

## *A Bill that fences in the right to information*

The news that the Union Cabinet has approved the Digital Personal Data Protection Bill and will table it in the monsoon session of Parliament (July 20-August 1) raises certain issues. The draft Bill was placed in the public domain in December 2022 but the final Bill has not been placed before the public. Citizens are concerned that if two of its provisions are not changed, it may lead to a major regression for democracy.

The proposed Digital Personal Data Protection Bill has two provisions which would greatly weaken the Indian citizen's right to information. The Indian Right to Information (RTI) Act, effective since October 12, 2005, is one of the best transparency laws in the world, empowering citizens and is a practical recognition of their role as the rulers and owners of India. This is the outcome of people's struggles led by the Mazdoor Kisan Shakti Sangathan's fight starting in rural Rajasthan which culminated in the drafting of the law in 2004. There were intense discussions about its provisions and it took an all-party parliamentary committee to carefully craft its provisions. Its preamble elegantly states that democracy requires informed citizens and transparency in the affairs of their government so that they can hold it accountable and curb corruption. It harmonised the need for an efficient government while preserving the ideals of democracy.

### **Embraced by the citizen**

Governments and those wielding the levers of power have been perturbed by this transfer of power to the ordinary citizen. Citizens have taken to the RTI like a fish to water. Despite public officials using various devices to deny citizens their legitimate right, many have used this democratic instrument to expose wrongdoing and corruption. The law recognises that the default mode is that each citizen has the right to



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In the proposed Digital Personal Data Protection Bill, the plan to amend Section 8(1)(j) in the RTI Act will greatly weaken the Indian citizen's right to information

access almost all the information with the government. Ten categories of information have been exempted from disclosure to prevent harm to certain interests and to ensure smooth working of the government. These are outlined in Section 8(1), with the 10 subsections from a to j.

The most widely misused exemption is Section 8(1)(j) which exempts personal information which is not a part of public activity, or which is an invasion on the privacy of an individual. It has a proviso which is an acid test to help anyone claiming exemption which states: 'Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.' Thus, the law stated that personal information may be exempt if: it is not related to a public activity or interest, or would cause unwarranted invasion of the privacy of an individual

To help an officer, an Information Commissioner or judge to arrive at the right decision, the special proviso was provided as an acid test. 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.

### **The basis of refusals**

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. This was illegal but has been widely used to cover arbitrary, corrupt or illegal acts of government officials. Some examples are: the Department of Personnel and Training refusing "Total number of Annual Performance Appraisal reports (APAR) of IAS officers pending presently for over one year, two years, three years and four 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

### **What is in store**

However, many honest officers and commissioners often gave information if it was not covered by the exemption. Unfortunately, the proposed Data Protection Bill plans to amend RTI Act Section 8(1)(j) to read as exempting information under (j), which relates to personal information

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. Incidentally, this proposal is a tacit admission that any current denial of information on the grounds of it being 'personal information' only, is illegal. Whenever a PIO wants to deny information, he will be able to link it to some person. 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. Thus, the RTI would become a Right to Deny Information, rendering it an ineffective tool.

In 18 years no harm has come to any national or personal interest because of RTI. Therefore, the proposed amendment would lead to a major regression for democracy.

## *A common civil code spelling equality for every Indian*

The 22nd Law Commission has called for responses to a proposal for a Uniform Civil Code in India. This has set off a debate, which has often been acrimonious. But the debate itself is much needed as Indians have never been consulted on the personal laws they are governed by. These laws were instituted by the British colonial government by giving a cursory hearing to the clergy, or religious scholars in the case of religions without one. The result was a religion-based set of personal laws for Hindus, Muslims and Christians. Whether the colonisers did this out of a deep concern for the sentiments of the natives or it was intended as another instrument in a strategy of divide and rule in order to hold India is irrelevant, but we should note the provenance of India's personal laws.

### Laws that are boxed

Personal laws in India are boxed according to the religion or social origins of the citizen. However, it does not take much to see a fearful symmetry between them. This is their unmistakably patriarchal framing, whereby men are privileged at every turn. Thus, only a man can be the 'karta' or head of a Hindu Undivided Family, a divorced Muslim woman is not entitled to maintenance beyond a certain period, among some tribes of India, the custom is that women do not inherit ancestral property, and a Parsi woman who marries outside the community is excommunicated. So, from the point of view of women's empowerment, India's civil code is uniform already. As for the section of the population that we today refer to as the LGBT community, the British colonialists considered them mere flotsam and jetsam, to be ignored altogether. Not only did they not even merit a personal law but their actions deserved to be criminalised, even when they were consensual.

We can now see why we cannot consider ourselves to be a democracy so long as we continue with current approach to personal law. It is not because it is not the same for different religious groups but because their uniformly patriarchal core denies women equality before the law. Prime Minister Narendra Modi's widely reported query as to how one country can be run on two laws misses this. But so does the Opposition when it rushes to defend inaction on these personal laws on grounds of diversity, which they hold as sacrosanct.

The antiquity of India's customs and the diversity of its peoples are both brought up to make a case for tip-toeing around the existing personal laws despite their unequal rights for men and women. But is this a valid argument at all? India's caste system is antique alright, but



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There needs to be a universal civil code applicable to all, irrespective of faith, gender and sexual orientation

India's lawmakers were wise enough to junk it in law very early on the history of independent India.

### The matter of diversity

Next comes diversity. Opponents of reform seem to be unaware that they are extolling a diversity based on religion. Here it is worth recalling political scientist Pratap Bhanu Mehta's reminder that India was not conceived of as "a federation of religions". Similarly, during the deliberations of the Constituent Assembly, B.R. Ambedkar is said to have expressed surprise that religion was being given as much importance when choosing India's political arrangements. These observations have a bearing on what is being debated today.

Whether India's civil code accords with the dictates of all religions is irrelevant. What matters is that it must be in accord with the democratic principles of liberty, equality and dignity. It is entirely possible to draft a civil code that preserves these ideals without any reference to religious practices. This would have the merit of being secular, in keeping with the defining character of India's constitution.

Self-appointed heads of religious groups have resisted calls for a common civil code by resorting to the argument that it infringes upon religious freedom. They fail to see that religious freedom means the freedom to adopt the faith of one's choice. In the domain of expression of faith, such as public worship, Indian courts have declared that it should conform to constitutional principles. In what may be considered one of the most significant social changes in India, restriction of temple entry to the *avarana* was discontinued almost a century ago. Much later, the Supreme Court of India struck down the practice of restricting women's entry to the Sabarimala temple.

These milestones point to an understanding of the right to religion as being confined to choice of one's faith and not to extra-constitutional expressions of it, such as the regulation of women's autonomy by men. This takes us to the question of the efficacy of legislation in advancing rights. For instance, when it comes to temple entry, we find instances of Dalits being denied entry even today. There are also recorded cases of bigamy among Hindus, in some regions greater than among Muslims. But the conclusion drawn from this that banning polygamy among Muslims is discriminatory is a non sequitur. The response to finding bigamy among Hindus hardly invalidates a call for ending the provision for polygamy among Muslims. The right response would be to prosecute those Hindus violating the law.

What is relevant here is not parity among men

of different religious groups when it comes to marriage, it is the rights of women within every religious grouping. The demand that sections of the population, whether tribal or Muslim, are entitled to separate personal laws even when they are gender unjust fails to acknowledge that they are equal beneficiaries of India's democracy. Democracy guarantees them liberty and equality in all spheres of life, including access to the rule of law, freeing them from arbitrary governance. A reform of their personal laws to end gender discrimination, rendering them compatible with democracy, would be no more than to seek a balance between their rights and their responsibilities.

### Bridging a gap

The obsession with parity among males across India's religion-based personal codes blanks out the issue of the rights of its LGBT community. No amount of reform of the Hindu, Muslim and Christian personal codes can reach them, for they have been rendered invisible by these colonial-era constructions. If there were to be a common civil code applicable to all Indians irrespective of faith, gender and sexual orientation, the LGBT population could be accommodated within it. In its absence, an alternative would have to be conceived of. Given the recognition implicitly granted to them with the reading down of Section 377 of the Indian Penal Code in 2018 and a highly visible hearing of a petition in the Supreme Court to allow same-sex marriage, which concluded only recently, the question of a personal law for this group can no longer be postponed.

To be credible, the current debate on personal law must include the LGBT, for the questions of civil partnership, inheritance and adoption are as relevant to them as to other Indians. Mundane acts such as opening a bank account or purchasing life insurance would make one aware of this. Complacently confining the discussion of India's personal laws within a Hindu-Muslim binary, leaves unrecognised the potential to empower a wide section of the population through their drastic overhaul. The combination of uniformly gender unjust personal laws and a disempowered LGBT population points to the advantage of having a universal civil code which encompasses all Indians. On Independence Day in 1947, Prime Minister Jawaharlal Nehru had, in a message to the nation, stated that the task before India was to "create social, economic and political institutions which will ensure justice and fullness of life to every man and woman". No social cleavage has been imagined in this vision. A universal civil code would be a step in that direction.