Data Protection Act vs the Right to Information Act

Mains: *GS II – Polity and Governance*

Why in News?

The recent challenge before the Supreme Court of India regarding amendments to the Right to Information Act (RTI Act) through the Digital Personal Data Protection Act (DPDP Act) has reignited the debate on the balance between transparency and privacy.

What is the constitutional background?

- **Right to Privacy –** In *Justice K.S. Puttaswamy v. Union of India,* the Supreme Court declared the *Right to Privacy* as a fundamental right under *Article 21*, and as part of freedoms guaranteed under *Article 19*.
- The Court directed the government to establish a comprehensive data protection regime, which eventually led to the *DPDP Act, 2023.*
- **Right to Information –** The RTI Act, 2005 operationalizes the citizen's right to know, derived from:
  - **Article 19(1) (a)** – Freedom of speech and expression
  - **Article 21** – Right to life and personal liberty
- The Supreme Court has consistently held that transparency strengthens democracy and accountability.

How Was the DPDP Act Framed?

- **B. N. Srikrishna committee –** It was constituted to draft a data protection framework.
- The committee submitted its report in July 2018.
- **DPDP Act** – After multiple revisions, Parliament passed the *Digital Personal Data Protection Act, 2023.*
- The Act provides a framework for processing personal data of individuals (data principals) by entities (data fiduciaries).

What is the core controversy?

- **Position Under the RTI Act (Before Amendment) –** Section 8(1)(j) of the RTI Act exempted disclosure of personal information if:
  - It had no relation to public activity or interest, OR
  - It caused unwarranted invasion of privacy
- However, disclosure was allowed if larger public interest justified it.
- This created a balancing mechanism between transparency and privacy.

- **Amendment Through DPDP Act (Section 44(3)) –** Section 44(3) of the DPDP Act amends Section 8(1)(j) of the RTI Act to provide a blanket exemption for personal information—without explicit reference to the public interest override.
- **Government's Argument –** Privacy is a fundamental right and cannot be diluted.
- Section 8(2) of the RTI Act still permits disclosure if public interest outweighs harm.
- **Petitioners' Argument –** The amendment removes the proportionality test.
- It undermines the RTI Act's core objective of ensuring accountability.
- It may enable authorities to deny even procurement, audit, or corruption-related information under the guise of "personal information."
- The petitions argue that the amendment is ultra vires the Constitution.

What are the key issues identified?

- **Transparency vs Privacy –** Both are fundamental rights.
- The challenge lies in maintaining a proportionate balance.
- The earlier Section 8(1)(j) explicitly incorporated proportionality.
  The amended version may tilt the balance excessively toward privacy.
- **Impact on Anti-Corruption Efforts –** Previously, disclosure of:
  - Assets and liabilities of public servants
  - Public spending records
  - Procurement details, was possible under "larger public interest."
- The amendment could potentially restrict such disclosures.
- **Doctrine of Proportionality –** In privacy jurisprudence post-Puttaswamy case, restrictions must satisfy:
  - Legality
  - Legitimate aim
  - Necessity
  - Proportionality
- The removal of public interest override raises questions under this doctrine.
- **Judicial Way Forward –** The Supreme Court has indicated it may:
- Define the scope of "personal information"
- Lay down guidelines balancing privacy and transparency
- **Scholars argument** – Many scholars argue that:
  - Section 8(1)(j) should revert to its earlier form
  - The RTI Act's specific balancing clause is superior to the general override under Section 8(2)

What lies ahead?

- The issue is not a contest between privacy and transparency but a search for constitutional harmony between the two.
- A democratic state requires:
  - Protection of personal data
  - Robust transparency mechanisms
- The challenge before the Supreme Court is to ensure that in safeguarding privacy, the citizen's right to know is not disproportionately curtailed.

Reference

[The Hindu| DPDP Act vs RTI Act 2005]