

Memorandum for
The Standing Committee on Information Technology (2017-18)
on
Citizens' Data Security and Privacy

June 14, 2018

Background

Consumer Unity and Trust Society (CUTS International)¹ expresses its gratitude to the Parliamentary Standing Committee on Information Technology (IT), headed by Shri Anurag Singh Thakur, Member of Parliament, Lok Sabha, for inviting comments and suggestions on the pertinent issue of 'Citizens Data Security and Privacy'.

About CUTS

In its 34 years of existence, CUTS has come a long way from being a grassroots consumer-centric organisation based in Jaipur, to opening overseas resource centres in Hanoi², Nairobi³, Lusaka⁴, Accra⁵, Geneva⁶ and most recently in Washington DC⁷. It continues to remain an independent, non-partisan and non-profit economic policy think tank, while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE)⁸; Centre for Consumer Action, Research & Training (CART)⁹; Centre for Human Development (CHD)¹⁰; and Centre for Competition, Investment & Economic Regulation (CCIER)¹¹. It has been working towards enhancing the regulatory environment through evidence-backed policy and governance related interventions across various sectors and national boundaries. For further details regarding CUTS, please visit: <http://cuts-international.org/pdf/About-CUTS-2018.pdf>

Being a consumer-oriented organisation, CUTS has identified a few critical issues impacting consumer welfare, which must be addressed by the Committee. These have been discussed in subsequent sections, along with a few recommendations to solve them.

Addressing Critical Issues Recommended by CUTS

To begin with, CUTS highly recommends the Committee, to adopt and institutionalise undertaking Regulatory Impact Assessments (RIA) and Competition Impact Assessments (CIA), while framing/providing any suggestions on the policy, regulatory and/or legislative framework regarding 'Citizen Data Security and Privacy'.

¹ <http://cuts-international.org/>

² <http://cuts-hrc.org/en/>

³ <http://www.cuts-international.org/ARC/Nairobi/>

⁴ <http://www.cuts-international.org/ARC/Lusaka/>

⁵ <http://www.cuts-international.org/ARC/Accra/>

⁶ <http://www.cuts-geneva.org/>

⁷ <http://www.cuts-wdc.org/>

⁸ <http://www.cuts-citee.org/>

⁹ <http://www.cuts-international.org/CART/>

¹⁰ <http://www.cuts-international.org/CHD/>

¹¹ <http://www.cuts-ccier.org/>

RIA is a process of systematically identifying and assessing direct and indirect impacts of regulatory proposals and existing regulations, using consistent analytical methods. It involves a participatory approach via public consultation to assess such impact, determination of costs and benefits, and selection the most appropriate regulatory alternative.¹²

Adopting such an approach will ensure the framing of optimal regulations. This will not only facilitate adequate data privacy laws, but will also aid in achieving other policy goals of relevant policies, such as the draft National Digital Communications policy. A few critical issues requiring action have been discussed in the Table below.

CUTS Recommendations on Consumer Welfare Issues

Issues	CUTS Recommendations
I. In light of Cambridge Analytica¹³	
1. Greater freedom for Indian users against compulsory signing up of 'Terms of Consent' agreement. It has also been opined that users should not be forced to tick every box while installing an application on a mobile phone. ¹⁴	1. The Committee has rightly identified this pain-point for users. In order to have a healthy discourse on the issue, users must be approached to gauge their perception on the issue of proving 'free and unambiguous consent' without having to face a 'take it or leave it' situation. Also, such a discourse should not only be restricted to 'installing applications', but should also include 'availing offline services', such as shopping at retail stores. These also mandate providing certain information, which may not be directly relevant for providing the service. The issues with respect to consent fatigue and accountability of data collectors in cases wherein consent has been provided also need to be reviewed. It has been argued that consent and accountability are not mutually exclusive.
2. The Computer Emergency Response Team of India (CERT-In) had issued an advisory on safeguarding personally identifiable information on social networking sites. ¹⁵	2. Though CERT-In's advisory seems apt the current awareness/capacity of users in adopting such advisories remains to be checked. Awareness and capacity building initiatives may be required on the issue of data sharing on social media platforms, in order to implement CERT-India's advisory.
3. Puttaswamy Judgement	3. In light of the right to privacy being declared as a fundamental right by the Supreme Court of India, adequate steps for securing citizen's data privacy must be taken by the government. Such steps may be preceded by adequate evidence-backed research to clearly identify the areas requiring attention, keeping in mind the interests of all stakeholders.

¹² <http://cuts-ccier.org/ria/>

¹³ <https://www.firstpost.com/india/cambridge-analytica-row-parliamentary-panel-likely-to-seek-explanations-regarding-facebooks-india-operations-may-summon-top-brass-4465079.html>

¹⁴ <https://www.opengovasia.com/articles/indian-parliament-calls-for-public-opinions-on-citizen-data-security>

¹⁵ <https://www.firstpost.com/india/cambridge-analytica-row-parliamentary-panel-likely-to-seek-explanations-regarding-facebooks-india-operations-may-summon-top-brass-4465079.html>

Issues	CUTS Recommendations
	The Puttaswamy Judgement highlighted that state obligation vis-à-vis citizen privacy has two aspects. First, negative i.e. preventing breach and second, positive i.e. taking conscious efforts to prevent privacy. There is a need to assess initiatives taken by the states and central government to protect citizen privacy.
4. The views of MeitY officials in this connection ¹⁶	4. In furtherance to the White Paper floated by the Srikrishna Committee (formed at the instance of the Ministry of Electronics and Information Technology or MeitY), it is requested that the suggestions received by various stakeholders on the White Paper, along with the findings of the Committee, should be made public for continued inclusive stakeholder interaction and enhanced transparency in drafting the data protection legislation. The draft data protection bill circulated by MeitY should also be put up in public domain for discussion. In addition, the recommendations and data protection bill should also be released in public domain. The stakeholders must be provided adequate time to review the documents and provide inputs.
5. The issue of digital payments and online security of data ¹⁷	5. The panel has been deliberating the issue of data privacy, within the realm of securing data pertaining to digital payments. In this regard, the recent RBI notification on payment data storage has mandated all payment system operators to ensure that data related to payment systems operated by them are stored only inside the country, which will provide unfettered access to RBI to all payment data for supervisory purposes. Such mandates may have multi-faceted implications for different stakeholders, and must therefore be taken in a more participative manner, and after due study of its ramifications on the interests of various stakeholders.
II. Retired Justice BN Srikrishna Committee	
1. The Srikrishna Committee has been formed to provide suggestions on the draft data protection legislation for the country.	1. As mentioned previously, it is highly recommended, that the Committee undertakes Regulatory Impact Assessments and Competition Impact Assessments.
2. Sectorial regulators also trying to govern the terms of data usage in their respective sectors.	2. Adoption of a Whole of Government System's Approach becomes necessary while providing recommendations to the draft data protection legislations. This is becomes important in light of data becoming an intrinsic component of innovation in every sector of the economy. The impact of data processing

¹⁶ <https://www.firstpost.com/india/make-facebook-commit-it-wont-misuse-user-data-to-influence-polls-in-india-parliamentary-committee-tells-centre-4439277.html>

¹⁷ <https://economictimes.indiatimes.com/news/politics-and-nation/cambridge-analytica-scandal-parliamentary-panel-to-decide-on-summon-to-facebook-official-on-april-6/articleshow/63573806.cms>

Issues	CUTS Recommendations
	differs in every sector, wherein sectorial regulators may also frame guidelines, rules, etc. for governing it.
III. India's preparation to deal with EU's GDPR¹⁸	
1. Many Indian Information Technology Enabled Service. (ITES)- Business Process Outsourcing (BPO) industries are reliant on the European market, and need to comply with the recently implemented General Data Protection Regulation (GDPR).	1. In today's globalised world, where business to business interaction across borders has been on the rise, any laws being formulated in a country bear an impact on many different sets of stakeholders in other countries as well. The two major points to be kept in mind in this regard are: (1) preparing Indian stakeholders to comply with the relevant provisions of the GDPR for continued digital interaction with European countries; and (2) ensure that the draft Indian data protection legislation does not hamper the growth of Indian business, such as ITES and BPO industries, Micro, Small & Medium Enterprises (MSMEs), start-ups, etc.
IV. Steps taken in the last few years to ensure that various arms of the government had managed to build the capacity to protect privacy of citizens in the virtual world¹⁹	
1. The Home Ministry has launched a focussed programme on capacity building to handle various types of crimes, including data theft, hacking, financial frauds and online stalking. ²⁰	1. A capacity building programme for police officers and other government department personnel on handle various cyber-crimes is a praiseworthy initiative. However, a bottom-up approach may be taken in this regard, i.e. it is more important on raise awareness and building capacity amongst users in order to better capacitate them to beware of such threats, and know about appropriate redress mechanisms in case of being a victim to any of these cyber-crimes.

The Way Forward

CUTS being a pioneer consumer centric organisation, is undertaking a user perception analysis survey pertaining to data privacy and user welfare in India, with the following objectives in mind:

- The role digital technologies play in the day to day lives of users
- Gauge the perception of users with regard to potential data protection and data privacy risks and
- The strategies deployed by users to protect data, along with the perceived correlation between data sharing and benefits

Further, the findings of the same would be shared with the Committee in due course of time. In addition, we look forward to assisting the Committee in its endeavours of securing citizen's data and privacy. We will be happy to present our views in-person to the Committee, if required.

¹⁸ <https://www.hindustantimes.com/india-news/users-should-not-be-forced-to-sign-terms-of-consent-on-social-media-sites-parliamentary-panel/story-Xp5Tlnb6lDftDFjuNViq6H.html>

¹⁹ <https://www.firstpost.com/india/cambridge-analytica-row-parliamentary-panel-likely-to-seek-explanations-regarding-facebooks-india-operations-may-summon-top-brass-4465079.html>

²⁰ <https://www.firstpost.com/india/cambridge-analytica-row-parliamentary-panel-likely-to-seek-explanations-regarding-facebooks-india-operations-may-summon-top-brass-4465079.html>