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COMPARATIVE ANALYSIS OF DIGITAL PERSONAL DATA PROTECTION ACT WITH GENERAL DATA PROTECTION REGULATION AND OTHER GLOBAL DATA PROTECTION LAWS

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Abstract

The Digital Personal Data Protection Act, 2023 (DPDP Act) marks a significant development in India's efforts to regulate personal data privacy. Given the global nature of data flows, it is essential to analyze how the DPDP Act aligns with international standards, especially the European Union's General Data Protection Regulation (GDPR), often considered the benchmark for data protection laws. This article compares the Digital Personal Data Protection Act with the General Data Protection Regulation and other important laws such as the California Consumer Privacy Act (CCPA) and Brazil's Lei Geral de Proteção de Dados (LGPD). This paper highlights similarities and differences in principles, scope, rights, consent requirements, enforcement mechanisms, and cross-border data transfer regulations. The paper also considers the implications of these variations for multinational businesses operating in India and concludes with suggestions to improve the DPDP Act's harmonization with global data protection norms.

Keywords: Data Protection, Privacy, International Standards

1. Introduction

The surge in digital data generation has heightened concerns over individual privacy worldwide. In response, countries have enacted comprehensive data protection laws to safeguard personal information. The EU's General Data Protection Regulation, effective since 2018, has become a global standard due to its thorough and robust regulatory framework. India's Digital Personal Data Protection Act, introduced in 2023, aims to establish a legal regime to protect the digital personal data of individuals in India while supporting technological innovation and economic growth. This article undertakes a comparative study of the Digital Personal Data Protection Act with the General Data Protection Regulation and other leading data protection laws to identify key areas of alignment and divergence, offering insights

valuable to regulators, legal practitioners, and businesses.

2. Applicability and Scope

The Digital Personal Data Protection Act applies broadly to all data fiduciaries who process digital personal data of individuals located in India, regardless of where the processing happens. It covers government and private entities, though it exempts certain sovereign and law enforcement activities. Similarly, the General Data Protection Regulation has extraterritorial application, governing any entity processing personal data of individuals within the European Union, whether or not the entity itself is located in Europe. The California Consumer Privacy Act targets for-profit businesses that collect data of California residents and meet specific thresholds, whereas Brazil's LGPD covers both public and private entities processing data of Brazilian residents. While all these laws reach beyond their borders to some extent, GDPR and LGPD are more explicit in their global reach. The DPDP Act aligns with this trend but includes distinct government exemptions reflecting India's priorities.

3. Definitions and Personal Data

The Digital Personal Data Protection Act defines 'digital personal data'¹ as any information about an individual stored digitally, but excludes anonymized data. It recognizes sensitive personal data but treats it with different rules. The General Data Protection Regulation provides a broad and inclusive definition of personal data, encompassing any information relating to an identified or identifiable natural person, including online identifiers and location data.² It further categorizes certain data as "special categories" requiring stricter protections. The California Consumer Privacy Act defines personal information broadly but excludes data that is publicly available. Brazil's LGPD adopts a definition similar to the General Data Protection Regulation, reflecting a harmonized approach to data classification.

4. Data Protection Principles

The Digital Personal Data Protection Act embodies fundamental principles such as lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, and security safeguards. It requires data processing to be lawful with consent or other legal grounds, emphasizing the importance of minimizing data collection and maintaining security. The

¹ DPDP Act, s. 2(7).

² GDPR, Art. 4(1).

General Data Protection Regulation also requires organizations to be accountable for their processing activities and incorporate data protection by design and by default. Similarly, LGPD and the California Consumer Privacy Act emphasize transparency and consumer control over personal data.

5. Data Subject Rights

The Digital Personal Data Protection Act grants individuals' right to access their data, seek correction, request data portability, and pursue grievance redressal. However, it does not explicitly include a right to erasure or the "right to be forgotten," which is a notable feature of the General Data Protection Regulation. The General Data Protection Regulation provides extensive data subject rights, allowing individuals to access, rectify, erase, restrict processing, port data, and object to certain processing activities. LGPD mirrors many of these rights, while the California Consumer Privacy Act focuses primarily on the right to know, the right to delete, and the right to opt out of the sale of personal information.

6. Consent Requirement

Under the Digital Personal Data Protection Act, consent must be freely given, informed, specific, clear, and revocable. Nonetheless, certain lawful purposes allow processing without consent. The General Data Protection Regulation enforces a strict consent regime where consent must be an unambiguous affirmative act, specific, informed, and explicit when processing sensitive data. LGPD and the California Consumer Privacy Act also require clear consent, but differ slightly in the operational details and exceptions provided.

7. Data Breach Notification and Enforcement

The Digital Personal Data Protection Act obliges data fiduciaries to notify the Data Protection Board and affected individuals promptly in the event of a data breach. Enforcement authority is centralized in the Data Protection Board, which can impose penalties. General Data Protection Regulation demands that data controllers notify supervisory authorities within 72 hours of becoming aware of a breach and inform affected data subjects when the risk is high. Enforcement under the General Data Protection Regulation includes the power to impose heavy fines, reaching up to 4% of global annual turnover or €20 million. LGPD and the California Consumer Privacy Act incorporate similar breach notification requirements and enforcement provisions, though the scale of penalties and enforcement mechanisms vary.

8. Cross-Border Data Transfers

The Digital Personal Data Protection Act permits cross-border transfer of data if certain adequacy criteria or conditions are met, aiming to safeguard data when it moves beyond Indian jurisdiction. The General Data Protection Regulation requires that personal data transfers outside the European Union happen only when the destination country or entity ensures an adequate level of protection, generally through adequacy decisions, standard contractual clauses, or binding corporate rules. LGPD follows a similar approach to the General Data Protection Regulation, while the California Consumer Privacy Act does not specifically restrict cross-border data transfers but enforces consumer protections extraterritorially.

9. Expanded Overview of General Data Protection Regulation and Other Global Data Protection Laws

The General Data Protection Regulation, effective from 2018, is recognized globally as a pioneering regulation that has shaped data privacy legislation worldwide. It harmonizes data protection laws across the European Union and imposes stringent obligations on organizations processing personal data of European Union residents, regardless of their geographical location. The General Data Protection Regulation's definition of personal data is broad, including any information that can identify an individual either directly or indirectly, such as online identifiers and biometric data. It empowers data subjects with comprehensive rights to control their personal information, including rights to access, correction, deletion, and objection to processing.

One of the GDPR's significant innovations is the requirement for data protection by design and by default, mandating organizations to embed privacy measures in their systems and processes proactively. Enforcement under GDPR is robust, with supervisory authorities vested with powers to investigate and impose significant fines. Cross-border data transfers are tightly regulated to prevent personal data from being sent to countries lacking adequate data protection laws.

Other important global laws include the California Consumer Privacy Act (CCPA), which focuses on consumer rights in California by providing rights to know, delete, and opt out of the sale of personal data. Though less comprehensive than GDPR, CCPA has spurred legislative movements across the United States. Brazil's LGPD closely mirrors GDPR, emphasizing legal

bases for processing, data subject rights, and establishing a national data protection authority with enforcement powers.

Additional laws like Canada's PIPEDA, Japan's APPI, and South Korea's PIPA reflect regional approaches but increasingly align with GDPR principles. PIPEDA emphasizes consent and accountability in the private sector, APPI has been amended to facilitate cross-border data flow aligned with GDPR, and PIPA is known for its strict consent and data subject rights requirements.

There is a growing global trend towards convergence around GDPR standards, as countries recognize the benefits of harmonized data protection for international trade and digital innovation. Laws increasingly focus on organizational accountability, requiring the appointment of Data Protection Officers, conducting impact assessments, and integrating privacy by design. Control over cross-border data flows remains a key priority to balance privacy protection and economic interests. Moreover, sector-specific regulations complement these general laws to address the unique needs of the healthcare, finance, and telecommunications industries.

10. Implications for India's Digital Personal Data Protection Act

India's DPDP Act incorporates many global best practices inspired by GDPR but is tailored to India's unique socio-legal environment. For example, it grants broader exemptions to government and law enforcement agencies, reflecting national sovereignty concerns. The Act relies on a centralized Data Protection Board rather than multiple supervisory authorities, which may affect regulatory independence and effectiveness. Certain data subject rights, like the right to erasure, are less clearly articulated, suggesting areas where the law could evolve.

Benchmarking the DPDP Act against GDPR and other global laws highlights its strengths and shortcomings, offering policymakers valuable lessons for refining India's data protection framework to enhance individual privacy protections and ensure smoother international interoperability.

11. Key Differences and Challenges

While the DPDP Act aligns with GDPR and other laws on many fronts, differences remain. The scope of data subject rights under the DPDP Act is narrower, notably lacking the explicit

right to erasure found in the GDPR. The penalties under the DPDP Act are also less severe, potentially weakening compliance incentives. Government exemptions are broader in the DPDP Act, which may impact individual privacy protections. Regulatory frameworks differ, with GDPR establishing multiple independent supervisory bodies compared to India's single Data Protection Board. Additionally, GDPR's provisions on data protection by design are more detailed and operationalized than those in the DPDP Act.

12. Implications for Multinational Entities

Multinational companies operating in India face the challenge of complying with the DPDP Act alongside GDPR or other applicable laws, often resulting in complex and sometimes conflicting obligations. Variations in rights, consent requirements, enforcement mechanisms, and cross-border data transfer rules create compliance challenges and legal uncertainties. This underscores the importance of harmonizing the DPDP Act with global standards to reduce friction in international business and data exchanges.

13. Conclusion and Recommendations

The DPDP Act is a vital step forward for India's data protection regime, reflecting global best practices while addressing local priorities. To fully realize its potential, India should consider explicitly incorporating the right to erasure, enhancing penalties to deter non-compliance, ensuring greater independence of the regulatory authority, clarifying government exemptions, and developing robust frameworks for cross-border data transfers. These steps would improve individual privacy protections, foster international cooperation, and support India's digital economy in the global landscape.