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Case Commentary: Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India, 2017

(Manasvi Katiyar)

Citation	AIR 2017 SUPREME COURT 4161, 2017 (10) SCC 1
Date of Judgment	August 24, 2017
Court	Supreme Court of India
Petitioner	Justice K S Puttaswamy (Retd.) and Anr.
Respondent	Union of India
Bench	S Abdul Nazeer, Sanjay Kishan Kaul, D Y Chandrachud, Abhay Manohar Sapre, Rohinton Fali Nariman, R K Agrawal, S A Bobde, J Chelameswar, Jagdish Singh Khehar

1. Introduction-

Privacy is not merely a right, it is the foundation of human dignity, liberty, and individual autonomy. The definition and the level of Privacy was taken to a new height in the case of Justice K.S. Puttaswamy (Retd.) v. Union of India which was decided on 24 August 2017 by the 9- Judge Constitutional Bench of Supreme Court.

It was unanimously held by the Court that the Right to Privacy is a fundamental right which is protected under Article 21- Right to Life and Personal Liberty guaranteed under Part III of the Indian Constitution. MP Sharma Case and Kharak Singh Case was overruled in this case. This case marked as one of the most important landmark judgments in the Indian history which recognizes that privacy is also a right guaranteed to the citizens of India.

2. Background-

The history of this case started in 2009 when the notification of Aadhaar Welfare Scheme was launched by the Government of India. A biometric based 12 digit unique identification number was issued to all Indian residents. Government of India started collecting and compiling both the demographic and biometric data of the residents of the country to prevent the duplication of the scheme and to provide benefit to only those people who are actually eligible.

Earlier Supreme Court rulings in *M.P. Sharma v. Satish Chandra* (1954) and *Kharak Singh v. State of Uttar Pradesh* (1962) held that Right to Privacy is not a fundamental right under the Constitution of India.

But the cases like *Gobind v. State of Madhya Pradesh*, *R Rajagopal v. State of Tamil Nadu* and in *People's Union for Civil Liberties v. Union of India*, the Supreme Court held that the Right to Privacy is a Fundamental Right which is protected under the Constitution of India.

So, in 2012, Justice K.S. Puttaswamy, a former Judge of Karnataka High Court, filed a petition in the Supreme Court challenging the constitutional validity of Aadhaar Scheme. He contended that that this scheme violates the Right to Privacy.

3. Facts of the Case-

When Justice K.S Puttaswamy, a retired Judge of the Karnataka High Court, filed a petition in 2012 before the Supreme Court of India regarding the constitutional validity of the Aadhaar scheme, then this matter was first placed before the 3-Judge Bench on 11 August, 2015 comprising 3 judges Justice Chelameswar, Bobde, and C. Nagappan who passes the order stating that an appropriate strength must examine the decisions of *M.P. Sharma v. Satish Chandra* and *Kharak Singh v. State of Uttar Pradesh*. Then the matter was referred to the 5-Judge Bench headed by then Chief Justice Khehar. Subsequently, the matter was referred to a 9-Judge Bench on July 18, 2017.

4. Legal Issues-

In this case, the major legal issues which were presented before the 9- judge constitutional bench were:

- a. Whether Right to Privacy is the fundamental right under Part III of the Constitution of India?
- b. Whether the decision held in the case of M.P. Sharma v. Satish Chandra was correct as per the law?
- c. Whether the decision held in the case of Kharak Singh v. State of Uttar Pradesh was correct as per the law?

5. Provisions Involved-

The constitutional provisions involved in this case were-

- a. Article 14- Equality before law.

Definition- It stated that the state shall not deny any person equality before the law or the equal protection of the laws within the territory of India.

- b. Article 19- Protection of certain rights regarding freedom of speech, etc.

Definition- It stated that all citizens shall have the right to freedom of speech and expression, peaceful assembly without any arms, form associations or unions or co-operative societies, move freely throughout the territory of India, reside and settle in any part of the territory of India, practice any profession, or carry on any occupation, trade or business.

But these freedoms are not absolute and are subject to certain reasonable restrictions in the interest of sovereignty and integrity of India, security of the State, public order, morality, decency, friendly relations with foreign States, etc.

- c. Article 21- Protection of life and personal liberty.

Definition- It stated that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

6. Argument from the Petitioner side-

- a. The Petitioners, represented by senior counsel including Gopal Subramaniam, Shyam Divan, Kapil Sibal, Soli Sorabjee, and others argued that the Judgments given in MP Sharma and Kharak Singh case should be overruled.

- b. The Petitioner while arguing relied on Article 12 of the 1948 Universal Declaration of Human Rights which stated that the right to privacy is fundamental to the development of the human personality.
- c. They argued that the act would take away the rights of the citizen as it is the part of Article 21 of the Indian Constitution.

7. Argument from the Respondent side-

- a. The Union of India, represented by the Attorney General K.K. Venugopal argued that there is no general or specific provision stating that right to privacy is a fundamental right under the constitution.
- b. They argued that if certain aspects of privacy are protected in part III of the Constitution, then they are subject to reasonable restrictions in public interest.
- c. They argued that definition of privacy is unclear.

8. Observation of the Court-

The court after listening both the parties observed that Privacy is an inherent and natural right forming an integral part of Part III of the Indian Constitution. They also observed that privacy is linked to Article 14, 19, and 21 of the Constitution of India. The court also clarifies that privacy is not an absolute right and is subject to reasonable restriction by the State and it must satisfy a three-fold test:

- a. Legality (existence of law)
- b. Necessity
- c. Proportionality (nexus between meaning and object)

9. Decision of the Court-

The majority opinion in this case was delivered by Dr Justice D Y Chandrachud on behalf of Hon'ble Chief Justice Shri Justice Jagdish Singh Khehar, Shri Justice R K Agrawal, Shri Justice S Abdul Nazeer and on the other hand Shri Justice J Chelameswar, Shri Justice S A Bobde, Shri Justice Abhay Manohar Sapre, Shri Justice Rohinton Fali Nariman and Shri Justice Sanjay Kishan Kaul delivered their separate concurring opinion.

The 9-Judge bench unanimously held that Right to Privacy is an intrinsic part of the right to life and personal liberty under Article 21 and it is also a part of freedom guaranteed by Part III of the Indian Constitution.

The decision in M P Sharma and Kharak Singh Case which stated that the right to privacy is not protected by the constitution stands overruled by the Supreme Court of India.

10. Analysis-

The landmark decision of this case still serves as a cornerstone in today's time. Even today when the question about the privacy is raised, the very first case which came to our mind is the case of Justice K.S Puttaswamy v. Union of India. Privacy is a very important concept and the state must ensure that no person is denied this right.

This judgment has influenced the reasoning in the Aadhaar judgement (2018) and also reflected in debate concerning data protection, digital surveillance etc. The court rightly emphasized that privacy is closely linked to human dignity and personal liberty.

11. Conclusion-

Right to privacy is a fundamental right. It is the right which protect the inner sphere of the individual. This very case held as a landmark one because it provide a fresh meaning to the privacy and a different understanding. The decision in Justice K. S. Puttaswamy (Retd.) v. Union of India (2017) represents a defining moment in the Indian Constitutional Jurisprudence by recognizing Privacy as a fundamental right.

This judgment directly paved the way for decriminalization of consensual same sex relation in Navtej Singh Johar v. Union of India (2018) and strike down criminal adultery in Joseph Shine v. Union of India (2018).