



Opacity in the name of privacy

Posted at: 27/09/2018

Highlights

- On August 24, 2017, the Supreme Court declared the right to privacy a fundamental right, a ruling widely welcomed.
- But many transparency advocates also felt apprehension, fearing that the right to privacy — meant to protect citizens from arbitrary state and corporate surveillance — might be deployed first and foremost to shield authorities from scrutiny by citizens.

Issue of accountability

- The Personal Data Protection Bill, 2018, drafted by the Srikrishna Committee, confirms these concerns.
- The Bill identifies “personal data” as any data that directly or indirectly identifies a person.
- It then calls for amending clause 8.1.j of the Right to Information (RTI) Act, 2005.
- The clause currently exempts the following from disclosure: “information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer... is satisfied that the larger public interest justifies the disclosure.
- Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”
- The Srikrishna Committee suggests amending this clause to authorise public information officers, or PIOs, to deny information containing ‘personal data’, if they feel that such disclosure is likely to cause harm to ‘the data principal’, and if such harm outweighs public interest.
- The Bill defines ‘data principal’ as whoever the data relates to.
- This amendment may seem reasonable on first reading, but for the practical experiences of RTI users in the past years.
- The RTI Act’s core aim is to bring accountability by making available public records that disclose the actions and decisions of specific, identifiable members of the political class and the bureaucracy.
- The Data Protection Bill extends the cloak of ‘personal data’ over all such information.
- It asks PIOs (now overwhelmingly appointed at junior levels) to weigh public interest against the potential for harm to those identifiable in public documents.
- The Bill defines harm expansively to include everything from blackmail and bodily injury to loss of reputation, humiliation and “mental injury”.
- The Bill ignores that another key aim of the RTI Act is “containing corruption”.
- By bringing corruption to light, dogged RTI users have served public interest and caused ‘harm’, in terms of the Bill, to those exposed.

Section 8 of RTI

- Further, most public records identify one or more persons.
- Under the proposed amendment, PIOs will be forced to test public interest versus potential for harm to multiple “data principals” in just about every request that they handle, and this is a responsibility they will be reluctant to take on.
- The amended clause will chill the RTI Act, as PIOs will now have a strong legal ground to play safe, and toss out RTI requests deploying an amended clause 8.1.j.
- In fact, this is already happening on account of how the Supreme Court has perhaps inadvertently mangled the privacy safeguard provided in the existing Section 8.1.j.
- However, in *Girish Deshpande v. Central Information Commission & Ors.* (2012), a two-judge Bench of the Supreme Court ignored this proviso and prior precedents in order to rule that the assets and details about the performance of a public servant constituted personal information, and were exempt from disclosure.
- This has set a precedent for subsequent court rulings and for PIOs to indiscriminately expand the ambit of personal information, and reject RTI requests, using clause 8.1.j.
- PIOs’ “misuse of 8.1.j is rampant”, and is reducing RTI to “a mockery,” as per official sources.
- The government should be addressing these alarms raised by the Central Information Commission, the RTI’s apex watchdog.
- If the Bill is passed as is, and the RTI Act amended, it will deal a body blow to India’s hard-won right to information.
- The Ministry of Information Technology is accepting public feedback on the Data Privacy Bill until the end of September.
- Citizens should use this window to urge the government not to amend the RTI Act.

The Hindu

