



RIGHT TO PRIVACY IN INDIA: A CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

The right to privacy, with time, has emerged as one of the most significant fundamental rights under the Indian Constitution. Although the Constitution does not mention it as a fundamental right, judicial interpretations recognise it as an integral part of Article 21- the right to life and personal liberty. The judgement of the landmark case Justice K.S. Puttaswamy v. Union of India recognised privacy as a constitutionally protected right under Article 21. This article examines the evolution of the right to privacy in India, its constitutional foundations, important judicial pronouncements, and contemporary challenges in the digital era.

Keywords: Privacy, Fundamental, Constitution, Article 21, Puttaswamy.

INTRODUCTION

A man lives in a society and is often called a social animal. He is expected to live in a family with other social animals. But he, being an individual, wants to keep some things hidden from society. This feeling or sense of keeping things secretive is known as Privacy. The word 'privacy' has been derived from the Latin word 'privatus', which means secret or personal. Thus, privacy is a sense of something that belongs to oneself, and private is something.

(tangible/intangible) that one does not want to share with others. Privacy is the right to be let alone, free from interference or intrusion.

The Constitution of India does not explicitly guarantee a right to privacy. However, through judicial interpretation, the Supreme Court has recognised privacy as a fundamental right flowing from Articles 14, 19, and 21 of the Constitution. The recognition of privacy as a

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constitutional right has significantly strengthened individual freedoms and protected against arbitrary State action.

CURRENT LEGAL FRAMEWORK GOVERNING THE RIGHT TO PRIVACY IN INDIA

Constitutional Basis of the Right to Privacy: Article 21¹ is the heart of the Indian Constitution. guarantees the fundamental Right to Life and Personal Liberty, stating: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” It is available to both citizens and non-citizens, as it serves as the cornerstone of human rights in India.

The Supreme Court has consistently interpreted Article 21 broadly. The term "personal liberty" has been expanded to include various rights necessary for a dignified life, including the right to privacy. Although privacy is not expressly mentioned in the Article, the judiciary has held that personal liberty cannot be effectively enjoyed without privacy.

JUDICIAL EVOLUTION OF THE RIGHT OF PRIVACY IN INDIA

The Conservative Era (1950s–1960s): The Right to Privacy was not immediately recognised; rather, its recognition was gradual, and it evolved with time. The Supreme Court's approach shifted from denying constitutional protection to ultimately recognising privacy as a fundamental right.

M.P. Sharma v Satish Chandra:² This was the first major case concerning privacy in India. The Supreme Court held that the Constitution did not expressly guarantee a right to privacy and upheld the validity of search and seizure procedures conducted during criminal investigations. As a result, privacy was not recognised as a fundamental right at this stage. The Court denied constitutional protection to privacy.

Kharak Singh v State of U.P.:³ The case challenged police surveillance practices. The majority held that the Constitution did not recognise a fundamental right to privacy. However, the Court struck down midnight domiciliary visits as they violated personal liberty under

¹ Right to life and personal liberty

² M.P. Sharma v. Satish Chandra (1954) AIR 300 and 1954 SCR 1077

³ Kharak Singh v. State of U.P. is AIR (1963) SC 1295 or (1964) 1 SCR 332

Article 21. Justice Subba Rao's dissent argued that privacy is an essential part of personal liberty. It was the first judicial recognition of privacy as a value connected to personal liberty.

The Turning Point (1970s–1990s): Gobind v. State of Madhya Pradesh:⁴ A significant shift occurred in this case. The petitioner challenged police surveillance regulations on the ground that they violated his personal liberty. While the Supreme Court stopped short of declaring privacy an independent fundamental right, it acknowledged that privacy is implicit in the concept of personal liberty guaranteed under Article 21. The Court further held that privacy rights are not absolute and may be restricted only when the State demonstrates a compelling public interest. This became known as the "compelling state interest test." The judgment marked the first substantial recognition of privacy as a constitutionally protected value.

People's Union for Civil Liberties (PUCL) v Union of India:⁵ The issue of privacy gained further importance in the context of telephone tapping. In PUCL v. Union of India, the Supreme Court examined whether interception of telephone conversations violated constitutional rights. The Court held that telephone conversations form an essential part of an individual's private life and are protected under Article 21. It emphasised that unauthorised surveillance and interception of communications constitute a serious invasion of privacy. The Court also laid down procedural safeguards to regulate telephone tapping and prevent arbitrary state action. This judgment expanded privacy protection beyond physical spaces and recognised the importance of communication privacy in a modern democratic society.

Recognition of Privacy as a Fundamental Right: Justice K.S. Puttaswamy (Retd.) v. Union of India:⁶ A nine-judge bench unanimously declared the Right to Privacy as a fundamental right under Articles 14, 19, and 21 of the Constitution. The Court overruled the contrary views in M.P. Sharma and Kharak Singh and held that privacy is essential for human dignity, autonomy, and liberty.

The Puttaswamy judgment is widely regarded as a constitutional milestone because it firmly established privacy as the foundation of human dignity, individual autonomy, liberty, and democratic citizenship. It transformed privacy from a judicially debated concept into a fully

⁴ Gobind v. State of Madhya Pradesh (1975) AIR 1378, 1975 SCR (3) 946

⁵ People's Union for Civil Liberties (PUCL) v. Union of India (1997) 1 SCC 301; AIR 1997 SC 568

⁶ Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1

enforceable fundamental right. It laid the groundwork for future developments in data protection, surveillance regulation, and digital rights in India.

Thus, privacy was finally recognised as a fundamental right and became a cornerstone of constitutional freedoms in India.

CHALLENGES IN THE EVOLUTION OF THE RIGHT TO PRIVACY IN INDIA

No Explicit Constitutional Provision: The Constitution does not specifically mention the Right to Privacy.

Conflicting Court Decisions: Early judgments did not consistently recognise privacy as a fundamental right.

State Interests vs. Individual Rights: Balancing privacy with national security and public order was challenging.

Technological Growth: Digital technologies created new privacy concerns.

Government Surveillance: Increased monitoring raised concerns about individual freedoms.

Data Protection Issues: Lack of strong laws to safeguard personal information.

Defining Privacy: Courts had to determine the scope and meaning of privacy rights.

These challenges were largely resolved through the landmark Justice K.S. Puttaswamy v Union of India judgment, which recognised privacy as a fundamental right.

CONTEMPORARY CHALLENGES TO THE RIGHT TO PRIVACY IN INDIA

Government Surveillance: Increased use of surveillance technologies raises concerns about privacy violations.

Data Breaches: Personal information is vulnerable to hacking, leaks, and unauthorised access.

Social Media and Big Tech: Companies collect and process large amounts of user data, often with limited transparency.

Artificial Intelligence (AI): AI systems can track behaviour, profile individuals, and process sensitive personal data.

Lack of Public Awareness: Many people are unaware of their privacy rights and online safety practices.

Balancing Privacy and National Security: Ensuring privacy while addressing security and law enforcement needs remains a challenge.

Weak Enforcement: Privacy laws and safeguards may not always be effectively implemented.

Emerging Technologies: Facial recognition, biometric systems, and location tracking create new privacy concerns.

RECOMMENDATIONS

Strengthen Enforcement of Data Protection Laws: Effective implementation of the Digital Personal Data Protection Act, 2023 is essential to ensure that personal data is protected from misuse and unauthorised disclosure.

Ensure Accountability in Government Surveillance: Surveillance measures should be subject to judicial oversight and the constitutional principles of legality, necessity, and proportionality established in Puttaswamy.

Regulate Emerging Technologies: Specific guidelines should be framed for Artificial Intelligence, facial recognition systems, and biometric technologies to prevent privacy violations.

Enhance Cybersecurity Measures: Government agencies and private organisations should adopt robust cybersecurity standards to reduce data breaches and cybercrime.

Promote Public Awareness: Citizens should be educated about their privacy rights, data protection, and safe digital practices through awareness campaigns and legal literacy programs.

Regular Legislative Review: Privacy laws should be periodically updated to address new technological developments and emerging privacy concerns.

CONCLUSION

The recognition of the Right to Privacy as a fundamental right marks one of the most important developments in Indian constitutional law. Although the Constitution does not expressly mention privacy, the judiciary has played a crucial role in expanding the meaning of life and

personal liberty under Article 21 to include the protection of an individual's private sphere. The landmark Justice K.S. Puttaswamy v. Union of India judgment firmly established that privacy is closely connected with human dignity, personal autonomy, and the freedom to make individual choices.

In today's digital world, where personal information is constantly collected, stored, and shared, the importance of privacy has increased significantly. Technological advancements have created new opportunities, but they have also raised concerns regarding surveillance, data misuse, and cyber threats. While legislative measures such as the Digital Personal Data Protection Act, 2023, represent a positive step towards protecting personal information, legal safeguards alone are not enough. Effective implementation, greater public awareness, and responsible use of technology are equally important.

Ultimately, the right to privacy is essential for preserving individual freedom and maintaining the democratic values on which the Constitution is based. As society continues to evolve, the law must also adapt to ensure that privacy remains protected in both physical and digital spaces. A balanced approach that respects individual rights while addressing legitimate state interests will be crucial in shaping the future of privacy protection in India.