



The Right to Privacy in India and UN Human Rights Instruments

Dr. Ram Shankar

Assistant Professor,
School of Studies in Law,
Jiwaji University Gwalior, MP

Abstract

The Indian judiciary has played a pivotal role in aligning constitutional rights with international human rights norms, particularly those enshrined in United Nations instruments such as the Universal Declaration of Human Rights (UDHR). Although India follows a dualist legal system requiring parliamentary approval for international treaties to have domestic effect the courts have creatively invoked these instruments to interpret and expand fundamental rights under the Constitution. This judicial innovation is particularly evident in the evolving right to privacy. Though not explicitly stated in the Constitution, the Supreme Court, in *People's Union for Civil Liberties v. Union of India*, invoked the ICCPR to uphold the privacy rights of individuals, citing Article 17 which protects against arbitrary interference with privacy. This paved the way for the landmark decision in *Justice K.S. Puttaswamy v. Union of India*¹, where the Court unanimously recognized the right to privacy as an intrinsic part of the rights to life and personal liberty under Article 21, and linked it to the dignity and autonomy guaranteed by Articles 14 and 19. The UDHR, while not legally binding, has served as a guiding framework for the judiciary. This interpretive reliance on global norms reflects India's commitment under Article 51(c) of the Constitution to respect international law and treaty obligations. This paper examines how Indian courts have used such international standards to give constitutional rights a broader and more dynamic interpretation, particularly in case of right to privacy. It concludes that international human rights instruments, including the UDHR, have significantly enriched India's human rights jurisprudence, especially in affirming privacy as a fundamental and evolving right.

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

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

Keywords: Human Rights, Indian Judiciary, Constitution of India, Universal Declaration of Human Rights, Fundamental Rights.

I. Introduction

Human rights, grounded in the inherent dignity and equal worth of all individuals, form the cornerstone of modern constitutional democracies.² “The Universal Declaration of Human Rights (UDHR)”, “the International Covenant on Civil and Political Rights (ICCPR)”, and “the International Covenant on Economic, Social, and Cultural Rights (ICESCR)” are just a few of the international human rights instruments that have codified these rights. These rights have played a significant role in forming national constitutional frameworks all over the world.³ In order to strengthen India’s adherence to its international commitments, the judiciary has been crucial in interpreting constitutional provisions in accordance with these international human rights norms.

“Human Rights are those fundamental, basic and inalienable rights which are essential for life as human being. Human Rights are the rights which are possessed by every human being, irrespective of his or her nationality, race, religion, sex etc. simply because he or she is a human being.”⁴ “Human Rights are regarded as birth rights as because no one can violate these rights. Human Rights are inalienable, inter dependent and inter related having a clear linkage with human development and both share a common vision with a common purpose.”⁵

Durga Das Basu defines Human Rights as “those minimum rights which every individual must have against the State or other public authority by virtue of his being a member of human family, irrespective of any other consideration.”⁶

The Indian judiciary especially the Supreme Court has frequently maintained that the Constitution’s guarantee of fundamental rights can be expanded and informed by international agreements, particularly those that India has signed. The Court specifically cited “the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)” to establish guidelines against sexual harassment in the workplace in the historic decision of “*Vishaka v. State of Rajasthan*”.⁶ This marked a turning point in the use of international instruments by the judiciary to address legislative gaps. Similar to this, the Court upheld the right to privacy in “*People’s Union for Civil Liberties v. Union of India*” by citing ICCPR duties, even before privacy was legally recognized as a fundamental right.⁷

² Preamble of the Universal Declaration of Human Rights, 1948.

³ Hurst Hannum and S. James Anaya, *International Human Rights: Problems of Law, Policy and Practice*, 6th edn., Wolters Kluwer Law and Business, Aspen Publishing, 2011.

⁴ S.K. Kapoor, *International Law and Human Rights*, 22nd edn, Central Law Agency, Prayagraj, 2022, p.817.

⁵ A.S. Anand, *Justice for Women*, 3rd edn., Universal Law Publishing Company, New Delhi, 2008, p.6. ⁶ D.D. Basu, *Human Rights in Constitutional Law*, 3rd edn., LexisNexis Butterworth Wadhwa, Nagpur, 2008, p.5.

⁶ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

⁷ *People’s Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

India now has a dynamic link between international human rights law and constitutional law because the proactive attitude shown by the judiciary.⁸ Deeper democratic governance, increased governmental accountability, and the increasing fulfillment of rights have all benefited from this connection. In India, the court not only upholds constitutional protections but also makes sure they stay in line with international human rights standards, highlighting the country's changing rights discourse.¹⁰

II. Development of Right to Privacy in International Law

The notion of human rights is not a recent development; instead, it has been a fundamental aspect of human awareness since ancient times. The origins of the idea of human rights can be traced back to philosophers like Locke and Rousseau. According to Locke, “individuals are naturally entitled to complete freedom and the unimpeded enjoyment of all rights and privileges bestowed by the laws of nature. He argued that individuals have a right to protect their personal space, which includes their life, dignity, and property, from unjust actions by others.”⁹ The concept of human rights began to take shape with the Magna Carta of 1215, recognized as the first significant document outlining the fundamental rights of citizens. “The Declaration of the Rights of Man and of the Citizen”, established in France in 1789, proclaimed the inherent, inalienable, and sacred rights of individuals.¹⁰

“The Universal Declaration of Human Rights” stands as the basic framework of international human rights law and has been adopted by the General Assembly on 10 December 1948.¹¹ The Declaration is a detailed enumeration of human rights to be enjoyed by every individual. By this Declaration, it is firmly believed that the natural rights of every human being are universal, inalienable, and should be made available to every individual irrespective of caste, creed, religion, sex, or language. “The Universal Declaration of Human Rights” was followed by a series of documents to form an International Bill of Rights, which was later supplemented by two Covenants: the “International Covenant on Civil and Political Rights”¹² and the “Covenant on Economic, Social and Cultural Rights”¹³.

Article 12 of the Universal Declaration of Human Rights Act, 1948, which states in shadows that “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, or to attack upon his honor and reputation,”¹⁴ also documents the right to privacy. Everyone is entitled to legal protection from these kinds of intrusions or assaults.

⁸ Upendra Baxi, *The Future of Human Rights*, 3rd ed. (Oxford University Press, 2012), pp. 54–56. ¹⁰ S.K. Verma, "International Law and Human Rights in India," in B.S. Chimni (ed.), *International Law and Developing Countries*, Oxford University Press, (2009), pp. 231–234.

⁹ M.P. Jain, *Indian Constitution Law*, 6th edn., LexisNexis Butterworth Wadhwa, Nagpur, 2010.

¹⁰ J.N. Pandey, *Constitutional Law of India*, 59th edn., Central Law Agency, Prayagraj, 2022, p.51.

¹¹ General Assembly Resolution No. 217 (iii), December 10, 1948.

¹² International Covenant on Civil and Political Rights, adopted on December 16, 1966.

¹³ International Covenant on Economic, Social and Cultural Right, adopted on December 16, 1966.

¹⁴ Universal Declaration of Human Rights, 1948, art. 12.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

Article 17 of the International Covenant on Civil and Political Rights Act, 1966 to which India is a gathering too defends that correct & conditions by way of shadows: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence or to unlawful attacks on his honor and reputation.”¹⁵

The “right to privacy” has also been deemed an important true statement. India is required to uphold the right to privacy of its residents as a signatory to the aforementioned international treaties. India has not yet passed laws to safeguard the truth about secrecy, even though it is a signatory to international accords. The Indian judiciary has sought to defend and enforce the right to privacy in favor of persons through two main avenues in the absence of a privacy-protecting regulation, viz. Recognition of the fundamental “right to privacy” as a civil right (common law right) under tort law and as a component of the freedom, existence, speech, expression, and mobility guaranteed by constitutional law.¹⁶ **III. Right to Privacy and Indian Constitution**

The Preamble of the Indian Constitution guarantees the freedom of thought, speech, opinion, religion, and worship to every citizen of the country. This illustrates how important and inclusive the term “liberty” was to the Indian Composition's drafters. According to an interpretation of Article 21 of the Indian Constitution, which contains the phrase personal liberty, a citizen's freedom must be protected in order for them to lead a dignified life, which basically necessitates the legal recognition of their right to privacy. The significance of defining the term “personal liberty” broadly under Article 21 of the Indian Constitution has been emphasized by the Supreme Court on several occasions. “The term personal liberty has the broadest amplitude, protecting a range of rights,” the Court said.

Even though the Indian Constitution does not specifically mention it, the right to privacy has steadily become one of the most important aspects of the fundamental rights that all citizens are entitled to. Based on the principles of liberty and dignity, privacy is essential to an individual's independence, sense of self, and freedom from unjustified intrusion. Over the years, the Indian court has been instrumental in transforming this right from a fringe idea to a fully acknowledged fundamental right that is enshrined in the constitution, especially under Article 21, which protects the right to personal liberty and life.¹⁷ Following a gradual judicial progression over more than 60 years, influenced by a number of seminal rulings, privacy was finally recognized as a basic right.

The fundamental principle of this body of legislation is found in Article 21 of the Constitution, which states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹⁸ Although the word “privacy” was not used

¹⁵ International Covenant on Civil and Political Rights, 1966, art. 17.

¹⁶ Dr. Suresh Kumar and Dr. Karan Singh Gaur, Right to Privacy in India, 9(1) International Journal of Law 170, 2023.

¹⁷ Lawbhoomi, Right to Privacy: Meaning and Scope, Available at: <https://www.lawbhoomi.com/right-to-privacy>, Last Accessed on August 05, 2025.

¹⁸ Constitution of India, art. 21.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

specifically by the Constitution's framers, Article 21's open-textured wording permitted future interpretations. The Supreme Court has defined “personal liberty” to include a variety of rights, including the right to privacy. Additionally, this interpretive framework was reinforced by the “golden triangle” of Articles 14, 19, and 21—established by the seminal case of *Maneka Gandhi v. Union of India*¹⁹—which stipulates that any legislation affecting personal liberty must fulfill the requirements of reasonableness, justice, and non-arbitrariness.

The evolution of the right to privacy in India reflects the dynamic and progressive nature of constitutional interpretation. From being denied outright in early decisions to its eventual recognition as a fundamental right, privacy has become central to the idea of constitutional democracy in India. The Supreme Court, through its expansive reading of Article 21 in conjunction with Articles 14 and 19, has ensured that privacy is not merely a personal right but a collective guarantee of dignity, autonomy, and liberty. However, legislative and executive responses remain inadequate and often threaten to dilute these gains. The need of the hour is for comprehensive legal safeguards, digital literacy, and institutional mechanisms that can translate judicial pronouncements into real-world protections. As technology continues to penetrate all spheres of life, the constitutional promise of privacy must remain vigilant and adaptive, ensuring that individual dignity is preserved in both physical and digital realms.

IV. Right to Privacy and Indian Judicial Trends

Indian judiciary, i.e., the Supreme Court and the High Courts, has played a key role in balancing international human rights norms and domestic constitutional rights. Without an explicit constitutional provision for automatic application of international treaties, Indian courts have adopted an activist approach by construing Part III of the Constitution in accordance with international obligations, i.e., those arising out of “the Universal Declaration of Human Rights (UDHR)”, “the International Covenant on Civil and Political Rights (ICCPR)”, “the International Covenant on Economic, Social and Cultural Rights (ICESCR)”, “the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”, and the “Convention on the Rights of Persons with Disabilities (CRPD)”.²⁰

In addressing several issues involving the right to privacy in one way or another, the Supreme Court of India has been instrumental in assisting the right to privacy in achieving its proper status as a component of the Right to Life and Liberty under Article 21. *M.P. Sharma v. Satish Chandra*²¹ was one of the first decisions in which the Supreme Court ruled on the “power of search and seizure” and found that privacy could not be included within basic rights since it was unrelated to the Indian Constitution.

¹⁹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

²⁰ See *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (where CEDAW was applied in absence of specific domestic legislation); *People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433 (relying on ICCPR); *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 (recognizing CRPD); Constitution of India, Part III; UDHR, 1948; ICCPR, 1966; ICESCR, 1966; CEDAW, 1979; CRPD, 2006.

²¹ *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

*Kharak Singh v. State of U.P.*²² dealt with the question of surveillance, whether police monitoring resulted in a violation of basic rights, and whether or not the right to privacy constituted a fundamental right. The Supreme Court's ruling rejected the notion that the right to privacy was a fundamental right and that it was not protected by our Constitution. Accordingly, the attempt to determine a person's movements in a way that infringes on their privacy is not an infringement of a fundamental right protected by Part III of the Indian Constitution.

In the case of *Govind v. State of M.P.*²³, The judicial approach was that there is an existence of right to privacy in terms of the different guarantees provided by Part III of the Indian Constitution. The Supreme Court did note, however, that the right to privacy will inevitably need to undergo a "case-by-case development" in the absence of legislative legislation because a single case will not be sufficient to understand the exceptions and ramifications of the right to privacy. However, it is undeniable that this judgment expanded the application of Article 21 to include the right to privacy.

The Supreme Court held in *ADM Jabalpur v. Shivakant Shukla*²⁴, that the right to privacy may not be explicitly guaranteed but may be implied because of its inclusion in common law. The court sought to ascertain whether the right to personal liberty is restricted by any other restrictions than those found in the Constitution and statute law. As Justice Khanna had noted: "The right to personal liberty is not exclusively included in Article 21. No one can be deprived of their life or personal freedom without the consent of the law. This is true not just of common law but also of statutory law, such as the Indian penal code."²⁵ The case *R. Rajagopal v. State of Tamil Nadu*²⁸, was among the first to provide a clear explanation of the evolution and scope of the right to privacy. The supreme court ruled that the guarantees of Article 21's right to life and liberty implicitly included the right to privacy. In addition, it acknowledged that among other things, a citizen has the right to protect the privacy of his family, marriage, procreation, motherhood, childbearing, education, and other situations. Nothing on the aforementioned topics may be published without permission, and the right to privacy may be both a basic and actionable right. The right to privacy in communications was expanded in the *People's Union for Civil Liberties v. Union of India*²⁶ case, which dealt with phone tapping. In this instance, the question of whether or not phone tapping violates the right to privacy under Article 21 was raised. The court also established guidelines for the nation's interception laws, such as requiring that only home secretaries make such orders and taking into account the information's need. Additionally, it extended the duration of an interception order by two months. The Supreme

²² *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

²³ *Govind v. State of M.P.*, AIR 1975 SC 1378.

²⁴ *ADM Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207.

²⁵ *ADM Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207. ²⁸ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

²⁶ *People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433. ³⁰ *Selvi and ors. v. State of Karnataka*, AIR 2010 SC 1974.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

Court also stated that the question whether right to privacy could be claimed or not or has been violated in a given case would be depending on the facts of the said case.

In *Selvi and others v. State of Karnataka and others*³⁰, the Supreme Court had to tie the right to privacy to Article 20(3) (self-incrimination) and distinguish between mental and bodily privacy as a result of this case. The necessity to distinguish between mental and bodily privacy was acknowledged by the Supreme Court. Although the criminal and evidentiary law permits interference with the right to bodily and physical privacy under specific conditions, it does not have the power to compel someone “to impart personal knowledge about a relevant fact.”

In “*Justice K.S. Puttaswamy (Retd.) v. Union of India*”,²⁷ the Supreme Court upheld the fundamental right to privacy as emanating from the right to life and personal liberty under Article 21 and cited international standards, observing: “Privacy has been held to be a part of the right to life and personal liberty under Article 21, and this understanding finds resonance in international human rights instruments such as the UDHR and ICCPR.”²⁸

The Supreme Court struck down Section 377 of the IPC in *Navtej Singh Johar v. Union of India*²⁹, decriminalizing consensual gay conduct between adults. In accordance with Articles 14, 15, and 21, the Court ruled that sexual orientation is a necessary component of privacy, dignity, and individual freedom. The LGBT community deserved an apology from history for the humiliations they endured, Justice Indu Malhotra stressed. This ruling, which mainly referenced Puttaswamy, reaffirmed that privacy encompasses the freedom of sexual identity and autonomy.³⁰

In the 2018 case of *Joseph Shine v. Union of India*³¹, the Supreme Court invalidated Section 497 IPC, which made adultery a crime. The Court ruled that the statute infringed on women's liberty and privacy and was outdated and oppressive. Chief Justice Dipak Misra said “that marriage does not reduce one partner's identity or privacy to another and that the state cannot regulate people's private lives”.³²

Conclusion

With its progressive and purposeful interpretation of the Constitution, the Indian judiciary has been instrumental in bringing domestic constitutional rights into line with international human rights norms. The Supreme Court and High Courts in particular have regularly used international instruments like “the Universal Declaration of Human Rights (UDHR)”, “International Covenant on Civil and Political Rights (ICCPR)”, “International Covenant on Economic, Social, and Cultural Rights (ICESCR)”, “Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”, and the “Convention on the Rights of Persons with Disabilities (CRPD)” to uphold and expand fundamental rights

²⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

²⁸ *Id.*

²⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³⁰ *Ibid*, para 91.

³¹ *Joseph Shine v. Union of India*, (2018) 2 SCC 189.

³² *Ibid*, para 117.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

under the Constitution, despite India being a dualist nation where treaties do not automatically become part of domestic law unless incorporated through legislation. The judiciary's stance demonstrates that human rights are enforceable rights that are essential to democratic governance, not just idealistic concepts. The courts have also reiterated that, as long as they do not clash with domestic laws, international instruments can be used to interpret constitutional provisions even if they are not inherently enforceable unless they are adopted by legislation. This strategy upholds India's foreign commitments while preserving parliamentary sovereignty.

The right to privacy has evolved from being an implicit constitutional guarantee in India to an explicit fundamental right following the landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India*³³. Under Article 21 of the Constitution, this court ruling connected privacy with dignity, autonomy, and liberty, transforming it from a minor civil right to a major constitutional issue. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which India is a member, are two examples of United Nations human rights instruments that reflect India's dedication to privacy. Under international law, privacy is not a single, universal idea. It addresses a number of topics, such as geographical autonomy, information privacy, and bodily integrity. "No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence,"³⁸ according to Article 12 of the UDHR. This concept is echoed in Article 17 of the ICCPR. These clauses have impacted public debate, legislation, and policy formation in addition to influencing the interpretive instruments employed by the Indian judiciary.

Furthermore, in the digital age, the right to privacy has taken on new aspects, such as informational self-determination, data protection, and surveillance reforms. India has particular privacy problems as a result of the introduction of technology like biometrics, artificial intelligence, and big data analytics. By establishing guidelines for data processing and safeguarding individual liberty, the Digital Personal Data Protection Act, 2023, aims to allay these worries. Nonetheless, the execution is still insufficient and needs strict judicial supervision and institutional responsibility. The incorporating UN human rights treaties into its interpretive framework, the Indian court has become a guardian of private rights. However, there is still a significant disconnect between the real implementation of norms and their awareness.

- Codification of Privacy Rights through Comprehensive Law: A comprehensive and well-organized privacy law that covers all aspects of privacy—digital, informational, decisional, and physical—must be passed in India immediately. Although it offers a framework for data privacy, the Digital Personal Data Protection Act of 2023 ignores more general constitutional issues including mass surveillance, profiling, and privacy in non-digital areas. To ensure conformity with international human rights standards,

³³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 ³⁸
Universal Declaration of Human Rights, 1948, Art. 12.

The Voice of Creative Research

Vol. 5 & Issue 2 (April 2023)

the legislation need to be harmonized with international instruments like the UDHR and ICCPR.³⁴

- **Constitutionalization of International Norms:** The Indian Parliament ought to think about using enabling laws to incorporate certain clauses from international human rights instruments—particularly those relating to privacy—into domestic law. This would give the judiciary a solid legal foundation on which to actively enforce international norms. Additionally, it would strengthen India's reputation as a democracy that upholds human rights.
- **Balancing Privacy with Other Rights and Interests:** Although it is a fundamental right, privacy is not unqualified. It needs to be weighed against conflicting objectives including free speech, public health, and national security. However, this balance must follow the rules of necessity and proportionality and shouldn't be arbitrary. Any privacy restriction must be supported by legislation, be the least restrictive option, and be closely examined by judges.³⁵
- **Campaigns for Public Awareness and Digital Literacy:** Only when people are aware of the importance and extent of privacy can it be properly realized. Comprehensive awareness campaigns on digital rights, data protection, and monitoring must be started by the government, civil society, and educational institutions. This involves include privacy rights in professional training programs and school curriculum, particularly for media professionals, law enforcement, and bureaucrats.³⁶

³⁴ UDHR, Art. 12; ICCPR, Art. 17.

³⁵ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

³⁶ Centre for Internet and Society, "Privacy in India: A Public Education Framework" (2022).