

Research Article

Consent in the Age of Algorithms: The Digital Personal Data Protection Act, 2023 and the Future of AI-Driven Personalized Marketing in India

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Abstract: AI has really revolutionized marketing, moving away from a mass-communications focus to a field of individually tailored, constantly evolving persuasions that rely on granular behavioral data gathered across devices and platforms. This paper examines how India's Digital Personal Data Protection Act, 2023 (DPDP Act), together with the Digital Personal Data Protection Rules, 2025 notified on 13 November 2025, reshapes the legal basis on which such personalization may lawfully occur. It analyses the Act's consent-centric architecture its definitions of data fiduciary and data principal, its notice and consent requirements, its narrower "legitimate uses" exceptions, its treatment of children's data and its cross-border transfer mechanism; against the operational logic of AI-driven marketing techniques such as behavioral profiling, lookalike-audience modeling and programmatic retargeting. The paper situates this analysis within the staggered implementation timeline running through May 2027 and the continuing interim application of the Information Technology Act's Section 43A regime. It concludes that although the DPDP framework is 'consent-centric' as compared to a 'harm-centric' approach, marketing and ad-tech companies will need to dramatically realign their methods of obtaining consent, purpose limitation and children's-data practices prior to the DPDP provisions actually being fully in effect.

Keywords: Digital Personal Data Protection Act 2023, DPDP Rules 2025, AI Marketing, Behavioural Advertising, Data Privacy Law, Consent Management, Personalised Marketing

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INTRODUCTION

More than ever before, data; at a level of granularity that, just 10 or less years ago, would have been technically as well as legally unremarkable- is essential to the work of marketing today and predicts much of how consent, profiling and targeting will be regulated. Recommendation engines, programmatic advertising exchanges and lookalike-audience tools build up a personalized profile of each of the visitors to the Web and that profile is used to not only decide which ads to show but to whom, when and for how much. The model of marketing that is available in this scenario is thus in glaring conflict with the constitutional protection of informational privacy, which the Supreme Court of the country firmly established as a part of the fundamental right to life and personal liberty in the case of Puttaswamy [1].

The Digital Personal Data Protection Rules, 2025 were notified along with the establishment of the Data Protection Board of India (India DPB) on 13 November 2025 and these Rules provide the necessary operational precision to operationalise the Digital Personal Data Protection Act, 2023 [2]. This paper focuses on the specific aspects of the DPDP framework and how it relates to AI customized marketing. There are four parts: an overview of the staged implementation of the statutory and regulatory framework; an analysis of the implications for specific marketing techniques; an assessment of compliance gaps in the transition period to full implementation; and recommendations for marketing and legal practitioners to prepare for full implementation.

The Legal Framework: The DPDP Act, the 2025 Rules and Phased Commencement

The DPDP [2] was assented to by the President on 11th August 2023 and remained essentially unchanged, dormant meanwhile, on the condition that subordinate rules are made. The Act embodies a triadic relationship of the "data fiduciary" (a person who determines how and for what purpose personal data is being processed), "data principal" (the person the data relates to) and "Significant Data Fiduciary" (SDF) for data fiduciaries who process personal data on a scale or sensitivity deemed significant by the Central Government and imposes additional requirements, such as Data Protection Impact Assessments (DPIAs) and independent Data Audits on these entities. Processing is lawful principally on the basis of the data principal's consent (Sections 6-7), which must be free, specific, informed, unconditional and unambiguous, accompanied by a notice in clear language stating the personal data collected and the specific purpose of processing. A narrower set of "legitimate uses" under Section 7; such as voluntarily provided data for a specified purpose or compliance with law; operate as exceptions to the consent requirement but the Act does not include a broad, open-textured "legitimate interest" ground of the kind found in Article 6(1)(f) of the EU General Data Protection Regulation, on which much lawful marketing processing in the European Union currently relies.

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The DPDP [3] were notified on 13 November 2025, together with an Enforcement Notification and the constitution of the Data Protection Board of India. Commencement is staggered across three phases. Phase I, effective from the date of notification, brings into force the Board's establishment and related procedural provisions. Opposing LANDSRP will be putting the consent-manager framework into a verbal operationalisation that in the first step requires registration and gives the Board the power to initiate inquiries into registering intermediate consent by ICUs with a minimum net-worth threshold, the entities on which consent is given by the data-principal. Phase III, effective eighteen months from notification (May 2027), brings into force the remaining substantive obligations most relevant to marketing practice: the consent and notice requirements proper, purpose limitation, security safeguards, the special regime for children's data, cross-border transfer restrictions and the Board's substantive enforcement powers. Until Phase III takes effect, the pre-existing regime under Section 43A of the Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 continues to apply [4,5].

Implications for AI-Driven Personalised Marketing

Notice and consent architecture. The Act's requirement that notice be "specific" as to purpose, rather than merely itemised, has direct consequences for consent-bundling practices common in marketing technology stacks, where a single checkbox has historically authorised data collection, third-party sharing, cross-device tracking and promotional communications together. Under the DPDP framework, each distinct processing purpose relevant to personalised marketing-on-site personalisation, cross-platform retargeting, sale or sharing of data with advertising exchanges and profiling for lookalike-audience generation will require a separately identifiable basis of consent, converging with the CCPA's parallel prohibition on bundled, non-granular consent as a dark pattern (see the companion analysis of the 2023 Dark Pattern Guidelines) [6,7].

Profiling and behavioural advertising. The DPDP Act does not create a distinct, elevated category for "profiling" or automated decision-making as GDPR Article 22 does; profiling for marketing purposes is regulated indirectly, through the general consent and purpose-limitation requirements applicable to any processing of personal data from which a behavioural profile is constructed. This is a materially different regulatory posture from the EU model: Indian marketers face a consent gate rather than a distinct profiling-specific right to object, which lowers the compliance bar for profiling itself but raises it for the antecedent data collection on which profiling depends.

Significant data fiduciaries and the ad-tech supply chain. Large advertising exchanges, demand-side platforms and data-management platforms that aggregate behavioural data at scale are strong candidates for designation as significant

data fiduciaries once the Central Government notifies applicable thresholds, triggering data protection impact assessment and independent audit obligations that will flow through contractually to the marketing agencies and brands that rely on their inventory and targeting services.

Children's data. Section 9 of the Act requires verifiable parental consent before processing a child's personal data and, significantly, prohibits processing likely to cause detrimental effect on a child's wellbeing and tracking, behavioural monitoring or targeted advertising directed at children altogether. This provision, once in force, will materially affect influencer marketing, edtech promotion, gaming and toy and confectionery advertising that currently rely on behavioural targeting of under-18 audiences and will require age-assurance mechanisms that go beyond a simple self-declared birthdate field.

Cross-border data transfer. Section 16 adopts a "restricted-country" (blacklist) approach, permitting transfer of personal data outside India except to countries the Central Government specifically notifies as restricted, reversing the more prescriptive adequacy or contractual-clause architecture found in GDPR. For global ad platforms that pass Indian users' information through to international infrastructure, it is superficially a more lenient default but this list (and any sector-based exemptions) is subject to future notification and should be watched closely as implementation unfolds.

It is important to stop and consider why the consent centred design is important and not just doctrinal but also commercially. Meanwhile, global advertising platforms have started making changes to consent-signalling infrastructure, such as consent-mode integration between publications and ad servers, to comply with the EU GDPR and ePrivacy regime and marketers in India who are using the same platforms will be subjected to the same infrastructure, which was designed with GDPR and ePrivacy in mind. Two frictions follow. Secondly, GDPR consent-mode tooling is likely to be structured and implemented within the context of identifying the underlying activity as a 'legitimate interest' basis, which is not legitimate for most marketing activities under DPDP. Second, DPDP's requirement that notice be specific to purpose, read together with the Rules' emphasis on a "specific" rather than merely itemised description of processing, will likely require Indian-specific consent-notice copy rather than a translated version of global templates, since the underlying purpose taxonomy itself differs [9].

Compliance Gaps During the Transition Period

There are three gaps that need to be considered. Firstly, the leading adoption of section 43A/SPDI rules leads to a long runway, as the marketing data environment continues to be run by the weaker rules, for a long time, up to May 2027, when the new Section 43B/Data-flow rules will come into effect. At the very least, a long runway becomes an extended interim period where the marketing data rules remain weaker and organisations need to start re-designing consent and data-flow systems much earlier, not necessarily as a matter of law but as sensible business. This disassociation between legal time and commercial push to deal first causes uncertainty around what standard current practices will be assessed against. Second, the model relies on a minimum net-worth requirement to gain access to the consent-manager which is dishonestly found at about INR 20 million and is likely to cluster the consent-intermediation market amongst a few well-capitalised players, leading to uncertainty about the interoperability and cost of consent infrastructures that marketing platforms will have to integrate with. Third, there is no convergence yet between the Ministry of EI and the CCPA on how the consent requirements of the DPDP shall apply specifically to the use of AI for ad targeting - and marketing and legal teams have had to build compliance programmes by extrapolation from some of the generic provisions.

A Comparative Note on Regulatory Philosophy

The choice not to import a GDPR-style "legitimate interest" ground and not to create a distinct profiling-specific right of the kind found in GDPR Article 22, reflects a deliberate simplification rather than an oversight. The DPDP Act's stated design philosophy; described in government explanatory material as Simple, Accessible, Rational and Actionable; favours a smaller number of clear, largely consent-dependent rules over the layered, principle-based balancing tests that characterise GDPR compliance, which typically requires a documented legitimate-interest assessment weighing the controller's interest against the data subject's rights. The practical consequence for marketing organisations is that Indian compliance is, in one sense, more binary; consent is present or it is not; but correspondingly less forgiving of processing that a GDPR-trained compliance team might have been able to justify under a legitimate-interest analysis without direct consent. Organisations operating across both jurisdictions should therefore resist the temptation to treat DPDP compliance as a subset of GDPR compliance; in the specific domain of consent-optional processing, the two frameworks diverge rather than nest [10].

Recommendations

Marketing and ad-technology organisations should treat the eighteen-month runway to Phase III as an implementation window rather than a grace period. A phased compliance roadmap should priorities, in order: an audit of current consent-capture flows against the Act's specificity and unbundling requirements; contractual re-papering with ad-tech vendors and data-management platforms to allocate significant-data-fiduciary obligations before those thresholds are

formally notified; the introduction of credible age-assurance mechanisms ahead of the children's-data provisions taking effect, rather than at the compliance deadline; and a consent-interface design process conducted jointly with legal counsel, so that granular, purpose-specific consent requests are built without resorting to the confirm-shaming or forced-action patterns the CCPA's parallel dark-pattern guidelines separately prohibit. Regulators, for their part, would do well to issue interpretive guidance specific to behavioral advertising and profiling before Phase III commencement, both to give the ad-technology sector adequate lead time and to reduce the risk of inconsistent early enforcement.

CONCLUSION

The DPDP Act and the 2025 Rules mark the transition of Indian data protection from a thin, security-oriented regime under the Information Technology Act to a comprehensive, consent-centered framework closer in ambition, if not in structure, to comparable global models. For AI-driven personalized marketing specifically, the Act's consent-and-purpose architecture rather than a GDPR-style profiling-specific right will be the primary lever of regulation and its children's-data prohibition on targeted advertising is likely to be its most immediately disruptive provision for practitioners. With the substantive obligations not commencing until May 2027, organisations have a defined but finite window in which to move from reactive compliance to a genuinely consent-by-design marketing data architecture.

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