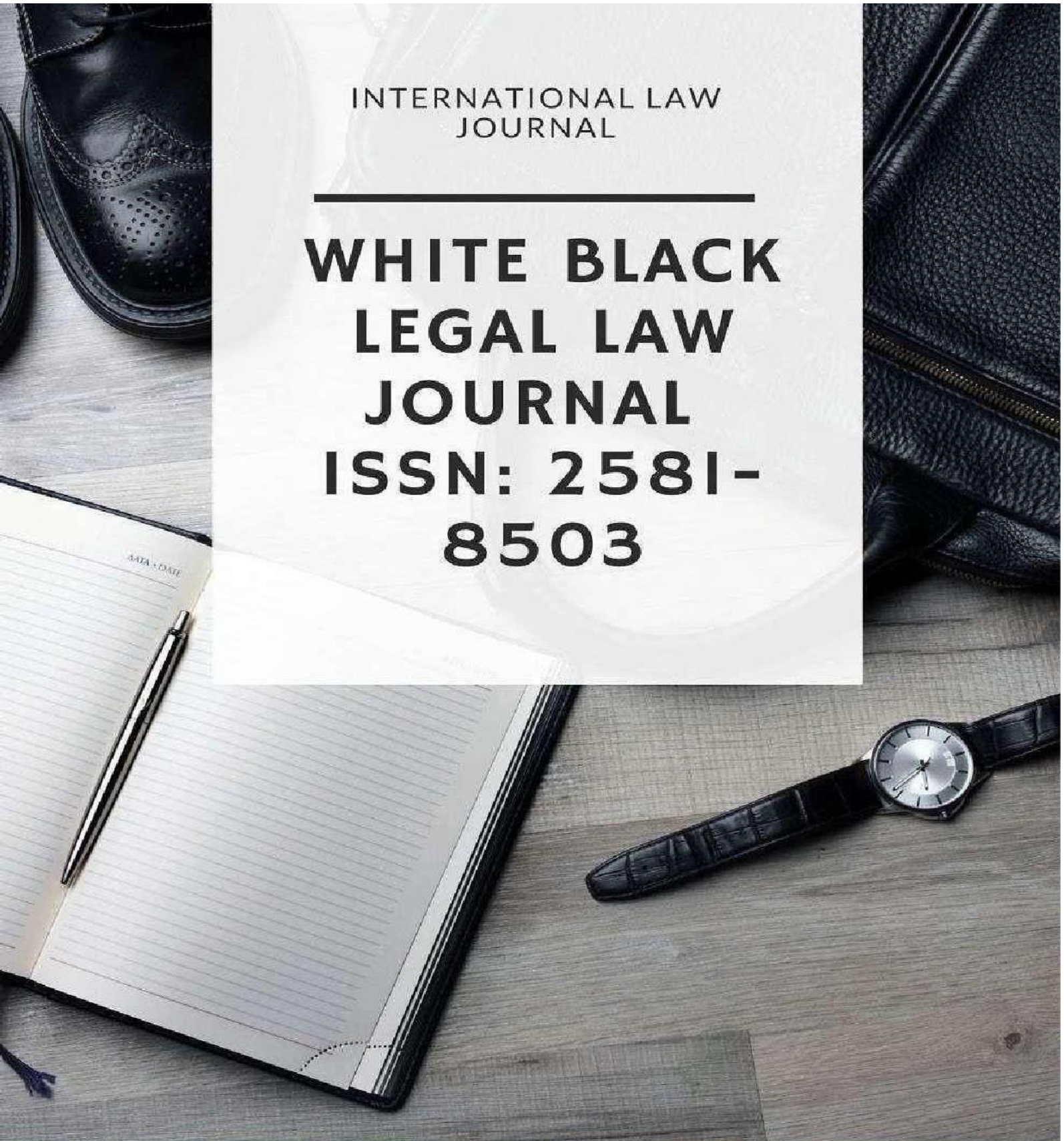




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RIGHT TO INFORMATION AND THE RIGHT TO PRIVACY IN INDIA: CONSTITUTIONAL CONFLICTS AND JUDICIAL BALANCING

AUTHORED BY - UMANG KAMBOJ

ABSTRACT

The Right to Information Act, 2005 and the constitutionally entrenched right to privacy occupy a position of structural tension within India's constitutional order: both trace their doctrinal foundations to Part III of the Constitution, yet each, taken to its logical extreme, threatens to subordinate the other. This paper undertakes a critical, doctrinal analysis of the constitutional conflict between the right to information, rooted in Article 19(1)(a), and the right to privacy, recognised as a fundamental right under Article 21 in Justice K.S. Puttaswamy v. Union of India, and examines the judicial balancing framework India's courts have developed to reconcile them. It traces the doctrinal trajectory from the Supreme Court's early, transparency-favouring jurisprudence in CBSE v. Aditya Bandopadhyay and the subsequently more privacy-protective standard set in Girish Ramchandra Deshpande v. Central Information Commissioner, through the nine-judge Puttaswamy bench's constitutionalisation of privacy and its accompanying proportionality test, to the Constitution Bench's application of that test to the specific context of judicial transparency in CPIO, Supreme Court of India v. Subhash Chandra Agarwal. The paper then undertakes a detailed critical examination of the most significant recent development in this field: the amendment of Section 8(1)(j) of the RTI Act effected through Section 44(3) of the Digital Personal Data Protection Act, 2023 and operationalised through the DPDP Rules, 2025, which removed the express public-activity-or-interest qualifier from the primary exemption clause and relocated the public-interest override to Section 8(2), materially narrowing Information Commissioners' discretionary proportionality assessment. The paper critically analyses the ongoing 2026 constitutional challenge to this amendment, referred to a five-judge Constitution Bench, which contends that the amendment undermines the Puttaswamy-derived balancing framework and disproportionately curtails investigative journalism and public-accountability reporting. Employing doctrinal legal research methodology, the paper argues that the amendment risks displacing case-specific proportionality analysis with a categorical exemption inconsistent

with the constitutional balance Subhash Chandra Agarwal established, and offers recommendations for restoring a principled, proportionality-anchored reconciliation of these two constitutional values.

Keywords: *Right to Information Act, 2005; right to privacy; Article 21; Puttaswamy; proportionality; Section 8(1)(j); DPDP Act; India.*

1. INTRODUCTION

The Right to Information Act, 2005 (“RTI Act”) and the constitutional right to privacy stand in a relationship of structural, and increasingly contested, constitutional tension. Both rights find their roots within Part III of the Constitution of India: the right to information as an implication of the freedom of speech and expression guaranteed under Article 19(1)(a), recognised as such well before the RTI Act’s enactment, and the right to privacy, definitively recognised as a fundamental right under Article 21 by the nine-judge bench of the Supreme Court in Justice K.S. Puttaswamy (Retd.) v. Union of India.¹ Each right, robustly and unqualifiedly enforced, threatens to constrain the other: an unbounded right to information risks exposing intimate personal details of public servants and private individuals whose information happens to be held by public authorities, while an unbounded right to privacy risks shielding precisely the kind of official conduct, financial dealings and institutional decision-making that public accountability requires citizens to be able to scrutinise.²

This paper undertakes a critical, doctrinal examination of how Indian courts have sought to reconcile these two constitutional values, tracing the jurisprudential trajectory from the RTI Act’s original statutory balancing mechanism under Section 8(1)(j), through the Supreme Court’s landmark privacy and RTI-specific rulings, to the most significant and contentious recent development in this field: the 2023-2025 amendment of Section 8(1)(j) effected through Section 44(3) of the Digital Personal Data Protection Act, 2023 (“DPDP Act”), and the resulting constitutional challenge now pending before a five-judge Constitution Bench of the Supreme Court.³ This inquiry sits at a moment of genuine doctrinal uncertainty: the amendment’s critics argue it displaces the case-by-case proportionality balancing the Supreme Court painstakingly developed across three decades of jurisprudence with a more categorical,

¹Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

²CPIO, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481, at paras 1-5 (Khanna, J., posing the question of “how transparent is transparent enough”).

³Digital Personal Data Protection Act, 2023, s. 44(3); “Five-Judge Bench to Argue on RTI & Freedom of Journalism,” Countercurrents (2026).

privacy-favouring default, while its defenders contend it merely aligns RTI's personal-information exemption with contemporary data-protection principles consistent with Puttaswamy itself.⁴

1.1 Statement of the Problem

India's RTI framework has, since 2005, relied on a statutorily embedded balancing mechanism under Section 8(1)(j) to reconcile transparency and privacy interests, a mechanism subsequently reinforced by the Supreme Court's constitutional recognition of privacy and its accompanying proportionality test. The 2023-2025 amendment of this provision, effected through data-protection legislation rather than direct RTI Act amendment, raises the question whether India's carefully calibrated judicial balancing framework has been legislatively displaced, and if so, whether that displacement is constitutionally sustainable.

1.2 Objectives of the Study

- To trace the jurisprudential evolution of the relationship between the right to information and the right to privacy in India from the RTI Act's enactment through the Puttaswamy and Subhash Chandra Agarwal rulings.
- To critically analyse the doctrinal content and operation of the Puttaswamy proportionality test as applied to RTI disclosure decisions.
- To examine the 2023-2025 amendment of Section 8(1)(j) of the RTI Act through Section 44(3) of the DPDP Act, and its effect on Information Commissioners' balancing discretion.
- To assess the constitutional challenge to this amendment currently pending before a five-judge Constitution Bench.
- To recommend a principled framework for reconciling the right to information and the right to privacy consistent with India's constitutional commitments to both values.

1.3 Research Questions

- How has the judicial balancing framework governing the relationship between RTI and privacy evolved from Girish Deshpande through Puttaswamy to Subhash Chandra Agarwal?

⁴"Balancing Transparency and Privacy: The Right to Information Vis-à-Vis the Right to Privacy in the Digital Era After India's Data Protection Act, 2023," Indian Journal of Law and Legal Research (2025).

- Does the amendment of Section 8(1)(j) through Section 44(3) of the DPDP Act displace case-specific proportionality analysis with a categorical exemption, and if so, is this displacement constitutionally sustainable under the Puttaswamy framework the amendment purports to implement?
- What is the likely impact of the amendment on investigative journalism, public-accountability reporting, and the disclosure of information concerning public officials' conduct in their official capacity?
- What principled framework would best reconcile the constitutional values of transparency and privacy going forward?

1.4 Research Methodology

This study adopts a doctrinal legal research methodology, involving critical analysis of the RTI Act, the DPDP Act and DPDP Rules, 2025, constitutional provisions, and judicial precedent, including the pending Constitution Bench reference. The analysis is supplemented by secondary literature and practitioner commentary addressing the 2025 amendment's practical implications.

1.5 Scope and Limitations

The paper is confined to the constitutional and statutory relationship between the RTI Act and the right to privacy under Indian law. It does not undertake comparative analysis of foreign freedom-of-information or data-protection regimes in detail, nor does it address the DPDP Act's substantive data-protection framework beyond its bearing on Section 8(1)(j). The Constitution Bench reference on Section 44(3)'s validity remained pending as of August 2026, and the analysis reflects the legal position as understood at that date.

1.6 Significance of the Study

This study assumes particular significance given the live, unresolved status of the constitutional challenge examined in Part 3. Unlike much doctrinal legal scholarship, which addresses settled jurisprudence retrospectively, this paper engages with an active constitutional controversy whose eventual resolution will materially shape the practical operation of India's transparency framework for the foreseeable future. The analysis offered here is accordingly best understood not as a definitive prediction of the Constitution Bench's eventual holding, but as a doctrinal contribution to the broader public and judicial deliberation the pending litigation has occasioned.

2. LITERATURE REVIEW

2.1 Early RTI Jurisprudence: Transparency as Default

India's early RTI jurisprudence developed a broadly transparency-favouring orientation. In *CBSE v. Aditya Bandopadhyay*, the Supreme Court held that examination answer books are accessible under the RTI Act and that the examiner-examinee relationship does not automatically constitute a fiduciary relationship warranting exemption, reflecting an interpretive posture generally favourable to disclosure absent a clearly established countervailing interest.⁵ *Reserve Bank of India v. Jayantilal N. Mistry* similarly rejected a blanket claim of fiduciary exemption asserted by the Reserve Bank of India, strengthening the transparency principle in the specific context of banking and financial regulatory information.⁶

2.2 Girish Deshpande and the Privacy-Protective Turn

A significant doctrinal shift occurred with *Girish Ramchandra Deshpande v. Central Information Commissioner*, in which the Supreme Court held that service records, annual confidential reports, disciplinary proceedings and personal financial details of a public servant constitute “personal information” exempt under Section 8(1)(j), disclosable only where the appellant establishes that a larger public interest justifies disclosure.⁷ Critical commentary on this ruling has been notably severe: one analysis describes Deshpande as “the single-most pocket-pistol decision that shot dead millions of RTI applications and thousands of second appeals all over the country,” arguing that its broad characterisation of service and disciplinary records as inherently personal, rather than bearing on public activity, has been invoked systematically by government authorities to resist disclosure demands well beyond what the decision's specific facts warranted.⁸ This tension between Deshpande's privacy-protective holding and the RTI Act's transparency-oriented purpose forms an important doctrinal backdrop against which the subsequent *Puttaswamy* and *Subhash Chandra Agarwal* rulings must be understood.

2.3 Puttaswamy: Constitutionalising Privacy and the Proportionality Test

The nine-judge bench decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* transformed the doctrinal landscape by unanimously recognising the right to privacy as a

⁵*CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

⁶*Reserve Bank of India v. Jayantilal N. Mistry*, Civil Appeal No. 91 of 2015.

⁷*Girish Ramchandra Deshpande v. Central Information Commissioner & Ors.*, Special Leave Petition (Civil) No. 27734 of 2012 (decided 3 October 2012).

⁸“Girish: An Iron Wall Between RTI and Public Information,” NUJS Working Paper (2022-2026 update).

fundamental right protected under Article 21, and, for several of the concurring opinions, also under Articles 14 and 19.⁹ Critically for RTI purposes, the Court held that privacy, while fundamental, is not absolute, and articulated a three-part test for justifying any invasion: the presence of a valid law, a legitimate state aim, and proportionality between the intrusion and the aim pursued.¹⁰ Several concurring opinions specifically identified informational privacy — an individual's right to control the collection, use and dissemination of personal information — as a distinct facet of the broader right, a facet of direct and immediate relevance to the Section 8(1)(j) balancing exercise.¹¹ Commentary observes that Puttaswamy's effect on RTI jurisprudence was to give Section 8(1)(j)'s personal-information exemption a constitutional, rather than merely statutory, foundation, transforming what had previously been a legislatively balanced exception into an exercise engaging directly with fundamental-rights proportionality analysis.¹²

2.4 Subhash Chandra Agarwal: Proportionality Operationalised

The Constitution Bench decision in *CPIO, Supreme Court of India v. Subhash Chandra Agarwal* applied the Puttaswamy proportionality framework directly to the RTI context, in litigation concerning whether the office of the Chief Justice of India falls within the RTI Act's ambit, and whether Collegium correspondence and judges' asset declarations are subject to disclosure.¹³ The majority opinion, authored by Justice Khanna, held that transparency is the default position under the RTI Act, that privacy constitutes a valid but rebuttable defence to disclosure, and that this defence can be overridden by a sufficiently compelling public interest, with the burden resting on the information-seeker to demonstrate a “pressing social need” for disclosure proportionate to the privacy harm the disclosure would occasion.¹⁴ Notably, the Court declined to issue a categorical ruling on whether Collegium decision-making, judges' personal asset disclosures, or CJI correspondence are universally subject to RTI disclosure, instead holding that transparency itself can serve judicial independence, and that determination of public interest must proceed on a case-by-case basis.¹⁵ This case-specific, proportionality-anchored approach — rather than any categorical rule favouring either transparency or privacy

⁹Puttaswamy, supra note 1; “Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.,” *The Lawscape* (2026).

¹⁰Puttaswamy, supra note 1, at paras 310, 325 (Chandrachud, J.).

¹¹“Puttaswamy: Privacy Is a Fundamental Right,” *RTI Wiki* (2026).

¹²*Id.*

¹³Subhash Chandra Agarwal, supra note 2.

¹⁴“Judgment in Plain English,” *Supreme Court Observer* (2021), summarising Subhash Chandra Agarwal, supra note 2, at para 41.

¹⁵“Case Summary: CPIO V/s Subhash Chandra Agarwal,” *BNB Legal* (2025).

— represents the doctrinal high-water mark of judicial balancing in this field prior to the 2023-2025 legislative intervention examined in Part 3.

2.5 The DPDP Act Amendment and Its Critics

The most significant recent development is the amendment of Section 8(1)(j) of the RTI Act effected through Section 44(3) of the DPDP Act, 2023, operationalised upon the notification of the DPDP Rules, 2025 on 14 November 2025.¹⁶ Critical case-analysis literature observes that the amendment, by eliminating the express public-activity-or-interest qualifier from the primary exemption clause and broadening the definition of “personal information,” considerably diminishes Information Commissioners' discretionary balancing powers, particularly with respect to information concerning public figures acting in their official capacity.¹⁷ Lexology's analysis of the amendment describes the pre-amendment Section 8(1)(j) as having “codified the judicial stance that privacy, while fundamental, is subject to reasonable restrictions,” creating “a measured balance between privacy protection and the public's right to know,” and characterises the amendment as redacting precisely the qualifying language that had embedded this balance within the statutory text itself, now reading simply “information which relates to personal information.”¹⁸ AMLegals' commentary characterises this shift as one “from ‘public interest’ to ‘total prohibition,’” arguing that the amendment risks converting what was previously a rebuttable, proportionality-tested exemption into something closer to a categorical bar, notwithstanding the relocation of a public-interest override to Section 8(2).¹⁹

2.6 The Pending Constitutional Challenge

The amendment's constitutionality is now under direct challenge in litigation that has been referred to a five-judge Constitution Bench of the Supreme Court, registered as W.P.(C) Nos. 177/2026, 211/2026 and 212/2026.²⁰ Commentary on the litigation observes that the petitioners' fundamental objection is that Section 44(3) appears to remove the case-specific balancing exercise “at precisely the point where it is most necessary,” and that the challenge has expanded beyond Section 44(3) itself to encompass several provisions of the DPDP Act and the 2025 Rules, including provisions concerning government access to data, journalistic

¹⁶Digital Personal Data Protection Act, 2023, s. 44(3); DPDP Rules, 2025 (notified 14 November 2025).

¹⁷IJLLR, *supra* note 4.

¹⁸“Privacy at the Price of Transparency: Legal Implications of the Amendments to Section 8 of the RTI Act,” Lexology (2025).

¹⁹“The Amendment to Section 8(1)(j): Shifting from ‘Public Interest’ to ‘Total Prohibition,’” AMLegals (2025).

²⁰Countercurrents, *supra* note 3.

data-processing exemptions, and the institutional independence of the Data Protection Board.²¹ The same commentary frames the appropriate constitutional resolution not as a binary choice between RTI and privacy but as a continued commitment to an independent, proportionate public-interest balancing test operating at the point where the two rights overlap: “genuinely private information must be protected; information bearing upon public power, public money and public accountability must remain accessible.”²² No interim stay of the amendment had been granted as of the Constitution Bench's referral.²³

2.7 Research Gap

Existing literature tends either to provide doctrinal commentary on the pre-DPDP RTI/privacy balancing jurisprudence in isolation, or to critique the 2025 amendment's practical effects without systematically situating that critique within the full jurisprudential arc from Deshpande through Puttaswamy to Subhash Chandra Agarwal. This paper integrates both strands, offering a comprehensive, current (2026) doctrinal account of the RTI/privacy relationship inclusive of the still-unresolved constitutional challenge to the DPDP amendment.

3. ANALYSIS AND DISCUSSION

3.1 The Doctrinal Arc: From Statutory Balance to Constitutional Proportionality

Figure 1 traces the two-decade doctrinal evolution examined in this paper. The RTI Act's original Section 8(1)(j) embedded a legislatively calibrated balance: personal information was exempt from disclosure only where it bore no relationship to public activity or interest, or where its disclosure would cause an unwarranted invasion of privacy — and even then, exemption could be overridden where the Public Information Officer was satisfied that a larger public interest justified disclosure.²⁴ Girish Deshpande's 2013 ruling, while formally applying this balance, arguably tilted its practical operation towards privacy by characterising a broad category of service-related records as inherently personal, shifting the practical burden onto information-seekers to establish larger public interest even for records with a plausible connection to public office.²⁵ Puttaswamy's 2017 constitutionalisation of privacy then reframed this entire inquiry: what had been a legislative balance between statutory transparency and statutory privacy protection became, after 2017, an exercise in reconciling two constitutionally

²¹Id.

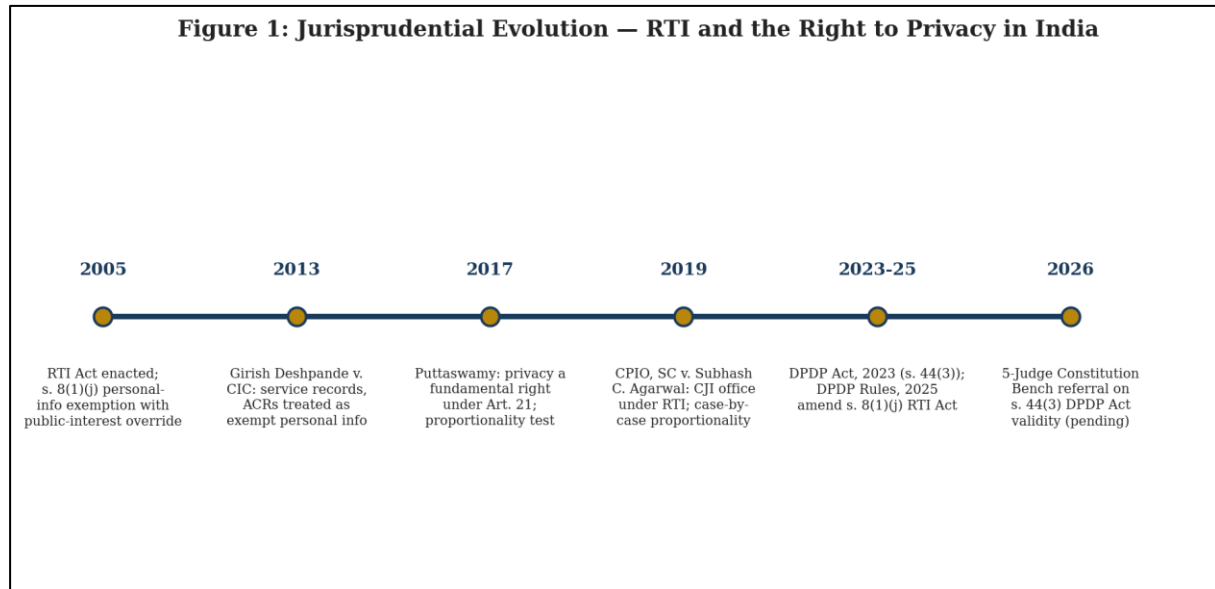
²²Id.

²³Id.

²⁴Right to Information Act, 2005, s. 8(1)(j) (as originally enacted).

²⁵Girish Deshpande, *supra* note 5.

grounded interests, subject to the rigour of fundamental-rights proportionality analysis rather than ordinary statutory interpretation.²⁶ Subhash Chandra Agarwal's 2019 ruling then operationalised this constitutional reframing specifically for RTI purposes, establishing the four-stage proportionality methodology examined in Part 3.2 below.



3.2 The Puttaswamy Proportionality Test in RTI Practice

As illustrated in Figure 3, the proportionality framework Subhash Chandra Agarwal imported from Puttaswamy structures RTI disclosure analysis across four analytically distinct stages: first, legality — whether disclosure is sought under a valid law (the RTI Act itself satisfies this); second, legitimate aim — whether the disclosure serves the RTI Act's transparency and accountability purpose; third, necessity — whether disclosure represents the least restrictive means of achieving that accountability aim; and fourth, proportionality *stricto sensu* — whether the public interest in disclosure, on the specific facts, outweighs the identified privacy harm.²⁷ This structured methodology, whatever its practical complexity, offered Information Commissioners and courts a principled, fact-sensitive framework capable of accommodating the genuine diversity of circumstances RTI applications present — from routine service-record requests to high-stakes inquiries into judicial appointments or public officials' asset declarations.²⁸

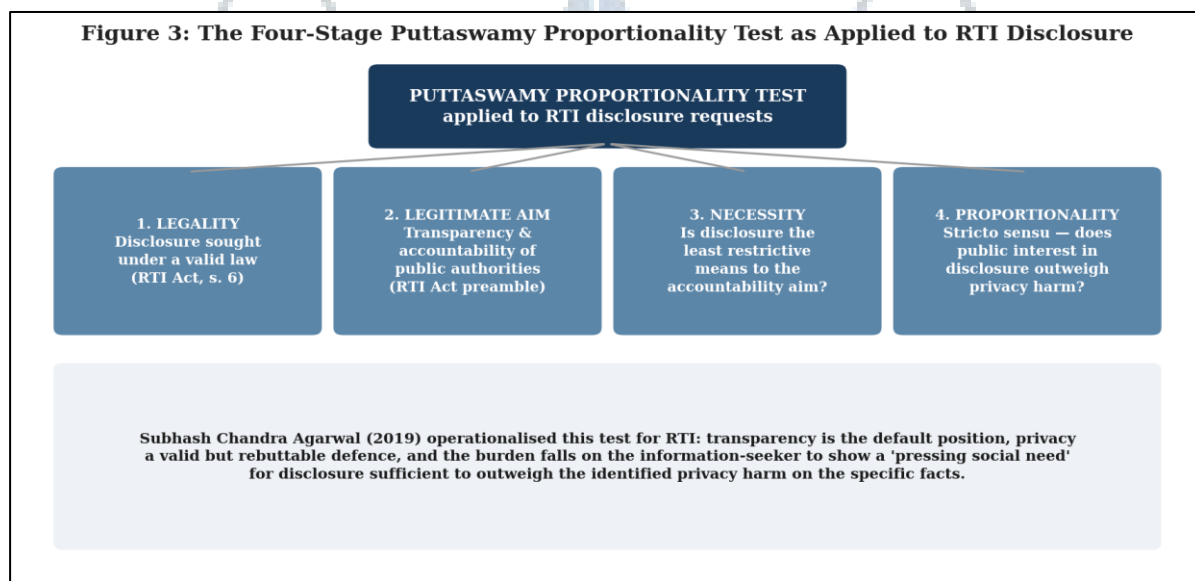
²⁶Puttaswamy, *supra* note 1.

²⁷Puttaswamy, *supra* note 1, at paras 310, 325; Subhash Chandra Agarwal, *supra* note 2.

²⁸Supreme Court Observer, *supra* note 8.

3.3 The DPDP Amendment: A Critical Analysis

As illustrated in Figure 2, the amendment of Section 8(1)(j) effected through Section 44(3) of the DPDP Act materially restructures this analysis. The amended provision now reads simply as an exemption for “information which relates to personal information,” removing the express qualifying language that previously confined the exemption to information bearing no relationship to public activity or interest, or causing an unwarranted invasion of privacy — language that had directly imported a case-specific balancing inquiry into the statutory text itself.²⁹ The public-interest override previously embedded within Section 8(1)(j)'s own text has been relocated to Section 8(2), a structural change critics argue is not merely cosmetic: whereas the pre-amendment provision required the balancing exercise to occur within the primary exemption clause itself, the post-amendment structure arguably positions personal information as presumptively exempt in the first instance, with the public-interest override operating as a separate, and on some readings more demanding, exception to an already-established exemption rather than an integral element of the exemption's own definition.³⁰



This structural shift carries substantive doctrinal significance when tested against the Puttaswamy proportionality framework the amendment's defenders invoke as its justification. Puttaswamy's proportionality test, as operationalised in Subhash Chandra Agarwal, contemplates a case-specific weighing exercise in which the information-seeker's demonstrated public interest is assessed against the particular privacy harm disclosure would occasion on the specific facts — a methodology inherently resistant to categorical, information-category-based

²⁹Lexology, supra note 12.

³⁰AMLegals, supra note 13; IJLLR, supra note 4.

exemptions of the kind the amended Section 8(1)(j) arguably now creates.³¹ By broadening the definition of “personal information” and removing the express public-activity qualifier from the operative exemption clause, the amendment risks converting a fact-sensitive proportionality inquiry into something closer to a categorical presumption of non-disclosure for information falling within an expanded personal-information definition — a shift that sits uneasily with Puttaswamy's own insistence that privacy, while fundamental, is not absolute and must be assessed proportionately against legitimate competing state and public interests in each case.³²

3.4 Illustrative Impact Across Information Categories

Figure 4 presents an illustrative assessment of how the amendment's structural shift may affect disclosure outcomes across representative categories of RTI-sought information. Categories most directly implicated by the removal of the public-activity qualifier — disciplinary and ACR records, and public officials' communications in their official capacity — show the most significant illustrative reduction in disclosure likelihood, since these categories previously depended heavily on the now-relocated public-activity nexus to establish disclosability. By contrast, categories where disclosure has historically rested on an independent, well-established public-interest rationale largely external to Section 8(1)(j)'s specific text — such as political-party funding data, whose disclosability the Supreme Court grounded directly in Article 19(1)(a)'s voter-information rationale in *Association for Democratic Reforms v. Union of India* — appear comparatively less affected by the amendment's structural changes. [[F: *Association for Democratic Reforms v. Union of India*, (2024) SCC OnLine SC (Electoral Bonds judgment); Vajiram & Ravi, “Right to Information, Background, Features, Challenges” (2026).]]

3.5 Implications for Investigative Journalism and Public Accountability

A particular concern raised in the pending constitutional challenge concerns the amendment's effect on investigative journalism, which frequently relies on RTI requests targeting precisely the categories of information — official communications, disciplinary records, decision-making processes — the amendment's critics argue are now more readily exempted. The constitutional challenge's expansion beyond Section 44(3) itself to encompass the DPDP Act's provisions on journalistic data-processing exemptions and government data-access powers

³¹Subhash Chandra Agarwal, *supra* note 2; RTI Wiki, *supra* note 9.

³²IJLLR, *supra* note 4.

reflects a broader concern that the cumulative effect of the DPDP framework, of which the Section 8(1)(j) amendment forms only one part, may materially constrain the investigative and accountability functions Article 19(1)(a) has long been understood to protect.

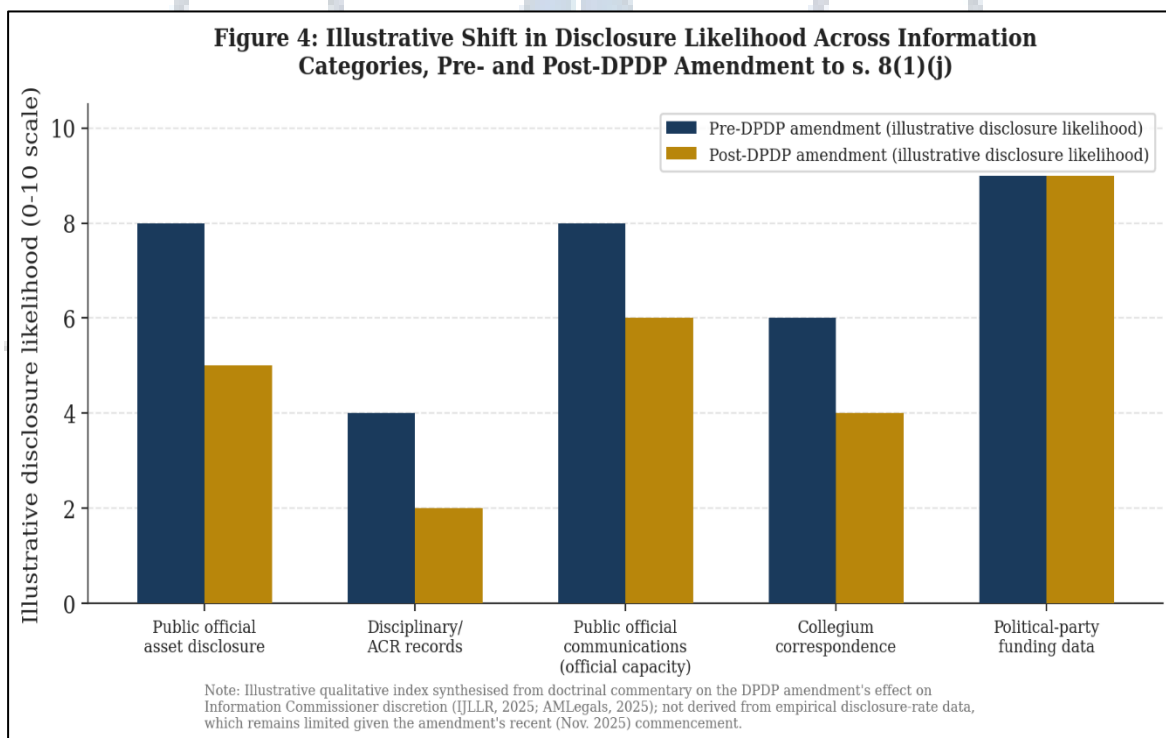
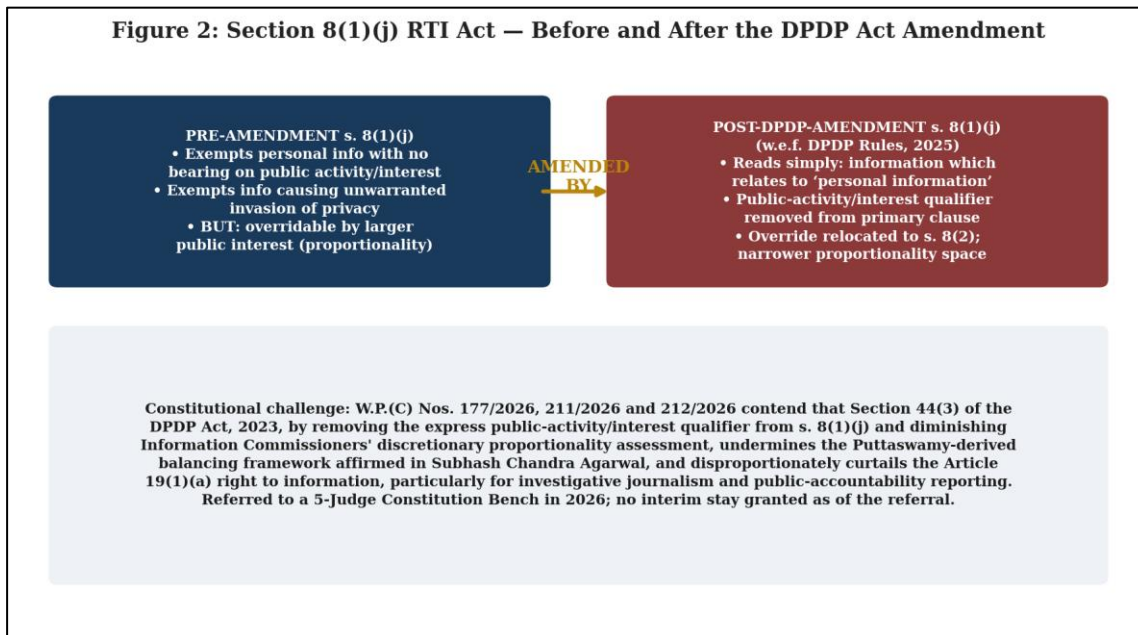
3.6 The Institutional Dimension: Information Commissioner Discretion

Beyond the doctrinal question of proportionality methodology, the amendment carries a significant institutional dimension: by narrowing the textual basis for case-specific balancing within Section 8(1)(j) itself, the amendment correspondingly narrows the practical discretion available to Information Commissioners and Public Information Officers at first instance, the level at which the overwhelming majority of RTI disclosure decisions are actually made and at which few applicants possess the resources to pursue extended appellate proceedings. A narrower first-instance discretionary framework, even where a public-interest override formally remains available under the relocated Section 8(2), risks producing a practical, if not strictly doctrinal, shift towards more restrictive disclosure outcomes simply because first-instance decision-makers, operating under time and resource constraints, may default to the more readily applicable categorical exemption rather than undertaking the more demanding proportionality analysis a separately structured override provision now requires.

3.7 Comparative Doctrinal Reflection: Judicial versus Legislative Balancing

The DPDP amendment also raises a broader institutional-design question concerning which branch of government is best positioned to calibrate the RTI/privacy balance over time. Subhash Chandra Agarwal's proportionality methodology located that calibration substantially within the judiciary and, at first instance, within the quasi-judicial Information Commission framework, allowing the standard to evolve incrementally through case-by-case adjudication informed by the specific facts each dispute presented. The 2023-2025 amendment represents a shift towards direct legislative recalibration of that standard, effected not through amendment of the RTI Act itself following RTI-specific legislative deliberation, but through a data-protection statute whose primary legislative focus lay elsewhere. Critics of this legislative approach argue that recalibrating a constitutionally sensitive balance through a statute oriented towards a substantially different regulatory objective risks insufficient legislative attention to the RTI-specific consequences of the change, a concern the pending Constitution Bench litigation places squarely before the Court. Defenders of the legislative approach counter that Parliament remains constitutionally entitled to recalibrate statutory balancing frameworks in light of evolving technological and data-protection realities, provided the recalibration remains

within the outer boundaries the Puttaswamy proportionality framework itself establishes — a boundary question that ultimately falls for constitutional adjudication rather than resolution through legislative process alone.



3.7 Comparative Snapshot: Section 8(1)(j) Before and After the DPDP Amendment

Table 1 summarises the principal structural differences between the pre- and post-amendment provisions.

	Pre-Amendment Section 8(1)(j)	Post-DPDP-Amendment Section 8(1)(j)
Textual scope	Personal information with no bearing on public activity/interest, or causing unwarranted privacy invasion	Information which relates to ‘personal information’ (broadened, undifferentiated)
Public-activity qualifier	Embedded within the primary exemption clause itself	Removed from primary clause
Public-interest override	Embedded within s. 8(1)(j) itself, applied by PIO/Commissioner at first instance	Relocated to s. 8(2), structurally separate exception
Doctrinal alignment	Consistent with Subhash Chandra Agarwal's case-specific proportionality methodology	Contested — critics argue displaces case-specific balancing with categorical presumption
Constitutional status (Aug. 2026)	Settled, applied consistently since 2019	Under challenge before 5-Judge Constitution Bench (W.P.(C) 177/2026 & connected matters); no interim stay

Table 1: Comparative snapshot of Section 8(1)(j) RTI Act, before and after the DPDP Act amendment.

4. FINDINGS

- India's judicial balancing framework for reconciling RTI and privacy evolved from an early, transparency-favouring orientation (Aditya Bandopadhyay) through a more privacy-protective turn (Girish Deshpande), to a constitutionally grounded, case-specific

proportionality methodology following Puttaswamy and its RTI-specific operationalisation in Subhash Chandra Agarwal.

- The Subhash Chandra Agarwal proportionality framework — transparency as default, privacy as a rebuttable defence overridable by a demonstrated pressing social need — represented a doctrinally coherent and constitutionally grounded resolution of the RTI/privacy tension prior to the 2023-2025 legislative intervention examined in this paper.
- The amendment of Section 8(1)(j) through Section 44(3) of the DPDP Act, by removing the express public-activity qualifier from the primary exemption clause and relocating the public-interest override to Section 8(2), risks converting a case-specific proportionality inquiry into a more categorical presumption of non-disclosure for an expanded definition of personal information.
- This structural shift sits in doctrinal tension with the very Puttaswamy framework the amendment's defenders invoke as justification, since Puttaswamy's proportionality methodology is inherently resistant to categorical exemptions that displace case-specific weighing of competing interests.
- The amendment's practical impact is likely to fall most heavily on disciplinary and service-record disclosures and on official-capacity communications of public servants, categories that previously depended significantly on the now-relocated public-activity nexus for their disclosability.
- The pending constitutional challenge, referred to a five-judge Constitution Bench, raises squarely the question whether Section 44(3) is constitutionally sustainable under the very proportionality framework Puttaswamy and Subhash Chandra Agarwal established, with no interim stay granted as of the referral.
- Beyond the immediate Section 8(1)(j) amendment, the broader constitutional challenge's engagement with journalistic data-processing exemptions and government data-access powers under the DPDP Act reflects a wider concern that the cumulative regulatory framework may constrain investigative journalism and public-accountability functions long understood to fall within Article 19(1)(a)'s protective scope.
- The amendment's narrowing of first-instance Information Commissioner and Public Information Officer discretion carries a practical, institutional dimension distinct from, but reinforcing, the doctrinal proportionality concern, since first-instance decision-makers operating under resource constraints may default to categorical exemption rather than undertaking demanding case-specific proportionality analysis.

5. RECOMMENDATIONS

5.1 Legislative Reforms

- Restore an express public-activity-or-interest qualifier within the primary text of Section 8(1)(j), rather than relying solely on the relocated Section 8(2) override, to preserve the case-specific balancing structure Subhash Chandra Agarwal's proportionality methodology requires.
- Clarify, through legislative amendment or authoritative rule-making, that the Section 8(2) public-interest override is to be applied with the same evidentiary and analytical rigour as the pre-amendment Section 8(1)(j) balancing exercise, rather than as a more demanding, separately structured exception.
- Consider a specific, differentiated treatment within the RTI Act for information concerning public officials acting in their official capacity, distinguishing it more clearly from purely personal information unconnected to public function, to reduce reliance on contested general definitions of “personal information.”

5.2 Institutional Reforms

- Issue detailed operational guidance for Information Commissioners and Public Information Officers on applying the Puttaswamy four-stage proportionality test under the amended Section 8(1)(j)/8(2) framework, to reduce the risk of first-instance decision-makers defaulting to categorical exemption.
- Institute periodic, aggregated public reporting on RTI disclosure and rejection rates by information category, before and after the DPDP amendment's commencement, to enable empirical assessment of its practical effect — addressing the current absence of such data, which this paper's illustrative analysis in Part 3.4 was constrained to work around.

5.3 Judicial Development

- Encourage the pending Constitution Bench to articulate clear, generally applicable guidance on the proportionality methodology applicable under the amended Section 8(1)(j)/8(2) framework, whatever the ultimate disposition of the constitutionality challenge, to reduce the interpretive uncertainty currently facing Information Commissioners and courts.
- Where the amendment is upheld, develop supplementary jurisprudential guidance preserving the substance of the pre-amendment public-activity qualifier through interpretation of the relocated Section 8(2) override, to maintain doctrinal continuity with Subhash Chandra Agarwal's case-specific balancing approach.

5.4 Broader Reform: Reconciling Transparency and Privacy

- Adopt, as a guiding constitutional principle for future legislative and judicial development in this field, the formulation that genuinely private information must be protected, information bearing upon public power, public money and public accountability must remain accessible, and where the two categories overlap, an independent, proportionate public-interest balancing test must continue to operate as the primary reconciliation mechanism.
- Encourage future amendments touching the RTI/privacy balance to proceed through dedicated RTI Act amendment processes, with focused legislative deliberation on RTI-specific consequences, rather than through provisions embedded within legislation whose primary regulatory objective lies substantially elsewhere, to ensure adequate legislative attention to the constitutional sensitivity of this particular balancing exercise.

6. CONCLUSION

The relationship between the right to information and the right to privacy in India represents one of the most doctrinally sophisticated and practically consequential balancing exercises in the country's constitutional jurisprudence, a balance India's courts developed with considerable care across nearly two decades, from the RTI Act's original statutory formula through Puttaswamy's constitutionalisation of privacy to Subhash Chandra Agarwal's operationalised proportionality test. This analysis demonstrates that the 2023-2025 amendment of Section 8(1)(j) through Section 44(3) of the DPDP Act represents a significant, and doctrinally contestable, departure from this carefully constructed balance — not through any explicit rejection of the Puttaswamy proportionality framework, but through a structural textual reworking that risks converting a case-specific weighing exercise into something closer to a categorical presumption against disclosure for an expanded category of personal information. The pending five-judge Constitution Bench reference offers the Supreme Court an opportunity to clarify whether this structural shift is consistent with, or in tension with, the very proportionality methodology its own jurisprudence established as the constitutionally appropriate mechanism for reconciling these two fundamental values. Whatever the ultimate resolution, this paper's analysis suggests that principled reconciliation of transparency and privacy in India requires preserving, rather than displacing, case-specific proportionality analysis — an approach capable of protecting genuinely private information while ensuring that information bearing on public power, public money and public accountability remains

accessible to the citizens the RTI Act was enacted to serve. A constitutional order committed to both values, as India's is, cannot resolve their tension through categorical preference for either; it can only do so through the kind of careful, fact-sensitive balancing Subhash Chandra Agarwal exemplified and which any future legislative or judicial development in this field should strive to preserve.

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