

The unfolding trajectory of data privacy law

ON CUSP OF CHANGE. The DPDP Bill 2023 is an encouraging first step towards establishing comprehensive data privacy regulations

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The Digital Personal Data Protection Bill, 2023 (DPDP Bill), has introduced significant changes to the proposed data privacy law regime. First, the DPDP Bill has transitioned from deemed consent to specific legitimate uses. While retaining the substance of the old draft, the Bill outlines circumstances in which personal data may be processed without obtaining explicit consent from the data principle. The 2022 draft faced severe criticism from public policy experts for permitting the non-consented processing of personal data in “public interest” — a term that was held to be vague and a potential foot in the door for abuse. The 2023 version has taken a better route by eliminating the public interest clause and defining a handful of cases where personal data may be processed without consent.

The Bill carves out of its scope all

personal data that has been made public either by data principles themselves or any others who are obligated by applicable law to make such data publicly available. By allowing personal data that has been made public to fall outside the Bill’s protection, the potential for misuse and unregulated personal data processing is left unchecked. This could undermine individuals’ control over their personal information and may create a loophole that could be exploited by data processors and companies, particularly those engaged in data scraping and profiling.

The Bill has also enhanced the regulation of international data transfer. Unlike its predecessor, the DPDP Bill provides for a restrictive approach where the transfer of personal data would be blocked to a country notified by the central government.

In what continues to remain a heavily debated subject, the DPDP Bill expands the scope of exemptions granted to the government instrumentalities. This includes State instrumentalities notified by the



RAY OF HOPE. Eliminating the public interest clause and defining specific cases for consent-less use of personal data are steps in the right direction

centre in the interests of sovereignty and integrity of India, security of state, friendly relations with foreign states, maintaining public order or preventing incitement to cognisable offences. Further, personal data necessary for research, archiving or statistical purposes would also be exempted so long as they adhere to standards that may be prescribed in future. The Bill, like

its predecessors, seeks to establish the Data Protection Board of India, which would act as a watchdog of the new law. But, as per the terms of clause 19(2) of the Bill, the members of this Board would be appointed by the centre. This provision has also been hotly debated as experts worry that appointment of officials to the Board by the central government may potentially undermine its

independence.

But, the DPDP Bill has come a long way from its predecessors. The Bill also accounts for the diversity of the Indian population by requiring data fiduciaries to simplify the language used while also giving the option to switch between multiple languages.

The two decade old IT Act of 2002 has struggled to match the swift pace of technological advancements. As global awareness regarding the significance of data and data processing platforms grow, it was imperative for India to usher in the long-anticipated data privacy law. The DPDP Bill presents itself as a straightforward yet encouraging initial step towards establishing comprehensive data privacy regulations. As India stands on the cusp of introducing a dedicated data privacy law, it becomes intriguing to observe the unfolding trajectory of the country’s journey into the realm of data privacy regulation.