

Exploring the New Frontier: The Digital Personal Data Protection Act (DPDP) of India and Its Effect on the Advertising Industry

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Abstract

India's Digital Personal Data Protection Act, 2023 (DPDP Act) is an important milestone in data privacy in the country, bringing with it a new era of rights-based data management and preference for the rights of the citizen. This research paper analyses the implications of the DPDP Act on India's advertising sector, an industry fully dependent on personal data for niche-focused promotions and customized interfaces. The article analyses the central provisions of the Act that are important to advertisers, evaluates the resulting challenges and opportunities. It also explores the future direction of online advertising in India under this new framework. It argues that while the DPDP Act requires substantial operational and strategic changes, it also provides an unprecedented opportunity for the industry to create consumer trust, lead innovation in individual privacy-focused advertising, and construct a more ethical and sustainable digital environment for the safety and security of the citizen.

Keywords: Digital Personal Data Protection Act (DPDP), India, Advertising Industry, Data Privacy, Targeted Advertising, Consent, Data Fiduciary, Data Principle.

1. Introduction

India is the world's emerging online market with more than 650 million Internet users. This usage was 50 % as of 2020, meaning that roughly half of India's population lacks access to the Internet in 2020. Indian government, as part of the National e-Governance Plan (NeGP) launched in 2006, began executing numerous digital initiatives in diverse departments, viz., agriculture, unique identification, health, education, passports seva, police and taxes, etc. These e-governance projects are home to key data assets like the Unique Identification numbers 'Aadhaar'; the Open Government Data (ODG) platform in order to make access to government shareable data easier; Sugamya Bharat Abhiyaan, an app on disability to get equal opportunity; Agri market app for farmers; Beti Bachao Beti Padhao to promote gender equality; BHIM (Bharat Interface for

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Money) a financial transaction app; Crime and Criminal Tracking Network & Systems (CCTNS) to boost effective policing, etc. Even though while using all these application the privacy of the citizens is in threat. When explore the news which are coming out day today there are many fraud and violation seen in the use of the digital devices. Given the humongous scale of data creation by government and non-government agencies in India, there are sure to be privacy violations.

India stood third as per Business Today in data breaches, 86.63 million users breached until November 2021³. Data breaches intrude into users' privacy and were one of the most prevalent forms of cybercrime. These leakages include personal information (For instance: name, sex, phone no, address, passwords and unique identification numbers, etc.) which have been sold/shared with thirdparty for analytics or cybercrime purposes. Some examples of data breaches in India are-the Air India personal data leak of 4.5 million passengers in 2021; the Leakage of 190,000 personal identifiable information (PII) test results of the Common Admission Test (CAT) 2020, and the COVID-19 lab test leaked by government websites. Although these data leakages, government and private enterprise's uptake of numerous digital services were not slow down; it has grown by many folds, which is based entirely on the Internet's capability to offer ease of convenience and accessibility to its users. In this context, the Indian parliament passed the Digital Personal Data Protection Act of 2023 (referred to here as "DPDP Act") to tackle privacy rights of its citizens. With recent passage of the DPDP Act in India on the 11th August 2023, both digital government programs and private enterprises in the form of e-commerce or online sellers should be regulated.

The development of the digital technologies has reshaped the Indian advertising market, with unprecedented personalization and access. Nevertheless, this datadriven transformation has in turn generated considerable issues over individual privacy as well as personal data gathering and exploitation. In order to address these issues worldwide the developments towards data protection, India passed the Digital Personal Data Protection Act, 2023.

The DPDP Act seeks to balance to safeguard the right of the individual in safeguarding the personal data and processing such data in a worthy manner and for legitimate purpose. The Act is a change for the advertising industry, which has long flourished on its capacity to segment, target, and track users based on their digital interactions. The purpose of this paper is to examine the key features of the

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DPDP Act that affect advertisers, privacy of the customer and ranging from robust consent processes and greater user rights to new responsibilities of data fiduciaries and serious penalties for non-adherence.

2.Major Provisions of the DPDP Act Applicable to the Advertising Profession

The DPDP Act has a number of provisions that impact advertising activity directly and indirectly:

The Digital Personal Data Protection Act, 2023 of India which was the very first act to guard its citizen's personal data was inspired by Europe's General Data Protection Right (GDPR). The DPDP Act gives extensive coverage under its nine chapters and one schedule 18. The general concept behind synthesizing the main privacy principles from the DPDP Act was to safeguard patrons' privacy.

2. 1.Consent as the Cornerstone: The Act gives top priority to free, specific, informed, unconditional, and unambiguous consent provided through an unambiguous clear affirmative action for the processing and collection of personal data. Advertisers can no longer to take advantage of bundled or implied consent. Consent demands needed to be communicated in clear and plain language, available in English and other official Indian languages understandable to the consenter, specifying the precise purpose of data processing.

2.2 Increased Rights of Data Principals: Data Principals (Individuals) are entitled to various rights, such as:

RT to Access Information: Users have the right to be provided with an overview of their own personal data under processing and the processing operations performed.

RT to Correction and Erasure: Individuals are entitled to request correction of false data and erasure of data which is no longer required for the purpose for which it was processed or in case of withdrawal of consent.

Right to Grievance Redressal: Data fiduciaries need to have mechanisms in place to address grievances.

Right to Nominate: One has the right to nominate someone to act on their behalf in exercising rights when they are dead or unable exercise their power.

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Obligations of Data Fiduciaries: Advertisers and adtech firms serving as Data Fiduciaries (organizations deciding the purpose and means of data processing) have a heightened sense of responsibility:15

Purpose Limitation: Personal information is to be processed for the particular, legal purpose for which consent was sought.

Data Minimization: Personal information must be collected only to the extent necessary for the stated purpose.

Accuracy: All reasonable steps must be taken to ensure accuracy and completeness of personal information.

Storage Limitation: Personal information must not be stored forever and should be deleted after the purpose is served or consent is revoked (e.g., three-year data retention for some data fiduciaries such as e-commerce websites following the latest interaction).

Reasonable Security Safeguards: Data Fiduciaries should have adequate technical and organizational measures in place to secure personal information from breaches.

Notification of Data Breach: In the incident of a data breach, the Data Protection Board of India (DPBI) and the concerned Data Principals must be informed for the further procedure.

Processing of Children's Data: The act safeguards the child protection policies. The Act makes it obligatory to put stringent conditions on processing the personal data of persons under 18 years. There should be parental consent for every act. Most importantly for the advertising sector, tracking, behavior monitoring, and targeted advertising to children are banned without express authorization from the central government which will manipulate the sentiments of the children for the business purpose.

- **Consent Managers:** The Act formalizes the 'Consent Managers' concept, registered organizations serving as one contact point to facilitate Data Principals to provide, manage, review, and revoke consent in a clear and transparent environment. This is a new dimension with deep repercussions for the adtech market. The consent of the personal who are involved in the advertising is a must with clear and proper document.

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Important Data Fiduciaries (SDFs): Organizations handling large amounts of sensitive kinds of personal information can be categorized as SDFs. They have added responsibilities, such as the appointment of a Data Protection Officer (DPO) who is located in India, the carrying out of Data Protection Impact Assessments (DPIAs), and the appointment of independent data auditors. Most major adtech platforms and advertisers are likely to come under this category.

Cross-Border Data Transfer: The Act allows cross-border data transfer of personal data to any territory or country except for restrictions specifically imposed by the central government. This is a more relaxed system than previous proposals for hard data localization but adds a bit of regulatory discretion.

Penalties for Non-Compliance: DPDP Act prescribes heavy financial penalties for non-compliance, up to ₹250 crore (about USD 30 million) per case for offenses like failure to put in place reasonable security measures or violations related to children's data.

3. Impact and Challenges for the Advertising Industry

DPDP Act put forward many challenges for the Indian advertising market, necessitating overhaul of current practices

Redesigning Data Gathering and Consent Frameworks: The rigorous and detailed consent controls will require the radical redesign of how personal data is gathered for using in the marketing. Marketers will have to abandon opt-out systems to explicit opt-in systems for each precise processing purpose. This will probably diminish the amount of easily accessible data for targeting.

Effect on Targeted and Personalized Advertising: The effectiveness of behavioral advertising, micro-targeting, and lookalike modeling, which are highly dependent on processing varied datasets, will suffer greatly. The curbs on tracking and profiling, particularly for children, will reduce the extend and detail of such campaigns.

Higher Costs and Complexity of Compliance: New systems for managing consent, strong data governance frameworks, security, and mechanisms for respecting data principal rights will require high expenditures on technology, processes, and staff. This may disproportionately hit smaller adtech businesses and less well-funded advertisers.

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Measuring Effectiveness of Campaigns: With access to less granular user data, existing measures for calculating campaign ROI and attribution might not be as effective, prompting the industry to look toward new measures of performance. The rules always curtail the effectiveness of the freedom of the advertiser.

Adjusting to the Role of Consent Managers: While potentially profitable in the long term, engaging with and depending on Consent Managers will mean adjustments in the adtech supply chain and data conduit. The very operational dynamics of this new organization are yet to completely come into play.

Navigating Ambiguity and Changing Regulations: Although the Act sets a context, detailed rules and interpretations from the Data Protection Board will keep changing. The sector must remain agile and evolve in response to new directions and clarifications.

Cross-Border Data Flows for Worldwide Campaigns: Although the Act is comparatively liberal with respect to data transfers, the likelihood of government curbs injects an element of uncertainty for multi-national advertising firms operating worldwide campaigns with Indian user data. The security of the data is considered while flowing the data from the country to outside.

Data Governance for Third-Party Data: Advertisers using third-party data will have to confirm whether such data is gathered in accordance with the DPDP Act, subject to valid consent, which complicates data partnerships. Before broadcasting the data should be validated inside the country.

4.Opportunities and the Way Forward

In spite of the obstacles, the DPDP Act also brings tremendous opportunities for the advertising industry to innovate and establish a more sustainable future for the industry in a systematic manner:

Enhancing Consumer Trust and Transparency: In the making of the advertising through focusing on user permission and data privacy, advertisers can help to build more trust and transparency among consumers. This can culminate in more engaging interactions and brand loyalty in the market.

Innovation in Privacy-Enhancing Technologies (PETs) and Approaches: The Act will serve as a driving force for PETs and privacy-first ad solutions development and adoption. This also entails a possible comeback of freedom to the individuals and individual privacy in business utilization.

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Context-Based Advertising: Positioning advertising based on page content instead of user behavior in isolation. The data is the prime factor for the enhancement of the advertising.

First-Party Data Strategies: Prioritizing gathering and utilizing data directly from consumers with their express permission, resulting in better quality and more precise insights.

Privacy-Preserving Measurement: Creating new methods to measure campaign performance without using individual identifiers.

Competitive Edge for Compliant Organizations: Organizations that actively adopt the principles of the DPDP Act and invest in solid data protection practices can differentiate themselves and become more competitive.

Simplification of Data Processes through Data Minimization: The focus on data minimization can promote streamlined data management practices, minimizing storage expenses and the attendant risks of maintaining too much data.³⁸

The Rise of Ethical Marketing: The DPDP Act promotes a movement towards ethical marketing. The ethical considerations are primary in the advertisement making. The user respect and data integrity take center stage in advertising campaigns.

New Business Models for Consent Managers: The implementation of Consent Managers can simplify the consent process for users and create a standardized mechanism for businesses, which may lead to new business models and services in the adtech/MarTech space. Industry experts view this as an Indian innovation that is distinct and has the potential to address most of the current issues in adtech.

Emphasis on Content and Creative: With perhaps fewer calls upon hypertargeting, creative content and message quality will become all the more decisive in campaign success.

5. Personalized Advertising in India's Future

Personalized advertising will hardly vanish but will certainly change. The future will most likely entail:

Consent-Driven Personalization: Personalization will significantly be based on explicit and detailed user consent. The users will have greater control over the usage of their data for advertising. The dignity and privacy is considered utmost in the advertising.

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More Use of Aggregated and Anonymized Data: Advertisers could turn to making use of aggregated or anonymized data to gain insights and target larger audience groups instead of individual-level targeting.

Refined First-Party Data Use: Brands will invest greater sums in constructing and using their first-party datasets, collected directly with user permission.⁴¹

Emerging Technologies: Look for developments in federated learning, differential privacy, and other on-device or privacy-protecting analytics that make insights available without undermining individual privacy.⁴²

More Balanced Ecosystem: The dynamics of power within the adtech ecosystem could change, with the users taking more control and possibly new intermediaries such as Consent Managers having a prominent role.

6. Conclusion

India's Digital Personal Data Protection Act, 2023, is a milestone piece of legislation that will drastically transform the Indian advertising sector. Compliance, though, poses serious challenges in terms of operational changes, investment in technology, and a re-examination of established data routines, the Act also opens the door to a more transparent, innovative, and trustworthy advertising environment.

The success of the industry's ability to evolve will rely on its commitment to adopt privacy by design, invest in strong data governance, and focus on consumer consent. The evolution can include a degree of pain and perhaps a repositioning of advertising tactics, with an expected shift to more contextual and first-party data-driven advertising, along with innovation in privacyprotecting technologies. Finally, the DPDP Act presents the Indian advertising industry with a chance not only to be compliant with the law but also to form stronger, more respectful connections with consumers, establishing a digital space based on trust and responsible data stewardship.⁴⁵ The road ahead will involve working together, being creative, and a forward-looking commitment to ethical data management.

7. Recommendations for the Advertising Industry

- **Execute Thorough Data Audits:** Identify what personal data is being collected, how it is being processed, where it is being stored, and for what purposes.

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- **Audit Consent Mechanisms:** Establish clear, granular, and easily withdrawable consent procedures in line with DPDP Act mandates.
- **Venture into Consent Management Platforms/Integrate with Consent Managers:** Plan for the deployment of Consent Managers.
- **Enhance Data Security Measures:** Establish strong technical and organizational measures to avoid data breaches.
- **Update Data Retention Policies:** Don't retain data longer than is necessary and clearly define erasure procedures.
- **Prioritize First-Party Data Strategies:** Build direct connections with consumers to ethically gather and use first-party data.
- **Invest in Privacy-Enhancing Technologies:** Research and implement PETs for advertising and analytics.
- **Train Staff:** Make all applicable staff knowledgeable about the DPDP Act provisions and their role.
- **Designate Data Protection Officers (where needed):** Especially for organizations qualifying as Significant Data Fiduciaries.
- **Keep Up with Regulatory Guidance:** Regularly review clarifications and regulations set by the Data Protection Board of India.
- **Make Transparency a Priority:** Simply and clearly inform users about data practices in readily understandable language.
- **By doing these, the Indian ad industry can overcome the intricacies of the DPDP Act and help build a more privacy-conscious digital world.**

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