

A Setback for Data Privacy Rights

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The pullback of the Personal Data Protection Bill, 2019 has nullified the multi-year efforts put in by various stakeholders that have gone into shaping the bill. The promise of a “comprehensive legal framework” to protect the citizens’ data is a hollow one, coming with no clear deadlines or underlying principles.

The union government’s withdrawal of the Personal Data Protection Bill, 2019 (hereafter the PDP Bill) from Parliament during the 2022 monsoon session (Singh 2022) is a loss for the Indian citizens and an admission of defeat on the part of the government in its attempt to bring “big tech” (meaning the handful of dominant, the United States (us)-based tech multinationals) to heel. The last version to be withdrawn by the union government is the third iteration of the PDP Bill (Bhandari 2022), starting with the one proposed by the Justice B N Srikrishna Committee back in 2018.¹

The justification offered by the union minister for electronics and information technology on the floor of Parliament, that in light of the recommendations made by the Joint Parliamentary Committee (JPC) a comprehensive legal framework is being worked on (Singh 2022), does not hold much water. On the contrary, given the consistent pressure against the PDP Bill from the multinational digital technologies or “big tech,” backed by the us government (Barik and Aryan 2022), it is entirely conceivable that the withdrawal of the PDP Bill was the result of the pressure from outside the country.

In this article, I will look at why the union government’s justification does not seem to be borne out by the facts emerging from the PDP Bill and the JPC report and why the government chose a complete withdrawal of the bill.

The JPC Report

The PDP Bill that was referred to the JPC was not the first version of a data protection law for India. It was based on the draft law proposed by the B N Srikrishna Committee in its report. The changes made to the draft proposed by the committee were criticised by the commentators, including Justice B N Srikrishna

himself (Mandavia 2019). The criticism had to do with the way in which the law seemed to give a free pass to government agencies in the context of data protection. While the B N Srikrishna report had attempted to give a limited exception to certain government agencies, it did not concern itself with the reform of surveillance laws in India. However, the PDP Bill, as modified by the government, seemed to have expanded the scope of such expansion giving potential to create what Justice Srikrishna called “an Orwellian state.”

The pushback against the bill also came from “big tech” specifically against the requirement of data localisation. The us government even described it as a “barrier to trade” (Dasgupta 2022a). This has been a bone of contention not only in the context of data protection but also in the payments ecosystem where the Reserve Bank of India’s rules on data localisation have hit the global credit card companies hard (ENS Economic Bureau 2022). Indian businesses themselves were divided on this requirement with some anticipating increased costs for start-ups and others arguing that this would give a boost to Indian businesses with minimal costs to the ones in a nascent stage (Dasgupta 2022b; Oriol 2022).

To address the various issues and suggest a way forward, the PDP Bill was referred to the JPC, which submitted its report in December 2021.² Among the many issues it covered, perhaps the biggest change proposed was to increase the scope of the law to include “non-personal data.” The committee recommended this because of the apparent difficulty in distinguishing between the two and the need to prevent the duplication of the work done by the Data Protection Authority (DPA). There are 12 general recommendations and several specific changes proposed to the PDP Bill ranging from the renaming of the bill to bigger changes necessary to include non-personal data. Crucially, the JPC also recommends that the PDP Bill may be passed after the specific modifications are made and the general recommendations made may be “implemented in due course.”³

Some of the recommendations of the JPC are debatable, perhaps the most

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controversial one being the conflation of personal and non-personal data in the same legislation. As others have pointed out (Gupta and Naithani 2022), personal data is required to be protected by virtue of an individual's fundamental right to privacy and non-personal data use is regulated in the interests of economic development. While it may not always be possible to draw a hard-and-fast distinction between the two categories of data, the overall dichotomy in purpose would make the exercise of regulatory powers by the DPA incoherent.

Another source of discontent with the JPC report has been the overarching powers given to the union government to exempt agencies from the rigour of the law. This is reflected in the dissent notes appended to the report by multiple members of the JPC who have argued that such power, unchecked by parliamentary oversight, would amount to a significant dilution of the fundamental right to privacy (Wire 2021).

Whatever the merits of the suggestions of the JPC, at no point does it require a wholesale redrafting of the PDP Bill, starting once again from scratch. All the suggestions it proposed, whether acceptable or not, could have been incorporated into the existing draft. It did not per se disagree with the approach or the objectives of the legislation. Its annexure even included a complete draft of the modified PDP Bill to show how the changes could be included in the existing bill itself.

It is, therefore, even more mystifying that the union government cited the report of the JPC as a reason to withdraw the PDP Bill. The withdrawal of the PDP Bill goes against the JPC's own recommendations that the bill, in its present form with modifications, be passed in Parliament. It would have been understandable if the older version of the PDP Bill was withdrawn and immediately replaced with the redrafted version as suggested by the JPC. However, no such draft has been forthcoming at the time of the publication of this article.

Conclusions

Given its background, the detailed inputs of stakeholders already taken into account and the place where the discourse was at,

the suggestion that the PDP Bill needed to be withdrawn and the effort started afresh based on the JPC recommendations does not make much sense. The changes suggested could have been easily incorporated if the government so willed. It was even open to the government to disagree with the JPC on such changes that it felt would not be in keeping with the larger ethos of the PDP Bill. The statement of the minister suggests as though the number of changes is the primary reason for the rethink when, as a perusal of the report shows that a large number of them are fairly minor and could have been undertaken without fundamentally altering the PDP Bill.

The loss from the withdrawal of the bill will be borne by the Indian citizens. For one, a national effort that involved multiple stakeholders, and a detailed discussion and debate starting with the Supreme Court judgment in *Justice (Retd) K Puttaswamy v Union of India* (2017) has been rendered nought. As other commentators have pointed out, whatever its flaws, a PDP Bill would have still provided a modicum of protection to Indian citizens' data, much better than the limited framework available under the Information Technology Act, 2000 (Bhandari 2022). Setting up a DPA would have kick-started a process that was always going to take years to mature. However, with the withdrawal of the bill, the entire process has gone back to square one.

Outside a few authoritarian countries, the internet is the playground of big tech. Their dominance is nearly unchallengeable given their access to resources, the support of the US government and the access of vast quantities of data. For all its flaws, the PDP Bill would have presented a pushback from the global South to challenge the power of big tech. By withdrawing the PDP Bill, India has, to paraphrase Israeli diplomat Abba Eban, taken the opportunity to miss an opportunity.

NOTES

- 1 The Personal Data Protection Bill, 2018, viewed on 15 August 2022, https://www.meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill%2C2018_o.pdf.
- 2 Report of the Joint Committee of Parliament on the Personal Data Protection Bill, 2019, viewed on 17 August 2022, <http://164.100.47.193/lssccommittee/Joint%20Committee%20on%20>

[the%20Personal%20Data%20Protection%20Bill,%202019/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf](https://www.meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill_2019_1.pdf).

- 3 Report of the Joint Committee of Parliament on the Personal Data Protection Bill, 2019, viewed on 17 August 2022, http://164.100.47.193/lssccommittee/Joint%20Committee%20on%20the%20Personal%20Data%20Protection%20Bill,%202019/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf, p 188.

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