

DPDP Act Challenge: Supreme Court Examines Privacy, RTI and Press Freedom Concerns

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DPDP Act Latest News

- Three Public Interest Litigations (PILs) have been filed in the Supreme Court questioning the constitutionality of the Digital Personal Data Protection Act, 2023 (DPDP Act). Although the law aims to protect individuals' digital privacy, the petitioners argue that it **weakens the Right to Information (RTI)**, restricts investigative journalism, and broadens state surveillance powers.
- The petitioners have contended that certain provisions of the Act and its Rules dilute transparency safeguards and may curb access to public-interest information.
- The Supreme Court has admitted the pleas, issued notice to the Centre, and referred the matter to a five-judge Constitution Bench for hearing in March. However, it declined to grant an interim stay on the Act.

Privacy vs Transparency: The RTI Amendment at the Heart of the DPDP Challenge

- A core objection raised in the petitions concerns **Section 44(3) of the DPDP Act**, which amends **Section 8(1)(j) of the RTI Act, 2005**.
- Earlier, public authorities could deny disclosure of personal information only if it had no relation to public activity or if it caused an “unwarranted invasion of privacy.”
- Crucially, the law allowed disclosure if a “larger public interest” justified it.
- The amended provision now broadly exempts “**information which relates to personal information,**” removing the public interest override.

Concerns Over Shielding Corruption

- The petitioners argue that this change eliminates the power of Public Information Officers (PIOs) to balance privacy against public interest.
- Investigative journalism and anti-corruption inquiries often depend on records such as asset disclosures, tender documents, and file notings — all of which may contain personal data.
- According to analysts, the amendment converts a “carefully calibrated privacy exemption into an absolute bar,” potentially shielding corrupt officials. They describe it as a “**death knell for participatory democracy.**”

Proportionality Test Under Puttaswamy

- All three petitions rely on the Supreme Court’s 2017 **Puttaswamy judgment**, which requires that any restriction on fundamental rights meet the **proportionality test** — serving a legitimate aim, adopting the least restrictive means, and including safeguards against misuse.
- The petitioners contend that replacing the RTI Act’s public interest safeguard with a blanket exemption fails this test and is “manifestly arbitrary,” as it creates a category of information that remains opaque regardless of public interest.

Impact on Journalism: Data Law and Press Freedom

- The Reporters’ Collective argues that under the DPDP Act, journalists collecting personal data during investigations may be treated as “**data fiduciaries.**”
- This classification imposes obligations such as issuing notices and obtaining consent from individuals whose data is being used.
- In investigative reporting — especially in cases involving fraud, corruption, or misuse of public funds — seeking consent from the subject of investigation is often impractical and defeats the purpose of the probe.

Consent and Data Erasure Concerns

- **Section 12 of the Act** requires that if consent is not granted or is withdrawn, the data must be erased.
- The petition contends that this would make post-publication verification and fact-checking difficult, potentially undermining the credibility and continuity of investigative journalism.

Chilling Effect on Free Press

- The petition also highlights the risk of severe financial penalties — up to ₹250 crore — for non-compliance.
- It argues that the fear of such heavy sanctions could discourage journalists from pursuing stories involving personal data, thereby creating a “chilling effect” on press freedom and limiting reporting in the public interest.

Concerns Over State Power and Surveillance

- Section 36 of the DPDP Act, which authorises the Union government to demand information from any “data fiduciary.”
- The petitions argue that this provision enables broad access to personal data without clear procedural safeguards, independent oversight, or prior authorisation.
- As per the analysts, Section 36 is “vague, overbroad and arbitrary,” as it allows the government to obtain personal data without the individual’s consent.
- The petition warns that, in the absence of specific protections for journalistic work, media organisations could be compelled to disclose data that may reveal confidential sources, discouraging whistleblowers and investigative reporting.
- There is no statutory appeal or review mechanism against orders issued by the Central Government under Section 36.
- This concentration of power creates the risk of arbitrary or excessive use, potentially enabling state control over private data and raising concerns about its implications for policymaking and electoral processes.

Concerns Over the Independence of the Data Protection Board

- Experts argue that the Data Protection Board of India lacks institutional independence.
- Under the notified Rules, the search-cum-selection committee for appointing the Board’s chairperson and members comprises only government secretaries and government-nominated experts.
- They contend that this “complete executive dominance” undermines the doctrine of separation of powers, especially since the Board performs quasi-judicial functions such as adjudicating disputes and imposing penalties.
- As per them, the State itself is the largest collector of personal data. Therefore, a regulatory body appointed solely by the executive raises concerns about impartiality, potential conflicts of interest, and effective oversight of government actions.

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