

Right to Privacy as A Fundamental Right In India Evolution, Challenges and the Impact of Digitalization

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Abstract

The right to privacy has emerged as a cornerstone of individual autonomy and dignity in contemporary India, particularly in the digital age. Historically under-recognized within Indian jurisprudence, this right underwent significant transformation following the landmark Supreme Court judgment in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), which established privacy as a fundamental right under Article 21 of the Indian Constitution. This paper explores the evolution of privacy as a legal and constitutional principle in India, tracing its development from early judgments such as Kharak Singh v. State of U.P. and Gobind v. State of M.P. to the pivotal Puttaswamy case.

It examines the growing challenges posed by digitalization, including data privacy concerns, mass surveillance, and the ethical implications of emerging technologies like facial recognition. Additionally, the paper discusses the interplay between privacy rights and regulatory efforts such as the proposed Personal Data Protection Bill, reflecting on the need for robust frameworks to safeguard individual freedoms while promoting innovation and security.

This research underscores the importance of a balanced approach in ensuring that privacy rights keep pace with technological advancements, emphasizing the role of civil society and judicial oversight in shaping India's privacy landscape. As the digital realm expands, this study highlights the ongoing need to reconcile individual rights with collective interests in the pursuit of a free and equitable society.

Introduction to the Right to Privacy

Overview and Importance of Privacy in Modern Society In our interconnected digital world, privacy has become more than a personal need - a fundamental right that underpins our freedom, privacy and security. Privacy allows us to control our lives and decide what to share, with whom and when. This is what allows us to have self-esteem, close relationships, and protect our beliefs. Without being proactive, we face the risk of constant scrutiny and judgment that can limit our behavior and restrict our freedom.

As people spend more and more time online—sharing personal moments, thoughts, and even locations—privacy is important. Whether through social media, online banking or e-commerce, new people are still leaving a digital footprint. Without strong protection, this data can be misused by companies for profit or by governments for surveillance, often without the individual's consent. With the increasing reliance on technology, privacy is not only a necessity, but a necessity in modern society.

An international view of privacy as a human right

Privacy is a universally recognized right that transcends borders and cultures. The international

community recognizes the importance of privacy and considers it essential to human dignity and independence. Article 12 of the United Nations Universal Declaration of Human Rights (UDHR), established in 1948, affirms that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence," protecting individuals from unjustified intrusion by the state or other entities. This declaration emphasizes the inherent value of privacy and has inspired many nations to embed privacy protections within their legal systems.

In fact, many democracies around the world have long treated privacy as a critical part of human rights. Europe, for instance, has taken a progressive approach with the General Data Protection Regulation (GDPR), which sets strict rules about how personal data is collected, stored, and used, empowering individuals with rights over their own information. The global recognition of privacy as a right reflects its importance not only in protecting individuals but also in fostering societies where freedom, trust, and respect are core values.

Changes to Privacy Policy in Indian Law

In India, the understanding and legal status of privacy has changed dramatically. Historically, privacy was not well recognized in Indian law. However,

the talk about it became stronger when technology began to change everyday life, creating vulnerabilities and ways to misuse personal data. A turning point in 2017 with the landmark case of Justice K.S. Puttaswamy (Retd.) v. Union of India, where the Supreme Court of India has declared liberty as a fundamental right protected under Article 21 of the Constitution of India which guarantees the right to life and liberty of the individual. This ruling, based on democratic principles and human dignity, marked a pivotal shift, situating privacy alongside other fundamental rights in the Indian Constitution.

Legal scholars and philosophers like Joseph Raz, who explored the ethical underpinnings of freedom in his book *The Morality of Freedom*, have emphasized that individual freedom depends on autonomy and respect for personal boundaries. The Indian judiciary has resonated with this view, seeing privacy as a safeguard for individual autonomy and personal dignity. In recent years, the growing concern over data privacy and surveillance has only strengthened India's commitment to privacy rights, prompting legislative initiatives, like the proposed Data Protection Bill, which seeks to create a structured legal framework to protect individuals' personal data.

In sum, privacy has transitioned from being a peripheral concern to a foundational element of human rights in India. As the digital landscape continues to evolve, India's approach to privacy is likely to adapt, balancing the benefits of technological advancement with the protection of individual rights. This shift in privacy awareness is rightly a testament to India's commitment to upholding human rights at a time when personal data remains vulnerable to abuse and misuse.

- (Raz, 1986)
- (Indian Ministry of Electronics and Information Technology. The Personal Data Protection Bill, 2019 (latest version pending).)
- (Supreme Court of India. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.)
- (United Nations General Assembly. Universal Declaration of Human Rights, Article 12, 1948)
- (General Data Protection Regulation (GDPR). Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.)

The development of historical privacy rights in India

The advancement of protection rights in India has been both a basic and complex handle, molded by case. The initial translation of the Indian Structure did not clearly recognize opportunity as a essential right. Be that as it may, the improvement of social standards and mechanical progresses have expanded the concern for security, and to decide the activities of the judge over time. The primary point of interest cases, *Khark Singh v. State of U.P.* (1963) and *Gobind v. The case of M.P.* (1975), laid the establishment for the acknowledgment of protection as a essential right beneath Indian law.

Early Lawful Contemplations on Security

In *Khark Singh v. State of U.P.* (1963), the Incomparable Court managed with the issue of police observation. *Khark Singh*, an charged in a criminal case, challenged the legitimacy of police directions that permitted the specialists to enter his house at night and track his developments. He claimed that these observation hones abused his essential rights to freedom beneath Article 21 and flexibility of development beneath Article 19(1)(d) of the Structure of India. Be that as it may, the Court expelled his claims, administering that the Structure did not expressly recognize a “right to security.” The larger part conclusion concluded that whereas self-assertive domiciliary visits encroached on individual freedom, they did not build up an free right to protection. Equity *Subba Rao’s* dissent, however, contended that Article 21 certainly enveloped a right to security, recommending a broader, more dynamic elucidation of individual freedom.

The administering in *Kharak Singh* checked a reluctant starting for security in Indian law, with the Court declining to establish protection as a crucial right but recognizing individual liberty’s part in ensuring an individual’s individual space. This case opened the entryway for future contentions supporting the acknowledgment of security inside the protected system.

Gradual Expansion of Privacy in Indian Constitutional Interpretation

A significant step forward came in *Gobind v. State of M.P.* (1975), where the Supreme Court took a more nuanced approach to privacy. In this case, *Gobind*, a man subjected to police surveillance, argued that the surveillance infringed on his personal liberty under Article 21. Unlike in *Kharak Singh*, the Court here recognized the need for a more extensive interpretation of personal liberty that could include privacy. Justice *Mathew*, writing the majority opinion, stated that while privacy was not an absolute right, it could be derived from the rights to personal liberty and dignity. He suggested that certain aspects of privacy might qualify as fundamental rights if they were “essential to the pursuit of happiness and dignity.”

The *Gobind* judgment was pivotal because it acknowledged that privacy could be implied within Article 21, marking the first time the Supreme Court identified privacy as a component of personal liberty. However, the court said that the right to privacy is subject to restrictions and can be restricted in order to promote public interests such as national security and public welfare. .

Articles of Incorporation and Legal Development

The *Khark Singh* and *Gobind* decisions laid the foundation for privacy rights in India and were developed in subsequent cases. These judgments seem to be slow but still the judicial movement to focus on privacy as a fundamental part of personal freedom, and finally Justice *K.S. Puttaswamy v. Union of India* (2017), in which the Supreme Court held that autonomy is a right under the Constitution.

This development reflects the development of the legal understanding of privacy in terms of personal autonomy and autonomy.

(Kharak Singh v. State of U.P., AIR 1963 SC 1295.) (Gobind v. State of M.P., AIR 1975 SC 1378) (Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.)

The Landmark Judgment: Puttaswamy v. Union of India (2017)

Overview of the Case and Its Background

The case of Puttaswamy v. Union of India is one of the strongest judgments that the Indian judicial system has ever given in the history of Indian constitutional law; the Indian Supreme Court recognized the right to privacy as a fundamental right under the Indian Constitution. The case originated from a retired judge, Justice K.S. Puttaswamy's, who had challenged the government's Aadhaar Scheme decision as violating the right of privacy. The key question, tried to be answered by a nine-judge bench of the Supreme Court, was whether the right of privacy fell under Article 21 of the Indian Constitution dealing with the right to life and personal liberty. The government argued that the right of privacy is not an absolute right and could be limited in the interest of national security or public order. On the other hand, the petitioners argued that privacy is a constituent element of human dignity and autonomy, and any infringement on this right would have severe implications on personal freedoms. Key Arguments and Constitutional Interpretation by the Supreme Court Holding that privacy was an imperative component of individual autonomy and dignity, the Supreme Court in its judgment went through references to various international conventions and jurisprudence of other countries. However, in its observations, it said that the constitutional framers of India left the issue of privacy open, but it could be inferred as a part of the right to life and liberty under Article 21. In the dissenting judgment, Justice Chandrachud lays considerable emphasis on privacy to safeguard individual autonomy and declares that privacy is not only a right but also forms part of the very cloth of a free society. The Court also refers to strict guardrails against unauthorised surveillance and arbitrary state actions. Judicial Declaration of Privacy as a Fundamental Right under Article 21 The most significant consequence of the judgment was declaring that right to privacy was a part of Article 21. The Khehar headed bench overruled earlier judgments in M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of U.P. in 1963, where the bench had refused to give constitutional recognition as a fundamental right to privacy. The judgment brought into light that privacy is essentially fundamental to the protection of human dignity, liberty, and speech. The Court held that any invasion into the right of privacy must pass through the tests of legality, necessity, and proportionality. Justice Chandrachud Opinion on the Right to Privacy Justice D.Y. Chandrachud's opinion in Puttaswamy was instrumental in bringing into the world the philosophy of privacy as part of the constitutional jurisprudence of India. He clarified that privacy is the core of individual autonomy and dignity. He then elaborated that outside of the physical, of course, it indeed does relate to informational privacy that is going to the right to control an individual's own personal information. Justice Chandrachud felt quite disturbed in particular by some implication of surveillance: "unfettered surveillance infringes on individual freedom and erodes the very concept of a free society.". His judgment stresses that the government must be held to high standards when they infringe into privacy by requiring the law, in itself, to be both specific and no broader than necessary to achieve legitimate objectives, and that the principles of proportionality apply. But what has been also emphasized by Justice Chandrachud is that other fundamental rights in the right to freedom of expression, the right to associate freely and the right to make personal choices are all built from this foundation of privacy. His opinion is largely a referral point for privacy jurisprudence in India, especially concerning the intersection of privacy with personal data, surveillance technologies, and much more. Consequences of the Right to

Privacy in a Digital Age The digital age makes the Puttaswamy judgment profound, especially as more and more personal data are collected through digital technologies. When digital surveillance is increasing with social media and data-driven economies, the right, recognized by the Court, opens up a space to pose important questions regarding the manner in which privacy must be protected in such a scenario.

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

Privacy Concerns and Judicial Reaction Post-Puttaswamy

Judicial Role in Privacy Protection of Rights against State and Corporate Intrusion. Puttaswamy judgment further established a landmark precedent for privacy as the fundamental right of India. The judiciary has been extra cautious about vigilance over privacy and threats from state and corporate intrusions ever since this judgment. Recently, in 2020, the Supreme Court debated the issue of legality related to internet shutdowns in Jammu and Kashmir in the case of Anuradha Bhasin v. Union of India. Here, while citing national security, the Court acknowledged that these restrictions must be "necessary and proportionate," ruling that even "national security cannot justify unlimited curtailment of fundamental rights, in this case, privacy." This case furthered the commitment of the Court to proportionality as a standard for measuring infringements on privacy and how governments must demonstrate any restriction on their rights to privacy. Studies: Social Media Regulation, Facial Recognition, and Data Localization Policies Since Puttaswamy, the oft-repeated mantra of privacy concerns for most has always been social media, facial recognition, or data localization. Just last year, new WhatsApp privacy

policy enabling it to share more user data with Facebook sparked public backlash and multiple lawsuits. Here again, courts have not been less categorical with their verdicts that adequate consent and transparency from users is a must, pointing out the judicial role in saving users' data from corporate abuse.

The second issue of concern is Facial Recognition Technology, or FRT. Its implementation by the Delhi Police without full safeguards raised an alarm of privacy breach, and groups such as the Internet Freedom Foundation, or IFF called for strict regulations to avoid possible misuse and safeguard the right of individual privacy.

Data localization, as contemplated by India's Personal Data Protection Bill, mandate specific data to be located within national borders. Although started in the name of fortifying data security, localization has been viewed by critics as a means through which governments will enjoy greater avenues to personal data, thus bordering concerns over mass surveillance. The principles of

Puttaswamy, as judicially

applied to the case, manifest a marriage of individual privacy protection to the concern over security on their part.

(Anuradha Bhasin v. Union of India, (2020) SCC OnLine SC 25.)

(Internet Freedom Foundation. "Reports and Case Studies on Privacy and Digital Rights.")

(Siddharth) (Narayan, Siddharth. "Data Privacy in India and the Growing Role of the Judiciary." Journal of Law and Technology, 2021.)

Conclusion:

Future of Privacy Rights in India

Balancing Innovation, Security, and Privacy:

Going forward in India, the balance between the right to privacy and legitimate interests in innovation, economic development, and national security will be extremely challenging. In that respect, the growing importance of digital technology will weigh the potential benefits of data usage—examples include AI applications and data-driven policymaking—against the fundamental right to privacy. The great challenge for courts and policymakers, therefore, will be regulatory frameworks that promote innovation while ensuring that personal data is protected from unauthorized access or misuse. What's next? Anticipated reforms and the role of civil society The Puttaswamy judgment has set off efforts to reorder the India data protection landscape by giving rise to the Personal Data Protection Bill. Thus, the new law imposes a legal framework on the field of data privacy, defines obligations on those called data processors, and empowers individuals in greater control over their personal information. On the future rulings, the judiciary is expected to draw on the principles of the Puttaswamy judgment in addressing emerging challenges on technology and surveillance.

The Internet Freedom Foundation is a civil society organization whose association resonates with issues of privacy protections, including doing the research, and raising public awareness of digital rights. The association further marked evidence of the need for a multi-stakeholder approach to shaping privacy laws. The suggested needed approach is derived from the insights from experts in the field of tech, advocates of privacy, and a balanced approach toward the individual's autonomy interests weighed against a modern digital economy.