

## Homelessness and Spatial Privacy in India: A Constitutional Review

Lakhwinder Singh\* and Manpreet Kaur

*Rajiv Gandhi National University of Law (RGNUL), Punjab, India.*

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### Abstract

This article explores the critical intersection of homelessness and spatial privacy in India within the framework of transformative constitutionalism. It argues that access to natural and urban spaces is a fundamental right enshrined implicitly in the Indian Constitution, particularly under the right to life and personal liberty (Article 21). Despite constitutional guarantees, homeless individuals face systemic exclusion, intrusive surveillance, forced evictions, and social stigmatization that violate their spatial privacy and dignity. The article highlights spatial privacy as an extension of spatial justice, encompassing bodily and psychological autonomy, crucial for the empowerment and inclusion of marginalized populations. It critically examines judicial pronouncements that recognize the constitutional protections relevant to homeless persons and advocates for a liberal constitutional interpretation that promotes equitable housing policies and social welfare programs. The transformative constitutionalism framework is presented as a dynamic tool to dismantle structural inequalities and affirm the spatial rights of the homeless, ensuring their dignity, liberty, and equality within India's evolving urban landscape.

**Keywords:** Homelessness; Spatial Privacy; Transformative Constitutionalism; Indian Constitution; Social Justice; Right to Dignity

### 1. Introduction

Access to natural spaces constitutes an inherent capability and fundamental right of every individual. These spaces, by virtue of their extensive nature, have the capacity to accommodate diverse users, each of whom ascribes their own meaning and purpose in pursuit of personal and social objectives. Crucially, this right to access must be balanced against the equivalent rights of others to the same natural environments. Recognition of such rights is essential within the social contracts that underpin societies globally. Historically, however, marginalized and vulnerable communities have been systematically excluded from accessing natural spaces, rendering them dependent upon dominant groups that exercised control over these environments for centuries. This historical exclusion represents a significant injustice that transformative constitutionalism—an idea that gained prominence in the post-World War II era—seeks to redress.

The Constitution of India embodies the principles of transformative constitutionalism by guaranteeing equitable access to spaces for all individuals and prohibiting both vertical and horizontal discrimination in the exercise of this fundamental right. Integral to this access is the concept of spatial privacy, derived from the broader framework of spatial justice, which empowers individuals to maintain control over their conduct within both public and private domains. Despite this constitutional guarantee, homelessness in India remains a pervasive socio-economic challenge that effectively denies spatial privacy to unhoused individuals. The homeless face numerous barriers to privacy, including hostile urban design and invasive scrutiny rooted in societal biases and prejudices. Consequently, they are deprived of the personal and social functions that privacy facilitates, constituting a violation of their dignity and autonomy—an issue that remains insufficiently addressed in public and legal discourse.

\* Corresponding author: Lakhwinder Singh

This article critically examines the intersection of homelessness and spatial privacy in India through the lens of constitutional law. It underscores the necessity of adopting a rights-based approach to effectively address these interrelated issues, thereby advancing social justice and constitutional guarantees for vulnerable populations.

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## 2. Homelessness, Spatial Privacy and Transformative Constitutionalism

Homelessness, as a pervasive social issue, continues to intensify in contemporary India, exacerbated by the emergence of increasingly complex socio-economic structures and urban configurations. Traditional causes of homelessness—such as poverty, displacement, and lack of affordable housing—are now compounded by new spatial dynamics that produce exclusive environments. These environments privilege individuals who possess the necessary resources to conform to rigid spatial and temporal norms, while systematically marginalizing those without such means. Consequently, homeless individuals are rendered as 'others,' subjected to the dominant spatial orders that dictate access and control over urban spaces.

Drawing on David Harvey's concept of the spatial fix, it is plausible to imagine that economic and urban restructuring processes can contribute significantly to the involuntary displacement of vulnerable populations, thereby intensifying homelessness. The issue transcends the mere absence of shelter; even when physical housing exists, socio-economic adversities within newly gentrified neighborhoods often perpetuate exclusion and insecurity for displaced and existing marginalized residents alike. Homeless individuals frequently encounter hostility within these market-driven urban spaces and are subjected to horizontal discrimination manifested through negative societal attitudes and systemic surveillance. This surveillance is both public and private in nature, involving disproportionate and often unreasonable monitoring practices. Homeless persons are increasingly subjected to biased algorithmic surveillance, including camera systems and social media monitoring, which reinforce their marginalization. Under such conditions, law enforcement agencies exercise excessive powers—such as arbitrary searches, frisks, and invasions of temporary shelters—without just cause. These practices undermine homeless individuals' constitutional rights, particularly their reasonable expectation of privacy and dignity as enshrined in constitutional morality.

The right to spatial privacy, an extension of the broader principle of spatial justice, is crucial in this context. Spatial privacy encompasses an individual's ability to control and manage their spatial environment, thereby delineating the boundaries between public and private spheres of life. It ensures autonomy, dignity, and the fundamental right to be left alone, even within public spaces. However, homeless individuals are systematically deprived of spatial privacy through the collective denial of their rights by both state and non-state actors. This denial manifests in everyday violations such as forced evictions, intrusive policing, and social stigmatization, which collectively erode their capacity to live with dignity. Furthermore, the infringement on homeless individuals' privacy extends to fundamental human rights, including the right to rest and sleep. During night-time hours, homeless persons are often compelled to present identification or endure random searches, violating their privacy and human dignity. Such practices highlight the urgent need to recognize spatial privacy as a critical dimension of the rights of homeless populations.

Transformative constitutionalism, a concept developed by Karl Klare, offers a promising framework to address these challenges. It envisions the constitution as a dynamic instrument for societal transformation, aimed at dismantling entrenched socio-economic inequalities. Homelessness, as a form of historical and structural injustice, persists amidst evolving urban and social landscapes. By embracing transformative constitutionalism, legislators, the judiciary, and administrative bodies can be guided to adopt affirmative measures that not only protect the spatial privacy of homeless individuals but also promote their social inclusion and dignity.

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## 3. Spatial Privacy: Concept and Importance

Spatial Privacy is inspired from the idea of "Spatial Justice". Edward Soja said that spatial justice involves "the fair and equitable distribution in space of socially valued resources and opportunities to use them".[1] According to Edward Soja, "Locational discrimination created through the biases imposed on certain populations because of their geographical location is fundamental in the production of spatial injustice and the creation of lasting spatial structures of privilege and advantage".[2] He said, "Spatial (in)justice can be seen as both outcome and process, as geographies or distributional patterns that are in themselves just/unjust and as the processes that produce these outcomes." [3]

Spatial privacy enables an individual to enjoy bodily, psychological and social functions of privacy in the given spaces. Indeed, Roger JR Levesque said, "The strand of privacy law that involves spatial privacy addresses whether to shield individuals from invasion by unwanted others, objects, and other disruptions. Although originally focused on individuals' territorial solitude, this strand of privacy expanded to consider shielding physical and psychological

integrity from illegitimate invasions that would be framed as infringements not only on one's repose but also on one's inherent sense of dignity." [4]

Spatial privacy is a fundamental concept that safeguards not only an individual's bodily autonomy and physical integrity within various environments but also extends to protecting mental privacy, including thoughts, expressions, ideas, and the broader principle of cognitive liberty. By ensuring spaces that respect both bodily and psychological privacy, society creates an enabling environment for individuals to exercise their freedoms fully and to engage meaningfully in constitutional democracy.

Bodily privacy entails the protection of individuals from unwarranted physical intrusions, allowing them to maintain control over their own bodies and immediate surroundings. Psychological privacy, on the other hand, guards the sanctity of one's inner world—thoughts, beliefs, and expressions—ensuring that these remain free from external coercion or surveillance. Together, these dimensions of privacy form the foundation for personal dignity, autonomy, and freedom of conscience, which are essential for fostering active participation in democratic processes.

For homeless individuals, spatial privacy is particularly critical. The absence of stable, private spaces severely compromises their ability to preserve bodily and psychological privacy. Without spatial privacy, homeless persons face constant vulnerability to physical invasions, social stigma, and intrusive surveillance, which collectively undermine their autonomy and dignity. Providing spatial privacy to homeless individuals is thus a prerequisite for enabling them to claim and enjoy their full spectrum of fundamental rights.

Moreover, access to spatial privacy empowers homeless individuals to participate more effectively in the social and political decision-making processes that shape the spaces they inhabit. When individuals can engage in dialogue regarding the production, organization, or transformation of urban spaces, it not only affirms their cognitive liberty but also fosters a more inclusive and responsive spatial governance. Such participation can challenge prevailing negative attitudes and social exclusions, promoting a shift toward greater societal empathy and equity.

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#### 4. Right of the Homeless to Spatial Privacy under the Indian Constitution

While the Indian Constitution does not explicitly articulate a distinct right to spatial privacy, this right can be implicitly derived from the fundamental right to life and personal liberty enshrined in Article 21. Spatial privacy is an essential liberty without which the enjoyment of other fundamental rights—civil, political, social, economic, and cultural—becomes untenable.

In several landmark judgments, the Supreme Court has affirmed the constitutional protections extended to homeless individuals, collectively contributing to the protection of their spatial privacy. Notably, in *Shantistar Builders v. Narayan Khimalal Totame* [5] and *Chameli Singh v. State of Uttar Pradesh* [6], the Court categorically recognized that the right to housing is an integral component of the right to life. These decisions underscore that the constitutional framework embraces the fundamental values associated with housing, including not only shelter but also related rights such as access to food, health, education, and a dignified living environment. This holistic interpretation emphasizes that adequate housing encompasses multiple dimensions crucial to human dignity and well-being.

Furthermore, the Court has underscored the necessity of ensuring that eviction processes comply with constitutional guarantees, as exemplified in *Olga Tellis v. Bombay Municipal Corporation*. [7] Here, the Court mandated that affected individuals must be provided with meaningful opportunities for participation, consultation, and adequate remedies before any eviction action is undertaken, reflecting respect for spatial privacy and procedural fairness.

In *In Re: Ramlila Maidan Incident*, [8] the Supreme Court explicitly recognized the right to sleep as an essential aspect of privacy. Although this judgment originally arose in the context of protestors who were lathicharged while sleeping overnight in a public space, its underlying principles can be extended to affirm the right to sleeping privacy and spatial privacy for homeless individuals as well. This recognition underscores the importance of protecting homeless persons' dignity and autonomy, particularly their right to rest without harassment or intrusion, thereby reinforcing the broader constitutional commitment to safeguard spatial privacy in public spaces.

The Court has also directed the State to establish night shelters, thereby affirming the right of homeless persons to spatial privacy and dignity.

Increasingly, the recognition of spatial privacy for homeless individuals aligns with the broader justice-oriented objectives of the Indian Constitution, including social, economic, and political justice. Article 14, which guarantees equality before the law and equal protection of the laws, imposes both negative and positive obligations on the State, embodies the principle of transformative constitutionalism by compelling the State to take affirmative measures to ensure spatial justice and protect the spatial privacy of homeless persons.

In recent years, the Supreme Court has taken a proactive stance in safeguarding the rights of homeless individuals by seeking comprehensive information from government authorities about their conditions, available facilities, shelter programs, and implementation status. The Court has appointed monitoring committees to oversee progress and address deficiencies, and has intervened to halt the demolition of homeless shelters, notably in Delhi.

The landmark *Justice K.S. Puttaswamy v. Union of India*[9] privacy judgment further broadens the constitutional protection of privacy, providing a robust framework for safeguarding the diverse and complex interests of homeless individuals necessary for the full realization of their right to spatial privacy.

Moreover, constitutional provisions such as Article 15(2) and Article 17 prohibit discrimination on unreasonable grounds, including in public spaces. They reinforce the principle that public spaces must be accessible to all individuals without discrimination or exclusion. These provisions also challenge societal prejudices and negative attitudes that create intangible barriers preventing homeless persons from enjoying spatial privacy within public domains.

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## 5. Moving Forward: Liberal Constitutional Interpretation of Fundamental Rights

A liberal constitutional interpretation of fundamental rights offers a robust framework for safeguarding the rights and interests of homeless individuals, particularly in relation to their spatial privacy. This approach can guide legislators, the executive, the judiciary, and administrative agencies in enforcing the fundamental right to spatial privacy in both vertical and horizontal dimensions. As Aileen Kavanagh articulates, a collaborative constitutional model necessitates the coordination of all branches of government. This model requires a comprehensive understanding and realization of the collective constitutional scheme, which must be reflected in policies promoting equitable land distribution through constitutional reforms and urban planning initiatives.

Housing policies that recognize the fundamental right to adequate housing should be grounded in core constitutional principles, including accessibility, equality, non-discrimination, justice, liberty, and human dignity. Special consideration must be given to individuals without any financial resources, ensuring that housing schemes include provisions for those unable to contribute monetarily. Furthermore, the role of state regulation remains indispensable within a constitutional democracy; it cannot be supplanted by unfettered deregulation. Social welfare programs, as mandated by the directive principles of state policy, should be implemented through proportionate and targeted measures to address the needs of marginalized populations.

The concept of transformative constitutionalism must be operationalized effectively to bring about meaningful social change. This requires raising societal awareness and ensuring that state institutions take decisive action to eliminate horizontal discrimination. The establishment of independent, effective, and accountable institutions is crucial in this regard, fostering an environment where the rights of homeless individuals are protected and promoted within the broader constitutional order. Through such a comprehensive and liberal interpretative approach, the constitutional promise of dignity and equality for all can be more fully realized.

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## 6. Conclusion

In conclusion, the intersection of homelessness and spatial privacy in India presents a critical challenge that demands urgent constitutional and policy attention. While the Indian Constitution does not explicitly enshrine a distinct right to spatial privacy, this right is inherently embedded within the fundamental right to life and personal liberty under Article 21, as well as the principles of equality, non-discrimination, and dignity enshrined elsewhere in the constitutional framework. Homeless individuals face systemic exclusion and violations of spatial privacy through intrusive surveillance, forced evictions, and social stigmatization, which collectively undermine their autonomy and human dignity.

The doctrine of transformative constitutionalism offers a powerful lens to address these entrenched inequalities by urging a dynamic and inclusive interpretation of constitutional rights that prioritizes social justice and equitable access to urban spaces. A liberal constitutional interpretation, emphasizing coordination among all branches of government,

can guide the formulation and implementation of comprehensive housing policies that respect spatial privacy and promote the inclusion of marginalized populations without financial means. Moreover, effective enforcement of state regulation and social welfare programs is vital to uphold the spatial rights of homeless individuals.

Ultimately, ensuring spatial privacy for homeless populations is not merely a legal imperative but a moral and democratic necessity. It requires the establishment of independent and accountable institutions, heightened societal awareness, and proactive state intervention to dismantle horizontal discrimination and create environments where dignity, liberty, and equality are genuinely accessible to all. By advancing these measures, India can fulfill its constitutional promise and foster a more just and inclusive society for its most vulnerable citizens.

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## Compliance with ethical standards

### *Disclosure of conflict of interest*

No conflict of interest to be disclosed.

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- [9] (2017) 10 SCC 1.