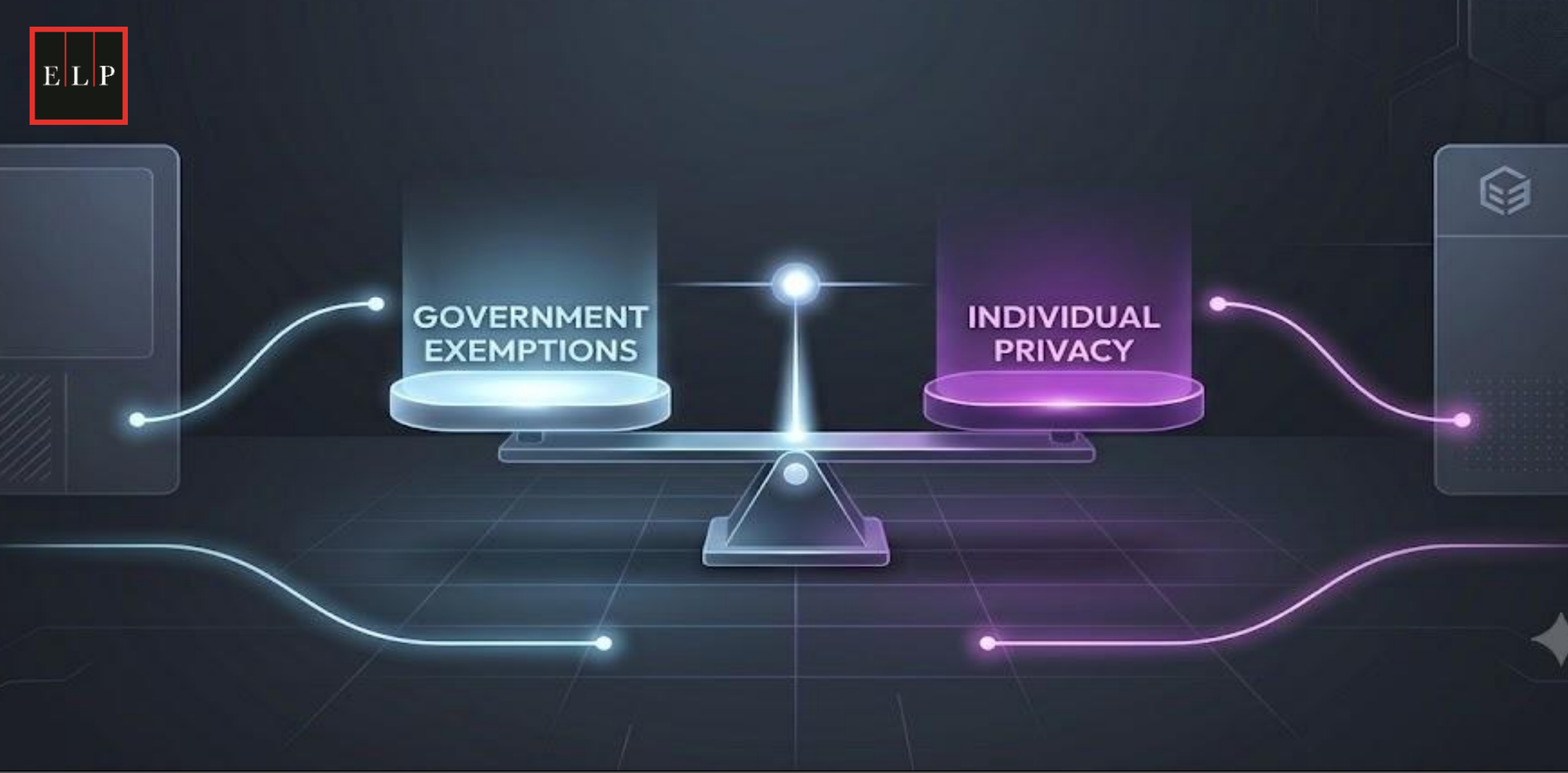

Government Exemptions and the Balance between Privacy and State Interests

INTRODUCTION

The Digital Personal Data Protection Act, 2023 (**DPDPA**) establishes a structured framework of rights for data principals[1] and obligations for data fiduciaries,[2] anchored in the Supreme Court's recognition, in *Justice K.S. Puttaswamy (Retd.) and Another v. Union of India and Others*[3] (**Puttaswamy Judgement**), of the right to privacy being an intrinsic facet of the fundamental right to life and personal liberty.[4] The Preamble of the DPDPA recognizes both the individual's right to protect their personal data and the need to process data for lawful purposes as the objective of the legislation.

However, the most consequential feature of the DPDPA is not this stated balance in the Preamble but the asymmetry built into it. Section 17 permits the Central Government to exempt its own instrumentalities from obligations under the DPDPA by executive notification, without a statutorily defined classification, duration or accompanying safeguards. This power does not operate in isolation. The same Central Government is responsible for the appointment and removal of the members of the Data Protection Board of India (**Board**),[5] the body that is also tasked with enforcing the DPDPA against those very instrumentalities of State. Further, the Central Government also holds separate freestanding powers under Sections 36 and 40 to call for information and to issue rules. Read together, these provisions raise a critical question of whether such broad powers to exempt, embedded in the institutional architecture that offers the exempted party control over its own regulatory institution, are subject to external checks and balances at all.

This primer examines the architecture of Section 17, the institutional design of the Board and its bearing on the credibility of any checks on the exemption powers reserved by the Central Government. It further highlights the constitutional safeguards against which Section 17(2) is likely to be tested and the gaps left open by India's new data protection framework.

THE EXEMPTION ARCHITECTURE UNDER SECTION 17

Section 17 is not a single exemption but a graduated set of five, each with a different trigger, a different scope and a different degree of obligation. It operates across five sub-sections.

---

1 Chapter III, DPDPA.
2 Chapter II, DPDPA.
3 (2017) 10 SCC 1.
4 Article 21, Constitution of India.
5 Sections 19 and 21, DPDPA.

- Section 17(1) provides for the non-application of Chapter II (except Sections 8(1) and 8(5)), Chapter III, and Section 16 for defined categories.[6] The obligations of accountability and security safeguards, which together form the minimum floor of protection, survive the exemptions.
- Section 17(2) is materially broader. It empowers the Central Government to notify and exempt any instrumentality of the State from the provisions of the DPDPA in the interests of sovereignty, security of the State, friendly relations with foreign States, public order, or the prevention of incitement to a cognizable offence related to these grounds.[7]

  Unlike Section 17(1), there is nothing in the legislation which requires such notifications to be category-limited, time-bound or safeguard-accompanied. For a data principal whose data is processed by a notified instrumentality, there is no notice obligation, and the Board has no jurisdiction to entertain a complaint as there is no breach to investigate in cases where the DPDPA does not apply.

The other sub-sections of Section 17 are narrower

- Section 17(3) is a proportionality exemption for notified data fiduciaries (including startups) based on volume and nature of processing.
- Section 17(4) automatically exempts the State from certain obligations, including obligations to erase data upon withdrawal of consent, even if retention is no longer required.
- Section 17(5) permits exemption of any data fiduciary from any provision within 5 (five) years of commencement of the DPDPA.

For a data principal whose personal data is processed by a notified instrumentality, the consequence flowing from the architecture of Section 17 described above appears to be a regulatory vacuum rather than a diminished one with no notice obligations, no purpose limitation, no data principal rights and no jurisdiction of the Board, leaving no provision of the DPDPA left to breach.

The Digital Personal Data Protection Rules, 2025 (**DPDP Rules**) operationalize certain of these exemptions but do not constrain Section 17(2)(a) itself. Rule 23 read with the Seventh Schedule only identifies who may call for information. No other rule regulates how a Section 17(2)(a) notification itself is to be reasoned and creates no body to scrutinize the exercise of these exemption powers, save for the constitutional recourse available under Articles 32 and 226 of the Constitution.

WHO CHECKS THE EXEMPTION POWER? THE BOARD'S STRUCTURAL POSITION

The Board is a redressal authority to which an aggrieved data principal can turn.[8] However, its composition places it in a position of structural proximity to the Central Government whose notifications it might need to scrutinize. For instance, under Section 19 of the DPDPA, the Chairperson and Members are appointed by the Central Government and can be removed by a decision of the Central Government under Section 21. The DPDP Rules place the Search-cum-Selection Committee for the Chairperson under the aegis of the Cabinet Secretary alongside secretaries from the Department of Legal Affairs and the Ministry of Electronics and Information Technology (**MeitY**).[9]

The statutory design itself, therefore, could potentially preclude the Board from operating as an independent check on the Central Government's exemption power.

It is against this institutional backdrop that the breadth of the language employed in Section 17(2)(a) assumes particular significance as it places the exemptions in direct tension with the very fundamental right to privacy which the DPDPA was designed to protect. This makes it imperative that the manner in which this power is exercised is guided by clear principles grounded in law, backed by reasons and constitutional values, rather than unfettered executive discretion.

---

6 The defined categories under Section 17(1) include enforcement of a legal right or claim; processing by courts, tribunals and regulators; prevention, detection, investigation or prosecution of offences; processing personal data of data principals outside India under contracts; court-approved restructurings and ascertaining a loan defaulter's financial position.

7 Section 17(2)(a), DPDPA.

8 Section 27(1), DPDPA.

9 Rule 17, DPDP Rules.

ADJACENT CENTRAL GOVERNMENT POWERS

Section 17 does not exist in isolation. Section 36 empowers the Central Government to call for information from the Board, any data fiduciary or an intermediary "for the purposes of this Act", which appears to be a broad, undefined power with no specific purpose limitation. Section 40 grants the Central Government wide rule-making powers, which is precisely the mechanism through which any procedural safeguards under Section 17(2) can be introduced. This highlights that the same actor that exercises the exemption power can also potentially define and redefine its limits.

Taken together, these provisions describe a single actor, the Central Government, that may exempt its own instrumentalities from the DPDPA, appoint and remove the members of the body responsible for enforcing the legislation, compel information from a data fiduciary and control the rule-making process. No independent institutional counterweight sits opposite any of these powers, and the only recourse that remains is under Articles 32 and 226 of the Constitution. However, the constitutional recourse is not a substitute for an institutional check which should have been built into the DPDPA itself, leaving the data principal to rely on case-by-case writ litigation rather than a statutory remedy.

PROPORTIONALITY

Section 17(2)(a) is best evaluated against the three-fold proportionality test of legality, legitimate aim and proportionality as laid down in the *Puttaswamy* Judgment. The exemptions are less likely to be contestable on the first two limbs of legality and legitimate aim as they are enacted by a validly passed statute, and rely on the grounds of sovereignty, security, public order and foreign relations.

On proportionality, a notification suspending the provisions of the DPDPA indefinitely, without specifying which categories of processing are covered, for how long, or why a narrower disapplication would not serve the stated purpose, does not reflect the least restrictive means available. The proportionality limb raises two questions: (i) whether the suspension of the entire DPDPA is necessary; and (ii) whether it strikes a fair balance between the data principal's rights and the interests of the State.

With respect to the question of necessity, *prima facie* the grounds provided under Section 17(2) do not require the suspension of the entire DPDPA. The legislation itself highlights that a narrower alternative is available. Section 17(1) suspends the application of Chapters II and III for defined purposes while expressly preserving the obligations of accountability and reasonable security. Section 17(2)(a) departs from this approach because it suspends the application of the DPDPA in its entirety, including the obligations that have no clear connection to the grounds invoked, for instance, the duty to keep the data secure or to use it only for the purpose for which it was collected. A necessity analysis would therefore require the Central Government to explain why all obligations under the DPDPA need to be suspended.

On balance, when one weighs the intrusion on privacy against the interest served, it requires some record of the categories of personal data and processing affected, the number of data principals likely impacted, and the duration of the exemption to weigh it against. A notification that names only the instrumentality being exempted, without any specifications, gives the courts nothing to assess.

Taken together, the absence of any requirement to preserve obligations unrelated to the stated aim and the absence of a record to support a balancing exercise leaves the notification of Section 17(2)(a) most exposed on the proportionality limb. On procedural safeguards, Rule 23 read with the Seventh Schedule regulates who may request data under Section 17(2)(a) rather than how the exemption notification itself is reasoned, reviewed or subjected to any independent scrutiny prior to or after issuance.

ACCOUNTABILITY AND PARLIAMENTARY OVERSIGHT

Section 41 requires rules and notifications under Sections 16 and 42 to be laid before each House of the Parliament, which retains the power to modify or annul them. Notifications under Section 17(2) fall outside this requirement entirely. This is a point of departure from Article 23 of the GDPR, which requires derogations to be affected by legislative measures specifying purpose, data categories, safeguards and retention periods.

CONCLUSION

Section 17(1) and Section 17(2)(a) proceed on different logics. The former preserves a floor of accountability and security obligations even as it disapplies the notice and consent requirements for defined purpose-specific processing. The latter's breadth is not counterbalanced elsewhere in the DPDPA's architecture. The Board's structural proximity to the Central Government, the absence of a parliamentary laying requirement, and the silence of the DPDP Rules on how the power relating to notification itself is to be exercised leaves Section 17(2)(a) as the least constrained provision in the statute.

Whether Section 17(2)(a), as presently structured, survives the proportionality and procedural-safeguards standard articulated in the *Puttaswamy* Judgement is a question constitutional courts are likely to be confronted with as the DPDPA moves toward full operationalization in May 2027. Until either Parliament amends Section 17(2)(a) to import defined safeguards, or the DPDP Rules are amended to supply some safeguards, the gap between the DPDPA's stated privacy objective and the scope of the State exemptions it provides for remains one of the most crucial unresolved questions in India's data protection framework.

We hope you have found this information useful. For any queries/clarifications, please write to us at insights@elp-in.com or write to our authors:

Ravisekhar Nair, Partner – Email - *ravisekharnair@elp-in.com*

Gauri Gupta, Associate – Email - gaurigupta@elp-in.com