
THE ROLE OF JUDICIAL ACTIVISM IN EXPANDING PRIVACY RIGHTS IN INDIA: AN ANALYSIS

Aman Rahman, (LL.M.), Faculty of Law, University of Lucknow

Arush Khanna, (LL.M.), Faculty of Law, University of Lucknow

ABSTRACT

This research explores the essential role of judicial activism in the expansion of privacy rights in India, particularly through landmark judgments and proactive interpretations of the Indian Constitution. The evolution of privacy rights, initially unaddressed in the constitutional text, has been profoundly influenced by the judiciary's dynamic approach. The landmark case of *Justice K.S. Puttaswamy v. Union of India*, which established privacy as a fundamental right, is a cornerstone of this evolution. The research also examines the judiciary's impact on data protection laws, including the Aadhaar judgment and the development of the Personal Data Protection Bill, 2019 highlighting the need for a comprehensive legal framework. Through an analysis of these judicial interventions, the research highlights the significance of judicial activism in safeguarding individual rights in the digital age.

Keywords: Judicial Activism, Privacy Rights, Data Protection, Justice K.S. Puttaswamy, Fundamental Rights, Public Interest Litigation (PIL), Judicial Restraint, Personal Data Protection Bill.

Introduction

The role of judicial activism in the expansion of privacy rights in India holds substantial significance within the current legal context. Judicial activism pertains to the proactive approach in interpreting and applying laws, frequently extending beyond conventional limits to ensure justice and safeguard fundamental rights. In India, this dynamic judicial approach has been instrumental in the evolution of privacy rights, particularly in the face of rapid technological advancements and growing state surveillance. This judicial dynamism has been crucial in balancing individual rights with the demands of modern governance, ensuring that privacy rights evolve in tandem with technological progress and state interests.

This proactive role ensures the judiciary's responsibility in protecting individual freedoms and maintaining the rule of law in an increasingly complex digital world. The right to privacy was not explicitly recognized in the Indian Constitution when it was adopted in 1950. However, over the decades, the judiciary has interpreted the right to life and personal liberty under Article 21 to encompass privacy rights. This judicial journey has been marked by several landmark judgments that have progressively expanded the scope of privacy.

The origins of privacy rights in India can be traced back to **Kharak Singh v. State of Uttar Pradesh**, where the Supreme Court recognized the concept of privacy, though it did not yet declare it as a fundamental right.¹ The court held that unauthorized intrusion into a person's home constituted a violation of personal liberty under Article 21. This case established the foundation for recognizing privacy concerns but also highlighted the limitations of the legal framework at that time. Although it acknowledged the impact of intrusion on personal liberty, it did not provide a comprehensive constitutional affirmation of privacy.

However, it was in **Govind v. State of Madhya Pradesh**, that the concept of privacy was further crystallized. The Supreme Court recognized privacy as a fundamental component of personal liberty, suggesting a broader interpretation of Article 21.² This case marked a pivotal moment in expanding the understanding of privacy rights, recognizing the need for legal protections beyond mere physical intrusion. The Court's broader interpretation set the stage for

¹ Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

² Govind v. State of Madhya Pradesh, AIR 1975 SC 1378.

future advancements in privacy law, establishing a precedent for more comprehensive legal safeguards.

The right to privacy gained explicit recognition in **R. Rajagopal v. State of Tamil Nadu**, where the court declared that the right to privacy is implicit in the right to life and liberty guaranteed under Article 21.³

The landmark ruling in **Justice K.S. Puttaswamy (Retd.) v. Union of India**, marked a pivotal moment in the evolution of privacy rights. In a unanimous decision by a nine-judge bench, the Supreme Court established that the right to privacy is a fundamental right protected under the Indian Constitution.⁴ The judgment emphasized that privacy is integral to the right to life and personal liberty under Article 21, covering various dimensions including informational privacy, bodily privacy, and the privacy of choice.

The implications of this judgment have been profound and far-reaching. It has influenced subsequent rulings and legislative actions, particularly in the realm of data protection. For instance, the judgment prompted the drafting of the **Personal Data Protection Bill, 2019**, which seeks to regulate the processing of personal data, emphasizing principles such as user consent, data minimization, and accountability.⁵ This legislation aims to establish a comprehensive framework for data protection, ensuring that individuals' personal information is managed with the highest level of care and respect.

It introduces key mechanisms, including the creation of a Data Protection Authority to oversee compliance and address grievances. The bill emphasizes transparency in data practices and mandates stringent standards for data processing and security.

According to a report by **Statista**, India had over 749 million internet users as of 2020, a number expected to grow to 1.5 billion by 2040.⁶ This digital boom has heightened concerns about data privacy, with incidents of data breaches and unauthorized surveillance becoming increasingly common.

³ R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.

⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁵ Draft Personal Data Protection Bill, 2019

⁶ "Internet usage in India - Statistics & Facts," Statista, Last accessed on August 9, 2024, <https://www.statista.com/topics/2157/internet-usage-in-india/>.

The Conceptual Framework of Judicial Activism and Its Expanding Horizons

Judicial activism involves the judiciary's proactive role in interpreting and applying the law to promote justice, often stepping beyond traditional roles to address social issues and protect fundamental rights. This concept embodies the idea that courts can and should go beyond the mere application of existing laws and should actively shape policy and societal norms when necessary.

Judicial activism contrasts with judicial restraint⁷, where judges limit their own power, deferring to the decisions of the legislative and executive branches unless there is a clear violation of the Constitution. The roots of judicial activism lie in the belief that the judiciary has a responsibility to safeguard the rights and liberties of individuals, especially when other branches of government fail to do so⁸.

In India, judicial activism has often manifested through Public Interest Litigations (PILs), where the courts have taken up cases that address broader public concerns. This approach has enabled the judiciary to address issues ranging from environmental protection to human rights and social justice. Upendra Baxi, in his book writes, "The home truth is that the Indian Supreme Court is a center of political power, even though a vulnerable one. It is a center of political power simply because it can influence the agenda of political action, control over which power politics is in reality all about."⁹

The expansion of the right to life under Article 21 of the Indian Constitution exemplifies judicial activism. The judiciary has broadened this right to encompass various protections, including the right to privacy¹⁰. The Supreme Court's decision in **Vishaka v. State of Rajasthan**, where guidelines were established for addressing sexual harassment at the workplace were laid down in the absence of specific legislation, exemplifies judicial activism in action¹¹.

⁷ **Holland, Kenneth**. "Review: Judicial Activism vs. Restraint: McDowell, Miller, and Perry Reconsider the Debate." *ABFRJ*, vol. 8, no. 3, 1983, pp. 705-720.

⁸ Sathe, S. P. "Judicial activism in India: Transgressing Borders and Enforcing Limits". Oxford University Press, New Delhi, 2002, p. 1.

⁹ Baxi, Upendra. "The Indian Supreme Court and Politics." Eastern Book Company, Law Publishers and Booksellers, 1980, p. 10.

¹⁰ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

Similarly, in **Navtej Singh Johar v. Union of India**, the Supreme Court's five-judge Bench struck down Section 377 of the Indian Penal Code, finding it violative of Articles 14, 15, 19, and 21, which had criminalized consensual same-sex relations. The Court's ruling affirmed the constitutional rights of the LGBTQ+ community¹².

It was critically argued that judicial activism could lead to judicial overreach, where courts might encroach upon the domains of the legislature and the executive, potentially disrupting the balance of power in a democratic system.¹³ However, proponents contend that judicial activism is essential for advancing justice and protecting the rights of marginalized and vulnerable populations.

Judicial Activism and Privacy Rights

Judicial activism has played a pivotal role in the recognition and expansion of privacy rights in India. The proactive stance of the judiciary in interpreting constitutional provisions to safeguard individual liberties has been instrumental in evolving the right to privacy, a concept not explicitly mentioned in the Indian Constitution.

The apex of judicial activism in the context of privacy rights came with the landmark judgment in **Justice K.S. Puttaswamy v. Union of India (2017)**. In this case, a nine-judge bench of the Supreme Court unanimously held that the right to privacy is a fundamental right under the Indian Constitution¹⁴. The court emphasized that privacy is intrinsic to the right to life and personal liberty under Article 21 and highlighted its multidimensional nature, encompassing informational privacy, bodily privacy, and privacy of choice.

The judgment has profound implications for various laws and practices, particularly in the digital age where data privacy and surveillance are major concerns. It set a precedent for evaluating the constitutionality of government actions affecting privacy and influenced subsequent rulings and legislative actions, including the drafting of the **Personal Data Protection Bill, 2019**, aimed at regulating the processing of personal data and safeguarding privacy¹⁵.

¹² Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

¹³ Mehta, Pratap Bhanu. "The Rise of Judicial Sovereignty." *Journal of Democracy*, vol. 18, no. 2, 2007, pp. 70-83.

¹⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹⁵ Draft Personal Data Protection Bill, 2019.

Recent Developments and Challenges

Judicial activism continues to shape the discourse on privacy rights in India. The Supreme Court's decisions in cases involving the Aadhaar scheme and other data protection issues highlights the judiciary's role in balancing state interests with individual privacy. Ongoing debates and legal challenges highlight the evolving nature of privacy rights, necessitating continued judicial vigilance and proactive interpretation to protect individual liberties amid technological advancements and state surveillance.

In the modern digital economy, where data is increasingly valuable, privacy concerns are significant for individuals, businesses, and governments. Issues such as data breaches, identity theft, and unauthorized monitoring are common in digital interactions.

To protect the privacy of Indian citizens and clarify the scope of privacy regulations, the Government of India established a committee chaired by **Justice B.N. Srikrishna**. The committee's report¹⁶, titled "A Free and Fair Digital Economy Protecting Privacy, Empowering Indians," was submitted in 2010. This report laid the groundwork for the introduction of the Digital Personal Data Protection Act, 2023 (the Act) in India.

Judicial Activism and Data Protection

Judicial activism has driven the development and enforcement of data protection laws in India. As the country navigates the complexities of the digital age, the judiciary has taken proactive steps to safeguard individuals' personal data and ensure that privacy rights are respected. This role has been particularly significant given the rapid advancements in technology and the increasing instances of data breaches and unauthorized surveillance.

Privacy as a Fundamental Right in India's Data Protection Era

The landmark case of **Justice K.S. Puttaswamy v. Union of India (2017)** serves as the cornerstone of judicial activism in data protection. The Supreme Court of India, in this historic judgment, recognized the right to privacy as a fundamental right under the Indian Constitution.

¹⁶ https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf. Last accessed on August 10, 2024.

The court's unanimous decision highlighted that privacy includes the right to protect personal information, thereby setting the stage for a robust data protection framework¹⁷.

The judgment emphasized that informational privacy is a crucial aspect of the right to privacy. It acknowledged the need for stringent safeguards to protect individuals' data from misuse and unauthorized access. This recognition by the judiciary has had far-reaching implications, prompting legislative and policy changes to enhance data protection in India.

Data Protection and the Constitutionality of Aadhaar

The Supreme Court's activism was further evident in the subsequent judgments related to the Aadhaar scheme. In the **Aadhaar case**, the court upheld the constitutional validity of the Aadhaar program but imposed strict limitations to protect individual's data privacy. The court mandated that Aadhaar could not be made mandatory for bank accounts and mobile connections, reflecting a balanced approach to data protection and state interests¹⁸.

Legislative Framework of Personal Data Protection Bill, 2019

Judicial activism has profoundly influenced the legislative sphere, as evidenced by the formulation of the **Draft Personal Data Protection Bill, 2019**. The Supreme Court's landmark *Puttaswamy* judgment played a pivotal role in shaping this bill, with its principles guiding critical aspects such as user consent, data minimization, and accountability. The bill aims to establish a comprehensive data protection framework in India, addressing essential elements like data processing, storage, transfer, and security.

In the area of data protection, India has made notable strides with the introduction of the Personal Data Protection Bill, 2019 (PDP Bill). This legislation aims to establish a robust legal framework for safeguarding personal data within the country¹⁹, drawing on international best practices, including the European Union's General Data Protection Regulation (GDPR).

It seeks to safeguard individual's privacy by regulating the use of personal data by both government and private entities.²⁰ The legislation introduces several key features, including

¹⁷ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹⁸ K.S. Puttaswamy v. Union of India (Aadhaar-5J.), (2019) 1 SCC 1.

¹⁹ Personal Data Protection Bill, 2019, Bill No. 373 of 2019 (India).

²⁰ Draft Personal Data Protection Bill, 2019.

stringent requirements for data handling practices, the establishment of a Data Protection Authority to oversee compliance, and mechanisms for individuals to seek redress for data breaches. In addition, the bill incorporates provisions for transparency, ensuring that organizations disclose their data collection and usage practices.

Challenges and the Role of the Judiciary

The growing digitization of services and the proliferation of digital platforms have intensified concerns about data security and privacy. In this evolving legal context, judicial activism remains essential, playing a pivotal role in addressing these challenges by ensuring that data protection laws are both robust and effectively implemented. The judiciary's ongoing involvement is crucial in adapting legal frameworks to the demands of a rapidly changing digital environment, safeguarding individual rights while balancing technological progress.

The judiciary's proactive stance is essential in scrutinizing data protection practices, particularly in cases of data breaches and unauthorized surveillance. Courts play a pivotal role in interpreting and applying data protection laws, ensuring that individuals' rights are upheld in the face of evolving technological challenges.

Conclusion

Judicial activism has been pivotal in advancing privacy and data protection rights in India. Through landmark judgments such as the *Justice K.S. Puttaswamy case*, the judiciary has not only recognized privacy as a fundamental right, influencing legislative developments like the Draft Personal Data Protection Bill, 2019. This proactive judicial stance ensures that individual rights are protected amidst rapid technological advancements and increasing data privacy concerns.

In this context, the judiciary's role extends beyond mere adjudication; it encompasses the proactive development of legal principles that adapt to emerging technologies and societal changes. Moreover, the judiciary's influence extends beyond domestic law, setting benchmarks that could inspire global standards in data protection and privacy. As India positions itself as a key player in the global digital economy, the judiciary's decisions will be pivotal in establishing the country as a leader in privacy rights. This will require a thoughtful approach that carefully balances the need for innovation and economic growth with the imperative of protecting

individual freedoms.

The future research can focus on several key areas. The first is how courts will adapt privacy laws to new technologies, such as artificial intelligence and biometric data. The second is examining how judicial activism impacts the protection of privacy rights for marginalized communities at the grassroots level.

The advancement of India into the digital age highlights the urgent need for strong legal frameworks that reflect the principles set by the judiciary. Future legal developments must ensure that privacy rights are not just theoretical but effectively protected, especially given the increasing concerns about data breaches and unauthorized surveillance.

Therefore, the role of the judiciary in safeguarding privacy and enforcing data protection will be crucial as India continues to evolve in the digital age. It is essential for upholding constitutional values and protecting individual liberties. This persistent commitment to justice will help maintain a balance between innovation and individual freedoms, ensuring that India's legal system adapts effectively to the challenges of the digital era.

Bibliography

1. Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.
2. Govind v. State of Madhya Pradesh, AIR 1975 SC 1378.
3. R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.
4. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
5. "Internet usage in India - Statistics & Facts." Statista. <https://www.statista.com/topics/2157/internet-usage-in-india/>.
6. Sathe, S. P. "Judicial activism in India: Transgressing Borders and Enforcing Limits". Oxford University Press, New Delhi, 2002, p. 1.
7. Baxi, Upendra. "The Indian Supreme Court and Politics." Eastern Book Company, Law Publishers and Booksellers, 1980, p. 10.
8. Maneka Gandhi v. Union of India, AIR 1978 SC 597.
9. Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
10. Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.
11. Mehta, Pratap Bhanu. "The Rise of Judicial Sovereignty." *Journal of Democracy*, vol. 18, no. 2 (2007): 70-83.
12. Draft Personal Data Protection Bill, 2019. Available at: https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf.
13. **Holland, Kenneth.** "Review: Judicial Activism vs. Restraint: McDowell, Miller, and Perry Reconsider the Debate." *ABFRJ*, vol. 8, no. 3, 1983, pp. 705-720.
14. K.S. Puttaswamy v. Union of India (Aadhaar-5J.), (2019) 1 SCC 1.
15. Personal Data Protection Bill, 2019, Bill No. 373 of 2019 (India).