

Data Protection Bill 2021

What is this?

An Act to regulate handling of data and protect the privacy of the individuals in the country with one of largest population of internet users of the world. Our laws are yet to catch-up with privacy protection of individual's data and the companies benefitting from the data.

A Joint Committee of the Parliament adopted the final version of the Data Protection Bill 2021 earlier this month.

Key Elements of the DPB 2021:

1. Applicable to States, Companies, firms, AOP/BOI any other person registered under our laws who process data related to Indian citizens
2. Covers all personal and non-personal data (anonymous data stripped off personal information)
3. Covers adults and children (<18 years of age)
4. An alternative to SWIFT payment system has been recommended
5. A 24-month window will be given for compliance to data fiduciaries and data processors
6. Consent is a must for processing all data
7. Social media to be regulated as well
8. An authority to monitor personal and non-personal data will be appointed

Areas of concern:

- Common authority notified for both personal and non-personal data regulation is a contentious issue.
- Central Government ***exemptions / powers*** granted under the updated Bill have raised concerns of centralization of powers.
- Recommendations on an alternative ***SWIFT*** payment system while welcome, will involve significant efforts to execute.
- Is a ***24-month*** window sufficient to set-up the infrastructure and processes to adhere to the compliance?
- Data processed by foreign entities are sought to be 'brought-back' / 'mirrored' in India thereby focusing on non-governance of this data by other countries.

What are the concerns for Businesses?

Do I, as a **BUSINESS** collect data?

Emphasis on **CONSENT**

Central Government Powers
on use of data

Surveillance issues of the State

Manish Tewari's dissent note

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- Is the data collected personal / non-personal data?
- Where is the data stored?

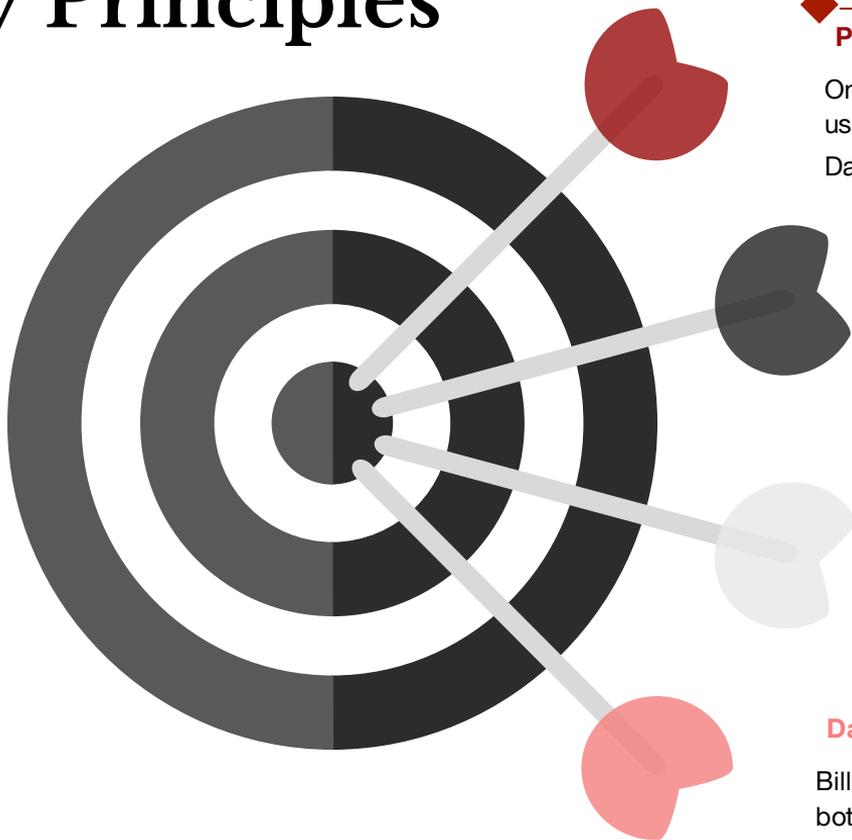
- Emphasis on **free** and **informed** consent.
- Consent must be specific for the purpose capable of withdrawal of consent

- Government powers are very broadly / widely worded – it can create risks of misuse

- This Bill was not intended for surveillance reform. That is addressed in a separate law

- Bill creates a different parallel regime for private / public sector – that may not have been the expectation

Key Principles



Principles for Data Protection

Only data that is essential for a particular purpose is collected and used only for limited purpose. No recycling of data is allowed.

Data to be purged post use

Grounds for collection of Data

There must be a pre-informed consent for collecting the data. There is a legal necessity to obtain consent

Rights of the Data Principal

Right to view, access, withdraw consent, Data protection officer details to be shared, Grievance mechanisms and compliant authorities to be notified

Data Protection Authority

Bill proposes a Data Protection Authority, a centralised regulator for both personal / non-personal data collected and processed

Points to ponder



- The key principles of the Bill are some insights into what could constitute the future ***audit reviews***.
- The Bill also details non-compliance penalties which run into crores. These ***penalties*** are defined for non-compliance with request from authorities, non-compliance of the law, non-compliance with requests of the data principal.
- Certain aspects of the proposed Data Protection Bill are at odds with the global governance frameworks on the data governance according to a senior executive at Google, Kathrine Charlet, Director – data, Google. The provisions relating to non-personal data and the restrictions of the flow of data are some examples.
- Inter-operability of the data governance framework is critical and would benefit our country according to this executive at Google. India would also benefit from news technologies like AI, Blockchain etc if the data flow is inter-operable and smooth was her opinion.
- According to Ralf Sauer, deputy head of unit for international data flow, DG Justice, European Commission, they are looking at the data protection safeguards of other countries to facilitate data flow.

Refer next slide for a summary mind map of the key elements as detailed in the draft bill.

Source: Economic Times, draft of Data Protection Bill, 2019, other research notes and articles published.

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