

THE EFFECT OF THE DIGITAL PERSONAL DATA PROTECTION BILL ON THE RTI AND FREEDOM OF SPEECH

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ABSTRACT

This paper seeks to critically analyze the impact of the Digital Personal Data Protection (DPDP) Bill 2022¹ on RTI and freedom of speech. The DPDP bill aims to secure a legal framework for the protection of personal data. Numerous activists and information commissioners have raised concerns regarding the implementation of the bill. The RTI Act is an important piece of legislation that increases transparency and accountability. The bill affects certain sections of the RTI, making its functioning redundant. The amendments made to the RTI by the bill negatively impact the citizen's fundamental rights. Unfortunately, the right to information is being forgone to give importance to personal data privacy. There is a dire need for improvement in the proposed bill to ensure the safety of the rights provided under the RTI Act.

Keywords: Data, Protection, Privacy, Protection, RTI Act, Transparency, Corruption.

In this digital day and age, the need for transparency and privacy of personal data must be placed at the forefront of policy. We live in a society where information about our lives is constantly gathered and shared by different organizations. Modern surveillance technology has every individual's movement captured in its periphery at the constant. The technology that is trusted dearly, allows the tracking of our physical and digital footprint more accurately and systematically than ever before.² Protecting personal data is of the utmost importance to secure the right to privacy of an individual. Technological dependency has made the collection of data take place at an unprecedented rate, forcing privacy rights to take a backseat. In an attempt to tackle the challenges posed by unmonitored mass data collection, the government has introduced the Digital Personal Data Protection Bill, 2022.³

The Digital Personal Data Protection Bill (DPDP) 2022 seeks to introduce a new and improved legal framework for personal data protection. The bill primarily seeks to ensure the utmost comprehension and understanding of the implementation of personal data protection

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¹ The Digital Personal Data Protection Bill 2022

² Giddens, Michel Foucault, the Panopticon and Surveillance (Organizations and Networks, 2009) 794-795

³ The Digital Personal Data Protection Bill 2022

into the fabric of the Indian legal system. The government wishes to enact this bill as part of its initiative of building a 'Digital Economy.'⁴The purpose of this bill is to digitalize the processing of personal data and to ensure the right of individual privacy and the use of personal data for lawful purposes. "The Supreme Court had recognized privacy as a fundamental right in 2017 and highlighted the need to protect online personal data from prying eyes."⁵ The bill has been justified as a necessary piece of legislation to protect personal data in this digital era. Despite the rallying of the Union Government for the application of this bill in the Indian Legislature, it has met with wide-scale speculation. These speculations are not unsolicited as the proposed bill directly affects the functioning of the Right to Information Act (RTI) 2005⁶. Numerous activists and information commissioners have suggested that the introduction of the bill is an attempt to make the functioning of the RTI obsolete. The bill will affect the RTI and have monumental changes to the freedom of speech of citizens, as the RTI is an important piece of legislature that ensures the proper functioning of democracy.

The Right to Information Act 2005⁷ provides for a legislature through which the citizens can acquire access to information that is under the control of the public authorities, in turn enabling the promotion of accountability and transparency amongst the citizens and government. The RTI was obtained by replacing the Freedom of Information Act of 2002⁸ and now is a fundamental right under the Indian Constitution of 1950.⁹The National Campaign for People's Right to Information (NCPRI) and the Mazdoor Kisan ShaktiSangathan (MKSS) played an essential role in the struggle for RTI. The NCPRI and MKSS through various campaigns formed the movement for the RTI. The demand for a national RTI law grew as time progressed. Well-known activists such as Aruna Roy highlighted the need for RTI on a grassroots level, by helping promote a shift in mindset and convincing people to play a more active role in the democracy. This shift in mindset brought a new-found sense of freedom and accessibility to information. This also helped bring power

⁴ Dev R, 'An Analysis of the Digital Personal Data Protection Bill, 2022' (*Live Law*, 23 June 2023) <<https://www.livelaw.in/articles/an-analysis-of-the-digital-personal-data-protection-bill-231161>> accessed 27 June 2023

⁵ Rajagopal K, 'New Digital Personal Data Protection Bill in Monsoon Session' (*The Hindu*, 11 April 2023) <<https://www.thehindu.com/news/national/new-data-protection-bill-likely-to-be-introduced-in-monsoon-session-in-parliament-centre-to-supreme-court/article66723887.ece>> accessed 27 June 2023

⁶ Right To Information Act 2005

⁷ Right To Information Act 2005

⁸ Freedom of Information Act 2002

⁹ Constitution of India 1950

back to the common man.¹⁰ The RTI plays a crucial role in involving the general public in the proper functioning of democracy.

Moreover, the need for RTI is cemented by the lack of accessibility and the inadequate disclosure of information. The growing number of RTIs filed over the past few years is an indicator of the need for administrative efficiency and the functioning of public authority. The RTI helps hold the government accountable for its various policies and decisions. Large democracies such as India must hold the government accountable, as the decisions made by governmental bodies affect the lives of millions of people and could hamper the development of the nation. The introduction of RTI has also helped curb the constant glooming shadow of corruption. The RTI has had a considerable effect on corruption as the RTI provides a platform for citizens to raise their various concerns and grievances.

According to the RTI, citizens can access all types of information apart from information that is exempted under Section 8 (1) of the RTI.¹¹ “The most commonly misused exemption is Section 8(1)(j)¹² and accounts for 35% of refusals.” The section allows government officials to refute information relating to personal information that has no relationship to any public interest.¹³ The data protection (DSDP) bill proposes amendments to Section 8 (1) (j)¹⁴ of the RTI, and it also states that “in the event of any conflict between a provision of Act and a provision of any other law for the time being in force, the provision of this Act shall prevail to the extent of such conflict, thus overriding any other act.” Essentially allowing the RTI Act to be set aside by the DSDP bill, having a clear effect on the fundamental rights of the citizens as stated under the RTI. The introduction of a data protection bill will nullify this section and it will exempt all personal information from disclosure, allowing most information to be denied. Also extending exemption beyond what is permissible in Article 19 (2)¹⁵ of the Indian constitution. The drafters of the RTI have done an adequate job of making sure that the section helps prevent the violation of decency and maintains morality. Awareness of the RTI has barely scratched the surface and is finally starting to make some progress. Amendments to the functionality will affect the understanding and will further diminish the progress made. There

¹⁰ Roy A, ‘Excerpt: The RTI Story; Power to the People by Aruna Roy with the MKSS Collective’ (*Hindustan Times*, 13 April 2018) <<https://www.hindustantimes.com/books/excerpt-the-rti-story-power-to-the-people-by-aruna-roy-with-the-mkss-collective/story-V5AWqGRa84dCxvoVsR2o4L.html>> accessed 27 June 2023

¹¹ Right To Information Act 2005, s 8 (1)

¹² Right To Information Act 2005, s 8 (1) (j)

¹³ Bhatnagar GV, ‘Activists, Information Commissioners Fear Data Protection Bill Will Crush RTI Act Provisions’ (*The Wire*, 14 December 2022) <<https://thewire.in/rights/activists-information-commissioners-fear-data-protection-bill-will-crush-rti-act-provisions>> accessed 27 June 2023

¹⁴ Right To Information Act 2005, s 8 (1) (j)

¹⁵ Constitution of India 1950, art. 19

have been no significant negative impacts made by the disclosure of information under the RTI. RTI's provisions to prevent corruption would be rendered unfit, proving to be in violation of fundamental rights such as freedom of speech as stated above.¹⁶

The DPDP Bill allows government employees to disregard requests for information by claiming that the information raised is personal information. Although already used as an excuse to deny information, the bill further makes it easier to deny information. For example, an appellant had two caste certificates and when information was asked under the RTI act it was denied on the grounds of being personal information. Cases that were previously being denied in an unjust interpretation of the law are now being legalized, further depriving the average citizen of their fundamental rights under Article 19¹⁷ of the Constitution. This bill makes all queries regarding RTI redundant and obsolete. The RTI Act should be left untouched as it provides a medium for the average citizen to hold the government accountable and play an active role in the decision-making process.¹⁸

The RTI is at the forefront of transparency and accountability in the Indian legal framework. RTI's ability to shine light upon the wrongdoings of the government will be disregarded upon the introduction of the data protection bill. The introduction of the bill seeks to improve data privacy but seeks to do so at the opportunity cost of forgoing the fundamental rights presented by the RTI. "Article 13¹⁹ of the Constitution says that no executive action or law can be brought that goes against the basic rights of the people." The introduction of the DPDP bill will allow officials to deny information in view of a breach of privacy which directly affects the people's fundamental right to information as presented to the Indian constituency by the RTI. This would allow officials to deny the right to information in a more recklessly blatant fashion.

Furthermore, it is a well-known fact that there is an unnecessary pattern of secrecy in terms of withholding information from the general public. Despite the RTI stating that information can be provided after 20 years of its occurrence, the government still refuses to present certain pieces of information. The introduction of the bill will make this infringement of RTI into a legal denial of knowledge. The difference between personal

¹⁶ TNN, 'Data Bill Will Leave RTI Act Ineffective: Experts: Bhopal News - Times of India' (*The Times of India*, 17 December 2022) <<https://timesofindia.indiatimes.com/city/bhopal/data-bill-will-leave-rti-act-ineffective-experts/articleshow/96292387.cms>> accessed 27 June 2023

¹⁷ Constitution of India 1950, art. 19

¹⁸ Bhatnagar GV, 'Activists, Information Commissioners Fear Data Protection Bill Will Crush RTI Act Provisions' (*The Wire*, 14 December 2022) <<https://thewire.in/rights/activists-information-commissioners-fear-data-protection-bill-will-crush-rti-act-provisions>> accessed 27 June 2023

¹⁹ Constitution of India 1950, art. 13

data and the withholding of information has been blurred by the introduction of the proposed provisions under the DPDP bill. Additionally, the new bill has conveniently not defined the meaning of personal data, allowing for the misuse of power.²⁰

Information regarding government spending could be denied with ease on the basis of the protection of data. The spending of the PM Cares fund has been denied on numerous occasions because of public interest reasons. The PM Cares fund is as such not a part of the governing body and is a private entity. Thus, does not require to show its budgetary spending under Section 8 (1) (j)²¹ of the RTI Act 2005. Despite this, the PM Cares fund is for the welfare of the general public and its spending potentially disturbs the lives of millions of downtrodden members of society. Already, numerous RTI requests filed for the budgetary spending of the fund have been denied. The introduction of the DPDP bill will ensure that the efforts to obtain information are made redundant.²² Proving to be the final nail in RTI's coffin.

The DPDP bill also forgets to account for certain crucial data principles. The bill does not account for data portability and the right to be forgotten. Data portability essentially helps increase competition amongst data fiduciaries to benefit consumer welfare. The right to be forgotten allows the data principle to request the stoppage of the continued sharing of their personal data. "This has to be balanced with the right to freedom of speech and right to information for all other individuals." DPDP colligates the right to be forgotten under the right to erasure. This forceful merger of the right to erasure and to be forgotten negatively affects the right to freedom of speech.²³

In conclusion, the introduction of the Digital Personal Data Protection Bill 2022²⁴ will have an adverse impact on the effective implication of the RTI Act. The DPDP bill will also tarnish the RTI's ability to act as a bridge of transparency and accountability between the governing body and the public. The bill will diminish the progress made by the RTI in combatting systemic corruption and will restrict the ambit of the RTI. The attempt to

²⁰ Bhatnagar GV, 'Activists, Information Commissioners Fear Data Protection Bill Will Crush RTI Act Provisions' (*The Wire*, 14 December 2022) <<https://thewire.in/rights/activists-information-commissioners-fear-data-protection-bill-will-crush-rti-act-provisions>> accessed 27 June 2023

²¹ Right To Information Act 2005, s 8 (1) (j)

²² TNN, 'Data Bill Will Leave RTI Act Ineffective: Experts: Bhopal News - Times of India' (*The Times of India*, 17 December 2022) <<https://timesofindia.indiatimes.com/city/bhopal/data-bill-will-leave-rti-act-ineffective-experts/articleshow/96292387.cms>> accessed 27 June 2023

²³ Goyal T, 'How Different Is the New Data Protection Bill?' (*The Hindu*, 21 November 2022) <<https://www.thehindu.com/sci-tech/technology/how-different-is-the-new-data-protection-bill/article66166438.ece>> accessed 27 June 2023

²⁴ The Digital Personal Data Protection Bill 2022

develop a 'Digital Economy' through the DPDP bill will hurt the fundamental rights of the citizen concerning their right to information and the right to freedom of speech.

