



Civils Cafe

IAS Study Circle

Lead by IAS, IPS, IAS officers

DATA PROTECTION

**MOST IMPORTANT
CURRENT AFFAIRS
FOR MAINS**



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Fundamental Rights

Issue: Personal Data Protection Bill

Discuss the provisions of data protection bill. Can it be adopted in the present form?

Personal data protection bill, 2019 is India's first attempt to introduce domestic legislation on the issue of data protection.

The personal data protection bill, 2019 was prepared by a committee of experts headed by **Justice B N Srikrishna**. The committee was constituted following the verdict under the **right to privacy (Justice K.S Puttaswamy vs Union of India)**

- The **personal data protection bill** seeks to apply data protection in government as well as private entities across all sectors. It emphasizes the data security and data privacy. The bill will give users a bunch of rights over their personal data and an atmosphere to maintain it. And a provision of creation of a **Data Protection Authority (DPA)** for monitoring and regulating data processing activities is there.

Decoding the data protection bill

WHAT IT MEANS FOR CONSUMERS

- **DATA** can be processed or shared by any entity only after consent.
- **SAFEGUARDS**, including penalties, introduced to prevent misuse of personal data.
- **ALL** data to be categorized under three heads—general, sensitive and critical.

THE GOVERNMENT & REGULATORY ROLE

- **GOVT** will have the power to obtain any user's non-personal data from companies.
- **THE** bill mandates that all financial and critical data has to be stored in India.
- **SENSITIVE** data has to be stored in India but can be processed outside with consent.

WHAT COMPANIES HAVE TO DO

- **SOCIAL** media firms to formulate a voluntary verification process for users.
- **SHARING** data without consent will entail a fine of ₹15 crore or 4% of global turnover.
- **DATA** breach or inaction will entail a fine of ₹5 crore or 2% of global turnover.

Source: Mint research

Need for Personal Data Protection Bill

- Currently, the usage and transfer of personal data of citizens is regulated by the **Information Technology (IT) Rules, 2011, under the IT Act, 2000 which has certain flaws such as**
 - Insufficient to meet demands of fast changing Digital Economy.
 - The **definition of sensitive personal data** under the rules is narrow.
 - Some of the **provisions can be overridden by a contract**.
 - The IT Act **applies only to companies, not to the government**.
- According to the **Internet And Mobile Association of India(IAMAI)'s Digital in India report 2019**, there are about **504 million active web users and India's online market is second only to China**
- Large collection of information about individuals and their online habits has become an important **source of profits**. It is also a

potential avenue for **invasion of privacy** because it can reveal extremely personal aspects.

- Protection of privacy of individuals relating to their Personal Data and to establish a **Data Protection Authority of India** for the said purposes and the matters concerning the personal data of an individual.
- To be in synchronous with practices across the world such as **European GDPR (General Data Protection Regulation)**, USA's-sectoral laws to deal with matters of digital privacy such as the US Privacy Act, 1974, Gramm-Leach-Bliley Act etc. which benefits Indian companies.

Major provisions of the bill

- The bill governs the processing of personal data by govt., companies incorporated in India and Foreign companies dealing with personal data of individuals in India.
- **Creation of Data Protection Authority:** to prevent misuse of data. It will consist of a chairperson and 6 members.
- **Social Media Intermediaries:** will enable online interaction between users and allow for sharing of information.
- **Personal data can be used only for specific and lawful purpose. It gives security safeguards like preventing misuse, data encryption, etc.**
- Composition of **grievance redressal mechanism.**
- **General consent:** The Bill provides the data principal with certain rights with respect to their personal data. Any processing of personal data can be done only on the basis of consent given by data principal. But in certain cases, exemptions are provided. These include (1) if required by the State for providing benefits to the individual, (2) legal proceedings, (3) to respond to a medical emergency.
- **Obligations of data fiduciary:** processing of personal data will be conditioned to certain purpose, collection and storage limitations.
- **Rights of the individuals:** rights include (1) obtain confirmation from the fiduciary on whether their personal data has been processed (2) seek correction of inaccurate, incomplete, or out-of-date personal data, (3) have personal data transferred to any other data fiduciary in certain circumstances, and (4) restrict continuing disclosure of their personal data by a fiduciary if it is no longer necessary or consent is withdrawn.
- **Transfer of Data outside India:** critical personal data as notified by govt. can only be processed in India. Anyways certain personal data

can be transferred outside India only when consent of the individual is granted and subjected to additional conditions. It will also continue to be stored in India.

Key definitions

- **Data principal:** the individual whose data is being stored and processed.
- **Data transfer:** data is transported across country borders in underwater cables.
- **Data localization:** storing data in any device physically present within the borders of a country.
- **Data Fiduciary:** one who decides the purpose of data processing.
- **Data protection:** is the process of safeguarding important information from corruption, compromise or loss.
- **Critical Personal Data:** category of data which need most protection under data protection law.
- **Data Protection Authority (DPA):** To ensure compliance with the provisions of the Bill, and provide for further regulations with respect to processing of personal data of individuals, the Bill sets up a DPA.

Positives

- All personal data online or offline require explicit and informed consent of the individual. Individual has great control over his/her data.
- Data localization will be done by domestic companies. The localization will help Indian govt. to tax internet giants.
- The **Personal** data protection bill will balance the growth of digital economy and protection of personal data.

Concerns

- DPA (Data Protection Authority of India) should comprise people who are independent, representatives of the stakeholders and some govt. nominee but now DPA is dominated by govt. nominees. This raises privacy concerns as the government can access peoples' details without their consent.
- Safeguards suggested by the panel are completely left out from the bill, which means the bill no longer protect the interest of citizens.

- Now Non-personal data can be accessed by agencies in the bill. There are three conditions should meet to obtain the data that are the objective has to be achieved, proportionality should be exhibited and the objective should be reasonable. Autonomy of the govt.
- The bill allowing the govt. to force companies to transfer non-personal data which raises serious intellectual property concerns.
- **Exemptions for the government:** Section 35 of the bill permits the Central Government to exempt any agency of the Government from the provisions of the law
- **No reasonable exemptions:** There is no sufficient reason for government agencies to be exempted from basic provisions of the Bill.
- **Easy breach:** Though this would be subject to procedures, safeguards, and oversight mechanisms to be prescribed by the Government.
- **Executive hegemony:** There is no scope for oversight over the executive's decision to issue such an order.
- **Arbitrary and intrusive:** As demonstrated by the Pegasus case, the current frameworks for protecting citizens from arbitrary and intrusive State action lack robustness.

Way Forward

- Leave the draft to an expert panel of selection committee for evaluation.
- strike a balance between privacy interest of public and security of state though extensive consultation and consensus among stakeholders.
- Govt. should respect the privacy of the citizen. And implement proper safeguard which included in the draft.
- Proper system for ensuring data security.
- Include independent personalities to DPA as suggested in the draft.
- The **government would also have to respect the privacy** of the citizens while **strengthening the right to information.**

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THE UNBEATABLES 2023

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