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Law, Privacy and Data Governance in the Digital Era

(An Edited Book exploring the intersections of Jurisprudence, Technology, and Policy)



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Dr. Ashraf Azmi

Dr. Tulika Singh

Ms. Aakansha Verma



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TABLE OF CONTENT

Sr. No.	Chapter Name	Page No.
1.	Protecting The Digital Child: Consent, Safety, And Regulatory Obligations Under The DPDPA, 2023 <i>Dr. Wasim Ahmad</i>	1-22
2.	Cybersecurity Law and Critical Information Infrastructure: Regulatory Gaps in The Indian Framework <i>Dr. Saif Ali Khan</i>	23-41
3.	Constitutional Proportionality in The Age Of Surveillance <i>Dr. Gaurav Gupta</i>	42-68
4.	AI, Big Data and Algorithmic Governance: Legal, Constitutional and Regulatory Perspectives <i>Dr. A. Mahendiran, Dr. N. Saravanan, C.Senthilkumar</i>	69-100
5.	A Regression in Protection? Health Data, Sensitive Personal Information, and The DPDP Act, 2023 <i>Somya Srivastava</i>	101-119
6.	The Digital Personal Data Protection Act, 2023 And The Right To Privacy: A Constitutional Critique <i>Dr. Mohd Juned Ansari</i>	120-135

7. Consumer Protection in The Data Market: Law, Privacy And Data Governance in The Digital Era **136-158**
Swati Joshi
8. Deepfake AI And The Right To Privacy: Balancing Transparency And Misinformation In India Details **159-180**
Risha Fatema, Shreyansh
9. Controlling The Digital Commons: Data Sovereignty and The Future of National Interest **181-208**
Ritika Singh
10. Re-Examining The Right to Privacy Under The Digital Personal Data Protection Act, 2023: A Constitutional Analysis **209-230**
SOORAJ KR
11. Mass Surveillance and The Constitutional Right to Privacy **231-248**
Mr. Faiz Osmani
12. Data Justice and Digital Constitutionalism: Reframing Informational Privacy and State Power under India's Digital Personal Data Protection Act, 2023 **249-274**
Dr. Manindra Singh Hanspal

CHAPTER - 1

Protecting The Digital Child: Consent, Safety, And Regulatory Obligations Under The Dpdpa, 2023

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ABSTRACT

The Digital Personal Data Protection Act, 2023 (hereinafter 'DPDPA' or 'the Act') represents India's first comprehensive legislative response to the challenges of personal data governance in the digital age. While the Act introduces certain child-specific provisions, it falls considerably short of offering a robust, rights-based framework for the protection of children in the digital ecosystem. This chapter undertakes a critical doctrinal, comparative, and policy analysis of three interrelated dimensions of child data protection: the consent mechanism under the DPDPA, the regulatory obligations imposed upon data fiduciaries in relation to children's online safety, and the significant legislative gaps that leave the digital child inadequately protected. Drawing upon constitutional jurisprudence, comparative frameworks from the European Union, the United States, and the United Kingdom, and the normative standards of the United Nations Convention on the Rights of the Child, the chapter argues that the DPDPA treats child data protection as a peripheral concern rather than a foundational imperative. It calls for the enactment of a dedicated children's online safety and data protection legislation, the institutionalisation of a Children's

Digital Rights Commissioner, and the adoption of age-appropriate design standards as legally binding obligations in India.

I. INTRODUCTION

India is home to one of the largest child populations in the world, with over 440 million individuals below the age of eighteen.¹ A significant and growing proportion of this population interacts daily with digital platforms i.e. social media, educational technology, gaming environments, streaming services, and digital payment ecosystems, leaving behind vast trails of personal data that are routinely harvested, analysed, and monetised by private actors.² The vulnerability of children in this landscape is qualitatively distinct from that of adults: children lack the cognitive maturity to comprehend the implications of data sharing, are susceptible to manipulative design techniques, and are frequently unable to exercise meaningful consent.³

The digital economy's appetite for behavioural data has made children a particularly lucrative target for surveillance capitalism.⁴ Yet, for much of India's legislative history, the protection of children's data existed only as a scattered concern across various laws like the Information Technology Act, 2000, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences Act, 2012 and none of them constituted a coherent framework for digital data governance.

¹Ministry of Electronics & Info. Tech., Gov't of India, *Annual Report 2022–23*, at 47 (2023).

²Internet & Mobile Ass'n of India & Kantar, *ICUBE 2022: Internet in India*, at 12 (2022).

³UNICEF, *The State of the World's Children 2017: Children in a Digital World*, at 11 (2017).

⁴Sonia Livingstone & Alicia Blum-Ross, *Parenting for a Digital Future* 34 (Oxford Univ. Press 2020).