
THE DATA PROTECTION BOARD OF INDIA: AN INSTITUTION WITHOUT INDEPENDENCE?

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Introduction

The definition of data, derived from the Latin word “*datum*”, meaning “something given”, becomes extremely relevant in today’s world when everything is run on data, based on data and decided by data. With the rise of globalisation and swift technological progress, it has emerged as one of the key resources in our everyday lives.

The Supreme Court, in *Justice K. S. Puttaswamy v. Union of India*¹, has acknowledged the right to privacy as a fundamental right under Article 21 of the Indian Constitution². Safeguarding individual privacy poses a significant challenge within data protection legislation. Over the last ten years, there has been a notable surge in the collection of personal data and digital transactions. This has raised significant concerns regarding privacy violations and the improper handling of data.

Prior to the year 2020, the handling of data was managed through limited sections of the Information Technology Act, 2000³, which included the “Sensitive Personal Data or Information Rules⁴.” In 2017, the government of India established the Justice B. N. Krishna Committee to examine and analyse the challenges and issues surrounding data protection in the country. There was no specific law dedicated solely to the “collection” and “processing” of personal digital data until then. Despite the Committee's draft Bill in 2018⁵, it was substantially diluted by the time the legislation was made. Finally, after a series of proposed bills⁶, in the

¹ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1

² Article 21 of the Constitution of India 1950

³ Information Technology Act 2000 (India)

⁴ Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (India)

⁵ Justice BN Srikrishna, 'A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians —Report of the Committee of Experts on Data Protection' (Ministry of Electronics and Information Technology, Government of India, July 2018)

⁶ Joint Committee on the Personal Data Protection Bill 2019, Report of the Joint Committee on the Personal Data Protection Bill, 2019 (17th Lok Sabha Sec09retariat, 16 December 2021)

year 2023, the Digital Personal Data Protection Bill⁷ was passed by both houses of Parliament. The Parliament enacted the Digital Personal Data Protection Act, 2023⁸, which was objectively designed to safeguard the personal data of individuals. It examines the needs of new technologies like artificial intelligence, big data analytics, and the Internet of Things (IoT), which depend significantly on the processing of personal information.

This act establishes strict obligations and responsibilities in the relationship between a data principal⁹, whose personal data is collected, and data fiduciaries, who determine how and why data is collected and processed. The Data Protection Board established under the Act is the sole regulatory and adjudicatory authority responsible for data grievances. It mandates that a person must be of ability, integrity and standing, which is a vague quality metric. This article will dive into these aspects in detail.

Data Protection Board of India

Data Protection Board¹⁰, a sole body tasked with overseeing the implementation and enforcement of the DPDP Act, consists of 4 members¹¹. The Board functions through an online complaint resolution mechanism. It conducts inquiries based on complaints, addresses personal data breaches, issues directions and imposes penalties for non-compliance. The DPDP Rules¹² prescribe that any inquiry of the Board is required to be completed within six months of the complaint, which may be extended up to three months for valid reasons.¹³

An appeal against any order of the board will lie with the Telecom Disputes Settlement and Appellate Tribunal (TDSAT)¹⁴. Thereafter, a final appeal can be made to the Supreme Court of India under Article 32. Hence, a three-tier appeal mechanism has been established under this regime.

Comparison between the Data Protection Board and other Indian regulators reveals substantial constraints on independence. Securities and Exchange Board of India (SEBI) is a quasi-judicial

⁷ Digital Personal Data Protection Bill 2023 (India)

⁸ Digital Personal Data Protection Act 2023 (India)

⁹ Digital Personal Data Protection Act 2023, s 3

¹⁰ Digital Personal Data Protection Act 2023 (India), s 18

¹¹ Digital Personal Data Protection Rules 2025, GSR 846(E) (India), Ministry of Electronics and Information Technology, 13 November 2025.

¹² Digital Personal Data Protection Rules 2025 (India)

¹³ Digital Personal Data Protection Act 2023, (India), s 27

¹⁴ Digital Personal Data Protection Act 2023 (India), s 29

body that adjudicates disputes and passes orders against entities violating securities laws through its adjudicating Officers. Such a body,¹⁵ or even the Competition Commission, makes rules, investigates violations, and adjudicates disputes all under one roof¹⁶. The DPDP Board is made from a subordinate legislation from the central government. All the significant policy decisions, from consent mechanisms to cross-border transfer rules, remain with the government. So the board's role is purely reactive and enforcement-based. It can hear complaints, conduct inquiries and impose penalties up to crores, but it cannot write the rules it enforces.

The Srikrishna Committee had recommended an authority, headed by the Chief Justice of India or one expert nominated by the CJI in consultation with the Cabinet Secretary, to appoint the Data Protection Authority because it expected the government agencies to be regulated by the data protection law. Under Clause 51 of the 2018 Bill,¹⁷ the Chairperson and Members of the DPA were to serve a term of five years, and were not eligible for reappointment. This "once and done" design is the gold standard for judicial independence. A member who cannot be reappointed has no incentive to please the appointing authority. But under Section 19¹⁸ of the DPDP Act and the DPDP Rules 2025, the Chairperson is selected by a committee chaired by the Cabinet Secretary. There is no judicial member and no independent expert with a role that is not government-nominated. The chairperson is provided a tenure of two years, with eligibility for reappointment. A member who knows their continuation depends on the same government has an obvious structural incentive to avoid confrontation. This raises concern over the Board's independence and potential susceptibility to executive influence, possibly affecting regulatory consistency and impartiality. The Competition Act, 2002, is another supportive example which provides a selection committee for the appointment of the Chairperson and Members of the Commission, comprising the Chief Justice or his nominee, two members from the executive¹⁹ and two independent experts. Additionally, the EDPB's head is composed of one supervisory authority of each Member State and the European Data Protection Supervisor (EDPS)²⁰. No single government controls the EDPB's membership, and it is constitutionally

¹⁵ Securities and Exchange Board of India Act 1992 (India), s 4

¹⁶ Competition Act 2002 (India), s7

¹⁷ Personal Data Protection Bill 2018 *cl* 51

¹⁸ Digital Personal Data Protection Act 2023 (India) s 19

¹⁹ Competition Act 2002 (Act No 12 of 2003, India) s 17

²⁰ 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, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1, art 52(4)– (6)

insulated from any one executive²¹.

The board also lacks financial autonomy. The Srikrishna Committee proposed a self- financing structure where penalties paid by violating entities would be deposited into a Data Protection Fund²², but Section 34 of the act states that all penalties collected by the Board go directly into the Consolidated Fund of India. To contrast this with how SEBI is structured, under section 13 of the SEBI Act 1992,²³ the central government may make grants to the SEBI board of such sums of money for its own general funds²⁴, giving it a revenue base, separate from annual government allocations. And even GDPR supervisory authorities in the EU are legally required to be provided with sufficient financial and human resources by member states, without those resources being contingent on annual political decisions. However, the DPDP board does not have such a mechanism.

Moreover, the board cannot hire employees or set employment terms without the government's prior approval. The Board, in accordance with the Rules and guidelines issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, appoint officers and employees on deputation from the Central Government, a State Government, or a public sector enterprise and an autonomous body under the overall control of the Central Government for a period not exceeding five years. The Board can also take any officer or other employee from the National Institute for Smart Government (NISG) for a period not exceeding five years. The phrase "prior approval" is significant as the Board cannot unilaterally decide to expand its workforce. The Rules further specify that leave and service conditions for the Board's Chairperson and Members replicate Central Government norms. They may avail such kind of leaves as are admissible to any Government servant under the Central Civil Services (Leave) Rules, 1972²⁵. This means even something as routine as approving the Chairperson's leave is retained by the Central Government, not an internal Board matter.

The Sri Krishna Committee has also recommended that members could be removed only through a process modelled on the removal of Supreme Court judges, and not by simple executive order. It has constitutional backing. In *Union of India v. R. Gandhi*²⁶, the Supreme

²¹ Regulation (EU) 2016/679 ... [2016] OJ L119/1 (GDPR), arts 68–76

²² PRS Legislative Research, 'Legislative Brief: The Digital Personal Data Protection Bill, 2023' (*PRS Legislative Research*, 2023) <https://prsindia.org/files/bills_acts/bills_parliament/2023/Legislative_Brief_Digital_Personal_Data_Protection_Bill_2023.pdf>

²³ Securities and Exchange Board of India Act 1992 (Act No 15 of 1992, India) s 13

²⁴ Securities and Exchange Board of India Act 1992 (Act No 15 of 1992, India) s 14(1)

²⁵ Central Civil Services (Leave) Rules 1972 (India)

²⁶ *Union of India v R Gandhi* (2010) 11 SCC 1 (Supreme Court of India)

Court held that tribunals must be constituted in a manner that inspires the confidence of the public in their ability and independence. In *Roger Mathew v. South Indian Bank Ltd*²⁷, it was held that there was a compelling need to exclude executive control over tribunals discharging responsibilities akin to those of courts.

Conclusion

The analysis demonstrates that the Data Protection Board falls considerably short of the institutional independence envisioned by the Srikrishna Committee and required by comparable regulatory bodies in India and abroad. While the Board is vested with adjudicatory powers to inquire into complaints, address breaches, and impose substantial penalties, its design leaves it to the executive at every administrative stage of its functioning. The appointment process places selection authority with a committee chaired by the Cabinet Secretary, with no judicial member and no independently nominated expert, unlike the safeguards built into the Competition Act, 2002, or the composition of the European Data Protection Board. The two-year reappointable tenure of the Chairperson, in contrast to the Srikrishna Committee's proposed non-renewable five-year term, creates a structural incentive for continued alignment with the government rather than independent decision-making. This concern is compounded by the Board's lack of financial autonomy, since penalties collected under the Act flow into the Consolidated Fund of India rather than its own fund, and by its inability to hire staff or sanction leave without prior government approval.

A body intended to check the government's handling of personal data remains structurally dependent on that same government for its composition, tenure, and resources. The Supreme Court's reasoning in *Union of India v. R. Gandhi* and *Roger Mathew v. South Indian Bank Ltd.* makes clear that tribunals discharging functions akin to courts must be insulated from executive control in order to retain public confidence. The Data Protection Board's current framework raises concerns about its capacity to function as an impartial adjudicator, particularly in matters involving the State itself. Strengthening the Board's independence, through judicial participation in appointments, non-renewable tenure, and a dedicated financial structure, would not merely align Indian data protection law with global best practices, but would also uphold right to privacy.

²⁷ *Roger Mathew v South Indian Bank Ltd* (2020) 6 SCC 1 (Supreme Court of India)