

# CONSUMER SOVEREIGNTY IN TIMES OF DATA LOCALISATION

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# SOME IMPORTANT CONCEPTS

- What is consumer sovereignty?
- Is consumer sovereignty in conflict with data sovereignty?
- Does data sovereignty incorporate the interests/rights of a consumer, when there is a fundamental right to a data protection regime (Puttaswamy judgment)

# NARRATIVE ON DATA LOCALISATION

- White paper by Sri Krishna Committee
- DISHA by Ministry of Health & Family Welfare
- RBI circular on payments data storage
- TRAI's paper on Data Privacy
- Draft e-commerce policy framework
- Srikrishna Committee recommendations
- International developments

# POTENTIAL ARGUMENTS FOR DATA LOCALISATION

- Local servers enhance access speed
- Avoid vulnerabilities of optical fibre network
- Preventing foreign surveillance
- Preventing data colonization & neo colonialism
- Development of local industry
- Monitoring and access to law enforcement agencies
- Mode of revenue for the government
- Bargaining chip in international trade wars

# POTENTIAL ARGUMENTS AGAINST DATA LOCALISATION (FOR CROSS BORDER FLOW)

- Privacy and data protection
- Fraud detection
- Affordability of services
- Access to open & free internet
- Avoiding security risks - mirroring + processing
- Ease of doing business/ competitiveness/ economical
- Access to global markets, products & technology
- Avoiding local government surveillance
- Compliance with international obligations

# ISSUES FOR DISCUSSION

- Can data localisation enhance consumer welfare (address security/ breach concerns and enhance access speed)? Is it technically feasible? What should then be the way forward?
  - If mandated, how to ensure fair and transparent regulatory regime and avoid adverse impact on stakeholders?
- What are effective alternatives to localisation (comparable)?
- Can cross border data flow enhance consumer welfare (ensure adequate safety net) while balancing interests of all stakeholders? How should it be allowed (standard clauses)?
  - If allowed, how to enable monitoring and access to law enforcement agencies (broken MLAT, local equivalents of CLOUD Act, bilateral/ multilateral agreements)?
- Need for stakeholder specific Cost Benefit Analysis/ Regulatory Impact Assessment

# THANK YOU!

TWEET using #COSTofDL

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