

The Digital Personal Data Protection Act, 2023: A comprehensive Study of India's Data Privacy Framework

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Abstract:

Digital technology has grown rapidly in recent years revolutionizing the collection, storage and processing of personal information. With the growth in internet penetration, digital payments, social media use and e-governance initiatives, protection of personal data is an important legal and social issue. The Digital Personal Data Protection Act (DPDP Act), 2023 was passed by the Parliament of India to provide for a comprehensive legal framework for processing of digital personal data. The Act seeks to balance the individual's right to privacy with the need to process personal data for lawful purposes. The paper analyzes the objectives, scope, key provisions, rights and obligations, penalties, significance, challenges and future prospects of the Act, while comparing the same with international data protection laws such as the General Data Protection Regulation (GDPR) of the European Union.

Keywords: Data Privacy, DPDP Act 2023, Digital Personal Data Protection Act, Privacy Rights, Data Protection Board, Personal Data, Consent, Cyber Law

Introduction:

The digital revolution has transformed communication, commerce, healthcare, banking, education and government. Every online action produces personal data that companies use for various reasons. This results in innovation and efficiency, but also leads to increased risks of privacy violations, identity theft, cybercrime and unauthorized data processing.

In the landmark judgment of Justice K.S. Puttaswamy v. Union of India (2017), the Supreme Court of India recognized the Right to Privacy as a Fundamental Right under Article 21 of the Constitution. After years of discussions and several draft bills, Parliament passed the Digital Personal Data Protection Act, 2023 to regulate the processing of digital personal data and to protect individual privacy.

Study Objectives:

The goals of this research are:

1. Understanding the Digital Personal Data Protection Act, 2023
2. To study its main provisions.
3. To consider the rights of the individual.
4. To analyze the duties of data processing entities.
5. To assess penalties and enforcement mechanisms.

6. Comparison of the Act to international privacy laws.
7. To determine the challenges in implementation.

Research Design:

This research is a doctrinal research that relies on secondary sources, namely:

- Digital Personal Data Protection Act, 2023
- Government publications
- Journals, Academic
- Research article
- Cyber Law Books
- Legal and technology organizations reports

Background of the Act:

Prior to 2023, India lacked a comprehensive personal data protection law. The main law for protection of personal data was the Information Technology Act, 2000 and the Rules framed thereunder.

- Key milestones include:
- 2017 – Right to Privacy as a Fundamental Right.
- 2018 – Justice B.N. Srikrishna Committee submitted its recommendations.
- 2019 – Introduction of the Personal Data Protection Bill.
- 2022 – New draft published.
- 2023 – Digital Personal Data Protection Act passed on 11th August 2023.

The Act's Scope:

This Act applies to—

- Personal data in digital form obtained from online sources.
- Personal data that is digitized from offline.
- Processing outside India related to provision of goods or services to individuals in India.

The Act generally does not regulate purely personal or domestic processing and certain categories of processing specified by law as exempt.

Important Definitions:

Personal Data - Data relating to an identified or identifiable individual.

Data Principal – The individual who is the subject of the personal data.

Data Fiduciary - A person, company or government body who decides the purpose and means of processing personal data.

Data Processor – A person who processes data on behalf of a Data Fiduciary.

Consent Manager - A registered entity that allows an individual to manage, review and withdraw consent.

Significant Data Fiduciary – Certain Data Fiduciaries designated by the Central Government based on factors including the volume and sensitivity of data processed.

Major Features of the Act:

1. Processing based on consent - As a general rule, personal data shall be processed only if:

- Voluntary consent
- Explicit consent
- Consent to participate
- Clear consent

You can withdraw your consent at any time.

2. Legitimate Uses - Consent may not be necessary in certain circumstances. Such circumstances include some government functions, emergencies, employment-related purposes, and other legitimate uses recognized under the Act.

3. Notice Requirement – The Data Fiduciary must provide clear notice before processing data that explains:

- Purpose of collection
- Data Principal Rights
- Dispute resolution mechanism

4. Purpose Limitation - Personal data shall be obtained only for specified, legitimate purposes.

5. Data Minimization – You should only collect the personal data that is needed.

6. Data Security - Organizations must implement reasonable security measures to prevent data breaches.

7. Data Retention - Data should not be kept longer than necessary for the purpose for which it was collected.

Data Principal Rights:

The Act provides for a number of rights to be:

Right to Information - People have the right to know how their data is processed.

Right to Correction - You have the right to correct inaccurate or incomplete data.

Right to be forgotten – If applicable, people can ask to be forgotten.

Right to Grievance Redressal - Grievances against improper processing can be raised.

Right to Nominate - In certain circumstances a person may nominate another to exercise rights.

Duties of Data Principals:

The Act also imposes duties on persons including:

- Not giving false information.
- Do not impersonate another person.
- Not lodging false or vexatious complaints.

Duties of Data Fiduciaries:

- Data Fiduciaries are required to:
- Ensure legal processing.
- Implement reasonable security safeguards.
- Report personal data breaches if necessary.
- Keep data only as long as is necessary to satisfy the purpose for which it was collected.
- Set up procedures for redress of grievances.

- Fulfill additional obligations where specified as Significant Data Fiduciaries.

Processing of Children's Data: The Act contains specific rules on the processing of children's personal data, including obligations related to verifiable parental consent and restrictions to protect children from harmful processing practices.

India's Data Protection Board:

The Act establishes a Data Protection Board of India.

Its functions are:

- Complaints received
- Investigate Violations
- Imposing penalties
- Dispute resolution

Compliance with the Act Penalties:

The Act provides for substantial monetary penalties for a number of violations, including:

- Security breach of personal data
- Failure to notify of data breaches
- Breaching data protection provisions relating to children
- Failure to comply with Board directions

Penalties can be as high as ₹250 crore for certain contraventions, depending on the nature of the contravention.

Benefits of the Act:

- The Act offers a number of benefits:
- Protects citizens' privacy.
- Supports responsible digital governance (new)
- Increases the confidence of consumers.
- Enhances cyber security practices.
- Promotes ethical data management.
- Facilitates growth of the digital economy.
- Brings India closer to global privacy standards.

Challenges:

- Despite its importance a number of challenges remain:
- Cost of compliance for small business.
- Knowledge of privacy rights among the public.
- Balancing innovation and regulation.
- Challenges in cross-border data sharing.
- Ability to effectively enforce
- Concerns relating to exemptions under the law.

Comparison to the GDPR:

Feature	DPDP Act 2023	GDPR
Country	India	European Union
Consent	Required for most processing	Required
Data Protection Authority	Data Protection Board	Independent Supervisory Authorities
Right to Correction	Yes	Yes
Right to Erasure	Yes	Yes
Financial Penalties	Up to ₹250 crore (depending on violation)	Up to €20 million or 4% of global turnover

Latest Updates:

Subsequent rulemaking has operationalized the DPDP Act and organizations are preparing compliance measures such as updated privacy notices, stronger security safeguards and consent management mechanisms. The law continues to be implemented through rules and judicial scrutiny.

Recommendations:

- Increase public awareness about data privacy.
- Upgrade the cyber security infrastructure.
- Simple compliance for start-ups and MSMEs
- Perform regular privacy audits.
- Encourage privacy-by-design.
- Increase the online literacy of citizens.

Conclusion:

The Digital Personal Data Protection Act, 2023 is a milestone in India's digital governance architecture. It strikes a balance between the fundamental right to privacy and the need for the lawful processing of personal data to enable innovation and economic growth. The Act establishes a framework for responsible data governance, delineating the rights of individuals and the responsibilities of organizations. Long-term success will depend on effective implementation, regulatory oversight, organizational compliance, technological safeguards and public awareness.

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