

To

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Ministry of Health & Family  
Welfare  
Government of India

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17 September 2020

**Subject: Technical, legal, ethical and implementation concerns regarding Aarogya Setu and other apps introduced during COVID-19 in India**

Dear sir,

We, the eight organisations and 145 individuals, consisting of public health advocates, experts in digital privacy, science and technology policy advocates, researchers, lawyers, journalists, medical professionals, students and other concerned persons want to express our deep concerns regarding the Aarogya Setu (AS) and other similar Apps related to the novel Corona virus epidemic. We are deeply concerned about violation of privacy, and compromised ethical principles and values, due to the AS App's design, its deployment, related policies regarding data storage, preservation of privacy and data sharing, as well as overall policy implementation and inadequate legal frameworks for data protection and grievance redressal for users.

**We appreciate the need of the hour viz.:**

1. the unprecedented nature and massive impact of the Covid-19 pandemic in India
2. the need for a multi-pronged approach to contain the pandemic and minimize its adverse impact on all domains of our lives
3. therefore the need for innovative approaches, including digital technology-based ones, that may be required to augment and complement other containment and mitigation measures

We believe that the key challenge is ensuring that a balance is struck between achieving greater public good and safeguarding individuals' rights and freedoms in alignment with frameworks provided by the Constitution of India, public health ethics discourse, International Health Regulations 2005 ([IHR 2005](#)), the [Siracusa Principles](#) on Civil and Human Rights, and the Universal Declaration of Human Rights.

In this context, we conducted a detailed analysis of the AS App purposed as a catch-all solution, its Privacy Policy, [Terms of Services](#) (henceforth ToS) and [Aarogya Setu Data Access and Knowledge Sharing Protocol, 2020](#) (henceforth, Protocol), and its code available on [GitHub](#) taking into account the broader eco-system in which Aarogya Setu has been deployed and is being used. This is presented in the

more detailed position paper (attached as Annexure 1) which informs this statement articulating key issues across five domains viz., technical and platform design; legal and policy frames; transparency and public engagement; eco-system in India in which the App has been deployed; and ethics and human rights.

**The key issues that we want to highlight are as follows:**

### **I. Technical and platform design domain**

At a technical level, the AS App does not conform to key technical best practices being developed internationally. The following major concerns arise:

1. The AS App collects people's GPS trails about which many [democracies, technologists and the World Health Organisation \(WHO\) have had concerns](#). It uses centralised social graph analysis to map interactions between individuals, thereby [contravening the strongly supported decentralised data storage systems which safeguards citizens' real-world activities](#). It also uses a static Device ID which is rudimentary, and is prone to risks of re-identification (i.e. the anonymised personal data may be matched with the actual person thereby exposing who the person is).
2. The AS App's centralised data storage system enables exporting of people's sensitive personal details to an external government-operated server which is linked with the Indian Council of Medical Research (ICMR) database and others. These are being provided to third parties such as research universities and private consultancy firms. Overall, this is an expansive approach to data collection and extraction, and clearly undermines privacy of people's data.
3. The AS App categorizes people as being at high risk of COVID-19 simply based on the App's opaque algorithm and inaccurate Bluetooth and GPS based proximity tracking. This creates a non-trivial risk of false positives and negatives, leading to other severe social, personal and public health consequences. The use of self-reported symptoms also runs the risk of people wrongly marking themselves as positive or negative.
4. The AS App is not accessible to people with disabilities, especially those with vision and hearing disabilities.

### **II. Legal and policy domain**

1. Aarogya Setu App's privacy policy or supporting documents such as its [ToS](#) and the [Protocol](#), assert that data retention or deletion requirements do not apply to people's data which has been "anonymised" and can therefore be seamlessly shared with third parties. This raises three key issues:
  - a. standards of 'anonymization' are not defined in the [ToS](#) and the [Protocol](#)
  - b. standards if any are not shared with the user and no consent sought for using their "anonymized" data
  - c. there is no sunset clause for the personal data AS App collects. The, "sunset" is to the protocol rather than the underlying personal data. This evokes concerns of permanent surveillance
2. The data security and protection framework under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, are not applicable to government authorities, so there is no automatic or compulsory privacy protection

3. The voluntary Electronic Health Records Standards which provide certain privacy and security protocols for data disclosures during times of national priority, lacks suitable enforceability.
4. The latest draft of the [Personal Data Protection Bill, 2019](#) introduced in India's Parliament in December 2019 is insufficient. It grants omnibus exemptions to Governments for emergency/epidemic situations which is inconsistent with the contours of the right to privacy and reasonable restrictions during emergency situations as prescribed by the Supreme Court of India in its seminal right to privacy judgement in [KS Puttaswamy v Union of India](#) (2017).
5. Obligations under the [IHR 2005](#) to which India is legally bound, require governments to ensure that national legislative frameworks relating to data sharing are adopted and be consistent with international human rights frameworks and foundational ethical principles. Lack of such legal framework in India implies lack of protection from potential commercial surveillance.
6. From a policy perspective, there is no independent institutional oversight on (a) public agencies and the businesses developing these Apps; (b) ethical and human rights aspects; and (c) the App's actual deployment.

### **III. Transparency and public engagement domain**

1. As per information in the public domain, Government of India (GoI), had initiated building of the AS App on March 19, 2020, and it was launched on April 2, 2020. As per standard best practice, GoI should have issued a technical whitepaper and consulted the public and external stakeholders before launching the App. However, even now, more than four months since the AS App's launch, GoI has not published any such document.
2. The lack of a structured public debate and public engagement around the AS App raises questions about its quality, and about the adequacy of ethical, procedural or institutional safeguards to mitigate risks arising from such technological interventions.
3. The [National Informatics Center \(NIC\) has informed the media that it opted for a public-private partnership model to develop the AS App](#). For example, [UX Design at MakeMyTrip has been a private volunteer](#) in building these systems. This evokes concerns of commercial exploitation and risk to privacy of the data collected through the AS App.
4. The underlying source code of the AS App was also not released for the longest time which is, again, best practice in such cases. Eventually, the GoI released the source code but it has not yet released the server-side code or the cloud functions. Experts have observed that the source code released on GitHub is inconsistent with the App which is being used by the public. This has therefore only marginal value in terms of transparency and is inconsistent with globally accepted standards of open source software.
5. There is ambiguity in the key AS App documents namely ToS, Protocol, and Privacy Policy. These include inadequate information for AS App users about the type and purpose of data collected, where and for how long data will be stored, with whom these data will be shared and for what purposes. A NITI Aayog official has indicated that data collected via the AS App is feeding into the development of India/Bharat Health Stack and that raises various other concerns but will not be dealt with here.
6. There is inadequate transparency about the various data points and inputs the App's algorithm relies upon to arrive at its risk scoring of users as green, yellow, orange or red.

#### **IV. India's eco-system in which AS App is deployed**

1. Indian governance systems habitually work in silos and inter-departmental coordination is extremely weak. Potential usefulness of the deployment of AS App depends upon how well the App data and its processing system is linked to contact tracing, testing and treatment through a well-equipped and trained health system. Unfortunately, there has been surprisingly little information put out so far by concerned government agencies as to how such institutional linkages have worked and how the App data has been used.
2. innovations in collection and processing of citizens' data must comply with broader legal and ethical frameworks and constitutional rights of citizens which have historically been weak and have come under increasing threat in recent times.
3. the fact that the Ministry of Home Affairs is steering this effort instead of the Ministry of Health and Family Welfare, conveys that instead of linkage with testing and treatment, the AS App is more likely being purposed as a tool for surveillance and movement control, potentially leading to social coercion.

#### **V. Constitutional and human rights, and public health ethics**

1. The Medical Council of India's Code of Ethics does not cover protocols for health data in circumstances when it is shared with the Government
2. The Government's push to make the App effectively mandatory erodes individual autonomy as guaranteed by the Constitution
3. Critically, effectively mandatory use of the AS App is inconsistent with a recent [WHO guidance](#) on ethical considerations in the use of digital proximity tracing technologies.
4. The AS App's [Protocol](#) is insufficient since it does not offer any legislative foundation for the AS App. Fundamental rights under the Constitution cannot be restricted by the Government even for legitimate purposes without express legislative authorisation.
5. Further, the Protocol [fails](#) to be consistent with standards of necessity and proportionality called for by both [IHR 2005](#) and the [Siracusa Principles](#). Specifically, it does not incorporate substantive language which sufficiently reigns in the government's ability to collect, store, process, retain and process people's sensitive personal details.

Against this backdrop, our demands are as follows:

##### **I. For proportionality:** Three points of emphasis must be design and architecture of the AS app; transparency and effective public engagement; and limits to retention time and use of the data.

1. There is a constitutional obligation to adopt the least restrictive/intrusive measure to achieve the stated purpose. These thresholds can be benchmarked against known technological best practices and models, and the kinds of interventions adopted by other constitutional democracies. The design of interventions must also ensure that they do not disproportionately impact people from certain backgrounds, identities, and regions.

2. A full release of specifications including cryptography, anonymization specifications, Application Programming Interface (API) specifications, and Bluetooth specifications.
3. Release of the source code for the current version of the AS App, given the fact that the released code does not match with the one in use, and release of the server-side code.
4. Development of a comprehensive privacy impact assessment, articulating accompanying risks associated with large scale roll-out of the App.
5. Commitment (i.e. sunset clauses that are clearly present in primary legislation) to permanently destroy the data and systems being built via AS App at the end of the COVID-19 pandemic.
6. The AS App must not in any way be made mandatory by government or private actors;
7. Among other things, the focus must be on assuring the public that these are temporary interventions which will not devolve into permanent surveillance and monitoring systems.

## **II. For legality**

1. Suitable legislation is required aim to hold the Union and State governments and private actors accountable for leakage or any inappropriate use of App data during epidemics and communicable disease outbreaks.
2. Under this, governments may only access patient data through hospital records, and must preserve patient anonymity.
3. These frameworks should be solely under the control of public health institutions.

## **III. For necessity:** The government must establish:

1. The contextual necessity of the new technological interventions like the AS App which monitors people's movements since this is already being done by other actors (like telecom service providers).;
2. Grounds for treating the existing government databases, such as those maintained by ICMR and other existing surveillance mechanisms and hospital records as inadequate for the current purposes of responding to the pandemic
3. The expected advantage of interventions for collection of health and related information is collected, the actual technical effectiveness of the interventions itself, and a detailed cost-benefit/privacy impact analysis to evaluate risks before rolling out such Apps
4. Necessity as a dynamic construct, and that it is embedded through the life cycle of the AS programme. Within it there is a need for continual review of the programme as regards principles of transparency and accountability.

## **IV. Oversight Structures and Processes**

1. The required legislation must create independent institutions for oversight separated from the political executive.
2. Towards this end, the agencies/institutions concerned should publish periodic reports informing the public if, and to what extent, the App is augmenting the Government's response in treating and containing the spread of Covid-19. Based on such feedback loops, these institutions should be empowered to make decisions for course correction or even discontinuation of the programme itself, and the permanent destruction of the systems created.

We hope that you will take cognisance of these concerns and address them urgently.

With regards

Apar Gupta - Internet Freedom Foundation (IFF)  
Sunita VS Bandewar- Forum for Medical Ethics Society (FMES) and Jan Swasthya Abhiyan  
Sulakshana Nandi- Jan Swasthya Abhiyan  
P.Rajamanickam- All India People's Science Network (AIPSN)

This letter has been endorsed by the following organisations, networks and individuals:

### **Organisational endorsements**

Janchetna Sansthan	Abu Road
Lok Manch	New Delhi
Rethink Aadhaar Campaign	India
Right To Food Campaign	India

### **Individual Endorsements**

1	Aayushman Aggarwal	Student
2	Abha	Feminist activist
3	Adarsh Ranjan	Student
4	Akshayarka Deka	Big Data Analyst
5	Alka Pawangadkar	Translator/Trainer
6	Amar Jesani	Editor, Indian Journal of Medical Ethics, Mumbai
7	Amitranjan Basu	Doctor, Shaheed Hospital
8	Ammu Abraham	Women's rights and Civil liberties activist
9	Anand Nandakumar	Lawyer
10	Anand Philip	Independent Researcher, Bangalore
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13	Apoorva Umap	Student
14	Arindom Bora	Student
15	Arundhati Dhuru	Social activist, National convener NAPM
16	Arvind	IT
17	Ashish Kothari	Kalpavriksh, Pune
18	Assunta Pardhe	Social worker and lawyer, Chief Functionary Chetna Mahila Vikas Kendra
19	Avi	Student
20	Aysha	Concerned citizen
21	Barathi Nakkeeran	Independent Researcher
22	Barun Mukhopadhyay	Professor (Retired), Indian Statistical Institute, Biological

	Anthropology Unit, Kolkata
23 Bindu Desai	Retired Neurologist
24 Ch Narendra	Senior Journalist, Hyderabad
25 Chayanika Shah	Queer Feminist Researcher
26 Deepika Joshi	Researcher, PUCL, Chhattisgarh
27 Deepriya Snehi	Advocate
28 Devdutta	Lawyer
29 Devika Shetty	Independent mental health activist, Goa
30 Dharmesh shah	Researcher
31 Divya Sornaraja	Engineer
32 Dr.Ganesh Singh Dharmshaktu	Associate Professor, Department of Orthopaedics, Government Medical College, Haldwani Uttarakhand
33 Dr Shakeel	Physician. The Polyclinic
34 Dr Shriyuta A	Infosys fellow in Public Health, SEARCH, Gadchiroli
35 Dr Sylvia Karpagam	Public health doctor
36 Dr. Harish Gupta	Consultant Physician , Internal Medicine, Lucknow
37 Dr. J. Charles Davis	Professor of Bioethics and Moral Theology
38 Dr. Kamaxi Bhate	Professor Emeritus KEM Hospital
39 Dr. Mahesh Devnani	Doctor, Hospital Administrator
40 Dr. Mohan Rao	Former professor at the Centre of Social Medicine and Community Health, JNU
41 Dr. Prashanth N S	Institute of Public Health, Bengaluru.
42 Dr. Satendra Singh,	Disability Rights activist & doctor at University College of Medical Sciences & GTB Hospital, Delhi
43 Dr. V Visvanathan	Computer Technologist
44 Dr.Mohan Rao	Independent public health researcher
45 Dr.Tusharkanti Dey	Retired Academician
46 Fatima A Castillo	Researcher
47 Gargi Sharma	Software Engineer
48 Geeta Seshu	Journalist, Co-Editor, Free Speech Collective
49 Goldee kushwaha	Student
50 Gurpreet Singh	Digital Marketing Manager
51 Hari Prasad Tripathi	Student
52 Hashim Khan	Working, CGSACS - Deputy Director
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54 Imtitangit Pongener	Student
55 Indira C	Public health researcher, Delhi
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57 Jashodhara Dasgupta	Independent researcher, New Delhi.

58	Jhuma Sen	Associate Professor, JGLS
59	Joy Bhattacharjee	Cloud Infrastructure Consultant
60	Jyotsna Tirkey	Service, Jan Swasthya Abhiyan
61	K Ram	Independent Educator
62	Kabi	Activist
63	Kalyani Menon Sen	Independent researcher
64	Kamayani Bali Mahabal	Trainer Gender, Health and Human Rights, Jan Swasthya Abhiyan, Mumbai – Convenor
65	Kamlesh Khantwal	State Coordinator BGVS and JSA Uttarakhand
66	Khrisha Shah	Entrepreneur, Dysco (Co-Founder & CEO)
67	Kim Fernandes	Delhi/University of Pennsylvania
68	Kiran Jonnalagadda	Technologist
69	Leo Saldanha	Researcher, Environment Support Group, Bangalore, India
70	Linda Chhakchhuak	Concerned citizen
71	Madhuresh Kumar	National Convener, NAPM
72	Mahathi	Doctor
73	Mahesh Devnani	Chandigarh
74	Maithreyi M R	Consulting editor
75	Manavi	Lawyer
76	Mansi Sood	Advocate
77	Mary Mathai	Scientist
78	Md Rushd Al Amin	Student
79	Medha Kale	Social activist and Translator, Trustee, Tathapi Trust Pune
80	Meena Gopal	Researcher and activist, Forum against Oppression of Women
81	Mrinal Sharma	Lawyer, Amnesty International India, Policy Advisor
82	Murali	Advocate
83	Nagmani Rao	Retired Academic, Citizen
84	Navneet Wadkar	PhD Scholar, Jawaharlal Nehru University, New Delhi
85	Neelanjana	Public Health Researcher, Jan Swasthya Abhiyan Chhattisgarh
86	Nikhat Hetavkar	Law student
87	Nilanjana Dey	Marketer
88	Niraj Bhatt	Researcher, Citizen consumer and civic Action Group
89	Niranjan Sathyamurthy	Illustrator
90	Oishik Sircar	Academic
91	Padmini Ray Murray	Independent Researcher, Founder, Design Beku
92	Paranjoy Guha Thakurta	Journalist, author, publisher and documentary film-maker
93	Paulomi Chakraborty	Associate Professor, Humanities and Social Sciences
94	Peehu Pardeshi	Teacher, Jan Swasthya Abhiyan member



95	Piyali Mitra	Researcher, Forum for Medical Ethics, Member
96	Prabha	Doctor
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98	Pranav Mattapalli	Student
99	Praveer Peter	Social Worker, Convenor, Solidarity Centre, Ranchi
100	Preethika	Lawyer
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102	Prof Dr Siby George	IITB, Mumbai
103	Raghav Mendiratta	Lawyer
104	Rajalakshmi	Independent
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107	Ravi Duggal	Independent Researcher and Activist
108	Ricky Saldanha	Research & Insights professional
109	Rishab Bailey	Lawyer and technology policy researcher, New Delhi
110	Roopashri Sinha	Freelance research consultant
111	Rujvi	Lawyer
112	Sagari Ramdas	Veterinary Scientist, Food Sovereignty Alliance, India Member
113	S Saroja	Director - Consumer Protection, Citizen consumer and civic Action Group
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115	Sandeep K Shukla	Professor
116	Sandeep Pandey	Social activist, Vice President Socialist Party (India)
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118	Sangeeta	CEHAT
119	Santosh Mahindrakar	Nurse
120	Saurabh Bhattacharjee	Academia
121	Senthamil Selvan K.	Health activist
122	Shals Mahajan	Writer, Member, LABIA - A Queer Feminist LBT Collective
123	Shamim Meghani Modi	Teacher, FMES
124	Sharmila	IIT Bombay
125	Shatakshi	Student
126	Siddharth Chakravarty	Researcher
127	Srijit Mishra	Bhubaneswar
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129	Srinivasan G	Technology Professional, Sochara - Volunteer
130	Subhashis Banerjee	Professor, IIT Delhi
131	Sudha N	Researcher & Activist

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<b>133</b>	Sujata Gothoskar	Researcher and activist
<b>134</b>	Sujata Patel	Teacher and Researcher
<b>135</b>	Sujata Sethi	Rohtak
<b>136</b>	Sukla Sen	Peace Activist
<b>137</b>	Sumi Krishna	Independent researcher, Bengaluru
<b>138</b>	Sunep Imsong	Tech Lead
<b>139</b>	Sunil Tamminaina	Research Scholar
<b>140</b>	Supriya Subramani	Postdoc
<b>141</b>	Surbhi Shrivastava	PhD Student
<b>142</b>	Swatija	Retired
<b>143</b>	Tanvi Sharma	Advocate, Volunteers Collective
<b>144</b>	Tara Murli	Architect , Chennai
<b>145</b>	Vivek Divan	Centre for Health Equity, Law & Policy: Indian Law Society, Pune