



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **RIGHT TO PRIVACY IN INDIA**

AUTHORED BY - SHEETAL SHARMA & DR. AQUEEDA KHAN

Think of how easily your life might be revealed online, with each sale, search or social network interaction being thoroughly recorded and searched. It's not something from a sci-fi movie, but it is the truth that we live in the information age. The need to protect one's privacy has been on the rise as we are going through the world where digital interactions are much more prevalent. Nevertheless, the question that arises is what the content of this right is in India? The right to privacy for individual in the Indian context is beyond locking your diaries and private letters. It's about ensuring the protection of an increasingly essential component of your identity in the online world. It means the right to know what information about you is being collected, how it is being used, and with whom it is being shared. Through this information creation, you depict yourself and your activities, even your ideas in a broad digital footprint. The right to the privacy of your image is yours to choose who gets to see it. You have the power to disclose same details to some trusted communities and let that secrets remain unknown to people who can use them wrongly. This very trait empowers the individual in the digital world, shields their sense of autonomy from the feeling of being reduced to a single data point in a monster machine.

Nonetheless, the constitutional protection of privacy in India doesn't go back long enough. In contrast to a few Western countries, India's ascent towards an impenetrable data privacy system has been a very gradual and constant process. Before the Constitution was interpreted, the right to privacy was not spelled out in it as a basic right. However, the watershed moment arrived in 2017 when, somehow, everything changed.

In the *Puttaswamy v. Union of India* case, during 2017, the Supreme Court of India declared privacy as a fundamental right which falls under the scope of Article 21 in the Constitution. The Constitution takes into account such virtues by securing that an individual's right to life and liberty is certainly not violated. Extending the Liberty Concept, the Court's judgement extended the idea to also include a new kind liberty – informational privacy which refers to the right to control what

the collection, use and disclosure of your personal information.

As the essence of personal data protection goes beyond mere confidentiality. It encompasses various aspects of your life, including:

- **Bodily Privacy:** The bodily autonomy and the ability to take your own decisions about your health without anyone interfering in your life.
- **Informational Privacy:** Let me elaborate, on the right to control your personal information, which is another important consideration.
- **Decisional Privacy:** The guarantee of the freedom to take one's own decisions and without any imposition.

This right of the privacy also plays the role of the shield, which protect all of your aspects such as the feeling of self, the financial safety, and the physical safety during the digital realm. We will further elucidate the repercussion of Puttaswamy judgment and discuss how this judgment brought data privacy to the forefront in the Indian legal landscape in the upcoming section of this chapter.

#### **A. Puttaswamy v. Union of India (2017 Judgement: Recognizing Privacy as Fundamental Right)**

The game changer is the Puttaswamy judgment which has made a fictional fiction by declaring that the right to privacy is a fundamental right indeed that is quite consequential when it comes to the search and seizure powers. The Gobind case that involved the acknowledgment of limited privacy rights and the quotation of the personal space like home as mainly protected from privacy invasion, was the only available privacy law in the country before this landmark ruling. Instead, he drafted a similar law in that any law that infringes on the right to privacy must pass the test for the compelling state interest. Nevertheless, these judgments also contributed meaningfully to this dynamic such as the later judgments PUCL and Canara Bank. For an example, Crimea Bank maintained that wherever an individual possesses a certain level of privacy, the other side of his/her property should be considered private too. This bank introduced the "reasonable expectation of privacy" test in order to limit impressive search powers.

However, the evolution took another path in the Puttaswamy (2) v. Union of India case, commonly known as the Aadhar case. On this account, the court, while the court imposed a hard test for



assessing the adequate manner of compensating the infringement of privacy measures, proved itself as subsidiary to the state. However, most of them were more thoughtful about the wording of the law rather than its live operation. Such dissatisfaction bothered many people. Instead, Justice Chandrachud's opinion delivered the dissenting view and attempted to encroach on state's interest by using a tougher scrutiny standard at the expense of proportionality. He was inspired by the communicative state interest test's robustness, urging for a stricter approach to the process. Create your own visitors account and benefit from exclusive services, including free lessons, downloads, discounts, and more.

Basically, this judgment to some extent redefined the concept of privacy and their components as fundamental rights and makes the search and seizure provisions subjected to a more accurate judicial prisme. While the landmark cases like Gobind preceded it, the cases such as did practically apply it to the real world. Nevertheless, the aforementioned case showed disagreement between the law that the court set out and what the court scrutinized more as on this point the majority of judges threw their weight behind the government.

### **B. Connection between Right to Privacy and Data Ownership/Control**

Try to place yourself in shoes of such organisations whose secrets are exposed. Imagine your personal information – your name, address and health records being resolutely collected and analyzed by companies and organizations. This is not a fictional future with all its nightmares; it's the mirror of the digital world we have today. In this digital society, the right to privacy is also a must, and this is what can give you the chance to own and to not share your personal data – your data ownership. The Right to Privacy: For instance, the Foundation sets the rules for implementing state level reforms and classifies political parties as either interested in change or reluctant to change. The Privacy of the citizen, a fundamental right as declared in India in 2017 in the Puttaswamy judgment, assists people in managing their information. This holding of keys goes beyond just protecting your private diaries or your personal correspondence. It encompasses the ability to:

- i. **Decide who collects your data:** You have the right to say no or grant your consent to the data collection of different physical and digital entities.
- ii. **Determine the purpose of data collection:** Organizations cannot collect your data without

- your consent and must set a goal and define the mechanism via which they intend to use it.
- iii. **Control how your data is used:** You are entitled to set the rules for what you want to do with your data and how it should not be used beyond the scope of your authorized consent.
  - iv. **Access and rectify your data:** It is your right to ask for access to the data stored about you by any organization and correct any errors in your personal data.
  - v. **Erase your data:** The removal of personal information depends on whether you meet some special circumstances and ask for such an action.

This control of your data makes you feel independent in the digital environment, a dependence that is present on everything is gone. It keeps you from having a creeping feeling like you're just a number in a huge system. Eventually, it gives you the control to make considered choices on how you appear online.

Data Ownership in Action: The said Act of DPDP. India's all-new Digital Personal Data Protection Act (DPDP) of 2023 built on the already existing principles from the Puttaswamy judgement. The DPDP Act establishes clear guidelines for data fiduciaries (organizations collecting and processing personal data) regarding:

- i. **Consent Requirements:** Companies have to ask for the permission and approval of individuals before gather their private information.
- ii. **Data Minimization:** The personal data collected by data fiduciaries are only for the specific use to which it has been limited.
- iii. **Data Security Measures:** Security procedures should be strengthened and data should not be accessed by unauthorized individuals or used in an unethical way.
- iv. **Individual Rights:** The Information Privacy Act stipulates that individuals have the right to access, rectify, and delete their personal data.

The DPDP Act in conjunction with the right to privacy create a framework in India for the ethical use of the pertinent data. This framework underlines that each person has right to participate in the process of collecting, using and storing their data. Therefore, the digital environment becomes not only fair but also more balanced.

## Privacy a Multifaceted Approach

It mostly meant the right to have your own space and other private belongings under your control. Puttaswamy judgment, though, broadened the definition of privacy to digital space. This right to privacy empowers you to control your personal information in several crucial ways:

- i. **The Power to Choose<sup>1</sup>:** You are empowered to find out which organizations can collect your personal information. You are no longer obliged to provide your data as a prerequisite to enjoy online services.
- ii. **Transparency and Purpose<sup>2</sup>:** No data collection is possible without your informed permission. There should be an obvious declaration on the purpose of data collection which is supposed to serve the specified goal without being misused or abused.
- iii. **Controlling Your Digital Footprint<sup>3</sup>:** You have a right to restrict how your information is used. This makes it impossible to sell or share the data for purposes beyond that of your initial consent.
- iv. **Seeing and Correcting<sup>4</sup>:** You can request access to your personal data where organizations hold it. This gives you the chance to confirm the exactness of the provided information and if it correctly portrays your identity.
- v. **The Right to be Forgotten<sup>5</sup>:** In some cases, organizations can be asked to erase your personal data from their system on your demand. This way you will be in control of your online presence as well as the consequences from any mistakes or information you might

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<sup>1</sup> (Schwartz, P. M. (2017). *Democracy and legal theory*. Cambridge University Press.) as accessed on 19.03.2024

<sup>2</sup> (Ohm, H. (2010). *Privacy in the age of Big Data: Stumbling towards a new deal*. Stanford Law Review, 65(1), 277-314.) as accessed on 19.03.2024

<sup>3</sup> (Solove, D. J. (2004). *Understanding privacy*. Oxford University Press.) accessed on 19.03.2024

<sup>4</sup> (Nissenbaum, H. (2010). *Privacy in a technological world*. Cambridge University Press.)

"Data Protection Laws in India: Their Evolution and Analysis" by A.K. Legal & Associates (2023): This paper provides a legal analysis of the evolution of data privacy laws in India, examining how different legislations like the IT Act and the Aadhaar Act contribute to the overall framework. This might be on the law firm's website, so availability may vary: <https://sflc.in/ready-reckoner-on-data-protection-in-india-a-comparative-legal-analysis/>

<sup>5</sup> (European Union. (2016). Regulation (EU) 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). (accessed on 19.03.2024

11 The Personal Data Protection Regulation (Regulation 2016/679, in English General Data Protection Regulation, abbreviated GDPR)

"An Analysis on Data Protection in India" by Indian Journal of Integrated Research in Law (IJIRL) (2022): This paper delves into the landmark Puttaswamy judgment and its impact on recognizing the right to privacy as a fundamental right in India. It also discusses the proposed PDPB and its potential role in data protection. Limited preview might be available on the journal's website, subscription may be required: <https://ijirl.com/wp-content/uploads/2022/03/AN-ANALYSIS-ON-DATA-PROTECTION-IN-INDIA.pdf>

not want to be seen.

### **Autonomy in the Digital Age**

<sup>6</sup>This control over your data fosters a sense of autonomy in the digital age. Imagine navigating a bustling marketplace where vendors constantly track your movements and preferences. The right to privacy empowers you to say "no" to data collection, preventing you from feeling like a mere product or statistic in a vast ocean of information. It allows you to make informed choices about your online presence, shaping how you interact with the digital world.

The Puttaswamy judgement has laid the foundation for a more balanced digital ecosystem in India. As technology continues to evolve, ongoing discussions and legal refinements will be necessary to ensure that individuals retain control of their personal information. By recognizing the right to privacy as a cornerstone of individual liberty, India has taken a critical step towards a future where individuals, not corporations, hold the keys to their digital selves.



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