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

Aditi Chouhan

COURT: SUPREME COURT OF INDIA (NINE-JUDGE BENCH) YEAR: 2017

CITATION: (2017) 10 SCC 1

INTRODUCTION:

The petitioners, including Justice K.S. Puttaswamy, contended that the scheme's mandatory gathering and preservation of personal and biometric information intruded upon the rights to privacy and personal liberty guaranteed by the Constitution of India. Further, they voiced apprehensions over the possible exploitation of this sensitive information, as well as the lack of appropriate legal provisions guarding against this.

The Government responded with an assertion that the scheme was essential in ensuring effective governance and administration of welfare initiatives. Citing its prior determinations in cases such as *M.P. Sharma v. Satish Chandra (1954)* [1]and *Kharak Singh v. State of Uttar Pradesh (1964)*[2], the Union of India argued that there was no recognition of privacy as a basic right under the Constitution. Thus, the case has sparked a wider discourse around key constitutional issues relating to privacy, State surveillance, data protection, and government authority within the context of modern technologies.

LEGAL ISSUES:

1. Whether the right to privacy is a fundamental right guaranteed under the Constitution of India?
2. Whether the right to privacy is absolute in nature, or is it subject to reasonable restrictions imposed by the State?

[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).

3. Whether the right to privacy is protected under Articles 14[3], 19[4] and 21[5] of the Constitution of India?

4. Whether the earlier decisions in *M.P. Sharma v. Satish Chandra* and *Kharak Singh v. State of U.P.* (to the extent they held that there is no fundamental right to privacy) were correctly decided?

FACTS OF THE CASE

1. PARTIES INVOLVED

- Petitioner: Justice K.S. Puttaswamy [6](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. CASE BACKGROUND AND RELEVANT FACTS

In 2009[7], the Government of India started the Aadhaar project as an executive scheme under the Unique Identification Authority of India (UIDAI), it aimed to provide citizens of India with a unique 12-digit identity number based on demographic and biometric data.

At the beginning of the scheme, the participation in Aadhaar was voluntary however later, Aadhaar became mandatory for availing all government subsidies, for opening a bank account, for buying a SIM card and for filing income tax returns. It soon became apparent that there could be severe implications over the citizen's right to privacy, data security issues, increased surveillance risks, and even the possibility of excluding real beneficiaries from these crucial services.

In this case, the petitioners questioned the constitutional validity of the Aadhaar scheme on the grounds that: it is an encroachment on the right to privacy, personal liberty, and freedom from unwarranted search by mandating the compulsory collection and storage of all types of personal and biometric information relating to every individual citizen of this country. They also expressed concerns about the potential misuse of such information, and the absence of adequate legal safeguards.

The Union of India argued that the Aadhaar Scheme is an essential component for effective governance, and welfare administration of citizens; citing earlier cases of *M.P. Sharma v. Satish Chandra (1954)*, and *Kharak Singh v. State of Uttar Pradesh (1964),* the Government contended that the Indian Constitution had never recognized the right to privacy as a fundamental right. This

[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.

case sparked various constitutional debates concerning notions of privacy, data-protection, and limits to the exercise of governmental power in our digitally connected world.

3. PROCEDURAL HISTORY

A writ petition was filed under Article 32[8]of the Constitution challenging the Aadhaar issue. Initially heard by a smaller Bench, the matter was later referred to a nine-judge Constitution Bench to determine whether the right to privacy is a fundamental right. On 24 August 2017, the Bench unanimously held that privacy is a fundamental right under the Constitution.

Subsequently, *Puttaswamy-II* case (2018)[9], a five-judge Bench laid down the privacy framework, applicable to State action, and corporate entities only, they excluded private entities.

COURT'S DECISION:

1. HOLDING

The Court held that right to privacy is an important part of the right to life and personal liberty under Article 21, and is also protected under Article 14 that guarantees equality, and under Article 19 that provides fundamental freedoms. It further held that privacy extends to various aspects of an individual's life, including bodily integrity, personal autonomy, decisional freedom, and informational privacy. However, the Court also said that the right to privacy is not an absolute right and may be subjected to restrictions, which are authorised by law, pursues a legitimate State objective, and satisfies the principle of proportionality.

2. RATIONALE

The Court held that the Constitution is a living document that had to be interpreted in a way that best serves individual liberty in the modern society. It held that privacy is inalienable and necessary to human dignity. Privacy includes a person's right to make choices about an individual's body, family, and personal life free from state intrusion. Additionally, court affirmed that individuals have a right to control the collection, storage, and use of their personal information. It relied on the constitutional morality to remind citizens that fundamental rights in the Constitution were intended to secure individual autonomy and dignity regardless of social or majoritarian pressures. The Court used this doctrine to uphold privacy as a constitutionally protected right.

LEGAL REASONING:

1. DISSENTING/CONCURRING OPINIONS-

[8] INDIA CONST. art. 32
[9] Justice K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 S.C.C. 1 (India).

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

- Maneka Gandhi v. Union of India (1978) [10]- Expanded Article 21 and established that restriction on personal liberty must be fair, just and reasonable.
- People's Union for Civil Liberties v. Union of India (1997)[11]- Recognised telephone conversations as part of the right to privacy**.**

INTERNATIONAL INSTRUMENT

- International Convention on Civil and Political Rights - Article 17**[12]**
- Universal Declaration of Human Rights - Article 12**[13]**
- European Convention on Human Rights - Article 8[14]

COMPARITIVE JURISPRUDENCE

- *Katz v. United States (US, 1967)[15]*
- *Griswold vs Connecticut (US, 1965)[16]*
- *R vs Spencer (Canada, 2014)[17]*
- *S vs Makwanyane (South Africa, 1995)[18]*

AFTERMATH OF THE JUDGEMENT

The judgment established right to privacy as a fundamental right under Part III of the Constitution. The judgement also provides the constitutional foundation for legislative and judicial decisions dealing with matters related to privacy and data protection. For instance, when the Supreme Court decided

[10] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
[11] People's Union for Civil Liberties v. Union of India, (1997) 1 S.C.C. 301 (India).
[12] United Nations, International Covenant on Civil and Political Rights, art. 17 (1966).
[13] United Nations, Universal Declaration of Human Rights, art. 12 (1948).
[14] Council of Europe, European Convention on Human Rights, art. 8
[15] Katz v. United States, 389 U.S. 347 (1967).
[16] Griswold v. Connecticut, 381 U.S. 479 (1965).
[17] R. v. Spencer, 2014 SCC 43, [2014] 2 S.C.R. 212 (Can.).
[18] S v. Makwanyane 1995 (3) SA 391 (CC) (S. Afr.).

Puttaswamy II case (2018) and invalidated the Section 57 [19]of Aadhaar Act, insofar that it permitted private entities to mandate Aadhaar authentication. A new law also came into existence, Digital Personal Data Protection Act, 2023.[20] That changed the framework a slightly, and also led to increased scrutiny, and strengthening the protection of personal data.

This decision also transformed the relation between the state and the citizen, by recognizing informational privacy as a constitutional guarantee. The judgment raised public awareness in respect to privacy but also provides the entities collecting the data and processing them, to be more transparent. As more information is gathered through artificial intelligence (AI) technology in this era, the significant of the verdict cannot be ignored. DPDPA, 2023 has addressed many of these problems. However, the extent to which this law can protect civilian's privacy from emerging AI technology is still questioned.

CRITICAL ANAYLSIS

This case represents the evolution of interpretation of the constitution in so far as the Supreme Court acknowledged that fundamental rights cannot remain static in the face of rapid digitisation. To begin with, by designating privacy as a fundamental right, the Supreme Court made sure that individual autonomy would not be subject to interference by any authority. In the second place, the court specified the need for designing the regulatory framework concerning the processing of personal data. Moreover, by rejecting the earlier judgments in M.P. Sharma and Kharak Singh cases, the court reversed the century-long jurisprudential trend in regards to the privacy as a fundamental right. Additionally, the court introduced the three-part test to determine the reasonableness of restrictions imposed on the privacy right which ultimately allowed to delineate the liberty of individuals in the digital age. Nevertheless, the Digital Personal Data Protection Act, 2023 seems to leave a number of issues unanswered in regards to contemporary challenges posed by AI probing algorithms.

CONCLUSION

The case was a landmark one in the history of the Indian constitution law which affirmed the right to privacy as a fundamental right. It made the Indian constitution more protective of rights to liberty and privacy in the digital era. The verdict not only overruled previous judgments but also created a three-part test for laws that seek to govern or regulate privacy. Although there are various challenges and issues regarding data protection, artificial intelligence and privacy in the digital era, the verdict created a firm constitutional foundation for various future legal developments in this sphere. Moreover, it also

[19] The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, No. 18 of 2016, § 57.
[20] The Digital Personal Data Protection Act, No. 22 of 2023, India Code (2023).

marked a historic judgment in the field of technological advancements while preserving and protecting the fundamental rights of the citizens of the country.