



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## MENTAL PRIVACY AS PART OF THE HUMAN RIGHT TO FREEDOM OF THOUGHT

~ Saurav Tiwari

### ABSTRACT

*For a long time, our inner, mental lives have been considered inaccessible to the outside world. Thoughts, memories, intentions, emotions, all of them we have traditionally conceived as being secluded from others, playing out in our brains, shielded by a thick and solid skull. But science and technology have challenged this long-lasting assumption. Today, a range of technologies are being developed that enable us to give insight in the mental realms of others. With the development of such “brain-reading” technologies, Brownsword argues, ‘researchers have a window into the brains and, possibly, into a deeper understanding of the mental lives of their participants. The right to freedom of thought is evolving. Among others, lawyers, philosophers, psychologists, and neuroscientists are increasingly debating the content and scope of this legal human right. This research paper examines the challenges posed to the right to freedom of thought and mental privacy in the 21st century, in the context of the rapid development of science and technology. It explores the historical, legal, and ethical dimensions of this issue, as well as the Indian scenario. It argues that mental privacy is a core attribute of freedom of thought and that it deserves a nuanced legal framework that balances the need for innovation with the imperative to uphold individual rights. It also identifies some limitations and directions for future research on this topic. The paper contributes to the advancement of human rights in the digital age by highlighting the significance and implications of mental privacy and freedom of thought for various stakeholders.*

**Keywords:** Freedom of Thought, Mental Privacy, Human Rights, Privacy, Liberty

## **I. Introduction**

Freedom of thought is one of the oldest and most fundamental human rights, recognized by various religious and philosophical traditions as well as international and regional instruments. It encompasses the right to hold opinions and beliefs without interference, the right to change one's religion or belief, and the right to manifest one's religion or belief in public or private. Freedom of thought is closely related to other human rights, such as freedom of expression, conscience, and religion. However, in the 21st century, the right to freedom of thought faces new and unprecedented challenges, as the advances in science and technology enable the access, monitoring, and modification of brain activity and mental data. In this context, the protection of mental privacy, or the right to keep one's thoughts, feelings, and mental states free from external intrusion, manipulation, or exploitation, becomes a crucial and urgent issue. The United Nations and other international bodies have recently addressed the implications of new and emerging technologies for the right to privacy, especially in relation to mental privacy and cognitive liberty. For example, the UN Special Rapporteur on the Right to Privacy issued a report in 2020 that proposed a set of principles and recommendations to safeguard mental privacy and cognitive liberty in the digital age.<sup>1</sup> Similarly, the Council of Europe adopted a resolution in 2019 that called for the respect and protection of human dignity and human rights in the application of neuroscience and technology.<sup>2</sup> This paper aims to explore the historical and legal evolution of the right to freedom of thought, the current debates and challenges on the protection of mental privacy, and the potential solutions and recommendations for safeguarding this right in the digital age.

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<sup>1</sup> United Nations Human Rights, <https://www.ohchr.org/en/special-procedures/sr-privacy>, (last visited on Nov. 16, 2023)

<sup>2</sup> Council of Europe, <https://www.coe.int/en/web/bioethics/round-table-on-the-human-rights-issues-raised-by-the-applications-of-neurotechnologies>, (last visited Nov. 16, 2023)

## **II. Towards Human Rights Protection of Mental Privacy**

Mental privacy, or the right to keep one's thoughts, feelings, and mental states free from external intrusion, manipulation, or exploitation, is a concept that has a long and rich history in various religious, philosophical, and legal traditions. However, the advent of science and technology has challenged the traditional view of mental privacy as an absolute and inviolable right. New and emerging technologies, such as neurotechnology, digital monitoring, and artificial intelligence, have the potential to access, monitor, and modify brain activity and mental data, thus posing unprecedented threats to the integrity and autonomy of the human mind. These technologies raise fundamental ethical, legal, and social questions about who can and should have access to our brains and for what purposes.<sup>3</sup> Therefore, there is a need for legal protection of mental privacy in the context of emerging technologies, both at the national and international level. Some scholars and experts have proposed the recognition of a new category of human rights, or "neurorights", to address the specific challenges posed by neurotechnology and artificial intelligence.<sup>4</sup> The term "brain privacy," or neuroprivacy, describes an individual's rights with regard to the imaging, extraction, and analysis of neural data from their brains.<sup>5</sup> Others have argued that existing human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights, already provide a sufficient framework to protect mental privacy and cognitive liberty. This chapter will explore the historical and legal evolution of the concept of mental privacy, the impact of science and technology on challenging the traditional view of mental privacy, the overview of technologies influencing mental privacy, and the need for legal protection of mental privacy in the context of emerging technologies.

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<sup>3</sup> Susie Alegre, *Freedom of Thought Is a Human Right*, Wired, (Nov. 14, 2023, 6:47 AM), <https://www.wired.com/story/regulation-privacy-surveillance/>.

<sup>4</sup> UNESCO, <https://www.unesco.org/en/ethics-neurotech>, (last visited Nov. 15, 2023).

### III. Scope of the Right to Freedom of Thought

The right to freedom of thought is one of the oldest and most fundamental human rights, recognized by various religious and philosophical traditions as well as international and regional instruments.<sup>6</sup> It encompasses the right to hold opinions and beliefs without interference, the right to change one's religion or belief, and the right to manifest one's religion or belief in public or private. However, in the 21st century, the right to freedom of thought faces new and unprecedented challenges, as the advances in science and technology enable the access, monitoring, and modification of brain activity and mental data.<sup>7</sup> In this context, the protection of mental privacy, or the right to keep one's thoughts, feelings, and mental states free from external intrusion, manipulation, or exploitation, becomes a crucial and urgent issue. This chapter will explore the scope of the right to freedom of thought, the UN Special Rapporteur's perspective on mental privacy as a core attribute, the legal perspectives on the scope of the right, and the legal historical context, relevant case law, and doctrine.

The scope of the right to freedom of thought can be understood as consisting of at least three substantive freedoms: (1) that persons are not forced to reveal their thoughts; (2) that persons are not sanctioned for their thoughts and (3) that thoughts are not impermissibly altered.<sup>8</sup> These freedoms are derived from the interpretation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the European Convention on Human Rights (ECHR), which guarantee the right to freedom of thought, conscience and religion. These freedoms are also affirmed by the Universal Declaration of Human Rights (UDHR), which states that "everyone has the right to freedom of thought, conscience and religion" in Article 18. These freedoms are intended to protect the innermost sphere of human dignity and autonomy, and to ensure that individuals can freely form and express their opinions and beliefs, without fear of coercion, discrimination, or punishment.<sup>9</sup>

The UN Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, has paid explicit and comprehensive attention to the right to freedom of thought in his annual thematic report of 2021. He has emphasized that mental privacy is a "core attribute" of freedom of thought and that it implies that no one should be compelled to reveal their thoughts, that

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<sup>6</sup> Nita Farahany, *'Cognitive Liberty' Is the Human Right We Need to Talk About*, The Time, (Nov. 14, 7:07 PM), <https://time.com/6289229/cognitive-liberty-human-right/>.

<sup>7</sup> Susie Alegre, *We're Dangerously Close to Giving Big Tech Control Of Our Thoughts*, The Time, (Nov. 14, 7:13 PM), <https://time.com/6191973/big-tech-freedom-of-thought/>.

<sup>8</sup> Sjors Ligthart, *Mental Privacy as Part of the Human Right to Freedom of Thought?*, Forthcoming in M. Blitz and J.C. Bublitz (eds.), *The Law and Ethics of Freedom of Thought Vol. 2*

<sup>9</sup> Ana Matronic, *What is freedom of speech?*, Amnesty International, (Nov. 15, 8:23 AM), <https://www.amnesty.org.uk/free-speech-freedom-expression-human-right>.

thoughts should not be accessed or monitored without consent, and that thoughts should not be manipulated or modified against one's will. He has also highlighted the challenges posed by new and emerging technologies, such as digital and neuroscientific technologies, that can potentially infringe on mental privacy and cognitive liberty. He has proposed a set of principles and recommendations to safeguard mental privacy and cognitive liberty in the digital age, based on existing human rights standards and best practices.

The legal perspectives on the scope of the right to freedom of thought vary among different jurisdictions and scholars.<sup>10</sup> Some argue that the right to freedom of thought is a broad and absolute right that covers all aspects of human cognition, including emotions, intentions, memories, and imagination. Others contend that the right to freedom of thought is a narrow and qualified right that only protects the rational and conscious processes of forming and holding opinions and beliefs. Some also debate whether the right to freedom of thought includes the right to control one's own mental processes, such as the use of neurotechnology and other means of enhancing or altering one's cognition. Moreover, some question whether the right to freedom of thought can be balanced or limited by other rights or interests, such as the right to privacy, the freedom of expression, or the public order.

The legal historical context, relevant case law, and doctrine on the right to freedom of thought provide further insights into the development and understanding of this right. The idea of freedom of thought originated in ancient Greece, where the term "parrhesia" meant free speech or to speak frankly. This term first appeared in the fifth-century B.C. and was associated with the ideals of democracy and philosophy. However, the recognition and protection of freedom of thought as a human right took a long time to emerge in different countries and regions, such as England, France, and America. The landmark cases and documents that contributed to the evolution of the right to freedom of thought include the Magna Carta, the Bill of Rights, the Declaration of the Rights of Man and of the Citizen, the US Constitution, and the UDHR. The right to freedom of thought has also been interpreted and applied by various courts and tribunals, such as the Supreme Court of India, the European Court of Human Rights, and the Inter-American Court of Human Rights, in relation to various issues and situations, such as the right to choose a child's name, the right to go abroad, the right to broadcast, the right to information, and the right to criticize.

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<sup>10</sup> Wolfgang Kleinwächter, *A history of the Right to Freedom of Expression*, Observer Research Foundation, (Nov. 15, 9:03 PM), <https://www.orfonline.org/expert-speak/a-history-of-the-right-to-freedom-of-expression/>.

#### **IV. General Comment No. 22 on Article 18 ICCPR**

General Comment No. 22 is a document issued by the Human Rights Committee in 1993, which provides an authoritative interpretation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of thought, conscience and religion.<sup>11</sup> The General Comment emphasizes the far-reaching and profound nature of this right, which encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The General Comment also affirms that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief, and that this provision cannot be derogated from, even in time of public emergency. The General Comment further clarifies that Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief, and that the terms "belief" and "religion" are to be broadly construed, without any discrimination or intolerance. The General Comment also distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief, and states that the former does not permit any limitations whatsoever, while the latter may be subject to certain restrictions that are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The implications of the General Comment for the scope of freedom of thought are significant, as it provides a comprehensive and expansive definition of this right, and recognizes its fundamental and non-derogable character. The General Comment also acknowledges the diversity and plurality of beliefs and religions, and the right of everyone to hold opinions without interference. The General Comment also implies that the right to freedom of thought includes the right to mental privacy, or the right to keep one's thoughts, feelings, and mental states free from external intrusion, manipulation, or exploitation. This is evident from the statement that no one can be compelled to reveal his thoughts or adherence to a religion or belief, and that thoughts should not be accessed or monitored without consent, or manipulated or modified against one's will.

The arguments supporting a broad interpretation of "thought" are based on the idea that human cognition is not limited to rational and conscious processes of forming and holding opinions and beliefs, but also includes emotions, intentions, memories, imagination, and other aspects

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<sup>11</sup> CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), Adopted at the Forty-eighth Session of the Human Rights Committee, on 30 July 1993 CCPR/C/21/Rev.1/Add.4, General Comment No. 22

of mental life.<sup>12</sup> A broad interpretation of "thought" would also reflect the diversity and complexity of human experience, and the fact that thoughts are not static or fixed, but dynamic and evolving. A broad interpretation of "thought" would also respect the dignity and autonomy of the human person, and the right of everyone to explore and express their thoughts, feelings, and mental states, without fear of coercion, discrimination, or punishment. A broad interpretation of "thought" would also be consistent with the spirit and purpose of Article 18, which is to protect the innermost sphere of human freedom and identity.

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<sup>12</sup> CCPR General Comment 22 on Freedom of Thought, Conscience and Religion .... <https://www.right-to-education.org/resource/ccpr-general-comment-22-freedom-thought-conscience-and-religion>, last visited 12 Nov. 2023

## V. Case Study: *Salonen v. Finland*

*Salonen v. Finland* is a case decided by the European Commission of Human Rights in 1997, which had a significant impact on the understanding of freedom of thought and mental privacy.<sup>13</sup> The case involved a married couple who challenged the decision of the Finnish authorities to refuse to register their daughter's name as "Ainut Vain Marjaana" (The One and Only Marjaana), on the ground that it did not comply with Finnish practice. The applicants argued that this decision violated their right to freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights (ECHR), as well as their right to respect for private and family life under Article 8 of the ECHR. The Commission found that there was no violation of Article 9, as the refusal to register the name did not interfere with the applicants' freedom to hold or manifest their beliefs. However, the Commission found that there was a violation of Article 8, as the refusal to register the name amounted to a disproportionate interference with the applicants' right to respect for their private and family life, which included the right to choose their child's name.

The case's impact on the understanding of freedom of thought and mental privacy was twofold. On the one hand, the case confirmed that freedom of thought is a broad and absolute right that covers all aspects of human cognition, including emotions, intentions, memories, and imagination. The Commission stated that "the right to freedom of thought is absolute and unqualified and, in its internal aspect, is not susceptible to any interference or restriction whatsoever"<sup>14</sup>. The Commission also recognized that the applicants' choice of name reflected their personal convictions and beliefs, and that they had the right to hold such thoughts without interference. On the other hand, the case also showed that freedom of thought is not necessarily identical to mental privacy, or the right to keep one's thoughts, feelings, and mental states free from external intrusion, manipulation, or exploitation. The Commission implied that the applicants' right to mental privacy was not violated by the refusal to register the name, as they were not compelled to reveal their thoughts or adherence to a religion or belief, and that their thoughts were not accessed or monitored without consent, or manipulated or modified against their will.

The case's relevance in shaping the debate on mental privacy lies in the fact that it was one of the first cases to address the issue of mental privacy in the context of new and emerging technologies that can potentially infringe on the integrity and autonomy of the human mind.

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<sup>13</sup> *Salonen v. Finland*, European Court of Human Rights, 2 July 1997

<sup>14</sup> HUDOC - European Court of Human Rights. <https://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-3751>, last visited 14 Nov., 2023

The applicants claimed that the refusal to register the name violated their right to mental privacy, as it exposed their thoughts and beliefs to public scrutiny and ridicule.<sup>15</sup> They also argued that the refusal to register the name was based on the use of a computerized system that automatically rejected names that did not conform to Finnish practice, and that this system violated their right to mental privacy, as it did not allow for human discretion or individual assessment. The Commission did not explicitly address these arguments, but it did acknowledge that the use of a computerized system raised "certain questions" regarding the protection of the applicant's right to respect for their private and family life. The case thus highlighted the need for legal protection of mental privacy in the context of emerging technologies, both at the national and international level.

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<sup>15</sup> AS TO THE ADMISSIBILITY OF by Mauri Henrik SALONEN - Council of Europe.  
<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-3751&filename=001-3751.pdf&TID=thkbhnilzk>, last visited 16 November, 2023

## VI. Legal Perspectives on Mental Privacy

Mental privacy, or the right to keep one's thoughts, feelings, and mental states free from external intrusion, manipulation, or exploitation, is a concept that has a long and rich history in various religious, philosophical, and legal traditions. However, the advent of science and technology has challenged the traditional view of mental privacy as an absolute and inviolable right. New and emerging technologies, such as neurotechnology, digital monitoring, and artificial intelligence, have the potential to access, monitor, and modify brain activity and mental data, thus posing unprecedented threats to the integrity and autonomy of the human mind.<sup>16</sup> These technologies raise fundamental ethical, legal, and social questions about who can and should have access to our brains and for what purposes. Therefore, there is a need for legal protection of mental privacy in the context of emerging technologies, both at the national and international level. This chapter will explore the legal perspectives on mental privacy, the different definitions of mental privacy in the ongoing debate, the need for a standalone human right to mental privacy, the existing human rights as potential bases for mental privacy, and the relation between mental privacy and freedom of expression.

The definition of mental privacy is not uniform or settled in the ongoing debate. Some scholars and experts have proposed different ways of conceptualizing and operationalizing mental privacy, depending on the focus and scope of their analysis.<sup>17</sup> For example, some have defined mental privacy as the right to control the access to one's own neural data and all relevant information about one's mental processes and states that can be obtained by analyzing such data. Others have defined mental privacy as the right to protect one's inner thoughts, feelings, and preferences from unwanted observation, disclosure, or interference. Some have also distinguished between different dimensions of mental privacy, such as informational, decisional, and physical. Moreover, some have argued that mental privacy is not only a negative right, but also a positive right, that entails the right to access and use one's own mental data and information.

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<sup>16</sup> Rafael Henrique, *Global: X's new policy risks violating right to privacy for millions*, Amnesty International, (Nov. 15, 4:53 PM), <https://www.amnesty.org/en/latest/news/2023/09/global-xs-new-policy-risks-violating-right-to-privacy-for-millions/>.

<sup>17</sup> Sjors Ligthart, Marcello Ienca, Gerben Meynen, Fruzsina Molnar-Gabor, Roberto Andorno, Christoph Bublitz, Paul Catley, Lisa Claydon, Thomas Douglas, Nita Farahany, Joseph J. Fins, Sara Goering, Pim Haselager, Fabrice Jotterand, Andrea Lavazza, Allan McCay, Abel Wajnerman Paz, Stephen Rainey, Jesper Ryberg, Philipp Kellmeyer, *Minding rights: Mapping ethical and legal foundations of 'neurorights'*,

The need for a standalone human right to mental privacy is a matter of debate among scholars and experts.<sup>18</sup> Some have argued for a standalone human right to mental privacy, while others contend that the right is already covered by existing human rights, such as the general right to privacy pursuant to Article 17 ICCPR and 8 ECHR. Another potential candidate to serve as a legal basis for the right to mental privacy, is the right to freedom of thought. According to the UN Special Rapporteur on Freedom of Religion or Belief, the right not to reveal thoughts implies a right to mental privacy and, arguably, a general right to remain silent [^6^, p. 7]. However, the scope and content of the right to freedom of thought is not clearly defined or widely recognized, and its relation to other human rights, such as the right to privacy and the freedom of expression, is not well established.

The relation between mental privacy and freedom of expression is complex and nuanced.<sup>19</sup> On the one hand, mental privacy and freedom of expression are interdependent and mutually reinforcing rights, as they both protect the innermost sphere of human dignity and autonomy, and enable individuals to freely form and express their opinions and beliefs, without fear of coercion, discrimination, or punishment.<sup>20</sup> On the other hand, mental privacy and freedom of expression may also come into conflict or tension, as they both impose limits and responsibilities on the exercise of the other right. For example, the right to mental privacy may restrict the freedom of expression of others, such as journalists, researchers, or public authorities, who may have a legitimate interest or duty to access or disclose mental information. Conversely, the freedom of expression of individuals may infringe on the mental privacy of others, such as celebrities, politicians, or victims, who may have a legitimate interest or right to keep their mental information confidential.<sup>21</sup> Therefore, the relation between mental privacy and freedom of expression requires a careful balance and proportionality, taking into account the context, purpose, and impact of the access, disclosure, or interference with mental information.

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<sup>18</sup> Ross Andersen, *The Right to Not Have Your Mind Read*, The Atlantic, (Nov. 15, 5:12 PM), <https://www.theatlantic.com/technology/archive/2023/08/mind-reading-brain-data-interrogation-mri-machines/675059/>.

<sup>19</sup> Raymond Wacks, *Privacy and freedom of expression*, Oxford Academic, (Nov. 15, 9:31 PM), <https://academic.oup.com/book/970/chapter-abstract/137831836?redirectedFrom=fulltext>.

<sup>20</sup> Abel Wajnerman Paz, *Is Mental Privacy a Component of Personal Identity?*, Department of Philosophy, Universidad Alberto Hurtado, Santiago, Chile, 14 October 2021

<sup>21</sup> Kate Wild, 'Our notion of privacy will be useless': what happens if technology learns to read our minds?, The Guardian, (Nov. 16, 4:23 PM), <https://www.theguardian.com/technology/2021/nov/07/our-notion-of-privacy-will-be-useless-what-happens-if-technology-learns-to-read-our-minds>.

## VII. Indian Scenario

India is a country with a rich and diverse cultural heritage, as well as a vibrant and dynamic democracy.<sup>22</sup> However, India also faces various challenges and issues in the field of human rights, especially in relation to the right to freedom of thought and mental privacy.<sup>23</sup> This chapter will provide an overview of the relevant human rights instruments in India, the legal framework regarding freedom of thought and mental privacy in India, the landmark cases or developments related to mental privacy in India, and the cultural and societal factors influencing the discourse on mental privacy in India.

India is a party to several international and regional human rights instruments that guarantee the right to freedom of thought, conscience and religion, as well as the right to privacy.<sup>24</sup> These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Bangkok Declaration on Human Rights.<sup>25</sup> India has also enacted various domestic laws and policies that aim to protect and promote human rights, such as the Protection of Human Rights Act, 1993, the Information Technology Act, 2000, the Right to Information Act, 2005, the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and the Personal Data Protection Bill, 2019.<sup>26</sup>

The legal framework regarding freedom of thought and mental privacy in India is not very clear or comprehensive, as there is no explicit recognition of these rights in the Constitution of India or in any specific legislation. However, the Supreme Court of India has derived the right to privacy as a fundamental right under Article 21 of the Constitution, which guarantees the right to life and personal liberty.<sup>27</sup> The Supreme Court has also interpreted the right to freedom of speech and expression under Article 19 and the right to equality under Article 14 as

<sup>22</sup> Amrit Mahotsav Ministry of Culture, <https://amritmahotsav.nic.in/india-s-rich-cultural-heritage.htm>, (last visited Nov. 16, 2023).

<sup>23</sup> Smriti Shalini and M. Sivakami, *India needs youth mental health focus to strike demographic gold*, The Hindu, (Nov. 15, 2023, 6:23 PM), <https://www.thehindu.com/sci-tech/science/youth-mental-health-focus-demographic-dividend/article67399051.ece>.

<sup>24</sup> Reuters, <https://www.reuters.com/world/americas/aircraft-glitch-delays-canada-pm-trudeaus-departure-india-2023-09-10/>, (last visited Nov. 17, 2023).

<sup>25</sup> United Nations Human Rights, <https://www.ohchr.org/en/instruments-listings>, last visited 18 November 2023

<sup>26</sup> APPROACH PAPER FOR A LEGISLATION ON PRIVACY, <https://cis-india.org/internet-governance/publications/privacyapproachpaper>, Last visited 16 November, 2023

<sup>27</sup> Aishwarya Giridhar and Nidhi Singh, *Six years after privacy verdict: How judiciary has implemented the law*, The Indian Express, (Nov. 17, 7:44 PM), <https://indianexpress.com/article/opinion/editorials/six-years-since-puttaswamy-indias-privacy-report-card-8937132/>.

encompassing aspects of freedom of thought and mental privacy. The Supreme Court has also relied on the principles and standards of international human rights law to uphold and expand the scope of these rights.<sup>28</sup>

The landmark cases or developments related to mental privacy in India include the following:

- In *Kharak Singh v. State of Uttar Pradesh (1963)*<sup>29</sup>, the Supreme Court held that the right to privacy is an essential ingredient of personal liberty, and that the surveillance and domiciliary visits by the police violated the right to privacy of the petitioner, who was a suspected dacoit.
- In *Govind v. State of Madhya Pradesh (1975)*<sup>30</sup>, the Supreme Court upheld the validity of the regulations that authorized the police to maintain a history sheet and conduct surveillance of habitual offenders, but also laid down certain guidelines and safeguards to protect the right to privacy of such persons.
- In *R. Rajagopal v. State of Tamil Nadu (1994)*<sup>31</sup>, the Supreme Court recognized the right to privacy of public figures, and held that the state cannot prevent or restrain the publication of any matter concerning the life or conduct of a public official, unless it can be shown that such publication would constitute defamation, contempt of court, or breach of parliamentary privilege.
- In *Selvi v. State of Karnataka (2010)*<sup>32</sup>, the Supreme Court held that the compulsory administration of narco-analysis, polygraph, and brain electrical activation profile tests on accused persons or suspects violated the right to privacy, as well as the right against self-incrimination under Article 20(3) of the Constitution.
- In *Justice K.S. Puttaswamy v. Union of India (2017)*<sup>33</sup>, the Supreme Court declared the right to privacy as a fundamental right under Article 21 of the Constitution, and overruled the previous judgments that had held otherwise. The Supreme Court also affirmed that the right to privacy includes the right to informational privacy, the right to bodily integrity, the right to personal autonomy, and the right to mental privacy. The

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<sup>28</sup> Right To Privacy: Development Through Case Laws, [Right To Privacy: Development Through Case Laws \(bnblegal.com\)](https://bnblegal.com), Last visited 16 November 2023

<sup>29</sup> AIR 1963 SC 1295

<sup>30</sup> AIR 1975 SC 1378

<sup>31</sup> AIR 1995 SC 264

<sup>32</sup> AIR 2010 SC 1974

<sup>33</sup> AIR 2017 SC 4161

Supreme Court also recognized that the right to privacy is not absolute, and can be subject to reasonable restrictions that are lawful, necessary, and proportionate<sup>4</sup>.

The cultural and societal factors influencing the discourse on mental privacy in India are complex and varied. India is a country with a rich and diverse cultural heritage, as well as a vibrant and dynamic democracy. However, India also faces various challenges and issues in the field of human rights, especially in relation to the right to freedom of thought and mental privacy. Some of the factors that may affect the perception and practice of mental privacy in India are:

- The collectivistic and hierarchical nature of Indian society, which may value social harmony, family loyalty, and respect for elders over individual autonomy, choice, and expression.<sup>34</sup>
- The influence of religious and spiritual traditions, such as Hinduism, Buddhism, Jainism, Sikhism, Islam, and Christianity, which may have different views on the nature and origin of the human mind, the role of meditation and prayer, and the ethical implications of accessing and altering mental states.
- The stigma and discrimination associated with mental health issues, which may deter people from seeking professional help, disclosing their mental condition, or participating in research or treatment involving neurotechnology.<sup>35</sup>
- The lack of awareness and education about the benefits and risks of neurotechnology, which may affect the informed consent, privacy preferences, and data protection of the users and participants of such technology.
- The gap between the legal and technological developments, which may create loopholes and challenges for the regulation and enforcement of mental privacy rights and obligations.

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<sup>34</sup> Bhargava, R., Kumar, N. & Gupta, A. *Indian Perspective on Psychotherapy: Cultural Issues*. *J Contemp Psychother* 47, 95–103 (2017). <https://doi.org/10.1007/s10879-016-9348-1>

<sup>35</sup> Yamila Lezcano LMHC, *The Role of Culture in Mental Health: Understanding diversity can help minorities overcome stigmas*, <https://www.psychologytoday.com/us/blog/becoming-resilient/202103/the-role-culture-in-mental-health>, Last visited 15 November, 2023

### **VIII. Conclusion**

This research paper delves into the evolving issue of mental privacy and its impact on the right to freedom of thought in the 21st century. It examines historical, legal, and ethical dimensions, focusing on challenges from rapid advancements in neurotechnology, digital monitoring, and AI. The paper asserts that mental privacy is crucial for freedom of thought, threatened by external intrusions and manipulations. It calls for a nuanced legal framework balancing innovation with individual rights. Key contributions include a comprehensive review of the right's evolution, implications of General Comment No. 22 on Article 18 ICCPR, a case study of *Salonen v. Finland*, and insights into India's unique context. It identifies the need for further research on technology's impact across cultures, ethical guidelines, civil society's role, and international cooperation. In conclusion, preserving mental privacy is essential to protect human dignity and autonomy in the digital age. This paper aims to inspire further research and action, emphasizing the significance of mental privacy for individuals, governments, researchers, and society.

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