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## DATA PROTECTION AND PRIVACY LAWS IN INDIA

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### Abstract

The rapid growth of digital technologies, internet usage, and online services has significantly increased the collection and processing of personal data in India. While digitalization has enhanced efficiency and accessibility across various sectors, it has also raised concerns regarding privacy, cybersecurity, unauthorized surveillance, identity theft, and data breaches. This article examines the concept of data protection and privacy in India and analyzes the legal framework governing personal data. It discusses the evolution of privacy rights through judicial interpretation, particularly the landmark decision in Justice K.S. Puttaswamy v. Union of India, which recognized the right to privacy as a fundamental right under Article 21 of the Constitution. The article further evaluates the role of the Information Technology Act, 2000, and the Digital Personal Data Protection Act, 2023, in regulating the collection, processing, and protection of personal information. It also highlights the rights of individuals, obligations of data fiduciaries, and challenges associated with the implementation of privacy laws. The study concludes that effective enforcement of data protection laws is essential to safeguard individual rights and ensure a secure digital environment in India.

Keywords: Data Protection, Privacy, Digital Personal Data Protection Act, Information Technology Act, Right to Privacy, Personal Data, Cybersecurity, India.

### Introduction

In today's digital world, the use of the internet and digital technologies has increased rapidly. India has witnessed substantial digital growth due to increased smartphone, accessibility and many of the governmental initiatives such as Digital India<sup>1</sup>. Individuals regularly depend so

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<sup>1</sup> Digital India Programme, Ministry of Electronics and Information Technology, Government of India, <https://www.digitalindia.gov.in>

much on online platforms to make their work easier for communication, banking, shopping, healthcare, e-commerce and governmental schemes. Consequently, a vast amount of personal information, including financial information, biometric details, medical information, and online data is collected and processed by both private corporations and public authorities. Although digitalization has enhanced efficiency and accessibility, it has simultaneously raised serious concerns regarding cybercrime, unauthorized surveillance, identity theft and data breaches. The rapid increase of cyber incidents and misuse of personal information has highlighted the urgent need for an effective legal framework for data protection in India. Privacy is one of the most essential for protecting individual dignity, autonomy and personal liberty in democratic society. In case Justice K.S. Puttaswamy vs. Union of India, the court of India recognized the right to privacy as a fundamental right under Article 21 of the Constitution<sup>2</sup>. India has enacted several legislative measures to regulate digital privacy and protect personal information, including the Information Technology Act and the Digital Personal Data Protection Act. This article discussed the concept of data protection and privacy in India the legal framework governing personal data, important judicial decisions and the challenges faced in implementing privacy laws in the digital age.

### **Concept of Data Protection and Privacy**

Data protection refers to the process of safeguarding personal information from unauthorized access, misuse, disclosure, alteration or destruction<sup>3</sup>. In the digital era, organizations collect and process a large amount of personal data through websites, mobile devices, banking systems and social media platforms and government databases. It is essential to establish legal and technical safeguards to ensure that such information is used only for lawful purposes and remain secure from cyber threats. Privacy refers to an individual's right to control the collection, use, storage and sharing of personal information. Personal data may include names, addresses, phone number, Aadhaar details, financial records, passwords, medical information. Data protection and privacy laws play a significant role in balancing technology with the protection of fundamental rights in the digital era<sup>4</sup>.

### **Evolution of Privacy Rights in India**

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

<sup>3</sup> Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).

<sup>4</sup> Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023)

Initially, the constitution of India did not expressly recognize the right to privacy as a fundamental right. However, over the years, the Indian Judiciary gradually expanded the scope of Article 21 of the constitution to include various aspects of personal liberty and privacy. In *Kharak Singh vs State of Uttar Pradesh*, the Supreme Court dealt with the issue of police surveillance and unauthorized intrusion into an individual's private life. Although the Court did not explicitly recognize privacy as a fundamental right, it observed that personal liberty includes protection against unlawful interference.<sup>5</sup> Over the years, the Indian judiciary gradually expanded the scope of personal liberty and privacy through various judicial interpretations. With the rapid growth of technology and digital communication, concerns relating to informational privacy and protection of personal data became increasingly significant. A major development in the recognition of privacy rights occurred in *Justice K.S. Puttaswamy vs Union of India*, where the Supreme Court unanimously held that the right to privacy is a fundamental right protected under Article 21 of the Constitution.<sup>6</sup> The recognition of privacy as a fundamental right significantly influenced the development of data protection laws in India and highlighted the need for a comprehensive legal framework to regulate digital data processing. Therefore, judicial interpretation played an important role in strengthening privacy rights and shaping modern data protection jurisprudence in India.

### **Information Technology Act, 2000 and Data Protection**

Before the enactment of a comprehensive data protection law, the primary legislation governing cyber activities and electronic data in India was the Information Technology Act. The Act was enacted to provide legal recognition to electronic transactions and to address issues relating to cybercrime, electronic communication, and digital governance. Although the Information Technology Act, 2000 was not specifically enacted as a data protection law, certain provisions of the Act provided protection for sensitive personal information and digital data. Section 43A of the Act provides compensation in cases where a body corporate fails to implement reasonable security practices and procedures, resulting in wrongful loss or wrongful gain to any person.<sup>7</sup> Further, Section 72A imposes punishment for the disclosure of personal information obtained under lawful contract without the consent of the concerned individual.<sup>8</sup> The Information Technology (Reasonable Security Practices and Procedures and

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<sup>5</sup> *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

<sup>6</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>7</sup> Information Technology Act, No. 21 of 2000, § 43A, INDIA CODE (2000).

<sup>8</sup> Information Technology Act, No. 21 of 2000, § 72A, INDIA CODE (2000).

Sensitive Personal Data or Information) Rules, 2011 also recognized categories of sensitive personal data, including passwords, financial information, medical records, and biometric information.<sup>9</sup> However, the Information Technology Act, 2000 had several limitations in addressing modern data privacy concerns arising from the rapid expansion of digital technologies and internet-based services. The Information Technology Act, 2000 did not provide a complete framework for protecting personal data in India. It lacked clear provisions relating to user consent, rights of individuals, obligations of organizations handling data, and proper enforcement mechanisms. As digital technologies and online platforms continued to expand, the need for a separate and comprehensive data protection law became more significant. These limitations ultimately led to the enactment of the Digital Personal Data Protection Act, which seeks to establish a more organized legal framework for the protection and processing of personal data in India.

### **Digital Personal Data Protection Act, 2023**

To address the growing concerns relating to digital privacy and protection of personal information, India enacted the Digital Personal Data Protection Act. The Act aims to regulate the collection, processing, storage, and use of digital personal data while ensuring the protection of individual privacy rights.<sup>10</sup> One of the most significant features of the Act is the consent-based framework for data processing. Under the Act, organizations are required to obtain clear and informed consent from individuals before collecting or processing their personal data. The Act also grants several rights to individuals, commonly referred to as Data Principals. These rights include the right to access information relating to their personal data, the right to correction and erasure of data, and the right to grievance redressal in cases of misuse or unauthorized processing of information. Further, the Act imposes certain obligations upon organizations handling personal data, known as Data Fiduciaries. Such entities are required to implement reasonable security safeguards, prevent data breaches, and process personal data only for lawful purposes. The Act also provides special protection for children's personal data by restricting tracking, behavioural monitoring, and targeted advertisements directed at minors. The enactment of the Digital Personal Data Protection Act, 2023 represents a significant step towards strengthening digital governance and ensuring greater accountability in the handling of personal data in India. However, despite the

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<sup>9</sup> Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

<sup>10</sup> Digital Personal Data Protection Act, No. 22 of 2023, INDIA CODE (2023).

introduction of this legislation, several practical and regulatory challenges continue to exist in relation to the effective implementation of data protection laws in India.

## **Conclusion**

In the modern digital era, the protection of personal data and privacy has become increasingly important due to the rapid growth of internet usage and digital technologies. The extensive collection and processing of personal information by both private organizations and public authorities have raised serious concerns regarding cybercrime, unauthorized surveillance, identity theft, and misuse of sensitive data. As a result, the need for a strong legal framework to regulate data protection and safeguard individual privacy has become essential in India.

Over the years, the Indian judiciary has played a significant role in strengthening privacy rights through various judicial pronouncements, particularly in Justice K.S. Puttaswamy vs Union of India, where the right to privacy was recognized as a fundamental right under Article 21 of the Constitution. Furthermore, legislative measures such as the Information Technology Act and the Digital Personal Data Protection Act have contributed towards establishing a regulatory framework for the protection and processing of personal data.

However, despite these developments, several challenges relating to cybersecurity, data breaches, lack of awareness, and effective enforcement continue to exist. Therefore, it is necessary for the government, organizations, and individuals to work collectively towards ensuring responsible handling of personal information and strengthening digital security measures. Effective implementation of privacy laws will play a crucial role in protecting individual dignity, maintaining public trust, and promoting a secure digital environment in India.