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From Recognition to Restriction: A Study of the Evolution and Constitutional Limits of the Right to Privacy in India

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From Recognition to Restriction: A Study of the Evolution and Constitutional Limits of the Right to Privacy in India

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Abstract

The right to privacy has emerged as a central pillar of constitutional jurisprudence in India, evolving from a contested and implicit concept to a firmly recognized fundamental right under Article 21 of the Constitution. This research paper traces the doctrinal evolution of privacy through landmark judicial decisions, culminating in the watershed judgment of Justice K.S. Puttaswamy (Retd.) v. Union of India, which affirmed privacy as intrinsic to life and personal liberty. The study examines how the judiciary has progressively expanded the scope of privacy to encompass informational, bodily, and decisional autonomy, thereby aligning Indian constitutional law with global human rights standards.

However, the recognition of privacy is not absolute and remains subject to reasonable restrictions grounded in constitutional principles. This paper critically analyses the contours of such limitations, including tests of legality, necessity, and proportionality, particularly in contexts such as national security, public order, and state surveillance. It further evaluates the interplay between privacy and competing state interests through subsequent judicial developments and legislative measures, including the Digital Personal Data Protection Act, 2023, which seeks to regulate personal data while balancing individual rights and state objectives.

The study argues that while the evolution of the right to privacy reflects a progressive and rights-oriented constitutional approach, the increasing expansion of state powers and digital governance frameworks raises significant concerns regarding potential overreach. It concludes that a nuanced balance must be maintained between individual autonomy and collective interests through robust judicial oversight, clear legislative safeguards, and adherence to constitutional morality. Ultimately, the paper underscores the need for a coherent and principled framework that ensures the effective protection of privacy while accommodating legitimate restrictions in a democratic society.

Keywords: *Right to Privacy, Article 21, Constitutional Law, Fundamental Rights, Proportionality, Judicial Review, Surveillance, Data Protection, Puttaswamy Case, India*

Evolution of the Right to Privacy Under the Constitution of India

One of the most dramatic and revolutionary developments in Indian constitutional law is the growth of the right to privacy under the Indian Constitution. The Indian Constitution does not specifically protect the right to privacy as a basic right, in contrast to several other constitutional systems where privacy is officially written. However, the Indian judiciary, especially the Supreme Court, has broadened the scope of current basic rights to include privacy as a crucial and fundamental element via a slow but significant process of judicial interpretation. This progression is not only a legal development; it also reflects how society, government, and technology are evolving, as well as the growing understanding of the significance of human liberty, autonomy, and dignity within a democratic framework. Therefore, the tale of privacy in India is one of judicial bravery, constitutional ingenuity, and the ongoing balancing of conflicting interests between the state and the individual.

Early Constitutional Viewpoint: Lack of Clear Recognition

The court took a cautious and textually strict stance while interpreting basic rights throughout the early years of the Indian Republic. The right to privacy was not specifically included in the original Constitution. Because there was no explicit textual requirement, the courts were reluctant to include such a right into the constitutional structure. This early method was typified by a formalistic conception of rights, where judicial interpretation was mostly limited to the exact text of constitutional clauses rather than their underlying principles or larger spirit.

The Supreme Court's historic ruling in *M.P. Sharma v. Satish Chandra* (1954),¹ which addressed whether state-conducted search and seizure operations violated an individual's right to privacy, amply illustrates this stringent viewpoint. The Court ruled categorically that there was no such right recognised by the Indian Constitution. The Court highlighted that it would be improper to import a right similar to the Fourth Amendment of the United States Constitution into Indian law, drawing a distinction between the Indian constitutional framework and the American Constitution. As a result, the ruling categorically denied the existence of a universal right to privacy, establishing a precedent that would affect future rulings for years to come.

In *Kharak Singh v. State of Uttar Pradesh* (1962),² a similar strategy was used to contest the legitimacy of police surveillance techniques, such as visiting suspects' homes and trailing them. Once again, the Court's majority rejected the idea that the right to privacy is a basic constitutional right. The Court did not recognise a more expansive right to privacy, even though it invalidated certain parts of surveillance—especially nighttime house visits—as violations of personal liberty

¹ *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

² *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295

under Article 21. The lack of clear constitutional protection for such a right served as the foundation for the argument.

It's crucial to remember, however, that Justice Subba Rao wrote a noteworthy dissent in this case, outlining a more wide and progressive conception of personal liberty. He maintained that the idea of liberty included the right to be free from unjustified interference in one's personal life as well as the freedom from bodily confinement. Despite not being recognised at the time, this dissent established the theoretical framework for India's future privacy jurisprudence. It was the start of a movement to acknowledge the more profound aspects of individual liberty, such as privacy protection.

Therefore, the early constitutional stance was characterised by the rejection of privacy as a basic right as well as the beginnings of a later, more progressive interpretation. The judiciary's early resistance may be explained by both its commitment to a limited interpretive philosophy and the larger sociopolitical backdrop of the era, which gave public order and state power precedence over individual liberties.

The Emergence of Privacy as an Implied Right via Gradual Judicial Expansion

A more liberal and purposeful reading of the Constitution increasingly replaced the strict approach of the early years, especially starting in the 1970s. Growing awareness that the Constitution is a living document that may change to reflect changing social demands and realities had an impact on this change. The court started to take a broader stance on basic rights, highlighting their function in defending individual liberty and human dignity.

The ruling in *Gobind v. State of Madhya Pradesh* (1975)³ marked a turning point in this change. In this instance, the Supreme Court carefully recognised that the basic rights protected by Articles 19 and 21 might be the source of the right to privacy. The Court acknowledged that privacy may be regarded as a basic right in certain situations, subject to legitimate limitations imposed by the state, even if it did not give a definite definition of the right. This opened the way for more court investigation and represented a substantial shift from the previous explicit denial of privacy.

In *Gobind*, the Court used a case-by-case approach, acknowledging that the boundaries of privacy must be created in light of particular factual circumstances rather than being rigorously defined. The court was able to progressively broaden the meaning of privacy without adhering to a rigid definition because to this adaptable methodology. It also demonstrated an understanding of the intricate and varied nature of privacy, which includes many facets of human existence, including as interpersonal connections, physical integrity, and information management.

³ *Gobind v. State of M.P.*, (1975) 2 SCC 148.

In *R. Rajagopal v. State of Tamil Nadu* (1994),⁴ the Supreme Court clearly declared that the right to privacy is a component of the right to life and personal liberty under Article 21, thereby solidifying the acceptance of privacy as an implicit right. The case concerned the unapproved publishing of a person's life narrative, and the Court decided that, unless it is based on public records, such publication is a breach of privacy. This ruling is noteworthy because it emphasises protecting personal data from unjustified disclosure and clearly recognises privacy as a fundamental right.

The Court addressed the question of telephone tapping in *People's Union for Civil Liberties (PUCL) v. Union of India* (1997)⁵ and acknowledged that the right to privacy included the freedom to have private conversations without interference. According to the Court, any infringement on this freedom must be justified by a legitimate legislation and come with procedural protections to guard against misuse. This ruling made clear how crucial it is to safeguard privacy in light of government monitoring and technological developments.

When taken as a whole, these instances show a slow but significant movement toward acknowledging privacy as a crucial part of basic rights. The court shifted from rejection to cautious acceptance, setting the stage for future years to see a broader acknowledgement of privacy.

Article 21 Expansion: Transitioning from Procedural to Substantive Due Process

It is impossible to comprehend the extension of the right to privacy under Article 21 of the Indian Constitution without acknowledging the significant changes that Article 21 itself experienced over time. The Supreme Court held in *A.K. Gopalan v. State of Madras* (1950)⁶ that the "procedure established by law" simply meant any procedure prescribed by a validly enacted law, regardless of its fairness or reasonableness. This narrow and literal interpretation of Article 21 was prevalent during the early constitutional phase. As long as there was some kind of legal support, this view essentially granted the government broad discretion to restrict personal freedom. Under such a framework, the Court's refusal to consider the substantive nature of the law severely curtailed the prospect of recognising unenumerated rights like privacy.

But with the historic ruling in *Maneka Gandhi v. Union of India* (1978),⁷ this narrow interpretation started to drastically shift. By ruling that the "procedure established by law" must be "just, fair, and reasonable" rather than arbitrary, whimsical, or oppressive, the Supreme Court in this judgement significantly changed the meaning of Article 21. With this, the concept of substantive due process was incorporated into Indian constitutional law, bringing it closer to the

⁴ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

⁵ *PUCL v. Union of India*, (1997) 1 SCC 301.

⁶ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

values of justice and fairness found in democracies. The Court also ruled that Articles 14, 19, and 21 must be interpreted in tandem to provide a complete framework for the protection of individual rights, since they are not mutually exclusive.

The ramifications of this theological change were extensive. It made Article 21 a storehouse of substantive rights required for a meaningful and dignified life, rather than just a procedural promise. The concept of the right to life was expanded to include the freedom, autonomy, and dignity of living, rather than being limited to animal existence. The right to privacy logically finds a place as a crucial part of individual liberty within this broadened concept.

The right to livelihood, the right to health, the right to education, and the right to a clean environment are just a few of the many rights under Article 21 that the Supreme Court started to acknowledge after *Maneka Gandhi*. One such right that has evolved is privacy, which is strongly related to the concepts of autonomy and dignity. The Court recognised that the right to make decisions about one's life without excessive government intervention is a component of personal liberty, and that this freedom is meaningless in the absence of a protected area of private. Any state action that affected privacy had to meet the standards of justice, rationality, and non-arbitrariness as a result of the enlargement of Article 21. This gave people a strong defence against intrusion and placed severe restrictions on the use of governmental authority. The court gained a sophisticated concept of privacy throughout time, acknowledging its many facets, such as physical integrity, informational control, and decisional autonomy.

Thus, the history of the right to privacy was significantly influenced by the conversion of Article 21 from a procedural precaution to a substantive guarantee. It offered the constitutional basis for the recognition, expansion, and protection of privacy as a fundamental component of individual liberty and human dignity.

Human Dignity and Privacy: A New Constitutional Value

The court in India started to see privacy as a fundamental constitutional right that is inextricably tied to human dignity as the country's privacy jurisprudence developed. This signalled a dramatic change from previous conceptions of privacy as a negative right to a more comprehensive perspective that acknowledges its beneficial function in empowering people to live fulfilling and independent lives. Deeply ingrained in the Preamble of the Constitution, the concept of dignity has progressively taken center stage in the interpretation of basic rights, especially in relation to Article 21.

Recognising a person as an independent, self-determining entity with the ability to make decisions about their own life, identity, and relationships is a component of human dignity. In this way, privacy becomes a prerequisite for exercising such

liberty. People cannot freely express their identities, develop their personalities, or make private choices without fear of intrusion or condemnation in the absence of a protected private domain. As a result, the court started to stress how crucial privacy is to maintaining human dignity and guaranteeing the full realisation of constitutional liberties.

In a number of court rulings, the Court acknowledged the significance of privacy in issues pertaining to physical integrity, reproductive rights, and interpersonal relationships. The Supreme Court has recognised that reproductive autonomy is a crucial component of individual liberty and privacy in *Suchita Srivastava v. Chandigarh Administration* (2009).⁸ The Court ruled that a woman's autonomy over her body is an essential component of her dignity and should be recognised. This case demonstrated the close relationship between physical autonomy and privacy, highlighting the fact that any interference with such autonomy would constitute a breach of dignity.

Similar to this, a significant advancement in constitutional law was the acknowledgement of sexual orientation as a component of privacy and dignity. The court recognised that a person's sexual identity is a fundamental aspect of their uniqueness and is very personal. Interference in such situations compromises an individual's dignity and self-worth in addition to violating their right to privacy. This viewpoint represents a more comprehensive sense of privacy, which includes the freedom to create one's own identity and to live authentically and respectfully.

Information control is also linked to privacy and dignity. Controlling the spread of personal data is essential for preserving one's dignity in an era when it is being gathered, kept, and analysed more and more. Loss of autonomy, discrimination, and humiliation may result from unauthorised disclosure or abuse of personal information. The court has acknowledged this and stressed the need of protecting informational privacy as a fundamental component of dignity.

Additionally, the idea of dignity gives privacy law a moral and ethical component. It mandates that the state uphold each person's inherent value and abstain from acts that denigrate or dehumanise them. This has resulted in a more considerate and inclusive approach to privacy protection, taking into consideration the various experiences and vulnerabilities of many societal groups.

Essentially, the concept of privacy has been broadened and enhanced by the rise of dignity as a fundamental constitutional principle. It has made privacy a basic human value that supports the whole system of constitutional rights, rather than

⁸ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

just a legal right. The foundation for a stronger and more thorough protection of privacy in the Indian legal system has been established by this development.

The Revolutionary Decision: Union of India v. Justice K.S. Puttaswamy (2017)

The ruling in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)⁹ marks the most significant and revolutionary turning point in the development of the Indian Constitution's guarantee to privacy. In addition to confirming the right to privacy as a basic right, this unanimous ruling by the Supreme Court's nine-judge bench offered a thorough and authoritative framework for its interpretation and implementation.

The lawsuit emerged in the backdrop of objections to the Aadhaar system, which involves the gathering and use of personal demographic and biometric data. The Court's main concern was whether the right to privacy is guaranteed by the Constitution and, if so, what its limits are. The Court conducted a thorough examination of comparative jurisprudence, constitutional principles, and the philosophical underpinnings of privacy in order to answer this issue.

The ruling's clear overturning of previous rulings in M.P. Sharma and Kharak Singh, which rejected the existence of a basic right to privacy, was one of its most important features. The Court acknowledged that the Constitution must be construed in a way that takes into account modern values and circumstances and that previous rulings were founded on a limited and antiquated view of basic rights.

The Court ruled that the right to privacy is a component of the freedoms protected by Part III of the Constitution and is inextricably linked to the right to life and personal liberty under Article 21. It highlighted the interdependence of privacy with other basic rights, such as the freedoms of speech, expression, movement, and association. This integrated approach highlights the significance of privacy within the larger context of individual liberty and reflects the comprehensive character of constitutional rights.

What stood out most was how the judgment acknowledged various forms of privacy - informational, bodily, and freedom in making choices. Human dignity stays intact when bodies are protected from unwanted intrusion. Managing one's own information means having authority over who accesses it and under what conditions. Choices about life paths like starting a family or ending a relationship fall within personal independence. Each aspect reflects a different layer of being left alone.

⁹ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

A key outcome of the Puttaswamy judgment was setting up a structured way to evaluate restrictions on privacy rights. Not only did it lay down clear criteria, but it also shaped how such limits are reviewed legally. One condition involves having an actual law - what's known as legality. Beyond that, there must be a legitimate aim held by the government. What ties these together is proportionality, ensuring actions match their purpose without going too far. Though built step by step, the framework functions as one coherent check. Because of this approach, decisions affecting private life now face stricter scrutiny under consistent rules.

Privacy matters deeply in any democracy, the decision reminded. How people keep control over their lives ties directly to how much space they have away from scrutiny. Without breathing room, even simple freedoms grow harder to practice. Watching screens alone does not fix what constant tracking breaks. Modern tools collect pieces of daily life at scales once unimaginable. That reach changes everything about personal boundaries. Laws must rise to meet these shifts, not just court rulings. Structures built on paper need strength equal to invisible networks weaving through homes and habits.

Nowhere is the shift in India's legal thinking more visible than in the Puttaswamy judgment. This decision firmly anchors privacy within fundamental rights, reshaping prior assumptions. Instead of treating old doctrines as fixed, the courts have shown willingness to adapt them. Through such reasoning, personal freedoms gain strength even when society changes rapidly. Technology evolves quickly - yet constitutional values keep pace, thanks to interpretive courage. What results is not just a verdict, but a recalibration of how liberty lives in modern times.

Conclusion

One step at a time, India's legal landscape began to shift - privacy slowly gaining ground despite early dismissal. Not until later did courts acknowledge what once seemed absent: a core claim to personal space within constitutional bounds. Through rulings shaped by changing lives and habits, judges expanded meaning where text appeared silent. Where first there was refusal, now grows protection rooted in daily experience. Interpretation, not amendment, opened doors that rigid reading might have kept shut. Slowly, dignity found voice in decisions far beyond old limits.

What happens when privacy becomes a recognized right shifts how individuals relate to the state. Shielding personal life from unchecked intrusion gains importance through such recognition, while clear limits emerge on how power may be exercised. Still, room remains for legitimate aims - welfare, order, safety - to shape where privacy applies. Balance defines constitutional governance here,

though not one set in stone. Constant care and thoughtful choices keep it functioning. Nowhere more than today does privacy matter, as technology races forward and societies lean heavily on digital platforms for daily functions across public services, commerce, and interaction. Because personal information now flows widely through networks, risks have grown - making solid rules and oversight bodies essential. With data handling becoming routine, guarding individual details requires clear legislation backed by real accountability measures. What once seemed secondary now stands central: how institutions manage private facts shapes trust and safety alike.

What stands out most is how privacy law's growth highlights rights as living concepts, shifting alongside society's changes. Not fixed in stone, these principles evolve through real-world pressures and demands. A key player here? The courts - shaping constitutional meaning without hesitation. Their role emerges clearly when protecting values like freedom, fairness, and human worth. Through their rulings, the Constitution acts - not as a relic - but as an instrument responsive to modern challenges.¹⁰

Ultimately, recognizing the right to privacy marks a pivotal shift in how Indian constitutional law has developed. This moment highlights the judiciary's ongoing commitment to democracy and personal freedoms. Yet progress cannot pause at this stage. Moving forward requires persistent effort by government bodies, legal institutions, and citizens alike. Awareness must grow. Protections need strengthening. A deeper grasp of why privacy matters - for freedom, for human worth - becomes essential.

Restrictions On Fundamental Rights – A Study with Special Reference to the Right to Privacy

Concept of Restrictions

Individual rights are not unqualified; they may only be used to defend the rights of other people, the state, or society. As far as the healthy existence of any community is concerned, limiting or restricting rights—which in certain circumstances may even amount to prohibitions—is a well-recognised idea. As a result, members of any given society are required to restrict their freedoms to the extent necessary to safeguard the freedoms of others, whether similar or different. They are inevitably limited in meeting community demands. Both powers and rights must be curtailed and sometimes prohibited in order to maintain social cohesion and realise the ideal of justice. A "state of legal regulation" is required in light of conflicting ideals by the legal liberty principle,

¹⁰ S.P. Sathe, *Judicial Activism in India* (2002).

which is the "legal permission to do and not to do as one pleases." In addition to emphasising rights, laws should develop in individuals a sense of duty to repay society for the advantages they get. The idea of legislative limitations on rights resolves this conflict of interest. The interests must be assessed using particular benchmarks, such as the safety and security of the country and society, the sanctity of the individual and the property, and the welfare of the community, in order to successfully and meaningfully resolve the dispute.¹¹

There are two ways to look at the relationship between a common law right and its limitations. The so-called "internal theory" sees the right and its limit as one, with the limit being inherent in the right and indicating the extent of its content. The second perspective, which is summarised as the "external theory," holds that there is no connection between the ideas of "right" and "limit." It recognises two things: the unlimited "right in itself" and the "right as limited," or what remains after the constraints are put in place. The appropriateness of the idea depends on the characteristics of the state, society, and most importantly, the right. The exterior theory would be supported by an individualistic conception of the state, whereas the internal theory would be preferred by a society that values its individuals' contributions to society.¹²

In the end, a right's content—that is, its core, penumbras, and limits that set it apart from other rights—as well as the degree of limitations placed on it define the extent of that right's availability to a person in a particular situation. Depending on the kind of right and the rationale for such limitations, this differs from case to case. The question of what and how much should be regulated to accommodate various conflicting interests is always at the heart of the issue. In summary, three factors—conflict between comparable or distinct rights of others, the presence of a supervening public interest, and the interests of the state—determine the scope, extent, and operation of the right. This also applies to basic rights.¹³

Rights Conflict

Individual rights often clash with conflicting claims made by others, necessitating the application of limitations to strike a balance. Therefore, in *Kerala Vyapari Vavasayi Ekopana Samithi v. State of Kerala*,¹⁴ the respondents' legal right to strike was limited in order to protect the freedom of movement and freedom of expression of those who did not support the strike call. In addition to legal rights, fundamental rights are also subject to reasonable limitations in order to protect other people's fundamental rights. In *R. Rajagopal v. State of Tamil*

¹¹ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982) 45.

¹² M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis, 2018) 1345.

¹³ V.N. Shukla, *Constitution of India* (13th edn., Eastern Book Company, 2017) 256.

¹⁴ *Kerala Vyapari Vavasayi Ekopana Samithi v. State of Kerala*, (2017) 5 SCC 810.

Nadu,¹⁵ the contradiction between the press's right to publish a putative autobiography and the purported author's right to privacy was brought before the court. The court limited the scope of press freedom by ruling that the petitioners might publish what they claimed to be an autobiography as long as it was based on public documents, even without the purported author's permission. It was also decided that publishing any further information about the author's life narrative without supporting documentation would be considered an invasion of his privacy, for which they would face legal repercussions.¹⁸ It is said that in the *Auto Shankar* case, the court was attempting to strike a balance between the competing rights in a manner that would maximise the promotion of the rights concerned with the least amount of conflict by limiting the scope of the right's substance. In a similar vein, the contradiction between the rights of minorities under article 30 and the right to education under articles 21 and 21 A must be harmoniously interpreted to allow for both rights to coexist peacefully.¹⁶

A Supervening Public Interest

Both the preservation of rights and their limits are centred on the public interest. The term "public interest" refers to "the general welfare of the public that warrants recognition and protection," which supports governmental control. Public interest is anything that advances the interests of the public as a whole rather than the interests of any one member of the public. To put it another way, the public interest is used to legitimise authority. Therefore, the common law acknowledged the need of preserving a "delicate balance between the right of the individual and the need of the community at large." Therefore, in the interest of public health, security, safety, and general welfare, the government may pass rules governing an individual's use of land.¹⁷ This also applies to constitutional rights, which establish the guiding principles of the legal system rather than listing its regulations. disagreement between principles requires more caution than disagreement between two regulations. Either negating one of the rules or making an exception to one of them will settle the problem.. Conversely, the relative weight of each principle is considered when two are in competition. In order to create a "conditional relation of precedence between the principles" that is acceptable for the factual circumstances, the courts must engage in a balancing exercise.^{Thirty} The principle that weighs more in the particular situation will take precedence over the other. For example, because of the overriding interest in the common welfare, the basic rights to equality and freedom are subordinated to the principles of socio-economic fairness outlined in Part IV of the Indian Constitution.³² The public interest and other significant factors serve as the foundation for limiting the liberties protected by Article 19(1) of the Indian Constitution. For instance, the requirement that two-wheeler riders wear helmets

¹⁵ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

¹⁶ Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* (Edward Elgar, 2014) 98.

¹⁷ Durga Das Basu, *Commentary on the Constitution of India* (LexisNexis, 2008) Vol. B, 2110.

was affirmed as a legitimate constraint on their freedom of movement since it served the public interest. *Mr. X v. Hospital Z*¹⁸ was a comparable instance of a conflict between two basic rights. It included disclosing an HIV patient's personal information to the public. The contradiction between the petitioner's right to privacy and other community members' right to a healthy existence—both of which stem from the right to life under A.21—was the matter before the court. The court ruled that while the patient has the right to keep the specifics of his illness secret, the public's greater interest in learning about them has a supervening impact and would therefore take precedence over the patient's right to privacy. Restrictions on fundamental rights were justified and supported on the grounds that they were necessary to maintain democracy, which is a component of the fundamental framework of the Constitution.

Interest of the State

Another justification for limiting rights is state interest. In common law, the argument of "state necessity"¹⁹ was recognised as a rationale for encroaching on an individual's rights. The claims made on behalf of a politically organised society, where the survival of a political unit in its identity is the irreducible minimum, may be used to define "state interest" and its components, even if it is difficult to do so. The integrity of the country's geography, political institutions, and culture must all be included in the contents of a state interest in a particular circumstance. The legitimacy of a limitation on a legal right based on a state interest may be shown by demonstrating a logical connection between the restriction and the state goal that is intended to be achieved. However, a more stringent standard of assessment is used when constitutional rights that establish a nation's governing principles are restricted due to state interests. This is due to the fact that upholding constitutional law against the government is at the core of constitutional adjudication. The significance of the right in issue undoubtedly determines the level of scrutiny to be used in constitutional adjudication. The more significant the right, the more stringent the criteria that must be used to guarantee that it is not unjustly violated. The basic rights are sometimes referred to as negative rights, meaning that they serve as restraints on the authority of the state. When determining whether an infringement of a right is permissible based on a projected state interest, the court may first determine whether the infringement is constitutionally permissible and, second, whether the "interest" is significant enough to be acknowledged as a legitimate state interest. Therefore, in order to justify a restriction on a basic right, the "state interest" must be "compelling" or "legitimate and important" enough to limit the extent of the right in issue. The contested legislation will not be saved by a simple logical connection between the limitation and the state interest. Because fundamental

¹⁸ *Mr. X v. Hospital Z*, (1998) 8 SCC 296

¹⁹ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press, 2012) 89.

rights are not granted by the state as legal rights are, a higher bar is imposed for their limitations. Rather, they are thought to be inherent to humans. The judge must verify that there are no other options for protecting the state interest that would have a smaller effect on the extent of the basic right before imposing such limits.

In legal systems with written constitutions, this kind of right-state interest conflict has been a major source of litigation. Courts have established a number of criteria in an effort to resolve disputes peacefully, including the proportionality test put forward by the European legal system and the rigorous scrutiny test adopted by the United States Supreme Court.

Restrictions on the Right to Privacy

This raises the issue of how far the limits may be applied without unnecessarily restricting the right to privacy. Since the right to privacy was recognised as a fundamental right, this has been a significant problem in both the legal systems of the United States and Europe. It has been noted that American constitutional law lacks a broad notion of rights restrictions.

Depending on the specific facts of each case, the courts put restrictions on rights. There are two categories for rulings on violations of the right to privacy in the United States. The first one looks at whether any individual rights were violated by the contested legislation, and the second one examines if there was a compelling state interest that justified such interference. Notably, the Supreme Court has not been considering cases involving privacy rights violations based on public interest violations. According to the German Basic Law, an individual's freedom to develop his personality may be restricted in order to protect moral law, the constitutional order, or the rights of others. Furthermore, the ECHR acknowledges limitations on the right to privacy for the sake of public order, national security, health or moral protection, and other people's rights.²⁰ According to the EU Charter on Fundamental Rights, limitations on the rights it recognises may only be imposed where they are required to safeguard the public interest or the rights and liberties of others.²¹

Therefore, it is evident that the evaluation of the infringement of the right to privacy in the United States differs from that of the European legal system. When it comes to weighing the right to privacy against the interests of the society, the American legal system is not as serious as the legal systems in Europe.

²⁰ Charter of Fundamental Rights of the European Union, 2012/C 326/02, Art. 7.

²¹ European Convention on Human Rights, Art. 8.

Reasons to Limit the Right to Privacy: The Indian Situation

In light of this, it is important to look at how Indian courts have responded to privacy violations. The courts have been weighing the rights of others, the public interest, and the state's interest while establishing the breadth and extent of the right to privacy under the Indian Constitution. It is important to highlight that, in contrast to the legal systems in the United States and Germany, the Indian court has not been mindful of the application of the rigorous scrutiny test or the proportionality test in the process of balancing the right to privacy and the competing interests. Since *Gobind v. the Government of M.P.* in 1975,²² the Supreme Court has been considering cases involving conflicts between the right to privacy and compelling governmental interests. In this context, the notion of compelling state interest might be seen as including the state's security, sovereignty and integrity, amicable relations with other states, and public order. The court doesn't seem to have delved into the specifics of the idea of compelling state interest, however. Because the court was unsure whether the right to privacy could be granted the status of a full-fledged basic right, it has also not established any standard to be used in evaluating the infringement of the right to privacy.

The contradiction between the right to privacy and the interests of others was first discussed in *Smt. Saroj Rani v. Sudarshan Kumar Chadha*²³. In *Saroj Rani*, the Supreme Court limited the wife's right to privacy in favour of the husband's after considering whether the remedy of restoration of conjugal rights offered by section 9 of the Hindu Marriage Act, 1955 infringed that right. During this process, the court disagreed with the Andhra Pradesh High Court's groundbreaking ruling in *T. Sareetha v. Venkata Subbaiah*.²⁴ In *Sharda v. Dharmpal*, the Supreme Court upheld the imposition of limits on the exercise of the right to privacy, giving precedence to the statutory right to divorce.

In a similar vein, the Supreme Court ruled in *Mr. X v. Hospital Z* that the right to privacy might be restricted in the public interest. In this instance as well, the Court remained mute on the applicability of the aforementioned criteria throughout the balancing process. Similar to this, the court clarified the matter in *PUCL v. Union of India*,²⁵ ruling that "when there is a competition between the right to privacy of an individual and the right to information of the citizens, the former has to be subordinated to the latter as it serves larger public interest."

²² *Gobind v. State of M.P.*, (1975) 2 SCC 148.

²³ *Saroj Rani v. Sudarshan Kumar Chadha*, (1984) 4 SCC 90.

²⁴ *T. Sareetha v. Venkata Subbaiah*, AIR 1983 AP 356

²⁵ *PUCL v. Union of India*, (1997) 1 SCC 301.

Judicial Scrutiny and the Right to Privacy: The Indian Approach

It has been noted that rather than using a formal test, the Indian court has stated proportionality as a general idea. The court often took a very deferential stance, using the Wednesbury standard of review even when it claimed to have used proportionality analysis. The court seldom looks at other functional aspects of the proportionality test or the need of the legislative action. The burden of proving a law's unconstitutionality rests on the petitioner since Indian courts often assume that statutes are valid. In *Directorate of Film Festivals v. Gaurav Ashwin Jain*,²⁶ the court decided as follows:

Courts are not and cannot serve as appellate authority evaluating a policy's appropriateness, suitability, and accuracy. Courts cannot intervene with policy on the grounds that it is incorrect or that there is a better, more equitable, or more sensible option. Judicial evaluation focuses on the policy's legality rather than its soundness or wisdom.

The Supreme Court has been considering the issue on a case-by-case basis, despite the fact that cases involving violations of the right to privacy have been presented before it since the 1950s, as seen by rulings such as *M.P. Sharma*. Until *Anuj Garg*, there was no test or doctrine established or used by the court in instances involving violations of the right to privacy, in contrast to cases involving violations of equality and the right to practise one's religion. In *Anuj Garg v. Hotels Association of India*,²⁷ the court considered the legality of Section 30 of the Punjab Excise Act 1914, which forbade the employment of women in establishments where the public consumed alcohol or intoxicating drugs. This case demonstrates the application of the proportionality analysis. Examining whether the legitimate goal of safeguarding women's interests is proportionate to the majority of established gender norms, such as autonomy, equality of opportunity, and the right to privacy, the court determined that the state bears the burden of proving that a measure is proportionate when its validity is evaluated using the equality touchstone. The court's involvement in *Anuj Garg* was limited to determining whether the legislative action was reasonable and proportionate. The court did not make the effort to establish the need of verifying the measure's adequacy as part of the proportionality test, even though it rejected the contested provision and reasoned that it was not appropriate since it curtailed women's autonomy. Although the court utilised proportionality analysis in *Anuj Garg*, it doesn't seem to have outlined the test in an organised manner and sometimes used the proportionality and rigorous scrutiny criteria interchangeably.

²⁶ *Directorate of Film Festivals v. Gaurav Ashwin Jain*, (2007) 4 SCC 737.

²⁷ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

Using the Doctrine of Proportionality to Assess the Aadhaar Scheme's Legality

The Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act was passed with the clear goals of advancing "good governance, efficient, transparent, and targeted delivery of subsidies, benefits, and services... to individuals residing in India"¹⁷⁵. In order to establish bank accounts, get a mobile phone connection, file taxes, and receive other social welfare benefits, the state mandated that all residents obtain an Aadhaar number by providing demographic and biometric data.¹⁷⁸ The whole plan was contested, among other things, on the grounds that it violated the right to privacy, which required the court to thoroughly re-examine the constitutional right to privacy. In the meanwhile, Parliament mandated that Aadhaar be linked to a Permanent Account Number (PAN) in order for the PAN to remain functional.¹⁷⁹ One's capacity to conduct different financial and banking transactions would be severely restricted by such a regulation. As a result, the clause's validity was contested in *Binoy Viswam v. Union of India*.²⁸ According to the court's ruling in *Binoy Viswam*, the restrictions placed on article 19(1)(g) by the cancelling PAN must be examined from a proportionality perspective.

In this case, the court agreed with the state's claim that Aadhaar would be a useful tool for preventing PAN duplication; as a result, the punishment for invalidating PAN was clearly related to the Act's objectives. It seems that the court has not used the standard as established by the German legal system, despite the fact that the court decided that the ruling advances the notion of proportionality. The court did not investigate the matter further in the context of the proportionality test or look for less restrictive ways to accomplish the goal. It is argued that the court's approach is incompatible with safeguarding the right to privacy. Furthermore, it goes against an individual's right to protect themselves from the possibility of data leaks.

However, by contrasting and comparing the Canadian and German models, the majority in *Puttaswamy II* advanced the proportionality theory when examining the validity of the Aadhaar Act. In the end, the proportionality test was established by combining the components of the test that were created by the legal systems in Germany and Canada. Analysing whether a restrictive measure is appropriate for accomplishing a valid goal is the first part of the test. The second question is whether this kind of action is appropriate for achieving the intended goal. After that, it is examined to make sure there are no "less restrictive but equally effective alternatives." Finally, it moves on to the balancing step to make sure the alleged advantages are not out of proportion to the expense of limiting the right.

²⁸ *Binoy Viswam v. Union of India*, (2017) 7 SCC 59.

The proportionality test seems to have been used by the majority in *Puttaswamy II*. A thorough examination of the ruling, however, reveals that the court did not think it essential to investigate the Act's operation in order to rule on both the Act's and its intended scheme's constitutionality. It is argued that this method restricts the examination of important factors, such as the law's real efficacy and influence on basic rights, as well as the applicability of the proportionality concept. Additionally, the majority has disregarded the petitioners' argument that the Aadhaar scheme had systemic flaws and that the government chose it without considering whether it was the least restrictive option. To put it simply, one of the crucial components of the proportionality test—necessity analysis—was absent. According to the court, the last phase of the proportionality test involves striking a balance between the need of accomplishing the intended goal and the societal significance of avoiding the restriction of constitutional rights. However, the court paid close attention to the law's stated goal and was persuaded of the state's legitimate interest in providing targeted subsidies, benefits, and services as well as its goal of stopping corrupt practices that obstruct worthy individuals at different levels of the public distribution system. Regarding the violation of the beneficiaries' right to privacy, most thought it was small and not excessive. The court concluded that "inroads into the privacy rights where these individuals are forced to part with their biometric information are minimal" after weighing the right to privacy against the right to a decent life. In a social welfare state, this technology really becomes an essential instrument for guaranteeing sound governance. About Furthermore, it was decided that in order to prevent judges from making arbitrary decisions, the state interest and the right must be balanced according to a set of reliable guidelines known as the "bright-line rules."²⁹ Nevertheless, the Court did not provide any advice or an explanation of what such bright-line standards may be.

Therefore, it is evident that even while the court seems to have used the proportionality test, the justices in *Puttaswamy II* did not take the time to ascertain the factual matrix that forms the basis of the proportionality test. The court determined that the directive under sections 7 and 8 of the Act to make the information accessible to the government did not violate the right to privacy by weighing the right to privacy against the state interest. Therefore, it may be concluded that despite the court's effort to present a very high level of scrutiny in its majority decision, the court really chose a highly deferential approach to the state and put minimum evidentiary requirements on it.

²⁹ David Feldman, *Civil Liberties and Human Rights in England and Wales* (Oxford University Press, 2002) 310.

Nonetheless, Chandrachud J.'s dissent revealed a pro-privacy stance. In Puttaswamy II,³⁰ he revised his version of the proportionality analysis as outlined in Puttaswamy I. He emphasised on shifting the burden of evidence from just maintaining a reasonable link between means and objectives to necessity and proportionality.²¹¹ Considering proportionality as an example of the "global shift from a culture of authority to a culture of justification," he concluded that the Aadhaar program as a whole violated people's right to privacy.

However, the court took a very different stance while evaluating the legality of Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, which calls for connecting Aadhaar to bank accounts. The court was less forgiving in this instance than it was in the Aadhaar Act case, despite the fact that the identical substantive criteria were used to evaluate the constitutionality of the contested regulation and the Aadhaar Act. The court determined that the proposed measure was disproportionate, excessive, and a violation of the right to privacy since the state had not met its burden of demonstrating the need of the measure and that it was proportional to the requirement of state interest.²¹⁵ It is argued that the court's position on the validity of the Aadhaar Act stands in sharp contrast to its application of the proportionality doctrine and its assessment of the constitutionality of the contested provision of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. Depending on whether they want to maintain or reject a legislation, courts tend to do proportionality analysis differently, according to criticism of this unequal approach to applying the proportionality test to different but comparable concerns in the same case.

³⁰ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

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