



Survey On People's Expectations from the Draft Personal Data Protection Bill 2019

- A Tsaaro Initiative



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PREFACE

INTRODUCTION

The Personal Data Protection Bill was introduced in the Lower house of the Parliament in 2019 by the Ministry of Electronics and Information Technology. The Draft Bill seeks to provide protection of Personal Data of individuals and establishes an independent Data Protection Authority (DPA) to regulate the matters related. The Bill also paves way for certain exemptions and their grounds.

With the growth of the Digital Economy amidst the rising technological advancements, it was imperative for the nation to protect the privacy and data of individuals. The PDP Bill is an attempt to measure up to the Global data regulations and regulate the uncharted waters of Personal Data Privacy in India.

SCOPE

Landmark legislation in making drafted to regulate the processing of personal data by:

- Processing of personal data where such data has been collected, disclosed, shared or otherwise processed within the territory of India.
- Processing of personal data by the State, any Indian company, any citizen of India or any person or body of persons incorporated or created under Indian law.
- Processing of personal data by data fiduciaries or data processors not present within the territory of India, if such processing is:
 - in connection with any business carried on in India, or any systematic activity of offering goods or services to data principals within the territory of India, or
 - in connection with any activity which involves profiling of data principles within the territory of India.

PREFACE

PERSONAL DATA AS PER PDP BILL

Any data which can be used to identify any natural person directly or indirectly, containing any characteristic, trait, attribute or any feature of identity in respect of a natural person whether online or offline and in any such combination which may be used to identify a person will be classified as Personal Data and thereby will fall under the purview of the Personal Data Protection Bill.

EFFECTIVE DATE

The Bill has not been adopted as a law yet as the Bill resides with the JPC for further discussion as the interim report of the PDP Bill was adopted for consideration by the Parliamentary Panel on the 22nd of November 2021.

ABBREVIATIONS

References are made in this publication to the Personal Data Protection Bill, India. The abbreviations used are as follows:

- CCPA - The California Consumer Privacy Act of 2018
- DPA - Data Protection Authority
- GDPR - The General Data Protection Regulation (EU) 2016/679
- PDPB - Personal Data Protection Bill, 2019
- PIPL - China's Personal Information Protection Law, 2021
- JPC - Joint Parliamentary Committee
- UIDAI - The Unique Identification Authority of India

SURVEY METHODOLOGY



WHY DID WE CONDUCT THIS SURVEY?

The need for the survey arose because we at Tsaaro wanted to connect with Professionals in the Privacy field and gather their take on the matter. Once the Personal Data Protection Bill is passed, every organisation will have to ensure compliance. We need adequate safeguards, appropriate provisions, valid exemptions and a dedicated Authority to ensure that an individuals' rights are being protected.

Since the Law is also around the corner, Tsaaro took this initiative upon themselves to connect with various professionals in the industry, to observe the people's perception of the upcoming statute.

THE OUTCOME

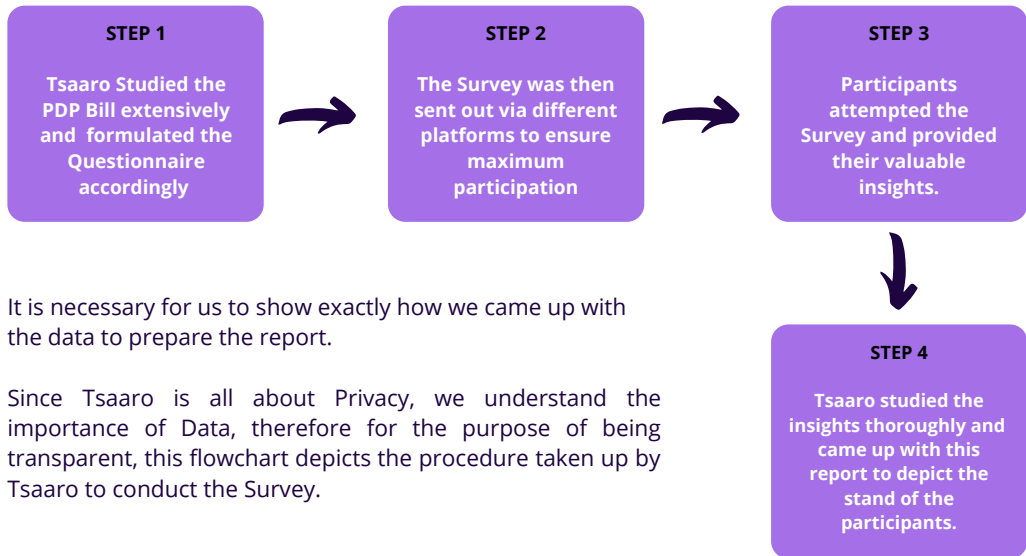
Tsaaro aims to gather valuable insights and on that basis draft a detailed report which depicts the stand of people when it comes to the Personal Data Protection Bill.

SURVEY METHODOLOGY

We framed our survey in a way where we could connect with individuals and through a series of questions, understand what they think is needed and what must be done to ensure that our law measures up in Global Standards.

We created the survey using online platforms and sent out the link to Privacy Professionals, via our Social Media Handles and through Personal Mail. In this survey, Tsaaro extensively studied the upcoming law and on points of interest, we drafted a Survey, wherein we collected the responses from more than 200 Privacy Professionals so as to study how people working in the industry are responding to the upcoming statute.

SURVEY PROCESS



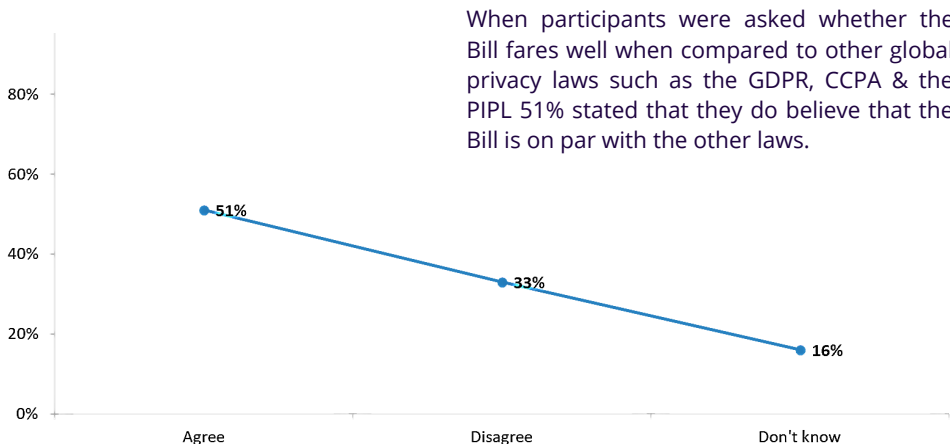
It is necessary for us to show exactly how we came up with the data to prepare the report.

Since Tsaaro is all about Privacy, we understand the importance of Data, therefore for the purpose of being transparent, this flowchart depicts the procedure taken up by Tsaaro to conduct the Survey.

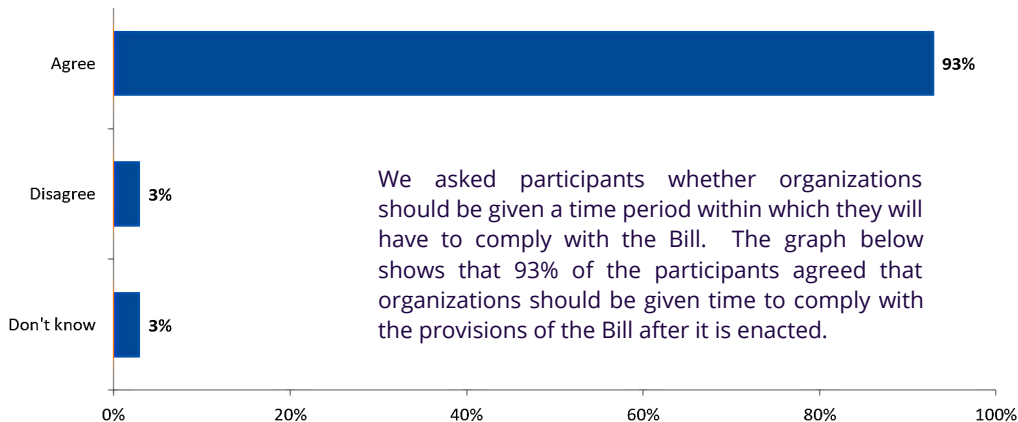
SURVEY INSIGHTS (Graphical Representation)



DO YOU AGREE THAT THE BILL FARES WELL AGAINST OTHER GLOBAL DATA PRIVACY REGULATIONS SUCH AS THE GDPR, PIPL OR CCPA?



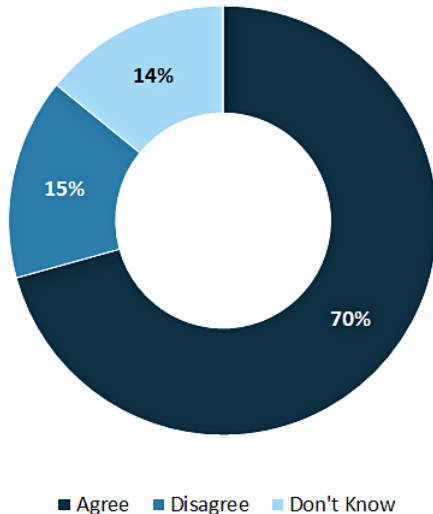
DO YOU AGREE THAT THE LAW SHOULD PROVIDE FOR A TIME PERIOD WITHIN WHICH ALL ENTITIES WILL HAVE TO COMPLY WITH THE PROVISIONS OF THE BILL?



We asked participants whether organizations should be given a time period within which they will have to comply with the Bill. The graph below shows that 93% of the participants agreed that organizations should be given time to comply with the provisions of the Bill after it is enacted.

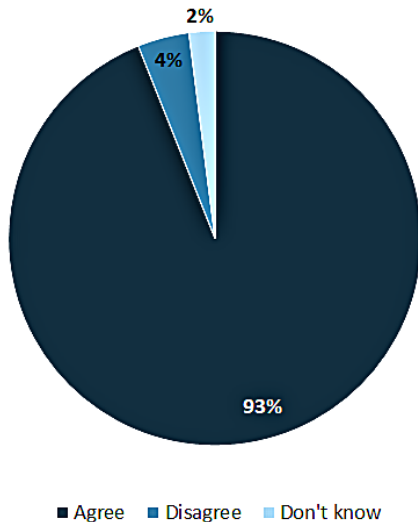
DO YOU AGREE WITH THE PROPOSED PROVISION OF DATA LOCALIZATION IN REFERENCE TO ORGANISATIONS OPERATING OUTSIDE OF INDIA?

When participants were asked whether they agree with the proposed provision of inculcating Data Localisation in reference to the organisations which are operating outside India, 70% of the insights we received were of the participants agreeing to the provision.



DO YOU AGREE THAT SOCIAL MEDIA PLATFORMS WILL NOW HAVE TO ADHERE TO THE INDIAN PRIVACY LAWS AND ENSURE COMPLIANCE?

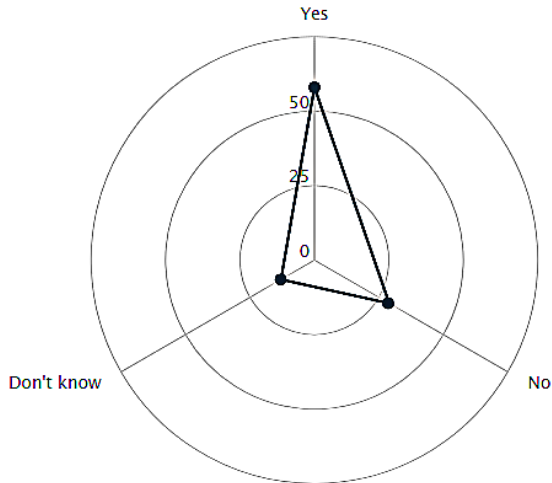
When participants were asked whether they agree that now Social Media Giants such as Instagram or Facebook etc. will have to ensure compliance as per the Indian Regulations, a majority of 93% agreed that Social Media Platforms will have to adhere as per Indian Privacy Laws now.



ARE THE SAFEGUARDS MENTIONED IN PDPB TO COVER THE CHILDREN PERSONAL DATA ADEQUATE, ACCORDING TO YOU?

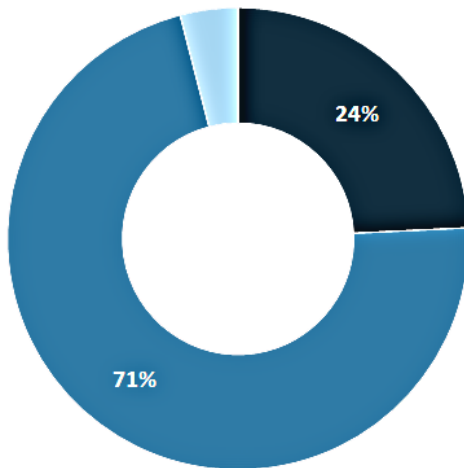
When participants were asked whether they feel if the safeguards mentioned in the Personal Data Protection were adequate to ensure the safety of children:

- 58% of the participants felt that the provisions in place were adequate
- 29% felt the opposite
- 13% choose the option 'Don't Know'



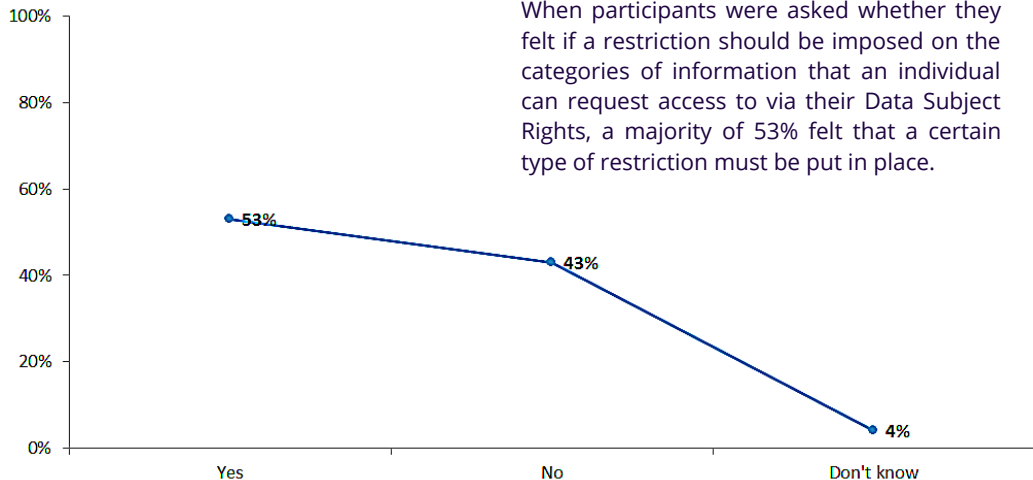
ARE YOU SATISFIED WITH THE DEFINITION OF CRITICAL DATA?

When participants were asked whether they were satisfied with the definition of critical data, as provided in the Personal Data Protection Bill, a majority of the participants felt that the definition of critical data needs to be worked upon. A total of 71% of participants felt that the definition, as of now, was not up to the standard.



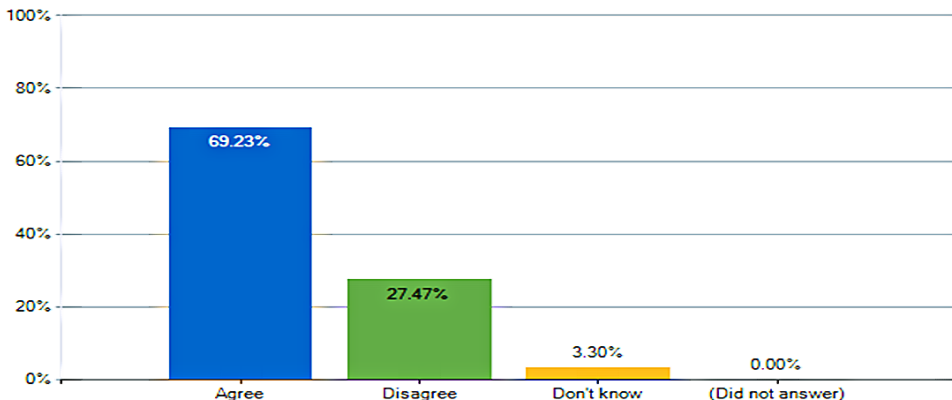
■ Yes ■ No ■ Don't know

SHOULD THERE BE A RESTRICTION ON THE CATEGORIES OF INFORMATION THAT AN INDIVIDUAL IS ENTITLED TO WHILE EXERCISING THEIR RIGHT TO ACCESS?



DO YOU AGREE THAT THERE SHOULD BE A LIMIT TO THE NUMBER OF DATA ACCESS REQUESTS?

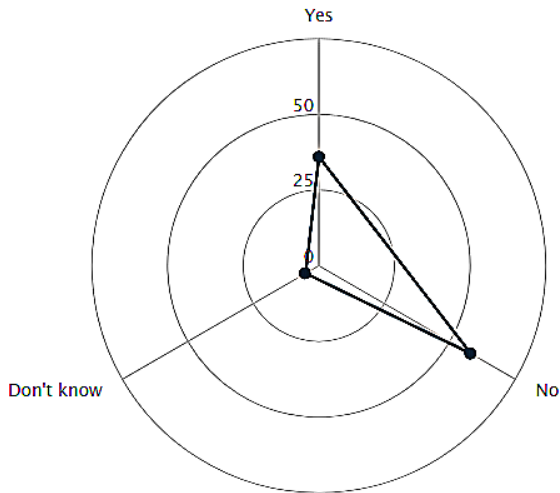
When participants were asked whether they felt there should be a limit to the number of Data Subject Requests an individual is entitled to because no limit might lead to the abuse of the procedure, 69% of participants felt that there must be a limit of some kind which provides access without infringing the rights of an individual.



DO YOU THINK THAT THE PRIVATE RIGHT OF ACTION IN INDIA WOULD OVERBURDEN THE SUPERVISING AUTHORITY?

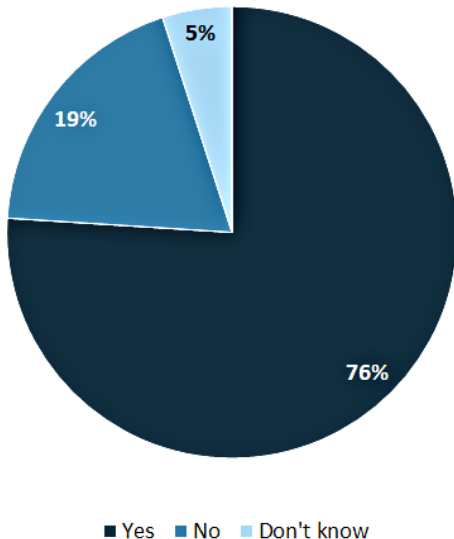
Due to the fact that the Indian Judicial System is overburdened, we asked the participants if they felt that once the PDPB comes into effect and a DPA is assigned. Will it share the same consequences?

- 36% Agreed
- 58% Disagreed
- 5% choose the option 'Don't Know'

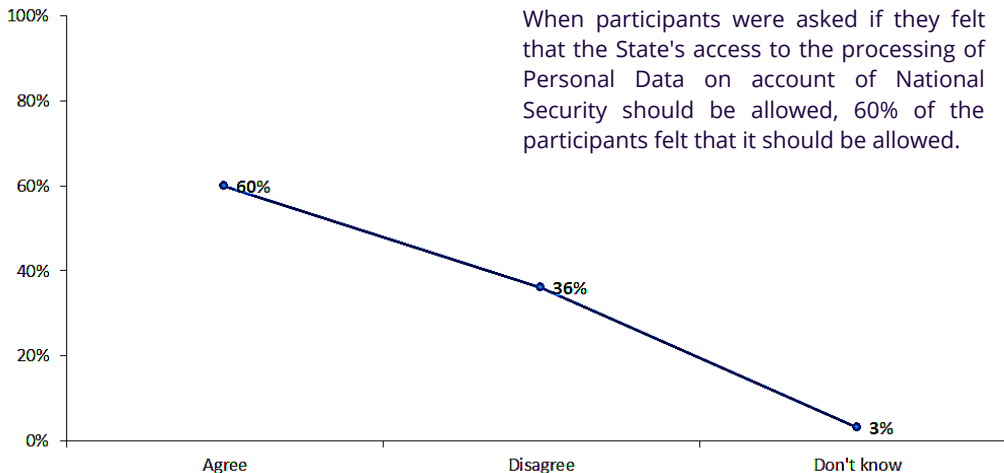


SHOULD THE LAW BE MADE APPLICABLE TO DATA THAT IS ALREADY PROCESSED?

When participants were asked whether they felt if there should be a retrospective application of the provisions of the PDP Bill, a majority of 76% of the participants agreed.

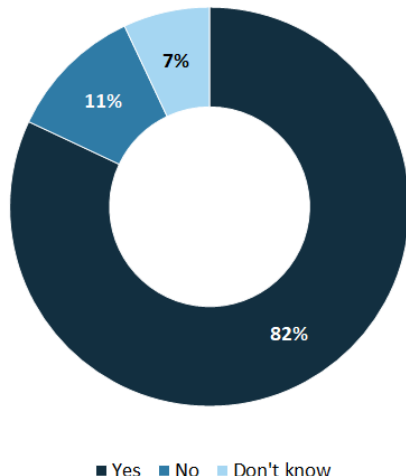


DO YOU AGREE WITH THE STATE'S ACCESS TO THE PROCESSING OF PRIVATE DATA ON ACCOUNT OF THE NATIONAL SECURITY?



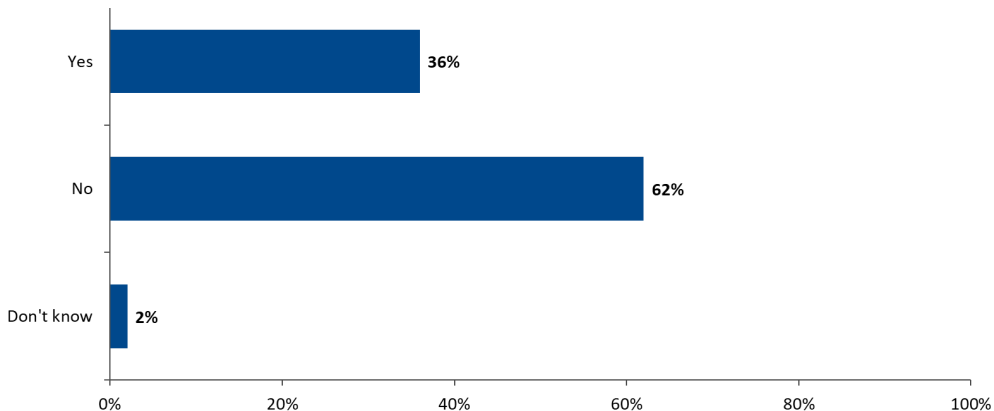
AS THE GOVT. HAS THE POWER TO APPOINT MEMBERS OF THE DATA PROTECTION AUTHORITY BY WAY OF RECOMMENDATION, DO YOU THINK THIS WILL AFFECT THE INDEPENDENCE OF THE DPA IF THAT POWER REMAINS UNCHECKED?

When participants were asked whether they felt if the power of appointing DPA members is left unchecked, would it affect the independence of the DPA, and a majority of the participants agreed. 82% of participants felt that the power may be abused.



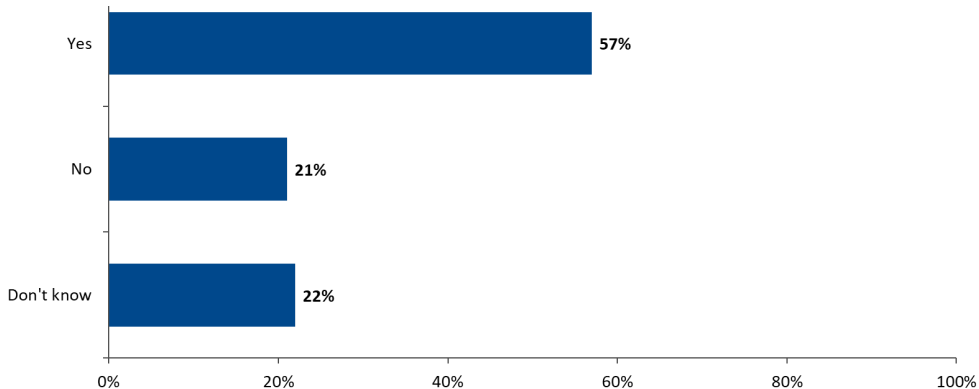
SHOULD CONSENT BE THE ONLY GROUND FOR PROCESSING PERSONAL DATA?

When participants were asked whether consent should be the only lawful basis on which data can be processed majority of them answered in the negative stating that the law should provide for another legal basis on which can data can be processed.



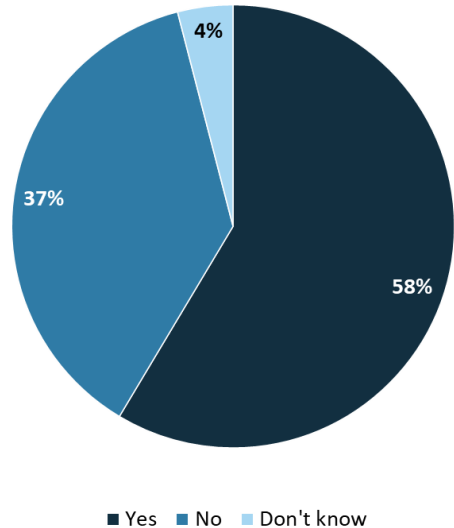
DO YOU BELIEVE THAT THE PURPOSE SPECIFICATION AND USE LIMITATION PRINCIPLES ARE MODIFIED TO KEEP UP WITH FUTURE TECHNOLOGY?

More than 50% of the participants responded in the negative indicating that the principles of Purpose Specification and Use Limitation have not been adapted to keep up with rapidly developing technology. Around 22% answered that they are unaware of the same.



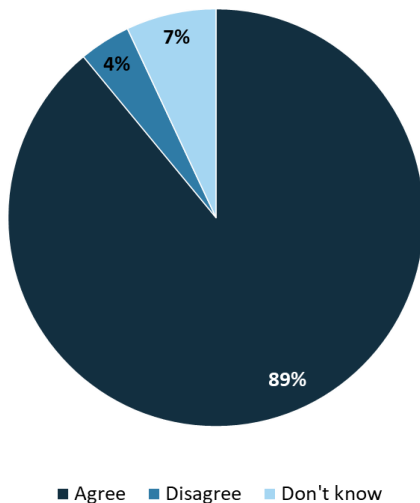
SHOULD THERE BE A CAP ON THE AMOUNT OF COMPENSATION THAT MAY BE GRANTED BY THE DPA?

When participants were asked whether the Bill should specify that compensation cannot exceed a certain amount majority of the participants agreed. 37% however stated that there should be no cap on the amount of compensation that can be awarded.



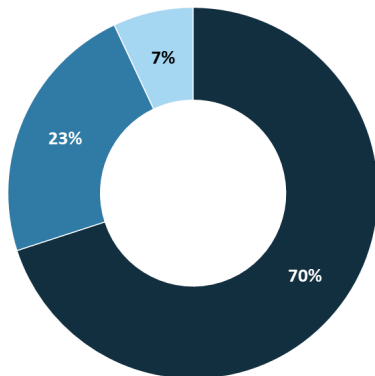
SHOULD THE LAW OPT FOR A STRICT LIABILITY APPROACH IN CASE OF A SIGNIFICANT BREACH OF SENSITIVE DATA DEALING WITH LARGE AUDIENCES?

We asked participants whether the law should impose strict liability in certain cases of data breaches. A large number of the participants agreed that the law should adopt a strict liability approach. 4% stated that this should not be the approach and the remaining 7% stated that they don't know.



DO YOU THINK THAT THE SUPERVISING AUTHORITY WHILE DECIDING THE PENALTY SHOULD CONSIDER WORLDWIDE TURNOVER OF THE FIRM OR ONLY THE ONE LINKED TO THE PROCESSING ACTIVITY PURSUANT TO A DATA PROTECTION BREACH?

We asked participants their opinion on how a fine for a data breach should be calculated. The majority of the participants answered that the worldwide turnover of the company should be taken as the basis for deciding a fine. On the other hand, 23% stated that the fine should be on the basis of the specific processing activity.



■ Worldwide Turnover

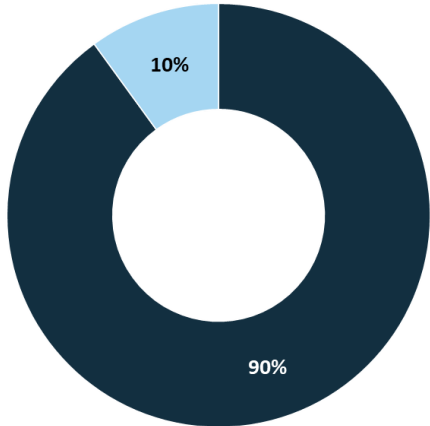
■ Linked to the Processing Activity in question

■ Don't know

DO YOU THINK THERE IS GROUND FOR IMPROVEMENT IN THE DRAFT BILL OR THIS SHOULD BE PASSED AS IT IS?

We asked our participants whether they felt if the Bill should be improved further before it is enacted into law. Almost all the participants responded in the affirmative. Only 10% of the participants responded that the Bill should be enacted as is.

We collected the insights provided to us by the participants and have mentioned the same at the end of the report from page 29.



■ Yes ■ No

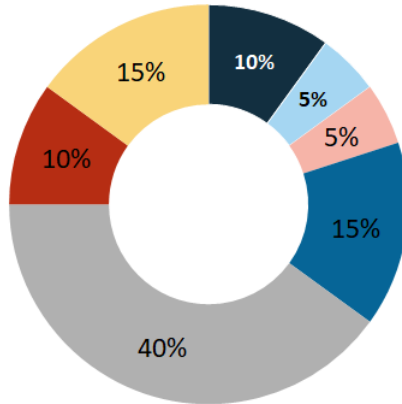
SUMMARY OF FINDINGS



The findings are summarized in a few key common points and through the survey, we have attempted to map the sector of employment of all the people who participated in the survey. The diversity in the sample sheds light on the fact that the PDP Bill affects us all.

PARTICIPANTS' SECTOR OF EMPLOYMENT

*The following data is a rough estimate as few of the participants attempted the survey anonymously



■ Education

■ Healthcare

■ Government

■ Information Technology

■ Professional Services

■ Transport and Logistics

■ Banking and Finance

SUMMARY OF FINDINGS

These are the key findings from the Personal Data Protection Survey:

DATA SUBJECT RIGHTS

With regard to data subject rights, we found out that most of the participants are concerned that the Bill does not provide the same rights that privacy laws such as the GDPR provide to Data Subjects. Further a majority of the participants we're not satisfied that the existing data protection principles are sufficient in light of evolving technology.

DATA PROTECTION AUTHORITY

The majority of the participants indicated that since the Government plays a significant role in the appointment of members of the DPA, if that power is left unchecked there would be a regulatory capture by the Legislator and DPA would lose its independence. Also, a majority agreed that in case sanctions are to be imposed, then the worldwide turnover of the organisation should be considered, without actually placing a cap on the upper limit of the fine.

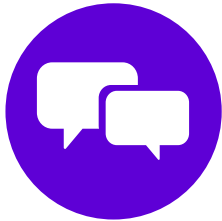
EXHAUSTIVE DEFINITIONS

The majority of the participants felt that there must exist clear definitions of terms in the upcoming statute, as vague definitions create grey areas and further obstruction in the natural course.

COMPLIANCE

The majority of the participants felt that, once the Bill is enacted there should be a given time wherein the organisation can ensure compliance. There must be a retrospective application of provisions and agreed on Data Localisation as a mandate for Social Media Platform especially to operate in India.

RECOMMENDATIONS FROM THE PARTICIPANTS



The Survey was designed in a way that Tsaaro could collect views from the participants attempting it. Every Participant had the option to suggest what according to them should be done to improve upon the Bill. We received some interesting insights and below mentioned are a few of the suggestions that people feel must be added/omitted from the upcoming PDP Bill.

SUGGESTIONS TO IMPROVE THE BILL

PRECISE DEFINITIONS

Most participants in the survey suggested that vague definitions that have been used in the Bill must be clarified. The term national security and national interest has been used in the Bill however these terms have not been defined.

DEFINE CRITICAL PERSONAL DATA

The Bill uses the term Critical Personal Data and Sensitive Personal Data. There were two broad categories of suggestions by participants in this context. The first category suggested that there must be a focus on categorization of what data fits under Sensitive Personal Data and Critical Personal Data. Further, the Bill should define what constitutes Critical Personal Data. The second category suggested that the Bill should remove the term Critical Personal Data as the GDPR does not make use of such terminology. The term should be removed in order to bring the Bill in line with the GDPR and other global privacy laws.

DATA LOCALIZATION REQUIREMENT

The Bill places certain restrictions on cross border transfer of data. Some participants suggested that these data localization requirements must be removed from the Bill. Other participants suggested that the Bill should provide more clarity on cross border data transfers. Providing this clarity is important as the Bill restricts the transfer of Critical Personal Data outside India.

SUGGESTIONS TO IMPROVE THE BILL

PROVIDE FOR AN INDEPENDENT SUPERVISORY AUTHORITY

Most of the participants recommended that the Bill should provide for an independent Data Protection Authority similar to the GDPR. The Bill in its current form allows for excessive Government intervention and therefore it is unlikely that the DPA will function independently.

GOVERNMENT/PUBLIC BODIES SHOULD NOT BE EXEMPTED

It was suggested that the Bill should state that in case of data breaches by public bodies they should be held liable for such a breach. Government bodies such as the UIDAI collect and process large amounts of Personal Data and Sensitive Personal Data. Therefore they should not be exempted from complying with the provisions in the Bill. In case of data access requests by public bodies, the entity subject to such a request should be obliged to inform this publicly unless the request is for crime or fraud prevention.

DATA SUBJECT RIGHTS

Some of the participants believed that the Bill does not provide for adequate rights to Data Subjects when compared to the GDPR. The Bill should include additional safeguards for Children and health-related Personal Data. Data Subjects should be made aware of Governmental access to their Data subject to limited exceptions.

ABOUT TSAARO



Tsaaro is a leading security services provider helping businesses across technology companies and new-age start-ups, secure their applications, through future-ready solutions that help keep up with the changing technology landscape.

Our strength lies in assessing security risks, monitoring for threats, and safeguarding applications against compliance issues as well as the latest threats. We provide data privacy services to align the organization's security roadmap to leading privacy frameworks such as GDPR, CCPA, PDPB, HIPPA. Our information security services truly complements our capabilities in privacy and security with an exhaustive list of assessment and implementation frameworks such as ISO 27001:2013, NIST, PCI-DSS.

We take a pragmatic, risk-based approach to provide our clients with real-world, workable advice, guidance, and support that helps them to deal with a wide range of security and privacy-related challenges.

CONTACT US

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