

General Studies-2; Topic: Important aspects of governance, transparency and accountability

TRAI's Recommendation on Data Privacy

1) Introduction

- The Telecom Regulatory Authority of India (TRAI) released a set of recommendations regarding privacy, security, and ownership of data in the telecom sector.
- Following the Supreme Court's judgment affirming that privacy is a fundamental right, TRAI recommendations put the users at the centre of privacy, and give us control over our data.
- The recommendations can be seen as inputs to the draft data protection Bill that is likely to be released soon by a Ministry of Electronics and Technology committee led by Justice B N Srikrishna.

2) Key Recommendations

- The apps, websites and services, which collect user data, are going to be treated as mere custodians of the data and do not have primary rights over that information.
- Data minimisation wherein privacy of a user's data should not be compromised by design of the systems that collect it
- Only data necessary to deliver a particular service be collected.
- The right to data portability - this will allow users to transfer their data to other service providers.
- The right to data deletion - this will allow a user to delete data that a telecom operator has collected.
- TRAI said that consumers should be given the right to choice, consent and to be forgotten to safeguard their privacy.
- The right to be forgotten empowers users to delete past data that they may feel is unimportant or detrimental to their present position.
- Devices should disclose the terms and conditions of use, before their sale, and that a user has the right to delete a pre-loaded app.
- Existing privacy laws that apply to telecom service providers (TSPs) should also apply to all entities in the digital ecosystem like devices (mobiles and computers), browsers, software operating systems, applications, and over-the-top (OTT) service providers.
- The Government should place a mechanism for redressal of telecommunication consumers' grievances relating to data ownership, protection, and privacy.
- The terms and conditions of an app must be made available in a multi-lingual format, easy to understand, and in the form of short templates.
- Firms should disclose data breaches in public and should list actions taken for mitigation and preventing breaches.
- Both data collectors and processors should be accountable for "unintended harm" caused to the user.
- The data protection framework should apply equally to the government and to private entities.

3) TRAI's Arguments

- Existing framework for the protection of the personal information/ data of telecom consumers is not sufficient.
- The recommendations have come at a time when various entities are accused of misusing consumers data through mobile apps and social media platforms.

- We need to protect telecom consumers against the misuse of their personal data.
- Since all user data passes through telcos and devices, appropriate steps must be taken to protect user privacy.
- All entities in the digital ecosystem, which control or process personal data should be brought under a data protection framework.
- TRAI acts as a sectoral regulator but the basics of privacy will be governed by the data protection Act.
- The recommendations will be applicable till the data protection law comes into force.

4) **Criticism**

- Companies are questioning the need for TRAI's recommendations at a time when the Justice BN Srikrishna committee is in the final stages of drafting the data protection law.
- Since the recommendations will be applicable till the data protection law comes into force, it won't have a legal mandate.
- Data minimisation will be detrimental to building the data business in the country.
- Many industry bodies said TRAI has no powers for regulating on issues of privacy and ownership of data, jurisdiction over devices, operating systems, browsers and applications.
- Mobile manufacturers said, they should be kept out of the ambit of the proposed regulations because they don't use customer data or monetise from it.
- Any additional pressure on indirect costs will lead to lower margins and consumers will have to bear the brunt, as it will lead to increase in prices of mobile phones.
- TRAI did not make a clear point on contentious issues of data localisation, cross-border data flows, lawful interception and mass surveillance from the government and legitimate exceptions to privacy.