

From the Right to Know to the Right to Deny: The Unconstitutional Weaponization of Privacy in India

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Abstract

Democracy is a "Government by, of and for the people" that relies on transparency, a principle upheld by the Indian judiciary in many landmark cases. "The Right To Information" and 'The Right To Know' were recognized as an integral part of Art. 19(1)(a) and Art. 21. However, along with this, the acknowledgement of "Right to Privacy" as an individual's right under Art. 21 in the case of *Puttaswamy* introduced a complex constitutional tussle between both rights and their overriding effects on each other.

Though the case mandated that any question on individual confidentiality must satisfy the "three-fold test of legality, legitimacy, and proportionality" which serves as a balancing mechanism between the two rights, the Digital Personal Data Protection (DPDP) Act, 2023, through provision 44, has fundamentally altered this equilibrium by amending provision 8(1)(j) of the 2005 information legislation to remove the "larger public interest" and the prohibition on imposing "unreasonable restrictions" on citizens' rights, giving primacy to privacy over information.

This paper seeks to critically analyze the changes created by this amendment in the Right To Information Act, 2005, imposing unreasonable restrictions on the individual right to information and violating Art. 14. Furthermore, it explores global trends regarding freedom of speech and expression. International frameworks such as the EU's GDPR (Articles 85 and 86), Canada's 1983 legislation, and Australia's 1982 legislation all mandate a reconciliation of privacy with a public interest test. Finally, the paper proposes future steps such as the redundancy of amendment provision 44(3) of the data protection legislation and restoration of the "Public Interest Test".

Keywords: RTI Act 2005, DPDP Act 2023, Right to Privacy, Article 19(1)(a), Public Interest test.

1. Introduction

India's identity as a democratic republic is upheld not only through its Constitution Preamble (India Const) but through its active government being democratic governance. Democracy is not merely a form of government that provides people to choose their representative but a controlling mechanism through which each citizen can control the working of government providing him a clear pathway leading towards accountability and transparency. Moreover a link can be established between true democracy and information through the words of "Justice P.N. Bhagwati" as

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing" (S.P. Gupta v. President of India, 1981)

As referring judgement made by SC held

[I]n a government of responsibility like ours where the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings. (State of U.P. v. Raj Narain, 1975)

This describes the importance of information and limits secrets to a few only.

Moreover a deep understanding of democracy and right to information can be derived from the case held

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It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. There can be little doubt that' exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is dean government and a powerful safeguard against political and administrative aberration and inefficiency. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. (S.P. Gupta v. President of India, 1981)

As information as fundamental right has been mandated under Art. 19(1)(a) and Art. 21 which describes the importance of such right and legal insight used by SC, as to practice free speech and expression, a person should have information and knowledge of the working of govt., failing to which the person fails to exercise its fundamental rights.

So all this describes the need for the information as an important part of Indian democracy and leading a path to accept it and adopt it, which was first done through the "The Freedom of Information Act, 2002" (The Freedom of Information Act, 2002) later repealed and introduced "The Right To Information Act, 2005" (2005, 2005) as does not only control the power of public offices but also promotes transparency and accountability of government.

Along with it as we are heading towards an era where the digital environment is subject to risk of digital fraud and cyber security challenges make it necessary for us to protect our personal digital data

to safeguard personal information. So with the motive to prevent the handling as well as storage of individual's data MeitY brings an act called "THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023" (2023, 2023) to safeguard individual privacy and the country's integrity via making dedicated legislation on that.

2. Analysis of Changes

Provision 44(3) of the 2023 data protection legislation mandates following substitution in provision 8(1) of 2005 information legislation (2005, 2005)

(j) information which relates to personal information (2023, 2023)

The amendment had exempted the disclosure of any individual's information to anyone via a RTI application without properly defining the scope of personal information. "Personal data" as per provision 2(t) along with provision 3(a)(ii) of personal data protection legislation, expand the ambit to such extent that merge in its horizon all information relating to the identity of anyone either in digital form or in physical form which has been digitalized at later stage, raising a question on the whole working of RTI applications. (2023, 2023) Furthermore, it can be understood by the example that if anyone wants to file a RTI application to seek the beneficiaries of particular public scheme then Public Information Officer (herein referred as PIOs) can deny such information on the ground that such information is covered as personal information and cannot be disclosed as per the new amendment in RTI by DPDP Act as the scope of personal information had been so widened that even disclosure of names of such beneficiaries will lead to identifying them.

2.1. Public Interest Override

Previous to this amendment, provision 8(1)(j) of the 2005 transparency framework, provided a qualified exemption for personal data while mandating a balancing test, as:

"\...information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause an unwarranted invasion of the privacy of the individual\..."

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. (2005, 2005)

A balancing quo can be understood with the clear legislative intent to protect the privacy as well information on reading provision 8(1)(j) while the harmonizing of both rights. Moreover referring to the case where the apex court ruled that if 'larger public interest' is proven then the dissemination of public records can be allowed. (Girish Ramchandra Deshpande v. Cent. Info. Comm'n, 2013) A clear judiciary and legislative intent be understood realizing importance of larger public interest and its need in democracy like us.

Moreover in the another case the bench held that public interest is subject to the case and matter involved in it and cannot be predetermined in any case. Though later apex court held that anything cannot be predetermined stated as in public interest and which is dependent on each case but all sudden removal of such doctrine put a question mark on legislature and the intention behind it, as one's privacy cannot be compared with whole government transparency and accountability. (Supreme court of India v. Subhash Chandra Agarwal, 2020)

2.2. Unreasonable Restrictions On RTI

As the information as individual right is covered under Art. 19(1)(a) state as

All citizens shall have the right--- (a) to freedom of speech and expression; (India.Const. art. 19)

Whose restrictions are provided in Art. 19(2)

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 6[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. (Constitution of India, Art. 19)

As no clear mention of privacy being a restriction ground for rights under article 19(2), so cannot be a ground for such restriction and being privacy not an absolute right under art. 21 as held in case (Justice K S Puttaswamy (Retd.) v. Union of India, 2017) cannot override such rights. In the case of PUCL bench held, a tussle between privacy and information then only right to information should prevail as it serves the larger public interest. (People's Union for Civil Liberties (PUCL) v. Union of India, 2003)

2.3. Relief Prescribed by the Government Against the Amendment

The legislature posits that the changes does not compromise transparency, asserting that provision 8(2) of information legislation permits applications for information when the public interest substantially cause potential harm. The Attorney General claimed that provision 8(2) effectively incorporates the former changes and work to safeguard the individual right. (DPDP Act, 2023)

This contention disregards fundamental structural realities:

- The proviso to provision 8(1)(j) previously mandated Public Information Officers (PIOs) to conduct an interest-weighting assessment during the initial evaluation. Following the amendment, PIOs possess the authority to immediately rejection of application.
- Provision 8(2) is operative solely at subsequent appellate stages, thereby shifting the onus from the public authority to the citizen.
- The severity of penalties stipulated under the legislation intensifies risk aversion, rendering it highly improbable that a PIO would rely upon the override provision of provision 8(2).
- The excision signifies a preference of individual data concern over the principle of transparency.

Consequently, provision 8(2) is insufficient to balance the structural void resulted by the exclusion of the mandatory framework.

2.4. The Result: A Blanket Ban

Reaching to the conclusion, the substitution of provision 8(1)(j) along with its proviso has resulted in a limitation on information from the government. As the proviso clearly provides that any data which can be discussed in parliament and state legislature cannot be withheld from the citizens which serve as the basic tool for accountability and transparency. Parliament consists of elected members representing the interest of individuals and if something can be disclosed there is also related with people in general. The removal of proviso also not justifies any valid contention behind such action of legislature.

3. Reference of EU-GDPR

In the global context EU- GDPR are most relevant regulations that guide the whole working of digital data protection in the EU. To understand the whole framework of EU-GDPR the understanding of data processing and article 85 and 86 is most crucial because as per *Article 1 of EU GDPR* the objective of GDPR's is to protect the individual data. For this processing is defined in art. 4(2) as wider term including all the aspects of the data movement in any way as-

'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; (Regulation (EU) 2016/679 of the European, 2016)

This is the vast definition covering all the handling of data included in itself. While article 85 and 86 fall under chapter 9 of EU-GDPR which dealt with special provisions regarding processing of personal data as follows-

Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including

processing for journalistic purposes and the purposes of academic, artistic or literary expression. For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information. Each Member State shall notify to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

Which to be read with recital 153 of EU-GDPR.

Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

Which to be read with recital 154 of EU-GDPR

From this it can be understood that in GDPR's the public interest doctrine is self built in regulations for maintaining accountability and transparency among the working of government. A balancing quo can be referred from these regulations for India's legislation which via section 44(3) tries to disturb this balance among two crucial and important rights of an individual. A global reference can be used for arguing the need for restoration of pre amendment provision 8(1)(j) and doctrine of public interest to uphold and affirm the traditional democratic spirit of India.

Moreover apart from EU from various democratic regime, the importance of public interest can be related as

From Canadian legislation also includes similar exclusions for personal information. Nevertheless, many of these laws include clear provisions for disclosure when a "compelling public interest" significantly outweighs any privacy concerns. (Access to Information Act, 1985)

From Australia's legislation which is structured similarly, featuring exemptions for personal data that often rely on a "public interest test." This test requires competent authorities to balance factors favoring disclosure. Disclosure is generally favored when the public interest is deemed substantial. (Freedom of Information Act, 1982)

4. Future Action: Restoration of the Doctrine of Public Interest

Before providing the future steps required in context of DPDP act it is very much necessary to understand the internal statutory formation of whole DPDP Act specially through provision 2(x), 3(c)(ii)(B), 4 and 7(d) which deals with the handling and the disclosures of individual data by data fiduciary. While providing 'legitimate uses' and 'public availability' exemptions, drafter of DPDP Act had provided robust and internal mechanism for public authorities to balance data protection and meet their transparency requirements. (2023, 2023, §§ 2(x), 3(c)(ii)(B), 4, 7(d).) A deep analysis of these sections raise a question on amendment through section 44(3) regarding its redundancy, jurisprudentially unnecessary and constitutionally unnecessary.

4.1. Grounds for Redundancy of the Amendment

To show the redundancy of amendment it is necessary to describe the operational mechanism provided in DPDP Act to manage such situations as-

4.1.1. Decoding Section 2(x): The Expansive Scope of "Processing"

This requires in depth examination of how the statute defines processing as material applicability of the DPDP Act hinges entirely on this

terminology of "processing." Under provision 2(x) of the legislation, processing is defined in an extraordinarily expansive manner referring to all functioning or set of functions done on digital individual data. Crucially, the statutory definition explicitly includes collection, storage, recording, organizing, sharing, alignment, combination, and, most importantly for the context of transparency laws, "disclosure by transmission, dissemination or otherwise making available" (2023, 2023, § 2(x).)

So from the above definition, if the PIO operating under RTI act receives a request for information that contains digital personal data and subsequent release of such information by PIO will lead him to 'disclosure by transmission' or 'dissemination' of personal data. Therefore, the administrative act of fulfilling an RTI request unambiguously constitutes "processing" under provision 2(x) of the data protection legislation. Because the legislation explicitly recognizes RTI disclosures as a regulated form of processing, the legality of such disclosures must be evaluated strictly through the lens of the DPDP Act's authorizing provisions, primarily found in Sections 4 and 7. (2023, 2023, §§ 4, 7.)

4.1.2. Section 4: The Lawful Purpose and Consent Framework

Provision 4 of legislation provides foundational elements for processing of data. It mandates that a person which as per section 2(s) of DPDP Act defined to include public authorities, government instrumentalities, companies, and individuals may handle the individual data of a Data Owner as per the permissible action in legislation and a designated "lawful purpose" (2023, 2023, § 2(s).) Provision 4(1) delineates two primary, mutually exclusive pathways for lawful processing as first via processing for which the Data Principal provides explicit and informed consent or processing for "certain legitimate uses". Furthermore, Section 4(2) provides a negative definition, clarifying that a "lawful purpose means any purpose which is not expressly forbidden by law". (2023, 2023, §§ 4(1)–(2).)

So, the statute on the explanation of 'certain legitimate uses' provides a valid ground to link it with "*legitimate interests*" or "*legal necessity*" as

referred to in EU-GDPR also. Moreover for States and its instrumentalities it is legally impossible and practically unfeasible to gather consent for processing their data for certain legitimate cases.

And if the DPDP Act did not include the provision regarding handling of data without the permission of the data principal then the entire transparency framework would be collapsed as PIOs could never obtain consent from corrupt officials to disclose their misconduct records.

4.1.3. Legitimate Uses Under Section 7(d): The Inherent Legal Obligations

The other legal argument demonstrating the redundancy of the provision 44(3) amendment to the RTI lies within provision 7 of data protection legislation.

As per provision 7 it provides for the legal obligation and can be referred to as "certain legitimate uses," wherein a Data Fiduciary (including a government department) may process individual data without seeking permission of the Data Principal.

For this provision 7(d) of DPDP Act provide the permit of processing as -

for fulfilling any obligation under any law for the time being in force in India on any person to disclose any information to the State or any of its instrumentalities, subject to such processing being in accordance with the provisions regarding disclosure of such information in any other law for the time being in force; (2023, 2023, § 7(d).)

So critical analysis of provision serves as robust legal bridge between privacy of personal data and obligations as mandated by other statutes. Provision 7(d) inherently validates the changes or movement of individual data when such movement is required to comply with existing legislative mandates. The 2005 legislation is undeniably a "law for the time being in force in India." As per provision 7 in the 2005's legislation, where govt. establishments are under a strict, time-bound statutory obligation to provide information to citizens upon request and are subject only to the specific exclusion outlined in provision 8 of the

2005 transparency framework. (2005, 2005, §§ 7-8)

As provision 2(x) also include disclosures as the form of data processing and provision 7 provide for a lawful ground to process data without consent to fulfill legal obligations as public authority disclosing personal data pursuant to a valid RTI request is engaging in a legally protected "legitimate use" under legislation putting an additional obligation on PIO to validate whether such application is valid and serve larger public interest but instead of that amendment had criminalized such act of as making disclosure of public information as exemption to it.

DPDP Provision	Function	Application to RTI	Conclusion
§ 2(x)	Defines "processing" to include dissemination and disclosure.	Releasing documents under an RTI request is an act of data processing.	RTI compliance falls within the Act's scope.
§ 4(1)	Requires processing on the basis of consent OR "legitimate uses".	RTI disclosures cannot rely on consent for urgent or larger-public-interest matters.	Disclosures must rely on the "legitimate uses" pathway.
§ 7(d)	Allows processing to fulfil any obligation under an existing statutory framework.	The Act obliges PIOs to disclose non-exempt information.	The DPDP framework already authorised RTI disclosures without amendment.

4.1.4. The Publicly Available Data Exemption: Analyzing Section 3(c)(ii)(B)

Another ground for redundancy of provision 44(3) lies in provision 3(c)(ii)(B) of the legislation which informs about the territorial, personal and material applicability of legislation. As the said above provision informs about the person whom this act does not extend.

As provision 3(c)(ii)(B) of the 2023's data legislation formally declare that the legislation shall not applicable to individual data that is be made available to large individual by "any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available". (2023, 2023, § 3(c)(ii)(B))

This clause serves as a foundational component of the transparency and privacy balancing status quo in DPDP Act. It establishes a clear legal hierarchy wherein specific statutory obligations to publish data supersede the data integrity and confidentiality duty as per data protection legislation. If a law compels a public authority to direct a corporation or an individual process its personal data publicly then the processing associated with that mandatory publication is entirely exempt from the DPDP legislation's rigorous compliance mechanisms. Consequently the requirements for prior notice under provision 5, explicit consent under provision 6, and data principal rights regarding erasure or correction under provision 12 do not apply to that specific data once it is made public pursuant to a legal mandate. (2023, 2023, §§ 5, 6, 12)

The interaction between provision 3(c)(ii)(B) (2023, 2023, § 3(c)(ii)(B)) and the 2005's information legislation highlights a profound legislative synergy that the government subsequently chose to ignore and dismantle. Provision 4 of the information legislation mandates the proactive disclosure of a vast array of administrative information by all public authorities. (2005, 2005, § 4.) This proactive disclosure includes details of public staff, monthly payment, the organizational budget and the recipients of concessions, permits, or authorizations. Much of this proactively disclosed information inherently contains the personal data of public functionaries and beneficiaries.

Under the framework established by provision 3(c)(ii)(B) of digital data protection Act as public authorities are under a rigid statutory obligation (via provision 4 of the information legislation) to make specific data publicly available, the DPDP Act would logically and legally not apply to such proactive disclosures. The data protection framework explicitly defers to the pre-existing transparency framework. When read along with Section 7's "legitimate uses" for RTI requests, Provision 3(c)(ii)(B) creates a defense for public authorities to promote transparency over secrecy in public authorities.

Therefore on all the above contentions the narrative that the DPDP Act required such an

amendment to the RTI Act to "harmonize" the two statutes is intellectually flawed and legally insupportable. The necessary harmony already existed within the unamended text itself.

5. Article 14 and the Proportionality Doctrine: The Rational Nexus Deficit

This part of the paper deals with more severe critique which extend far beyond the structural redundancy into deep constitutional violations concerning *Art. 14 i.e. Right To Equality*.

5.1. The Intelligible Differentia Standard

Art. 14 embodies equality, which prohibits the target to specific group without merit but allow category on valid distinction for the purposes of governance. (Constitution of India, Art. 14) As established in landmark case of *Anwar Ali (State of West Bengal v. Anwar Ali Sarkar, 1952)* and another of *Ram Krishna Dalmia (Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1958)*, where a legislative classification to be valid and survive constitutional scrutiny if it must pass the twin tests of "intelligible differentia" (there must be a clear, logical distinction between those grouped together and those left out) and a "rational nexus".

The DPDP's amendment in the RTI Act fails the intelligible differentia test because it illegally conflates two inherently distinct classes of individuals i.e. private citizens and public functionaries entrusted with public duties. Public servants, by virtue of their voluntary assumption of public office and payment from the public exchequer, are subject to public scrutiny and enjoy a significantly lower expectation of privacy regarding their official duties. Therefore, via the pre-amendment *Section 8(1)(j)*, this unequal standing between a public servant and a private citizen was rightly recognized through the public interest test.

But now through provision (2023, 2023, § 44(3).) of personal data protection legislation this constitutionally valid distinction is totally vanished as by blanket prohibition on the disclosure of all "personal information" the law treats the disciplinary records, tender evaluations, and asset declarations of a corrupt bureaucrat with the exact same level of absolute privacy protection as the

sensitive medical records or financial data of a private citizen. Furthermore, the amendment accords disturbance and arbitrary abuse by the executive to withhold any containing a name, thereby violating the principles of fairness and non-arbitrariness inherent in Art.14.

5.2. The Absence of a Rational Nexus

Moreover the amendment also lack the rational nexus i.e. the objective sought to be achieve must be valid by the legislation's preamble which is state as

An Act to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto. (2023, 2023, pmb.)

But creating a total exemption from disclosure of individual identities under the 2005's legislation is not connected to this aim. As protecting digital personal data does not legally force to shield public authorities from democratic accountability as the original RTI framework which was earlier self sufficient to protect the personal information unless larger public interest override it. Moreover Justice A.P.Shah, former Delhi HC's Chief Justice and former Law Commission's Chairperson as noted in a detailed legal critique that this blanket exemption will lead vast amounts of information into darkness from the public affecting the transparency and accountability of their working. (Justice A.P Shah's Open Letter Seeking, 2025)

6. Conclusion

Though the personal data protection legislation was drafted with internal safety valves designed to prevent the disruption of existing statutory obligations, the core rationale presented by the Union Government for amending the information legislation strict privacy protections would inherently conflict with the information legislation's transparency mandates. So, the amendment was not enacted to resolve a genuine conflict of law, rather it was introduced to systematically dismantle the transparency regime. As provision 44(3), the legislature intentionally

disturbed this harmonious construction between two rights of individuals. The amendment was not necessary to protect ordinary citizens' privacy as the original provision 8(1)(j) already effectively protected citizens from "unwarranted invasions" of privacy. Instead, the blanket ban introduced by provision 44(3) primarily serves to shield public authorities and state functionaries from public scrutiny. In constitutional terms, the amendment has weaponized the fundamental right to confidentiality to disbalance and nullify the information as fundamental right. It is need that the Supreme Court of India, using its judicial activism and power to restore amendment provision 8(1)(j) and proportionality test back in 2005's information legislation. Lastly, the matter was schedule for consideration in matter of Venkatesh Nayak v. UOI where the petitioner argued that such amendment leads to total exemption from disclosure of individual identities which was to be heard on 23 March 2026. The court refused to grant an interim stay on the personal data legislation or its provisions while the constitutional challenge is pending. It took the view that it would not halt a parliamentary statute before full hearing and refer the matter to a greater bench as matter involves fundamental issue about the balance between privacy, transparency and free speech.

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