

CURRENT AFFAIRS

10 August 2022



PERSONAL DATA PROTECTION BILL 2019

- ✓ It was introduced in Lok Sabha by the Minister of Electronics and Information Technology, on December 11, 2019.

Why ?

- ✓ Collection of information about individuals and their online habits has become an important source of profits, but also a potential avenue for invasion of privacy because it can reveal extremely personal aspects.
- ✓ Companies, governments, and political parties find it valuable because they can use it to find the most convincing ways to advertise online.
- ✓ To prevent the breach of privacy and unwarranted advertising, this bill was a necessity.

Obligations of data fiduciary:

- ✓ Personal data can be processed only for a specific, clear and lawful purpose. Additionally, all data fiduciaries must undertake certain transparency and accountability measures such as:
- ✓ Implementing security safeguards (such as data encryption and preventing misuse of data), and
- ✓ Instituting Grievance Redressal Mechanisms to address complaints of individuals. They must also institute mechanisms for age verification and parental consent when processing sensitive personal data of children.

Exemptions

- ✓ The central government can exempt any of its agencies from the provisions of the Act.
- ✓ In the interest of the security of the state, public order, sovereignty and integrity of India and friendly relations with foreign states, and
- ✓ For preventing incitement to the commission of any cognisable offence (i.e. arrest without warrant).

Offences:

- ✓ Processing or transferring personal data in violation of the Bill is punishable with a fine of Rs 15 crore or 4% of the annual turnover of the fiduciary, whichever is higher, and
- ✓ Failure to conduct a data audit is punishable with a fine of five crore rupees or 2% of the annual turnover of the fiduciary, whichever is higher.

TOPIC:FUNDAMENTAL RIGHTS

Withdrawal of the data Bill was a bad move

The enactment of the Personal Data Protection Bill into law would have helped create a framework for redress



VRINDA BHANDARI

In a surprise development last week, the Government withdrew the Personal Data Protection (PDP) Bill, 2019, thereby abruptly halting the country's quest for a national data protection law that had been in the works for over five years. The reasons for the Government's decision are brief and cryptic. The short circular issued by the Minister of Electronics and Information Technology simply states that considering the report of the Joint Parliamentary Committee (JPC) — it had proposed 81 amendments and made 12 recommendations — “a comprehensive legal framework is being worked on”. “In these circumstances”, the Government proposed to withdraw the Bill and present a new Bill “that fits into the comprehensive legal framework”.

Multiple iterations, to no avail Interestingly, there is no elaboration on what such a “comprehensive legal framework” entails. The Government could enact a fresh privacy legislation or a comprehensive data protection law (covering both personal and non-personal data). Alternatively, it could subsume data protection under its ongoing attempts at revising the existing Information Technology Act, 2000. It could also enact a digital markets law, along the lines of the European Union's Digital Services Act, focusing on competition and innovation in the digital space. Unfortunately, the Ministry's circular leaves us with no clarity on the way forward.

The Ministry's attribution of the withdrawal to the JPC Report is al-

so at odds with the proposed amendments of the JPC, which did not recommend withdrawing the PDP Bill in favour of a comprehensive legal framework.

The lack of clarity is compounded by the fact that the circular does not establish any timelines on when the new Bill will be introduced in Parliament, or when it will be passed. This is particularly important, given the drafting history of the PDP Bill. When the Supreme Court of India affirmed the right to privacy in its historic K.S. Puttaswamy judgment in 2017, the nine-judge Bench of the Court referred to the Government's Office Memorandum constituting the B.N. Srikrishna Committee to suggest a draft Data Protection Bill. The committee released its draft Personal Data Protection Bill in 2018, which was the first public articulation of a data protection law in India.

Subsequently, when the Supreme Court upheld the constitutionality of the Aadhaar Act, the majority emphasised that it believed that “there is a need for a proper legislative mechanism for data protection”. It “impressed” upon the Central government to bring out a “robust data protection regime” through the enactment of a law based on the recommendations of the Srikrishna Committee Report, with modifications as deemed necessary.

In December 2019, the Government introduced the PDP Bill, 2019 in the Lok Sabha as a comprehensive personal data protection regime. Considering the importance of the Bill and the controversies associated with various provisions, the Bill was referred to the JPC for its recommendations. In 2021, the JPC suggested multiple amendments to its re-worded Data Protection Bill, 2021, which privileged state exceptionalism over individual privacy, while continuing to strictly regulate corporate action.



GETTY IMAGES/STOCKPHOTO

Now, after five years of hard work and three iterations of data protection legislation, the Government has wasted its efforts to protect our privacy.

The faultlines

The PDP Bill, 2019, as well as the JPC's recommendations in the suggested Data Protection Bill, 2021, suffered from serious lacunae, leading Justice Srikrishna to criticise the Bill for its potential to turn India into an “Orwellian state”. First, the Bill's expansive exemptions allowed the state to exempt the entire application of the law simply as if it was “expedient” to do so in the interest of national security or public order. These exemptions did not need to be tabled before Parliament and there was no provision for review or oversight of the Government's decision. In fact, Member of Parliament Jairam Ramesh pointed out in his dissent note, “government agencies are treated as a separate privileged class whose operations and activities are always in the public interest and individual privacy considerations are secondary”.

Second, the PDP Bill, 2019 as well as the JPC's version established a strong regulator (the Data Protection Authority) with a lot of power, but very little independence or accountability.

Third, the Bill imposed a strong data localisation mandate, requiring companies to store all sensitive

personal data and critical personal data (which was not defined) in India. Despite concerns around surveillance and increased cost of compliance expressed by civil society and the private sector, the Government did not endorse cross-border data transfer.

Finally, the JPC recommended subsuming the regulation of personal data and non-personal data within a single legislation, even though it undermined the Puttaswamy mandate to ensure protection of personal data.

Increasing digitisation, issues

However, despite these real concerns, it was, and continues to be, imperative to enact data protection legislation urgently. India currently has over 750 million Internet users, with the number only expected to increase in the future. The Government is also making a strong push for a “Digital India”, with increased focus on digitisation of access to health, ration, banking, insurance, especially after the COVID-19 pandemic. There is a greater focus on the inter-linking of data, whether through facial recognition, Aadhaar, or the Criminal Procedure (Identification) Act, 2022.

At the same time, India has among the highest data breaches in the world. It has been reported that around 18 of every 100 Indians have been affected by data breaches since 2004, with 962.7 million data points being leaked, primarily personal data points such as names and phone numbers. Without a data protection law in place, the data of millions of Indians continues to be at risk of being exploited, sold, and misused without their consent.

Unlike state action, corporate action or misconduct is not subject to writ proceedings in India. This is because fundamental rights are, by and large, not enforceable against private non-state entities. This leaves individuals with limited

remedies against private actors. They can either seek action under the inadequate and ineffective provisions of the Information Technology Act, or file civil/criminal proceedings before a court of law (which itself is time-consuming and expensive).

A personal data protection legislation would remedy this lacuna by providing individuals with proper grievance redress options and creating sufficient deterrence among private actors. Inadequate and flawed as it was, the enactment of the PDP Bill into law would have marked a beginning in providing a redress framework. Instead, we are left with the vague promise of a “comprehensive legal framework”, with no timeline in sight.

Consult, work on fresh law

Where, then, do the Government's actions leave us? It is imperative that the Government soon introduces a fresh data protection legislation, drawn after proper public consultation. Such a law should take into consideration the criticisms that have been raised by civil society as well as the private sector. It should be extensively discussed and debated in Parliament.

Even if the PDP Bill is not the most privacy-respecting law, it provides a certain desirable level of protection to the personal data of individuals. Once enacted, there is always scope for judicial review (based on challenges to provisions that are potentially unconstitutional) and parliamentary amendment (by legislators incorporating feedback on the working of the law). That is why even the justifiable criticisms around the PDP Bill, 2019 or the JPC's recommendations do not justify its withdrawal. After all, there is no reason to let perfect be the enemy of good.

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INDIA AND NEIGHBOURING COUNTRIES

Bangladesh river water deal likely

Joint River Commission meeting to decide on agreements on Kushiara, Ganga

KALLOL BHATTACHERJEE
NEW DELHI

India and Bangladesh are likely to ink at least one major river agreement later this month, *The Hindu* has learned.

The planning for the agreement is being tightly guarded by officials on both sides as water sharing between the two countries is considered a sensitive subject given the fact that it often takes political meaning.

Apart from the major agreements under discussion, sharing of data of river waters and better flood control planning are expected to feature in the upcoming meeting of the Joint River Commission (JRC) that will meet in the last week of August ahead of Prime Minister Sheikh Hasina's September 6-7 India visit.

In response to a query, *The Hindu* learned that



Long history: Indian and Bangladesh Ministers during talks on river waters commission in 1982. ■ THE HINDU ARCHIVES

there is a "strong possibility" that an agreement on the Kushiara that flows from Assam into Bangladesh is part of one such agreement that may get "done" during the JRC.

A diplomatic source also hinted at a "major agreement" involving the Ganga may also be taken up as there is a "strong urge" to achieve a big river agree-

ment ahead of Prime Minister Hasina's visit, which may be her last trip to Delhi before Dhaka goes into election mode next year.

Teesta waters agreement
The Awami League government has been insistent on sealing the Teesta waters agreement, which has eluded settlement so far. Now, it is understood that India has

agreed to offer Bangladesh a package on river waters-related deals that will be considered a significant advancement in terms of sharing of river resources with Dhaka.

While political ties between Delhi and Kolkata have been a reason that apparently stalled Teesta waters, West Bengal Chief Minister Mamata Banerjee was in Delhi last week and met with Prime Minister Narendra Modi on issues that are relevant to her State.

Ms. Banerjee's visit, which came against the backdrop of the tightly guarded India-Bangladesh negotiation, has contributed to the speculation on river water sharing between India and Bangladesh.

Convening the JRC has been a long-pending demand of Bangladesh as the ministerial-level meeting was last held in 2010.

- ✓ The **Kushiyara River** is a distributary river in Bangladesh and Assam, India. It forms on the India–Bangladesh border as a branch of the Barak River, when the Barak separates into the Kushiyara and Surma. The waters of the Kushiyara thus originate in the state of Nagaland in India and pick up tributaries from Manipur, Mizoram and Assam.
- ✓ **Teesta** is a long river that rises in the Pauhunri Mountain of eastern Himalayas, flows through the Indian states of Sikkim and West Bengal through Bangladesh and enters the Bay of Bengal. Teesta is the largest river of Sikkim and second largest river of West Bengal after Ganges.

TOPIC : WOMEN EMPOWERMENT

ABSTRACT

Can women be true representatives of the people?

How women legislators are breaking stereotypes and asserting their presence in the Indian Parliament

REBECCA ROSE VARGHESE

Hussain, Sadia, 'Performance of Women in Parliament: A Quantitative Study of Questions by Women Members in Lok Sabha (1999-2019)', Economic and Political Weekly, Vol 57, Issue No. 31, July 30, 2022

Literature on the workings of Parliament and its performance has been scarce. Very few academic papers have covered critical reviews of the institution. Even less are research works on women's performance in leadership positions or how they participate and represent people in political spaces. Sadia Hussain's article, 'Performance of Women in Parliament: A Quantitative Study of Questions by Women Members in Lok Sabha (1999-2019)' draws attention to women's performance in the Lok Sabha through a quantitative analysis of the questions posed by women leaders on the floor.

Women in politics

The article contextualises women's position in Indian electoral politics. Nivedita Menon's work on feminist theory and politics in India asserts how India has not had a single women's movement that challenged patriarchal and gender norms in the last two decades. Women have had to use alternate methods to come to power. Education and wealth have aided women in political participation. Studies suggest that more women have started to organise themselves into economic groups, and financial freedom has pushed them to be more politically active. The decreased gap in voter turnout between men and women is a positive sign toward gender inclusivity in the political sphere. The 2019 general election was a historic moment for women's politics, as it saw 78 women elected to the lower house of Parliament for the first time since independence where only 22 women were present in the 543-member Lok Sabha. But the author explains that this number is still not representative of the actual proportion of women in the country.

Access to power versus participation

With more women representatives in Parliament,

it is imperative to look at their performance.

Women's performance during the Question Hour session becomes relevant as it is a space where legislators act free from party regulation. Substantive representation or acting in the interest of those represented defines the quality of a leader. It becomes imperative to analyse whether descriptive representation transforms into substantive representation.

Do women members only represent women, or do they represent the general public that voted them into positions of power? Do they ask questions only about "softer issues" such as women and child development, health, and sanitation, shying away from discussions on national security, finance, agriculture, and railways?

On the one hand women legislators bear the burden to represent women's issues more and on the other they are concerned in representing the issues pertaining to the general public at large.

The author analyses these research questions through the study of parliamentary sessions. The questions asked during the Question Hour of Parliamentary sessions between the years 1999 to 2019 were specifically chosen as they involved four general elections with governments completing their full five-year terms with two different ruling coalitions. As part of the evaluation, the number of questions raised by representatives, the Ministries under which they fell, and the content of questions including terms like 'women', 'girls', 'rape', 'crimes against women' and 'maternal', were collected and categorised.

Breaking stereotypes

The study reveals how descriptive representation transforms into substantive representation. It goes against the popular notion that women members only touch upon softer issues or that they are silent spectators in Parliament.

Though men asked more questions and participated in more debates than women, there has been a substantial increase in the number of questions women asked. Moreover, contrary to general belief, women representatives asked more questions on health and family welfare, human

resource development, home affairs, finance, agriculture and railways than women's issues. Male legislators asked more questions on issues concerning women than their female counterparts. These are very welcoming signs as the representatives were seen not to be held back by gender stereotypes.

Intersectionality of identities became an important factor in the questioning capacity of representatives. Members from marginal States, irrespective of gender asked fewer questions. Women from the BJP, irrespective of whether they were in power or representing the Opposition, asked the most number of questions. Party affiliations, education, regional background, ethnicity, caste and the age of women members played a role in the number and content of questions asked in the lower house. Thus, the author explains the danger of considering women as a homogenous group and how identities intersect and influence the political representation of women.

The paper studies the friction between the burden women bear to represent women's issues more and on the other hand, being concerned in representing the issues pertaining to the general public at large. While women are expected to bring a feminine quality into the public political domain, they are breaking stereotypes by simply behaving like their male counterparts.

Analysing these debates on gender and politics, using the performance framework, one concludes that the problem of under-representation of women is only superficial.

What lies underneath is the problem of structural inequality, wherein women are marginalised at different levels. Through examples of Latin American Parliaments, the author explains how proportional representation will lead to a better representation of women's interests.

Moreover, representation becomes a phenomenon that cannot be isolated from society. Social, cultural, economic, religious and political factors affect the process.

The increased political participation is a positive sign toward gender inclusivity and equality in the political sphere. But it has a long way to go, considering the socio-economic and cultural conditions that still socialise women into being averse to politics, hindering them from pursuing politics as a career.

THE GIST

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■ With more women representatives in Parliament, it is imperative to look at their performance. Women's performance during the Question Hour session becomes relevant as it is a space where legislators act free from party regulation. It becomes imperative to analyse whether descriptive representation transforms into substantive representation.

■ It was found that contrary to general belief, women representatives asked more questions on health and family welfare, human resource development, home affairs, finance, agriculture and railways than women's issues.

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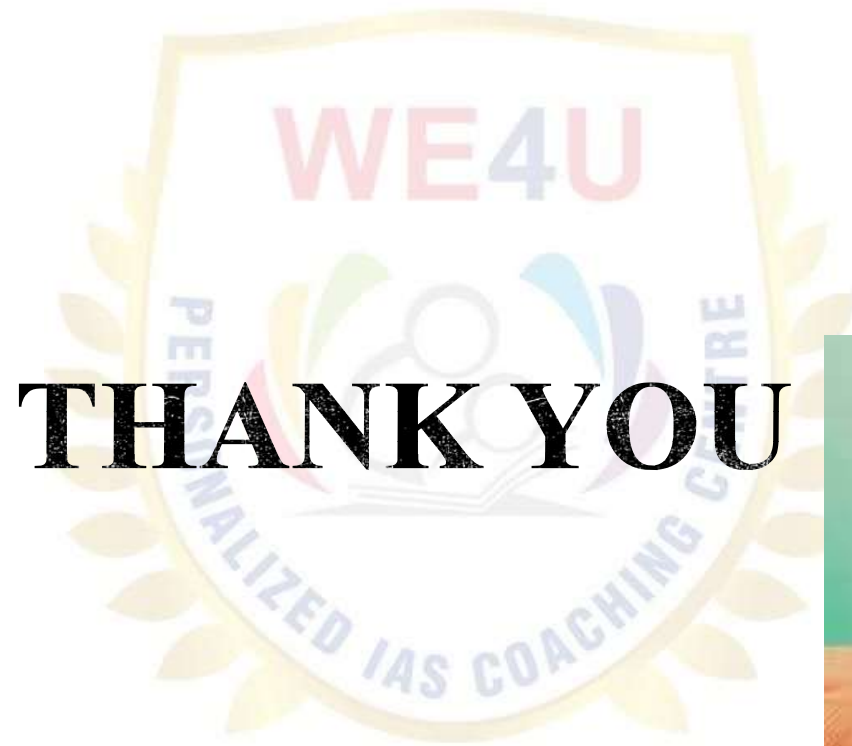
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TOPIC : POPULATION

Population an asset to economy: Shah

Modi government brought 60 crore people out of penury, making them aspirational, says Minister



THANK YOU

