

THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

25th August 2023

Snapshot



INTRODUCTION

The Digital Personal Data Protection Bill, 2023 was passed in the Parliament of India and received the presidential assent on August 12, 2023. Now the Digital Personal Data Protection Act, 2023 (“DPDP Act”) is applicable to the processing of all kinds of digital personal data within India irrespective of whether data is collected online or offline. It is also applicable to the processing of personal data outside India if that is for offering goods or services in India. Notable highlight is that the DPDP Act provides for establishment of Data Protection Board of India which will monitor the compliances with the provisions of the DPDP Act. The Act also grants certain rights to individuals which include the right to seek correction and erasure, right to obtain information and right to grievance redressal mechanism. This is a snapshot of the DPDP Act; there will be more nuanced notes coming up on the sub-topics and actionables, and various sectoral insights will also follow.

Snapshot of DPDP Act

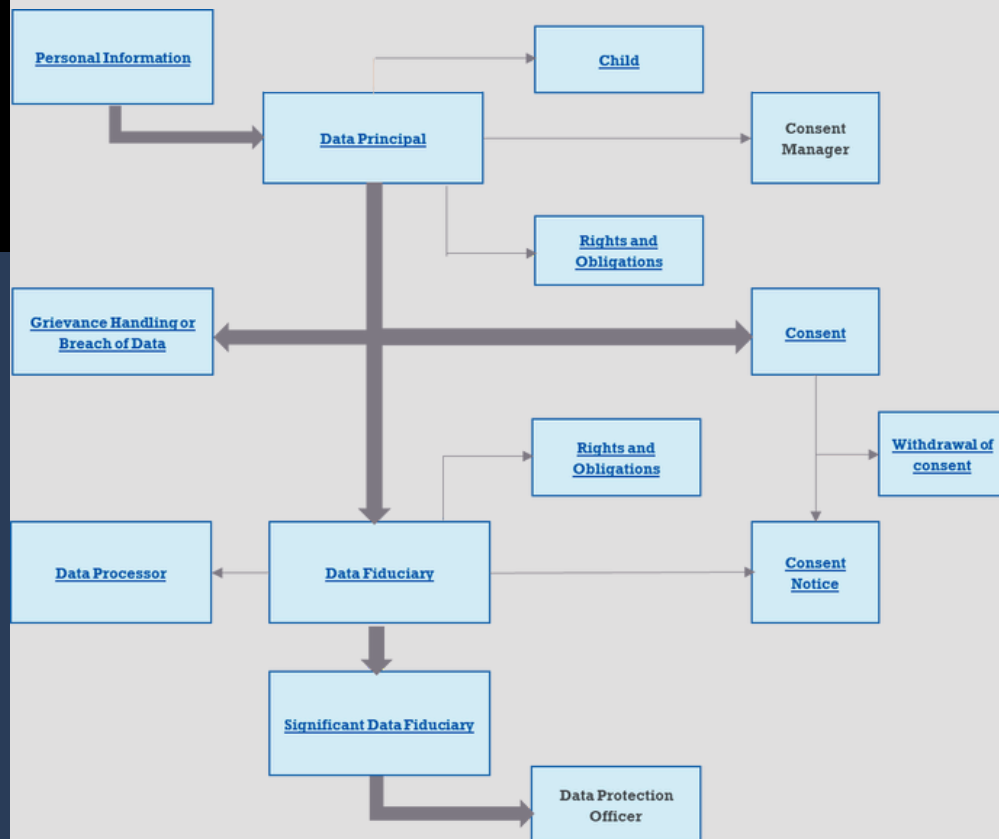
DP BOARD

1. Indian Data Regulator
2. May take Suo-Moto actions | receive complaints
3. Data breach notification, hearing and actions
4. Power of search and seizure
5. Consent manager registration
6. Notifications of Rules

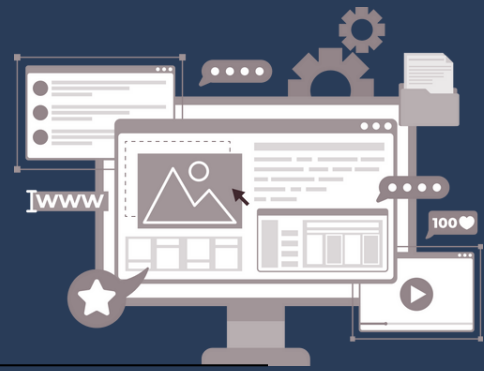
WATCH OUT:

1. Consent Notice - Existing and New DP
2. Start-ups to be partially exempted
3. Grievance Redressal Mechanism
4. Consent Withdrawal
5. Erasure of Personal Data
6. Employer Interest Protection
7. Updating Privacy policy
8. Immediate Actions

APPLICABILITY



Analysis



APPLICABILITY OF DPDP ACT

The DPDP Act applies to digital personal data of data principals, either collected online or in case of offline when collection has been digitized. It further applies to procession of data conducted outside India provided it is for profiling or offering goods or services to data principals located in India.

Exemptions from Applicability:
Offline data | Data used for personal or domestic purposes | Data available publicly

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WHEN TO START COMPLYING?

The DPDP Act has got Presidential assent and broad possible compliances must start right away, however minute requirements, forms, guidelines etc. may subsequently be officially notified in a phased manner and further fine tuned compliances must then be observed accordingly.

PERSONAL DATA ("PD")

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PD means any data about an individual who is identifiable by or in relation to such data. The data in this regard means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means. It is notable that the DPDP Act deals with data in relations to persons even though it is shared in business parlance.



IMMEDIATE ACTIONS

Start a check on the data collection and flow of the data and nature of data as personal data. For example, data in relation to customers, vendors representatives, channel partners etc.



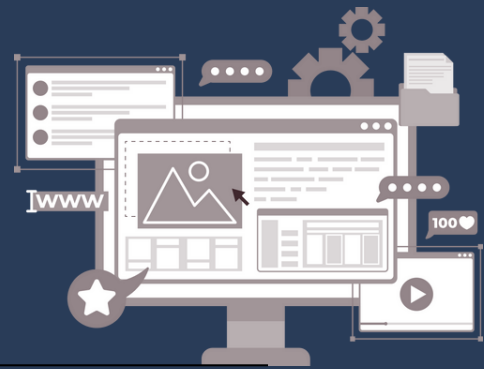
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SIGNIFICANT DF ("SDF")

SDF is to be notified by DP Board considering the volume and sensitivity of personal data processed | risk of the rights of DP | potential impact on the sovereignty and integrity of India | risk to electoral democracy | security of the State and public order. If a DF is signified as SDF, then it will be subject of higher compliances and obligations.



Analysis



DATA PRINCIPAL ("DP")

DP means the individual to whom the personal data belongs to and data of parents or guardian in case the personal data is in relation to child or person with disability. The DP's consent is required for dealing with personal data. In this case child means anyone below 18 years of age.

IMMEDIATE ACTIONS

4

To evaluate how much data is being shared with direct consent of DP.

DATA FIDUCIARY ("DF")

5

DF means any person who alone or in conjunction with other person determines the purpose and means of processing of personal data. Data Processors ("Processor") means any person who processes personal data on behalf of a DF.

Processing of personal data means a wholly or partly automated operation or set of operations on digital personal data and include operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction.



IMMEDIATE ACTIONS



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In relation to all data collections, processing and flow it is important to determine whether you are acting as DF or DP. The role and responsibilities changes in case of change of role.

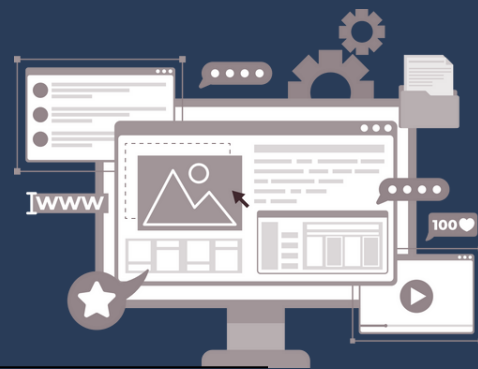


DATA PROTECTION BOARD ("DPB")

The DPB will be the authority to monitor the compliance of the DPDP Act. The complaints for non-compliance with the DPDP Act are to be made to the DPB and it will conduct an inquiry and would have power to impose penalty. The appeal to the order of DPB lie to the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).



Analysis



CONSENT NOTICE ("CN") AND WITHDRAWAL OF CONSENT

A person may process the personal data of a DP only as per this Act and for lawful purpose for which the DP has given the consent. The CN to be given by DF to DP at the time of taking personal data or prior. The CN to provide details of personal data required | purpose of processing | process of withdrawal of consent | grievance redressal | manner in which DP can complaint to DP Board | or any other information as notified.



IMMEDIATE ACTIONS

The withdrawal of consent clause is required to be integrated in the current privacy policies and the ramifications as well as the entire process of deletion to be embedded into the organizational systems.

DF RIGHTS & OBLIGATIONS



The DF irrespective of DP failure has the obligation to comply with the provisions of the Act | the burden of proof of compliance is on DF | DF to ensure compliance by Processor | to ensure technical and organizational measures for effective compliance| safeguarding and protecting PD | compliances in relation to data breach | deletion of data or conserving data if obligation under any other law| SDF higher obligations | processing of children data| DF to provide certain summary of processes and details to DP as requested | etc.



IMMEDIATE ACTIONS



DF is required to erase data in case of withdrawal of consent or as soon as it is reasonable to assume that the specified purpose is no longer served whichever is earlier. The reasonable assumption is something which will be sector specific. It will be important to make a segregation of data for which no particular purpose is sustaining in the organization.

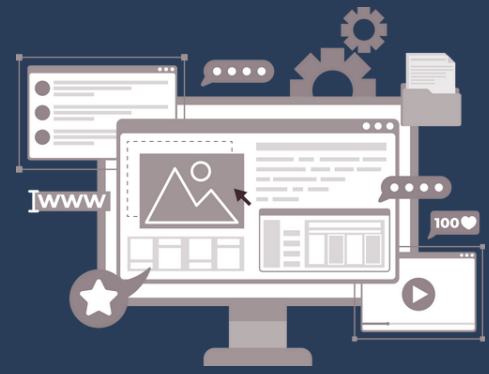


DP RIGHTS & DUTIES

DP can ask for a summary of data processes | list of all other DFs and Processors with whom PD shared | other information as would be required. The DP has a right to correction and/or erasure of PD | Right of Grievance redressal | Right to nominate. Duties of DP comply with applicable laws | not to impersonate | provide true, verifiable and complete details.



Analysis



10 GRIEVANCE HANDLING AND ALTERNATIVE DISPUTE MECHANISM

In case of any data breach the DF is required to inform DPB and the DP. The DPB will induct an inquiry and would direct Data Fiduciary to adopt any urgent measures to find remedy of data breach or mitigate harm caused to Data Principal. The DPB can also impose penalty.

The DP can approach for any grievances or breach by DF. The DPB can also recommend mediation or any alternative mechanism of dispute resolution.

11 PENALTIES

The financial penalty under DPDP Act has been kept significantly high and for various non-compliances the penalty has been kept ranging from INR 50 Crore (approx. USD 6 million) to INR 250 Crore (approx. USD 30 million).

Since the penalties for non-compliance is high; this could be seen as deterrent for non-compliance. The DF and DP should definitely ensure substantial understanding and requisite compliances.

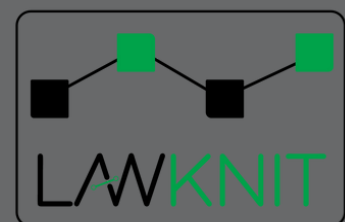
THANK YOU!

TO ONBOARD ON
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