

# The Digital Personal Data Protection Act, 2023

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A Detailed Reading of the Act, Sections, and  
Compliance Structure

Part 3 - Review of Chapter 2

# Detailed Tutorials

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# Chapters of the Act

## 9 Chapters



### CHAPTER I – PRELIMINARY

*Introduction and Definitions*



### CHAPTER II – OBLIGATIONS OF DATA FIDUCIARY

*Duties of Data Controllers*



### CHAPTER III – RIGHTS AND DUTIES OF DATA PRINCIPAL

*Entitlements & Responsibilities*



### CHAPTER IV – SPECIAL PROVISIONS

*Specific Situations*



### CHAPTER V – DATA PROTECTION BOARD OF INDIA

*Regulatory Authority*



### CHAPTER VI – POWERS, FUNCTIONS AND PROCEDURE TO BE FOLLOWED

*Board Processes*



### CHAPTER VII – APPEAL AND ALTERNATE DISPUTE RESOLUTION

*Appeals & Mediation*



### CHAPTER VIII – PENALTIES AND ADJUDICATION

*Fines & Enforcement*



### CHAPTER IX – MISCELLANEOUS

*General Provisions*

# Chapter 2 - Obligations of Data Fiduciary



CHAPTER II –  
OBLIGATIONS OF  
DATA FIDUCIARY  
*Duties of Data Controllers*

 <b>TOTAL SECTIONS</b> <b>7</b>	 <b> GROUNDS FOR PROCESSING</b> <b>2</b>	 <b> LEGITIMATE USE SCENARIOS</b> <b>9</b>
 <b> AGE THRESHOLD</b> <b>18 YEARS</b>	 <b> SDF ADDITIONAL ROLES</b> <b>2</b>	 <b> SDF COMPLIANCE CHECKS</b> <b>2</b>

Section 4: Grounds for Processing	Section 5 & 6: Notice & Consent	Section 7: Legitimate Uses	Section 8: General Obligations	Section 9: Children's Data	Section 10: Significant Data Fiduciaries (SDF)
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# Sec 4: Grounds for processing personal data.

- (1) A person may process the personal data of a Data Principal **only in accordance with the provisions of this Act** and for a lawful purpose,—
- (a) for which the Data Principal has given **her consent**; or
  - (b) for certain **legitimate uses**.
- (2) For the purposes of this section, the expression “**lawful purpose**” means any purpose which is **not expressly forbidden by law**

# Sec 5: Notice

(1) Every **request made to a Data Principal** under section 6 for consent shall be **accompanied or preceded by a notice** given by the Data Fiduciary to the Data Principal, informing her,—

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

## Sec 5: Notice. (continued)

(2) Where a Data Principal has **given her consent** for the processing of her personal data before the date of commencement of this Act,—

(a) the Data Fiduciary shall, as soon as it is reasonably practicable, **give to the Data Principal a notice** informing her,—

(i) the **personal data and the purpose** for which the same has been processed;

(ii) the manner in which she may **exercise her rights** under sub-section (4) of section 6 and section 13; and

(iii) the manner in which the Data Principal may make a **complaint to the Board**, in such manner and as may be prescribed.

(b) the Data Fiduciary **may continue to process** the personal data until and unless the Data Principal **withdraws her consent**.

## Sec 5: Notice. (continued)

(3) The Data Fiduciary shall give the Data Principal the **option to access the contents of the notice** referred to in sub-sections (1) and (2) in **English or any language** specified in the Eighth Schedule to the Constitution.

# Sec 6: Consent

(1) The consent given by the Data Principal 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**.

(2) Any part of consent referred in sub-section (1) which constitutes an **infringement of the provisions** of this Act or the rules made thereunder or any other law for the time being in force shall be **invalid to the extent** of such infringement.

## Sec 6: Consent. (continued)

(3) Every **request for consent** under the provisions of this Act or the rules made there under shall be presented to the Data Principal in a **clear and plain language**, giving her the option to access such request in **English or any language** specified in the Eighth Schedule to the Constitution and providing the **contact details of a Data Protection Officer**, where applicable, or of any other person authorised by the Data Fiduciary to respond to any communication from the Data Principal for the purpose of exercise of her rights under the provisions of this Act.

(4) Where consent given by the Data Principal is the basis of processing of personal data, such Data Principal shall have the **right to withdraw her consent** at any time, with the **ease of doing so** being comparable to the ease with which such consent was given.

## Sec 6: Consent. (continued)

(5) The consequences of the withdrawal referred to in sub-section (4) shall be **borne by the Data Principal**, and such withdrawal shall not affect the legality of processing of the personal data based on consent **before its withdrawal**.

(6) If a Data Principal withdraws her consent to the processing of personal data under sub-section (5), the Data Fiduciary shall, within a reasonable time, **cease and cause its Data Processors to cease processing** the personal data of such Data Principal unless such processing without her consent is required or authorised under the provisions of this Act or the rules made thereunder or any other law for the time being in force in India.

(7) The Data Principal may give, manage, review or withdraw her consent to the Data Fiduciary **through a Consent Manager**.

## Sec 6: Consent. (continued)

(8) The **Consent Manager shall be accountable** to the Data Principal and shall act on her behalf in such manner and subject to such obligations as may be prescribed.

(9) Every Consent Manager shall be **registered with the Board** in such manner and subject to such technical, operational, financial and other conditions as may be prescribed.

(10) Where a consent given by the Data Principal is the basis of processing of personal data and a question arises in this regard in a proceeding, the Data Fiduciary shall be **obliged to prove that a notice was given** by her to the Data Principal and **consent was given by such Data Principal** to the Data Fiduciary in accordance with the provisions of this Act and the rules made thereunder.

## Sec 7: Certain legitimate uses.

(a) for the specified purpose for which the Data Principal has **voluntarily provided** her personal data to the Data Fiduciary, and in respect of which she has **not indicated** to the Data Fiduciary that she does not consent to the use of her personal data.

## Sec 7: Certain legitimate uses. (continued)

(b) for **the State and any of its instrumentalities** to provide or issue to the Data Principal such **subsidy, benefit, service, certificate, licence or permit** as may be prescribed, where—

(i) she has **previously consented** to the processing of her personal data by the State or any of its instrumentalities for any subsidy, benefit, service, certificate, licence or permit; or

(ii) such personal data is **available in digital form in, or in non-digital form and digitised subsequently** from, any database, register, book or other document which is maintained by the State or any of its instrumentalities and is notified by the Central Government, subject to standards followed for processing being in accordance with the **policy issued by the Central Government or any law** for the time being in force for governance of personal data.

## Sec 7: Certain legitimate uses. (continued)

(c) for the performance by **the State or any of its instrumentalities** of any function **under any law** for the time being in force in India or in the **interest of sovereignty and integrity** of India or **security of the State**;

(d) for fulfilling any **obligation under any law** for the time being in force in India on **any person to disclose** any information to the State or any of its instrumentalities, subject to such processing being in accordance with the provisions regarding disclosure of such information in any other law for the time being in force;

(e) for compliance with any **judgment or decree or order** issued under any law for the time being in force in India, or any judgment or order relating to **claims of a contractual or civil nature** under any law for the time being in force outside India;

## Sec 7: Certain legitimate uses. (continued)

- (f) for responding to a **medical emergency** involving a threat to the life or immediate threat to the health of the Data Principal or any other individual;
- (g) for taking measures to provide **medical treatment** or health services to any individual during an **epidemic, outbreak of disease**, or any other threat to public health;
- (h) for taking measures to **ensure safety** of, or provide assistance or services to, any individual during **any disaster, or any breakdown** of public order.
- (i) for the **purposes of employment** or those related to **safeguarding the employer** from loss or liability, such as prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information or provision of any service or benefit sought by a Data Principal who is an employee.

## Sec 8: General obligations of Data Fiduciary.

(1) A Data Fiduciary shall, irrespective of any agreement to the contrary or failure of a Data Principal to **carry out the duties provided under this Act**, be responsible for complying with the **provisions of this Act and the rules** made thereunder in respect of any processing undertaken by it or on its behalf by a Data Processor.

(2) A Data Fiduciary may **engage, appoint, use or otherwise** involve a **Data Processor** to process personal data on its behalf for any activity related to offering of goods or services to Data Principals **only under a valid contract**.

## Sec 8: General obligations of Data Fiduciary. (continued)

(3) Where personal data processed by a Data Fiduciary is likely to be—

(a) used to make a **decision that affects** the Data Principal; or

(b) **disclosed to another** Data Fiduciary,

the Data Fiduciary processing such personal data shall ensure its **completeness, accuracy and consistency**.

(4) A Data Fiduciary shall implement **appropriate technical and organisational measures** to ensure effective observance of the provisions of this Act and the rules made thereunder.

(5) A Data Fiduciary shall **protect personal data** in its possession or under its control, including in respect of any processing undertaken by it or on its behalf by a Data Processor, by taking **reasonable security safeguards to prevent personal data breach**.

## Sec 8: General obligations of Data Fiduciary. (continued)

(6) In the **event of a personal data breach**, the Data Fiduciary shall give the **Board and each affected Data Principal, intimation of such breach** in such form and manner as may be prescribed.

(7) A Data Fiduciary shall, **unless retention is necessary for compliance** with any law for the time being in force,—

(a) **erase personal data**, upon the Data Principal **withdrawing** her consent or as soon as it is reasonable to assume that the **specified purpose is no longer being served**, whichever is earlier; and

(b) **cause its Data Processor to erase** any personal data that was made available by the Data Fiduciary for processing to such Data Processor.

## Sec 8: General obligations of Data Fiduciary. (continued)

(8) The purpose referred to in clause (a) of sub-section (7) shall be deemed to **no longer be served**, if the Data Principal does not—

(a) approach the Data Fiduciary for the **performance of the specified purpose**;

and

(b) **exercise any of her rights** in relation to such processing, for **such time period as may be prescribed**, and different time periods may be prescribed for different classes of Data Fiduciaries and for different purposes.

## Sec 8: General obligations of Data Fiduciary. (continued)

(9) A Data Fiduciary shall publish, in such manner as may be prescribed, the **business contact information of a Data Protection Officer**, if applicable, or a person **who is able to answer** on behalf of the Data Fiduciary, the questions, if any, raised by the Data Principal about the processing of her personal data.

(10) A Data Fiduciary shall establish an effective **mechanism to redress the grievances** of Data Principals.

(11) For the purposes of this section, it is hereby clarified that a Data Principal shall be considered as not having approached the Data Fiduciary for the performance of the specified purpose, in any period during which she has not **initiated contact with the Data Fiduciary** for such performance, in person or by way of communication in electronic or physical form.

## Sec 9: Processing of personal data of children.

- (1) The Data Fiduciary shall, before processing any **personal data of a child or a person with disability** who has a lawful guardian obtain **verifiable consent of the parent** of such child or the **lawful guardian**, as the case may be, in such manner as may be prescribed.
- (2) A Data Fiduciary **shall not undertake** such processing of personal data that is likely to cause any **detrimental effect on the well-being** of a child.
- (3) A Data Fiduciary **shall not undertake tracking or behavioural monitoring** of children or **targeted advertising** directed at children.
- (4) The provisions of sub-sections (1) and (3) **shall not be applicable** to processing of personal data of a child by such classes of Data Fiduciaries or for such purposes, and subject to such conditions, **as may be prescribed**.

## Sec 9: Processing of personal data of children. (continued)

(5) The **Central Government may, if satisfied** that a Data Fiduciary has ensured that its processing of personal data of children is done in a **manner that is verifiably safe**, notify for such processing by such Data Fiduciary the **age above which that Data Fiduciary shall be exempt** from the applicability of all or any of the obligations under sub-sections (1) and (3) in respect of processing by that Data Fiduciary as the notification may specify.

# Sec 10: Additional obligations of Significant Data Fiduciary.

(1) The **Central Government may notify** any Data Fiduciary or class of Data Fiduciaries as **Significant Data Fiduciary**, on the basis of an assessment of such relevant factors as it may determine, including—

- (a) the **volume and sensitivity** of personal data processed;
- (b) **risk to the rights** of Data Principal;
- (c) **potential impact on the sovereignty and integrity** of India;
- (d) **risk to electoral democracy**;
- (e) **security of the State**; and
- (f) **public order**.

## Sec 10: Additional obligations of Significant Data Fiduciary. (continued)

(2) The Significant Data Fiduciary shall—

(a) **appoint a Data Protection Officer** who shall—

(i) **represent the Significant Data Fiduciary** under the provisions of this Act;

(ii) be **based in India**;

(iii) be an **individual responsible to the Board of Directors** or similar governing body of the Significant Data Fiduciary; and

(iv) be the **point of contact for the grievance redressal** mechanism under the provisions of this Act;

(b) **appoint an independent data auditor** to carry out data audit, who shall evaluate the compliance of the Significant Data Fiduciary in accordance with the provisions of this Act; and

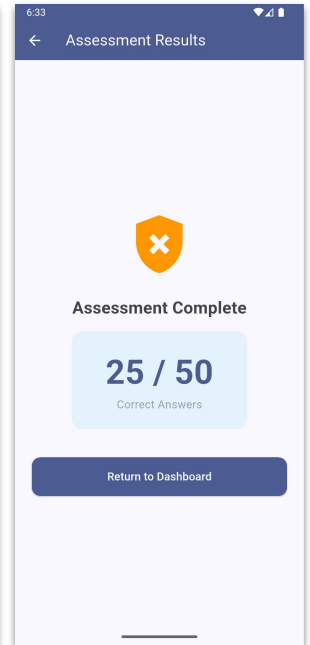
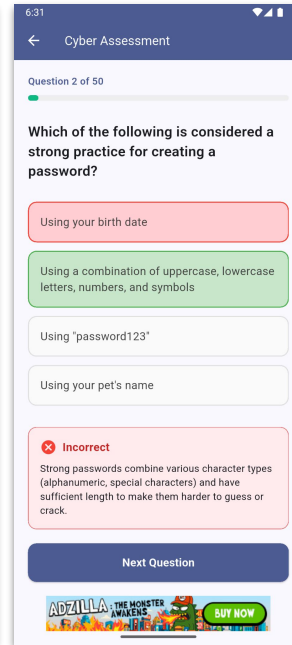
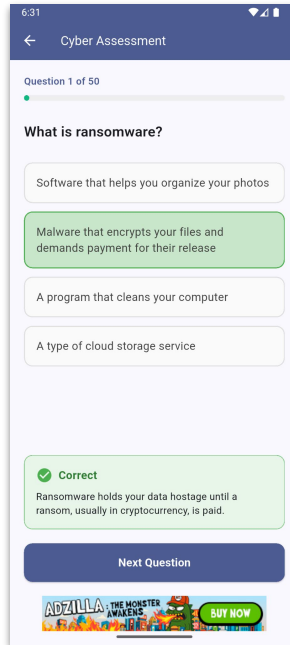
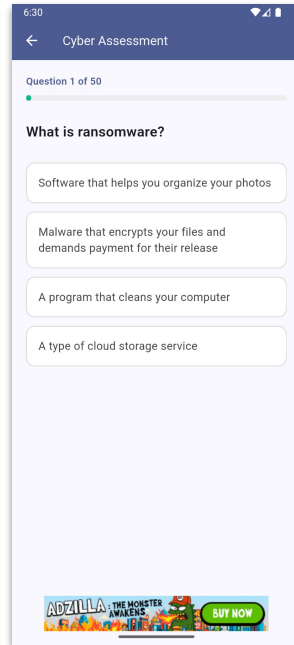
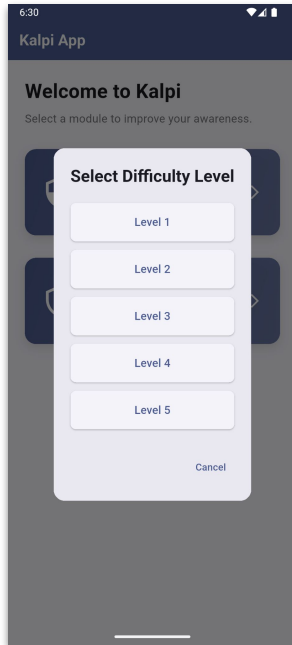
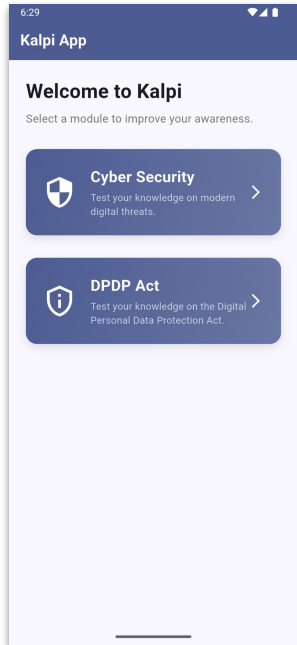
## Sec 10: Additional obligations of Significant Data Fiduciary. (continued)

(c) undertake the following other measures, namely:—

- (i) **periodic Data Protection Impact Assessment**, which shall be a process comprising a description of the rights of Data Principals and the purpose of processing of their personal data, assessment and management of the risk to the rights of the Data Principals, and such other matters regarding such process as may be prescribed;
- (ii) **periodic audit**; and
- (iii) such other measures, consistent with the provisions of this Act, **as may be prescribed**.

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# Thank You

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