

Theme 3: Rights issues

- Assessment of working of RTI during COVID
- Freedom of speech of civil servants (Context: report that Shah Faesal to reapply into IAS)
- Transgender rights
- Issue of privacy - Personal Data Protection

1) Assessment of working of RTI during COVID

- Was RTI a major casualty during the crisis?
 - Migrants data:
 - even when labour ministry had specifically asked its centres to maintain region wise data
 - PM cares
 - CIC order had already brought PM-Relief under RTI
 - access to beneficiaries under PM Garib Kalyan Yojana
 - Covid = Pandemic + Infodemic
 - Hence, RTI had a major role to play

Possible Questions

- The ineffectiveness of RTI during COVID-19 period is a continuation of an old trend. Discuss
- RTI was one of the major casualties of the COVID-19 crisis. Discuss

2) Freedom of speech of civil servants

- Context: report that Shah Faesal to reapply into IAS)
 - e guidelines say that if an officer who has submitted his/her resignation sends an intimation in writing to withdraw it before its acceptance by the competent authority, the resignation will be deemed to have been automatically withdrawn
- Why is restriction on civil servants' social media expression is required?
 - Consistency of code of conduct: be it real or virtual
 - foundational values: Anonymity, Neutrality and Ministerial responsibility
 - discipline
 - diffusion of responsibility: blame game
 - step towards politicization
 - social media: blurring of personal and private spheres

- Tripura High Court verdict (January 2020) : Landmark
 - As a government servant the petitioner is not devoid of her right of free speech, a fundamental right which can be curtailed only by a valid law.
 - **Article 33** which puts additional restrictions on fundamental rights of armed forces does not apply to civil services
 - As a government servant the petitioner is not devoid of her right of free speech, a fundamental right which can be curtailed only by a valid law. She was entitled to hold her own beliefs and express them in the manner she desired of course subject to not crossing the borders

- Even attending a political rally would not be considered as involvement in politics.
 - A student of politics, an enthusiastic young man, a reporter or just a curious bystander - all are likely to be present in any political gathering.
 - Even an opponent or a critic of a political party may also attend the gathering. Her mere presence at a political gathering,
 - therefore, without any further allegation, would not amount to her participation in such political gathering

- Do you think that the Code of conduct of civil servants should extend to their posts on social media done in personal capacity? Justify your view
- Allowing civil servants a freedom of speech at par with common citizens would do more harm than good. Evaluate
- Changing political culture in India requires more assertive and expressive civil servants who are different from the traditional neutral anonymous civil servant. Discuss
- Do you think that values of anonymity and neutrality have lost relevance in the era of social media? Justify your view

3) Transgender rights

- Following protests by the [queer community](#) against the 2016 and 2018 bills, the 2019 act has done away with few of the severely criticised provisions of the 2018 bill, such as the
 - **criminalisation of begging** and
 - the establishment of a **district screening committee** to process applications for issuance of transgender person certificates.
- However, it still fails to incorporate yet other principles in line with the [Supreme Court](#) judgment in [National Legal Services Authority v. Union of India \(NALSA v. UOI\)](#) in 2014, such as
 - **Definition issue remains**
 - defines a transgender person as one who is partly female or male, or a combination of female and male, or neither female nor male.
 - In addition, the person's gender must not match the gender assigned at birth, and includes trans-men, trans-women, persons with intersex variations and gender-queers.
 - The definition of “transgender persons” in the Bill is at variance with the definitions recognised by international bodies and experts in India

- the right of transgender people to declare their self-perceived gender **identity only after undergoing [sex reassignment surgery](#)**, and
 - direct violation of NALSA, which affirmed the right to self-determination of gender as male, female or transgender without the mandate of any medical certificate or sex-reassignment surgery.
- [Lack of mandatory reservations](#) in jobs and educational institutions and employment
 - This goes against the mandate in NALSA, which had clearly stated that the state must take measures “to treat them as socially and educationally backward classes


- The act has also been criticised for imposing less punishment for crimes against transgender people compared with punishment for crimes against [cisgender people](#).
 - the Bill fails to extend protection to transgender persons who might face sexual abuse because the Indian Penal Code recognises rape in strict terms of men being perpetrators and women being victims.
 - Bill makes “sexual abuse” punishable, with imprisonment of only up to two years,
 - it does not define the acts that constitute sexual offences, making it complicated for transgender persons to report such crimes.
- On 27 January 2020, the Supreme Court issued a notice to the central government in a petition challenging the constitutionality of the act.

Possible questions


- The Transgender Rights Bill falls short of empowering the third gender. Discuss
- The bill to provide rights to transgenders does more harm than good. Examine
- “Transgender rights bill is in direct violation of the NALSA judgment.” Discuss the points of deviation between the two.

4) Issue of privacy - Personal Data Protection


Decoding the data protection bill

 **WHAT IT MEANS FOR CONSUMERS**

- **DATA** can be processed or shared by any entity only after consent.
- **SAFEGUARDS**, including penalties, introduced to prevent misuse of personal data.
- **ALL** data to be categorized under three heads—general, sensitive and critical.

 **THE GOVERNMENT & REGULATORY ROLE**

- **GOVT** will have the power to obtain any user's non-personal data from companies.
- **THE** bill mandates that all financial and critical data has to be stored in India.
- **SENSITIVE** data has to be stored in India but can be processed outside with consent.

 **WHAT COMPANIES HAVE TO DO**

- **SOCIAL** media firms to formulate a voluntary verification process for users.
- **SHARING** data without consent will entail a fine of ₹15 crore or 4% of global turnover.
- **DATA** breach or inaction will entail a fine of ₹5 crore or 2% of global turnover.

Source: Mint research

Features: through comparison (EU's GDPR vs India's PDP)

Similarities

- Principle of consent as basis
- Rights like right to portability, right to modify and right to be forgotten
- Creating data fiduciaries and putting responsibility on them
- Exceptions to government

Differences

- Right to object profiling (GDPR)
- clear cut parameters to transfer data abroad (GDPR)
- More data types and corresponding higher localisation needs (PDP)
- Right to non-personal data (PDP)

On the Positive Side,

- This is the first legislation that lays down concrete principles for protecting personal data.
- It is also the first codification of the fundamental right to privacy, affirmed by the Supreme Court in a 2017 judgment.
- It lays down the principles by which data would be judged “personal”, “sensitive’ and “critical”, and mandates processes by which such data may be obtained with consent, stored, and processed
- there is good protection against data misuse by companies.
- The Bill proposes that personal data will not be processed without consent of the owner of the information, and that no personal data will be processed except for clear and lawful purpose subject to some exceptions.

- There is also a provision for a Right to Erasure (the so-called right to forget) and Right to Correction, right to portability which allows individuals to request deletion or correction of data, once it is no longer necessary for the specific purpose for which it was collected
- Provides an institutional framework through creation of a separate DPA (data protection authority)
- It has substantial similarities with EU's GPDR in terms of rights, principle of consent, exception to government and creation of and putting responsibility on data fiduciary
- It has better classification of data types and corresponding data localisation requirement.

On the Negative Side: Issues are

- Massive exemptions to government in deviation from BN Shrikrishna committee
- Voluntary verification by social media can increase profiling
- Government has claimed right to non-personal data which is defined so widely such that even anonymous users data can be targetted
- Independence of DPA(data protection authority) is questionable as all members from executive. Unlike BN Shrikrishna
- Wrt international standards and other models like EU's GDPR it does not provide right to object on profliling for marketing. GDPR has limited itself to core privacy protection and doesn't go beyond giving powers like right to non-personal data to government instead

- Reaction of stakeholders
 - Business bodies have reacted negatively and expressed concern over privacy and level playing field between business and government and even IPR dilution.
 - It creates new concerns for private sector by going beyond core issue of privacy and including new issues like right to non-personal data and social media liability.
- Manner and haste of passing the Bill (next slide)

Lapses in the process of passing the Bill

- The government has taken extraordinary measures to reduce public scrutiny, and even Parliamentary examination of the Personal Data Protection Bill 2019
- The draft was not circulated well in advance of its presentation in Parliament and
- comments and submissions made during the drafting process were not made public.
- Communications, Electronics & Information Technology Minister Ravi Shankar Prasad requested that the Bill should be examined by a select committee chosen for the purpose and not by the Standing Parliamentary Committee on IT (which is chaired by an Opposition member).
- This lack of scrutiny makes it more likely that multiple areas of concern will not be addressed.

way forward:

- Despite all these gaps and flaws, the establishment of a first basic framework for personal data protection is important. In the absence of such legislation, it is easy for government arms and the private sector to indulge in overreach and collect data without consent, as indeed has occurred in the two years since the Supreme Court ruling. But lawmakers must examine the Bill with care, and raise appropriate concerns so that gaps in the legislation can be plugged.

Possible questions

- Evaluate the effectiveness of Personal Data protection in protecting the privacy of citizens
- The Personal Data Protection Bill is too harsh with the market and too soft with the state. Illustrate
- The Personal Data Protection Bill is a lost opportunity of creating a strong data ecosystem in India. Examine