



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CONSENT MANAGEMENT UNDER DPDP ACT

~Jyothsna Subrahmania

ABSTRACT

Consent has always been treated as a procedural formality in the digital world, rather than a legal safeguard, leading to the enactment of the Digital Personal Data Protection Act (DPDP Act), 2023, which has made consent as its core regime. This paper assesses the legal architecture of consent under the DPDP Act, while examining the requirements of notice and consent under Section 5 and 6 of the Act. It also explores the concept of 'Consent Managers' which was introduced under Rule 4 of the DPDP Rules, which act as intermediaries between the data fiduciary and data principal. The paper also makes a comparative analysis with other countries, comparing consent standards around the world. The paper also identifies the overlap between the DPDP Act and the Consumer Protection Act, 2019 that concerns the manipulative consent practices. It concludes that while the DPDP Act has a rigorous consent-based regime, it remains to be seen whether it can be executed and implemented efficiently in the real-world.

INTRODUCTION

Most Indian businesses treated 'consent' as an item on a list that needed to be checked, rather than an essential to a legal relationship. To resolve this issue, the Digital Personal Data Protection Act (DPDP Act) was enacted in 2023. Consent forms the backbone of the DPDP Act. As the digital economy grows, the need to protect the personal data that is being uploaded online is ever increasing. After the DPDP Act gained assent from the president in August, 2023, the DPDP rules were notified on 13th November, 2025. The implementation of this legislation will take place in three parts, the first being the constitution of the Data Protection Board of India (DPBI). On 13th November, 2026, the Consent Manager framework will be executed, after which the entire substantive regime will be enforced in 2027.

NOTICE AND VALID CONSENT UNDER DPDP ACT

This act establishes a data fiduciary which refers to the individual(s) who determine the purpose and means for processing data, and a data principal refer to whose personal data is being processed. Section 5 and 6 set the foundation for what amounts to notice and consent. The notice must precede or accompany consent and can no longer simply be a clause within the terms and conditions of a website.

The consent must be free, informed, specific, unconditional and unambiguous with a clear affirmative action. The pop-up window with pre-ticked boxed and an unchecked box for the 'I agree' does not amount to informed consent under this Act. Each set of data being processed has a specific purpose and thereby needs its own consent. Subsequently, withdrawal from data processing should be as easy as giving consent and the processing should be stopped within a reasonable time from the moment withdrawal is completed. Furthermore, the data principal would face no penalty from the data fiduciary for withdrawing from the information processing. This also extends to the processing of a child's data (anyone below 18 years), the consent of a parent or a guardian is required, furthermore the Act bans the data fiduciary to undertake tracking, behavioural monitoring and targeted advertising directed at children.

CONSENT MANAGERS

The DPDP framework differs from other legislations by setting up consent managers. Under Rule 4 of the DPDP rules, the concept of consent managers is set up. They are an intermediary registered under the Data Protection Bureau of India that gives each individual a platform to assess and withdraw (if need be) consent across every Data Fiduciary they have engaged with, instead of interacting with each Data Fiduciary separately. The registration for the consent managers will be open from November, 2026 and their obligations are listed down in Schedule I, including prevention of 'lock-in' using specified interoperability measures. Incorporating the idea of 'consent managers' solves the problem of consent fatigue – wherein consent online has become just a meaningless click to access certain material rather than a meaningful choice to allow personal data to be processed at various levels.

HOW CONSENT IS TREATED GLOBALLY?

The General Data Protection Regulation (hereinafter GDPR) is a comprehensive and expansive data protection law enacted on May 25, 2018 in the European Union. The GDPR serves as a benchmark for other nations' legislation for data protection. It is formed around a set of lawful

bases and individual data privacy rights. The enforcement of the GDPR is also accompanied by large privacy violation fines, reinforcing the vital importance of data protection. The DPDP act as well has used the GDPR as a reference point in its framing.

The GDPR establishes six legal grounds for data processing which include consent, contract, legal obligation, legitimate interests, public task and vital interests. This way the controllers have more room to process information without having to ask for permission every time as long as one of these grounds are reasonably applied. In comparison, the DPDP has 2 main legal grounds that it works upon – notice and consent, thereby restricting the data fiduciary's ability to process data without consent for every purpose. The 'legitimate uses' listed under section 7 of the DPDP act is the closest similarity to the six legal grounds of the GDPR. Subsequently, the DPDP act maintains a stricter standard for breach wherein each breach must be reported to the Data Protection Bureau of India regardless of whether the breach would likely result in any harm. In contrast, the GDPR only imposes penalty based on risk-assessment, wherein the breach is most likely to cause harm or injury. Additionally, the rights available to the data principal under the DPDP act are fewer as compared to the GDPR. The GDPR offers data portability rights and protection against automated decision-making, whereas in India these rights are limited right to access information, right to correction and erasure, right to grievance redressal and right to nominate someone to exercise the rights of an individual after death or incapacity. The framework for penalty under the two above regulations are also different. The GDPR imposes the penalty based on the turnover-linked ceiling, hence protecting smaller enterprises and startups. The DPDP Act imposes the same ₹250 crores ceiling on all companies regardless of whether it is a startup or a big tech company.

Comparing the data protection framework in India against California's CCPA/CPRA, which follows the opt-out mechanism, which allows businesses to process user data as a default, and gives consumers the option of opting out, the DPDP act follows a consent driven model or an opt-in model. The DPDP Act is also similar to the Singapore and Brazil data protection framework, but the differing point is the Consent Managers regime adopted by India.

CONCLUSION

The DPDP Act's consent approach is comprehensive but is not without a few concerns. Unlike a few other countries, the digital literacy in India is relatively low, thereby raising the question of whether consent is truly 'informed'. Furthermore, the Act does not provide for protection

against automated decision-making leaving the data principal no path for redressal against a decision made by an algorithm.

Another concern is the overlap with the Consumer Protection Act, 2019. The act had incorporated manipulative consent under unfair trade practices that is enforceable with criminal penalties. With the mechanism of the Consumer Protection Act of quick disposal of cases, individuals will prefer redressal under this act, rather than the DPDP act.

The DPDP Act establishes a strict standard for consent to data processing, but the implementation of the same standard does not always translate from paper to reality. The real test of the enforcement of this law can only be judged after May 2027, until then the questions relating to digital literacy gaps, unresolved overlap and undefined terms remain open.

REFERENCES

1. Sushant Jain, Aditya, Decoding Consent Managers under the Digital Personal Data Protection Act, 2023 : Empowerment Architecture, Business Models and Incentive Alignment (February 11, 2025). Volume 7.4 of the *Journal of Data Protection & Privacy*, by Henry Stewart Publications, London., Available at SSRN: <https://ssrn.com/abstract=5291354> or <http://dx.doi.org/10.2139/ssrn.5291354>
2. Jidesh Kumar, The Future of Consent Management Under the DPDP Act & DPDP Rules: Redefining User Autonomy Through Consent Managers and Interoperable Platforms, King Stubb & Kasiva (Nov. 17, 2025)
3. Taylor, Mark J. and Paterson, Jeannie Marie (2020) "Protecting Privacy in India: The roles of consent and fairness in data protection," *Indian Journal of Law and Technology*: Vol. 16: Iss. 1, Article 4.
4. Rachael Israel & Deborshi Barat, *A Guide to Designing Consent Management Systems under the DPDP Act*, S&R Associates (July 18, 2025)

5. Raktima Roy & Gabriela Zanzir-Fortuna, *The Digital Personal Data Protection Act of India, Explained*, Future of Privacy Forum (Aug. 15, 2023) <https://fpf.org/blog/the-digital-personal-data-protection-act-of-india-explained/>.
6. Bluebook 22nd ed. Vedant Raj Chaurasiya, Consent Mechanisms under the Digital Personal Data Protection Act, 2023: A Comparative Legal Analysis with GDPR and CCPA/CPRA, 3 [[SC]]LawFoyer Int'l J. Doctrinal Legal Rsch.[[/SC]] 517 (2025).
7. The Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India)
8. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1.
9. Jan Philipp Albrecht, How the GDPR Will Change the World, 2 EUR. DATA PROT. L. REV. 287 (2016).