

PERSONAL DATA PROTECTION ACT (PDPA, 2023): HERALDING FUTURISTIC ERA OF DATA AND PRIVACY PROTECTION IN INDIA

Abstract

Background/Introduction: Gossamer-like, the internet has seamlessly woven itself into the fabric of Indian Society with over 714 million Indians are actively using the internet in India, which accounts for approximately 48% of the total population in the year 2022; and this is further anticipated to grow up to one billion users by 2025. There are around 338 million Indians who use digital means for making payments of which 36 % hail from rural India.[i]. The trend that has been set does point to the fact that the major chunk of these users do hail from rural India. In a way, rural India is on the verge of a major social socio-cultural upheaval towards urbanization.

From the bustling streets of metropolitan cities to the sleepy town far up to remote villages of India, masses at large are adopting the magical Internet to connect, learn and grow above and beyond their wholesome entertainment. Post-COVID-19, the internet has had a very profound impact on the way we lead our lifestyle, do our work and follow our livelihood.

Conclusion: Such a futuristic piece of legislation will have salutary effect on the rapidly growing sectors of healthcare in India including medical insurance since cyber-security is the key to ensuring a climate conducive to such a growth in these vital economy sectors including India's banking sector for continued prosperity and national uplift.

Author

Dr. Wali Tariq

MBBS MD DCH

Associate Professor

Forensic Medicine & Toxicology

K M Medical College & Hospital

Mathura, India

drstwali@gmail.com

Benazir Malik

Advocate

Delhi High Court

Delhi, India.

benazirmalik54@gmail.com

I. INTRODUCTION

- 1. Background/Introduction:** Gossamer-like, the internet has seamlessly woven itself into the fabric of Indian Society with over 714 million Indians are actively using the internet in India, which accounts for approximately 48% of the total population in the year 2022; and this is further anticipated to grow up to one billion users by 2025. There are around 338 million Indians who use digital means for making payments of which 36 % hail from rural India [2].

The trend that has been set does point to the fact that the major chunk of these users do hail from rural India. In a way, rural India is on the verge of a major social socio-cultural upheaval towards urbanization.

From the bustling streets of metropolitan cities to the sleepy town far up to remote villages of India, masses at large are adopting the magical Internet to connect, learn and grow above and beyond their wholesome entertainment. Post-COVID-19, the internet has had a very profound impact on the way we lead our lifestyle, do our work and follow our livelihood.

From connecting with friends and family on social media to studying with the help of educational Apps to attend online virtual lectures, to work from home via MS-Teams to making online purchases to paying through UPI, we are entirely dependent upon the ubiquitous aid of internet, realizing little the impact these online implements make on our privacy and personal space.

To further safeguard the rights of individuals, and communities, the *PERSONAL DATA PROTECTION ACT (PDPA, 2023)* has been enacted by our Parliament. In the last two decades, the internet outreach has grown in exponential manner and we have lately seen several landmark cases of data breaches, in which the health-related and otherwise personal data of millions of Indians has been exposed. And these data breaches have raised the civil concern about the security of personal data in India and the underlined imperative need for stronger data protection laws.

It may be mentioned that the Hon'ble Apex Court of India duly recognized the citizens' right to privacy as a fundamental right under Article 21 of the Constitution of India in the case of *Justice K.S. Puttaswamy v. Union of India (2017)*. This verdict established that informational privacy constitutes a part of the right to privacy [2].

II. THE SCOPE OF THE ACT

The *PDPA, 2023* ("PDPA") received assent from the President on August 11, 2023, and is a landmark piece of legislation that establishes a comprehensive framework for the protection of personal data in India. The "PDPA" gives individuals control over their personal data and sets out a number of obligations for organizations that collect and process personal data. Data protection is the practice of safeguarding sensitive data from loss, manipulation,

and misuse. It is important to protect personal data because it can be used to commit identity theft, fraud, and other crimes.

To safeguard the privacy of personal data a new, comprehensive data protection was needed, which must define personal data, and set clear rules for how organizations can collect, use, & share personal data. This was done with an optimistic approach to provide a stronger law with privacy rights to individuals.

III. APPLICABILITY OF THE ACT

As per *section 3* of the Act, it applies to [3]. The processing of personal data collected within the territory of India;

It also applies to the processing of personal data outside of India if the processing is in connection with any activity related to offering goods & services to data principle in India.

And this act doesn't apply to:

Data processed by an individual for any personal or domestic use;

Data that is made or caused to be made publicly available;

Any person who is under the obligation of law for the time being to make such personal data publicly available;

Any offline or undisguised data or data not being subsequently made digital.

IV. THE ACT ENUMERATES THE FOLLOWING OBJECTIVES

To provide individuals the right to privacy as a fundamental right. This means that individuals have the right to control their personal data and to prevent it from being used in ways that they do not consent to [4].

Individuals have the right to access their personal data and to request that it be corrected or deleted. Organizations must provide individuals with access to their personal data within a reasonable time and in a format that is easy to understand. Organizations must also correct or delete personal data that is inaccurate or incomplete.

Organizations must stop processing personal data if an individual objects unless they can demonstrate that there are compelling legitimate grounds for continuing to process the data.

Organizations must take steps to protect personal data by design and by default. This means that organizations must implement appropriate technical and organizational measures to protect personal data from the outset. These measures should be proportionate to the risks posed by the processing of personal data.

Organizations that breach the "PDPA" can be fined up to INR 250 crores (two hundred and fifty crores). The penalties can be even higher for repeated breaches or for breaches that are serious or intentional [5].

V. SALIENT FEATURES OF THE ACT

An individual can use the right to access to request that an organization delete their personal data. This can be useful if an individual no longer wants their personal data to be used by an organization. [6].

An individual can use the right to object to prevent an organization from using their personal data for direct marketing. This can be useful if an individual does not want to receive unsolicited marketing messages from an organization.

An organization can assess the risks to privacy posed by their processing activities. This can help organizations take steps to mitigate these risks and comply with the Act.

An individual can file a complaint with the DPA if they believe that their privacy rights have been violated. The DPA can investigate the complaint and take action against the organization if it has violated the law [7].

VI. THE ACT IS BASED ON THE PRINCIPLE [8.]:

Consented, lawful, and transparent use of personal data: Organizations must obtain the consent of the data principal before using their personal data, and they must be transparent about how they will use the data.

Purpose limitation: Organizations can only use personal data for the purpose for which it was collected.

Data minimization: Organizations must collect only the personal data that is necessary for the purpose for which it is being collected.

Data accuracy: Organizations must ensure that the personal data they collect is accurate and up-to-date.

Storage limitation: Organizations must only store personal data for as long as it is necessary for the purpose for which it was collected.

Reasonable security safeguards: Organizations must take reasonable steps to protect personal data from unauthorized access, use, disclosure, alteration, or destruction.

Accountability: Organizations must be accountable for their compliance with the data protection principles.

VII. CONCLUSIONS

The “PDPA” 2023 is a landmark moment in the fight for right to privacy in India. Such a futuristic piece of legislation will have salutary effect of rapidly growing sectors of healthcare in India including medical insurance. It accords individuals the legitimate power to control their personal data and holds associations and organizations accountable for how

they use it. This is a major step forward for the protection of privacy in India, and therefore it is expected to have a beneficial impact on the growth and furtherance of digitalized healthcare, patient rights and public health based on social security. Individuals can protect their autonomy and safeguard their private data by being vigilant about what data is being wrongfully collected from and about them, demand its deletion, and report data breaches. By taking these broad legal steps, individuals can hopefully ensure that their privacy is protected in the digital age.

REFERENCES

- [1] Internet and Mobile Association of India (IAMAI), "Internet in India, 2022" (KANTAR) in May, 2023
- [2] Justice K.S. Puttuswamy (Retd.) vs Union of India, 2017, Writ Petition (Civil) No. 494 of 2012
- [3] The DPDA, 2023 (Act 22 of 2023), s. 3
- [4] The DPDA, 2023, (Act 22 of 2023), s. 4
- [5] The DPDA, 2023 (Act 22 of 2023), s. 8(5)
- [6] The DPDA, 2023 (Act 22 of 2023), s. 6(4)
- [7] The DPDA, 2023 (Act 22 of 2023), s. 5
- [8] Ministry of Electronics & IT, India, available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947264> (Posted: 09August, 2023 by PIB, N. Delhi)

