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DATA PROTECTION AND PRIVACY LAWS IN INDIA: WHOSE PRIVACY DOES THE DPDP ACT ACTUALLY PROTECT?

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Everything in this world can be interpreted as data, be it flow of air around you or the steps you take to get your morning coffee, even the coffee you drink can be denoted as some form of data. The data that defines us, be it our name, age, features physical or digital, any kind of data which will describe oneself is what we call personal data, the concept of personal data is nothing without the existence of privacy¹, the very right to go about your life without intrusion. In order to uphold the right to privacy as affirmed in the Supreme Court's judgement in Justice K.S. Puttaswamy v. Union of India, 2017², which determined the right to privacy by interpreting it under Article 21 of the Indian Constitution³, the question which worried the people about the role of the state has come to be posed out plainly: Is it possible for the state to demand that citizens provide their biometric information without holding to the Constitution? Now, six years later, we see that the Parliament has passed the Digital Personal Data Protection Act of 2023⁴. But if one were to study the act, particularly Section 44(3)⁵, it would be apparent that we will be up against that same question raised to the nine-judge bench once again.

The change in Section 44(3) of the DPDP Act amends Section 8(1)(j) of the Right to Information Act, 2005⁶, which protects the personal information from being disclosed. This amendment puts forth a “blanket bar against the provision of personal information” by the

¹Off. of Compliance, Pol'y & Privacy Servs., Drexel Univ., *What Is Privacy?*, <https://drexel.edu/compliance-policy-privacy/privacy/what-is-privacy> last visited Sept. 19, 2026).

²*Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

³India Const. art. 21, pt. III.

⁴Digital Personal Data Protection Act, 2023, Act No. 22 of 2023 (India).

⁵*Id.* § 44(3).

⁶Right to Information Act, 2005, § 8(1)(j), Act No. 22 of 2005 (India) (as amended by Digital Personal Data Protection Act, 2023, § 44(3)).

government. Accordingly, the executive branch can deny the information to ordinary citizens based on the “personal nature of the information.” This argument goes to violate the right to information and the right to know as per Article 19(1)(a)⁷ which is the right to free speech and expression.

Prior to the amendment, Section 8(1)(j) of the RTI Act⁸ allowed for the withholding of certain “personal information” from disclosure only if it had no connection with a public activity, or where the release of the information would cause unwarranted harm to privacy, despite that, in certain cases the information could be disseminated, where the concerned officer ‘is satisfied that any larger public interest warrants such disclosure.’ In the case of CPIO, Supreme Court v. Subhash Aggarwal (2019)⁹, the Supreme Court, with its five-judge bench, relied on exactly this balancing mechanism to hold that judges' asset declarations and disciplinary records could, in appropriate cases, be disclosed despite being personal information, because public officials carry a diminished expectation of privacy relative to private citizens. However, with this amendment in effect, the very nature of any information which any public officer, or the officer of the state do not want to be disclosed would be deemed to be “relating to personal information”, hence creating a blanket shield, regardless of how compelling the public interest is present in knowing.

Another question might arise, why does this personal information of any public officer actually matter? RTI applications pertaining to asset disclosures and disciplinary records have always been important for uncovering corruption. In fact, the previous Section 8(1) successfully freed this information assuming that there would be a showing of public interest. The new provision, on the other hand, offers no legal basis for activists to confirm whether a public servant has declared assets in line with his income. The information is “personal,” and that is where the trail ends. This not mere policy oversight, but a part of larger scheme in the very structure of the DPDP act itself, consider the The Data Protection Board of India, formed under Section 18¹⁰, is responsible for protecting the data rights of citizens against misuses and comprises a Chairperson and members appointed by the Central Government on the direction of a Search cum Selection Committee established by the Central Government.¹¹ The Board is set up

⁷India Const. art. 19(1)(a).

⁸Right to Information Act, 2005, § 8(1)(j), Act No. 22 of 2005 (India) (as originally enacted, prior to amendment by Digital Personal Data Protection Act, 2023, § 44(3)).

⁹*Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, 2019 SCC OnLine SC 1459 (India).

¹⁰Digital Personal Data Protection Act, 2023, § 18, Act No. 22 of 2023 (India).

¹¹Digital Personal Data Protection Act, 2023, § 19, Act No. 22 of 2023 (India).

administratively under the same ministry which may face inquiry into its own conduct.¹² The two sections of the same law turn in the same direction, they state that citizens cannot get much information from the state, and they place the authority established for this purpose into the direct control of the state. It should be added that none of this has an influence on the way private enterprises deal with personal information.

This asymmetry isn't just a policy criticism, its neither just an academic challenge, the amendment, along with the Board's independence, is currently under challenge before the Supreme Court in pending writ petitions filed by press-freedom and transparency organisations.¹³ The DPDP Act has received a lot of attention and well-deserved credit since its inception, as it was proclaimed to be India's solution to Puttaswamy, namely, a piece of legislation helping to protect the rights of citizens. This formula, however, is only partially correct. The DPDP Act does provide specific protections to individuals in relation to private entities, but it gives little to no powers to citizens when it comes to the actions done by the state, which is governed by a regulatory body with questionable independence. Thus, this is arguably a constitutional challenge, one unfolding in front of our eyes as we speak, with ramifications which could change the way privacy and right to information is viewed by law in India.

¹²See generally SFLC.in, *Data Protection Board of India: A Watchdog Without Teeth*, <https://sflc.in/data-protection-board-of-india-a-watchdog-without-teeth/> (last visited Sept. 19, 2026).

¹³See Supreme Court Observer, *Constitutionality of the Digital Personal Data Protection Act, 2023*, <https://www.scobserver.in/cases/constitutionality-of-the-digital-personal-data-protection-act-2023/> (last visited Sept. 19, 2026).