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Digital Protection and Data Protection Act(DPDP),2023 : A New Era Of Liability

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Abstract

The Digital Personal Data Protection (DPDP) Act, 2023, marks a watershed moment in India's digital governance landscape, introducing a new era of legal liability surrounding the collection, processing, and storage of personal data. In response to the exponential growth of digital data handling across sectors—ranging from e-commerce to healthcare—the Act aims to ensure that individual privacy is safeguarded while enabling innovation and economic development. Inspired by the European Union's GDPR, the legislation lays down clear principles such as consent-based processing, data minimization, and time-bound retention, thereby establishing a rights-based framework for data principals and imposing strict accountability on data fiduciaries.

This paper offers an analytical overview of the DPDP Act, detailing its scope, key definitions, consent framework, and institutional mechanisms like the Data Protection Board of India. It highlights the shift from advisory norms to binding obligations, with significant emphasis on enforceable liabilities and penalties for non-compliance. Corporate entities, especially those categorized as 'Significant Data Fiduciaries,' are required to realign their internal processes to adhere to the law's mandates, including proactive risk mitigation, breach notification, and transparent grievance redressal.

Despite its strengths, the Act faces critical challenges—ambiguous terms like "legitimate use," broad government exemptions, and the centralized control over the Data Protection Board, which raise concerns about interpretative uncertainty and potential political influence. The paper argues for increased institutional autonomy and clearer statutory language to ensure effective implementation. Ultimately, the DPDP Act is a much-needed legislative intervention that transitions data protection in India from a voluntary exercise to a statutory necessity, ushering in a culture of digital accountability, yet it demands further refinement to meet the evolving complexities of data governance.

Keywords: Digital Personal Data Protection Act 2023, Data Privacy, Data Fiduciary, Data Principal, Consent Framework, Data Protection Board of India, Legal Liability.

1. Introduction

In today's rapidly digitalizing world, personal data has developed into a valuable resource as well as a considerable threat. We can understand the importance of personal data from the fact itself that a substantial amount of individual's personal data is being collected and processed by various platforms, whether e-commerce, social media, banking or healthcare every single minute. This expeditious increase in data handling by huge number of platforms across the country has posed a high risk of individual's or business's personal data breach and necessitated a robust legal framework to counter this risk. After reviewing the issue, the Government of India had took a significant step by adopting THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023.

The establishment of THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 has marked a notable step towards constituting an effective and strong governance not only to deal with the issue of individual's privacy or high business risk but also to ensure the formation of an organization with a long term sustainability. The aforementioned law has drawn its inspiration from the EU's General Data Protection Regulation (GDPR) and was introduced with the aim to manage the collection, processing and retention of the personal data along with balancing the need for innovation and economic growth. Its emphasis over the 'enforceable liability' is a clear indication that the era of optional privacy policy is now over and it's the rise of an era of legally binding accountability.

2. Overview of the act

The Digital Personal Data Protection Act, 2023 is the first extensive act aiming to deal with the digital personal data exclusively. The act widely covers any matter of processing data inside India as well as outside India if the processing is in relation with any activity providing goods or services within the India, by this the act also creates a jurisdiction over the cross border data processing, moreover it includes any data which is collected in digital form or non-digital form later on digitalized.

The act is laid down on several key principles like Consent, data storage and data retention. The act defines the person whose data is being processed as Data Principle while to those who process the data as Data Fiduciary. The act asserts strict liability over the Data Fiduciary for the processing of personal data of any individual and at the same time provides Data Principal with many rights like right to seek information on how their data is being processed or with what platform the data is being shared, right to correction and erasure, right to grievance redressal and right to nominate any individual to exercise the

forementioned rights on behalf of the person in case of death of Data Principal.

According to the provisions Data Fiduciary can process the data of a Data Principal only for the lawful purpose and with explicit consent of the Data Principal, and can process the data till the purpose of such processing cease to exist or Data Principal withdraws his/her consent for such processing, however the act also provides with several exemptions for same. The act establishes Consent Manager as the person accountable to Data Principle and shall manage, review or withdraw the consent.

The act provides with penalties in case of noncompliance of the provisions by Data Fiduciary and establishes a proper body called Data Protection Board of India as an adjudatory body to check after the proper compliance with the provisions of this act.

3. Liability Framework

Unlike the earlier data protection efforts that are either more of advisory or fragmented under sectoral regulations, DPDP act assert strict accountability and liability over the data fiduciaries. The act clearly outlines the liability regime for processing digital personal data of any individual.

The obligations laid down by the act over the Data Fiduciaries aims to resist any kind of digitalized Personal Data Mishandling in order to safeguard individual's privacy and reputation. The law definitively sets out that free and explicit consent of Data principle is mandatory to deal with any kind of digital personal data, preceded by a notice given by Data Fiduciary to Data Principal informing him/her about the purpose of such processing.

Data Fiduciary is legally bounded to comply with the general obligation of this act irrespective of any agreement to contrary or even on failure of Data Principal in carrying out his/her duties as per the provision mentioned therein. The Data Protection Board of India is established under this legislation to perform as the key adjudatory body and has power to investigate any data breach, conduct inquiries and also to impose monetary penalties over Data Fiduciaries. The legislation lays down hefty monetary penalties for violation of provisions like failure to notifying affected individual and Data Protection Board about the data breach and breach in observance of additional obligation in relation to childrens.

4. Corporate Implication

The legislation places a firm responsibility over the corporate bodies providing their services in India to establish a comprehensive and efficient data regulatory framework. They are compelled to shift their operational approach from damage management to proactive planning for proper implementation of the act. A proper training programme for the

employees will be required by the businesses running inside india in order to meet the obligations.

The big tech companies that are categorized as 'Significant Data Fiduciaries' under the act, owing to their involvement in large amount of sensitive and personal data handling on daily basis, are required to incorporate the data security measures at every step of their operation as well as a robust reporting mechanism about any potential data breach in order to avoid any penalties. They are required to adopt a clear, accountable and effective grievance resolution method to win the trust of the customers.

Corporate entities are not bounded to follow this only for the sake of aligning with the newly introduced law but also to protect their image and reputation among their customers, non compliance with the provision can result in huges monetary losses to the functioning businesses not only in terms of heavy monetary fines but also in terms of loosing customers due to distrust among them as a result of potential data breach.

5. Critical View

Dispite of all the admirable efforts on securing the digital processing of data, a few flaws still persisted. While the act assets strict obligations on data fiduciaries regarding processing of someone's data with explicit consent, it gives data fiduciaries freedom to process their data without consent or with deemed consent(where data principal has not indicated thier objection), for legitimate uses, where the term 'Legitimate Use' isn't defined under the act, creating a lot of uncertainty. Broad powers has been granted to government in relation to exempting any government body from the provisions of the law, it also gives power to the government to appoint the chairperson and members of the Data Protection Board which can potentially cause political influence. Although the act allows for cross border sharing and processing of digital data, it also permits government to restrict any such sharing and processing against any particular country by notifying about same which can result in business unpredictability.

6. Conclusion

The Digital Personal Data Protection Act, 2023 is not going to be just an another legislation but a much needed governance framework to ensure and fix accountability in relation to digital data handling, with a clear message that the matter of data privacy is no longer just a formality or optional but a legal obligation . By asserting various obligations over data fiduciaries the act necessitates them to bring changes in their functioning related to digital data, and are compelled to be more cautious and alert for any potential data mishandling that can result in huge monetary as well as reputational loss. It provides individuals with many rights in order to give them some sort of control over their personal data. Though

the act appears almost set to bring changes in data handling, certain gaps still need to be addressed, like proper definition of several terms used in the act and related to the huge power and exemptions provided to the Government.

Data protection board of india should be given more independence from central government in terms of its structure, appointment and functioning to avoid any potential political bias and to ensure impariality.

Bibliography:

1. The Digital Personal Data Protection Act, 2023 Available at: https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef3_5e82c42aa5.pdf
2. Manupatra: A Paradigm Shift In Data Protection: Analyzing The Digital Personal Data Protection Bill In The Context Of India's Privacy Landscape Available at: <https://articles.manupatra.com/article-details/A-ParadigmShift-In-Data-Protection-Analyzing-The-Digital-Personal-Data-Protection-Bill-InThe-Context-Of-India-s-Privacy-Landscape>
3. EY's Blog: DPDP Act: Decoding the Digital Personal Data Protection Act, 2023 Available at : https://www.ey.com/en_in/insights/cybersecurity/decoding-the-digitalpersonal-data-protection-act-2023
4. The Hindu: Explained | What is the Data Protection Bill of 2023? Available : <https://www.thehindu.com/news/national/explain-edwhat-is-the-data-protection-bill-of-2023/article67162906.ece>
