

Dr. JOHN BRITTAS
MEMBER OF PARLIAMENT
(RAJYA SABHA)



Member :

- Standing Committee on Communications and Information Technology
- Consultative Committee for the Ministry of Information & Broadcasting
- Committee on Information and Communication Technology Management in Rajya Sabha

MPRS/07/1290/2023

28.07.2023

The Chairman

Department Related Parliamentary Standing Committee on Communications and Information Technology

Respected Chairman,

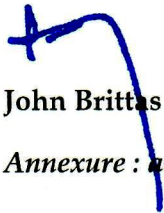
Sub:- 'Citizens' data security and privacy- 'Digital Personal Data Protection Bill' - Consideration and adoption of Report - dissent note - reg:

Kind attention is invited to the captioned subject.

Please recollect the fact that I had placed my Note of Dissent on 26.07.2023 during the sitting of the Department Related Parliamentary Standing Committee on Communications and Information Technology expressing my reservations over the captioned Report taken for consideration and adoption by the Committee, before boycotting the meeting protesting over the illegalities. As it has been requested that the dissent note be sent on e-mail, I hereby despatch the same and the same may kindly be treated as part of the Report of the Committee as per Rule 331 I (3) of the Rules of Procedure and Conduct of Business in Lok Sabha and Rule 274(3) of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha).

Thanking you.

Yours faithfully,


John Brittas

Annexure : as above

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NOTE OF DISSENT

1. It is imperative to note that the 'Digital Personal Data Protection Bill' had neither been introduced before either of the Houses of Parliament till date, nor was it referred to the Standing Committee by the Chairman of the Rajya Sabha or the Speaker, as the case may be, for examination.
2. According to the unequivocal provisions in Rules 331E (1) (b), 331H (a) & 331H (b) of Lok Sabha Rules and Rules 270 (b) & 273 (a) of the Rajya Sabha Rules, the Standing Committees are explicitly prohibited from examining any Bills that have not been referred to them by the Chairman or the Speaker after their introduction in either House.
3. Hence, it is evident that the above mentioned draft Report of the Standing Committee on Communications and Information Technology, containing Report on the examination and Recommendations of the Committee on the 'Digital Personal Data Protection Bill' are *void ab initio* and are *ultra vires* of the powers of the Standing Committee conferred by the Rules. The Rules proscribe the Standing Committee from examining such yet to be introduced Bills.

Without prejudice to the above, the following Note of Dissent vis-a-vis the draft Report presented to the Committee may also be recorded.

Note of dissent on the Recommendations in the draft Report titled as "Citizens' data security and privacy" about the "Digital Personal Data Protection Bill"

4. There is excessive delegated legislation in the proposed **Digital Personal Data Protection Bill**, as the draft bill does not go into the specifics of the implementation. It seems as if the Government's favourite catchphrase "as may be prescribed" is the highlight of this draft bill. It has been mentioned 18 times in a 24 page bill with only 30 clauses.
5. The proposed Bill gives Union Government unfettered power to give exemptions to government agencies [clause 18(2)] from the application of provisions of the Bill on specified grounds like sovereignty and integrity of India, friendly relations with foreign States, public order etc.
6. Additionally, clause 18(3) allows the Government to exempt any Data Fiduciary or a class of Data Fiduciary from the application of this proposed Act. Such sweeping exemptions raises major concerns like-
 - a. Whether it will meet the proportionality test set out by Supreme Court in the K.S. Puttaswamy Judgement (2017)? Will it not lead to violation of fundamental right to privacy?

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- b. It will lead to an untoward situation where any Data Fiduciary or any class of Fiduciaries would be able to exert pressure for seeking permission for exemption from the Act.
7. The proposed Data Protection Board of India is at the risk of becoming a puppet of the Centre, because everything ranging from composition, qualifications, tenure and procedure of appointment of members would be as per the whims and fancies of the Government.
 - a. The Joint Parliamentary Committee Report on the Personal Data Protection Bill, 2019 had recommended that a Selection Committee shall nominate the Data protection Authority. Members of the Committee itself should include: (i) Attorney General of India, (ii) an independent expert from fields such as data protection, information technology, or cyber laws, and (iii) Directors of an IIT and an IIM. None of this has been touched upon in the 2022 draft.
8. The bill does not include non-digital personal data, anonymized personal data, and non-personal data in its ambit, thus no protection is available to these kinds of data. It goes against the recommendations of the Joint Parliamentary committee on the Personal Data Protection Bill, 2019.
9. The Bill does not provide for the Right to data portability and the Right to be forgotten. The 2019 Bill on Data Protection and the Joint Parliamentary Committee, examining the 2019 Bill, recommended retaining these rights. The GDPR of EU also recognises these rights.
10. The bill removes the distinction between sensitive and critical personal data. This distinction was recommended by Justice Srikrishna and was included in the Personal Data Protection Bill, 2019 and the Joint Parliamentary Committee recommendations.
11. The draft bill no longer requires local storage of data. Businesses can only transfer data to countries notified by the Indian govt. During the examination of Ministry officials before the committee, it was deposed that a 'negative list' or a list of disapproved countries will be notified and cross-border data transfers to countries not on 'negative list' will be allowed on default basis. Without the assessment criteria being defined in the Digital Personal Data Protection Bill for such 'negative list', it could depend more on geopolitics than privacy safeguards.
12. Clause 24 of the draft bill talks about 'Voluntary Undertaking', under which the Data Protection Board has powers to accept voluntary undertaking with respect to non-compliance with any provisions of the proposed Act. Such a provision allows those who are non-compliant to avoid penalties ranging up to rupees 500 crore by giving a mere undertaking. The bill should clearly state the mechanism which the Data Protection Board would employ to accept such an undertaking.

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13. While the Data Protection Board of India has the power to impose penalty on a Data Fiduciary for breach of personal data as per the Bill, it is not given the power to provide compensation to the aggrieved Data Principals. On the other hand, it is surprising to see that the Bill proposes a penalty of up to Rs 10,000 for Data Principals, in case, he/she fails to comply with section 16 of the Bill (Duties of Data Principal).
14. The Bill [as per clause 30(1)(a)] amends the IT act, 2000 and proposes to omit section 43A of the IT act. Section 43(A) of the IT Act, 2000 enables an aggrieved person to demand compensation from a body corporate due to any negligence in handling any sensitive personal data, thereby causing wrongful loss or wrongful gain to any person. This further accentuates the precarious situation of Data Principals. The GDPR of EU, on the other hand, specifically provides for Right to compensation to an aggrieved party under Article 82 for damage caused as a result of an infringement of the provisions of the regulation.
15. Section 8(1)(j) of the RTI act allows personal information to be disclosed if the larger public interest justifies the disclosure of such information (subject to satisfaction of Central Public Information Officer or the State Public Information Officer or the appellate authority), or it is related to any public activity or interest; even if the disclosure causes unwarranted invasion of the privacy of the individual, or if it is such an information which cannot be denied to the Parliament or a State Legislature. These portions are proposed to be deleted vide section 30(2) of the new Digital personal Data Protection Bill making all personal information exempt from RTI Act. This would fundamentally weaken the RTI Act and adversely impact the ability of people to access information and will definitely curtail transparency in the Government.
16. Notice requirements weakened: Compared to past versions, data fiduciaries do not have to inform principals about the third-parties with whom their data will be shared, the duration for which their data will be stored and if their data will be transferred to other countries.
17. Vague non-consensual processing of data permitted: The DPDPB, 2022 allows the Data Fiduciary to “deem” or assume consent of the Data Principal if the processing is considered necessary as per certain situations such as for the breakdown of public order, for purposes related to employment, and in public interest.


John Brittas