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- Once the consent to use data has been withdrawn by the data principal,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
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2. scale of disclosure and the degree of accessibility sought to be restricted or prevented
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3. role of the data principal in public life
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4. relevance of the personal data to the public
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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.
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- An appeal can be made to the appellate tribunal if the same decision is reaffirmed.
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- 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]
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ii. in the interests of prevention, detection, investigation and prosecution of any offence or any other contravention of law [Section 43]
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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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