

ENGAGING MEMBERS OF BOTH THE HOUSES OF PARLIAMENT ON ISSUES PERTAINING TO DATA PROTECTION AND PRIVACY

Background

In the judgement of *K S Puttaswamy vs. Union of India, 2017*, the Supreme Court of India (SC) recognised 'right to privacy' as a fundamental right. The Government of India (GoI) had formed a committee led by retired Justice BN Srikrishna to study various issues relating to data protection, which proposed the draft Personal Data Protection Bill 2018 (draft bill).

After a round of public consultation, The Personal Data Protection Bill, 2019 (the bill or PDPB) was introduced in Lok Sabha on December 11, 2019, with many changes to the draft bill. The same has been referred to a Joint Select Committee of both houses of Parliament (JPC) for review. The objective of the bill is to 'provide for the protection of the privacy of individuals relating to their personal data', among other incidental issues.

Evidence-based Studies

Consumer Unity & Trust Society (CUTS International) has undertaken three evidence-based studies on issues falling within the ambit of the PDPB, such as privacy, data protection, consumer welfare, and cross-border data flows. These have been given below:

- Consumer Impact Assessment of Data Localisation¹
- Data Privacy and User Welfare in India²
- Digital Trade and Data Localisation³

¹ **Objective:** Assessing the impact of restriction of cross-border data flows on consumers, among other stakeholders, on parameter,s such as quality of service, innovation, data privacy, data security etc. **Expected Outcome:** presenting an evidence-based impact of data localisation, to the government and other stakeholders. <https://cuts-ccier.org/consumer-impact-assessment-on-cross-border-data-flow/>

² **Objective:** Engage with consumers on a pan India level regarding data and privacy protection on both, online, as well as offline platforms, from the government and private players alike. **Expected Outcome:** Policy reforms empowering consumers for data privacy and protection. <https://cuts-ccier.org/cdpp/>

³ **Objective:** Understand and analyse the importance of digital exports for India's GDP and economy, along with the possible impact of data localisation barriers on Indian exports of digital goods and services. **Expected Outcome:**

Outreach Initiatives

The findings from these studies were captured in a bill blow-up⁴ prepared for Parliamentarians (MPs – across party lines), including those from the JPC. The same, along with hard copies of select consumer-facing research findings have been circulated amongst them. Apart from members of the JPC, the bill blow-up has also been sent to key policymakers/influencers, such as:

- Shri Ravi Shankar Prasad, Hon'ble Minister for Communications, Electronics & Information Technology (IT)
- Shri Piyush Goyal, Hon'ble Minister for Commerce & Industry
- Smt Nirmala Sitharaman, Hon'ble Minister for Finance
- Shri Om Birla, Hon'ble Speaker – Lok Sabha
- Shri Baijayant 'Jay' Panda, MP – Lok Sabha, National Vice President & Spokesperson, Bharatiya Janata Party (BJP)
- Dr Narendra Jadhav, MP – Rajya Sabha, and Member, Parliamentary Standing Committee on IT
- Dr Subhash Chandra, MP – Rajya Sabha, and Member, Parliamentary Standing Committee on IT
- Smt Mahua Moitra, MP – Lok Sabha, and Member, Parliamentary Standing Committee on IT
- Shri Ajay Prakash Sawhney, Secretary, Ministry of Electronics & IT (MeitY)
- Shri Gopalakrishnan S., Additional Secretary, MeitY
- Shri R.S. Sharma, Chairperson, Telecom Regulatory Authority of India (TRAI)

build detailed and holistic understanding of the economic implications of existing and/or proposed data localisation barriers on India's digital exports, while producing evidence to study alternatives to data localisation measures which are prohibitory to free data flows, in order to help policy makers in India and around the world to take an informed and appropriate and on data localisation. <https://cuts-ccier.org/pdf/project-brief-dtdl.pdf>

⁴ CUTS regularly come out with Bill Blow-ups. which weigh the pros and cons of a bill tabled in the Parliament in a simple language to assist the busy MPs, so that better laws are enacted. <https://parfore.in/pdf/bill-blowup-the-personal-data-protection-bill-2019.pdf>

In-person meetings with select MPs have also been conducted with the purpose of sharing our views and proposed changes in the draft Bill. Glimpses of a few such meetings have been provided below:



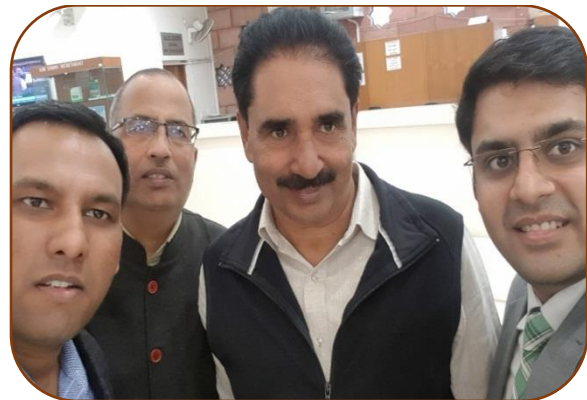
Dr Shashi Tharoor, MP (Lok Sabha – Indian National Congress), and Chairperson, Parliamentary Standing Committee on Information Technology – 25th November 2019, Private Office



Shri Suresh P. Prabhu, MP (Rajya Sabha – Bharatiya Janata Party), and Member, JPC – 4th February 2020, Office, Ministry of External Affairs



Shri Bhartruhari Mahtab, MP (Lok Sabha - Biju Janata Dal), and Member, JPC – 3rd February 2020, Parliament House



Shri N. K. Premachandran, MP (Lok Sabha - Revolutionary Socialist Party) – 3rd February 2020, Parliament House



Dr Amar Patnaik, MP (Rajya Sabha - Biju Janata Dal), and Member, JPC – 11th February 2020, Constitution Club of India.



Shri Gaurav Gogoi, MP (Lok Sabha – India National Congress), and Member, JPC – 14th February 2020, Private Office.



Shri SS Ahluwalia, MP (Lok Sabha – Bharatiya Janata Party), and Member, JPC – 17th March 2020, Private Office.

More such meetings are being planned with select members of the JPC.

Key Issues highlighted by CUTS

The key issues flagged by CUTS in the meetings have been given in the table below.

The Bill at a Glance	
Highlights	Lowlights
<ul style="list-style-type: none"> • The bill grants various rights to consumers, such as data portability, correction and erasure of personal data, the right to be forgotten and grievance redress. • Differentiates between personal and sensitive personal data. • Mandates notice requirements, purpose limitation and transparency regarding processing personal data on service providers. • Bill provides for setting up a Data Protection Authority (DPA). 	<ul style="list-style-type: none"> • Implementation, awareness and capacity building issues remain unaddressed for the effective exercise of rights given to consumers. • Missed making significant data fiduciaries responsible for providing appropriate data protection tools to consumers. • Blanket exemptions are given to the GoI from the provisions of the bill, for processing personal data under various circumstances. • Consumer perspective not considered while establishing ‘identifiability’ for the purpose of determining personal data. • Issues of consent and notice fatigue not addressed adequately. • GoI, in consultation with DPA, can direct service providers to provide anonymised and/or non-personal data for select purposes.

<ul style="list-style-type: none"> • DPA has been empowered to create a 'sandbox' to encourage innovation. • A new concept of consent managers has been introduced. 	<ul style="list-style-type: none"> • Details pertaining to 'sandbox' remain unknown and ambiguous. • The bill now provides for allowing consumers of social media intermediaries to voluntarily verify their accounts. • Data localisation through minimised but remains for sensitive and critical personal data.
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Suggestions/action points for overcoming the lowlights have been tabulated below.

Action Points	
<ul style="list-style-type: none"> • Awareness and capacity building workshops for consumers must be undertaken, to enhance the uptake of data protection tools. • Scope of data portability should be determined: which and whose data can be ported, along with privacy issues arising from portability. • Cost-Benefit Analysis or impact assessment studies from a consumer and/or competition perspective must be undertaken on select provisions, to ensure optimal regulations. • Independence and accountability of DPA must be ensured. • Notices and privacy policies should be simple, and easy to understand for consumers. Executive summaries may be prepared, and Privacy Labels should be adopted. 	<ul style="list-style-type: none"> • Harsh provisions, such as data localisation should be removed, and less intrusive ways of ensuring Law Enforcement Agencies (LEAs) access to data need to be explored. • Explore alternate dispute redress mechanisms for consumers. • Greater accountability should be mandated on the GoI, and the exemptions must be pruned down while accommodating for compliance with the principles of the Puttaswamy judgement. • The regulatory overreach of the bill must be avoided, so as to not strive to attain government objectives that are beyond the scope of the bill. • JPC must hold extensive and inclusive stakeholders' consultations.

Key Outcome

On the basis of our discussion, the MPs had requested CUTS to submit its comments in the form of proposed amendments in the bill (in track changes), for their kind perusal. The same has been submitted.⁵

⁵ CUTS Submission to the Joint Committee on The Personal Data Protection Bill, 2019. Available at: <https://cuts-ccier.org/pdf/submission-pdpb-2019.pdf>