

SYNOPSIS AND LIST OF DATES AND EVENTS

The Petitioner has approached this Hon'ble Court by filing the present petition in public interest under Article 32 of the Constitution of India, seeking *inter-alia*, that this Hon'ble Court may be pleased to declare that Sec. 44(3) and Secs. 17(1)(c), 17(2), 33(1), 36 of The Digital Personal Data Protection Act, 2023, (hereinafter referred to as "DPDP Act") as well as Rules 17 and 23(2) of The Digital Personal Data Protection Rules, 2025, are *ultra vires* the Constitution, and other consequential reliefs.

Right to Information and Right to Know - Fundamental Rights under Articles 19(1)(a) and 21 of the Constitution

The right to information and right to know of citizens is part of the rights and freedoms guaranteed under Articles 19(1)(a) and 21 of the Constitution of India. This has been held in various judgments of this Hon'ble Court including *PUCL vs Union of India* (2003) 4 SCC 399, *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 and *Reliance Petrochemicals vs Proprietors of Indian Express Newspapers* (1988) 4 SCC 592.

In furtherance of the fundamental right to information, Parliament had enacted the Right to Information Act, 2005 (hereinafter referred to as "RTI Act"). The constitutional principle and norm with regard to public functionaries and public duties is that information must be shared in the interest of transparency ensuring open governance. Parliament while enacting the RTI Act, in Section 4(1)(b) provided for mandatory voluntary disclosures to be made by public authorities to give effect to the citizens' right to information and right to know. The RTI Act, in Section 8(1), carves out a narrow and limited scope for exemptions to the disclosure of information, and unless the information sought

is specifically covered under an exception, publishing the information is statutorily mandatory. Further, the onus to justify the denial of a request for information is also on the Public Information Officer, and the reason for a citizen seeking information is not open to scrutiny under the RTI Act.

The Digital Personal Data Protection Act, 2023, and the amendment to Section 8(1)(j) of the Right to Information Act, 2005

The Digital Personal Data Protection Act, 2023, brought into operation vide GSR 843(E) on 13.11.2025, through Section 44(3) amended Section 8(1)(j) of The Right to Information Act, 2005. Section 44(3) of DPDP Act provides that in Section 8(1) of the RTI Act, for existing clause (j), the following clause shall be substituted: “(j) *information which relates to personal information;*”. A comparative table of Section 8(1)(j) of RTI Act before and after the amendment is produced below for reference:

Unamended Clause	Amended Clause
<p data-bbox="443 1160 863 1294">8. <i>Exemption from disclosure of information.—</i></p> <p data-bbox="443 1355 863 1590">(1) <i>Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—</i></p> <p data-bbox="443 1650 863 1982">(j) <i>“information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause</i></p>	<p data-bbox="981 1176 1401 1310">8. <i>Exemption from disclosure of information.—</i></p> <p data-bbox="981 1370 1401 1606">(1) <i>Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—</i></p> <p data-bbox="981 1666 1401 1800">(j) <i>“information which relates to personal information;”</i></p>

<p><i>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:</i></p> <p><i>Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”</i></p>	
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The Petitioner submits that vide the above amendment, Section 8(1)(j) of RTI Act has been stripped of the three pronged test that it originally contained and now operates as a blanket ban on the obligation to disclose personal information. Earlier, prior to the amendment, the Public Information Officer or First Appellate Authority was statutorily equipped and required to carry out a three pronged test as detailed below under Section 8(1)(j):

- i. Test of public activity
- ii. Test of unwarranted invasion
- iii. Mandatory public interest override to facilitate disclosure

The Petitioner submits that a blanket bar on the obligation to disclose all personal information, without the statutory scheme to balance it against larger

public interest, renders Section 44(3) of DPDP Act liable to be struck down on multiple counts, including *inter-alia*:

- a) It is an unreasonable restriction on the right under Article 19(1)(a); and
- b) Privacy is not a fundamental right available to the State; and
- c) Privacy is not a ground for restriction under Article 19(2); and
- d) It fails the 5 pronged proportionality test; and
- e) It violates Article 14 by equating privacy of public functionaries to that of ordinary citizens; and
- f) It inverts the jurisprudence of privacy viz-a-viz the right to information; and
- g) It prioritizes privacy over the larger public interest of transparency and open governance, which is unconstitutional and against the dicta of *PUCL vs Union of India* (2003) 4 SCC 399, as reiterated in *KS Puttaswamy vs Union of India* (2019) 1 SCC 1.
- h) It accords unguided discretion to the executive to deny personal information, which is unconstitutional.

The Petitioner submits that the amendment to Section 8(1)(j) of the RTI Act, when read in conjunction with the definition of the term “personal data” in Section 2(t) read with Section 3(a)(ii) of the DPDP Act, brings within its fold all information which even remotely relates to the identity of an individual, and renders the right to information illusory. It allows the executive to deny information to citizens by citing the personal nature of the information, even for public functionaries entrusted with public duties. It is a death knell for participatory democracy, and ruinous to ideas of open governance, which must guide the Indian polity in consonance with the Constitutionally recognized fundamental right of the citizen to know and be informed.

Rules 17(1) and (2) of the DPDP Rules provide for constitution of Search-cum-Selection Committees for appointment of the Chairperson and

other members of the Board, and executive dominance in the formation of the said Committee is violative of the doctrine of separation of powers, given that the Board performs quasi judicial functions.

Further, the Petitioner submits that Sections 17(1)(c), 17(2), 33(1) and 36 of the DPDP Act, as well as Rule 23(2) of the DPDP Rules, which have been notified by GSR 843(E) and GSR 846(E) dated 13.11.2025, but will come into force eighteen months after the notification, are also unconstitutional and violate Articles 14, 19(1)(a) and 21 of the Constitution.

Sections 17(1)(c) and 17(2), insofar as they exempt application of provisions of the DPDP Act either in part or whole, facilitate the operation of a surveillance regime with no necessary safeguards or review mechanism, thereby failing the necessary safeguards prong of the proportionality test. Section 36, in a similar vein, allows the Central Government to call for any information without any statutory guidance or limitation on the scope and reasons for calling such information from the Data Board of Data Fiduciaries. This makes the provision fall foul of the test of manifest arbitrariness as it violates Article 14.

Section 33(1), in providing penalties for data breach, states that penalties shall be imposed when after inquiry the Data Board concludes that the data breach is “significant”, without any statutory guidance as to what constitutes a “significant” data breach. Unbridled discretion in that regard brings the provision within the vice of arbitrariness and violates Article 14.

Thus, in view of the immediate effect given to Section 44(3) of the DPDP Act and Rule 17 of the DPDP Rules, as well as the impending commencement of other unconstitutional provisions in the said Act and Rules, the Petitioner is constrained to file the present petition in public interest seeking declaratory reliefs to protect and further the fundamental right of citizens to information; the right to know; the right of participatory democracy as a facet of the right to life; and to ensure that two decades of transparency in the life of public authorities is

not reversed into an era of dark opacity, on a fallacious legislative attempt to uphold the right to privacy.

LIST OF DAES AND EVENTS

DATES	EVENTS
15.06.2005	The Right to Information Act, 2005, received Presidential assent.
11.08.2023	The Digital Personal Data Protection Act, 2023, received the assent of the President of India.
13.11.2025	The Digital Personal Data Protection Rules, 2025, were published in the Official Gazette vide GSR 846(E), and on the same day GSR 843(E) brought into commencement certain parts of The Digital Personal Data Protection Act, 2023, including Section 44(3) which amends Section 8(1)(j) of The Right to Information Act, 2005. Sections 17(1)(c), 17(2), 33(1) and 36 were also notified vide GSR 843(E) but the said provisions shall come into force eighteen months from the date of publication of GSR 843(E).
06.02.2026	Hence this petition in public interest.