

India's Digital Personal Data Protection Act (DPDP) Overview

The DPDP Act 2023 assigns restrictions and obligations to organizations that process personal data, including:

- Obtain consent from individuals before processing their personal data;
- Organizations must obtain consent from individuals before processing their personal data, unless an exemption applies.

The DPDP Act borrows significantly from the European General Data Protection Regulation (GDPR), with some foundational deviations.

Applicability and Scope:

- The bill applies to the processing of digital personal data within India, whether collected online or digitized from offline sources.
- It extends its jurisdiction to processing data outside India if it's intended for offering goods or services within India.

Consent and Lawful Processing:

- Personal data can only be processed for lawful purposes, and the consent of the individual is required.
- Exemptions from consent include specified legitimate uses, such as voluntary data sharing by individuals and processing by the State for licenses, permits, benefits, and services.

Rights and Duties of Individuals:

- Individuals have certain rights, including the right to information about processing, correction, erasure of data, and grievance redressal.
- Data principals (individuals whose data is processed) have duties, such as not lodging false complaints.

Obligations of Data Fiduciaries:

- Data fiduciaries (entities processing data) must ensure data accuracy, maintain security, delete data when its purpose is fulfilled, and report data breaches.
- Government entities have some exemptions from data erasure and storage limitation.
- Certain rights and obligations may not apply in specific cases, such as prevention and investigation of offenses.

Key Issues and Analysis:

- The bill overrides consent for certain purposes, which could affect individual autonomy and privacy.
- The absence of regulation on harm arising from data processing is a concern.
- The bill does not include the right to data portability and the right to be forgotten.
- The mechanism for cross-border data transfer needs to ensure adequate protection.
- Certain exemptions from notice for consent might affect informed consent.