



# 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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## Right to Privacy v. Freedom of Expression

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**“Privacy is not something that I’m merely entitled to, it’s an absolute prerequisite.”- Marlon Brando**

### 1. Introduction

In a democratic setup, rights are to coexist. However, in numerous situations, one right can interfere with another right of an individual and thus lead to a conflict. This is one of the most pressing conflicts that have arisen in modern times. The conflict between Right to Privacy and Freedom of Expression is one of the biggest constitutional conflicts in the country today. The said conflict arises between issues related to surveillance, media and publication, social media and digital communication, public protests and expression, and reputation and personal life.

**“Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom.”- Benjamin N. Cardozo**

The right to privacy protects the interests of an individual to preserve his/her private life, protect his/her dignity, to allow him/her to be independent and to have a shield on his/her reputation. On the other hand, the right of freedom of expression protects the interests of a citizen to freely express his/her views, and to disseminate and gather information through any medium of communication. The delicate balance of these two rights have become far more challenging to achieve with the advent of the digital era where information is disseminated within seconds through the medium of social media, news channels and various other platforms of mass communication.

Today, private conversations are often splashed on news sites and social networking sites within minutes; personal photographs are published online without the individual's consent; media carry out 'public trials' on a daily basis before the courts deliver their judgments in a case. The dangers of restricting free speech far outweigh those of allowing it to be exercised freely. The concern for constitutional law in India today is to how protect the individual's right to privacy while allowing free speech to run its full course.

Various landmark cases have been decided by the Supreme Court of India to determine the degree to which the right to privacy can be curtailed in order to protect freedom of expression. In all such cases, the Court has ruled that both privacy and free speech are not absolute and have to be balanced on the principles of the Constitution and the concept of constitutional morality. This balance is required to be made with human dignity and the larger interest of the public at large.

This article examines the conflict between the right to privacy and freedom of expression in India, using constitutional provisions, landmark cases, current examples, and judicial principles.

## **2. Constitutional Framework**

The Indian Constitution guarantees both liberty and democratic freedom. While the Constitution does not explicitly mention the "right to privacy," the judiciary has interpreted it as part of Article 21, which assures the right to life and personal liberty.<sup>1</sup> Freedom of speech and expression is explicitly guaranteed under Article 19(1) (a) of the Constitution.<sup>2</sup>

### **❖ Right to Privacy under Article 21**

**“The right to be let alone is indeed the beginning of all freedoms.”- Justice William O. Douglas**

Article 21 states: -

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

At first, Article 21 had a narrow interpretation. Over time, the Supreme Court broadened its meaning to include dignity, autonomy, reputation, and privacy. Privacy is now seen as vital for the growth of individual personality and liberty.

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<sup>1</sup> INDIA CONST. Art. 21.

<sup>2</sup> INDIA CONST. Art. 19, cl. 1(a).

Privacy includes-

- Bodily privacy
- Informational privacy
- Decisional autonomy
- Sexual and reproductive choices
- Protection against surveillance
- Confidentiality of personal data

In modern society, privacy is closely linked with technology. Mobile phones, online banking, social media platforms, facial recognition systems, and artificial intelligence constantly gather personal information. As a result, protecting privacy is crucial for maintaining human dignity.

❖ **Freedom of Speech and Expression under Article 19(1)(a)**

Article 19(1) (a) guarantees freedom of speech and expression to all citizens. This right includes-

- Freedom of press
- Freedom of artistic expression
- Right to criticize the government
- Right to access information
- Freedom of online speech
- Political expression and dissent

Freedom of expression is essential for democracy because citizens cannot engage effectively in governance without the ability to speak freely.

**If liberty means anything at all, it means the right to tell people what they do not want to hear. – George Orwell**

However, Article 19(2)<sup>3</sup> allows for reasonable restrictions in the interests of-

- Public order
- Decency and morality
- Defamation
- Security of the State
- Sovereignty and integrity of India
- Friendly relations with foreign states

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<sup>3</sup> INDIA CONST. art. 19, cl.2.

Thus, free speech is not absolute and may be limited to protect other constitutional values, including privacy and reputation.

### **3. Evolution of Privacy Jurisprudence in India**

#### **❖ Early Judicial Hesitation**

Courts in India originally were hesitant to protect the right to privacy.

In *M.P. Sharma v. Satish Chandra*, the Supreme Court noted that the Indian Constitution did not explicitly mention a right to privacy.<sup>4</sup> Following this, in *Kharak Singh v. State of Uttar Pradesh*, the majority refused to extend privacy protections to individuals from police spying.<sup>5</sup> However, Justice Subba Rao wrote in dissent that privacy was necessary for the guaranteed right to liberty: “stealing of man’s privacy is the trespass into his woman’s chamber.”

While the majority did not recognize privacy rights, the dissent laid the groundwork for how the constitution would be read later on.

#### **❖ Gradual Recognition of Privacy**

In *Govind v. State of Madhya Pradesh*, the Supreme Court of India went on to hold that it was within the parameters of Article 21 of the Constitution that one’s right to privacy could be protected.<sup>6</sup> The Court also iterated the fact that right to privacy though necessary for the enjoyment of the said right to life and liberty, is not an absolute right.

This decision laid the groundwork for privacy law in India.

### **4. Justice K.S. Puttaswamy (Retd.) v. Union of India: A Historic Transformation**

The constitutional position changed completely in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.<sup>7</sup> A nine judge bench of the Supreme Court held that privacy is a fundamental right protected under Articles 14, 19, and 21 of the constitution.

The Court stated that privacy is connected with:

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<sup>4</sup> *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

<sup>5</sup> *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

<sup>6</sup> *Govind v. State of Madhya Pradesh*, (1975) 2 S.C.C. 148 (India).

<sup>7</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

- Human dignity
- Individual autonomy
- Personal liberty
- Freedom of choice

This also led to the Court recognizing the concept of “**informational privacy**” which would protect an individual’s personal data from being misused by corporations as well as government in the digital era.

The decision also highlighted the importance of the growing concept of ‘informational privacy’ in the wake of increasing digitalization and the growing need to safeguard sensitive personal information that is required to be stored on servers located in different parts of the country and abroad.

The case also highlighted how mobile applications were tracking location of users, storing contacts, collecting facial information and even history of browsing by users without their knowledge and consent. The decision laid down that it was for the citizens to protect their information and not the governments.

## **5. Importance of Freedom of Expression in Democracy**

Freedom of expression is essential because democracy relies on criticism, debate, and accountability. In *Romesh Thappar v. State of Madras*, the Supreme Court stated that freedom of speech and expression is the foundation of all democratic organizations.<sup>8</sup> Without free speech:

- Corruption cannot be exposed
- Governments cannot be criticized
- Citizens cannot express dissent
- Journalists cannot investigate wrongdoing.

Therefore, courts generally interpret free speech broadly.

### **❖ Digital Expression and the Internet**

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<sup>8</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

The internet has changed freedom of expression. Today, social media allows ordinary people to share opinions publicly. However, online speech also brings challenges like hate speech, misinformation, cyber bullying, and privacy violations.

A significant event occurred in **Shreya Singhal v. Union of India**, where the Supreme Court cancelled Section 66A of the Information Technology Act, 2000.<sup>9</sup> **Section 66A made “offensive” online speech a crime using vague language.** The Court stated that vague restrictions create a “**chilling effect**” on free speech because citizens become afraid to express their opinions online.

The ruling protected digital expression and enhanced internet freedom in India. A practical example arose when students and activists were arrested simply for social media posts criticizing public authorities. The ruling ensured that democratic criticism on digital platforms remains safe.

## 6. Conflict between Privacy and Freedom of Expression

Both rights are important, but conflicts often occur.

### ❖ Media Trials

One clear example is “media trials.” Television channels often reveal:

- Personal messages
- Medical records
- Family disputes
- Private videos
- Investigation details

This raises serious privacy concerns. A major instance was the media coverage after actor **Sushant Singh Rajput's death**. News channels frequently aired private WhatsApp chats, mental health discussions, and family matters before the investigation or trial was complete. This incident sparked a national debate about:

- Media ethics
- Trial by media
- Mental health privacy
- Freedom of the press

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<sup>9</sup> *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

While media organizations claimed that the public had a right to know, critics argued that excessive disclosure undermined dignity and privacy.

#### ❖ **Celebrity Privacy**

Celebrities often face invasions of privacy. The paparazzi culture, unauthorized photographs, and the publication of personal relationships blur the line between public interest and curiosity. The main constitutional question is-

- Does public popularity eliminate personal privacy?

Indian courts have made it clear that even public figures have privacy rights, though the level of scrutiny allowed might be higher.

#### ❖ **Social Media and Privacy Violations**

Social media has significantly increased privacy violations. Examples include:

- Leaking private photographs
- Revenge pornography
- Doxxing
- Cyberstalking
- Viral circulation of personal videos
- Fake accounts and impersonation

In many cases, victims face emotional trauma, social humiliation, and damage to their reputation. For instance, unauthorized sharing of altered photographs of women online often leads to mental harassment and social stigma. These incidents demonstrate that unchecked expression can directly harm dignity and personal freedom.

## **7. Landmark Cases Balancing Privacy and Free Speech**

### ➤ **R. Rajagopal v. State of Tamil Nadu**

In *R. Rajagopal v. State of Tamil Nadu*, known as the “Auto Shankar case,” the Supreme Court recognized both privacy and press freedom.<sup>10</sup>

The Court held that the press cannot publish unauthorized details of a person’s private life without consent, unless the information is part of public records.

This judgment established an important principle:

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<sup>10</sup> *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 S.C.C. 632 (India).

**Public interest justifies disclosure, but mere curiosity does not.**

➤ **People's Union for Civil Liberties v. Union of India**

In PUCL v. Union of India, the Supreme Court looked at telephone tapping and surveillance.<sup>11</sup>

The Court held that unauthorized telephone tapping violates the right to privacy. It emphasized the need for safeguards against misuse of surveillance powers.

This judgment remains highly relevant today because digital surveillance technologies have become more common.

➤ **Subramanian Swamy v. Union of India**

In Subramanian Swamy v. Union of India, the Supreme Court upheld laws on criminal defamation.<sup>12</sup>

The Court noted that reputation is a vital part of Article 21 and deserves protection under the Constitution. Therefore, free speech may be limited to protect dignity and reputation.

This judgment shows that constitutional rights must coexist rather than undermine one another.

## **8. Public Interest vs. Public Curiosity**

One of the most important distinctions made by courts is between public interest and public curiosity. Public interest supports democratic accountability and social welfare.

For example-

- Exposing corruption by a minister
- Revealing misuse of public funds
- Reporting human rights violations

These disclosures strengthen democracy. Public curiosity, on the other hand, only feeds sensationalism or gossip.

For example-

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<sup>11</sup> *People's Union for Civil Liberties v. Union of India*, (1997) 1 S.C.C. 301 (India).

<sup>12</sup> *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

- Publishing private medical reports of a celebrity
- Disclosing personal relationships unrelated to public duties
- Broadcasting private family disputes for entertainment

Courts generally protect expression that serves the public interest while limiting disclosures driven solely by sensationalism.

## **9. Privacy in the Age of Artificial Intelligence**

Artificial intelligence has sparked a whole new set of constitutional questions. Today's AI tools scoop up everything—from your face in a crowd, the sound of your voice, the sites you visit, how you move, even the way you behave online. And with all that data floating around, the risks keep getting bigger- mass surveillance, profiling, manipulation, and straight-up data leaks. Think about those facial recognition cameras watching people in public places, often without anyone's permission. Or deepfake videos-AI can fake someone's face and voice, messing with reputations and privacy in seconds.

India's rapid digital transformation has significantly increased concerns regarding data privacy and surveillance. Government initiatives such as aadhaar linkage, digital governance systems, facial recognition technologies, and online data collection by private corporations have intensified debates regarding informational privacy. According to the report of the Committee of Experts under the Chairmanship of Justice B.N. Srikrishna, protection of personal data is essential to preserve individual autonomy, dignity, and constitutional freedom in the digital era.<sup>13</sup>

**So, how do you protect privacy and still keep democracy alive and kicking?** Modern constitutional law has to find a way to tackle tech threats without shutting down free expression.

## **10. A Balanced Approach to Privacy and Free Speech**

It's not about picking privacy over free speech, or the other way around. There's got to be a middle path. When courts look at these issues, they need to think through a bunch of things-

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<sup>13</sup> COMM. OF EXPERTS UNDER THE CHAIRMANSHIP OF JUSTICE B.N. SRIKRISHNA, MINISTRY OF ELECS. & INFO. TECH., A FREE AND FAIR DIGITAL ECONOMY: PROTECTING PRIVACY, EMPOWERING INDIANS 1-10 (2018).

what kind of information is involved, did the person agree to share it, is there a public interest, how much harm does publicity cause, is any restriction fair and necessary, do media play by ethical rules, and is there a real democratic need?

That's where proportionality comes in—it keeps everything balanced. If you're going to restrict someone's rights, you can't go overboard. Restrictions should just do what's needed for clear, constitutional reasons—not any more than that.

As legal scholar Gautam Bhatia observes, constitutional rights in democratic societies function through balancing rather than absolutism.<sup>14</sup> Therefore, courts must adopt a case-by-case approach based on proportionality, public interest, dignity, and democratic necessity.

**“Constitutional rights cannot exist in isolation; they survive through balance and mutual respect.”**

## **11. Conclusion**

The fight between privacy and free expression has become one of India's toughest constitutional battles. Privacy safeguards dignity, control over your life, and your personal freedom. On the other hand, the right to speak your mind protects democracy, ensures accountability, and keeps public debates alive.

But in a world where social media and websites let private details spread in seconds, holding the line between these rights gets harder every day. This constitutional balance has been significantly shaped through landmark judgements such as Justice K.S. Puttaswamy v. Union of India. But laws alone can't do the job. Responsible reporting, ethical behaviour online, solid data protection, and making sure people know their rights all matter just as much.

Free speech keeps democracy afloat, but it loses its meaning if it tramples on dignity and privacy. Really, constitutional values push us towards letting these rights live together, not battle it out. A true democracy is a place where people speak openly, but still get to live with dignity, autonomy, and peace of mind.

## **12. References**

### **❖ Constitutional Provisions**

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<sup>14</sup> GAUTAM BHATIA, OFFEND, SHOCK, OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION 45-52 (Oxford Univ. Press 2016).

- 1) INDIA CONST. art. 19, cl. 1(a).
- 2) INDIA CONST. art. 19, cl.2.
- 3) INDIA CONST. art. 21.

❖ **Cases**

- 1) *Govind v. State of Madhya Pradesh*, (1975) 2 S.C.C. 148 (India).
- 2) *Justice .S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).
- 3) *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.
- 4) *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.
- 5) *People's Union for Civil Liberties v. Union of India*, (1997) 1 S.C.C. 301 (India).
- 6) *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 S.C.C. 632 (India).
- 7) *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.
- 8) *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).
- 9) *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

❖ **Books**

- 1) GAUTAM BHATIA, OFFEND, SHOCK, OR DISTURB: *FREE SPEECH UNDER THE INDIAN CONSTITUTION* (Oxford Univ. Press 2016).

❖ **Journal Articles**

- 1) Samuel D. Warren Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

❖ **Government Reports**

- 2) COMM. OF EXPERTS UNDER THE CHAIRMANSHIP OF JUSTICE B.N. SRIKRISHNA, MINISTRY OF ELECS. & INFO. TECH., *A FREE AND FAIR DIGITAL ECONOMY: PROTECTING PRIVACY, EMPOWERING INDIANS* (2018).