

Right to Privacy for Women: Legal Framework and Social Imperatives

Satyavati Rajesh Khaladkar

Principal In-Charge, Sarhad Law School, Pune, India

Email: satyakhaladkar@gmail.com

Abstract

The right to privacy is a fundamental human right essential for the dignity, autonomy, and freedom of individuals, particularly for women. In India, this right gained constitutional recognition with the landmark judgment in Justice K.S. Puttaswamy (Retd.) v. Union of India which elevated privacy to the status of a fundamental right under Article 21. For women, privacy is intrinsically linked to issues like bodily autonomy, reproductive rights, data protection, domestic space, and protection from surveillance. This paper explores the legal contours of the right to privacy for women, the social and cultural barriers, state responsibility, and judicial interpretations. It also examines case studies to evaluate the enforcement of privacy rights in real-life contexts.

- 1. To define and understand the scope of the right to privacy from a gendered perspective.*
- 2. To examine constitutional, legal, and international frameworks related to women's privacy rights.*
- 3. To analyze key judicial pronouncements related to privacy and women's rights in India.*
- 4. To study the challenges faced by women in exercising their right to privacy.*

To offer suggestions for strengthening privacy rights for women in policy and practice.

Keywords

Privacy Right, Women, Gender, Legal Framework, Social Imperatives

INTRODUCTION

The concept of privacy has evolved significantly over the years. Traditionally seen as the "right to be let alone," it has now come to encompass a wide range of personal freedoms, including bodily autonomy, personal data protection, and freedom of expression. For women, privacy takes on deeper significance, especially in societies like India where patriarchal norms often dictate a woman's choices. Privacy is central to a woman's dignity and liberty—it influences her ability to make decisions about her body, health, education, marriage, career, and digital presence. However, systemic inequalities often deprive women of privacy in homes, workplaces, and public spaces.

Understanding Privacy as a Concept

Privacy, in its simplest form, refers to the right of an individual to be left alone and to make personal decisions without interference. It encompasses physical space, personal data, thoughts, body, and autonomy. In legal and philosophical traditions, privacy is linked to dignity, freedom, and individuality. Globally, the right to privacy is considered a foundational human right and is enshrined in key international instruments such as:

- The **Universal Declaration of Human Rights (Article 12)**,
- The **International Covenant on Civil and Political Rights (Article 17)**.

The meaning of privacy has expanded over time. Today, it is not only about being free from surveillance but also about

having control over personal choices and information. It includes decisions related to marriage, reproduction, expression, body, identity, and digital data.[1]

Gender and Privacy: A Unique Intersection

The concept of privacy is not experienced equally by all individuals. Women's right to privacy is deeply influenced by gendered power structures, cultural norms, and patriarchy. While men are traditionally afforded autonomy in public and private life, women's privacy is often monitored, controlled, or denied—especially in conservative or patriarchal societies like India.

A woman's desire for personal space, independent communication, or reproductive choice is often questioned or stigmatized. Women are seen as the bearers of family honor, and their autonomy is perceived as a threat to societal structures. As a result, privacy becomes a battleground between individual freedom and social control.

For instance:

- In many households, girls and women are denied personal rooms, phones, or passwords.
- Decisions like choosing one's partner, clothing, or profession are often subject to family or societal scrutiny.
- Women's mobility is frequently regulated under the guise of "protection," effectively limiting their agency.[2]

The Indian Context

In India, the legal recognition of the right to privacy came relatively late. The landmark judgment in Justice K.S. Puttaswamy v. Union of India (2017) declared that the right

to privacy is a fundamental right under Article 21 of the Constitution. This judgment opened new legal avenues to protect women's rights in areas like:

- **Reproductive health** (e.g., abortion decisions),
- **Freedom from surveillance** (e.g., mobile tracking, moral policing),
- **Digital dignity** (e.g., protection from revenge porn or online abuse),
- **Confidentiality in healthcare and legal reporting** (e.g., domestic violence, rape cases).

However, despite the legal recognition, social and institutional barriers continue to limit the privacy of women, especially among marginalized communities such as Dalits, Adivasis, LGBTQIA+ individuals, and economically disadvantaged women. [3] [4]

The Importance of Privacy for Women's Empowerment

Privacy is not a privilege—it is a **prerequisite for gender equality**. It allows women to:

- Make informed and independent choices,
- Safeguard their bodies and identities,
- Access education and healthcare without fear or coercion,
- Participate equally in economic and political spaces.

Without privacy, women are more vulnerable to gender-based violence, exploitation, forced medical interventions, and denial of justice. Moreover, a lack of privacy often leads to emotional stress, anxiety, and psychological trauma, which goes unaddressed in both legal and medical systems.

CONSTITUTIONAL AND LEGAL FRAMEWORK

Understanding the right to privacy for women requires a strong grounding in the constitutional and legal provisions that govern individual liberty in India. While privacy as a concept existed implicitly within the Constitution, it was not explicitly recognized as a fundamental right until the landmark judgment in Justice K.S. Puttaswamy v. Union of India in 2017. This chapter explores how constitutional guarantees, judicial precedents, and statutory laws together shape the legal framework for protecting women's privacy in India.

Constitutional Provisions Related to Privacy

The **Constitution of India** guarantees several fundamental rights that collectively establish a legal basis for the right to privacy. While there is no specific article titled "Right to Privacy," its elements are embedded in the following key provisions:

a) Article 21 – Right to Life and Personal Liberty

This is the most direct source of the right to privacy. The Supreme Court has interpreted "personal liberty" to include:

- The right to bodily autonomy,
- The right to make reproductive choices,
- The right to mental and emotional integrity,
- The right to sexual orientation and identity.

For women, this means the right to:

- Choose to have or not have children,
- Access safe abortions,
- Protect themselves from forced medical procedures,
- Safeguard personal and intimate information.

b) Article 14 – Right to Equality

This article ensures that all individuals are treated equally before the law. Privacy violations often stem from **gender-based discrimination**, and therefore, protecting a woman's privacy also means upholding her equality.

c) Article 15 – Prohibition of Discrimination

This prohibits discrimination on grounds of sex. It empowers the State to make special provisions for women and children. Thus, any violation of privacy specific to women (e.g., voyeurism, harassment, forced disclosure) is also a violation of this article.

d) Article 19 – Right to Freedom

Articles 19(1)(a) and 19(1)(d) protect freedom of speech and movement. For women, the lack of privacy often leads to restriction of these freedoms. For example, women who are monitored or judged for their online behaviour may be forced to self-censor or withdraw from public platforms.[1] [4]

The Puttaswamy Judgment (2017): A Milestone

In the historic case of Justice K.S. Puttaswamy (Retd.) v. Union of India, the Supreme Court unanimously held that privacy is a fundamental right under Article 21. The nine-judge bench stated:

"Privacy is intrinsic to freedom, dignity and autonomy... it is the constitutional core of human dignity."

This judgment emphasized:

- **Bodily integrity:** Protection of personal health and reproductive choices.
- **Decisional autonomy:** Right to make personal decisions.
- **Informational privacy:** Control over dissemination of personal data.

The verdict had special significance for women as it validated their control over reproductive and sexual health, and condemned practices like forced sterilization, marital rape, and surveillance. [3] [4]

Judicial Interpretation Supporting Women's Privacy

a) Suchita Srivastava v. Chandigarh Administration (2009)

This case recognized a woman's right to make decisions regarding abortion and motherhood. The court affirmed that reproductive rights are a dimension of personal liberty under Article 21.

b) Devika Biswas v. Union of India (2016)

The court highlighted gross violations in mass sterilization camps where women underwent procedures without informed consent. It reinforced the need for ethical, private, and dignified medical treatment for women.

c) Navtej Singh Johar v. Union of India (2018)

Though primarily about LGBTQIA+ rights, the case reaffirmed that sexual orientation and gender identity fall within the ambit of privacy. This opened new paths for gender-sensitive interpretation of privacy.

d) Joseph Shine v. Union of India (2018)

By decriminalizing adultery, the court ruled that a woman is not the property of her husband, and that she has full control over her personal and sexual choices. [4] [5] [6]

Statutory Protections for Women's Privacy

In addition to constitutional rights, various laws specifically protect women's privacy in different contexts:

a) The Medical Termination of Pregnancy (MTP) Act, 1971 (Amended 2021)

- Protects the identity of women seeking abortions.
- Upholds confidentiality and autonomy in reproductive decisions.

b) The Protection of Women from Domestic Violence Act, 2005

- Recognizes emotional abuse and invasion of privacy as forms of domestic violence.
- Provides for protection orders that can stop abusers from contacting or surveilling the victim.

c) The Information Technology Act, 2000

- Penalizes online abuse including cyberstalking, morphing, voyeurism, and identity theft.
- Sections 66E, 67, and 72 provide penalties for breach of privacy on digital platforms.

d) The Protection of Children from Sexual Offences (POCSO) Act, 2012

- Recognizes the need for protecting minor girls' identities and dignity during legal processes. [7] [8] [9] [10]

Institutional Mechanisms and Policies

Several institutions and policies work to enforce legal protections:

- **National Commission for Women (NCW):** Handles complaints of privacy violations and abuse.
- **Fast Track Courts and Family Courts:** Offer speedy redress in sensitive cases.
- **Cyber Crime Cells:** Address complaints of online abuse and breach of digital privacy.
- **POSH Act, 2013:** Protects women from sexual harassment at workplaces and mandates **confidentiality during inquiry**. [11]

Challenges in Implementation

Despite a strong legal framework, practical enforcement is weak. Some of the major challenges include:

- **Lack of awareness** among women about their rights.
- **Institutional insensitivity** or apathy from police or judiciary.
- **Cultural resistance** to granting women autonomy and

privacy.

- **Technological gaps** in addressing digital privacy threats.
- **Conflicting personal laws** that may contradict privacy protections in some religions.

DIMENSIONS OF WOMEN'S PRIVACY

The right to privacy for women is not a singular or abstract idea—it manifests across multiple spheres of life, including the body, home, workplace, and digital world. Unlike a generic notion of privacy, women's privacy is deeply contextual, shaped by societal attitudes, patriarchal control, class, caste, religion, and even geography (urban vs. rural). This chapter aims to explore the various dimensions of women's privacy, highlighting how violations can occur in each domain, often with serious consequences for personal dignity, autonomy, and safety.

Bodily Autonomy and Reproductive Privacy

The most intimate and fundamental form of privacy is control over one's body. For women, bodily autonomy includes:

- Making decisions regarding contraception and abortion,
- Refusing unwanted sexual contact (even in marriage),
- Accessing reproductive and sexual healthcare confidentially,
- Deciding whether and when to become a mother.

Challenges:

- In many Indian households, women are denied the choice to use contraceptives or to terminate a pregnancy.
- Reproductive decisions are often dictated by husbands, in-laws, or religious/community leaders.
- In cases like forced sterilizations, bodily privacy is completely violated.
- Marital rape, though still not criminalized in India, is a grave infringement of bodily autonomy.

Legal Support:

- *Suchita Srivastava v. Chandigarh Administration* (2009) recognized reproductive rights as a part of personal liberty under Article 21.
- The MTP (Amendment) Act, 2021 allows unmarried women to seek abortion, enhancing privacy and autonomy. [3] [5] [9]

Privacy in the Domestic Sphere

Ironically, the home—often seen as a place of safety—is one of the most common sites of privacy violations for women. A woman's private space is often non-existent in Indian households, where:

- Shared rooms and lack of personal space are common, especially in joint families.
- Mobile phones, social media, and diaries are monitored by family members.
- Surveillance by husbands, brothers, or parents restricts their freedom of movement, expression, and social

interaction.

Women facing domestic violence are often denied the right to speak out, leave the home, or seek help, as their movements and interactions are tightly controlled.

Cultural Norms:

- The idea that a “good woman” does not demand space, time, or secrecy reinforces the denial of privacy.
- **Honor-based restrictions** control women’s dressing, friendships, and relationships.

Legal Protection:

- The Domestic Violence Act, 2005 recognizes emotional abuse and controlling behaviour as violations of dignity and liberty.
- Protection Orders can help restrict surveillance and harassment by abusive partners. [11]

Informational Privacy and Digital Presence

In the digital age, women face increasing threats to informational privacy—the right to control personal data and information, especially online.

Threats Include:

- **Cyberstalking and revenge porn,**
- **Non-consensual sharing** of private photos or messages,
- **Fake social media profiles** and impersonation,
- Breach of health or menstrual data through apps,
- **Doxxing** (publishing private information to harass or threaten).

Even in professional contexts, women are sometimes asked invasive personal questions during job interviews or are subjected to surveillance in workplaces through CCTV or phone tracking.

Legal Safeguards:

- The IT Act, 2000 punishes voyeurism, cyberbullying, and publishing obscene content.
- However, there is no comprehensive data protection law yet that addresses gender-specific digital threats.
- The proposed Digital Personal Data Protection Act (DPDPA), 2023 is under discussion, but concerns remain about lack of gender sensitivity. [8] [9]

3.4 Sexual and Relationship Privacy

A woman’s freedom to choose her partner—whether romantic, sexual, or marital—is a vital part of her privacy. However, in India, such choices are often seen as rebellion.

Violations Include:

- Honor killings, where families murder women for marrying outside their caste or religion.
- Moral policing by society, educational institutions, or religious groups.
- In rural areas, Khap Panchayats issue punishments for “inappropriate” relationships.
- LGBTQIA+ women face additional challenges, such as forced marriages and conversion therapies.

Key Judicial Interventions:

- Navtej Singh Johar v. Union of India (2018) decriminalized consensual same-sex relationships.
- Shakti Vahini v. Union of India (2018) directed states to prevent honor killings and protect inter-caste/inter-faith couples.

Despite these rulings, many women still live under the threat of violence or social exclusion for making personal relationship choices.

Workplace Privacy

In work environments, privacy violations may come in subtle or overt forms:

- **Gendered dress codes**, surveillance, and lack of confidential grievance systems.
- **Invasive behaviour** such as asking about marital status, pregnancy plans, or personal life.
- Lack of **clean, private sanitation facilities** especially in informal or rural sectors, impacting the dignity of women.

The Sexual Harassment of Women at Workplace (POSH) Act, 2013 requires organizations to maintain confidentiality during complaints and inquiries, but implementation is often poor. [4] [11]

Intersectionality: Caste, Class, Religion, and Region

Women’s privacy is also affected by social identity markers:

- **Dalit women** often face public humiliation, violence, and surveillance by dominant castes.
- **Muslim women** were subjected to “Sulli Deals” and “Bulli Bai” apps where they were **auctioned online** as a form of harassment.
- **Rural women** may lack access to private toilets or clinics, affecting hygiene and healthcare privacy.
- **Disabled women** often experience violations of their bodily privacy during institutional care or therapy.

Thus, privacy is not a uniform experience for all women—it is layered, and those at multiple social disadvantages face the harshest violations. [2]

Psychological Impact of Privacy Violations

When women are denied privacy, it doesn’t just limit their freedom—it also leads to serious mental health consequences, such as:

- Anxiety, fear, and depression,
- Loss of confidence and self-worth,
- PTSD after incidents like revenge porn or sexual abuse,
- Social withdrawal and isolation.

Without structural support, women may internalize these violations, accepting them as “normal” rather than recognizing them as rights-based issues.

4: SOCIAL AND CULTURAL CHALLENGES

The legal recognition of privacy as a fundamental right is a significant milestone. However, laws alone cannot protect privacy if society continues to uphold traditions, beliefs, and

behaviour that infringe upon it—especially for women. In India, deeply entrenched patriarchal norms, honor-based value systems, collectivist family structures, and gendered expectations often override women's rights to autonomy and dignity. This chapter examines how social and cultural factors act as barriers to the realization of women's right to privacy.

Patriarchy and Gender Roles

India's socio-cultural fabric is largely patriarchal, wherein women are **conditioned to obey, serve, and sacrifice personal desires** for family honor and cohesion.

How It Affects Privacy:

- Women are often not allowed to make independent choices about their education, job, clothes, friends, or spouse.
- From early childhood, girls are taught to prioritize obedience over independence, which weakens their ability to demand personal space or privacy.
- Husbands or fathers may monitor or restrict access to mobile phones, social media, bank accounts, etc.

Cultural Norms:

- The idea that “good girls don't keep secrets” implies that privacy is immoral.
- Female privacy is seen as dangerous, rebellious, or a threat to family honor. [2]

Honor and Control

In many communities, especially in rural and semi-urban India, a woman's behaviour is linked to the family's *izzat* (honor). This leads to:

- Strict control over women's mobility, speech, friendships, and appearance.
- Forbidding use of mobile phones or limiting public presence.
- Surveillance by family members, neighbours, or community elders.

Any deviation is viewed as shameful and may lead to:

- Social ostracism,
- Violence, including honor killings,
- **Forced marriage** or confinement.

Women who seek privacy for relationships, education, or self-expression are thus **punished or shamed** by their families and communities.

Collectivist Culture and Lack of Individual Space

Indian families often live in **joint or extended family systems**, where the idea of **individual space is almost alien**, especially for women. This collectivist approach can infringe on:

- Physical privacy (e.g., no separate rooms or bathrooms),
- Decisional privacy (e.g., life decisions made collectively),
- Informational privacy (e.g., medical records or personal messages openly shared).

Women are expected to adjust and accommodate, even when uncomfortable or violated.

Social Stigma and Silence

Women who assert their right to privacy are often stigmatized as arrogant, immoral, or disobedient. For example:

- A girl who asks for a lock on her room may be accused of hiding something “shameful.”
- A woman seeking abortion without informing her husband may be branded “unethical.”
- Single women living alone face suspicion, character assassination, and even harassment by landlords or neighbours.

This stigma silences women, discouraging them from reporting violations or asserting their rights.

Media, Morality, and the Female Image

The **representation of women in media and pop culture** often reinforces stereotypes that compromise their privacy:

- Glorification of **sacrifice, obedience, and selflessness**.
- Villainization of women who seek independence or sexual freedom.
- Normalization of stalking, surveillance, and public shaming in movies and television.

These portrayals justify privacy violations and shape public opinion against women's autonomy.

Religion and Cultural Practices

- Many **religious customs and community practices** interfere with women's privacy:
- **Purity rituals** and menstrual taboos that restrict physical mobility.
- **Dress codes** enforced in the name of modesty.
- **Community policing** in the form of moral monitoring or forced public apologies.

Women from minority communities face dual pressures—gender-based control within their communities, and religious-based scrutiny from outside. [6]

Silence Around Sexuality and Consent

In India, sexuality is a taboo subject, especially for women. This leads to:

- Lack of sex education, resulting in fear, misinformation, and abuse.
- Inability to speak out against marital rape, molestation, or sexual coercion.
- Shame and silence around issues like abortion, birth control, or sexual orientation.

The absence of open discussion allows institutions like families, religious groups, and even the state to make decisions on behalf of women, infringing on their personal liberty.

Intersectional Disadvantages

Certain groups of women face additional cultural and social burdens:

- Dalit and tribal women are more likely to be surveilled, controlled, and shamed.

- Widows, divorced women, and unmarried women are seen as “threats” to social norms and hence subjected to more scrutiny.
- Disabled women may face privacy breaches in care settings, as their dignity is often overlooked.

These groups face greater resistance when claiming their right to privacy and personal agency.

Role of Social Institutions

a) Family

Often the primary site of control. Even educated families may normalize surveillance, shaming, or forced decision-making.

b) Schools and Colleges

- Enforce strict dress codes only for girls.
- Restrict phone use and interactions between genders.
- Fail to offer counseling or privacy in cases of sexual harassment.

c) Community and Panchayats

- Enforce unwritten codes of conduct.
- Punish women who step outside prescribed norms.

d) Religious Institutions

- Often promote modesty, obedience, and silence as virtues in women.
- Limit access to education and modern knowledge under the guise of tradition. [10]

CONCLUSION

Privacy is not a luxury for women—it is a necessity for autonomy, dignity, and equality. In a patriarchal society like India, privacy becomes both a shield and a sword to fight gender-based discrimination and control. While legal recognition is a significant step forward, enforcement, education, and cultural change remain crucial. The right to privacy for women must be upheld not only by the State but also within families, communities, and institutions.

REFERENCE

- [1]. United Nations General Assembly. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- [2]. Shreya Atrey, Feminist constitutionalism: Mapping a discourse in contestation, *International Journal of Constitutional Law*, Volume 20, Issue 2, April 2022, Pages 611–641, <https://doi.org/10.1093/icon/moac029>
- [3]. Supreme Court of India. (2017). Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. Supreme Court Cases, Vol. 10, pp. 1. <https://indiankanoon.org/doc/91938676/>
- [4]. Government of India. (1950). The Constitution of India. New Delhi: Ministry of Law and Justice. <https://legislative.gov.in/constitution-of-india/>
- [5]. Supreme Court of India. (2009). Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1. Supreme Court Cases, Vol. 9, pp. 1. <https://indiankanoon.org/doc/1500783/>
- [6]. Supreme Court of India. (2015). Shreya Singhal v. Union of India, (2015) 5 SCC 1. Supreme Court Cases, Vol. 5, pp. 1. <https://indiankanoon.org/doc/110813550/>
- [7]. Government of India. (2000). The Information Technology Act, 2000. New Delhi: Ministry of Law and Justice. https://www.meity.gov.in/static/uploads/2024/03/IT-Act-Rules_2000_0.pdf
- [8]. Government of India. (2005). The Protection of Women from Domestic Violence Act, 2005. New Delhi: Ministry of Women and Child Development. <https://wcd.delhi.gov.in/scert/protection-women-domestic-violence-act-2005>
- [9]. Government of India. (2021). The Medical Termination of Pregnancy (Amendment) Act, 2021. New Delhi: Ministry of Health and Family Welfare. <https://mohfw.gov.in/sites/default/files/MTP%20Amendment%20Act%202021.pdf>
- [10]. European Union. (2016). General Data Protection Regulation (GDPR) – Regulation (EU) 2016/679. Official Journal of the European Union, L119, 1–88. <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>
- [11]. Ministry of Women and Child Development. (Various Years). Annual Reports and Policy Documents. Government of India. Retrieved from <https://wcd.nic.in>