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# THE DATA PROTECTION BOARD OF INDIA: AN ANALYSIS OF ITS INDEPENDENCE, ADJUDICATORY POWERS, AND THE ABSENCE OF JUDICIAL MEMBERS

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## I. ABSTRACT

*The Digital Personal Data Protection Act, 2023 (DPDP Act), marks a watershed moment in India's journey towards establishing a comprehensive data protection framework. Central to this legislative architecture is the Data Protection Board of India (DPB), a body vested with significant adjudicatory powers, including the authority to impose penalties up to ₹250 crore. This paper offers a critical analysis of the statutory and functional independence of the DPB and concludes that the DPB's design, which involves executive-dominated appointments, the lack of judicial members, and insufficient institutional protection, raises serious constitutional issues. Through a comparative analysis with the Competition Commission of India (CCI) and the Securities and Exchange Board of India (SEBI), this paper demonstrates that the DPB's institutional architecture falls short of the independence standards necessary for a body adjudicating matter touching upon the fundamental right to privacy under Article 21. The paper further analyzes the DPDP Rules, 2025, particularly the "digital office" concept, and assesses its implications for adjudicatory fairness. It concludes with recommendations for structural reforms to align the DPB with constitutional mandates and global best practices.*

## II. KEYWORDS

DPDP Act 2023; Quasi-Judicial Powers; Administrative Law; Digital Office; Judicial Members.

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### III. INTRODUCTION

"A law is only as good as its enforcement."

This maxim holds particular resonance in the context of data protection, where the effectiveness of substantive rights depends entirely on the institutional mechanisms designed to enforce them. The Digital Personal Data Protection Act, 2023 (DPDP Act), represents India's long-awaited response to the constitutional mandate established by the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, which recognized privacy as a fundamental right under Article 21.<sup>2</sup> However, the way in which the enforcement agency, the Data Protection Board of India (DPB), operates is worth exploring in-depth.

The DPB is not merely an administrative convenience; it is the institutional guardian of constitutional rights. Its powers are immense: it can impose penalties up to ₹250 crore, order cessation of data processing, mandate erasure of personal data, and issue binding directions to data fiduciaries.<sup>3</sup> Yet, paradoxically, the Board itself is structurally vulnerable to executive influence. Appointed entirely by the Central Government, lacking judicial members, and operating without the robust procedural codification that characterizes mature regulatory bodies, the DPB presents a case study in the tensions between regulatory efficiency and constitutional accountability.

This institutional design marks a significant departure from the framework originally proposed by the Justice B.N. Srikrishna Committee in its 2018 Report on Data Protection. The Committee recommended the establishment of an independent Data Protection Authority (DPA) with substantial autonomy from executive control, supported by transparent appointment processes and strong regulatory safeguards. The Srikrishna framework envisioned an enforcement authority structurally comparable to independent statutory commissions, reflecting the constitutional importance of informational privacy after *Puttaswamy*. In contrast, the DPDP Act, 2023 replaced this model with the Data

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<sup>2</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) 10 SCC 1.

<sup>3</sup> Digital Personal Data Protection Act, 2023, s 33 (India).

Protection Board of India, whose members are appointed exclusively by the Central Government and whose structure omits any mandatory judicial representation. This legislative shift is central to understanding the present concerns regarding the Board's independence and constitutional legitimacy.<sup>4</sup>

This paper argues that the DPB's design reflects a fundamental misunderstanding of the relationship between institutional independence and effective adjudication. This article uses a comparative analysis of the CCI and SEBI and finds that there are no structural safeguards, particularly no judicial members, and there is only executive control over appointments; this creates a deficit in legitimacy, undermining the privacy rights for which the Board exists to protect. The recent notification of the DPDP Rules, 2025, introducing the concept of a "digital office", adds another layer of complexity to this assessment.<sup>5</sup>

### **A. Research Objectives**

This paper seeks to critically examine the institutional architecture of the Data Protection Board of India (DPB) under the Digital Personal Data Protection Act, 2023. It aims to evaluate whether the structural composition and adjudicatory framework of the DPB satisfy the constitutional requirements of independence and procedural fairness applicable to bodies exercising quasi-judicial powers. The paper further intends to analyse the implications of executive-controlled appointments, the absence of judicial members, and the introduction of the "digital office" framework under the DPDP Rules, 2025. Through a comparative study of regulatory institutions such as the Competition Commission of India (CCI) and the Securities and Exchange Board of India (SEBI), the paper also seeks to identify institutional safeguards and reforms necessary to strengthen the DPB's legitimacy and effectiveness.

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<sup>4</sup> Committee of Experts under the Chairmanship of Justice B.N. Srikrishna, *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians* (Ministry of Electronics and Information Technology, 2018).

<sup>5</sup> Digital Personal Data Protection Rules, 2025, r 4 (India).

## **B. Research Questions**

1. Whether the present institutional structure of the Data Protection Board of India ensures sufficient independence from executive influence?
2. Whether the absence of mandatory judicial members on the DPB undermines the constitutional legitimacy of its adjudicatory functions?
3. How does the DPB compare with other Indian regulatory bodies such as the CCI and SEBI in terms of appointment mechanisms, adjudicatory safeguards, and procedural fairness?
4. Whether the “digital office” framework introduced under the DPDP Rules, 2025 adequately protects principles of natural justice and adjudicatory fairness?
5. What structural and procedural reforms are necessary to align the DPB with constitutional principles and best international practices in data protection governance?

## **C. Research Methodology**

This paper primarily adopts a doctrinal research methodology based on the analysis of statutory provisions, judicial precedents, delegated legislation, and scholarly commentary relating to the Digital Personal Data Protection Act, 2023 and the DPDP Rules, 2025. The study further employs a comparative analytical approach by examining the institutional frameworks of the Competition Commission of India (CCI) and the Securities and Exchange Board of India (SEBI) to assess the adequacy of safeguards relating to adjudicatory independence, appointment mechanisms, and procedural fairness. Relevant constitutional principles, particularly those emerging from judicial decisions concerning tribunal independence and the right to privacy under Article 21, have also been examined to evaluate the constitutional validity of the DPB’s present structure.

## IV. THE DATA PROTECTION BOARD: STRUCTURE, POWERS, AND THE 'DIGITAL OFFICE' PARADIGM

### A. Statutory Framework and Composition

Section 27 of the DPDP Act provides for the establishment of the Data Protection Board of India. The Board consists of a Chairperson and such number of Members as the Central Government may notify, all appointed by the Central Government.<sup>6</sup> The statute prescribes eligibility criteria encompassing expertise in law, data protection, information technology, cybersecurity, or public administration.<sup>7</sup> Notably, the Act does not mandate the inclusion of members with judicial experience, nor does it prescribe a specific quota for legally qualified members.

The tenure and removal provisions offer limited protection. Members serve for a term prescribed by the Central Government, and removal is permitted on grounds of misconduct, incapacity, or conflict of interest.<sup>8</sup> Without an official right to run indefinitely (like how judges have high court-based guarantees), the existence of regulations to protect the executive from being unhappy with the Board results in being open to possible unfavourable acts by the executive branch of the government.

### B. Adjudicatory Powers and Their Constitutional Weight

The DPB's powers are quasi-judicial in nature. It conducts inquiries into breaches of data protection obligations, adjudicates complaints from data principals, imposes monetary penalties, and issues corrective directions.<sup>9</sup> The penalty regime under the DPDP Act is

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<sup>6</sup> DPDP Act, 2023, s 27(1).

<sup>7</sup> *Ibid* s 27(2).

<sup>8</sup> *Ibid* s 27(4)-(5).

<sup>9</sup> King Stubb & Kasiva, 'The Data Protection Board of India under the DPDP Act, 2023: Structure, Composition, and Adjudicatory Process' (15 October 2025) <https://ksandk.com/data-protection-and-data-privacy/understanding-indias-data-protection-board-under-dpdp-act/> accessed 17 March 2026 .

among the most stringent in Indian regulatory law, with potential fines reaching ₹250 crore for failures to implement reasonable security safeguards.<sup>10</sup>

Critically, these penalties are not compensatory; they accrue to the Consolidated Fund of India rather than to affected individuals.<sup>11</sup> The Board's orders are binding and enforceable, subject only to appeal before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) and subsequent judicial review by High Courts under Article 226 and the Supreme Court under Article 32.<sup>12</sup>

The constitutional weight of the DPB's functions cannot be overstated. When the Board adjudicates a privacy complaint or imposes a penalty for a data breach, it is effectively determining the contours of a fundamental right. This places the DPB in a distinct category from regulators dealing primarily with economic or commercial matters.

### C. The 'Digital Office' Under the DPDP Rules, 2025

Rule 4 of the DPDP Rules, 2025, introduces the concept of the DPB functioning as a "digital office".<sup>13</sup> This innovative framework envisions remote proceedings, electronic filing of complaints and responses, and the use of techno-legal measures for conducting inquiries. The stated objectives are efficiency, accessibility, and alignment with India's broader digital governance architecture.<sup>14</sup>

The analogue office model has many advantages, such as quickness and broad reach, but creates issues of fairness in adjudicating issues. The move to virtual hearing may impact one's ability to participate in the hearing and could hinder their ability to be heard as a

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<sup>10</sup> Fox Mandal, 'The DPDP Act's Penalty Regime: Design, Challenges, and Constitutional Questions' (25 November 2025) <https://foxmandal.in/the-dpdp-acts-penalty-regime-design-challenges-and-constitutional-questions/> accessed 17 March 2026.

<sup>11</sup> *Ibid.*

<sup>12</sup> King Stubb & Kasiva, 'Data Protection Board's Relationship with Judiciary under the DPDP Act, 2023: Appeals, Judicial Review, and Constitutional Implications' (24 October 2025) <https://ksandk.com/data-protection-and-data-privacy/judicial-review-and-appeals-under-indias-dpdp-act-2023/> accessed 13 March 2026.

<sup>13</sup> DPDP Rules, 2025, r 4; Agrud Partners, 'MeitY and Statutory Data Protection Enforcement' (31 January 2026) <https://agrudpartners.com/meity-statutory-data-protection-enforcement/> accessed 13 March 2026.

<sup>14</sup> *Ibid.*

party before the analog model. More importantly, the digital office does not resolve and/or may mask issues related to the independence and composition of the Board's members due to its digital efficiency. A digital office is still compromised if it is a structurally compromised hearing body.

## V. THE INDEPENDENCE DEFICIT: EXECUTIVE APPOINTMENTS AND THE ABSENCE OF JUDICIAL MEMBERS

### A. Theoretical Foundations of Regulatory Independence

The independence of regulatory authorities' rests on three pillars: structural independence (security of tenure, protection from arbitrary removal), functional independence (freedom from executive direction in adjudicatory matters), and financial independence (control over resources).<sup>15</sup> For bodies exercising quasi-judicial functions, a fourth dimension assumes critical importance: the independence of adjudicators from the executive that appoints them.

In the Indian context, the Supreme Court has repeatedly emphasized that tribunals and adjudicatory bodies must be sufficiently independent to inspire public confidence. In *L. Chandra Kumar v. Union of India*, the Court held that tribunals perform a supplemental role in the administration of justice and must remain free from executive interference.<sup>16</sup> More recently, in *Rojer Mathew v. South Indian Bank Ltd.*, the court underscored the importance of judicial members in tribunals exercising adjudicatory functions.<sup>17</sup>

### B. The DPB's Structural Vulnerability

The DPB fails on multiple dimensions of independence. First, appointments are exclusively controlled by the Central Government, with no statutory requirement for consultation with the Chief Justice of India or any other independent authority. This

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<sup>15</sup> Trishee Goyal and Renuka Sane, 'Towards better enforcement by regulatory agencies in India' *The Leap Blog* (25 March 2021) <https://blog.theleapjournal.org/2021/03/towards-better-enforcement-by.html> accessed 14 March 2026.

<sup>16</sup> *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261.

<sup>17</sup> *Rojer Mathew v. South Indian Bank Ltd.* (2020) 6 SCC 1.

stands in stark contrast to the appointment process for judicial members of other tribunals, where the Supreme Court has mandated collegium involvement.<sup>18</sup>

Secondly, the lack of any judicial member is very troubling; the Board adjudicates issues that are the subject of interpretation of statutory provisions, assesses evidence and applies legal principles. Traditionally, these functions require legal expertise. The Act permits the appointment of people with legal expertise to serve on the Board; however, it does not require them to do so. The presence of non-lawyers on the Board raises serious questions regarding the legal reasoning of its orders and subsequently whether or not the quality of the legal reasoning contained within the Board's orders can be trusted.

Third, the tenure provisions offer inadequate institutional protection. Under the DPDP framework, members of the Board are appointed for terms prescribed by the Central Government, while Section 27(5) of the DPDP Act permits removal on specified grounds such as misconduct, incapacity, or conflict of interest. The DPDP Rules, 2025 further prescribe relatively short and renewable terms for members, thereby creating concerns regarding continuity and institutional independence. Although the statute does not expressly adopt the constitutional 'pleasure doctrine', the combination of executive-controlled appointments, renewable tenure, and limited statutory safeguards may still expose the Board to perceived executive influence.<sup>19</sup>

### **C. The Problem of the Missing Judicial Member**

The absence of a mandated judicial member on the DPB represents a significant departure from the established practice for Indian tribunals exercising adjudicatory powers. The Competition Commission of India, for instance, is appointed through a selection process involving judicial participation, as the Selection Committee under the Competition Act is chaired by the Chief Justice of India or the Chief Justice's nominee. Further, its appellate tribunal is chaired by a person who is or has been a judge of the Supreme Court or a Chief

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<sup>18</sup> *Ibid.*

<sup>19</sup> Digital Personal Data Protection Act, 2023, s 27(5); Digital Personal Data Protection Rules, 2025.

Justice of a High Court.<sup>20</sup> SEBI's adjudicatory proceedings are conducted by adjudicating officers with legal training, and appeals lie to the Securities Appellate Tribunal, composed of judicial and technical members.<sup>21</sup>

The rationale for judicial members in adjudicatory bodies is well-established: they bring specialized expertise in evidentiary assessment, procedural fairness, and legal interpretation. They serve as a bulwark against arbitrary decision-making and ensure that orders are reasoned, proportionate, and legally sound. The DPB, lacking such expertise by design, risks producing inconsistent or legally vulnerable decisions that will invite frequent judicial intervention, thereby defeating the very purpose of specialized adjudication.

#### **D. Comparative Analysis: CCI and SEBI as Institutional Benchmarks**

The Competition Commission of India provides a useful comparator. Established under the Competition Act, 2002, the CCI consists of a chairperson and members appointed by the Central Government on the recommendation of a Selection Committee chaired by the Chief Justice of India or his nominee.<sup>22</sup> The inclusion of judicial members is statutorily mandated. Appeals from CCI orders lie to the Competition Appellate Tribunal (COMPAT), now the National Company Law Appellate Tribunal (NCLAT), which includes judicial members.<sup>23</sup>

SEBI's enforcement architecture offers another benchmark. While SEBI members are appointed by the Central Government, the appellate mechanism, the Securities Appellate Tribunal, is chaired by a judicial member, and appeals lie to the Supreme Court.<sup>24</sup> More importantly, SEBI's adjudicatory proceedings are governed by detailed regulations specifying notice requirements, rights of representation, and evidentiary standards.<sup>25</sup>

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<sup>20</sup> Competition Act, 2002, ss 9, 53D (India).

<sup>21</sup> Securities and Exchange Board of India Act, 1992, s 15K (India).

<sup>22</sup> Competition Act, 2002, s 9.

<sup>23</sup> *Ibid* s 53A.

<sup>24</sup> SEBI Act, 1992, s 15L.

<sup>25</sup> Goyal & Sane (n 13).

The DPB compares unfavorably on multiple fronts. Unlike CCI, it has no collegial selection process insulating appointments from executive control. Unlike both CCI and SEBI, it has no mandated judicial representation. And unlike the established practice for economic regulators, its appellate mechanism (TDSAT) is a generic tribunal not specifically designed for data protection matters.

## VI. JURISDICTIONAL OVERLAPS AND THE PROBLEM OF REGULATORY COORDINATION

### A. The CCI-DPB Interface

The relationship between data protection and competition law has emerged as a significant area of regulatory complexity. The Competition Commission of India has increasingly asserted jurisdiction over data-related practices, particularly those of dominant digital platforms. In the *WhatsApp Privacy Policy* case, the CCI investigated whether the mandatory sharing of user data with Meta constitutes an imposition of unfair terms by a dominant undertaking.<sup>26</sup>

This creates potential jurisdiction overlap with the DPB. A single set of facts, for example, a platform's data collection practices, could simultaneously constitute a violation of consent requirements under the DPDP Act (within DPB's jurisdiction) and an abuse of dominance under the Competition Act (within CCI's jurisdiction).<sup>27</sup> The Supreme Court's decision in *Competition Commission of India v. Bharti Airtel Limited* provides guidance: where jurisdictional overlap exists, the sectoral regulator should first address the issues, and the CCI's jurisdiction activates only if findings indicate anticompetitive conduct.<sup>28</sup>

However, this framework assumes that the sectoral regulator (here, the DPB) has the expertise to identify competition concerns, an expertise that may be lacking given the

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<sup>26</sup> *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo motu Case No. 1 of 2021 (CCI); AZB Partners, 'Digital Personal Data Protection Act: Yet Another Jurisdictional Overlap?' (27 October 2023) <https://www.azbpartners.com/bank/digital-personal-data-protection-act-yet-another-jurisdictional-overlap/> accessed 15 March 2026.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Competition Commission of India v. Bharti Airtel Limited* (2019) 2 SCC 521.

absence of members with competition law backgrounds. The DPB's composition, focused on data protection and technology, may render it ill-equipped to recognize the competitive implications of data practices, potentially allowing anticompetitive conduct to escape scrutiny.

### **B. The RBI, TRAI, and Sectoral Regulator Coordination**

Similar coordination challenges arise with sectoral regulators such as the Reserve Bank of India (RBI) and the Telecom Regulatory Authority of India (TRAI). Banks and financial institutions, regulated by RBI for data security and customer privacy, now face parallel oversight from the DPB.<sup>29</sup> Telecom service providers, subject to TRAI's privacy and consumer protection regulations, must also comply with DPB enforcement.

The DPDP Act does not provide a clear mechanism for resolving jurisdictional conflicts or coordinating enforcement actions. This gap creates risks of duplicative proceedings, inconsistent orders, and regulatory arbitrage. The absence of judicial members on the DPB may exacerbate these challenges, as the Board may lack the legal sophistication to navigate complex inter-regulatory questions.

## **VII. ADJUDICATORY PROCESS AND PROCEDURAL FAIRNESS CONCERNS**

### **A. The Current Procedural Framework**

The DPDP Act and the 2025 Rules outline a basic adjudicatory process: complaint filing, preliminary scrutiny, notice to the data fiduciary, inquiry, and final order.<sup>30</sup> However, the statutory framework lacks the detailed procedural codification that characterizes mature regulatory regimes. Critical questions the standards of evidence, the rights of cross-examination, the timeline for proceedings, and the format of orders are left largely to the Board's discretion.<sup>31</sup>

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<sup>29</sup> King Stubb & Kasiva (n 6).

<sup>30</sup> DPDP Act, 2023, s 28; DPDP Rules, 2025, r 5-8.

<sup>31</sup> Fox Mandal (n 8).

This procedural ambiguity is concerning for a body wielding significant adjudicatory power. The principles of natural justice, opportunity to be heard, and reasoned decision-making are constitutionally mandated for anybody affecting rights.<sup>32</sup> Yet the DPB's procedures are skeletal, inviting both inconsistent application and constitutional challenge.

### **B. Lessons from SEBI and CCI Enforcement Failures**

Research on enforcement practices at SEBI and CCI reveals persistent procedural failures. A study of Securities Appellate Tribunal orders found that 33% of SEBI orders were overturned for violating principles of natural justice, with 86% of those cases involving inadequate notice.<sup>33</sup> Similar issues have been documented at the CCI, where scanty procedural guidance has led to due process violations.<sup>34</sup>

These failures stem from a common cause: Indian regulatory statutes confer civil court powers and expect compliance with natural justice principles but provide no detailed guidance on how regulators should implement these principles.<sup>35</sup> Common law development has been ad hoc, leaving regulated entities uncertain of their procedural rights and regulators uncertain of their procedural obligations.

The DPB is at risk of repeating such past mistakes as it lacks formal procedures, the form of procedure found in both the US Administrative Procedure Act and UK Tribunal Rules. Therefore, the adjudication process conducted pursuant to the Board's procedures creates a legitimate concern about issuing inconsistent or insecure (in terms of lawfulness) decisions. Consequently, although the digital office model may provide operational efficiencies, it fails to cure the procedural deficiencies associated with the Board's adjudicative function.

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<sup>32</sup> *A.K. Kraipak v. Union of India* (1969) 2 SCC 262.

<sup>33</sup> Goyal & Sane (n 13).

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

### C. The Digital Office and Adjudicatory Fairness

The digital office concept raises additional procedural questions. Virtual hearings may limit the ability of data principals particularly those without legal representation or technological resources to effectively present their cases. The shift to electronic filings assumes a level of digital literacy that cannot be taken for granted across India's diverse population.<sup>36</sup>

The digital office has also changed how we view the human element of adjudication. Adjudication involves applying the law to facts and judging; however, judging (empathy), finding context, and making decisions do not occur simply in a digital environment when compared to a more traditional forum. The DPB must ensure that its digital operations do not compromise the substantive quality of its decision-making.

## VIII. CONSTITUTIONAL CHALLENGES

### A. Potential Constitutional Vulnerabilities

The DPB's structural design invites constitutional challenge on multiple grounds. First, the exclusive executive control over appointments may violate the principle of independence of tribunals recognized by *L. Chandra Kumar* and reinforced by *Rojer Mathew*. When a body adjudicates matters affecting fundamental rights, its members must be sufficiently independent of the executive to inspire public confidence.

Second, the absence of judicial members may render the DPB constitutionally suspected. The Supreme Court has consistently held that tribunals performing adjudicatory functions must include judicial members to ensure legal expertise and procedural fairness.<sup>37</sup> The DPB's composition, lacking any mandated judicial representation, may fail this test.

Third, the penalty regime may face challenges under Article 14 (right to equality) and Article 19(1)(g) (freedom to carry on business). Penalties up to ₹250 crore, imposed

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<sup>36</sup> Agrud Partners (n 11).

<sup>37</sup> *Rojer Mathew* (n 15).

without clear proportionality guidelines, may be challenged as arbitrary and disproportionate.<sup>38</sup> The absence of turnover-based caps, a feature of the GDPR and other international frameworks, exacerbates this vulnerability.<sup>39</sup>

### **B. Comparative Lessons: The GDPR Model and the 'Fourth Branch' Concept**

The European Union's approach to data protection enforcement offers instructive contrasts. Under the GDPR, each member state establishes an independent supervisory authority, with members appointed through transparent processes and insulated from external influence.<sup>40</sup> The European Data Protection Board coordinates enforcement across member states, ensuring consistency and mutual recognition.

Critically, GDPR supervisory authorities combine regulatory and adjudicatory functions but operate under robust procedural frameworks. Their decisions are subject to judicial review, and penalties are calculated as a percentage of global turnover, ensuring proportionality.<sup>41</sup>

Scholars have proposed transforming the DPB into a "Fourth Branch Institution" an independent body with constitutional status, insulated from executive control through mechanisms such as bipartisan appointments, fixed non-renewable terms, and full oversight of government agencies.<sup>42</sup> This model, inspired by election commissions and auditors general, would recognize the DPB's unique role in safeguarding fundamental rights.

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<sup>38</sup> Fox Mandal (n 8).

<sup>39</sup> *Ibid*; Springer, 'Bridging the Gap: Assessing India's Digital Personal Data Protection Act in Light of the EU GDPR' (2025) 6 SN Computer Science 855.

<sup>40</sup> General Data Protection Regulation (EU) 2016/679, arts 51-52.

<sup>41</sup> *Ibid* art 83.

<sup>42</sup> Tanmay Durani, 'In this analysis, Dr. Ivneet Walia and I argue that the Data Protection Board of India...' *LinkedIn* (March 2025) [https://www.linkedin.com/posts/tanmay-durani-48487a21a\\_fourth-branch-data-protection-board-a-post-puttaswamy-activity-7307806149720907777-9URf](https://www.linkedin.com/posts/tanmay-durani-48487a21a_fourth-branch-data-protection-board-a-post-puttaswamy-activity-7307806149720907777-9URf) accessed 16 March 2026 .

## IX. SUGGESTIONS AND RECOMMENDATIONS

Based on the foregoing analysis, the following reforms are essential to align the DPB with constitutional mandates and best global practices:

1. *First*, the appointment process must be reformed to include independent input. A selection committee chaired by a retired Supreme Court judge, with representation from the Chief Justice of India, should recommend appointments. This would entail the Board from exclusive executive control.
2. *Second*, judicial members must be mandated on the DPB. At least one-third of the Board's strength should consist of people who are or have been judges of High Courts or have equivalent legal experience. This would ensure legal expertise in adjudicatory proceedings.
3. *Third*, the tenure of members must be protected by statute. Fixed terms of five to seven years, with removal only for proven misbehavior after a judicial inquiry, would provide the security of tenure essential for independent decision-making.
4. *Fourth*, procedural regulations must be codified in detail. Drawing upon the US Administrative Procedure Act and UK tribunal rules, the DPB should promulgate regulations specifying notice requirements, evidentiary standards, rights of cross-examination, timelines for decisions, and the format of reasoned orders.<sup>43</sup>
5. *Fifth*, coordination mechanisms with other regulators must be established. A statutory coordination council, bringing together the DPB, CCI, RBI, TRAI, and other relevant bodies, should be created to resolve jurisdictional conflicts and harmonize enforcement approaches.
6. *Sixth*, the digital office must be complemented by offline access. While the efficiency of digital proceedings is welcome, the DPB must ensure that data principals without digital access can effectively participate. Physical hearing

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<sup>43</sup> Goyal & Sane (n 13).

centres, vernacular language options, and assisted filing mechanisms should be established.

7. *Seventh*, the penalty regime must be recalibrated to ensure proportionality. Turnover-based caps, similar to the GDPR's 4% of global turnover, should be introduced. Detailed guidelines on penalty calculation, incorporating mitigating and aggravating factors, should be published.

## X. CONCLUSION

The Data Protection Board of India stands at the intersection of technological innovation, constitutional rights, and regulatory governance. Its design will shape not only the effectiveness of India's data protection regime but also the broader relationship between citizens and the state in the digital age.

This paper has argued that the DPB's current architecture, characterised by executive-dominated appointments, the absence of judicial members, and inadequate procedural safeguards, falls short of the independence standards required for a body adjudicating fundamental rights. The DPDP Rules, 2025, while introducing innovative concepts like the digital office, do not address these structural deficits. Comparative analysis with the CCI and SEBI reveals that India has developed more robust institutional models for economic regulation; these models should inform the evolution of data protection governance.

The constitutional vulnerabilities identified in this paper are not merely academic concerns. They will be tested in court as the DPB begins issuing orders and imposing penalties. The Supreme Court, which recognized privacy as a fundamental right in *Puttaswamy*, will inevitably scrutinize the institutional mechanisms designed to protect that right. A DPB found wanting independence or procedural fairness may see its orders repeatedly overturned, undermining the very enforcement the DPDP Act seeks to achieve.

The path forward requires structural reform. The DPB must be transformed from an executive-dominated body into a genuinely independent adjudicatory authority, with judicial members, protected tenure, and robust procedures. Only then can it fulfil its constitutional mandate and earn the trust of both data principles and data fiduciaries. In data protection, as in all areas of law, enforcement is indeed the measure of the law's worth, but enforcement is only as legitimate as the institution that wields it.

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