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News / India / Govt ignored Niti red flag that data protection law could weaken RTI

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Govt ignored Niti red flag that data protection law could weaken RTI

Niti's concern: Disclosure of personal info of public officials may not be possible in larger public interest too

Written by [Dheeraj Mishra](#) , [Soumyarendra Barik](#)

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5 min read



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Union Minister of Electronics and Information Technology (IT) Ashwini Vaishnaw

Amid protests from stakeholders including Opposition parties and the civil society on provisions of the Digital Personal Data Protection Act, the government faced some pushback from within as well. Niti Aayog, the top think tank of the government, had opposed some of the provisions of the law, and particularly red flagged the changes proposed to the Right to Information (RTI) Act that could “weaken” the legislation.

In simple words, what the data protection law proposed is an amendment to a section in the RTI Act with such effect that disclosure of personal information about public officials would not be allowed even when these are justified in larger public interest.

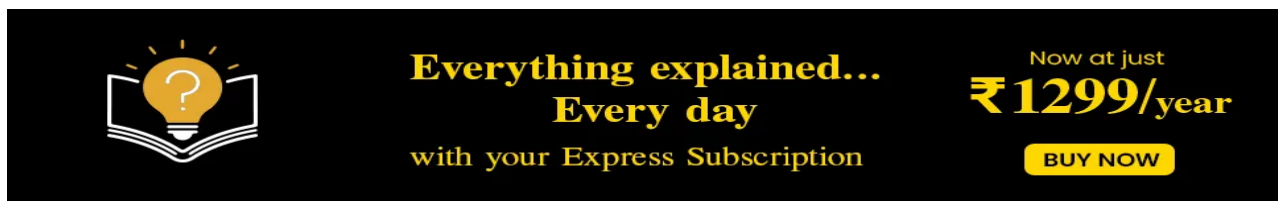
On January 16, 2023, the Niti Aayog formally wrote to the Ministry of Electronics and Information Technology (MeitY) urging it to not pass the proposed law in its current form as it could weaken the [RTI Act](#), and suggested the Bill be amended and fresh opinion sought, records reviewed by [The Indian Express](#) as part of an RTI application showed.

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Niti Aayog's suggestions had come as part of the then ongoing inter-ministerial consultations, and the law was still in its draft stage. Just two months earlier, MeitY had released a new version of the data protection Bill in November 2022, following which it held a series of private inter-ministerial consultations and public consultations.

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The Bill was passed in Parliament in August 2023 and received the President's assent the same month, but all through the process, MeitY kept the proposed changes to the RTI Act unchanged despite the reservations of Niti Aayog. As of now, the law is yet to be operationalised, with necessary rules for its implementation awaited.



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Both Niti Aayog and MeitY are yet to respond to queries sent by The Indian Express.

But two senior government officials, who did not wish to be named, confirmed Niti Aayog's observations. One official said the reason its recommendations were not accepted is because the Department of Personnel and Training (DoPT), the implementing agency for the RTI Act, had not expressed any concerns regarding the

amendments to the RTI Act. The Indian Express has verified during the file inspection that the DoPT indeed did not raise any red flags.

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The reason for Niti Aayog's caution is a single line in the data protection law, that is rather easy to miss as a footnote. The law proposes to amend Section 8(1)(j) of the Right to Information Act, 2005. This prevents a public authority from sharing anyone's personal information on two main grounds – that the disclosure will have no bearing on any public activity, and that revealing such information would cause unwarranted invasion of the privacy of an individual, unless such disclosure is justified in larger public interest.

However, the law proposes that the personal information of public officials will not be disclosed under the RTI Act. The two key grounds, that such information could be disclosed provided it serves a larger public interest, have been done away with. “In section 8 of the Right to Information Act, 2005, in sub-section (1), for clause (j), the following clause shall be substituted, namely:— “(j) information which relates to personal information,” reads Section 44 (3) of the law.

In its opinion, the Niti Aayog, said the amendment will take away the power of the Public Information Officers “to examine the condition”, which will ultimately “weaken the RTI Act”.

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Currently, Section 8(1)(j) of the RTI Act says that “information which relates to personal information and the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information”.

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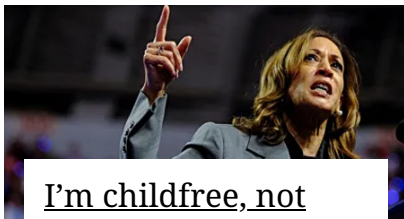
The November 2022 draft version of the data protection Bill also included the clause to amend Section 8(1)(j) of the RTI Act, meaning that the Aayog's suggestion

to remove the provision was not taken into account and the Bill was passed with the provision to amend the RTI Act intact.

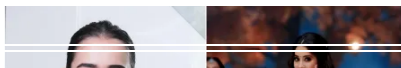
The provision to amend the RTI Act was also criticised by the Opposition parties and civil society activists during the consultation period last year and when the Bill came up for discussion in Parliament. **To address their concerns then, the government had said the right to privacy afforded by the Constitution was a fundamental right, which should be made available to officers in government institutions as well.**

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Soumyarendra Barik is Special Correspondent with The Indian Express and reports on the intersection of technology, policy and society. With over five years of nev

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