

April 5, 2022

Joint Committee on the Personal Data Protection Bill, 2019, Lok Sabha Secretariat, New Delhi –
110001

Dear Chairperson,

On behalf of the *Center for AI and Digital Policy (CAIDP)*, we are pleased to provide you with our statement in response to the **Report of the Joint Parliament Committee on the Personal Data Protection Bill, 2019.**¹

The CAIDP is an independent, non-profit organization established to advise national governments and international organizations on artificial intelligence (AI) and digital policy. Led by a multinational team of experts in technology, law, and policy, CAIDP has provided recommendations to governments and decision-makers around the globe². Recently, we have published *Artificial Intelligence and Democratic Values*³ (*AIDV*) report, a comprehensive annual research of the AI policies and practices in 50 countries. As set forth in detail in the CAIDP's 2021 publication, we recommend, among other things, that:

- Countries must guarantee fairness, accountability, and transparency in all AI systems;
- Countries must commit to these principles in the development, procurement and implementation of AI systems for public services. ; and
- Countries must establish national policies for AI that implement democratic values;
- Countries must ensure to create robust mechanisms for independent oversight of AI systems.

At the core of CAIDP's mission is the promotion of **a better, more fair, more just society** that prioritizes **fairness, accountability and transparency in AI**. In line with this mission, we focus our comments on the aspects of the Recommendation No. 44 that are connected to these goals.

¹ Report of the Joint Committee on the Personal Data Protection Bill, 2019, http://loksabhaph.nic.in/Committee/CommitteeInformation.aspx?comm_code=73&tab=1

² CAIDP Statement on proposed EU AI Act or CAIDP Statement to G20 Digital Economy Taskforce (July 28, 2021), <https://www.caidp.org/app/download/8334787563/CAIDP-Comments-on-EU-AI-Act-28072021.pdf>

³ *Artificial Intelligence and Democratic Values* (CAIDP 2022), <https://www.caidp.org/aisci-2021/>

CAIDP commends the foresight of the Joint Parliamentary Committee (JPC) that led to the proposed addition of a sub-clause (1)(h) to clause 23 addressing **algorithmic transparency**. By way of Recommendation No. 44, in the *Personal Data Protection Bill, 2019 (PDPB)*, the JPC highlighted the criticality of algorithmic transparency which had not been a part of the PDPB as introduced in the Parliament, prior to its referral to the JPC⁴. CAIDP agrees with the JPC on the centrality of algorithmic transparency and the potential impact on human rights.

Authoritative studies in the field of AI systems, emphasize the importance of algorithm transparency to achieve AI accountability. The involvement of society in the formulation of AI policy and the expertise of the oversight bodies that monitor AI practices is critical to the fair use of AI systems⁵.

In consideration of the above-mentioned points, and in response to the Joint Parliament Committee's (JPC) request for comments, CAIDP offers the following suggestions to expand the positive impact of the policy the Data Protection Bill:

1. We commend the prioritization of algorithm transparency as a human right.

Algorithm transparency is central to democratic values. CAIDP purports that “At the intersection of law and technology - knowledge of the algorithm is a fundamental right, a human right.”⁶ Section 23(h) in the latest version of the Bill, prescribes the steps that companies have to take in maintaining transparency in the processing of personal data and ensuring the fairness of their algorithms.

CAIDP suggests that an assessment of the impact of algorithms on human rights be introduced explicitly in the Bill, requiring organizations to explain how an algorithm works and what is the potential impact. Growing concerns at the global level about the use of automated decision-making systems and recommendation algorithms in criminal justice, policing,

⁴ The Personal Data Protection Bill, 2019

http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/373_2019_LS_Eng.pdf

⁵ Choucri, N., Nguyen, A., & Rotenberg, *Social Contract for the Artificial Intelligence Age. Safety, Security, & Sustainability for AI world. The Riga Conference* (2020), <https://www.rigaconference.lv/wp-content/uploads/Social-Contract-for-the-Artificial-Intelligence-Age.pdf>

⁶ UNESCO, *Privacy expert argues “algorithmic transparency” is crucial for online freedoms at UNESCO knowledge café* (Dec. 2, 2015), <https://en.unesco.org/news/privacy-expert-argues-algorithmic-transparency-crucial-online-freedoms-unesco-knowledge-cafe>

employment, financing, demand a unified and firm action⁷. Transparency is required to avoid practices where predictive analytics of human behavior or automated decision-making pose a risk of discrimination or social inequality⁸. Besides, we believe it will be additionally beneficial to add Human Rights Impact Assessment to the bill as an additional tool to check compliance with the human rights. Additionally, are sharing additional sources of Human Rights Impact Assessment practices.⁹

CAIDP believes that “technologies that fail to protect rights are not innovative, they are oppressive and stifling.”¹⁰

2. We encourage to add clarity to the method or framework for assessment of ‘fairness of algorithm’.

In accordance with the OECD AI Principles¹¹ of Human-centered values and fairness¹², CAIDP supports the notion that “AI systems should ... include appropriate safeguards to ensure a fair and just society.” To this end, the use of AI should reduce discrimination or other unfair and/or unequal outcomes. Given that AI is increasingly used for decision-making, we need to ensure that AI algorithms do not inherit human bias and respect the value of fairness. To achieve this, we suggest considering a similar framework adopted in The Algorithmic Accountability Act of 2019¹³ where companies are required to assess their automatic decision systems for risks of “inaccurate, unfair, biased, or discriminatory decisions”¹⁴. This can be further supplemented by competencies such as defining fairness objectives recapitulated in the

⁷ Council of Europe, *Algorithms and human rights. A study on the human rights dimensions of automated data processing techniques and possible regulatory implications* (March 2018), <https://rm.coe.int/algorithms-and-human-rights-en-rev/16807956b5>

⁸ Wulf, J. (2021). *Autocheck- Mapping risks of discrimination in automated decision-making systems*. *Algorithmwatch.org*. Retrieved from <https://algorithmwatch.org/en/autocheck/>

⁹ Council of Europe, Human Rights, Democracy and Rule of Law Impact Assessment of AI systems. Retrieved from <https://rm.coe.int/cahai-pdg-2021-02-subworkinggroup1-ai-impact-assessment-v1-2769-4229-7/1680a1bd2d>

¹⁰ *Artificial Intelligence and Democratic Values 2021*

¹¹ OECD, *OECD AI Principles overview* (2019), <https://oecd.ai/en/ai-principles>

¹² OECD, Human-centred values and fairness (Principle 1.2). OECD AI Policy Observatory (2021), <https://oecd.ai/en/dashboards/ai-principles/P6>

¹³ Senate - Commerce, Science, and Transportation (2019). S.1108 - Algorithmic Accountability Act of 2019. Congress.Gov. Retrieved from <https://www.congress.gov/bill/116th-congress/senate-bill/1108/committees>

¹⁴ Mark MacCarthy, *Fairness in algorithmic decision-making*, The Brookings Institution (Dec. 6, 2019), <https://www.brookings.edu/research/fairness-in-algorithmic-decision-making/>

World Economic Forum's A Holistic Guide to Approaching AI Fairness Education in Organizations¹⁵.

3. We suggest considering parameters to assess algorithmic transparency, explainability, and interpretability.

To ensure fairness and accountability in the digital world, democratic countries develop and implement algorithmic transparency, explainability, and interpretability. It is imperative to note that since these concepts are rapidly developing, so is the discourse around their assessment. Transparency is widely seen as essential for the successful deployment of autonomous systems in the real world. CAIDP considers the lack of transparency about how AI products are designed and trained as a worrisome affair. Primarily due to the idea that entities will harbor an incentive to use AI for gain. CAIDP believes that the inability to gain algorithmic transparency, explainability and interpretability will have detrimental effects in the adoption of AI as a general-purpose technology.

Therefore, CAIDP recommends a few salient guidelines that are under our observation. For example, the OECD's (2019b) Council Recommendation on Artificial Intelligence includes a dedicated article on transparency and explainability that may be viewed as a sector-wide approach. All key parties are urged to "commit to transparency and responsible disclosure about AI systems" according to document¹⁶. Rather than prescribing a set of standards or rules, the AI Now Institute at New York University produced an Algorithmic Accountability Policy Toolkit to alert practitioners to the hazards of deploying algorithmic systems in the public sector.¹⁷

4. We recommend establishing mechanisms for the accountability of algorithms.

One of the major objectives cherished in CAIDP's recommendations is its **mission to promote accountability in all AI systems**. Algorithms make life-changing and key decisions

¹⁵ Adlakha et. al. *A Holistic Guide to Approaching AI Fairness Education in Organizations*, World Economic Forum (2021), <https://www.weforum.org/whitepapers/a-holistic-guide-to-approaching-ai-fairness-education-in-organizations>

¹⁶ *OECD Recommendation of the Council on Artificial Intelligence* (2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449#adherents>

¹⁷ AI Now Institute, *Algorithmic Accountability Policy Toolkit* (Jan. 10, 2018), <https://ainowinstitute.org/aap-toolkit.pdf>

concerning our health, recruitment, or credit. However, there are many instances, where the algorithms have been found to be biased or discriminatory.

We recommend establishing mechanisms for the accountability of algorithms. Although, there is no single formula to ensure accountability, but some of the measures may include: (a) establishment of an oversight body (b) filing of periodic statements regarding the functioning of algorithms (c) developing codes of practice (d) establishing the right to object to automated decision-making and to access the logic behind it, (e) provisions for right to challenge adverse decisions, among others. Appropriate oversight, impact assessment, audit and due diligence mechanisms, including whistle-blowers' protection, should be developed to ensure accountability for AI systems and their impact throughout their life cycle.¹⁸ The rule of law requires respect for principles such as lawfulness, transparency, accountability, legal certainty, non-discrimination, equality and effective judicial protection – which can be at risk when certain decisions are delegated to AI systems.¹⁹

5. We commend JPC for designating a Data Protection Authority with independent oversight responsibilities.

Given the fast pace and complexity of algorithms and their impact on our daily lives, adopting effective forms of independent oversight²⁰ intersecting ethics, technology, and subject matter expertise is of utmost importance²¹. The suggested provisions of the Bill include the appointment of Data Protection Officers²², responsible for “monitoring personal data protection activities”. CAIDP recommends considering an express mention of responsibilities for human

¹⁸ UNESCO, *Recommendation on The Ethics of Artificial Intelligence* (2021), <https://en.unesco.org/artificial-intelligence/ethics>

¹⁹ Council of Europe, *Feasibility Study by the Ad hoc Committee on Artificial Intelligence (CAHAI)* (Dec. 17, 2020) (par. 40), <https://www.coe.int/en/web/artificial-intelligence/-/the-feasibility-study-on-ai-legal-standards-adopted-by-cahai>

²⁰ MEP Eva Kaili, *Panel presentation: AI and Democratic Values*, CAIDP (Feb. 21, 2022), <https://www.caidp.org/app/download/8376068963/CAIDP-Panel-Report-21022022.pdf>

²¹ Rainie, L., & Anderson, J. (2017). *Code-dependent: Pros and Cons of the algorithm age. Theme 7. The need grow for algorithmic literacy, transparency and oversight*. Pew Research Center, <https://www.pewresearch.org/internet/2017/02/08/theme-7-the-need-grows-for-algorithmic-literacy-transparency-and-oversight/>

²² Lok Sabha Secretariat, *Report of the Joint Committee on the Personal Data Protection Bill. 2019 Dec. 2021* (Sect. 27), https://prsindia.org/files/bills_acts/bills_parliament/2019/Joint_Committee_on_the_Personal_Data_Protection_Bill_2019.pdf

oversight of algorithms²³, which complexity makes it necessary to implement meaningful controls of the AI systems.²⁴ The foresight of the committee in including Data Auditors²⁵, as independent evaluators of the “conduct and transparency of processing activities” is an important contribution of this Bill. Requiring to undertake impact assessments that include algorithm systems, to prevent risks of significant harm, is a central role of AI policy to protect and promote algorithm accountability.

6. A human in the loop for purposes of accountability of algorithm.

In accordance with [the OECD AI Principles](#)²⁶ of [accountability](#)²⁷, CAIDP supports the notion that “organizations or individuals will ensure the proper functioning, throughout their lifecycle, of the AI systems that they design, develop, operate or deploy, in accordance with their roles and applicable regulatory frameworks, and for demonstrating this through their actions and decision-making process.” In line with article 35 and 36 of UNESCO’s [recommendation on the ethics of artificial intelligence](#)²⁸ covering human oversight and determination, “member states should ensure that it is always possible to attribute ethical and legal responsibility for any stage of the life cycle of AI systems, as well as in cases of remedy related to AI systems, to physical persons or to existing legal entities... It may be the case that sometimes humans would choose to rely on AI systems for reasons of efficacy, but the decision to cede control in limited contexts remains that of humans, as humans can resort to AI systems.” Accordingly, we highlight the need for a human-in-the-loop for data protection purposes to ensure the capacity to practice measures of algorithmic accountability.

²³ *Artificial Intelligence and Democratic Values 2021*

²⁴ Id.

²⁵ Lok Sabha Secretariat. December 2021. [Section 29(1)] Report of the Joint Committee on the Personal Data Protection Bill. 2019. Retrieved from https://prsindia.org/files/bills_acts/bills_parliament/2019/Joint_Committee_on_the_Personal_Data_Protection_Bill_2019.pdf

²⁶ OECD, *OECD AI Principles overview* (May 2019), <https://oecd.ai/en/ai-principles>

²⁷ Id. Accountability (Principle 1.5) Accountability (Principle 1.5), <https://oecd.ai/en/dashboards/ai-principles/P9>

²⁸ UNESCO, *Recommendation on the Ethics of Artificial Intelligence* (2021), <https://unesdoc.unesco.org/ark:/48223/pf0000380455>

7. We commend the JPC for including the public in the formulation of policies related to algorithm transparency.

We commend the JPC for including the public in the formulation of policies related to algorithm fairness and transparency, the latest being the Department of Telecommunications ('DoT') [announcement](#)²⁹ on February, 22 2022 that its Telecommunication Engineering Centre ('TEC') is seeking comments on a potential framework for fairness assessments in relation to artificial intelligence ('AI') and machine learning ('ML') systems. Public engagement and consultation in artificial intelligence is crucial, as the OECD argues, to include “multi-disciplinary, diverse, and inclusive perspectives” and “is perhaps the main enabling factor to achieving AI initiatives that are both effective and ethical, both successful and fair”³⁰.

Thank you for considering our views.³¹ We look forward to further communications with the JPC and other government functionaries involved in formulating the PDPB.

Sincerely,



Marc Rotenberg
CAIDP President



Merve Hickok
CAIDP Research Director



Karine Caunes
Global Program Director



Khatia Zukhubaia
CAIDP Fellow

²⁹ India: DoT initiates public consultation on fairness assessment framework for AI systems (Feb. 22, 2022), <https://www.dataguidance.com/news/india-dot-initiates-public-consultation-fairness>

³⁰ Berryhill, J., Heang, K. K., Clogher, R., & McBride, K. *Hello, world: Artificial intelligence and its use in the public sector*, OECD Observatory of Public Sector Innovation (OPSI), 1–88. (2019), <https://www.oecd.org/gov/innovative-government/working-paper-hello-world-artificial-intelligence-and-its-use-in-the-public-sector.htm>

³¹ CAIDP acknowledges the significant contributions to this statement of the 2022 CAIDP Research Group, Asia-Pacific Team B, including Atandra Ray, Angshuman Kaushik, Grace S. Thomson, Saif Malhem, and Siew Sanz Ng.