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Digital Personal Data Protection Bill : Threatens RTI Act

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Why in News

The Union Cabinet has approved the Digital Personal Data Protection Bill and will table it in the monsoon session of Parliament (July 20-August 11) raises certain issues. The draft Bill was placed in the public domain in December 2022 but the final Bill has not been placed before the public.

Proposed Digital Personal Data Protection Bill

The proposed Digital Personal Data Protection Bill has two provisions which would greatly weaken the Indian citizen's right to information.

The Indian Right to Information (RTI) Act, effective since October 12, 2005, is one of the best transparency laws in the world, empowering citizens and is a practical recognition of their role as the rulers and owners of India.

This is the outcome of people's struggles led by the Mazdoor Kisan Shakti Sangathan's fight starting in rural Rajasthan which culminated in the drafting of the law in 2004.

There were intense discussions about its provisions and it took an all-party parliamentary committee to carefully craft its provisions.

Its preamble elegantly states that democracy requires informed citizens and transparency in the affairs of their government so that they can hold it accountable and curb corruption.

It harmonised the need for an efficient government while preserving the ideals of democracy.

Impact on RTI

Governments and those wielding the levers of power have been perturbed by this transfer of power to the ordinary citizen. Citizens have taken to the RTI like a fish to water.

Despite public officials using various devices to deny citizens their legitimate right, many have used this democratic instrument to expose wrongdoing and corruption.

The law recognises that the default mode is that each citizen has the right to access almost all the information with the government.

Ten categories of information have been exempted from disclosure to prevent harm to certain interests and to ensure smooth working of the government. These are outlined in Section 8(1), with the 10 subsections from a to j.

The most widely misused exemption is Section 8(1)(j) which exempts personal information which is not a part of public activity, or which is an invasion on the privacy of an individual.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

It has a proviso which is an acid test to help anyone claiming exemption which states: 'Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.'

Thus, the law stated that personal information may be exempt if: it is not related to a public activity or interest, or would cause unwarranted invasion of the privacy of an individual

To help an officer, an Information Commissioner or judge to arrive at the right decision, the special proviso was provided as an acid test. Whoever claimed that a disclosure was exempt under Section 8(1)(j) should make a statement that he would not give this information to Parliament.

Many refusals of information did not adhere to the law but refused information with a bland statement that since it was personal information, they would not give it. This was illegal but has been widely used to cover arbitrary, corrupt or illegal acts of government officials.

Some examples are:

the Department of Personnel and Training refusing "Total number of Annual Performance Appraisal reports (APAR) of IAS officers pending presently for over one year, two years, three years and four years" by claiming exemption under Section 8(1)(j)

request for details of Member of the Legislative Assembly funds being denied saying it was personal information; details of the beneficiaries of the Prime Minister's fund

bogus caste certificates, education certificates, ghost employees; gross arbitrariness and corruption in selections for jobs and non-conformance to rules and laws

disproportionate assets compared to declared income; verification of affidavits of elected representatives; unfair assessment of students and job seekers in government

disregard of corruption charges against officials that have been proven; file noting and minutes of meetings

However, many honest officers and commissioners often gave information if it was not covered by the exemption. Unfortunately, the proposed Data Protection Bill plans to amend RTI Act Section 8(1)(j) to read as exempting information under (j), which relates to personal information

Conclusion

If this amendment is made, all information which can be related to a person could be legally denied. Most information could be shown as being related to a person, and hence the law would become a Right to Deny for Public Information Officers (PIO) who do not wish to give out information.

Incidentally, this proposal is a tacit admission that any current denial of information on the grounds of it being 'personal information' only, is illegal. Whenever a PIO wants to deny information, he will be able to link it to some person.

The proposed Bill defines the term 'person' very widely to include individuals, companies, and the state. Most information except budgets would be linked to one of these. Thus, the RTI would become a Right to Deny Information, rendering it an ineffective tool.

In 18 years no harm has come to any national or personal interest because of RTI. Therefore, the proposed amendment would lead to a major regression for democracy.