

Background Guide

AIPPM



AIMUN

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A man must elevate himself

Greetings Members!

The All-India Political Parties Meet was created as a body to bring legislators and the executive class to one single platform to discuss and clear out issues, without any legislative provisions for a specific purpose, that being, to serve as a forum for undiluted solution-oriented debate which the constraints of many bodies disallow.

We, as the Executive Board of the AIPPM, believe in providing the utmost freedom to the members, and our inputs into the substantive matters of the committee, will be at the discretion of the committee members.

We expect that while you have fun during research or deliberations on the issue, you do not undermine their relevance, and that you debate them because they affect you as a citizen as well. This guide has been prepared with the idea that it will brief you about the issues at hand and give you a good starting point for further research. So, we request you to not see it as an end in terms of preparation. Going beyond the scope of this guide during preparation is not only suggested but is a necessity if you wish to perform well.

Good Luck! Hoping to see all of you soon.

Regards

Varya Khosla
Moderator

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Valid Sources for Research

1. Government Reports (Each ministry publishes its reports including the External Affairs Ministry)

2. PTI, PIB
3. Government Websites
4. Committee Reports/ Commission Reports
5. RTI Proofs
6. Parliamentary Standing Committee reports
7. Indian Express/ The Hindu/ Another Reputed Opinion Newspaper
8. https://onoe.gov.in/HLC-Report-en#flipbook-df_manual_book/1
(High-Level Committee report on One Nation One Election)

Introduction

"One Nation, One Election" (ONOE) entails the synchronization of the timing of elections in India where both parliamentary (Lok Sabha) and state assembly (Vidhan Sabha) elections shall be done at one go. This idea seeks towards systematization of the electoral system thereby decreasing the cost and ensuring better governance limits.

The idea of ONOE has been a topic of discussion and debate in Indian political discourse for several years. While there is some support for the concept, significant challenges remain in terms of political agreement, legal amendments, and logistical execution. The future of ONOE depends on the ability to navigate these challenges and build a broad consensus for its implementation.

The Idea of ONOE was brought up by the current Prime Minister, Shri. Narendra Damodardas Modi and by the members of the BJP. The High-Level Committee on 'One Nation, One Election' was set up on Sept. 2nd, 2023. It is headed by the former President of India, Shri. Ramnath Kovind.

The Report, comprising 18,626 pages, is an outcome of extensive consultations with stakeholders, experts and research work of 191 days, since its constitution on 2nd September 2023. The other members of the Committee were Shri Amit Shah, Union Minister of Home Affairs and Minister of Cooperation, Shri Ghulam Nabi Azad, former

Leader of Opposition in Rajya Sabha, Shri N.K. Singh, former Chairman of the 15th Finance Commission, Dr. Subhash C. Kashyap, former Secretary General, Lok Sabha, Shri Harish Salve, Senior Advocate, and Shri Sanjay Kothari, former Chief Vigilance Commissioner. Shri Arjun Ram Meghwal, Minister of State (Independent Charge) Ministry of Law and Justice was a Special Invitee and Dr. Niten Chandra was the Secretary of the HLC.

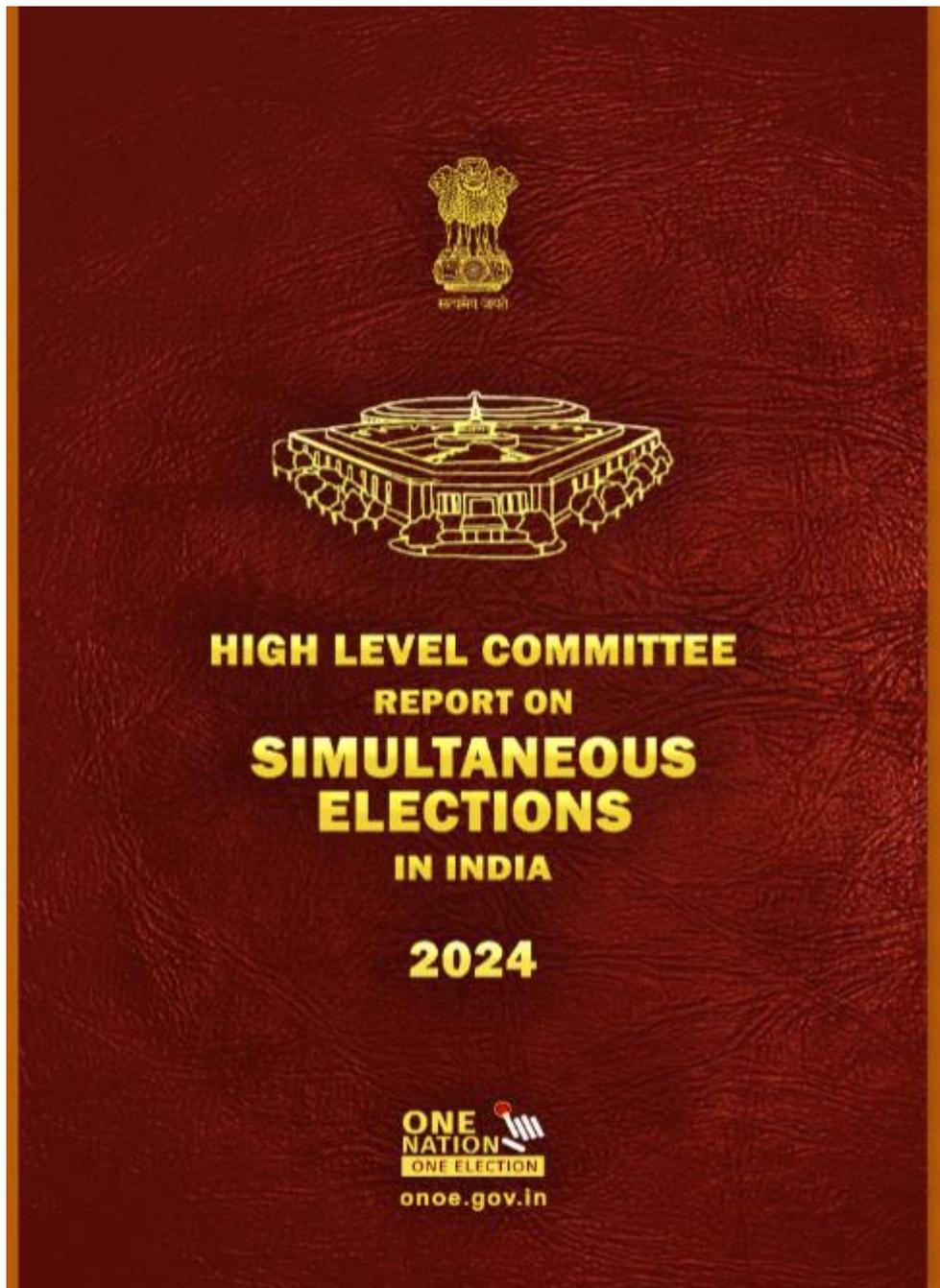
This was only in the history of 1951-52 when simultaneously general and state elections were held for the first time in India. But with the transition of various political and administrative factors, the calendar of the election process is taking step by step leaving the way of widespread elections in multiple states.

ONOE's primary benefit is cost efficiency. Simultaneous elections will considerably reduce repetitive election costs and related security and management issues, thereby easing the financial burden on the exchequer. It will also help minimize the disruptive effect of the imposition of the Model Code of Conduct, which very often puts a brake on governance and development activities.

However, this proposal also faces several challenges. To begin with, it is logistically difficult to have simultaneous elections in a large and heterogeneous country like India. Politically, many people oppose such a move out of apprehensions of electoral disadvantages and disruption of established political strategies. Constitutionally, ONOE is possible only if there is a massive amendment of the Indian Constitution and intricate legal changes in the existing electoral laws.

Besides these, there are paramount federal concerns, in the sense that states may see this act as an attempt to invade their autonomy by the federal authorities. The implementation of ONOE, therefore, would require building a broad social, and hence political consensus; generating a law to set up a legislative framework and organization; implementing pilot projects to test practical difficulties and make the public aware to get the necessary support.

In sum, the concept of ONOE has been in debate for a few years and, in terms of cost and efficiency in governance, seems to offer a bouquet of benefits, but successful implementation faces huge logistic, political, legal, and federal challenges. The capacity to be built for such a consensus and the concerns of the stakeholders will hold the future of this initiative.



Background and History

The concept of "One Nation, One Election" (ONOE) in India has its roots in the early years of the country's democratic journey. Following independence, India conducted its first general elections in 1951-52. During this period, elections for both the Lok Sabha (House of the People) and state legislative assemblies were held simultaneously. This practice continued until 1967, marking a period where synchronized elections were the norm.

The shift away from simultaneous elections began with the political instability of the late 1960s. Several state assemblies were dissolved prematurely, necessitating mid-term elections. For instance, in 1968 and 1969, several states including Bihar, Punjab, West Bengal, and

Haryana saw their assemblies dissolved ahead of schedule. This trend continued into the 1970s and 1980s, further disrupting the synchronized election cycle.

By the late 1980s and early 1990s, the electoral calendar had become highly fragmented, with frequent elections across different states. The practice of holding elections at different times became entrenched, leading to a situation where the country is almost perpetually in election mode. This frequent electoral cycle has been criticized for causing disruptions in governance and increasing the financial burden on the exchequer.

The idea of returning to simultaneous elections has been discussed periodically. In 1999, the Law Commission of India recommended holding simultaneous elections to improve governance and reduce costs. The concept gained further traction in recent years, with Prime Minister Narendra Modi advocating for ONOE. The NITI Aayog, a policy think-tank of the Indian government, also suggested conducting simultaneous elections to streamline the electoral process.

Proponents argue that ONOE would lead to significant cost savings, as the expenses associated with conducting elections, including security and administrative costs, would be reduced. Additionally, it is believed that synchronized elections would minimize the policy paralysis that occurs due to the imposition of the Model Code of Conduct, which restricts the government's ability to announce new projects and policies during election periods.

However, the implementation of ONOE faces several challenges. Logistically, organizing simultaneous elections in a country as large and diverse as India is a formidable task. Politically, there is opposition from various parties, which fear that such a move could diminish their electoral prospects. Moreover, constitutional amendments would be required to synchronize the electoral calendar, posing legal challenges.

In summary, while the concept of ONOE is rooted in the early practice of synchronized elections in India, its re-implementation faces numerous hurdles.

The idea continues to be a topic of significant debate, reflecting the complexities of balancing electoral efficiency with democratic principles and political realities.

Past International Actions / How Countries have dealt with this agenda

Sweden

General elections to the Riksdag, regional/county council assemblies and municipal councils are held every four years, in September. These elections take place on the same day. The electoral system in Sweden is proportional, which means that the parties are given several representatives in the elected assembly that are proportional to their share of the vote. The practice also ensures a high voter turnout as citizens cast their votes for various levels of government in one electoral event.

Nepal

Nepal has experience holding national and state elections simultaneously once in 2017. On August 21, 2017, the Nepal government ordered the holding of national and state elections across the country simultaneously. This was to be Nepal's first election after the country adopted a new Constitution in 2015. However, the Election Commission of Nepal raised concerns about the difficulty of organizing such concurrent elections across the country. The government then went for a two-phase election with a gap period. As a result, the election in Nepal was divided into two phases. The first phase took place on November 26, 2017, followed by the second phase on December 7 of that year.

South Africa

Provincial and national elections are held simultaneously every five years in South Africa. The African country has nine provinces. In these elections, voters elect representatives for the National Assembly and the provincial legislatures. This ensures consistent voter turnout and streamlines the electoral process.

Indonesia

The simultaneous national election followed by a local simultaneous election at a regional level is deemed the most ideal and likely to be carried out in Indonesia. This system was implemented in the country in 2019 for the first time. Under this system, elections for the president, the national parliament (DPR), the Regional Representative Council (DPD), and regional legislatures are held on the same day. The simultaneous electoral process is a strategic step to strengthen the process of institutionalizing democracy in Indonesia.

Philippines

This country's elections are called 'synchronized national and local elections'. They are held every three years on the second Monday of May and during the electoral process, voters cast their votes for national positions (President, Vice President, and Senator) as well as local positions (Congressmen, Governors, Mayors, and Councillors).

Key Stakeholders

1. Election Commission of India (ECI)

The Election Commission of India is responsible for holding the elections. It plays a crucial role in ensuring that the elections are held in a free and fair manner and highest voter turnout is ensured.

2. Central Government

The central government will be crucial in crafting the plan and enacting the constitutional reforms required to carry out this agenda, especially the Ministry of Law and Justice and our current Minister of Law, Shri Arjun Ram Meghwal. Additionally, the nation's central government will guarantee the administrative and logistical assistance needed to hold simultaneous elections throughout the nation.

3. State Governments

Because of the large number of states in India, there will be a need for all the state governments to align their electoral schedules with the central government to concede

to the agenda and conduct all the electoral processes smoothly and simultaneously with the central general elections.

4. Judiciary

The role of the judiciary will be critical in interpreting the constitutional amendments that will be made to adjust the agenda into the country's being. The High courts and the Supreme Court will need to ensure adherence to the constitutional framework and that the country's foundation is not being harmed.

5. Political Parties

All political parties whether central or regional, a part of the opposition or the ruling will have to show their support and be fully in line with the concept of One Nation One Election to ensure a simultaneous and smooth conduction of the general and the assembly elections.

6. Media

In a country like India where the population is so diverse, the role of the media becomes critical they will be important for disseminating the information educating the public, and raising awareness about the agenda to ensure proper and high voter turnouts and let people know about what is happening about the amendments that are being made to the constitution.

7. Voters

One we talk about the key stakeholders the population ultimately is the most important case stakeholder because it all depends on them. The voter turnout will only be high if the people know what they are going to vote for and what the electoral processes are that are taking place in the country post the implementation of one nation one election.

8. Security Agencies

Conducting simultaneous elections is no easy task for a country like India there will be high security needed so that every process goes smoothly. The people's acceptance will matter the most. General elections and assembly elections can only be conducted simultaneously and smoothly if everyone is willing to cooperate and especially the key stakeholders are sure and they know what they are doing.

- Constitutional and legal concerns regarding the potential alteration of the duration of State Legislative Assemblies.
- Linguistic bias in consultations, limiting the inclusivity of the decision-making process.
- Potential compromise of the Election Commission's independence and autonomy.
- Balancing financial considerations with the fundamental principles of democracy.
- The challenge of ensuring a fair and unbiased decision-making process amid political interests.

Identifying the problem that led to ONOE

1. **Frequent Elections:** India currently has elections happening almost every year in different states, which leads to a continuous cycle of electioneering
2. **High Costs:** Conducting separate elections for the Lok Sabha and various state assemblies is expensive.
3. **Policy Paralysis:** The Model Code of Conduct (MCC) comes into effect during elections, restricting the government's ability to announce new policies or projects.
4. **Governance Disruption:** Continuous election cycles divert the attention of political leaders and government officials from governance to campaigning.
5. **Voter Fatigue:** Frequent elections can lead to voter fatigue, reducing voter turnout and engagement.

ONOE was initially practiced until 1967 but was disrupted due to various factors like defections, government dismissals, and dissolutions.

Analysing the issues with ONOE

It has been noted that several Articles of the Constitution will have to be amended for holding simultaneous elections. Four national-level political parties have objected to the One Nation, One Election scheme saying it was/is unconstitutional. The 'Aam Aadmi Party' said it would "institutionalise a Presidential form of government, which cannot be dislodged by a vote of no confidence," while the Congress said this would require "substantial changes to the basic structure of the Constitution."

- Articles 83 and 172 of the Constitution, which guarantees five years to every elected Lok Sabha and Assembly respectively, 'unless sooner dissolved' will have to be amended.
- Articles 85(1) and 174(1) stipulate that the intervening period between the last session of the House of the People / State Legislative Assemblies and the first Session of the subsequent House / Assemblies shall not exceed six months. So, if ONOE comes in, what would happen in case of a hung parliamentary situation? What if a government falls due to a no-confidence motion? What if a representative faces a mishap in a year into their tenure?
- Article 356, which deals with President's rule, may need to be amended. Article 356 comes into force only if there is a failure of constitutional machinery in a state – so for President's rule to be put in place for the sake of simultaneous elections is problematic.

- The Tenth Schedule of the Constitution – which is the anti-defection law – will have to be reconsidered if Assemblies and the Lok Sabha must ensure continuous governance for five years, if the ruling party does not have a large mandate.

Case Study 1- Andhra Pradesh and Telangana

In 2014, the state of Andhra Pradesh was bifurcated to create the new state of Telangana. This led to separate state legislative assembly elections for both states, even though the Lok Sabha elections were also scheduled that year.

Implementation

- Both Andhra Pradesh and Telangana held their state legislative assembly elections simultaneously with the Lok Sabha elections in 2014.
- The administrative machinery had to manage both sets of elections, coordinating voting, counting, and security arrangements.

Outcomes

The simultaneous elections saw a high voter turnout in both states. Voters were engaged in the process, and there was significant media coverage, which kept the electorate informed. Conducting both elections together allowed for better utilization of resources, including security personnel and polling staff. It also reduced the logistical burden and cost associated with conducting two separate elections.

The elections highlighted the differences in voter behavior for state and national issues. In Andhra Pradesh, the Telugu Desam Party (TDP) won a significant number of Lok Sabha seats but also faced challenges in the state assembly elections due to local issues.

Challenges

Parties had to differently strategize for state and national issues, which sometimes led to mixed messages and voter confusion

Focus on National Issues

There was a tendency for national issues to dominate the discourse, which overshadowed local issues important to the state electorate.

Case Study 2- Karnataka Assembly Elections

Karnataka, a major state in southern India, had its state legislative assembly elections in 2018, separate from the Lok Sabha elections held in 2019.

Implementation

- The assembly elections were conducted in May 2018, while the Lok Sabha elections were held almost a year later in April-May 2019.
- This separation required the Election Commission of India (ECI) to conduct extensive electoral exercises twice within a year.

Outcomes

Karnataka saw robust voter turnouts in both elections, with voters distinguishing between state and national issues effectively.

Resource Utilization Conducting separate elections required extensive resources and logistics twice within a short span, leading to increased costs and administrative efforts.

Governance Impact The imposition of the Model Code of Conduct (MCC) twice within a year led to periods of policy paralysis, impacting governance and decision-making processes.

Challenges

Voters and political parties experienced electoral fatigue, as they had to engage in back-to-back election campaigns and voting processes.

The financial cost of conducting separate elections was significantly higher, with substantial funds allocated for security, election staff, and logistics.

The frequent imposition of the MCC disrupted ongoing governance and developmental projects, leading to delays and administrative bottlenecks.

Analysis and Implication

Holding elections simultaneously could significantly reduce the financial burden on the exchequer by consolidating electoral processes.

It would streamline the deployment of security personnel and election staff, improving overall efficiency.

Issues Faced on the concept of ‘One Nation, One Election’

1. Constitutional and Legal Challenges

- **Amendments Required:** Amendments are necessary if simultaneous elections are to be established. This would involve getting approval from 2 houses of the parliament and prevailing on the majority state assemblies.
- **Election Commission's Role:** The election commission needs more resources and greater power than it already has.

2. Logistical Challenges

- **Resource Allocation:** There will be a need for parallel elections calling for significant logistical exercises that involve transporting security personnel, poll officials and availing voting equipment.
- **Infrastructure:** Ensuring adequate infrastructure, such as polling stations and voter lists, would be a massive task.

3. Political and Administrative Challenges

- **Consensus Among Political Parties:** Achieving political consensus is a significant challenge. There are different views on the matter, within distinct groups, opinions which are either directed by strategic interest or otherwise.
- **Governance Disruption:** During election periods, there could be governance disruptions, because governments will focus on elections instead of governance if this proposal is adopted.

4. Federalism Concerns

- **Impact on State Autonomy:** Opposition refers to how simultaneous polls can undermine the federal structure of India by reducing the autonomy of states. Any given time may have a different set of politico-social issues in each state that require different electoral considerations.
- **Regional Representation:** There is the fear of regional issues being outshone by national issues, hence creating an imbalance in terms of representation and focus.

5. Economic and Financial Issues

- **Initial Costs:** The initial expenditure towards the implementation of simultaneous elections could be high, as additional resources would be needed, from EVMs to VVPATs.
- **Economic Disruption:** Frequent elections certainly cause much disturbance to economic activity. Some, however, have argued that the periodic disturbance factor would be less if elections were held simultaneously.

6. Voter Behavior and Engagement

- **Voter Fatigue:** This might have the possible effect, in the event of simultaneous elections, of voter fatigue as regards the length and complexity of the ballot paper.
- **Engagement Levels:** Equally challenging in the process of simultaneous elections would be to have equal, active engagement of voters in national and state issues.

7. Implementation Timeline

- **Transition Period:** It would require a transition period in which the terms of some of the legislative assemblies either would be extended or curtailed, open to political and judicial interpretations for aligning the election cycles of the Lok Sabha with State Assemblies.

Pros and Cons

Arjun Meghwal had cited five impediments to "One Nation, One Election" and arguments in favour of the idea in a written reply in parliament on 27 July, to a question raised by Kirodi Lal Meena.

Hurdles Listed by Minister:

- The move would require amendments in five articles of the Constitution, the Law Minister said.

These are:

- Article 83 on the duration of Houses of Parliament
- Article 85 on the dissolution of Lok Sabha by the President
- Article 172 on the duration of state legislatures
- Article 174 on dissolving state legislatures
- Article 356 on President's Rule in states.
- Simultaneous national and general elections will also require the consensus of all political parties.
- Mr Meghwal said given the country's federal structure, the consensus of all state governments needed to be obtained.
- The cost of the move could run into thousands of crores as additional Electronic Voting Machines and Voter Verifiable Paper Audit Trail (EVMs/VVPATs) would be needed.

"Considering that the life of the (EVM) machine is only 15 years, this would imply that the machine would be used for about three or four times in its life span, entailing huge expenditure in its replacement every 15 years," said Mr Meghwal's reply.

- The minister also listed the requirement for additional polling personnel and security forces.

Pros listed by Law Minister:

- Simultaneous elections will be a huge saving for the public exchequer. The minister says avoiding replicating the administrative and law and order machinery with repeated elections will also save the costs to political parties and candidates in their election campaigns.
- Because of asynchronous national and state elections, including byelections, the Model Code of Conduct is in force for prolonged periods, which impacts developmental and welfare programmes adversely.
- The minister cited the example of South Africa, where elections to national and provincial legislatures are held simultaneously for five years and municipal elections are held two years later.
- In Sweden, the election to the national legislature (Riksdag) and provincial legislature/county council (Landsting) and local bodies/municipal assemblies (Kommunfullmaktige) are held on a fixed date - the second Sunday of September - for four years.
- In UK, the term of parliament is governed by the Fixed-term Parliament Act, 2011.

Questions to Consider

1. Having already been there in the country in 1951-52, in its totality is ONOE an approachable concept for the country in today's time?
2. Does it have more pros or cons?
3. Effects of the General Elections on Assembly Elections and vice versa
4. How will the uniform implementation of this agenda affect the voter turnout ratio
5. What will be the effect of ONE NATION ONE ELECTION on Casteism?
6. What are the lessons learned from simultaneous general elections and state elections in the 2024 elections? (Andhra Pradesh, Tripura)
7. Will there be a need to implement the two-child policy if this agenda comes into being?

PERSONAL DATA PROTECTION BILL

INTRODUCTION TO AGENDA

1. India is the second largest internet market in the world, with more than 760 million active internet users. The Supreme Court of India recognized the right to privacy in a 2017 verdict and in August 2023, the Indian Parliament passed a comprehensive data protection bill, the Digital Personal Data Protection (DPDP) Act.
2. The DPDP Act is a federal law in India that regulates the processing of the digital personal data of its citizens. The law aims to strike a balance between the recognized need to process personal data for various purposes, and individuals' right to control and protect it.
3. Like many data privacy laws around the world, the DPDP Act is extraterritorial, and so applies to organizations operating both inside and outside of India, if they are offering goods or services to Indian citizens, and in doing so processing personal data. The Act does allow for legal bases for data processing in addition to consent of the data principal, but consent is required for many processing purposes.
4. Key takeaways from the law-

- **Obligations of data fiduciary:** Data fiduciaries, which are entities collecting and processing personal data, are required to obtain free, informed and unconditional consent from individuals before processing their data. Data must be deleted when its purpose has been fulfilled or consent is withdrawn.
- **Rights and Responsibilities of Individuals:** Individuals have the right to access the personal data collected about them and know with whom it has been shared. They can request the deletion, correction, or updating of their personal data. In case of grievance, they can approach such a mechanism set up by data fiduciaries. The rights, however, come with certain duties. They cannot impersonate another individual while providing personal data, cannot register a false complaint, or suppress material information.
- **SPECIAL PROVISIONS:** The government can restrict the transfer of personal data to certain countries for security and sovereignty reasons. It can also exempt certain classes of fiduciaries, including startups, from complying with specific provisions.
- **Powers of Government:** The government can order the blocking of a data fiduciary after a hearing based on the recommendation of a Data Protection Board. Immunity from legal proceedings is extended to the central government, the board, its chairperson, and members.
- **Processing of Personal Data of Children:** DPDP mandates parental consent for processing of children's data. Data collecting entities cannot undertake processing of personal data that is likely to cause detrimental effect on the well-being of a child, nor can they undertake tracking or behavioral monitoring of children or targeted advertising directed at children. It defines a child as an individual who has not completed 18 years of age.

Background and History

The Personal Data Protection Bill in India has a detailed history and background:

1. **Supreme Court Judgment (2017):** The groundwork for the PDPB was laid by an August 2017 Supreme Court judgment that identified privacy as a fundamental right.
2. **Srikrishna Committee (2017):** In July 2017, a committee chaired by retired Supreme Court judge Justice B.N. Srikrishna was established to examine the need for a data protection law in India.
3. **Draft Submission (2018):** The Srikrishna committee's draft emphasized user consent, data localization, and penalties for non-compliance. It highlighted the inadequacies of the existing laws and rules.
4. **First Tabling in Parliament (2019):** The PDP Bill was first tabled in Parliament in December 2019. It included new provisions and retained committee recommendations as well.

5. **Joint Parliamentary Committee (JPC) Review:** The bill was reviewed by a Joint Parliamentary Committee (JPC), which adopted the final draft in November 2021.
6. **Withdrawal and Revisions (2022):** The bill faced criticism and was eventually withdrawn in August 2022 for further revisions.

The bill aims to protect personal data, ensure user consent, and establish a Data Protection Authority of India.

Past International Actions

International actions on personal data protection have evolved significantly over the years. Here are some key milestones:

1. **Convention 108 (1981):** The Council of Europe adopted the first legally binding international treaty for privacy and data protection, known as Convention 108.
2. **General Data Protection Regulation (GDPR) (2018):** The European Union implemented the GDPR, which is one of the most comprehensive data protection laws globally. It strengthens individuals' rights and imposes strict requirements on data handling.
3. **California Consumer Privacy Act (CCPA) (2020):** This act gives California residents more control over their personal data and requires businesses to be transparent about data collection and usage.
4. **Brazil's General Data Protection Law (LGPD) (2020):** Similar to the GDPR, Brazil's LGPD regulates the processing of personal data and grants rights to data subjects.
5. **India's Personal Data Protection Bill:** Although still in draft form, this bill aims to provide a framework for data protection in India, focusing on the rights of individuals and the obligations of data processors.

CREDIBLE SOURCES

The following is the list of credible sources that will be accepted inside the committee along with sources that are strictly prohibited:

1. Government Reports (Each ministry publishes its own reports)
2. PTI , PIB
3. Government Websites
4. Government run News channels i.e. RSTV, LSTV, DD News
5. Standing Committee Reports/ Commission Reports
6. RTI Proofs
7. Parliamentary Standing Committee reports
8. Questions and Answers of the parliament
9. Supreme Court and High Court Judgments
10. Any Statutory Law of India
11. Constitution of India

IDENTIFYING PROBLEMS

Key issues related to PDPB are:

1. Exemptions to data processing by the State on grounds such as national security may lead to data collection, processing, and retention beyond what is necessary. This may violate the fundamental right to privacy.
2. The Bill does not regulate risks of harms arising from processing of personal data.
3. The Bill does not grant the right to data portability and the right to be forgotten to the data principal.
4. The Bill allows transfer of personal data outside India, except to countries notified by the central government. This mechanism may not ensure adequate evaluation of data protection standards in the countries where transfer of personal data is allowed.
5. The members of the Data Protection Board of India will be appointed for two years and will be eligible for re-appointment. The short term with scope for re-appointment may affect the independent functioning of the Board.
6. Weakens the RTI Act by giving the government more reasons to deny information.

7. The government's power to block content goes beyond the already controversial Section 69A of the IT act.
8. While the Data Protection Board can impose a penalty of up to Rs 250 crores on an entity for a personal data breach, none of this goes towards the user, who is the victim of the data breach.
9. The Chairperson and Members of the Data Protection Board will be appointed by the Central Government on terms specified by the government, raising questions about the Board's independence from the government.
10. The DPDP Bill allows the Data Protection Board to levy a penalty of up to ₹10,000 if a user fails to perform their duties as listed in the Bill.
11. The law will not apply to anonymised personal data, which could be a problem because not only can anonymised data be deanonymised but it can also be layered on top of personal data to draw inferences of individual.

CASE STUDIES

1. K.S Puttaswamy vs Union of India

- The right to privacy is widely considered one of the basic human rights and the same is explicitly stated under Article 12 of the 1948 Universal Declaration of Human Rights:
“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”
- The Supreme Court had already made strong observations on the matter in various judgements which include:
 - *M.P. Sharma v Satish Chandra*
 - *Maneka Gandhi v Union of India*
 - *Kharak Singh v State of UP, and*
 - *Peoples Union for Civil Liberties v Union of India.*
- The right to privacy of an individual was again brought to the fore by the issuance of Aadhar Cards. Retired Justice Puttaswamy challenged the constitutionality of Aadhar before the Supreme Court by filing a writ petition. The petitioner contended that with

regard to all the previous apex court judgements, the right to privacy is a fundamental right and the Aadhar procedure violated this right.

Issues before the Court

1. The issue before the Court was whether Right to Privacy was a fundamental right despite it not being expressly provided for by the Constitution.
2. The question that also arose was that since the Court had stopped short of declaring the right to privacy an absolute fundamental right in some of the above-mentioned judgements, the petitioner wanted the Court to clarify whether the view expressed in these previous judgements was the correct constitutional position.

Puttaswamy Case Judgement

The Court in its judgement stressed upon the following points:

1. It was held that privacy concerns in this day and age of technology can arise from both the state as well as non-state entities and as such, a claim of violation of privacy lies against both of them.
2. The Court also held that informational privacy in the age of the internet is not an absolute right and when an individual exercises his right to control over his data, it may lead to the violation of his privacy to a considerable extent.
3. It was also laid down that the ambit of Article 21 is ever-expanding due to the agreement over the years among the Supreme Court judges as a result of which a plethora of rights has been included within Article 21.
4. The judgement in this landmark case was finally pronounced by a 9-judge bench of the Supreme Court on 24th August 2017 upholding the fundamental right to privacy emanating from Article 21.
5. The court stated that Right to Privacy is an inherent and integral part of Part III of the Constitution that guarantees fundamental rights. The conflict in this area mainly arises between an individual's right to privacy and the legitimate aim of the government to implement its policies and a balance needs to be maintained while doing the same.
6. The SC also declared that the right to privacy is not an absolute right and any incursion of privacy by state or non-state actors must satisfy the following triple test:
 - Legitimate Aim
 - Proportionality
 - Legality

7. The decision of all the nine judges also held the following:

- The decision given in *M.P. Sharma v Satish Chandra*, which held that the Right to Privacy is not protected by the Constitution of India, stands over-ruled.
- The decision in *Kharak Singh*, to the degree it holds that Part III does not guarantee Right to Privacy, also stands over-ruled.
- The right to privacy of an individual is not only protected by the Constitution under Article 21 but is also an intrinsic part of the scheme of Part III which guarantees fundamental rights.

General Data Protection Regulation (GDPR)

1. The General Data Protection Regulation (GDPR), which went into effect on May 25, 2018, is a comprehensive data privacy law that establishes a framework for collecting, processing, storing, and transferring personal data. It requires that all personal data be processed in a secure fashion, and it includes fines and penalties for businesses that do not comply with these requirements. It also provides individuals with a number of rights regarding their personal data.
2. The GDPR applies to any company or organization regardless of geographical location if the company or organization offers goods and services to people in the EU (European Union) or monitors their behavior within the EU.
3. The GDPR defines a data subject as "an identified or identifiable natural person." Data subjects have the following rights:
 - **Right to be informed:** Data subjects must be given easy-to-understand information about how their personal data is collected and processed
 - **Right to data portability:** Data subjects can transfer their data from one data controller to another.
 - **Right of access:** Data subjects have the right to obtain a copy of collected personal data.
 - **Right to rectification:** Data subjects can correct inaccurate data about themselves.
 - **Right to erasure:** Data subjects can request that their data be deleted (also called the right to be forgotten).
 - **Right to restrict processing:** Under certain circumstances, data subjects can limit the way their personal data is being processed.
 - **Right to object:** Data subjects have the right to object to the processing of their personal data, and under certain circumstances the data controller or data processor will be obligated to comply with the data subject's objection.

- **Right to object to automated processing:** Data subjects can object to a decision that legally affects them that is based solely on automated data processing.

GDPR and DPDP

1. Similarities

The GDPR is one of the foremost laws that set the tone for and outlines the need for respecting privacy of individuals in a globalized world. It is but natural that the Indian DPDP resonates closely with and exhibits certain similarities with the GDPR.

- Anonymized data excluded – While the GDPR expressly excludes from its applicability, anonymized data, the DPDP suggests that it would not apply to data that is anonymized such that it cannot lead to identification of an individual.
- Processing of data without consent permitted in certain circumstances – DPDP provides for certain ‘legitimate uses’ for processing of personal data by data fiduciaries (data controllers) for certain special use cases without the consent of the data principal. Such ‘legitimate uses’ (for which consent of the data principal is not required) include processing for purposes of employment, responding to medical emergencies, performing any function under law or the State providing any service or benefit to the data principal etc. Similarly, the GDPR gives ability to the data controller to process personal data without consent in specific situations while providing for certain obligations on the data controller.
- Quality of consent – Consent of the data principal is one of the foundational principles, using which data fiduciary / data controller may process personal data. Broadly speaking, the basic principles of consent are similar under DPDP and the GDPR i.e. consent should be free, specific and informed. Further, both GDPR and DPDP require a legitimate reason (purpose) to process personal data. Another common provision under both GDPR and DPDP requires the data fiduciary to demonstrate that consent has been obtained in compliance with the respective legislations.
- Significant Data Fiduciary – Given the factors relevant for categorization of a data fiduciary as a significant data fiduciary (i.e. based on factors such as volume and sensitivity of data processed) under the DPDP, incremental obligations such as appointment of data protection officers seems consistent with GDPR.

2. Differences

Despite the numerous similarities between DPDP and GDPR, the DPDP is unique in its own way.

- The GDPR classifies personal data into various specific subsets. These categories of personal data are subject to separate compliances including the purpose for processing of such personal data. Compliances under the DPDP however, are not dependent on whether personal data is of a particular kind, and it equally applies to all kinds of personal data.

- While GDPR applies to any offline data which is part of a filing system, DPDP Act restricts its applicability only to digital or digitized data.
- The DPDP requires notice to be provided only where consent is the basis of processing data (and not for legitimate uses). Under GDPR however, the notice requirements appear to apply whenever data is collected from the data subject and is not linked only to consent.
- The DPDP prescribes elements that a notice must contain so that a data principal can provide their consent. These elements include information regarding nature of personal data being collected, the purpose for which it is collected, the manner in which consent may be withdrawn, information regarding grievance redressal and the manner in which a complaint may be made to enforcement authority. Under the GDPR, the details required to be provided to a data subject are much wider in scope and do not seem exclusively linked to cases where consent of the data subject is required.
- GDPR does not expressly prohibit behavioral monitoring or targeted advertising aimed at children. The DPDP prescribes the requirement for verifiable parental consent and there is an express and broad prohibition on processing data which is likely to cause detrimental effect on the well-being of a child; which does not seem to find an express mention under GDPR.
- Unlike the DPDP, GDPR does not require a data subject to redress their grievance before the controller before making a complaint to the jurisdictional Supervisory Authority or courts.
- The DPDP mandates the data fiduciary to notify the Data Protection Board and each affected data principal, in the event of any personal data breach. Unlike the DPDP, an obligation to inform the data subject of a breach is triggered under the GDPR only when there is high risk to the impacted individuals.

Note: PDPB was made by taking references from GDPR and data protection laws of Australia and Singapore.

Questions a resolution must answer

When drafting a resolution for a personal data protection bill, several key questions should be addressed to ensure comprehensive coverage and effectiveness. Here are some crucial questions:

1. **What types of personal data are covered?**
 - Define the scope of personal data, including sensitive information like health records, financial data, and biometric information.
2. **What are the rights of individuals?**
 - Outline the rights individuals have over their data, such as the right to access, correct, delete, and transfer their data.

3. **How is consent obtained and managed?**
 - Specify how consent is obtained from individuals and how they can manage or withdraw their consent.
4. **What are the obligations of data controllers and processors?**
 - Detail the responsibilities of entities that collect, store, and process personal data, including data security measures and breach notification protocols.
5. **How is data security ensured?**
 - Describe the security measures required to protect personal data from unauthorized access, breaches, and other threats.
6. **What are the penalties for non-compliance?**
 - Define the consequences for entities that fail to comply with the data protection regulations, including fines and other sanctions.
7. **How is data transferred across borders?**
 - Address the rules and safeguards for transferring personal data to other countries, ensuring it remains protected.
8. **What mechanisms are in place for enforcement and oversight?**
 - Establish the authorities responsible for enforcing the regulations and the mechanisms for oversight and accountability.
9. **How are data protection principles integrated into business practices?**
 - Encourage or mandate the integration of data protection principles into the design and operation of business processes and systems.
10. **How are emerging technologies and practices addressed?**
 - Consider the impact of new technologies, such as artificial intelligence and big data, on personal data protection and how the bill will adapt to these changes.