

THE EXIGENCY OF A JOURNALISTIC EXEMPTION IN INDIA’S DATA PROTECTION FRAMEWORK

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In an age where the right to privacy and freedom of speech are frequently at odds, the omission of a journalistic exemption in India's Digital Personal Data Protection Act, 2023, ('DPDPA' or 'the Act') creates a critical gap in reconciling these fundamental rights. While global data protection frameworks recognise the need for journalistic exemptions to balance privacy with public interest, the DPDPA departs from this norm, raising concerns about its potential impact on both professional and citizen-led journalism. This article examines how the DPDPA constrains journalistic freedom through its stringent consent requirements and data-use limitations, compounded by potential governmental overreach. Drawing on constitutional principles under Articles 19(1)(a), it argues that the absence of a journalistic exemption undermines both journalists' rights and the public's access to essential information. To address this, the article proposes a recommended draft provision for a journalistic exemption that aligns with global best practices and seeks to find the appropriate balance between considerations of data protection, public interest and journalistic freedom.

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I. INTRODUCTION

“In the times to come, [young journalists] will change the meaning of journalism from what it has become today. It is possible that they may lose the battle, but there is no other way left apart from resistance. Not all battles are fought for victory — some are fought to tell the world that someone was there on the battlefield”.

— Ravish Kumar’s speech on the acceptance of the Ramon Magsaysay Award¹

India, like many other jurisdictions,² has struggled to strike the right balance between the right to freedom of speech and expression under Article 19 of the Indian Constitution³ and the right to privacy of individuals, which is encapsulated by Article 21.⁴ On the one hand, if individuals remain afraid of being sued, it has a chilling effect on their ability to express themselves freely on public issues.⁵ At the same time, the invasive age of information and technology poses increasing threats to the privacy of an individual.⁶ This has necessitated intervention by the State to define the nebulous contours of the right to free press and the right to be left alone.⁷

An illustration of this conflict arose on February 16, 2024, when the Editors Guild of India made a representation⁸ to the Ministry of Electronics and Information

¹ NDTV, “*Not All Battles Fought for Victory*”: *NDTV’s Ravish on Magsaysay Award*, YOUTUBE, September 9, 2019, available at <https://www.youtube.com/watch?v=btGX0bL5XY4> (Last visited on November 15, 2024).

² See generally Raymond Wacks, *Striking a Balance* in THE PRIVACY AND MEDIA FREEDOM, 129 (Oxford University Press, 2013).

³ The Constitution of India, 1950, Art 19.

⁴ K.S. Puttaswamy v. Union of India, (2018) 1 SCC 809, ¶94 (‘Puttaswamy’).

⁵ See Ram Jethmalani v. Subramaniam Swamy, 2006 SCC OnLine Del 14 (‘Ram Jethmalani’).

⁶ Puttaswamy *supra* note 4; See also COMMITTEE OF EXPERTS UNDER THE CHAIRMANSHIP OF JUSTICE SRIKRISHNA, *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians* (July 27, 2018) (‘B.N. Srikrishna Committee Report’).

⁷ *Id.*

⁸ The Wire Staff, *Editors Guild Expresses ‘Grave Concerns’ on Data Protection Act in Representation to IT Ministry*, THE WIRE, February 18, 2024, available at <https://thewire.in/media/editors-guild-expresses-grave-concerns-on-data-protection-act-in-representation-to-it-ministry> (Last visited on July 5, 2025).

Technology ('MeitY'), highlighting the absence of an exemption for journalistic activities under the Digital Personal Data Protection Act, 2023 ('DPDPA' or 'the Act').⁹ The Act, which was passed by both Houses of the Indian Parliament, was an outcome of a long legislative process to provide a framework for data protection in India.¹⁰ This process itself started with the Personal Data Protection Bill, 2018 ('PDP Bill, 2018'), which was drafted by the MeitY-appointed B.N. Srikrishna Committee,¹¹ and went on to be modified in 2019,¹² 2022,¹³ and then finally became the DPDPA. Interestingly, while the first three versions contained an exemption for journalists, this has been removed in the last two versions without any explanation. Additionally, the committee consultations and discussions are also not in the public domain to discern any coherent reason for such removal.¹⁴

It is important to stress that journalists often interact with personal data for various purposes, including enhancing transparency in administrative work,¹⁵ holding power to account, and even investigative journalism.¹⁶ At this juncture, it is also pertinent that it is not only 'professional journalists' who need an exemption, but also a lot of private citizens and individuals who engage with data for journalistic purposes. This becomes especially important in an age where internet penetration¹⁷ and the advent of social media have democratised content creation¹⁸ as well as access to information.¹⁹ Any hindrance posed by a data protection legislation on journalistic activities by professionals and public-spirited citizens would be an unfair restriction on the freedom of speech and the public interest in free information.

This omission is also surprising because data protection laws across nations provide for journalistic exemptions.²⁰ The rationale of this lies in balancing considerations of data privacy and public interest in freedom of the press and unhindered dissemination of information.²¹ Since data protection regimes aim to put the privacy of the 'data principals'²² at

⁹ See The Digital Personal Data Protection Act, 2023.

¹⁰ *The Digital Personal Data Protection Act, 2023*, PRS LEGISLATIVE RESEARCH, available at <https://prsindia.org/billtrack/digital-personal-data-protection-bill-2023> (Last visited on November 20, 2024).

¹¹ *The Personal Data Protection Bill, 2018*, PRS LEGISLATIVE RESEARCH, available at <https://prsindia.org/billtrack/draft-personal-data-protection-bill-2018> (Last visited on November 25, 2024).

¹² *The Personal Data Protection Bill, 2019, 373 of 2019*, PRS LEGISLATIVE RESEARCH, available at <https://prsindia.org/billtrack/the-personal-data-protection-bill-2019> (Last visited on November 25, 2024).

¹³ *The Digital Personal Data Protection Bill, 2022*, PRS LEGISLATIVE RESEARCH, available at https://prsindia.org/files/bills_acts/bills_parliament/2022/The%20Digital%20Personal%20Data%20Potection%20Bill,%202022.pdf (Last visited on August 22, 2025).

¹⁴ The Personal Data Protection Bill, 2018, §47; The Personal Data Protection Bill, 2019, §36.

¹⁵ See generally Donald H. Johnston, *JOURNALISM AND THE MEDIA: AN INTRODUCTION TO MASS COMMUNICATIONS* (Barnes & Nobles, 1979).

¹⁶ *Data Protection and Journalism Code of Practice*, THE INFORMATION COMMISSIONER'S OFFICE, available at <https://ico.org.uk/media2/migrated/4025760/data-protection-and-journalism-code-202307.pdf> (Last visited on November 19, 2024).

¹⁷ Press Trust of India, *Over 82% of Rural Youth Able to Use Internet in India, Says Govt Survey*, BUSINESS STANDARD, October 9, 2024, available at https://www.business-standard.com/india-news/over-82-of-rural-youth-able-to-use-internet-in-india-says-govt-survey-124100901062_1.html (Last visited on August 1, 2025).

¹⁸ See generally Dan Gillmor, *WE THE MEDIA: GRASSROOTS JOURNALISM BY THE PEOPLE, FOR THE PEOPLE* (O'Reilly Media Inc, 2006).

¹⁹ *Id.*

²⁰ General Data Protection Regulation, 2018, Art. 85 (European Union); Personal Data Protection Act, 2012, Sch. I, Part 2 (Singapore); Data Protection Act, 2018, §54 (Austria); The Protection of Personal Information Act, 2013, §7 (South Africa); The General Personal Data Protection Act, 2018, Art. 4 (Brazil).

²¹ Natalija Bitiukova, *The GDPR's Journalistic Exemption and its Side Effects*, VERFASSUNGSBLOG, June 16, 2023, available at <https://verfassungsblog.de/the-gdprs-journalistic-exemption-and-its-side-effects> (Last visited on November 15, 2024).

²² The Personal Data Protection Bill, 2018, §2(j) (Data Principal refers an individual to whom the person data relates. Under DPDPA, 2023, data principal has several rights with respect to their personal data such as right to

the forefront,²³ they usually have mandatory requirements for the data fiduciaries²⁴ to obtain informed consent from the individuals on how to handle their data.²⁵ However, any data protection regime also recognises that there may be some purposes that are lawful, legitimate, and in the public interest for which consent of the Data Principal may not be sought.²⁶

This paper aims to demonstrate the constitutional and practical imperative for incorporating a journalistic exemption within the DPDPA by analysing its current constraints, comparing international best practices, and proposing a context-sensitive legislative amendment. The paper is divided into six parts. Part II illustrates how the DPDPA poses constraints on journalistic actors through the requirements of consent and notice, codifying purpose and storage limitation, and allowing excessive interference by the government. Part III elaborates on the jurisprudential and constitutional necessity to include a journalistic exemption, which stems from Article 19(1)(a) and Article 19(1)(g) of the Indian Constitution. It argues that the DPDPA, by constraining journalistic freedom, violates the fundamental rights of journalistic actors and the citizenry. Part IV provides an analysis of internationally recognised best practices followed by different jurisdictions, in terms of (a) who can avail the said exemption, (b) for what purposes they can avail it, and (c) the application of which rules is exempted as a result of its invocation. Building on the above analysis, Part V provides a recommended draft journalistic exemption provision that is well adjusted to the Indian context. Finally, Part VI provides concluding remarks.

II. HOW THE DPDPA FREEZES PUBLIC DEBATE WITH THE CHILLING EFFECT

Journalism is an umbrella term that covers multifarious activities involving the collection, processing and dissemination of information through the media.²⁷ This would include professional journalists working in media houses on one hand, and even ‘citizen journalists’ who act in various capacities and engage with data and information that may be ‘personal’ in nature.²⁸ There are various provisions in the current DPDPA that significantly interfere with the independence and activities of such journalistic actors. Notably, journalists, whether professional or otherwise, would be covered by the definition of a data fiduciary within the DPDPA, which includes any individual, company, firm, or association of persons,²⁹ who

access information pertaining to their personal data, right to erase and rectify and right to redressal of grievances among others).

²³ Trishee Goyal, *A First Look at the New Data Protection Bill*, THE HINDU, November 23, 2022, available at <https://www.thehindu.com/sci-tech/technology/a-first-look-at-the-new-data-protection-bill/article66162209.ece> (Last visited on November 16, 2024).

²⁴ The Personal Data Protection Bill, 2018, §2(i) (Data Fiduciary refers to an individual who alone or in conjunction of a data processor determines and controls the processing of personal data. Under the DPDPA, data fiduciary is responsible to comply with the provision of the act and are subjected to certain obligations like implementation of reasonable security standards to prevent data breach and establishment of effective grievance redressal mechanism).

²⁵ *Id.*

²⁶ *A Guide to the Data Protection Exemptions*, THE INFORMATION COMMISSIONER’S OFFICE, available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/exemptions/a-guide-to-the-data-protection-exemptions> (Last visited on November 21, 2024).

²⁷ See Johnston, *supra* note 15 (Processing would involve and include selection of what information goes through for dissemination and its analysis and interpretation).

²⁸ J.D. Lasica, *What is Participatory Journalism?*, J.D. LASICA, August 7, 2003, available at <https://www.jdlasica.com/journalism/what-is-participatory-journalism> (Last visited on November 21, 2024).

²⁹ The Digital Personal Data Protection Act, 2023, §2(s).

“alone or on in conjunction with other persons determines the purpose and means of processing of personal data”.³⁰

The DPDPA imposes certain obligations upon a data fiduciary *vis-à-vis* the data processing of a data principal’s information — particularly the consent and notice requirement, and the purpose and storage limitations — which may be incompatible with journalistic activities. Further, the DPDPA also broadens the scope for potential governmental overreach.

A. REQUIREMENT OF CONSENT & NOTICE

Section 7 of the DPDPA provides that there may be ‘certain legitimate uses’ for which data fiduciaries may process personal data of a data principal without consent.³¹ This includes a situation where the data principal voluntarily provides their data for a specified purpose.³² One might argue that the said provision will protect a host of journalistic activities where responses of data principals are sought for interviews, questionnaires and surveys. However, this exception is narrow and excludes a wide spectrum of journalistic practices essential to a free and effective press, as journalism does not function solely through voluntary disclosures.

For instance, journalists also engage in ‘Enterprise Reporting’ or ‘Investigative Journalism’ which involves reporting on the basis of personal research and often involves exposing matters of public interest that were deliberately or accidentally concealed “behind a chaotic mass of facts and circumstances”.³³ Beyond this, even while reporting news generally or in opinion pieces, journalists base their findings on private research. Under the given circumstances, it will become extremely difficult to secure the consent of each and every individual whose data, either personal or otherwise, has been relied upon to prepare the opinion or news piece.

For the activities not covered under the grounds of non-consensual processing of personal data, Section 6 obligates the data fiduciary to seek consent from the individual data principal before processing their data.³⁴ This is preceded by an itemised notice informing the latter of the purpose for which the specific data is to be processed and the manner in which rights may be exercised by them.³⁵

It was categorically noted by the B.N. Srikrishna Committee that imposing such an obligation of notice and consent upon journalists before publication would “defeat the purpose of the exercise”. It is rightly noted that such requirements could suppress all news that is unfavourable to the data principal, who may well be an influential individual, a powerful corporate giant, or a public authority.³⁶

Investigative journalism stands to be one of the greatest casualties. For instance, consider a journalist preparing a report on corruption allegations against a senior politician, which involves a sting operation video and testimonies from close aides. Under the DPDPA’s current framework, the journalist would be required to serve an itemised notice to the public

³⁰ *Id.*, §2(i).

³¹ *Id.*, §7.

³² *Id.*, §7(a).

³³ See Mark Lee Hunter & Nils Hanson, *STORY-BASED INQUIRY: A MANUAL FOR INVESTIGATIVE JOURNALISTS*, Chapter 1, 7–12 (UNESCO, 2011).

³⁴ The Digital Personal Data Protection Act, 2023, §6.

³⁵ *Id.*, §5.

³⁶ B.N. Srikrishna Committee Report, *supra* note 6, ¶142.

official detailing the data being used. This not only risks revealing sensitive sources and compromising their safety but also discourages further investigative efforts.

Even beyond investigative reporting, the chilling effect of such a consent-and-notice regime would extend across the spectrum of journalistic output.³⁷ Everyday news reporting, editorial commentary, political criticism, and even satire often rely on fragments of personal data — patterns of behaviour, or relationships with other public figures. If consent becomes a precondition for such reporting, the ability of journalists to hold the powerful to account will be fundamentally undermined.

Moreover, this requirement will open the floodgates of Strategic Litigation Against Public Participation (‘SLAPP’), which are suits filed by the powerful and influential entities to prevent the public from accessing crucial information, which, although might be personal in nature, is nevertheless important for transparency and public scrutiny.³⁸ The Act compounds this risk by empowering the Data Protection Board with the authority of a civil court, thereby creating a formal and potentially coercive avenue to stifle journalistic work.³⁹

Consider a scenario in which a journalist publishes a story exposing serious mismanagement, tax evasion, or unethical practices within a publicly listed company. The company could retaliate by filing a complaint with the Data Protection Board (‘the Board’), demanding the takedown of the content on the grounds of personal data misuse, claiming reputational harm and loss of investor trust.

This is not a hypothetical concern. In India, journalist Paranjoy Guha Thakurta faced multiple defamation suits, including one for INR 100 crore filed by the Adani Group, after publishing investigative reports alleging corporate malpractices.⁴⁰ While framed as defamation, such lawsuits functionally operated as SLAPPs, deterring further reporting and burdening the journalist with protracted litigation. Internationally, in the Philippines, journalist Maria Ressa, Nobel Peace Prize laureate and editor of *The Rappler*, faced a slew of legal actions, including cyber-libel and tax-related charges, widely seen as attempts to suppress critical journalism under the veneer of legal compliance.⁴¹

Even if such proceedings ultimately do not succeed on the merits, the very process of defending against them imposes a significant burden on journalists. The chilling effect—both in terms of time, cost, and psychological pressure—could deter future reporting on sensitive issues, thereby undermining press freedom and the public’s right to know.

B. PURPOSE & STORAGE LIMITATION

Consent under Section 6 of the DPDPA is given for a ‘specified purpose’ and the data shall be processed by the data fiduciary or the data processor only to the extent “necessary for the said specific purpose”.⁴² This, in effect, introduces a ‘purpose limitation’

³⁷ For further details on the aspect of chilling effect, *see supra* Part III.B.2 on “The Chilling Effect”.

³⁸ Aditi Agrawal, *Could India’s New Data Protection Bill Force Journalists to Reveal Their Sources?*, NEWSLAUNDRY, January 4, 2023, available at <https://www.newslaundry.com/2023/01/04/could-indias-new-data-protection-bill-force-journalists-to-reveal-their-sources> (Last visited on November 21, 2024).

³⁹ The Digital Personal Data Protection Act, 2023, §28(7).

⁴⁰ The Wire Staff, *Adani’s Group ‘SLAPP’ Pushes EPW Editor out of his Job*, July 18, 2017, THE WIRE, available at <https://thewire.in/media/adani-group-slapps-epw-editor-job> (Last visited on May 23, 2025).

⁴¹ *See generally* Philippines v. RAPPLER and Ressa, R-PSG-18-02983-CR (September 12, 2023) (‘Rappler’).

⁴² The Digital Personal Data Protection Act, 2023, §6.

which is a key principle of data privacy and means that data collected should only be used for the purpose for which it was collected.⁴³

The Act, however, does not clarify the degree of specificity required. The B.N. Srikrishna Committee acknowledged the need for balance, guarding against vague or overly broad formulations (such as ‘improving consumer experience’ or ‘better services’) while ensuring that purposes are not so detailed as to become inaccessible or incomprehensible to data principals. It is recommended that any subsequent use of data must remain consistent with the originally specified purpose and within the reasonable expectations of the data principal, considering the context and circumstances of processing.⁴⁴

In light of the DPDPA’s stated objective of safeguarding personal data through strict purpose limitation,⁴⁵ courts may adopt a narrow interpretation of ‘specified purpose’, requiring precise articulation at the time of collection.⁴⁶ This could severely limit contexts such as journalism, where data collection is inherently exploratory and the final use or framing of the information may evolve over time. Investigative journalism, in particular, often begins with a hypothesis or a lead that may or may not develop into a reportable story.⁴⁷ Imposing a rigid requirement of prior specification risks precluding such essential functions, unless Section 6 is interpreted to include broader or evolving purposes under its ambit.

Further, under Section 6(4), the said consent given by the data principal can be withdrawn at any point in time at will.⁴⁸ The data fiduciary thereafter has to cease processing the concerned data.⁴⁹ Section 12 provides the right to erasure of the data from which the consent has been revoked earlier.⁵⁰ While these provisions further the purpose of ‘storage limitation’, their composite effect is that the journalistic stories are being subjected to the whims of the data sources, and can be modified or altogether withdrawn at the will of the data principals. This is infeasible and impractical from the perspective of a journalist, as past records are important in contextualising news,⁵¹ especially in matters of public accountability or investigative journalism.

C. SCOPE FOR GOVERNMENTAL INTERFERENCE

⁴³ See Amoha Basrur et al., *The Digital Personal Data Protection Act, 2023: Recommendations for Inclusion in the Digital India Act*, OBSERVER RESEARCH FOUNDATION AND THE DIALOGUE, October 30, 2023, available at <https://www.orfonline.org/research/the-digital-personal-data-protection-act-2023-recommendations-for-inclusion-in-the-digital-india-act> (Last visited on November 20, 2024) (The purpose limitation principle is best understood alongside the general principle of collection limitation, which requires that only the data necessary to achieve the specified purposes of processing should be collected).

⁴⁴ B.N. Srikrishna Committee Report, *supra* note 6, ¶¶53, 54.

⁴⁵ *Id.*, ¶53.

⁴⁶ See General Data Protection Regulation, 2016, Art. 5(1)(b) (European Union); California Civil Code, 1872, §1798.120(c) (U.S.A.); Personal Data Protection Act, 2012, §§13–15 (Singapore); see also Regina Becker et al., *Purpose Definition As a Crucial Step for Determining the Legal Basis Under the GDPR: Implications for Scientific Research*, Vol. 11(1), JOURNAL OF LAW AND THE BIOSCIENCES (2024) ((Moreover, data protection laws globally, including the GDPR, CCPA, and Singapore’s PDPA tend to interpret the purpose limitation principle narrowly. They require that consent be tied to a clearly defined and specific purpose, reinforcing the need for transparency and foreseeability in data use. The GDPR, in particular, provides structured criteria for assessing specificity requiring that the purpose be clear enough to determine necessity, proportionality, and duration of processing).

⁴⁷ Rappler, *supra* note 41.

⁴⁸ The Digital Personal Data Protection Act, 2023, §6(4).

⁴⁹ *Id.*, §6(6).

⁵⁰ *Id.*, §12.

⁵¹ B.N. Srikrishna Committee Report, *supra* note 6, ¶146.

In the absence of an exemption, the vulnerability of journalistic actors is compounded by another area of concern, namely the scope for governmental interference in the functioning of data fiduciaries. Under Section 10(1) of the Act, the Central Government has the power to designate any data fiduciary as a Significant Data Fiduciary ('SDF'). This provision imposes additional obligations on major entities that process large volumes of personal data. However, the Act does not lay down any specific thresholds or quantifiable criteria for such designation. Instead, it vaguely states that the determination shall be based on factors such as "volume and sensitivity of personal data processed, risk to the rights of data principal, potential impact on the sovereignty and integrity of India, risk to electoral democracy, security of the State, and public order".⁵² For instance, a media outlet conducting large-scale investigative reporting on government surveillance or electoral practices could be said to process sensitive personal data and be perceived, however tenuously, as impacting 'public order' or 'sovereignty'. This opens the door to media houses or influential journalists being classified as SDFs, thereby inviting disproportionate regulatory burdens.⁵³

Further, SDFs are required to comply with a range of onerous obligations under the Act, including the appointment of data protection officers and independent data auditors, conducting regular 'data protection impact assessments', undergoing periodic audits, and fulfilling other compliance measures that may be prescribed under future rules.⁵⁴ Undoubtedly, such a notification would impose an onerous financial and operational burden on the conduct of journalistic activities and would also allow for possible political interference.

Additionally, Section 36 of the DPDPA empowers the Central Government to require any data fiduciary or intermediary to furnish any information that it may call for.⁵⁵ This section could compromise the secrecy of sources, which is integral to journalism,⁵⁶ and also be particularly debilitating for whistleblowers who use journalistic avenues as platforms to reveal sensitive information about illegal or fraudulent activities.⁵⁷

Lastly, a newly added provision, Section 37, gives the power to the Central Government to issue directions to block access by the public "to any information generated, transmitted or received, stored, or hosted" that allows the data fiduciary to offer services in India.⁵⁸ Such a direction may only be issued when a written reference has been received from the Board, in public interest.⁵⁹ This provision, which has not been sufficiently debated upon, is analogous to Section 69A of the Information Technology Act, 2000, which also allows for orders to block access to information.⁶⁰ Section 69A has faced sustained criticism from civil society and legal scholars for its lack of transparency, limited scope for judicial review, and its chilling effect on free speech and press freedom.⁶¹ The opaque nature of takedown orders under

⁵² The Digital Personal Data Protection Act, 2023, §10.

⁵³ Agrawal, *supra* note 38.

⁵⁴ The Digital Personal Data Protection Act, 2023, §10(2).

⁵⁵ *Id.*, §36.

⁵⁶ Agrawal, *supra* note 38.

⁵⁷ Eduardo Bertoni, *Journalism and Whistleblowing: An Important Tool to Protect Human Rights, Fight Corruption, and Strengthen Democracy*, UNESCO, 2022, available at <https://unesdoc.unesco.org/ark:/48223/pf0000381406> (Last visited on November 21, 2024).

⁵⁸ The Digital Personal Data Protection Act, 2023, §37.

⁵⁹ *Id.*, §37(1)(b).

⁶⁰ The Information Technology Act, §69A.

⁶¹ Vasudev Devadesan, *The Phantom Constitutionality of Section 69A: Part I*, CONSTITUTIONAL LAW AND PHILOSOPHY, October 22, 2022, available at <https://indconlawphil.wordpress.com/2022/10/22/the-phantom-constitutionality-of-section-69a-part-i/> (Last visited on May 24, 2025); See also Khadija Khan, *Centre Blocks 200 Online Platforms Under Section 69(A) of IT Act: What is The Provision, The Debate Around It*, THE INDIAN

this provision, often shielded from public scrutiny, has contributed to concerns about its use as a tool for silencing dissent and suppressing investigative journalism.⁶²

In light of these provisions, the DPDPA appears to facilitate a regulatory framework that can be weaponised against journalistic actors.

III. THE CONSTITUTIONAL IMPERATIVE OF A JOURNALISTIC EXEMPTION

Having discussed how the DPDPA poses onerous burdens for journalistic actors, this section discusses its impact on the exercise of the fundamental right of freedom of speech and expression and the right to information available to all citizens, as well as the right to practice any profession for journalists. It argues that exempting journalists from the application of certain parts of DPDPA is a constitutional obligation.

This section *first*, examines the jurisprudential considerations of protecting free speech and provides a concrete theoretical foundation for further discussions and *second*, demonstrates how the DPDPA would violate the abovementioned fundamental rights.

A. THE VALUE OF A FREE PRESS FOR DEMOCRATIC SELF-GOVERNANCE

To evaluate the DPDPA's impact on press freedom, it is essential to first understand why free speech, especially journalistic speech, holds a privileged status in democratic societies. This section outlines key jurisprudential justifications for free expression, which serve as the normative framework for the analysis in Part III and the recommendations advanced in Part IV.

Free speech has rarely been considered as an end in itself, and defenders of free speech have usually taken the argument that it is a means to achieve a socially desirable end.⁶³ For instance, for John Stuart Mill, the free exchange of ideas was an important and arguably the only means to arrive at the 'truth'.⁶⁴ American Realists such as Justice Oliver Wendell Holmes took this idea to its logical conclusion by arguing that "the best test of truth is the power of thought to get itself accepted in the competition of the market".⁶⁵ Further, Joseph Raz viewed tolerance of heterodox views as an important means of achieving the social good of a pluralistic society.⁶⁶

A remarkable defence of free speech in the context of press freedom has been most prominently offered by Alexander Meiklejohn, who had suggested that free speech is essential to achieve democratic self-government.⁶⁷ The crux of his argument is that true self-

EXPRESS, February 10, 2023, available at <https://indianexpress.com/article/explained/explained-law/centre-blocks-online-platforms-section-69a-it-act-debate-explained-8434750/> (Last visited on May 24, 2025).

⁶² Alok Prasanna Kumar, *Section 69A of IT Act Must Also Go*, DECCAN HERALD, July 25, 2021, available at <https://www.deccanherald.com/opinion/section-69a-of-it-act-must-also-go-1012522.html> (Last visited on November 21, 2024).

⁶³ Gautam Bhatia, OFFEND, SHOCK OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION, 29 (Oxford University Press, 2016).

⁶⁴ See generally Jill Gordon, *John Stuart Mill and the Marketplace of Ideas*, Vol. 23(2), SOC. THEORY PRAC., 235–249 (1997).

⁶⁵ See *Abrams v. United States*, 250 US 616 (1919) (United States Supreme Court); *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, ¶11 (per Nariman J.).

⁶⁶ See generally Joseph Raz, *THE MORALITY OF FREEDOM* (Oxford University Press, 2003).

⁶⁷ See Alexander Meiklejohn, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (Lawbook Exchange, 2014).

governance requires citizens to make an informed judgment about State policy, which cannot be made without the free dissemination of political information.⁶⁸ This protection was not restricted only to explicitly political speech but extended to “those activities of thought and communication by which we govern”.⁶⁹

For instance, while casting the ballot is the most manifest example of self-governance, it is only the culmination of a long process involving deliberation over issues of public concern.⁷⁰ It is this vision of deliberative democracy that Meiklejohn advances. This reasoning also undergirded cases such as *People’s Union for Civil Liberties v. Union of India* (‘People’s Union’), where the Supreme Court recognised that for voting to be a meaningful exercise, citizens had to be equipped with adequate information about the antecedents of the candidates,⁷¹ and further held that the right to receive information was a part and parcel of the freedom of speech and expression.⁷² More recently, in the case of *Association for Democratic Reforms v. Union of India* (‘Association for Democratic Reforms’), where the constitutionality of the Electoral Bonds Scheme was at stake, the Supreme Court reinforced the ‘Meiklejohnian’ idea, holding that the information of political funding is crucial to the effective participation of citizenry in the democracy.⁷³

Thus, protecting free speech and, by extension, the rights of the fourth estate, becomes the fundamental duty of any State that seeks to be committed to democratic ideals. Any legal regime, such as the DPDPA, that imposes vague, burdensome, or discretionary constraints on this function must therefore be scrutinised not just for regulatory overreach, but for its potential to erode the very foundations of democratic participation.

B. DPDPA & THE EROSION OF FUNDAMENTAL RIGHTS OF THE PRESS & CITIZENS

Professional journalists, as a part of the mainstream media and press, have not been explicitly conferred any fundamental rights in the Constitution of India. However, it is widely recognised that they are entitled to, *first*, the right to freedom of speech and expression under Article 19(1)(a)⁷⁴ and *second*, the freedom to practise any profession under Article 19(1)(g).⁷⁵

Both rights are subject to reasonable restrictions under Article 19(2)⁷⁶ and 19(6),⁷⁷ respectively. One notable difference is that while Article 19(1)(g) is subject to the restrictions ‘in the interests of the general public’, it has been held by the Indian judiciary that the freedom of speech and expression under 19(1)(a) cannot be sacrificed at the altar of public interest⁷⁸ or regulation of business activities.⁷⁹

⁶⁸ *Id.*

⁶⁹ See Ronald J. Colombo, *The First Amendment: Freedom of Speech* in *THE FIRST AMENDMENT AND THE BUSINESS CORPORATION* (Oxford University Press, 2014).

⁷⁰ Bhatia, *supra* note 63.

⁷¹ *People’s Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399, ¶¶50–52.

⁷² *Id.*, ¶¶69–71.

⁷³ See *Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India*, (2024) 5 SCC 1 (‘Electoral Bonds’).

⁷⁴ The Constitution of India, Art. 19(1)(a).

⁷⁵ *Id.*, Art. 19(1)(g); See also *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641.

⁷⁶ *Id.*, Art. 19(2).

⁷⁷ *Id.*, Art. 19(6).

⁷⁸ See generally M.P. Jain, *INDIAN CONSTITUTIONAL LAW* (Justice Jasti Chelameswar & Justice Dama Seshadri Naidu eds., LexisNexis, 8th ed., 2018).

⁷⁹ *Sakal Papers (P) Ltd. v. Union of India*, 1961 SCC OnLine SC 124, ¶¶25–28 (‘Sakal Papers’).

It is to be mentioned here that though Article 19(1)(g) may not extend to the growing number of ‘citizen journalists’ including bloggers, and ‘Youtubers’ who may not derive their primary income from journalism, but they invariably have the same rights as the press under Article 19(1)(a).⁸⁰ Therefore, any references to the press below include within its ambit citizen journalists as well. It is argued that the DPDPA violates the fundamental right to free speech in four distinct ways.

1. RESTRICTION ON CERTAIN FORMS OF SPEECH: EFFECTS TEST AND DOUBLE PROPORTIONALITY

First, as discussed above, through mandatory consent and notice requirements for data fiduciaries, the DPDPA indirectly restricts certain forms of journalism, such as investigative journalism and pieces based on private research. Thus, it restricts certain forms of speech and has an inevitable consequence on the volume of speech disseminated. It cannot be argued that this is in the interest of the general public, as the right to freedom of speech and expression is not subject to public interest under Article 19(2) and the reasonable restrictions imposed on this right cannot go beyond the scope delineated in Article 19(2).⁸¹

Further, it is argued that the DPDPA does not address freedom of speech and its subject matter relates to the data privacy of data principals. However, there is a consensus as to the fact that the point of departure in the test for violation of Article 19(1)(a) is not the ‘objective’ of the law, which may not be to address journalistic activities, but its ‘effect’, which encroaches upon the fundamental rights of journalists.⁸²

This is best illustrated through the landmark case of *Bennett Coleman & Co. v. Union of India* (‘Bennett Coleman’)⁸³ where the argument taken by the Central Government was that the regulations to limit the newsprint were based on the import-export policy of the government and that their constitutionality was to be adjudged upon the pith and substance of the regulatory provision, and not its result.⁸⁴ However, the Supreme Court of India rejected this approach, emphasising that the constitutionality of a law must be assessed not merely on its stated intent or purpose but on its practical impact. Justice A.N. Ray, writing for the majority, observed that even if the ‘object’ or ‘intent’ of a law is not to restrict speech, its ‘practical effects’ can still amount to a violation if it disproportionately limits the ability of the press to function. Thus, even if the government’s stated aim was to regulate newsprint supply for economic reasons, the ‘inevitable consequence’ of such regulation was a severe limitation on the press’s ability to publish freely. It was noted that even if it was within the power of the government to impose a newsprint policy, in the given case, the restrictions were unreasonable and directly impacted press freedom.⁸⁵

Similarly, in the case of the DPDPA, even if the law is framed as a data protection measure, its effect of limiting journalistic activities through mandatory consent and notice requirements must be scrutinised.

In the context of the DPDPA, this reasoning is further supported by the Supreme Court’s articulation of the double proportionality test in *Central Public Information Officer v.*

⁸⁰ The Constitution of India, 1950, Art. 19(1)(a).

⁸¹ *Id.*, Art. 19(2).

⁸² Jain, *supra* note 78; Sakal Papers, *supra* note 79, ¶¶25–28; See *Express Newspapers v. Union of India*, 1985 SCC (1) 641.

⁸³ *Bennett Coleman & Co. v. Union of India*, (1972) 2 SCC 788 (‘Bennett Coleman’).

⁸⁴ *Id.*, ¶28.

⁸⁵ *Id.*, ¶39.

*Subhash Chandra Agarwal*⁸⁶ and reiterated in *Association for Democratic Reforms v. Union of India*.⁸⁷ When a legislative measure affects two conflicting fundamental rights — in this case, the right to freedom of speech under Article 19(1)(a) and the right to informational privacy under Article 21 — courts must assess the validity of the restriction using the three-pronged double proportionality standard. This includes evaluating whether the restriction has a rational connection to both rights, whether it employs the least restrictive and equally effective means, and whether its impact disproportionately burdens either right.⁸⁸

In the present case, applying the double proportionality test reveals that the DPDPA's blanket consent and notice requirements fail to achieve a fair balance. While the objective of protecting informational privacy is legitimate, the law does not incorporate any tailored safeguards or sector-specific exemptions to account for the unique function of journalism in a democratic society. *First*, the requirement of mandatory consent, even for information that is lawfully obtained from sources and serves the public interest, lacks a rational nexus to the goal of privacy protection in the context of journalistic use. *Second*, it does not constitute the least restrictive means, since alternative frameworks such as public interest-based exemptions or post-publication accountability could better serve both interests. *Third*, and most importantly, the law disproportionately burdens freedom of speech by erecting significant procedural barriers for news reporting, without demonstrating a commensurate benefit to privacy in such cases

Thus, DPDPA's consent architecture disproportionately burdens the press and fails to strike a constitutional balance envisioned under the double proportionality standard.

2. THE CHILLING EFFECT

Second, as discussed above, the DPDPA gives broad powers to the Government to designate data fiduciaries as SDF if they pose risks to, *inter alia*, “the rights of data principals”, “the sovereignty and integrity of the nation”, or “electoral democracy”,⁸⁹ call upon them for any information⁹⁰ and even block access to information regarding the data fiduciary.⁹¹ Further, it also empowers data principals to seek redressal through the Board, which could lead to significant litigation costs.⁹²

Taken cumulatively, these consequences would create a ‘chilling effect’ on journalists that leads them to self-censor from publishing news that relates to potentially influential data principals, even though it may be in public interest to disseminate this information.⁹³ This doctrine has been firmly assimilated into the Indian jurisprudence.⁹⁴ The

⁸⁶ *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, ¶¶41–46 (‘Subhash Chandra Agarwal’).

⁸⁷ *Electoral Bonds*, *supra* note 73, ¶¶145–157.

⁸⁸ Chirath Mukunda, *The Supreme Court's Electoral Bonds Judgment – III: A Critique of Double Proportionality*, CONSTITUTIONAL LAW AND PHILOSOPHY, March 25, 2024, available at <https://indconlawphil.wordpress.com/2024/03/25/the-supreme-courts-electoral-bonds-judgment-iii-a-critique-of-double-proportionality-guest-post/> (Last visited on June 8, 2025).

⁸⁹ The Digital Personal Data Protection Act, 2023, §10.

⁹⁰ *Id.*, §10(2).

⁹¹ *Id.*, §37.

⁹² *Id.*, §27(1)(b).

⁹³ See generally Joshua Rozenberg, *A Chilling Effect in PRIVACY AND THE PRESS* (Oxford University Press, 2005); see also D. Solove, *The First Amendment as Criminal Procedure*, Vol. 82(1), NYU L. REV., (2007).

⁹⁴ See Bhatia *supra* note 63.

Delhi High Court, in a series of cases,⁹⁵ recognised that “if a person is under a fear of being sued, he may not express himself freely on public issues and this would chill the public debate”.⁹⁶ Citing the American judgment of *New York v. Sullivan*,⁹⁷ the Court said that the “aim of the law was to see that there was no chilling effect”.⁹⁸ The doctrine has also been affirmatively applied by the Supreme Court while striking down Section 66A of the Information Technology Act, 2000, as unconstitutional, which, due to its vague contours and overbroad application, created a ‘chilling effect’.⁹⁹

Beyond self-censorship by journalists, the DPDPA would also create a chilling effect for sources of journalists as well as whistleblowers, who would be more reluctant to divulge information to the press because of the provisions that give the Government broad powers to seek any information from Data Fiduciaries.¹⁰⁰ This is illustrated by a European case where a journalist working in a magazine was subject to an injunction mandating disclosure of his sources.¹⁰¹ Overturning this decision of the English Court of Appeal, the European Court of Human Rights held that in a democratic society, any compromise to the protection of journalistic sources would lead to an inevitable chilling effect and would be impermissible unless there was an ‘overriding requirement in the public interest’.¹⁰²

3. FINANCIAL IMPLICATIONS OF THE COMPLIANCE BURDEN

Third, the DPDPA puts an onerous compliance burden on journalistic entities that would be considered as data fiduciaries, as they would have to effectively observe the provisions of the Act, which involves establishing a grievance redressal mechanism for data principals,¹⁰³ and differentiating the data on the basis of who it is being collected from,¹⁰⁴ among other things.¹⁰⁵ This would further increase if an entity is notified as an SDF.¹⁰⁶ These activities demand investment in technology and dedicated staff to handle data security and respond to complaints. For journalistic organisations, especially smaller ones, these additional requirements translate into significant operational costs, diverting resources away from their core function of reporting news.¹⁰⁷ While some degree of compliance is inevitable under any data protection framework, it is necessary to assess whether such obligations disproportionately impact the press’s freedom under Article 19(1)(a).

There are a number of judgments that link the loss of revenue or the monetary costs of speech to the infringement of the right to freedom of speech.¹⁰⁸ In the case of *Sakal*

⁹⁵ See Ram Jethmalani, *supra* note 5, ¶94; Petronet LNG Ltd. v. Indian Petro Group, 2009 SCC OnLine Del 841, ¶57 (‘Petronet LNG’); Nirmaljit Singh Narula v. Yashwant Singh, 2012 SCC OnLine Del 4844, ¶¶23, 24; see also R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632, ¶19.

⁹⁶ Ram Jethmalani, *supra* note 5, ¶94.

⁹⁷ See generally *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (Supreme Court of the United States).

⁹⁸ Ram Jethmalani, *supra* note 5, ¶94.

⁹⁹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, ¶90.

¹⁰⁰ Agrawal *supra* note 38.

¹⁰¹ See *Christine Goodwin v. The United Kingdom*, Application No. 28957/95, July 11, 2002 (Eur. Ct. H.R.).

¹⁰² *Id.*, ¶93.

¹⁰³ The Digital Personal Data Protection Act, 2023, §13.

¹⁰⁴ *Id.*, §9.

¹⁰⁵ See the Digital Personal Data Protection Act, 2023, Ch. II.

¹⁰⁶ *Id.*, §10.

¹⁰⁷ Urvi Malvania, *Implementation of the Data Protection Law to Increase Telcos’ Compliance Burden*, THE ECONOMICS TIMES, September 6, 2023, available at <https://economictimes.indiatimes.com/industry/telecom/telecom-news/implementation-of-data-protection-law-to-increase-telcos-compliance-burden-legal-expert/articleshow/103405582.cms?from=mdr> (Last visited on November 21, 2024).

¹⁰⁸ Bennett Coleman, *supra* note 83, ¶36; *Sakal Papers*, *supra* note 79, ¶¶25–28.

Papers v. Union of India,¹⁰⁹ the petitioners moved to the Court against the anti-trust regulations imposed by the Government upon the press. The impugned Act sought to regulate the amount of advertisement space for newspapers and mandated that the prices of the newspapers be proportionate to the number of pages in them. This was ostensibly done to encourage ‘healthy competition’ in the press industry.¹¹⁰ The Court considered the implications of lowered advertisement revenue as a result of the regulations and concluded that it would effectively lead to the violation of Article 19(1)(a), which can only be subjected to reasonable restrictions delineated in Article 19(2).¹¹¹

Earlier, in the case of *Express Newspapers v. Union of India*,¹¹² the court laid down the ‘direct effect test’, which was further developed in *Indian Express Newspapers v. Union of India*.¹¹³ In the given case, the policy of imposing an import duty on the newsprint was challenged. The Court, while allowing the petition, held that although taxation is not inherently unconstitutional, it would be struck down if found to be arbitrary, unreasonable, and if it disproportionately burdens the press or interferes with its functioning.

Thus, according to the above laid tests, even economic burdens that restrict the freedom of speech and affect the daily functioning and circulation can amount to a violation of Article 19(1)(a). Applying this reasoning to the DPDPA, the financial burdens imposed, such as building data infrastructure, hiring specialised compliance teams, and maintaining grievance redressal systems, pose a structural disadvantage to small and medium-sized journalistic outlets. These outlets, lacking scale and capital, may be unable to absorb these costs without cutting down their reporting budgets or scaling back operations entirely. This compels them either to under-comply and risk penalties or to reduce their journalistic output, particularly in areas requiring investigative or sensitive reporting.

The effect, therefore, is not merely administrative inconvenience but a tangible suppression of speech, especially speech that is resource-intensive or critical of power structures.

4. THE RIGHT TO INFORMATION OF CITIZENS

Fourth, as illustrated in the previous sub-section, restrictions on the speech of the press have ripple effects on the ability of citizens to participate in democratic self-governance.¹¹⁴ This is associated with the right of citizens to be supplied with information as well as the duty of the government to foster public education.¹¹⁵ Indian courts have recognised these two aspects as corollaries of the right to freedom of expression under Article 19(1)(a).

In several cases, including *People’s Union*,¹¹⁶ as well as *Association for Democratic Reforms*,¹¹⁷ the Courts have advanced a ‘Meiklejohnian’ understanding,¹¹⁸ as

¹⁰⁹ *Sakal Papers*, *supra* note 79, ¶¶25–28.

¹¹⁰ *Id.*, ¶¶25–28.

¹¹¹ *Bhatia*, *supra* note 63, ¶22.

¹¹² *See generally* *Express Newspapers v. Union of India*, 1958 SCC OnLine SC 23.

¹¹³ *Indian Express Newspapers v. Union of India*, 1985 SCC (1) 641, ¶¶32, 84.

¹¹⁴ *See* *Meiklejohn*, *supra* note 67.

¹¹⁵ *Bhatia*, *supra* note 63, ¶¶14–18.

¹¹⁶ *See* *People’s Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.

¹¹⁷ *See* *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294; *See also* *Electoral Bonds*, *supra* note 73.

¹¹⁸ *See* *Meiklejohn*, *supra* note 67 (Meiklejohn views free speech as a necessary condition for democratic self-governance, enabling citizens to make informed judgments on matters of public policy. It protects not just political speech but all forms of communication essential to the process of collective decision-making in a democracy).

explained above, to advance that the ‘right to know’ or the right to acquire ‘public information’ is an integral part of the freedom of speech and expression. In fact, in *State of Uttar Pradesh v. Raj Narain*, the Supreme Court had enunciated that,

“In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries”.¹¹⁹

Further, in *Bennett Coleman*,¹²⁰ Justice Mathew points to a Directive Principle of State Policy, Article 41, to hold that the Government has a duty to educate people as far as its economic resources allow.¹²¹ ‘Education’ would include political education, which cannot be achieved without public discussion and the dissemination of information.¹²² He held that: “Newspapers is the most potent means for educating the people as it is read by those who read nothing else and, in politics, the common man gets his education mostly from newspaper”.¹²³

Accordingly, it is argued that the DPDPA violates the fundamental right to free speech and expression of the press, with significant implications for the right to information of citizens. As outlined in the preceding sections, subjecting journalistic entities to onerous compliance requirements adversely affects their circulation, operational reach, and, in some cases, their very viability. This, in turn, impairs their essential function of disseminating information to the public. Moreover, as previously discussed, the conferment of broad discretionary powers on the government creates a chilling effect on the press, placing its functioning at the mercy of governmental control.

IV. HOW TO DRAFT A JOURNALISTIC EXEMPTION?

Having established how DPDPA violates the fundamental rights of journalistic actors, particularly, and citizens generally, this section explores how to ideally draft a journalistic exemption provision in India’s data protection framework. The originally drafted PDP Bill, 2018, already contained a draft journalistic exemption, which can serve as a foundation for further refinement.¹²⁴

Notably, Section 47 of the Draft PDP Bill, 2018, provided that “where the processing of personal data is necessary for or relevant to a journalistic purpose”, certain chapters of the Act would not be applicable, including provisions governing the data fiduciary’s obligation, grounds of processing of personal data, transparency and accountability measures and cross border transfer of data.¹²⁵ Further, this exemption was to be available only where it could be demonstrated that the processing was in compliance with any code of ethics published by the Press Council of India (‘PCI’) or “any media self-regulatory organisation”.¹²⁶ Section 2(25) defined journalistic purpose thus:

¹¹⁹ *State of U.P. v. Raj Narain*, (1975) 4 SCC 428, ¶74 (referred to in *People’s Union for Civil Liberties v. Union of India*, (2004) 2 SCC 476); *Madhucon-Sino Hydro JV v. Government of Andhra Pradesh*, 2012 SCC OnLine AP 991, ¶8.

¹²⁰ *Bennett Coleman*, *supra* note 83, ¶36.

¹²¹ The Constitution of India, 1950, Art. 41.

¹²² *Bhatia*, *supra* note 63, ¶¶14–18.

¹²³ *Bennett Coleman*, *supra* note 83, ¶36 (per Matthew J.).

¹²⁴ *See generally* The Personal Data Protection Bill, 2018.

¹²⁵ *Id.*, §47 (The provisions stated herein are the chapters that shall not be applicable as a result of the journalistic exemption).

¹²⁶ *Id.*

“any activity intended towards the dissemination through print, electronic or any other media of factual reports, analysis, opinions, views or documentaries regarding—

- (i) news, recent or current events; or
- (ii) any other information which the data fiduciary believes the public, or any significantly discernible class of the public, to have an interest in”.¹²⁷

This exemption may be analysed under three heads: *first*, the classification of what constitutes a journalistic purpose, *second*, the limits of the exemption, and *third*, obligations to be exempted as a result of the application of the exemption. Additionally, wherever relevant, the analysis incorporates comparative perspectives from jurisdictions with well-established data protection frameworks that seek to maintain a democratic balance between press freedom and individual privacy, including the European Union (‘EU’), the United Kingdom (‘UK’), Australia, Canada, the United States of America (‘US’), and South Africa.

A. WHAT CONSTITUTES A JOURNALISTIC PURPOSE?

Since the exemption is intended for journalists, the legal definition should ideally have focused on identifying a ‘journalistic person’ rather than merely a ‘journalistic purpose’. However, this distinction has proven difficult in practice, largely due to the challenges of legally defining who qualifies as a journalist.¹²⁸ In common parlance, a journalist can be employed by a media organisation, either full-time or part-time, and contributes towards the creation and distribution of news material. However, in today’s digital age, it is increasingly difficult to clearly define what qualifies as ‘news material’ and who exactly should be recognised as a journalist.¹²⁹

Earlier, the avenues of public information dissemination were largely confined to traditional sources such as news channels and newspapers. The full-time media organisations were typically registered with the State and operated under specific regulatory frameworks.¹³⁰ The advent of the World Wide Web in 1990 permanently changed the traditional understanding of public dissemination. Alvin Toffler, in his seminal work, describes this transformation as the ‘third wave’¹³¹ where sources of public information become diverse and relatively independent from strict government regulation.¹³² This ‘democratisation’ of news sources increased public participation and helped foster a culture of healthy debate and discussion on matters of public interest, thereby enabling virtually everyone with internet access to broadcast

¹²⁷ *Id.*, §2(25).

¹²⁸ See Jonathan Peter & Edson Tandoc, “People who aren’t really Reporters at All, Who have No Professional Qualifications:” *Defining A Journalist and Deciding Who May Claim Privileges*, N.Y.U. JOURNAL OF LEGISLATION AND PUBLIC POLICY QUORUM (2013), available at <https://nyujlpp.org/wp-content/uploads/2013/03/Peters-Tandoc-Quorum-2013.pdf> (Last visited on August 22, 2025).

¹²⁹ *Id.*

¹³⁰ Akriti Gaur et al., *Report on ‘The Future of News in India’*, VIDHI CENTRE OF LEGAL POLICY, April 30, 2020, available at <https://vidhilegalpolicy.in/research/the-future-of-news-in-india/> (Last visited on August 1, 2025) (‘Vidhi Report’).

¹³¹ See generally Alvin Toffler, *THE THIRD WAVE* (William Morrow, 1980).

¹³² Deb Westphal, *An Insider Look at Thriving in the Third wave of Third Wave*, TOFFLER ASSOCIATES (2016), available at <https://tofflerassociates.com/vanishing-point/an-insider-look-at-thriving-in-the-third-wave-of-the-third-wave/> (Last visited on August 22, 2025).

information to the world.¹³³ As a result, independent content creators and bloggers, though not affiliated with traditional media organisations, often engage in activities akin to those of professional journalists.¹³⁴ Any legal definition of the journalistic exemption must therefore account for the protection of such individuals as well.

The challenge of drafting such an inclusive definition can be seen in American jurisprudence.¹³⁵ In *Branzburg v. Hayes*,¹³⁶ the U.S. Supreme Court noted that defining who is a journalist will pose a ‘practical and conceptual difficulty of high order’¹³⁷ and refrained from laying down any workable test for the same. However, subsequent jurisprudence, particularly in *Von Bulow by Auersperg v. Von Bulow*,¹³⁸ clarified that affiliation with a registered media organisation is not a prerequisite for journalistic status. What matters is a ‘clear intention from the beginning’ to disseminate information to the public. Additionally, the medium of dissemination, whether print, broadcast or digital, is not consequential as long as it facilitates transmission to the public.

Building on these principles, the courts have extended protection to an academic professor conducting surveys and interviews about companies,¹³⁹ a financial advisor publishing analytical pieces,¹⁴⁰ a columnist writing for a weekly magazine,¹⁴¹ an editor publishing an index and the price range of natural gas¹⁴² as being engaged in journalistic activities, and thereby considerably expanding its ambit.

Thus, data protection legislations across other jurisdictions, including Canada,¹⁴³ the EU,¹⁴⁴ and the UK,¹⁴⁵ have provided a definition of journalistic purpose while formulating the journalistic exemption provisions.¹⁴⁶ The definition of journalistic purpose

¹³³ Peter & Tandoc, *supra* note 128.

¹³⁴ See generally Daniel J. Solove, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET* (New Haven: Yale University Press, 2007).

¹³⁵ *Branzburg v. Hayes*, 408 U.S. 665 (1972) (Supreme Court of United States), ¶704; *Bulow v. Bulow*, 811 F.2d 136, 144 (2d Cir. 1987) (United States Court of Appeal of Second Circuit), ¶¶30–37 (The US lacks a dedicated Federal Data Protection Legislation. The cases referred herein concern the protection of journalist speech under the First Amendment to the US Constitution).

¹³⁶ *Branzburg v. Hayes*, 408 U.S. 665 (1972) (Supreme Court of United States), ¶704.

¹³⁷ *Id.*, ¶704.

¹³⁸ *Bulow v. Bulow*, 811 F.2d 136, 144 (2d Cir. 1987) (United States Court of Appeal of Second Circuit), ¶¶30–37.

¹³⁹ See *Cusamano v. Microsoft*, 162 F.3d 708, 715 (1998) (United States Court of Appeals of First Circuit).

¹⁴⁰ See *Summit Tech., Inc. v. Healthcare Capital Grp. Inc.*, 141 F.R.D. 381 (D. Mass. 1992) (United States Court of Appeal of First Circuit).

¹⁴¹ See *Tripp v. Dep’t of Defense*, 284 F. Supp. 2d 50 (D.D.C. 2003) (United States District Court – District of Columbia).

¹⁴² See *U.S. Comm. Futures Trading Comm’n v. McGraw-Hill Co.*, 390 F. Supp. 2d 27 (D.D.C. 2005) (United States District Court – District of Columbia).

¹⁴³ See the Personal Information Protection and Electronic Documents Act (‘PIPEDA’), 2000, §4 (Canada); *Globe24h.com*, *infra* note 154.

¹⁴⁴ E.U. Directive 2016/679, *General Data Protection Regulation*, April 27, 2016, O.J.E.U. L-119/1, Art. 85.

¹⁴⁵ The journalistic purpose comprises of activities where the background data is collected, used, processed and thereafter information is created and retained as a part of ‘journalistic day-to-day activities’ in preparation of a news story, regardless of the fact whether they are actually published or not. Here the focus is on the intention and purpose of production of journalistic material rather than on the person who is involved in the said production, see *The Data Protection Act, 2018, Part 5 Sch. II* (U.K.).

¹⁴⁶ *Id.*; E.U. Directive 2016/679, *General Data Protection Regulation*, April 27, 2016, O.J.E.U. L-119/1, Art. 85; Personal Information Protection and Electronic Documents Act (‘PIPEDA’), 2000, §4 (Canada) (It is emphasised here that these jurisdictions, though differing in legal structure, have well – established and comprehensive regimes, and share democratic commitments to privacy and press freedom. Thus, their approaches serve as a

under the PDP Bill, 2018, therefore rightly shifts the focus from journalistic actors to purposes. This does away with the unnecessary conflict that is witnessed in certain jurisdictions, such as the US, regarding the identification of journalistic actors. It is emphasised that the definition in the PDP Bill, 2018, would include within its fold all journalistic actors, irrespective of their size, platform or viewership.¹⁴⁷

Despite this shift, certain aspects need to be taken care of to narrow down the definition and identify genuine journalistic activities. The following sections discuss the same.

1. SIFTING NEWS FROM CONTENT

One issue that arises in outlining the contours of journalistic purpose is separating news from content. As Robert Park explains, the function of the news and opinions includes shaping the perception of individuals on societal events, and orienting the public about what is going on,¹⁴⁸ and has a social function element attached to it.¹⁴⁹ In this sense, news serves a vital social function, closely tied to information that must remain under public scrutiny in a democratic society, such as the functioning of government or the State of the national economy,¹⁵⁰ thus falling outside the scope of the exemption. By contrast, certain forms of information — such as reporting on the private lives of celebrities or public figures — may not contribute meaningfully to public discourse but are still widely consumed for their entertainment or recreational value. Such material, often produced and disseminated by media organisations, aligns more with ‘content’ than with ‘journalism’ in its classical sense, driven by societal demand rather than democratic necessity.¹⁵¹

In addition to the concerns outlined above, it is important to recognise that journalism, as practised within a market-driven industry, is not limited to the mere collection and dissemination of news. Journalists and media entities also engage in commercial activities such as generating revenue through advertisements and managing administrative functions — activities that often require the processing of personal data.¹⁵²

In a democratic society, it is critical to distinguish between these commercial functions and the essential democratic function of journalism. Unlike content creation or advertising, journalism plays a foundational role in shaping public perception, fostering a culture of debate, and ensuring public scrutiny — elements which are central to democratic life. The rationale for providing such an exemption is to preserve journalistic freedom and free speech. As explained in the previous section, the jurisprudential rationale to protect free speech, in turn, was to protect a vision of deliberate democracy where “all activities of thought and communication” that contribute to our ability to govern ourselves are included.¹⁵³

persuasive benchmark for reconciling journalistic exemption with that of data protection, especially in the absence of Indian Jurisprudence in this regard).

¹⁴⁷ The Personal Data Protection Bill, 2018, §2(25).

¹⁴⁸ See Robert Park, *News as a form of knowledge: A Chapter in the Sociology of Knowledge*, Vol. 45(5), AM. J. SOCIOL (1940).

¹⁴⁹ See generally Michael Schudson, *DISCOVERING THE NEWS: A SOCIAL HISTORY OF AMERICAN NEWSPAPER*, 31 (Basic Books, 1980).

¹⁵⁰ The Supreme Court has consistently highlighted the crucial public function of news in number of cases. An extensive discussion of the same has been undertaken in Part III of the current paper, see also, *Sakal Papers*, *supra* note 79, ¶¶25–28; *Indian Express Newspapers v. Union of India*, 1985 SCC (1) 641, ¶¶32, 84.

¹⁵¹ Park, *supra* note 148, 677.

¹⁵² Vidhi Report, *supra* note 130.

¹⁵³ See Toni Massaro & Helen Norton, *Free Speech and Democracy: A Primer for Twenty First Century Reformers*, Vol. 54, U.C. DAVIS L. REV., (2021), available at

Judicial decisions from Canada offer valuable guidance in delineating the scope of such exemptions, particularly in contexts where the courts have distinguished the press function from other commercial or administrative functions that do not serve a public interest.¹⁵⁴ In the case of *A.T. v. Globe24h.com* ('Globe24h.com'),¹⁵⁵ the court refused to provide protection to a Romania-based website that provided free access to the decisions of Canadian courts under the journalistic exemption. It was held that under the Canadian Personal Information Protection and Electronic Documents Act ('PIPEDA'), the exemption is only available for 'exclusively journalistic purposes'. In the given case, the organisation earned revenue by charging individuals for taking down the judgments.¹⁵⁶ It must also be noted that PIPEDA does not provide a definition for 'journalism' or 'news.' The Court, however, relied on a proposed definition by the Office of the Privacy Commissioner of Canada, which outlined three elements for qualifying as journalism:

1. Informing the public on matters of interest
2. Original production of content, or
3. Accurate and fair description of facts, opinions, or debates on public issues.¹⁵⁷

Similarly, in the case of *Google LLC v. Canada (Privacy Commissioner)* ('Google LLC'),¹⁵⁸ the Federal Court held that Google's search engine could not claim the journalistic exemption under PIPEDA. The Court held that Google's activities are primarily commercial rather than journalistic. The search results provided by Google are not limited to journalistic content, and Google does not assess the fairness or accuracy of the information it displays.¹⁵⁹ The Court observed that Google lacks editorial control over the content and that its services are not restricted to media-related purposes.¹⁶⁰

https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/54-3_Massaro_Norton.pdf
(Last visited on November 21, 2024).

¹⁵⁴ *Globe24h.com*, *infra* note 154; *Google LLC*, *infra* note 157 (The decisions referred to herein illustrate the critical distinction between the public functions of the press and its commercial activities, and demonstrate how the courts have consistently sought to delineate the two).

¹⁵⁵ *A.T. v. Globe24h.com*, 2017 FC 114 (Federal Court of Appeal of Canada) ('Globe24h.com').

¹⁵⁶ *Id.*, ¶29; (Several complaints were filed with the Office of the Privacy Commissioner concerning a website that hosted court judgments containing personal information, which were required to be taken down pursuant to an order by the Commissioner. During the investigation, it was brought to the Court's attention that the website was charging individuals a fee to remove such information, allegedly as a measure to prevent anonymous and fraudulent takedown requests. The website contended that its activities were journalistic in nature and that the judgments were freely accessible, thereby invoking the journalistic exemption under applicable privacy laws. However, the Court rejected this argument and held that, even if the activities possessed some journalistic elements, the primary objective of the website was to induce individuals to pay for the removal of their personal information. As such, the activities could not be considered to be of a genuinely journalistic nature and thus did not qualify for the exemption).

¹⁵⁷ See Olivia Gile, *The Journalistic Purposes Exemption for the Collection, Use and Disclosure of Personal Information*, MCCARTHY TETRAULT, April 24, 2017, available at <https://www.mccarthy.ca/en/insights/articles/journalistic-purposes-exemption-collection-use-and-disclosure-personal-information> (Last visited on August 12, 2025).

¹⁵⁸ *Google L.L.C. v. Canada (Privacy Commissioner)*, 2023 FCA 200 (Federal Court of Appeal of Canada) ('Google LLC').

¹⁵⁹ *Id.*, ¶¶86, 87 (The judgment emphasized that the mere display of information does not qualify as a journalistic activity. To invoke the exemption, there must be an element of editorial intervention in the arrangement and presentation of the information. This editorial modification was identified as an additional requirement, particularly relevant for platform-based entities seeking to claim the journalistic exemption).

¹⁶⁰ Bruna Kalinoski & Rylea Yanke, *Google's Search Engine Operation Extends Beyond Journalism and is not Covered by the Privacy Legislation Exemption*, BD&P LAW FIRM, October 5, 2023, available at

Thus, while considering the grant of exemption, the primary nature of the concerned activity was to be taken into account. Charging individuals was considered acceptable as long as the purpose was not ‘solely’ to generate profits, but rather to sustain day-to-day activities. The argument is that the journalistic exemption applies only to activities that are exclusively journalistic in nature, regardless of whether the entity as a whole is dedicated to journalism. Accordingly, a journalistic entity cannot claim exemption for data processed for commercial, administrative, or any other purposes that do not serve a purely journalistic function. The Court also noted that when data is processed for advertising purposes, the exemption would not be available.¹⁶¹ Disconcertingly, the PDP Bill, 2018, definition extends to reports, analyses, opinions or views, regarding ‘news’,¹⁶² without defining the term itself. This creates ambiguity and opens the door to include entertainment content or even advertisement-driven material under the exemption, diluting its original purpose. Thus, based on the above discussion, the authors propose the following definition of news: “Information disseminated with the primary purpose of informing the public on matters of relevance to public discourse, including current or recent events, public policies, and social issues”.

While the boundaries between the news and content generally can blur, such as when entertainment stories intersect with public concerns,¹⁶³ the defining feature of news is its role in fostering an informed citizenry and furthering the discourse on issues of public interest can be taken into account.

This definition ensures that the exemption supports genuine public-interest journalism without being misused for commercial gain. *First*, focusing on the primary purpose of informing the public ensures that only material relevant to public discourse, such as governance, policy, and social issues, is protected. *Second*, it excludes content such as celebrity gossip or click-driven entertainment that does not contribute to public interest. *Third*, it addresses the issues raised in *Globe24h.com* and *Google LLC*, that the protection should not be extended to activities where profit trumps public information.

2. VAGUE STANDARDS OF DISCRETION TO DATA FIDUCIARY

Another potential ambiguity is that the definition places disproportionate emphasis on the ‘intention’ or ‘belief’ of the data fiduciary, in clause (ii) of the definition,¹⁶⁴ which provides that the exemption shall cover every publication in which the data fiduciary ‘believes’ that the public or a class of the public has an interest. This introduces an element of subjectivity and creates the risk of vague or self-serving standards. While such an approach may appear to promote broad journalistic freedom, it leaves adjudicating authorities without any objective benchmark to determine whether a particular act of dissemination falls within the scope of the exemption. As a result, it risks overextending the exemption and encroaching upon the privacy rights of data principals.

To limit the scope of the exemption, courts in the EU and other jurisdictions have evolved the ‘public interest test’, which limits the exemption to publications that objectively and demonstrably serve a legitimate public interest. However, this approach raises critical questions about the contours of ‘public interest’ and how it should be applied to balance

<https://www.bdplaw.com/insights/googles-search-engine-operation-extends-beyond-journalism-and-is-not-covered-by-the-privacy-legislation-exemption> (Last visited on August 12, 2025).

¹⁶¹ *Globe24h.com*, *supra* note 155, ¶29.

¹⁶² The Personal Data Protection Bill, 2018, §2(25).

¹⁶³ See *Von Hannover v. Germany*, Application No. 59320/00, June 24, 2004 (Eur. Ct. H.R.).

¹⁶⁴ The Personal Data Protection Bill, 2018, §2(25)(ii).

the competing claims of privacy and press freedom. The next section examines this test in detail and explores how it may provide a more balanced and constitutionally coherent framework.

B. THE LIMITS OF THE EXEMPTION: IS THE PUBLIC INTEREST STANDARD FEASIBLE?

As Part IV.A has examined the definitional challenges posed by the journalistic exemption; this section turns to the equally important question of whether and how that exemption can be meaningfully limited. The right to freedom of speech and expression is not absolute and is subject to the right to privacy and reputational rights of citizens.¹⁶⁵ Privacy itself as a fundamental right, encapsulated in Article 21, and as a constitutional value, has only been recently recognised in the landmark case of *K.S. Puttaswamy v. Union of India* (‘Puttaswamy’).¹⁶⁶

Even in *Puttaswamy*, it was recognised that there are only a few rights that can be considered absolute.¹⁶⁷ Citing Aharon Barak,¹⁶⁸ the Court underscored the need to balance competing constitutional rights and public interest, holding that the exercise of any fundamental right must be proportionate — neither disproportionately infringing upon the rights of others nor undermining collective societal interests.¹⁶⁹ The recognition of privacy as a fundamental right, therefore, does not override the right to freedom of expression; instead, it calls for the careful calibration of both rights through the mediating lens of ‘public interest’.¹⁷⁰

This balancing approach has also been operationalised under the General Data Protection Regulation (‘GDPR’) framework in Europe, where courts apply a public interest test to reconcile journalistic freedom with individual privacy when assessing eligibility for exemptions.¹⁷¹ While Indian courts have yet to apply such a test in the context of data protection, they have done so in various other contexts.¹⁷² The following sections examine how the public interest test has evolved through judicial reasoning in India and abroad, whether the identity and public status of the data subject influence its application, the potential of self-regulatory codes as alternatives to judicial balancing and the appropriate allocation of the burden of proof in determining the grant of exemption.

1. REINING IN THE UNRULY HORSE: RECONCILING PUBLIC INTEREST AND PRIVACY

This section examines how Indian courts have attempted to balance privacy and the right to free expression using the test of public interest. Indian courts have attempted to

¹⁶⁵ *Puttaswamy*, *supra* note 4.

¹⁶⁶ *Id.*, ¶42.

¹⁶⁷ *Id.*, ¶45.

¹⁶⁸ See generally Aharon Barak, *HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT* (Cambridge University Press, 2015); *Puttaswamy*, *supra* note 4, ¶105.

¹⁶⁹ *Puttaswamy*, *supra* note 4, ¶¶100, 101, 310 (The proportionality test laid down in *Puttaswamy* comprises four criteria: the measure must have a legal basis; it must bear a rational connection to the stated objective; it should be the least intrusive means among available alternatives; and there must be a balance between the extent of rights infringement and the importance of the intended goal).

¹⁷⁰ *Puttaswamy*, *supra* note 4, ¶86.

¹⁷¹ *Bitiukova*, *supra* note 21.

¹⁷² Bihar Commission, *infra* note 172; *Petronet LNG*, *supra* note 95 (Indian courts have developed the public interest test primarily in contexts involving restrictions on media reporting, confidentiality breaches, and reputational harm, where they are required to weigh the right to information and free expression against individual rights to privacy and dignity).

articulate the contours of public interest that may justify limiting individual rights.¹⁷³ There is, however, a broad consensus that ‘ensuring the dissemination of news and free flow of ideas’ is in the public interest. Notably, in *Petronet LNG Ltd. v. India Petro Group & Anr.* (‘Petronet’),¹⁷⁴ the Delhi High Court had to adjudicate upon the plea of the plaintiff, which sought a permanent injunction against a news agency from publishing certain information regarding confidential contract negotiations of the plaintiff company.¹⁷⁵ It was contended that the negotiations involved substantial amounts of public funds, which made it the media’s responsibility to provide objective reporting of such commercial dealings.¹⁷⁶

The Court went on to hold that a balancing exercise was needed, which would involve “weighing the public interest in maintaining confidence with a countervailing public interest favouring disclosure”. The Court relied on the judgment of the English Court of Appeal in *H.R.H. Prince of Wales v. Associated Newspapers Ltd.*,¹⁷⁷ where the following test was laid down:

“The court will need to consider whether, having regard to the nature of the information and all the relevant circumstances, it is legitimate for the owner of the information to seek to keep it confidential or whether it is in the public interest that the information should be made public [...] In applying the test of proportionality, the nature of the relationship that gives rise to the duty of confidentiality may be important”.¹⁷⁸ (emphasis added)

Applying this reasoning, the Delhi High Court in *Petronet* acknowledged that there are certain categories of information, such as medical records of sexual harassment victims, details of criminal investigations, or confidential testimonies of witnesses, which carry an inherent expectation of confidentiality.¹⁷⁹ Further, sensitive data such as trade secrets, pricing strategies or nascent marketing plans, if prematurely disclosed, could result in irreversible commercial repercussions.¹⁸⁰ In determining the appropriate relief, the courts are to undertake a fact-specific analysis, which involves ‘the nature of the information’ and a ‘balancing exercise to be carried out’.¹⁸¹ Accordingly, the Court denied *Petronet* the relief and allowed for disclosure in the public interest.

Another notable instance of such balancing can be seen from the Supreme Court’s judgment in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*,¹⁸² where J. Sanjiv Khanna, while writing for the majority, illustratively wrote:

“Public interest in access to information refers to something that is in the interest of the public welfare to know. Public welfare is widely different from what is of interest to the public. Something which is of interest to the public and

¹⁷³ *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Anr.*, (2012) 13 SCC 61, ¶13 (‘Bihar Commission’) (The issue concerned the disclosure of information related to the conduct of interviews by the Bihar Public Service Commission, which claimed exemption under Section 8(1)(e) of the Right to Information Act).

¹⁷⁴ *Petronet LNG*, *supra* note 95.

¹⁷⁵ *Id.*, ¶1.

¹⁷⁶ *Id.*, ¶70.

¹⁷⁷ *His Royal Highness Prince of Wales v. Associated Newspapers Ltd.*, [2006] EWHC 11 (Ch) (England and Wales High Court).

¹⁷⁸ *Id.*, ¶68.

¹⁷⁹ Bhatia, *supra* note 63, 227.

¹⁸⁰ *Petronet*, *supra* note 95, ¶51.

¹⁸¹ *Id.*

¹⁸² *Subhash Chandra Agarwal*, *supra* note 86, ¶75.

something which is in the public interest are two separate and different parameters. For example, the public may be interested in private matters with which the public may have no concern and a pressing need to know. However, such interest of the public in private matters would repudiate and directly traverse the protection of privacy”.¹⁸³ (emphasis added)

That case concerned the reconciling of the right to privacy with the Right to Information Act, 2005. The Supreme Court accordingly sought to highlight that factors such as advancing public debate, ensuring accountability of officials, exposing misuse of public funds, enhancing transparency in regulatory actions, addressing complaints, and protecting public health and safety would favour disclosure.¹⁸⁴ By contrast, facts such as an intrusive breach of privacy and confidentiality would weigh against disclosure.

2. IS THE SOCIAL STATUS OF A PERSON RELEVANT?

Building on the judicial foundation laid in the previous section, this section investigates whether the identity or status of the data subject is relevant while deciding disclosure in public interest. A brief analysis of decisions from the EU and South Africa — often referred to by Indian courts and possessing a more developed jurisprudence — reveals several factors commonly considered when applying the public interest test.¹⁸⁵ These include whether the person whose information is in question was a public figure,¹⁸⁶ to what extent the disseminated information would contribute to public debate,¹⁸⁷ the extent of intrusion into the privacy of the individual,¹⁸⁸ and whether the information was already in the public domain.¹⁸⁹ The factors have been dealt with in detail in the current section.

Indian courts have also drawn upon similar considerations, particularly focusing on the public status of individuals to determine the threshold for what qualifies as public interest. For instance, in the case of *R. Rajagopal v. State of Tamil Nadu* ('R. Rajagopal'),¹⁹⁰ the question before the Supreme Court was whether a journalist could publish the unauthorised biography of a convicted criminal, Auto Shanker, without his consent. The Supreme Court held that such publication without consent would amount to a violation of the right to privacy of the person.¹⁹¹ However, the Bench carved three significant exceptions to the right to privacy: *first*, where an individual had 'thrust' themselves into a controversy; *second*, the information was based on public records; and *third*, public functions of the government officials were not covered.¹⁹²

The first criterion is particularly controversial, as it is not clear when an individual can be said to have 'thrust [themselves] into controversy'.¹⁹³ The Court also did not clarify what exactly counts as 'public record', or how much reliance on such records can justify

¹⁸³ *Id.*

¹⁸⁴ *Id.*, ¶¶104, 105.

¹⁸⁵ Petronet LNG, *supra* note 95, ¶51.

¹⁸⁶ See *Kaçki v. Poland*, Application No. 10947/11, July 4, 2017 (Eur. Ct. H.R.).

¹⁸⁷ See *Castells v. Spain*, Application No. 11798/85, April 23, 1992 (Eur. Ct. H.R.).

¹⁸⁸ See *Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece*, Application No. 72562/10, February 22, 2018 (Eur. Ct. H.R.).

¹⁸⁹ See *Drousiotis v. Cyprus*, Application No. 42315/15, August 24, 2022 (Eur. Ct. H.R.).

¹⁹⁰ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

¹⁹¹ *Id.*, ¶29.

¹⁹² *Id.*, ¶26

¹⁹³ Bhatia, *supra* note 63, 220.

breaching someone's privacy. Lastly, while it may be reasonable to say that government officials have a lower expectation of privacy due to their public roles, the Court did not explain where their public functions end and private life begins. In *R. Rajagopal*, the Court did not explain these points clearly, leaving many questions unanswered.¹⁹⁴

The European courts have also developed certain tests on the above issue. In the case of *Axel Springer v. Germany*,¹⁹⁵ the question was whether an injunction can be granted against a media house for published news reports regarding possession of cocaine by a well-known celebrity. The Court held that the involvement of a public figure in criminal proceedings is of legitimate interest to the public. Further, the reports are fact-based, and injunctions will have a chilling effect on the freedom of the press. The public interest of disclosure thus trumped the privacy interests in the given case.¹⁹⁶

On the other hand, in the case of *Google Spain SL v. Agencia Española de Protección de Datos*,¹⁹⁷ the concern was regarding the removal of links on the newspaper reports to the property auction of a Spanish individual from the Google search results. The Court of Justice of the European Union ('CJEU') laid down the right to be forgotten by individuals and directed Google to remove information that is no longer "inadequate, irrelevant or no longer relevant", thus favouring the privacy of individuals.¹⁹⁸

A striking balancing was, however, undertaken in *Von Hannover v. Germany*.¹⁹⁹ The case concerned the publication of paparazzi photographs of Princess Caroline taken without her consent in a private setting. The Court held that publishing private information about public figures is justified only when it contributes to a debate of genuine public interest, not merely public curiosity. It affirmed that even public figures have a right to privacy in relation to their non-official activities, and accordingly, ordered the removal of the photographs.²⁰⁰

An illustrative case of similar balancing can be seen in a case from South Africa in *Prinsloo v. RCP Media Ltd.*, where the question was whether the publication of intimate sexual photos of two prominent advocates is justified in public interest.²⁰¹ It was held that despite the involvement of two prominent advocates, the information concerned is intimate in nature, and there was no public interest in the disclosure of the same. Public stature of the person may be relevant when considering disclosure in public interest, but it should by no means be considered the sole criterion. If the nature of the disclosed information is intimate and lacks any significance to the public debate, the privacy considerations should prevail.²⁰²

However, the distinction is not always clear-cut, as illustrated in *Tshabalala-Msimang and Another v. Makhanya*.²⁰³ Here, South Africa's High Court of Gauteng ruled that allegations of a minister's alcohol consumption during hospitalisation were pertinent to

¹⁹⁴ *Id.*

¹⁹⁵ See *Axel Springer v. Germany*, Application No. 39954/08, February 7, 2012 (Eur. Ct. H.R.).

¹⁹⁶ *Id.*, ¶100.

¹⁹⁷ *Google Spain SL v. Agencia Española de Protección de Datos and Mario Costeja González*, Case C-131/12, May 13, 2014 (C.J.E.U.).

¹⁹⁸ *Id.*, ¶93.

¹⁹⁹ *Von Hannover v. Germany* European Court of Human Rights, Application No. 59320/00, June 24, 2004 (Eur. Ct. H.R.).

²⁰⁰ *Id.*, ¶109.

²⁰¹ *Prinsloo v. RCP Media Ltd.*, 2003 (4) SA456 (T) (High Court of South Africa).

²⁰² *Id.*, ¶40.

²⁰³ *Tshabalala-Msimang and Medi-Clinic Ltd v. Makhanya*, 2008 (3) BCLR 338 (W) (The Constitutional Court of South Africa).

assessing her constitutional and ministerial responsibilities.²⁰⁴ This case demonstrates how even disclosure of deeply personal details may, in certain circumstances, be justified in public interest.

From the analysis of the above cases, it is clear that the balance of privacy and public disclosure depends on varied criteria. Public stature may lower the expectation of privacy, but it is not, by itself, sufficient to override privacy rights. Instead, courts have adopted a case-by-case balancing approach, weighing factors such as the nature of the information, its relevance to public discourse, and the context of its publication. This contextual analysis, while providing a nuanced understanding and assessment, has resulted in the absence of a clear legal standard, giving rise to subjectivity, uncertainty, and inconsistent outcomes.

Interestingly, the Bulgarian Data Protection law endeavoured to codify the public interest standards developed by the CJEU and European Court of Human Rights in their data protection law by providing ten tests for balancing the rights. It was subsequently declared unconstitutional on the account of vagueness and arbitrariness of the criteria.²⁰⁵ Additionally, while discussing the Australian Data Privacy Act, the concerned committee expressly recommended against employing the public interest test in their legislation.²⁰⁶ These experiences reinforce the concern that codifying the public interest test, especially without precise contours, risks generating indeterminacy rather than clarity.

Against this backdrop, it becomes imperative to explore alternative mechanisms to achieve the balance between press freedom and data privacy.

3. FROM PUBLIC INTEREST TO CODE OF ETHICS

Recognising the subjectivity and unpredictability involved in the judicially evolved public interest test, this section evaluates whether statutory or self-regulatory media codes could offer a more structured and industry-sensitive method of resolving the above conflicts. Foresightedly, the journalistic exemption contained in the PDP Bill, 2018, recommends a ‘code of ethics’, prescribed by the PCI, or any other self-regulatory media organisation, as the standard of adjudication, for determining whether the exemption should be available.²⁰⁷ Prescribing a code with defined norms is an effective way to safeguard public interest in a way that balances freedom of expression and the right to privacy.²⁰⁸

Notably, the U.K.’s Data Protection Act²⁰⁹ and the Australian Privacy Act²¹⁰ also provide for exemptions upon compliance with Media codes, such as the BBC Editorial

²⁰⁴ *Id.*, ¶¶40–42.

²⁰⁵ Bitiukova, *supra* note 21.

²⁰⁶ AUSTRALIAN PRIVACY LAW AND PRACTICE, *Retaining an Exemption for Journalistic Acts and Practices*, ALRC Report 108/2010, available at <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/42-journalism-exemption/retaining-an-exemption-for-journalistic-acts-and-practices/> (Last visited on November 22, 2020).

²⁰⁷ The Personal Data Protection Bill, 2018, §47 (The Clause provides, “[Exemption] shall apply only where it can be demonstrated that the processing is in compliance with any code of ethics issued by— (a) the Press Council of India, or (b) any media self-regulatory organisation”).

²⁰⁸ See generally John Steel, *JOURNALISM AND FREE SPEECH* (Routledge, 2012).

²⁰⁹ Data Protection Act, 2018, Part 5, Sch. II. (United Kingdom).

²¹⁰ The Privacy Act, 1988, Part 4 (Australia).

Guidelines,²¹¹ Ofcom Broadcasting Code,²¹² or the Australian Code of Practices on Misinformation and Disinformation.²¹³

The advantage of using the code of ethics lies in the fact that it provides very broad and very comprehensive standards for balancing free speech with privacy concerns. John Steel, while referring to the efforts of evolving self-governing standards for the press by the Royal Commission of Press in England, commented that the code of ethics is the condensation of the principles of fair and responsible reporting and establishes the press as a strong medium to safeguard public interest and fill the gap between quality and popular press.²¹⁴ This is because such codes reflect the shared professional values of journalists and respond to the challenges posed by sensationalism and market-driven reporting, which courts may be ill-equipped to regulate through abstract standards such as public interest alone.

In India, the latest Norms of Journalistic Conduct, 2022 ('PCI Norms'),²¹⁵ released by the PCI, provides comprehensive guidelines for journalistic entities for reporting on various matters. The guidelines are associated with undertaking pre-publication verification, anti-discriminatory and gender sensitive reporting, and responsible reporting affecting religious sentiments, among others, to ensure fairness and respect for privacy in journalism.²¹⁶ By prohibiting unauthorised recordings without express consent (unless an overriding justification truly exists),²¹⁷ mandating the omission of identifiable details of victims of sexual crimes,²¹⁸ or child abandonment,²¹⁹ and enjoining journalists to omit gratuitous personal data (addresses, family information, etc.) unless strictly necessary,²²⁰ the code directly

²¹¹ *BBC Editorial Guidelines*, BBC, available at <https://www.bbc.com/editorialguidelines/guidelines> (Last visited on November 22, 2024).

²¹² *The Ofcom Broadcasting Code*, OFCOM, June 12, 2023, available at <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/broadcast-code/> (Last visited on November 22, 2024).

²¹³ The Australian Code of Practice on Disinformation and Misinformation, 2021.

²¹⁴ Natascha Engel & John Steel, *A code of Ethics for Citizen Journalists*, UPEN, June 17, 2022, available at <https://upen.ac.uk/resources/a-code-of-ethics-for-citizen-journalists/#:~:text=Greater%20knowledge%20and%20understanding%20of%20ethical%20standards,University%20of%20Derby%20Natascha%20Engel%20is%20CEO> (Last visited on August 12, 2025).

²¹⁵ See generally Norms of Journalistic Conduct, 2022.

²¹⁶ *Id.*

²¹⁷ *Id.*, Clause 8. (The Press shall not tape-record anyone's conversation without that person's knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason. Further, Newspapers are required to give the context in which the statement is made by a political leader, but this does not extend to the liberty of giving it a meaning of their own).

²¹⁸ *Id.*, Clause 39(d). (All the reporting on Child Abandonment shall necessarily carry the following: A child can be legally and anonymously relinquished at a specialised adoption agency).

²¹⁹ *Id.*, Clause 39(e) (The media to take utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not to publish or telecast any photos that would result in disclosure of such identities).

²²⁰ *Id.*, Clause 42 (The Press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity).

operationalises core data protection principles²²¹ of purpose limitation,²²² data minimisation,²²³ and accuracy,²²⁴ within the editorial workflow itself.

These concrete prescriptions remove the guesswork that courts repeatedly wrestle with when applying the amorphous public interest standard. Instead of relying solely on *post hoc* judicial reasoning or *ad hoc* regulatory discretion to assess whether a particular disclosure is justified, journalists are guided by rules that are context-sensitive and media-aware. These norms, while grounded in self-regulation, are not without influence beyond the newsroom. Their structured and evolving nature lends them interpretive weight, especially in adjudicatory contexts where clarity and operational feasibility are valued. They serve as a point of reference in resolving privacy disputes in a manner more attuned to editorial realities, subtly bridging normative guidance with institutional decision-making.

Moreover, the evolutionary and self-regulatory nature²²⁵ of PCI norms underscores their superiority over a static judicial test. Since 1995, and through successive updates culminating in the 2022 edition, PCI has continuously revised the codes;²²⁶ whether by issuing comprehensive suicide-reporting guidelines aligned with the Mental Healthcare Act, 2017 and the World Health Organisation's recommendations, or by prescribing temperate language standards to foster social harmony in India's pluralistic society.²²⁷ Specialised provisions on anti-discriminatory and gender-sensitive reporting, along with a guaranteed right of reply, further strengthen accountability and fairness.²²⁸

Critically, this self-governed framework can be updated rapidly to address emerging phenomena such as deepfakes, algorithm-driven content amplification, or platform-specific risks, without necessitating fresh legislation or landmark court rulings. In contrast, embedding a vague public interest test into the DPDPA would tether journalistic practice to a slow-moving, litigation-dependent standard, exposing both journalists and adjudicators to uncertainty. Faced with poorly defined criteria, reporters may self-censor critical investigations, while regulators may either overreach, imposing disproportionate intrusions, or

²²¹ See E.U. Directive 2016/679, *General Data Protection Regulation*, April 27, 2016, O.J.E.U. L-119/1, Art. 5; Kyna Kosling, *GDPR: Understanding the 6 Data Protection Principles*, IT GOVERNANCE, June 6, 2024, available at <https://www.itgovernance.eu/blog/en/the-gdpr-understanding-the-6-data-protection-principles> (Last visited on May 28, 2025).

²²² Purpose limitation refers to the principle that data collection must occur for specified, explicit, and legitimate purposes, see *Principle (b): Purpose Limitation*, INFORMATION COMMISSIONER'S OFFICE, available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/purpose-limitation/> (Last visited on August 22, 2025).

²²³ Data minimisation refers to the principle according to which organisations must limit collection of data to information that is "adequate, relevant, and necessary" for stated purposes, see *How do we Keep Biometric Data Secure*, INFORMATION COMMISSIONER'S OFFICE, available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/biometric-data-guidance-biometric-recognition/how-do-we-keep-biometric-data-secure/> (Last visited on August 22, 2025).

²²⁴ Data accuracy requires controllers to ensure that personal data is "accurate and kept up to date," with appropriate mechanisms in place for rectification; see *Principle (d): Accuracy*, INFORMATION COMMISSIONER'S OFFICE, available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/accuracy/> (Last visited on August 22, 2025).

²²⁵ The Press Council of India Act, 1978, §5 (The Press Council consist of a Chairman and twenty-eight members; Chairman should be a retired Supreme Court judge; six editors of newspapers; seven working journalists other than editors; six persons representing newspaper management; one person from news agencies; three persons with special knowledge in law education or literature and culture; five Members of Parliament three from Lok Sabha two from Rajya Sabha).

²²⁶ *Resume November, 1996 – September 30, 2024*, PRESS COUNCIL OF INDIA, available at <https://www.presscouncil.nic.in/Pdf/resumepciitillsept2024.pdf> (Last visited on August 12, 2025).

²²⁷ The Norms of Journalistic Conduct, *supra* note 216.

²²⁸ *Id.*

under-protect privacy, erring on the side of disclosure. The authors believe that this approach provides for more flexibility in adapting the fairness standards, avoids the difficulty of determining the exact contours of public interest, and at the same time avoids disproportionate intrusions into individuals' privacy.

However, this may be subject to two hindrances: *First*, unlike countries where there are robust institutions for self-regulation of the press,²²⁹ the PCI has been criticised as a 'toothless' organisation.²³⁰ In order to ensure smooth and efficient self-regulation, efforts need to be made towards the broader rehaul of the PCI, as has been previously recommended by different experts.²³¹ Furthermore, the scope of the phrase 'any media self-regulatory organisation' under the PDP Bill, 2018,²³² ought to be clarified. This is problematic because the Bill does not define what qualifies as a valid self-regulatory body. It is unclear whether the exemption applies only to statutory bodies such as the PCI or if it also includes private associations such as the News Broadcasters & Digital Association, the Editors Guild of India, or even smaller, less accountable groups. This vagueness can lead to confusion and misuse. For instance, media organisations might choose to affiliate with lenient or ineffective bodies just to claim the exemption, without following meaningful data protection or journalistic standards. To prevent such abuse and ensure consistent standards, the law should clearly define what counts as a 'media self-regulatory organisation', incorporating criteria such as independence, transparency, and enforcement capacity.

Second, there may still be possible issues that might not be covered adequately by the self-regulatory codes alone.²³³ One way to address such cases is through a more structured framework, such as South Africa's Protection of Personal Information Act ('POPIA'), which provides an interesting solution.²³⁴ Under Section 7 of POPIA, a journalistic actor is "subject to a code of ethics that provides adequate safeguards for the protection of personal information".²³⁵ And in the event that there may be a conflict as to whether the code adequately safeguards the information, regard may be had to:

- “(a) the special importance of the public interest in freedom of expression;
- (b) domestic and international standards balancing the—

²²⁹ Vidhi Centre for Legal Policy, *supra* note 130.

²³⁰ The PCI has no powers to enforce its decisions, summon journalists, impose penalties, or take binding corrective action beyond issuing advisories or censures. Its quasi-judicial status lacks teeth because its findings are not enforceable in law. Successive reports, including those by the Second Press Commission and various Parliamentary Committees, have criticised its limited mandate and lack of punitive powers, *see generally* A.G. Noorani, *The Press Council: An Expensive Irrelevance*, Vol. 44(1), E.P.W., (2009) available at <https://www.epw.in/journal/2009/01/commentary/press-council-expensive-irrelevance.html> (Last visited on November 25, 2024); *See also* PRESS COUNCIL OF INDIA, *Report of the Second Press Commission*, ¶5, available at <https://rni.nic.in/secondpresscommission.pdf> (Last visited on May 28, 2025).

²³¹ *See generally* A.G. Noorani, *The Press Council: An Expensive Irrelevance*, Vol. 44(1), E.P.W., (2009) available at <https://www.epw.in/journal/2009/01/commentary/press-council-expensive-irrelevance.html> (Last visited on November 25, 2024); Sukumar Muralidharan, *Press Council as Bully Pulpit: A Debate on Media That Could Go Nowhere*, Vol. 46(47), E.P.W., (2011) available at <https://www.epw.in/journal/2011/47/commentary/press-council-bully-pulpit-debate-media-could-go-nowhere.html> (Last visited on November 25, 2024).

²³² The Personal Data Protection Bill, 2018, §47.

²³³ The Norms of Journalistic Conduct, *supra* note 216 (For instance, reporting in the Board process of a Company is an issue that the current PCI norms do not adequately discuss).

²³⁴ Protection of Personal Information Act, 2013 (South Africa).

²³⁵ *Id.*, §7.

- (i) public interest in allowing for the free flow of information to the public through the media in recognition of the right of the public to be informed; and
- (ii) public interest in safeguarding the protection of personal information of data subjects;
- (c) the need to secure the integrity of personal information;
- (d) domestic and international standards of professional integrity for journalists; and
- (e) the nature and ambit of self-regulatory forms of supervision provided by the profession”.²³⁶

This framework differs from ordinary self-regulatory codes because it introduces legal oversight through a statutory authority. While self-regulatory codes rely on industry bodies to set and enforce standards, POPIA ensures that these standards can be reviewed by the regulator. This ensures that self-regulation operates within a legal structure and is held accountable, rather than being left entirely to the discretion of media organisations. In this way, POPIA combines the flexibility of self-regulation with the enforceability and consistency of statutory oversight.

4. BURDEN OF PROOF

Finally, this section turns to a procedural but critical question: who should bear the burden of proving whether the journalistic exemption applies? Disconcertingly, the journalistic exemption under the PDP Bill, 2018, seems to shift this burden upon the media organisation to justify the same.²³⁷ Section 47 of the Bill states that the exemption shall only apply in the case “it can be demonstrated” that the processing is according to the code of ethics. On the plain reading of the provision, it is clear that it will be the entity claiming the exemption, that is, the journalistic entity, that will bear the burden.

The general rule of statutory interpretation provides that exemptions are to be interpreted strictly, and the burden of proof lies on the party claiming the exemption.²³⁸ However, the same is not absolute, and this standard is particularly problematic in the present case, as this would defeat the purpose of the exemption. The journalistic exemption protects the fundamental right to freedom of speech and expression under Article 19(1)(a). In *Bennett Coleman*,²³⁹ as referred above, the Supreme Court held that courts must assess a law by its effect, not just its stated purpose.²⁴⁰ Further, the Court noted in *Romesh Thapar v. State of Madras*,²⁴¹ that it is the duty of the State to justify the restriction, and such a restriction should be read narrowly. These decisions underscore that when press freedom is at stake, the obligations must be construed narrowly, and even subjecting them to burdensome procedural requirements would risk compromising the constitutionally protected freedom of the press.

Requiring journalists to prove compliance with ethical codes in every case would produce a chilling effect. Media houses would face SLAPP suits and excessive litigation

²³⁶ *Id.*

²³⁷ The Personal Data Protection Bill, 2018, §47.

²³⁸ See generally G.P. Singh, PRINCIPLES OF STATUTORY INTERPRETATION (Alok Aradhe ed., LexisNexis, 15th edn., 2021).

²³⁹ *Bennett Coleman*, *supra* note 83.

²⁴⁰ *Id.*, ¶36.

²⁴¹ See *Romesh Thapar v. State of Madras*, AIR 1950 SC 124; See also *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

whenever they publish contentious material, deterring investigative reporting and undermining the press's role as a watchdog.²⁴² To preserve both data protection and press freedom, the initial burden should instead rest on the complainant. A private individual or public figure challenging a disclosure should be required to demonstrate that the published information fails to serve any legitimate public interest or constitutes a disproportionate intrusion into privacy.

Keeping the above view, the UK Data Protection Act, 2018 provides that in cases where the exemption for journalistic purposes is claimed, the controller must reasonably believe that the publication was made in pursuance of public interest and that the said publication is in compliance with the Act.²⁴³ Thus, there is an initial presumption in favour of the journalistic entity, and the complainant has to bear the burden of proving a lack of public interest and non-compliance with the act.

C. OBLIGATIONS TO BE EXEMPTED

Many jurisdictions, notably South Africa²⁴⁴ and Argentina,²⁴⁵ provide for the non-application of the Act in case the data is processed for journalistic purposes. As outlined above, the exemption works to protect journalist from an adverse burden which affects their right to carry out professional activities and to contribute to the public debate. However, this must be counterbalanced with the protection of individual privacy. Therefore, a blanket exemption of the entire Act would not serve the purpose²⁴⁶ and would be prone to constitutional challenges, as has been faced in the past in other jurisdictions.²⁴⁷

Under the GDPR regime, the exemption clause allows for derogation from the purposive limitation requirements, rights of data principals for access and erasure of data, obligations of data fiduciaries such as appointment of a data officer and other specific requirements.²⁴⁸ In essence, all the key provisions are exempted as a result of the application of the exemption, except for the provisions providing for remedies and penalties for data breaches.

Under the Privacy Act of Australia, the journalistic exemption operates to exclude the rights of data subjects or data principals against the exempted entity.²⁴⁹ Additionally, the organisation does not need to notify the office of the Australian Information Commissioner of the breach of personal data.²⁵⁰

Under the UK Data Protection Act, the provisions relate to the requirement of general consent, protection for children, conditional processing, special processing with regards to criminal offences, data principal's right except the rights related to automated processing and decision making, requirement of notification to UK Information Commissioner

²⁴² To read about this aspect in further detail, see *supra* Part II.A on "Requirement of Consent and Notice".

²⁴³ Draft Data Protection and Journalism Code of Practice, INFORMATION COMMISSIONER'S OFFICE, available at <https://ico.org.uk/media2/migrated/4021635/ico-draft-data-protection-and-journalism-code-of-practice-second-consultation-21092022.pdf> (Last visited on August 23, 2025).

²⁴⁴ The Protection of Personal Information Act, 2020, §7 (South Africa).

²⁴⁵ The Personal Data Protection Law, 2000, §1 (Argentina).

²⁴⁶ See Rory Dolan, *Guarding the Guardians: How Should the Privacy Act 1988 (CTH) Protect Journalistic Output?*, Vol. 12, UNIVERSITY OF NEW SOUTH WALES LAW JOURNAL STUDENT SERIES, (2023), available at <https://classic.austlii.edu.au/au/journals/UNSWLawJLStuS/2023/12.html> (Last visited on March 17, 2025).

²⁴⁷ Bitiukova, *supra* note 21.

²⁴⁸ E.U. Directive 2016/679, *General Data Protection Regulation*, April 27, 2016, O.J.E.U. L-119/1, Art. 85.

²⁴⁹ The Privacy Act, 1988, §7B(4) (Australia).

²⁵⁰ *Id.*

office in case of sensitive data and cross border transfer. Apart from the above, the data controller is required to adhere to the security and accountability provisions in the event of data breaches.²⁵¹

The B.N. Srikrishna Committee report provided for the derogation from requirements of securing general consent, collection limitation, purposive specification and storage limitation.²⁵² A similar approach is followed in the journalistic exemption clause under the PDP Bill, 2018. The PDP Bill, 2018, provided for such derogations; however, it mandates fair and reasonable processing of personal data and adherence to strict security standards to protect against personal data breaches to the journalistic entities claiming exemption.

Thus, by limiting journalistic exemptions to two core duties, namely fair and reasonable processing and strict security standards, the PDP Bill, 2018, creates a precise calibration between the press's right to inform and the individual's right to privacy. The fairness requirement demands that any personal data collected or published be both foreseeable to the subject and strictly necessary for the story at hand, following the principle of proportionality recognised in *Puttaswamy* and ensuring reporters cannot justify gratuitous intrusions simply by labelling them news. The security mandate obliges media outlets to deploy robust technical and organisational measures such as encryption, access logs, and rapid breach response that minimise the risk of unauthorised disclosures or data misuse.²⁵³ In practice, journalists retain the procedural freedom to pursue stories yet remain bound by enforceable privacy safeguards that protect data principals, striking a balance between competing fundamental rights.

V. A RECOMMENDED DRAFT FOR INDIA'S DPDPA BASED ON BEST PRACTICES

India's evolving data protection framework must balance the right to privacy with the need to preserve the freedoms that underpin a democratic society, particularly journalistic freedom. As established by this paper, the absence of a journalistic exemption violates constitutional safeguards under Article 19(1)(a) for journalistic entities and further infringes the right to public information of citizens under Article 19(1)(a).

Accordingly, the authors intend to propose a journalistic exemption that takes into account the above concerns. The existing provisions in the PDP Bill, 2018, which sought to offer exemptions for journalistic purposes, provide a valuable starting point, but also present significant ambiguities that need to be addressed to ensure both the protection of individual privacy and the unfettered ability of the media to serve the public interest.

Accordingly, the authors propose the following definition of Journalistic Purposes to be included within the DPDPA, taking inspiration from the other jurisdictions that provide for such exemptions in their data protection statutes:

“Journalistic Purposes: any activity intended towards the dissemination through print, electronic or any other media of factual reports, analysis, opinions, views or documentaries regarding—

²⁵¹ The Data Protection Act, 2018, Part 5, Sch II, ¶26 (United Kingdom).

²⁵² B.N. Srikrishna Committee Report, *supra* note 6.

²⁵³ The Personal Data Protection Bill, 2018, §31.

- a) information disseminated with the primary purpose of informing the public on matters of relevance to public discourse, including current or recent events, public policies, and social issues; or
- b) any other information which any reasonable person would believe the public, or any significantly discernible class of the public, to have an interest in; excluding processing of data that is purely for commercial, promotional or similar reasons that are not directly or indirectly contributing to the furtherance of public interest”.

First, this definition strikes a delicate balance by clearly narrowing the scope of ‘journalistic purposes’ to content that directly serves public discourse, such as news, analysis, and social issues, while excluding purely commercial or promotional data processing. *Second*, focusing on the purpose rather than the identity of the actor ensures that all journalistic actors, regardless of size or platform, are included while preventing the misuse of the exemption for non-journalistic purposes. *Third*, the emphasis on ‘public interest’ and the reasonableness test ensures that the exemption remains anchored to democratic values, protecting both the right to freedom of expression and the privacy of individuals.

Further, the exemption may, in line with the recommendations, be drafted thus:

“Exemption for Journalistic Purposes:

- a) The exemption under this section shall apply to the processing of personal data undertaken for journalistic purposes, provided such processing is necessary for public interest, or informing the public on matters relevant to public discourse, including current events, public policies, and social issues.
- b) Data processing, disclosure or dissemination under this exemption shall adhere to principles of proportionality, ensuring that the public interest served by the processing outweighs the harm to the data subject's privacy.
- c) Information of a sensitive nature, including personal health records, trade secrets, and other inherently confidential data, shall be disclosed only when absolutely necessary and in accordance with a legitimate public interest.
- d) Entities that avail themselves of this exemption shall be subject to a Code of Ethics by the Press Council of India or any designated media self-regulatory organisation.
- e) In cases of ambiguity or dispute regarding the adequacy of safeguards under part (d), the Data Protection Board may assess compliance by considering:
 - i. The nature of the information and its contribution to public interest;
 - ii. The public interest in the freedom of expression and information;
 - iii. Established domestic and international standards balancing public interest in safeguarding the freedom of expression and the public interest in the protection of personal data of the Data Principal;
 - iv. Established domestic and international standards of professional integrity of journalists.

Explanation: For the purpose of this exemption, “established domestic and international standards” shall refer exclusively to journalistic codes, protocols, data protection principles or ethical guidelines that have been formally adopted or recognised by Indian regulatory or self-regulatory bodies, or by the Central Government either by notification or through treaty obligations. In interpreting this clause, the Data Protection Board may consider, for guidance only, relevant international instruments and rulings provided they do not contradict domestic law. Where any conflict arises, the provision of this Act shall prevail.

f) The burden of demonstrating that the processing was not undertaken for journalistic purposes, or that it does not satisfy the public interest requirement, shall lie upon the complainant”.

First, this exemption directly addresses the core concerns by ensuring that data processing for journalistic purposes is always tied to a legitimate public interest, such as fostering public discourse, accountability, and an informed citizenry. Public discourse is a broad term that is not limited to merely political information, but includes a broad array of issues ranging from economic to social. *Second*, the principle of proportionality safeguards against excessive intrusion into privacy, ensuring that only necessary and relevant data is processed. *Third*, incorporating conditions on the disclosure of information of a sensitive nature minimises the risk of misuse. *Fourth*, the inclusion of self-regulation through the PCI or similar bodies reinforces ethical standards for journalists, while empowering the Board to resolve ambiguities based on established legal and ethical criteria. *Fifth*, placing the burden of proof on the complainant rather than the media organisation prevents abuse and SLAPP suits, ensuring that the exemption truly serves its democratic purpose.

VI. CONCLUSION

The omission of a journalistic exemption in the final draft of DPDPA represents a concerning departure from the recommendations of the B.N. Srikrishna Committee and the precedent set by the PDP Bill, 2018. This removal undermines the constitutional safeguards enshrined in Articles 19(1)(a) and 19(1)(g), both of which protect the fundamental right to free speech and the ability of journalists to carry out their essential role in informing the public. By placing excessive restrictions on data processing without adequate protections for journalistic activities, the DPDPA threatens not only the independence of journalists but also the public’s right to be informed — an indispensable element of a functioning democracy.

This paper has explored the chilling effects that the DPDPA in its current form could have on journalistic entities, particularly in the absence of clear exemptions. It has also critically examined the journalistic exemption provision of the PDP Bill, 2018, recognising it as a strong foundation for balancing privacy rights with press freedom while identifying necessary improvements. Drawing on comparative analyses of judicial decisions and data protection frameworks from mature jurisdictions such as the US, Canada, the EU, Australia, and the UK, this paper has proposed a model provision that aligns with global best practices while being adaptive to India’s constitutional and democratic context.

However, the conversation on this issue cannot end here. A comprehensive and urgent discussion must take place within the parliamentary committee and the legislature to ensure that a well-calibrated journalistic exemption is incorporated into the law. Without such a provision, the rights and independence of journalists will remain in jeopardy, threatening the democratic fabric of the nation. As James Madison aptly stated, “Nothing could be more irrational than to give the people power, and to withhold from them information without which

power is abused [...] A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both”.²⁵⁴

²⁵⁴ Madabhushi Sridhar, *Non-Disclosure Hampers Public Debate*, HANS INDIA, 13 September, 2016, available at <https://www.thehansindia.com/posts/index/Opinion/2016-09-13/Non-disclosure-hampers-public-debate/253515> (Last visited on July 23, 2025).