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The Evolution of Privacy Law in India: From Colonial Statutes to the Digital Personal Data Protection Act, 2023

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Abstract

This paper traces the evolution of privacy law in India from the colonial period to the Digital Personal Data Protection Act, 2023. The Constitution contains no express right to privacy, and for much of its history Indian law protected privacy only indirectly. The paper describes that development in three phases. The first is the colonial and early constitutional period, in which statutes authorised State interception and the Supreme Court declined to recognise a right to privacy. The second is the period in which the Court constructed privacy under Article 21, while Parliament enacted only fragmentary protection. The third begins with *K.S. Puttaswamy v. Union of India* in 2017 and ends with the DPDP Act and its Rules. The paper concludes with observations on the questions that remain open.

Keywords: *Right to privacy; Article 21; Puttaswamy; Data protection; Digital Personal Data Protection Act.*

Introduction

In *K.S. Puttaswamy v. Union of India*, a nine-judge bench of the Supreme Court held unanimously that privacy is a fundamental right (*K.S. Puttaswamy v. Union of India*, 2017). The decision came nearly seven decades after the Constitution was adopted (Constitution of India, 1950), and a general data protection statute followed only in 2023. Until then, the protection of privacy in India depended on case law and on provisions scattered across statutes made for other purposes.

This paper describes that evolution chronologically. It concentrates on informational privacy, and on the regulation of personal data processing by the State and by private entities. It is descriptive, and notes contested questions without attempting to resolve them. The law is stated as at 24 November 2026.

From Constitutional Silence to Puttaswamy

Laws permitting surveillance preceded any law protecting privacy. Section 5(2) of the Indian Telegraph Act, 1885 allowed the government to intercept messages on the occurrence of a public emergency or in the interest of public safety (Indian Telegraph Act, 1885, S.5(2)).

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The Constituent Assembly considered privacy but did not adopt it. K.M. Munshi sought to make the inviolability of the home and the secrecy of correspondence fundamental rights. On 3 December 1948, Kazi Syed Karimuddin moved an amendment against unreasonable search and seizure, modelled on the American, Irish and German constitutions. Dr. B.R. Ambedkar gave it only qualified support, and the amendment was negatived (Constituent Assembly of India, 1948; Qazi, n.d.).

The Supreme Court initially took the same position. In *M.P. Sharma v. Satish Chandra*, an eight-judge bench held that the Constitution contained no provision akin to the Fourth Amendment of the United States Constitution (U.S. Const. amend. IV), and that the power of search and seizure could not therefore be challenged on grounds of privacy (*M.P. Sharma v. Satish Chandra*, 1954). In *Kharak Singh v. State of Uttar Pradesh*, a six-judge bench held that privacy was not a guaranteed right, though it struck down police domiciliary visits as a violation of personal liberty under Article 21 (*Kharak Singh v. State of Uttar Pradesh*, 1962). As both decisions were given by large benches, later and smaller benches could recognise interests in privacy but could not overrule them.

The groundwork for a wider reading was laid in *R.C. Cooper v. Union of India*, where an eleven-judge bench rejected the treatment of fundamental rights as distinct and unrelated (*R.C. Cooper v. Union of India*, 1970). In *Gobind v. State of Madhya Pradesh*, the Court assumed, without deciding, that privacy could be a fundamental right, which would yield only to a compelling State interest (*Gobind v. State of Madhya Pradesh*, 1975). The ground widened further after *Maneka Gandhi v. Union of India* required that a law depriving a person of liberty be fair, just and reasonable (*Maneka Gandhi v. Union of India*, 1978).

In *R. Rajagopal v. State of Tamil Nadu*, the Court held privacy to be implicit in Article 21, so that a person's life story could not be published without her consent unless it formed part of the public record (*R. Rajagopal v. State of Tamil Nadu*, 1994). In *People's Union for Civil Liberties v. Union of India*, it held that telephone tapping infringes privacy unless authorised by law and accompanied by procedural safeguards (*People's Union for Civil Liberties v. Union of India*, 1997).

The status of the right nevertheless remained uncertain so long as *M.P. Sharma* and *Kharak Singh* stood. In August 2015, a three-judge bench hearing the challenge to the Aadhaar scheme referred the question to a larger bench, and on 18 July 2017 it was placed before nine judges (Supreme Court Observer, n.d.).

Before 2023, the protection of personal data came from provisions in statutes enacted for other purposes. The Information Technology (Amendment) Act, 2008 added Section 69, on interception and decryption, to the Information Technology Act, 2000. It also added Section 43A, which allows a person to claim compensation where a body corporate has been negligent in maintaining reasonable security practices for her sensitive personal data, and Section 72A, which penalises the disclosure of personal information in breach of a lawful contract (Information Technology (Amendment) Act, 2008; Information Technology Act, 2000, Ss.43A, 69, 72A). Sections 43A and 72A came into force on 27 October 2009 (Linklaters, n.d.).

The Rules made under Section 43A on 11 April 2011 required privacy policies, consent for collection and security practices. They applied, however, only to body corporates and to

sensitive personal data, and excluded information freely available in the public domain (Information Technology [Reasonable Security Practices] Rules, 2011, r. 3). The Right to Information Act, 2005 separately exempted from disclosure personal information unrelated to any public activity or interest (Right to Information Act, 2005, S.8(1)(j)).

The Aadhaar Act, 2016 gave statutory backing to the biometric identity scheme and came into force on 12 September 2016 (Aadhaar Act, 2016; Linklaters, n.d.). The Telegraph Act has since been replaced by the Telecommunications Act, 2023, parts of which came into force on 26 June 2024, but the new Act retains the earlier interception powers (Telecommunications Act, 2023, S.20; Bar & Bench, 2024).

On 24 August 2017, the nine-judge bench held unanimously that privacy is protected by Article 21 and by Part III of the Constitution as a whole, and overruled *M.P. Sharma* and *Kharak Singh* to that extent (*K.S. Puttaswamy v. Union of India*, 2017). An intrusion on privacy must now satisfy three requirements: legality, a legitimate aim and proportionality. The Court has since relied on the right in other landmark decisions, including those decriminalising consensual same-sex relations and adultery (*Navtej Singh Johar v. Union of India*, 2018; *Joseph Shine v. Union of India*, 2019).

The test was applied soon afterwards. On 26 September 2018, a five-judge bench upheld the Aadhaar Act by a majority of four to one (*K.S. Puttaswamy v. Union of India*, 2019). The majority struck down Section 57 in so far as it allowed private bodies to use Aadhaar authentication, struck down Section 33(2) on disclosure in the interest of national security, and struck down the regulation permitting authentication records to be kept for five years (Aadhaar Act, 2016, Ss.33(2), 57; Aadhaar (Authentication) Regulations, 2016, reg. 27(1)). It also held mandatory linking with bank accounts to be disproportionate. Justice D.Y. Chandrachud dissented and would have held the whole Act unconstitutional.

The Road to the DPDP Act

The legislative process had begun before *Puttaswamy* was decided. The Group of Experts on Privacy chaired by Justice A.P. Shah reported to the Planning Commission on 16 October 2012. It proposed nine national privacy principles and an overarching law, with privacy commissioners at the Central and State levels, and advised that such a law should not circumscribe the right to information (Planning Commission, 2012).

In July 2017, the Ministry of Electronics and Information Technology constituted a committee under Justice B.N. Srikrishna. The committee released a white paper on 27 November 2017 posing 231 questions for consultation (SFLC.in, n.d.), and submitted its report, with a draft Personal Data Protection Bill, on 27 July 2018. The report also recommended amendments to the Aadhaar Act and the Right to Information Act (Committee of Experts, 2018).

A revised Bill was introduced in the Lok Sabha on 11 December 2019 and referred to a Joint Parliamentary Committee (Personal Data Protection Bill, 2019). The Committee reported on 16 December 2021, proposing 81 amendments and 12 recommendations (Joint Committee on the Personal Data Protection Bill, 2019, 2021), and the government withdrew the Bill on 3 August 2022 (LiveLaw, 2022). A fresh draft was released in November 2022 (MeitY, 2022). The Digital Personal Data Protection Bill, 2023 was introduced on 3 August 2023, passed by both Houses by 9 August, and received assent on 11 August 2023 (Bar & Bench, 2023).

The Act adopts the vocabulary of the Srikrishna Committee, of data principals and data fiduciaries, but is considerably shorter than the Bills that preceded it. It applies to digital personal data, but not to data processed for personal or domestic purposes, nor to data made publicly available by the data principal (Digital Personal Data Protection Act, 2023, S.3). Processing must rest either on consent given after notice or on one of the legitimate uses listed in the Act (Ss.4–7). Data fiduciaries must maintain security safeguards and report breaches (S.8), the data of children may be processed only with verifiable parental consent (S.9), and data principals have rights of access, correction, erasure and grievance redress (Ss.11–14). Section 17 exempts processing for the investigation of offences and permits the Central Government to exempt instrumentalities of the State (S.17). The Data Protection Board may impose penalties of up to INR 250 crore (S.33, Schedule).

The Act is not yet fully in force. The Rules were notified on 13 November 2025, after consultation that drew 6,915 responses (Press Information Bureau, 2025). The substantive provisions commence only in May 2027, and until then Section 43A and the 2011 Rules continue to apply (MeitY, 2025; S&R Associates, 2025).

Several questions remain open. First, it has been argued that the exemptions in Section 17 fall short of the standard set in *Puttaswamy*, and a petition challenging them was reported to have been filed in the Supreme Court in February 2026 (Tech Policy Press, n.d.). Second, members of the Data Protection Board are appointed, and may be removed, by the Central Government, which has raised doubts about the Board's independence (ELP, 2026). Third, the exclusion of publicly available data has been criticised as vague, leaving a large category of personal data unregulated (IAPP, n.d.). Fourth, the Act creates no right to compensation, while Section 43A, which does provide for compensation, is omitted with effect from May 2027 (Digital Personal Data Protection Act, 2023, S.44(2)).

Conclusion

Indian privacy law has developed through a series of responses to gaps. A Constitution without a privacy clause led the Court to read privacy into Article 21, and the patchwork of statutes that followed led, after *Puttaswamy*, to more than a decade of legislative drafting. The DPDP Act is a considerable advance on that position. It nevertheless raises once more the question with which the process began, namely whether the processing of personal data by the State itself meets the constitutional standard set in 2017. Since the substantive provisions commence only in May 2027, that question remains open.

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