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THE RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT: A CRITICAL ANALYSIS OF K.S. PUTTASWAMY V. UNION OF INDIA (2017)

-Garvita Mishra

I. Introduction

The Constitution of India has been debated for a long time regarding the right to privacy. The Constitution does not mention the word "*privacy*". For 70 years, the Supreme Court did not clearly state that it was a right protected under the Constitution. This was amended on August 24, 2017. A nine-judge Bench in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*¹ unanimously held that the right to privacy is a fundamental right. It is protected as part of the right to life and personal liberty under **Article 21**.² It is also part of the freedoms guaranteed under Part III of the Constitution. What makes the Puttaswamy judgment a landmark is not just the outcome but how it was reached. To make this decision, the Court had to re-examine two of its judgments. These earlier judgments had raised doubts about the existence of a right to privacy. This commentary examines the judgment on its own terms. It examines the reference that led to the judgment. It analyses the reasoning behind the six opinions. It discusses the newly introduced proportionality standard. Then it critically evaluates what the judgment left unsettled. It argues that the promise of the judgment has been only partially fulfilled in recent years.

II. Factual and Procedural Background

The case did not start as a case about privacy in general. It began with a challenge to the Aadhaar programme, the government's system for identifying people using biometric information. A retired High Court judge, Shri K.S. Puttaswamy, was the lead petitioner. The main argument was that

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

² India Const. art. 21.

collecting a lot of demographic and biometric information about people was against the right to privacy. The government responded by citing cases, saying that privacy is not always guaranteed. The government cited *M.P. Sharma v. Satish Chandra*,³ decided by eight judges, and *Kharak Singh v. State of U.P.*,⁴ decided by six judges, to support its argument regarding the Aadhaar programme and the right to privacy.

Since a smaller Bench cannot overrule a larger one, the case was sent to a nine-judge Bench to decide only whether the Constitution protects a right to privacy. The question of Aadhaar's validity was set aside for later. The nine judges focused only on this key constitutional issue.⁵

III. Issues Before the Court

1. Whether the issue concerns whether the right to privacy constitutes a fundamental right guaranteed by the Constitution, specifically under Article 21 and other provisions of Part III.
2. Whether the decisions in *M.P. Sharma* and *Kharak Singh*, insofar as they held that no such right exists, accurately reflect the correct legal position.

IV. The Pre-Puttaswamy Landscape

To understand why a nine-judge Bench was necessary, we need to look at what happened. The case of *M.P. Sharma* in 1954 is a place to start. At that time, an eight-judge Bench was dealing with the issue of search and seizure.⁶ They noticed that the people who made the rules did not include something like the Fourth Amendment of the United States Constitution. Because of this, they decided not to include a privacy guarantee. Ten years later, the Court revisited the case of *Kharak Singh* in 1963. This case was about the police monitoring a person with a history of getting into trouble. The majority of the judges said that the police could not visit this person's home at night because it went against their freedom. However, they did not say that people have a right to privacy. The important idea came from the judges who disagreed with the majority. Justice Subba Rao said that privacy is a part of personal freedom. This idea was like a seed that would be developed by judges in cases. The idea of privacy was first talked about in the case of *M.P. Sharma*.

³ *M.P. Sharma v. Satish Chandra*, A.I.R. 1954 S.C. 300 (India).

⁴ *Kharak Singh v. State of U.P.*, A.I.R. 1963 S.C. 1295 (India).

⁵ Puttaswamy, *supra* note 1.

⁶ *M.P. Sharma*, *supra* note 3.

Then again, in the case of Kharak Singh. The judges, in these cases, including Justice Subba Rao, helped to shape the concept of privacy.⁷

After that, smaller benches took a different approach. In *Gobind v. State of M.P.* (1975),⁸ the Court cautiously accepted a limited right to privacy if there was a compelling state interest. Later, in *R. Rajagopal v. State of T.N.* (1994),⁹ it recognized the right to be let alone and to protect the privacy of one's own and one's family's affairs. In *PUCL v. Union of India* (1997),¹⁰ the Court decided that telephone tapping without a legal procedure violated privacy. This led to an unstable legal situation: several smaller-bench decisions supported privacy rights, but two larger benches had denied them. The *Puttaswamy* case was the Court's effort to finally settle this contradiction.

V. The Judgment: A Unanimous Result in Six Voices

The Bench agreed that privacy is a right. Instead of one opinion, they gave six separate opinions. Justice D.Y. Chandrachud wrote the opinion for himself, Chief Justice Khehar, and Justices Agrawal and Nazeer. The other judges, Justices Chelameswar, Bobde, Nariman, Sapre, and Kaul, each wrote their own opinions even though they all agreed on the main point. One thing that people often miss is that there is no one judgment in the *Puttaswamy* case. To understand what the judges really meant, you have to look at all the opinions and figure out what they agreed on, even if they did not all take the same path to get there. The judges, in the *Puttaswamy* case, all said that privacy is a right, but they explained it in different ways.¹¹

Privacy is not an elitist right, it is a part of the respect, freedom, and rights we all have under Article 21. This idea of privacy is connected to the guarantees given in Part III. The Court found privacy in the rights that belong to every person, not just in one specific rule. The Court divided privacy into three areas:

1. Physical privacy, which is autonomy on our bodies

⁷ Kharak Singh, *supra* note 4 (Subba Rao, J., dissenting).

⁸ *Gobind v. State of M.P.*, (1975) 2 S.C.C. 148 (India).

⁹ *R. Rajagopal v. State of T.N.*, (1994) 6 S.C.C. 632 (India).

¹⁰ *People's Union for Civil Liberties v. Union of India*, (1997) 1 S.C.C. 301 (India).

¹¹ *Puttaswamy*, *supra* note 1 (six separate opinions; plurality of Chandrachud, J., for Khehar, C.J., Agrawal & Nazeer, JJ.).

2. Informational privacy, which is about controlling our personal information
3. Decisional privacy, which is about making choices

These areas are not completely separate but are different aspects of one main idea: protecting who we are and our freedom from an arbitrary government. The Court views privacy as integral to our dignity and autonomy. It is a way to ensure we are treated with respect. Privacy is essential for our freedom and individuality.¹²

The Court examined the past decisions. They completely changed their minds about the *M.P. Sharma* and *Kharak Singh* cases because those cases held that people do not have a right to privacy. The Court struck down the main idea in *ADM Jabalpur v. Shivkant Shukla*.¹³ This was a decision made during a difficult time in India's history when many people's rights were taken away. The Court said that this decision was a big mistake. It is very interesting that Chandrachud J. did not agree with the decision that his own father had agreed with. This shows how much the Court cares about the individual and their place in the Constitution. The Court is putting the individual at the centre of the constitution. This is a very big change. The Court's decisions in *M.P. Sharma*, *Kharak Singh*, and *ADM Jabalpur v. Shivkant Shukla* are part of this change.

VI. The Proportionality Standard

A right is only as good as the rules that say what you can and cannot do with it. The Court said that privacy, like some rights, is not an absolute freedom and can be limited. But only if the limitation is fair and follows a careful check. When we look at what the judges said, we can see that if someone interferes with your privacy, there needs to be a law that allows it, a reason for the government to do it, a clear connection between what the government does and what it wants to achieve and no other way to achieve it that is less intrusive. Also, the good thing the government wants to achieve has to be worth the intrusion into your privacy.¹⁴ The idea behind this standard is to ensure the government does not interfere with you more than necessary to achieve what it wants.

¹² Id.

¹³ *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 S.C.C. 521 (India), overruled by *Puttaswamy*, supra note 1.

¹⁴ *Puttaswamy*, supra note 1, Conclusion 3(H).

Precision is important here, as the Bench was not uniform. Chandrachud J.'s plurality identified three requirements: legality, a legitimate aim, and proportionality. Kaul J. added a fourth: procedural safeguards against abuse. This divergence was significant. When the Court later applied the standard in the Aadhaar judgment, the lack of a single agreed formulation allowed for debate over the test's stringency.

VII. The Post-Puttaswamy Trajectory

The real test of a court decision is how it affects in reality. Since then, Puttaswamy set things in motion quickly. In one year, the court made significant changes. The *Navtej Singh Johar*¹⁵ case in 2018 held that **Section 377** of the Indian Penal Code was unconstitutional.¹⁶ This section made it a crime for adults to have same-sex relationships. The court upheld that a person's sexual orientation is part of their right to privacy and dignity. The same idea was used in another case, *Joseph Shine v. Union of India*, in 2019.¹⁷ The court decided that making adultery a crime was not right. It said this law was an intrusion on a person's personal freedom. The court used the Puttaswamy judgment to support its decision. The court protected autonomy and dignity. The judgment also ensured dignity for women.

The Supreme Court directly addressed informational privacy in the 2018 Aadhaar judgment, in which a five-judge Bench applied the *Puttaswamy* framework to review the biometric scheme.¹⁸ The Court kept the main parts of Aadhaar but removed or limited some sections, especially the one that allowed private companies to require Aadhaar authentication. This decision was mixed: it supported the idea of informational privacy but still allowed a large State database, leading some to argue that the Court did not fully apply its own proportionality test.

The legislative response was the Digital Personal Data Protection Act, 2023, which received assent on 11 August, 2023.¹⁹ The Act builds on the informational privacy aspect of Puttaswamy by introducing the Data Fiduciary, who determines the purpose and means of processing, and the Data

¹⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

¹⁶ Indian Penal Code, No. 45 of 1860, § 377 (India).

¹⁷ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

¹⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India (Aadhaar-5 J.)*, (2019) 1 S.C.C. 1 (India).

¹⁹ The Digital Personal Data Protection Act, No. 22 of 2023, India Code (2023).

Principal, whose data is processed. It requires processing to be based on consent, purpose limitation, and data minimisation, thereby translating a constitutional value into an enforceable statutory scheme.

VIII. Critical Analysis

Puttaswamy's strengths are quite significant. The Court linked privacy to dignity and autonomy rather than to a single person. This helped create a right that can adapt to threats the original framers didn't think of, like when someone is watching everything you do, making money from your data, or using computers to make guesses about you. The way they decided whether something was okay, called the proportionality standard, gave people who brought cases to court and the courts themselves a way to figure things out. Also, they corrected some mistakes from long ago in three cases: *M.P. Sharma*, *Kharak Singh*, and the *ADM Jabalpur*. They fixed all of these in one decision.

Yet the decision is not beyond criticism, and a fair commentary must say so.

First, having six separate opinions is a real weakness, not just a matter of style. Since there are no single majority opinion, later judges and lower courts have had to figure out the main reasoning themselves, and the exact proportionality standard is still open to debate. If the right had been announced in a single, unified opinion, it would have been more difficult to weaken.

Second, there is a real gap between principle and application. The Aadhaar judgment demonstrated that the Court could affirm privacy in theory while upholding the scheme that prompted the case. A test that appears rigorous on paper but is deferential in practice provides less protection than its rhetoric implies.

Third, the law that came after has its own problems. The DPDP Act, 2023 is a positive step, but it gives the State wide exemptions for reasons like security and public order. These are exactly the broad reasons that proportionality was supposed to limit. If courts do not require each exemption to meet the tests of legality, necessity, and proportionality, the Act could bring back the same surveillance issues that *Puttaswamy* aimed to fix.

Fourth, the issue of how privacy rights apply between private parties is still not fully addressed. *Puttaswamy* mainly focused on actions by the State, but today, the biggest threats to privacy come

from private tech companies that collect more personal data than the State ever did. The judgment raised the question of how much these rights apply to private actors, but it did not answer it.

IX. Conclusion

Puttaswamy is widely seen as one of the most important constitutional decisions in independent India. It turned privacy from a debated idea into a clear fundamental right, set a proportionality standard, and put individual dignity at the heart of the Constitution. Its impact on *Navtej*, *Joseph Shine*, the Aadhaar judgment, and the DPDP Act is clear and direct.

However, a landmark decision marks a beginning, not an end. The true test of the judgment is its application: whether courts enforce the proportionality standard, whether the legislature avoids undermining the right through broad exemptions, and whether the right extends to private entities that control much of our data. *Puttaswamy* established the right to privacy in principle. Its protection in practice will be determined by future cases and legislation.

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A. Cases

1. ADM Jabalpur v. Shivkant Shukla, (1976) 2 S.C.C. 521.
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10. R. Rajagopal v. State of T.N., (1994) 6 S.C.C. 632.

B. Statutes and Constitutional Provisions

1. Constitution of India, art. 21.
2. The Digital Personal Data Protection Act, No. 22 of 2023.
3. Indian Penal Code, No. 45 of 1860, § 377.