

Reconceptualising Privacy in India: A Doctrinal Analysis of Constitutional Foundations and Judicial Evolution

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Abstract

The right to privacy has undergone a profound transformation in Indian constitutional jurisprudence, evolving from judicial denial to recognition as a fundamental right intrinsic to life and personal liberty under Article 21 of the Constitution. This article critically examines the constitutional framework of privacy in India through a doctrinal lens, focusing on its emergence, development, and consolidation in judicial decisions. It traces the trajectory from early formalist interpretations in *M.P. Sharma v. Satish Chandra* and *Kharak Singh v. State of Uttar Pradesh* to the transformative recognition in *Justice K.S. Puttaswamy v. Union of India*. The article further analyses the integration of privacy within the “golden triangle” of Articles 14, 19, and 21, and evaluates the role of proportionality and dignity in shaping privacy jurisprudence. By situating Indian developments within broader constitutional theory, the paper highlights both the strengths and limitations of the current framework, particularly in the context of emerging technological challenges. It argues for a more robust and coherent doctrinal approach, supported by legislative intervention, to ensure effective protection of privacy in the digital age.

Keywords: Privacy, Constitution of India, Article 21, Puttaswamy, Proportionality, Fundamental Rights

1. Introduction

The recognition of the right to privacy in India represents a significant milestone in constitutional jurisprudence, reflecting the dynamic and evolving nature of fundamental rights. Unlike jurisdictions where privacy is explicitly codified, the Indian Constitution does not expressly guarantee privacy. Instead, it has emerged through judicial interpretation, primarily under Articles 14, 19, and 21.

This evolution marks a transition from a **textual and formalist approach to a purposive and transformative interpretation of the Constitution**. As Gautam Bhatia argues, the Indian Constitution is inherently transformative, designed to expand rights and address evolving societal challenges.¹

Privacy, in this context, is not a singular or static right but a **composite constitutional value**, encompassing autonomy, dignity, identity, and informational self-determination. Its recognition reflects the judiciary’s effort to adapt constitutional principles to the complexities of modern governance and technological advancement.

2. Doctrinal Foundations of Privacy

The constitutional framework of privacy in India is rooted in the interrelationship between Articles 14,

19, and 21, often described as the “golden triangle” of fundamental rights.

2.1 Article 21 and the Expansion of Personal Liberty

Article 21 has been the primary vehicle for the development of privacy jurisprudence. The transformation of this provision began with *Maneka Gandhi v. Union of India*, where the Supreme Court held that any law affecting personal liberty must be just, fair, and reasonable.² This interpretation introduced substantive due process into Indian constitutional law, enabling the recognition of unenumerated rights, including privacy. The Court subsequently expanded the meaning of “life” to include dignity, autonomy, and personal development.

2.2 Article 14: Non-Arbitrariness

Article 14 reinforces privacy by requiring that any State action interfering with personal liberty must be non-arbitrary and reasonable. This ensures that privacy is protected not only as a liberty interest but also as a safeguard against arbitrary governance.³

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1. Bhatia, G. (2016).
 2. *Maneka Gandhi v. Union of India* (1978).
 3. Article 14 doctrine.

2.3 Article 19: Freedom and Privacy

Privacy is closely linked to freedoms guaranteed under Article 19. Surveillance and data collection can have a chilling effect on free speech, association, and movement, thereby necessitating constitutional protection of privacy.⁴

3. Judicial Evolution of Privacy in India

3.1 Early Denial: Formalist Interpretation

The initial judicial approach to privacy was marked by denial. In *M.P. Sharma v. Satish Chandra*, the Supreme Court held that the Constitution did not recognize a right to privacy, relying on the absence of an explicit provision.⁵

Similarly, in *Kharak Singh v. State of Uttar Pradesh*, the majority rejected privacy claims, although it invalidated domiciliary visits on grounds of personal liberty.⁶

Justice Subba Rao’s dissent in *Kharak Singh* is significant, as it recognized privacy as an essential component of personal liberty, laying the foundation for future developments.

3.2 Transitional Phase: Gradual Recognition

The recognition of privacy began to emerge in *Gobind v. State of Madhya Pradesh*, where the Court acknowledged privacy as an implied right under Article 21, albeit subject to restrictions.⁷

Subsequent cases such as *R. Rajagopal v. State of Tamil Nadu* and *People’s Union for Civil Liberties v. Union of India* expanded privacy protection to include media publication and telephone surveillance.⁸

These decisions reflect a gradual shift towards recognizing privacy as a constitutional value.

4. The Transformative Moment: Puttaswamy Judgment

The landmark decision in *Justice K.S. Puttaswamy v. Union of India* represents the culmination of privacy jurisprudence in India. A nine-judge bench unanimously held that privacy is a fundamental right under the Constitution.⁹

4.1 Conceptual Framework

The Court conceptualized privacy as:

4. Article 19 freedoms.
5. *M.P. Sharma v. Satish Chandra* (1954).
6. *Kharak Singh v. State of Uttar Pradesh* (1962).
7. *Gobind v. State of Madhya Pradesh* (1975).
8. *R. Rajagopal v. State of Tamil Nadu* (1994); *PUCL v. Union of India* (1997).
9. *Justice K.S. Puttaswamy v. Union of India* (2017).

- A right to autonomy
- A component of dignity
- A safeguard against surveillance
- A protection of informational self-determination

4.2 Overruling Earlier Precedents

The judgment explicitly overruled *M.P. Sharma* and *Kharak Singh* (majority), thereby correcting earlier doctrinal inconsistencies.

4.3 Proportionality Doctrine

A key contribution of the judgment is the adoption of the proportionality test, requiring:

1. Legality
2. Legitimate aim
3. Necessity
4. Proportionality

This framework provides a structured approach to evaluating restrictions on privacy.

4.4 Horizontal Application

The Court recognized that privacy violations may arise from both State and private actors, significantly expanding the scope of constitutional protection.

5. Post-Puttaswamy Developments

The recognition of privacy has influenced subsequent constitutional decisions. In *Navtej Singh Johar v. Union of India*, the Court decriminalized homosexuality, emphasizing dignity and autonomy.¹⁰

Similarly, in *Joseph Shine v. Union of India*, the Court struck down the adultery law, reinforcing the importance of individual privacy and autonomy.¹¹

These cases demonstrate the **transformative potential of privacy jurisprudence**.

6. Critical Evaluation

6.1 Strengths

- Strong normative foundation rooted in dignity and autonomy
- Flexible and evolving jurisprudence

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

11. *Joseph Shine v. Union of India* (2018).

- Alignment with global constitutional standards

6.2 Limitations

- Lack of comprehensive statutory framework
- Inconsistent application of proportionality
- Challenges in enforcement

Scholars have emphasized the need for legislative intervention to complement judicial recognition.

7. Conclusion

The evolution of privacy in India reflects a shift from denial to constitutional centrality. The recognition of privacy as a fundamental right has reshaped constitutional jurisprudence, integrating principles of dignity, autonomy, and liberty.

However, the effectiveness of this framework depends on its translation into **coherent statutory and regulatory mechanisms**, particularly in the context of digital technologies.

The future of privacy in India lies in achieving a balance between constitutional values and practical governance, ensuring that the right to privacy remains robust, enforceable, and responsive to emerging challenges.

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