

Right to Privacy, Evolution, Significance, Challenges

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The Right to Privacy is a **human right**, enshrined in numerous international covenants and institutions as reflected in Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the **International Covenant on Civil and Political Rights**, 1966. In the **K.S Puttaswamy case**, the court ruled that privacy is a fundamental right, protected intrinsically under the right to life and personal liberty.

Privacy is a right enjoyed by every human being by virtue of their existence. It can extend to other aspects such as bodily integrity, personal autonomy, protection from state surveillance, dignity, confidentiality, etc.

What is the Right to Privacy?

The right to privacy is a fundamental aspect of **individual autonomy**, allowing people to make personal choices free from unwarranted interference. It encompasses the right to control one's personal information, maintain confidentiality, and make autonomous decisions without interference.

- **Need:** This right is essential for upholding **human dignity and freedom**, as it allows individuals to express themselves freely, engage in personal relationships, and participate in society without fear of surveillance or discrimination.

- **Indian Context:** In 2017, the Supreme Court affirmed this right in the landmark **Puttaswamy v. Union of India case**, recognising privacy as a constitutional and fundamental right under **Article 21 of Part III of the Indian Constitution**.
- **International Framework:** Article 12 of the **Universal Declaration of Human Rights** 1948 and Article 17 of the International Covenant on Civil and Political Rights 1966 establish legal safeguards against "**arbitrary interference**" with an individual's privacy, family, home, correspondence, dignity, and reputation.

Right to Privacy Evolution

The Constitution makers did not directly envisage the Right to Privacy, and as such, it does not find a mention in Part III of the Constitution relating to **Fundamental Rights**. The **judiciary** has deliberated on the matter and interpreted privacy from the beginning.

- **M.P. Sharma vs Satish Chandra (1954):** The Supreme Court made a passing reference to the right to privacy while deciding whether searches and seizures were unreasonable and offered restrictions on various petitioners' rights.
- **Kharak Singh vs. State of UP (1961):** The Supreme Court examined the power of police surveillance concerning history sheeters, and it ruled in favour of the police, holding that the **right to privacy has not been guaranteed** as a fundamental right under the Constitution.
- **Gobind vs. State of MP & ANR (1975):** The Supreme Court introduced the compelling state interest test from American jurisprudence. The court stated that an individual's right to privacy would have to give way to a larger state interest, the nature of which must be convincing.
- **PUCL vs. Union of India (1997):** The Supreme Court unequivocally held that individuals had a privacy interest in the content of their telephone communications.
- **Information Technology Act 2000:** The Act was amended in 2008 to insert Section 43A, which made companies compromising sensitive personal data liable to pay compensation.
- The Government framed eight rules to protect an individual's privacy, including seeking permission from a company before accessing an individual's privacy data and fixing liabilities for violation of the same.

Puttaswamy Judgement

A nine-judge Constitution Bench gave a landmark decision on the Right to Privacy in the judgement on "Justice K.S. Puttaswamy (Retd) and Another vs Union of India and Others",

2017.

- **Judgement:** The **Supreme Court** ruled that the Right to Privacy is "**intrinsic to life and personal liberty**" and is inherently protected under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. In this way, the Court overruled its own eight-judge bench and six-judge bench judgements for the M.P. Sharma and Kharak Singh cases, respectively.
- **Significance:** By making the right to privacy an intrinsic part of life and liberty under **Article 21**, it is **not just an Indian citizen. Now, anyone** can move the courts under Articles 32 and 226 to get justice.
 - By declaring that **privacy is inherent to every fundamental liberty** provided in Part III of the Constitution, the Supreme Court has made privacy an essential ingredient of other important

fundamental freedoms.

Right to Privacy Significance

The right to privacy is fundamental for safeguarding individual autonomy, dignity, and freedom. Recognised in the **Puttaswamy Judgment**, it ensures protection from surveillance, enables free expression, and secures personal data, strengthening democratic values.

- **Right to Life with Dignity:** Privacy is linked to the constitutional **right to life** and dignity. It offers a shield against actions that could undermine personal respect and ensures that all individuals are treated with honour and respect.
- **Freedom of Expression:** Privacy enables free expression by ensuring individuals can express, explore, and share their ideas without fear of judgment or retribution, which strengthens **democratic discourse** and personal development.
- **Protection from Surveillance:** Privacy protects against intrusive surveillance, preventing both **governmental and private entities** from unreasonably tracking individuals' activities, thus preserving a sense of security and freedom in personal spaces.
- **Data Protection:** In the digital age, privacy safeguards personal data, preventing unauthorised access to sensitive information, which is crucial for protecting identity and financial security and maintaining trust in digital services.

Right to Privacy Challenges

The right to privacy in India is constantly in contention—balancing individual privacy with other fundamental rights, security, and digital inclusivity. The challenging challenges arise in areas like prioritisation over other rights, digital awareness, and communications surveillance, often exposing gaps in regulatory and judicial clarity.

- **Conflict with Other Rights:** Prioritising the right to privacy over other fundamental rights is challenging. For example, during **COVID-19**, there was a clash between the right to life and the fundamental right to privacy, and therefore, it became of necessary importance and was prioritised.
- **Digital Divide:** Many individuals, especially in rural areas, lack awareness and resources to protect their privacy, leaving them vulnerable. For example, a limited understanding of **online privacy settings** leads to data misuse.
- **Communications Surveillance:** In modern times, surveillance is carried out via tapping or interception of telecommunication messages, etc. The two most important legislations in this context are the **Indian Telegraph Act of 1885 and the Information and Technology Act of 2000**.
 - According to both of these Acts, the government can invade an individual's privacy based on national security, friendly relations with foreign states, and public order to prevent incitement and the commission of an offence.
- **Judicial Clarity:** Despite the landmark Puttaswamy v. Union of India ruling affirming privacy as a fundamental right, clear legal frameworks for implementation and enforcement remain limited, complicating privacy protection measures.

Government Steps to Protect Privacy

The Indian government has taken crucial steps to enhance privacy protections, focusing on legislative, regulatory, and surveillance oversight reforms. These initiatives aim to secure citizens' personal data, establish clear data protection laws, and ensure balanced privacy frameworks that align with digital age demands.

B N Srikrishna Committee

The government appointed the **B.N. Srikrishna Committee**, an expert group on data protection led by Justice B.N. Srikrishna. In July 2018, the committee submitted its report, proposing a Draft Data Protection Bill and recommending key principles to safeguard individuals' privacy and data rights in India.

Digital Personal Data Protection Act

Following the 2017 KS Puttaswamy judgment, a committee led by Justice BN Srikrishna was established to explore ways to safeguard the **right to informational privacy**. The committee's recommendations resulted in the passage of the **Digital Personal Data Protection Act**, which regulates the processing of digital personal data.

- **Applicability:** The DPDP Act applies to all data, whether originally online or offline and later digitised in India. Additionally, the Act applies to the processing of digital personal data beyond India's borders.
- **Alternate Disclosure Mechanism:** This mechanism will allow two parties to settle their complaints with the help of a mediator. Further, it provides for the establishment of a **Data Protection Board**.
- **Precedence in Case of Conflict:** The provisions of the DPDP Act are in addition to and do not supersede any other law currently in effect. However, in the event of any conflict between a provision of this Act and a provision of any other law currently in effect, the provision of this Act shall take precedence to the extent of such conflict.
- **Penalties:** It provides for **offences and penalties** if anyone fails to comply with the provisions.
- **Exemptions under the DPDP Act:** The exemptions provided in the DPDP Act are as follows:
 - For notified agencies, in the interest of security, sovereignty, public order, etc.
 - For research, archiving, or statistical purposes.
 - For start-ups or other notified categories of data fiduciaries.
 - To enforce legal rights and claims.
 - To perform judicial or regulatory functions.
 - To prevent, detect, investigate, or prosecute offences.
 - To process non-residents' personal data under foreign contracts in India.
 - For approved mergers, demergers, etc.
 - To locate defaulters and their financial assets, etc.

Statutory Regulation

The government oversees surveillance practices under the **Indian Telegraph Act (1885) and Information Technology Act (2000)**, which permit lawful interception with strict procedural safeguards to balance privacy with national security. Additionally, the **National Cyber Security Policy** and Indian **Computer Emergency Response**

Team (CERT-In) promote privacy through guidelines on data protection, **cyber security**, and responses to data breaches.

Right to Privacy Way Forward

Ensuring the right to privacy in today's digital age requires comprehensive measures, including judicial oversight, public awareness, advanced privacy technologies, clear surveillance laws, and strong private-sector accountability to protect individuals' data and uphold privacy rights.

- **Strengthening Judicial Oversight:** Establish robust judicial oversight mechanisms for surveillance activities, ensuring they are authorised, proportionate, and essential, thus safeguarding citizens' privacy rights from misuse.
- **Public Awareness Campaigns:** Promote awareness about privacy rights through government and civil society initiatives, enabling citizens to understand data privacy risks and assert their rights in the digital age.
- **Technology and Privacy Innovation:** Encourage the development of privacy-centric technologies like end-to-end encryption and anonymisation techniques, which allow individuals and organisations to protect data without compromising usability.
- **Clear Surveillance Regulations:** Define specific legal frameworks for surveillance, balancing national security with individual privacy, specifying data retention limits, and ensuring transparency in government surveillance practices.
- **Private Sector Accountability:** Enforce accountability for private companies through strict regulations that prevent unauthorised data sharing and profiling and mandate transparency in data collection, storage, and processing practices.

Right to Privacy UPSC PYQs

Question 1: 'Right to Privacy' is protected under which Article of the Constitution of India? **(UPSC Prelims 2021)**

- (a) Article 15
- (b) Article 19
- (c) Article 21
- (d) Article 29

Ans: (c)

Question 2: Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? **(UPSC Prelims 2018)**

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution
- (b) Article 17 and the Directive Principles of State Policy in Part IV
- (c) Article 21 and the freedoms guaranteed in Part III
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution

Ans: (c)

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