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Evolving the Digital Personal Data Protection Act, 2023 Scope, Challenges and Legal Reforms

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Abstract

The Digital Personal Data Protection Act, 2023 (DPDP ACT) is a Landmark legislation enacted by India to safeguard the privacy of individual in the digital era. The act seeks to regulate the processing of digital personal data while ensuring the balance between the right to privacy and the needs of innovation and economic growth. This paper examines the scope, objectives, key provisions, and legal framework of the act. It also analysis the challenges in its implementation, such a broad government exemption, lack of regulatory Independence and Limited rights of data principals. Further, the paper suggests legal reforms to strengthen India's data protection regime in line with international standards like the GDPR.

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1. Introduction

The Rapid growth of digital technology and the internet has transformed the way individuals, businesses, and government collect, store, and process personal data. Every click, transaction, search, and communication leaves behind digital footprints, while these technologies bring convenience and innovation, they also expose individuals to risk such as data breaches, identity theft, surveillance, and misuse of personal information. Recognizing the importance of privacy, the Supreme Court of India in justice K.S. Puttaswamy V. Union of India (2017) declared the right to privacy is a fundamental right under article 21 of the Constitution.

In this background, The Digital Personal Data Protection Act, 2023 was enacted to provide comprehensive legal framework for the protection of individuals' personal data. The ACT aims to empower individuals, impose obligations on data fiduciaries, and ensure accountability in the processing of digital personal data. This paper critically evaluates the act with respect to its scope, challenges, and suggests legal reforms for a more rebuts data protection regime.

2. Research Objectives

To study the scope objectives of the Digital Personal Data Protection Act, 2023 To analyse the key provision and rights

of data principal under the act, To examine the challenges and limitations in the implementation of the act, To compare the act with international standards like GDPR, To suggest legal reforms for strengthening the data protection Framework in India.

3. Research Methodology

This research is doctrinal in nature and is based on the analysis of primary source such as the Digital Personal Data Protection Act, 2023, Constitution of India, Judicial decisions, and government reports. Secondary sources individual books, research articles, journals, and websites. The study adopts a qualitative approach by critically analysing legal provision and comparing them with international practices.

4. Scope of the Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 (DPDP ACT) is India's first comprehensive legislation to regulate the processing of the digital personal data. The act applies to the processing of digital personal data within the territory of India where such data is collected in digital form or collected offline and subsequently digitalized. It also has extraterritorial applications. It covers processing of personal data outside

India if such processing is in connection with offering goods or service to data principal in India.

The Act does not apply to personal data processed by an individual for personal or domestic purpose it also excludes personal data made publicly available by the data principal or under any law for the time being enforced.

The Key entities under the act are the Data Principal (the individual to whom the data relates), Data fiduciary (the person who determines the purpose and means of processing personal data) and Significant Data Fiduciary (notified by the central government considering the value and sensitive of data and risk the right of individuals)

5. Salient Features of the Digital Personal Data Protection Act, 2023

- **Consent-Based Processing:** The Act mandates that personal data shall be processed only with the free, Specific, informed, unconditional and unambiguous consent of the data principal. Consent must be obtained through a clear affirmative action. The data principal has the right to withdraw consent at any time.
- **Legitimate uses Without Consent:** Processing without consent is permitted for certain legitimate uses such as performance of any function by the state, compliance with legal obligations, Provision of subsidies, benefits and services by the state, medical emergencies, employment, purposes, disaster management, judicial or Quasi-judicial functions, and for prevention, detection and investigation of offence.
- **Right of Data Principal:** The act grants several rights, including right to access information, right to correction, right to eraser, right to grave INS redressed and right to nominate another person to exercise these rights in case of death or incapacity.
- **Obligations of Data Fiduciaries:** Data fiduciaries must ensure lawful processing, purpose limitation, data accuracy, security safeguard, data breach notification to the board and affected individuals, and erasure of data after the purpose is full field unless relation is required by law.

Data Protection Board in India: The act establishes the Data Protection Board of India to ensure compliance, here appeals and impose monitory penalties for contravention. The Board can pass directions for remedial action and enforcement.

6. Constitutional Perspective: Right to Privacy and DPDP Act

The constitutional foundation of the DPDP Act is the Right to privacy recognised as a fundamental right under article 21 of the Constitution in Justice K.S. Putta Swamy (Retd.) V. Union of India (2017) 10 SCC the Supreme Court held that privacy is intrinsic to life and personal liberty and includes informational privacy. And restriction on privacy must satisfy

the test of Legality, Legitimate aim, necessity and proportionality. The DPDP Act is an attempt to by the legislature to give effect to this constitutional mandate. However, board exemption available to the central government and the limited independence of the regulatory authority have raised concerns about the proportionality of act.

7. Critical Analysis of the Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 is a landmark legislation and a major step towards protecting the informational privacy of individuals in India. However, certain provisions of the Act have raised important legal, constitutional and practical concerns.

- **Broad Government Exemptions (Section 17):** The Central Government can exempt any instrumentalities from the application of the Act for reasons such as sovereignty, security of the State, public order, friendly relations with foreign States, etc. The absence of adequate safeguards and independent oversight may lead to excessive executive discretion and potential misuse, which can dilute the fundamental right to privacy guaranteed under Article 21.
- **Independence of the Data Protection Board of India:** The Data Protection Board of India (DPBI) is constituted by the Central Government and is financially controlled by it. Lack of structural independence may affect the impartiality and credibility of the Board. For effective enforcement, the Board must function independently, similar to global standards like GDPR.
- **Limited Rights of Data Principals:** Compared to the GDPR, the Act provides a limited set of rights. It does not provide Right to Data Portability, Right to Object to Processing, Right to Restrict Processing, and safeguards against automated decision-making and profiling. In the era of AI and algorithmic decision-making, these omissions may lead to discrimination, bias and lack of transparency.
- **Cross-border Data Transfer:** The Act allows cross-border transfer of personal data to any country or territory notified by the Central Government. While this promotes global trade and digital innovation, it also creates risk of data misuse in jurisdictions having weak data protection laws.
- **Challenges in Implementation:** Effective enforcement requires robust technological infrastructure, regulatory expertise, cybersecurity readiness, coordination among agencies and public awareness. In the absence of these, the Act may face difficulties in achieving its objectives. In spite of the above concerns, the Act lays a strong legal foundation for data protection in India by promoting accountability, transparency and responsible data governance.

8. Comparative Analysis with GDPR

Basis	DPDP Act, 2023 (India)	GDPR (European Union)
Rights of Individuals	Limited rights: access, correction, erasure, grievance redressal, nomination.	Extensive rights: portability, objection, restriction, erasure, automated decision-making safeguards, etc
Regulatory Authority	Data Protection Board of India—constituted and controlled by Central Government	Independent Data Protection Authorities in each member State; completely independent
Consent	Consent-based processing with certain legitimate uses without consent.	Strict consent requirement with limited lawful bases.
Cross-border Transfer	Allowed to countries/territories notified by Central Government.	Allowed only to countries with adequate protection or with safeguards.

Penalties	Penalties up to ₹250 crore (by DPBI).	Penalties up to 20 million Euro or 4% of global annual turnover.
Accountability	Compliance obligations prescribed but comparatively flexible.	Strict accountability with DPIA, records of processing, transparency, data protection by design.

Conclusion

The Digital Personal Data Protection Act, 2023 is a significant milestone in India's digital governance. It recognises the importance of data privacy while balancing the needs of the State, business and innovation. However, to make it constitutionally robust and globally credible, the Act needs reforms in areas of government exemptions, institutional independence, individual rights and accountability. A rights-centric and transparent framework will strengthen citizens' trust and promote a secure digital future.

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