

DEFENDING PERSONAL LIBERTIES: THE SUPREME COURT AND THE RIGHT TO PRIVACY

Angad Sood

BALLB Sem VII, Punjab School of Law, Punjabi University, Patiala.



ABSTRACT

There was once a time when the grant of privacy rights was unheard of, existing as a mere afterthought in many normative debates in the pre-independence India. Now, it has evolved into a core facet of personal liberty and human dignity, inalienable from discussions of human life. It affirms the right of a person to make life decisions free from duress or external control, control private and personal information, and secure themselves from unwarranted and unreasonable encroachment by the State and other actors into the sphere of private individual activity. The present paper seeks to analyse the growth of the right to privacy, and its entrenchment in the Indian legal discourse with a particular emphasis on landmark Supreme Court rulings of Justice K.S. Puttaswamy v. Union of India¹ and its subsequent judicial affirmations. The paper traces the doctrinal evolution of the right from early decisions such as M.P. Sharma² and Kharak Singh³, to more contemporaneous rulings that have significantly enlarged the scope of privacy with respect to digital rights, reproductive autonomy, and medical confidentiality. The study also takes note of troubling developments that do not augur well for the future of privacy rights, such as state-sponsored surveillance through invasive digital spyware, unbridled deployment of facial recognition technologies, and wanton data collection under the garb of digital protection legislations. Leveraging Internet-based legal databases and recent case reportage, the paper seeks to contextualize these events within the broader constitutional framework.

Keywords: Right to Privacy, Writs, Jurisdiction, Pegasus, Jurisprudence

INTRODUCTION

The 24th day of August, 2017, marked the watershed moment in Indian jurisprudence when the Hon'ble Supreme Court decreed a judgement holding that the Indian Constitution secures to all its citizens a fundamental right of privacy, bringing it under the umbrella of Article 21. Nine years later, the enthused protection of the right is yet to wane and it continues to be a cherished liberty enjoyed by the denizens of the country. The judiciary continues in earnest to be steadfast in protecting and enforcing the right, often stymying government's ambitions, making an exception for certain circumstances where governmental overreach is justified. The case of *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India*⁴ has since become a guiding star for the Court in its endeavour to secure to the citizens their privacy and has laid down a solid foundation for future judgements to build upon.

The necessity of this right has grown substantially in light of rapid technological progress and the burgeoning scope of State activity. Privacy faces threats from primarily two fronts. First, the proliferation of digital devices, social media platforms and perhaps, most importantly, artificial intelligence, has exposed personal data to collection, storage and processing, often without the express permission or consent of the individuals, for purposes ranging from targeted marketing to more sinister applications. Second, both state authorities and private corporations alike now possess extraordinary capacity to surveil conduct, monitor location and construct detailed individual profiles. The Income Tax Bill, 2025's proposal to grant tax officials warrantless access to emails and social media accounts exemplifies how this valued right remains vulnerable to erosion. Such invasions into personal domains generate profound

1 AIR 2017 SC 4161

2 M.P. SHARMA vs. SATISH CHANDRA AIR 1954 SC 300

3 KHARAK SINGH vs. STATE OF UTTAR PRADESH AIR 1963 SC 1295

4 AIR 2017 SC 4161

questions regarding privacy protections, freedom of expression, and the authenticity of consent. Within this context, the judiciary's function balancing the reasonable and lawful interests of the Indian State, such as national security and public order, against the fundamental rights of individuals to live free from unwarranted intrusion, while voiding any unconstitutional act and ensuring robust privacy guards, becomes indispensable.

This paper examines the Supreme Court's dedicated efforts to safeguard privacy rights through an analysis that begins with the historicity of the discourse surrounding privacy before proceeding to examine pivotal decisions and their underlying legal doctrines. By charting the development of judicial reasoning, this study demonstrates the courts' sustained affirmations of privacy as intrinsic to human dignity, individual autonomy, and personal liberty.

A BRIEF HISTORICAL CONSPECTUS IN THE INDIAN CONTEXT THE CONSTITUENT ASSEMBLY DEBATES

The debates in the Constituent Assembly surrounding the inclusion and codification of the right to privacy occurred in the backdrop of shared memories and experiences with repressive laws such as the Indian Press Act 1910, the Official Secrets Act, 1923, and the like. Hence came the initiative by Mr. Kazi Syed Karimuddin, an eminent Rajya Sabha member in the later years, moving an amendment in 1948 to the effect of providing safeguards and preventive measures from unreasonable search and seizures, inspired by the American and Irish Constitutions. The move sought to immunise an individual's right to privacy from unreasonable and oft unlawful state interference and overindulgence.

Dr B. R. Ambedkar pointed out that protective provision finds mention in the Criminal Procedure Code, he nonetheless welcomed the amendment, calling it a 'useful proposition' which must be 'beyond the reach of the legislature'¹. However, the right to privacy did not find a place in the Constitution.

M.P. SHARMA vs. SATISH CHANDRA (1954)²

In the present case, Messrs. Dalmia Jain Airways Ltd. was accused of embezzling and misappropriating funds on the basis of information tendered by the Registrar of Joint Stock Companies to the Inspector General, Delhi Special Police Establishment. The report of the inspector in charge of the investigation alleged the company of: (a) embezzlement and misappropriation of funds, (b) declare the business as a substantial loss to bring about the aforementioned object, (c) to conceal from the shareholders and investors the true designs and the state of affairs within the company by submission of false reports and balance sheets. The investigations laid bare many fraudulent transactions and indictment under the erstwhile Indian Penal Code was initiated, resulting in the requisitioning and seizure of various company documents.

The case reached the Supreme Court by way of writ petitions, challenging the *vires* of the searches on the grounds that the fundamental rights under Articles 19(1)(f) [since omitted] and 20(3) — protection against self-incrimination. The 8-judge bench of the Supreme Court ruled that the power of search and seizure is one regulated by law and the drafters of the Constitution did not deem it fit to restrict the power by subjecting it to Constitutional limitations by recognising a fundamental right of privacy. They opined that construction of the language of

¹ SCO Team, Right to Privacy: Court in Review, SCOBSEVER (April 21, 2025, 1:30 PM), <https://www.scobserver.in/journal/right-to-privacy-court-in-review/>
² AIR 1954 SC 300

the Constitution and that of the American Constitution cannot be analogous, and that there exists no justification for importing the concept of a fundamental right to privacy, which they held would amount to a strained construction of the Indian Constitution.

The Court also clarified that the mere seizure of documents, without any form of coercion or compulsion to produce evidence, does not amount to self-incrimination under Article 20(3). Furthermore, the court resorted to a curtailed and narrow reading of the Constitution, noting that privacy was a right not expressly mentioned in any of the provisions and hence could not be arbitrarily read into the protections governing search procedures. This stance of the judiciary on privacy and self-incrimination remained operative for decades until it was explicitly overturned in *Justice K.S. Puttaswamy v. Union of India*¹, which affirmed the existence of a fundamental right to privacy under Article 21.

KHARAK SINGH vs. STATE OF UTTAR PRADESH (1962)²

This case concerned a man named Kharak Singh who was under surveillance by the Uttar Pradesh Police under Regulation 236 of the U.P. Police Regulations. As a part of the surveillance, Kharak Singh was shadowed, his movements reported on, and was even visited at his domicile in the night. Kharak Singh then challenged these actions and the laws empowering them as *ultra vires* the Constitution on the grounds that they were violative of his fundamental rights under Article 19(1)(d), which secures freedom of movement and Article 21 dealing with the protection of life and personal liberty. The provision authorizing domiciliary visits was struck down as unconstitutional by the Supreme Court, stating that such intrusions into the “private space of an individual”³, especially in the dead of the night, constituted an infringement on personal liberty. The Court however, upheld the validity of the other surveillance measures, reasoning that they did not involve any direct physical interference and thus did not violate the Constitution.

The majority opinion held that the absence of explicit constitutional text regarding privacy precluded reading such a right into Article 21. In contrast, Justice Subba Rao’s dissenting opinion interpreted “personal liberty” in Article 21 expansively, reasoning that the right to privacy inheres within that constitutional protection. He reasoned that the right to be let alone was an essential part of individual freedom, and constant surveillance without just cause amounted to a violation of constitutional guarantees. Though the majority did not accept this reasoning in 1962, Justice Subba Rao’s dissent proved to be forward-looking. It laid the foundation for future jurisprudence on privacy rights, which culminated in *Justice K.S. Puttaswamy v. Union of India*⁴, wherein the Supreme Court explicitly overruled *Kharak Singh* to the extent it had “denied the existence of a constitutional right to privacy”⁵.

JUSTICE K.S. PUTTASWAMY vs. UNION OF INDIA (2017)⁶

On 24th August, 2017, a 9-Judge Bench of the Supreme Court unanimously declared, in *Justice K.S. Puttaswamy v Union of India*⁷, that the Indian Constitution indeed does guarantee a fundamental right to privacy to each individual, overturning the previous decisions and establishing a new status quo. Although unanimous, there were 6 separate concurring decisions,

1 AIR 2017 SC 4161

2 AIR 1963 SC 1295

3 Ibid

4 AIR 2017 SC 4161

5 KHARAK SINGH vs. STATE OF UTTAR PRADESH AIR 1963 SC 1295

6 AIR 2017 SC 4161

7 Ibid

each similar in principle. Justice Chandrachud authored the decision for himself, and for Justice Khehar, Justice R.K. Agarwal and Justice Abdul Nazeer. Each of the 5 remaining Justices wrote their individual concurring judgment.

THE WATERSHED MOMENT: HOW THE JUDGEMENT CAME TO BE

"The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."¹

-Excerpt from J.S. Mill's "On Liberty"

Justice K.S. Puttaswamy who is a retired judge of the Madras High Court initiated the challenge to the *vires* of the Aadhaar scheme. His contention was that the scheme since inception was a violation of the right to privacy. A three-judge bench which initially heard the issue decided that a larger constitutional bench should determine the question whether the Constitution of India guarantees a right to privacy. The formation of a larger bench was necessary because reviewing and potentially overturning the decision in the previous cases (*vis.* Kharak Singh's case and M.P Sharma's case), a larger bench than was constituted in those cases was required to be constituted in the present case.

Retired Karnataka High Court Justice K.S. Puttaswamy initiated writ proceedings before the Supreme Court in 2022, contesting the legality of the Aadhaar scheme introduced by the UPA Government. The challenge rested mainly on the ground that it offended against an individual's right to privacy, which is a part of the larger right contained in Article 21 of the Constitution. Following the enactment of the Aadhaar Act, many new petitions flooded the court challenging the *vires* of the Act, and seeing it in the best interests of judicial economy and swift justice, all these connected petitions were clubbed together and treated as a single case. Questions pertaining to the constitutionality of the Aadhaar Act, extent of permissible government intrusion in citizens' private lives, and the potential data leak risk of the Aadhaar ID arose. In the main, however, remained only one question: whether the right to privacy fits in the scheme of the Indian Constitution and consequently, a constituent right under right to life and personal liberty under Article 21?

The Hon'ble Court held privacy as inherent attribute of human dignity. The right protects an individual's autonomy in making personal choices, whether in the realm of marriage, procreation, sexual orientation and the like. Significantly, the Court described discrimination on the grounds of sexual orientation as "deeply offensive to dignity and self-worth", laying the groundwork for judgements in *Navtej Singh Johar vs. Union of India*² [decriminalisation of homosexuality] and *Joseph Shine vs. Union of India*³ [decriminalisation of adultery]. In the opinion of the Court, the right to privacy draws legitimacy from Article 21, enriched further by the values enshrined in other fundamental rights.

Of wide import is the observation by the court that the right to life and liberty is not a creation of the Constitution, but rather an inherent attribute of human existence, one that attached to individuals by virtue of their very personhood. It thus, effectively overturns the majority view

¹ Mill, J.S. 1864 On Liberty. London: Longman, Green, Longman, Roberts & Green, p.22

² AIR 2018 SC 4321

³ [2018] 11 S.C.R. 765

held in *ADM Jabalpur vs. Shivkant Shukla*¹, also known as the Habeas Corpus case. The oft-remembered and highly regarded dissenting opinion of Justice Khanna in the aforesaid case was finally recognised and paid credence. The case affirmed rights as a creature of natural law, and the fact that they are granted by the Constitution does not necessarily lead to the conclusion that they are created by it. The Court noted that gathering of information which is intimate to an individual grants another power over them. Consequently, this would have a deleterious effect leading to stifling of dissent and also impinge on the exercise of fundamental rights.

The court also dismissed the argument that right to privacy and State action are mutually exclusive and that the former disturbs the exercise of the latter. The Court advocated for a conciliatory approach between the two, to affect a balance so as to best preserve not only State action but also the right to privacy. It further opined that, as this right operates under the aegis of Article 21, it is also limited in the way the aforementioned provision is, that is, by “procedure established by law”. This makes any such law seeking to limit or in any other way restrict that right, subject to the judicial guidelines determining the vires of such law. Moreover, such law, insofar as it seeks to intrude on privacy, must meet the three qualifications of:

- Legality, or a legitimate statute duly passed by Parliament
- The existence of a cogent State aim (e.g.: national security concerns, investigation of a crime, etc.)
- Proportionality, the means adopted must bear a nexus to the object of the statute.

Accordingly, the Supreme Court unanimously held that the right to privacy is a fundamental right of every individual, enshrined in Article 21 specifically and Part III of the Constitution as a whole.

FROM PRINCIPLE TO PRACTICE: JURISPRUDENCE POST PUTTASWAMY

A sound body of jurisprudence has since developed, and numerous cases have emerged challenging state encroachments on the right to privacy. The alleged infringement/curtailment of the right to privacy became the central question to be deliberated upon in a few of the cases. For instance, in its judgement decriminalizing adultery in *Joseph Shine vs Union of India*², the Supreme Court put to use the three-fold test espoused in the *Puttaswamy* case³, and declared as unconstitutional Section 497 of the Indian Penal Code, 1860. In the case of *IN RE: Banners Placed on Roadside in the City of Lucknow vs. State of Uttar Pradesh*⁴ the Allahabad High Court employed this test in assessing the constitutionality of the State Government's action of publicly displaying personal details of individuals accused of vandalism.

In another category of cases, the Supreme Court refrained from applying the Puttaswamy test because the judgement itself had recognised certain spheres of human activity where the right to privacy was inherently and automatically protected. For example, in *Navtej Singh Johar vs Union of India*⁵, where the court struck down Section 377 of the Indian Penal Code for criminalising homosexuality, the court cited the *ratio decidendi* of the Puttaswamy case that

1 AIR 1977 SC 1207

2 Ibid

3 JUSTICE K.S PUTTASWAMY vs UNION OF INDIA AIR 2017 SC 4161

4 AIR ONLINE 2020 ALL 342

5 AIR 2018 SC 4321

“sexual orientation is a facet of individual privacy to strengthen its argument for decriminalization”¹.

A different category of cases involves those where affirmation of privacy rights provided auxiliary support for deciding constitutional rights. The Supreme Court's decision in *Common Cause vs. Union of India*², exemplifies this approach. The court examined whether Article 21 of the Constitution confers a right to die and permits passive euthanasia. Privacy rights were relied upon as a basis for recognising individual autonomy in matters concerning one's death. The Court ruled in the affirmative, declaring that dying with dignity constitutes a dimension of and is a facet of Article 21.

In *Vinit Kumar v. CBI*³, the Bombay High Court struck down a series of telephonic interceptions ordered by the Union Government. The Court held that the surveillance violated both statutory safeguards in place by the virtue of the Indian Telegraph Act, 1885 and the constitutional right to privacy as reaffirmed in *Puttaswamy case*. The government had failed to demonstrate the necessity or proportionality of the surveillance it had ordered forth, thus vitiating the three-fold test laid in the landmark case. The Court emphasized that interception without strict adherence to legal procedure and oversight mechanisms would be unconstitutional. It was one of the first cases post-*Puttaswamy* where the principles laid out in the judgment were applied to quash state surveillance. This decision reinforced that state intrusion into private communication must be legally justified, narrowly tailored, and subject to procedural safeguards including but not limited to the three-fold test.

The recent case of *Frank Vitus vs Narcotics Control Bureau*⁴ saw the Apex Court rule postulates of privacy rights demand that bail conditions violative of an individual's privacy cannot and ideally should not be imposed. The *ratio decidendi* in this case comes on the backdrop of certain courts directing that the accused share their Google Maps co-ordinates with the police or investigating agency as the case may be, as a pre-condition for granting bail.

While the ruling recognised that bail conditions can restrict an accused from venturing to specific areas to protect witnesses or victims, they cannot demand a constant or regular reporting/surveillance of whereabouts to the police. Such reporting/surveillance, whether by use of technology or otherwise, interferes with the exercise by the accused of the rights guaranteed under Article 21 of the Indian Constitution. The Court emphasised such imposition of such stringent bail conditions would tantamount to an unlawful and unreasonable encroachment upon the accused's privacy, similar to confinement even after bail is granted.

In a significant stride in reproductive rights and privacy, the Supreme Court in the case of *X vs. Union of India*⁵, decreed that unmarried women are entitled to seek abortions up to 24 weeks of gestation under the Medical Termination of Pregnancy (MTP) Act, 1971, as amended in 2021. The Court reiterated that reproductive autonomy inheres in the right to privacy and personal liberty under Article 21. It was the Court's opinion that denying unmarried women access to abortion services would be a clear violation of their fundamental rights. The Court confronted a comparable issue in the more recent case of *A (Mother of X) v. State of*

1 JUSTICE K.S PUTTASWAMY vs UNION OF INDIA AIR 2017 SC 4161

2 AIR 2018 SC 1665

3 AIR ONLINE 2019 BOM 1117

4 [2025] 1 S.C.R. 184

5 2023 INSC 919

*Maharashtra & Anr.*¹ the judgement stressed that the opinion of Registered Medical Practitioners (RMPs) and medical boards must give primacy to the pregnant woman's physical and mental wellbeing. It declared that delays or denials in abortion provision constitute encroachments upon dignity, autonomy and privacy. These pronouncements together establish reproductive choices as fundamental to privacy entitlements. The Apex Court has maintained a consistent position that reproductive decisions, including abortion, represent profoundly personal determinations secured by Article 21's personal liberty and privacy framework. The Courts decisions underscore a resolve to transform reproductive rights from abstract principles to lived realities, unburdened and unbothered by excessive state micromanagement and social stigma.

The application of the Puttaswamy judgement to criminal investigations is, however, subject to certain limitations that have been judicially recognised. The Supreme Court has remarked that "the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest"², to allow the collection of the voice samples of the accused³. Hence, in a spate of cases, it has been held that tests such as narcotic analysis or a polygraph test or submission of a sample of signature or handwriting, would not tantamount to infringement of privacy.

In recent times, the word privacy is associated primarily with digital rights. Hence, it would be remiss not to examine the right in the context of digital age. The Supreme Court's decision in *Anuradha Bhasin v. Union of India*⁴ stands as a landmark judgment in Indian constitutional law, particularly concerning the intersection of state-imposed restrictions and fundamental rights in the digital age.

Following the abrogation of Article 370 in 2019, which granted special status to the erstwhile State of Jammu and Kashmir, a spate of restrictions was imposed in the valley by the government. These included the suspension of internet services and the invocation of Section 144 of the Criminal Procedure Code (CrPC), which restricts public gatherings. All was done ostensibly keeping in mind concerns about national security and public order. Anuradha Bhasin, a seasoned journalist, filed a writ petition under Article 32 of the Constitution, challenging these restrictions as violations of fundamental rights. Key issues and questions of law before the Court can be summarized as under:

- Whether the right to freedom of speech and expression under Article 19(1)(a) extends to the use of the internet?
- Whether the "freedom to practice any profession" under Article 19(1)(g) includes conducting business activities through the internet?
- Whether the government can impose indefinite internet shutdowns under the aegis of Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017?
- Whether the government is obligated to publish orders related to internet shutdowns and restrictions under Section 144 CrPC.?

¹ [2024] 5 S.C.R. 470

² *RITESH SINHA vs STATE OF UTTAR PRADESH AIR 2019 SC 3592*

³ *Ibid*

⁴ [2020] 1 S.C.R. 812

The Supreme Court decided that the “freedom of speech and expression” [Article 19(1)(a)] and the “freedom to practice any profession or carry on any occupation, trade, or business” [Article 19(1)(g)] through the internet are protected under the Constitution. It emphasized that any restriction on these rights must comply with the tests of reasonableness and proportionality¹, evolved by the Court to protect the six freedoms under Article 19 from any unreasonable restrictions. The Court went on to clarify that indefinite suspension of internet services is unjustifiable and cannot be allowed in any circumstance. The Court further stated that shutdowns can be a temporary measure for securing public order warranted by exceptional circumstances, and that there must exist a cogent link or a nexus with a lawful object. It further directed for the publication of all orders imposing such shutdowns, or those under Section 144 of the CrPC, in the public domain to allow affected parties, stakeholders and the larger public an opportunity to peruse and challenge them, thereby reinforcing transparency and due process.²

The judgment has become an important milestone in India’s digital rights jurisprudence. It recognises the pivotal role of the internet in enabling the effective exercise of fundamental rights and imposes critical limitations on the power of the executive to impose restrictions. It has reinforced the necessity for accountability and transparency of the government, especially when fundamental rights are at stake.

CONCLUSION

The judicial recognition in *Justice K.S. Puttaswamy v. Union of India*³ that privacy constitutes a fundamental right marked a watershed moment in Indian constitutional jurisprudence. By placing privacy within the framework of Article 21 and linking it to human dignity, individual autonomy, and personal liberty, the Supreme Court of India set a transformative precedent that continues to shape legal discourse and State action. Importantly, *Puttaswamy* did not exist in a vacuum, rather it was the culmination of a doctrinal evolution that had its roots in early decisions like *M.P. Sharma*⁴ and *Kharak Singh*⁵, wherein the courts were reticent to recognise privacy as a constitutional right. The gradual shift in judicial thinking, marked especially by the dissenting voices in these early cases, found full expression in the unanimous verdict of the nine-judge bench in *Puttaswamy*.

What immediately followed was not merely normative posturing but an active implementation of privacy principles across a variety of contexts. All the decisions after the landmark 2017 judgement, from *Anuradha Bhasin*⁶ which protected digital rights and emphasized proportionality in internet restrictions, to *X vs. Union of India*⁷ where the Court safeguarded reproductive and informational privacy, reveal that privacy is not a static or singular idea but a dynamic, context-sensitive right. It is interrelated with concepts of bodily autonomy, freedom of expression, and control of flow and consumption of information. Every single one of these

¹ See CHINTAMANI RAO vs STATE OF MADHYA PRADESH AIR 1951 SC 118; STATE OF WEST BENGAL vs ANWAR ALI SARKAR 1952 SCR 284; N.B KHARE vs STATE OF PUNJAB AIR 1960 SC 211; OM KUMAR AND ORS. vs UNION OF INDIA AIR 2000 SC 3689; JUSTICE K.S PUTTASWAMY vs UNION OF INDIA AIR 2017 SC 4161; ANURADHA BHASIN vs UNION OF INDIA AIR 2020 SC 1308.

² ANURADHA BHASIN vs UNION OF INDIA AIR 2020 SC 1308

³ AIR 2017 SC 4161

⁴ M.P. SHARMA vs. SATISH CHANDRA AIR 1954 SC 300

⁵ KHARAK SINGH vs. STATE OF UTTAR PRADESH AIR 1963 SC 1295

⁶ ANURADHA BHASIN vs UNION OF INDIA AIR 2020 SC 1308

⁷ 2023 INSC 919

judgments emphasise that privacy is not an antithesis to effective governance but rather a necessary qualification upon it, ensuring that power is exercised within constitutional limits.

However, the jurisprudence post-*Puttaswamy* portends significant challenges ahead. The increasing sophistication of surveillance technologies, expansive data collection by both state and private actors, and a legal framework that is still catching up to these realities, all point to the need for continued judicial vigilance and robust legislative frameworks. Certain events have occurred or been uncovered in the recent decade that places an individual's privacy in a precarious position, leaving personal data and other connected aspects of the right liable and vulnerable to exploitation, which necessitates urgent policy action and judicial intervention. Some of these events are briefly mentioned henceforth.

- The unauthorised deployment of Pegasus spyware to monitor opposition politicians, members of the press, legal professionals, business figures and entrepreneurs, government personnel, scientists and civil rights advocates led to litigation before the Supreme Court where the matters remain *sub judice*¹.
- Delhi Police's deployment of facial recognition technology to further the investigation in the North East Delhi Riots, the Kisan Rally incident at the Red Fort and the Jahangirpuri violence raises significant concerns and red flags. These concerns are heightened by the acknowledgement of the police, disclosed through an RTI response, that any match exceeding 80% similarity is considered positive identification.
- Expansive collection and protracted storage of biological samples and personal data authorised under the Criminal Procedure Identification Act, 2022, present disproportionate intrusions by the law enforcement.

While the Supreme Court, through *Puttaswamy* and future rulings, has firmly established privacy as a fundamental right, its enforcement requires proactive commitment from all arms of the State. Judicial declarations alone cannot safeguard against the erosion of privacy through executive overreach or legislative over-breadth. The use of Pegasus spyware for unauthorised surveillance highlights the danger posed when technological capabilities outpace legal accountability. Similarly, the Delhi Police's deployment of facial recognition technologies, with a low threshold for positive matches, risks institutionalizing bias and arbitrary profiling, especially in the absence of robust oversight or statutory regulation. The Criminal Procedure (Identification) Act, 2022 exemplifies how broad data collection authority, if left unchecked, can precipitate widespread privacy infringements. These trends demonstrate that without executive commitment to a rights-based governance and legislative enactment of robust data protection frameworks with clear safeguards, the constitutional guarantee of privacy risks remaining theoretical rather than practical. Realising privacy protection thus requires concerted action across all branches of the State, not merely to prevent abuse, but to affirmatively integrate constitutional principles into governance structures and technological implementation.

Nevertheless, the Supreme Court's work towards actualising the aim of protecting the right to privacy has been commendable and transformative. These sustained efforts in developing and elaborating privacy jurisprudence following *Puttaswamy* demonstrate a deep commitment and

¹ *Manohar Lal Sharma vs. Union of India*. The next hearing is scheduled by the Supreme Court to be heard next week (from April 22, 2025), as per an article published in The Hindu on April 22, 2025 (web link: <https://www.thehindu.com/news/national/supreme-court-schedules-pegasus-hearing-for-next-week/article69478128.ece>)

adherence to constitutionalism and legal accountability. This body of work affirms that within a democratic framework, individuals are not mere subjects of State authority, but rights-bearing citizens entitled to dignity, autonomous decision-making, and liberty in their personal and public spheres.

REFERENCES

- SCO Team, Right to Privacy: Court in Review, SCOBSEVER (April 21, 2025, 1:30 PM), <https://www.scobserver.in/journal/right-to-privacy-court-in-review/>
- SCO Team, Fundamental Right to Privacy: Justice K.S. Puttaswamy v Union of India, SCOBSEVER (April 21, 2025, 1:30 PM), <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/>
- Anirudh Burman, Development of Privacy Rights in India, CARNEGIE INDIA (April 21, 2025, 1:34 PM), <https://carnegieendowment.org/india/ideas-and-institutions/development-of-privacy-rights-in-india-or-burkes-thoughts-on-political-economy?lang=en>
- Justice K.S. Puttaswamy & Anr. vs. Union of India & Ors. AIR 2017 SC 4161
- Justice K.S. Puttaswamy vs. Union of India, SOUTH ASIA TRANSLAW DATABASE (April 21, 2025, 1:35 PM), <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

*Pratibha
Spandan*