Concerns with Data Protection Bill

What is the issue?

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- A draft law titled the ‘‘The Personal Data Protection Bill, 2018’’ was recently produced by Justice B.N. Srikrishna committee. Click here to know more
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- The report seems to be misinterpreting the Supreme Court’s right to privacy judgment.
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What was the court’s order?

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- The Supreme Court earlier unanimously affirmed on the right to privacy as a fundamental right.
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- The court imposed upon the government a clear obligation.
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- It was to make a law safeguarding a person’s informational privacy, commonly referred to as data protection.
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- So clearly the Committee was formed within the ambit of, and even bound by, the Right to Privacy judgment.
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What are the concerns?

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- **Judgement** - The recent recommendations undermine the legal principles within the Right to Privacy judgement.
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- The judgement expressly stated the primacy of the individual as the

beneficiary of fundamental rights.
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- It also rejected the argument that right to privacy could be dissolved for the cause of economic development.
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- **Priorities** – The priorities of the Srikrishna committee deviate from the basic points of the judgement.
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- The report is titled “A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians”.
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- It brings together the expansion of the digital economy and state control with the principles of the right to privacy judgment.
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- Clearly, it suggests the common good and the economy as the first priority and individuals, the second.
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- **Constitutional law** – The report clearly suggests that the State is a facilitator of human progress.
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- Notably, it says the State is guided in this process by Directive Principles of State Policy (DPSP), rather than fundamental rights (FR).
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- It thus ignores the very structure of the Constitution which keeps the FR enforceable and DPSP unenforceable.
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- The report leaves open to government’s convenience, the realisation of its regulatory agenda.
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- But the judgement tasks the government to measure and justify its actions at every point it intrudes into privacy.
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- **Language** - The report’s approach to rights gets to be a concern for the health of the democracy.
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- It states that rights are not “deontological categories”, meaning that their realisation is subjected to other factors.
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- Such complicated wording and highly debatable content makes the report alien to the common citizens.
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What is the way forward?

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- In all, the report seems to be making a compromise on the individual right for the ‘‘collective good’’.
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- But this stands in stark contrast to the right to privacy judgment.
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- Preserving the true spirit of the judgement is essential for realising the values of freedom, autonomy and dignity.
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Source: The Hindu

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