

# **DATA PROTECTION LAWS IN INDIA - HIGHLIGHTS**

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# BIRTH OF DIGITAL PERSONAL DATA PROTECTION ACT 2023

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The Data Protection Legislation can be traced back to 2017 when an expert Committee was Constituted by the Ministry of Electronics and Information Technology (Meity).

In the matter of “Justice K.S. Puttaswamy (Retd.) & Another vs. Union of India & Ors.” the Hon’ble Supreme Court of India has recognized a fundamental right to privacy in India, including informational privacy, within the “right to life” provision of India’s Constitution. In this judgment, a nine-judge bench of the Hon’ble Supreme Court urged the Indian Government to put in place “a carefully structured regime” for the protection of personal data.

The Hon’ble Supreme Court in K.S. Puttaswamy (supra) affirmed that privacy (including informational privacy) was protected under the Constitution of India. More practically, the decision played a role in forcing the hand of the Executive to create legislation on privacy and data protection.

Finally, on 3rd August 2023, The Lok Sabha introduced the Digital Personal Data Protection Bill, 2023 on 3rd August 2023 to provide for the processing of digital personal data which not only recognizes the right of individuals in protecting their personal data but the need to process such personal data for any lawful purposes.

Until the President of India gave her assent on **Digital Personal Data Protection Act 2023 (DPDA Act)** on 11th August 2023, **The Information Technology Act, 2000 (IT Act)** was the data protection legislation in India because there was no special legislation.

# DEVELOPMENT IN DATA PROTECTION LEGISLATION IN INDIA BEFORE THE ENACTMENT OF DIGITAL PERSONAL DATA PROTECTION ACT 2023

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## ➤ Personal Data Protection Bill, 2018

The Justice Srikrishna Committee, tasked by the Ministry of Electronics and Information Technology (MeitY) with drafting data protection legislation for India, came out with the initial proposal of the legislation, the Personal Data Protection Bill, 2018

## ➤ Personal Data Protection Bill, 2019

Personal Data Protection Bill, 2019, which was later withdrawn amid promises of a replacement measure that would adhere to India's extensive legal system, keeping in mind the other 81 suggested modifications by the Joint Parliament Committee.

## ➤ Data Protection Bill, 2021

The Data Protection Bill, 2021, was a single law put out by the committee covering both personal and non-personal datasets. The report's recommendation to move toward total localization of data was under question.

## ➤ Digital Personal Data Protection Bill (DPDP Bill, 2022)

This Bill covered both personally identifiable information gathered online and offline that has been converted to digital form for handling. This bill affected the legal safeguards offered to customers of Indian start-ups doing business abroad, affecting their competitiveness.

# REASONS FOR ENACTMENT OF DIGITAL PERSONAL DATA PROTECTION ACT 2023

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- Millions of Indians use hundreds of applications daily, creating data trails that may be misused to create profiles, target advertisements, and forecast activity and trend.
- In India, the intersection of the different laws for different fields creates ambiguity and it is one of the primary reasons behind the breach of a large amount of data.
- There was not a single codified law in India that pays close attention to all the aspects of data protection and keeps a record for the penalties that should be imposed.
- Countless examples of nonexistent and malfunctioning grievance redressal mechanisms need to be quickly resurrected and reviewed.
- Since India is a nation-state, the data of the citizens is considered a national asset.

# REASONS FOR ENACTMENT OF DIGITAL PERSONAL DATA PROTECTION ACT 2023

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- Depending on India's security and geopolitical objectives, this national asset may need to be protected and stored within national borders. That would include not only the corporates, but also Non- Governmental Organizations and governmental bodies.
- The Information Technology Act, 2000 was moderately handling India's data protection issues, and was not very strict as it falls short in implementing the provisions properly. Data Protection with strict implementation is currently a requirement of India.
- Despite India being a member to several international organizations that focus on data protection mechanisms like the United Nations Commission on International Trade and the provisions in Directive Principles of State Policies. Article 38 of Constitution of India is related to the overall welfare of citizens. Privacy and data protection are essentially related to a welfare state.
- Online transactions needed to be addressed specifically, as it is being regulated by RBI norms, which should be addressed by relevant laws, which necessitated new laws on data protection in India.

# KEY HIGHLIGHTS OF THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

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The Act of Parliament received the assent of the President on the 11th August, 2023. (hereinafter referred to as “**Digital Personal Data Protection Act 2023**” or “**Act**” or “**DPDA Act**”)

## Intent

An Act to provide for the processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

## Applicability of the Digital Personal Data Protection Act 2023

The Act applies to the processing of digital personal data within India’s territory, whether collected in digital or non-digital form and digitized subsequently.

Act also applies to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India.

The Act is not applicable to personal data processed by an individual for any personal or domestic purpose and personal data which is made publicly available by Data Principal.

# KEY HIGHLIGHTS OF THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

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## **Section 2 (a) : Appellate Tribunal**

Appellate Tribunal means the Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997;

## **Section 2 (c) : Board**

“Board” means the Data Protection Board of India established by the Central Government under section 18.

## **Section 2 (h): Data**

“Data” means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means.

## **Section 2 (i): Data Fiduciary**

“Data Fiduciary” means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data.

# KEY HIGHLIGHTS OF THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

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## **Section 2 (j): Data Principle**

“Data Principal” means the individual to whom the personal data relates and where such individual is—

- (i) a child, includes the parents or lawful guardian of such a child.
- (ii) a person with disability, includes her lawful guardian, acting on her behalf.

## **Section 2 (t): Personal Data**

“personal data” means any data about an individual who is identifiable by or in relation to such data.

## **Section 2 (u) : Personal Data Breach**

“personal data breach” means any unauthorized processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to personal data, that compromises the confidentiality, integrity or availability of personal data.



# OBLIGATIONS OF DATA FIDUCIARY

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A data fiduciary plays a vital role in the processing of personal data and the onus of protection of those data lies with data fiduciary.

Example: Data fiduciary may be your telephone operator, Myntra, Amazon, Matrimony website, or any other person or organization with whom you have shared your personal data.

A data fiduciary may process the personal data of an individual in accordance with the provisions of the Act and for a lawful purpose for which the consent is given or for certain legitimate use.

While asking for consent from a data principal, a data fiduciary shall also give notice beforehand or at the moment informing the purpose of data processing, rights of data principal and manner in which the data principal may make a complaint to the Board.

A data Fiduciary is a duty bound to protect personal data in its possession or under its control, including in respect of any processing undertaken by it or on its behalf by a Data Processor, by taking reasonable security safeguards to prevent a personal data breach.

In the event of a personal data breach, the Data Fiduciary shall give the Board and each affected Data Principal, intimation of such breach in such form and manner as may be prescribed.

# SIGNIFICANCE OF DATA FIDUCIARY

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## **Section 2(z): Significant Data Fiduciary**

“Significant Data Fiduciary” means any Data Fiduciary or class of Data Fiduciaries as may be notified by the Central Government under section 10.

The Central Government may notify any Data Fiduciary or class of Data Fiduciaries as Significant Data Fiduciary.

## **The Significant Data Fiduciary shall —**

- appoint a Data Protection Officer who shall be the point of contact for the grievance redressal mechanism under the provisions of this Act;
- appoint an independent data auditor to carry out data audit, who shall evaluate the compliance of the Significant Data Fiduciary.
- carry a periodic Data Protection Impact Assessment, which shall be a process comprising a description of the rights of Data Principals and the purpose of processing of their personal data, assessment and management of the risk to the rights of the Data Principals.
- carry out a periodic audit.

# RIGHTS AND DUTIES OF DATA PRINCIPAL

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## **Rights of Data Principal**

- to access information about personal data .
- Right to correct, complete, update and erasure of the personal data provided.
- Right to nominate any other individual, who shall, in the event of death or incapacity of the Data Principal, exercise the rights of the Data.
- Right to have readily available means of grievance redressal provided by a Data Fiduciary or Consent Manager Duties.

## **Duties of Data Principal**

- Comply with the provisions of all applicable laws for the time being in force while exercising rights under the provisions of this Act.
- to ensure not to register a false or frivolous grievance or complaint.
- to ensure not to suppress any material information while providing personal data for any document.
- to ensure not to impersonate another person while providing personal data for a specified purpose.

# DATA PROTECTION BOARD AND IT'S FUNCTIONS

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## ➤ Data Protection Board

The Data Protection Board of India is established by the Central Government.

The Board is a body corporate with perpetual succession, a common seal, and powers to acquire, hold, dispose of property, contract, sue, and be sued.

The headquarters of the Board is determined by the Central Government.

Central Government is in consultation with stakeholders and is likely to form the board within a month.

## ➤ Key functions of the Board include

Monitoring compliances and imposing penalties.

Directing data fiduciaries to take necessary measures in the event of data breach.

Hearing grievances made by affected persons.

## ➤ Authority of Data Protection Board

Inspect documents of Companies handling personal data .

Summon and examine individuals under oath .

Recommend blocking access to intermediaries that repeatedly breach the provisions of the bill.

# DATA PROTECTION BOARD AND IT'S FUNCTIONS

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## Tenure of the Board

The Chairperson and other Members shall hold office for a term of two years and shall be eligible for re-appointment .

## Appeal & Dispute Resolution

Any person aggrieved by an order or direction made by the Board under this Act may prefer an appeal before the Appellate Tribunal i.e. Telecommunications Dispute Settlement and Appellate Tribunal.

Every appeal shall be filed within a period of sixty days from the date of receipt of the order or direction appealed against.

An order passed by the Appellate Tribunal under this Act shall be executable by it as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

If the Board is of the opinion that any complaint may be resolved by mediation, it may direct the parties concerned to attempt resolution of the dispute through such mediation by such mediator as the parties may mutually agree upon, or as provided for under any law for the time being in force in India.

# PENALTIES AND ADJUDICATION

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If the Board determines on conclusion of an inquiry that breach of the provisions of this Act or the rules made thereunder by a person is significant, it may, after giving the person an opportunity of being heard, impose such monetary penalty specified in the Schedule.

All sums realised by way of penalties imposed by the Board under this Act, shall be credited to the Consolidated Fund of India.

As per Schedule, the penalty imposed upon Breach of provisions of this Act or rules made thereunder are as follows:

- a) Extend to Rupees 250 Crore** - Breach in observing the obligation of Data Fiduciary to take reasonable security safeguards to prevent personal data breach.
- b) Extend to Rupees 200 Crore** - Breach in observing the obligation to give the Board or affected Data Principal notice of a personal data breach.
- c) Extend to Rupees 200 Crore** - Breach in observance of additional obligations in relation to children.
- d) Extend to Rupees 150 Crore** - Breach in observance of additional obligations of Significant Data Fiduciary.
- e) Extend to Rupees 10,000/-** Breach in observance of the duties.
- f) Extend to rupees 50 Crore** - Breach of any other provision of this Act or the rules made thereunder.

# BENEFICIAL LEGISLATION

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Overall, in keeping with times, and technology, the DPDA Act 2023 is meant to be beneficial legislation that seeks to prioritize data protection and privacy, implement robust security measures. Now the implementation of DPDA Act is beneficial in terms of:

- A concrete governance in tech world
- upholds the law of land.
- balancing profits vis-à-vis personal space.
- Great assistive role in control of fraud.
- Maintain trust with customers and stakeholders.

Thus most important part lies not between the black and white, but in the shades of grey that lie in the space between the lines. How will it pan out, for better or worse, is something only time can reveal.

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**THANK YOU**

