



Digital Personal Data Protection Bill (DPDP) PART – IV

OZA PATEL & DOSHI
CHARTERED ACCOUNTANTS

Obligations of Data Fiduciary

- The Bill introduces both **general obligations** for all Data Fiduciaries and **additional obligations** specifically targeted at Significant Data Fiduciaries. In Part IV, we will explore the overarching general obligations that apply to Data Fiduciaries as a whole.
- Data Fiduciary may **appoint Data Processor*** only under **valid contract** and for activity related to **offering goods or services** to Data Principals.
- Data Fiduciary shall **ensure** personal data's **completeness, accuracy and consistency** when personal data processed is likely to be used **to make decision** that affects the Data Principal or data is likely to be disclosed to another Data Fiduciary

General Obligations of Data Fiduciary

- **Data Fiduciary** shall protect personal data which is in his possession or is with Data Processor by taking reasonable **security safeguards to prevent personal data breach**. Failure to which may result into **penalty** upto Rupees **Two hundred and Fifty Crore**. This should be considered as welcoming step as this would result into better implementation of security measures and which would subsequently result into lesser number of Data breaches opposed to the current scenario.
- If the personal **data breach takes place**, Data Fiduciary shall intimate the Board and each affected Data Principal about it. Failure to which lead to penalty upto **Rupees Two hundred Crore**. This would **enable** the Data Fiduciaries to take corrective measures promptly and allows Board also to take corrective action.

General Obligations of Data Fiduciary

- **Example**

As I have stated earlier, one can check if his/her digital personal data had been breached on any earlier occasion by putting his/her Email ID on **Have I been Pwned** website and my personal data was leaked from a couple of Data fiduciaries. If I were made aware of such incident that would have resulted in me changing my passwords and other personal details on different digital platform.

- Data Fiduciary shall **erase** personal data when Data Principal **withdraws** his/her **consent** or cause Data Processor to erase the personal data, unless retention is required by law.

General Obligations of Data Fiduciary

- **Example**
- X, an individual, registers himself on an online marketplace operated by Y, an e-commerce service provider. X gives her consent to Y for the processing of her personal data for selling her used car. The online marketplace helps conclude the sale. Y shall no longer retain her personal data.
- X, an individual, decides to close her savings account with Y, a bank. Y is required by law applicable to banks to maintain the record of the identity of its clients for a period of ten years beyond closing of accounts. Since retention is necessary for compliance with law, Y shall retain X's personal data for the said period.

General Obligations of Data Fiduciary

- As soon as it is reasonable to assume that the **specified purpose is no longer being served**, a Data Fiduciary shall **erase** the personal data. Specified purpose deemed to be no longer be served if Data Principal does not approach the Data Fiduciary for performing the specified purpose and does not exercise any rights (will be discussed in the upcoming sessions) in relation to data processing.
- Data Fiduciary shall establish an **effective mechanism to redress the grievances** of Data Principals.
- A data Fiduciary shall **publish the business contact information of Data Protection Officer*** in case of Significant Data Fiduciary* (more on Significant Data Fiduciary will be discussed in the next session) or any other person to answer the questions raised by Data Principal on behalf of Data Fiduciary.

General Obligations of Data Fiduciary

- The Data Fiduciary shall be responsible for **complying with the provisions of this Bill** for any processing undertaken by Data Fiduciary or on its behalf by a Data Processor even if Data Principal fails to perform duties provided under this Bill or under any agreement.
- **Example**
- One of the duties of Data Principal under this Bill is not to impersonate another person while providing his/her personal data for a specified purpose. However, at the time of providing Personal Data Y, a Data Principal, provided data of his friend X and subsequently, Data breach tookplace and it was established that Data Fiduciary did not reasonable security safeguards to prevent personal data breach. Now, the Data Fiduciary can not get away saying it was it was false data provided by Y therefore this shall not be considered as Y's personal data breach and Data Fiduciary shall not be liable for the penalty.


Definitions


- “**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
- “**Data Protection Officer**” means an individual appointed by the Significant Data Fiduciary



THANK YOU!

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