# THE PRIVACY PARADOX: A DOCTRINAL EVALUATION OF THE DPDP ACT'S CHILLING EFFECT ON THE RIGHT TO INFORMATION UNDER ARTICLE 19(1)(A)

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**ABSTRACT**

The conflict between the ideas of democratic transparency and informational privacy has become the most complicated constitutional paradox in the modern Indian jurisprudence. This paper is a comprehensive doctrinal analysis of the friction created by the Digital Personal Data Protection Act, 2023, and especially its highly consequential amendment of the Right to Information Act, 2005, Section 8(1)(j). The RTI Act initially carefully balanced the right to information, a judicially realized element of the freedom of speech and expression of Article 19(1)(a) of the Constitution of India with the right to privacy of Article 21, through a subtle public interest override. But the DPDP Act, under the mechanism of Section 44(3) is a systematic breakdown of the constitutional soundness of proportionality in that, instead of the qualified exemption of personal information, Section 44(3) introduces a blanket ban on disclosure that is unqualified. The study examines the chilling effect that follows this legislative change through assessing the doctrinal basis of this change on investigative journalism, governmental questioning, and accountability in democracy. The paper discusses the theoretical aspects of the privacy paradox and uses the contextual integrity framework by Helen Nissenbaum to show how the blanket exemption is wrongly applying the concept of data that is in the open world. Moreover, the analysis will focus on the asymmetrical visibility that the Act has produced, in this case, understood as a legislative panopticon, in which state instrumentalities are protected against the scrutiny of citizens, but the power of state surveillance is dramatically increased. Based on a mixed approach of doctrinal deconstruction and comparative analysis using the information of the United Kingdom, the results indicate that the promotion of privacy to be an absolute statutory privilege at the cost of transparency is jurisprudentially unsound. The report ends with a proposal of a jurisprudential realignment that the constitutional courts should read a proportionality requirement back into the amended structure to maintain the balance of existence. [1]

[1] Sudhir Krishnaswamy & Shruti Vidyasagar, *The Right to Information Act: A Decade of Transparency*, 10 Indian J. Const. L. 45 (2016).

**Keywords**: Privacy Paradox, Right to Information, DPDP Act 2023, Chilling Effect Doctrine, Article 19(1)(a), Constitutional Law.

## I. Introduction

The development of the democratic structure of India has been heavily influenced by the ongoing adjustment of the basic rights. And, perhaps, the most sensitive of such balances is one between the right of the citizen to know and the right of the individual to be left to himself. The Right to Information Act, 2005 has been the unquestioned leader of the participatory democracy in the nation in almost 20 years of its existence. It gave the common citizenry power to lift the veil of bureaucratic obscurity that had existed in history and in fact gave reality to the freedom of expression and speech that was enshrined in Article 19(1)(a) of the Constitution of India. It is certainly known that it is impossible to express oneself meaningfully without access to the correct information about the processes occurring within the state. Nonetheless, there was a Paradigm shift witnessed in the legal environment with the historic landmark nine-judge bench ruling in Justice *K.S. Puttaswamy (Retd.). v. Union of India* which had expressly acknowledged the right to privacy as an inherent, constitutionally guaranteed aspect of the right to life and personal liberty in Articles 21. Although the *Puttaswamy* ruling provided the essential baseline requirement to a strong data protection infrastructure to protect citizens against corporate and governmental encroachment, the ultimate legislative embodiment of that requirement, the Digital Personal Data Protection Act, 2023 has brought significant, and arguably dangerous, constitutional tensions. [2]

Section 44(3) of the DPDP Act is the epicenter of this friction as it is the basic amendment to Section 8(1)(j) of the RTI Act[3]. Section 8(1)(j) used to be a qualitatively restricted and well-protected defence before this amendment. It did not subject personal information to disclosure to the public unless the information sought was indivisibly connected with a public activity, or a greater public interest demanded its publication without a doubt. It served as a highly complex statutory mechanism which directly incorporated a proportionality test into the legislative framework with transparency becoming the default position of democracy and privacy being a rebuttable defense. This is a subtle structure that is suddenly destroyed by the DPDP Act. In replacing the qualifiers of Section 8(1) (j) with the minimalist terms that cover any information

[2] Gautam Bhatia, *The Digital Personal Data Protection Act, 2023: A Constitutional Assessment*, 15 NUJS L. Rev. 112, 118 (2023).
[3] Digital Personal Data Protection Act, 2023, Section 44(3), No. 22, Acts of Parliament, 2023 (India).

that is relevant to personal information, the Act in effect creates a blanket prohibition on the release of personal information. [4]This absolute ban, which is completely devoid of any examination of the public interest, poses a serious privacy paradox in constitutional and administrative law. At the same time as the state uses privacy as a veil to thwart any attempt to examine the assets, disciplinary records, and official communications of the government officials, it also has broad exemptions in place that allow it to handle the data on citizens under wide sovereign authority. [5]

The result of this lawful realignment therefore has a chilling effect to the right to information. It suppresses investigative journalism, discourages whistle blowing, and undermines the accountability measures that are required in a working republic. It is in this constitutional anomaly, in which the privacy of the citizens is turned into an institutional protection on behalf of the state, that this report attempts to take a critical look at.

### A. Research Questions

i. Does Section 44(3) of the Digital Personal Data Protection Act, 2023, violate the fundamental right to information under Article 19(1)(a) by establishing a blanket and disproportionate exemption for personal information without a public interest override?

ii. In what specific doctrinal manner does the statutory elevation of privacy to an absolute exemption engender a chilling effect on press freedom, investigative journalism, and the civic oversight of state instrumentalities?

iii. How does the simultaneous expansion of state surveillance exemptions under the DPDP Act, juxtaposed with the severe curtailment of civic transparency, foster a constitutionally suspect asymmetry of visibility between the state and the citizen?

### B. Hypothesis

The amendment of Section 8(1)(j) of the Right to Information Act, 2005 to the Digital Personal Data Protection Act, 2023, in effect, by means of the addition of a new Section 44(3) of the latter, methodically eliminates the constitutional proportionality test by making privacy a

[4] Id
[5] Usha Ramanathan, *The State as a Panopticon: Data Protection and the Loss of Privacy*, 57 Econ. & Pol. Wkly. 34 (2022).

statutory privilege of absolute importance. This inversion of the law is highly detrimental to the democratic accountability, creates a chilling effect on freedom of speech and expression as per Article 19(1)(a), and creates a panopticon of legislative view where the state is visible to its surveillance powers but unrecognizable to the citizens.

### C. Research Objectives

i. To doctrinally evaluate the jurisprudential tension between the right to informational privacy (Article 21) and the right to information (Article 19(1)(a)) in the context of the recent legislative amendments, tracing the trajectory from the *Puttaswamy* judgment to the current DPDP regime.

ii. To critically analyze the application of the 'chilling effect' doctrine within Indian constitutional law, specifically examining how the threat of penalization and the systemic denial of public-interest information paralyze investigative reporting and advocacy.

iii. To propose harmonizing legal constructions and policy reforms-drawing upon theories of contextual integrity and comparative foreign jurisprudence- that can successfully restore the dynamic constitutional equilibrium between state transparency and individual privacy.

### D. Literature Review

The scholarly discussion of the connection between data protection and transparency is quite vast and grows fast, with the introduction of the Digital Personal Data Protection Act, 2023. The privacy paradox is a socio-legal phenomenon that is discussed in a significant amount of Scopus-indexed literature. In behavioral economics and the literature on cybersecurity, privacy paradox is a cognitive dissonance of people showing a strong concern over digital privacy, but who simultaneously share confidential personal data to make life easier or to be involved in digital platforms. It has been suggested by scholars that this incongruity is due to the fact that individuals are unable to measure long term privacy risks against short-term gains. [6]

The privacy paradox takes on a structural aspect, however, in the context of the constitution. Researchers have started to use the concept to explain the actions of the state itself. Governments are increasingly demanding larger data access through citizens to governance,

[6] Helen Nissenbaum, *Privacy as Contextual Integrity*, 79 Wash. L. Rev. 119 (2004).

welfare delivery, and national security purposes at the same time creating legislative barriers to their own institutional transparency[7]. This dynamic threatens the theory of privacy as presented by Alan Westin, who defined the concept of privacy as being the power of individuals to regulate the sharing of information about them. Although the theory of informational self-determination proposed by Westin is essential in safeguarding the privacy of regular citizens and their data collection by corporations, its unquestioning extension to the situation of the regular citizen officials about the execution of their responsibilities threatens to subvert the normative framework.

In order to solve this doctrinal tension, the modern scholarship often uses the theory of contextual integrity that was developed by Helen Nissenbaum. Within this framework, the concept of privacy is not described as the secrecy but the suitability of the information flows in particular social settings. A violation happens when there is a breach of established norms of information in a situation [8]. The new legal discussions in India are increasingly of the view that the DPDP amendment neglects this principle by not distinguishing between data and information that are inherently personal and those that are produced in the context of the administration of the state. Even with the increasing amount of criticism, there is a research gap that is present. The current literature has failed to adequately chart the way the DPDP Act applies the chilling effect doctrine to Article 19(1)(a). Although the chilling effect has been studied in detail, in relation to internet shutdowns, criminal defamation laws and national security legislation, little has been done to explore how the chilling effect relates to systemic denial of information requests within a data protection framework. This study attempts to close such a gap by offering a precise doctrinal investigation of the correlation between administrative opaqueness and more general limitations on democratic discourse.

### E. Research Methodology

The study is based on a doctrinal and analytical approach that is well-established in the Indian constitutional law. The paper is based on the qualitative analysis of primary and secondary legal sources to develop a sound jurisprudential inquiry. Primary sources are statutory documents (Constitution of India, the Right to Information Act, 2005, the Digital Personal Data Protection Act, 2023), and landmark cases in which the Supreme Court of India and the

[7] Gautam Bhatia, *The Digital Personal Data Protection Act, 2023: A Constitutional Assessment*, 15 NUJS L. Rev. 112, 118 (2023).
[8] Alan F. Westin, Privacy and Freedom 24 (1967); *see also* Nissenbaum, *supra* note 23, at 122.

corresponding High Courts have ruled. The study also takes into account the current constitutional issues that are awaiting in the Supreme Court on the legitimacy of the DPDP model.

The secondary sources are scholarly literature that is high-impact, commentaries on the Constitution, and theoretical work on privacy, transparency, and state surveillance. The analytical framework uses the tools of doctrinal analysis, namely, the proportionality test, theory of contextual integrity, and the doctrine of the chilling effect to analyze the way the relationship between privacy and transparency in India is developing. Besides, comparative legal approach is integrated in the research. The Indian framework is discussed in parallel with the regulatory balance reached in the United Kingdom, specifically in the context of interaction of General Data Protection Regulation framework (adapted in the country) and the Freedom of Information Act 2000. This analogy exercise points out other institutional mechanisms that can achieve a balance between conflicting constitutional values without compromising privacy and transparency.

## II. The Doctrinal Foundations of the Privacy-Transparency Tension

To fully understand the scale of the legal upheaval that the implementation of the DPDP Act has created, it is absolutely paramount to initially find out the doctrinal roots of the right to the information and the right to privacy in the Indian Constitution. Interestingly, the original text of Part III, which is the foundation of the Part III right, does not mention either of the rights; instead, both have been carefully excised of larger constitutional protections by decades of progressive, activist judicial interpretation. The right to information was identified quite early in the post-independent Indian history as an inseparable and natural extension of the right to freedom of speech and expression in *State of U.P. v. Raj Narain, (1975)* and subsequently in *S.P. Gupta v. Union of India*, the Supreme Court made it very clear that the public has a fundamental right to know all the public acts, and all that is done in a public manner, by their appointed officials in a public capacity[9]. The judicial rationale used in this case was very deep and yet very simple, a citizen cannot effectively or intelligibly exercise his or her freedom of speech under Article 19(1)(a) without first having access to accurate, unfiltered information on how the state operates. Transparency is not just a statutory privilege slapped upon the legislature at their convenience through the RTI Act; it is an unquestioned constitutional

[9] State of U.P. v. Raj Narain, (1975) 4 S.C.C. 428; S.P. Gupta v. Union of India, 1981 Supp S.C.C. 87.

requirement to the existence of a participatory democracy. On the other hand, the history of the right to privacy was initially divided, and the judicial reluctance was evident at the beginning of the cases, such as *M.P. Sharma v. Satish Chandra* and *Kharak Singh v. State of U.P*, in which the Supreme Court acting by the restrictive doctrine of isolated fundamental rights, refused to acknowledge privacy as a separate constitutional right, was conclusively overruled by the landmark nine judge constitution bench in *Justice K.S. Puttaswamy (Retd.). v. Union of India, (2017)*[10]. The Puttaswamy case was the first landmark judicial ruling that made a bold statement concerning informational privacy as a fundamental aspect of human dignity; the right of an individual to control the commercial and state distribution of his or her personal information. Nevertheless, Justice D.Y. Chandrachud (then) who wrote the plurality opinion was unusually keen to underline that the recently established right to privacy is not absolute. Any infringement of privacy, or any legislative measure that puts privacy above other fundamental rights, must meet the high, multi pronged test of proportionality.

The proportionality test is highly strict and requires that a law must have a legitimate state purpose, must be rationally linked to the purpose, must use the minimal possible restrictive means to accomplish the purpose and must provide a delicate balance between the level of the restriction and the level of the fundamental right being constrained. It is in this very sensitive constitutional nexus that the friction presently exists. The Right to Information Act and the right to privacy are not existing in two distinct realms; they are competing constitutional values, which often and violently clash when a citizen makes an application of the RTI to get the performance evaluations, disciplinary memos or the asset declarations of a serving official as a constitutional right of Article 19(1)(a). Over the years, the Indian judiciary managed to bring these conflicting interests into balance using the textual mechanism availed in the RTI Act itself. The abrupt intrusion of the DPDP Act into this historic chemical balance, giving prominence to one of the fundamental rights at the absolute sacrifice of the other, is a flagrant violation of the proportionality requirement that is seen in the Puttaswamy bench.

## III. Deconstructing Section 44(3) of the DPDP Act and the Subversion of Section 8(1)(j)

The very particular, micro-level processes of the legislative subversion are in the textual modification of the RTI Act. Section 8 of the RTI Act includes the list of the particular

[10] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1

situations in which a Public Information Officer (PIO) does not have the legal duty to share information with the citizenry. Of such well thought-out exemptions, the burden of protecting personal information was traditionally placed on Section 8(1)(j). The plain, undressed text of Section 8(1)(j) was generally considered the masterpiece of legislative moderation[11]. It expressly said that there would not be any duty to disclose any information that is connected with personal information, unless the disclosure of the information is not related to any public activity or interest, and that would lead to the unwarranted intrusion on the privacy of the individual. Most importantly, it had a strong, democratic caveat, which states that, unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, depending on the case, is convinced that the greater public interest warrants disclosure of such information[12]. This framework forced the PIO to carry out a balancing exercise on a case-by-case basis, which was mandatory. The statutory default was certainly transparency.

Privacy was identified as a defense that was admitted to be a very limited defense that could be overcome in case the information is associated with a public activity or an overriding public interest required the disclosure. In the famous case: *Girish Ramchandra Deshpande v. Central Information Commissioner*, (2013), the Court stated that information such as the assets, income tax return and disciplinary memos of a government servant were personal information and were not to be disclosed on a routine basis[13]. The Court however indicated in a triumphant manner that such information should be disclosed when an applicant could prove a greater interest to the public. In *Subhash Chandra Agarwal, (2020*) the opinion of the majority was purely based on the presumption that the balancing exercise incorporated in Section 8(1)(j) was not only imperative but also paramount to the continuity of the Act. Section 44 of the DPDP Act concerns consequential changes in other laws to harmonize the new data protection regime.

Under the guise of harmonization, the Section 44(3) is a sweeping legislative override on the RTI Act by replacing the entirety of the subtlety of Section 8(1)(j). It explicitly stated that there shall be no obligation to give any citizen information which relates to personal information, *provided that* the disclosure of such information has no relationship to any public activity or interest, or which would cause an unwarranted invasion of the privacy of the individual. Crucially, it contained a powerful, democratic caveat: unless the Central Public Information

[11] Right to Information Act, 2005, Section 8(1)(j), No. 22, Acts of Parliament, 2005 (India).
[12] Id.
[13] Girish Ramchandra Deshpande v. Central Information Commissioner, (2013) 1 S.C.C. 212.

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. In order to fully understand the scale of this erasure of the legislation, the statutory frameworks require direct comparison. An evaluation of the statutory frameworks show very sharp contrasts. In respect to the nature of the exemption, the initial form of the Section 8(1)(j) of the RTI Act was conditional and very conditional in nature and the revamped Section 8(1)(j) of the RTI Act through the DPDP Act has an unqualified, blanket ban. Regarding the test of the public activity, the original RTI Act obligated the PIO to strictly determine whether the data is related to any public activity, which has been removed entirely in the amended version of the law. In the same vein, the privacy invasion test that necessitated an examination of "unwarranted invasion" of privacy under the original RTI Act has been wholly done away with in the legal text.

Lastly, on the issue of public interest override, the initial RTI Act required disclosure in case there was a greater public interest to warrant it, but this protection has been abolished entirely in the DPDP Act clause (j). By progressively and intentionally removing all the safeguards, qualifiers, and proportions of the clause, the amendment transforms the law into a regime of moderate transparency into one of complete prohibition by the state, just because the document includes personal information. Proponents of the new amendment often argue that the case of Section 8(2) of the RTI Act, which vaguely states that a public authority may permit access to information when the public interest prevails over the harm to the protected interests, has not been changed and is a sufficient point of release. But constitutional legal experts rightly note that this is a fallacy. Section 8(2) functions at a general and highly discretionary level throughout the vast range of the diverse exemptions, and the specific, mandatory balancing inquiry specifically designed to resolve the special tension of personal information in 8(1)(j) has been absolutely overruled.

## IV. The Privacy Paradox and the Theory of Contextual Integrity

Section 44(3) is not only a failure in doctrine which can be attributed to bad statutory drafting; it is also entrenched in an underlying theoretical misconception of what privacy can and does mean in a modern, democratic society. The DPDP Act does not view any difference between personal data, but proclaims that all the personal data are a monolith and the same level of high protection is given to the asset declarations of a mighty Member of Parliament as to the very sensitive and personal medical data of an average citizen. What is essentially referred to as a

constitutional privacy paradox is provoked by this arbitrary legislative practice. In order to unravel this paradox, one must go further than Alan Westin, more conventional and somewhat dogmatic paradigm of privacy as a mere control of information, and apply the much more solid and sophisticated model offered by Helen Nissenbaum, which is contextual integrity. [14]

The contextual norm would demand full confidentiality when an individual provides a physician with intimate medical data. But once a person voluntarily takes a public office, his or her material resources, office policies, and professional behavior are subjected to an entirely different social environment - the environment of democratic politics, trust of the people and civil responsibility. The RTI Act, in its original draft, explicitly and cautiously distinguishing between activities that are of a personal type and those that are connected to any public activity, fully reflected the theory of Nissenbaum in statutory terms. It was a prudent acknowledgment that the detachability of information is entirely a matter of context. The amendment of the DPDP Act makes a fatal contextual mistake. The legislature has forcibly decoupled the data as it concerns its critical context in the public, by defining personal information broadly as any data about an identifiable person, and by then banning, under the RTI Act, all disclosure of such data, as an injury to the right to privacy, in total disregard of the legal fact that public officials are obliged to exercise a certain degree of privacy over any information, particularly information pertaining to their own responsibilities in the public. The DPDP Act has placed the privacy of the powerful well above the constitutional right of the citizen to know.

## V. The Chilling Effect Doctrine in Indian Constitutional Law

The implications of this statutory absolute are far-reaching beyond the simple administrative disallowance of any particular RTI applications at government desks; they trickle down into the wider constitutional canvas, like the creation of an immeasurable chilling effect on the freedom of speech and expression. The doctrine of the chilling effect, which was initially a staple of American First Amendment law, has established a solid foundation in Indian constitutional law to safeguard speech against over-spanning, incompletely-crafted, or disproportionately-punitive state regulations that unintentionally discourage legal expression as a result of the constant threat of penalty. The Supreme Court of India has applied the chilling effect doctrine in a consistent and dominant manner to invalidate laws which restrict democratic speech. In *S. Khushboo v. Kanniammal*, (2010), the Court recognized that the

[14] Alan F. Westin, Privacy and Freedom 24 (1967); *see also* Nissenbaum, *supra* note 23, at 122.

specter of a recurring, vexatious criminal litigation would have a very chilling effect on free expression of ideas. [15]

More to the point, in *Shreya Singhal v. Union of India*, (2015), the Court realized the looming threat of the repeated, frivolous criminal litigation. [16]The Court, in *Anuradha Bhasin v. Union of India*, (2020) has quashed the provision of the Information Technology Act, 2000 under Section 66A as it was a ridiculously broad net that had a chilling effect on innocent, constitutionally-protected speech, due to its vague, undefined terms (i.e., the terms of annoyance and inconvenience). The Court acknowledged that the disproportionate shutdown of the internet by the state has a direct chilling effect on the right to know of the press and the population, in general, and that the state relies on secretive so-called sealed cover procedures and imprecise national security assertions, to deny broadcasting licenses. The Court also reiterated that the criticism of a governmental policy is greatly safeguarded under the Article 19(1)(a) and it can not be smothered by the administrative obscurity. [17]

Moreover, the recent ruling of the Bombay High Court in the case of *Kunal Kamra v. Union of India* restated that excessively general regulatory frameworks concerning fake news with no procedural protections excessively caution expression and give rise to a self-censorship culture. The chilling effect becomes powerful when it is applied to the DPDP Act and the new amended RTI regime which will have a dual capacity. First, the direct and immediate chilling of investigative journalism and transparency activism. The RTI Act is the most important law to journalists in India because they use it to discover corruption, check the political assets misrepresentation, and unveil administrative malfeasance, which means that nearly any document that contains a human being, such as a list of government employees, an official audit report with specific names of negligent officials, a list of welfare recipients, etc., can be withheld legally and without delay by the PIO. Journalists are left to work under a cloud of constant legal ambiguity, which is actively deterrent to aggressive reporting and creates the atmosphere of a high editorial risk-aversion. Second, the DPDP Act contains harsh, devastating punitive provisions, such as excessive fines, in case of an unlawful processing or disclosure of personal data. The Act drives a chilling effect on leaking, reducing, and printing documents: not only does the new law force journalists and independent publishers to constantly decide whether their critical reporting will be retroactively subjected to the new law as a data fiduciary,

[15] S. Khushboo v. Kanniammal, (2010) 5 S.C.C. 600; Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.
[16] Id.
[17] Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637.

but also to literally starve the entire information ecosystem. By unceremoniously severing the flow of information at the RTI level, and endangering the further flow of information in the publication level, the DPDP Act practically paralyzes the democratic control the framers of Article 19(1)(a) envisage.

## VI. The Legislative Panopticon: Asymmetry of Visibility

The constitutional peril of the DPDP Act is so great as to be seen with naked eyes when one considers the act as a whole, comparing the harsh new limitations on the citizen with the unbelievably wide exceptions on the part of the state. Such an opposition is what can be called the construction of what can best be termed as a Legislative Panopticon, a systemic structure, which is defined by a deep asymmetry of visibility, with the state having a gods eye view of the population, but behind a veil of secrecy of legislation which makes what the state does to itself completely opaque. This is the concept of the Panopticon described by philosopher Michel Foucault; a system where the subjects are not only always visible to a central authority, but cannot be certain that they are under observation, therefore causing a state of constant visibility that enforces complete obedience. This is the dynamic that is being performed in the digital space in the DPDP Act. On the one hand, Section 17 of the Act gives the central government the blanket authority to waive any instrumentality of the state, the strict privacy, notice and consent requirements of the Act, to provide an architecture of lawful mass surveillance in which the citizen is as transparent as a glass and in full view by the government.

Conversely, the state is also proactive in destroying the ability of the citizen to retrospect. As discussed in detail in Chapter 2, Section 44(3) of the Act is the amendment to the RTI Act that firmly protects the inner workings of the government, administrative rulings, and personal information of the government servants, to be kept out of public sight. This generates a frightening legitimate uses paradox, which is well brought to light by civil liberties organizations that track the legislation[18], whereby Section 7 of the DPDP Act is quite liberal in allowing the state to process personal data in many uses without explicit consent of the citizen in their everyday governmental affairs, licensing and subsidies, but the RTI amendment is aggressively enforced against the citizen to exercise similar principles to demand state transparency. The statutory right to privacy was initially formulated in ways that were geared

[18] Apar Gupta, *Chilling Effects of Data Protection Exemptions on Free Speech*, 14 Indian J.L. & Tech. 88 (2023).

to guard the less powerful against the powerful; rather, the DPDP Act restructures the fundamentals of the right to privacy in such a way that it serves the utility of the state even as it renders the state invisible to the citizens[19]. This is the panoptic relationship that is inherently arbitrary and violently abuses the basic framework of a democratic republic where the state must at all times remain answerable to the governed.

## VII. The Overriding Non-Obstante Clause: Analyzing Section 38(2)

To make the doctrinal crisis which the amendments have brought about, more distressing is the very aggressive tone in which the DPDP Act has been given the claim of absolute dominance over all the current legal systems. Adding a provision of Section 38(2) of the DPDP Act to the historical transparency laws seriously distorts the new privacy regime. Although Section 38(1) is an innocuous platitude that the Act shall be interpreted as being consistent with other laws, Section 38(2) is a heavy-handed, sweeping concept of non-obstante: where there should be any conflict between the provisions of the DPDP Act and the provisions of another law in force at that time, the provisions of the former shall invariably prevail. The survival of RTI Act has devastating immediate effects as a result of this overriding effect.

In the event that a legal tussle can arise concerning the disclosure of digital personal data in the possession of a government functionary, the PIO is now statutorily obliged to invoke the provisions of Section 38(2), the absolute privacy requirement of the DPDP Act to override the requirement of transparency of the RTI Act. It is perhaps worth noting that even earlier expert committees on privacy, including the highly respected Justice A.P. Shah Committee report, specifically warned against just this situation, arguing vehemently that the privacy legislation must not circumscribe the Right to Information. Additionally, the Act characterizes a person in a very broad way. Combining this enormously broad definition of a 'person' with the overriding impact of Section 38(2) and the general prohibition of disclosure contained in Section 44(3), the Act places the power of the government authorities to refuse to disclose virtually any government document on their hands. All that pertains to or is related to these vaguely defined 'persons' can be easily categorized as personal data, and therefore actually makes the entire RTI framework submissively subordinate in the law, which grants transparency statutory compliance in a head-on collision with statutory privacy.

[19] Usha Ramanathan, *The State as a Panopticon: Data Protection and the Loss of Privacy*, 57 Econ. & Pol. Wkly. 34 (2022).

## VIII. Comparative Constitutional Perspectives: Reconciling the Paradox

To fully comprehend the radicality and the constitutional anomie of the Indian legislative decision, it is much educative to use a comparative constitutional approach. The vices of the DPDP Act are so clear when comparing the way the transparency-privacy paradox is addressed in other developed democracies. The UK offers a most applicable and most operational comparative example by the combination of the General Data Protection Regulation (UK GDPR), 2018, and the Freedom of Information (FOI) Act, 2000. Comparative analysis of the legal models in the United Kingdom and India reveals that there are enormous differences. The Digital Personal Data Protection Act, 2023 has become the main law on data protection in India, whereas the United Kingdom is dependent on the General Data Protection Regulation (GDPR), 2018.

In the case of the RTI/FOI interface, the Indian post-2023 framework is based on the unconditional, blanket exemption of personal information expressed in Section 8(1)(j). Conversely, the GDPR and the FOI Act 2000 of the UK are thoroughly aligned, allowing disclosure to be made in case of a lawful basis. With regard to the overriding of the public interest, India has eliminated it statutorily under the particular personal information exemption clause, whilst in the UK, it explicitly continues to form the part of the core, working factor in establishing the lawful basis of data disclosure. Therefore, the doctrinal position of privacy in India has been used as a tool to stop state transparency by creating an absolute statutory shield against such transparency, whereas the UK has opted to see it as a fundamental right but maintain it in a dynamic balance with the right to know by the people. The European and UK data protection models are marked by a very subtle and a well-balanced reconciliation of conflicting rights.[20]

In the case of the GDPR, although the control of personal information by individuals is highly valued and strictly secured, this does not serve as a simple, blanket cloak against the visibility of society. In a situation where the information requested by a citizen by the UK FOI Act contains personal information, the authorities are bound by law to consider whether there is a lawful basis on which the information should be disclosed. This evaluation inherently entails the consideration of the good interests, sought by the people in gaining access to the information against the interests or the basic rights and freedoms of the data subject. It is also

[20] Mark Taylor, *The Right to Information and the GDPR*, 8 Int'l J.L. & Info. Tech. 214 (2020).

the case that the social interest is a crucial, functional measure that cannot be overlooked. On the contrary, the Indian legal environment has actively moved out of this dynamic balance[21]. By wholly removing the public interest test out of Section 8(1)(j), the Indian parliament has abdicated the internationally recognized legal principle of harmonization. The Indian paradigm, though, represents an entrenched administrative wish to have perfect secrecy, cynical in its application of the internationally understood term of data protection to perform and legitimize localized bureaucratic secrets.

**Findings and Suggestions**

The Digital Personal Data Protection Act, 2023, and the deplorable effect it has produced on the right to information act, 2005 illustrate a profound statutory imbalance through its exhaustive system of doctrinal analysis. The legislative amendment of the Section 8(1)(j) is much more than a statutory amendment; it is a structural, fundamental re-engineering of the democratic social contract between the Indian state and the Indian citizens. According to the above exhaustive analysis, the paper underlines the following conclusive findings:

Firstly, the amendment is unconstitutional, and raises the right to privacy to an absolute statutory privilege, which altogether avoids the strict proportionality of the judicial mandate, which was clearly required in the Puttaswamy judgment, and which demanded a careful proportionality analysis whenever fundamental rights clash.

The DPDP Act sacrifices important democratic nuance to rigid, bureaucratic absolutism. Second, the Act has a chilling effect on the freedom of speech and expression in the Article 19(1)(a), the specter of harsh regulatory punishment coupled with the systematic, legal denial of primary source documents on the administration of the people, has a devastating impact on investigative journalism, media coverage, and critical disclosure of whistleblowers.

Third, the law enacts a constitutionally questionable asymmetry a legislative panopticon, the giving of the state sweeping, unrestrained exemptions to process data on its citizens (Section 17) combined with the overriding effect of the Act (Section 38(2)) and the RTI amendment (Section 44(3)) to effectively bar the ability of the citizenry to inspect the workings of the state apparatus, turns the very purpose of privacy inside out. It actively gives power to state surveillance and actively kills state transparency. Immediate jurisprudential and legislative

[21] Id.

interventions are needed to correct this gross paradoxical doctrinal imbalance between Article 19(1)(a) and Article 21 in order to remedy this, and to restore the constitutional balance between Article 19(1)(a) and Article 21. The constitutional issues that are already pending in the Supreme Court of India like *Venkatesh Nayak v. Union of India (W.P.(C) No. 177 of 2026)* and related petitions by the Reporters Collective, is an exceptional, perhaps temporary, chance of the judiciary to redress this imbalance.[22]

**Recommendations on Legal and Policy Reform:**

Section 44(3) of the DPDP Act is to be judicially Read Down: The Supreme Court of India has to use the strict proportionality test of Puttaswamy on Section 44(3) of the DPDP Act. To prevent the strike down of the provision as ultra vires, the Court ought to read down the blanket exemption, which requires that the term information which relates to personal information should be necessarily qualified by the historical public interest test. The courts will need to restate the doctrine of Subhash Chandra Agarwal that the doctrine of democratic accountability is unconditionally superior to the doctrine of bureaucratic privacy in cases where the interests of the greater majority are proved to be at risk.

Reinstatement of the Proportionality Test Legislation: Parliament must pressurize on an amendment of the legislation so as to re-introduce the specific public interest override into the text of Section 8(1)(j) of the RTI Act. The statutory text should be brought back to track so that the legality, legitimate aim, necessity and minimal intrusive means are duly considered by the PIO before it rejects any citizen RTI request.

Legal adoption of Contextual Integrity Principles: The regulatory system that will be run by the newly established Data Protection Board of India should formally incorporate the theory of contextual integrity, developed by Helen Nissenbaum.[23] It will be necessary to come up with clear and enforceable administrative principles that will separate between the very sensitive, purely personal data of regular citizens and the administrative, monetary, and disciplinary data of governmental officials. The latter, because of its direct relation to the duty of the people and the funds of the state, must strongly be subjected to the scrutiny of the people. [24]

[22] Venkatesh Nayak v. Union of India, W.P.(C) No. 177 of 2026 (pending before the Supreme Court of India).
[23] Helen Nissenbaum, *Privacy as Contextual Integrity*, 79 Wash. L. Rev. 119 (2004).
[24] *Subhash Chandra Agarwal*, (2020) 5 S.C.C. at 495.

To conclude, it is impossible to have a strong democracy that can operate in the shadows, to say the least. Although the safeguarding of the digital personal information is an undeniable necessity of the Constitution in the new era, it cannot be used as a tool of the state secrecy. Privacy and information rights are complementary elements of freedom, which should be balanced proportionately rather than consumed like statutory absolutism. The intervention of the constitutional courts to break this privacy paradox is imperatively needed so that the needed privacy shield is not silently transformed into an iron curtain against the democratic openness.

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