

Title of the Article:

The Right to Privacy as a Fundamental Right under Article 21:
Constitutional Foundations, Doctrinal Evolution, and Contemporary
Challenges

Sub-Theme:

Constitutional Limits on State Power in the Age of Digital Governance

Name of Author:

M . Hima Sai Sushma

Name of Institute/Organization:

VIT School of Law, VIT Chennai

Official Designation:

B.A. LL.B. (Hons.) – IV Year Student

The Right to Privacy as a Fundamental Right under Article 21: Constitutional Foundations, Doctrinal Evolution, and Contemporary Challenges

ABSTRACT

Privacy as a Fundamental Right under Article 21 of the Constitution of India has brought about a change in the Indian constitutional jurisprudence. Though privacy was not provided under the Constitution, the Court held privacy to be a part of life, liberty, dignity and autonomy. The decision in the matter of Justice K.S. Puttaswamy (Retd.) v Union of India, rendered by a nine-judge bench of the Supreme Court, has settled the doctrine of privacy for all times to come and introduced the principle of proportionality to be applied while examining the actions of the State which offend privacy. This Article tries to record the developments of the privacy jurisprudence in India and the factors which have led to the recognition of privacy as a right. It seeks to examine the importance of the right to privacy in the age of digital governance and its future. It submits that privacy as a right under Article 21 is not merely a restrictive principle on the actions of the State, but a structural principle of the Constitution that ensures that the Indian citizens remain democratic in an age of surveillance capitalism and algorithmic governance.

Keywords: Article 21; Privacy; Proportionality; Dignity; Informational Self-Determination; Constitutional Morality

I. Introduction

Privacy as a fundamental right is not provided under the Indian Constitution. By using the doctrine of interpretation, the Supreme Court held privacy as a part of right to life and liberty, under Article 21. The Supreme Court's decision in privacy cases is an important judicial interpretation of the Constitution and is considered as a landmark judgment that enhanced the scope of Article 21 which was reinterpreted as a substantive due process clause in the case of *Maneka Gandhi v Union of India*¹.

where privacy was a concern only of the elite class and not the common man, today privacy has emerged as a central constitutional issue with developments in biometrics, data analysis, artificial intelligence and surveillance. In *Justice K.S. Puttaswamy (Retd.) v Union of India*² the Supreme Court held the law and

¹ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

² *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) 10 SCC 1

constitutional jurisprudence that existed till then as bad law and bad constitutional history and guaranteed the right to informational privacy, which has also been called the right to informational self-determination.

The Article is divided into five sections. Section I chronicles the doctrinal history of the privacy doctrine. Section II engages with the Puttaswamy judgment. Section III turns to constitutional values and possibilities that may be pressed into service to protect privacy. Section IV is concerned with privacy and the Constitution and law as they stand today. Section V sets out a constitutionally appropriate and responsive conception of privacy for the present and future.

II. Early Judicial Reluctance and Incremental Recognition

M.P. Sharma v Satish Chandra is the first constitutional decision on privacy. An eight-judge bench held that the Constitution did not confer a right to privacy in relation to search and seizure³. The Court held that there was a distinction between the Fourth Amendment of the United States Constitution and Article 20(3) of the Indian Constitution. The Court held that there was a distinction between the Fourth Amendment of the United States Constitution and Article 20(3) of the Indian Constitution. One of the main factors in this decision was the absence of textual protection as is provided by the Fourth Amendment.

In *Kharak Singh v State of Uttar Pradesh* the majority dismissed the privacy claim as it related to interactions with the police but ruled that there was no justification for restricting personal liberty⁴ in terms of allowing police to carry out domiciliary visits. This was a strong dissent by Justice Subba Rao, who ruled that privacy was a part of “ordered liberty”. This ruling was later reversed by the Supreme Court.

In later decisions the Supreme Court proceeded on the footing of an evolution of its privacy judgement. In *Gobind v State of Madhya Pradesh*, the Court seems to have taken the view that privacy could be read into Articles 19 and 21 only when the interest of the State was vitally involved⁵. In *R Rajagopal v State of Tamil Nadu*, it held that it was part of the fundamental human right of citizens to be left alone and while refusing the reliefs sought by the appellants held that the publication of personal information about a person without his

³ *M.P. Sharma v Satish Chandra* AIR 1954 SC 300.

⁴ *Kharak Singh v State of Uttar Pradesh* AIR 1963 SC 1295.

⁵ *Gobind v State of Madhya Pradesh* (1975) 2 SCC 148.

consent, to the extent that it causes harm or injury to him, was not permitted under Article 19(1)(a).⁶In *People's Union for Civil Liberties v Union of India* the Court held telephone tapping to be an invasion of privacy under Article 21.⁷

The Court had decided individual privacy issues one after another over a period of many years without ever even attempting to define privacy. By simply deciding privacy in each particular set of facts, the Court had enunciated a doctrine that did not provide any conceptual unity. The Court obviously did not even think of itself as attempting to fashion a new constitutional doctrine.

III. The Transformative Judgment: Justice K.S. Puttaswamy

In *Justice K.S. Puttaswamy (Retd.) v Union of India* the 9-judge bench rewrote Indian constitutional law.⁸ A unanimous majority held that privacy is a fundamental right as part of the right to life and personal liberty under Article 21 and that it interlinks with various freedoms contained in Part III.⁸

The Supreme Court had to reconsider its earlier decisions in *M.P. Sharma* and *Kharak Singh* where it had held privacy was not a fundamental right. The court held privacy as a constitutional value that protects the dignity, autonomy and liberty of an individual. Justice Chandrachud explained privacy as including “sanctity of the family life, marriage, procreation, home and sexual orientation.”⁹

The judgment articulated a four-part test for assessing restrictions on privacy:

Legality – existence of a law;

Legitimate aim – a legitimate State objective;

⁶ *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632.

⁷ *People's Union for Civil Liberties v Union of India* (1997) 1 SCC 301.

⁸ *Puttaswamy* (n 2).

⁹ *ibid* [298]–[300].

Procedural safeguards – against abuse.¹⁰

This proportionality framework has changed the way Indian courts approach rights adjudication and has made domestic constitutional law consistent with comparable constitutional values.

IV. Normative Foundations: Dignity, Autonomy and Constitutional Morality

The component of privacy under Article 21 is based on three fundamental elements of dignity, autonomy and liberty.

Privacy and Dignity In fact, dignity is the bedrock of Part III of the Constitution. The Puttaswamy decision of the Court has explained dignity as the aspect of our personality which “recognises an individual as a human agent capable of making choices”.¹¹ That dignity is no more than an empty word if privacy is taken away. It is this autonomy that privacy protects. Through privacy we are able to assert our dignity and have some measure of control over our personal space and choices.

The second aspect of autonomy is decisional privacy. The Court used the doctrine of privacy to hold down the criminalisation of consensual same-sex sexual acts in *Navtej Singh Johar v Union of India*, and whatever may be said of its reasoning the fact remains that the Court treated sexual orientation as falling within the ‘core zone of autonomy’ mandated by Article 21.¹²

Thirdly, the Constitution seeks to secure the rights of the minority from being overrun by those of the majority. Thus, privacy secures the rights of the minority against very inimical social or State norms. Interestingly many scholars have argued that privacy is necessary to enable democratic citizenship¹³.

¹⁰ *ibid* [325].

¹¹ *ibid* [119].

¹² *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

¹³ N Chowdhury, ‘Privacy and Citizenship in India: Exploring Constitutional Morality and Data Privacy’ (NUJS Law Review).

To me privacy in India is not just about maintaining confidentiality or a private personal life; it is also about having some control over one's personal space or privacy invasion, which is often overlooked and undermined in our everyday living. In the information age and the increasingly digital world we live in today where almost everything is about communicating and sharing through electronic media and the Internet, Privacy is not just about not disclosing certain information but it is also about how one's personal information is being used. It is a matter of great concern, as to how one's personal information is being used, in a fair and reasonable manner and only to the extent required by law.

V. The Digital State and Informational Privacy

Informational self-determination is currently the most urgent aspect of privacy. Digital identity and data-driven welfare delivery are becoming more and more important components of India's governance structure.

The Court affirmed the constitutionality of the Aadhaar scheme in *K.S. Puttaswamy (Aadhaar-5J) v. Union of India*, but rejected some mandatory linkages as excessive.¹⁴ The majority upheld the constitutional protection of informational privacy even though it agreed with the State's welfare argument.

According to academic research, Aadhaar illustrates both the potential and dangers of digital governance.

¹⁵Although technology can promote inclusivity, it also runs the risk of establishing centralized data silos that are open to abuse. Therefore, rather than relying on conjectural claims of necessity, the proportionality standard must require empirical justification.

Furthermore, an effort to operationalize privacy principles in statutory form is reflected in the emergence of comprehensive data protection legislation. However, constitutional examination is still necessary to guarantee the autonomy, openness, and responsibility of enforcement systems.

VI. Proportionality, National Security, and Surveillance

Surveillance measures are often justified by national security concerns. Puttaswamy clarifies, nevertheless, that security goals do not supersede constitutional protections.¹"

The Information Technology Act and the Telegraph Act's interception frameworks in India have drawn criticism for having little judicial oversight. Prior authorization, independent review, and transparency

¹⁴ *K.S. Puttaswamy (Aadhaar-5J) v Union of India* (2019) 1 SCC 1

¹⁵ P Panigrahi and S Mehta, 'The Impact of the Puttaswamy Judgement on Data Rights' (NUJS Law Review).

measures are necessary for effective privacy protection. Such procedural checks are becoming more and more required by comparable constitutional systems.

Pervasive surveillance is incompatible with democracy. Individual autonomy, freedom of expression, and freedom of association are all protected by privacy.

VII. Corporate Data Power and Horizontal Application

Whether privacy only applies to the State or to private actors is a significant modern question. Puttaswamy acknowledged that non-State actors pose an equal threat to privacy, even though fundamental rights are mainly enforced vertically.¹⁶¹"

Businesses gather and profit from behavioral data in the era of surveillance capitalism. Therefore, statutory interpretation and regulatory frameworks must be guided by constitutional values. Private data monopolies require privacy jurisprudence to adjust without impeding innovation, as noted in scholarly commentary¹⁷. In my opinion, privacy ought to function as a constitutional compass that directs the creation of regulations, making sure that personal autonomy is not undermined by economic expansion.

VIII. Conclusion

A significant turning point in the constitution was reached when Article 21 recognized privacy as a fundamental right. From early judicial resistance to Puttaswamy's doctrinal affirmation, privacy has developed into a structural guarantee based on autonomy and dignity.

However, strict enforcement is necessary for it to remain viable. It is necessary to apply the proportionality test with evidentiary discipline. Independent oversight must be guaranteed by legislative frameworks. Courts need to be on the lookout for gradual erosion caused by executive discretion.

In the end, privacy is the cornerstone of liberal constitutionalism rather than a luxury. Article 21 guarantees that liberty in India stays substantive rather than symbolic by protecting individual liberty from both technological intrusion and State overreach. The future of constitutional democracy itself will depend on how privacy develops.

¹⁶ *ibid.*

¹⁷ V Bhandari, 'Protecting Citizens from the State Post-Puttaswamy' (NLSIU Student Law Review).

