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THE WEAKENING OF THE RIGHT TO INFORMATION ACT, 2005: CHALLENGES TO TRANSPARENCY AND ACCOUNTABILITY IN INDIA

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INTRODUCTION

In India right to information is recognized as fundamental right under article 21 of constitution and The Right to Information Act of 2005 enables citizens to demand accountability and transparency from the government. However, this well enacted legislation got weakened by amendment made under the Digital Personal Data Protection Act, 2023 ('DPDP Act'), in this effect section 8(1)(j) of RTI Act got amended to limiting access to personal data without any public interest assessment. This change infringed the constitutional right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution

RIGHT TO INFORMATION

The Right to Information (RTI) Act of 2005 is a significant legislative measure that empowers Indian citizens and facilitates their meaningful engagement in democracy. Estimates indicate that annually, four to six million RTI applications are sent in the country. Over the past two decades, the law has been frequently employed to hold governments and public officials accountable for corruption and deficiencies in the provision of important services, as well as to ensure access to fundamental rights¹. This was further emphasised during the COVID-19 pandemic, when access to precise and real-time information regarding the availability of hospital beds and oxygen became essential for the life of several people.

The nation's top officials have been questioned about their actions, choices, and performance via the RTI Act. The electoral bonds scam, the Vyapam scam, and the Adarsh housing society scam were all exposed in large part under this legislation. A significant ruling by the Supreme

¹20 years of RTI Act: The last 11 years have seen a systematic undermining of the transparency regime in India, authored by [Anjali Bhardwaj](#), [Amrita Johri](#), Published on 11 Oct 2025, <https://www.downtoearth.org.in/governance/20-years-of-rti-act-the-last-11-years-have-seen-a-systematic-undermining-of-the-transparency-regime-in-india>

Court held that the RBI must reveal information such as inspection reports, risk assessment reports of banks, names of wilful loan defaulters, and details of Non-Performing Assets (NPAs) of public sector banks under RTI Act and The RTI law has also been used to obtain information about the Reserve Bank of India's (RBI) oversight in light of multiple banking scams². The crucial task of redistributing power within a democratic framework has been started by this legislation. It is possible that this is the cause for the strong opposition to the law and its users.

RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT:

In landmark cases like *State of Uttar Pradesh v. Raj Narain*³ and *S.P. Gupta v. Union of India*⁴, the Indian Supreme Court has construed the right to information to be covered under Article 19 (1)(a). Every citizen has the right to information, and the RTI Act gives them the means to exercise that right. As a corollary to this right, every public authority is required by Section 7 of the RTI Act to keep documents and promptly make them available to the public. However, Section 8 of RTI Act provides some exception. For instance, Central Public Information Officer 'CPIO' or State Public Information Officer 'SPIO' not to release such information if citizens seek secret or privileged information, or information that could affect the sovereignty of the nation and

In association for democratic reforms vs union of India the court was evaluating the scope and extent of the right to know about the candidates contesting in election of the state legislature or parliament as the right of the citizen to vote. In addressing the matter at hand, the court ruled that voters have a fundamental right under the Indian constitution to be aware of the background of persons running the public offices. The court interpreted the "Right to be informed" as a right that results from the freedom of speech and expression.

IMPACT OF THE DPDP ACT ON RTI ACT

Under **Section 8(1)(j) of the RTI Act** provides an exemption that:

8(1)(j) Exemption from disclosure of information: information which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or

²Concerns Rise Over Weakened RTI as Delhi HC Cites Yet to be Notified Data Protection Law in Modi Degree Case, authored by sarvasti gupta, published on 27 august 2025, <https://thewire.in/rights/concerns-rise-over-weakened-rti-as-delhi-hc-cites-yet-to-be-notified-data-protection-law-in-modi-degree-case>

³ *State of Uttar Pradesh v. Raj Narain* (1975 AIR 865)

⁴ *S.P. Gupta v. Union of India* (AIR 1982 SC 149)

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: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person⁵.

However, a quite simple exception under Section 44(3)(j) of the DPDP Act information pertaining to personal information has replaced this well-balanced regulation. This legislative revision effectively establishes a near-complete exemption for any "personal information" from publication under the RTI Act by eliminating the "larger public interest," regardless of its significance to public accountability or its relevance to public operations. The DPDP Act 2023 eliminates the exceptions that may have allowed the disclosure of personal information for the interest of general public under Section 8(1)(j) of the RTI Act.

Prior to the amendment, at least one of the following criteria had to be demonstrated in order to deny personal information:

1. The requested information had no connection to any public activity,
2. The requested information had no connection to any public interest, or
3. The requested information would result in an unjustified invasion of privacy, and
4. The PIO or appellate authority was convinced that there was no greater public interest that warranted disclosure.

The previous qualification of "unwarranted invasion of privacy" is eliminated, and the Public Information Officer's discretion to disclose such information based on perceived greater public interest is removed, as the amended provision simply states that "information which relates to personal information" shall be exempt from disclosure⁶.

The RTI Act does not define "personal data", and the definition under the DPDP Act is broad. According to Section 2 (t) of the DPDP Act, "personal data" means "any data about an individual who is identifiable by or in relation to such data⁷". This is wide enough and could easily encompass into its ambit any kind of information/data relating to an individual.

⁵ Section 8(1)(j) of right to information Act, 2005

⁶ Revisiting Right to Information in India: Is the DPDP Act counterproductive to RTI Act?, authored by Sanya D. Kishwar Sadqua Khatoon Kritika Vatsa, published on Jul 11, 2025, <https://ohrh.law.ox.ac.uk/revisiting-right-to-information-in-india-is-the-dpdp-act-counterproductive-to-rti-act/>

⁷ Section 2 (t), The Digital Personal Data Protection Act (DPDP Act), 2023

After amendment: Following the 2023 change, the jurisprudence regarding the extent of Section 8(1)(j) is still ambiguous. Because the CPIO may now use this definition to reject material on the grounds that it is personal, this approach jeopardies democratic governance, openness, and decision-making based on correct information. The purpose of the RTI Act was to increase citizen participation and empower them to keep an eye on public institutions. These modifications go against the RTI Act's basic goals.

EFFECTS OF AMENDMENT

In effect of this change, the names of voters, welfare program recipients, and recipients of subsidies may also be considered personal data. Programs like the Mahatma Gandhi National Rural Employment Guarantee and the Public Distribution System become less open as a result, endangering social audits and anti-corruption initiatives. Every month, more than hundreds of RTI petitions are submitted, the majority of them are from underprivileged individuals looking to obtain basic services like financial aid and food. By giving them the authority to request information about delays or denials of benefits, RTI helps to ensure accountability and expose corruption⁸. These most vulnerable populations suffer the most when this system is weakened, which exacerbates inequality. Furthermore, it may no longer be feasible to look up electoral rolls and other public information like company registries and land records. The government may find it simpler to avoid accountability as a result of these reforms.

TEST OF PROPOTINALITY

Any law which is enacted for the benefit of the society should not be excessively harsh and disadvantageous to the people. Under the power of judicial review the court enacted the doctrine of proportionality, by applying this test of proportionality, the extent to which any law restricts the fundamental rights will be assessed and the constitutionality of such legislation will be decided. By applying this doctrine in the historic case of *K.S. Puttaswamy v. Union of India*⁹, the right to privacy was indisputably established as fundamental right under article 21, though it is recognized as the fundamental right, for the interest of general public the right to privacy was not recognized as an absolute right it subject to reasonable limitations if those

⁸ India's Transparency Quandary: RTI versus DPDP by Paakhhi , authored by Garg and Nachiketa Mittal, published on August 11, 2025, <https://www.sconline.com/blog/post/2025/08/11/indias-transparency-quandary-rti-versus-dpdp/>

⁹ *K.S. Puttaswamy v. Union of India*, (AIR 2017 SC 4161)

limitations meet the severe requirements of necessity, proportionality, legality, and legitimate intent.

Hence the original Section 8(1)(j) of Right to information Act is within its inherent public interest, that was a proportional provision and that was entirely corresponding to the Puttaswamy principles. The modification to the DPDP Act gives absolute protection for personal information goes against strategy advocated by the Puttaswamy ruling.

According to the law that existed before the DPDP Act, public officials may publish information about their performance of their duties, even if it is essentially personal, if doing so truly serves the greater public interest. The new law completely overturns this long-standing legal interpretation, which is a major step in the direction of greater governmental transparency.

A global perspective:

Tests of public interest in other countries The "public interest test," a cornerstone of freedom of information (FOI) laws in democracies, is an essential instrument for finding a balance between privacy and openness. Such a test is specifically included in many nations, particularly for exemptions pertaining to personal data:

United Kingdom (Freedom of Information Act, 2000): Section 40 of the UK Freedom of Information Act, 2000¹¹, addresses personal information. If the public interest in publishing the information clearly outweighs the public interest in keeping it private, it may be published even if it is deemed personal data. This recognises privacy and is referred to as a "qualified exemption.

Canada (Access to Information Act): Federal and provincial access-to-information laws in Canada contain comparable exclusions for personal data. However, several have explicit provisions mandating disclosure in situations when a "compelling public interest" manifestly outweighs any privacy infringement. For example, some provincial laws mandate that the head of a public body divulge personal information if doing so serves the public interest more than the individual's private interest¹⁰.

¹⁰ India's Transparency Quandary: RTI versus DPDP by Paakhhi , authored by Garg and Nachiketa Mittal, published on August 11, 2025, <https://www.sconline.com/blog/post/2025/08/11/indias-transparency-quandary-rti-versus-dpdp/>

Australia (Freedom of Information Act, 1982): A similar structure governs The Freedom of Information Act, 1982¹³, in Australia, contains exclusions for personal information that are frequently predicated on a "public interest test." A balance must be struck by the appropriate authorities between factors that encourage disclosure (such increasing public discourse and accountability) and those that hinder it (like commercial prejudice and unwarranted violation of privacy). In cases when the public interest is deemed significant, disclosure is typically preferred.

These countries mostly use a public interest balancing test or a proportionality test. The following are typical components of this test:

- (i) Determining the public interest in disclosure
- (ii) Determining the possible harm in disclosure
- (iii) Comparing conflicting interests of public interest and right to privacy

Therefore most of the countries in order to balance the larger public interest and the right to privacy, the test of proportionality have been followed. Here the recent amendment under DPDP Act 2023 completely removing the exception of public interest for disclosing of personal data is against the doctrine of proportionality principals.

CONCLUSION:

The enactment of the Digital Personal Data Protection Act, 2023 marks a significant shift in India's legal framework governing access to information and protection of privacy. While the intent of the DPDP Act to safeguard personal data in the digital era is commendable, its broad exemptions and overriding effect on the RTI Act, 2005 raise serious concerns about transparency and accountability in governance. By redefining "personal information" and restricting access to such data, the DPDP Act effectively narrows the scope of citizens' right to know, which has been a cornerstone of participatory democracy since the RTI Act came into force. This shift tilts the balance in favor of secrecy, allowing public authorities greater discretion to withhold information that may be vital for ensuring accountability. For India to uphold the spirit of open governance, it is imperative to harmonize the two laws ensuring that the protection of personal data does not become a pretext for shielding public authorities from scrutiny. Only through such balance can the original objectives of the RTI Act empowerment, accountability, and participatory democracy be preserved.