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“THE EVOLUTION OF THE RIGHT TO PRIVACY”

~by *Paiyyavula Ramya*

ABSTRACT:

This paper traces the legal and historical journey of the Right to Privacy in India, showing how it evolved from an unmentioned concept into a recognized fundamental right. While ancient Indian texts like the Vedas and the Artha Shastra respected personal space and the privacy of the home, the framers of the modern Indian Constitution intentionally left privacy out of the document, fearing it would hinder police investigations. For over six decades, the Indian Supreme Court maintained a strict stance, repeatedly ruling that privacy was not a basic constitutional right.

This paper examines how the judiciary slowly changed its perspective case by case as society modernized, culminating in the landmark 2017 Puttaswamy judgment. In a unanimous ruling, nine judges declared privacy an essential part of the Right to Life under Article 21 and introduced a "triple test" to limit state interference. Finally, the paper discusses current digital challenges, such as large-scale biometric data collection and the exceptions within the new Digital Personal Data Protection Act of 2023. It concludes that protecting a citizen's personal bubble is crucial to preserving individual autonomy and maintaining a healthy democracy.

KEYWORDS:

Right to Privacy, Puttaswamy Judgment, Article 21, Constitutional History, Data Protection, Digital Age

INTRODUCTION:

The Right to privacy¹ is not just a fancy legal term, it is the feeling that every person has an inner world that should not be messed without their permission, it is also like a right to be let alone. While it sounds basic, this Right is a huge part of what makes us human and allows us

¹ INDIA CONST. art. 21.

to live with dignity. In India, this Right has been a topic of debate for a very long time, moving from ancient traditions to the centre of modern law.

For a long time, India did not have a specific law like right to privacy. The people who wrote the Constitution discussed it, but decided to leave it out because they were worried it might make it too hard for the police to do their jobs. However, over the last 70 years, things have changed significantly. Because of new technologies like the internet and computers, and because of how the world views human rights, the way we view privacy in India has evolved.

The main point of this paper is to show that the Right to privacy in India has gone through an incredible journey. It started as something that was not even mentioned in the Constitution and was often rejected by the courts. However, over the course of decades, as judges reconsidered the law under the pressure of the digital age, it was finally recognised as a fundamental right in 2017. This journey shows how the law can grow to protect people as the world changes.

This paper will start by looking back at ancient India. Even though they did not use the word privacy as we do today, ancient Indian texts such as the Dharma Shastras and the Artha shastra contained rules governing the respect for a person's home and personal life. Next, it will examine why the framers of the Indian Constitution in the 1940's chose not to include privacy as a basic right, even though some leaders strongly supported it. The paper will then walk through the long history of the Supreme Court's long history. For many years, the courts said privacy was not a right. We will see how they slowly changed their minds, case by case, until they reached a tipping point. Then it will dive deep into the famous *Puttaswamy case*,² in which nine judges unanimously held that privacy is a fundamental part of the Right to life. Finally, it will look at what this Right means today. With initiatives such as Aadhaar and new data protection laws, we will explore how India is balancing the government's needs with its citizens' personal freedoms. By the end, it will be clear that privacy in India is no longer just a luxury but it is a core part of being a free person in a modern democracy.

BACKGROUND:

Privacy is one of those things that everyone feels they have, but it is actually quite hard to put into a single sentence. If one looks up the Oxford Dictionary,³ it basically describes it as staying

² *Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors.*, (2017) 10 SCC 1.

³ *Privacy*, OXFORD ENGLISH DICTIONARY (online ed. 2026), <https://www.oed.com>.

out of the public eye or being in a state of seclusion. The Cambridge⁴ dictionary makes it even simpler; it is just your Right to keep your personal business and relationships a secret.

Privacy has 2 sides to it, the relational and informational side. The Relational side, which includes territorial privacy (like Right to have a home where nobody can barge in) and bodily privacy (Right not to be touched or searched without a justified reason). The Informational side, it is about who has data, who is tracking clicks, and who knows secrets.

privacy is a vital civil liberty because it protects our dignity as human beings. However, it is important to remember that privacy is not absolute. One will not get a total shield from the law. It always has to be balanced against other important things, like the government's need to stop a crime or protect the country from a terrorist attack. The whole debate in Indian law has been about where to draw that line.

HISTORICAL AND CULTURAL BACKGROUND IN INDIA:

In India, the idea of privacy dates back thousands of years to texts such as the Dharma shastras, the Upanishads, and the Vedas. Ancient texts like the Hitopadesha explicitly stated that certain matters, such as family affairs, sex, and religious worship, were meant to be kept private. There was even a well-known saying back then, "Sarvas Swe Swe Grihe Raja," which essentially means that every man is a king in his own home. Even Kautilya's Artha shastra, written around 300 B.C., included very specific rules to make sure that when ministers met for consultations, their discussions remained private.

As India entered the colonial era, the concept of privacy began to appear in early legal documents, often framed as the idea that a person's home should be an inviolable asylum. This was seen in the Constitution of India Bill of 1895, the Commonwealth of India Bill of 1925,⁵ and later in the Nehru Report of 1928,⁶ all of which sought to protect people from having their homes searched without proper legal process.

When the time came to write the modern Indian Constitution between 1946 and 1949, there was a major debate over whether to include privacy as a fundamental right. Some of the most famous leaders, such as Dr B.R. Ambedkar, K.M. Munshi, and Harman Singh, were strongly

⁴ *Privacy*, CAMBRIDGE DICTIONARY (online ed. 2026), <https://dictionary.cambridge.org>.

⁵ https://www.constitutionofindia.net/historical_constitutions/the_constitution_of_india_bill_unknown_1895_1st%20January%201895?paragraph_number=18#CIB.18

⁶ Nehru Report. (1928) 1st January, NR 4.

in favour of it. In fact, Ambedkar's initial draft included a right to be secure in one's home and papers against unreasonable searches and seizures.⁷

However, there was also a lot of pushbacks from members like B.N. Rau and A.K. Ayyar argued that if private letters and correspondence were protected too much, it would be a disaster for court cases that need those documents as evidence. Rau was mostly worried that a Right to privacy would make it too difficult for the police to investigate crimes and do their jobs.

Even though several members tried to save the idea, like Somnath Lahiri, who proposed protecting private mail in 1947, and Kazi Syed Karimuddin, who pushed for a right against unreasonable searches in 1948, the Assembly could not reach an agreement. Because of these concerns about police power and legal evidence, the Right to privacy was ultimately left out of the final list of fundamental rights in the original Constitution.

LEGAL FRAMEWORK:

Privacy in India is woven into several parts of the Constitution and specific acts passed by Parliament. The most important place it lives is Article 21,⁸ which covers the Right to life and personal liberty. The logic here is simple, if a person is being watched all the time or have no personal space, then they are not truly living a free or dignified life. However, it is also connected to Article 14⁹ (the Right to be treated equally) and Article 19¹⁰ (the freedom to speak, move, and join groups). There is even a special protection in Article 20(3)¹¹ that covers mental privacy, under which no one can force you to incriminate yourself or delve into your thoughts without your permission.

Outside of the Constitution, we have statutory laws, which are specific rules for different situations. For instance, the *Indian Telegraph Act*¹² sets the ground rules for when the government can listen to phone calls. Then there is the *Information Technology (IT) Act*¹³ of 2000, which was designed to address the digital world things like stopping online stalkers and protecting people from having their private photos shared without consent. More recently, the

⁷ https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-03#7.66.11

⁸ INDIA CONST. art. 21.

⁹ INDIA CONST. art. 14.

¹⁰ INDIA CONST. art. 19

¹¹ INDIA CONST. art. 20, cl. 3.

¹² Indian Telegraph Act, 1885, No. 13 of 1885.

¹³ Information Technology Act, 2000, No. 21 of 2000.

*Aadhaar Act*¹⁴ was passed to govern how the government collects fingerprints and iris scans to ensure welfare benefits go to the right people.

Because privacy is so important, the Supreme Court in the *Puttaswamy case* said the government cannot just take it away whenever they feel like it and created a triple test that the state must pass before it can interfere with your privacy:

1. Legal Backing: There must be an actual, written law that allows them to do it; they cannot just make it up as they go.
2. A Real Need: They must have a valid goal, such as keeping the country safe or ensuring that food subsidies reach people experiencing poverty.
3. Do not Overdo It (Proportionality): This is the most important part. Even if they have a law and a good reason, they must use the least intrusive means possible to get the job done. They should not use a sledgehammer when a smaller tool would suffice.

Essentially, the court wants to make sure that any time the government peeks into any citizen's life, it is for a necessary reason and done in a way that respects your dignity as much as possible.

CASE LAWS:

Since the people who wrote the Constitution did not clearly include a Right to privacy, the task fell to the judges of the Supreme Court to determine whether it existed. For over sixty years, the court went back and forth, slowly changing its mind as the world became more modern.

At first, the courts were very strict. In the 1954 case of *M.P. Sharma v. Satish Chandra*,¹⁵ the police searched several offices of the Dalmia Group in search of evidence of fraud. The court ruled that the government had every Right to search and seize documents because the Constitution did not specifically protect privacy, so the state's power to catch criminals was more important than an individual's personal space. A decade later, in *Kharak Singh v. State of U.P.*,¹⁶ the court examined a man who was constantly under police surveillance. The majority of judges still insisted that privacy was not a fundamental right. However, they did strike down night visits where police would barge into his home to check on him, saying this was a violation

¹⁴ Aadhaar Act, 2016, No. 18 of 2016.

¹⁵ AIR 1954 SC 300.

¹⁶ AIR 1963 SC 1295.

of his personal liberty. A very important part of this case was Justice Subba Rao's dissent, which argued that privacy is a vital part of being a free person.

By the mid-1970s, the court's attitude began to shift. In *Govind v. State of M.P.*,¹⁷ the judges acknowledged that privacy is of great importance to human dignity. They said that while it might not be written in plain ink in the Constitution, it emanates out of other rights like freedom of speech and movement. They decided that privacy should be protected on a case-by-case basis, though it still had to be balanced against the government's needs. During the dark days of the emergency, the *ADM Jabalpur v. Shivakant Shukla*¹⁸ case happened. While the majority of the court failed to protect rights during this time, Justice Khanna famously observed that the Right to life and liberty flows from common sense and old laws, not just from the Constitution itself. Shortly after, the *Maneka Gandhi v. Union of India*¹⁹ changed everything by ruling that, any law depriving a person of liberty must be "just, fair, and reasonable". This opened the door wide for privacy to be seen as a basic requirement for a fair life.

As India moved into the 90s, the court started applying privacy to specific parts of life. In *R. Rajagopal v. State of Tamil Nadu*²⁰ (1995), also known as the auto Shankar case, the court ruled that everyone has a right to keep their family life, marriage, and motherhood private. People cannot publish stories about these personal things without permission. This case of *PUCCL v. Union of India*,²¹ was about phone tapping. The court declared that a telephone conversation is a private matter and that the government cannot listen in whenever they want without following strict rules. In *District Registrar v. Canara Bank*,²² the court confirmed that privacy is tied to the person, not just a physical place like a house. In *Selvi v state of Karnataka*,²³ the court ruled that using lie detectors or truth serums without a person's consent was a violation of their rights.

All these years of small steps led to the massive 2017 case, Justice *K.S. Puttaswamy v. Union of India*.²⁴ A group of nine judges met to settle the debate once and for all. In a rare unanimous decision, they ruled that privacy is a fundamental right. The court explained that one cannot truly have freedom of speech or a right to life without privacy and also created the triple test,

¹⁷ AIR 1976 SC 1207.

¹⁸ AIR 1975 SC 1378.

¹⁹ AIR 1978 AIR 597.

²⁰ AIR 1995 SC 264.

²¹ AIR 1997 SC 568.

²² AIR 2004 SC 6350.

²³ AIR 2010 SC 1974.

²⁴ AIR 2014 SC 2524.

which means the government can only peek into your life if there is a clear law, a real need, and it is done in a way that is not excessive.

WHEN CAN A STATE RESTRICT THE RIGHT OF PRIVACY:

Even though privacy is a fundamental right, it is not an absolute shield that can never be breached. The Puttaswamy ruling made it clear that while this Right is very important, it is not absolute and must be balanced with the needs of the whole community. For the government to legally step into your private life, it must follow three main rules.

First, there must be a written law that gives the state clear authority to act. Second, they must have a valid reason, like keeping the country safe from a terrorist attack or making sure that welfare benefits actually reach the poor. Third, their actions must be proportionate, meaning they should do only what is strictly necessary to achieve their goal and avoid overstepping the intrusion.

The government can generally restrict privacy for several reasons, such as national security, crime prevention, or public health protection. Sometimes privacy is limited to protect the rights of others, such as when one person's Right to keep a secret clash with another person's Right to stay safe from a life-threatening disease.

Specific laws in India give the state these powers, such as the Telegraph Act, which allows phone calls to be monitored during public emergencies. The Information Technology Act also allows the government to monitor or block digital data when necessary to protect the nation's security. These rules are very similar to European law,²⁵ which holds that the state can only interfere if it is necessary in a democratic society and that any interference must follow a strict legal process. In the end, the law seeks a fair balance that allows people to have their own private space while the government retains the power to keep everyone safe.

IMPORTANCE OF THIS RIGHT:

At its heart, privacy is about human dignity. It gives people the personal bubble they need to develop their own unique personality. When people have privacy, they have the freedom to try new things and make their own choices. Privacy is also vital for mental well-being. Everyone

²⁵ Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1.

needs a timeout from the world. Alan Westin, a famous expert on this, pointed out four key reasons we need this space:²⁶

1. Personal Autonomy: The space to grow as an individual.
2. Emotional Release: A safe place to relax, or even express sadness or anger without being ridiculed.
3. Self-Evaluation: Quiet time to process what is happening in our lives and make decisions.
4. Limited Communication: The ability to share secrets with only the people we trust, like our family or close friends.

There is a direct link between privacy and freedom of speech. If someone is always watching or listening, people will naturally start to self-censor. One might stop saying what they really think or avoid looking up certain topics online because they are afraid of how it might look to the government or a boss. This is a chilling effect. Surveillance makes people act more like conformists where everyone starts acting the same way because they are afraid to be different. In the modern world, we are more vulnerable than ever. In the past, someone had to follow you physically but now, one's phone, bank, and internet history are enough. Companies and governments can take tiny fragments of citizens data and put them together to create a detailed portrait of their life that they never agreed to share. With technologies like CCTV, Aadhaar, and biometrics, we are entering a surveillance society in which almost everything we do is tracked.

Finally, a healthy democracy cannot survive without privacy. If the state knows everything about its citizens, it can easily target people who disagree with it (dissent). When people feel they are being monitored, they often withdraw from participating in politics because they do not feel safe. Privacy is the precondition for every other Right we have, without privacy, one cannot truly have liberty or equality.

GLOBAL CONTEXT AND COMPARISON WITH INDIA:

The modern idea of privacy as a legal right did not just appear out of nowhere, it has a long global history that varies from one country to another. The real spark for modern laws was a

²⁶ ALAN F. WESTIN, PRIVACY AND FREEDOM 7 (1967).

famous 1890 article in the US by Warren and Brandeis.²⁷ On a global level, the first time this was recognised was in 1948, when the United Nations included it in the Universal Declaration of Human Rights (UDHR).²⁸ Shortly after that, in 1950, Europe took a major step by adopting Article 8 of the European Convention on Human Rights,²⁹ which protects a person's private life, home, and family.

Europe has consistently been the leader in making strict privacy laws. They moved from a general 1995 Directive to the very famous GDPR in 2018,³⁰ which is now seen as the gold standard for data protection worldwide.

In the United States, things are handled a bit differently because the Constitution does not actually have the word privacy in it. Instead, judges have had to find privacy by looking to other rights, such as the First Amendment (freedom of speech), the Fourth Amendment (protection against searches), and the Fourteenth Amendment (personal liberty). A famous court case in 1928, *Olmstead v. US*,³¹ held that wiretapping was not a violation of privacy. However, years later, the *Katz case*³² changed the rule, saying the law should protect what a person reasonably expects to be private.

When we compare India to the rest of the world, we can see a few big differences. First, India was quite late to include privacy as a fundamental right, while Europe had these rights in the 1950s and laws in the 70s, India only officially accepted it in 2017. Second, the way the laws are made is different. In India the courts have had to decide cases one at a time through case-by-case development. In contrast, the EU created massive omnibus laws like the GDPR that cover everything at once.

Another big gap is how these laws are enforced. Most developed countries have had independent data commissioners for decades to oversee privacy. India is only just now setting up its own Data Protection Board as part of the new 2023 Digital Personal Data Protection Act.³³ However, there is one major similarity, almost every country, including India and those

²⁷ Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, in THE RIGHT TO PRIVACY 133 (Adam Carlyle Breckenridge ed., 1970).

²⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

²⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, 213 U.N.T.S. 221.

³⁰ GDPR, *supra* note 24.

³¹ *Olmstead v. United States*, 277 U.S. 438 (1928).

³² *Katz v. United States*, 389 U.S. 347 (1967).

³³ Digital Personal Data Protection Act, 2023, No. 22 of 2023.

in the EU, agrees that privacy is not absolute. Every system allows the government to peek into your life when strictly necessary, such as to catch criminals or protect national security.

ANALYSIS:

The Puttaswamy judgment was a massive watershed moment because it finally settled the long-standing debate over whether privacy is a basic right in India. It moved privacy from a confusing legal grey area to a fundamental right protected by the Constitution. This was important because it recognised privacy as the foundation for all other freedoms as one cannot truly have a free mind or free speech if they are always being watched.

There is a common myth that privacy is just a western or modern concept and that India is too social of a society to care about it. However, our history debunks this idea. Ancient Indian texts such as the Vedas and the Artha shastra show that respecting a person's home and private life has been part of Indian culture for thousands of years. Privacy is actually a natural right that belongs to every human being just because they are human, not a gift from the government.

Despite this landmark ruling, there are still huge tensions in how the government handles our data. The Aadhaar project is the best example of this, as many fear it could lead to a surveillance state where every action is tracked. The real danger today is not just one person knowing a secret about us but it is data aggregation. This happens when small fragments of info from one's bank, phone, and government records are combined to build a detailed portrait of who they are without they ever agreeing to it.

We also see a major gap between having a right on paper and actually enforcing it in real life. For instance, while we now have a Data Protection Act, it criticised the government for granting too many exemptions. This allows the state to skip getting your consent for things like national security or public order, which are terms that can be used very broadly.

Finally, as researcher Jan Holvast explains, privacy is not just a legal problem but it is a political one.³⁴ Because technology is everywhere, we are constantly leaving digital footprints. Governments often want to use this data to be efficient or to fight terrorism, and they frequently choose these goals over our personal freedom. Protecting privacy in India will ultimately

³⁴ Jan Holvast, *History of Privacy*, in THE HISTORY OF INFORMATION SECURITY: A COMPREHENSIVE HANDBOOK 737 (Karl de Leeuw & Jan Bergstra eds., 2007).

depend on political will and whether the government is actually willing to limit its own power to respect the dignity of its citizens.

REFORMS AND SUGGESTIONS:

While India now has the Digital Personal Data Protection Act (DPDPA) of 2023, it still has some gaps that need to be addressed. We should look to global standards, such as the European GDPR, to give individuals greater control over their own information. We need a Data Protection Board that is truly independent. Right now, there are concerns that the government has too much power over who gets appointed to the board, which might make it hard for them to rule against the state. A truly independent authority is a key part of any successful privacy system. Old laws like the Telegraph Act need to be updated to match modern standards. Any time the government wants to watch or listen to someone, it must have reasonable and a justified explanation. We have to make sure Aadhaar is used only for what it was meant for. The court has already warned that collecting so much data can lead to data aggregation, where fragments of your life are put together to create a detailed profile of you without your permission. We need strict rules to stop the government or private companies from using this data for tracking. The government should use tools like encryption and anonymity that allow people to use services without revealing every detail of their identity. We need to find a better way to balance the public's Right to know with a person's Right to keep their life private. Courts have to decide this on a case-by-case basis, ensuring that someone's personal secrets are not exposed unless there is a very strong reason that helps the whole community. Privacy cases should not take years to settle. We need to educate judges on these new digital issues and create faster ways for people to get their grievances heard through the new Data Protection Board.

CONCLUSION:

The story of the Right to privacy in India is an amazing journey that saw it go from being completely missing in the original Constitution to becoming one of our most important fundamental rights. This evolution really highlights how our understanding of human dignity and law has grown over time. It all began in ancient times, where old texts like the Dharma shastras and the Artha shastra taught that family matters, worship, and the home should be kept private. Even back then, Indian culture believed that every man is a king in his own house.

However, when the modern Constitution was being drafted between 1946 and 1949, the leaders faced a tough choice. While some members, like Dr Ambedkar, pushed hard for privacy, others feared it would make it too difficult for the government to investigate crimes. As a result, they decided not to name privacy as a specific right in the final document.

This set the stage for a long period of confusion, during which the courts had to figure out the Right on a case-by-case basis. Early rulings, such as *M.P. Sharma* in 1954 and *Kharak Singh* in 1963, took a very narrow view, holding that the Constitution did not protect privacy. However, the tide began to turn as we realised the right to life must include the Right to be let alone. This long judicial road finally reached its destination in 2017 with the famous *Puttaswamy* case, in which nine judges unanimously ruled that privacy is an essential part of the Right to life.

Today, privacy is recognised. The fight is not over. We still face major challenges, such as the massive collection of biometric data through Aadhaar and the growing threat of constant state surveillance. While we now have new laws like the Digital Personal Data Protection Act of 2023, many people worry they might give the government too many excuses to ignore our personal space. Ultimately, we must remember that privacy is the bedrock of a free and democratic society. If we lose our personal bubble, we lose our ability to think and act for ourselves, which is why we must proactively work hard to protect this Right.