



FREQUENTLY ASKED QUESTIONS

on Digital Personal Data Protection
Act 2023



CONTENTS

04

Rights & Duties
of a Data Principal

08

Obligations of
Data Fiduciary

12

Enforcement
Mechanisms

18

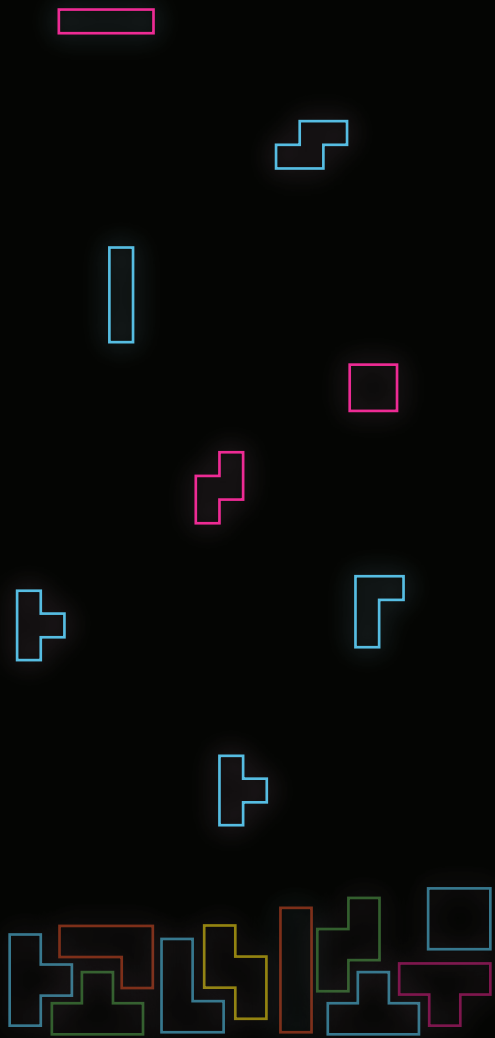
Cross-Border
Data Transfers
and Exemptions

GLOSSARY

- ▶ **Appellate Tribunal** means the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997.
- ▶ **Consent Manager** means 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** means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data.
- ▶ **Data Principal** means 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 Processor** means any person who processes personal data on behalf of a Data Fiduciary.
- ▶ **Significant Data Fiduciary** means any Data Fiduciary or class of Data Fiduciaries as may be notified by the Central Government under section 10.

RIGHTS & DUTIES

of a data
principal



› **Does a Data Principal have the right to access information about their personal data?**

A Data Principal has the right to obtain a summary of their personal data being processed, identities of entities with whom their data has been shared, and other related information, from the Data Fiduciary to whom they have given consent.

› **Are there any limitations to the right of access to shared personal data?**

The right to access is only applicable when the personal data is being processed on the grounds of consent. Additionally, the right to access does not apply to personal data shared by the Data Fiduciary with other entities authorized by law for purposes such as prevention, detection, investigation of offences, or cyber incidents.

➤ **What rights does a Data Principal have regarding the correction and erasure of personal data?**

Data Principals have the right to correct inaccurate or misleading data, complete incomplete data, update their data, and request erasure of their data, subject to legal compliance and necessity for specified purposes.

➤ **Should a Data Fiduciary respond to requests for correction, completion, or updating of personal data?**

Yes, upon receiving such a request, the Data Fiduciary is obliged to make the necessary corrections, complete the data, or update it as requested by the Data Principal.

➤ **What is the procedure for a Data Principal to request the erasure of their personal data?**

Data Principals need to make a request in the manner prescribed by the Central Government to the Data Fiduciary for erasure of their personal data. The Fiduciary must erase the data unless retention is necessary for specific purposes or legal compliance.

➤ **What rights do Data Principals have in terms of grievance redressal?**

Data Principals have the right to accessible means of grievance redressal provided by the Data Fiduciary or Consent Manager regarding any issues related to data processing or exercise of their rights.

➤ **Within what timeframe, must a Data Fiduciary or Consent Manager respond to grievances?**

The Data Fiduciary or Consent Manager must respond to grievances within the time period prescribed by the Central Government.

➤ **What is the right to nominate and how does it work for Data Principals?**

Data Principals can nominate another individual to exercise their rights under the Act in the event of their death or incapacity. 'Incapacity' in this case is defined as the inability to exercise rights due to unsoundness of mind or infirmity of body.

➤ **What are the key duties of a Data Principal under the DPDPA, 2023?**

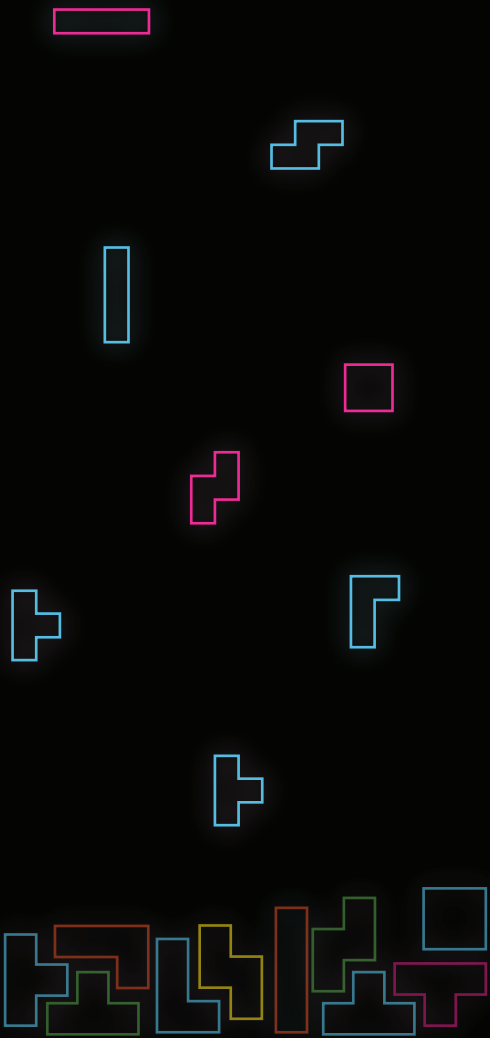
Data Principals must comply with applicable laws, avoid impersonation, not suppress material information, refrain from registering false grievances, and provide verifiably authentic information for data correction or erasure.

➤ **Is there a duty for Data Principals to ensure authenticity when exercising rights under act?**

Yes, Data Principals are required to furnish only authentic information, especially when exercising rights like correction or erasure of personal data, to ensure the integrity of the data being processed.

OBLIGATIONS

of Data
Fiduciary



› What is the procedure if there is a personal data breach?

In the event of a personal data breach, the Data Fiduciary must promptly inform the Board and affected Data Principals about the breach, its nature, and the steps taken to mitigate its effects, in the prescribed manner.

› How should a Data Fiduciary handle the erasure of personal data?

Data Fiduciaries must erase personal data upon the Data Principal withdrawing their consent or as soon as the purpose of processing is no longer being served. They must also ensure that their Data Processors erase any data shared for processing.

➤ **What are the responsibilities of a Data Fiduciary in ensuring data accuracy and consistency?**

When personal data is used for decision-making or disclosed to another Data Fiduciary, the processing Data Fiduciary must ensure the data's completeness, accuracy, and consistency.

➤ **What are the grounds under which a Data Fiduciary can process personal data?**

A Data Fiduciary may process personal data only if it is for a lawful purpose and either with the consent of the Data Principal or for certain legitimate uses.

➤ **What should a consent request include according to the DPDPA, 2023?**

Every consent request must be accompanied or preceded by a notice informing the Data Principal about the personal data to be processed, the purpose of processing, and how they can exercise their rights or make a complaint to the Board.

➤ **How is consent defined under the DPDPA, 2023?**

Consent must be free, specific, informed, unconditional, and unambiguous with a clear affirmative action, and it must be limited to the purpose of use.

➤ **Can a Data Principal withdraw their consent? If so, what are the implications?**

A Data Principal has the right to withdraw consent at any time. However, the withdrawal will not affect the legality of data processing based on consent before its withdrawal, and the consequences of withdrawal are borne by the Principal.

➤ **What are the responsibilities of a Data Fiduciary in case of withdrawal of consent?**

If consent is withdrawn, the Data Fiduciary must cease processing the personal data within a reasonable time unless processing is required or authorized under the Act or other any other laws.

➤ **What additional obligations does a Significant Data Fiduciary have?**

Significant Data Fiduciaries must appoint a Data Protection Officer, conduct periodic data audits, undertake Data Protection Impact Assessments, and implement other measures as prescribed by the Act.

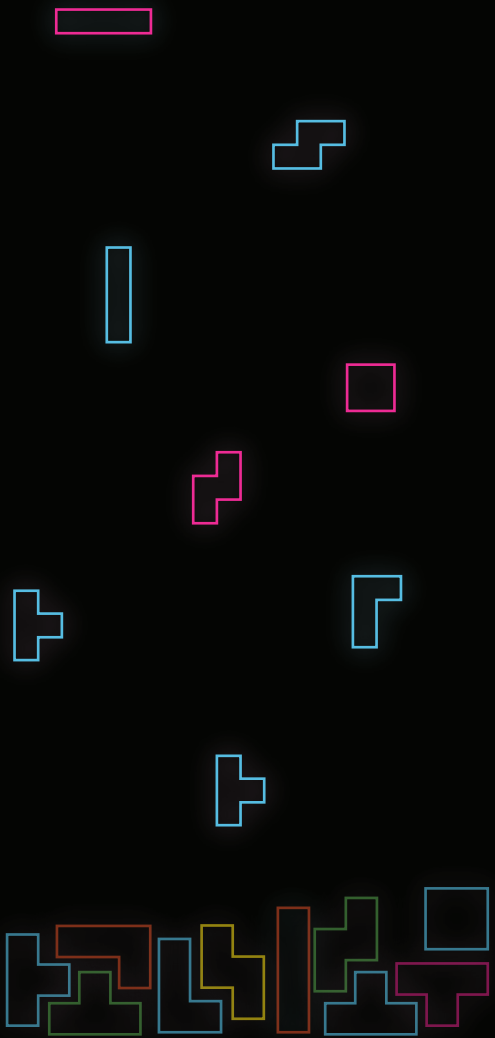
➤ **What guidelines must a Data Fiduciary follow when processing children's personal data?**

The Data Fiduciary must obtain verifiable consent from the parent or lawful guardian of the child. They must not process data in ways that could harm the child's well-being and should not undertake tracking, behavioural monitoring, or targeted advertising directed at children.

➤ **Are there exceptions to the restrictions on processing children's personal data?**

Yes, exceptions can be made for certain classes of Data Fiduciaries or purposes as prescribed, and the government may exempt Data Fiduciaries from some obligations if their processing methods are verifiably safe.

ENFORCEMENT MECHANISMS



➤ **How can an individual or entity appeal against a decision made by the Board under the DPDPA, 2023?**

An aggrieved party can appeal to the Appellate Tribunal within 60 days of receiving the order or direction from the Board. This appeal must comply with prescribed forms, manners, and fees.

➤ **Under what conditions can the Appellate Tribunal accept late appeals?**

The Appellate Tribunal may accept an appeal after the 60-day period if it is satisfied that there was sufficient cause for the delay.

➤ **What powers does the Appellate Tribunal have in terms of altering Board decisions?**

Upon receiving an appeal, the Appellate Tribunal can confirm, modify, or set aside the order appealed against after giving the involved parties a chance to be heard.

➤ **What is the expected timeframe for the disposal of appeals by the Appellate Tribunal?**

The Tribunal aims to dispose of appeals as expeditiously as possible, ideally within six months from the date of presentation of the appeal.

➤ **How is the execution of orders passed by the Appellate Tribunal handled?**

Orders passed by the Appellate Tribunal are executable as a decree of a civil court. The Tribunal can transmit orders to a local civil court for execution.

➤ **What is the role of mediation in resolving disputes under the DPDPA, 2023?**

If the Board believes a complaint can be resolved through mediation, it can direct the parties to attempt resolution via mediation by a mutually agreed upon mediator or as per existing laws.

➤ **What are voluntary undertakings in the context of the DPDPA, 2023?**

Voluntary undertakings may be accepted by the Board from any person as a commitment to observe provisions of the Act. These can include promises to take specified actions or refrain from certain actions.

➤ **What are the consequences of breaching a voluntary undertaking?**

Breaching the terms of a voluntary undertaking is deemed a breach of the Act's provisions. The Board may then proceed in accordance with imposition of penalties under section 33 after providing a hearing opportunity.

➤ **What criteria does the Board consider when imposing penalties for breaches of the DPDPA, 2023?**

The Board considers factors like the severity and duration of the breach, the nature of the personal data affected, the repetitive nature of the breach, any gain or loss resulting from the breach, efforts to mitigate its effects, and the impact of the penalty on the violating entity.

➤ **Are there varying degrees of penalties for different types of breaches under the DPDPA, 2023?**

Yes, the Act provides for varying degrees of penalties, depending on the nature and severity of the breach. The specific penalty for each type of breach is determined based on the guidelines provided in the Act.

➤ **Can penalties under the DPDPA, 2023 include both financial and non-financial measures?**

While the primary form of penalty under the DPDPA is monetary, the Act also allows for other forms of corrective actions to be undertaken by the Data Protection Board, such as issuance of directions or imposing conditions on the Data Fiduciary or Consent Manager.

➤ **Can repeated violations lead to increased penalties under the DPDPA, 2023?**

Yes, repeated violations of the Act can lead to more severe penalties. The Act recognizes the repetitive nature of breaches as an aggravating factor in penalty assessment.

➤ **In what way does the DPDPA, 2023 handle cases where breaches result in financial gains or loss avoidance for the violator?**

When assessing penalties, the Board takes into account whether the violator has financially benefited or avoided losses due to the breach. This factor can influence the severity of the penalty imposed.

➤ **How are penalties under the DPDPA, 2023 enforced if the violator fails to comply voluntarily?**

Penalties are enforceable as a decree of a civil court. If necessary, the Appellate Tribunal can transmit the order to a local civil court for execution.

➤ **How does the DPDPA, 2023 ensure consistency with other laws?**

Section 38 states that the provisions of the DPDPA are in addition to, and not in derogation of, any other law. In effect, this means that existing obligations under sectoral or other laws will continue to remain in effect. In case of conflict, however, the provisions of the DPDPA will prevail.

➤ **What is the jurisdiction of civil courts in matters covered by the DPDPA, 2023?**

Section 39 restricts civil courts from having jurisdiction over matters for which the Board is empowered under the Act. No injunction can be granted against actions taken under the Act.

➤ **What powers does the Central Government have in making rules under the DPDPA, 2023?**

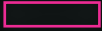
As per Section 40, the Central Government can make rules to carry out the purposes of the Act. These rules can cover a wide, range of matters including consent management, Data Fiduciary obligations, and procedures for filing appeals.

➤ **Can the Central Government amend the Schedule of penalties under the DPDPA, 2023?**

Section 42 permits the Central Government to amend the Schedule, provided that no amendment can increase any penalty more than twice the amount specified when the Act was originally enacted.

CROSS BORDER DATA

Transfers
& Exemptions



► Can organisations transfer personal data outside India?

Under Section 16(1), personal data may be transferred by a Data Fiduciary to certain countries or territories outside India that have been notified by the Central Government.

► Are there exceptions to the applicability of certain chapters of the DPDPA, 2023?

Yes, according to Section 17, certain provisions of Chapter II, Chapter III, and Section 16 do not apply in specific situations such as legal enforcement, judicial functions, investigation of offences, and certain business processes.

➤ What exemptions are provided for processing personal data outside India?

Any restrictions on transfers of personal data outside India introduced under the negative list under section 16 will not be applicable where processing of personal data is for enforcing legal rights/claims, for judicial purposes, for investigation, detection, etc. of crimes, for processing of non-residents' personal data in India pursuant to a contract, for mergers/amalgamations of companies, or for financial information assessment in case of loan defaults.

➤ How does the DPDPA, 2023 address the processing of personal data for State-related purposes?

Section 17(2) exempts certain State instrumentalities from the Act's provisions when processing data in the interest of national security, public order, and other specified areas.

➤ What provisions exist for data processing for research or statistical purposes?

Data processing necessary for research, archiving, or statistical purposes is exempted under Section 17(2)(b), provided the data is not used for decisions specific to a Data Principal and is carried out in compliance with prescribed standards.

➤ Are startups and certain Data Fiduciaries exempted from some provisions of the Act?

The Central Government may notify certain Data Fiduciaries, including startups, as exempt from specific provisions of the Act, as per Section 17(3).

➤ **What are the exemptions for processing by the State or its instrumentalities?**

Certain provisions related to consent and erasure of personal data do not apply to State processing, especially when it does not involve decision-making that affects the Data Principal, as outlined in Section 17(4).

➤ **Can the Central Government declare exemptions for certain Data Fiduciaries from the Act?**

Yes, the Central Government may declare, by notification, that any provision of the Act shall not apply to certain Data Fiduciaries or classes of Data Fiduciaries for a specified period.

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Data Security Council of India (DSCI) is a not-for-profit, industry body on data protection in India, setup by Nasscom, committed towards making the cyberspace safe, secure and trusted by establishing best practices, standards and initiatives in cyber security and privacy. DSCI works together with the Government and their agencies, law enforcement agencies, industry sectors including IT-BPM, BFSI, CII, telecom, industry associations, data protection authorities and think tanks for public advocacy, thought leadership, capacity building and outreach initiatives.

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