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सत्यमेव जयते

24th November, 2021

(New Delhi)

LETTER # 029-030/FS/2021

Dear Chaudhary Ji,

Let me begin by extending my deepest gratitude and appreciation for the manner in which you and the previous chairperson conducted the deliberations of the JCP on Personal Data Protection Bill, 2019 spread over the past 70 sittings, in an inclusive manner. There were extensive discussions on every facet of the bill at great length.

Though I am in broad agreement with the recommendations of the JCP, deeper contemplation puts me in doubt in respect of two recommendations. Undoubtedly in the course of JCP sessions these issues were taken up and discussed at length. Mr. Jairam Ramesh and others raised their concerns about the danger in maintaining draft provision as positioned in section 12 and section 35 of the bill. The amendment suggested to the said provisions in my opinion are necessary to prevent abuse of the power of exception so liberally granted to the state. I would request you to kindly take this letter as my note of doubt/dissent and kindly record the same.

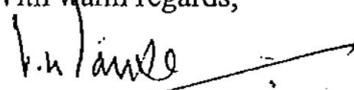
It is pertinent to mention here that the PDP, 2019 Bill finds itself based on an incorrect architecture/assumption that the right to privacy arise only for protection against breach of qua private and the state is virtually exempted from these constitutional responsibilities. The government agencies have a special status, treated as a distinct class, which makes the recommendation inconsistent with the spirit of the judgement by the Hon'ble Apex Court. I am reminded of the following observation made by the Supreme Court in the case of *K.S. Puttaswamy vs Union of India (2017)10 SCC1*.

"Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds its origin in the notion that there are certain rights which are natural to inherent in human being. The human element in life is impossible to conceive without the existence of natural rights. Natural rights are not bestowed by the state. They inhere in human being because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation."

The electronic data is shared by government agencies and others on a regular basis. This activity puts the privacy of the individual at great risk. Therefore a necessity to put a check on sharing of personal data, to safeguard the privacy of the citizens unless it is inconsistent with National security, sovereignty, foreign relations or for prevention/detection of any crime/cognizable offence. These exceptions may be allowed only in exceptional cases and by a reasoned order for posterity and constitutional courts to judge the level of personal intrusion. I have grave doubts on the addition of open ended phrase of 'public order' as an exception. It will be susceptible to gross misuse.

Blanket protection to the government agency is neither constitutional nor in the interest or people's democracy. The unfettered rights given by way of exemption to the government agency owes its presence to the presumption that the right to privacy of a citizen is not extendable to protect citizens from the state and its machinery; in fact nothing can be further from this truth. It is the duty of the state to protect the breach of privacy of its citizens, be it in the form of private, government or foreign agencies. Any exemption to permit breach of a fundamental right protected by the constitution of India must fulfil and owe complete obedience to the exceptional circumstances permitted by law and so granted by a reasoned order; that is to not trust or leave to state/officers fancy the precious freedom afforded by the constitution to every citizen or person.

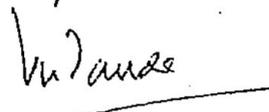
With warm regards,


(Vivek K. Tankha)

SHRI P. P. CHAUDHARY

Chairperson – Joint Committee Of Parliament on PDP Bill, 2019
New Delhi

This is to certify that I have perused and understood the draft report.


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