

# **International Cooperation on Cybercrime and Electronic Evidence**

## **Evolution of India's Data Protection Framework**

**- Deepak Maheshwari**

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**Octopus**





# Mutual Legal Assistance Treaties

## 20<sup>th</sup> Century Tool For 21<sup>st</sup> century crime?

- **Cross-Border Nature of Internet**
  - **Criminals operate and collaborate across borders**
  - **But what about surely,**
  - **Service providers including social media**
    - **Cross geographical borders**
    - **Play around or cross legal redlines**
    - **User in country A**
    - **(Suspected) Criminal in (supposedly) country B**
    - **Data center in country C**
    - **Headquarters in country D**

**Technology is Global, Policy and Law is Local / National / Regional**



# Sharp Challenges, Blunt Responses?

## Slew of Proposals

- **Localization mandates**
  - Data localization
  - In-country establishment
  - ‘Local residents’ in key positions, criminally liable
  - Personal, criminal liability
  - Content moderation per local norms
- **Strong KYC mandate for customers and users**
- **Trace the originator**
- **Ban, Restrict or Weaken ‘end-to-end encryption’ & VPN**

**Is Data Protection Framework the Right Tool?**



# Evolution of Legislative Framework

**2000 - Information Technology Act enacted**

**2008 - IT Act amended; rules for sensitive or personal data or information, 2011**

**2010 - Enrolment began for Aadhaar without law, national ID for 'residents' sans any entitlement**

**2010 - Consultations on Privacy Law began**

**2012 - National Data Sharing and Accessibility Policy notified**

**2012 - A committee recommends 9 principles for privacy law**

**2012 - Writ petition filed in Supreme Court challenging constitutional validity of Aadhaar**

**2016 - Aadhaar Act passed**

**2017 - Supreme Court upheld privacy as a fundamental right in 2017**

**2018 - An expert committee recommends Draft Personal Data Protection Bill, 2018**

**2018 - Supreme Court upholds constitutional validity of Aadhaar Act**

**2019 - Government introduced PDP Bill, 2019; referred to Joint Parliamentary Committee (JPC)**


**2020 - Another expert committee recommends Non-Personal Data (NPD) governance framework**

**2021 - JPC recommends to include NPD and renames it as Data Protection Bill, 2021**

**2021 – Intermediary rules notified with higher compliance burden in case of more than 5 million users**

**2022 - Comments sought on Draft Data Accessibility and Use Policy; monetization of processing data**

**Data Protection → Privacy → Data Protection**



# Data Protection Bill, 2021: Key Concerns

## Data Protection ≠ Privacy

- **Non-Personal Data In, Non-Digital Data Out**
- **Modeled on EU GDPR (2018 & 2019)**
  - **Over-reliance on consent framework**
  - **Fresh consent necessary for any other purpose(s)**
  - **Hard Classification between SPI and PII**
- **'Critical Data' undefined**
- **Data localization mandates**
- **Government to decide on Data Transfer Agreements**
- **Exemption for Government Agencies**
- **Social Media Intermediaries to be treated as Publishers**
- **Adverse Impact of Compliance Burden on Start-ups and Innovation**
- **Concept of Sandbox**

**Need for Public Consultation Afresh!**



# Questions to Ponder

- **What is the scope and philosophy of your national law (existing or proposed)?**
  - **‘Data Protection’ or the broader ‘Right to Privacy’**
  - **Is GDPR the right model, notwithstanding social-cultural milieu and political economy of a country?**
  - **What about crimes pertaining to Non-Personal Data?**
  - **What about ‘Privacy Sandbox’, for example, to test the data practices of digital platforms and mobile apps?**