



INDIA'S DIGITAL PERSONAL DATA PROTECTION ACT 2023 HIGHLIGHTS

- The Digital Personal Data Protection Act 2023 (**DPDP 23**) was passed by both the houses of the Parliament and received Presidential assent. It was published in the Official Gazette on 11 August 2023.
- Central Government will notify the dates on which various provisions of DPDP 23 will come into force.

TERRITORIAL AND EXTRA-TERRITORIAL APPLICABILITY

- DPDP 23 will apply to personal data collected within India in: (i) digital form; and (ii) non-digital form but digitized subsequently.
- It covers processing of personal data outside India, if such processing is in connection with an activity related to offering goods or services to data principals (akin to data subjects) within India.
- Does not apply to personal data made publicly available.

KEY EXEMPTIONS

- Exemptions from certain obligations for processing personal data in India of individuals outside India, pursuant to a contract between an Indian entity and a foreign entity (e.g., outsourcing).
- Based on volume and nature of personal data being processed, Central Government could also exempt certain data fiduciaries (akin to data controllers) from requirement of notice, etc.

CROSS-BORDER DATA TRANSFER

- Cross border transfer allowed to all jurisdictions by default.
- Central Government may, however, restrict transfer to certain notified countries/territories outside India.

- Other stricter laws (such as sectoral regulations) relating to cross border transfer to prevail.

ADDITIONAL OBLIGATIONS FOR CHILDREN'S PERSONAL DATA

- 'Verifiable consent' from parents / lawful guardians is mandatory.
- Embargo on behavioral monitoring or targeted advertising or processing which is '*likely to cause any detrimental effect on the well-being of a child*'.
- Central Government may notify a lower age of children (i.e., below 18 years) only for such processing by a data fiduciary which is done in a verifiably safe manner.

DATA PROTECTION BOARD OF INDIA

- Establishment of a Data Protection Board of India (**DPBI**) having power to adjudicate complaints under DPDP 23 and impose penalties.

NOTICE AND CONSENT FOR PROCESSING OF PERSONAL DATA

- Consent should be free, specific, informed, unconditional, unambiguous, and through a clear affirmative action indicating an agreement for processing for specified purposes.
- DPDP 23 provides for certain 'legitimate uses' other than consent - e.g., employment related purposes, compliance with judicial orders or legal obligations.

DATA FIDUCIARY'S OBLIGATIONS

- Responsible for implementation of appropriate technical and organizational measures, reasonable security safeguards, etc.
- Responsible for setting up effective mechanism for grievance redressal, erasure of personal data after purpose is served, report personal data breaches, etc.

ADDITIONAL OBLIGATIONS FOR SIGNIFICANT DATA FIDUCIARIES

- Central Government to notify significant data fiduciaries based on parameters such as volume and sensitivity of data handled.
- Additional obligations such as appointment of a data protection officer **residing in India**, appointment of an independent data auditor, undertaking of data protection impact assessments, etc.

FINANCIAL PENALTIES

- Depending on the nature of breach, penalties ranging from a maximum of INR 50 crores (USD 6 million) to INR 250 crores (USD 30 million) can be imposed on a data fiduciary.
- When an instance of contravention involves multiple breaches, cumulative penalty above INR 250 crores (USD 30 million) can be imposed.

OUR VALUE PROPOSITION

TRAINING AND SENSITIZATION

- Presentation to the leadership / board members highlighting key aspects of DPDP 23.
- Training and sensitization sessions for key functions / mid-management.
- Elaborate masterclass with relevant stakeholders (e.g., legal / compliance / privacy teams) who will implement the programme.

GAP ANALYSIS

- Interviewing of relevant stakeholders to identify verticals / functions where personal data is involved.
- Customized questionnaires for the identified verticals / functions.
- Detailed report basis interviews / responses to questionnaires.

EFFECTING RECOMMENDATIONS

- Creating step plan in order to implement recommendations, spell out action items, identify relevant participants, etc.
- Assistance from a legal perspective, wherever required (e.g., drafting / reviewing of privacy notices, consent requests, agreements, etc.).
- Regular interactions with the implementation team and monitoring progress.

Our Core Team



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AWARDS & RECOGNITION

LEGAL500 Tier 1: Data Protection



Leading individuals:

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Recommended Lawyers:

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ALB: Data Protection Law Firm of the Year

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Firm of the Year



**Data Protection Lawyer of the
Year 2023**

Harsh Walia



**Data Privacy &
Protection**

Supratim Chakraborty

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