
Issues for Consideration

The Registration of Births and Deaths (Amendment) Bill, 2023

The Registration of Births and Deaths Act, 1969 provides for the regulation and registration of births and deaths. The registration of births and deaths falls under the Concurrent List, giving powers to both Parliament and state legislatures to make laws on the subject.¹ As of 2019, the national level of registration of births was 93% and death registration was at 92%.² The Law Commission (2018) recommended the inclusion of marriage registration in the Registration of Births and Deaths Act, 1969.³

The Registration of Births and Deaths (Amendment) Bill, 2023 seeks to amend the 1969 Act. It was introduced in Lok Sabha on July 26, 2023.

Key Features of the Bill

- **Database of births and deaths:** The Act provides for the appointment of a Registrar-General, India who may issue general directions for registration of births and deaths. The Bill adds that the Registrar General will maintain a national database of registered births and deaths. The Chief Registrars (appointed by states) and Registrars (appointed by states for local area jurisdiction) will be obligated to share data of registered births and deaths to the national database. The Chief Registrar shall maintain a similar database at the state level.
- **Electronic certificates:** The Act provides that any person may: (i) cause a search to be made by the Registrar for any entry in a register of births and deaths, and (ii) obtain an extract from the register related to any birth or death. The Bill amends this to provide for obtaining a birth or death certificate (electronically or otherwise) instead of extracts.
- **Aadhaar details of parents and informants required:** The Act requires certain persons to report births and deaths to the Registrar. For example, the medical officer in charge of a hospital where a baby is born must report the birth. The Bill adds that, in cases of births, the specified persons shall also provide the Aadhaar number of the parents and the informant. This provision also applies to: (i) jailor in case of births in a jail, and (ii) manager of a hotel or lodge in case of births in such a place. Further, it expands the list of specified persons to include: (i) adoptive parents for non-institutional adoption, (ii) biological parent for births through surrogacy, and (iii) the parent in case of birth of a child to a single parent or unwed mother.
- **Connecting database:** The Bill states that the national database may be made available to other authorities preparing or maintaining other databases. Such databases include: (i) population register, (ii) electoral rolls, (iii) ration card, and (iv) any other national databases as notified. The use of the national database must be approved by the central government. Similarly, the state database may be made available to authorities dealing with other state databases, subject to state government approval.
- **Use of birth certificate:** The Bill requires the use of birth and death certificates to prove the date and place of birth for persons born on or after this Bill comes into effect. The information will be used for purposes including: (i) admission to an educational institution, (ii) preparation of voter lists, (iii) appointment to a government post, and (iv) any other purpose determined by the central government.
- **Appeal process:** Any person aggrieved by any action or order of the Registrar or District Registrar may appeal to the District Registrar or Chief Registrar, respectively. Such an appeal must be made within 30 days from receipt of such action or order. The District Registrar or Chief Registrar must give their decision within 90 days from the date of appeal.

Issues to consider

Bill may be violating the Constitution

Use of birth certificate

The Bill requires the birth certificate of persons for certain purposes. This provision will be applicable to persons born after this Bill comes into effect. Certain purposes include: (i) admission to an educational institution, (ii) preparation of voter lists, (iii) appointment to a government post, (iv) registration of marriage, and (v) any other purpose determined by the central government. Some of these purposes are constitutional rights that citizens have, and making them conditional on a birth certificate may violate those rights.

School admission: Denying admission to school to a child without a birth certificate may violate the fundamental right to education under Article 21A. Under the Right to Education Act, 2009, for admission to elementary education, a child's age is determined on the basis of their birth certificate or any other document that may be prescribed.⁴ The Act also provides that no child should be denied admission on the grounds of lack of age proof. The Bill does not provide any such exemptions. This implies that if a child's birth has not been registered, they could be denied admission to educational institutions for their entire life.

Right to vote: Article 326 guarantees that every citizen above the age of 18 years has the right to vote. This right may be curtailed if a person is subject to certain disqualifications due to non-residence, being of unsound mind, or crime, corrupt, or illegal practice. The absence of birth certificates (for age proof) does not fall within the mentioned disqualifications.

Linking Aadhaar with birth records

The Bill links the Aadhaar details of the parents and the person reporting the birth to the birth certificate of the child (informant). Informants include: (i) the doctor in-charge of a nursing home, (ii) jailors in case of births in a jail, (iii) manager of a hotel, lodging house, or dharmshala in case of births in such place, and (iv) SHO of the concerned police station in case of an abandoned new-born child. This raises two issues:

Right to privacy: In 2017, the Supreme Court recognised the right to privacy as a fundamental right, subject to reasonable restrictions.⁵ This right may be restricted if four conditions are met: (i) there is a law permitting the restriction, (ii) the restriction serves a public purpose, (iii) the law has a rational nexus with such purpose, and (iv) the law is proportionate, i.e., it is the least intrusive way to achieve the public purpose. This provision may violate the informant's right to privacy. For instance, attaching a medical officer's Aadhaar to any child born in the hospital, or an SHO's Aadhaar to all abandoned children in their jurisdiction may violate these officers' right to privacy disproportionately.

Violation of Aadhaar judgement: This provision may also violate the principles laid down in the Aadhaar judgement (Puttaswamy 2018).⁶ The judgement said that the Aadhaar Act, 2016, was passed as a money Bill and read down provisions that permitted linking of Aadhaar for purposes other than government benefits and services. Using this rationale, the judgement struck down the requirement of Aadhaar for bank accounts and mobile phone connections. The same rationale may apply for linking of Aadhaar to birth certificates, as well. In 2016, during a case on marriage registration under the Delhi (Compulsory Registration of Marriage) Executive Order, 2014, the Central Information Commission stated that Aadhaar was not mandatory for marriage registration based on the 2015 Supreme Court's interim order on Aadhaar.⁷

Linking across databases

The Bill allows the national database for births and deaths to be shared with authorities maintaining other databases (such as electoral rolls and ration cards). Similarly, the state database can be shared with authorities dealing with other state databases. Such sharing is subject to the approval of the central and state government, respectively. However, such linkage across databases under the Bill does not require consent from the person whose data is being linked. This may violate an individual's right to privacy.⁵

The Personal Data Protection Bill, 2019 (now withdrawn) and the Draft Digital Personal Data Protection Bill, 2022 (published by the Ministry of Electronics and Information Technology) both mandated obtaining informed consent of individuals before processing their data. The government was allowed to process data without consent if such processing was needed for providing services and benefits.^{8,9} However, neither Bills states whether such

exemptions would apply if the data is shared across government databases. The Srikrishna Committee, which had suggested a data protection framework for India, had suggested that if personal data is collected for a specified purpose, it should not be processed for any other purpose.

Birth certificate may become the sole conclusive proof for age

The Bill mandates the use of birth certificates in several cases, effectively establishing it as the sole conclusive proof to determine age and place of birth for a person in all such cases. Not having a birth certificate would then imply that a person cannot vote, or apply for admission to school, marriage, or a government job. The Bill does not provide for any other means to determine a person's age in case they do not have a birth certificate. A further consequence could be that this gives the authority issuing birth certificates significant powers to affect an individual's life. This may lead to perverse incentives that could lead to corruption.

Birth certificate requirement may discriminate against children in need of care and protection

After this Bill comes into effect, any child born will require a birth certificate to prove their age and place of birth for certain purposes. These include: (i) admission to an educational institution, (ii) preparation of voter lists, (iii) appointment to a government post, and (iv) any other purpose determined by the central government. Delayed registration is allowed under certain conditions. Registration will be allowed after 30 days but within one year, only with the written permission of the District Registrar (or any such authority) upon payment of a fee and submission of a self-attested document, as prescribed. Registration after a year of birth will be allowed only after an order made by the District Magistrate following verification of the correctness of birth, and on payment of a fee. These provisions may discriminate against children in need of care and protection who may not have a birth certificate. For example, there may be instances where a child's birth was registered but they ran away from home, or lost their parents in a natural disaster. If such a child wants to enrol in school, determining their age may be difficult.

Further, this may violate provisions of the Juvenile Justice Act, 2015 that aim to promote social reintegration and rehabilitation of children in need of care and protection.¹⁰ In 2021, the Supreme Court noted that in cases where the Child Welfare Committee or the Juvenile Justice Board is uncertain about whether a person brought before it is a child or not, they can use evidence listed in the Juvenile Justice Act, 2015 to determine the person's age. The evidence includes: (i) birth certificate from the school or matriculation certificate, or in the absence of either, (ii) birth certificate given by an urban or rural local body, or in its absence, (iii) a medical age determination test conducted on the orders of the Child Welfare Committee or Juvenile Justice Board. The Court ruled that the age recorded by the Child Welfare Committee or the Juvenile Justice Board will be the true age of the person brought before it for the purpose of the Juvenile Justice Act, 2015.¹¹ The Bill does not provide of an alternative proof if a person does not have a birth certificate.

¹ Entry 30, List III, [Seventh Schedule](#), The Constitution of India.

² Unstarred Question No. 1791, Rajya Sabha, Ministry of Home Affairs, August 04, 2021.

³ Report No. 270, [Compulsory Registration of Marriage](#), The Law Commission, July 2017.

⁴ Section 14, [The Right to Child for Free and Compulsory Education Act, 2009](#).

⁵ Writ Petition (c) No. 494 of 2012, [Justice K.S Puttaswamy v Union of India](#), Supreme Court, August 24, 2017.

⁶ Writ Petition (c) No. 494 of 2012, [Justice K.S Puttaswamy v Union of India](#), Supreme Court, September 26, 2018.

⁷ [CIC/SA/A/2015/001772](#), Central Information Commission, 2016.

⁸ [The Personal Data Protection Bill, 2019](#).

⁹ [The Draft Digital Personal Data Protection Bill, 2022](#).

¹⁰ [The Juvenile Justice Act, 2015](#).

¹¹ Criminal Appeal No. 1240 of 2021, [Rishpal Singh Solanki v. State of Uttar Pradesh](#), Supreme Court, November 18, 2021.

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