

# DIGITAL PERSONAL DATA PROTECTION ACT, 2023



An Update from Ambadnya Consultancy Services Private Limited

## SUMMARY

India's Privacy Law, the DPDP Act was notified in the Official Gazette on 11 August 2023 and will come into force on a date to be subsequently notified, with different dates being appointed for different provisions.

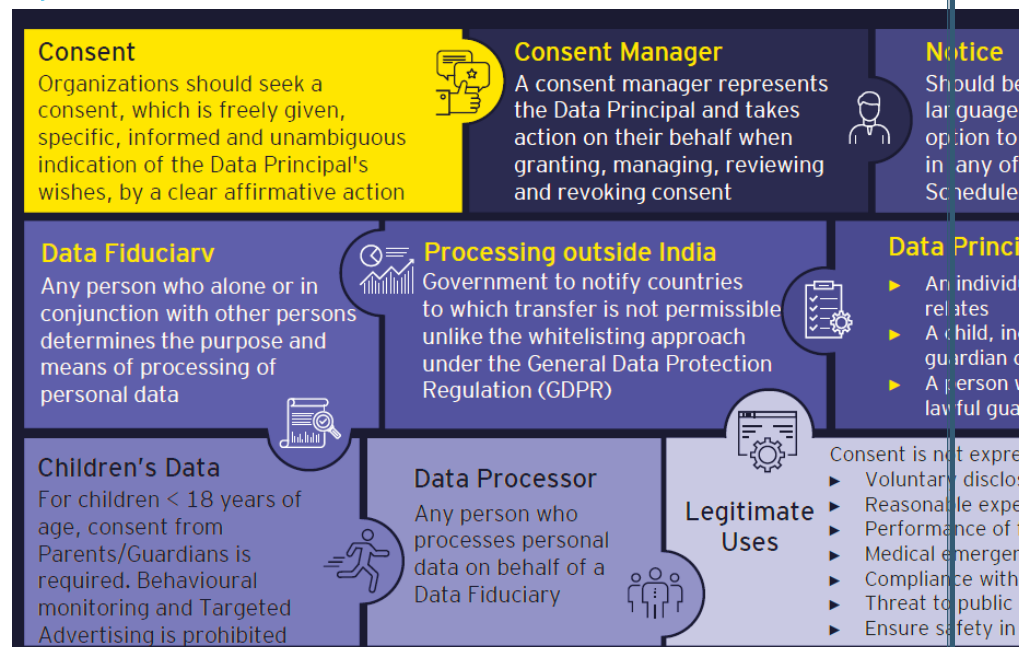
The DPDP Act provides the framework for the new data protection regime but will be supplemented by rules to be issued by the Central Government in due course.

## Scope of the DPDP Act

The DPDP Act is 'principles-based legislation' that relies on concepts that are broadly similar to those in the GDPR. It governs data fiduciaries (i.e. data controllers), data processors and data principals (i.e. data subjects).

The DPDP Act is applicable to personal data capable of identifying the data principal, which is either collected digitally or is digitized after it is collected non-digitally. Personal data processed for personal or domestic purposes or aggregated personal data collected for research and statistical purposes which is not used for any decision specific to a data principal are excluded from the DPDP Act. Interestingly, and in contrast to the GDPR, personal data made publicly available is also out of scope of the DPDP Act.

## Key Definitions



Source: EY

## Purpose, notice and consent

The DPDP Act contains a more limited concept of privacy notices. Where a data fiduciary needs to rely on consent to process personal data, that consent should be free, specific, informed, unconditional and unambiguous. Companies should seek such consent by way of

a clear and itemized notice and request for consent, to be made available in all the 22 languages mentioned in the 8th schedule of the Indian Constitution. The contents of that notice may be further elaborated in subsequent rules but based on the DPDP Act it is unlikely to need details of any data protection officer, further recipients of the personal data, period of retention, etc. as needed under the GDPR

Consent is not always needed and data fiduciaries may also process personal data for certain 'legitimate uses'. This includes processing for:

- specified purposes for which the data principal has voluntarily provided her/his personal data, and has not indicated her/his objection to use such personal data for that purpose;
- fulfilment of any legal/judicial obligations of a specified nature;
- medical emergencies and health services, breakdown of public order; and
- employment.

### Data Principal Rights

- Right to information - seek information on how their data is processed, available in clear and understandable way
- Right to grievance redressal - Individuals have the right to readily available means of registering a grievance with a Data Fiduciary
- Right to correction and erasure - Individuals have the right to correct inaccurate / incomplete data and erase data that is no longer required for processing
- Right to nominate - Individuals can nominate any other individual to exercise these rights in the event of death or incapacity

### Data fiduciaries

Data fiduciaries have been classified into different brackets on the basis of volume and sensitivity of the personal data (and other prescribed criteria). Organisations routinely dealing with large volumes of individual personal data will be classified as significant data fiduciaries and have additional obligations such as appointing a data protection officer and an independent data auditor, and conducting data protection impact assessments.

### Data breach and breach notifications

Data fiduciaries are required to employ reasonable security safeguards to prevent personal data breaches.

In addition, all personal data breaches are mandatorily reportable to the Board and, in a first in India, to affected data principals. The timeline for reporting a data breach under the DPDP Act is expected to be clarified by way of rules.

### Children's personal data

Parental consent must be obtained when processing data of all minors (defined as those under 18 years of age). There are additional restrictions on the usage of such data.

### Rights and duties of data principals

Data principals have the right to access information, nomination, correction, completion, updating and erasure and grievance redressal. One of the major innovations under the GDPR, the right of data portability, is missing, possibly reflecting the limited take up of that right within the EU.

### Data localization and cross-border data transfers

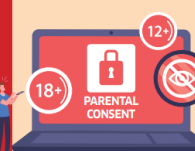
The DPDP Act allows for cross-border transfers to all countries *unless* specifically restricted by the Indian Government. This provides a much simpler approach to international transfers compared to the complex matrix of adequacy, SCCs, BCRs and TIAs currently in place under the GDPR.

### The Data Protection Board

- The Central Government may, by notification shall appoint and establish, an independent board to be called

For users in India between 13 and 18 years of age, apps may now have to get parental consent by verifying the identity of the children and their parents

IT minister **Ashwini Vaishnaw** suggested in the Lok Sabha that parental consent can be taken via government e-document wallet DigiLocker







May increase compliance costs for social media, edtech cos

the Data Protection Board of India (Board).

- This Board should consist of a chairperson and other members, who should be appointed by the Central Government
- The Board is entrusted with the task of enforcement, including determining non-compliances, imposing penalties, issuing directions and mediation (to resolve dispute between parties) to ensure compliance with the law
- The Board is enshrined with powers of a civil court and appeals against its decisions lie to Telecom Disputes Settlement and Appellate Tribunal

#### Penalties

	Up to <b>INR10,000</b> Breach in observance of duty of Data Principal		Up to <b>INR200 Crore</b> Breach in not giving notice of Personal Data Breach
	Up to <b>INR200 Crore</b> Breach in observance of additional obligation in relation to children		Up to <b>INR250 Crore</b> Noncompliance of the provisions by Data Fiduciaries

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*“While the date of the notification of the law is awaited, it is pertinent for organisations to perform an assessment on their existing practices and policies on Data Privacy and related protection*

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#### WHERE WE CAN HELP?

- Perform Undertake a Data Privacy Assessment to understand Privacy posture
- Develop Data Privacy framework
- Data Discovery, Classification, and Mapping exercise to identify the Personal Data touch points, and structured and unstructured data across the environment and classify them.
- Develop/update relevant policies and underlying procedures to outlay the intent and consistent approach toward privacy and protection

#### OUR SERVICES

- Information Security - Governance, Risk & Control (GRC), Data Privacy and SOC 2
- Management System Consultancy and Training - Management system deployment
- Human Resource Consulting - Manpower Services

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