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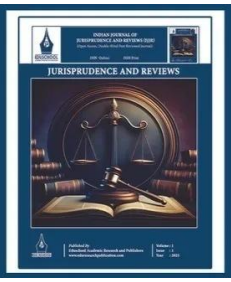

Privacy at the Cost of Transparency? Section 44(3) of the Digital Personal Data Protection Act, 2023 and the Future of the Right to Information in India

Shajan Chakkiath

Managing Director, Eduschool Academic Research and Publishers, Kerala

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Abstract

The Digital Personal Data Protection Act, 2023 (DPDP Act), was enacted to give effect to the fundamental right to informational privacy recognised in Justice K.S. Puttaswamy v. Union of India (2017). Yet a single, easily overlooked provision of that statute, Section 44(3), reaches back to amend the Right to Information Act, 2005 (RTI Act), and in doing so recalibrates the relationship between two constitutionally grounded rights. This paper examines that recalibration. Before the amendment, Section 8(1)(j) of the RTI Act exempted personal information from disclosure only where the information bore no relationship to public activity or where disclosure would constitute an unwarranted invasion of privacy, and even then a public information officer could order disclosure where the larger public interest so required. Section 44(3) replaces that calibrated exemption with a minimalist formula that withholds all information relating to personal information, removing the public-interest override that for two decades allowed transparency to prevail in cases of genuine public concern. The paper argues that this amendment dismantles the proportionality balance that Puttaswamy itself prescribed for reconciling privacy with the public's right to know, a right the Supreme Court has located within Article 19(1)(a). Through doctrinal analysis of the statutory text, the governing precedents, and the government's defence under Section 3 of the DPDP Act, the paper concludes that Section 44(3) is constitutionally infirm in its present form. It recommends restoring the public-interest override and re-establishing a structured balancing mechanism, so that India's data-protection regime advances privacy without eclipsing the transparency on which democratic accountability depends.

Keywords: - Right to information, Data protection, Privacy, Section 44(3), Proportionality

I. INTRODUCTION

The Right to Information Act, 2005, transformed the relationship between the Indian citizen and the State. Over two decades it has exposed corruption in public works, uncovered the diversion of welfare funds, and equipped journalists and activists to hold power to account. Its premise is simple but radical: that information held by public authorities belongs, presumptively, to the public. The Digital Personal Data Protection Act, 2023, by contrast, gives statutory form to a more recently recognised constitutional value, the right to informational privacy affirmed by a nine-judge Bench of the Supreme Court in Justice K.S. Puttaswamy v. Union of India (Puttaswamy, 2017). Each statute serves a constitutional purpose; neither is dispensable in a constitutional democracy.

The difficulty addressed in this paper is that the two have been brought into collision by a single provision. Section 44(3) of the DPDP Act amends Section 8(1)(j) of the RTI Act, the clause that governs when personal information may be withheld from disclosure. The amendment is short, and its full significance is easy to miss, but its effect is structural: it removes the mechanism by which transparency and privacy were previously balanced and replaces it with a near-absolute exemption for personal information (S.S. Rana & Co., 2025; Analysis, 2025).

The change has provoked sustained controversy. More than one hundred and twenty Members of Parliament from the Opposition petitioned the government to repeal Section 44(3), warning that it undermines the citizen's ability to access

information of public concern and threatens press freedom (Business Standard, 2025). Civil-society organisations and former information commissioners have echoed the warning, while the government has maintained that privacy and transparency remain reconciled, principally by reference to Section 3 of the DPDP Act (S.S. Rana & Co., 2025; Internet Freedom Foundation, 2025). The provision has since been brought into force, even as the broader data-protection obligations of the Act roll out in phases, sharpening the debate over whether the dilution of transparency has preceded the delivery of privacy.
This paper addresses three central questions:

- First, what precisely did Section 44(3) change, and how does the amended Section 8(1)(j) differ in operation from its predecessor?
- Second, is the amendment consistent with the constitutional framework in which both the right to information and the right to privacy are grounded, and with the proportionality balance that Puttaswamy prescribed?
- Third, what reform would preserve the legitimate protection of personal data without extinguishing the public-interest disclosure that democratic accountability requires?

Through doctrinal analysis of the statutory text and the governing precedents, the paper argues that Section 44(3), as drafted, upsets a constitutional equilibrium and should be restored to one that balances rather than subordinates.

II. TWO RIGHTS, ONE CONSTITUTION: THE FOUNDATIONS OF PRIVACY AND INFORMATION

Both rights at issue are of constitutional stature. The right to information was located by the Supreme Court within the freedom of speech and expression guaranteed by Article 19(1)(a) long before the RTI Act was enacted. In State of U.P. v. Raj Narain, the Court recognised that citizens have a right to know how their government functions, and in subsequent decisions it held that the right to know is implicit in the right to free expression, since meaningful participation in democracy presupposes access to information (Raj Narain, 1975; S.P. Gupta, 1981; PUCL, 2003). The RTI Act, 2005, gave this constitutional right a concrete statutory machinery.

The right to privacy attained comparable status in Puttaswamy, where the Court held that privacy, including informational privacy, is a fundamental right protected by Article 21 and the freedoms in Part III. Crucially, the Court did not treat privacy as an absolute that overrides competing interests. It prescribed a structured proportionality inquiry: any State action limiting privacy must pursue a legitimate aim, be rationally connected to that aim, be the least restrictive means available, and strike a fair balance between the right and the public interest (Puttaswamy, 2017). The same framework, the Court recognised, governs the reverse situation, in which privacy is invoked to limit the public's right to information.

Because both rights are constitutional, neither can categorically defeat the other. The task of the legislature and the courts is to reconcile them at the point of conflict. The original Section 8(1)(j) performed exactly this reconciling function, and the constitutional question raised by Section 44(3) is whether its removal leaves privacy to defeat transparency by default rather than after a genuine balancing of the two.

III. THE STATUTORY AMENDMENT: FROM BALANCED EXEMPTION TO BLANKET BAR

The original Section 8(1)(j) of the RTI Act exempted personal information from disclosure, but only on conditions and subject to an override. It applied where the information had no relationship to any public activity or interest, or where disclosure would cause an unwarranted invasion of privacy. Even then, the public information officer or the appellate authority could direct disclosure where satisfied that the larger public interest justified it. A proviso further ensured that information which could not be denied to Parliament or a State Legislature could not be denied to a citizen. The clause was, in short, a calibrated balancing test rather than a categorical bar (Internet Freedom Foundation, 2025; Analysis, 2025).

Section 44(3) of the DPDP Act substitutes this structure with a single, minimalist phrase, exempting ‘information which relates to personal information’. The conditions disappear, and so does the larger-public-interest override. Whereas the earlier clause required an officer to weigh the public interest against the privacy intrusion in each case, the amended clause appears to authorise refusal whenever the information can be characterised as personal, without any balancing at all (S.S. Rana & Co., 2025). What was an exemption qualified by public interest becomes, on its face, an exemption that public interest can no longer displace?

This is not a stylistic revision. The deletion of the override transfers the default from disclosure to denial in the very cases where the RTI Act has historically done its most important work, namely those in which information about identifiable officials, beneficiaries, or contractors is precisely what reveals wrongdoing. Details of public servants' assets, of beneficiaries of public schemes, or of parties to public contracts all relate to personal information, yet their disclosure has repeatedly served the public interest. By removing the mechanism that permitted disclosure in such cases, the amendment narrows the practical reach of the RTI Act considerably (Mahiti Adhikar Gujarat Pahel, 2025).

IV. THE GOVERNMENT'S DEFENCE AND ITS CRITICS

The government's principal defence rests on Section 3 of the DPDP Act, which excludes from the Act's scope personal data made publicly available by the data principal and, more pertinently, personal data whose disclosure is required by law. On this reasoning, where another statute mandates disclosure, the DPDP Act does not impede it, and the RTI framework therefore survives intact (S.S. Rana & Co., 2025). The responsible Minister has accordingly maintained that the two statutes are not at odds and that the Act protects privacy without compromising transparency.

Critics regard this defence as circular. The statute that empowered citizens to obtain personal information in the public interest was the RTI Act itself, and it is precisely that empowering provision which Section 44(3) has amended. Section 3 preserves disclosures that some other law requires, but it cannot resurrect a disclosure power that has been legislated away.

Once the public-interest override in Section 8(1)(j) is deleted, there is no longer a legal mandate to disclose personal information in the public interest for Section 3 to protect (Internet Freedom Foundation, 2025; Deccan Herald, 2025). The defence, on this view, addresses a problem the amendment did not create while leaving untouched the problem it did.

Two further features sharpen the criticism. First, the parliamentary history is contested: commentators note that the relevant change departed from the recommendations of the Joint Parliamentary Committee and was adopted during a session dominated by other business, limiting deliberation (Business Standard, 2025). Second, there is an asymmetry of timing. The dilution of transparency through the RTI amendment has taken effect, whereas the data-principal rights and many obligations that constitute the privacy benefit of the Act are being implemented only in phases over a longer horizon (Mahiti Adhikar Gujarat Pahel, 2025). The result, critics argue, is that the cost to transparency has arrived before the promised gain to privacy.

V. CRITICAL EVALUATION: THE LOSS OF THE PROPORTIONALITY BALANCE

Assessed against constitutional principle, the central defect of Section 44(3) is that it removes the balancing mechanism that the Constitution requires. Puttaswamy did not hold that privacy prevails over information; it held that limitations on either must satisfy proportionality, which is an exercise in balancing, not in categorical preference (Puttaswamy, 2017). A statutory provision that exempts all personal information without any inquiry into public interest substitutes a categorical rule for the case-by-case balancing that proportionality demands. It is the absence of balancing, not the protection of privacy, that renders the amendment constitutionally vulnerable.

The point is reinforced by the Supreme Court's own practice in RTI cases involving personal information. In Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, the Court held that the office of the Chief Justice is a public authority subject to the RTI Act and that disclosure of personal information, such as judges' assets, must be decided by weighing privacy against the public interest in transparency, applying proportionality rather than a blanket exemption (Subhash Chandra Agarwal, 2019). Even in decisions more protective of privacy, such as Girish Ramchandra Deshpande v. Central Information Commissioner, the Court applied the public-interest test rather than discarding it (Girish Ramchandra Deshpande, 2013). The amended clause forecloses the very analysis these precedents treat as constitutionally mandatory.

There is also a deeper structural concern. Transparency and privacy are not natural antagonists; in many contexts they reinforce one another, since the disclosure of how power is exercised protects citizens from the arbitrary use of their own data by the State. By framing the relationship as a zero-sum exemption in which any personal dimension defeats disclosure, the amendment misconceives the constitutional architecture, which treats both as facets of a single democratic order. A data-protection law that weakens public accountability may ultimately disserve the privacy interests of the very citizens it purports to protect, because accountability is itself a safeguard against State overreach.

VI. IMPLICATIONS AND RECOMMENDATIONS

The legitimate aim of protecting personal data can be achieved without disabling public-interest disclosure. Four measures are proposed.

First, and most directly, the larger-public-interest override should be restored to Section 8(1)(j). Reinstating the power of the public information officer and the appellate authority to direct disclosure where the public interest outweighs the privacy intrusion would return the clause to the balancing test that two decades of practice and precedent have validated, while leaving genuine privacy intrusions properly protected.

Second, the exemption should be expressly structured around proportionality. The clause could require the decision-maker to consider the nature and sensitivity of the information, the existence and weight of any public interest in disclosure, and the availability of less intrusive alternatives such as redaction or anonymisation, before refusing access. This would codify the Puttaswamy framework within the RTI machinery itself.

Third, certain categories of information with strong accountability value, such as the assets and qualifications of public servants, the identities of beneficiaries of public funds, and the parties to public contracts, should be presumptively disclosable subject to redaction of sensitive particulars, rather than presumptively withheld. A schedule of such categories would reduce inconsistency and litigation.

Fourth, the implementation of the Act should be sequenced symmetrically. The privacy protections that justify any narrowing of disclosure should take effect alongside, not after, the narrowing itself, so that the public is not left to bear the cost of reduced transparency in advance of the corresponding benefit to data protection. Where the two cannot be synchronised, the transparency-narrowing provision should await the privacy framework it is said to serve.

VII. CONCLUSION

The Digital Personal Data Protection Act, 2023, is a necessary and overdue statute, and the right to privacy it protects is no less fundamental than the right to information it has come to constrain. The difficulty lies not in the recognition of privacy but in the means chosen to protect it. Section 44(3), by deleting the public-interest override in Section 8(1)(j) of the RTI Act, converts a carefully balanced exemption into a near-absolute bar, and in doing so removes the proportionality analysis that the Constitution, as interpreted in Puttaswamy and applied in the RTI jurisprudence, requires.

This paper has argued that the conflict between privacy and transparency is not irreconcilable, and that the original Section 8(1)(j) had already reconciled it. Restoring the larger-public-interest override, structuring the exemption around proportionality, presumptively disclosing categories of high accountability value subject to redaction, and synchronising the Act's implementation would protect personal data without eclipsing the public's right to know. Such reforms would align India's data-protection regime with its own constitutional commitments to both privacy and accountability.

The stakes extend beyond any single statute. The Right to Information Act has been among the most effective instruments of democratic accountability in independent India, and the manner in which its relationship with the new data-

protection regime is settled will shape the transparency of governance for a generation. A data-protection law that strengthens citizens against the State should not, by an inadvertent or insufficiently deliberated clause, weaken the citizen's capacity to hold that State to account.

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