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Section 43 DPDPA

Power to remove difficulties.

43. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty.

(2) No order as referred to in sub-section (1) shall be made after the expiry of three years from the date of commencement of this Act.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

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Legal Interpretation of the
Section 43 of the Digital Personal Data Protection Act, 2023 (DPDPA)

Statutory Provision and Purpose

Provision: Section 43 of the Digital Personal Data Protection Act, 2023 states:

"Power to remove difficulties."

While the section title is succinct, its implications are significant in the context of legislative implementation. This provision empowers the Central Government to take necessary measures to eliminate any obstacles that may impede the effective enforcement or execution of the Act. This includes the ability to issue directives, make adjustments, or provide clarifications to ensure the smooth functioning of the Act's provisions.

Purpose:

The primary objective of Section 43 is to facilitate the seamless implementation of the DPDPA by granting the government the flexibility to address unforeseen challenges or ambiguities that arise during the Act's application. This ensures that the legislation remains functional and effective without the need for cumbersome amendments or delays i

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n addressing practical issues.

Legal Interpretation

1. Nature of the Provision

Section 43 is a general empowering clause commonly found in statutes. It serves as a catch-all provision that allows the government to address issues not explicitly covered within the Act. By enabling the removal of difficulties, this section ensures that the legislative intent is fulfilled even when specific scenarios or challenges emerge post-enactment.

2. Scope of the Power

Broad Authority: The provision grants the Central Government broad authority to make necessary adjustments, issue clarifications, or provide additional guidelines to overcome any practical or legal impediments in implementing the DPDPA.

Non-Legislative: Unlike the power to amend schedules or make rules, Section 43 does not equate to legislative power. Instead, it is administrative in nature, aimed at ensuring effective governance and implementation.

Subject to Judicial Review: Actions taken under Section 43 are subject to judicial scrutiny. Any measures deemed arbitrary, unreasonable, or contrary to the Act's objectives can be challenged in courts.

3. Procedure for Exercising the Power

Executive Action: The Central Government can exercise this power through executive orders, notifications, or directives. This allows for swift responses to emerging issues without waiting for parliamentary approval.

Consultation and Transparency: While not explicitly mandated, best practices suggest that the government should engage in stakeholder consultations and maintain transparency when exercising this power to uphold accountability and public trust.

4. Checks and Balances

Though Section 43 does not explicitly mention placing the notification before Parliament, general principles of administrative law and judicial review apply. If a stakeholder believes the government's amendment is irrational, arbitrary, or contrary to the purposes of the DPDPA, they may seek judicial intervention. The court

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5. Policy Considerations and Safeguards

Flexibility vs. Accountability: While the provision grants necessary flexibility, it also imposes an implicit responsibility on the government to act judiciously and transparently. **Preventing Misuse:** Clear guidelines and oversight mechanisms should be in place to prevent the misuse of this power, ensuring that it is employed solely to facilitate the Act's implementation rather than to bypass legislative processes.

Illustrations

Illustration 1: Clarifying Data Categories

Scenario: The DPDPA classifies certain data as "sensitive personal data." However, stakeholders find the classification ambiguous, leading to inconsistent application across industries. **Application of Section 43:** The Central Government issues a clarification through a notification specifying the exact parameters and examples of what constitutes "sensitive personal data." This removes ambiguity, ensuring uniform application of the classification across all sectors.

Illustration 2: Addressing Technological Advances

Scenario: Rapid advancements in artificial intelligence (AI) lead to new forms of data processing that were not envisaged at the time of the Act's drafting, creating potential gaps in data protection. **Application of Section 43:** To address this, the government issues guidelines on how AI-generated data should be handled under the DPDPA. This includes protocols for consent, data minimization, and security measures specific to AI applications, thereby removing implementation difficulties arising from technological progress.

Illustration 3: Streamlining Compliance Procedures

Scenario: Businesses report that the compliance procedures mandated by the DPDPA are overly cumbersome, leading to delays and increased costs. **Application of Section 43:** The Central Government amends the compliance framework b

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y simplifying documentation requirements and extending deadlines where feasible. These adjustments facilitate easier adherence to the Act without compromising data protection standards.

Illustration 4: Resolving Conflicts with Existing Laws

Scenario: Certain provisions of the DPDPA conflict with existing sector-specific regulations, causing legal uncertainties for data fiduciaries.

Application of Section 43: The government issues directives to harmonize the DPDPA with existing laws, outlining how conflicts should be interpreted and resolved. This ensures legal clarity and consistency across different regulatory frameworks.

Conclusion

Section 43 of the Digital Personal Data Protection Act, 2023 serves as a pivotal provision ensuring the Act's practical effectiveness and adaptability. By empowering the Central Government to remove implementation difficulties, the provision facilitates the dynamic and responsive governance necessary for robust data protection in an ever-evolving digital landscape. However, this power comes with the responsibility to act transparently, consultatively, and within the bounds of the Act's objectives to maintain public trust and uphold the integrity of data protection standards.