21 November 2021

Shri P.P. Chaudhary
Chairman
Joint Committee on the Personal Data Protection Bill, 2019

Note of Dissent on the JPC on Personal Data Protection Bill, 2019

Sir,

As members of the Joint Committee on the Personal Data Protection Bill, 2019, we express our dissent to the final report of the Committee not only because of the Orwellian nature of the provisions contained in the Bill but also the improper functioning of the Committee itself.

The Committee rushed through its mandate, not providing sufficient time and opportunity for stakeholder's consultations. The proceedings of the Committee were held multiple times per week, during an ongoing pandemic, making it difficult to attend for MPs residing outside Delhi.

We strongly oppose the Bill for lack of adequate safeguards to protect the right to privacy of data principals. In addition, we oppose the recommendations of the Committees for the inclusion of non-personal data within this legislation. The Committee has made a number of recommendations to amend parts of the Bill in order to include non-personal data protection in its ambit. We strongly oppose all the recommendations to this effect. There is a need for a detailed study and separate framework for regulation of non-personal data.

The Bill provides overboard exemptions to the Government of India, without proper safeguards in place. We had moved an amendment to Clause 35 of the Bill which gives powers to the Central Government to exempt any agency of government from application of the act. Not only has the Committee failed to introduce proper safeguards in clause 35 to prevent its misuse, the Committee has made recommendations to empower Central Government with more unqualified powers. For instance, the selection process for members and chairperson on the Data Protection Authority (DPA) has heavy involvement of the Central Government under Clause 42. The Committee has recommended that the DPA should be bound by the directions of the Central Government under all cases and not just on questions of policy. This would affect the independent functioning of the DPA. We strongly oppose these recommendations.

These objections, along with more, are contained in the amendments moved by me and my colleague during the clause-by-clause consideration of the Bill. The amendments proposed by us are summarised below. Along with the recommendations mentioned above, we express our dissent to the final report on the following points.

In the Preamble, appropriate changes be made to shift the emphasis from overreliance on economic interests to data protection.

In Clause 2, 92 and 94, to exclude non personal from the application of the provisions of this Bill and to remove the power vested in Central Government to make rules or issue directions regarding non-personal data.

In Clause 3, to take away the excessive powers of the Government to define a new category of data as sensitive personal data; to categorize data relating to "trade union or political affiliation" as sensitive personal data.

In Clause 5, 6 and 13, to include a reference to "proportionality" for the purpose of processing and collecting personal data.

In Clause 12, to delete the clause in order to remove the excessive powers given to the Government to access data without consent.

In Clause 14, to exclude "credit scoring" from the meaning of the expression "reasonable purposes" for the purpose of processing personal data.

In Clause 15, to remove the power of the Central Government to define new category of Sensitive personal data.

In Clause 21, to remove the provision for charging of a fee to comply with rights conferred to every data principal under the Bill.

In Clause 26, to remove the provision that enables Social Media Companies to link IDs with user accounts.

In Clause 35, to remove the sweeping powers to the Central Government to exempt any Government agency from the application of the act.

In Clause 42, to restore the composition of the Selection Committee contained in the Draft Personal Data Protection Bill 2018.

In Clause 49, to include provision for preparation and publication of reports setting out the result of any inspection or inquiry, by the DPA.

The final report lacks the consensus of the Committee members. We express our dissent under direction 85 of the Speaker of Lok Sabha. We strongly condemn the Bill for supporting a framework that fails to protect the digital rights of the people of this country.

Sincerely,

Derek O'Brien
(Member, Rajya Sabha)

Mahua Moitra
(Member, Lok Sabha)

Add on

In Clause 2, section 2(12), to not recommend to add word "digital" before "privacy of individuals". Bill should cover all personal data, not just in digital form.

Mahua Moitra