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BALANCING PRIVACY AND INNOVATION: INDIA'S DISTINCT PATH UNDER THE DPDP ACT

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ABSTRACT

India's rapid digital transformation has made personal data an increasingly important component of its economic and technological development. The Digital Personal Data Protection Act 2023 represents a significant step towards establishing a comprehensive framework for the protection and responsible processing of digital personal data. While the Act seeks to strengthen individual privacy through rights, consent requirements and obligations upon Data Fiduciaries, it also recognises the need to facilitate legitimate data processing for economic, technological and governmental purposes. This creates an important regulatory question concerning how India can protect privacy without unnecessarily restricting innovation.

This article examines whether India's DPDP framework establishes an appropriate balance between individual privacy and the requirements of a rapidly developing digital economy. It analyses the regulatory tensions arising from consent, data-driven innovation, artificial intelligence, compliance costs, cross-border data flows and legitimate State interests. The article further compares India's framework with the European Union's General Data Protection Regulation and argues that India should not seek to replicate the European model in its entirety. Instead, India should develop a distinct, proportionate and risk-sensitive approach to data protection. The article proposes stronger implementation guidance, simplified compliance mechanisms for smaller enterprises, regulatory sandboxes for emerging technologies and effective consent-management infrastructure. Such an approach can strengthen privacy protection while preserving India's capacity for technological innovation and digital economic growth.

Keywords: Digital Personal Data Protection; Data Privacy; Data Protection; Innovation; Digital Economy; Data Fiduciary; Consent; Artificial Intelligence; GDPR; India.

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I. INTRODUCTION

India's digital transformation has expanded the collection and use of personal data across commerce, public services, fintech and artificial intelligence. Although this creates opportunities for growth and innovation, it also increases the risks of unauthorised collection, misuse and disclosure. Data protection is therefore essential both to individual privacy and to public trust in India's digital ecosystem.

The constitutional dimension of this issue was firmly established by the Supreme Court in *K S Puttaswamy v Union of India*, where a nine-judge Bench recognised privacy as a fundamental right protected by the Constitution.[1] The judgment provided the constitutional foundation for subsequent efforts to establish a comprehensive statutory framework governing personal-data processing. Following the recommendations of the Committee of Experts chaired by Justice BN Srikrishna and several iterations of proposed legislation, Parliament enacted the Digital Personal Data Protection Act 2023.[2]

The DPDP Act replaces India's fragmented approach with obligations for Data Fiduciaries, rights and duties for Data Principals, consent requirements, safeguards and enforcement. The DPDP Rules 2025 provide implementation details.[3] The Act and Rules adopt staggered commencement: although the definitions and specified institutional provisions are in force, most substantive processing obligations will commence eighteen months after publication of the relevant notifications.[4] The Government characterises the framework as citizen-centric and innovation-friendly, reflecting its effort to protect personal data without unduly restricting legitimate use.[5]

This balancing exercise presents the central legal problem. Strong privacy protections are necessary to protect individual autonomy, dignity and trust, but excessive or disproportionate compliance requirements may increase costs, discourage innovation and disproportionately burden start-ups and smaller enterprises. The challenge is particularly significant in emerging sectors such as artificial intelligence, fintech and digital services, where access to and

[1] *Justice K S Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.*
[2] Digital Personal Data Protection Act 2023 (Act 22 of 2023) ('DPDP Act'); Committee of Experts under the Chairmanship of Justice BN Srikrishna, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (Ministry of Electronics and Information Technology 2018) <https://www.meity.gov.in/data-protection-framework> accessed 15 September 2026.
[3] Digital Personal Data Protection Rules 2025, GSR 846(E), Gazette of India, Extraordinary, pt II, sec 3(i) (13 November 2025) ('DPDP Rules').
[4] Ministry of Electronics and Information Technology, Notification GSR 843(E), Gazette of India, Extraordinary, pt II, sec 3(i) (13 November 2025); DPDP Rules, r 1(2)–(4).
[5] Ministry of Electronics and Information Technology, 'DPDP Rules, 2025 Notified: A Citizen-Centric Framework for Privacy Protection and Responsible Data Use' (Press Information Bureau, 17 November 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2190655> accessed 15 September 2026.

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responsible use of data can be an important component of technological development.

This article argues that India should not reproduce the European Union's model wholesale. India's distinct framework can better balance privacy, regulatory flexibility, economic development and legitimate State interests if supported by proportionate risk-based compliance, clearer guidance and regulatory sandboxes. Properly implemented, privacy protection can support rather than impede India's digital growth.

II. INDIA'S DPDP FRAMEWORK: FROM PRIVACY PROTECTION TO RESPONSIBLE DATA USE

Before the DPDP Act, India primarily protected personal information through section 43A of the Information Technology Act 2000 and the 2011 Sensitive Personal Data Rules.[6] Constitutional recognition of privacy in *K S Puttaswamy* strengthened the case for comprehensive legislation.[7] The DPDP Act now establishes a framework centred on responsible processing rather than prohibiting personal-data use.

A. The Data Fiduciary–Data Principal Framework

The DPDP Act structures the relationship between individuals and organisations through the concepts of the 'Data Principal' and 'Data Fiduciary'. A Data Principal is the individual to whom personal data relates, while a Data Fiduciary is the person who determines the purpose and means of processing personal data.[8] This distinction is significant because responsibility is placed primarily upon the entity that determines why and how personal data is processed.

The Act establishes several obligations upon Data Fiduciaries, including requirements concerning lawful processing, accuracy of personal data in specified circumstances, security safeguards and notification of personal-data breaches.[9] It also imposes enhanced obligations upon entities designated as Significant Data Fiduciaries, having regard to factors including the volume and sensitivity of personal data processed and the potential impact upon the sovereignty and integrity of India, security of the State and public order.[10] This creates an important basis for a proportionate regulatory approach because entities presenting greater potential risks can be subjected to additional obligations.

[6] Information Technology Act 2000, s 43A; Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011, GSR 313(E), Gazette of India, Extraordinary, pt II, sec 3(i) (11 April 2011), rr 3–8.
[7] *Puttaswamy* (n 1), [652.3].
[8] DPDP Act, s 2(i)–(j).
[9] DPDP Act, ss 4 and 8(1), (3)–(6).
[10] DPDP Act, s 10(1)–(2).

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B. Consent and Lawful Processing

Consent remains an important basis for processing under the DPDP Act. Section 6 requires consent to be free, specific, informed, unconditional and unambiguous and to be expressed through clear affirmative action by the Data Principal.[11] The Act also permits certain forms of processing based upon 'certain legitimate uses', thereby recognising that consent cannot be the sole mechanism through which all socially or economically valuable data processing occurs.[12] This distinction is particularly important for innovation. Digital services frequently require data processing for purposes that may be legitimate even where obtaining repeated individual consent would be impractical. By recognising specified legitimate uses alongside consent, the Act seeks to preserve lawful data utilisation while retaining statutory boundaries around its exercise.

C. Rights, Duties and Accountability

The DPDP Act grants Data Principals rights relating to access to information about personal data, correction and erasure, grievance redressal and nomination.[13] At the same time, Data Principals are subject to statutory duties, including compliance with applicable law and refraining from impersonation or suppression of material information in specified circumstances.[14] The framework therefore does not conceptualise data protection solely as a one-sided set of rights against businesses; it also recognises responsibilities within the digital ecosystem.

D. Institutional Enforcement

The Act establishes the Data Protection Board of India as the principal statutory body responsible for enforcing its provisions.[15] The Board is empowered to inquire into breaches and impose monetary penalties, with the Act prescribing penalties that can extend to substantial amounts depending upon the nature of the contravention.[16] The DPDP Rules 2025 supplement this statutory structure by prescribing detailed requirements concerning matters such as notices, security safeguards, breach notifications and the functioning of the regulatory framework.[17]

The framework therefore combines individual rights, fiduciary duties, legitimate uses, risk-

[11] DPDP Act, s 6(1).
[12] DPDP Act, s 7.
[13] DPDP Act, ss 11–14.
[14] DPDP Act, s 15.
[15] DPDP Act, ss 18 and 27.
[16] DPDP Act, ss 27(1) and 33, and sch.
[17] DPDP Rules, rr 3, 6–7 and 17–21.

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sensitive obligations and enforcement to protect personal data while permitting legitimate processing.

III. BALANCING PRIVACY AND INNOVATION: THE REGULATORY TENSIONS

The DPDP Act seeks to protect individuals against misuse of personal data while permitting its lawful processing. The central difficulty, however, lies in determining whether the regulatory obligations imposed by the Act can achieve this balance without unnecessarily restricting India's digital economy. Privacy and innovation should not be treated as inherently competing objectives. Effective data protection can increase public confidence in digital services, while excessive or uncertain regulation can increase compliance costs and discourage legitimate experimentation. The challenge is therefore to distinguish between data processing that creates genuine risks to individuals and processing that generates legitimate technological and economic value.

A. Consent: Individual Autonomy versus Data-Driven Innovation

Consent is central to the DPDP framework because it gives individuals a measure of control over the use of their personal data. The requirement that consent be free, specific, informed, unconditional and unambiguous, and expressed through clear affirmative action, seeks to prevent organisations from relying upon passive or uninformed acceptance.[18] However, consent can become less meaningful where individuals are confronted with lengthy privacy notices, repeated requests and complex technological services that they may not fully understand.

This creates a particular difficulty for data-driven innovation. Artificial intelligence, personalised digital services and predictive technologies may require the processing of substantial datasets, while the precise future uses of data may not always be capable of being anticipated at the time it is collected. Requiring highly granular consent for every subsequent use could therefore increase friction and reduce the ability of businesses to develop new applications.

The solution should not be to weaken consent altogether. Instead, India should promote clearer and more comprehensible notices and standardised mechanisms through which individuals can understand and manage their choices. The DPDP framework's recognition of specified

[18] DPDP Act, s 6(1).

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legitimate uses alongside consent already indicates that not every socially valuable processing activity can depend exclusively upon individual authorisation.[19]

B. Data Minimisation and Artificial Intelligence

The tension becomes more pronounced in the context of artificial intelligence and machine learning. Data-driven systems frequently depend upon large datasets for training, testing and improving their performance. A rigid interpretation of data-protection principles could make experimentation involving datasets more difficult, particularly where future applications cannot be completely identified when the data is initially collected.

At the same time, the availability of large datasets cannot justify unlimited collection or indefinite retention. Excessive collection can increase the consequences of data breaches, enable intrusive profiling and reduce individual control. The Supreme Court's decision in *K S Puttaswamy* emphasised that restrictions upon privacy must satisfy requirements of legality, legitimate State aim, proportionality and procedural safeguards.[20] Although the judgment primarily addressed constitutional limitations upon State action, its broader emphasis on proportionality provides an important conceptual basis for balancing competing interests in the digital environment.

India should therefore avoid both extremes. Data minimisation should remain an important safeguard, but its application should be sufficiently flexible to permit legitimate research, innovation and technological development. The relevant question should be whether the processing is proportionate to a legitimate purpose and accompanied by adequate safeguards, rather than whether every future use of data was capable of being predicted at the moment of collection.

C. Compliance Costs and India's Start-Up Ecosystem

Another concern is the economic cost of compliance. Large technology companies may possess dedicated legal, cybersecurity and privacy teams, whereas start-ups and smaller Indian enterprises may have limited financial and technical resources. If compliance obligations become excessively complex, the costs may fall disproportionately upon smaller businesses.

This may entrench established firms able to absorb compliance costs while impeding new entrants; compliance should therefore be proportionate.

The DPDP Act's treatment of Significant Data Fiduciaries provides a useful starting point.

[19] DPDP Act, s 7.
[20] *Puttaswamy* (n 1).

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Enhanced obligations are linked to factors such as the volume and sensitivity of data processed and the potential impact upon matters including sovereignty, security and public order.[21] A similar risk-sensitive approach could inform implementation more broadly, ensuring that compliance requirements correspond to the actual risks created by an organisation rather than merely its existence as a Data Fiduciary.

Such an approach would particularly benefit India's start-up ecosystem. Smaller enterprises should be encouraged to adopt privacy-preserving practices without being subjected to compliance structures designed primarily for very large-scale data processors.

D. Privacy and Legitimate State Interests

The privacy–innovation balance also extends beyond private businesses. The Indian State is a major processor of personal data because of the scale of public welfare programmes, taxation, digital identity, public health and administrative services. A data-protection framework that makes legitimate governmental processing excessively difficult could impair the delivery of public services.

The DPDP Act consequently recognises specified legitimate uses and provides exemptions in particular circumstances.[22] These provisions reflect the reality that privacy must coexist with legitimate State functions, national security and the provision of public services. Nevertheless, governmental access to personal data must remain subject to legality and appropriate safeguards. Constitutional privacy jurisprudence requires State interference with privacy to be authorised by law, necessary for a legitimate aim, proportionate and accompanied by procedural guarantees against abuse.[23]

The appropriate approach is therefore not to treat governmental data processing as categorically superior to individual privacy, but to distinguish legitimate public purposes from unnecessary or disproportionate data use. Clear internal safeguards, access controls and accountability mechanisms remain essential to maintaining public trust.

E. Cross-Border Data Flows and the Digital Economy

The regulation of cross-border data transfers presents another important policy choice. India's digital economy is closely connected to global cloud infrastructure, information-technology services, financial technology and international business operations. Excessive localisation

[21] DPDP Act, s 10(1)–(2).
[22] DPDP Act, ss 7 and 17.
[23] *Puttaswamy* (n 1), .

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requirements could increase infrastructure costs and reduce India's integration with global digital markets.

The DPDP Act adopts a comparatively flexible approach by empowering the Central Government to restrict the transfer of personal data to notified countries or territories rather than imposing universal localisation requirements.[24] This approach can facilitate international data flows while retaining the ability of the State to intervene where strategic or security concerns arise.

Such flexibility is particularly relevant to India's ambition to remain a major destination for digital investment and IT-enabled services. The challenge is to ensure that flexibility does not become uncertainty. Businesses require clarity concerning where data may be transferred and what safeguards are expected. Predictable rules can therefore serve both privacy and economic interests.

F. Penalties, Enforcement and Regulatory Certainty

Finally, the effectiveness of the DPDP framework will depend substantially upon the manner in which it is enforced. Significant monetary penalties can create incentives for organisations to adopt stronger privacy and security practices.[25] However, excessively uncertain enforcement can itself become a barrier to innovation because businesses may be unable to determine the legal consequences of legitimate technological experimentation.

The objective should therefore be certainty rather than merely severity. Organisations should be able to understand what constitutes non-compliance, what safeguards are considered adequate and how the regulator will assess the seriousness of a breach. A predictable enforcement environment would encourage businesses to invest in compliance before harm occurs rather than respond only after regulatory action.

Clear rules for responsible data use can build trust while preventing compliance from obstructing technological development. Implementation must preserve this balance.

IV. COMPARATIVE LESSONS AND INDIA'S DISTINCT APPROACH

The privacy–innovation tension identified above is not unique to India. Different jurisdictions have attempted to reconcile individual control over personal data with the economic and technological benefits of data processing. The European Union provides the most developed example through the General Data Protection Regulation (GDPR), which places strong

[24] DPDP Act, s 16(1).
[25] DPDP Act, ss 27(1) and 33, and sch.

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emphasis on individual rights, accountability and institutional oversight. India's DPDP framework adopts several comparable principles but deliberately follows a more streamlined regulatory structure. The comparison is therefore useful not to determine which system is universally superior, but to examine whether India's distinctive approach is better suited to its digital and developmental context.

A. European Union: A Rights-Centred Model

The GDPR adopts a comprehensive approach to the protection of personal data. It establishes principles including lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation and accountability.[26] Processing must generally be based upon one of the lawful bases specified under article 6, which include consent, contractual necessity, legal obligations and legitimate interests.[27] The framework therefore recognises that consent is important but does not make it the exclusive basis for legitimate data processing.

The GDPR also provides extensive rights to individuals, including rights of access, rectification, erasure, restriction of processing and data portability.[28] These rights are complemented by substantial obligations upon controllers and processors, including appropriate technical and organisational measures, data protection impact assessments in specified circumstances and, where applicable, the appointment of data protection officers.[29]

The European framework consequently adopts a relatively intensive compliance model. Supervisory authorities possess significant enforcement powers, and infringements of important provisions can attract administrative fines of up to €20 million or, in the case of an undertaking, up to four per cent of total worldwide annual turnover of the preceding financial year, whichever is higher.[30] This approach places substantial economic consequences upon organisations that fail to comply.

B. India's Divergence from the GDPR

The DPDP Act adopts several principles that are familiar from the GDPR but does not reproduce its regulatory architecture. India's framework is comparatively streamlined in its treatment of individual rights, obligations and enforcement. Rather than establishing multiple

[26] 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 OJ L119/1 ('GDPR'), art 5(1).
[27] GDPR, art 6(1).
[28] GDPR, arts 15–20.
[29] GDPR, arts 24–25, 32, 35 and 37–39.
[30] GDPR, art 83(5).

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independent sectoral supervisory authorities, it creates a central Data Protection Board of India as the principal statutory enforcement body.[31]

India has also adopted a more limited approach to the legal bases for processing. Consent is central to the framework, but section 7 identifies specified legitimate uses in which processing may occur without relying upon consent.[32] This reflects an attempt to recognise practical circumstances in which obtaining consent for every instance of processing may be inefficient or unnecessary.

The treatment of cross-border data transfers further demonstrates this distinction. Rather than imposing a general requirement that personal data remain within India, section 16 permits the Central Government to restrict transfers to notified countries or territories.[33] This provides greater flexibility for international data flows and is potentially significant for India's information-technology, cloud-computing and digital-services sectors.

India has therefore not simply adopted a weaker version of the GDPR. It has made different regulatory choices based upon its own policy objectives, institutional capacity and economic circumstances.

C. Why India Requires a Distinct Model

The Indian digital economy operates on a scale and under conditions substantially different from those in which the GDPR was developed. India combines a rapidly expanding private technology sector with extensive digital public infrastructure and large-scale governmental data processing. Digital payments, online public services, fintech, e-commerce and emerging artificial-intelligence applications increasingly depend upon the ability to process data efficiently.

A regulatory framework imposing extensive compliance obligations upon every entity irrespective of its size or risk could therefore have unintended consequences. Large technology companies may be able to absorb substantial compliance costs, whereas start-ups and smaller Indian businesses may face greater difficulty doing so. Regulation that is formally neutral may consequently produce economically unequal effects.

The Indian framework's emphasis upon Data Fiduciaries and its enhanced obligations for Significant Data Fiduciaries provides a foundation for a more proportionate model.[34] Rather than treating every organisation as presenting identical risks, India can progressively increase

[31] DPDP Act, ss 18 and 27.
[32] DPDP Act, s 7.
[33] DPDP Act, s 16(1).
[34] DPDP Act, s 10(1)–(2).

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regulatory obligations according to the volume, sensitivity and potential consequences of the data processing involved.

D. Lessons for India's Regulatory Development

The appropriate lesson from the GDPR is therefore not wholesale transplantation but selective adaptation. India should retain strong principles of transparency, meaningful consent, security and accountability while avoiding unnecessary procedural complexity. The European experience demonstrates that effective enforcement and individual rights are essential to building confidence in digital services. At the same time, India's own regulatory choices demonstrate that privacy protection can be pursued through a comparatively flexible framework.

India should consequently seek to develop a risk-sensitive and innovation-oriented model. Greater obligations should attach to entities whose processing creates greater risks, while smaller and lower-risk organisations should be provided with proportionate compliance pathways. Such an approach would preserve the protective purpose of data-protection law while reducing the possibility that compliance costs become a barrier to entry and technological experimentation.

India's distinct path should therefore neither be characterised as a rejection of global privacy standards nor as an attempt to replicate them. The more sustainable approach is to develop a regulatory framework that draws upon international experience while remaining responsive to India's constitutional commitments, economic priorities and rapidly evolving digital ecosystem.

V. TOWARDS A PRO-INNOVATION DATA PROTECTION REGIME FOR INDIA

India's objective should not be to choose between strong privacy protection and technological innovation. The more appropriate approach is to create a regulatory environment in which responsible data use becomes a foundation for digital growth. The DPDP Act already provides the basic statutory architecture for achieving this objective. The next stage should therefore focus on proportionate implementation, regulatory clarity and mechanisms that enable businesses to innovate while maintaining meaningful safeguards for individuals.

First, India should adopt a risk-based approach to data-protection compliance. Not every Data Fiduciary presents the same level of risk. The regulatory burden should therefore reflect factors such as the volume and sensitivity of personal data processed, the nature and purpose of

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processing and the potential consequences of a breach. The enhanced obligations applicable to Significant Data Fiduciaries provide an existing foundation for this approach.[35] Extending this principle through detailed implementation guidance could prevent smaller businesses from being subjected to compliance requirements disproportionate to the risks they create.

Secondly, India should develop standardised compliance mechanisms for start-ups and small enterprises. The absence of substantial legal and technical resources should not become a reason for businesses to disregard privacy, but neither should compliance complexity become a barrier to entry. The Data Protection Board and the Central Government should therefore provide model privacy notices, standard contractual clauses, breach-response templates and practical compliance guidance for smaller entities. Such measures would allow businesses to meet their statutory obligations without having to develop costly compliance systems independently.

Thirdly, India should encourage regulatory sandboxes for emerging data-driven technologies, particularly artificial intelligence, fintech and health technology. Controlled testing environments would allow innovative products to be developed under regulatory supervision while potential privacy risks are identified at an early stage. This would be preferable to either unrestricted experimentation or blanket restrictions on emerging technologies. A sandbox model could also enable regulators to develop practical standards in response to technologies whose risks cannot yet be fully anticipated.

Fourthly, India's consent architecture should be strengthened through interoperable and user-friendly Consent Managers. The DPDP Act already provides for consent management mechanisms through which Data Principals can give, manage, review and withdraw consent.[36] Effective implementation should make these mechanisms simple enough to give individuals meaningful control without imposing unnecessary transaction costs upon businesses. A standardised consent infrastructure could become an important component of India's wider digital public infrastructure.

Finally, enforcement should prioritise regulatory certainty and proportionality. The DPDP Act permits substantial monetary penalties for serious breaches, which can create meaningful incentives for organisations to maintain appropriate safeguards.[37] However, penalties should be accompanied by clear regulatory guidance concerning compliance expectations and factors relevant to enforcement. Organisations that demonstrate good-faith compliance with prescribed

[35] DPDP Act, s 10(1)–(2).
[36] DPDP Act, s 6(7)–(9).
[37]DPDP Act, s 33 and sch.

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standards should receive appropriate consideration, while deliberate misconduct, concealment of breaches and repeated non-compliance should attract stronger consequences.

These reforms would allow India to pursue a distinctive model of data protection that is neither excessively permissive nor unnecessarily restrictive. A proportionate compliance structure would reduce barriers for emerging businesses, while effective enforcement and meaningful individual control would strengthen public confidence in digital services. India's regulatory objective should therefore be to make privacy a competitive advantage rather than a compliance burden. By combining protection with regulatory flexibility, India can create the conditions necessary for responsible innovation and strengthen its position as a major global digital economy.

VI. CONCLUSION

India's transition towards a data-driven economy has made the protection of personal data an increasingly important legal and policy concern. The DPDP Act 2023 represents a significant development in India's data-protection framework by establishing statutory rights for individuals, obligations for Data Fiduciaries and an institutional mechanism for enforcement. At the same time, the framework recognises that personal data must continue to be processed for legitimate economic, technological and governmental purposes.

The central challenge is therefore not whether India should prioritise privacy or innovation, but how both objectives can be pursued simultaneously. A regulatory framework that provides strong privacy safeguards can strengthen public trust in digital services, while excessive compliance burdens or regulatory uncertainty may discourage investment, innovation and market entry. India's approach should consequently avoid treating the European GDPR as a model that must be reproduced in its entirety.

India's distinct path should instead be based upon proportionality, risk-sensitive regulation and regulatory certainty. Enhanced obligations should apply where data processing creates greater risks, while smaller and lower-risk entities should have practical compliance pathways. Regulatory sandboxes, standardised compliance mechanisms and effective Consent Managers can further facilitate responsible technological development.

The success of the DPDP framework will ultimately depend upon its implementation. If India can combine meaningful privacy protection with predictable and innovation-friendly regulation, data protection need not become an obstacle to digital growth. It can instead become a foundation of trust, technological development and India's continued emergence as a leading global digital economy.