

AS INTRODUCED IN THE RAJYA SABHA
ON 8TH DECEMBER, 2023

Bill No. IX of 2023

THE FACIAL RECOGNITION TECHNOLOGY (REGULATION OF
POLICE POWERS) BILL, 2023

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BILL

to provide for a framework to regulate, control and define powers of the police agencies and central investigative agencies to use facial recognition technologies for the purposes of identification, investigation and inquiries of criminal offences and for matters connected therewith and incidental thereto.

BE it enacted by the Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Facial Recognition Technology (Regulation of Police Powers) Act, 2023.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "facial recognition technology" means an algorithm based automated or semi-automated technology which is employed to identify, verify, map and match individual's facial features, including 1:1 identification and 1: N verification system, to infer emotions, associations or activities of the individual; 5

(b) "face surveillance" means the use of facial recognition technology to track, analyse, observe movements, behaviour, data, or actions of an individual or groups of individuals;

(c) "Magistrate" means,—

(i) in relation to a metropolitan area, the Metropolitan Magistrate; or 10

(ii) in relation to any other area, the Judicial Magistrate of the first class.

(d) "other remote biometric recognition" means any form of automated or semi-automated process used to assist in identifying an individual, trace an individual or otherwise surveil information about an individual, which may include voice recognition technology, logs to infer characteristics of the individual but does not include finger prints and palm prints; 15

(e) "police officer" means an officer in-charge of a police-station or a police officer making an investigation under Chapter XII of the Code of Criminal Procedure, 1973, or any other police officer not below the rank of Sub-Inspector; and 2 of 1974.

(f) "prescribed" means prescribed by rules made under this Act. 20

Use of Facial Recognition Technology in certain offences.

3. (1) Unless otherwise stated under this Act, no police officer, police agency or central investigation agency shall be allowed to acquire, possess, access or use facial recognition technology or other remote biometric recognition to identify, trace or otherwise surveil the origin of any individual for any criminal investigation, identification or inquiry:

Provided that nothing contained in this section shall apply to offences committed which affect or endanger the national security of India, or such offences which threaten the unity and integrity of India. 25

(2) Subject to provision of sub-section (1), a police officer shall obtain the order of a Magistrate for utilising facial recognition technology or other remote biometric recognition in the identification, investigation or inquiry of the offence, in such manner as may be prescribed. 30

(3) The use of facial recognition technology or other remote biometric recognition shall not be considered within the ambit of 'measurements' as provided under the Criminal Procedure (Identification) Act, 2022. 11 of 2022.

(4) The use of facial recognition technology shall not be employed to identify persons only on the basis of race, caste, religion, gender, sexual orientation, political ideology, place of birth, face surveillance or any of them. 35

Collection, storing, preservation of face surveillance and/or other remote biometric recognition records.

4. (1) The National Crime Records Bureau shall, in the interest of prevention, detection, investigation and prosecution of any offence under any law for the time being in force,— 40

(a) collect the record of face surveillance and/or other remote biometric recognition record from State Government or Union Territory Administration or any other law enforcement agencies;

(b) store, preserve and destroy the record of face surveillance and/or other remote biometric recognition records at national level; 45

(c) process such record with relevant crime and criminal records; and

(d) share and disseminate such records with any law enforcement agency, in such manner as may be prescribed.

(2) The record of face surveillance and/or other remote biometric recognition records shall be retained in digital or electronic form for a period of seventy-five years from the date of collection of such measurement:

Provided that where any person, who has not been previously convicted of an offence punishable under any law with imprisonment for any term, has had his face surveillance and/or other remote biometric recognition records taken according to the provisions of this Act, is released without trial or discharged or acquitted by the court, after exhausting all legal remedies, all records so taken shall, unless the Court or Magistrate, for reasons to be recorded in writing otherwise directs, be destroyed from records.

(3) The State Government and Union Territory Administration may notify an appropriate agency to collect, preserve and share the face surveillance and/or other remote biometric recognition records in their respective jurisdictions.

15 **5.** (1) Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 or any other law for the time being in force, it is expedient to direct any person to give face surveillance and/or other remote biometric recognition records under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the face surveillance and/or other remote biometric recognition records to be taken in conformity with such directions.

Power of Magistrate to allow the investigating agencies to take face surveillance and/or other remote biometric recognition records.

(2) No person shall be denied a reasonable opportunity of being heard before allowing the deployment of facial recognition technology or other remote biometric recognition techniques as may be required, in such manner as may be prescribed.

25 **6.** No suit or any other proceeding shall lie against any person for anything done, or intended to be done in good faith under this Act or any rule made thereunder.

Bar of Proceedings or suit.

7. (1) The Central Government or the State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act;

Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule;

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

40 **8.** The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have overriding effect.

11 of 2022. **9.** (1) The Criminal Procedure (Identification) Act, 2022 is hereby repealed to the extent of powers accorded in this Act to use of facial recognition technology or other remote biometric recognition techniques;

Repeal and savings.

45 (2) Any regulation, or any proceedings taken, any rule made or any direction given or any proceedings taken or any penalty or fine imposed under the repealed Identification of Prisoners Act, 1920 shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to be void;

33 of 1920.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. 10 of 1897.

STATEMENT OF OBJECTS AND REASONS

The advancement in the field of technology has created ripples in other domains of social life, such as governance, communication, service delivery and also law enforcement. Technology can be a friendly servant but a dangerous master. The development of Facial Recognition Technology (FRT) has a significant potential of improving the efficiency of law enforcement agencies.

2. However, unregulated utilisation of such technology by the law enforcement agencies in the background of absence of a strong data protection law in the country can have several unintended consequences emanating from the possible misuse. This may primarily include misidentification, inaccuracy of the technology, machine bias etc.

3. In the case of *Sadhan Haldar vs. NCT of Delhi*, the Hon'ble High Court of Delhi allowed the use of technology for identification of missing children. However, there have been several reported instances where Central as well as State level agencies have used technologies to track persons involved in protests against the government. In this light, the legality of use of the technology requires introspection.

4. Given the immense potential of the technology in several aspects of law enforcement, such as identification of missing persons, prevention of crimes, boosting security systems, faster processing of data etc., there is a need to strike a balance in a way that the technologies such as FRT and other remote biometric recognition techniques would be used by law enforcement agencies within the permissible bounds of constitutional right to privacy and right against self-incrimination.

5. Thus, there is a need to demarcate the offences for which such a technology may be deployed in the course of investigation, identification and inquiries.

The Bill seeks to achieve the above-mentioned objective.

PRIYANKA CHATURVEDI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the Central Government and the State Governments to make rules for carrying out the purposes of the Bill. Since the rules will relate to matters of detail only, the delegation of the legislative power is of a normal character.

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(Shrimati Priyanka Chaturvedi, M.P.)