
THE TRANSPARENCY–PRIVACY PARADOX IN INDIA: A CRITICAL EXAMINATION OF THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 AND ITS IMPACT ON THE RIGHT TO INFORMATION ACT, 2005

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ABSTRACT

The tension between transparency and privacy has emerged as one of the most pressing constitutional challenges in India. The Right to Information Act, 2005 (RTI Act) revolutionised democratic accountability by empowering citizens to demand access to government-held information. Its framework, however, always contained a delicate balance—protecting personal privacy under Section 8(1) (j) while permitting disclosure in larger public interest. This equilibrium has been disrupted by the Digital Personal Data Protection Act, 2023 (DPDP Act), which amends the RTI Act through Section 44(3) to create an absolute bar on disclosure of personal information. In doing so, it removes the possibility of balancing transparency with privacy and risks hollowing out the RTI framework.

This paper examines the constitutional and policy implications of this amendment. It traces judicial developments from *Raj Narain* to *Puttaswamy*, analyses the doctrinal shift from proportionality to absolutism, and highlights the risks of misuse in a bureaucracy already inclined towards secrecy.

The findings suggest that India's current approach undermines constitutional values of openness and may face judicial correction. Recommendations are offered to restore balance, including reintroducing a public interest test, narrowing the definition of personal information, and strengthening independent oversight. The paper concludes that privacy and transparency are not mutually exclusive but complementary pillars of democracy, both of which must coexist to sustain citizen trust and state accountability.

Keywords: Transparency, Privacy, RTI Act, DPDP Act, Proportionality, Participatory Democracy.

Overview

India's democratic journey has been characterised by an ongoing conflict between transparency and secrecy. It was hailed as a turning point in this fight when the Right to Information Act, 2005 (RTI Act) was passed. By giving common people the opportunity to enquire, examine, and demand responsibility, it revolutionised the relationship between the people and the government. Citizens could demand answers for administrative mistakes, uncover corruption, and get clarification on how public resources were being used by using RTI applications. It reinforced the notion that democracy can only flourish when citizens have access to information, and in both spirit and practice, it embraced the constitutional protection of free expression under Article 19(1)(a).

Over time, the RTI Act came to symbolise empowerment. It was hailed as the "*sunshine law*," which broke through layers of bureaucratic secrecy. Investigative journalists, civil society organisations, and ordinary citizens used it to expose fraud and ensure that aid programs were carried out. RTI has been one of the most effective instruments for participatory government in a country as complex and diverse as India, where the state's role permeates every aspect of daily life. It helped to change the balance of power by reminding government officials that public authority is not immune to examination and is subject to democratic accountability.

Yet, there are contemporary challenges to the promise of transparency. The Digital Personal Data Protection Act, 2023 (DPDP Act), which aims to safeguard privacy in the digital age, introduces a new paradigm. Privacy, which was recognised as a basic right in the landmark decision of *K.S. Puttaswamy v. Union of India*¹, has become crucial to government in a world where data is currency. Growing worries about the abuse of personal data by both private and public actors necessitated the enactment of a special regulation. By governing the processing, storing, and safeguarding of digital personal data, the DPDP Act seeks to strike a balance between the demands of business and governance and the rights of individuals.

However, the conflict between privacy and transparency has led to a constitutional dilemma. The DPDP Act's Section 44(3) amends Section 8(1)(j) of the RTI Act², removing the prior public interest criterion and expanding the exemptions for "personal information." Under the

¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

² The Digital Personal Data Protection Act, 2023, s. 44(3), which substitutes s. 8(1)(j) of the Right to Information Act, 2005, now reads: "information which relates to personal information;"

original RTI framework, publication of personal information might still be required if the public benefit outweighed privacy concerns. Because of this check and balance, privacy was not used as a pretext for official abuse or corruption. After the modification, the exemption was broadened and the balancing precaution was eliminated. What was formerly a flexible equilibrium has been replaced by an absolute constraint.

This development carries important implications. Information about public officials' assets, qualifications, and recipients of government programs that was previously accessible under RTI may now be kept on the basis of preserving "personal information." The fundamental tenets of RTI, according to its opponents, are that transparency is the rule and secrecy is the exception. The shift could jeopardise one of the most significant democratic advancements of independent India. However, supporters of the DPDP Act argue that privacy is just as important to democracy and that the move simply harmonises RTI with evolving constitutional legislation.

This article situates the conversation within the frames of analogies, statutes, and the constitution. It examines whether the existing legal system complies with the proportionality principle and the conflicts between two fundamental rights: the right to know under Article 19(1)(a) and the right to privacy under Article 21. By looking at case law and legislative intent, the study evaluates how these rights have been balanced in practice. Additionally, when privacy is utilised as a convenient way to hide information, the study highlights the dangers of executive overreach.

In the end, the tension between privacy and transparency is a question of constitutional design rather than an unavoidable one. A strong democracy must uphold both ideals:

openness guards against the abuse of power, while privacy safeguards the individual. The purpose of this essay is to investigate how India might balance these conflicting demands without sacrificing one for the sake of the other.

Review of Literature

Scholarly and policy debates on the intersection of RTI and the DPDP Act have largely revolved around one central question: has India compromised transparency in the name of privacy? Civil society groups such as the Internet Freedom Foundation argue that the

amendment dismantles the accountability regime created by the RTI Act, pointing out that Section 8(1)(j) already had sufficient safeguards against unwarranted invasions of privacy.

Their concern is that the new framework weaponises privacy, enabling authorities to shield information that would otherwise expose corruption or maladministration. Commentaries on platforms like ForumIAS and SCC Online similarly underline that the removal of the public interest test represents a sharp departure from international best practices, where privacy exemptions are almost always balanced against democratic imperatives.

On the other hand, the government defends the amendment as a step towards clarity and dignity in information-sharing. Official communications from the Ministry of Electronics and Information Technology emphasise that the DPDP Act provides certainty to both citizens and public authorities about the scope of personal data protection. Some academics also suggest that privacy, especially in the digital era, must be given primacy to prevent misuse of sensitive data. However, legal scholars writing in journals such as the *Indian Law Institute Journal* argue that an absolutist interpretation of privacy undermines constitutional democracy itself, as the right to information is integral to the basic structure of participatory governance.

Taken together, the literature presents two competing narratives: one of harmonisation and one of dilution. Yet, as several studies note, there remains a research gap in doctrinal analysis, particularly in applying proportionality and comparative constitutional frameworks to Section 44(3). This paper addresses that gap by examining the transparency–privacy paradox not as a binary conflict but as a constitutional balancing exercise.

Statutory Framework and Judicial Developments

The story of India’s transparency framework begins with the Right to Information Act, 2005 (RTI Act). Enacted after years of grassroots struggle, the law was designed to dismantle the culture of secrecy that dominated public administration. Its objective, clearly stated in the preamble, was to ensure accountability and empower citizens to seek information about government actions. Section 3 granted every citizen the right to information, while Section 8 listed the exemptions. Among them, Section 8(1)(j) dealt with “personal information,”

prohibiting disclosure unless a larger public interest justified it³. This provision was the law's safety valve, ensuring that privacy was protected but not at the cost of democratic accountability.

The Digital Personal Data Protection Act, 2023 (DPDP Act), introduced a major change to this balance. While its primary goal is to regulate the processing of personal data in the digital age, Section 44(3) specifically amends Section 8(1)(j) of the RTI Act. The earlier language, which required authorities to weigh privacy against public interest, was replaced with a categorical exemption: any information classified as "personal" could be withheld, without the possibility of disclosure even if larger public interest demanded it. In effect, the balancing test was removed, leaving an absolute bar on access to personal information.

This amendment has created deep tensions. On one hand, the RTI Act was born from the principle that transparency is the rule and secrecy the exception. On the other, the DPDP Act reflects the constitutional recognition of privacy under Article 21, affirmed by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017). The result is a direct clash between two rights that are both central to democratic governance: the citizen's right to know and the individual's right to privacy.

Judicial Foundations of the Right to Information

Long before the RTI Act was implemented, the judiciary has already recognised transparency as a part of Article 19(1)(a). "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," the Court famously declared in the 1975 case of *State of U.P. v. Raj Narain*⁴. Similarly, in *S.P. Gupta v. Union of India*⁵, Justice Bhagwati described open government as the new democratic culture, which paved the way for the right to know to be officially recognised by the law. These cases created the constitutional foundation for the RTI Act and made transparency a part of India's democratic fabric.

³ The Right to Information Act, 2005, s. 8(i)(j): "information which relates to personal information the disclosure of which has no 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:

⁴ *State of U.P. v. Raj Narain*, (1975) 4 SCC 428.

⁵ *S.P. Gupta v. Union of India*, (1981) 1 SCC 87.

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

Courts were tasked with interpreting Section 8(1)(j) when the RTI Act went into effect. The Supreme Court held in *Girish Ramchandra Deshpande v. CIC* ⁶ that public officers' income tax returns and service records could not be made public unless there was a compelling public interest. This case upheld the significance of the public interest test in spite of its shortcomings. In *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*,⁷ a Constitution Bench ruled that even the Chief Justice of India was subject to RTI, while they highlighted proportionality to strike a balance between privacy and transparency. A recurring theme emerged from these rulings: privacy is safeguarded, but where accountability is at stake, the public interest may supersede private.

Privacy as a Fundamental Right

The constitutional environment changed dramatically in 2017 when a nine-judge bench ruled in the *Puttaswamy* case that privacy was a fundamental right under Article 21. Importantly, the Court made clear that privacy is not absolute. According to the proportionality principle, any restriction or exemption must be necessary, have a valid reason, and be the least restrictive choice. This conceptual framework provided a rational way to strike a balance between privacy and transparency, acknowledging that both are necessary for a functioning democracy.

However, the DPDP Act departs from this idea of proportionality. Because Section 44(3) creates a general prohibition on the revelation of personal information under RTI, it may violate the core principles outlined in *Puttaswamy*. It elevates privacy to an absolute legislative privilege while ignoring the constitutional necessity that rights be carefully balanced.

Judicial Response After the DPDP Act

Since the enactment of the DPDP Act, 2023, there has not yet been a conclusive judgment directly addressing the validity of Section 44(3) and its impact on the Right to Information Act, 2005. Nevertheless, early judicial reactions indicate significant concern regarding the potential breadth of this provision. In a 2024 proceeding before the Delhi High Court, the

⁶ *Girish Ramchandra Deshpande v. Central Information Commissioner & Ors.*, (2013) 1 SCC 212.

⁷ *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

Court remarked orally that “*the very essence of RTI is public interest; if that is excluded, the law risks being hollowed out.*” This statement underscores the judiciary’s recognition that broad exemptions under Section 44(3) of DPDP Act could undermine the core purpose of the RTI regime, which is to promote transparency and accountability in governance.⁸

A number of petitions challenging the constitutional validity of Section 44(3) are currently pending before both the Supreme Court and various High Courts. These cases raise questions about whether the amendment disproportionately restricts the public’s right to information by prioritizing privacy without considering public interest.² Legal commentators suggest that the judiciary may adopt one of two approaches: it could read down the provision to ensure that disclosure is permitted where public interest clearly outweighs privacy concerns, thereby preserving the proportionality framework established in *K.S. Puttaswamy v. Union of India*,³ or it could uphold the amendment in line with Parliament’s legislative intent, leaving the balance between privacy and transparency largely to the legislature.

The ongoing judicial scrutiny reflects a broader trend in Indian constitutional law, where courts are increasingly expected to act as arbiters in conflicts between competing fundamental rights. While the DPDP Act elevates privacy as a legislative safeguard, the judiciary may intervene to ensure that this right does not entirely eclipse the public’s right to know. The outcome of these cases will be pivotal in shaping the practical application of Section 44(3), determining whether India’s transparency framework continues to operate in a manner consistent with democratic accountability.

Critical Issues and Constitutional Implications

The enactment of Section 44(3) of the Digital Personal Data Protection Act, 2023, has introduced a significant challenge in balancing two fundamental yet competing constitutional rights: the right to privacy under Article 21 and the right to information under Article 19(1)(a). In the contemporary digital era, where personal data is ubiquitous and government accountability is critical, these rights frequently intersect, creating complex legal and policy dilemmas. The core issue lies in maintaining democratic oversight and public trust while simultaneously respecting individual privacy.

⁸ Oral observations of the Delhi High Court in a 2024 hearing regarding Section 44(3), Digital Personal Data Protection Act, 2023.

The Right to Information Act, 2005, was premised on the principle that transparency is the default position of governance, and secrecy is the exception. Section 8(1)(j) of the RTI Act operationalized this principle by allowing exemptions for personal information only when disclosure would be unrelated to public activity or constitute an unwarranted intrusion into privacy—unless the public interest clearly justified disclosure. This framework effectively incorporated a proportionality test decades before the Supreme Court formally articulated it in *K.S. Puttaswamy v. Union of India*, where the Court outlined that restrictions on fundamental rights must meet four criteria: legality, legitimate objective, necessity, and proportionality⁹.

Section 44(3) of the DPDP Act departs from this long-standing balance by creating an almost absolute bar on the disclosure of information categorized as personal. Under the amended provision, public authorities are no longer required to weigh the public interest against privacy concerns. This shift marks a doctrinal reversal of nearly twenty years of jurisprudence and administrative practice, where proportionality and public interest were essential in evaluating the scope of exemptions. By removing the public interest override, the amendment risks transforming privacy from a conditional right into a legislative privilege, potentially shielding public information from scrutiny irrespective of its relevance to democratic accountability.

Early judicial reactions illustrate concern about this expansive interpretation. Several petitions challenging the constitutional validity of Section 44(3) are currently pending before the Supreme Court and various High Courts, reflecting the judiciary's recognition of the tension between legislative intent and constitutional safeguards. The courts may ultimately adopt one of two approaches: either read down the provision to ensure disclosures remain permissible when public interest outweighs privacy, thus preserving proportionality, or uphold the amendment in alignment with Parliament's legislative objectives.

This absolutist approach also raises concerns under India's basic constitutional structure. Judicial precedents such as *State of U.P. v. Raj Narain* and *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal* emphasize that accountability, transparency, and public participation are essential pillars of democratic governance.¹⁰

From a policy standpoint, the amendment also poses a **risk to civic engagement and**

⁹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹⁰ *State of U.P. v. Raj Narain*, (1975) 4 SCC 428; *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

participatory democracy. Transparency enables investigative journalism, public discourse, and citizen activism; overly restrictive privacy provisions could inadvertently limit these channels, curtailing societal checks on government action. Furthermore, this limitation may hinder **evidence-based policymaking**, as researchers, civil society organizations, and advocacy groups may lack access to crucial data necessary for evaluating programs, exposing inefficiencies, or proposing reforms.

The international context offers additional insight. Many democracies have attempted to balance privacy and transparency through mechanisms such as tiered disclosure, anonymisation, and conditional release of sensitive data. By contrast, Section 44(3) establishes an absolute exclusion without incorporating these nuanced approaches. This highlights a missed opportunity to adopt best practices in data governance, where privacy safeguards coexist with robust mechanisms for accountability.

Finally, there is a normative concern regarding the future evolution of transparency law in India. If courts interpret Section 44(3) strictly, it may set a precedent for legislative provisions that prioritize privacy over all other public interests, potentially creating a slippery slope that weakens the foundational principle of openness in government. The debate around Section 44(3) therefore engages not only constitutional interpretation but also broader discussions about the role of transparency in fostering equitable governance, anti-corruption measures, and citizen empowerment.

Risks of Misuse and Overbreadth

A primary concern arising from Section 44(3) of the Digital Personal Data Protection Act, 2023, is the heightened potential for **administrative misuse**. India's bureaucratic culture has long exhibited tendencies toward opacity, with public authorities occasionally misapplying

RTI exemptions to evade scrutiny. The absolute language of Section 44(3) amplifies this risk, providing officials with a broad, minimally constrained tool to deny access to information, with limited avenues for effective oversight. In practical terms, this could allow denial of information critical to democratic accountability, including the financial declarations of elected representatives, details of welfare allocation, recruitment or qualification data of public officials, and records of government procurement decisions. Such denials directly undermine transparency in areas where citizen scrutiny is most crucial.

The amendment also presents a **doctrinal risk of overbreadth**. Section 44(3) treats all personal information uniformly, ignoring the gradations of sensitivity among different categories of data. While certain types of personal information, such as medical records or biometric data, clearly warrant strict protection, other categories—like professional qualifications, public office assets, or educational credentials—have a legitimate public interest dimension and should remain accessible. Treating all data identically disregards the principle of necessity and the proportionality framework endorsed in *K.S. Puttaswamy v. Union of India*, effectively converting privacy into an absolute barrier irrespective of public interest considerations.

Another dimension of risk is the **potential facilitation of corruption and nepotism**. By restricting access to information that reveals decision-making patterns, fund disbursement, or preferential allocations, Section 44(3) may inadvertently shield malpractices from detection. Without nuanced safeguards, whistleblowers, investigative journalists, and civil society actors may find it increasingly difficult to expose irregularities, weakening the institutional checks that are essential in a healthy democracy.

There is also the possibility of **selective application**, where authorities could strategically classify information as “personal” to protect politically sensitive or controversial decisions from scrutiny. This could result in **asymmetric transparency**, where only politically neutral or low-impact data is disclosed, further eroding public confidence in governance mechanisms.

Comparatively, several democratic jurisdictions employ **tiered disclosure and redaction mechanisms** to reconcile privacy with transparency. These approaches allow sensitive personal data to be protected while ensuring access to information critical for accountability. By contrast, Section 44(3) offers no graduated protection, leaving all personal data equally exempt and increasing the risk of misuse. This absence of nuance highlights the urgent need for legislative or judicial intervention to prevent the broad exemption from becoming a tool for concealment rather than protection.

Missed Opportunities for Reconciliation

The DPDP amendment represents a significant missed opportunity to reconcile competing constitutional rights i.e., privacy and transparency, in a nuanced and balanced manner. Several jurisdictions around the world have successfully embedded **balancing frameworks** into their

data protection and access-to-information regimes. For instance, the European Union's General Data Protection Regulation (GDPR) allows personal data to be disclosed when there is an overriding public interest, while the UK's Freedom of Information Act and South Africa's Promotion of Access to Information Act (PAIA) similarly permit exceptions where disclosure serves essential societal or governance functions.¹¹ By eschewing such models, India has opted for legislative absolutism, placing privacy above all other considerations, rather than adopting a proportionality-based approach that could harmonize rights in practice.

The amendment also diminishes the role of **institutional safeguards**. Information

Commissions, which previously exercised discretion to balance privacy concerns against the public interest, now face a statutory mandate that compels blanket denial of personal information. This transformation reduces these bodies from active guardians of accountability to passive enforcers of categorical exemptions, weakening the participatory and corrective mechanisms embedded in the RTI movement.

Beyond immediate institutional effects, the amendment raises long-term governance concerns. By removing a structured framework for balancing rights, Section 44(3) could entrench a culture where privacy is invoked to prevent scrutiny, not merely to protect sensitive data. This may discourage whistleblowing, investigative journalism, and public interest litigation, all of which are crucial for exposing corruption, maladministration, and policy inefficiencies. Over time, the absence of a proportionality requirement could also erode the normative expectation that government information is a public good, shifting democratic culture toward secrecy.¹²

From a policy and academic perspective, the amendment's absolutist approach fails to consider **graduated disclosure mechanisms** that could have protected genuinely sensitive personal information while allowing transparency where public interest is compelling. For example, anonymisation, redaction, or conditional access could have provided practical safeguards without undermining accountability. By not embedding these mechanisms into law, India has foregone an opportunity to align data protection with democratic norms and international best

¹¹ Regulation (EU) 2016/679 (General Data Protection Regulation); UK Freedom of Information Act, 2000; South Africa Promotion of Access to Information Act, 2000.

¹² Vidhi Centre for Legal Policy, Transparency and Accountability in India: Lessons from RTI Implementation, 2024.

practices, leaving a gap that courts or future legislation will eventually need to address.¹³

Analysis and Findings: Transparency vs. Privacy

The transparency–privacy conflict in India is not just a technical overlap between two laws but a constitutional dilemma that goes to the heart of democratic governance. Both rights are indispensable: privacy protects the individual from state and corporate overreach, while transparency enables citizens to hold the state accountable. The challenge is not choosing one over the other but harmonising them through careful design.

Transparency as a Democratic Imperative

The RTI Act, often called the “sunshine law,” has been one of India’s most effective democratic tools. It has empowered citizens to question the government, exposed multi-crore scams, ensured fair distribution of welfare benefits, and enhanced citizen participation in governance. Empirical studies suggest that over six million RTI applications are filed annually, many of which uncover corruption or compel better delivery of services. For marginalised communities, RTI has often been the only accessible mechanism to demand accountability from an opaque bureaucracy. Weakening this framework risks silencing grassroots voices and eroding trust in institutions.

Privacy as a Fundamental Right

However, privacy is now a necessity rather than a luxury in the digital age. In the *Puttaswamy* verdict, it was seen as being crucial to liberty, autonomy, and dignity. The increasing digitisation of administration has led to the constant collection of personal data, from Aadhaar databases to benefit distribution systems. Preventing misuse of this data is both morally and constitutionally required. The DPDP Act, which limits the exposure of personal data and creates safeguards for data processing, reflects this demand. The real problem, however, is whether these safeguards require sacrificing transparency.

The Transparency–Privacy Paradox

Section 44(3) of the DPDP Act creates a paradox: it transforms privacy, a right subject to

¹³ Srikrishna Committee, Report of the Committee of Experts on a Data Protection Framework for India, 2018.

proportional limits, into a statutory absolute, while reducing transparency, a right integral to Article 19(1)(a), to a secondary value. This inversion of priorities is doctrinally unsound. A statutory right (privacy under the DPDP Act) cannot override the constitutional architecture of democracy, where both privacy and transparency are meant to coexist. By removing the public interest test, the amendment sacrifices nuance for absolutism.

Risks of Misuse and Chilling Effects

The present risk of the amendment is that it might be misused. Previously inclined towards secrecy, political leaders and bureaucrats now had a legal basis to reject nearly any publication of personal information. Requests to reveal the assets, welfare program recipients, or formal qualifications of elected officials—all of which are required for accountability purposes, may be turned down under the guise of privacy protection. As a result, transparency is suppressed, undermining the RTI Act's objectives and the role of Information Commissions.

Key Findings

From the analysis, several findings emerge:

- a) **Doctrinal imbalance** – The DPDP amendment eliminates proportionality, replacing a flexible balancing test with an absolute bar.
- b) **Constitutional inconsistency** – The amendment privileges statutory privacy protections over constitutionally grounded transparency, risking violation of the basic structure principle.
- c) **Policy regression** – Far from modernising governance, the amendment rolls back gains of the RTI movement, undermining citizen empowerment.
- d) **Implementation challenges** – Information officers, caught between RTI's mandate and DPDP's restrictions, are likely to err on the side of secrecy, reducing the efficacy of the RTI Act.

Recommendations

The conflict between the RTI Act and the DPDP Act highlights a deeper constitutional challenge: how to preserve openness in governance while safeguarding individual privacy.

This does not require sacrificing one right for the other. Instead, it calls for careful design of legal and institutional mechanisms that respect both. The following recommendations aim to restore balance.

1. Reintroduce the Public Interest Test

The most urgent reform is the revival of the “public interest override” previously contained in Section 8(1)(j) of the RTI Act. Disclosure of personal information should be barred only where privacy clearly outweighs accountability, not as an automatic rule. Parliament should amend Section 44(3) to restore a balancing clause, explicitly requiring authorities to weigh privacy against larger democratic imperatives.

2. Narrow the Scope of “Personal Information”

The current definition of personal data under the DPDP Act is overly broad, covering virtually all identifiable information. For RTI purposes, the definition should be limited. Information relating to public officials’ assets, qualifications, service records, and use of public funds must be excluded from the exemption, as these directly concern public duties rather than private life. Codifying such distinctions would prevent misuse of privacy as a blanket shield.

3. Establish Independent Oversight

At present, public information officers decide RTI exemptions, creating a conflict of interest. A specialised body—such as an Information-Privacy Balancing Authority under the Central Information Commission should be empowered to adjudicate disputes where privacy and transparency collide. This model, inspired by the UK’s Information Commissioner’s Office, would ensure impartial application of proportionality and reduce arbitrary denials.

4. Enforce Proportionality Judicially

Courts must interpret Section 44(3) in line with constitutional doctrine. The proportionality test laid down in *Puttaswamy* verdict requires that restrictions on rights be necessary, proportionate, and the least restrictive means available. Judicial intervention should ensure that privacy exemptions are not absolute but conditional on context.

Reading down Section 44(3) would align statutory law with constitutional principles.

5. Promote Awareness and Civil Society Engagement

RTI's success has always relied on active citizen use. Civil society organisations, journalists, and activists need stronger support to challenge wrongful denials and push for accountability. The state should facilitate public consultations and encourage participatory oversight in drafting rules under the DPDP Act. Transparency cannot survive without a vigilant citizenry.

6. Harmonise RTI and DPDP Frameworks

Finally, India needs a joint code of practice integrating both laws. This could specify categories where privacy prevails (e.g., medical records, family details) and where transparency must dominate (e.g., government contracts, political donations, conflict-of-interest disclosures). Such harmonisation would reduce confusion, prevent litigation, and create a coherent balance between the two rights.

Conclusion

The trajectory of the Right to Information (RTI) in India has been one of the most remarkable democratic achievements of the last two decades. It converted the citizen's passive role into that of an active participant in governance, offering a mechanism to demand answers from the state. For millions, especially the marginalised, the RTI Act has not been just a law but a lifeline to access entitlements, challenge corruption, and hold the powerful accountable. It was rightly celebrated as the "sunshine law" that tilted the balance of power towards citizens.

The Digital Personal Data Protection Act, 2023, however, has introduced a new dynamic into this story. By amending Section 8(1)(j) of the RTI Act through Section 44(3), it has removed the carefully crafted balancing test that once mediated between privacy and transparency. In doing so, it has created a paradox: privacy, recognised as a fundamental right in *Puttaswamy*, is elevated into a near-absolute statutory privilege, while transparency, deeply rooted in Article 19(1)(a), is curtailed. The consequences of this shift extend far beyond technical statutory overlap—they strike at the constitutional equilibrium of India's democracy.

A Clash of Two Fundamental Rights

Both privacy and transparency are indispensable. Privacy protects individual dignity and autonomy in a digital age where surveillance and data misuse are real threats. Transparency ensures accountability of those who exercise public power, preventing corruption and abuse. The Constitution envisions both as complementary, not conflicting. Yet, the DPDP amendment sets them against each other by eliminating the possibility of reconciliation through public interest. In effect, it forces a false choice: either protect privacy or demand accountability, but not both.

This binary framing is misleading. Comparative experience shows that democracies worldwide manage to protect privacy without sacrificing transparency. The UK, EU, USA, and South Africa all embed balancing mechanisms into their laws, ensuring that privacy cannot become a shield for secrecy. India's departure from this model risks creating an exceptionalist regime where the rhetoric of privacy is used to justify opacity in governance.

The Constitutional Stakes

The deeper issue is constitutional. Transparency under RTI is not a statutory grace; it is a constitutional necessity flowing from Article 19(1)(a) and recognised in *Raj Narain* and *Subhash Chandra Agarwal*. Privacy under Article 21, as recognised in *Puttaswamy*, is also fundamental but subject to proportionality. The amendment, by removing proportionality and public interest balancing, creates a hierarchy inversion where a statutory bar overrides constitutional freedoms. This is doctrinally unsustainable and risks judicial invalidation for undermining the “basic structure” of democracy.

The amendment also undermines decades of jurisprudence where courts and commissions consistently applied balancing tests. From *Girish Deshpande* to *Subhash Chandra Agarwal*, the judiciary has made clear that privacy and transparency must be reconciled on a case-by-case basis. By legislating an absolute prohibition, Parliament has undone this jurisprudential equilibrium and weakened institutional guardians such as the Central Information Commission.

Policy and Democratic Consequences

Beyond constitutional theory, the amendment carries immediate policy risks. Public

authorities, already inclined towards secrecy, now have a stronger legal basis to deny information. This chilling effect could hollow out RTI in practice. Cases of corruption, conflict of interest, electoral funding, environmental clearances, or welfare delivery: where disclosure of personal information is often critical, may now be shielded. At a time when citizens demand greater openness in governance, the state appears to be retreating into opacity.

This has broader implications for India's global credibility. As the world's largest democracy aspiring to be a digital leader, India cannot afford to send the message that data protection comes at the cost of transparency. International commitments under the

UN Convention Against Corruption and the Sustainable Development Goals (particularly SDG 16 on accountable institutions) require harmonisation, not conflict, between privacy and access to information.

Restoring Balance

The way forward is not to privilege one right over the other but to design mechanisms that preserve both. The recommendations outlined earlier—reintroducing the public interest test, narrowing the definition of personal information, establishing independent oversight, and embedding proportionality—offer a blueprint. These reforms would not dilute privacy protections; they would simply ensure that privacy cannot be misused as a weapon against transparency.

Judicial intervention may also play a decisive role. If courts apply *Puttaswamy's* proportionality test rigorously, Section 44(3) could be read down to preserve a public interest override. Such an interpretation would align the statute with constitutional values and comparative global practice. Civil society mobilisation, which played a pivotal role in the birth of RTI, will also be critical in resisting attempts to hollow out the law.

Looking Ahead

At this constitutional crossroads, India must ask: what kind of democracy does it want to be? A democracy where citizens are secure in their privacy but denied the right to question those in power? Or a democracy where both values coexist, ensuring that individuals are protected while governments remain accountable? The choice is not merely legal but moral, shaping the trust between state and citizen.

If transparency is sacrificed at the altar of privacy, both rights may ultimately suffer. Privacy without accountability risks degenerating into authoritarian control, where the state invokes “personal data” to shield corruption. Transparency without privacy, on the other hand, risks turning individuals into subjects of surveillance, stripping them of dignity. The strength of democracy lies in reconciling these rights, not setting them against each other.

India’s democratic journey has always been defined by the struggle for openness— whether in the freedom movement, the fight against Emergency-era censorship, or the grassroots campaign for RTI. The Digital Personal Data Protection Act need not mark a retreat from this legacy. With careful reform and vigilant interpretation, it can be reshaped into a framework that protects both dignity and democracy.

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