



SALOT & SHAH
ASSOCIATES

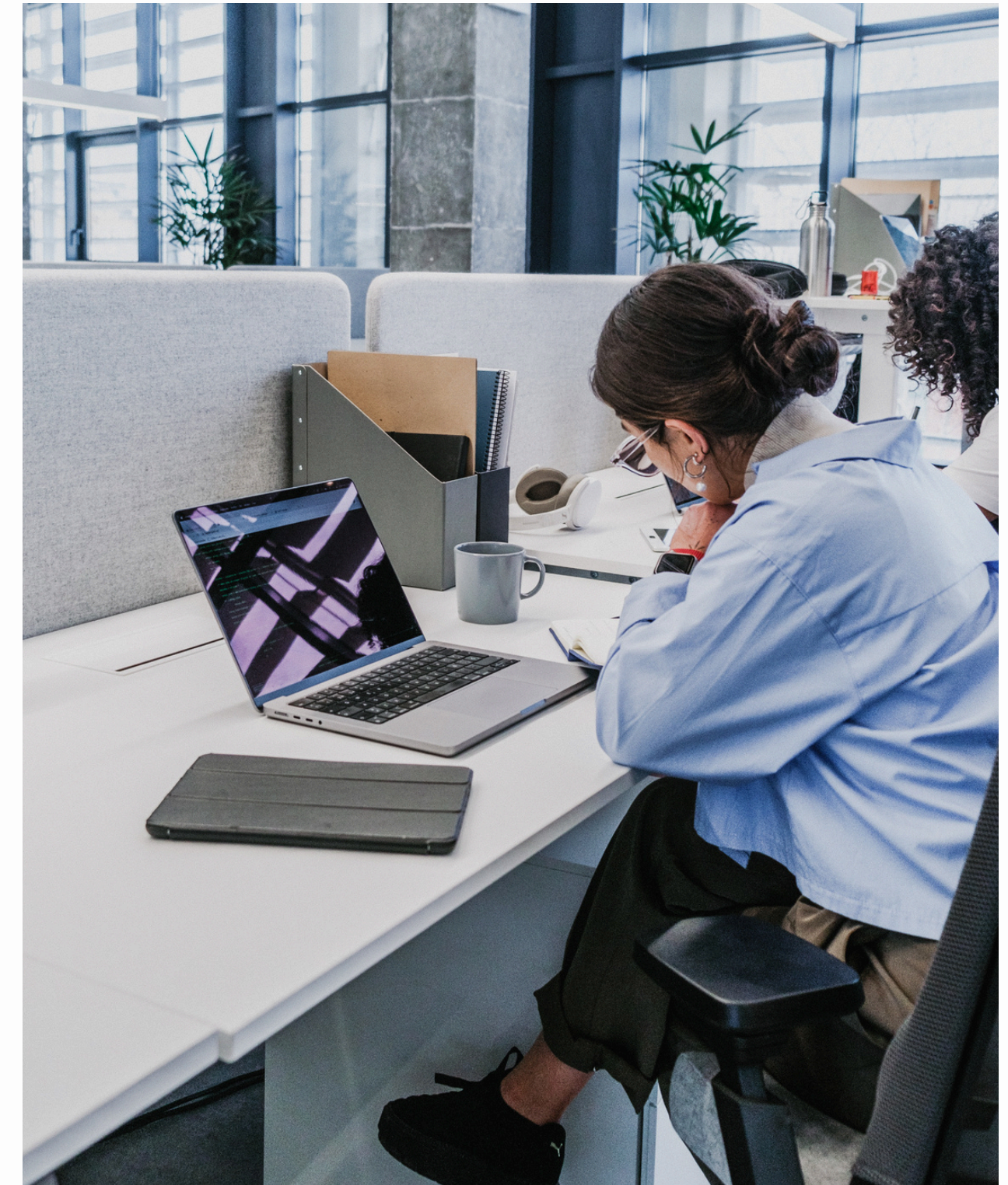
Digital Personal Data Protection Act 2023 (DPDPA)

By: Salot and Shah Associates



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Introduction

In an increasingly digitized world, the volume and sensitivity of personal data being processed has grown exponentially. India, as one of the largest digital economies, faced growing demands for a dedicated data protection law to safeguard individuals' privacy rights. The Digital Personal Data Protection Act, 2023 was introduced to address these concerns and lay the foundation for responsible data governance.

Background

- Earlier laws like the IT Act, 2000 offered limited data protection.
- Puttaswamy (2017) case declared privacy a fundamental right.
- The Srikrishna Committee (2018) proposed a draft law.
- Led to the enactment of the DPDP Act, 2023.

Why DPDP enacted?

- To address increasing concerns over data misuse, breaches, and surveillance.
- To provide a structured framework for processing digital personal data with adequate safeguards.
- To support India's growing digital economy and facilitate cross-border trust in data practices.

Objective

- To protect individuals' digital personal data while ensuring legitimate data use.
- To establish the rights and remedies available to Data Principals.
- To define the obligations of Data Fiduciaries and enable enforcement through the Data Protection Board of India.

Key Definitions

- **Consent Manager:** A person registered with the Board, who acts as a single point of contact to enable a Data Principal to give, manage, review and withdraw her consent through an accessible, transparent and interoperable platform.
- **Data Fiduciary:** Any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data
- **Data Principal:** 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
- **Data Protection Officer (DPO):** Significant Data Fiduciaries must appoint a DPO based in India to ensure compliance with the DPDP Act. The DPO serves as the point of contact for authorities.
- **Personal Data:** Any data about an individual who is identifiable by or in relation to such data
- **Significant Data Fiduciary:** Any Data Fiduciary or class of Data Fiduciaries as may be notified by the Central Government.



Applicability and Scope

01

Applies to digital personal data processed in India, whether collected digitally or digitized after being collected offline.

Example: A hospital in Delhi digitizes handwritten patient records — **the Act applies.**

02

Applies to data processing outside India if it involves offering goods or services to individuals in India.

Example: A U.S.-based e-commerce website collects delivery details from Indian customers — **the Act applies.**

03

Does not apply to personal/domestic use of personal data by an individual.

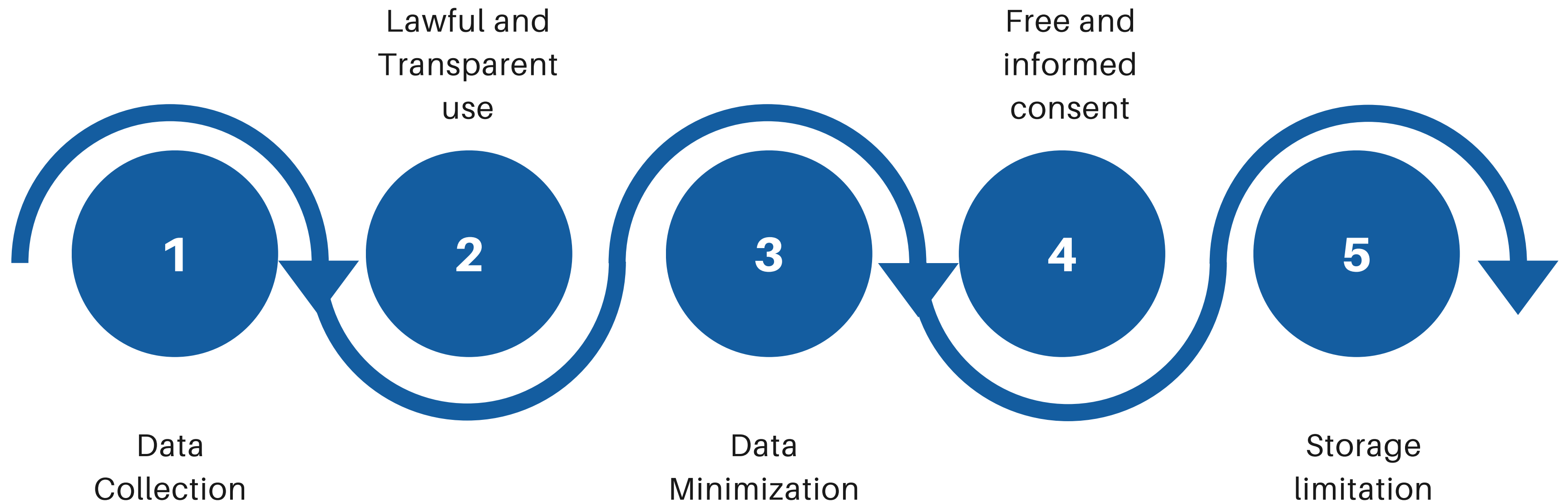
Example: A person storing family contacts or managing a personal photo album — **the Act does not apply.**

04

Does not apply to publicly available personal data, made available by the Data Principal or under a legal obligation.

Example: A person shares their phone number on social media, or a government agency publishes public records — **the Act does not apply.**

CORE PRINCIPLES



RIGHTS OF DATA PRINCIPAL

The Digital Personal Data Protection (DPDP) Act, 2023, grants several rights to data principals, empowering them to control their personal data.



Right to access
information
about personal
data



Right to
correction



Right to
erasure of
personal data



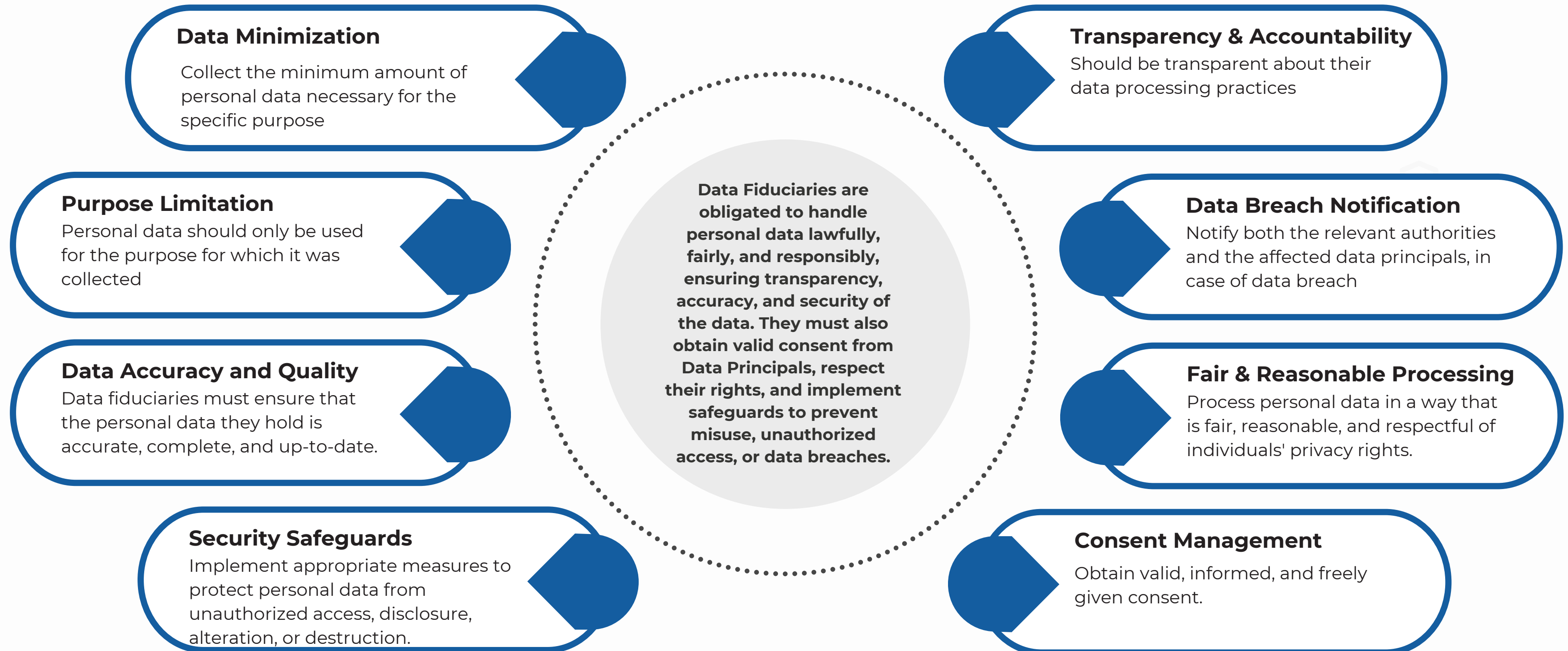
Right of
grievance
redressal



Right to
nominate



OBLIGATIONS OF DATA FIDUCIARY



Consent Framework

Valid Consent

- Consent must be **free, specific, informed, unconditional, and unambiguous**, given through a clear affirmative action.
- It must relate to a **specified purpose** and allow the Data Principal to withdraw consent at any time.

Example: A user ticking a checkbox to allow a fintech app to access their KYC details for account verification.

Consent Manager

- A Consent Manager is an authorized, independent, and accountable platform that enables Data Principals to manage, review, and withdraw their consent.
- Must be registered with the Data Protection Board of India.

Example: A government-approved portal where users can see and revoke consents given to various digital service providers.

Deemed Consent for legitimate use

- Voluntary data sharing
- Government Subsidies & Benefits
- National Security & State Functions
- Legal Obligations
- Judicial or Legal Compliance
- Medical Emergencies
- Public health response such as pandemic
- Disaster & Public order response

Example: A hospital collecting patient data during a medical emergency without explicit consent.

Data Protection Board of India

The Board shall be a body corporate under the aforesaid name, having perpetual succession and a common seal. It shall have the power, subject to the provisions of this Act, to acquire, hold, and dispose of both movable and immovable property, and to enter into contracts. The Board shall also have the capacity, in its said name, to sue and be sued.

Constitution

- The Board consists of a Chairperson and such other Members as may be notified by the Central Government.
- All appointments are made by the Central Government as per prescribed procedure.
- Members must be individuals of ability, integrity, and standing, with expertise in fields like data governance, law, ICT, dispute resolution, or digital economy; at least one must be a legal expert.

Powers & Functions

- Enforces compliance with the DPDP Act and related rules.
- Directs remedial or mitigation measures in case of breaches.
- Can issue orders to Data Fiduciaries, Significant Data Fiduciaries, and Consent Managers.
- Has the power to investigate, summon evidence, and conduct inquiries.
- Can impose penalties for violations of the Act.

Adjudication

- The Board conducts digital-by-default proceedings, ensuring efficiency and accessibility.
- Adopts a summary inquiry process before issuing any directions or penalties.
- Offers Data Principals and Fiduciaries a chance to be heard.
- Appeals against Board decisions lie with the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

Miscellaneous

01

Personal Data of Children and Persons with Disabilities:

Obtain verifiable parental or guardian consent before processing the personal data of children or persons with disabilities. The government may exempt certain fiduciaries or purposes if the processing is verifiably safe and meets prescribed conditions.

02

Cross-Border data transfer: Central Government may, by notification, restrict the transfer of personal data by a Data Fiduciary to any country or territory outside India, as specified in such notification.

03

Exemptions: Data Fiduciaries are exempted to process the personal data under the following exemptions:

- Legal, Judicial, and Regulatory Processing
- Contractual, Corporate, and Financial Processing
- State and Research-Related Exemptions
- Startups and Time-Bound Relaxations

PENALTIES

₹250 crore

Maximum penalty for breaches of obligations related to personal data and failure to take reasonable security safeguards to protect data breach

₹150 crore

For non-compliance by Significant Data Fiduciaries (SDF) with their extra duties.

₹200 crore

Failure to give notice upon breach of personal data

₹10,000

For breach of duties of the Data Principal.

₹200 crore

For failing to protect children's data or for violating children-specific provisions.

₹50 crore

For breach of any other obligations

THANK YOU!

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