



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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CASE COMMENTARY- K.S. PUTTASWAMY(RETd) v. UNION OF INDIA

-Sneha Gupta

ABSTRACT:

The case of K.S. Puttaswamy (Retd.) v. Union of India is one of the most significant constitutional decisions of the Indian Supreme Court that laid down the foundation for future judgments. The case was disposed of on 24 August 2017 when the nine-judge bench delivered the unanimous judgment. The primary question before the court was whether the Right to Privacy is protected under the Constitution.

The decision in this case made a significant contribution to Indian law because, first of all, the privacy of individuals was recognized as a fundamental right enshrined in Article 14, 19, and 21. Secondly, by declaring this right as a fundamental one, the Supreme Court added another dimension to the concept of Rights. Thirdly, the judgment helped to overcome the previous objections to the status of the Right to Privacy and therefore became the basis for subsequent judgments on such issues as Aadhaar, LGBTQ+, reproductive rights, and so on.

CASE DETAILS:

Case Name: *Justice K.S. Puttaswamy (Retd.) v. Union of India*

Citation: (2017) 10 SCC 1

Court: Supreme Court of India

Bench: Nine-Judge Constitution Bench comprising Chief Justice J.S. Khehar, Justice J. Chelameswar, Justice S.A. Bobde, Justice R.K. Agrawal, Justice Rohinton F. Nariman, Justice A.M. Sapre, Justice D.Y. Chandrachud, Justice Sanjay Kishan Kaul, and Justice S. Abdul Nazeer.

Date of Judgment: 24 August 2017

Petitioner: Justice K.S. Puttaswamy (Retd.)

Respondent: Union of India

FACTS:

The Government of India has mandated its citizens to give their biometric data like fingerprints, iris scans, etc., to enroll for an Aadhaar ID. The Aadhaar ID was made optional but later it was made mandatory to access numerous benefits like government schemes, opening bank accounts, paying taxes, etc.

Justice K.S. Puttaswamy (Retd.), a judge of the Karnataka High Court, filed a petition challenging the constitutional validity of the Aadhaar scheme. His petition stated the collection of biometric data of every citizen to be an unreasonable invasion of privacy.

While the petitioner argued that his fundamental rights of privacy and protection of personal information were being infringed by the state, the Union Government argued that the Constitution does not provide for the right to privacy. The government cited the rulings of Supreme Court in *M.P. Sharma v. Satish Chandra*¹ and *Kharak Singh v. State of Uttar Pradesh*² to prove that there was no such explicit or implicit right provided under the Constitution to the citizens.

As both the cases were decided by larger Benches of the Supreme Court, the constitutional validity of Aadhaar was referred to a Nine Judge Bench for consideration.

ISSUES:

The Court considered the following constitutional issues:

1. Whether the Right to Privacy is a Fundamental Right under the Constitution of India.
2. Whether earlier decisions in *M.P. Sharma* and *Kharak Singh* correctly interpreted the Constitution regarding privacy.
3. Whether privacy forms an integral part of the rights guaranteed under Articles 14, 19, and 21.
4. Whether the State may restrict the right to privacy and, if so, under what conditions.

¹ *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

² *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

JUDGEMENT:

The Supreme Court reiterated the Right to Privacy as a fundamental right enshrined in Part III of the Constitution through its unanimous ruling. The judiciary acknowledged the privacy as something that is intrinsically linked with human dignity and emanates from the rights to liberty and autonomy even though it is not explicitly mentioned in the constitution.

The court held that several rights that are not explicitly named in the Constitution nonetheless have a basis in the Constitution and, therefore, must be considered as substantive rights.

DY Chandrachud, the Justice who wrote the majority opinion said that the right to privacy enables individuals to make choices about matters relating to issues such as marriage, sex lives, education, diet, and beliefs, free from state interference.

The court also completely overruled the judgments in M.P. Sharma and Kharak Singh that said that the fundamental rights did not encompass a right to privacy in respect of matters such as marriage, sex, and contraception.

The ruling, however, stated that the right to privacy is not absolute and any lawful restrictions are justified if they meet the following three tests:

Legality: There must be a valid law authorizing the restriction.

Legitimate State Aim: The restriction must pursue a legitimate governmental objective.

Proportionality: The restriction must be necessary, reasonable, and proportionate to achieve that objective.

SIGNIFICANCE:

The judgment not only shook the very foundation of Indian constitutional law but also added new dimensions to it. The ways in which the ruling added significance to the Indian Constitution are:

First: Privacy as an intrinsic of Article 21, thereby enriching its content.

Second: Emphasized that human dignity is the basis of all fundamental rights and that the fundamental rights are safeguards against the state.

Third: By providing extensive constitutional protection against intrusion into the sphere of informational privacy by the state and others, and by recognizing the threat to privacy posed by new technologies and data banks.

Fourth: The ruling serves as a constitutional basis for several subsequent judgments, including the *Navtej Singh Johar vs Union of India*³ Judgment 2018, decriminalizing homosexuality and the *Joseph Shine vs Union of India*⁴ 2018 judgment, which legalized adultery. It is also a significant constitutional authority for the Supreme Court's ruling on the Constitutionality of Aadhaar (2018) and the Digital Personal Data Protection Act, 2023, which regulates privacy in India and the handling of personal data.

CRITICAL ANALYSIS:

The judgment is correctly considered as one of the most successful constitutional interpretation practices in India. One of the reasons for this is the living constitution approach, which allowed the court to go beyond the language of the 1950 constitution and interpret the fundamental rights as something that should be constantly adapted to technological progress and societal development. Particularly in the context of technology development and personal data collection, the constitutional right to privacy protection becomes essential.

Furthermore, the Court highlighted the concept of constitutional morality, essentially linking it to the role of fundamental rights in protecting minorities and individual rights from majoritarian tyranny. Privacy was interpreted not only as a right to secrecy but also as a right to make decisions about one's own identity, which added to the value of the constitutional provision. This approach was highly effective, as it allowed India to further develop its own constitutional law tradition.

Another positive aspect of the case is that the Court explicitly acknowledged informational privacy as a key aspect of technological development. The ability of states and private actors to monitor virtually all spheres of human life using advanced technologies is a serious concern and has driven legislative and judicial action in India, such as the data protection bill, and elsewhere.

However, there are also several criticisms that can be made regarding the case. First of all, while the Court confirmed the status of privacy as a fundamental right, it did not provide a

³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁴ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

concrete definition of permissible surveillance practices for the state. Therefore, several cases concerning facial recognition technology, internet shutdowns, and state-sponsored spying have raised additional questions about the constitutional compliance of state actions.

Perhaps more importantly, while the Court introduced the concept of proportionality as a guiding star in privacy matters, it failed to apply it consistently in subsequent cases. One might argue that proportionality is a concept that is difficult to quantify, and different judges may have varying interpretations of it. However, in practice, this has led to inconsistencies between various court decisions.

Another problem raised by some critics is that the Court's emphasis on the need to reconcile privacy and national security often fails to provide sufficient privacy protection. While it correctly notes that there is no absolute privacy in modern society, it leaves the details of its regulation to the legislature and the executive. At the same time, legislative and executive measures to guarantee national security are rarely subject to judicial review, thus weakening the protection of individual rights.