

Justice Ajit Prakash Shah

Former Chief Justice, High Court of Delhi

Former Chairman, Law Commission India

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OPEN LETTER

To,

Shri. R. Venkataramani,
Attorney General for India

Sub: Urgent Need to Roll Back Amendments to the Right to Information Act, 2005

1. I write to you with profound concern over the recent legislative changes to the Right to Information Act, 2005 ('RTI Act') through the Digital Personal Data Protection Act, 2023 ('DPDP Act'). These changes represent a seismic shift in India's transparency framework for the worse, threatening to dismantle RTI Act's core purpose of democratic accountability and citizen empowerment. It has come to my attention – through reports in *The Economic Times* and other sources – that the Ministry of Electronics and Information Technology ('MeitY') has formally sought your legal opinion on whether the DPDP Act undermines the RTI Act. As a concerned citizen, I have applied my mind to this important subject. My endeavour in submitting this opinion is to assist your office and contribute meaningfully to the public discourse on this matter of urgent constitutional importance.
2. India's RTI Act has been hailed globally as a benchmark "sunshine law" that transformed the relationship between the state and its citizens by promoting transparency and accountability in public administration. It codified the fundamental right to information, derived from Articles 19(1)(a) and 21 of the Constitution. It has empowered citizens to scrutinize government functions, prevent corruption, and ensure good governance. The original RTI Act, particularly Section 8(1)(j), meticulously balanced the public's right to know with the individual's right to privacy – a balance consistently affirmed by the Indian judiciary. The recent amendments, however, destroy this delicate equilibrium.

3. The DPDP Act significantly harms the RTI Act, both directly and indirectly, in the following manner:
 - A. **Section 8(1)(j) Amended:** Section 44(3) of the DPDP Act replaces the narrowly tailored exemption in Section 8(1)(j) with an overbroad provision for withholding information, and removing the "public interest" override. This enables public authorities to deny information simply by classifying it as "personal," regardless of its public relevance or importance.
 - B. **Proviso to Section 8(1) Deleted:** The removal of the *proviso* to Section 8(1) of the RTI Act - which mandated that information not deniable to Parliament or a State Legislature shall not be denied to any person - is alarming for democracy. This attempt to legitimate information asymmetry between elected representatives and ordinary citizens undermines the principle of an informed citizenry vital for democratic functioning and public accountability.
 - C. **Impact on *Suo Motu* Disclosures (Section 4):** The expansive definition of 'personal data' in the DPDP Act, coupled with the absence of a public interest override, severely curtails proactive disclosures under Section 4 of the RTI Act. Public authorities can now withhold information concerning their functions, decision-making processes, employee details, and budgets if such information can be broadly interpreted as 'personal information'.
4. As a co-author of the *Report of the Group of Experts on Privacy* (2012), constituted under the aegis of erstwhile Planning Commission, it was our position that any legislation on privacy should not affect or dilute the RTI Act. Our report recommended that "Privacy Act should not circumscribe the Right to Information Act." It also unequivocally stated that "Any information that is available or accessible in public domain or furnished under the Right to Information Act, 2005 will not be regarded as sensitive personal data." This foundational principle, articulated in greater detail in our report, demonstrates the complementary nature of privacy and transparency - which the DPDP Act gravely disrupts.
5. These amendments are manifestly ill-thought-out, raising critical legal issues that are ripe for constitutional challenge.

- A. Does the amendment to Section 8(1)(j) of the RTI Act via Section 44(3) of the DPDP Act constitute an unreasonable restriction on the fundamental right to information under Articles 19(1)(a) and 21 of the Constitution?
- B. Does the removal of the "larger public interest" override from Section 8(1)(j) of the RTI Act, contradict the principles established in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), which emphasized that privacy, while a fundamental right, is not absolute and can be subject to reasonable restrictions in the public interest?
- C. Does the broad and undefined scope of "personal information" in the amended Section 8(1)(j), when read in conjunction with the DPDP Act's definition of "personal data," lead to an arbitrary and excessive denial of information that is intrinsically linked to public activity and accountability, thereby undermining the public's right to know?
- D. Does the deletion of the *proviso* to Section 8(1) of the RTI Act, which ensures information accessible to the legislature is open to the public, violate the principles of democratic accountability and an informed citizenry?
- E. Does the DPDP Act, through its broad definitions and lack of public interest override, undermine the spirit and effectiveness of *suo motu* disclosures under Section 4 of the RTI Act?

The Original Framework of Section 8(1)(j): A Balanced Approach

6. The RTI Act was designed with a clear intent to enable 'maximum disclosure with minimum exemptions' in order to promote transparency and accountability in public authorities. Within this framework, Section 8(1)(j) served as a crucial provision for balancing the right to information with the right to privacy.

Narrow Scope of "Personal Information"

7. The original Section 8(1)(j) of the RTI Act was carefully worded to exempt "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." This restrictive phrasing ensured that the exemption was not a blanket one but applied *only* to specific categories of personal data. It primarily concerned information that genuinely lacked public relevance or constituted an "unwarranted invasion" of privacy. This approach ensured that the provision was not intended to be a broad shield against disclosure.

The Indispensable Public Interest Balancing Test

8. A critical component of the original Section 8(1)(j) is that it allows disclosure "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." This "public interest override" is the cornerstone of the RTI Act's balance. It permits Public Information Officers (PIOs) to weigh the public's right to know against individual privacy concerns on a case-by-case basis.

Judicial Affirmation of the RTI Act's Balance

9. The judiciary consistently affirmed the delicate balance struck by the original Section 8(1)(j). The nine-judge bench decision in ***Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*** unequivocally declared the right to privacy as a fundamental right under Articles 14, 19, and 21 of the Constitution. However, the Supreme Court held that the right to privacy, like other fundamental rights, is not absolute and can be limited. Any invasion of privacy must meet a three-pronged proportionality test:
- (i) legality (existence of a law),
 - (ii) legitimate state aim, and
 - (iii) proportionality *stricto sensu*.

10. The original Section 8(1)(j) with its public interest override is inherently aligned with the principles of proportionality. It ensures a calibrated approach to privacy invasion when a legitimate state aim, such as public interest in transparency, justifies disclosure. This position has been reinforced by the five-judge Constitution Bench in ***Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal (2019)***. The Court reiterated that decisions on public disclosure must be made on a "case-by-case basis" by weighing competing public interest claims. In particular, the Court upheld the disclosure of judges' assets by affirming the public interest override in Section 8(1)(j).
11. Courts and Information Commissions consistently accepted the existing Section 8(1)(j) as a fair and workable balance between the right to information and the right to privacy. The framework allowed for nuanced decision-making, ensuring that personal information was protected from unwarranted invasion while permitting disclosure where public accountability was paramount.

The Digital Personal Data Protection Act, 2023 and the Dilution of Section 8(1)(j)

12. The DPDP Act's Section 44(3) drastically amends Section 8(1)(j) of the RTI Act to simply read: "(j) information which relates to personal information." This seemingly minor textual change fundamentally alters its original character and purpose.

The Undefined and Overbroad Scope of "Personal Information"

13. It removes the crucial qualifying phrases: "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."
14. While the RTI Act itself does not define "personal information," the DPDP Act defines "personal data" broadly as "any data about an individual who is identifiable by or in relation to such data." This broad and vague definition, when implicitly applied to RTI, enables public authorities to classify virtually any data related to an individual as "personal information," thereby exempting it from disclosure. This could include public officials' salaries, educational qualifications, disciplinary actions, and property records, which were previously accessible.

15. The vagueness of 'personal information', coupled with the removal of qualifiers in the original 8(1)(j), is a significant legal loophole. It shifts the burden of proof on the public authority to justify non-disclosure based on specific criteria, to the RTI applicant, who now has to prove the information is not 'personal'. Thus, it fundamentally alters the RTI Act's openness principle and creates a ripe environment for PIOs to shield information.

Exclusion of the Public Interest Test

16. The most significant change is the complete removal of the public interest override from Section 8(1)(j). This means that even if the disclosure of certain personal information is overwhelmingly in the public interest - for example, exposing corruption or ensuring the accountability of public officials - it can now be denied outright simply because it relates to 'personal information'. This *blanket ban* on the disclosure of personal information, regardless of its public relevance, eliminates the nuanced balancing act that is central to the original RTI framework. The removal of this crucial safeguard transforms an exception into a broad rule, severely curtailing the public's right to access information.
17. The following tables illustrate the stark differences between the original and amended Section 8(1)(j):

	Original 8(1)(j)	Amended 8(1)(j)
What is Protected	Personal information unrelated to public activity or interest, or causing unwarranted invasion of privacy.	All personal information, regardless of public relevance.
Disclosure Condition	Can be denied only if it causes unwarranted invasion of privacy and has no relationship to public activity or public interest.	Can be denied in all cases if it relates to personal information.

Public Interest Override	Disclosure allowed if larger public interest justifies it.	Removed — no disclosure even if public interest is involved.
Definition of "Personal Info"	Undefined but applied narrowly with a public interest test.	Undefined but likely to be interpreted broadly.

Grave Knock-on Effects on Democratic Governance

18. The amendments to Section 8(1)(j) of the RTI Act carry profound and detrimental consequences for the functioning of India's democratic governance.

Chilling Impact on Journalists and Free Speech

19. The amendments, coupled with the broad definitions in the DPDP Act, pose a severe threat to independent journalism and the freedom of the press. Journalists fear that the Act will criminalise routine reporting and require consent for news coverage, which is impractical for investigative journalism, especially in situations like riots, custodial deaths, or corruption scandals. The DPDP Act's definitions of "Data Principal" (a person mentioned in a news article) and "Data Fiduciary" (the journalist handling that information) mean that even quoting a name or taking a photo could be considered processing personal data, potentially leading to heavy penalties up to ₹250 crore or ₹500 crore.

Undermining Public Accountability and Anti-Corruption Efforts

20. The removal of the public interest override and the vague definition of "personal information" under the DPDP Act will significantly hamper efforts to ensure public accountability and combat corruption. Information about public servants' qualifications, disciplinary actions, property records, and even minutes of public meetings could now be withheld under the guise of privacy. Even a document that would otherwise be disclosed may be withheld simply because a small part of it pertains to "personal information" of an individual. The RTI Act's original intent was to prevent corruption and ensure accountability. This was achieved by allowing access to information about public officials' conduct and assets. If this information is subject to blanket exemption, then the mechanism for accountability is broken, leading to increased opacity and potential for corruption.

21. The RTI Act was a potent weapon against corruption, making government officials wary of misconduct. This amendment weakens that deterrent effect. The amendment creates an information asymmetry that favors public authorities and potentially corrupt officials. By restricting access to personal information that is intrinsically linked to public activity, it shifts the balance of power away from citizens and oversight bodies, making it harder to hold the government accountable. This directly undermines the foundational purpose of the RTI Act.

Crippling Social Audits

22. Social audits, a crucial mechanism for ensuring transparency and accountability in the implementation of public welfare schemes, rely heavily on the ability to access information about beneficiaries, expenditures, and service delivery. Social audits require detailed information about individuals, such as beneficiaries and officials, to verify scheme implementation. If this "personal information" is now exempt, then the very data needed for audits is inaccessible, making them impossible or ineffective.
23. By creating a blanket ban on disclosure of personal information, the amendments will cripple social audits and the verification of public service delivery. Examples include exposing ration distribution fraud or identifying "ghost beneficiaries" in public distribution systems, which were previously achieved through RTI requests. These vital oversight mechanisms will become impossible if access to relevant personal data of beneficiaries or officials involved is denied. The impact on social audits highlights how the amendment's broad sweep affects grassroots accountability.

Susceptibility to Legal Challenge: Violation of Constitutional Principles

24. The amendments introduced by the DPDP Act to Section 8(1)(j) of the RTI Act are not merely problematic from a policy perspective; they are susceptible to legal challenge on fundamental constitutional grounds.

Failure to Satisfy the Proportionality Test

25. As established in *Puttaswamy*, any invasion of privacy, or restriction on fundamental rights, must satisfy the three-pronged proportionality test: legality, legitimate state aim, and proportionality. While the DPDP Act provides legality, the blanket ban on personal information disclosure, without a public interest override, **fails the proportionality limb.**

- (a) **Rational Nexus:** A blanket exemption from disclosure for all "personal information" is not rationally connected to the legitimate state aim of merely protecting an individual from unwarranted infringement of privacy. As explained earlier, the original Section 8(1)(j) was meticulously crafted to exempt only such personal information that had "no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy." This inherent qualifier ensured that the scope of privacy protection was tailored to the actual harm. The current broad exemption encompasses vast swathes of information that are intrinsically linked to public functions and accountability, where the privacy interest is negligible or outweighed by public interest.
- (b) **Least Restrictive Means (Necessity Test):** The *Puttaswamy* judgment mandates that any restriction on a fundamental right must employ the least intrusive means possible to achieve its legitimate aim. The original Section 8(1)(j), with its in-built public interest override and the requirement to demonstrate "unwarranted invasion," served as a less restrictive, yet effective, mechanism for privacy protection. It allowed for a nuanced, case-by-case balancing that prevented arbitrary denials. The amendment, by removing this balance and creating a blanket ban, adopts the *most* restrictive means possible. It presupposes that all "personal information," irrespective of context or public relevance, carries an equal and overriding privacy sensitivity, which is clearly fallacious in a transparent governance framework.

- (c) **Proportionality *Stricto Senso* (*Balancing Test*):** This final component requires a balancing of the adverse impact on the affected rights against the benefit derived from the restriction. The benefit of a blanket privacy protection, achieved at the cost of a complete erosion of the public's right to information on matters of public concern, is disproportionate. The adverse impact on public accountability, anti-corruption efforts, social audits, and journalistic freedom (as detailed previously) far outweighs the marginal, if any, additional privacy protection gained beyond what the original Section 8(1)(j) already afforded. It undermines the very essence of public oversight and creates an information asymmetry that tilts heavily in favour of public authorities.

26. This failure to satisfy the stringent proportionality test, particularly on the aspects of rational connection, necessity, and balancing, renders the amendment to Section 8(1)(j) constitutionally vulnerable and susceptible to legal challenge.

Deprivation of Fundamental Rights

27. The amendment deprives citizens of their fundamental right to information, which is an intrinsic part of the right to freedom of speech and expression [Article 19(1)(a)] and the right to life and personal liberty (Article 21). By creating a broad exemption for "personal information" without a public interest override, it unduly restricts the flow of information necessary for informed public discourse and democratic participation. The right to information is a fundamental right, and any restriction on it must be reasonable. A blanket ban on "personal information" regardless of public interest is an unreasonable restriction, directly depriving citizens of their fundamental right. This suggests that the amendment is not merely a policy choice but a constitutional infringement.
28. Furthermore, while purporting to protect privacy, the amendment paradoxically undermines the broader constitutional scheme where transparency and accountability are complementary to, not in contradiction with, privacy. The amendment creates a false dichotomy between privacy and transparency, implying they are inherently conflicting, whereas judicial pronouncements have emphasized their complementary nature in a democratic society.

Deletion of the *Proviso* to Section 8(1) of the RTI Act: Erosion of Democratic Oversight

29. The original *proviso* to Section 8(1) of the RTI Act stated: "Provided further, that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person." This *proviso* embodies the principle that what is accessible to the legislature, representing the people, must also be accessible to the people directly. The deletion of this *proviso* is not merely a procedural change but a symbolic and substantive attack on the principle of popular sovereignty. It suggests that the government's primary accountability is to the legislature, rather than directly to the citizenry, creating a hierarchical information flow that is antithetical to a vibrant participatory democracy.

The Mandate of Suo Motu Disclosures under Section 4 of the RTI Act

30. The RTI Act not only mandates disclosure upon request but also imposes a duty on public authorities to actively disclose, disseminate, and publish information of general public interest *suo motu*. Section 4(1)(b) of the RTI Act sets out 17 categories of information that public authorities must proactively disclose, including details about their functions, decision-making norms, documents held, employee contacts, and budgets. The positive effects of proactive disclosure include minimizing time, money, and effort for the public to access routine information, helping citizens understand what information is available, and reducing the administrative burden of individual RTI requests.
31. The DPDP Act defines "personal data" broadly as "any data about an individual who is identifiable by or in relation to such data." It mandates that personal data processing generally requires "free, specific, informed, unconditional, and unambiguous" consent, obtained through "clear affirmative action." While the DPDP Act is ostensibly focused on protection of digital personal data, it has lost sight of the profound and unintended consequence of dismantling *proactive transparency* mechanisms that have been built over years under the RTI Act. The stringent consent requirements for processing "personal data" create a fundamental conflict with the *suo motu* disclosure mandate of Section 4 of the RTI Act. Many categories of information proactively disclosed under Section 4, such as beneficiary lists for welfare schemes, employee details, or property records, inherently contain "personal data".

Conclusion

32. In light of the profound implications for democratic governance and fundamental rights, the following recommendations for legislative action are respectfully submitted:

- A. Section 44(3) of the DPDP Act, which amends Section 8(1)(j) of the RTI Act, should be immediately **repealed**.
- B. It must be explicitly clarified within the DPDP Act that the RTI Act applies with full force. This clarity is essential to prevent any future misinterpretation that might undermine the RTI Act's effectiveness.

I urge your good offices to give this matter their urgent attention and initiate steps to rectify this critical legislative flaw, thereby upholding the constitutional values of transparency, accountability, and the fundamental rights of every citizen.



Best regards,
Ajit Prakash Shah

Copy to:

- 1. Minister for Law & Justice
- 2. Minister for Electronics & Information Technology