

## Issues with Data Protection Bill

### What is the issue?

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- The draft personal data protection Bill 2018 was recently submitted by the Justice B.N. Srikrishna-headed expert panel. Click [here](#) to know more.

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- The Right to be forgotten in the proposed Data Protection Bill poses a threat to press freedom and RTI.

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### What is the right to be forgotten?

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- The right allows for the **lawful removal of personal information** of an individual if such request is made.

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- It can determine the development of one's life in an autonomous way, without being perpetually or periodically stigmatised as a consequence of a specific action performed in the past.

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- It is distinct from the right to privacy because the right to privacy constitutes information that is not publicly known.

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- Whereas, right to be forgotten involves removing information that was publicly known at a certain time and not allowing third parties to access the information.

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### What are the provisions in the bill in this regard?

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- Once the consent to use data has been withdrawn by the data principal,

he/she has a right to prevent the data processor or data fiduciary from using such data or information.

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- An adjudicating officer can decide on the question of disclosure based on:

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1. sensitivity of the personal data
2. scale of disclosure and the degree of accessibility sought to be restricted or prevented
3. role of the data principal in public life
4. relevance of the personal data to the public
5. nature of the disclosure and of the activities of the data fiduciary

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- The order of the adjudicating officer can be filed for a review.
- An appeal can be made to the appellate tribunal if the same decision is reaffirmed.
- The right to be forgotten can be exempted

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- i. for the purpose of data processing in the interest of security of the state [Section 42]
- ii. in the interests of prevention, detection, investigation and prosecution of any offence or any other contravention of law [Section 43]
- iii. for processing of personal data for a journalistic purpose [Section 47]

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- Accordingly, Parliament should pass a law explaining the procedures to determine the interests and to create another authority to decide the

disclosure.

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- Nevertheless, Section 4 (right to privacy) and Section 31 (fair and reasonable processing duties) will be applied to have a fair procedure.

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- Failure to adhere to security standards might lead to a penalty of up to Rs 5 crore.

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- A penalty of up to Rs 1 crore can be imposed where any person fails to comply with any provision of this Act.

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### **What are the related judicial pronouncements?**

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- The Karnataka High Court had upheld a woman's 'right to be forgotten' in a plea to annul the marriage certificate, after a person got a certificate of marriage with her name who never married him.

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- Also, a rape victim in India has a right that her past be forgotten.

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- At the same time, the Gujarat High Court ruled that a criminal cannot claim the right to be forgotten.

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- He/she does not have the right to insist that the conviction should not be referred to by the media.

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### **What are the concerns?**

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- The right to be forgotten might spell a danger to press freedom.

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- Though section 47 provides for journalistic exemptions, it applies only where the journalist demonstrates that the processing is in compliance with any code of ethics issued by -

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1. the Press Council of India (or)  
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2. any media self-regulatory organisation  
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- These will create additional pre-publication restrictions on citizens and the media, as journalistic publication will be dependent upon the opinion of an adjudicating officer.  
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- Besides, freedom to criticise the public personalities for their public policies based on their past statements and activities will be in jeopardy.  
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- Also, both CIC (Central Information Commission) and DPA (Data Protection Authority) deals with information disclosure.  
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- So a citizen seeking access to such information will be confused on whom to approach.  
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- Besides, Article 19(2) of the Indian Constitution did not provide “privacy” as a ground for imposing restrictions.  
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- So the Bill's provision on the right to be forgotten would fail on constitutional verification by the judiciary.  
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- It is thus essential that “privacy” is added in Article 19(2) by a major amendment to the Constitution, to materialise the right to be forgotten.  
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**Source: The Indian Express**

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