

THE PRIVACY (PROTECTION) BILL, 2013

[Long Title]

[Preamble]

CHAPTER I PRELIMINARY

1. Short title, extent and commencement. – (1) This Act may be called the Privacy (Protection) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. – In this Act and in any rules made thereunder, unless the context otherwise requires, –

(a) “anonymise” means, in relation to personal data, the removal of all data that may, whether directly or indirectly in conjunction with any other data, be used to identify the data subject;

(b) “appropriate government” means, in relation the Central Government or a Union Territory Administration, the Central Government; in relation a State Government, that State Government; and, in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly –

(i) by the Central Government or a Union Territory Administration, the Central Government;

(ii) by a State Government, that State Government;

(c) “authorised officer” means an officer, not below the rank of a Gazetted Officer, of an All India Service or a Central Civil Service, as the case may be, who is empowered by the Central Government, by notification in the Official Gazette, to intercept a communication of another person or carry out surveillance of another person under this Act;

(d) “Authority” means the Authority constituted under sub-section (1) of section 17;

(e) “biometric data” means any data relating to the physical, physiological or behavioural characteristics of a person which allow their unique identification including, but not restricted to, facial images, finger prints, hand prints, foot prints, iris recognition, hand writing, typing dynamics, gait analysis and speech recognition;

(f) “Chairperson” and “Member” mean the Chairperson and Member appointed under sub-section (3) of section 17;

(g) “collect”, with its grammatical variations and cognate expressions, means, in relation to personal data, any action or activity that results in a data controller obtaining, or coming into the possession or control of, any personal data of a data subject;

(h) “communication” means a word or words, spoken, written or indicated, in any form, manner or language, encrypted or unencrypted, meaningful or otherwise, and includes visual representations of words, ideas, symbols and images, whether transmitted or not transmitted and, if transmitted, irrespective of the medium of transmission;

(i) “competent organisation” means an organisation or public authority listed in the Schedule;

(j) “data controller” means a person who, either alone or jointly or in concert with other persons, determines the purposes for which and the manner in which any personal data is processed;

(k) “data processor” means any person who processes any personal data on behalf of a data controller;

(l) “data subject” means a person who is the subject of personal data;

(m) “deoxyribonucleic acid data” means all data, of whatever type, concerning the characteristics of a person that are inherited or acquired during early prenatal development;

(n) “destroy”, with its grammatical variations and cognate expressions, means, in relation to personal data, to cease the existence of, by deletion, erasure or otherwise, any personal data;

(o) “disclose”, with its grammatical variations and cognate expressions, means, in relation to personal data, any action or activity that results in a person who is not the data subject coming into the possession or control of that personal data;

(p) “intelligence organisation” means an intelligence organisation under the Intelligence Organisations (Restriction of Rights) Act, 1985 (58 of 1985);

(q) “interception” or “intercept” means any activity intended to capture, read, listen to or understand the communication of a person;

(r) “personal data” means any data which relates to a natural person if that person can, whether directly or indirectly in conjunction with any other data, be identified from it and includes sensitive personal data;

(s) “prescribed” means prescribed by rules made under this Act;

(t) “process”, with its grammatical variations and cognate expressions, means, in relation to personal data, any action or operation which is performed upon personal data, whether or not by automated means including, but not restricted to, organisation, structuring, adaptation, modification, retrieval, consultation, use, alignment or destruction;

(u) “receive”, with its grammatical variations and cognate expressions, means, in relation to personal data, to come into the possession or control of any personal data;

(v) “sensitive personal data” means personal data as to the data subject’s –

(i) biometric data;

(ii) deoxyribonucleic acid data;

(iii) sexual preferences and practices;

(iv) medical history and health;

(v) political affiliation;

(vi) commission, or alleged commission, of any offence;

(vii) ethnicity, religion, race or caste; and

(viii) financial and credit information.

(w) “store”, with its grammatical variations and cognate expressions, means, in relation to personal data, to retain, in any form or manner and for any purpose or reason, any personal data;

(x) “surveillance” means any activity intended to watch, monitor, record or collect, or to enhance the ability to watch, record or collect, any images, signals, data, movement, behaviour or actions, of a person, a group of persons, a place or an object, for the purpose of obtaining information of a person; and all other expressions used herein shall have the meanings ascribed to them under the General Clauses Act, 1897 (10 of 1897) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be.

CHAPTER II REGULATION OF PERSONAL DATA

3. Regulation of personal data. – Notwithstanding anything contained in any other law for time being in force, no person shall collect, store, process, disclose or otherwise handle any personal data of another person except in accordance with the provisions of this Act and any rules made thereunder.

4. Exemption. – Nothing in this Act shall apply to the collection, storage, processing or disclosure of personal data for personal or domestic use.

CHAPTER III PROTECTION OF PERSONAL DATA

5. Regulation of collection of personal data. – (1) No personal data of a data subject shall be collected except in conformity with section 6 and section 7.

(2) No personal data of a data subject may be collected under this Act unless it is necessary for the achievement of a purpose of the person seeking its collection.

(3) Subject to section 6 and section 7, no personal data may be collected under this Act prior to the data subject being given notice, in such and form and manner as may be prescribed, of the collection.

6. Collection of personal data with prior informed consent. – (1) Subject to sub-section (2), a person seeking to collect personal data under this section shall, prior to its collection, obtain the consent of the data subject.

(2) Prior to a collection of personal data under this section, the person seeking its collection shall inform the data subject of the following details in respect of his personal data, namely: –

- (a) when it will be collected;
- (b) its content and nature;
- (c) the purpose of its collection;
- (d) the manner in which it may be accessed, checked and modified;
- (e) the security practices, privacy policies and other policies, if any, to which it will be subject;

- (f) the conditions and manner of its disclosure; and
- (g) the procedure for recourse in case of any grievance in relation to it.

(3) Consent to the collection of personal data under this section may be obtained from the data subject in any manner or medium but shall not be obtained as a result of a threat, duress or coercion:

Provided that the data subject may, at any time after his consent to the collection of personal data has been obtained, withdraw the consent for any reason whatsoever and all personal data collected following the original grant of consent shall be destroyed forthwith:

Provided that the person who collected the personal data in respect of which consent is subsequently withdrawn may, if the personal data is necessary for the delivery of any good or the provision of any service, not deliver that good or deny that service to the data subject who withdrew his grant of consent.

7. Collection of personal data without prior consent. – Personal data may be collected without the prior consent of the data subject if it is –

- (a) necessary for the provision of an emergency medical service to the data subject;
- (b) required for the establishment of the identity of the data subject and the collection is authorised by a law in this regard;
- (c) necessary to prevent a reasonable threat to national security, defence or public order; or
- (d) necessary to prevent, investigate or prosecute a cognisable offence.

8. Regulation of storage of personal data. – (1) No person shall store any personal data for a period longer than is necessary to achieve the purpose for which it was collected or received, or, if that purpose is achieved or ceases to exist for any reason, for any period following such achievement or cessation.

(2) Save as provided in sub-section (3), any personal data collected or received in relation to the achievement of a purpose shall, if that purpose is achieved or ceases to exist for any reason, be destroyed forthwith.

(3) Notwithstanding anything contained in this section, any personal data may be stored for a period longer than is necessary to achieve the purpose for which it was collected or received, or, if that purpose has been achieved or ceases to exist for any reason, for any period following such achievement or cessation, if –

- (a) the data subject grants his consent to such storage prior to the purpose for which it was collected or received being achieved or ceasing to exist;
- (b) it is adduced for an evidentiary purpose in a legal proceeding; or
- (c) it is required to be stored under the provisions of an Act of Parliament:

Provided that only that amount of personal data that is necessary to achieve the purpose of storage under this sub-section shall be stored and any personal data that is not required to be stored for such purpose shall be destroyed forthwith:

Provided further that any personal data stored under this sub-section shall, to the extent possible, be anonymised.

9. Regulation of processing of personal data. – (1) No person shall process any personal data that is not necessary for the achievement of the purpose for which it was collected or received.

(2) Save as provided in sub-section (3), no personal data shall be processed for any purpose other than the purpose for which it was collected or received.

(3) Notwithstanding anything contained in this section, any personal data may be processed for a purpose other than the purpose for which it was collected or received if –

- (a) the data subject grants his consent to the processing and only that amount of personal data that is necessary to achieve the other purpose is processed;
- (b) it is necessary to perform a contractual duty to the data subject;
- (c) it is necessary to prevent a reasonable threat to national security, defence or public order; or
- (d) it is necessary to prevent, investigate or prosecute a cognisable offence.

10. Transfer of personal data for processing. – (1) Subject to the provisions of this section, personal data that has been collected in conformity with this Act may be transferred by a data controller to a data processor, whether located in India or otherwise, if the transfer is pursuant to an agreement that explicitly binds the data processor to same or stronger measures in respect of the storage, processing, destruction, disclosure and other handling of the personal data as are contained in this Act.

(2) No data processor shall process any personal data transferred under this section except to achieve the purpose for which it was collected.

(3) A data controller that transfers personal data under this section shall remain liable to the data subject for the actions of the data processor.

11. Security of personal data and duty of confidentiality. – (1) No person shall collect, receive, store, process or otherwise handle any personal data without implementing measures, including, but not restricted to, technological, physical and administrative measures, adequate to secure its confidentiality, secrecy, integrity and safety, including from theft, loss, damage or destruction.

(2) Data controllers and data processors shall be subject to a duty of confidentiality and secrecy in respect of personal data in their possession or control.

(3) Without prejudice to the provisions of this section, a data controller or data processor shall, if the confidentiality, secrecy, integrity or safety of personal data in its possession or control is violated by theft, loss, damage or destruction, or as a result of any disclosure contrary to the provisions of this Act, or for any other reason whatsoever, notify the data subject, in such form and manner as may be prescribed, forthwith.

12. Regulation of disclosure of personal data. – Subject to section 10, section 13 and section 14, no person shall disclose, or otherwise cause any other person to receive, the content or nature of any personal data that has been collected in conformity with this Act.

13. Disclosure of personal data with prior informed consent. – (1) Subject to sub-section (2), a data controller or data processor seeking to disclose personal data under this section shall, prior to its disclosure, obtain the consent of the data subject.

(2) Prior to a disclosure of personal data under this section, the data controller or data processor, as the case may be, seeking to disclose the personal data, shall inform the data subject of the following details in respect of his personal data, namely: –

- (a) when it will be disclosed;
 - (b) the purpose of its disclosure;
 - (c) the security practices, privacy policies and other policies, if any, that will protect it;
- and
- (d) the procedure for recourse in case of any grievance in relation to it.

14. Disclosure of personal data without prior consent. – (1) Subject to sub-section (2), personal data may be disclosed without the prior consent of the data subject if it is necessary –

- (a) to prevent a reasonable threat to national security, defence or public order; or
- (b) to prevent, investigate or prosecute a cognisable offence.

(2) No data controller or data processor shall disclose any personal data unless it has received an order in writing from a police officer not below the rank of [___] in such form and manner as may be prescribed:

Provided that an order for the disclosure of personal data made under this sub-section shall not require the disclosure of any personal data that is not necessary to achieve the purpose for which the disclosure is sought:

Provided further that the data subject shall be notified, in such form and manner as may be prescribed, of the disclosure of his personal data, including details of its content and nature, and the identity of the police officer who ordered its disclosure, forthwith.

15. Quality and accuracy of personal data. – (1) Each data controller and data processor shall, to the extent possible, ensure that the personal data in its possession or control, is accurate and, where necessary, is kept up to date.

(2) No data controller or data processor shall deny a data subject whose personal data is in its possession or control the opportunity to review his personal data and, where necessary, rectify anything that is inaccurate or not up to date.

(3) A data subject may, if he finds personal data in the possession or control of a data controller or data processor that is not necessary to achieve the purpose for which it was collected, received or stored, demand its destruction, and the data controller shall destroy, or cause the destruction of, the personal data forthwith.

16. Special provisions for sensitive personal data. – Notwithstanding anything contained in this Act and the provisions of any other law for the time being in force –

(a) no person shall store sensitive personal data for a period longer than is necessary to achieve the purpose for which it was collected or received, or, if that purpose has been achieved or ceases to exist for any reason, for any period following such achievement or cessation;

(b) no person shall process sensitive personal data for a purpose other than the purpose for which it was collected or received;

(c) no person shall disclose sensitive personal data to another person, or otherwise cause any other person to come into the possession or control of, the content or nature of any sensitive personal data, including any other details in respect thereof.

CHAPTER IV DATA PROTECTION AUTHORITY OF INDIA

17. Establishment and incorporation of Authority. – (1) With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, an Authority to be called the Data Protection Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not more than two whole time members and not more than two part-time members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi.

18. Qualification for appointment of Chairperson and other members. – The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of and professional experience in, privacy law, information technology, telecommunication, civil society, or law:

Provided that a person who is, or has been, in the service of an appropriate Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary or Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.

19. Term of office, conditions of service, etc., of Chairperson and other members. – (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself

that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson and other members shall hold office for a term not exceeding three years, as the Central Government may notify in this behalf, from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

(3) An employee of an appropriate Government, on his selection as the Chairperson or whole-time member, shall retire from the service of the appropriate Government before joining as the Chairperson or a whole-time member.

(4) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and whole-time members shall be such as may be prescribed.

(5) The salary, allowances and other conditions of service of the Chairperson or of a member shall not be varied to his disadvantage after appointment.

(6) The part-time members shall receive such allowances as may be prescribed.

(7) Notwithstanding anything contained in sub-section (2), a member may-

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 21.

(8) The Chairperson or any whole-time member ceasing to hold office as such, shall –

(a) be ineligible for further employment under the Central Government or any State Government; or

(b) not accept any commercial employment, for a period of one year from the date he ceases to hold such office:

Provided that nothing contained in this sub-section shall apply to the Chairperson or a member who has ceased to hold office under sub-section (3) and such Chairperson or member shall be eligible for re-appointment in the Authority or appointment in the Appellate Tribunal.

(9) A vacancy caused to the office of the Chairperson or any other member shall be filled up within a period of three months from the date on which such vacancy occurs.

Explanation. – For the purposes of this section, "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in any field and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.

20. Powers of Chairperson and Vice-Chairman. – (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

21. Removal and suspension of member from office in certain circumstances. – (1) The Central Government may remove from office any member, who, –

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as a member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) No such member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

22. Meetings. – (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meeting) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

23. Vacancies, etc., not to invalidate proceedings of Authority. – No act or proceeding of the Authority shall be invalid merely by reason of –

- (a) any vacancy in, or any defect in the constitution of, the Authority, or
- (b) any defect in the appointment of a person acting as a member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

24. Officers and other employees of Authority. – (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The salary and allowance payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

CHAPTER V POWERS AND FUNCTIONS OF THE AUTHORITY

25. Functions of Authority. – (1) The Chairperson may inquire, suo moto or on a petition presented to it by any person or by someone acting on his behalf, in respect of any matter connected with the collection, storage, processing, disclosure or other handling of any personal data and give such directions or pass such orders as are necessary for reasons to be recorded in writing.

(2) Without prejudice to the generality of the foregoing provision, the Authority shall perform all or any of the following functions, namely –

(a) review the safeguards provided by or under this Act and other law for the time being in force for the protection of personal data and recommend measures for their effective implementation;

(b) review any measures taken by any entity for the protection of personal data and take such further action as it deems fit;

(c) review any action, policy or procedure of any entity to ensure compliance with this Act and any rules made hereunder;

(d) formulate, in consultation with experts, norms for the effective protection of personal data;

(e) promote awareness and knowledge of personal data protection through any means necessary;

(f) undertake and promote research in the field of protection of personal data;

(g) encourage the efforts of non-governmental organisations and institutions working in the field of personal data protection;

(h) publish periodic reports concerning the incidence of collection, processing, storage, disclosure and other handling of personal data;

(i) such other functions as it may consider necessary for the protection of personal data.

(3) Notwithstanding anything contained in the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Authority may make recommendations, either suo motu or on a request from an interested person, on the following matters, namely –

(i) terms and conditions of any licence to a data controller that pertain to protection of personal data;

(ii) recommend [to the Telecom Regulatory Authority of India] the revocation of a licence for non-compliance of those terms and conditions of any licence that pertain to protection of personal data;

(iii) technological improvement in the protection of personal data by the data controllers;

(iv) type of equipment to be used by the data controllers to protect personal data;

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

26. Powers of Authority to call for information, conduct investigations, etc. – (1) Where the Authority considers it expedient so to do, it may, by order in writing, –

- (a) call upon any data controller at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or
- (b) appoint one or more persons to make an inquiry in relation to the affairs of any data controller; and
- (c) direct any of its officers or employees to inspect the books of account or other documents of any data controller.

(2) Where any inquiry in relation to the affairs of a data controller has been undertaken under sub-section (1), –

- (a) every officer of the Government Department, if such data controller is a department of the Government;
- (b) every director, manager, secretary or other officer, if such data controller is a company; or
- (c) every partner, manager, secretary or other officer, if such data controller is a firm; or
- (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (b) and (c),

shall be found to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry, and also to furnish to the Authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.

(3) Every data controller shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to data controller as it may consider necessary for proper functioning by data controller.

27. Power of Authority to issue directions. – The Authority may, for the discharge of its functions under section 25, issue such directions from time to time to the data controllers, as it may consider necessary.

CHAPTER VI APPELLATE TRIBUNAL

28. Establishment of Appellate Tribunal. – The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Data Protection Appellate Tribunal to –

- (a) adjudicate any dispute –

- (i) between a data subject and a data controller or data processor;
- (ii) between two or more data controllers or data processors;
- (iii) between a data controller and a person or group of persons:

Provided that nothing in this clause shall apply in respect of matters relating to –

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);

(B) the complaint of an individual consumer maintainable before a consumer Disputes Redressal forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal commission established under Section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

29. Application for settlement of disputes and appeals to Appellate Tribunal. – (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of Section 28.

(2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period.

(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The application made under sub-section (1) or the appeal preferred under sub section (2) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be:

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

30. Composition of Appellate Tribunal. – (1) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by notification, by the Central Government.

(2) The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) Subject to the provisions of this Act –

(a) the jurisdiction of the Appellate Tribunal may be exercised by the benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.

31. Qualifications for appointment of Chairperson and Members. – A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he –

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less

than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

32. Term of office. – The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding three years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained, –

- (a) in the case of Chairperson, the age of seventy years;
- (b) in the case of any other Member, the age of sixty five years.

33. Terms and conditions of service. – The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

34. Vacancies. – If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

35. Removal and resignation. – (1) The Central Government may remove from office, the Chairperson or any Member of the Appellate Tribunal, who-

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as the Chairperson or a member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.

(3) The Central Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

36. Staff of Appellate Tribunal. – (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salaries and allowances and other conditions of service of such officers and employees of the Appellate Tribunal shall be such as may be prescribed.

37. Distribution of business among Benches. – Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

38. Power of Chairperson to transfer cases. – On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal to any other Bench.

39. Decision to be by majority. – If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and made a reference to the Chairperson of the Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

40. Members, etc, to be public servants. – The Chairperson, Members and other Officers and employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

41. Civil court not to have jurisdiction. – No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

42. Procedures and Powers of Appellate Tribunal. – (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record for document, from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it, ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and
- (i) any other matter which may be prescribed.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

43. Right to legal representation. – Any party to a proceeding before the Appellate Authority shall be entitled, as of right, to be represented by a legal practitioner.

44. Appeal to Supreme Court. – (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

45. Orders passed by Appellate Tribunal to be executable as a decree. – (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of a civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

46. Penalty for wilful failure to comply with orders of Appellate Tribunal. – If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to [one lakh rupees] and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.

CHAPTER VII REGULATION BY DATA CONTROLLERS AND DATA PROCESSORS

47. Co-regulation by Data Controllers and the Authority. – (1) The Authority may, in consultation with data controllers, formulate codes of conduct for the collection, storage, processing, disclosure or other handling of any personal data.

(2) No code of conduct formulated under sub-section (1) shall be binding on a data controller unless –

- (a) it has received the written approval of the Authority; and
- (b) it has received the approval, by signature of a director or authorised signatory, of the data controller.

48. Co-regulation without prejudice to other remedies. – Any code of conduct formulated under this chapter shall be without prejudice to the jurisdiction, powers and functions of the Authority.

49. Self-regulation by data controllers. – (1) The Authority may encourage data controllers and data processors to formulate professional codes of conduct to establish rules for the collection, storage, processing, disclosure or other handling of any personal data.

(2) No code of conduct formulated under sub-section (1) shall be effective unless it is registered, in such form and manner as may be prescribed, by the Authority.

(3) The Authority shall, for reasons to be recorded in writing, not register any code of conduct formulated under sub-section (1) that is not adequate to protect personal data.

CHAPTER IV SURVEILLANCE AND INTERCEPTION OF COMMUNICATIONS

50. Surveillance and interception of communication to be warranted. – Notwithstanding anything contained in any other law for the time being in force, no –

- (i) surveillance shall be carried out, and no person shall order any surveillance of another person;
- (ii) communication shall be intercepted, and no person shall order the interception of any communication of another person;

save in execution of a warrant issued under section 53, or an order made under section 55, of this Act.

51. Application for issuance of warrant. – (1) Any authorised officer seeking to carry out any surveillance or intercept any communication of another person shall prefer an application for issuance of a warrant to the Magistrate.

(2) The application for issuance of the warrant shall be in the form and manner prescribed in the Schedule and shall state the purpose for which the warrant is sought.

(3) The application for issuance of the warrant shall be accompanied by –

(i) a report by the authorised officer of the suspicious conduct of the person in respect of whom the warrant is sought, and all supporting material thereof;

(ii) an affidavit of the authorised officer, or a declaration under his hand and seal, that the contents of the report and application are true to the best of his knowledge, information and belief, and that the warrant shall be executed only for the purpose stated in the application and shall not be misused or abused in any manner including to interfere in the privacy of any person;

(iii) details of all warrants previously issued in respect of the person in respect of whom the warrant is sought, if any.

52. Considerations prior to the issuance of warrant. – (1) No warrant shall issue unless the requirements of section 51 and this section have been met.

(2) The Magistrate shall consider the application made under section 51 and shall satisfy himself that the information contained therein sets out –

(i) a reasonable threat to national security, defence or public order; or

(ii) a cognisable offence, the prevention, investigation or prosecution of which is necessary in the public interest.

(3) The Magistrate shall satisfy himself that all other lawful means to acquire the information that is sought by the execution of the warrant have been exhausted.

(4) The Magistrate shall verify the identity of the authorised officer and shall satisfy himself that the application for issuance of the warrant is authentic.

53. Issue of warrant. – (1) Subject to section 51 and section 52, the Magistrate may issue a warrant for surveillance or interception of communication, or both of them.

(2) The Magistrate may issue the warrant in Chambers.

54. Magistrate may reject application for issuance of warrant. – If the Magistrate is not satisfied that the requirements of section 51 and section 52 have been met, he may, for reasons to be recorded in writing, –

(i) refuse to issue the warrant and dispose of the application;

(ii) return the application to the authorised officer without disposing of it;

(iii) pass any order that he thinks fit.

55. Order by Home Secretary in emergent circumstances. – (1) Notwithstanding anything contained in section 52, if the Home Secretary of the appropriate government is satisfied that a grave threat to national security, defence or public order exists, he may, for reasons to be recorded in writing, order any surveillance or interception of communication.

(2) An authorised officer seeking an order for surveillance or interception of communication under this section shall prefer an application to the Home Secretary in the form and manner prescribed in the Schedule and accompanied by the documents required under sub-section (3) of section 51.

(3) No order for surveillance or interception of communication made by the Home Secretary under this section shall be valid upon the expiry of a period of seven days from the date of the order.

(4) Before the expiry of a period of seven days from the date of an order for surveillance or interception of communication made under this section, the authorised officer who applied for the order shall place the application before the Magistrate for confirmation.

56. Duration of warrant or order. – (1) The warrant or order for surveillance or interception of communication shall specify the period of its validity and, upon its expiry, all surveillance and interception of communication, as the case may be, carried out in relation to that warrant or order shall cease forthwith:

Provided that no warrant or order shall be valid upon the expiry of a period of sixty days from the date of its issue.

(2) A warrant issued under section 53, or an order issued under section 55, for surveillance or interception of communication, or both of them, may be renewed by a Magistrate if he is satisfied that the requirements of sub-section (2) of section 52 continue to exist.

57. Duty to inform the person concerned. – Subject to sub-section (2), before the expiry of a period of sixty days from the conclusion of any surveillance or interception of communication carried out under this Act, the authorised officer who carried out the surveillance or interception of communication shall, in writing in such form and manner as may be prescribed, notify, with reference to the warrant of the Magistrate, and, if applicable, the order of the Home Secretary, each person in respect of whom the warrant or order was issued, of the fact of such surveillance or interception and duration thereof.

(2) The Magistrate may, on an application made by an authorised officer in such form and manner as may be prescribed, if he is satisfied that the notification under sub-section (1) would –

- (a) present a reasonable threat to national security, defence or public order, or
- (b) adversely affect the prevention, investigation or prosecution of a cognisable offence,

for reasons to be recorded in writing addressed to the authorised officer, order that the person in respect of whom the warrant or order of surveillance or interception of communication was issued, not be notified of the fact of such interception or the duration thereof:

58. Security and duty of confidentiality and secrecy. – (1) No person shall carry out any surveillance or intercept any communication of another person without implementing measures, including, but not restricted to, technological, physical and administrative measures, to secure the confidentiality and secrecy of all information obtained as a result of the surveillance or interception of communication, as the case may be, including from theft, loss or unauthorised disclosure.

(2) Any person who carries out any surveillance or interception of any communication, or who obtains any information, including personal data, as a result of surveillance or interception of communication, shall be subject to a duty of confidentiality and secrecy in respect of it.

(3) Every competent organisation shall, before the expiry of a period of one hundred days from the enactment of this Act, designate as many officers as it deems fit as Privacy Officers who shall be administratively responsible for all interceptions of communications carried out by that competent organisation.

59. Disclosure of information. – (1) Save as provided in this section, no person shall disclose to any other person, or otherwise cause any other person to come into the knowledge or possession of, the content or nature of any information, including personal data, obtained as a result of any surveillance or interception carried out under this Act.

(2) Notwithstanding anything contained in this section, if the disclosure of any information, including personal data, obtained as a result of any surveillance or interception of any communication is necessary to –

- (a) prevent a reasonable threat to national security, defence or public order, or
- (b) prevent, investigate or prosecute a cognisable offence,

an authorised officer may disclose the information, including personal data, to any authorised officer of any other competent organisation.

CHAPTER VI OFFENCES AND PENALTIES

60. Punishment for offences related to personal data. – (1) Whoever, except in conformity with the provisions of this Act, collects, receives, stores, processes or otherwise handles any personal data shall be punishable with imprisonment for a term which may extend to [] years and may also be liable to fine which may extend to [] rupees.

(2) Whoever attempts to commit any offence under sub section (1) shall be punishable with the punishment provided for such offence under that sub-section.

(3) Whoever, except in conformity with the provisions of this Act, collects, receives, stores, processes or otherwise handles any sensitive personal data shall be punishable with imprisonment for a term which may extend to [*increased for sensitive personal data*] years and may also be liable to fine which may extend to [] rupees.

(4) Whoever attempts to commit any offence under sub section (3) shall be punishable with the punishment provided for such offence under that sub-section.

61. Abetment and repeat offenders. – (1) Whoever abets any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.

(2) Whoever, having been convicted of an offence under any provision of this Act is again convicted of an offence under the same provision, shall be punishable, for the second and for each subsequent offence, with double the penalty provided for that offence.

62. Offences by companies. – (1) Where an offence under this Act has been committed by a company, every person who, at the time of the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

63. Cognisance. – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences under section [] shall be cognisable and non-bailable.

64. General penalty. – Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice or order issued under any provisions thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to [] rupees, and, in the case of a continuing failure or contravention, with an additional fine which may extend to [] rupees for every day after the first during which he has persisted in such failure or contravention.

65. Punishment to be without prejudice to any other action. – The award of punishment for an offence under this Act shall be without prejudice to any other action which has been or which may be taken under this Act with respect to such contravention.

CHAPTER VII MISCELLANEOUS

66. Power to make rules. – (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for –

[]

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

67. Bar of jurisdiction. – (1) On and from the appointed day, no court or authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court and a High Court exercising powers under Article 32, Article 226 and Article 227 of the Constitution) in relation to matters specified in this Act.

(2) No order passed under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Authority is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

68. Protection of action taken in good faith. – No suit or other legal proceeding shall lie against the Central Government, State Government, Authority, Chairperson, Member or any person acting under the direction either of the Central Government, State Government, Authority, Chairperson or Member in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder.

69. Power to remove difficulties. – (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of three years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

70. Act to have overriding effect. – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.