

# ***DIGITAL PERSONAL DATA PROTECTION ACT, 2023 - AN OVERVIEW***



**SUGATHAN & ASSOCIATES**





# DPDP ACT 2023

Right to Privacy is recognised as a fundamental right of the citizen. Protection of personal data from misuse is important for protecting this right.

The Digital Personal Data Protection Act recognises the need to protect personal data.

Act received the assent of the President on 11th August, 2023.

Act will come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions.



# WHAT IT MEANS FOR BUSINESS?

## SECTORS

- Hospitals/Clinics
- Financial Services
- Schools
- Travel services
- Professional services

## REQUIREMENTS

- Privacy notices
- Data protection practices
- Grievance Redressal Mechanism
- Security
- Breach notices
- Audits/ Impact Assessments



# AMBIT & JURISDICTION

## PERSONAL DATA

- The act focuses on the personal data in digital form.
- Section 2(t) defines the term personal data as “any data about an individual who is identifiable by or in relation to such data”

## APPLIES TO

- Within India:  
Processing of digital personal data within India where such data is collected either online or offline and is digitized
- Outside India  
processing of personal data, under the condition that such processing has been in connection with an activity of offering goods or services to data principal within India

The Act allows the transfer of personal data outside India, except to countries which has been restricted by the Central Government by notice.

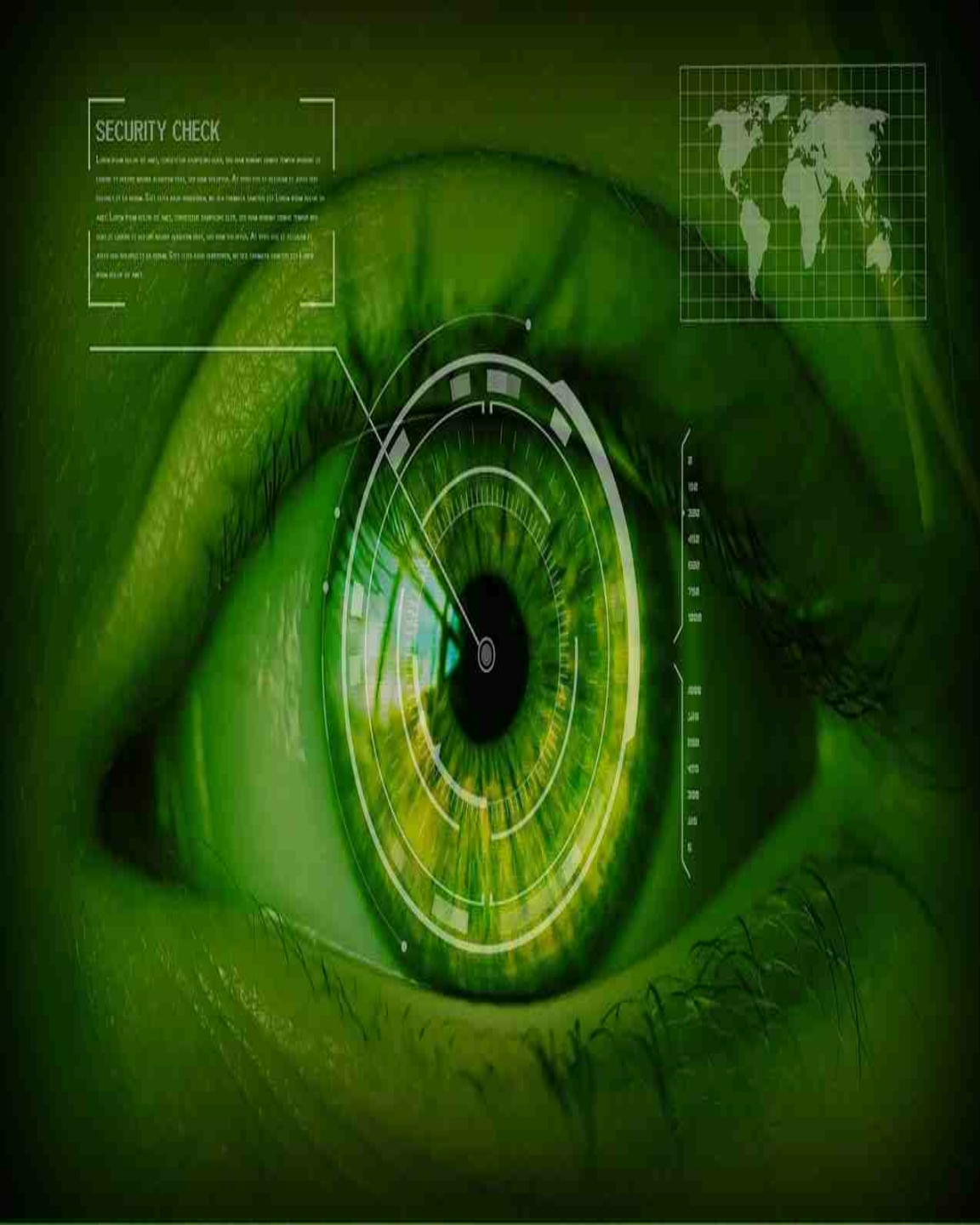


# EXEMPTIONS

## The act doesn't apply to:

1. personal data that has been published or made available by the data principal herself or
2. by any other person who has a legal obligation to do so.
3. processing of personal data done by a person for any personal or domestic purpose





DATA PRINCIPAL: Sec 2(j)

“the individual to whom the personal data relates and where such individual is— (i) a child, includes the parents or lawful guardian of such a child; (ii) a person with disability, includes her lawful guardian, acting on her behalf”

DIGITAL FIDUCIARY: Sec 2(i)

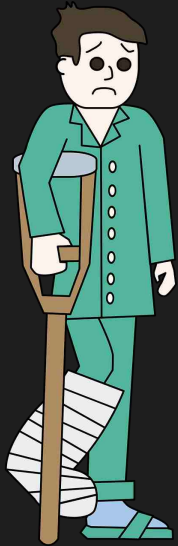
“any person who alone or in conjunction with other persons determines the purpose and means of processing the personal data”

DATA PROCESSOR: Sec 2(k)

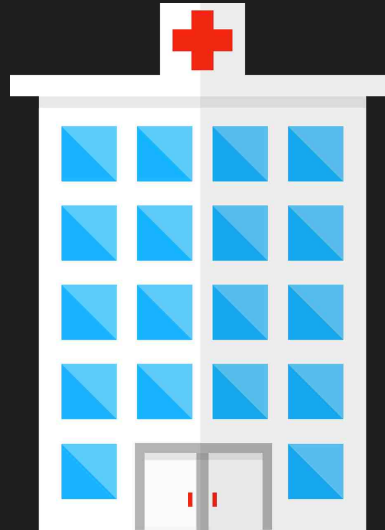
“any person who processes personal data on behalf of data fiduciary”



# DATA PROCESSING



Patient -- Data  
Principal



Hospital-- Data  
Fiduciary



Cloud Service  
Provider--- Data  
Processor- who on  
behalf of the hospital  
processes the data



# PERSONAL DATA- PROCESSING

## ➤ DATA PRINCIPAL

- They have the right to obtain information about processing access, update and erase their personal information so it can be said that the individuals are attaining more control over their digital footprints.
- They can nominate a third person to exercise the rights in the event of death or incapacity of the person. They the right to grievance redressal also.
- Consent should be free, precise, informed, unconditional, and unequivocal, with a clear affirmative action, and should represent acceptance to the processing of personal data.
- Data principal shall have the right to withdraw the consent at any time.
- Upon withdrawal of consent, the data fiduciary shall cease processing the personal data of data principal unless such processing is required







## ➤ CHILDREN

If the information to be processed is of a child then,

- the data fiduciary has to obtain prior confirmation/ permission from the parents or the lawful guardian of the child
- Children cannot be tracked, behaviourally observed, or subjected to targeted advertising by data fiduciaries. Additionally, they are not allowed to handle personal data in a way that might have a negative impact on a child's wellbeing

# DATA PRINCIPAL

## RIGHTS

- Right to access personal data information
- Right to correction, completion, updation and erasure of personal data
- Right of grievance redressal
- Right to nominate

## DUTIES

- Not to withhold any material information when submitting personal information for any document, unique identifier, proof of identity, or proof of address.
- Should not register false or frivolous complaint
- Should not impersonate another person

# DATA FIDUCIARY

## DEFINITION :

Section 2(i) : any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data

## NOTICE:

- Notice should be sent to the data principal regarding the personal data to be processed
- The notice must include information about the personal data that will be collected for processing, the purpose of processing, the data principal's rights, and the manner in which these rights can be exercised.

## EXEMPTION:

Data fiduciary can process a personal data of an individual for “legitimate purpose” without the concerned person’s consent





# LEGITIMATE PURPOSE

- The personal data is provided by the data principal to the data fiduciary and there is no indication as to the non consent of the person to process their PD
- To fulfil an existing legal obligation on a person to disclose information to the state
- For the purpose of employment or for safeguarding an employer from loss or liability



# DATA FIDUCIARY

## OBLIGATIONS

- Take reasonable measures to ensure the accuracy and completeness of data
- Build reasonable security safeguards to prevent a data breach
- Inform the Data Protection Board of India and affected persons in the event of a breach
- Erase personal data as soon as the purpose has been met and retention is not necessary for legal purposes.

## DUTIES

They should ensure that the processor,

- has stopped processing the PD when the consent has been withdrawn,
- has erased the PD after processing
- protects the PD under their control

# SIGNIFICANT DATA FIDUCIARY

- Special category of data fiduciary to be notified by the Central Government based on certain factors such as,
  - the volume and sensitivity of personal data processed,
  - risk to the rights of data principal and
  - its potential impact on sovereignty and integrity of India
  - risk to electoral democracy;
  - security of the State; and
  - public order

## Obligations

- Conduct periodic audit
- Appointment of independent data auditor and a data protection officer
- Undertake data protection impact assessment





# GENERAL EXEMPTIONS

- Personal data of Data Principals outside India is processed pursuant to a contract
- Processing for a scheme of compromise or arrangement or merger or amalgamation of two or more companies or to ascertain financial information and assets as well as liabilities of a debtor
- Instrumentality of the State or Central Government as notified
- The Central Government has the authority to declare some data fiduciaries, including start-ups, exempt from certain legal requirements.

# DATA PROTECTION BOARD OF INDIA

## ➤ INTRODUCTION

- Central Government has the power to establish Data Protection Board of India.
- Board members will be appointed for two years and will be eligible for re-appointment
- The central government will prescribe details such as the number of members of the Board and the selection process.
- Appeals against the decisions of the Board will lie with TDSAT (Telecom Dispute Settlement and Appellate Tribunal)

## ➤ FUNCTIONS

- Monitoring compliance and imposing penalties
- Directing data fiduciaries to take necessary measures in the event of a data breach
- Hearing grievances made by affected persons.



# PENALTY

The Data Protection Board has the power to issue penalties up to INR 250 crore.

1. Failure to take security measures to prevent data breaches - upto INR 250 crore
2. Breach in observance of the duties of Data Principal - upto INR 10,000.
3. Breach in observing the obligation to give the board or affected data principal notice of a personal data breach - upto INR 200 crore
4. Breach in observance of additional obligations in relation to children - upto INR 200 crore
5. Breach in the observance of the additional obligations of a significant data fiduciary - upto INR 150 crore
6. Breach of any other provision of this Act or the rules made thereunder - upto INR 50 crore





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