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The Digital Personal Data Protection Act, 2023

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Opportunities and importance

- **Two-way working:** Understanding the dynamic interplay in modern data processing ecosystems.

- **Professional Roles:** Recognizing Chartered Accountants (CA) and Company Secretaries (CS) as crucial Data Fiduciaries or Data Processors.

- **Professional Services:** Providing expert consulting for clients encompassing comprehensive gap assessment and rigorous implementation of compliance measures.

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Why DPDPA?

Global Standards

As Indian businesses expand internationally, aligning with stringent global privacy laws (such as the EU's GDPR) ensures cross-border trade and compliance.

Combating Data Misuse

Establishes a robust framework to prevent unauthorized access, breaches, and the unethical commercial exploitation of personal data.

Constitutional Right

It directly stems from the landmark 2017 Supreme Court Puttaswamy judgment, which declared privacy a fundamental right under Article 21 of the Indian Constitution.

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Applicability & Exemptions

To Whom is it Applicable?

The Act applies to any entity processing digital personal data within the defined jurisdictions.

- **Any one processing data:** If you collect or process digital personal data, the act applies to you.
- **Nature is not material:** The type of organization does not exempt it.
- **Sector Agnostic:** Covers Corporate, Non-Corporate, and Government entities alike.

Key Exemptions

Certain specific scenarios and types of data processing are exempt from the core obiigations.

- Personal Data processed for purely personal or domestic use.
- Publicly available data, including social media digital footprints.
- Data processed for law enforcement, national security, or legal/journalistic purposes.

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Important dates

Phase 1

Nov 13, 2025: Initial roll-out. Provisions regarding the establishment and administrative functions of the Data Protection Board of India (DPBI) take effect.

Phase2

Nov 13, 2026: The ecosystem for registered Consent Managers goes live, allowing platforms to manage user consent across multiple entities.

Phase3

May 13, 2027: Full, mandatory compliance enforced. Non-compliance after this date attracts penalties of up to f250 crore.

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Important concepts

Data

A representation of information, facts, concepts, opinions or instructions suitable for communication, interpretation or processing.

Personal Data

Any data about an individual who is identifiable by or in relation to such data.

Digital Personal Data

Personal data stored or processed in digital form.

Data Fiduciary

Any person who alone or in conjunction with others determines the purpose and means of processing personal data.

Data Principal

The individual to whom the data relates. Includes parents/guardians for children or persons with disabilities.

Data Processor

Any person who processes personal data solely on behalf of a Data Fiduciary.

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PI (Personal Identifiable)

The law covers information in digital form (or data collected offline and later digitized) across the following categories:

- **Identity Information:** Names, dates of birth, Aadhaar numbers, PAN cards, Voter IOs, and passport numbers.
- **Financial Data:** Bank account details, UPI IOs, credit/debit card information, and transaction histories.
- **Health Information:** Medical history, diagnostic reports, and health insurance details.
- **Location Data:** GPS information and travel records.
- **Contact Details:** Phone numbers, email addresses, and residential addresses.
- **Biometric Data:** Fingerprints, facial images, and iris scans.
- **Online Identifiers:** IP addresses, device I Os, and digital cookies (when linked to an individual).

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Important Provisions – consent

- **DPDPA Board:** The central authority established under the Act.
- **Requirement:** Consent is mandatory for data processing and must be for a legitimate purpose.
- **Clarity:** Consent needs to be clear, unambiguous, and informed.
- **Language:** Must be in English and 22 scheduled languages, if demanded by the Data Principal.
- **Minors:** Consent by the Guardian is very important. Minor data is treated significantly.
- **Withdrawal:** Consent can be withdrawn by the user at anytime.
- **Access & Control:** Individuals can access their data and understand usage, ensuring transparency.
- **Consent Managers:** Can be registered to facilitate these processes.

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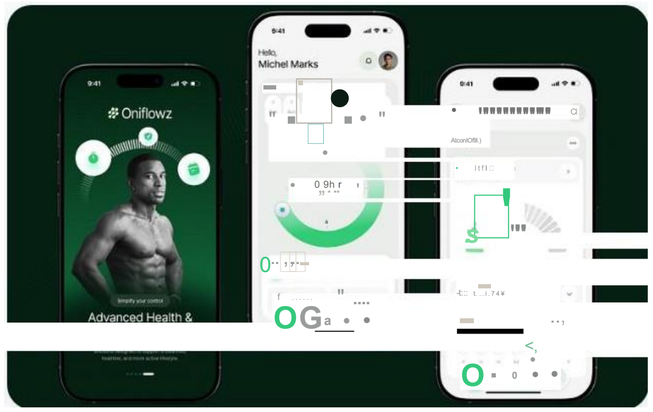
Real Life consent scenario

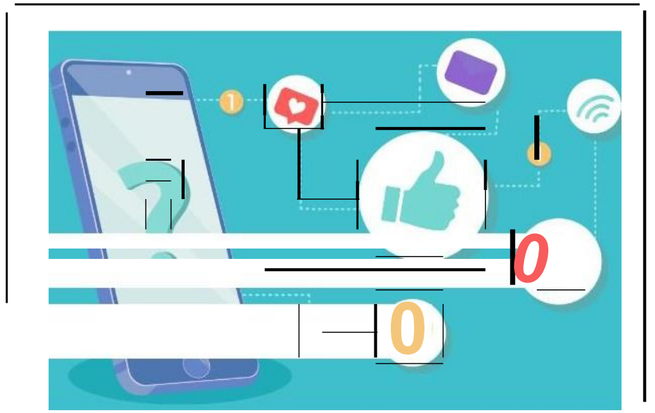
Online Shopping

The platform must obtain explicit consent to process data for order fulfillment and marketing.You must have the option to opt-out of promotional emails at any time.



Healthcare Apps

The app must obtain explicit consent before collecting sensitive metrics. It must clearly state usage, provide revocation mechanisms, and ensure secure storage.



Social Media

The platform must ensure consent is informed and specific regarding targeted ads. Users should control the extent of data sharing and can withdraw consent.

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Data Fiduciary

Custodians of a Digital Vault

Data Fiduciaries are responsible for ensuring personal data is handled ethically, securely, and transparently.

Core Roles:

- Obtain clear, explicit, and freely given consent.
- Provide detailed information on processing purpose and scope.
- Implement Consent Management Systems.
- Ensure Data Security to prevent unauthorized access.
- Conduct Regular Audits and Compliance Checks.

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Significant data fiduciary

The Central Government decides SDF status based on data volume/sensitivity, risk to Data Principal rights, impact on sovereignty, electoral democracy, state security, and public order.

- **Appoint a Data Protection Officer (DPO):** The DPO will represent the Data Fiduciary, must reside in India, is responsible directly to the Board of Directors, and serves as the primary point of contact for grievance redressal.
- **Appoint an Independent System Auditor:** To ensure unbiased verification of data security and processing protocols.
- **Periodic Assessments:** Carry out periodic Data Protection Impact Assessments (DPIA) to evaluate and mitigate risks.
- **Periodic Audits:** Conduct regular compliance and security audits to maintain adherence to DPDPA standards.

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Consent Mangers

A Consent Manager is a registered intermediary empowering Data Principals to grant, manage, review, and revoke consent to Fiduciaries via a unified interface.

- **Strict Independence:** They operate independently of the Fiduciaries utilizing the data.
- **Data-Blind Portability:** Acting as "sealed couriers," they do not read, access, or store the underlying personal data. They only route data securely.
- **Financial Standards:** Must meet stringent operational requirements, including a minimum net worth of Rs. 2 crore, to prevent misuse and ensure systemic trust.
- **Nature:** Internal or External. Third-party is not mandatory, but specialized tools are heavily utilized.

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Data principal

Access & Info

Demand a summary of personal data being processed, its purposes, and third-party identities.

Correction & Erasure

Request correction of inaccuracies, completion of data, or erasure of data no longer necessary.

Withdraw Consent

Revoke consent anytime. Once withdrawn, Fiduciaries must cease processing unless a legal basis applies.

Right to Nominate

Designate another person to exercise these rights in the event of death or incapacity.

Grievance Redressal

Escalate grievances to the Data Fiduciary and further to the Data Protection Board of India.

Statutory Duties

Must provide authentic info, not impersonate, and avoid false complaints (penalties up to ₹10,000).

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Data Processors (Part 1)

Definition & Authority

A Data Processor is any entity that processes digital personal data on behalf of a Data Fiduciary.

- **No Independent Power:** A processor has no decision-making authority over why or how the data is processed.
- **Strict Instructions:** They act entirely on the instructions of the Data Fiduciary.
- **Risk of Reclassification:** If making independent decisions (e.g., training their own AI), they automatically classify as a Fiduciary with full liabilities.

Contracts & Sub-Processors

The relationship must be governed by a valid, legally binding contract detailing processing scope.

- **Contract Requirements:** Must specify duration, security standards, and immediate breach notification timelines.
- **Prior Written Approval:** Cannot engage a sub-processor (e.g., a cloud host) without prior written authorization from the Fiduciary.

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Data Processors (Part 2)

(Ji) **Chain of Liability:** The primary processor remains fully liable to the Fiduciary for the actions and compliance failures of any sub-processors they engage.

Technical Measures: Processors must implement robust security (like AES-256 encryption and role-based access controls) to prevent breaches.

Incident Reporting: Bound to report incidents immediately to the Fiduciary, who faces strict reporting timelines to the Board.

Data Deletion: Must stop processing and securely delete/return data if consent is withdrawn or the contract terminates, certifying deletion in writing.

Indemnity: Fiduciaries often require processors to provide Unlimited Indemnity for regulatory fines caused by the processor's negligence.

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Other Imp provisions

Security & Legacy Data

- **Rule 6 (Security):** Requires encryption, least privilege access, strict admin login, and 1-year log retention.
- **Legacy Data:** For pre-act consent, a notice must be given detailing what data is held, access limits, and Board approach. If no notice, processing requires a fresh start.
- **Erasure:** Requires a retention-to-erasurematrix. Keep data only for its purpose. Issuewarning48 hours before deletion.

Reporting & Transfer

- **Breach Reporting:** 72 hours to the Board. Quick reporting to the Data Principal in plain language. Abnormal access reporting starts within 6 hours.
- **Cross-Border Transfer:** Follows a negative list of jurisdictions (stricter jurisdictions). Not yet fully defined. No re-consenting required.
- **Grievance Redressal:** Outer limit of 90days for resolving data leakage issues.
- **Penalty:** Upto Rs. 250 crores/-

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How to Prepare

Know YOUR Data: Identify all personal data touchpoints.

Consent Notices: Draft compliant DPDPA notices.

Vendor Checks: Maintain a clean and compliant processor ecosystem.

Retention Matrix: Establish an effective retention and erasure matrix.

Data Mapping: Trace data flow from collection to deletion.

Consent Operations: Ensure operational readiness for consent management.

Rule 6Security: Implement required IT security and encryption.

Setup Reporting: Institute 72-hour breach response mechanisms.

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Questions & Answers

Thank you for your attention.

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