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# Digital Data Protection Act, 2023

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SAI KRISHNAN J.<sup>1</sup>

## ABSTRACT

*The Digital Data Protection Act, implemented by the Indian government in 2023, addresses the critical need to safeguard personal data from unauthorized access and breaches. This legislation introduces stringent regulations to prevent unauthorized access to personal information and outlines clear procedures for investigating data breaches. Key components of the Act include defining the rights and responsibilities of Data Principals (individuals whose data is collected) and Data Fiduciaries (entities collecting and managing data). It also establishes penalties for non-compliance, emphasizing the importance of adhering to data protection standards. Additionally, the Act establishes the Data Protection Board of India, empowering it with significant functions and powers to oversee compliance and enforce regulations effectively. Moreover, the Act introduces amendments to existing laws to strengthen the protection of personal data across various sectors in India. By enhancing these safeguards, the legislation aims to enhance public trust in the security and privacy of personal information in the digital age. Overall, the Digital Data Protection Act represents a crucial advancement in ensuring robust data governance and promoting a secure digital environment in India.*

**Keywords:** Digital data, Data Fiduciary, Data Principal.

## I. INTRODUCTION

Digital Data Protection act came into force on 1<sup>st</sup> September 2023 in India which mainly focuses on the prevention of misuse of Digital data that are given by the Data Principle to any of the Data Fiduciary and the act allows full rights to the data principle to modify the data that are given by them and give an option of erase all the data from the data fiduciary. This act also enhances the protection of data relating to children. This new law is an initiative taken by the government of India to reduce the offences and cases relating to data theft and misuse of sensitive given by the Data principle. Data privacy is one of the major concerns in the 21<sup>st</sup> century because of the new innovations and development in the technology and this act will mainly emphasis on the procedures and solutions to reduce the cyber or digital crimes in India.

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<sup>1</sup> Author is a student at Sastra deemed University, Thanjavur, India.

## II. RIGHT TO PRIVACY

In the case of **Justice K Puttaswamy (Retd.) vs Union of India<sup>2</sup>**, the Hon'ble Supreme Court held that the right to privacy is also one of the fundamental rights included under Article 21 of the Indian Constitution and this landmark judgement paved a way to the implementation of this new Digital Data protection act.

### **(A) Data principal and Data Fiduciary:**

As stated in section 2(j), "Data Principal" refers to the individual to whom the personal data pertains. If the individual is:

- (i) a child, it includes the parents or lawful guardian of that child
- (ii) a person with a disability, it includes their lawful guardian acting on their behalf.<sup>3</sup>

The Data Principal is the person to whom the data relates, and in the case of a minor, it includes the data of the parents or any other lawful guardian. For a person with a disability, it includes the data of their lawful guardian.

According to Section 2(i), "Data Fiduciary" is defined as any person who, alone or in conjunction with others, determines the purpose and means of processing personal data.<sup>4</sup>

This provision clearly indicates that the Data Fiduciary is the person who determines the necessity of the data and who has the authority to process personal data.

### **(B) Grounds for Processing Personal Data:**

According to Section 4 of the act, personal data can only be processed under two conditions:

1. When consent is given by the Data Principal.
2. For specific lawful purposes.<sup>5</sup>

A lawful purpose refers to any purpose not prohibited by law, as defined in Section 4(2) of the act.

The term "person" includes various entities as defined in Section 2(s) of the act:

- i. an individual
- ii. a Hindu undivided family
- iii. a company

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<sup>2</sup> Justice K Puttaswamy (Retd.) vs Union of India, (2019) (1) S.C.C 1 (India)

<sup>3</sup> The Digital Data Protection Act,2023; Section 2(j)

<sup>4</sup> The Digital Data Protection Act,2023; Section 2(i)

<sup>5</sup> The Digital Data Protection Act,2023; Section 4

- iv. a firm
- v. an association of persons or a body of individuals, whether incorporated or not the State and
- vi. any artificial juristic person not covered by the preceding sub-clauses.<sup>6</sup>

Section 5 of the act mandates that a notice from the Data Fiduciary must precede or accompany any request made to the Data Principal for processing personal data. This notice must inform the Data Principal of:

- (i) the personal data and the purpose for which it is to be processed.
- (ii) how they can exercise their rights, such as the right to withdraw consent and file a complaint with the board.
- (iii) the process for making a complaint to the Board, as prescribed by the central government or the board.<sup>7</sup>

Section 5 clearly requires the Data Fiduciary to obtain consent from the Data Principal before or at the time of the request for processing personal data, and the purpose must be clearly stated. If the Data Fiduciary fails to comply with this requirement, the Data Principal can withdraw their consent under Section 6(4) and exercise their right to redress grievances as outlined in Section 13 of the act.

#### **(C) Consent:**

Section 6 of the act stipulates that the consent given by the Data Principal must be free, specific, informed, and signify agreement to the processing of personal data. If any part of the consent is unlawful, it is considered invalid, while the lawful part remains valid. According to Section 6(3), requests for consent must be in plain language, such as English or any other language specified in the 8th schedule of the Indian Constitution. The Data Principal has the right to withdraw their consent at any time. Data processed before the withdrawal of consent remains valid, but the withdrawal obligates the data processor and Data Fiduciary to cease processing the personal data. As stated in Section 6(7), the Data Principal can manage, review, or withdraw their consent. If any dispute arises regarding the processing of personal data, the burden of proof lies with the Data Fiduciary.<sup>8</sup>

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<sup>6</sup> The Digital Data Protection Act,2023; Section 2(s)

<sup>7</sup> The Digital Data Protection Act,2023; Section 5

<sup>8</sup> The Digital Data Protection Act,2023; Section 6

**(D) Use of Personal Data:**

As stated in section 7 of the act the data fiduciary can process the personal data for the legitimate purposes for which the data principal had given her consent and state and its instrumentalities can process the data for any subsidy, benefit, service, certificate, licence or permit as may be prescribed by the central government and for which she had previously given her consent. The state can also process the data for the purposes like

1. In the interest of sovereignty and integrity and security of the state
2. To fulfil any obligations given under any law
3. For compliance with any judgement, decree or order
4. For responding to any medical emergency
5. For taking measures to provide medical treatment or health services to any individual during an epidemic, outbreak of disease, or any other threat to public health
6. For taking measures to ensure safety of, or provide assistance or services to, any individual during any disaster, or any breakdown of public order.
7. For the purposes of employment or to prevent employer from any loss.<sup>9</sup>

**(E) Obligations of Data Fiduciary:**

As stated in the Section 8 of the act the data fiduciary has certain obligations that has to be fulfilled

1. The data fiduciary has to comply with the rules under this act
2. A data fiduciary may appoint a data processor to process the personal data on behalf and after obtaining consent from the data principal
3. The Data Fiduciary processing such personal data shall ensure its completeness, accuracy and consistency if the data has an impact on the decision of the data principal or disclosed to other data fiduciary
4. A Data Fiduciary shall implement appropriate technical and organisational measures for effective observation of the provisions of the act
5. A data fiduciary shall protect the data in his possession or any other data processed by the data processor to avoid any data breach
6. In case of any breaches it has to be notified to the board in a prescribed manner

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<sup>9</sup> The Digital Data Protection Act,2023; Section 7

7. Upon the withdrawal of consent the data fiduciary has to erase all the data unless retention is necessary by law and data processor has too erase the data
8. If the data principal not approach the Data Fiduciary for the performance of the specified purpose and exercise her right within specified period then the purpose under section 7(1) no longer be served
9. A data fiduciary has to publish the business contact of the data protection officer or any other person who is answerable on behalf of data fiduciary if any question arises.
10. A Data Fiduciary shall establish an effective mechanism to redress the grievances of Data Principals.<sup>10</sup>

#### **(F) Processing Data of Children:**

As per section 9 of the act the data fiduciary shall obtain a verified consent from the parent or lawful guardian before processing the personal data of the child or person with disability. The data fiduciary shall not process the personal data that likely to cause any detrimental effect on the well-being of a child and shall not undertake the tracking or behavioural monitoring of children or targeted advertising directed at children. The data fiduciary can process the personal data of a child by such classes of Data Fiduciaries or for such purposes, and subject to such conditions, as may be prescribed and the central government if satisfied by the processing of personal data of the child is verifiable then the data fiduciary can process the data.<sup>11</sup>

#### **(G) Significant Data Fiduciary:**

As per section 10 of the act the central government may notify certain class as significant data fiduciary the determining factors are:

- a) the volume and sensitivity of personal data processed
- b) risk to the rights of Data Principal
- c) potential impact on the sovereignty and integrity of India
- d) risk to electoral democracy
- e) security of the State and
- f) public order.

As per section 10(2) of the act the significant data fiduciary shall appoint a data protection officer who is the one represents the data fiduciary and he has to be based on India and be a

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<sup>10</sup> The Digital Data Protection Act,2023; Section 8

<sup>11</sup> The Digital Data Protection Act,2023; Section 9

person responsible to the board of directors and be a grievance redressal mechanism. The data fiduciary shall appoint a data auditor who shall regularly conduct a data protection assessment and periodic audit has to be conducted.<sup>12</sup>

### **III. RIGHTS OF DATA PRINCIPAL**

#### **(i) Right to access information about personal data:**

As stated in section 11 the data principal can access the data for which she had previously provided consent by making a notice to the data fiduciary and can make a request for

1. A summary of personal data which is being processed by such Data Fiduciary and the processing activities undertaken by that Data Fiduciary with respect to such personal data.
2. The identities of all other Data Fiduciaries and Data Processors with whom the personal data has been shared by such Data Fiduciary, along with a description of the personal data so shared and
3. Any other information related to the personal data of such Data Principal and its processing, as may be prescribed.

Nothing is applicable in case of data shared by the data fiduciary to another data fiduciary by law or any other purposes like prevention or detection or investigation of offences or cyber incidents, or for prosecution or punishment of offences.<sup>13</sup>

#### **(ii) Right to correction, update and erasure of personal data:**

As stated in section 12 of the act the data principal has the right to correction, completion and erase her personal and upon request by the data principal the data fiduciary has to complete the incomplete data, correct the inaccurate or misleading personal data and update the personal data.<sup>14</sup>

#### **(iii) Right of grievance redressal mechanism:**

As per section 13 of the act, the data principal can seek for grievance redressal in respect of any act or omission contrary to the provisions of the act by the data fiduciary and the data fiduciary or consent manager has to respond to the grievance within the said period as may be prescribed

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<sup>12</sup> The Digital Data Protection Act,2023; Section 10

<sup>13</sup> The Digital Data Protection Act,2023; Section 11

<sup>14</sup> The Digital Data Protection Act,2023; Section 12

and the Data Principal shall exhaust the opportunity of redressing her grievance under this section before approaching the Board.<sup>15</sup>

**(iv) Right to nominate:**

As per the provision section 14, the data principal shall nominate any other individual in the event of death or incapacity shall exercise the rights of data principal and the expression incapacity means inability to exercise the rights of the Data Principal.<sup>16</sup>

**(A) Duties of the Data Principal:**

As stated in section 15 of the act, the data principal has some duties and she shall perform those duties:

- 1) Comply with the provisions of all applicable laws for the time being in force while exercising rights under the provisions of this Act.
- 2) To ensure not to impersonate another person while providing her personal data for a specified purpose.
- 3) To ensure not to suppress any material information while providing her personal data for any document, unique identifier, proof of identity or proof of address issued by the State or any of its instrumentalities.
- 4) To ensure not to register a false or frivolous grievance or complaint with a Data Fiduciary or the Board. and
- 5) To furnish only such information as is verifiably authentic, while exercising the right to correction or erasure under the provisions of this Act or the rules made thereunder.<sup>17</sup>

#### **IV. PROCESSING OF PERSONAL DATA OUTSIDE INDIA**

As stated in the section 16 of the act the central government by notification, restrict the transfer of personal data by a Data Fiduciary for processing to such country or territory outside India as may be so notified and nothing contained in this section shall restrict the applicability of any law for the time being in force in India that provides for a higher degree of protection for or restriction on transfer of personal data by a Data Fiduciary outside India in relation to any personal data or Data Fiduciary.<sup>18</sup>

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<sup>15</sup> The Digital Data Protection Act,2023; Section 13

<sup>16</sup> The Digital Data Protection Act,2023; Section 14

<sup>17</sup> The Digital Data Protection Act,2023; Section 15

<sup>18</sup> The Digital Data Protection Act,2023; Section 16



**(A) Exemptions:**

As per section 17 of the act nothing section 8 (1) to (5) of chapter II and section 16 of Chapter III shall not apply in case of

- a) the processing of personal data is necessary for enforcing any legal right or claim
- b) The processing of personal data by any court or tribunal or any other body in India which is entrusted by law with the performance of any judicial or quasi-judicial or regulatory or supervisory function, where such processing is necessary for the performance of such function.
- c) Personal data is processed in the interest of prevention, detection, investigation or prosecution of any offence or contravention of any law for the time being in force in India.
- d) Personal data of Data Principals not within the territory of India is processed pursuant to any contract entered into with any person outside the territory of India by any person based in India.
- e) The processing is necessary for a scheme of compromise or arrangement or merger or amalgamation of two or more companies or a reconstruction by way of demerger or otherwise of a company, or transfer of undertaking of one or more company to another company, or involving division of one or more companies, approved by a court or tribunal or other authority competent to do so by any law for the time being in force. and
- f) The processing is for the purpose of ascertaining the financial information and assets and liabilities of any person who has defaulted in payment due on account of a loan or advance taken from a financial institution, subject to such processing being in accordance with the provisions regarding disclosure of information or data in any other law for the time being in force.<sup>19</sup>

Section 17(2) states that the provisions of this Act shall not apply in respect of the processing of personal data

- (a) by such instrumentality of the State as the Central Government may notify, in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, maintenance of public order or preventing incitement to any

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<sup>19</sup> The Digital Data Protection Act, 2023; Section 17(1)

cognizable offence relating to any of these, and the processing by the Central Government of any personal data that such instrumentality may furnish to it and

- (b) necessary for research, archiving or statistical purposes if the personal data is not to be used to take any decision specific to a Data Principal and such processing is carried on in accordance with such standards as may be prescribed.<sup>20</sup>

Section 17(3) states that The Central Government may, having regard to the volume and nature of personal data processed, notify certain Data Fiduciaries or class of Data Fiduciaries, including startups, as Data Fiduciaries to whom the provisions of section 5, sub-sections (3) and (7) of section 8 and sections 10 and 11 shall not apply.

Central government within 5 years of commencement of this act shall declare that any provisions shall not apply to data fiduciary or classes of data fiduciary by a notification.<sup>21</sup>

## **V. DATA PROTECTION BOARD OF INDIA**

As per section 18, the central government by notification can establish a board called Data Protection Board of India and shall be a body of corporate and having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. The headquarters shall be notified by the central government.<sup>22</sup>

### **(A) Composition and Qualification:**

As per section 19 the central government by notification appoint a chairman and other members and appointed in the manner as may be prescribed by the central government.

The Chairperson and other Members shall be a person of ability, integrity and standing who possesses special knowledge or practical experience in the fields of data governance, administration or implementation of laws related to social or consumer protection, dispute resolution, information and communication technology, digital economy, law, regulation or techno-regulation, or in any other field which in the opinion of the Central Government may be useful to the Board, and at least one among them shall be an expert in the field of law.<sup>23</sup>

### **(B) Salary and Allowances and Term:**

As per section 20 of the act the salary, allowances and other terms and conditions of service of

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<sup>20</sup> The Digital Data Protection Act,2023; Section 17(2)

<sup>21</sup> The Digital Data Protection Act,2023; Section 17(3)

<sup>22</sup> The Digital Data Protection Act,2023; Section 18

<sup>23</sup> The Digital Data Protection Act,2023; Section 19

the Chairperson and other Members shall be such as may be prescribed, and shall not be varied to their disadvantage after their appointment and each of them shall hold an office of two years and eligible for re-appointment.<sup>24</sup>

**(C) Disqualification of Chairperson and Members:**

A person shall be disqualified as per section 21 of the act and the following circumstances where a person shall be disqualified:

- a) If she has been adjudged as an insolvent.
- b) If the person has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude.
- c) If the person has become physically or mentally incapable of acting as a member.
- d) has acquired such financial or other interest, as is likely to affect prejudicially her functions as a member. or
- e) has so abused her position as to render her continuance in office prejudicial to the public interest.

The chairperson or member shall be given reasonable opportunity to be heard before disqualification<sup>25</sup>

**(D) Resignation by the Chairperson or Member:**

As stated in section 22 of the act, the chairperson or member shall resign her job by giving a notice to the central government and shall be effective from the date of which the government relinquish from her job and shall continue her office for three months from the date of order or till the successor appointed whichever is earlier and a vacancy caused by the resignation or removal or death of the Chairperson or any other Member, or otherwise, shall be filled by fresh appointment in accordance with the provisions of this Act and the chairperson or member shall not for a period of one year from the date which they cease shall not hold any office except with the previous approval of the central government.<sup>26</sup>

**(E) Proceedings of the Board:**

As per the section 23 of the act, the board shall observe such procedure in regard of holding its business transactions and shall hold in digital means and authenticate its orders, judgements and instruments in a manner in which may be prescribed and no act or proceeding shall be invalid

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<sup>24</sup> The Digital Data Protection Act,2023; Section 20

<sup>25</sup> The Digital Data Protection Act,2023; Section 21

<sup>26</sup> The Digital Data Protection Act,2023; Section 22

solely for the reasons like

- (a) Any vacancy in or any defect in the constitution of the Board.
- (b) Any defect in the appointment of a person acting as the Chairperson or other Member of the Board. or
- (c) Any irregularity in the procedure of the Board, which does not affect the merits of the case.

In case if a chairperson is unable to discharge her functions for the reasons like illness or any other cause, the senior most member will discharge her functions until the chairperson resumes her duties.<sup>27</sup>

**(F) Officers and Employees:**

As per section 24, the board may appoint officers and employees with the approval from the central government as may be necessary for discharge of its functions<sup>28</sup> and as per section 25 the officers and members shall be considered as public servants as defined in section 21 of the Indian Penal Code.<sup>29</sup>

**(G) Powers of Chairperson:**

As stated in section 26 of the act the chairperson shall possess certain powers, namely:

- (a) general superintendence and giving direction in respect of all administrative matters of the Board.
- (b) authorise any officer of the Board to scrutinise any intimation, complaint, reference or correspondence addressed to the Board. and
- (c) authorise performance of any of the functions of the Board and conduct any of its proceedings, by an individual Member or groups of members and to allocate proceedings among them.<sup>30</sup>

**(H) Powers and functions of the board:**

As per the section 27 of the board shall exercise and functions namely

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<sup>27</sup> The Digital Data Protection Act,2023; Section 23

<sup>28</sup> The Digital Data Protection Act,2023; Section 24

<sup>29</sup> The Digital Data Protection Act,2023; Section 25

<sup>30</sup> The Digital Data Protection Act,2023; Section 26

- (a) On receipt of data breach, to direct any urgent remedial or mitigation measures in the event of a personal data breach, and to inquire into such personal data breach and impose penalty as provided in this Act.
- (b) On a complaint made by a Data Principal in respect of a personal data breach or a breach in observance by a Data Fiduciary of its obligations in relation to her personal data or the exercise of her rights under the provisions of this Act, or on a reference made to it by the Central Government or a State Government, or in compliance of the directions of any court, to inquire into such breach and impose penalty as provided in this Act.
- (c) On a complaint made by a Data Principal in respect of a breach in observance by a Consent Manager of its obligations in relation to her personal data, to inquire into such breach and impose penalty as provided in this Act.
- (d) On receipt of an intimation of breach of any condition of registration of a Consent Manager, to inquire into such breach and impose penalty as provided in this Act. and
- (e) On a reference made by the Central Government in respect of the breach in observance of the provisions of sub-section (2) of section 37 by an intermediary, to inquire into such breach and impose penalty as provided in this Act.

The board has to provide a reasonable opportunity to be heard and shall be recorded in writing, issue directions to the concerned person. The board may also cancel, modify or suspend the direction with the approval of central government and shall impose such directions as may be deemed to fit while cancelling, modification or suspension of direction.<sup>31</sup>

**(I) Procedure followed by the Board:**

As per section 28 of the act, the board shall a procedure

- a) The Board operates independently and mainly digitally, handling complaints and decisions through digital means and following prescribed techno-legal measures.
- b) Upon receiving a complaint or reference, the Board acts according to the Act and related rules.
- c) The Board decides if there are enough grounds for an inquiry.
- d) If there aren't enough grounds, the Board can close the case with written reasons.
- e) If there are enough grounds, the Board can investigate to check compliance with the Act, recording reasons in writing.

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<sup>31</sup> The Digital Data Protection Act, 2023; Section 27

- f) Inquiries follow principles of natural justice, with actions recorded.
- g) The Board has powers similar to a civil court, including:
  - a. Summoning and examining persons under oath
  - b. Receiving affidavit evidence and requiring document production
  - c. Inspecting relevant data and documents
  - d. Other prescribed matters
- h) The Board can't prevent access to premises or seize items that affect daily operations.
- i) The Board can request assistance from police or government officers, who must comply.
- j) The Board can issue interim orders during an inquiry, with written reasons and after hearing the concerned person.
- k) After an inquiry, the Board can close the case or take further action, giving the concerned person a chance to be heard and recording reasons.
- l) If a complaint is found false or frivolous at any stage, the Board can issue a warning or impose costs on the complainant.<sup>32</sup>

**(J) Appeal:**

As per section 29 of the act, a person aggrieved by an order or direction shall file an appeal before the appellate tribunal and the appeal has to be made within 60 days of the issue of order and the tribunal may entertain the appeal after the expiry of the period if there is a sufficient cause for not preferring the appeal within said period

The appellate tribunal after the appeal has to provide reasonable opportunity to be heard and issue an order with modification as deemed to be fit and the copy of the order has to be issued to the parties of the appeal

The tribunal has to dispose the appeal within six months from the date of appeal has been made and if they fail to do so then the reasons had to be recorded in writing.<sup>33</sup>

As per section 30 of the act, the appellate tribunal has a power of the civil court and the order passed by the tribunal shall be executable as a decree of the civil court and the tribunal can transmit to the civil court having local jurisdiction.<sup>34</sup>

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<sup>32</sup> The Digital Data Protection Act,2023; Section 28

<sup>33</sup> The Digital Data Protection Act,2023; Section 29

<sup>34</sup> The Digital Data Protection Act,2023; Section 30

As per section 31 if the tribunal is of opinion that the issue can be solved through mediation then the issue can be resolved through mediation.<sup>35</sup>

As per section 32 of the act, The Board may accept a voluntary undertaking from any person related to following this Act during any stage of a proceeding under section 28. This voluntary undertaking may include actions to be taken or avoided within a specified time, and it may be publicized. The Board can modify the undertaking with the person's consent and where a person fails to adhere to any term of the voluntary undertaking accepted by the Board, such breach shall be deemed to be breach of the provisions of this Act and the Board may, after giving such person an opportunity of being heard, proceed in accordance with the provisions of section 33.<sup>36</sup>

**(K)Penalties:**

As per section 33 of the act the board after the conclusion of the proceedings and given reasonable opportunity to be heard can impose monetary penalty as may be prescribed in the schedule and while determining the penalty, the board has to consider few things namely:

- a. the nature, gravity and duration of the breach.
- b. the type and nature of the personal data affected by the breach.
- c. repetitive nature of the breach.
- d. whether the person, as a result of the breach, has realised a gain or avoided any loss.
- e. whether the person took any action to mitigate the effects and consequences of the breach, and the timeliness and effectiveness of such action.
- f. whether the monetary penalty to be imposed is proportionate and effective, having regard to the need to secure observance of and deter breach of the provisions of this Act. and
- g. the likely impact of the imposition of the monetary penalty on the person.<sup>37</sup>

As per section 34 of the act, the penalty imposed shall be credited to the consolidated fund of India.<sup>38</sup>

As per section 35 of the act, no suit or prosecution be made against the central government, the board, member or chairperson if they does any act in good faith <sup>39</sup>and as per section 36 of the act, The Central Government may, for the purposes of this Act, require the Board and any Data

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<sup>35</sup> The Digital Data Protection Act,2023; Section 31

<sup>36</sup> The Digital Data Protection Act,2023; Section 32

<sup>37</sup> The Digital Data Protection Act,2023; Section 33

<sup>38</sup> The Digital Data Protection Act,2023; Section 34

<sup>39</sup> The Digital Data Protection Act,2023; Section 35

Fiduciary or intermediary to furnish such information as it may call for.<sup>40</sup>

**(L) Power to issue directions:**

As per section 37 of the act, the central government or any other authorized persons shall intimate the imposition of penalties in two or more instances and advises, in the interests of the general public, the blocking for access by the public to any information generated, transmitted, received, stored or hosted, in any computer resource that enables such Data Fiduciary to carry on any activity relating to offering of goods or services to Data Principals within the territory of India

The central government or authorized person has to give an reasonable opportunity to be heard by the data fiduciary and make a record in writing by order, direct any agency of the Central Government or any intermediary to block for access by the public or cause to be blocked for access by the public any such information.<sup>41</sup>

**(M) Overriding effect:**

As per section 38 of the act, this act is an addition to all existing laws and not in derogation with other laws and in case of conflict, this act will override all other acts.<sup>42</sup>

As per section 39 of the act no civil court has a jurisdiction to entertain any suit or proceedings under this act and any decree or injunction can be granted in respect to the provisions of this act<sup>43</sup>.

**(N) Power to make rules:**

As per section 40 of the act, the Central Government can create rules to implement this Act, as long as they are consistent with the Act.

These rules can cover the following:

- a. How a Data Fiduciary (an entity that processes data) informs a Data Principal (the data owner) under section 5(1).
- b. How a Data Fiduciary informs a Data Principal under section 5(2).
- c. The accountability and obligations of Consent Managers under section 6(8).
- d. How Consent Managers are registered and the related conditions under section 6(9).

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<sup>40</sup> The Digital Data Protection Act,2023; Section 36

<sup>41</sup> The Digital Data Protection Act,2023; Section 37

<sup>42</sup> The Digital Data Protection Act,2023; Section 38

<sup>43</sup> The Digital Data Protection Act,2023; Section 39



- e. What subsidies, benefits, services, certificates, licenses, or permits allow for personal data processing under section 7(b).
- f. How personal data breaches are reported to the Board under section 8(6).
- g. The time period for which a specified purpose is considered served under section 8(8).
- h. How to publish the business contact information of a Data Protection Officer under section 8(9).
- i. How to obtain verifiable consent under section 9(1).
- j. The types of Data Fiduciaries, purposes for processing a child's personal data, and related conditions under section 9(4).
- k. Other aspects of the Data Protection Impact Assessment process under section 10(2)(c)(i).
- l. Additional measures for Significant Data Fiduciaries under section 10(2)(c)(iii).
- m. How a Data Principal can request information related to their personal data and its processing under section 11(1).
- n. How a Data Principal can request the erasure of their personal data under section 12(3).
- o. The time frame for a Data Fiduciary to respond to grievances under section 13(2).
- p. How a Data Principal can nominate another individual under section 14(1).
- q. Standards for processing personal data for exemptions under section 17(2)(b).
- r. How to appoint the Chairperson and other Members of the Board under section 19(2).
- s. Salary, allowances, and other terms for the Chairperson and other Members of the Board under section 20(1).
- t. How to authenticate orders, directions, and instruments under section 23(1).
- u. Terms and conditions for appointing and servicing officers and employees of the Board under section 24.
- v. Techno-legal measures adopted by the Board under section 28(1).
- w. Other matters under section 28(7)(d).
- x. The form, manner, and fee for filing an appeal under section 29(2).
- y. The procedure for dealing with an appeal under section 29(8).

- z. Any other matters that need rules or provisions under this Act.<sup>44</sup>

As per section 42 of the act, the Central Government can change the Schedule via notification, but cannot increase any penalties to more than double the original amount and such amendments will be treated as if they were part of the original Act and take effect from the date of the notification.<sup>45</sup>

As per section 43 of the act, if there are any issues in implementing the Act, the Central Government can issue orders to address them, as long as they are consistent with the Act and these orders can only be made within three years of the Act's commencement and every such order must be presented to both Houses of Parliament as soon as possible.<sup>46</sup>

### **(O) Amendments to the existing laws:**

As per section 44 of the act certain amendments had been made to the existing laws

1. The Telecom Regulatory Authority of India Act, 1997 will be ended to include a reference to the Appellate Tribunal under the Digital Personal Data Protection Act, 2023.
2. The Information Technology Act, 2000 will be amended by:
  - a. Removing section 43A.
  - b. Adding the Digital Personal Data Protection Act, 2023 to the proviso of section 81.
  - c. Removing clause (ob) from section 87(2).
3. The Right to Information Act, 2005 will be amended to replace clause (j) of section 8(1) with: "information which relates to personal information."<sup>47</sup>

## **VI. CONCLUSION**

The enactment of the Digital Data Protection Act, 2023 represents a pivotal measure by the Indian government to combat cyber and data-related crimes effectively. This legislation empowers the central government to formulate comprehensive rules and amendments, thereby enhancing regulatory capabilities in the digital sphere. By amending existing laws, the Act aims to foster a safer online environment, particularly safeguarding children's personal data against cybercrime. Additionally, it ensures the protection of personal data accessed from foreign

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<sup>44</sup> The Digital Data Protection Act, 2023; Section 41

<sup>45</sup> The Digital Data Protection Act, 2023; Section 42

<sup>46</sup> The Digital Data Protection Act, 2023; Section 43

<sup>47</sup> The Digital Data Protection Act, 2023; Section 44

jurisdictions, reinforcing national security and privacy measures.

A notable feature of the Act is the establishment of a dedicated body to investigate cyber law offenses, streamlining enforcement efforts and ensuring swift justice. By addressing previous legal ambiguities, the Act clarifies the judicial landscape, enabling more effective recourse for victims of digital crimes. This proactive approach not only strengthens cybersecurity frameworks but also bolsters trust in digital interactions among Indian citizens. Overall, the IT Act signifies a crucial milestone in India's digital evolution, underlining its commitment to advancing secure and responsible digital practices for all.

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**VII. REFERENCES****(A) Cases:**

- (i) Justice K Puttaswamy (Retd.) Vs Union of India (2019) (1) S.C.C 1.

**(B) Statutes:**

- (i) The Digital Data Protection Act,2023

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