Analysing the “Draft Privacy Bill”

What is the issue?

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- “Srikrishna committee” was mandated to draft a law for “privacy protection” \n after widespread study and consultations.
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- The committee has now released its report and the draft law, but it has opened to mixed reviews and several loopholes have been pointed out.
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What are the positives of the draft bill?

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- “Draft Personal Data Protection Bill 2018” displays the principles to be followed in protecting an individual's fundamental right of privacy.
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- **What -** The bill is progressive as it seeks to clearly recognize the importance of privacy and defines personal data broadly (beyond the current metrics).
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- Personal data now includes - passwords, financial data, health data, official identifier, sex life, sexual orientation, biometric data, genetic data, transgender status, intersex status, caste or tribe, and religious or political affiliation.
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- Importantly, “location” is one critical indicator that hasn’t been considered sensitive by the draft bill.
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- **Consent -** The bill seeks to make data processing “fair and reasonable” by permitting for only limited personal data to be collected.
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- It mandates that data aggregation needs to be done only for a clearly specified lawful purpose, with the explicit consent of the concerned person.
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- Nonetheless, broad exemptions granted within the bill are a serious setback

to this provision and the envisioned overall privacy structure.
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What are the major concerns with the bill?

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- **Deletion -** The rights of correction, updating, and data portability are included in the draft, but the “right to be forgotten” is only vaguely articulated.
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- Further, there is no apparent “right of deletion or right to object processing”.
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- **Transparency -** The envisioned “Data Protection Authority” would have the powers to decide if data breaches are to be disclosed at all to affected users.
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- This is in contrast to the expectations that hoped that the law would mandate the disclosure of all data base breaches to the concerned public.
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- **State Snooping -** No attempt has been made to curb government surveillance and the push for “data localisation” might actually aggravate this.
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- Notably, the government has been empowered to classify any information as "critical personal data" and mandate its storage and processing within India.
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- Significantly, the controversial case of “Aadhar” hasn’t been discussed in the bill as the matter is under the judicial scanner.
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- **Broad Exemptions -** Data may be collected without consent for compliance with legal orders, for employment related aspects, and for emergencies.
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- Further, it has been stated that data might also be collected for ‘functions of the state’, which is a broad and discretionary a category.
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How does the draft fare overall?

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- It is a pity that the consultative process was opaque, with submissions to the committee kept confidential.

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- Further, unlike with most draft bills, there is no apparent provision for feedback from stakeholders after the release of the draft.
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- Therefore, areas of serious concern may not be addressed before the bill is signed into law, thereby making the bill non-inclusive.
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- The draft makes a beginning in terms of affording data protection to citizens but it falls short of the envisioned goal by a huge margin.
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Source: Business Standard

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