

Six years after privacy verdict: How judiciary has implemented the law

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Since then, the Supreme Court has expanded freedoms. It should continue to do so

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After over half a decade of deliberations and numerous iterations of India's data protection law, both houses of Parliament passed the Digital Personal Data Protection Act last month. This comes almost exactly six years after the judgment in K S Puttaswamy vs Union of India, where the Supreme Court (SC) reaffirmed the right to privacy and stressed the need for a dedicated data protection law.

The Puttaswamy judgment formed the cornerstone of privacy jurisprudence in the country, holding that the right to privacy was an integral part of the fundamental rights under the Indian Constitution. Six separate opinions of the Court spelt out an expansive interpretation of the right to privacy. The Court construed privacy not as a narrow right against physical invasion, but as one that includes the body and mind, enables us to make free decisions, and is deeply tied to human dignity and autonomy.

This conception of privacy recognises how central it is to our daily lives. Privacy enables us to make meaningful choices, for example concerning our sexual and reproductive health, choice of partners, and control over personal information. Six years after this rich conception of privacy was established, we ask — how has the right to privacy evolved in the SC?



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The SC has explored principles of autonomy, dignity, and identity in relation to privacy to strengthen the framework of constitutional rights. For instance, it decriminalised all sexual relations between consenting adults, including adults of the same sex, relying on the right to privacy linked with freedom of expression, equality, and non-discrimination. It has, in multiple judgments, reaffirmed the right of adults to marry across religious and caste lines, linking such rights to autonomy and self-recognition. It decriminalised adultery both based on protecting sexual autonomy and privacy and on the grounds of excessive state involvement in the married life of individuals. The Court also examined the role of privacy in the context of end-of-life care and reaffirmed the right to die with dignity. Since Puttaswamy, the SC has deliberated on and expanded the ambit of the right to privacy.

We can also see the effects of Puttaswamy percolate through the high courts as per the CCG's High Court Tracker, which tracks the evolution of privacy judgments through high courts in India. They have provided more nuanced versions of the right to privacy, especially in cases relating to the right to be forgotten, where individuals can ask for information about themselves to be removed from public records in some cases. Privacy, among other grounds, has also been used as the basis for taking down intimate images of individuals where they were shared without consent. High courts have also relied on Puttaswamy to clarify the limitations on the powers of investigative authorities in relation to surveillance, search and seizure, and DNA testing.

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However, the right to privacy hasn't always prevailed, and the SC has restricted this right in certain cases. For example, in a split verdict, the Court limited the right to privacy in public spaces and curtailed the right of women to wear a hijab in educational institutions.

The case is now slated to be referred to a larger bench. Additionally, the Court has also decided to review its verdict in the Sabarimala case, which struck down the customary prohibition on women between the ages of 10-50 from entering the Sabarimala shrine.

Over the next few years, the Court will also be faced with deciding on other key issues that will shape the evolution of fundamental rights and freedoms in the country. For instance, it will have to decide on the ongoing case relating to the State's alleged use of the Pegasus suite of spyware on Indian citizens, and will deliver its judgment on the right to marry for individuals from the LGBTQIA+ community. Contentious provisions of the Digital Personal Data Protection Act are also likely to be challenged soon, and the Court will be called upon to interpret provisions of the law as it's enforced. Since Puttaswamy, the Court has steadily built up jurisprudence that has expanded the scope of the right to privacy, and it should continue to do so to allow individuals to more effectively exercise their rights and freedoms in India.

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