
RIGHT TO PRIVACY IN MATRIMONIAL MATTERS

Divyasri P, Dhanalakshmi Srinivasan University

Bhavanya E K, Dhanalakshmi Srinivasan University

ABSTRACT

This paper explains in simple terms why the right to privacy is important in Indian family and marriage laws, especially after the *Puttaswamy* judgment. It shows how privacy keeps each person in a marriage safe and respected, especially in matters like adultery, domestic violence, and personal choices.

It also explains why privacy is important for couples in mediation or counselling. By looking at important court cases and laws, the paper shows that privacy helps make family disputes more fair, respectful, and focused on human dignity.

Keywords: Right to Privacy in Matrimonial Law, *Puttaswamy* Judgment, Domestic Violence, Adultery, *Joseph Shine* Case, Mediation and Counselling, Confidentiality, Surveillance in Marriage, Dignity and Personal Liberty, Article 21.

Introduction

The right to privacy is an important part of our basic rights. In 2017, the Supreme Court gave a famous judgment in **Justice K.S. Puttaswamy v. Union of India**¹, saying that privacy is a part of the right to life and personal liberty under Article 21. This means that privacy is key for every person and does not depend on the government to exist.

In family and marriage, privacy becomes even more important. Marriage is not just a social arrangement. It depends on trust, personal space, and respect between partners. But today, many problems like spying on a partner, collecting private messages, or interfering in reproductive and personal choices raises tough questions about where one partner's right to know ends and the other's right to privacy begins.

After the *Puttaswamy* judgment, courts have started looking at privacy inside marriage more seriously. In cases like adultery, domestic violence, and other family matters, courts now try to

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

balance the rights of both partners. This shows that marriage is not only a bond between two people but also a place where each person's individual rights must be protected.

1. Evolution of Privacy Jurisprudence in India

The development of privacy rights in India has been gradual, shaped by various Supreme Court judgements. Although the Constitution does not mention "privacy" explicitly, courts have interpreted it as part of the right to life and personal liberty under Article 21.

The journey began with *Kharak Singh v. State of Uttar Pradesh*², where the Court questioned police surveillance practices. While privacy wasn't named as a separate right, the idea was introduced. This was followed by *Gobind v. State of Madhya Pradesh*³ in the 1970s, which tried to balance individual privacy with state interests like public safety.

Later, in *R. Rajagopal v. State of Tamil Nadu*⁴, the Court protected individuals from unauthorized publication of private details by the press, reinforcing that privacy is part of the right to life.

The foundation for modern privacy law was laid in *Maneka Gandhi v. Union of India*⁵, where the Court expanded the meaning of personal liberty to include fairness, dignity, and procedural justice. These rulings gradually built a legal framework that supported a stronger privacy right.

This evolution reached its peak in *Justice K.S. Puttaswamy v. Union of India* (2017). A nine-judge bench unanimously ruled that privacy is a fundamental right under Articles 14, 19, and 21. The judgment recognized privacy as having multiple dimensions like; **informational, decisional, and bodily** and introduced a **proportionality test** to assess whether state intrusions into privacy are justified. Most importantly, it placed **human dignity and autonomy** at the heart of constitutional values.

Since then, courts have used these principles to evaluate privacy in family law cases, especially in disputes involving surveillance, consent, or reproductive choices.

In sum, privacy law in India has evolved from limited protections to a broad constitutional

² Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

³ Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148.

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

⁵ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

guarantee, with *Puttaswamy* marking the turning point in this transformation.

2. Understanding Privacy Within Marriage

Privacy within marriage involves more than just physical space, it includes personal autonomy, decision-making freedom, and confidential communication between husband and wife. Traditionally, Indian family law focused on duties like cohabitation and companionship. However, privacy is now seen as a core constitutional right that continues even within marriage.

Marriage does not erase individual rights. Instead, it creates a shared space where both partners still hold their own legal identity, dignity, and autonomy. Legal scholars like M.P. Jain⁶ and D.D. Basu⁷ have long argued that the right to personal liberty under Article 21 includes freedom from unnecessary interference, even within the home.

Law Commission Reports, such as the 71st Report⁸ on the Hindu Marriage Act, have also recognised that matrimonial cases deal with sensitive personal matters. These require privacy protections especially in how evidence is collected and used.

Since the *Puttaswamy* case, courts have affirmed that spouses have a “reasonable expectation of privacy,” not just from the State, but also from each other. This means actions like secret surveillance, accessing private messages, or forcing medical tests must be carefully scrutinized. For instance, in *Sharda v. Dharmpal*⁹, the Court held that medical exams must not violate a person’s dignity or bodily autonomy.

However, privacy is not absolute. Family courts still need to examine conduct in cases involving cruelty, divorce, custody, or maintenance. To do this fairly, courts apply the ***proportionality principle*** allowing privacy to be limited only, when necessary, justified, and not excessive.

Today, privacy is seen as part of a person’s identity. It protects private decisions around intimacy, lifestyle, communication, and self-expression. This aligns with modern global views

⁶ M.P. Jain, *Indian Constitutional Law* (8th ed. 2018).

⁷ D.D. Basu, *Commentary on the Constitution of India* (9th ed. 2014).

⁸ Law Commission of India, 71st Report: Hindu Marriage Act, 1955—Irretrievable Breakdown of Marriage (1978).

⁹ *Sharda vs Dharmpal*, AIR (2003) 4 SCC 493.

of marriage as a partnership of equals, not a place of control.

In conclusion, *Puttaswamy* calls for a modern view of marriage, where each partner retains personal rights, and any intrusion by the State, the courts, or the other spouse must meet strict legal tests. Privacy in marriage isn't a barrier to justice, it's a guide for how family law should respect human dignity.

3. Privacy and Adultery After *Puttaswamy* case

3.1 Decriminalizing Adultery: *Joseph Shine Case*¹⁰

In *Joseph Shine v. Union of India* (2018), the Supreme Court struck down **Section 497** of the *IPC*¹¹, which criminalized adultery. The Court relied heavily on the principles laid down in *Puttaswamy* to highlight three key concerns:

- It violated the right to personal and *decisional privacy* within marriage.
- It treated wives as the *property* of their husbands.
- It allowed the *state to police private relationships*, which lies outside its legitimate authority.

The Court clarified that ***while adultery may still be a ground for divorce, it cannot be treated as a crime***. Criminal law, it held, should not enter the private space of marriage.

3.2 Effect on Family Law

After *Puttaswamy*, adultery is seen as a ***private issue*** between spouses, not a public offense. Courts have become more careful about how evidence is collected in such cases. Practices like spying, tapping phones, or forcing someone to reveal private information are now seen as *violations of constitutional privacy*, and often not allowed. This reflects a broader shift toward treating spouses as equals, each with their own rights and dignity.

3.3 Morality vs. Constitutional Rights

Puttaswamy drew a line between ***morality and legality***. The State can no longer punish adults for consensual relationships, even if seen as immoral by others. While adultery may influence

¹⁰ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹¹ S.497, Indian Penal Code, No. 45 of 1860 (India).

decisions in divorce or custody, it is *no longer a criminal offense*. This brings Indian law in line with international standards, where adultery is treated as a *civil matter*, grounded in personal freedom.

4. Privacy vs. Protection: Domestic Violence and Cruelty

“Privacy is not absolute

Inside marriage, this creates a complex challenge of how to protect individual dignity while respecting the private nature of the home. Indian courts have repeatedly held that **freedom from violence and abuse** is a core part of the right to life under Article 21, even within intimate spaces.

4.1 Domestic Violence Law: Prioritizing Safety

The *Protection of Women from Domestic Violence Act, 2005 (PWDVA)*¹² marked a shift away from the idea that the home is beyond legal scrutiny. It recognizes different forms of abuse, like emotional, sexual, verbal, and economic and focuses on *protecting women’s physical and mental well-being*. The 2003 Parliamentary Report¹³ pointed out that, for years, the idea of “family privacy” was given so much importance that many cases of abuse stayed hidden and unaddressed.

4.2 Cruelty and Family Law

In family law, **cruelty** is a key ground for divorce. Courts look at whether one partner’s behaviour *violated the dignity* of the other, not whether it fits social or moral standards. In *V. Bhagat v. D. Bhagat*¹⁴, the Supreme Court acknowledged that even psychological harm without physical violence can be enough. To assess such claims, courts must enter the so-called “private” space of the marriage when needed.

4.3 Feminist View: Privacy Should Not Hide Abuse

Feminist scholars and the *National Commission for Women (NCW)*¹⁵ have long argued that

¹² Protection of Women from Domestic Violence Act, No. 43 of 2005, 3.

¹³ Department-Related Parliamentary Standing Comm. on Home Affairs, 103rd Report on the Protection from Domestic Violence Bill, 2002, at 9 (India 2003).

¹⁴ V. Bhagat v. D. Bhagat, (1994) 1 SCC 337.

¹⁵ National Commission for Women, Annual Report (2019–20).

the idea of "family privacy" has often been used to **shield abuse**. After *Puttaswamy case*, courts have started to treat privacy as a **right of individuals**, not families or institutions. This means privacy **cannot be used to excuse harm** behind closed doors.

Feminist thinkers like *Catherine MacKinnon* and *Martha Fineman* argue that the private household can be a place where power imbalances and violence are hidden. In India, courts once dismissed issues like *marital rape and emotional abuse* as "*private matters*." This approach failed to protect those most vulnerable.

The modern view reframes privacy not as protection for the household as a whole, but as a **shield for individual autonomy and safety**. True privacy means the right to be free not just from the State but also from abuse, even within the home.

5. Privacy in Matrimonial Mediation and Counselling

Mediation is a process where a neutral person helps couples talk and solve problems like divorce, child custody, property issues, and maintenance. It is voluntary, which means both partners choose to take part. Mediation and counselling both help couples communicate better. Counselling mainly deals with emotional problems like trust issues, misunderstandings, or feeling distant from each other. A trained counsellor helps the couple understand each other in a safe environment.

Both mediation and counselling work only when people feel safe enough to speak honestly. That is why *privacy is very important*. During these sessions, people may share private information about their feelings, health, past experiences, or family problems. If they think this information will be shared outside, they may not open up. So, privacy is not just a rule it is necessary for these sessions to help couples effectively.

6. Privacy Protections in Indian Family Law

Indian family law encourages peaceful and respectful ways to settle disagreements. *Section 9 of the Family Courts Act, 1984*¹⁶ asks courts to help couples solve their issues through discussion and conciliation. Similarly, *Section 23(2) of the Hindu Marriage Act*,

¹⁶ Family Courts Act, No. 66 of 1984, sec. 9.

1955¹⁷ requires courts to see if a couple can reconcile before granting a divorce.

Family court counselling centres also help couples manage stress, misunderstandings, and other emotional issues. These sessions are usually held in private (called "*in camera*"), as stated in **Section 11 of the Family Courts Act**¹⁸. This protects sensitive topics like infertility, mental health problems, or family conflicts.

Courts have always said that mediation must stay confidential. Anything said during mediation cannot be used as evidence later unless both partners agree. In **Moti Ram v. Ashok Kumar**¹⁹, the Supreme Court explained that confidentiality is the foundation of mediation because it builds trust and helps couples speak honestly.

In short, privacy helps mediation and counselling work better. It gives couples the confidence to talk openly without fear. Indian law understands this and provides rules to protect these private conversations.

Conclusion

The **Puttaswamy judgment** declared privacy as a fundamental right that protects every person's dignity and freedom. This has changed how family law works in India. Even inside marriage, each person has their own rights. Privacy helps guide how disputes should be solved. It should be respected unless the law allows an exception. Today, Indian family law tries to balance privacy with fairness. Courts make sure that family matters are handled with care, respect, and dignity for everyone involved.

¹⁷ S.23(2), Hindu Marriage Act, No. 25 of 1955 (India).

¹⁸ S 11, Family Courts Act, No. 66 of 1984 (India).

¹⁹ Moti Ram v. Ashok Kumar, (2011) 1 SCC 466