

DECODING THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

INTRODUCTION

Of lately, the country has witnessed a spark in the number of cases being reported where the personal data of an individual is being misused or manipulated by several online platforms.

Though the Indian Constitution guarantees the protection of “right to privacy”, there was no legal recourse for an individual to report the blatant violation of their personal information.

Therefore, to address this issue, the parliament promulgated The Digital Personal Data Protection Act, 2023, which recognizes the right of individuals to protect their personal data and at the same time the need to process such personal data for lawful purposes.

The article focuses on the legalities that will now be required to be complied by the entities/business owners who collect and use personal data of their customers or prospective customers in digital form or convert physical data into digital form.

KEY PLAYERS UNDER THE ACT

- a) **Data Fiduciary:** Data Fiduciary means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data.
- b) **Data Processor:** Data Processor means any person who processes personal data on behalf of a Data Fiduciary.
- c) **Data Principal:** Data Principal means the individual to whom the personal data relates.

EXTENT OF APPLICABILITY

The act applies to the ‘Digital Personal Data’ of an individual, where the ‘*Personal Data*’ means any data about an individual who is identifiable by or in relation to such data, including but not limited to KYC documents, personal details etc.

This Act shall apply to the processing of digital personal data within the territory of India and also outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India;

However, it does not apply to:

- **Personal Data processed by individual for personal or domestic purpose.**
- **Personal Data which is made or caused to be made publicly available by Data Principal or any other person obligated under law.**

LEGAL COMPLIANCES UNDER NEW LAW:

1. Notice to be given by Data Fiduciary to Data Principal:

The act mandates sending of notice by Data Fiduciary to Data Principal informing her regarding:

- a. the personal data and the purpose for which the same is proposed to be processed;
- b. the manner in which she may exercise her rights under sub-section (4) of section 6 and section 13; and
- c. the manner in which the Data Principal may make a complaint to the Board, in such manner and as may be prescribed.

The Data Fiduciary shall also give the Data Principal the option to access the contents of the notice in English or any language specified in the Eighth Schedule to the Constitution.

2. Consent to flow from Data Principal to Data Fiduciary

Data Fiduciary shall before obtaining the data from the Data Principal shall take a consent from the Data Principal before processing her data for specified purpose.

The consent can be withdrawn anytime by Data Principal, whereafter the Data Fiduciary has to within a reasonable time, cease and cause its Data Processors to cease processing the personal data of such Data Principal.

Further, the law mandates that the consent shall be free, specific, informed, unconditional and unambiguous with a clear affirmative action, and shall signify an agreement to the processing of her personal data for the “specified purpose” and be limited to such personal data as is necessary for such specified purpose.

RIGHTS OF DATA PRINCIPAL:

1. Right to access information about personal data

The Data principal has a right to seek following information from the Data Fiduciary:-

(a) a summary of personal data which is being processed by such Data Fiduciary and the processing activities undertaken by that Data Fiduciary with respect to such personal data;

(b) the identities of all other Data Fiduciaries and Data Processors with

whom the personal data has been shared by such Data Fiduciary, along with a description of the personal data so shared; and

(c) any other information related to the personal data of such Data Principal and its processing, as may be prescribed.

2. Right to correction and erasure of personal data

A Data Principal shall have the right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent.

Data Fiduciary shall, upon receiving a request for correction, completion or updating from a Data Principal-

(a) correct the inaccurate or misleading personal data;

(b) complete the incomplete personal data; and

(c) update the personal data.

3. Right of grievance redressal

The Data Principal shall have the right to approach Data Fiduciary or Consent Manager to seek redressal of its grievances in respect to any act or omission by them.

The Data Fiduciary and Consent Manager have to respond to such grievance within such period as may be prescribed.

It is only when this remedy is exhausted by Data Principal, he can approach the Data Protection Board.

4. Right to nominate

Data Principal shall have the right to nominate, in such manner as may be prescribed, any other individual, who shall, in the event of death or incapacity of the Data Principal, exercise the rights of the Data Principal in accordance with the provisions of this Act and the rules made thereunder.

DATA PROTECTION BOARD

The Central Government may by notification for the purpose of the act, appoint a Board which shall be known as the Data Protection Board.

Powers of the Board:

- A. On receipt of an intimation of personal data breach, to direct any urgent remedial or mitigation measures in the event of a personal data breach, and to inquire into such personal data breach and impose penalty as provided in this Act.
- B. On a complaint made by a Data Principal in respect of a breach in observance by a Consent Manager of its obligations in relation to her personal data, to inquire into such breach and impose penalty as provided in this Act;

- C. On receipt of an intimation of breach of any condition of registration of a Consent Manager, to inquire into such breach and impose penalty as provided in this Act;

Function of the Board:

The Board may, for the effective discharge of its functions under the provisions of this Act, after giving the person concerned an opportunity of being heard and after recording reasons in writing, issue such directions as it may consider necessary to such person, who shall be bound to comply with the same.

APPEAL AGAINST THE ORDERS PASSED BY THE BOARD

Any person aggrieved by an order or direction made by the Board under this Act may prefer an appeal before the Appellate Tribunal.

Section 2(a) of the Act defines “Appellate Tribunal” which means the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997;

Time Period: Every appeal shall be filed within a period of sixty days from the date of receipt of the order or direction appealed against. The Appellate Tribunal may entertain an appeal after the expiry of the period, if it is satisfied that there was sufficient cause for not preferring the appeal within that period.

ALTERNATE RESOLUTION

DISPUTE

In case where the Board is of the opinion that the complaint may be resolved by mediation, it may direct the parties concerned to attempt resolution of the dispute through mediation by such mediator as the parties may mutually agree upon, or as provided for under any law for the time being in force in India.

PENALTIES

If the Board determines that there is a breach of the provisions of this Act or the rules made thereunder by a person is significant, it may, after giving the person an opportunity of being heard, impose such monetary penalty specified in the Schedule of the Act which ranges between Rs.10,000/- to Rs. 250,00,00,000/-.

The quantum of the monetary penalty depends upon grounds such as the nature, gravity and duration of the breach, the type and nature of the personal data affected by the breach, repetitive nature of the breach, whether the person, as a result of the breach, has realised a gain or avoided any loss, any mitigatory step adopted by the person, impact of imposition of the monetary penalty on the person etc.

It is unfortunate that there is no provision to pay compensation to the Data Principal whose data has been compromised as the entire penalty is required be deposited in the favour of Consolidated Funds of India.

DISCLAIMER

The present Article intends to provide brief and general information on the above mentioned subject & in no manner provides exhaustive details on the same. This document shall not be construed as a legal advise & further, shall not form as a base to take any decision without seeking proper legal advise from us. We shall not be responsible for whatsoever sustained by any person relying on this material

CONTACT US

UTKRISHTHA LAW OFFICES Advocates & Solicitors



Address:- 29, Kailash Hills, New Delhi

Email:- contact@utkrishthalaw.com

Phone:-8750021607, 9999309222

[Website:www.utkrishthalaw.com](http://www.utkrishthalaw.com)

KEY CONTACTS

**Himanshu Dhawan, Founding Partner
& Advocate, Supreme Court of India**

Email:- HimanshuDhawan@Utkrishthalaw.com

Phone: +91-9999309222

**Shubham Jain, Managing Partner &
Advocate on Record, Supreme Court of
India**

Email:- ShubhamJain@Utkrishthalaw.com

Phone:- +91-8750021607