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## **THE RIGHT TO PRIVACY – CONSTITUTIONAL AND JURISPRUDENTIAL EVOLUTION**

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### **HISTORICAL DEVELOPMENT OF THE RIGHT TO PRIVACY IN INDIA**

The concept of privacy, though intrinsic to human dignity and liberty, was not explicitly enshrined in the original text of the Indian Constitution. For a long time, the Indian legal system lacked a formal recognition of privacy as a fundamental right. The historical development of the right to privacy in India is closely linked to the interpretation of Article 21, which guarantees the right to life and personal liberty, and has evolved significantly through judicial pronouncements over time. The early judicial approach was conservative.

- In *Kharak Singh v. State of Uttar Pradesh (1962)*<sup>1</sup>, the Supreme Court considered the constitutionality of police surveillance and domiciliary visits. Although the majority rejected the recognition of privacy as a fundamental right, Justice Subba Rao's dissent laid the groundwork for future developments by asserting that personal liberty included the right to be let alone. This dissent, though not binding, became a foundational voice in later jurisprudence.

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<sup>1</sup> Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

- A pivotal shift occurred in *Gobind v. State of Madhya Pradesh (1975)*<sup>2</sup>, where the Court assumed that privacy could be a fundamental right derived from Article 21. However, it held that it was not absolute and could be curtailed for compelling state interests. This cautious but progressive interpretation marked a significant step in the constitutional recognition of privacy.
- Further reinforcement came from *R. Rajagopal v. State of Tamil Nadu (1994)*<sup>3</sup>, also known as the “Auto Shankar case.” The Supreme Court explicitly held that the right to privacy is implicit in the right to life and liberty under Article 21. The Court ruled that individuals have a right to prevent others, including the state, from infringing on their private lives, unless justified by a countervailing public interest.
- In *People’s Union for Civil Liberties (PUCL) v. Union of India (1997)*<sup>4</sup>, which dealt with phone tapping, the Supreme Court held that surveillance without proper legal procedure was a violation of privacy under Article 21. This judgment emphasized procedural safeguards and highlighted how technological intrusions could infringe upon privacy rights.
- The culmination of this evolving jurisprudence came in the landmark judgment of *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*<sup>5</sup>, where a nine-judge constitutional bench unanimously held that the right to privacy is a fundamental right, protected under Articles 14, 19, and 21. The Court recognized privacy as intrinsic to dignity, autonomy, and liberty, and emphasized its multidimensional nature—covering informational, bodily, and decisional privacy. This judgment overruled previous decisions like *M.P. Sharma (1954)* and *Kharak Singh*, thereby cementing privacy's place in Indian constitutional law. The Puttaswamy judgment did not merely declare a right; it offered a robust philosophical and normative framework, situating privacy within the broader context of a democratic and rights-based society. It marked the true constitutionalization of privacy in India.

Thus, the historical development of privacy in India reflects a gradual but determined shift from judicial hesitation to strong constitutional affirmation, making it a cornerstone of personal liberty in the digital age.

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<sup>2</sup> *Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148.

<sup>3</sup> *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

<sup>4</sup> *People’s Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301.

<sup>5</sup> *Supra* Note 1.

## **PRIVACY AS A HUMAN RIGHT IN GLOBAL CONVENTIONS AND TREATIES**

The right to privacy is widely recognized as a core human right in international law, enshrined in numerous global conventions and treaties that serve as guiding principles for nations to protect individual freedoms in both physical and digital realms. These international instruments form the foundation of global human rights jurisprudence and have played a pivotal role in influencing national constitutional frameworks, including India's.

The most prominent acknowledgment of privacy as a human right is found in the Universal Declaration of Human Rights (UDHR), 1948.

Article 12 of the UDHR states:

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

Though the UDHR is not legally binding, it serves as a moral and ethical standard adopted by the United Nations and its member states. Building on the UDHR, the International Covenant on Civil and Political Rights (ICCPR), 1966, a legally binding treaty ratified by over 170 countries including India, further enshrines the right to privacy. Article 17 of the ICCPR reiterates the UDHR's principles and obligates signatory states to ensure legal protection against arbitrary or unlawful interference with privacy.

The European Convention on Human Rights (ECHR), 1950, under Article 8, guarantees the right to respect for private and family life, home, and correspondence. The European Court of Human Rights (ECtHR) has expanded the interpretation of this article to include data protection, sexual orientation, and personal identity, influencing privacy jurisprudence across Europe and beyond. For instance, landmark cases like *Niemietz v. Germany* (1992)<sup>6</sup> and *S. and Marper v. United Kingdom* (2008)<sup>7</sup> have significantly shaped global legal thought on privacy.

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<sup>6</sup> Niemietz v. Germany, (1992) 16 EHRR 97.

<sup>7</sup> S. and Marper v. United Kingdom, [2008] ECHR 1581.

Similarly, the American Convention on Human Rights (ACHR), 1969, also recognizes the right to privacy under Article 11, ensuring protection against abusive interferences. The African Charter on Human and Peoples' Rights (ACHPR), 1981, though not as explicit, implies privacy protections under its broader guarantees of dignity and liberty.

In the digital context, the General Data Protection Regulation (GDPR) of the European Union (2018) has emerged as a global benchmark for data privacy and protection. While not a treaty, its extraterritorial reach and emphasis on informed consent, data minimization, and accountability have influenced privacy legislations worldwide.

Moreover, the UN Human Rights Committee (UNHRC) and the UN Special Rapporteur on the Right to Privacy have actively advocated for the recognition of privacy in the age of surveillance, artificial intelligence, and big data. Their reports emphasize the need for a human rights-based approach to data governance and digital policies.

In conclusion, global conventions and treaties have firmly established privacy as a universal human right, essential to human dignity, autonomy, and democratic participation. These instruments provide not only the normative basis for national laws but also act as a check on states in ensuring privacy is respected, protected, and fulfilled in the modern era.

## **RECOGNITION OF PRIVACY IN INDIAN CONSTITUTIONAL LAW**

The recognition of privacy as a fundamental right in Indian constitutional law has been a gradual process, with landmark judgments that have significantly shaped the evolution of privacy jurisprudence in India.

The journey of privacy as a constitutional right can be understood through the progression of three key cases:

*M.P. Sharma v. Satish Chandra* (1954), *Kharak Singh v. State of Uttar Pradesh* (1962), and *Justice K.S. Puttaswamy v. Union of India* (2017). Each of these cases represents a critical juncture in the recognition of privacy in Indian law.

***M.P. Sharma v. Satish Chandra* (1954)<sup>8</sup>**

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<sup>8</sup> M.P. Sharma v. Satish Chandra, AIR 1954 SC 300.

The first major case that addressed the issue of privacy in the context of Indian constitutional law was *M.P. Sharma v. Satish Chandra*. In this case, the Supreme Court ruled on the legality of search and seizure under the provisions of the Criminal Procedure Code and the Indian Evidence Act. The petitioners argued that their right to privacy was being violated due to the unlawful search of their premises. However, the Court held that the right to privacy was not a guaranteed fundamental right under the Indian Constitution, as there was no express provision recognizing privacy. The Court also observed that the Constitution did not provide an explicit guarantee of privacy and dismissed the petitioners' claim. This judgment reflected a narrow understanding of privacy, emphasizing the state's authority over individual freedoms.

***Kharak Singh v. State of Uttar Pradesh (1962)*<sup>9</sup>**

The next significant case was *Kharak Singh v. State of Uttar Pradesh*, where the Supreme Court again dealt with the issue of personal surveillance by the police. The case involved the challenge to a regulation allowing domiciliary visits by the police without a warrant. The majority of the Court did not recognize the right to privacy as a fundamental right, reinforcing the view in *M.P. Sharma* that privacy was not protected under the Constitution. However, Justice Subba Rao's dissenting opinion was groundbreaking. He contended that the right to privacy was implied under Article 21 (the right to life and personal liberty), even if it was not explicitly mentioned in the Constitution. His dissent laid the foundation for the eventual recognition of privacy as a constitutional right, influencing future judgments on the subject.

***Justice K.S. Puttaswamy v. Union of India (2017)*<sup>10</sup>**

The Puttaswamy case marked a watershed moment in the recognition of the right to privacy in India. In this case, the petitioners challenged the Aadhaar scheme on the grounds that it violated the right to privacy. The Supreme Court, in a historic nine-judge bench judgment, overturned the previous decisions in *M.P. Sharma* and *Kharak Singh* and unanimously declared that the right to privacy is a fundamental right under the Indian Constitution. The Court held that privacy is intrinsic to Article 21 (right to life and personal liberty) and also flows from the freedoms guaranteed under Articles 14 (right to equality) and 19 (right to freedom of speech and expression). The judgment

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<sup>9</sup> Supra Note 10.

<sup>10</sup> Supra Note 1.

recognized privacy as a fundamental aspect of human dignity, autonomy, and liberty, encompassing both bodily integrity and informational privacy. The ruling in Puttaswamy effectively overturned earlier precedents that had denied privacy protection, establishing it as a robust and constitutionally protected right.

The Puttaswamy decision also set the stage for further developments in privacy law, particularly in relation to digital privacy and data protection, marking the beginning of a new era for privacy jurisprudence in India.

### **JUDICIAL INTERPRETATIONS AND EXPANSION OF THE RIGHT TO PRIVACY**

The judicial interpretation and expansion of the right to privacy in India have undergone significant transformation over the years. While the Indian Constitution did not explicitly guarantee the right to privacy initially, judicial decisions have progressively expanded its scope, culminating in the landmark Puttaswamy (2017) case, which firmly established privacy as a fundamental right under the Constitution. This expansion can be traced through key judicial pronouncements that have gradually enhanced the understanding of privacy in the Indian legal framework.<sup>11</sup>

#### **Early Judicial Interpretations**

In the early stages, Indian courts were reluctant to recognize privacy as an enforceable right under the Constitution. In *M.P. Sharma* (1954), the Supreme Court dismissed the idea that the right to privacy was constitutionally protected, citing the absence of explicit mention in the Constitution. The Court held that privacy was not a fundamental right and that the power of the state to regulate searches and seizures was paramount.

Similarly, in *Kharak Singh* (1962), the Court maintained a narrow view of privacy, ruling that the state's power to conduct surveillance did not infringe upon a fundamental right to privacy. However, Justice Subba Rao's dissenting opinion in *Kharak Singh* recognized the possibility of privacy being a part of the right to life and liberty under Article 21. This dissent would later play a crucial role in future judicial developments regarding privacy.

#### **Expanding the Scope of Privacy under Article 21**

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<sup>11</sup> Beaney, William M. "The constitutional right to privacy in the Supreme Court." *The Supreme Court Review* 1962 (1962): 212-251.

The recognition of privacy as a part of Article 21 (right to life and personal liberty) evolved through several judicial interpretations in the 1970s and 1980s. The *Maneka Gandhi v. Union of India* (1978)<sup>12</sup> judgment was pivotal in interpreting Article 21 expansively. The Supreme Court in *Maneka Gandhi* held that the right to life and personal liberty is not just a physical existence but includes the right to live with dignity, which implicitly covers various aspects of privacy, such as personal choices and freedoms. This case marked a shift in how privacy could be linked to the broader concept of individual autonomy.

## **THE RIGHT TO PRIVACY IN THE CONTEXT OF TECHNOLOGY AND DATA**

With the rise of technological advancements and the increasing role of the state in regulating digital information, privacy became more relevant in the digital context. In *R. Rajagopal v. State of Tamil Nadu* (1994)<sup>13</sup>, the Supreme Court recognized the right to privacy in the context of press freedom. The Court held that a person's right to privacy extends to protecting the publication of personal information without consent, emphasizing that privacy is essential to the freedom of thought and expression.

In *Shreya Singhal v. Union of India* (2015)<sup>14</sup>, the Supreme Court expanded the scope of privacy by safeguarding free speech on the internet, particularly against arbitrary censorship. This judgment, while primarily focused on freedom of speech, reinforced the significance of privacy in the digital era.

### **The Puttaswamy (2017) Judgment**

The Puttaswamy case marked a watershed moment in the evolution of privacy jurisprudence. The Supreme Court, in a unanimous verdict, ruled that the right to privacy is a fundamental right under Article 21. The judgment unequivocally overruled earlier precedents, such as *M.P. Sharma* and *Kharak Singh*, that had denied privacy constitutional protection. The Court ruled that privacy is essential to individual dignity and autonomy, and it must be protected from arbitrary interference, particularly in the digital age. The judgment also laid down a robust framework for privacy protection, emphasizing the proportionality test for any encroachment on privacy rights.

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<sup>12</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>13</sup> *Supra* Note 12.

<sup>14</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

### **Contemporary Jurisprudence and Future Directions**

The recognition of privacy in the Puttaswamy judgment has influenced subsequent legal developments, including the Personal Data Protection Bill and other data protection laws, which aim to provide a legal framework for safeguarding privacy in the digital world. Courts now consider privacy as a dynamic concept that must be constantly reassessed in the context of evolving technologies.

In conclusion, the judicial interpretation of privacy has transformed from a narrow and restrictive view to a broad and inclusive understanding of personal freedom, autonomy, and dignity. The expansion of privacy rights in India continues to evolve, especially in the face of digital challenges, ensuring that privacy remains a cornerstone of individual liberty.

### **RIGHT TO PRIVACY VS. PUBLIC INTEREST: BALANCING ACTS**

One of the most contentious issues in privacy jurisprudence is the balancing act between the individual's right to privacy and the state's interest in ensuring public welfare, security, and other broader societal objectives. While privacy is a fundamental right under Indian law, it is not an absolute right. Like many other fundamental rights, privacy can be restricted in certain circumstances, provided such restrictions are proportionate, reasonable, and based on a legitimate aim, such as the protection of national security, public order, or health.<sup>15</sup>

#### **The Constitutional Framework of Balance**

The Constitution of India does not provide an explicit balancing test for privacy rights, but the Supreme Court has developed a framework through judicial interpretations, particularly after the Puttaswamy (2017) judgment<sup>16</sup>. The Court emphasized that any infringement of privacy must be tested against the standard of proportionality, which is a critical element of the right to privacy. According to this test, restrictions on privacy are permissible if they meet three conditions:

1. **Legality:** The restriction must be authorized by law, meaning it must be clear and specific.

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<sup>15</sup> Raab, Charles D. "Privacy, social values and the public interest." *Politik und die Regulierung von Information*. Nomos Verlagsgesellschaft mbH & Co. KG, 2012.

<sup>16</sup> Panigrahi, Pratyay, and Eishan Mehta. "The Impact of the Puttaswamy Judgement on law Relating to Searches." *NUJS L. Rev.* 15 (2022): 1.

2. Legitimate Aim: The purpose behind the restriction must serve a legitimate goal, such as national security, public health, or the prevention of crime.
3. Proportionality: The measure taken must be necessary and proportionate to the aim pursued. The restriction should not be more intrusive than required to achieve the desired public interest.

This proportionality test ensures that privacy is not arbitrarily overridden by state interests, and it guides the judicial interpretation of privacy rights in contexts where the public interest is involved.

### **Public Interest Considerations in Privacy**<sup>17</sup>

The state often justifies its actions that may infringe on individual privacy rights by invoking the public interest rationale. Public interest, as a broad and often vague concept, can encompass a variety of concerns, such as:

- National Security: In matters of national security, such as combating terrorism, privacy rights can be curtailed to monitor individuals and communications. For example, surveillance programs may be justified on the grounds of detecting threats to national security.
- Public Health: During health crises like the COVID-19 pandemic, public health considerations might require the government to collect personal data, including health and travel information, to control the spread of infectious diseases. In such cases, the collection and use of personal data must be balanced against the need to protect individuals' privacy.
- Crime Prevention and Law Enforcement: Law enforcement agencies may request access to private data or communications in criminal investigations, which may involve a clash between individual privacy and the need to prevent or investigate criminal activity.

## **JUDICIAL PRECEDENTS ON THE BALANCE BETWEEN PRIVACY AND PUBLIC INTEREST**

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<sup>17</sup> Alekseenko, Aleksandr P. "Privacy, Data Protection, and Public Interest Considerations for Fintech." *Global Perspectives in FinTech: Law, Finance and Technology*. Cham: Springer International Publishing, 2022. 25-49.

Several judicial precedents in India and abroad have dealt with the tension between privacy and public interest, providing guidance on how this balance can be achieved.

In *K.S. Puttaswamy v. Union of India* (2017)<sup>18</sup>, while the Court affirmed the right to privacy as fundamental, it also acknowledged that privacy could be restricted for legitimate state interests such as national security and crime prevention, provided such restrictions were reasonable, necessary, and proportionate.

Similarly, in *R. Rajagopal v. State of Tamil Nadu* (1994)<sup>19</sup>, the Supreme Court held that the right to privacy extends to safeguarding personal information, yet it can be overridden if the public interest, such as freedom of the press or public health, outweighs individual privacy concerns.

Internationally, the European Court of Human Rights (ECtHR) has often had to strike a balance between individual privacy rights and public interest. In *S. and Marper v. United Kingdom* (2008)<sup>20</sup>, the ECtHR ruled that the retention of biometric data without individual consent violated privacy rights, even though the data was collected for crime prevention purposes. The Court emphasized that data retention must meet the proportionality standard to be justifiable.

## **EMERGING CHALLENGES IN THE DIGITAL AGE**

The advent of digital technologies has complicated the balancing act between privacy and public interest. The collection, storage, and analysis of vast amounts of personal data by both state and private entities have raised concerns about data protection, surveillance, and potential abuse. The Aadhaar case (2017)<sup>21</sup> brought to light the tension between the state's interest in efficiently delivering services and the right to privacy. The Court, while upholding the Aadhaar scheme, cautioned against excessive state surveillance and misuse of personal data.

In conclusion, the balance between privacy and public interest is dynamic and context-dependent. Judicial bodies must carefully evaluate the competing interests to ensure that privacy rights are not unnecessarily or disproportionately infringed. While privacy is a fundamental right, the state's need to serve public welfare must also be safeguarded through reasonable and proportionate measures.

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<sup>18</sup> Supra Note 1.

<sup>19</sup> Supra Note 12.

<sup>20</sup> Supra Note 16.

<sup>21</sup> Supra Note 1.