



Event Report

Consumer Awareness Workshop on Data Protection and Privacy & Impact of Personal Data Protection Bill, 2018

November 01, 2019



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Background

Technology advancement since the last three decades has propelled unprecedented development in mobile technology coupled with improved mobile broadband services. Consumers are increasingly becoming dependent on technology in their daily lives. For instance mobile-based applications are being used not only to make phone calls but to meet their various daily requirements like online shopping, taxi booking, etc. On one hand, the use of technology is playing a significant role in increasing the ease of living of consumers, on the other hand, it is also jeopardising their privacy. Incidents of data breaches and data leaks have become rife nowadays.

In the Indian context, half of India's population is estimated to become internet users by 2022. The number of smartphone users in India is expected to rise by 84 percent to 859 million by 2022 from 468 million in 2017. Additionally, a large part of the consumer base will be from rural India who hardly understands the significance and importance of data privacy as well as measures to safeguard it. Adding to the concern, recently India has been ranked third, only behind Russia and China, when it comes to surveilling citizens.

In this backdrop, CUTS International, a global policy research and advocacy group, organised a daylong consumer awareness workshop on **Data Protection and Privacy & Impact of Personal Data Protection Bill, 2018 (PDPB)** in Kolkata on November 01, 2019. The workshop intended to engage with key local stakeholders from north-east and east India in order to build their capacity to further engage with citizens and policymakers productively on the issues of privacy and data protection, and to also help consumers' put forth their perspectives.

The workshop highlighted the issues related to data leaks, data breaches, and surveillance. Several stakeholders participated in the discussion, including policy influencers, academia, consumer organisations, think tanks, and media, among others.

Key Takeaways

- There is an urgent need to introduce PDPB as a national act.
- PDPB should be translated into regional languages.
- Provisions for grievance redressal should be easy and simple to follow, in case one's privacy is breached.
- Awareness about dos and don'ts have to be undertaken to help the new and inexperienced online citizens protect their privacy, especially in tier II regions
- There is a need to develop a comprehensive framework for cross border data sharing and embed relevant provisions in the privacy framework (PDPB) to enhance digital connectivity between India and its neighbouring countries.

Proceedings

Opening Session: Welcome Remarks and Mapping the expectations

Arnab Ganguly, Assistant Policy Analyst, CUTS International and Head, CUTS Calcutta Resource Centre delivered the welcome remarks. He outlined the overall objectives of the workshop and gave an overview of how the workshop will progress over the course of the day. Before the beginning of the sessions, he mapped the expectations of the participants from the workshop. Key expectations of the participants were to:

- understand the basic concepts related to data privacy, ways in which it could be threatened, and how to protect data privacy;
- develop an understanding about the **Data Protection and Privacy & Impact of Personal Data Protection Bill (PDPB), 2018;**
- understand the legal remedies in situations where privacy of personal information is breached; and
- identify key messages to be communicated to the consumers at the grassroots.

Bipul Chatterjee, Executive Director CUTS International, delivered the opening remarks and highlighted the role of citizens in enhancing privacy and protecting their personal data. Further, he mentioned that the key objective of this workshop is to deconstruct the concepts around privacy and data protection for a common man in order to enable his engagement in the debates surrounding the issue.

Swati Punia, Assistant Policy Analyst, CUTS International, mentioned that increasingly vulnerable groups are coming within the fold of digital economy and therefore having data protection that protects their privacy is need of the hour.

Introductory Session: Swati Punia, Assistant Policy Analyst, CUTS International

Punia gave a brief introduction to the topic of the workshop. She presented facts, and figures on the digital ecosystem, and highlighted news stories on data leaks, and data surveillance. Challenges and solutions emanating in this backdrop were also discussed. CUTS privacy survey results **covering 2,160 respondents across six states in India on the usage of digital technologies by consumers**, that gauged consumers' perspective pan India on the use of digital technology, were also shared with the participants.

It was pointed out that consumers expect service providers to use their data only for the purposes it was collected, uphold privacy and practice anonymisation. Further, reputation is key in providing confidence to consumers for sharing their data. Thus, any unfair attempt to use consumer data without following due process may breach the trust consumers have on service providers.

It was highlighted that digital users in rural India are increasing at a high rate due to internet penetration, cheap data packs, and smartphones. Therefore, there is a dire need to spread awareness on data protection and privacy, as well as the harms and problems around it, particularly in tier II locations.

Session 1: Consent and Notice

Faiza Rahman, Research Fellow, National Institute of Public Finance and Policy (NIPFP)

The session discussed the importance of the notice-consent framework in the context of data privacy. Discussions revolved around the needs and challenges in implementing a transparent, accountable, easy to understand and affirmative data privacy framework. Key issues that emerged from the deliberations are as follows:

- Consent is when two or more persons agree upon the same thing in the same sense. For consent to be valid, it should be freely given, clear and specific, and informed.
- It was pointed out that users of various online platforms and smartphone applications provide consent because they do not have the time to go through the lengthy terms and conditions honeycombed with legal jargon. Moreover, the user will not be able to use the installed application unless it accepts the terms and conditions. As a result, the ideal notice-consent framework breaks down.
- A study undertaken by NIPFP revealed that the readability of the terms and conditions is a major reason why the notice-consent framework breaks down. Some of the factors affecting the readability of the terms and conditions include the use of ambiguous expressions that are vague, the legal and technical terminologies that are difficult to comprehend for a non-legal person and lack of consistency in the design of the disclosures.
- In this regard, it was pointed out the PDPB has the potential to address these concerns effectively. However, in addition, the interplay of the following two crucial factors would ensure effective data protection system:
 - There is a need for the data fiduciaries (controller) to be more responsible in securing consent and design a user-friendly notice; and
 - The users would have to be practice caution while sharing their personal information across online platforms and smartphone applications.

Session 2: User Rights and Entitlements

Rahul Sharma, Founder, The Perspective, and Country Head-India, International Association of Privacy Professionals

The session focussed on demystifying the concepts of rights and entitlement of users as provided under the PDPB. The session also explained various concepts and principles pertaining to data privacy; the evolution of the data protection regime in India, and the overall context in which the issue of data privacy should be considered. Key issues that emerged, are as follows:

- India is moving towards becoming a US\$5tn economy and envisages US\$1tn to come from the digital economy propelled by technological innovation, increase in the use of smartphones, greater use of online platforms, etc. However, given that India is lacking any stringent data protection and privacy laws, users of such platforms and applications are getting more and more exposed to breach in their personal information, which is provided, often unknowingly, by the users on the online platforms. In this regard, the need for an appropriate data protection Act is essential not only to protect the privacy of users but also to design an appropriate framework to facilitate cross border data flows.
- It was pointed out that the absence of a comprehensive data protection framework makes the issue of data localisation extremely relevant and necessitates undertaking a very nuanced approach towards the same.
- An effective data privacy framework should be able to effectively address various privacy risks like:
 - Excessive collection of Personal Identifiable Information (PII);
 - Unauthorised access to PII;
 - Unauthorised modification of the PII;
 - Loss, theft or unauthorised removal of the PII;
 - Unauthorised or inappropriate linking of PII;
 - Failure to keep information appropriately secure;
 - Retention of personal information for longer than necessary;
 - Processing of PII without the knowledge or consent of the PII principal (unless such processing is provided for in the relevant legislation or regulation); and
 - Sharing or repurposing PII with third parties without the explicit informed consent of the data subject.
- The Supreme Court of India has identified the Right to Privacy as a fundamental right, but to date, there is no act in place. Unfortunately, the PDPB is still waiting to become an 'act'.

Session 3: Enforcement and Regulation

S. Prasanna, Advocate, Supreme Court of India

The session centred around the enforcement and regulation regime under the PDPB. It intended to make consumers understand the redressal mechanism, along with the procedure for filing a complaint, generating an inquiry, and going for appeal.

- Traced the path of Right to Privacy. As per the Supreme Court verdict in the landmark cases of M P Sharma of 1954 (a six judge bench) and Kharak Singh of 1962 (an eight bench judge), it was held that privacy is not a fundamental right. In 2017 a nine-judge bench headed by Chief Justice J.S. Khehar rejected the previous argument and ruled that *"right to privacy is an intrinsic part of Right to Life and Personal Liberty under Article 21 and entire Part III of the Constitution"*.¹

¹ <https://yourstory.com/2017/08/right-privacy-fundamental-right-sc>

- The need for setting up a grievance redressal mechanism was emphasised. In this context, users can approach the grievance redressal system, seek compensation/redressal in event of a data breach.
- Steps to be taken for redressing a grievance were explained. As per the PDPB, a consumer needs to first apply to the Data Protection Authority. And if the issue remains unresolved then they may move to the Appellate Tribunal and ultimately to the Supreme Court.
- Along with compensation and penalties, PDPB also includes punishment. The design of the penalty is influenced by the European privacy law and can be imposed up to Rs. 10 crore. And if it is a Multinational Corporation then the penalty would be four percent of the total worldwide turnover. Whether a case attracts compensation, penalty and/or punishment, is to be decided by the court.
- It was pointed out that there is no provision of compensation in the PDPB if someone is unable to prove damage/loss of any kind (viz. financial, reputational, or physical) in case of a data breach. Even if some banks share transactional details, details of credit or debit cards of its consumers, no remedies are there until he/she proves that there is a direct financial loss.
- While enforcement of privacy rights is imperative but there is a need to address the limitations of the bill and to make the provisions more consumer-friendly instead of making them skewed to serve interests of the data fiduciaries.

Conclusion

Every citizen of India has the Right to Privacy. However, they hardly understand when and how their privacy is violated. Additionally, they also lack the understanding of whom to approach in case of a breach of privacy. Given this context, India is yet to have an act in place to protect the privacy of its citizens, despite the PDPB lingering around for almost two years now, which is a serious concern. It is imperative for India to have a well-defined framework in place, both to ensure the privacy of personal data and also help in having a data-sharing framework with neighbouring countries.

Participants emphasised that PDPB should be translated into regional languages, and such citizen-centric legislations should not just be in English. Moreover, all participants raised the need to supplement the same with training and outreach events that help educate and empower consumers, especially in tier II and III as well as rural areas.

The main event was followed by a **keynote address featuring Daniel David Castro**, Vice-President of Information Technology and Innovation Foundation (ITIF) and Director, ITIF's Centre for Data Innovation. Along with workshop participants, it was attended by key local stakeholders from the industry, academia, lawyers and civil society. The keynote speech revolved around two important concepts: Convergence in Privacy Frameworks and Cross Border Data Flows. The session made an attempt to explore the measures that could be

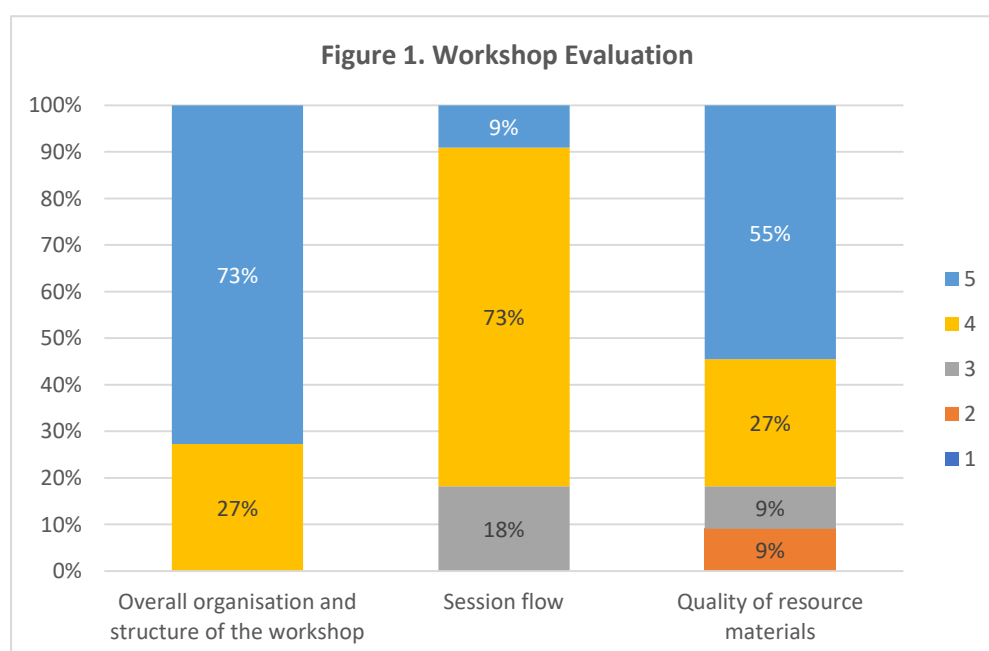
undertaken to support a harmonised evolution and convergence of data privacy frameworks that facilitate CBDF.

Programme Evaluation based on Feedback Analysis

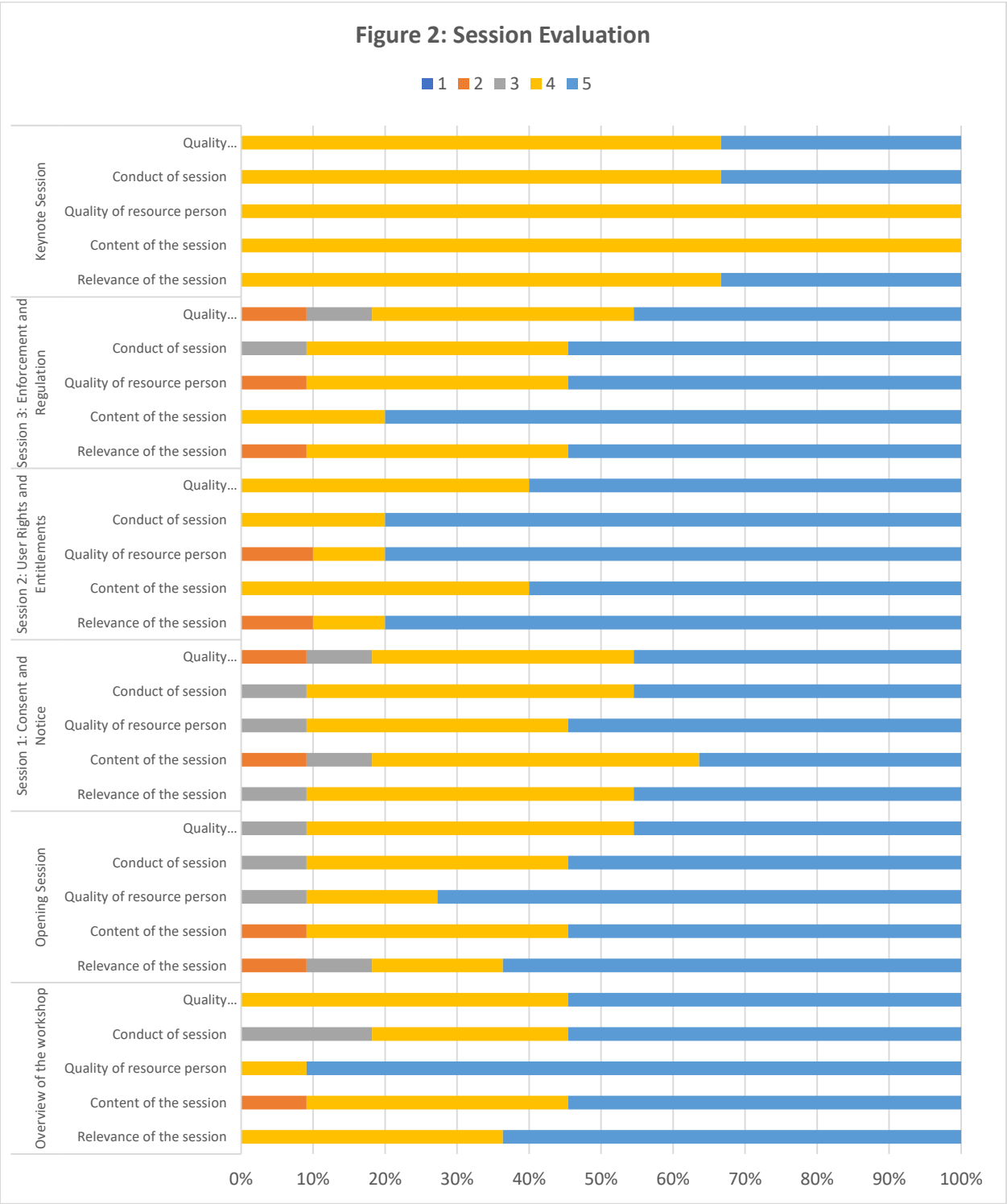
The Feedback Form was divided into three parts. For parts I and II, the participants were asked to rate the topics of the workshop and the various aspects of the sessions therein on a scale of 1 to 5, where 1 is equivalent to poor and 5 is equivalent to excellent.

Workshop Evaluation

- Almost all participants were exploring the topic of the workshop for the first time ever but claimed to have developed an adequate understanding and knowledge of the topic.
- The participants expressed their willingness to learn more about the topic and the need to conduct more workshops. However, they were of the opinion that they would prefer a slow-paced session for certain issues that were technical in nature. Although they were comfortable with the English language, they would prefer to have access to resource material and the bill as well in their regional language.



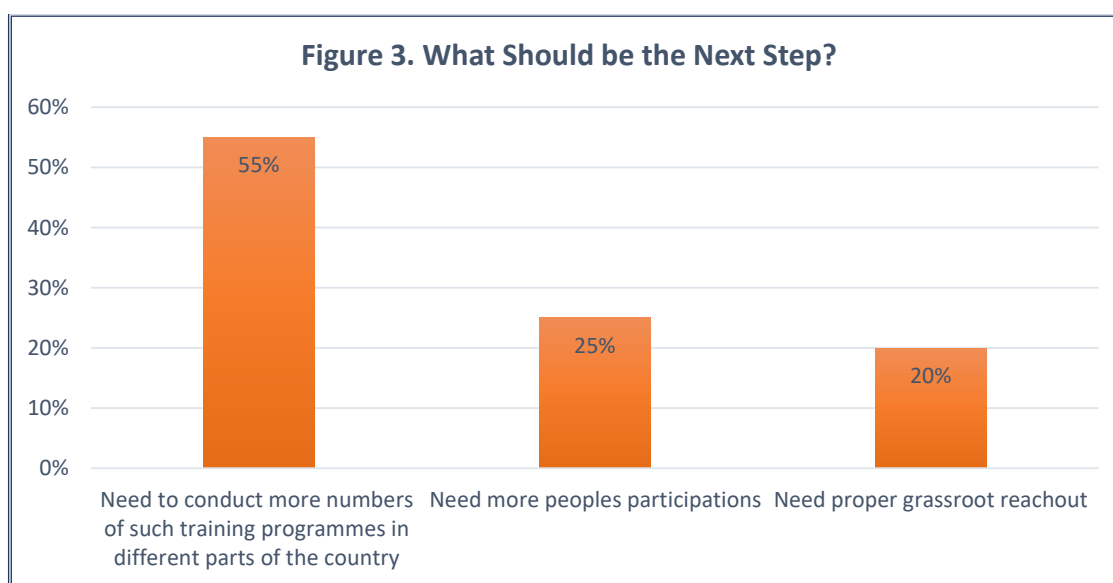
Part II: Session Evaluation



- The sessions were seen as extremely relevant, as participants recognised and understood the importance of issues discussed during the training programme. Although most participants knew about the right to privacy, they did little to safeguard their privacy as well as personal data due to lack of knowledge and understanding, until now. They vowed to practice more awareness and spread the word through their network.
- The participants liked the exercises and case study method during the sessions for it enabled them to relate to real-life scenarios. The speakers tried to keep the sessions as simple as possible, chaffing out the technicalities and legalities attached to the issues, wherever possible.

Part III: What Should be the Next Step?

This section was an attempt to know whether the workshop was able to generate any substantial knowledge and interest in the field of data protection and privacy. Figure 3 gives an idea about participants responses under this category.



- Majority of the participants felt the need to further this topic and increase its awareness through capacity building exercises.
- Despite coming from different backgrounds, regions, age, gender, and level of awareness, the participants were unanimous in building their capacity and enhancing awareness regarding the topic of the workshop. Not only did they understand the issues discussed but also realised the value of holding such awareness workshops that engages with consumer and civil society organisations at the grassroots.

Pre and Post Workshop Questionnaire

The purpose of the questionnaire was to understand whether there is any change in the perspective and understanding of the participants, before and after the workshop. Figure 4 gives a brief outline of how the participants fared on an average.

The workshop helped improve the understanding of the participants to a great extent. We noticed that the participants were comfortable with the use of English as a medium of instruction during the workshop. This most certainly facilitated better learning and understanding as English language did not present itself as a challenge. A remarkable improvement in the understanding of the participants was noted (Figure 4).

