RBI's Stance on Data Localisation Rules

Why in news?

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The government and the RBI are firm on the October 15 deadline for compliance on data localisation standards.

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What was RBI's order on data storage?

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- Data localisation is storing of data on a device physically present within the borders of the country where the data was generated.
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- RBI, in April, 2018, gave 6 months time to global payment companies to store transaction data of Indian customers within India.
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- The data should include the full end-to-end transaction details, information collected/carried/processed as part of the message/payment instruction.
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- The requirements apply as those mentioned in the draft data protection bill and draft national e-commerce policy framework.
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What was the demand?

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- Global financial technology companies have reportedly sought an extension to the October 15 timeline, with demands to adopt a soft stance on data localisation.
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- But the RBI and the government did not favour any extension of the deadline.
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- The government has also ruled out data mirroring as an option.
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- Foreign payment companies had asked the RBI to allow data mirroring which would allow them to store a copy of the data overseas as well.
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Why is it being opposed?

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- Any move to restrict all cross-border data flows could be counterproductive, on becoming a trade barrier.
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- The norms could have negative impacts on the ability of companies to do business in India.
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- Especially, the U.S. warned that India's policy on the issue will adversely affect American businesses in the country.
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- It may undermine India's own economic goals and may not likely improve the security of Indian citizens' data.
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- It could also break up the Internet if every country in the world insists on keeping data within its territory.
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What is RBI's rationale?

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- The move was to ensure better monitoring of payment service operators.
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- Data localisation would offer supervisory access to data stored with these system providers.
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- It also gives access to data stored by their service providers/ intermediaries/third party vendors and other entities in the payment ecosystem.
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- National security and data sovereignty are other reasons for data localisation rules.
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- As, it is possible that data could be indicted if it is stored on American servers and India faced US sanctions.

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What are the limitations to data localisation?

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- **Global players** like banks, e-commerce majors, fin-tech service providers and credit card companies prefer to store and process data at one or two global centres.
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- So moving processes implies higher costs and disruption for them.
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- New teams must be hired and trained, and security procedures have to be reviewed and modified.
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- **Local infrastructure** in India suffers from severe deficiencies.
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- Indian data-transmission speeds are slow by global standards.
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- Server capacity is low and costs are high, and likely to rise as demand is artificially boosted.
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- So RBI's insistence may lead to a situation where smaller payment companies stop offering services in India.
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- It will also impose higher costs on the start-up ecosystem since any Indian start-up will pay higher costs to include payment options.
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- **Legal** - The Srikrishna Committee recommendations on data protection are now only open for public feedback.
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- So as of now, India neither has a functioning data protection law nor adequate security standards in practice.
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- Evidently, there have been instances of massive leaks and hacks of sensitive information, including payment records.
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- **Surveillance** - Law and order departments and security agencies currently operate in a legal vacuum, making surveillance another grey area.
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- They can search and survey all sorts of digital data without any checks or balances.
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- Indeed, there is evidence that foreign intelligence agencies also collect a massive amount of Indian data and meta-data.
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How is it elsewhere?

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- Data localisation is not a new concept but has picked up pace after 2013.
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- It is when America's National Security Agency contractor Edward Snowden leaked classified documents.
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- It showed how the US government had accessed data to conduct surveillance on foreign allies.
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- Since then, countries like Germany have taken steps to ensure that sensitive data stay within their borders.
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- Many other countries like Russia and China have very stringent laws around data localisation.
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- It is largely driven by the fear of losing critical data to hackers and spy networks of rival countries, as well as systemic risks during times of conflict.
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What lies ahead?

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- **RBI's** firm stance on sticking to the deadline is a welcome move.
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- It should now send a stronger signal by imposing stiff penalties for non-compliance.
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- **Sectors** - However, India should be careful in imposing data localisation across all sectors.
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- Adopting data localisation in few sensitive sectors like financial services and

relaxing on e-commerce and cloud computing is valid.
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- E.g. in Australia and Canada, data localisation rules are applied only to specific sectors like healthcare, telecom and finance
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- **Law** - Data localisation rules must be backed up by a strong data protection law to clearly define and limit surveillance powers.
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- Policy measures to encourage the creation of higher server capacity and enabling cheaper and faster data transmission are essential.
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- **Multinational companies**, on their part, should take a more proactive role in following local rules.
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Source: Economic Times, BusinessLine, Business Standard

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