

# EVALUATING THE DPDP ACT, 2023: SAFEGUARDING CHILDREN'S DATA

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## 1. INTRODUCTION

In the 21<sup>st</sup> century every individual is dependent and increasingly rely on smartphone, tablets, laptops, etc. for education, entertainment and communication. But this digitalization has given rise to challenges like privacy and security of personal information. Every Individual are using data as digital currency and mainly the children are misusing it and exploiting themselves. And In India the minors are using internet and it is significantly growing; safeguarding children's data has become a legal and ethical concern. Minor aged children or children of developing stage doesn't understand the consequences of sharing personal information online. Mostly they are targeted from online advertising, profiling and online harm. Global framework such as General Data Protection Regulation (GDPR) and the U.S. Children's Online Privacy Protection Act (COPPA) has come up with some norms to protect children's data. In India there is Act called Digital personal Data Protection, Act 2023 which ensure privacy in digital ecosystem. The DPDP Act safeguard children's data and evaluates its strengths and shortcomings. This DPDP Act introduced the Doctrine of methodology where they analyses statutory provisions, judicial interpretations, and comparative legal frameworks to check that whether the Act concerns about children's privacy or not. This study checks whether the DPDP Act truly meets the constitutional promise of the right to privacy in the digital age.

## 2. UNDERSTANDING THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

The Act is India's First Data Protection Act,

which protects the personal Data in this Digital environment. After enactment of DPDP Act it came into the knowledge that this is an important step in giving effect to the constitutional right to privacy as a fundamental right, as given in the judgment of K.S. Puttaswamy vs Union of India (2017)<sup>1</sup>. In this era, which is dominated by data-driven technologies, the government of India makes an effort to establish accountability, transparency, and individual control over personal information through this Act.

Justice B.N. Srikrishna Committee (2018) proposed a detailed data protection framework for India, which is why the DPDP Act came into force. Several drafts were circulated over the past years, and each one attempted to balance privacy with innovation and economic interest. After every debate in parliament, the President has given its assent to the DPDP Act on 12<sup>th</sup> August, 2023. Its main aim is to protect the individual's personal data processed by entities, in India or outside India.<sup>2</sup>

The Act defines several key terms central to understanding its scope. Personal data refers to any data about any individual through which He/she is identifiable. The law established a Data Protection Board in India to ensure compliance and address violations. Data Fiduciary means the purpose and method of processing data, and a data principal means the individual whose personal data is concerned.

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1 **Justice K.S. Puttaswamy (Retd.) v. Union of India**, (2017) 10 S.C.C. 1 (India); **Digital Personal Data Protection Act**, No. 22 of 2023, India.

2 Committee of Experts on Data Protection Framework for India, *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians* (2018); **Digital Personal Data Protection Act**, No. 22 of 2023 (India).

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The DPDP Act<sup>3</sup> mandate Data fiduciary for reasonable security safeguard also it limits data retention. This Act restricts tracking, behavioral monitoring, and gives targeted advertising without parental consent. Also, the DPDP Act gives content-based processing and allows individuals to control their information. The DPDP Act build trust in India's expanding digital ecosystem with the right to privacy, which is a fundamental right under constitution of India.

### 3. CHILDREN AND DIGITAL PRIVACY RISKS

#### 3.1 Vulnerabilities of Children and Their Online Behavior

In this generation, children are the most active but most insecure internet users. They have access to smartphones, laptops, tablets for an online learning platform and social media, where they give digital footprint at a very young age. However, children share their personal information and do not understand the long-term effects of sharing personal information online. Children are easy targets for data collection due to their curiosity and impulsive nature.

#### 3.2 Issues such as profiling, targeted advertising, and data manipulation.

Internet where children's do online activity like searches, clicks, games and interaction get recorded as their behavior, and this is the major concern in data profiling. And then targeted advertising get share to them according to their content preference and content consumption pattern.<sup>4</sup> Mostly, the educational platform collects its data in exchange for "free access. Due to these children unwarily participating in commercial surveillance systems, and such hidden practices lead to data manipulation.

#### 3.3 The rationale behind treating children as a special class of data principals.

Children have a limited ability to make informed decisions, so that's why children are treated as a special category for data manipulation. International

frameworks like GDPR<sup>5</sup> and the UN Convention on the Rights of the Child protect children's personal data.<sup>6</sup> The DPDP Act 2023 also follow that framework by limiting the use of data for children and requiring parental consent. This Statute states that children's privacy is not just about data control but also about protecting their future by protecting their identity, autonomy, and mental well-being in a digital society.

### 4. STATUTORY PROVISIONS RELATING TO CHILDREN'S DATA UNDER DPDP ACT

The personal data of children is also safeguarded under the Digital Personal Data Protection Act,2023. The word "Also" here means not only that the adult members' rights are protected under this Act, but also that the children's rights are protected. In today's age, not only adults have the right to privacy, but even children have privacy Rights and the DPDP Act establishes a structured framework for the protection of the rights of children. The Processing of Children's data and placing distinct obligations on entities, which is termed as "DATA FIDUCIARIES", is given under section 9 of the said Act. The aim of this act to make a child protection mechanism for child data protection, which is being fulfilled by the said act, so as to balance consent, accountability and ethical digital practices.<sup>7</sup>

As we know, for children who are underage, for them we stop them from watching something obscene on television, and for that purpose, we put parental controls on television. Similarly, the DPDP Act requires verifiable parental consent or guardian control before processing any personal data concerning children who are under 18 years of age. The reason for placing this provision is to ensure that minors should not engage directly in data-sharing

transactions. The law mandates that consent should be given freely and informed in consonance with the principle of "notice and consent", aligning

3 **Digital Personal Data Protection Act**, No. 22 of 2023, India.

4 **Committee of Experts on Data Protection Framework for India, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians** (2018).

5 **Regulation (EU) 2016/679** of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), **art. 8**, 2016 O.J. (L 119) 1.

6 **Convention on the Rights of the Child**, Nov. 20, 1989, 1577 U.N.T.S. 3.

7 **Convention on the Rights of the Child**, Nov. 20, 1989, 1577 U.N.T.S. 3, **art. 16**

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with central global data protection regimes like general data Protection Regulation. However, this provision, as given under the act, faces challenges in practical application: many parents are not fully comprehending the scope of digital consent, and the technical mechanism for the age and identity of underdeveloped children. The provisions given under the said act depend on the implementation guidelines and public digital literacy.

To prevent exploitation of digital marketing practices that manipulate children's online experience for commercial gain, the act further imposes restrictions on tracking, behavioral monitoring and targeted advertising. However, the prohibition on something under the act is not absolute, as it allows certain entities as "significant data fiduciaries. This invites additional duties such as periodic audits or impact assessment concerning children's data processing

With the restrictions on the data fiduciaries who handle children's information, they are required to adopt robust security measures as well, practice data minimization and to uphold transparency in the procedures adopted for the methods of data collection and utilization. The act discourages the retention of children's data beyond the necessary period for fulfilling the stated purpose of the act. And to obligate the fiduciaries to delete it upon withdrawal of consent. Also, the fiduciaries should develop the platform in a manner that will be safe for minors, and it shall be easily accessible to minors.<sup>8</sup>

No doubt, the DPSP Act incorporates a strong legal framework for safeguarding children's data Protection, but its practical success rests on how effectively the fiduciaries comply and regulates and enforce these standards. The given framework is very effective on paper, but it requires continuous oversight, technical innovation and awareness initiatives to protect the privacy of children's data in India by expanding the digital ecosystem.

### 5. STRENGTHS OF THE DPDP ACT IN PROTECTING CHILDREN'S DATA

The Digital Personal Data Act prescribes a structured framework for the protection of

children's data privacy, where a well-mechanized mechanism has been prescribed for the regulation of data protection. The said Act is aligned with the international framework, like the European Union's General Data Protection Regulation (GDPR)<sup>9</sup> and the United Nations' Children Online Privacy Protection Act (COPPA)<sup>10</sup>, for protecting Children's Data. As the GDPR lays emphasis on the principle of informed consent, data minimization and purpose limitation, the DPDP Act also has established the upon the same principle. The insistence of COPPA on verifiable parental consent and restriction on tracking or targeted advertising can also be seen in the provisions of the DPDP Act, as it also obliges parental control over the collection and use of minors' data. All these efforts of India show that we are trying effortlessly to meet the international standards.

If we are talking about the strengths of the DPDP Act, we cannot forget about the recognition of children's right to privacy of data, which is protected under Article 21 of the Indian Constitution. As the Indian Judiciary has declared that right to privacy is an intrinsic to Right to Life and Personal Liberty, which is the bedrock for the legislation as has been held in the case of Justice K. S. Puttaswamy vs. Union of India (2017)<sup>11</sup>. The extension of the recognition for the protection of children's privacy rights is not at all constrained by age or capacity. The DPDP Act, by incorporating these principles, has reinforced the constitutional ideals and ensured that the privacy rights of adults and children are on par with enhanced protection.

Another strength of the DPDP Act lies in its legal accountability structure and safeguards against the misuse of the said Act. The Data Protection Board, as has been established under the Act, serves as an independent authority, which is empowered to inquire into the breach, impose penalties, and to ensure its strict compliance. The Act also mandates the security measures, reasonable safeguards and transparent grievance redressal processes.

<sup>8</sup> Digital Personal Data Protection Act, No. 22 of 2023, § 9, India.

<sup>9</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), art. 8, 2016 O.J. (L 119) 1.

<sup>10</sup> Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506 (2018).

<sup>11</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

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Data fiduciaries are responsible for deleting data upon withdrawal of consent and also for adopting privacy-by-design principles, and by this, protection measures at the system level, rather than relying on reactive enforcement

Lastly, it can be said that the DPDP Act is aligned with international standards and the provisions under the Constitution with regard to the right to privacy and built-in accountability mechanisms signify a strong legislative framework. However, we have an act that establishes a solid foundation to meaningfully secure children's digital identities and autonomy in the evolving technological landscape, but the implementation of the act still remains a challenge.

### 6. GAPS AND LIMITATIONS IN THE DPDP ACT

Despite the fact that Digital Personal Data Protection, 2023, is a landmark step in India's privacy regime, there are still a lot of gaps and limitations that dilute its effectiveness, especially in the field of privacy rights of children. The Act attempts to balance individuals' interests, state functions and technological innovation; its broad exemptions, lack of clarity, and weak enforcement framework pose substantial challenges.

The main shortcomings in the act lie in broad exemptions granted to the government and certain data fiduciaries. Section 17 of the act empowers the central government to exempt instrumentalities from compliance obligation on the grounds of national security, public order or for preventing offences. National security is an important concern; the absence of judicial oversight or a proportionality test creates a potential overreach. In matters relating to children's privacy rights, the exemption given under this act undermines the very purpose of the Act by allowing unchecked state access and surveillance. Large technology platforms – classified as "significant data fiduciaries" may receive an obligation.

The next critical gap is the lack of explicit guidance on age-appropriate design and verification mechanisms.<sup>12</sup> Unlike the United Kingdom's Data Protection Act 2018, the DPDP Act in India offers no clear technical or procedural blueprint for ensuring that online platforms are safe. The Act requires

parental consent, but it does not specify the conduct of age verification so as to distinguish minors from adults. This opens the door for superficial compliance of the Act, which fails to prevent children from exposure to harmful content.

Another weakness in the effectiveness of the DPDP Act is the absence of a detailed regulatory and enforcement framework. Data Protection Board of India has been set up, but its effectiveness depends upon future notification, despite of the fact that the DPDP Act gives the composition, independence, and investigative powers. But without Clear rule-making and technical standards, the risk of enforcement is still inconsistent and reactive. This uncertainty is in contrast to the structured authority granted to supervisory bodies under the GDPR, which have with itself advisory power, corrective powers and supervisory bodies. The lack of sector-specific guidelines for gaming, education, or social media platforms also limits the focus for children.

Lastly, the act's dependence on parental consent poses conceptual and practical challenges. In Indian Perspective this is a challenge as they are often not being so much digitally literate, so the question is how they will give consent; their consent will be informal rather than formal, which the Act needs. Many of the parents will not be able to understand the complex privacy policies. They will also find it difficult to realize the data-sharing implications on digital platforms. Furthermore, the binary model of parental consent does not determine the evolving capacities of adolescents, who might be mature enough to exercise their limited autonomy.

In totality, it can be said that the DPDP Act lays down an important foundation for privacy in India. The consent-based shortcomings, its broad exemptions ambiguous design mechanism are some shortcomings that leave meaningful safeguards for children's data incomplete. Without Mentioning, These gaps through rule-making, technical guidance, and awareness initiatives and awareness programs, the promise of the Act of protecting children in the digital ecosystem will remain largely unfulfilled.

### 7. INTERNATIONAL FRAMEWORK AND ITS COMPARISON-

Legislation can be best understood when it is compared with similar legislation. And it will be

<sup>12</sup> Information Commissioner's Office, *Age-Appropriate Design Code (Children's Code)* (2020).

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best that the DPDP Act, when compared to global legislation like the European Union General Data Protection Regulation (GDPR) and the United States' Children's Online Privacy Protection Act (COPPA), will have a better understanding. Both laws will have a significant influence on contemporary data-protection regimes, which offer valuable benchmarks for assessing India's approach to children's data protection.

The GDPR provides one of the world's most exhaustive data-protection frameworks. Article 8 of the Act says that Children's consent in relation to information-society-services, setting the age of consent at 16. Although the member states have the right to lower the age to 13. The regulation mandates age-appropriate information, transparency in data use and a clear right to erasure. In contrast, the DPDP Act remains a uniform consent age of 18. The GDPR also establishes an independent supervisory authority that may investigate and impose penalties. But under the DPDP Act, the absence of an oversight body reduces the Indian Act's enforceability relative to GDPR.

The COPPA, however, adopts a narrower framework for data-protection, but it is highly specific for children under 13 years of age. Before collecting any personal information from minors and imposes strict disclosure on online service providers, it requires verifiable parental consent. The federal Trade Commission (FTC) also have power here to separately investigate the violations and also have power to impose penalties, creating a deterrent effect. Emphasis on parental consent and prohibition on tracking or targeted advertising is one of the features adopted and aligned with the COPPA. Although it lacks the provisions of a strong enforcement mechanism and verification methods.

India should draw key lessons from these two important frameworks in relation to data protection mechanisms by adopting a flexible age threshold to respect adolescents' evolving capacities, by establishing an independent regulatory authority and ensuring explicit data-subject rights such as correction and erasure. By Integrating these global practices will enhance the DPDP Act's effectiveness, aligning with international standards while tailoring it to local social and technological realities.

### 8. JUDICIAL AND POLICY PERSPECTIVE ON CHILDREN'S PRIVACY

The Indian Judiciary always plays an important role in shaping the laws. The Indian judiciary has also played its part by shaping the conceptual foundations of privacy, paving the way for legislative measures like the DPDP Act. Right to Privacy As a fundamental Right Under Article 21 of the Indian Constitution<sup>13</sup>, has been established by the landmark Case of Justice K.S Puttaswamy v. Union of India (2017), which recognizes Right to Privacy as an integral part of human dignity and autonomy. The Supreme Court held that privacy is integral to all human being including Children, who are always susceptible to digital exploitation. This case explained that a clear statue is required to control the activities regulated in this digital era, and also stated that how and when the state can be held responsible for handling people's personal data.

Later on, the court decisions and official's instructions emphasized the need to protect children from online risk. DPDP Act's provision on consent, targeted advertising, and data-processing restriction on children is the result of the underestimation of courts on both state and private entities to uphold children's safety and their confidentiality in virtual space.

The DPDP Act is the combination of several complementary frameworks. Indian government has made many laws and guidelines that work to protect children in this digital environment. The IT Act<sup>14</sup> placed extra duties on online platform like apps and website to stop age-inappropriate content from reaching children, & the National Cyber Security policy<sup>15</sup> mainly focus on online awareness for young users. However, these measures mainly focus on cyber safety rather than intervening privacy protection.

The DPDP Act, fills the important gap by introducing privacy-centric obligations specifically tied to personal data. Still, perfect enforcement requires synergy between court principles and government

<sup>13</sup> INDIA CONST. art. 21.

<sup>14</sup> **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Feb. 25, 2021.**

<sup>15</sup> **Ministry of Communications & Information Technology, Government of India, National Cyber Security Policy (2013).**

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policy frameworks. Integrating data-protection awareness programs within education and digital-literacy initiatives can help actualize the constitutional promise of privacy for all, especially for children navigating India's rapidly expanding digital environment.

### 9. RECOMMENDATIONS AND THE WAY FORWARD

Any Act's effectiveness depends upon the robust implementation and continuous policy evaluation. And here, under the DPDP Act, also for securing children's data protection, we require a multidimensional strategy which will fuse legal reforms, institutional oversight and education. No doubt the DPDP Act provides an important foundation for the data privacy of children, but still, we require something additional for its effectiveness.

DPDP Act addresses the privacy provision of children, but we need some supplementary rules or guidelines for its better enforcement. The rules should be flexible, which will clearly define technical and organizational measures for data fiduciaries who deal with minors—Especially those in educations sector, gaming and social media. As the GDPR suggests a flexible age-threshold, if we adopt this provision in India also, it could ensure a more balanced approach between protection and autonomy.

We should also adopt an age-appropriate design like the United Kingdom's design code for online services. If we maintain such standards, it would also compel digital platforms to build in-built safety and privacy measures by default, by limiting data collection, disabling profiling, and ensuring a simplified privacy interface for minors. Incorporating these principles in our legislation would somehow lead to the effectiveness of the DPDP Act.

Also, large-scale digital literacy and parental awareness programs will be very helpful for the effectiveness. But it should also accompany legislative measures. As has already been discussed, many parents and guardians lack the technical understanding to make decisions about their children's online engagement. Assimilating privacy education in schools' curricula and government

awareness programs will bridge the gap and also empower families to protect their children's interests.

Lastly, building a dedicated Child Data Protection Authority or Specialized Oversight Division inside the data protection board would ensure a focused enforcement mechanism. That institution will conduct timely Audits, issue compliance guidelines and coordinate with international counterparts. All these measures would transform

Collectively, these measures would transform the DPDP Act from a declarative framework into a dynamic and responsive system capable of ensuring that children's privacy in India is protected not only in principle but also in everyday digital reality.

### 10. CONCLUSION

India's first digital protection act for children's is Digital Personal Data Protection Act, 2023 (DPDP Act) and this is the comprehensive attempt to safeguard every individual privacy in this digital era. This paper's analysis reveals that the Act has come up with the extra protection like parental consent requirements, restrictions on tracking and profiling, and accountability obligations for data fiduciaries. The DPDP Act has come up with the global framework like GDPR and COPPA, as the DPDP Act reflects India's Constitutional Recognition of Right to Privacy under Article 21.

However, despite these progressive features, several gaps remain. The design of DPDP Act has not cleared the appropriate age requirement and intended safeguard for children are potentially undermined by wider governmental exemptions. India should adopt a child centric design principle and aware public about privacy rights to bridge this weakness.

There should be a balance between technological innovation and privacy protection for sustainable digital development. Children's data should be protected with ethical innovation by promoting trust, transparency and accountability in this digital era. The DPDP Act is a powerful law where every child should feel safe, respected and rights-oriented while having the digital experience.

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