

## Right to Privacy vs Forensic Investigation: Indian Perspective

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### Abstract

*The right to privacy and forensic investigation are two conflicting interests that have been debated extensively in the Indian context. The right to privacy is a fundamental right guaranteed under the Indian constitution, forensic investigation is a crucial tool for law enforcement agencies to solve crimes and bring perpetrators to justice. This paper examines the tension between these two interests and explores the Indian perspective on balancing individual privacy rights with the need for effective forensic investigation. It analyzes the constitutional framework, judicial pronouncements, and legislative developments to understand the tensions between individual privacy and investigative needs. Indian constitution protects individual privacy through Article 21, Article 19(1) a. To ensure privacy, forensic investigations are subject to legal limitations, procedural limitations and technological limitations. Indian Courts balance privacy concerns with investigative needs through a nuanced approach considering judicial principles, legal framework and judicial precedents. Forensic Investigation plays a crucial role in crime solving by providing scientific evidence to aid in the investigation and conviction of criminals. It provides unbiased evidence that helps investigators to identify perpetrators.*

### Keywords

*Constitution, Forensic, Fundamental, Court, Privacy.*

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### **Research Questions:**

- How does the Indian Constitution protect individual privacy?
- What are the limitations of forensic investigation to ensure privacy?
- How do Indian courts balance privacy concerns with investigative needs?

### **Introduction**

The right to privacy has been recognized as a fundamental right in India, with the Supreme Court holding that it is an essential aspect of personal liberty guaranteed under Article 21 of the Indian Constitution. However, forensic investigation, which involves the collection and analysis of evidence, often requires the invasion of individual privacy. This paper seeks to explore the Indian perspective on balancing these two competing interests.

#### **A. How does the Indian Constitution protect individual privacy?**

The Indian Constitution protects individual privacy through various provisions and judicial interpretations. Here are some key ways:

#### **Fundamental Rights**

**1. Article 21: Right to Life and Personal Liberty:** The Supreme Court has interpreted this Article to include the right to privacy, dignity, and autonomy. It protects individuals from unwarranted intrusion into their personal lives and includes the right to data protection and personal autonomy.

**2. Article 19(1) (a): Freedom of Speech and Expression:** This article protects individuals' freedom to express themselves and maintain their privacy.

#### **Judicial Interpretations and Landmark Judgements**

The right to privacy in India has been recognized as a fundamental right through a series of judicial decisions.

**1. Kharak Singh v. State of Uttar Pradesh (1963):** The Supreme Court held that the right to privacy is an essential part of the right to personal liberty under Article 21.

**2. Rajagopal v. State of Tamil Nadu (1994):** The Supreme Court reaffirmed that the right to privacy is a fundamental right and includes the right to protect one's reputation.

**3. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017):** The Supreme Court held that the right to privacy is a fundamental right and an integral part of the right to life and personal liberty under Article 21.

#### **Statutory Protections**

**1. Information Technology Act, 2000:** This Act provides safeguards for protecting personal data and privacy in the digital sphere.

2. The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016: Although the act has faced challenges, it aims to protect the privacy of Aadhaar holders.

### **Implications**

**1. Data Protection Laws:** The right to privacy has led to the enactment of data protection laws, such as the Personal Data Protection Bill, of 2019.

**2. Surveillance:** The right to privacy imposes restrictions on state surveillance and requires that any surveillance be reasonable, necessary and proportionate.

**3. Aadhaar:** The right to privacy has implications for the Aadhaar scheme, which requires the collection and storage of personal biometric data.

### **Other Safeguards**

**1. Data Protection Bills:** Various data protection bills have been proposed to strengthen privacy protections in India.

**2. Judicial oversight:** Indian Courts have consistently played a crucial role in protecting individual privacy and upholding fundamental rights.

While the Indian Constitution and judiciary have made significant strides in protecting individual privacy, there is still a need for robust data protection laws and stricter enforcement mechanisms.

### **B. What are the limitations of forensic investigation to ensure privacy?**

Forensic investigation is a crucial tool for law enforcement agencies in India to solve crimes and bring perpetrators to justice. The use of forensic science in investigation has become increasingly important in recent years, with the advent of new technologies such as DNA profiling and digital forensics.

#### ➤ **Forensic Investigation Techniques:**

**1. DNA profiling**

**2. Fingerprints**

**3. Digital forensics**

**4. Narco-analysis and brain mapping.**

#### ➤ **Importance of forensic investigation in crime solving.**

Forensic Investigation plays a crucial role in crime solving by providing scientific evidence to aid in the investigation, prosecution, and conviction of criminals. Here is some key importance of forensic investigation in crime solving.

**1. Objective Evidence:** Forensic investigation provides objective, unbiased evidence that helps investigators reconstruct crimes and identify perpetrators.

**2. Crime Scene Analysis:** Forensic experts analyze crime scenes to collect and

examine physical evidence, such as fingerprints, DNA, and other traces.

**3. Identification of Perpetrators:** Forensic investigation helps identify perpetrators through DNA analysis, fingerprint comparison and other techniques.

**4. Reconstruction of Crimes:** Forensic experts reconstruct crimes to understand the sequence of events, which helps investigators and prosecutors build strong cases.

**5. Enhanced Prosecution:** Forensic evidence provides strong support for prosecution cases, increasing the likelihood of convictions.

**6. Exoneration of Innocent:** Forensic investigation can also exonerate innocent individuals by providing evidence that proves their innocence.

**7. Improved Investigation Efficiency:** Forensic investigation helps investigators focus on the most promising leads, reducing investigation time and resources.

**8. Standardization and quality control:** Forensic investigation follows standardized protocols and quality control measures, ensuring the integrity and reliability of evidence.

**9. Interagency Collaboration:** Forensic investigation facilitates collaboration among law enforcement agencies, laboratories and other stakeholders.

**10. Continuous Improvement:** Forensic investigation drives continuous improvement in investigative techniques, technologies, and methodologies.

In summary, forensic investigation is essential in crime solving providing critical evidence, identifying perpetrators and supporting prosecution cases. Its importance cannot be overstated in the pursuit of justice.

➤ **To ensure privacy, forensic investigations are subject to several limitations:**  
**Legal Limitations**

**1. Warrants and Court Orders:** Investigators must obtain warrants or court orders to conduct searches, seizures or surveillance.

**2. Probable Cause:** Investigators must demonstrate probable cause to believe a crime has been committed.

**3. Reasonable Expectation of Privacy:** Investigators must respect individuals' reasonable expectation of privacy.

➤ **Procedural Limitations**

**1. Minimization:** Investigators must minimize the collection and examination of personal data.

**2. Relevance:** Investigators must ensure that collected data is relevant to the investigation.

**3. Proportionality:** Investigators must balance the need for evidence with individual privacy rights.

➤ **Ethical Limitations**

**1. Informed Consent:** Investigators must obtain informed consent from individuals before collecting personal data.

**2. Confidentiality:** Investigators must maintain confidentiality and protect sensitive information.

**3. Transparency:** Investigators must be transparent about their methods and intentions.

➤ **Oversight Mechanisms**

**1. Judicial Review:** Courts review investigative methods and ensure they comply with legal and constitutional standards.

**2. Internal Oversight:** Law enforcement agencies have internal oversight mechanisms to monitor investigations.

**3. External Oversight:** Independent bodies, such as data protection authorities, oversee investigations and ensure compliance with privacy regulations.

**C. How do Indian courts balance privacy concerns with investigative needs?**

Forensic investigation often requires the invasion of individual privacy, which raises concerns about the balance between individual rights and the need for effective investigation. The Indian Courts have recognized the need to balance individual privacy rights with the need for effective forensic investigation. In the case of *Selvi V. State of Karnataka*, the Supreme Court held that the use of narcoanalysis and brain mapping techniques in investigation is unconstitutional, as it violates the right to privacy. However, the Court also recognized the need for effective investigation and held that the use of these techniques may be justified in exceptional circumstances. Indian Courts balance privacy concerns with investigative needs through a nuanced approach, considering various factors. Here's a breakdown:

➤ **Judicial Principles**

**1. Proportionality:** Courts ensure that investigative measures are proportionate to the seriousness of the crime and the need for evidence.

**2. Necessity:** Courts verify that investigative measures are necessary to achieve the legitimate goal of solving the crime.

**3. Least Intrusive Method:** Courts prefer investigative methods that are least intrusive to individual privacy.

➤ **Legal Framework**

**1. Code of Criminal Procedure (Cr.PC):** The CrPC provides guidelines for investigative procedures, including search and seizure, and interrogation.

**2. Indian Evidence Act:** The Act governs the admissibility of evidence in Court, ensuring

that evidence is collected and presented in a manner that respects individual privacy.

**3. Information Technology Act:** The Act regulates digital evidence and provides safeguards for protecting personal data.

➤ **Judicial Precedents**

**1. Kharak Singh v. State of Uttar Pradesh (1963):** The Supreme Court held that the right to privacy is an essential aspect of personal liberty.

**2. Rajagopal v. State of Tamil Nadu (1994):** The Supreme Court reaffirmed that the right to privacy and emphasized the need for a balancing act between individual privacy and investigative needs.

**3. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017):** The Court recognized the right to privacy as a fundamental right and emphasized the need for a robust data protection framework.

➤ **Oversight Mechanisms**

**1. Judicial Oversight:** Courts review investigative actions to ensure they comply with legal and constitutional standards.

**2. Magisterial Oversight:** Magistrates oversee investigative procedures, such as search and seizure, to ensure they are conducted in accordance with the law.

**3. Internal Oversight:** Law enforcement agencies have internal mechanisms to monitor investigations and ensure they are conducted in a manner that respects individuals' privacy. By considering these factors, Indian Courts strive to balance individual privacy concerns with the need for effective investigations, ensuring that justice is served while protecting fundamental rights.

**Judicial Pronouncements**

**1. Selvi v. State of Karnataka (2010):** Narco-analysis and privacy

The Selvi v. State of Karnataka (2010) case is a landmark judgment in India that dealt with the issue of narco-analysis, brain mapping, and polygraph tests in the context of criminal investigations. Here's a brief summary:

**Case Background**

The case involved a writ petition filed by Selvi and others, challenging the constitutional validity of narco-analysis, brain mapping, and polygraph tests. These techniques were being used by investigative agencies to extract information from accused persons.

**Key Issues**

**1. Right to Privacy:** The petitioners argued that these techniques violated their right to privacy, as they involved the use of chemicals and other methods to extract information from their minds without their consent.

**2. Voluntariness of Confessions:** The petitioners also argued that confessions obtained through these techniques were not voluntary and could not be relied upon as evidence.

### **Judgment**

The Supreme Court of India, in a majority judgment, held that:

**1. Narco-analysis, brain mapping, and polygraph tests are not admissible as evidence:** The court ruled that these techniques are not recognized scientific methods of investigation and cannot be used as evidence in court.

**2. Right to Privacy:** The court held that the right to privacy is a fundamental right, and these techniques violate that right. The court stated that the use of these techniques without consent would be a violation of Article 20(3) of the Indian Constitution, which protects against self-incrimination.

**3. Voluntariness of Confessions:** The court emphasized that confessions must be voluntary and not obtained through coercive means, including the use of these techniques.

### **Impact**

The *Selvi v. State of Karnataka* judgment has significant implications for criminal investigations in India. It emphasizes the importance of protecting individual rights, particularly the right to privacy, and ensures that investigative agencies do not use coercive methods to extract information from accused persons.

- **Ram Jethmalani v. Union of India (2011):** Phone tapping and privacy

The *Ram Jethmalani v. Union of India (2011)* case is a significant judgment in Indian law that deals with phone tapping and the right to privacy. Here's a brief summary:

### **Case Background**

The case was filed by Ram Jethmalani, a senior advocate, who challenged the validity of the provisions of the Indian Telegraph Act, 1885, and the Indian Telegraph Rules, 1951, which govern phone tapping in India.

### **Key Issues**

The main issues raised in the case were:

1. Whether phone tapping violate the fundamental right to privacy under Article 21 of the Indian Constitution?
2. Whether the existing laws and regulations governing phone tapping are adequate to protect individual privacy?

### **Court Judgment**

The Supreme Court of India held that:

1. Phone tapping does indeed violate the right to privacy, which is an integral part of the right to life and personal liberty under Article 21 of the Constitution.

2. The existing laws and regulations governing phone tapping are inadequate and need to be revised to ensure that individual privacy is protected.

### **Significance**

The judgment is significant because it:

1. Recognized the importance of the right to privacy in the context of phone tapping.
2. Emphasized the need for a more robust legal framework to regulate phone tapping and protect individual privacy.
3. Paved the way for future judgments and legislative reforms aimed at strengthening privacy protections in India.

Overall, the Ram Jethmalani v. Union of India (2011) case is an important milestone in the evolution of privacy law in India, and its implications continue to be felt in the country's ongoing debates about surveillance, data protection, and individual rights.

• **Shafhi Mohammad v. State of Himachal Pradesh (2018):** Forensic examination and consent.

The case of Shafhi Mohammad v. State of Himachal Pradesh (2018) is a significant judgment by the Supreme Court of India. The case revolves around the issue of forensic examination and consent in criminal proceedings.

In this case, the Supreme Court held that a forensic examination of a victim can be conducted without their consent, but only when it is deemed necessary for the investigation and prosecution of the offense. However, the court also emphasized that the victim's consent is required for certain invasive medical procedures.

The judgment highlights the importance of balancing the need for effective investigation and prosecution with the rights and dignity of the victim. It also underscores the need for sensitive handling of victims, particularly in cases involving sexual offenses.

### **Legislative Developments**

- **Information Technology Act, 2000:** Digital privacy concerns
- **Indian Evidence Act, 1872:** Admissibility of electronic evidence
- **Draft Data Protection Bill, 2022:** Implications for forensic investigation

### **Recommendations**

• **Robust Regulatory Framework:** There is a need for a robust regulatory framework to govern the use of forensic science in investigation, which balances individual privacy rights with the need for effective investigation.

• **Judicial Oversight:** Judicial oversight is essential to ensure that forensic investigation is conducted in a manner that respects individual privacy rights.



- **Public awareness:** There is a need to raise public awareness about the importance of forensic investigation and the need to balance individual privacy rights with the need for effective investigation.

### **Conclusion:**

The right to privacy and forensic investigation are two competing interests that need to be balanced in the Indian context. While the right to privacy is a fundamental right guaranteed under the Indian Constitution, forensic investigation is a crucial tool for law enforcement agencies to solve crimes and bring perpetrators to justice. The Indian Courts have recognized the need to balance individual privacy rights with the need for effective forensic investigation, and have laid down guidelines for the use of forensic science in investigation.

### **Forensic Investigation Needs**

**1. Crime Solution:** Forensic investigators need to analyze evidence to solve crimes and bring perpetrators to justice.

**2. Evidence Collection:** Investigators must collect and analyze physical and digital evidence to reconstruct crimes.

**3. Public Safety:** Forensic investigations help ensure public safety by identifying and prosecuting criminals.

### **Resolving the Conflict**

**1. Proportionality:** Investigations should be proportionate to the crime, minimizing intrusion into personal privacy.

**2. Transparency and Accountability:** Clear guidelines, oversight mechanisms, and transparency can ensure investigations are conducted fairly.

**3. Data Protection Safeguards:** Implementing robust data protection measures can help protect personal information during investigation.

**4. Alternative Investigation Methods:** Exploring alternative methods, such as anonymized data or targeted surveillance, can minimize privacy intrusion.

**5. Judicial Oversight:** Judicial review and oversight can ensure investigations are lawful, necessary and proportionate.

### **Challenges ahead**

**1. Emerging Technologies:** Advancements in technologies like AI, biometrics, and IoT raise new privacy concerns and challenges.

**2. Cross-Border Investigations:** International cooperation and data sharing create tensions between privacy and investigation.

**3. Public Expectations:** Balancing public expectations for safety and security with individual privacy rights is an ongoing challenge.

Ultimately, resolving the conflict between privacy and forensic investigation requires a nuanced approach that balances individual rights with societal needs.

### **References**

Include relevant Indian and international sources, such as:

1. Supreme Court judgments
2. Legislative documents
3. Reports from organizations like the National Human Rights Commission (NHRC).