

PRIVACY VIS-À-VIS TRANSPARENCY: RECONCILING THE RIGHT TO INFORMATION ACT, 2005 WITH THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

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Abstract

The Indian constitutional framework simultaneously advances two foundational democratic commitments: transparency in governance and protection of individual privacy. Transparency, institutionalised through the Right to Information Act, 2005 (RTI Act), is essential for accountability, participatory democracy, and control of corruption. Privacy, elevated to the status of a fundamental right under Article 21 by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India*, is integral to human dignity and individual autonomy. The enactment of the Digital Personal Data Protection Act, 2023 (DPDP Act) has recalibrated the legal landscape governing informational privacy, particularly in the digital sphere. This article undertakes an in-depth doctrinal, constitutional, and jurisprudential analysis of the interface between privacy and transparency in India. It argues that privacy and transparency are not antithetical values but must be reconciled through principles of proportionality, public interest, and harmonious statutory interpretation. The article further contends that an overly expansive application of data protection norms risks diluting the transformative potential of the RTI regime and weakening democratic accountability.

Keywords: Transparency in Governance, Right to Information Act, 2005, Right to Privacy (Article 21), Digital Personal Data Protection Act, 2023, Democratic Accountability

1. Introduction

Democratic governance rests on the twin pillars of openness and accountability. Transparency enables citizens to scrutinise the functioning of public institutions, participate meaningfully in governance, and hold public officials accountable for the exercise of power. At the same time, constitutional democracies are committed to safeguarding individual liberty and dignity through the protection of privacy. The relationship between these values is inherently complex, particularly in an era marked by digitisation, data-driven governance, and expansive State information systems.

In India, transparency has found robust expression through the Right to Information Act, 2005, widely regarded as one of the most progressive transparency laws in the Global South. Privacy, on the other hand, attained explicit constitutional recognition only in 2017 with the Supreme Court's unanimous decision in *Justice K.S. Puttaswamy v. Union of India*. The subsequent enactment of the Digital Personal Data Protection Act, 2023 represents a legislative response to this constitutional mandate, aiming to regulate the collection, storage, and processing of digital personal data.

The coexistence of these two statutes raises pressing questions. Can personal data

held by public authorities be disclosed under RTI without violating privacy? Does the DPDP Act curtail the scope of the RTI Act? How should conflicts between the right to know and the right to privacy be resolved? This article addresses these questions through a comprehensive analysis of constitutional principles, statutory provisions, and judicial precedents.

2. Privacy and Transparency: Constitutional Foundations

2.1 Privacy as a Constitutional Value

Although the Constitution of India does not expressly enumerate a right to privacy, judicial interpretation has long recognised privacy as implicit in the guarantee of life and personal liberty under Article 21. Early decisions such as *Kharak Singh v. State of Uttar Pradesh* reflected judicial hesitation, but subsequent jurisprudence gradually expanded the scope of personal liberty.

The nine-judge bench in *Puttaswamy* conclusively settled the issue by holding that privacy is a constitutionally protected right deriving from Articles 14, 19, and 21. The Court conceptualised privacy as a multifaceted right encompassing bodily integrity, informational self-determination, and decisional autonomy. Importantly, the Court clarified that privacy is not absolute and may be restricted by law, provided such restriction satisfies the test of legality, necessity, and proportionality.

2.2 Transparency and the Right to Know

Transparency is deeply embedded in Indian constitutional jurisprudence through Article 19(1)(a). The Supreme Court has consistently held that freedom of speech and expression includes the right to receive information and the right to know about governmental affairs. In *State of Uttar Pradesh v. Raj Narain*, the Court famously observed that secrecy in government is antithetical to democratic accountability.

The RTI Act operationalises this constitutional principle by conferring a statutory

right upon citizens to access information held by public authorities. It represents a shift from a culture of secrecy to a regime of openness, subject only to narrowly tailored exemptions.

3. The Right to Information Act, 2005: Normative and Institutional Design

3.1 Objectives and Scope

The RTI Act was enacted with the explicit objective of promoting transparency and accountability in the functioning of public authorities. It applies to all authorities established by or under the Constitution, statutes, or government notification, including bodies substantially financed by the State.

3.2 Disclosure Obligations

Section 3 confers upon all citizens the right to information, while Section 4 mandates suo motu disclosure of key information to reduce the burden of individual requests. These provisions reflect the Act's emphasis on proactive transparency.

3.3 Exemptions and Privacy Protection

Section 8 of the Act enumerates specific exemptions from disclosure. Among these, Section 8(1)(j) directly addresses privacy concerns by exempting personal information unrelated to public activity or interest or whose disclosure would result in unwarranted invasion of privacy. Crucially, the provision incorporates a public interest override, allowing disclosure where larger public interest so warrants.

4. Judicial Engagement with Privacy under the RTI Regime

Judicial interpretation has been instrumental in shaping the contours of privacy within the RTI framework. The Supreme Court has generally adopted a cautious approach to disclosure of personal information.

In *Girish Ramchandra Deshpande v. Central Information Commissioner*, the Court held that service records, disciplinary proceedings, and property details of public servants constitute personal information

exempt from disclosure in the absence of overriding public interest. This position was reaffirmed in *Canara Bank v. C.S. Shyam*, where the Court denied disclosure of personal information relating to bank employees.

At the same time, the Court has underscored the importance of institutional transparency. In *CPIO, Supreme Court of India v. Subhash Chandra Agarwal*, a Constitution Bench held that the office of the Chief Justice of India falls within the RTI Act, though personal information must be protected through a balancing exercise. This decision reflects the Court's attempt to reconcile transparency with privacy rather than privileging one value absolutely.

5. The Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 was enacted to regulate the collection, processing, and storage of digital personal data. It establishes obligations for entities handling personal data and provides rights to individuals regarding their data. The Act also introduced amendments affecting the RTI framework. The amendment to Section 8(1)(j) seeks to harmonize the RTI regime with the constitutional right to privacy recognized in *Justice K.S. Puttaswamy v. Union of India*. However, critics argue that the amendment may enable authorities to deny information requests by labelling information as "personal data."

The constitutionality of these amendments is currently under challenge before the Supreme Court in *Venkatesh Nayak v. Union of India*, which will examine whether the amendments undermine transparency under the RTI Act.

The DPDP Act represents a watershed moment in Indian data protection law. Enacted in response to *Puttaswamy*, it seeks to create a comprehensive framework for regulating digital personal data.

Scope and Applicability

The Act applies to processing of digital personal data by both State and non-State actors. Government departments, therefore, function as data fiduciaries under the Act, subject to statutory obligations.

Rights of Data Principals

The DPDP Act recognises several rights of data principals, including the right to access information, correction and erasure of data, and grievance redressal. These rights reinforce the principle of informational self-determination.

Obligations of the State

By subjecting government entities to data protection obligations, the DPDP Act seeks to curb arbitrary data collection and misuse by the State. However, it also contains exemptions in the interest of sovereignty, security, and public order.

6. Privacy Vis-à-Vis Transparency: Zones of Conflict

The most acute conflict between the RTI Act and the DPDP Act arises where RTI requests seek personal data held by public authorities. Asset declarations of public officials, educational qualifications of candidates, and records of disciplinary proceedings exemplify this tension.

While such disclosures promote transparency and accountability, they also implicate informational privacy. An overly restrictive approach based on data protection may undermine the RTI's role as a tool of democratic oversight.

7. Harmonious Construction and Doctrinal Tools

7.1 Public Interest as a Mediating Principle

Public interest has emerged as a central balancing concept in both RTI and privacy jurisprudence. Courts have consistently held that personal information may be disclosed where it serves a legitimate public purpose, such as exposing corruption or maladministration.

7.2 Doctrine of Proportionality

The proportionality test articulated in *Puttaswamy* provides a structured framework for resolving conflicts between fundamental rights. Applied to RTI disclosures, proportionality requires assessing whether disclosure is necessary and whether less intrusive means are available.

8. Harmonising RTI and DPDP: A Constitutional Imperative

The DPDP Act does not expressly override the RTI Act. In the absence of a clear non-obstante clause, the principle of harmonious construction must govern their interpretation. Both statutes must be read in a manner that preserves transparency while respecting privacy. Any interpretation that permits blanket denial of RTI requests on data protection grounds would erode democratic accountability and undermine the constitutional right to information.

9. Comparative Perspectives

Comparative experience demonstrates that data protection and freedom of information laws often coexist. Under the European Union's General Data Protection Regulation (GDPR), personal data may be disclosed where necessary to comply with legal obligations, including freedom of information laws. Similarly, the UK Freedom of Information Act incorporates a public interest test when personal data is sought.

These jurisdictions reinforce the view that privacy and transparency can be reconciled through nuanced balancing rather than absolute exclusions. Privacy and transparency are not irreconcilable constitutional values but complementary principles that sustain democratic governance. The RTI Act, 2005 and the DPDP Act, 2023 must be viewed as parts of a coherent constitutional framework rather than competing statutes. The real challenge lies not in choosing one value over the other but in calibrating their interaction

through principled, proportionate, and context-sensitive interpretation.

A robust democracy demands openness from the State while respecting individual dignity. Privacy must not become a veil for secrecy, and transparency must not become a license for intrusion. The future of Indian constitutionalism depends on maintaining this de

10. Emerging Challenges

The intersection of transparency, privacy, and data protection presents several challenges:

Over-broad interpretation of personal information

Potential misuse of privacy exemptions by public authorities

Digital governance and mass data collection

Balancing anti-corruption transparency with individual privacy

These challenges demonstrate the complexity of reconciling open government with data protection in the digital age.

11. Suggestions and Recommendations

- To maintain a balance between transparency and privacy, the following measures are necessary:
- Clear guidelines on what constitutes "personal information" under RTI.
- Strengthening the public interest test before denying information.
- Harmonizing RTI and data protection laws through judicial interpretation.
- Promoting transparency in public administration while safeguarding sensitive personal data.

12. Conclusion

The relationship between the Right to Information Act, 2005 and the Right to Privacy represents one of the most significant constitutional debates in contemporary India. While transparency remains essential for democratic accountability, privacy and data protection have become increasingly important in the digital era. The enactment of the Digital

Personal Data Protection Act, 2023 reflects India's attempt to protect informational privacy while maintaining transparency. However, the long-term balance between these competing values will ultimately depend on judicial interpretation and careful legislative reforms. Privacy and transparency are not irreconcilable constitutional values but complementary principles that sustain democratic governance. The RTI Act, 2005 and the DPDP Act, 2023 must be viewed as parts of a coherent constitutional framework rather than competing statutes. The real challenge lies not in choosing one value over the other but in calibrating their interaction through principled, proportionate, and context-sensitive interpretation. A robust democracy demands openness from the State while respecting individual dignity. Privacy must not become a veil for secrecy, and transparency must not become a license for intrusion. The future of Indian constitutionalism depends on maintaining this delicate balance.

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