

# Right to Privacy

## Introduction

The concept of privacy, often viewed as a fundamental human right, has undergone significant evolution in legal discourse, particularly within the context of the Indian Constitution. Privacy, in its broadest sense, pertains to the right of individuals to keep their personal affairs and information away from public scrutiny and governmental interference. This right, although not explicitly mentioned in the original text of the Constitution of India, has emerged as an important aspect of individual liberty and dignity.

## Evolution of the Right to Privacy

The journey of the right to privacy in India began with a hesitant acknowledgment and gradually progressed towards unequivocal affirmation. Initially, the Indian judiciary was reluctant to recognize privacy as a fundamental right. In **M.P. Sharma v. Satish Chandra (1954)** and **Kharak Singh v. State of Uttar Pradesh (1962)**, the Supreme Court dismissed the existence of a constitutional right to privacy. However, the seeds of change were sown in these early judgments, hinting at the necessity of privacy in a democratic society.

The landmark case that changed the trajectory was **Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)**. This nine-judge bench decision unequivocally held that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21 and the freedoms guaranteed under Part III of the Constitution. The judgement overruled the earlier decisions in M.P. Sharma and Kharak Singh to the extent they held that privacy is not a constitutionally protected right.

## Constitutional Provisions and Judicial Interpretation

The recognition of the right to privacy as a fundamental right under Article 21 of the Indian Constitution is rooted in the broader interpretation of the right to life and personal liberty. Article 21 states, "No person shall be deprived of his life or personal liberty except according to procedure established by law." The Supreme Court, through various judgments, has interpreted this provision to include the right to dignity, autonomy, and personal freedom, thus encompassing the right to privacy.

In **Gobind v. State of Madhya Pradesh (1975)**, the Court acknowledged that privacy deserves protection as a constitutional right but emphasised that it is not an absolute right and can be subject to reasonable restrictions. This principle was reiterated in subsequent cases like **R. Rajagopal v. State of Tamil Nadu (1994)**, where the Court held that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21.

The Justice K.S. Puttaswamy case further elaborated on the facets of privacy, categorising it into three broad aspects: personal privacy, informational privacy, and decisional privacy. The judgement emphasised that privacy includes the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation.

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### Legislative Framework

Post the Puttaswamy judgement, there has been a significant push towards enacting comprehensive data protection legislation in India. The **Personal Data Protection Bill, 2019** (now the **Digital Personal Data Protection Bill, 2022**) is a critical step in this direction. The Bill aims to protect individual privacy concerning personal data, ensuring that data is processed lawfully and transparently, with appropriate security measures.

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, under the Information Technology Act, 2000, also provide a framework for protecting personal data, mandating entities to implement reasonable security practices and procedures.

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### Scholarly Opinions

Scholars have widely discussed the right to privacy, emphasising its necessity in safeguarding human dignity and autonomy. Dr. B.R. Ambedkar, the principal architect of the Indian Constitution, envisioned a society where individual freedoms are respected and protected. Scholars like Abhinav Chandrachud argue that the recognition of privacy is essential in a modern democracy to ensure the protection of individuals against state surveillance and arbitrary intrusions.

### International Perspective

Internationally, the right to privacy is enshrined in various human rights instruments. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights protect individuals against arbitrary interference with their privacy. The European Union's General Data Protection Regulation (GDPR) sets a high standard for data protection and privacy, influencing privacy laws worldwide.

### Challenges and Future Directions

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Despite the judicial recognition and legislative efforts, the right to privacy in India faces several challenges. The rapid advancement of technology and the proliferation of digital platforms pose significant threats to privacy. Issues like unauthorised data collection, surveillance, and data breaches necessitate robust legal frameworks and effective enforcement mechanisms.

The balance between national security and individual privacy is another contentious area. The government's surveillance programs and data collection initiatives often clash with individual privacy rights, raising concerns about misuse and lack of accountability. The Puttaswamy judgement highlighted the need for a balanced approach, ensuring that any restriction on privacy must pass the tests of necessity, proportionality, and legitimacy.

#### **Conclusion**

The recognition of the right to privacy as a fundamental right marks a significant milestone in the constitutional jurisprudence of India. The judiciary has played an active role in affirming this right, ensuring that individual dignity, autonomy, and freedom are protected against arbitrary intrusions. The evolving legislative framework, coupled with robust judicial oversight, is essential in safeguarding privacy in the digital age.

