

THE STRUCTURE OF THE RIGHT TO PRIVACY IN INDIA



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ABSTRACT

This thesis studies the structure of the constitutional right to privacy in India. Recent events in the country — most notably, the Government’s judicial challenge to the very existence of this right, a proposed biometric data collection scheme and the fear of mass surveillance — render this study topical.

The thesis concludes that the Indian constitutional right to privacy consists of three distinct conceptions — ‘physical privacy’, ‘informational privacy’ and ‘decisional privacy’. Although the implications of the conceptual distinction between these categories seem to have had a considerable impact on judicial decision-making, they have rarely if ever been expressly articulated. On an examination of the Indian case-law, it may also be seen that the standards of judicial review vary between the three classes of privacy.

This thesis takes as its starting point, the Indian cases on privacy. An examination of the privacy case-law since independence reveals that the existence of this right has been reaffirmed time and again. However, conceptual inconsistencies plague most aspects of privacy. A survey of the scholarship on the taxonomy of privacy reveals useful insights. In particular, it provides considerable support for classifying privacy into manageable and conceptually delineable sub-categories. This then permits one to consider the further question — how, if at all, should the judicial treatment of these categories differ? Fortunately, the answers derived from academic literature are largely compatible with the Indian case-law.

In light of the Government’s challenge, a constitution bench of the Supreme Court of India will soon be called upon to re-adjudicate on the right to privacy. It is

hoped that the Court will take this opportunity to bring in much needed clarity into this area.

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