

Dimensions of Right to Privacy under the Constitution of India

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Abstract

This article explores into the various dimensions of the right to privacy under the constitution India. It traces the evolution of privacy as a legal concept, starting from early legal precedents and leading up to significant judicial decisions through constitutional interpretations. The research analyzes landmark court cases, such as Kharak Singh v. State of Uttar Pradesh and M.P. Sharma v. Satish Chandra, which have played pivotal roles in shaping privacy jurisprudence in India. The discussion encompasses how the concept of privacy has evolved over time, particularly focusing on its recognition as a fundamental right by the Supreme Court in the landmark Puttaswamy judgment. This research highlights the implications of privacy as a constitutional right in various contexts, including data protection, surveillance practices, and individual autonomy.

Key Words: *Privacy, Right, Life, Constitution, Interest etc*

Introduction

The concept of privacy has deep historical roots in India, evident in ancient texts and traditions that upheld the sanctity of personal space and confidentiality. However, it was only in 2017 that the right to privacy was explicitly recognized as a fundamental right under the Indian Constitution. The landmark judgment of the Supreme Court in the case of Justice K.S. Puttaswamy (Retd.) v. Union of India laid the foundation for an individual's right to privacy and set the stage for discussions on privacy in the digital age.

The right to privacy is not explicitly mentioned in the Indian Constitution. However, the Supreme Court of India has held that it is a part of the right to life and personal liberty (Article 21) and the right to freedom of expression (Article 19). The judiciary's early interpretation of privacy was largely confined to protecting physical privacy and personal space.

The historical development of the right to privacy in India has been a gradual process marked by judicial interpretations and landmark judgments. The concept of privacy, although not explicitly mentioned in the Indian Constitution, has evolved as an integral part of the right to

life and personal liberty under Article 21. Here is a chronological overview of the historical development of the right to privacy in India:

M.P. Sharma v. Satish Chandra (1954)¹: In this case, the Supreme Court of India dealt with the issue of search and seizure of documents under the Indian Evidence Act, 1872. The court held that the Constitution of India did not recognize the right to privacy as an independent and fundamental right. The judgment stated that the right to privacy was not expressly protected under the Constitution, and any protection related to privacy had to be derived from other fundamental rights.

Kharak Singh v. State of Uttar Pradesh (1962)²: In this case, the Supreme Court revisited the issue of privacy, particularly in the context of surveillance and police surveillance on individuals. The court held that the right to privacy was not explicitly mentioned in the Constitution but could be inferred from other fundamental rights, including the right to life and personal liberty (Article 21), the right to freedom of movement (Article 19), and the right against self-incrimination (Article 20).

Gobind v. State of Madhya Pradesh (1975)³: In this case, the Supreme Court emphasized that the right to privacy was an essential ingredient of personal liberty guaranteed under Article 21. The court recognized that privacy was not an absolute right but could be restricted by law if such restrictions were reasonable and proportionate.

R. Rajagopal v. State of Tamil Nadu (1994)⁴: In this case, the Supreme Court held that the right to privacy was a part of the right to personal liberty under Article 21. The court emphasized that an individual's right to privacy was not an absolute right and could be curtailed if the intrusion was justified in the public interest.

People's Union for Civil Liberties v. Union of India (1997)⁵: In this case, the Supreme Court reaffirmed the importance of the right to privacy and recognized the right to privacy in telephonic conversations under Article 21. The court held that unauthorized government interception of telephone conversations violated the right to privacy.

Puttaswamy v. Union of India (2017): the Supreme Court delivered a landmark judgment in the case of *K.S. Puttaswamy v. Union of India*. This judgment, commonly known as the *Puttaswamy* judgment, unequivocally recognized the right to privacy as a fundamental right

¹ AIR 1954 SC 300.

² AIR 1963 SC 1295.

³ (1975) 2 SCC 148.

⁴ (1994) 2 SCC 179.

⁵ (1997) 3 SCC 433.

under Article 21 of the Constitution. The court declared that privacy is intrinsic to the right to life and personal liberty and provides individuals with an area of choice and autonomy.

The most significant development in the history of the right to privacy in India came in 2017 with the Puttaswamy judgment. In this landmark case, a nine-judge bench of the Supreme Court unanimously held that the right to privacy was a fundamental right under Article 21 of the Constitution. The court recognized privacy as an intrinsic part of human dignity and liberty, forming the core of the fundamental rights enshrined in the Constitution. The historical development of the right to privacy in India has been characterized by a progressive understanding of privacy as an essential component of personal liberty and human dignity. The Puttaswamy judgment's unequivocal recognition of privacy as a fundamental right has set a strong foundation for addressing privacy issues in the digital age and shaping data protection laws and policies in the country. Post the Puttaswamy judgment, the recognition of privacy as a fundamental right has had a significant impact on various legal and policy matters in India.

Emergence of Privacy as a Fundamental Right

The recognition of privacy as a fundamental right in India has been a significant legal and constitutional journey, marked by key court cases and evolving interpretations. This section explores the emergence of privacy as a fundamental right, with references to relevant case laws that have shaped this trajectory.

Evolution of Right to Privacy as Fundamental Right⁶

Before privacy was explicitly recognized as a fundamental right, Indian courts recognized its implicit existence within the broader framework of fundamental rights. The concept of privacy was intertwined with rights such as the right to life and personal liberty (Article 21) and the right to freedom of expression (Article 19)

Right to privacy refers to protection of one's personal information from being public or used by other without permission. Privacy is defined as "absence or avoidance of publicity or display; the state or condition from being withdrawn from the society of others, or from public interest; seclusion" in New Oxford English Dictionary. Black's Law Dictionary also refer privacy as "the right to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned". If we see the traces of privacy law in India, it

⁶ <https://www.legalservicesindia.com>

has been a very debatable topic that whether it should be treated as a fundamental right or a civil right but now by the recent judgment of Supreme Court, right to privacy is a Fundamental Right has become a settled law of land.

Right To Privacy and Constitution of India

On August 24th, 2017, Supreme Court has given its verdict on Right to privacy in Justice K S Puttaswamy V Union of India, declaring it as a fundamental right of a citizen. This judgment has finally put an end to the long historical legal battle from the past 40-50 years.

Since the 1960s, the Indian judiciary and the Supreme Court in particular, have dealt with the issue of privacy, both as a fundamental right under the constitution and as a common law right. The common thread through all these judgment by the supreme court of India has been to recognize a right to privacy either as a fundamental under the constitution or as a common law right, but to refrain from giving a specific definition before the recent landmark judgement. Instead court has decided to have it evolve on case to case basis. As Justice Mathew put it, “The right to privacy will, therefore, necessarily, have to go through a process of case by case development”.

Right to privacy in the context of surveillance by the state

The first case to lay down the basics of right to privacy in India, was the case of Kharak Singh v. State of Uttar Pradesh, where a seven-judge bench of the Supreme Court was required to check the constitutionality of certain police regulations which allowed police to do domiciliary visit and surveillance of persons with criminal record. In the present case the petitioner challenges the constitutionality of such provisions on the ground of that they violated his fundamental right to privacy under clause ‘personal liberty’ of article 21 of the constitution of India. In this particular case majority of the judges decline to interpret article 21 to include within its ambit the right the privacy, part of the majority expressed “The right of privacy is not a guaranteed right under our Constitution, and therefore the attempt to ascertain the movements of an individual is merely a manner in which privacy is invaded and is not an infringement of a fundamental right guaranteed in Part III.” But however they did recognize it as a common law right to enjoy the liberty of their houses and approves an old age saying “man’s home was his castle” The majority therefore understood the term ‘personal liberty’ in Article 21 in the context of age old principles from common law while holding domiciliary visits to be unconstitutional. Two of the judges of the seven judge bench,

however, saw the right to privacy as a part of Article 21, marking an early recognition of privacy as a fundamental right. Justice Subba Rao held “It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.”

The question of privacy as a fundamental right presented itself once again to the Supreme Court a few years later in the case of *Govind v. State of Madhya Pradesh*⁷. The petitioner in this case had challenged, as unconstitutional, certain police regulations on the grounds that the regulations violated his fundamental right to privacy. Although the issues were similar to the *Kharak Singh* case, the 3 judges hearing this particular case were more inclined to grant the right to privacy the status of a fundamental right. Justice Mathew stated: “Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. ‘Liberty against government’ a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy.” This statement was however qualified with the disclaimer that this right was not an absolute right and that the same could be curtailed by the State provided it could establish a “compelling public interest” in this regard.

Right to Privacy against Right to Free Speech

Subsequent to the *Govind* judgment, the Supreme Court was required to balance the right of privacy against the right to free speech in the case of *R. Rajagopal v. State of Tamil Nadu*. In this case, the petitioner was a Tamil newsmagazine which had sought directions from the Court to restrain the respondent State of Tamil Nadu and its officers to not interfere in the publication of the autobiography of a death row convict—‘Auto Shankar’ which contained details about the nexus between criminals and police officers. The Supreme Court framed the questions in these terms: “Whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorized writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Article 19(1) (a) entitles the press to publish such unauthorized account of a citizen's life and activities and if so to what extent and

⁷ AIR 1975 SC 1378

in what circumstances?” While answering the above questions, a bench of two judges of the Supreme Court, for the first time, directly linked the right to privacy to Article 21 of the Constitution but at the same time excluded matters of public record from being protected under this ‘Right to Privacy’. The Supreme Court held:

“(1) the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. (2)The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others.”

The ‘Right to Privacy’ of HIV (‘ve’) Patients

In the case of Mr. ‘X’ v. Hospital ‘Z’, the Supreme Court was required to discuss the scope of a blood donor’s right to privacy of his medical records. The respondent hospital in this case had disclosed, without the permission of the blood donor, the fact that the blood donor was diagnosed as being a HIV patient. Due to this disclosure by the hospital, the lady who was to have been married to the blood donor had broken off her engagement and the donor was subject to social ostracism. Discussing the issue of privacy of medical records, the Supreme Court ruled that while medical records are considered to be private, doctors and hospitals could make exceptions in certain cases where the non-disclosure of medical information could endanger the lives of other citizens, in this case the wife.

Prior Judicial Sanction for Tapping of Telephones

In the case of PUCL v. Union of India, the petitioner organization had challenged the actions of the state in intercepting telephone calls. Recognizing procedural lapses that had occurred, the court set out procedural safeguards which would have to be followed, even as it did not strike down the provision relating to interception in the Telegraph Act 1885. In arriving at its decision, the court observed: “Telephone-tapping is a serious invasion of an individual's privacy. It is no doubt correct that every government, howsoever democratic, exercises some degree of sub Rosa operation as a part of its intelligence outfit, but at the same time citizen's right to privacy has to be protected from being abused by the authorities of the day.” The court held: “Telephone tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.” The Supreme Court placed restrictions on the class of bureaucrats who could authorize such surveillance and also ordered the creation of a ‘review committee’ which would review all surveillance measures authorized under the Act.

The ‘search and seizure’ Powers of Revenue Authorities

In 2005, the Supreme Court passed one of its most important privacy related judgments in the case of District Registrar v. Canara Bank⁸. In this case the Supreme Court was required to determine the constitutionality of a provision of the A.P. Stamps Act which allowed the Collector or ‘any person’ authorized by the Collector to enter any premises to conduct an inspection of any records, registers, books, documents in the custody of any public officer, if such inspection would result in discovery of fraud or omission of any duty payable to the Government. The main issue, in the case, related to the privacy of a customer’s records stored by a financial institution such as a bank. The impugned provision was held to be unconstitutional by the Supreme Court on the grounds that it failed the tests of reasonableness enshrined in Articles 14, 19 and 21 of the Constitution. The Court held that any legislation intruding on the personal liberty of a citizen (in this case the privacy of a citizen’s financial records) must, in order to be constitutional, satisfy the triple test laid down by the Supreme Court in the case of Maneka Gandhi v. Union of India.

This triple test requires any law intruding on the concept of ‘personal liberty’ under Art. 21, to meet certain standards:“(i) it must prescribe a procedure; (ii) the procedure must withstand

⁸ (2005) 1 SCC 496.

the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14.” The impugned provision was held to have failed this test. More importantly, the Court ruled that the concept of privacy related to the citizen and not the place. The implication of such a statement was that it did not matter that the financial records were stored in a citizen’s home or in a bank. As long as the financial records in question belonged to a citizen, those records would be protected under the citizen’s right to privacy.

Privacy in the context of Sexual Identities

In the case of *Naz Foundation v. Union of India*⁹, the Delhi High Court ‘read down’ Section 377 of the Indian Penal Code, 1860 to decriminalize a class of sexual relations between consenting adults. One of the critical arguments accepted by the Court in this case was that the right to privacy of a citizen’s sexual relations, protected as it was under Article 21, could be intruded into by the State only if the State was able to establish a compelling interest for such interference. Since the State was unable to prove a compelling state interest to interfere in the sexual relations of its citizens, the provision was read down to decriminalize all consensual sexual relations.

Following the trend of these judgements, the concept of right to privacy has evolved and emerged, as a fundamental right. Our judiciary has tried in these various judgements interpret the meaning and the scope of right to privacy. Right to privacy is an essential component of right to life and personal liberty under Article 21. Right of privacy may, apart from contract, also arise out of a particular specific relationship, which may be commercial, matrimonial or even political. No doubt puttaswamy judgment will have a deep impact upon our legal and constitutional landscape for years to come. It will impact the interplay between privacy and transparency and between privacy and free speech; it will impact State surveillance, data collection, and data protection for sure.

Conclusion: can be analyzed that evolution of privacy as a legal concept, starting from early legal precedents and leading up to significant judicial decisions and constitutional interpretations. The landmark cases, such as *Kharak Singh v. State of Uttar Pradesh* and *M.P. Sharma v. Satish Chandra*, which have played pivotal roles in shaping privacy jurisprudence in India. The discussion encompasses how the concept of privacy has evolved over time, particularly focusing on its recognition as a fundamental right by the Supreme Court in the

⁹ (2009) 160 DLT 277.

landmark Puttaswamy judgment. The implications of privacy as a constitutional right in various contexts, including data protection, surveillance practices, and individual autonomy.

References:

1. Jain M P, the Indian Constitutional Law, Justice Jasti Chelameswar, 2018, Lexis Nexis.
2. Basu DD, Introduction to the Constitution of India, Kamal law House Kolkata, 2019.
3. Shukla VN, Constitution of India, eastern Book Company Lucknow, 2022.
4. Kashyap Subhash C, An Introduction to India's Constitution and Constitutional Law, National Book Trust India, 2011.
5. <https://www.legal500.com/developments/thought-leadership/personal-dataprotection-law-in-india/>
6. <https://www.legalservicesindia.com>

