

IMPACT OF DATA PROTECTION LAWS ON THE RIGHT TO INFORMATION: A COMPARATIVE ANALYSIS OF INDIA AND THE UNITED KINGDOM

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Abstract

The right to information empowers an individual for having legitimate access to the existing information available in the public domain. Conversely, the right to privacy encompasses an individual's control over the dissemination of personal information about them. Both the rights are mutually enhancing but due to the congruence nature of both rights, the competing interests of access to information and privacy are sometimes at a crossroads. Data protection laws have been a long-standing issue in India. The Digital Personal Data Protection Act 2023 marks an important milestone in the voyage of the right to privacy. The Act makes "Consent" to be paramount for all the actions of data processing and ensures information self-determination. The DPDP Act promotes transparency and accountability through assigning rights and duties of the "Data Principal". The DPDP Act, 2023 under section 44 (3) has also made an amendment to section 8 (1) (j) of the Right to Information Act, 2005 which provides for exemption of disclosure of personal information. The amendment has the effect of constituting privacy as an unqualified exemption from disclosure of information. The proposed amendment has removed the already present qualified provision of section 8 (1) (j) and has been scrutinized by civil society groups as diluting the RTI Act, 2005. It is being claimed that through amendment the DPDP Act, 2023 is prioritising privacy over public interest. The present study will closely analyse the effect of the amendment introduced by the DPDP Act to the RTI Act in light of the GDPR 2018 and FOI Act 2000.

Keywords: Digital Data, Disclosure, Exemption, Public Interest, Processing, Collection

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- III Amendments to section 8 (1) (j) of the Right to Information Act, 2005 in the light of the Digital Personal Data Protection Act, 2023 in India**
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I Introduction

OVER THE past several decades, the character of information has undergone a profound transformation. It has transitioned from being an instrument of acquisition and manager of other assets to becoming one of the primary assets in our daily lives.¹In the contemporary digital era, the challenge of safeguarding one's private space remains a persistent concern. Throughout history, individuals have grappled with the complexities of securing and protecting their personal information and documents. Humans possess an innate sense of intuition that recognizes certain aspects of nature as private domains. This intuition also conveys a profound sense of interconnectedness among all life's elements, fostering a holistic understanding of the world.²To have an understanding of privacy can be described as a state of human experience. It has been conceptualized as being the "right to be let alone" or varying human experiences ranging from states of "solitude, intimacy, anonymity and reserve."³Adequate privacy protection is an essential component of an individual's ability to develop and maintain their identity.⁴

With the advent of globalization and rapid technological advancements, the sharing of personal data has increased significantly. The action of collection and process of data by public authorities have led to new issues and challenges in the field of data protection.⁵The intensification in the use of internet services for data sharing and other technology from one device to another has posed an increased risk of breaches and misuse of data which has detrimental effects on individual data protection. Personal data can be proved to be a potentially toxic asset if not collected, processed and shared appropriately and lawfully in a transparent manner.⁶In the past decade, particularly since the Covid-19 pandemic, there has

¹ Anne Wells Branscomb, *Who Owns Information? From Privacy to Public access*, 1 (Basic Books, New York, 1994).

² Daniel J. Solove, "Conceptualizing Privacy" 90 (4) *California Law Review* 1093 (2002).

³ Kirsty Hughes, "A Behavioural Understanding of Privacy and its Implications for Privacy Law" 75 (5) *The Modern Law Review* 808 (2012).

⁴ Nuala O'Connor and Alethea Lange, *et.al.*, *Privacy in the Digital Age*, Great Decisions 27 (Foreign Policy Association, 2015).

⁵ Attila Peterfalvi, "Data Protection and Freedom of Information on Digital Platforms" 2021 (2) *Law Review of Kyiv University of Law* 348 (2021).

⁶ EPW Engage, "What Enables the State to Disregard the Right to Privacy?" *Economic and Political Weekly (Engage)* 3 (2019), available at: <https://www.epw.in/engage/article/what-enables-state-disregard-right> (last visited on March 10, 2025).

been a significant increase in digital transactions. This has led to heightened concerns about privacy violations and the inappropriate processing of data.⁷

In our digital age, handling data ethically and legally is essential for a functioning democracy. After the Supreme Court's judgement in the case of *Justice K.S Puttaswamy (retd.)*,⁸ which lead to the recognition of the right to privacy as fundamental right under of article 21 of the Indian Constitution,⁹ the protection of individual's privacy forms one of the crucial challenges of the data protection laws. The state's primary responsibility is to safeguard the liberties and freedoms of its citizens. This entails imposing limitations on data collection and processing practices to ensure that all users have control over the dissemination of information pertaining to them.¹⁰ The Parliament of India has passed the "Digital Personal Data Protection Act, 2023",¹¹ (hereinafter referred to as DPDP Act) with the primary goal for providing protection to individual's personal digital data. The DPDP Act, 2023 creates a compliance mechanism which contains penalties to be imposed upon the violators in the cases of breaches and non-compliance of its provisions.¹²

A comprehensive data protection regime not only safeguards individuals' privacy but also offers a range of associated social and economic benefits.¹³ The enactment of the DPDP Act, 2023 marks a significant milestone in establishing a comprehensive data protection framework. Prior to this legislation, India lacked a standalone dedicated statute specifically addressing the "collection" and "processing" of personal digital data. Prior to its enactment, the processing and collection of data was regulated through limited provision of sections 43A¹⁴ and 72A¹⁵ of the "Information Technology Act, 2000" by prescribing the "Sensitive Personal Data or Information" (SPDI) rules.¹⁶ The protection afforded by these regulations

⁷Deepika Saluja and Krati Shrivastava, *et.al.*, "The Urgent Need for Actionable and Comprehensive Data Protection Legislation in India" 57 (53) *Economic and Political Weekly* 55 (2022).

⁸*Justice K. S. Puttaswamy (retd.) v. Union Of India*, (2017) 10 SCC 1.

⁹The Constitution of India, art. 21.

¹⁰ Mohammad Omar Hashmi; Adnan Ahmad, "Data Protection Bill: A Comparative Study of the Indian Data Privacy Dilemma" 3(3) *Jus Corpus Law Journal* 515 (2023).

¹¹ The Digital Personal Data Protection Act, 2023, (Act 22 of 2023).

¹²*Supra* note 10.

¹³Gaurav Pathak, "Need for a Data Privacy Law" 57 (34) *Economic and Political weekly* 5 (2022).

¹⁴The Information Technology Act, 2000, (Act 21 of 2000), s. 43A.

¹⁵*Id.*, s. 72A.

¹⁶ Ministry of Communications and Information Technology, Department of Information Technology Notification, Dated April 11, 2011.

was inadequate and insufficient when considering the current scale of data collection and processing undertaken by both state and non-state actors.¹⁷

The Justice B. N. Srikrishna Committee (2017)¹⁸ was appointed by the Government of India to examine and analyse the issues and challenges of data protection in the country. The Personal Data Protection Bill, 2019,¹⁹ was a result of the suggestions made by the Justice B. N. Srikrishna Committee's report which it submitted in 2018. Subsequently, the joint parliamentary committee conducted a thorough examination of the bill and submitted its comprehensive report in December 2021. After all this chronology, the Personal Data Protection 2019 bill was withdrawn and the new draft Digital Personal Data Protection bill,²⁰ was put for seeking public opinions in November 2022. On August 07, 2023, the DPDP bill, 2023 was introduced and passed by "Lok Sabha" and subsequently passed by the "Rajya Sabha" on August 09, 2023.²¹ The DPDP Act, 2023 has been revised to a greater extent in comparison to its predecessor of 2019 Bill, which was mostly moulded on "The General Data Protection Regulation, 2018".²²

The DPDP Act, 2023 introduces a legal framework for establishing a compliance mechanism for processing digital personal data by assigning data principles with specific rights and responsibilities. The DPDP Act, 2023 grants individuals the right for having access to information related to them²³ and make data corrections as well as erasure respectively.²⁴ The act also empowers individuals to nominate some person for acting on behalf of them.²⁵ The act ensures informational self-determination and promotes transparency and accountability.

The DPDP Act, 2023 aims to resolve and balance conflicts of interest arising from the struggle between privacy and other fundamental rights by establishing a comprehensive legal

¹⁷ P Arun, "A Soft Tone with a Tiger Claw-A Critical Commentary on the Digital Personal Data Protection Bill, 2022" 58 (6) *Economic and Political Weekly* 10 (2023).

¹⁸ Justice B.N. Srikrishna "A Free and Fair Digital Economy Protecting Privacy" Empowering Indians" Government of India (2017).

¹⁹ The Personal Data Protection Bill, 2019, (Bill 373 of 2019).

²⁰ The Digital Personal Data Protection Bill, 2022, available at: https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Potection%20Bill%2C%202022_0.pdf (last visited on March 10, 2025).

²¹ Ministry of Electronics and Information Technology, "The Digital Personal Data Protection Bill, 2023" *PRS Legislative Research*, available at: <https://prsindia.org/billtrack/digital-personal-data-protection-bill-2023> (last visited on March 10, 2025).

²² Karishma Sundara and Nikhil Narendran, "Protecting Digital Personal Data in India in 2023 is the lite approach, the right approach?" 24 (1) *Computer Law Review International Journal* 9 (2023).

²³ *Supra* note 11, s. 11.

²⁴ *Supra* note 11, s. 12.

²⁵ *Supra* note 11, s. 14.

framework based on consent.²⁶ The fundamental purpose of the act is to facilitate the processing of digital personal data in a manner that acknowledges and balances the individual's rights for data protection while also adhering to the requirements for processing personal data for lawful purposes and all associated matters, incidental or not.²⁷ The act strives for enabling a transparent environment for the Data processing.²⁸

The Act will have an impact on most of the organisations working in the areas relating to “legal, IT, human resources, sales and marketing, procurement, finance, and information security” as a huge amount of data is being stored and processed by all these organisations. The organisation working in these areas will have to adapt to the new data protection regime and ensure proper compliance with the act.²⁹ The DPDP Act forms an earnest attempt to bring a harmonised and balanced data privacy regime in the country.³⁰

The DPDP Act, 2023 has made several changes to the existing legal framework. The whole mechanism of data collection and processing has been affected. The Act has proposed various amendments to the already existing legislations like “Information Technology Act 2000”³¹ and “Right to Information Act, 2005”,³² (hereinafter referred to as RTI Act). The DPDP Act vide section 44(3)³³ amends section 8 1 (j) of the RTI Act, 2005³⁴ insert a provision protecting privacy under RTI request. The amendment has the effect of overhauling the exemption from disclosure of information. The proposed amendment reads as:³⁵

Section 44 (3): In section 8 of the Right to Information Act, 2005, in sub-section (1), for clause (j), the following clause shall be substituted, namely: (j) information which relates to personal information.

The anticipated effect of the proposed amendment is to provide protection in the event of personal information disclosure under Right to Information (RTI) requests made under

²⁶ Angad Haksar, “Analysing the Digital Personal Data Protection Bill, 2022” 5 *Indian Journal of Law and Legal Research* 4 (2023).

²⁷ Divyanshi Kaushal, “The Digital Personal Data Protection Bill, 2022” 3 (2) *Jus Corpus Law Journal* 748 (2022).

²⁸ *Supra* note 26.

²⁹ Lalit Kalra, “Decoding the Digital Personal Data Protection Act, 2023”, *EY*, August 23, 2023, available at: https://www.ey.com/en_in/cybersecurity/decoding-the-digital-personal-data-protection-act-2023 (last visited on March 10, 2025).

³⁰ Sivarama Krishnan and Anirban Sengupta, *et.al.*, “The Digital Personal Data Protection Act, 2023” *PWC.IN* (2023).

³¹ The Information Technology Act, 2000, (Act 21 of 2000).

³² The Right to Information Act, 2005, (Act 22 of 2005).

³³ *Supra* note 11, s. 44 (3).

³⁴ *Supra* note 32, s. 8 (1) (j).

³⁵ *Supra* note 33.

section 6 of the Right to Information Act, 2005.³⁶ Through the amendment, the exemption clause will allow no category of personal information to be disclosed, thus strengthening and prioritising the privacy of individuals.

The original text of the exemption clause of section 8 (1) (j),³⁷ imbining the public activity and public interest test is been removed from the language of the section. It prescribed the conditions of the twin test *i.e.* “public activity” and “larger public interest”. If fulfilling the test, the personal information so requested to be disclosed was held to fall outside the scope of the protection of exemption. The qualified exemption clause now after 2023 RTI amendment stands to be an absolute one, disallowing disclosure of personal information under RTI request.³⁸

Criticism of the amendment has primarily centred on the elimination of the caveat provisions pertaining to “public activity” and “larger public interest. “Even before the amendment, there were concerns about misuse of the exemption clause of section 8 (1) (j) of the RTI Act, as the Public Information Officer (hereafter referred to as PIO), invoked the provisions of exemption to deny information, making it a frequent phenomenon.³⁹

Now after the removal of provisos after the amendment, the section makes room for more concerns. It’s been expressed that the public authority will acquire the right even to deny that personal information which fulfils the twin test of the “public activity” and “larger public interest”. This creates a blanket of restraint on the disclosure of information which have would have been otherwise done under earlier provisions of section 8 (1) (j). Now after the amendment the authorities would not be under any legal obligation to disclosure such personal information so requested.⁴⁰

The PIO will be now be provided with more wide range of discretionary power to allow or not allow any information falling under the category of personal information. Thus denying the disclosure of such information to the person seeking such information. It will result to an enlargement of the scope of subjectivity in the absence of any qualified proviso or

³⁶*Supra* note 32, s. 6.

³⁷*Supra* note 32, s. 8 (1) (j).

³⁸Himanshu Jha, “How India’s Data Protection Law Weakens Citizens’ Right to Information” *The Diplomat*, August 12, 2023, *available at*: <https://thediplomat.com/2023/08/how-indias-data-protection-law-weakens-citizens-right-to-information/> (last visited on March 10, 2025).

³⁹Vineet Bhalla, “How Modi government is using data privacy as an excuse to cripple the Right to Information” *Scroll.in*, August 02, 2023, *available at*: <https://scroll.in/article/1053514/how-modi-government-is-using-privacy-as-an-excuse-to-cripple-the-right-to-information> (last visited on March 10, 2025).

⁴⁰*Supra* note 17 at 4.

any other conditional clause as it was provided under the original Exemption Clause of the section 8 (1) (j), RTI Act, 2005.

II Balancing Transparency and Privacy: The Interface between Right to Information and Privacy

The freedom of speech and expression is a globally cherished right aimed at promoting self-fulfilment and individual's growth. Tracing its origin in freedom of speech and expression, right to information allows for accessing information held by public authorities.⁴¹ The right to information allows people to seek and request for the government information. RTI plays a crucial role in ensuring accountability of state institutions.⁴² The right enables a lawful flow of information which in turn fosters transparency and accountability⁴³

In today's age of liberalization and globalization, secret government is no longer acceptable, and all stakeholders, including citizens, consumers, civil society organizations, and businesses, have a right to access information relating to the administration, operations, or decisions of public authorities.⁴⁴ Whereas, the right to privacy is designed to safeguard and nurture an individual's personality and protect people's personal space from any unwarranted intrusion. Privacy acts as shield from disclosure of any such information which results into an act of intrusion into a person's inviolate personality. The right of privacy results into acting as a restriction on the right to information.⁴⁵

Right to information and privacy are vital human rights which are complementary to each other. One right facilitates access to the information already available with the public institutions, whereas privacy acts as an exemption against the dissemination of the such information held by public institutions falling into the category of personal information and affecting the private sphere of an individual.

⁴¹*Supra* note 9, art.19.

⁴²Aparna Singh, "Right to Information Vis-A-Vis Privacy Right: Balancing of Interest" 7 *RMLNLJ* 81 (2015).

⁴³The Right to Information, *What is Right to Information*, Wiki, available at: <https://righttoinformation.wiki/guide/applicant/fundamental-facts-about-rti#:~:text=RTI%20stands%20for%20Right%20to,and%20seek%20certified%20photocopies%20thereof>. (last visited on March 10, 2025).

⁴⁴Pujarani Behera, "An Analysis of Right to Freedom of Speech and Expression" 11 *Penacclaims* 1 (2020).

⁴⁵*Supra* note 42 at 82.

The first academic discussion on privacy dates back to an article published, in *Harvard Law Review*, 1890.⁴⁶ The article was the first eye-opener manifesting a right like “privacy” as the “right to be let alone”. Privacy was explained encompassing a claim to enjoy life free from intrusions by the public at large. It was described as enjoying one’s private space without any threat of unauthorized intrusion. Privacy also includes having power to control over the publication of information affecting private sphere; and also the unauthorized distribution of the photographs, thus keeping private all the aspects of one’s personality.⁴⁷

The right to information as a “positive right” empowers individuals to access information and makes them informed and aware citizens. Compared to the nature, privacy acts as a “negative right” protecting an individual’s life, liberty, and property from unlawful intrusion.⁴⁸ However, judicial trends suggest that privacy also has a positive aspect, particularly about protecting one’s identity.⁴⁹

Although the rights of information and privacy are mutually supportive of each other, there arise conflicts when the request for information disclosure includes such information which falls under the category of personal information. For dealing with situations where the information disclosure is in conflict with privacy of a person, adequate safeguards provided under both the data protection law and information need to be followed in a harmonised manner. The safeguards included as exemption under unamended section 8 (1) (j) for protecting disclosure of personal information which had no relation to any public interest had tried to balance the competing interest of informational access and privacy. The qualified exemption of protecting disclosure of “personal information” had tried to balance and harmonise both the rights while deciding on cases of access to information concerning personal information.

III Amendments to section 8 (1) (j) of the Right to Information Act, 2005 in the light of the Digital Personal Data Protection Act, 2023 in India

The main aim of data protection legislations is for prescribing rules and procedures for creating a compliance mechanism for collecting and processing of data with minimisation

⁴⁶ Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy” 4(5) *Harvard Law Review* 193-220 (1890). 1890.

⁴⁷ Herbert Spencer Hadley, “Right to Privacy” 3(1) *Northwestern Law Review* 1 (1894).

⁴⁸ Markkula Center for Applied Ethics, *Rights*, available at: <https://shorturl.at/mquS1> (last visited on March 10, 2025).

⁴⁹ *Supra* note 8 at 76.

of intrusion an individual's privacy.⁵⁰ The recently passed Digital Personal Data Protection Act of 2023 stands as the principal legislation for protection of digital personal data in India. The DPDP Act, 2023 has extra-territorial jurisdiction which will have implications over international and non-domestic entities dependent on usage and processing personal digital data.⁵¹ The Act has been drafted for enabling necessary changes to the existing legal framework with minimum disruption. It also contains provisions for enhancing "Ease of living" and "Ease of doing business" with special emphasis on "India's digital economy" initiative and its "innovation ecosystem".⁵²

Prior to the enactment of the DPDP Act, 2023, both the right of information and privacy were harmoniously balanced through the original exemption provision of the RTI Act, 2005 under section 8 (1) (j). The exemption clause provided under the RTI act tried to balance the public's interests of right to know and individual's privacy by putting specific exemptions from disclosure in cases of personal information with qualified proviso's of "public interest" and "public activity".⁵³

The recently enacted DPDP Act, 2023, through its section 44 (3), amends section 8 (1) (j) of the RTI Act, 2005. The significance of the exemption clause provided under section 8 (1) (j) was that it exempted the disclosure of information pertaining to personal information if the request made was concerning personal information. The proposed amendment has been criticized as deviating from the fundamental principles of the RTI Act and is perceived as a detrimental amendment. The language employed in the amendment clearly states that any information relating to personal information being sought under an RTI application will not be disclosed and will be exempted from disclosure under the purview of the exemption clause introduced in the 2023 amended section 8 (1) (j) of the RTI Act, 2005.

⁵⁰Vijay Pal Dalmia, "India: Data Protection Laws in India - Everything You Must Know" *Mondaq*, December 13, 2017, available at: <https://www.mondaq.com/india/data-protection/655034/data-protection-laws-in-india---everything-you-must-know> (last visited on March 10, 2025).

⁵¹Kirk Naha and Roma Gujarathi, *et.al.*, "India Passes Long Awaited Privacy Law", *Wilmerhale Privacy and Cyber Security Law*, August 18, 2023, available at: <https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20230818-india-passes-long-awaited-privacy-law> (last visited on March 10, 2025).

⁵²Ministry of Electronics and IT, "Salient Features of the Digital Personal Data Protection Bill, 2023" *Press Information Bureau*, August 09, 2023, available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947264> (last visited on March 10, 2025).

⁵³Moyurie Som, "Privacy Vs Information: Does The Digital Personal Data Protection Act Water Down The RTI Act?", *The Times of India*, August 10, 2023, available at: <https://epaper.timesgroup.com/timesspecial/sci-tech-environment/privacy-vs-information-does-the-digital-personal-data-protection-act-water-down-the-rti-act/1691642518636> (last visited on March 10, 2025).

The RTI amendment of 2023 vide DPDP Act, will result in making a conditional exemption into an unconditional provision; it will exempt the disclosure of personal information sought through RTI applications. The amendment does not carry any qualifying provisions, as was the case with section 8 (1) (j) before the amendment. The PIO will have the discretion to deny any Personal information whatsoever to the applicant without going into the merit of the case and will undermine the spirit and the basic intent of the RTI Act, 2005.⁵⁴

The stand of the Government of India on the criticism of the amendment of the exemption clause can be traced through the statement of the Cabinet Minister for the Ministry of Electronic and Information Technology, Government of India:⁵⁵

The harmonisation that was required between the RTI Act and the Data Protection has been done here.

Let us now closely look through provisions provided in the original section 8(1) (j) of the RTI Act, 2005 before the 2023 Amendment.

Section 8 (1) (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: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

The exemption clause allowed for the non-disclosure of any “personal information” that was not related to any “public activity” or “public interest”; and any such information disclosure of which had the tendency of causing an “unwarranted invasion” of an individual’s privacy. This provision grants individuals the protection of their privacy while

⁵⁴Shailesh Ghandi, “How the proposed Data Protection Bill will undermine India’s Right to Information” *Scroll.in*, November 21, 2023, available at: <https://scroll.in/article/1037879/how-the-proposed-data-protection-bill-will-undermine-indias-right-to-information> (last visited on March 10, 2025).

⁵⁵ The Hindu Bureau, “Digital Personal Data Protection Bill, 2023 passes in Lok Sabha; govt. shrugs off exemptions” *The Hindu*, August 07, 2023, available at: <https://www.thehindu.com/news/national/data-bill-passes-in-lok-sabha-govt-shrugs-off-exemptions/article67167943.ece> (last visited on March 10, 2025).

simultaneously ensuring that the right to information of others is not unreasonably restricted..⁵⁶

The original exemption clauses of section 8 (1) (j) encompassed the public policy principle privacy's protection and it also forms one of the oldest provisions preserving the private sphere of individuals. The exemption tried to postulate equilibrium between informational access and privacy of an individual. The words employed in the language of the exemption clause make it inherently clear that an individual's personal information cannot be provided any RTI application unless the prerequisite conditions of the "public interest" and "publicity activity" is satisfied. If there exist a larger public interest in the disclosure of the information, then information may be allowed to be disclosed. Otherwise, public authorities are lawful in denying requests for personal information and withholding such information.

In exceptional cases of the intersection of request for information disclosure happening to containing personal information, the essential ingredients contained in section 8(1) (j) had to be employed. The onus is upon the RTI applicant to prove and show on record the relevant supporting documents and shreds of evidence before the PIO that the disclosure of information so requested by the applicant is in public interest and exist a relation to public activity. The applicant must also provide evidence that the disclosure of information will be beneficial to the general public. Once the PIO is convinced, they can provide the applicant with the requested information. As a general rule, the public interest criterion has been used to balance the privacy exemption.

The judicial trend in India concerning information disclosures has been in line with the spirit and intent of the RTI Act, 2005. The intent of the RTI Act, 2005 has been for harmonising the conflicting interest of information disclosure and other competing interest arising out of such disclosures. Indian Courts have interpreted the conflict on the same line and had laid down that the disclosure of personal information which does not amount to the infringement of the privacy and serving the public interest can be permitted. In the case of *Girish Ramchandra Deshpande v. Central Information Commission*:⁵⁷

⁵⁶Shailesh Ghandi, "Can Personal Information Be Sought or Denied under RTI?" *Money Life*, June 15, 2023, available at: <https://www.moneylife.in/article/can-personal-information-be-sought-or-denied-under-rti/64230.html> (last visited on March 13, 2023).

⁵⁷ (2013) 1 SCC 212.

The Court denied the information relating to the personal matters of a public servant, pertaining to his service career and the details of his assets, liabilities, movable and immovable properties based on exception mentioned in section 8(1) (j) of the RTI Act, 2005.

The Supreme Court has further held that such information could be disclosed only if it would serve a larger public interest.⁵⁸In *Mario Arya v. Central Public Information Officer, Cabinet Secretariat*,⁵⁹ the Central Information Commissioner while agreeing to *Girish Ramchandra Deshpande* judgement,⁶⁰ has laid down that information relating to the complaints registered against a government's official and any action initiated upon such complaints by the authorities, qualifies to be term as personal information and liable for the protection provided under the exemption clause of section 8 (1) (j) of RTI Act.

The position has been reiterated by the Supreme Court in *R.K Jain v. Union of India*,⁶¹ In which the appellant requested copies of all note sheets and correspondence pages contained in an Annual Confidential Report (ACR) and any subsequent actions related to the integrity of a public servant, the request was denied on the grounds of section 8(1) (j) of the RTI Act. The spirit and intent of the harmonised provision encompassed under the umbrella of original section 8 (1) (j) has also been reiterated in various cases by the Indian Supreme Court,⁶² that if there exists no larger public interest, the act of disclosure of such personal information will fall outside the ambit of the exemption clause of section 8 (1) (j).

The original unamended content of section 8 (1) (j) was very balanced and harmonised through its provisos and qualified provisions. At times for ensuring transparency and accountability in the functioning of the public institutions it is required to disclose information but it has to be ensured that it cannot be done at the cost of the violations of the privacy of others.⁶³

The earlier picture has been altered after the 2023 amendment of section 8 (1) (j), now when any person seeking any information if falling under the ambit of personal information,

⁵⁸Bhumesh Verma and Ujjwal Agrawal, "Interplay between Right to Information and Right to Privacy" *SCC Online Blog*, available at: <https://www.scconline.com/blog/post/2020/11/20/interplay-between-right-to-information-and-right-to-privacy/> (last visited on March 10, 2025).

⁵⁹CIC/SM/A/2013/000058.

⁶⁰(2013) 1 SCC 212.

⁶¹(2013) 14 SCC 794.

⁶²*Girish Ramchandra Deshpande v. Central Information Commission*, (2013) 1 SCC 212; *R.K. Jain v. Union of India*, (2013) 14 SCC 794.

⁶³*Supra* note 53.

it cannot be disclosed. Although scrutinized by the PIO, the PIO is not obligated to disclose information, even if it is in the public interest or related to public activity, if there is a prevailing public interest in the information disclosure. Various concerns have been raised regarding the denial of RTIs based on the rationale of safeguarding individual privacy. Following the removal of the caveat provisions related to public interest, the majority of RTI applications now face the risk of rejection due to falling under the exemption clause.⁶⁴ Such a broad exemption can undermine the fundamental principle of informational access and potentially defeat the intent of the RTI Act, 2005. Concerns about the potential misuse of this provision have been raised, and it could have disastrous consequences, enabling the PIO to deny the disclosure of even crucial information to the public without meeting any qualified provisions, similar to the situation with the original exemption clause.⁶⁵

Effect of RTI Amendment 2023 are believed to be far-reaching and will have consequences to the official records not just limited to personal information. The critics of the amendment claims if any official document falsify happening to be containing personal information can be easily denied to the RTI applicant under disguise of section 8 (1) (j) and the protection of privacy. It will have far reaching impact as the RTI Act, 2005 is applicable to the cases of both digital and paper based record.⁶⁶ The definition of information provided under section 2 (f),⁶⁷ includes both electronic and material form.⁶⁸

The presence of a vague definition of “personal information” will act as a barrier in the effective implementation of the RTI Act as it can be interpreted to include information

⁶⁴*Supra* note 55.

⁶⁵ Aditya Bashambu; Lavanya Chetwani, “Critical Analysis: Digital Personal Data Protection Bill 2022” 3 (2) *Jus Corpus Law Journal* 530 (2022).

⁶⁶ Aiman J. Chisthi, “Denying Information under the Guise of Data Protection’: Concerns Raised about Digital Personal Data Protection Bill Amending RTI Act” *Live Law*, August 10, 2023, available at: <https://www.livelaw.in/articles/unravelling-impact-of-personal-data-protection-bill-on-right-to-information-234884> (last visited on March 10, 2025).

⁶⁷ RTI, act s. 2(f), “information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”.

⁶⁸ Aiman J. Chisthi, “Denying Information under the Guise of Data Protection’: Concerns Raised about Digital Personal Data Protection Bill Amending RTI Act” *Live Law*, August 10, 2023, available at: <https://www.livelaw.in/articles/unravelling-impact-of-personal-data-protection-bill-on-right-to-information-234884> (last visited on March 10, 2025).

like electoral rolls or policy records terming such records as containing personal information.⁶⁹

The scope of definition of “person” has been enlarged.⁷⁰ Other apprehensions have been raised relating to its effects on other acts, as the DPDP Act, 2023 through its section 38 includes provisions giving the overriding effects in case of the arising of any conflict with provisions of other acts. The person under the Act includes:

Section 2 (s): an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not; (vi) the State; and (vii) every artificial juristic person.

Thus there are concerns if information relating to all these may also be denied if the “personal information” clause comes into play under the RTI Act.⁷¹

The DPDP Act, 2023 also under the definitional clause lacks any precise definition or conceptualization of the word “personal information”. The lack of any precise definition makes the PIO vested with wide discretion for the determination of the cases under section 8 (1) (j) and lay down whether the exemption will be applied or not. And accordingly determine that disclosure of such piece of information will amount to a violation of privacy.⁷²

A definite definition of “personal information” is provided under the IT Act, 2000.⁷³

Personal information means any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.

Although the personal information definition provided under the Information Technology rules is clear, a more comprehensive definition that aligns with other definitional clauses would have been more convenient. This would have facilitated clearer interpretation

⁶⁹Apar Gupta and Injila Muslim Zaidi, “IFF Joins RTI Campaign: Ensuring Privacy Protections don’t weaken Transparency” *Internet Freedom Foundation*, March 04, 2025, available at: <https://internetfreedom.in/iff-joins-rti-campaign-ensuring-privacy-protections-dont-weaken-transparency/> (last visited on March 12, 2025).

⁷⁰*Supra* note 11, s. 2 (s).

⁷¹*Supra* note 68.

⁷²Shreyi Singh, “Right to Privacy under the PDP Bill and RTI Act” *The Right to Information*, February 20, 2020, available at: <https://www.thyrighttoinformation.com/2020/02/20/privacy-right-under-the-pdp-bill-and-rti-act/> (last visited on March 10, 2025).

⁷³The Information Technology Act, 2000, s. 43A; Ministry of Communications and Information Technology, Department of Information Technology Notification New Delhi, The 11th April, 2011, G.S.R. 313(E), s. 2(i).

and conclusions under the provisions of the Act. A precise definition specifically tailored to the RTI Act, 2005, would have been beneficial in minimizing any room for subjectivity.⁷⁴

Thus the previous settled position provided under the category of exemption clause of section 8 (1) (j) where a senior government official was in a position to determine whether the public interest outweighs the privacy protection has been changed. After the amendment through the enactment of the DPDP Act, the altered provision is that any personal information so requested under RTI application cannot be disclosed even if there exists a public interest and it outweighs the privacy concerns.⁷⁵ The amendment is seen to be threatening transparency and accountability under the disguise of privacy protection by curtailing access to information and impacting the basics of democracy.⁷⁶ The balance which has been maintained between privacy and information access by the RTI has suffered.⁷⁷

The last seventeen years' experience of RTI regime in India are seen to be towards ensuring transparency and accountability. The experiences had shown that a considerable number of information seeking application have asked for granular personal information including people's names, addresses and contact information. All these type of information has the potential to be falling under the head of "personal". Although containing tendency of personal nature, such information was provided to the public following the "larger public interest" test under the original Exemption Clause of section 8 (1) (j). Now after the RTI Amendment, 2023 there are exists apprehension by the civil society people that such sort of information cannot be disclosure and denied under the new amendment.⁷⁸

The RTI regime in India has shown exemplary results in accessibility to information under the control of public authorities and enhancement of transparency and accountability of the public institutions. Taking an example of the welfare schemes of the government, the marginalized and the poor section of the society for availing the benefits of schemes like Rationing System need to have access to granular information which is relevant to them. For

⁷⁴ Like that of person under section 2(s) of the DPDP, Act, 2023.

⁷⁵ Hunton Andrews Kurth, "India Passes Digital Personal Data Protection Act" *Privacy & Information Security Law Blog* August 23, 2023, available at: <https://shorturl.at/bdF67> (last visited on September 08, 2023).

⁷⁶ Jhon Brittas and Aneesh Babu, "What Lies Beneath the PR Blitz on the New Data Protection Act?" *The Wire*, August 27, 2023, available at: <https://thewire.in/government/what-lies-beneath-the-pr-blitz-on-the-new-data-protection-act> (last visited on March 10, 2025).

⁷⁷ Ishwar Ahuja and Sakina Kapadia, "Digital Personal Data Protection Act, 2023 – A Brief Analysis" *Bar and Bench*, August 22, 2023, available at: <https://www.barandbench.com/law-firms/view-point/digital-personal-data-protection-act-2023-a-brief-analysis> (last visited on March 10, 2025).

⁷⁸ *Supra* note 53 at 3.

the affecting working of the public distribution system, legitimate access to information becomes crucial.

For example, the National Food Security Act, 2013 stress the need for putting in the public domain the details related to ration card holders as well as the records of ration shops with the relevant information of the sales and stock registers for facilitating the social audits of the whole ration system. Providing unfettered power to the public authorities for deciding on the contents of the information be it personal information or not leads to a state of anarchy. The information which may be of public interest will be regulated and can be denied.⁷⁹ This legal situation will also affect other social security and welfare schemes like scholarships, pensions, etc., where access to government information containing details and records of the beneficiaries forms an important step in ensuring transparency and exposing corruption.⁸⁰

The fundamental principle of a data protection law is the recognition of the consent of the “data principal,” which refers to the individual to whom the personal data pertains.⁸¹ The DPDP Act, 2023 takes into account the principles of “consent”. The Act proposes that in the event of data processing, the data principal’s consent shall be “free, specific, informed, unconditional and unambiguous with a clear affirmative action” and to be “limited for the specific purpose” for which it is collected.⁸² The Act requires the data fiduciary (entity collecting the data) to communicate the same through a notice to be provided to the data subject.⁸³

The benchmarks “legality”, “necessity” & “proportionality” established by the apex court of the country,⁸⁴ while defining privacy have been claimed to be balanced by the DPDP Act, 2023.⁸⁵ When privacy was not explicitly declared as a fundamental right, it was through section 8 (1) (j) of the RTI Act, 2005 which granted protections against disclosure of personal

⁷⁹Anjali Bhardawaj and Amrita Johri, “The problems with the Data Protection Bill” *The Hindu*, February 21, 2023, available at: <https://www.thehindu.com/opinion/op-ed/the-problems-with-the-data-protection-bill/article66531928.ece> (last visited on March 10, 2025).

⁸⁰*Supra* note 53 at 3.

⁸¹*Supra* note 11, s. 2(j).

⁸²*Supra* note 11, s. 6 (1).

⁸³Vikram Koppikar, “India’s digital data protection law involves compliance complexities” *Money Control*, August 14, 2023, available at: <https://www.moneycontrol.com/news/opinion/indias-digital-data-protection-law-involves-compliance-complexities-11182171.html> (last visited on March 10, 2025).

⁸⁴*Supra* note 8.

⁸⁵ Ajay Banerjee, Personal data gets protective cover, *The Tribune*, August 13, 2023, available at: <https://www.tribuneindia.com/news/features/personal-data-gets-protective-cover-534569> (last visited on March 10, 2025)- “Provisions are not in violation of the Puttaswamy judgment. All three principles of the judgment — legality, legitimacy, and proportionality — have been well taken care of.- Ashwini Vaishnav”

information safeguarding privacy of individuals. After the recognition of privacy fundamental right, it has to align and harmonised with other fundamental rights. One right cannot be deterrent to another. The qualified exemption enabling disclosure of personal information provided in the texts of un-amended section 8 (1) (j) has been converted into an absolute one after the recent amendment proposed by DPDP Act, 2023.

IV Impact of the General Data Protection Regulation 2016 on the Freedom of Information Act, 2000 in the United Kingdom

The “General Data Protection Regulation”,⁸⁶ (hereinafter referred to as GDPR) which came into force from May 25, 2018, intended to create uniform data privacy regulation and compliance requirements for the whole of the European Union consisting of twenty-eight member states and three countries that comprise the European Economic Area.⁸⁷ GDPR replaced the 1995 Data Protection Directives of 1995. Apart from maintaining uniformity, various provisions of GDPR allow the member states to refine or impose additional safeguards or conditions apart from those laid down in the regulation. It is noteworthy that privacy has been long regarded as a fundamental right across the European Union, and all the provisions of the GDPR reflect this approach.⁸⁸

GDPR strives for ensuring protection of an individual’s personal digital data.⁸⁹ GDPR also contains various provisions and guidelines for dealing with the issues of data breaches while data processing and defines data subjects’ rights concerning their personal data. GDPR explains the legislative framework for data processing and associated control of consent for its use.⁹⁰ It set forth six main principles for regulation of processing of personal data.⁹¹ It is

⁸⁶ The General Data Protection Regulation, 2018, (EU 679 of 2016).

⁸⁷ Lothar Determann; Chetan Gupta, “India’s Personal Data Protection Act, 2018: Comparison with the General Data Protection Regulation and the California Consumer Privacy Act of 2018” 37(3) *Berkeley Journal of International Law* 504 (2019).

⁸⁸ Steven M. Puiszis, “Unlocking the EU General Data Protection Regulation” 2018 *Journal of the Professional Lawyer* 2 (2018).

⁸⁹ W. Gregory Voss, “European Union Data Privacy Law Reform: General Data Protection Regulation, Privacy Shield, and the Right to Delisting” 72 (1) *The Business Lawyer* 222 (2017).

⁹⁰ Brian Daigle and Mahnaz Khan, “The EU General Data Protection Regulation: An Analysis of Enforcement Trends by EU Data Protection Authorities” *Journal of International Commerce & Economics* 2 (2020).

⁹¹ *Supra* note 88 at 3.

also the principal instrument for offering people a right to information self-determination, and European identity.⁹²

GDPR enables an atmosphere for safeguarding privacy of individuals and gives priority to consent of an individual resulting in restricting the processing of data without the consent of the data subjects. In United Kingdom, the Freedom of Information Act 2000,⁹³ (hereinafter referred to as the FOI, Act) provides the people with the power to seek information held by any public sector organisation.⁹⁴ Both the laws, one enabling data protection law and other conferring the freedom upon an individual the right to access to information helps in ascertain the nature and extent of information pertaining to them that is being stored by an organization.⁹⁵

Looking into the objective of both the laws, the GDPR intends to protect individuals' privacy, who all have given consent for processing of personal data by EU institutions or bodies, whereas the FOI Act, 2000 promotes transparency and accountability.⁹⁶ The point of intersection between the two laws, comes into the picture when a disclosure of information so requested under the FOI Act, 2000 also includes information which may violate the privacy norms laid under GDPR. Thus, a state of balance has to be maintained between both the legislations. The FOI Act being a relatively older act has witnessed various amendments after the coming into force of the GDPR.

Section 40 of the FOI Act, 2000,⁹⁷ lays down certain exemptions from the disclosure of personal under the FOI request subject to the fulfilment of certain conditions.⁹⁸ It lays down procedures for the treatment of personal information as an exemption from disclosure. Following the implementation of the GDPR, several procedural modifications have been implemented to the management of personal information, as outlined in section 40(8) of the

⁹² Mario Rosentau, "The General Data Protection Regulation and Its Violation of EU Treaties" 27 *Juridica International* 36 (2018).

⁹³ Freedom of Information Act, 2000, (United Kingdom, Chapter 36 of 2000).

⁹⁴ Nidirect, *Freedom of Information and Data Protection*, available at: <https://www.nidirect.gov.uk/articles/freedom-information-and-data-protection> (last visited on March 10, 2025).

⁹⁵ Atul Singh, "Data Protection: India in the Information Age" 59 (1) *Journal of the Indian Law Institute* 85 (2017).

⁹⁶ Orla Lynskey, "Data Protection and Freedom of Information; Reconciling the Irreconcilable" 70 (1) *The Cambridge Law Journal* 37 (2011).

⁹⁷ Supra note 93, s. 40.

⁹⁸ Capsticks, *Revised section 40 of the Freedom of Information Act*, available at: <https://www.capsticks.com/insights/revised-section-40-of-the-freedom-of-information-act> (last visited on March 10, 2025).

act.⁹⁹ The change introduced to section 40 includes an amendment of the text that now the law will have to be read in reference to the ‘legitimising conditions’ in article 6 of GDPR.¹⁰⁰

In dealing with the cases of disclosure under section 40 of the FOI Act, 2023 the relevance of “First Data Protection Principle of GDPR” comes into play.¹⁰¹ The first data protection principle dictates that “any processing for law enforcement purposes must be lawful and fair”¹⁰² and in particular, must benefit from one or more specific conditions.¹⁰³ This particular procedural requirement under GDPR makes the FOI officers address individuals’ data protection and balance it with other’s people rights and their legitimate interests in processing personal data.¹⁰⁴

Section 40 (1) remained unchanged after GDPR, as it only applies to personal data of the FOI requestor, not third parties. It was treated as a subject access request.¹⁰⁵ In relation to sections 40(2) and 40(3A), there have been significant alterations in their implementation procedures. In both the clauses when the FOI request is being made in reference for third party’s personal information, the relevance of the first data principle of the GDPR, which lays down fairness, lawfulness and necessity of disclosing such information comes into picture. Thus, if it’s not substantiated on record that the disclosure of personal information is fair or lawful or would be not disproportionate, the exemption will be applicable and the information would be exempt.¹⁰⁶

The position was different before the enactment of GDPR, in cases pertaining to section 40 (2) of the FOI Act, 2023 for the determination of the fairness and lawfulness of disclosure of data having personal content, public authorities relied on Schedule 2 of the Data Protection Act of 1998. It contained the grounds to rely upon for the disclosure of personal information and usually legitimate interest was the relevant criteria.¹⁰⁷ Now after the GDPR regime has into effect, data protection processing is given more priority than before, Schedule

⁹⁹ *Ibid.*

¹⁰⁰ *Supra* note 86, art. 6.

¹⁰¹ *Supra* note 86, art. 5 (1) (a).

¹⁰² Information Commissioner’s Office, *Principles*, available at: <https://ico.org.uk/for-organisations/law-enforcement/guide-to-le-processing/principles/#:~:text=whichever%20is%20higher.-,What%20is%20the%20first%20principle%20about%3F,requirements%20of%20data%20protection%20law> (last visited on March 10, 2025).

¹⁰³ *Ibid.*

¹⁰⁴ Curtis McCluskey, “How will the GDPR affect FOI law?” 13 (5) *PDP Journals* 1 (2017).

¹⁰⁵ Case Guard, *FOIA 2000 Vs. GDPR- An Analysis, Privacy Legislation*, available at: <https://caseguard.com/articles/foia-2000-vs-gdpr-an-analysis/> (last visited on March 10, 2025).

¹⁰⁶ *Supra* note 98.

¹⁰⁷ *Supra* note 98.

2 of the DPA has been replaced by article 6 of GDPR, which contains ‘lawfulness of processing’ which still has the presence of ‘legitimate interests’ as a ground for lawful processing.¹⁰⁸

As a public authority under the GDPR, there should be no reliance on the legitimate interest as a basis for any processing of personal data for the performance of public tasks. However, for the specific purpose of disclosing personal information and applying the exemption clause under section 40 of the FOI Act, 2000 reliance can be given to legitimate interests. The basis of it lies in section 40 (8) of the FOI Act, 2000 which itself confirms that in the cases of involving disclosure of information under section 40 whether it will be in contravention of the “lawfulness principle” laid under article 5(1)(a) of the GDPR, a public authority may consider the legitimate interests lawful basis for processing.¹⁰⁹

Consequently, a nuanced and balanced approach is being maintained between the access to personal information under the exemption clause of section 40 of the FOI Act, 2000 and the fundamental data protection principles under the General Data Protection Regulation, 2018. Even after implementing adequate safeguards for the protection of individual privacy, the right to access information held by public institutions by other individuals is in a state of equilibrium through the principles provided under article 6 (a) of the GDPR and the “legitimate interest” clause under Section 40 (8) of the FOI Act, 2000.

V Conclusion

The entitlements to information and privacy are indispensable prerequisites for safeguarding and realising the dignity and integrity of individual lives. An intricate relationship, occasionally cooperative and sometimes contentious, exists between these rights. The rapid evolution of technology and the growing reliance on internet services have elevated the processing of data and information to a pivotal role in daily existence. Personal data has, in fact, evolved into an asset category necessitating safeguarding against unauthorised access and intrusion. India, for an extended period, grappled with a conspicuous absence of dedicated data protection legislation. At times, alternative legal mechanisms proved inadequate. Subsequent to the recognition of privacy as a fundamental right, the clamour for data protection legislation intensified.

¹⁰⁸ *Supra* note 98.

¹⁰⁹ Information Commissioner, Personal information (*section 40 and regulation 13*), available at: <https://ico.org.uk/for-organisations/foi/section-40-and-regulation-13-personal-information/> (last visited on March 10, 2025).

The culmination of these efforts resulted in the enactment of the Digital Personal Data Protection Act in 2023. This comprehensive legislation strives to create a compliance mechanism for digital personal data's processing and aligning the rights of individuals with the legitimate requirements for such processing in connected contexts.

In the same vein as the General Data Protection Regulation (GDPR), the Data Protection and Privacy Protection Act of 2023 has garnered recognition as a progressive legal framework. Like the GDPR, it advocates for the principle of “informational self-determination” by establishing a compliance framework for data protection and empowering individuals to exercise control over the storage, utilization, dissemination, and processing of their personal data. The fundamental objective of data protection legislation is to safeguard individuals from arbitrary and unlawful actions related to the collection and processing of personal data. To achieve a harmonious legal structure, the DPDP Act incorporates various amendments to existing legislation. One such amendment pertains to the exemption provision under section 8(1) (j) of the Right to Information Act, 2005.

The RTI Act being the primary access to Information law in India, offering a statutory framework for enabling citizens to seek information from public institutions. The facility of exemption from disclosing any information which may be personal in nature under the auspices of its relationship with “public interest” and “public activity ”has been removed, Thus rendering the exemption clauses of section 8(1) (j) more unconditional by eliminating the earlier cautionary provisions. The Department of Public Policy and Development (DPDP) Act does not differentiate between personal information that is solely personal and personal information that is relevant to public interest or activity. These proposed amendments may potentially diminish the transparency-enhancing role of the Right to Information (RTI) Act.

A parallel situation of the GDPR, 2018 induced amendments to the FOI Act, 2000 has also been looked and studied in the present research. After coming into force of the GDPR, the exemption clause for personal information provided under section 40 has also gone through several procedural changes like the present Indian scenario. The amended provisions make reference to the first data principle of the GDPR, which sets fairness, lawfulness and necessity of disclosing such information as the guiding factors to be determined for considering exemption request under section 40 of FOI Act, 2000. The other mechanism for harmonising the privacy and disclosure of personal information is through section 40 (8) of the FOI Act, 2000. It aligns for implying the legitimate interest as lawful basis for the

disclosure of information. Thus, the nuanced and balanced approaches of the GDPR and FOI Act in the United Kingdom reconcile the conflicting interests of privacy and information to a significant extent.

The dynamic equilibrium between the right to information and privacy was largely maintained through section 8(1) (j) of the RTI Act before to the 2023 amendment. This amendment has to be viewed in conjunction with the recent developments in the privacy jurisprudence in India. Section 8(1)(j) was enacted and interpreted with the understanding that the right to privacy is not an absolute right, like other fundamental rights. One fundamental right should not be interpreted to the detriment of another. The recognition personal information as an absolute exemption under the DPDP Act of 2023 represents a step toward realising the 2017 judgment and safeguarding the fundamental right of privacy. Exemption clauses exist to serve the cause of justice and protect individual rights by restricting the exercise of one right when it encroaches upon or conflicts with another. Personal information cannot always be disclosed under the preview of the access to information; likewise, access to information cannot be denied under the guise of privacy. Privacy must be harmonised with other fundamental rights, and the state bears the obligation to ensure and promote this balance. In the context of a thriving democracy, it is imperative that both the right to information and privacy are judiciously balanced and harmonised without undermining each other.