

Rights of Data Subjects: An Overview and the Future

Existing Indian Data Protection Rules: A Recap

- Applicability: Section 43A of the Information Technology Act, 2000:

³[43A. **Compensation for failure to protect data.**—Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

- What is “sensitive personal data or information”?
- What are penalties for non-compliance, and how does enforcement work?



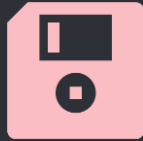
Existing Indian Data Protection Rules: A Recap

- Right to **review information** provided and ensure that both, personal information and sensitive personal data or information that is inaccurate or deficient shall be **corrected or amended as “feasible”**.
- Data subjects are **responsible for the authenticity of the information they provide**.
- Data subjects have the **right to withdraw consent**. Consent must be in writing. Exercise of such right can result in a **denial of services**.

- Data Principals Under the Upcoming Law



Who is a data principal?



What are the different categories of personal data?

● The Rights of Data Subjects Under the Upcoming Law



Access to
Information



Right to be
Forgotten



Complaints



Data
Portability



Correction
and Erasure



Withdraw
Consent

● Right to Confirmation and Access

- Right to obtain: (a) confirmation of whether the data fiduciary is or had processed personal data, (b) the personal data or a summary thereof, (c) a brief summary of processing activities.
- Clear, comprehensible, and concise that is easily comprehensible to a reasonable individual in a similar context. .
- A right to access, in one place, identities of data fiduciaries with whom personal data has been shared, together with categories of personal data. The DPA may prescribe formats.

- Right to Data Portability

- Applies when data has been collected through automated means.
- Data subjects have the right to receive certain information about their personal data – the data provided, the data generated, and data which forms a part of the profile – in a structured, commonly used, and machine-readable format.

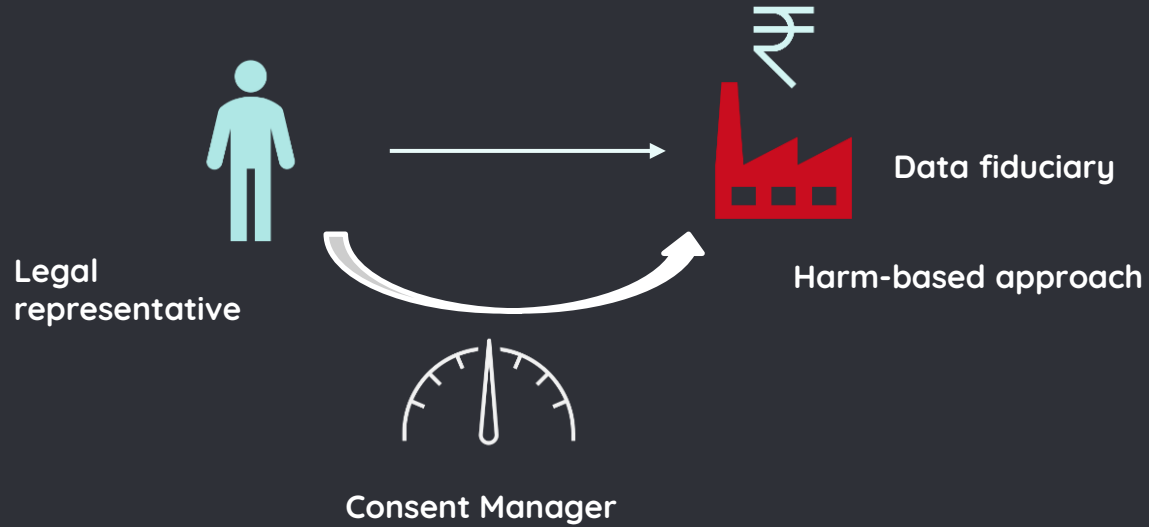
- **Right to Correction and Erasure**

- Data principals have the right to correct, complete, update, or erase data – subject to certain conditions.
- Rights can be denied; data becomes “disputed by the data principal”.
- Additional obligation on data fiduciaries to inform other entities of correction, completion, updation, and erasure.

● Right to be Forgotten

- Data principals can restrict the disclosure (and processing) of personal data in certain instances: where purpose has been served, if consent has been withdrawn, or where processing itself was not in compliance with law.
- Unlike other rights, this right can only be enforced by an Adjudicating Officer made on an application filed by the data principal. The AO must take into account several factors. Decisions may be sent for review, and can be appealed against as well.
- Rights must be balanced against others' fundamental rights to freedom of speech and expression and retention rights.

- Other Factors



Penalties

Failure to comply with a data principal request: a penalty of INR 5,000 for every day of default.

Maximum:

- Significant Data Fiduciary: INR 10,00,000
- Data Fiduciary: INR 5,00,000