



Enforcing claims

Context: For several years now, the relationship of the U.S. and India has been marked by their sensitivity to each other's concerns as they deepened cooperation on strategic issues and aligned positions on multilateral issues. As a result, the April 7 press release by the U.S. Navy that announced that its 7th fleet had traversed India's Exclusive Economic Zone (EEZ) in order to "challenge" India's claim came as a surprise.

Highlights:

1. In the press release, the U.S. Navy said its ship had "asserted navigational rights and freedoms approximately 130 nautical miles west of the Lakshadweep Islands, inside India's exclusive economic zone, without requesting India's prior consent," claiming this was "consistent" with international law, referring to the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
2. While the U.S.'s decision to conduct "Freedom of Navigation Operations" (FONOPs) is not new, what appears to be new is the statement issued by the U.S. Navy itself.

India Stand:

India contested the U.S. claim about international law, saying that UNCLOS did not authorise military manoeuvres on the continental shelf or EEZ, as the 7th fleet had carried out, without prior consent.

Divergence on the understanding of rule-based order:

1. The U.S.'s announcement indicates that a new SOP (Standard Operating Procedure) for these FONOPs is being adopted.
2. To begin with, the government must clearly explain its own position, making it clear to all partners how the Indian law governing maritime claims is in line with international law.
3. Next, it must analyse the U.S.'s motivations for this belligerence, and chart out a course accordingly. Primarily, the U.S. naval actions may be a message to China, whose maritime claims are increasingly coming into conflict with those of the U.S. and its allies, but Washington is attempting to send a broader message that it will not tolerate any other country's claims.



4. As New Delhi contends with this new reality, it must seek answers from Washington about how their newly intensified Quad partnership, especially their stated objective to cooperate on keeping a “free and open Indo-Pacific”, can co-exist with the open challenge the U.S. Navy has posed.

While the matter has been disposed of diplomatically for the moment, it is clear that the government must prepare to grapple with the issue with the U.S. in the long term.

Why the Personal Data Protection Bill matters

Data protection law: The recent alleged data breach at MobiKwik could stand to be India’s biggest breach with the data of 9.9 crore users at risk. Robust data protection regimes are necessary to prevent such events and protect users’ interests. Unfortunately, the existing data protection regime in India does not meet this standard. However, the Personal Data Protection Bill, 2019, now under scrutiny by a Joint Parliamentary Committee, could play a big role in providing robust protections to users and their personal data.

Problems with the current regime:

1. How different entities collect and process users’ personal data in India is mainly governed by the Information Technology Act, 2000, and various other sectoral regulations. However, this data protection regime falls short of providing effective protection to users and their personal data.
2. For instance, entities could override the protections in the regime by taking users’ consent to process personal data under broad terms and conditions. This is problematic given that users might not understand the terms and conditions or the implications of giving consent.
3. Further, the frameworks emphasise data security but do not place enough emphasis on data privacy. In essence, while entities must employ technical measures to protect personal data, they have weaker obligations to respect users’ preferences in how personal data can be processed. As a result, entities could use the data for purposes different to those that the user consented to.
4. The data protection provisions under the IT Act also do not apply to government agencies. This creates a large vacuum for data protection when governments are collecting and processing large amounts of personal data.



5. Finally, the regime seems to have become antiquated and inadequate in addressing risks emerging from new developments in data processing technology.

The upcoming regime (Draft bill based on BN Shrikrishna Committee)

1. The proposed regime under the Bill seeks to be different from the existing regime in some prominent ways. First, the Bill seeks to apply the data protection regime to both government and private entities across all sectors.
2. Second, the Bill seeks to emphasise data security and data privacy. While entities will have to maintain security safeguards to protect personal data, they will also have to fulfil a set of data protection obligations and transparency and accountability measures that govern how entities can process personal data to uphold users' privacy and interests.
3. Third, the Bill seeks to give users a set of rights over their personal data and means to exercise those rights. For instance, a user will be able to obtain information about the different kinds of personal data that an entity has about them and how the entity is processing that data.
4. Fourth, the Bill seeks to create an independent and powerful regulator known as the Data Protection Authority (DPA). The DPA will monitor and regulate data processing activities to ensure their compliance with the regime. More importantly, the DPA will give users a channel to seek redress when entities do not comply with their obligations under the regime.

Problems with the bill

Several provisions in the Bill create cause for concern about the regime's effectiveness. These provisions could contradict the objectives of the Bill by giving wide exemptions to government agencies and diluting user protection safeguards.

1. For instance, under clause 35, the Central government can exempt any government agency from complying with the Bill. Government agencies will then be able to process personal data without following any safeguard under the Bill. This could create severe privacy risks for users.
2. Similarly, users could find it difficult to enforce various user protection safeguards (such as rights and remedies) in the Bill. For instance, the Bill



threatens legal consequences for users who withdraw their consent for a data processing activity.

3. In practice, this could discourage users from withdrawing consent for processing activities they want to opt-out of.
4. Additional concerns also emerge for the DPA as an independent effective regulator that can uphold users' interests.

A case for cash transfers

Minimum Basic Income: The Nyuntam Aay Yojana (NYAY) has become more relevant since it was first proposed two years back.

Rationale:

1. Unconditional cash transfers to the poor is a resoundingly good idea. Of course, cash transfers lead to important short-term effects: better nutrition, less food insecurity, higher consumption, and so on. But their benefits extend beyond this.
2. Research shows that by freeing people from being held hostage to hunger and insecurity and anxiety about basic needs, even a modest cash transfer can radically transform people's futures, unlocking stymied entrepreneurship, investment, and eventually a sustainable exit from poverty.
3. It is hard to dream and plan on an empty stomach, and cash transfers help ease that problem. They are, thus, a powerful instrument for sustainable poverty reduction.
4. NYAY was already a good idea in 2019. But the COVID-19 pandemic and the hardships endured by rural-urban migrants during the countrywide lockdown, followed by the crippling economic slowdown, have only made the case for it stronger.
5. Had a NYAY-like scheme been in place, migrant workers who found themselves thrown out of work by the lockdown might have had the wherewithal to remain where they were, rather than being forced to make perilous journeys home.

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6. Businesses that faced labour shortages might have found it easier to restart activity once restrictions eased, and cash in the hands of potential consumers could have helped in recovering from the dramatic economic slump that the pandemic set off.

Behavioural tools and Nudges:

1. A world bank experiment in Kenya involving cash transfers along with a simple behavioural tool to help people articulate long-term goals and figure out how much money to set aside to achieve these goals (often things like purchasing livestock or inputs for a small business), helped people save more, make some productive investments, and pay off high-interest debt.
2. A state-level implementation of a programme like NYAY facilitates the necessary tinkering and ironing out logistical challenges.
3. It also allows for strategically incorporating 'nudges' and other proven interventions that can help magnify the impact of cash transfers.
4. Such interventions can help ensure that people receiving cash are not only able to meet their immediate needs but are also able to set some money aside for contingencies, such as a pandemic or natural disasters.