



INSIGHTSIAS
SIMPLIFYING IAS EXAM PREPARATION

AUG. 2. 2023

INSIGHTS INTO EDITORIAL



Editorial

ANALYSIS

EDITORIAL ANALYSIS

The dangers in the Digital Personal Data Protection Bill

- **Prelims:** RTI Act, CIC, Digital Personal Data Protection Bill, Governance etc
- **Mains GS Paper I and II:** Statutory, regulatory and various quasi-judicial bodies, Important aspects of governance, transparency and accountability etc

ARTICLE HIGHLIGHTS

- The government is set to introduce the **Digital Personal Data Protection (DPDP) Bill** in Parliament.
 - The final draft is wrapped in secrecy.

INSIGHTS ON THE ISSUE

Context

The Right to Information (RTI) Act:

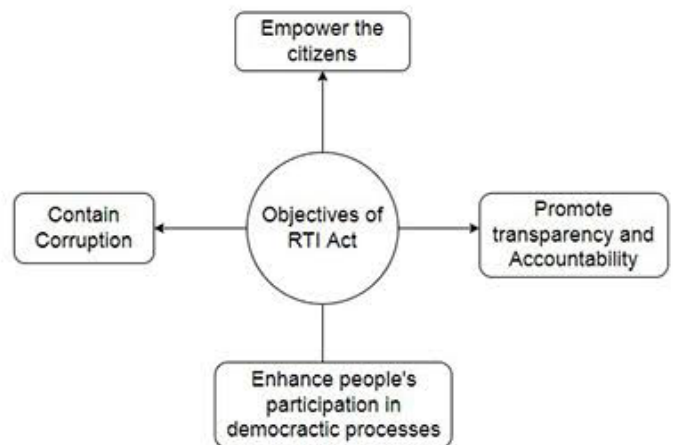
Changes and revisions made in the RTI Act		
Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
Term of office	At the central and state level, Chief Information Commissioner (CIC) and Information Commissioners (ICs) are eligible to hold office for five years, or up to 65 years of age.	The Bill removes this provision and confers the power on the central government to notify the term of office for the CIC and ICs.
Amount of Salary	At the central level, the salary of the CIC and ICs will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. At the state level, the salary of the CIC and ICs will be equal to the salary paid to the election commissioners and chief secretary, respectively.	The Bill removes these provisions and confers the power on the central government to decide salaries, allowances and other terms and conditions of service of central and state CICs and ICs.
Reductions in Salary	At the central and state level, if the CIC and ICs, at the time of appointment are in receipt of pension or any other superannuation benefits for previous government service, their salaries will be lessened by an amount equal to the pension.	The Bill removes these provisions.

Important provisions:

Important provisions of RTI Act, 2005

- ✓ Section 4(i)(b):- Suo motu disclosure.
- ✓ Section 5:- Designation of PIOs/Deemed PIOs.
 - *Assistance u/Section 5(4).
- ✓ Section 6:- Request for obtaining information.
- ✓ Section 6(3):- Transfer within 5 days.
- ✓ Section 7:- Disposal of RTI application.
 - *Section 7(6):- If not replied within timeline-free of cost.
 - *Section 7(8):- Reasons of rejection be communicated.
- ✓ Section 7(9):- Denial due to voluminous info/diversion of resources.
- ✓ Exemptions from Disclosure:- Section 8(i)(a) to Section 8(i)(j).
- ✓ Section 10:- Redact the exempted.
- ✓ Section 11 : Third party procedure .
- ✓ Section 9:- Rejection on infringement of copyright subsisting in a person other than the state.
- ✓ Section 18 & Section 19:- Complaint/Appeal.
- ✓ Section 20:- Penalties.

Objectives:



Background of Digital Personal Data Protection Bill:

- It was placed in the public domain in December 2022 but the final Bill has not been placed before the public.
- It has two provisions which would greatly weaken the Indian citizen's right to information.
- It plans to amend RTI Act Section 8(1)(j) to read as exempting information under (j), which relates to personal information
- 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.

What are the issues with circulation?

- **MeitY focused primarily on consulting industry** and big tech companies on a law that will have vast ramifications for the information regime in India
 - **It will impact every citizen** of the country.

The Digital Personal Data Protection Bill, 2022:

- **It is a crucial pillar of the overarching framework of technology regulations** the Centre is building.
- **It includes the**
 - **Digital India Bill**(the proposed successor to the Information Technology Act, 2000)
 - **The draft Indian Telecommunication Bill, 2022**
 - **Policy** for non-personal data governance.
- **It will apply to processing of digital personal data within India**
 - **To data processing outside the country** if it is done for offering goods or services
 - for profiling individuals in India
- **It requires entities that collect personal data** — called data fiduciaries — to maintain the accuracy of data, keep data secure, and delete data once their purpose has been met.

Importance of RTI?

- **The Data Protection Bill of 2022** includes a provision to amend the Right to Information (RTI) Act
- **To effectively hold their governments accountable** in a democracy, people need access to information, including various categories of personal data.
 - **For example, the Supreme Court** has held that citizens have a right

to know the names of wilful defaulters and details of the Non Performing Assets (NPAs) of public sector banks.

- **Democracies routinely ensure public disclosure of voters' lists** with names, addresses and other personal data to enable public scrutiny and prevent electoral fraud.
- **The RTI Act in India, especially the poor and marginalized**, obtain the benefits of government schemes and welfare programmes, they must have access to relevant, granular information.
 - **For example the Public Distribution System (PDS)** Control Order recognises the need for putting out the details of ration card holders and records of ration shops in the public domain
 - ☑ **It enables public scrutiny** and social audits of the PDS.
- **The RTI Act includes a provision to harmonize peoples' right to information** with their right to privacy through an exemption clause under **Section 8(1)(j)**.

Personal information is exempt from disclosure under RTI Act if :

- It has no relationship to any public activity
- It has no relationship to any public interest
- **If information sought is such** that it would cause unwarranted invasion of privacy
 - **The information officer is satisfied** that there is no larger public interest that justifies disclosure.

Issues with DPDP Bill 2022:

- **The enactment of a data protection law** does not require any amendment to the

existing RTI law

- This is also noted by the **Justice A.P. Shah Report on Privacy**.
- **The DPDP Bill 2022, proposes amendments to Section 8(1)(j)** to expand its purview and exempt all personal information from disclosure.
 - **This threatens the very foundations of the transparency and accountability regime in the country.**
- **A primary objective of any data protection law is to curtail the misuse of personal data**, including for financial fraud.
 - **Government is the biggest data repository**, an effective data protection law must not give wide discretionary powers to the government.
- **The DPDP Bill, 2022, empowers the executive** to draft rules and notifications on a vast range of issues.
 - **For instance, the central government can exempt** any government or even private sector entity from the application of provisions of the law by merely issuing a notification.
 - **It would potentially allow the government** to arbitrarily exempt its cronies and government bodies such as the **Unique Identification Authority of India (UIDAI)**
 - **It will result in immense violations** of citizens' privacy.
- **Small non-governmental organizations, research organizations, associations of persons and Opposition parties**
 - **The government chooses** not to include in the notification
 - **It would have to set up systems** to comply with the stringent obligations of a data fiduciary.
- **To meet its objective of protecting per-**

sonal data, it is critical that the oversight body set up under the legislation be adequately independent to act on violations of the law by government entities.

- **The draft Bill does not** ensure autonomy of the **Data Protection Board**
 - ☒ **The institution responsible** for enforcement of provisions of the law.
- **The central government is empowered** to determine the strength and composition of the board, as well as the process of selection and removal of its chairperson and other members.
 - **The chief executive responsible** for managing the board is to be appointed by the government
 - **It will give the government** direct control over the institution.
- **Law could dilute the Right to Information (RTI) Act**, as personal data of government functionaries is likely to be protected under it, making it difficult to be shared with an RTI applicant.

Section 8(1)(j) of RTI ACT:

- **It exempts personal information** which is not a part of public activity, or which is an invasion on the privacy of an individual.
- **To help anyone claiming exemption it states:** 'Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.'
- **Personal information may be exempt if:**
 - **it is not related to a public activity** or interest
 - **would cause unwarranted invasion** of the privacy of an individual
- **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.

Misuse of section 8(1)(j):

- **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.
- **To cover government officials:** It has been widely used to cover arbitrary, corrupt or illegal acts of government officials.
- **Some examples of illogical refusal:**
 - **The Department of Personnel and Training refused “Total number of Annual Performance Appraisal reports (APAR) of IAS officers pending for over 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 notings** and minutes of meetings

Way Forward

- **The creation of a totally government-controlled Data Protection Board, empowered to impose fines upto ₹500 crore**
 - **It is bound to raise serious apprehensions** of it becoming another caged parrot
 - **It will be open to misuse by the executive** to target the political opposition and those critical of its policies.
- **These concerns need to be urgently addressed** before the DPDP Bill is enacted.
- **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.
- **The Data Protection Bill:** It will set up a system of amending the RTI law in a manner that all personal information will be exempted.

QUESTION FOR PRACTICE

Q. What do you understand about the term ‘good governance’? How far have recent initiatives in terms of e-Governance steps taken by the State have helped the beneficiaries? Discuss with suitable examples.(UPSC 2022)

(200 WORDS, 10 MARKS)