



## RECALIBRATING PRIVACY IN THE DIGITAL AGE: A POST-PUTTASWAMY ANALYSIS OF THE RIGHT TO PRIVACY UNDER THE INDIAN CONSTITUTION

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### ABSTRACT:

*The evolution of the right to privacy in India was given shape by the Supreme Court ruling in Justice K.S. Puttasawamy (Retd.) v. Union of India (2017), wherein the court unequivocally recognised the privacy of an individual as a fundamental right essential for life and personal liberty under Article 21 of the Constitution. Puttaswamy not only altered the constitutional landscape but also provided a strong framework concerning the operation and protection of privacy in the contemporary world. In this paper, I analyse the scope of the right to privacy in India after Puttaswamy vis-a-vis the boundaries set by the apex court, the legal requirements it set in place, its impact on future court decisions, and novel troubles rising within the system.*

**Keywords:** Right to Privacy, Puttaswamy Judgment, Article 21.

### INTRODUCTION

“The right of privacy is safeguarded as an intrinsic part of the ‘life and personal liberty’ under Article 21 and as part of the freedoms guaranteed by the constitution in its Part III.” The judgment of Puttaswamy and Others v. India represents a significant milestone in recognising the constitutional right to privacy, which is multifaceted and crucial for autonomy, dignity. In this paper, I analyse the increasing complexity and wider scope of significance of privacy after Puttaswamy and its ramifications on governance, surveillance, protection of data, and freedom.

### BACKGROUND: EVOLUTION OF THE RIGHT TO PRIVACY IN INDIA

While privacy rights are not expressly stated in the Indian Constitution, they have been interpreted to exist within the scope of Article 21. This judicial acknowledgement started over

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a period beginning with *M.P. Sharma v. Satish Chandra* (1954); *Kharak Singh v. State of Uttar Pradesh* (1962), further extending to *Rajagopal v. State of Tamil Nadu* (1994), finally culminating with the recognition of privacy in *People's Union for Civil Liberties v. Union of India* (1997).

### **THE PUTTASWAMY JUDGMENT**

The Puttaswamy judgement stemmed from the challenges posed to the Aadhaar biometric identification system. The primary issue was about the existence of privacy as a fundamental right under the Constitution. The Supreme Court, in its unanimous decision, has held that privacy is a constitutionally protected right. The judgment has placed significant emphasis on privacy, dignity, and personal liberty, stating that privacy subsumes bodily integrity, informational self-determination, and decisional autonomy.

The judgment lays down a three-pronged test to impose permissible restrictions on the right to privacy, namely:

1. Legality, the existence of a valid law;
2. Necessity, the restriction must serve a legitimate need in a democratic society; and
3. Proportionality, the means adopted must bear a rational nexus to the objective and not be excessive.

This has since also become widely accepted as the basic document for assessing state action concerning privacy. It has also been observed that within the scope of this judgement, privacy is neither spatial nor static, but it is dynamic, requiring a balance between state interests.

### **SCOPE OF THE RIGHT TO PRIVACY POST-PUTTASWAMY**

The Informational Privacy, the Puttaswamy Judgment, which prioritised the protection of fundamental rights infrastructure in India, has highlighted how privacy has emerged in the digital era and now holds paramount importance. Protects individuals against unwarranted collection of information, automated surveillance, and data misuse. With the emphasis on calibrating the data protection ecosystem, this ruling was influential in the drafting of the Personal Data Protection Bill. Stated that individuals are the sovereigns of their data and Information Deconstruction encompasses the ability of individuals, or groups, in society to

maintain control over the information on themselves. We are in an environment where data is collected, processed, and stored exceptionally, which makes the ongoing discourse even more critical.

Decisional Autonomy Privacy includes decisional autonomy in sensitive areas like reproductive health, choice of sexual orientation, and general lifestyle. It became one of the building blocks of later judgments such as *Navtej Singh Johar v. Union of India* (2018), which decriminalized adultery. Outcomes demonstrate a disregard for the individual's preferences within his or her bedroom and therefore strengthen the State's responsibility away from people's private affairs.

Bodily integrity, the judgment protects bodily integrity and autonomy, crucial for issues like abortion rights, medical consent, and gender identity. It has informed progressive stances in judicial decisions related to gender justice and reproductive health. The recognition of bodily autonomy has strengthened women's rights and the right of transgender persons to self-identify, as affirmed in *NALSA v. Union of India* (2014) and further reinforced by *Puttaswamy*.

*Puttaswamy* imposed strict scrutiny on surveillance mechanisms. It requires action to be backed by law and subject to judicial oversight, balancing national security with individual freedoms. The standards laid down have been frequently cited in subsequent debates surrounding issues such as the Pegasus spyware controversy and the broader concerns over centralised surveillance mechanisms.

## LEGAL AND POLICY DEVELOPMENTS

The judgment catalysed efforts to introduce comprehensive data protection laws. The Justice B.N. Srikrishna Committee Report (2018) and the Draft Personal Data Protection Bill (2019) were direct outcomes. The eventual enactment of the Digital Personal DATA Protection Act, 2023, reflects the principles enshrined in *Puttaswamy*, including consent, purpose limitation, and accountability. The Act seeks to empower individuals, impose duties on data fiduciaries, and establish a Data Protection Board. However, critics argue that exemptions for the state and inadequate oversight mechanisms may undermine privacy protections.

In *K.S. Puttaswamy v. Union of India* (Aadhaar case 2018), the Supreme Court upheld the Aadhaar scheme with restrictions. It struck down provisions allowing private entities access

and mandated strict use limitations. The majority upheld Aadhaar for welfare delivery but emphasised safeguards to prevent data misuse. Dissenting opinions raised concerns over exclusion, surveillance, and the erosion of privacy.

### **JUDICIAL DEVELOPMENTS POST-PUTTASWAMY**

In the *Navtej Singh Johar v. Union of India* (2018) case, the court decriminalized homosexuality, citing that *Puttaswamy v. Union of India* recognised sexual orientation as an important part of one's privacy. This decree celebrated personal freedoms, which indicated a positive development in the LGBTQ+ rights movement.

In *Joseph Shine v. Union of India* (2018), struck down section 497 IPC (adultery law), affirming decisional autonomy and reaffirming equality, reigniting the women's rights discourse. The court rejected the overtly sexist ideology within the legislation, declaring women's rights to self-determination.

In *Anuradha Bhasin v. Union of India* (2020), addressed issues around the internet being shut down in the Jammu and Kashmir region, the court referenced *Puttaswamy's* proportionality and necessity relative to the violation of fundamental rights. He argued that the measures taken must be reasonable and issued under strict conditions.

In *Internet and Mobile Association of India v. Reserve Bank of India* (2020), the court lifted the RBI's restriction on cryptocurrency transactions, highlighting the right to privacy over financial activities as fundamental for economic activity. It called for measures of state intervention that are logically balanced and moderate concerning economic freedom.

In *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2023), in follow-up litigation, the Supreme Court examined the implementation of Aadhaar and its alignment with the principles laid down in the original judgment. The court dwelt on, any deviation must be justified on constitutional grounds, especially concerning privacy and dignity.

### **CHALLENGES IN THE ENFORCEMENT OF THE RIGHT TO PRIVACY**

The lack of public awareness regarding privacy rights, complications enforcement, and activism. Digital literacy and access to education empower people to claim their rights.

Surveillance practices continue to lack adequate legal and judicial control, undermining the privacy regime. Components like the Telegraph Act of 1885, as well as the Information Technology Act of 2000, have existed these regulations permitting indiscriminate Usage.

New technologies like AI, facial recognition, biometric databases, and big data analytics are developing too rapidly for existing legal protections to keep up with, resulting in privacy concerns. The absence of regulation surrounding privacy protects emerging technology restraints significantly.

Even with the proportionality test, its implementation differs court to court, which is detrimental to privacy jurisprudence. It is possible for strict judicial guidelines, along with comprehensive Standard procedures for judicial training erase this issue.

### **COMPARATIVE PERSPECTIVE**

Many democratic constitutions recognise privacy explicitly, such as the US (through judicial interpretation), the EU (through the Charter of Fundamental Rights), and South Africa (constitutional provision). Post-*Puttaswamy*, India's privacy framework aligns more closely with international human rights norms. The judgment draws upon global precedents, particularly European jurisprudence on informational self-determination and proportionality.

The EU's General Data Protection Regulation serves as a model for data protection and privacy. India's legal framework, while inspired by GDPR, diverges in several areas, especially regarding state access. South Africa's Protection of Personal Information Act offers another example of balancing privacy and legitimate interests.

### **CONCLUSION**

The *Puttaswamy* verdict marks a pivotal moment in the evolution of Indian constitutional jurisprudence, firmly establishing the right to privacy as a fundamental and inalienable component of the Constitution. It reoriented legal, policy, and judicial frameworks toward a more rights-centric approach. However, significant gaps remain in implementation, awareness, and protection against state and private encroachments. Continuous Judicial vigilance, robust legislative frameworks, and an informed citizenry are essential for realising the full potential of the right to privacy in India.

Future jurisprudence and policy must adapt dynamically to address emerging challenges in the digital age, ensuring that privacy remains a living and enforceable right. Strengthening institutions, promoting transparency, and cultivating a culture of rights will be pivotal in achieving the constitutional promise of privacy, dignity, and freedom for all.