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TITLE: JUSTICE K.S PUTTASWAMY (Retd.) AND ANR vs UNION OF INDIA AND ORS.

COURT: SUPREME COURT OF INDIA (NINE-JUDGE BENCH)

YEAR: 2017

CITATION: (2017) 10 SCC 1

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INTRODUCTION:

This case is regarded as the most important constitutional case. On 24th of August 2017, a nine-judge bench, declared right to privacy as a fundamental right under Article 21 (right to life and liberty), and protected under part -III of the constitution. The judgement over ruled another 2 precedents namely- M.P Sharma vs Satish Chandra¹ (1954), and Kharak Singh vs State of Uttar Pradesh² (1962). Under these cases, the right to privacy's constitutional status was denied.

The case emerged from the Aadhar biometric identity scheme, who's basic necessity was collection, and retention of personal data of many citizens. Therefore, this issue broadened. The issue was whether the privacy was constitutionally protected or not. And, the court acknowledged the same with the growing technology, and the new threat to personal data.

This case also addressed various other issues such as; decriminalising homosexuality, and adultery. The judgment laid a new legal framework for data protection laws. And also, it still continues to provide about Artificial Intelligence, and technologies all around.

LEGAL ISSUES:

¹ M.P. Sharma v. Satish Chandra, A.I.R. 1954 S.C. 300 (India).

² Kharak Singh v. State of Uttar Pradesh, A.I.R. 1963 S.C. 1295 (India).

1. Whether right to privacy is a constitutional right under the constitution of India?
2. Whether privacy is protected under Article 14³, 19⁴ and 21⁵?
3. Whether privacy is subjected to individual or there are reasonable restrictions imposed by the state?
4. Whether the earlier decided cases were correctly decided or not?

FACTS OF THE CASE:

1. PARTIES INVOLVED-

- **Petitioner:** Justice K.S. Puttaswamy⁶ (Retd.), a former Judge of the High Court of Karnataka.
- **Respondents:** Union of India (represented by the Attorney General), State of Tamil Nadu, and other government authorities.

2. RELEVANT FACTS-

The Aadhaar Project started in 2009⁷ as a way for the government to manage things. On it became a law under the Aadhaar Act of 2016. It recorded their data like fingerprints, iris scan, and face photo. It also collected details like where they live and who they are. All this information is stored in one place by the UIDAI.

At first people did not have to join the Aadhaar Project if they did not want to. Later they had to join if they wanted to get help from the government use banks get a mobile number or file their taxes. They took the government to court. They said the government should not make them give their details without making sure they are safe. They said this was not right. It affected their privacy and freedom. The government said the Aadhaar Project was a thing. They also said that people in India do not have a right to privacy. The government based their argument, on what the courts said in the M.P. Sharma and Kharak Singh cases. The disagreement showed the conflict between technological progress and personal freedom. The disagreement also posed more general issues about surveillance, information control, and restrictions on the State.

3. PROCEDURAL HISTORY-

³ INDIA CONST. art. 14

⁴ INDIA CONST. art. 19

⁵ INDIA CONST. art. 21

⁶ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, 497 (India).

⁷ The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016.

A writ petition was filed under Article 32⁸ of the constitution, where initially a smaller judge bench heard the Aadhaar issue, but later a nine-judge bench had to be set up for the privacy, as a fundamental right issue. On 24th August 2017, the nine- judge bench gave a unanimous landmark decision.

Also, additionally in 2018 a five-judge bench in *Puttaswamy -II* laid down the privacy framework, subjected to use for state, and corporate entities only, excluding private entities' usage.

LEGAL ISSUES:

1. ISSUES STATEMENTS-

2. Does constitution guarantee right to privacy, as a fundamental right?
3. Whether right to privacy is only confined to Article 21, or from Article 14,19, and 21 together?
4. Whether privacy is an absolute right, or subjected to restrictions from state?
5. Whether the precedents remain valid, or not?

2. IMPORTANCE-

In such technological driven economy, the government and the private institutions collect an extensive amount of personal data from millions of citizens. Therefore, the judgement would provide a check on such technology. And it will also safeguard citizen's personal data, and protect them from any such cyber issues. And, also the need for a better, and regulated framework will be addressed properly.

COURT'S DECISION:

1. HOLDING-

The court held that, right to privacy is protected under Article 21 of the fundamental right. And not only Article 21, but along with that Article 14, 19, inclusive. The precedents, were over ruled, in which they denied the right.

2. RATIONALE-

According to the court, right to privacy is not conferred to a particular thing, but it is for all the human beings. As time changes, social and technology factors also change, therefore

⁸ INDIA CONST. art. 32

constitutional rights should be flexible, and should bend towards the changing need. The court then established three tests, which determine the invasion of privacy, namely; legality, proportionality, and legitimate state aim.

Additionally, privacy was held as a necessary stipulation for various other rights.

LEGAL REASONING:

1. DISSENTING/CONCURRING OPINIONS-

There were no dissenting opinions. All the nine judges wrote separately, each aiming at different aspects.

2. STATUTES/PRECEDENT-

OVERRULED~

- *M.P. Sharma vs Satish Chandra* (1954, 8-judge bench)
- *Kharak Singh vs State of U.P.* (1962, 6-judge bench)

AFFIRMED AND EXPANDED~

- *Gobind vs State of M.P.* (1975)⁹ - limited privacy rights under Article 21
- *R. Rajagopal vs State of Tamil Nadu* (1994)¹⁰ - privacy in press and defamation context

INTERNATIONAL INSTRUMENTS~

- UDHR, Article 12¹¹
- ICCPR, Article 17¹²
- ECHR, Article 8¹³

COMPARITIVE JURISPRUDENCE~

- *Griswold vs Connecticut* ¹⁴(US, 1965)

⁹ *Gobind v. State of Madhya Pradesh*, (1975) 2 S.C.C. 148 (India)

¹⁰ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 S.C.C. 632 (India).

¹¹ United Nations, Universal Declaration of Human Rights, art. 12 (1948).

¹² United Nations, International Covenant on Civil and Political Rights, art. 17 (1966).

¹³ Council of Europe, European Convention on Human Rights, art. 8

¹⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

- *R vs Spencer*¹⁵(Canada, 2014)
- *S vs Makwanyane*¹⁶(South Africa, 1995)

IMPACT OF THE CASE:

1. LEGAL PRECEDENT-

It established privacy as a fundamental constitutional right. Also, a new law came into existence, Digital Personal Data Protection Act, 2023¹⁷. Due to which, the framework was changed a bit, the scrutiny increased, and the protection of personal data was taken up seriously.

In 2018, the Aadhaar judgment struck down Section 57¹⁸ of the Aadhaar Act to the extent it enabled private entities to mandate Aadhaar authentication.

2. SOCIAL AND POLITICAL IMPACT-

The judgement led to protection of citizen's personal data. Also, it amplified the awareness in citizens, regarding the data, and privacy. This decision is especially pertinent in relation to AI. Contemporary AI systems are heavily reliant on vast datasets, frequently including personal data. The ruling altered the dynamics between citizens and the state in the digital age. By establishing informational privacy as a constitutional right, it transformed data subjects from mere beneficiaries of regulatory measures into individuals who possess constitutional rights.

The court also established constitutional principles, which addressed the concerns. Though, the DPDPA, was a response to the principles laid in Puttaswamy. Still, it didn't adequately solve the privacy concerns, arising from AI.

PERSONAL ANALYSES:

1. CRITICAL ANALYSIS-

The judgement delivered keeps in the mind technological, and social progressions. The right to privacy, was not only kept to the state, or the corporate bodies, but was given to all the citizens, for the safeguard. The court also put the emphasis, on protection of personal data, by making sure that personal data is protected, and along with that the monitoring was also put at its

¹⁵ R. v. Spencer, 2014 SCC 43, [2014] 2 S.C.R. 212 (Can.).

¹⁶ S v. Makwanyane 1995 (3) SA 391 (CC) (S. Afr.).

¹⁷ The Digital Personal Data Protection Act, No. 22 of 2023, India Code (2023).

¹⁸ The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016, § 57.

importance. The over ruling of the previous judgements was justified, by giving a valid reason that; privacy should not be curtailed, to a specific entity, but it is for all.

Additionally, there were various tests which were adopted for the privacy protection, and check. It worked as a control mechanism. Also, the DPDP Act came into existence, even though it isn't perfectly driven. Viewed holistically, this landmark judgement laid down the right to privacy as a fundamental right. It also encouraged, for a framework which not only was growth, and technological driven, but also which protects the rights of citizens.

2. ALTERNATIVE OUTCOMES-

If the previous precedents were to be held as the final decisions, then the personal data would have been remained unchecked, plus there would have been absolute control of the state, and the corporate entities, which would mostly lead to cyber-attacks, and data of millions of citizens, would have been laid susceptible to breach.

The concept of privacy would have been narrow, and subject to only few things in it. the awareness wouldn't have been reached to public, about various issues related to the data. The DPDP Act wouldn't have came into existence, or its existence would have diluted.

CONCLUSION:

Justice K.S Puttaswamy (Retd.) and Anr. vs Union of India is a landmark judgement which states the right to privacy as a fundamental right, which is not only subject to a particular thing, but it is for everyone. Privacy is not a single concept, but it is taken along with 2 more articles (14 and 19). It also established a framework, for scrutinizing the impediments of privacy.

It also alerted the court, and the government about the incomplete legal framework, and the need for more protected, and regulated framework. As, the technological growth advances, there will be more challenges to AI, and data protection, therefore there is an urgent need for such rules, or framework which keeps the privacy intact, and citizens protected.