

Digital Personal Data Protection Act 2023 (DPDP Act)

The newly passed Digital Personal Data Protection Act 2023 establishes guidelines for the processing of digital personal data.

1. Applicability of the Act:

- Any personal data gathered offline but later digitised and the personal data obtained online from Data Principals in India.
- If data processing is in connection with any activity related to the offering of goods or services to data principals within the territory of India, it will also be subject to the same rules.
- A Data Fiduciary term has been defined to include persons who, either alone or with others, decide on the reasons and the ways personal data should be used.

2. Salient Features:

The obligations of Data Fiduciary viz., individuals, companies, and government entities who process data) for data processing (that is, collection, storage, or any other operation on personal data).

- To have security safeguards to prevent personal data breaches.
- To intimate personal data breaches to the affected Data Principal and the Data Protection Board.
- To erase personal data when it is no longer needed for the specified purpose.
- To erase personal data upon withdrawal of consent.
- To have in place a grievance redressal system and an officer to respond to queries from Data Principals.
- To fulfil certain additional obligations in respect of Data Fiduciaries notified as Significant Data Fiduciaries, such as appointing a data auditor and conducting periodic Data Protection Impact Assessments to ensure a higher degree of data protection.



Rights to individuals on privacy:

- 1 To access information about personal data processed.
- 2 To correction and erasure of data.
- 3 To grievance redressal.
- 4 To nominate a person to exercise rights in case of death or incapacity.

Personal data of children:

- Act allows a Data Fiduciary to process the personal data of children only with verifiable parental consent.
- Act does not permit processing that is detrimental to the well-being of children or involves their tracking, behavioural monitoring, or targeted advertising.

Data Protection Board:

- DPDP Act requires creation of Data Protection Board of India, which will oversee compliance, investigate violations, assess penalties, and take corrective or mitigating actions in case of a data breach.

Penalties vary depending on the offense; for example:

- Breach in observing the obligation of Data Fiduciary to take reasonable security safeguards to prevent personal data breach - Upto INR 250 crore.
- Breach in observing the obligation to give the board or affected Data Principal notice of a personal data breach - Upto INR 200 crore.
- Breach in observance of additional obligations in relation to children - Upto INR 200 crore.
- Breach in observance of additional obligations of significant Data Fiduciary - Upto INR 150 crore.
- Breach in observance of the duties - Upto INR 10,000.
- Breach of voluntary undertaking accepted by the board upto the extent applicable to the breach under section 28.
- Breach of any other provision of this Act or rules - Upto INR 50 crore.



Organisation's immediate actionable points:

- To be aware of the rules and regulations set forth by the law.
- To create a thorough data inventory and their classification.
- To conduct Data Protection Impact Assessment.
- To implement required data security controls based on the existing risks.
- To identify the gaps via periodic internal audits and evaluations.
- To implement a system to react to requests for data primary rights.
- To make sure that all contracts with data processors are updated as per DPDP Act.



How we help?

We have experienced data privacy and protection professionals with in-depth industry and technical knowledge who can assist you with the following services relating to India's DPDP Act 2023:



Gap Analysis: Identifying data privacy gaps in the organisation by applying gap assessment methodology to highlight lapses in your policies/processes and suggest an effective data privacy mitigation plan based on relevant industry best practices.

Data Privacy Framework: Setting up data protection governance framework for data management, privacy policies, controls, risk assessments, and consent forms compliant with the DPDP Act 2023 within timeline.

Compliance Check: Carrying out compliance check to ensure the processes are working effectively and the controls/ framework defined is adequate and in accordance with the requirements of the DPDP Act.

Organisational Training program: Can conduct online/offline training to relevant departments on regulatory requirements of the DPDP Act 2023 and their responsibilities while handling or processing personal data to ensure compliance with the Act.



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