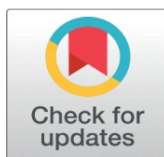
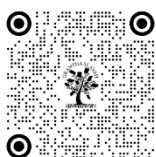


EVOLUTION OF THE RIGHT TO PRIVACY IN INDIA: CONSTITUTIONAL PERSPECTIVE AND JUDICIAL APPROACH

Dr. Anupam Kurlwal ¹, Shreyansh ²

¹ Associate Professor, MDU-CPAS, Gurugram, India

² Research Scholar, Faculty of Law, MDU, India



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ABSTRACT

India's journey toward recognizing the Right to Privacy is a remarkable constitutional achievement. Once entirely absent from the written Constitution and explicitly rejected by early courts as seen in cases like M.P. Sharma and Kharak Singh, privacy has now emerged as a cornerstone fundamental right. This paper lays down this profound transformation, driven significantly by judicial interpretation and activism. The paper explores how courts progressively reshaped the understanding of "life and personal liberty" under Article 21, culminating in the historic K.S. Puttaswamy verdict, which firmly anchored privacy within the Constitution as essential to human dignity, autonomy, and freedom. Beyond tracing this legal evolution, the paper delves into the philosophical bedrock of privacy. It examines its roots in natural rights theory and liberal constitutionalism, while also confronting the unique pressures of our digital age. Further, the paper analyses the pivotal Supreme Court rulings that built India's privacy jurisprudence and assess whether current laws, including the new Digital Personal Data Protection Act 2023, provide sufficient safeguards. Ultimately, the paper moves beyond diagnosis to propose concrete suggestions for strengthening the right to privacy for every individual in India.

Keywords: Privacy, Right to Privacy, Fundamental Right, Digital Privacy, Right to be Forgotten



1. INTRODUCTION

The Right to Privacy serves as a critical bastion protecting individual's dignity and autonomy in today's world.¹ Essentially, it protects the individual's prerogative to manage the access to their personal sphere encompassing life, information, choices, and physical spaces against undue interference from State, corporations, or even private individuals.² With the rapid technological progress and the rise of data-driven governance, the scope of privacy has expanded beyond physical seclusion to include critical dimensions such as informational privacy, decisional autonomy, and protection from digital surveillance. Despite its fundamental significance, privacy rights have followed a paradoxical trajectory in constitutional democracies like India and the United States, where the original Constitutions initially lacked explicit recognition of this right.³ This absence has necessitated significant judicial intervention to recognize, define, and expand the right to privacy through interpretation and precedent. The modern legal concept of 'privacy' traces its roots

¹ Gautam Bhatia(2014). *State surveillance and the right to privacy in India: A constitutional biography*. *National Law School of India Review*, 26, 127–147

² Sebastian, J., & Sen, A. (2020). *Unravelling the role of autonomy and consent in privacy*. *Indian Journal of Constitutional Law*, 9, 85–104

³ Saurabh Raj, Prateek Sikchi, et.al., *View of A Comparative Examination of Privacy Jurisprudence: India and the USA*, *Russian Law Journal*, (2023).

to Samuel D. Warren and Louis D. Brandeis, who first defined it in their ground breaking 1890 Harvard Law Review article, 'The Right to Privacy', which defined it as the 'right to be let alone'.⁴ This conceptualization laid the groundwork for future constitutional interpretations, even though the U.S. Constitution never directly referred to privacy as a right. Similarly, the Indian Constitution does not explicitly mention the right to privacy in its text. Both the countries had to rely heavily on judicial creativity to read privacy into existing constitutional guarantees, particularly those concerning liberty and dignity. Under the Indian Constitution, the right to privacy is rooted in the broader frame work of fundamental rights, particularly under Article 21. The right to privacy has been shaped by judicial interpretations responding to societal and technological changes. Privacy as a right encompasses personal autonomy, bodily integrity, and protection from unwarranted state or non-state intrusion, making it a cornerstone of democratic societies. The judiciary's role in this evolution has been indispensable. Constitutional courts have emerged as active agents in affirming privacy as a right, balancing it against competing interests such as national security, public morality, and digital innovation. In the absence of clear legislative directives, particularly concerning data protection and digital rights, courts have often had to fill the void by interpreting existing constitutional provisions liberally and purposively. This paper traces the judicial journey of the right to privacy from a constitutional perspective in India, analyzing key cases that have defined its scope and culminated in its recognition as a fundamental right. It also examines recent legislative developments and the ongoing challenges in balancing privacy with state interests.

2. CONCEPTUAL AND THEORETICAL ASPECT OF PRIVACY

Beyond its legal and constitutional evolution, the right to privacy is fundamentally grounded in philosophical doctrines of natural rights and liberal constitutionalism, which emphasize the inherent dignity, autonomy, and liberty of individuals against intrusive state power.⁵ These foundations have laid the intellectual groundwork for how courts and scholars conceptualize privacy across cultural and legal contexts.

2.1. NATURAL RIGHTS AND LIBERAL CONSTITUTIONALISM

Natural rights theory, dating back to philosophers like John Locke and Jean-Jacques Rousseau, postulates that individuals possess inalienable rights inherently as Human Beings.⁶ Among these are the rights to liberty, personal autonomy, and control over one's person and property. While early articulations did not explicitly mention privacy, the concept of inviolable personal space which is free from arbitrary interference of the state or other individuals was embedded within these frameworks. Similarly, building on this philosophical base, **liberal constitutionalism** emerged as a political and legal doctrine that sought to limit the powers of the state by institutionalizing rights through written constitutions, separation of powers, and independent judiciaries. Liberal constitutionalism, particularly in post-Enlightenment democracies, advanced these ideas by enshrining them into their legal structures.⁷ The development of written constitutions, separation of powers, and bill of rights frameworks facilitated the translation of philosophical ideals into judicially enforceable norms. Within this tradition, privacy has come to represent a safeguard not only against state surveillance and authoritarianism, but also as a necessary condition for individual flourishing and self-determination. It underpins the exercise of other freedoms such as speech, silence, expression, association, and conscience and is thus a cornerstone of democratic societies.⁸ The principles of liberal constitutionalism ensure that individual dignity remains at the center of constitutional interpretation. Courts, acting as guardians of rights of the individuals, have drawn upon these principles to interpret and expand the right to privacy in contexts that the original framers may never have anticipated.

⁴ Samuel D. Warren, Louis D. Brandeis, The Right to Privacy, Harvard Law Review, Vol. 4, No. 5 (1890).

⁵ Ralph F. Gaebler, "Is There a Natural Law Right to Privacy?" *Articles by Maurer Faculty* 45–62 (1992).

⁶ Locke, in particular, argued that in the "state of nature," humans are governed by natural law, which obliges everyone to respect the life, health, liberty, and possessions of others. Rousseau, through his social contract theory, connected natural rights to the legitimacy of social order, emphasizing that these rights form the foundation for just governance.

⁷ M. Zafirovski, "Modern democratic society and the Enlightenment", in *The Enlightenment and Its Effects on Modern Society* 33–78 (Springer, 2011).

⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, (Chandrachud, J.)

2.2. 'THE RIGHT TO BE LET ALONE'

The modern legal discourse on privacy was profoundly influenced by the ground breaking article, *The Right to Privacy*, published in the *Harvard Law Review*.⁹ Alarmed by the growing power of the press and new photographic technologies, they conceptualized privacy as '**the right to be let alone**'. This was a foundational idea that continues to influence judicial reasoning even today. Warren and Brandeis argued that common law, particularly in tort, must evolve to protect individuals from 'mental pain and distress' caused by the unauthorized dissemination of personal information. Though their focus was on **civil remedies**, the broader philosophical implication was clear that the law must adapt to safeguard individual dignity in a rapidly changing world. This article laid the groundwork for treating privacy as a **distinct legal interest**, separate from property or contractual rights, and laid the foundation for its eventual constitutional recognition. While the article was not grounded in constitutional law per se, its philosophical foundation laid the groundwork for future constitutional interpretations of privacy in the United States and elsewhere. Indeed, the U.S. courts, especially in *Griswold v. Connecticut*¹⁰ and *Roe v. Wade*¹¹, would later cite this work when framing privacy as a right.

2.3. THEORETICAL EVOLUTION FROM SECLUSION TO CONTROL

The 20th and 21st centuries witnessed a dramatic expansion of privacy's theoretical scope, driven by technological advancements and sociological insights. The theoretical understanding of privacy has undergone a fundamental shift, moving from a relatively narrow focus on physical seclusion to a complex, multi-dimensional concept centred on individual autonomy and sovereignty over private data and personal choices. In his influential book, Westin defined privacy as the "claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others."¹² He identified four states of privacy, each corresponding to a different facet of human behavior, *Solitude*, which is the most complete state of privacy, where an individual is free from observation, *Intimacy*, the privacy of personal relationships, such as those between family members or close friends, *Anonymity*, the ability to participate in society without being personally identified and *Reserve*, the control over what personal facts or feelings one chooses to reveal.¹³ This framework extended the notion of privacy beyond physical or spatial limits to include **psychological, social, and informational dimensions**. Over time, privacy has evolved into a **multi-dimensional legal and theoretical concept**. However, the digital era and pervasive surveillance technologies strain these theoretical constructs. Massive data aggregation, algorithmic profiling, and ubiquitous monitoring challenge the feasibility of traditional notions of control and anonymity.

3. CONSTITUTIONAL FRAMEWORK AND THE RIGHT TO PRIVACY IN INDIA

The Indian Constitution like its U.S. counterpart, did not explicitly guarantee a right to privacy. However, the Apex court, gradually carved out privacy as a fundamental right implicit in Article 21, which guarantees protection of life and personal liberty. For decades, privacy remained legally invisible and fragmented, treated as a peripheral concern rather than a standalone constitutional right.¹⁴ The judiciary's early approach to privacy was restrictive and inconsistent. However, the decisive turning point arrived with the *Puttaswamy* verdict, which explicitly affirmed the right to privacy as an intrinsic fundamental right in Article 21.¹⁵ The constitutional framework of Right to Privacy is as under.

3.1. ARTICLE 21: THE CORE OF PRIVACY JURISPRUDENCE

Article 21 lays down that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Initially the provision was interpreted narrowly but it was broadened substantially in *Maneka*

⁹ Supra note 4.

¹⁰ *Griswold v. Connecticut*, 381 U.S. 479.

¹¹ 410, U.S. 113

¹² Alan F. Westin, *Privacy and Freedom* (Atheneum, New York, 1967).

¹³ Ibid.

¹⁴ Sargam Thapa, "The Evolution of Right to Privacy in India" 10 International Journal of Humanities and Social Science Invention 53-58 (2021).

¹⁵ Supra note 8.

Gandhi case.¹⁶ In *Puttaswamy*, the Court confirmed that privacy is intrinsic to the right to life and personal liberty and is a necessary condition for the exercise of other rights. It was held that any state restriction on privacy must satisfy the tripartite test of legality, necessity, and proportionality. Thus, Article 21 became the constitutional foundation for privacy, deeply embedded in the principle of limited government and rule of law, the core tenets of Indian constitutionalism.

3.2. ARTICLE 14: EQUALITY AND NON-ARBITRARINESS

Article 14 mandates that there shall be equality before the law and provides protection against arbitrary state action. In the privacy context, it serves as a check against discriminatory or disproportionate state practices. For example, in the debate over the Aadhaar scheme, concerns arose about unequal and arbitrary profiling of individuals.¹⁷ The Supreme Court emphasized that any law affecting privacy must be non-discriminatory and adhere to the principle of reasonable classification.¹⁸ Article 14 in context of privacy rights ensures that the privacy-invasive measures that the states may impose in the name of security, law and order and other such important domains are not excessively invasive, arbitrary or discriminatory to certain individuals. The law curtailing privacy of an individual must pass the tests imposed by Article 14 as well.¹⁹

3.3. ARTICLE 19: FREEDOM OF EXPRESSION AND MOVEMENT

Article 19, especially clauses (1)(a) and (1)(d), guarantees freedoms of speech and movement. The meaningful practice of these freedoms hinges on privacy. For speech, expression to be genuine, individuals must first enjoy a sheltered space to cultivate beliefs without exposure or repercussion. Privacy provides this essential refuge, protecting the internal processes of thought, conscience, and intellectual exploration. Without this protection, individuals may self-censor nascent or controversial ideas, stifling the diversity of thought necessary for democratic discourse. It ensures that a citizen has right and ability to hold unpopular opinions, express identity, or engage in personal relationships. The exercise of these rights depends on the assurance that such choices will not be exposed to public scrutiny or state interference. In *Navtej Singh Johar*,²⁰ privacy was explicitly recognized as the basis for sexual orientation and autonomy. The court laid down that "the right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution."²¹ In *PUCL*,²² the decision restricted arbitrary phone tapping under Article 19(1)(a), recognizing that surveillance curtails free speech, the court laid down guidelines to ensure necessity and proportionality.

Similarly, the freedom to move freely encompasses more than mere locomotion, it includes the autonomy to choose where to go, whom to meet, and for what purpose. Privacy protects the choices underlying movement such as the decision to attend a political meeting, visit a place of worship, seek medical help, or meet intimate partners.²³ Constant tracking or surveillance of movement fundamentally undermines this autonomy, transforming free movement into monitored mobility.

Thus, both these rights compliment each other and none of them can be fully exercised in vacuum.

4. JUDICIAL APPROACH TO RIGHT TO PRIVACY IN INDIA

India's Constitutional Courts have played a crucial role in the recognition and expansion of rights surrounding the issue of privacy in India. The proactive stance taken by the courts during the interpretation of constitutional provisions to safeguard individual liberties has been the key in evolution of this right, which is not expressly mentioned in the Constitution. Through an expansive interpretation of Article 21's guarantee of life and personal liberty, the Indian

¹⁶ *Maneka Gandhi v. Union of India*, (1978) 2 SCR 621.

¹⁷ Raman J. Chima and Amber Sinha, "Aadhaar and Data Protection in India: A Step in the Right Direction, but Concerns Remain" (The Centre for Internet & Society, 2018).

¹⁸ *K.S. Puttaswamy v. Union of India* (II), (2019) 1 SCC 1.

¹⁹ Article 14 propounds two prong test for the constitutionality of a law, i.e. Test of manifest arbitrariness and Test of reasonable classification.

²⁰ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

²¹ *Ibid.*

²² *People's Union for Civil Liberties v. Union of India & ors.* AIR 1997 SC 568.

²³ Anant Khajuria, "Article 19 & 21 with respect to Right to Privacy" 1 *Jus Corpus Law Journal* (3)

judiciary has progressively recognized privacy as an intrinsic component of fundamental rights.²⁴ This jurisprudential evolution, advanced by landmark rulings, has systematically broadened the conceptual and practical scope of privacy protections.

4.1. EARLY JUDICIAL APPROACH

In the early years of India's constitutional history, the judiciary was reluctant to recognize the right of privacy as a fundamental right. In *M.P. Sharma* case, a decision of the eight-judge bench of the Apex Court, assessed the validity of search and seizure operations conducted under the Code of Criminal Procedure. The case arose from an investigation into fraudulent practices by the Dalmia Group, where search warrants were issued to seize documents. The petitioners argued that these actions violated their fundamental rights under Articles 19(1)(f)²⁵(now repealed) and Article 20(3) which deals with protection against self-incrimination. The Court stated that the Constitution did not include a fundamental right to privacy similar to the Fourth Amendment of the U.S. Constitution, it was held that search and seizure powers were necessary for social security and they are regulated by law. Further, the court in its decision said that there is no need to import privacy on to a different fundamental right via a strained constitutional construction²⁶. This decision set a precedent that privacy was not constitutionally protected, influencing subsequent judicial interpretations.

The issue of privacy resurfaced in *Kharak Singh* case, where the concept of privacy was recognised but it wasn't declared as a right. The case involved a challenge of the UP Police Regulations which permitted extensive surveillance, including domiciliary visits and shadowing of individuals suspected of criminal tendencies. Kharak Singh, accused of dacoity but released due to lack of evidence, argued that such surveillance violated his rights of freedom of movement and life and personal liberty under Articles 19(1)(d) and 21 respectively. The majority opinion, delivered by *Justice Ayyangar*, declared nighttime domiciliary visits unconstitutional as they infringed personal liberty under Article 21. However, the Court validated other surveillance measures and unequivocally held privacy lacked status as a guaranteed fundamental right under the Constitution.²⁷ Notably dissenting, Justice Subba Rao contended that privacy formed an indivisible component of Article 21's personal liberty rights, laying a foundation for future judicial reconsideration.²⁸

4.2. SHIFT IN JUDICIAL ATTITUDE

A significant shift in judicial attitude in regards to the interpretation of privacy rights occurred in *Govind case*, where the Supreme Court began to recognize the right to privacy as emanating from personal liberty. The Madhya Pradesh Police Regulations that allowed surveillance, including domiciliary visits, similar to those in *Kharak Singh* were challenged. The Court, led by Justice Mathew, acknowledged that privacy is a fundamental right derived from the right to life and personal liberty, but emphasized that it is not absolute and can be subject to reasonable restrictions in the interest of public safety and crime prevention. The regulations were upheld as they were deemed necessary for public interest, provided they were applied reasonably.²⁹ This decision marked a departure from earlier rulings by affirming privacy's constitutional status, albeit with qualifications, and set the stage for further judicial exploration.

The judiciary continued to refine the scope of privacy in subsequent cases. In *R. Rajgopal v. State of T.N.*, the Supreme Court addressed privacy in the context of freedom of the press, holding that public figures have a limited expectation of privacy compared to private individuals. The decision recognized the right as part of Article 21, protecting personal intimacies such as family and marriage.³⁰ Similarly, in *PUCL*³¹, the Court examined privacy concerns related to telephone tapping, emphasizing the need for procedural safeguards to prevent arbitrary state intrusion. These cases incrementally expanded the understanding of privacy addressing diverse contexts such as media, surveillance, and personal autonomy.

²⁴ Pamarthi Satyanarayana, "Privacy as a Fundamental Right: The Supreme Court's Perspective in India", in Dilipkumar A. Ode and others (eds.), *Innovative Recent Trends in Research (RED'SHINE Publication, 2021)*.

²⁵ Article 19(1)(f) dealt with Right to Property, it was repealed by Forty Fourth Amendment, 1978.

²⁶ *M.P. Sharma v. Satish Chandra* AIR 1954 SC 300

²⁷ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

²⁸ *Ibid.*

²⁹ *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378.

³⁰ *Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264.

³¹ *Supra* note 22.

4.3. THE LANDMARK PUTTASWAMY JUDGMENT

The definitive recognition of Right to Privacy came in *K.S. Puttaswamy*³², a landmark case prompted by challenges to the constitutional validity of the Aadhaar scheme, which involved collecting biometric and demographic data. A nine-judge bench, led by CJ J.S. Khehar, unanimously held that the right to privacy is a fundamental right, intrinsic to life and personal liberty under Article 21 and protected under Part III of the Constitution of India. The judgment overruled the decisions in *M.P. Sharma* as well as *Kharak Singh*, which had denied right's fundamental status. Justice Chandrachud, writing for himself and three other judges, emphasized that privacy is rooted in liberty and dignity, encompassing personal autonomy, bodily integrity, and informational privacy. He noted that privacy includes control over personal intimacies such as marriage, family, and sexual orientation, and overruled *ADM Jabalpur*³³ case for its stance on suspending rights during emergencies. Justice Chelameshwar highlighted privacy as essential for liberty, incorporating repose and intimate decisions, while Justice Bobde described it as a natural, inalienable right. The Court established a three-pronged test for any infringement of privacy, Any law infringing privacy shall be tested on, (a) legality, it must be based on law (b) Legitimacy, it must serve a legitimate state objective, and (c) proportionality, it must be rationally connected to the objective. This judgment marked a critical moment, aligning India's constitutional jurisprudence with global privacy standards.

4.4. POST-PUTTASWAMY DEVELOPMENTS

The *Puttaswamy* judgment has had profound implications, influencing both judicial and legislative landscapes³⁴. It has been cited in cases like *Navtej Johar v. Union of India*³⁵, which decriminalized consensual same-sex relations, and *Joseph Shine v. Union of India*³⁶, which struck down the adultery law, both reinforcing privacy's role in protecting personal autonomy. The Supreme Court's judicial activism was further demonstrated in its *Aadhaar verdict*, which upheld the scheme's constitutionality while rigorously applying privacy safeguards. To reconcile state interests with fundamental rights, the Court prohibited mandating Aadhaar linkages for bank accounts and mobile connections, establishing critical boundaries against data overreach. Additionally, the *Puttaswami* judgment prompted legislative action, notably the enactment of the personal data Act³⁷ which regulates the processing of personal data to safeguard privacy in the digital age. This law addresses concerns about data collection and surveillance, reflecting the judiciary's influence on policy-making.³⁸

However, challenges to the Right of Privacy in India still persist, particularly with the rise of digital technologies and state surveillance. In 2024, India has over 900 million internet users and is expected to cross 1 Billion by the early 2025.³⁹ This boost in internet penetration has created a bed rock for challenges surrounding data privacy of individuals especially women and children. The breach of data at the hands of corporations and unauthorised surveillance by big tech and state have become frequent and quite common. The absence of a comprehensive surveillance framework and concerns about data breaches underscore the need for robust safeguards to protect privacy rights.⁴⁰ These developments highlight the ongoing tussle between individual privacy and state interests, such as security of the state and public welfare.

³² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1

³³ *ADM Jabalpur v. Shivkant Shukla* AIR 1976 SC 1207

³⁴ Jagriti Vijay and Shiv Shankar Singh, "KS Puttaswamy Judgment After-effects: Moving Towards Transformative Constitutionalism" 4 *DME Law Journal* (2023).

³⁵ AIR 2018 SC 4321.

³⁶ AIR ONLINE 2018 SC 241.

³⁷ The Digital Personal Data Protection Act, 2023.

³⁸ Priya Bhardwaj and Vikram Singh, "Reforming Data Privacy in India: An Analysis of the Digital Personal Data Protection Act 2023" 8 *Journal of Technology and Privacy* 115 (2023).

³⁹ The Internet in India Report 2023 by IAMAI and Kantar.

⁴⁰ Mehab Qureshi, "The Evolution of Right to Privacy in India: A Look at the Past, Present & Future", *The Quint* (2021).

5. RIGHT TO BE FORGOTTEN: EXTENSION OF RIGHT TO PRIVACY

The Right to be Forgotten has emerged as a critical aspect of the broader Right to Privacy, particularly in the current digital age where personal data once made public can be permanently archived and endlessly replicated⁴¹. Essentially, the Right to be Forgotten refers to an person's right to have the **erasure or delisting** of personal information from online platforms, search engines, or databases when such data is **no longer relevant, necessary, or lawful to retain**. It entails a specific right to an individual for being able to remove his digital footprint, created by the use of internet about their choices, orientations, media reports and so on.⁴² The right has been recognised in *Google, Spain v. AEPD*, wherein the court affirmed individuals' right to have personal data deleted from search engines where such data is no longer relevant or after change in circumstances. However, it was also laid down that the exercise of this right is not absolute. The right can be denied if the publication is made in the free speech and expression and other legally correct obligations⁴³. Orissa HC in a judgment recognised Right to be Forgotten, the court while dealing with the leak of a sexual assault video laid down that every victim has a right to approach the appropriate forum and courts for removal of materials from the web which are injurious to their Right of dignity and reputation⁴⁴. Further, in *Jorawar Singh Mundy*, the Delhi HC directed several online platforms to remove the name of Petitioner, an American citizen of Indian origin. The HC order directed online legal databases to remove his name as he was acquitted from the case, but the showing of name in these databases were creating hurdles for him in getting jobs in US. The court also noted in its judgment that the issue involves a careful balancing of two rights, viz. Right to Privacy, Right to Information of the Public and maintenance of transparency⁴⁵. The DPDP Act⁴⁶ has provisions for data principals to request the erasure or correction of personal information or data, but it does not clearly define or codify the right. Moreover, enforcement remains weak due to the absence of an independent and empowered Data Protection Authority, and the absence of specific guidelines on delisting from search engines or judicial databases. Thus, in practice, the Right to be Forgotten seems to be an unenforceable aspiration, especially when requests are pitted against freedom of speech, archival obligations, or public interest.

6. CONCLUSION

In India, the evolution of the right to privacy through the efforts of courts reflects a dynamic and progressive interpretation of the Constitution. From the initial denial in many judgments to the qualified recognition in *Govind* case and the definitive affirmation in *Puttaswamy*, the judiciary has played a pivotal role in expanding the scope of fundamental rights. The *Puttaswamy* judgment, with its comprehensive framework for privacy protection, has set a global benchmark, emphasizing dignity, autonomy, and the need for proportionality in state actions. Importantly, the Court did not stop at mere recognition, it laid down a structured proportionality test to assess privacy infringements, set normative standards for future legislation, and acknowledged privacy's intersections with dignity, autonomy, and digital life. This doctrinal clarity gave the right to privacy both moral depth and practical applicability. The enactment of a personal data protection law, namely, the DPDP Act, 2023, further demonstrates the judiciary's influence in shaping legislative responses to contemporary challenges. As India navigates the complexities of the digital age, the principles established in *Puttaswamy* will be crucial in balancing individual privacy with societal and state interests, ensuring that the right to privacy remains a robust safeguard of human dignity. In essence, India's privacy jurisprudence demonstrates how judicial creativity can breathe life into constitutional silences, transforming abstract liberties into tangible shields for human dignity. Yet, as technology and state power evolve, the judiciary must vigilantly apply *Puttaswamy*'s core principles, ensuring privacy remains not merely a legal doctrine, but a living reality for every citizen.

7. SUGGESTIONS

We are close to completing a decade since the day, Privacy was recognised as a Fundamental Right in India, yet, there is still a lack of comprehensive privacy Act to govern the issues surmounting this legal right. It seems as if privacy is a distant reality for the millions of Indians. In the modern era, individuals are increasingly able to safeguard their spatial privacy, particularly in the context of physical environments and personal spaces. However, the more formidable and complex challenge lies in securing privacy within the digital domain. The digital sphere has effectively become an

⁴¹ Sanjay Vashishtha, "The Evolution of Right to be Forgotten in India" SCC OnLine Blog Exp 7 (2022).

⁴² Prashant Mali, "Privacy Law: Right to be Forgotten in India" 7 *NLIU Law Review*.

⁴³ ILEC 060 (CJEU 2014)

⁴⁴ *Subhranshu Rout @ Gugul v. State of Orissa*, 2020 SCC OnLine Ori 878.

⁴⁵ *Jorawar Singh Mundy v. Union of India* 2021 SCC OnLine Del 2306.

⁴⁶ *Supra* note 37.

extension of the self, a virtual home that encapsulates one's preferences, behaviors, communications, and personal choices. With the proliferation of data-driven technologies, sophisticated algorithms are capable of inferring intimate aspects of an individual's life, including their health conditions, educational background, emotional state, and behavioral patterns. This unprecedented degree of surveillance and data profiling poses significant risks to informational and decisional privacy, necessitating a critical re-examination of existing legal and ethical frameworks. Below are some of the suggestions to inculcate and strengthen the Right to Privacy.

1) Establish a Comprehensive Statutory Tort of Privacy:

While the right is recognized, claiming compensation for non-digital privacy violations like intrusion, publication of private facts, etc is complex under existing tort law or specific statutes. Therefore, there is a need to enact a dedicated Privacy Tort Act defining actionable wrongs like intrusion, public disclosure of private facts, providing clear remedies in the form of damages and injunctions, and establishing a lower burden of proof for the victims. This would cover physical, non-data related intrusions effectively.

2) Enhance Privacy for Vulnerable Groups:

Vulnerable sections of the society such as children, women, marginalised communities require enhanced privacy protections. The women and children require protection against stalking, voyeurism and requires safe, private spaces in shelters, hostels, and public facilities like toilets, changing rooms. While LGBTQIA+ Individuals needs prevention from forced 'outing' and confidentiality in accessing healthcare or support services, and in personal relationships. The marginalized Communities needs protection from surveillance and profiling based on caste, religion, or ethnicity in physical spaces.

3) Safeguard Privacy in Residential Spaces:

An increasing trend is seen with the Residential Welfare Associations (RWAs) regulating personal choices within homes for e.g. guests, food habits and religious practices. Some reasonable limit must be imposed on such associations limiting their domain concerning residents' private lives unless their activity demonstrably harm others.

4) Protection of Privacy in Judicial and Investigation Processes:

The identity of the victims needs to be protected. There is a want for strictly enforcing Section 228A IPC prohibiting disclosure of victim identity in any medium including physical documents, court filings, police station boards. An effective way to achieve is to mandate redaction in all public records, sensitize police, judiciary and media. Also, stringent penalties for violations shall be imposed. Despite the presence of provision to curb it, it is often seen that the identity of victim is made public either by the Police or by the media. Further, media trials are run on the accused and his family despite the presence of principle of innocent until proven guilty. If not the accused, at least the privacy of their family members shall be ensured in these processes.

5) Strengthen and Democratize the Data Protection Authority:

The Digital Personal Data Protection Act, 2023 establishes a Data Protection Board, but its lack of independence and centralized control undermines its credibility. A rights-based approach to data protection demands an impartial regulator, not one tethered to executive discretion. Thus, a multi-stakeholder process involving judiciary, civil society, and data ethics experts shall be taken in the formulation of the Board.

6) Institutionalize the "Right to be Forgotten":

Each person must have the right to **control their digital legacy** and rehabilitate their reputations. India lacks a clear and enforceable 'Right to be Forgotten', even after courts hinted at it post-Puttaswamy as discussed above. The right must be codified with a criterion for removal of personal data from public platforms, safeguards to protect freedom of speech and press to ensure balance between both the rights and a review mechanism involving both courts and the data protection regulator.

7) Mainstream Privacy Education in Schools and Public Institutions:

A constitutionally guaranteed right is effective only if the people know it exists. However, privacy awareness remains low, especially among the youth and rural populations. The government should aim at Integrating privacy rights and digital hygiene into school curricula, conduct mass media campaigns on consent processes which takes place while accessing internet, surveillance, and personal data protection and train the public officials handling citizen data regarding its proper storage, deletion and sharing.

8) Embed Privacy in Governance Ethics and Policy Design:

All major governance and welfare platforms for e.g., Health ID, Digital Locker, e-SHRAM and the like must adopt privacy impact assessments as part of policy design. The NITI Aayog and other public policy think tanks should develop privacy-centric design templates for digital services. The privacy must be part and parcel of the administrative and digital DNA of public governance.

9) Limit Aadhaar Usage Strictly to Permitted Purposes:

Compelled biometric identity violates the spirit of *Puttaswamy* and bodily autonomy. Despite the Supreme Court rulings, Aadhaar linkage persists in domains beyond welfare distribution or where less intrusive alternatives exist such as school admissions, mobile/bank linkages often, etc. An option to provide opt-out or unlinking shall be provided to the citizen. Also, penalize unauthorized Aadhaar-based profiling by any individual or private entities. The introduction of masked Aadhaar is a great step to ensure that the privacy of Aadhaar number is maintained.

10) Informed Consent Framework:

In terms of protecting digital privacy, the websites shall rather than using a blanket "I Agree" option should be mandated to provide users the ability to opt out of specific data processing activities, similar to GDPR provisions.

CONFLICT OF INTERESTS

None.

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None.

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