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Right to Privacy as a Fundamental Right: Post-Puttaswamy Jurisprudence

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Abstract : In Justice K. S. Puttaswamy (Retd.) v. Union of India (2017), a nine-judge bench of the Supreme Court recognized the right to privacy as a fundamental right secured as part of life and personal liberty under Article 21 and as an element of the freedoms guaranteed by Part III of the Constitution. The decision overturned precedents denying the right and introduced a test of legality, legitimate aim, and proportionality of interferences. This paper explores the evolution of Indian privacy law since this landmark judgment. By employing a doctrinal approach, the paper analyzes the decision in Puttaswamy, and later rulings on Aadhaar, decriminalisation of same-sex conduct, adultery, internet shutdowns, and data protection. It concludes that the Court has relied on privacy as an organizing principle connecting dignity, autonomy, and liberty, and has been increasingly applying the test of proportionality, albeit inconsistently. It also finds that the content of informational privacy is highly dependent on statutory elaboration and that the data protection regime adopted in 2023 grants substantial State exemptions. The paper calls for clarification of statutory standards for surveillance and for a coherent proportionality test.

Keywords: right to privacy; Article 21; Puttaswamy; proportionality; Aadhaar; data protection; dignity

Introduction

Privacy means the right of a person to regulate access to himself or herself, his or her information, and decisions about his or her life. It is recognized in international human rights instruments, in particular, Articles 12 of the Universal Declaration of Human Rights and 17 of the International Covenant on Civil and Political Rights. According to contemporary juridical conceptions, privacy originates from the idea that it is the right to be let alone, which has been expanding to cover bodily integrity, personal information, and personal autonomy (Solove, 2008).

There is no explicit constitutional provision on privacy in the Constitution of India. Over decades, the Supreme Court provided an ambivalent position on whether the right exists. Initially, several decisions have rejected the existence of the right. Later decisions have found some limited protection in Article 21; finally, the matter has been settled in 2017. Puttaswamy decision has radically changed the constitutional position at the moment when

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the development of digital technologies and mass collecting of personal data was fundamentally changing the nature of the relationship between individuals and

the state. The paper analyzes the developments since this decision. It addresses three central questions. What does Puttaswamy decision say and what test it introduces? How has the right been applied by the judiciary and the legislature in subsequent jurisprudence? And what unresolved issues remain in the right's doctrine and implementation? The answers shed light on the way how a broad principle stated in the supreme judicial decision has been translated into the rules governing the administrative practice.

Literature Review

The previous case law is the starting point. M. P. Sharma v. Satish Chandra (1954) case, in which an eight-judge bench denied that search and seizure under the Code of Criminal Procedure violates a fundamental right and that the Constitution contains no provision comparable to the American Fourth Amendment from which privacy could be derived, and Kharak Singh v. State of Uttar Pradesh (1963), where the majority decided that night-time domiciliary visits violated personal liberty, but surveillance by other means does not, and privacy is not a guaranteed right, despite the dissenting opinion of Subba Rao J., which considered privacy as an integral part of personal liberty, established the basis for future developments. Subsequent cases have built on this opinion. In Gobind v. State of Madhya Pradesh (1975), the Court assumed that privacy can be derived from Article 21 and other freedoms, but decided that the right is not absolute and may be restricted for compelling reasons. In R. Rajagopal v. State of Tamil Nadu (1994), the Court considered privacy as an element of the right to life and personal liberty in the context of publishing of a prisoner's autobiography. In PUCL v. Union of India (1997), the Court held that telephone tapping constitutes an interference with privacy and outlined the procedure of the protection of the right. In Selvi v. State of Karnataka (2010), compulsory narco-analysis and similar tests were found to violate mental privacy and right against self-incrimination.

The academic literature on the subject has focused on the structure of privacy. Solove (2008) argues that privacy is not a single concept, but a complex of related interests, in particular, control over information, protection from intrusion, and freedom of personal decision-making, and that the meaning of privacy should be clarified through the analysis of specific problems. This approach coincides with the Indian jurisprudence, in which privacy has been applied to bodily integrity, information, and autonomy (Jain, 2018). The comparative literature also emphasizes the fact that informational privacy became especially important due to the possibility of collecting, aggregating, and using data on unprecedented scales compared to the time when the classic privacy cases were decided.

The litigation around Aadhaar constituted the real test of the practical applicability of the right to privacy. In Justice K. S. Puttaswamy (Aadhaar) v. Union of India (2019), a five-judge bench upholds the Aadhaar Act with modifications, strikes down the provision allowing private entities to require authentication and applies the proportionality analysis, while a dissenting judge considers the Act unconstitutional. Academic literature about the case notes that the majority has applied the proportionality in a way that resulted in a deferential outcome, whereas the dissenting opinion follows a more rigorous approach.

It appears that two gaps emerge from the existing literature. On one hand, most of the analyses focus on the 2017 judgment and the Aadhaar decision, without paying much attention to how the privacy has been applied to other areas of law during subsequent years. On the other hand, there has been scarce analysis of the implications of the 2023 data protection statute. The present research seeks to fill these gaps.

Research Methodology

The research methodology in this study relies on the doctrinal approach. The primary sources include the Constitution of India, Supreme Court of India decisions, and relevant statutes, notably the Digital Personal Data Protection Act 2023. The secondary sources include treatises and scholarly articles on constitutional law and privacy theory. The selected decisions directly touch upon the existence, scope, or limitations of the right to privacy, and are analyzed for their ratio decidendi and tests applied. The methodology is analytical and critical, tracing the development of the doctrine chronologically. No empirical data were collected.

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The Puttaswamy Decision

The appeal to the nine-judge bench originated in the Aadhaar litigation, in which the Union argued that M. P. Sharma and Kharak Singh – decisions denying privacy rights in larger benches – preclude the recognition of the right to privacy. In the unanimously issued decision of 2017, the Court recognizes that privacy is a constitutional right, arising as an intrinsic element of the right to life and personal liberty under Article 21 and as an element of freedoms guaranteed by Part III of the Constitution. It overturns M. P. Sharma and Kharak Singh insofar as they deny privacy as a fundamental right. The leading opinion in the case, written by Chief Justice Chandrachud, describes privacy as a necessary prerequisite of dignity and as a protection for autonomy in relation to the body, information, and decisions. Additionally, the Court acknowledges that the right is not absolute. The interference by the State has to satisfy the triadic test formulated in the plurality opinion: legality (existence of the statutory authority), legitimate aim (legitimate interest of the State), and proportionality (rationale relation between means used and the aim pursued). The opinion of Kaul J. additionally emphasizes the necessity of the safeguards against misuse of powers, and this framework was further developed in the Aadhaar decision and in Anuradha Bhasin. The principal elements of the doctrine are listed in Figure 1 and Table 1, and development of the doctrine is outlined in Figure 2.

Table 1. Elements of the right to privacy recognized in Indian law

Dimension	Content	Illustrative decisions
Bodily privacy	Integrity of the body; limits on compelled physical and mental tests	Selvi v. State of Karnataka (2010)
Informational privacy	Control over personal data; limits on surveillance and data collection	PUCL (1997); Aadhaar (2019)
Decisional privacy	Autonomy in matters of family, marriage, sexuality and belief	Navtej Singh Johar (2018); Joseph Shine (2018)
Spatial privacy	Protection of home and private communications	Kharak Singh (1963); Gobind (1975)

Figure 1. Main elements of the right to privacy.

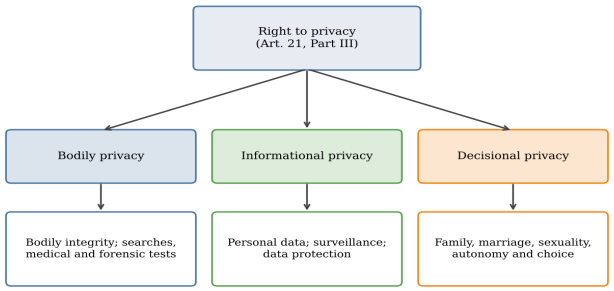
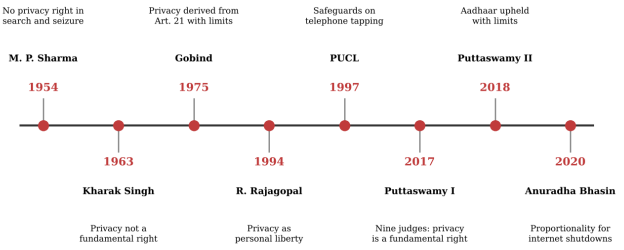


Figure 2. Evolution of the privacy doctrine in India.



Post-Puttaswamy Developments

Aadhaar and informational privacy

In the Aadhaar decision of 2019, the majority upholds the Act as the tool implementing the legitimate aim of ensuring the distribution of the welfare benefits and holds that the collecting of the limited biometric data satisfies the test of proportionality. Simultaneously, Section 57, which allowed private entities to require authentication, was declared unconstitutional, and the use of Aadhaar was limited to services such as bank accounts and mobile phone numbers. Dissenting opinion found that the Act failed the test of proportionality due to the impact on privacy and insufficient safeguards. This case shows that the application of the proportionality leads to different results depending on the stringency with which each step is applied.

Decisional privacy and dignity

Privacy reasoning has been applied most expansively in the cases about personal autonomy. In Navtej Singh Johar v. Union of India (2018), the Court held that Section 377 of the Indian Penal Code is unconstitutional insofar as it makes consensual sexual intercourse

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between adults a crime, relying on privacy, dignity, and equality. In Joseph Shine v. Union of India (2018), the Court declared the offense of adultery unconstitutional, stressing individual autonomy and intimacy of the relationship. These decisions consider privacy as the protection of decisions in the area of intimate life, and connect it to dignity and non-discrimination principle.

Surveillance, communications, and internet

In Anuradha Bhasin v. Union of India (2020), the Court addressed the situation of internet shutdowns and declared that such indefinite suspension is impermissible; all restrictions have to satisfy the test of proportionality and be subject to the review. Even though the decision is mostly about freedom of expression and freedom of trade, it expands the proportionality framework to cover measures restricting communication. The traditional safeguards in PUCL about telephone tapping are not followed by the comparable framework for the modern electronic surveillance, which is mostly regulated by the executive rules.

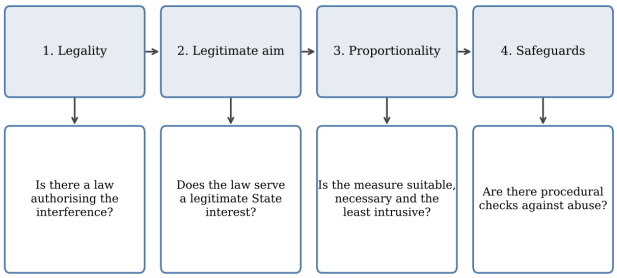
Statutory data protection

The first statute regulating personal data – the Digital Personal Data Protection Act, 2023 – provides the obligations of the data processors and rights of the individuals. It also gives the Government wide powers to exempt State agencies from these obligations on the grounds of, for example, national security and public order. This aspect of the statute has importance for the constitutional analysis since, according to the test laid down in Puttaswamy, any law that provides for the interference has to be proportionate and include the safeguards. Thus, the scope of the exemptions will be reviewed against this standard.

Table 2. The leading decisions on privacy

Case	Principal holding
M. P. Sharma v. Satish Chandra, AIR 1954 SC 300	No fundamental right to privacy in search and seizure (overruled in part in 2017)
Kharak Singh v. State of U.P., AIR 1963 SC 1295	Domiciliary visits invalid; privacy not a fundamental right (overruled in part)
Gobind v. State of M.P., (1975) 2 SCC 148	Privacy derived from Art. 21 with restrictions on compelling interest
R. Rajagopal v. State of T.N., (1994) 6 SCC 632	Privacy part of the right to life and personal liberty
PUCL v. Union of India, (1997) 1 SCC 301	Telephone tapping subject to procedural safeguards
Puttaswamy v. Union of India, (2017) 10 SCC 1	Privacy is a fundamental right under Art. 21 and Part III; test of legality, aim and proportionality
Puttaswamy (Aadhaar), (2019) 1 SCC 1	Aadhaar Act upheld in part; section 57 struck down
Navtej Singh Johar v. Union of India, (2018) 10 SCC 1	Consensual same-sex conduct decriminalised on grounds including privacy and dignity
Anuradha Bhasin v. Union of India, (2020) 3 SCC 637	Internet restrictions must be proportionate and reviewable

Figure 3. The structure of the Interference with Privacy Test: An Analysis



According to post-Puttaswamy jurisprudence, privacy is the principle that connects various other rights. It provides the foundation for dignity in Navtej and Joseph Shine cases, helps to evaluate data collection in the Aadhaar case, and influences the approach to restrictions on communication in the Anuradha Bhasin case. This mediating role adds doctrinal strength by allowing the Court to address emerging problems without creating a new right for each problem. On the other hand, it poses the risk that the right will become

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so general that it will fail to provide clear guidelines for decision-making.

One of the key doctrinal issues concerns the application of proportionality. The test in Puttaswamy involves multiple steps, but the application of the test has been inconsistent among decisions. In the Aadhaar case, the majority and minority differ less on the substance of the law, but differ in the stringency of application to each step, resulting in the outcome that depends on the degree of deference that is given to the necessity of the law adopted by the legislature. A consistent structure, which requires the State to show that there is no less intrusive alternative and sufficient safeguards, would add predictability to the test and provide guidelines to the legislature.

Another issue is the reliance of informational privacy on statutory provisions. The Court recognized the data protection as part of privacy, but the content of this privacy is mainly provided by the 2023 statute that gives the executive extensive discretion to create exceptions. The broad scope of the exceptions and the absence of limitation by purposes means that the area where the State collects and uses most extensively the data will coincide with the area of least protection. As the constitutional standard for the interference provides that the law has to be proportionate and include the safeguards, this standard will be applied to the statute itself.

Third, the issue is the surveillance. The statutory framework of the Telegraph Act and rules to it, supplemented by the decision in PUCL, is geared towards the regulation of telephonic surveillance, but the current technologies of surveillance do not have the comparable framework for independent authorization and oversight. Oversight by an executive committee does not satisfy the requirement of the independent check of the test of proportionality. Gaps in Post-Puttaswamy Position and Proposed Solutions

Table 3. Gaps in the post-Puttaswamy position and suggested responses

Gap	Suggested response
Uneven application of proportionality	Consistent structured test with a burden on the State to show necessity and less intrusive alternatives
Broad exemptions for State agencies in the data protection law	Narrow exemptions with purpose limits, independent oversight and review
Outdated framework for surveillance	Statute with judicial or independent authorisation, time limits and notification
Low awareness and remedies for individuals	Accessible grievance mechanisms and effective independent regulator

Findings

The analysis has shown that Puttaswamy has significantly altered the constitutional position by establishing privacy as a fundamental right with the defined test, and that subsequent jurisprudence has expanded the scope of the right, in particular, to autonomy and dignity. It has also shown that the application of the proportionality is not consistent, that the current statutory framework of the data protection allows extensive State exemptions, and that the law of surveillance has not been modernized to reflect the proportionality test established in the decision.

Suggestions

The following four measures are proposed. First, the courts should apply the proportionality test consistently. Second, Parliament should narrow down exemptions within the data protection statute and limit them by purposes, and subject them to the independent oversight. Thirdly, a robust surveillance law would need to involve authorization from an independent body, have a time frame attached to it and also provide for eventual notification of the individual in question. Fourthly, an independent regulatory authority needs to have the capacity to receive complaints and remedies.

Conclusion

The recognition of privacy as a constitutional right marks an important milestone in Indian constitutional law. It allows for a common foundation to claims related to dignity, autonomy and personal data, and a

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framework of test for assessing any interference. The present task is to make sense of the test and to ensure that laws and practices are in conformity with it. The success of the Puttaswamy decision will depend on how effectively privacy is protected in everyday interaction between the individual, the State and the private sector.

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