



## A Legal Study on Digital Protection of Data Privacy Act, 2023

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### Abstract

Our time is time of information and technology. This is a century of digitalization. In 2023 we had worldwide uses of internet at around 5.2 billion, approximately 2-3rds of global population. This huge use has also raised new crimes and privacy concerns. Protecting privacy and people from crime is difficult task already and doing it online has become almost impossible. Not only cyber-crime but protecting data from online sources and preventing breach of private data has become nuisance for all governmental and national and international organization worldwide. Protecting data privacy is basic human right and part of our fundamental rights. Governments worldwide are trying to frame rules and regulations to protect online data and data privacy of an individual. European Union's general data protection rules, 2018. Indian parliament also recently in August, 2023 passed DPDP Act, 2023 finally, which become our country's first DP Act for processing and protection of personal data in India. Through this paper we will legally study the features of the Act, what it provides and what can be expected from it. Will it be fruitful in doing its job or fail in implementation like many of our existing ones. How in the long run it will come out to be, will be decided later, right now we can only speculate and keep our hopes on this much awaited legislation to protect our online data privacy. We will get to know, who the stake holders are and whom the individuals are protected from and to what extent. This is latest addition to digital laws and needs a study from an individual's point of view.

**Keywords:** DPDP Act, data privacy, online data, cyber protection, digital laws.

### 1. Introduction

On 11<sup>th</sup> August, 2023 finally the curtains were drawn on a journey that began years ago. The Digital Protection of Data Privacy Bill received President's assent and thus finally became an act. We as the largest population with the largest democracy were in dire need of a data protection law. We are in a digital and information and technology age today. With the growth of digital era more information is more freely and easily available. Information has become a very information asset in today's world.

Easy availability of information has many advantages but along with them it has serious disadvantages too. The easy access to information is largely invading right to privacy. Right to privacy is our Fundamental Right as recognized by the honourable Apex Court of India in the landmark judgment of K.S. Puttaswamy vs. Union of India<sup>1</sup> by expansion of Article 21 i.e. Right to life and personal liberty. But unlike other rights, the protection of right to privacy, especially data privacy is a real tough task. With the advent of social media and the information being available everywhere, it has become tougher still.

Applications, especially the ones providing services such as Uber, Facebook, Instagram, Amazon, Alibaba, etc. have vast knowledge relating to its customers. They know our whereabouts, our travel plans, our shopping preferences and much more. All the social network service providers, e-mail services providers, various search engines and various messaging and payment applications, all these are some examples of non-state actors that gather our extensive information relating to places, transactions, conversations, personal and professional information, health related information, mental state, interests, habits and everything we do, read, watch or search online.

Thus, we were in dire need of a law that can provide for protection of such information from both of these state and non-state actors. In today's globalized era when everyone and everything is just a click away, defining clear boundaries of privacy is not an easy task. To protect privacy we need to restrict and limit power of private and public sector both of collecting and controlling our private information which is collected or available online.

<sup>1</sup> Justice K.S. Puttaswamy (Retd) v. Union Of India, 2017 10 SCC 1

<sup>2</sup> Justice K.S. Puttaswamy (Retd) v. Union Of India, 2017 10 SCC 1



After the Aadhar case judgment in 2017<sup>2</sup>, the Government of India set up a committee of experts to study various issues which are related to data protection in India under the chairmanship of Justice B N Srikrishna. Justice B N Srikrishna's committee presented its report titled 'A free and fair digital economy, Protecting Privacy, Empowering Indians'.

The committee made specific suggestions on the principles laid down and prepared a draft data protection bill. The major objective of the data protection bill was to ensure growth of digital economy, while keeping personal data of citizens secure and protected. After a long wait of many years finally it was enacted in August, 2023.

## 2. Objectives of the Digital Personal Data Protection Act

- This act i.e. the Digital Personal Data Protection act of 2023 is our country's first act for protection of data and its major objective is to provide framework for processing of personal data in India.
- DPDP Act will promote ease of living and ease of doing business.
- The act covers both types of data i.e. online data and data collected offline but later digitized.
- The act will empower our right to information. It gives us right to know how the data is processed, in a clear and understandable way.
- The Act also aims to provide right to be forgotten. It provides right to correction and erasure of data.
- The major objective of the act is to provide grievance redressal.
- The act also gives power to nominate other individual to exercise rights in case of death or incapacity.

## 3. Salient Features of the Digital Personal Data Protection Act

The study of act will not be complete without discussing its salient features.

Firstly, the act defines the important terms such as data processor, data fiduciary, significant data fiduciary, data principal, digital personal data, data breach, etc. but the most important definition is that of personal data which is defined in clause (t) of section 2<sup>3</sup> as, "personal data means any data about an individual who is identifiable by or in relation to such data". This one is a definition which is very broad and can encompass wide range of data.

Section 3<sup>4</sup> provides the application and non-application of this act. According to this section the act's application extends to processing of the digital personal data within the territory of India, where it is collected in digital form or in non-digital form and digitized subsequently after. This also applies to data processed outside India if such processing is in connection with any activity which is related to offering of goods or services to data principals within India. The act does not apply to any personal data for personal or domestic purpose and to data which is made publicly available by data principal or under any legal obligation by any person.

There is a whole chapter on obligations of data fiduciaries. No data can be collected without consent. Every request for taking consent needs to be made accompanying or preceding a notice. The notice shall clearly state the purpose and manner of data collection. The act provides uses for which data may be legitimately collected. In case of child person with disability consent of legal guardian is to be taken.

The act also provides for rights and duties of data principal. The rights given are right to access the information about personal data, right to the correction and erasure of personal data, right to get grievance redressed and right to nomination of a person in case of death or incapacity who will exercise rights as data principal in behalf of such person.

Section 17<sup>5</sup> provides exemptions for certain data from the application of the act.

<sup>3</sup> The Digital Privacy Data Protection Act, 2023 (No. 22 of 2023)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.



These includes data for enforcing legal rights or claim, data processed by court or other judicial and quasi-judicial body, for prevention or investigation of crimes, for purpose of financial institutions, etc. The act provides for establishment of a board by the name of Data Protection Board of India and provides for qualification, disqualification, composition, term, salary and allowances of the members of the board. Chapter VI of the act provides powers, functions and procedure to be followed by the board.

The act has provision for appeal in case an aggrieved person is not satisfied by decision of the board. The appeal lies to the appellate tribunal within 60 days. In case the board is of opinion that

dispute can be settled through mediation, it can direct parties to attempt mediation, thus keeping doors open for alternate dispute resolution.

The act provides for monetary penalties in case of breach. The draft bill stipulated maximum penalty of Rupees 500 crores, which was removed later. The board can decide the amount of monetary penalty having regard to nature, gravity, type and repetition of breach, keeping in mind the effect of penalty imposed.

The 9 chapters and 44 sections of the act are supplemented with a Schedule which provides for maximum amount of penalty for certain breaches. Thus these are various provisions given in the act.

#### 4. Shortcomings of the DPDP Act

No law can be perfect; it will more or less have various shortcomings and loopholes. If it's a good law, it might not be easy to implement, if its implemented, it might have loopholes which can be exploited to avoid it, if not this then it may not satisfactorily provide remedy to some section, group of people, if it does, it might become outdated soon and so on.

Making a law for digital protection of data is tough because technology is fast changing and evolving and we need very flexible laws for them. Also the reach of social media and internet has become so widespread that controlling data and protecting privacy is not only impossible in a complete sense but also not feasible. We

have become so much inter-connected that it is not easy to enforce any law for digital privacy completely.

The next issue is the jurisdiction. Mostly online applications are not based in any one country. All are from different places and law of one place will not apply to them. Also it will not be easy to make them adhere to law of any other country other than their own. Keeping all these and other problems in mind we can explore what problems our newly made Digital Personal Data Protection Act might face and what are its shortcomings which could have been avoided while framing it and which could be faced in implementing it religiously.

- One major shortcoming of this new born law is that this Act does not prescribe any specific timeline for implementing the grievance redressal.
- The act lacks security auditing mandate and the act leaves it to the organizations to choose whether to have audit or not. This will greatly reduce credibility and liability of organizations.
- The major flaw of the act is that it curbs the right to information. The departments can quash queries citing that such data cannot be shared. This will also hamper the right to freedom of speech.
- The act provides weak remedy. It is almost next to no remedy, as it cannot be strongly implemented, and has no time frame, moreover it is discretion of the board to decide amount of penalty, and no minimum penalty has been stipulated. The penalty goes to consolidated fund of India and act is silent on compensation to the victim which further weakens the provisions for the victim.
- The exemptions are not specific and vague and thus can be misused to exempt almost any kind of data in the name of exemption.

<sup>6</sup> General Data Protection Regulation- 2016/679



- The government has through this act given itself access to huge amount of data and this is a matter of concern. There are vast powers in the hands of the central government which are discretionary and arbitrary.

## 5. Conclusion

The Digital Personal Data Protection Act, 2023 is the first of its kind law in India for protecting online digital privacy. It should have been done long ago. It is a very new law and how efficiently it will work, it is very early to speculate. It has various provisions which were need of the hour, such as right to erasure, right to nominate and to have consent before data is processed. But the law has weak and vague provisions for implementation. Our lawmakers should have taken help from European Union's GDP Rules, which though made almost seven years ago, provides much better remedies and rights and clearly and specifically drafted. GDPR mandates reporting data breach within 3 days i.e. 72 hours<sup>6</sup>. Nonetheless the law has been passed, it may not be perfect but this act has recognized the urgent need of protecting digital privacy which is a very essential in era of digital and online technologies. Though it seems more like central government is empowering itself rather than recognizing rights of individuals, yet it is too early to say anything and we will have to wait and watch how the law unfolds itself as a protector of our rights. If it misfires we have our Supreme Court and its inherent power to protect us and we still have faith in it. It has protected our rights earlier and it will do so in future. With this let's see what how new digital world will shape itself and how the legislators and we all as individuals will be ready to tackle the problems which can come with the act.

## 6. References

1. Justice K.S. Puttaswamy (Retd) v. Union Of India, 2017 10 SCC 1
2. The Digital Privacy Data Protection Act, 2023 (No. 22 of 2023)
3. General Data Protection Regulation- 2016/679