



The Indian Journal for Research in Law and Management

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DATA PROTECTION AND PRIVACY LAWS IN INDIA: UNDERSTANDING THE DPDP ACT, 2023

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In the growing digital world, the protection of data and privacy has become both a moral imperative and a moral obligation. The Indian development in the digital sector is driven by factors like fintech, ecommerce, social media platforms, and other digital-led services need safeguards for user data as the rampant usage has never been greater. Until recently, India did not have a specific law towards data protection, but with the enactment of the Digital Personal Data Protection Act, 2023, the country has taken a significant step forward towards ensuring responsible data governance, accountability, and transparency in the digital spectrum.

The Evolution of Data Protection Laws in India

Before the DPDPA, the Indian legal framework for data protection and data privacy mostly relied on the Information Technology Act of 2000¹ and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, also referred to as privacy rules. Section 43A² of the IT Act obligates the stakeholders to implement reasonable security practices to protect such sensitive information. The sections under the act further provide as to what shall be such sensitive data, which includes passwords, health data, financial records, and thus provide basic obligations relating to consent, access, and disclosure relating to such information.

However, the scope was very limited, as it did not adequately define the rights of users, lacked strict enforcement mechanisms, and mostly focused on cybersecurity rather than full-fledged

¹ Information Technology Act, No.21 of 2000, India Code(2000)

² Information Technology Act, No.21 of 2000, India Code(2000)



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comprehensive data protection. The need for a stronger privacy regime grew after the case of Justice K.S. Puttaswamy (Retd) v. Union of India, 2017, which also held that the Right to Privacy is a fundamental right as enshrined in Article 21 of the Indian Constitution. This was a landmark judgment that also paved the way for dedicated data protection laws in India.

Introduction of the DPDPA 2023

After many discussions and consultations, and draft bills, the Indian government passed the Digital Personal Data Protection Act (DPDPA) on August 11, 2023. This law brings India to the global standards, namely, the General Data Protection Regulation (GDPR)³ of the European Union, which introduces a rights-based approach of autonomy, accountability of data handlers, and responsible use of digital personal data. This act also applies to the processing of digital personal data in both scenarios, when collected online or converted into a digital file, after being collected in an offline setting. This Act covers data processing within India and also applies to foreign entities that offer any type of goods or services to individuals in India. But it also excludes personal data that is being used for personal purposes as well as that data made available publicly as per the requirement of any law of the land. The DPDP Act lays 7 foundational principles which give guidelines as to how data is to be collected, processed, and stored; they are-Lawful and fair processing, purpose limitation, minimisation of data, accuracy, storage limitation, security safeguards, and accountability.

The DPDPA also empowers individuals who are Data Principals, and enshrined set of legal rights that reinforces control over their personal information, that includes the right of accessing information as to learn how their data is being processed, the right to correction and ensure the erasure of the inaccurate or irrelevant data, and right to grievance redressal, if the grievance is not been solved by the data fiduciary, the situation can be taken to the relevant forum and the enforcement authority under the act. These are a few of the rights that are available to the Data Principal.

³ General Data Protection Regulation,(EU) 2016/679,(2016



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Data Fiduciaries have several obligations under this act, such as consent for the collection of data must be free, informed, specific, and given through clear affirmative action by the data principal, the information relating to the use, purpose, their rights, and grievance mechanism should be provided. Additionally, organizations that handle large volumes of personal data or sensitive information may be classified as significant data fiduciaries; they also need to appoint Data Protection Officers (DPOs) and conduct data protection impact assessments, and maintain detailed records of data processing activities.

Furthermore, the DPDPA is not operating in isolation but is coexisting and supplementing with the other laws in India, the Information Technology Act, 2000⁴, the Consumer Protection Act, 2019, etc. This shows the need of data protection across the sector to uphold the rights of the consumer and their privacy. But as of now, the DPADPA is not fully in operation, but the draft rules have been drafted as of January 3, 2025, with various public consultations. The Act's provisions will be enforced gradually, with various organisations being part of it in compliance and enforcement with the new laws.

Conclusion

The DPDP Act of 2023 is paving the way in India's digital journey, as it seeks to balance economic growth, individual rights, digital and technological growth, along with privacy. It shall affirm the digital dignity and autonomy by upholding the principles of transparency, ethics, and lawful practices concerning data, as these practices and implementation of the DPDP Act shall shape India's take on digital development and privacy laws.

⁴ Information Technology Act, No.21 of 2000, India Code(2000)



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