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CASE COMMENT:

**JUSTICE K.S. PUTTASWAMY & ANR. VS. UNION OF INDIA
AND ORS.**

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Citation:

[2017] 10 SCC 1, AIR 2017 SC 4161

Bench:

Chief Justice J.S. Khehar, J. Chelameshwar, S.A. Bobde, R.K. Agrawal, R.F. Nariman, A.M. Sapre, D.Y. Chandrachud, S.K. Kaul, and S.A. Nazeer.

Introduction:

The case *Justice K.S. Puttaswamy (Retd.) & Anr. Vs. Union of India & Ors*^[1] (2017), widely referred to as the Right to Privacy verdict, was a pivotal ruling by the Supreme Court of India. The Court declared that the right to privacy is a fundamental right, protected under Articles 14, 19, and 21 of the Indian Constitution. This landmark decision stemmed from a challenge to the Aadhaar scheme, which involved the mandatory collection of biometric data. Justice K.S. Puttaswamy (Retd.), a former High Court judge, filed a writ petition asserting that the scheme infringed upon the privacy rights of citizens.

A nine judge bench of J.S. Khehar, J. Chelameshwar, S.A. Bobde, R.K. Agrawal, R.F. Nariman, A.M. Sapre, D.Y. Chandrachud, S.K. Kaul, and S.A. Nazeer unanimously held that “the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21

and as a part of the freedoms guaranteed by part III of the constitution. It explicitly overrules previous judgements of the Supreme Court in Kharak Singh vs. State of UP[2] and M.P. Sharma vs. Union of India[3], which held that there is no fundamental right to privacy under the Indian Constitution.

The Supreme Court of India unanimously ruled that the right to privacy is a constitutionally protected right, integral to other fundamental freedoms guaranteed under the Indian Constitution. The case, filed by retired High Court Judge K.S. Puttaswamy, challenged the government's proposal for a mandatory biometric-based identity system for accessing government services and benefits. The government contended that the Constitution did not explicitly guarantee the right to privacy. However, the Court concluded that privacy is a component of the fundamental freedoms safeguarded under Article 21, which states: "No person shall be deprived of his life or personal liberty except according to procedure established by law." This landmark judgment is expected to trigger constitutional challenges to various Indian laws, including those criminalizing same-sex relationships and imposing bans on beef and alcohol consumption in certain states. Legal experts also anticipate that the ruling will prompt the Indian government to implement a data protection framework to safeguard individual privacy. Moreover, the case could have broader international implications as privacy advocates around the world may draw on it to advance the debate on privacy rights in other countries.

Historical Background and Facts:

Earlier, privacy was not expressly recognized as a fundamental right under the Indian constitution. However, in the case of Maneka Gandhi v. Union of India[4] [1978], the Supreme Court held that there is a connection between privacy and personal liberty. In 2009, the Indian government launched the Aadhaar scheme which aimed to assign a unique identification number to every resident of India using biometric and demographic data. Over time, concerns arose about the potential misuse of this data regarding privacy

The case was brought forward through a petition filed by Justice K.S. Puttaswamy, a former judge of the Karnataka High Court, challenging the Aadhaar Project led by the Unique Identification Authority of India (UIDAI). The Aadhaar system issued a 12-digit identification number to Indian residents, aiming to create a universal identity framework. It was integrated with various government welfare programs to improve service delivery and eliminate fraudulent beneficiaries. Justice Puttaswamy petition questioned the constitutional legitimacy of the Aadhaar scheme. Subsequently, other petitions addressing different concerns regarding Aadhaar were also brought before the Supreme Court.

In 2015, a three-judge bench of the Supreme Court examined the government's collection of demographic and biometric data, raising concerns about potential violations of the right to privacy. The Attorney General of India argued that the right to privacy was not a fundamental right, referencing earlier judgments in *M.P. Sharma* and *Kharak Singh*. In response to these challenges, the bench reviewed several Supreme Court decisions in which privacy had been

recognized as a constitutionally protected right. However, these later rulings had been delivered by smaller benches than the ones in *M.P. Sharma* and *Kharak Singh*. Consequently, the case was referred to a larger Constitution Bench to reassess the precedents set in those earlier cases and to evaluate the validity of the subsequent decisions. On 18 July 2017, the Constitution Bench decided that the matter should be resolved by a bench of nine judges.

Issues:

Issues in the said case were –

1. Is the Aadhaar act constitutional and violates the right to privacy.
2. What safeguards must be in place for the gathering, storing, and application of biometric information
3. Can the Aadhaar plan be deemed unconstitutional, and does it aid in or result in the creation of a surveillance state?
4. Does the Income Tax Act of 1961 section 139AA violate someone's right to privacy?
5. Is it unlawful and unconstitutional for the Department of Telecommunications to publish a circular on March 23, 2017, requiring the linkage of Aadhaar with mobile numbers?

Judgement:

The judgement in *K.S. Puttaswamy v. Union of India* is a landmark ruling by the Supreme Court of India, which unequivocally recognized the right to privacy as a fundamental right protected by the constitution. Delivered by the nine-judge bench, the decision unanimously held that privacy is an intrinsic part of article 21 and is interlinked with Articles 14 and 19 of the Indian constitution. The bench ruled that privacy is a constitutionally protected aspect of liberty, dignity and individual autonomy. On 24th August, 2017 the Supreme Court delivered a unanimous verdict in this case, upholding that the constitution of India guarantees to each individual a fundamental right to privacy. The Supreme Court held that the right to privacy is a fundamental right protected under Article 21 and part 3 of the Indian constitution. All nine judges delivered concurring opinions, elaborating on the philosophical, legal, and practical aspects of privacy,

According to J. Chandrachud, a person's privacy was not completely given up in public. It further established that right to privacy encompassed both the positive right to state protection and the negative right against state intervention such as in the case of criminalisation of homosexuality. Based on this, the judges decided that India needed to implement a data protection law.

According to J. Chelameswar, the right to privacy includes the freedom to decline medical care, the freedom from forced feeding, the freedom to eat beef, the freedom to wear religious symbols on one's person, and other rights.

J. Nariman in his opinion classified the aspects of privacy into three categories, autonomy over personal decisions, protection of personal information, and non interference with individual's body.

J. Sapre stated that the right to privacy encompassed an individual's freedom of expression and movement in addition to its existence as an independent right. The judge also stated that the right to privacy was necessary to fulfil the constitutional goals of liberty and fraternity, which guaranteed the dignity of the individual.

J. Kaul: The judge talked about the right to privacy in relation to safeguarding informational privacy and maintaining one's reputation. According to him, the legislation must secure data and control national security exceptions that permit the government to intercept data.

Although the right to privacy has been accepted in a number of Supreme Court rulings, the Attorney General contended that Part III of the Constitution does not guarantee this fundamental right because the larger court benches in *M.P. Sharma* and *Kharak Singh* had not merely acknowledged that the right to privacy was protected by the Constitution.

The judgement in *M.P. Sharma v. Satish Chandra*^[5] (1954) and *Kharak Singh v. State of Uttar Pradesh*^[6] (1963) was overruled in this case. The *M.P. Sharma* case, decided by an eight-judge bench, had rejected the existence of privacy as a constitutionally protected right. Also the judgment had viewed the right to privacy as a mere common law right, not a fundamental right protected by the Indian Constitution. In the *Kharak Singh* case, the court denied the existence of privacy as a fundamental right, linking privacy only to physical intrusion. The *Puttaswamy* ruling confirmed that the right to privacy is, in fact, a fundamental right that stems from both the individual's dignity provided by Part III of the Constitution and the provisions of Article 21.

Similarly, the court rejected the reasoning of *ADM Jabalpur v. Shivkant Shukla*^[7] (1976) describing it as a blot on Indian constitutional jurisprudence. Justice D.Y. Chandrachud, in his opinion, stated that the judgement in *ADM Jabalpur* was seriously flawed and incompatible with the principles of constitutional democracy and the rule of law. He acknowledged the dissenting opinion of Justice H.R. Khanna in *ADM Jabalpur*, which had argued that the right to life and liberty is inherent and not dependent on state recognition. The *Puttaswamy* judgement thus honoured Justice Khanna's dissent as a beacon of constitutional integrity.

Analysis:

The judgement delivered by the nine-judge bench of the Supreme Court that the privacy is a fundamental right protected under articles 14, 19 and 21 has had far-reaching implications on constitutional jurisprudence, governance or individual rights in the country.

The judicial recognition of privacy as a fundamental right has been significantly developed in this case. In its initial stages, Indian courts grappled with defining privacy within the constitutional framework. The judicial interpretation of privacy evolved significantly over time.

In Govind v. State of Madhya Pradesh [8](1975), the Supreme Court recognised privacy as an implicit right under article 21 but stated that it could be subject to reasonable restrictions. This case marked the beginning of privacy being linked to personal liberty, though its scope remained narrow. The Puttaswamy case was a turning point because it categorically acknowledged privacy as a constitutionally guaranteed fundamental right.

The proportionality test in the *Puttaswamy* judgment serves as a crucial framework for evaluating the validity of restrictions on the right to privacy. It ensures that such restrictions are neither arbitrary nor excessive and that they uphold constitutional principles. This test involves four components. First, the state must demonstrate that the restriction serves a **legitimate aim**, such as protecting public order, national security, or public health. Second, there must be a **rational connection** between the means employed and the aim pursued, ensuring that the measure logically advances the stated objective. Third, the restriction must meet the standard of **necessity**, meaning there are no less intrusive or less restrictive ways to achieve the same goal. Finally, the infringement on privacy must be **proportionate**, striking a balance where the harm caused by the restriction does not outweigh the benefits derived from it.

The underlying argument questions whether the government's Aadhaar initiative, which stores demographic data, fingerprints, and retina scans under twelve-digit unique identification numbers, is constitutional. The government has required that Aadhaar data be connected to residents' phone numbers, bank account information, tax returns, and medical records. There is no law that prevents misuse of the data through unauthorized usage or that permits a person to report such misuse[9][10]. By a 4:1 majority, the Court upheld the Aadhaar Act, affirming its validity under specific conditions while striking down provisions that disproportionately infringed on individual rights. The Court recognized Aadhaar as a tool to ensure targeted delivery of government subsidies and welfare schemes, aligning with Article 21's objectives of socio-economic justice. However, it emphasized that the scheme must operate within constitutional boundaries to safeguard personal data and privacy. The judgment allowed the mandatory use of Aadhaar for availing subsidies and welfare benefits under Section 7 of the Aadhaar Act. However, it struck down provisions that required Aadhaar linking for mobile numbers, bank accounts, and private services like education and employment, deeming them excessive and unconstitutional. The Court also prohibited private entities from accessing Aadhaar data, stressing the need for robust data protection mechanisms to prevent misuse. Additionally, it struck down the storage of metadata and retention of authentication records beyond six months. The judgment allowed the mandatory use of Aadhaar for availing subsidies and welfare benefits under Section 7 of the Aadhaar Act. However, it struck down provisions that required Aadhaar linking for mobile numbers, bank accounts, and private services like education and employment, deeming them excessive and unconstitutional. The Court also prohibited private entities from accessing Aadhaar data, stressing the need for robust data protection mechanisms to prevent misuse. Additionally, it struck down the storage of metadata and retention of authentication records beyond six months.

Aftermath:

This judgment has profoundly influenced Indian jurisprudence by establishing privacy as a fundamental right. This principle has been invoked and expanded in several subsequent landmark rulings, shaping the contours of individual freedoms and constitutional protections. By declaring privacy a fundamental right, the judgment provided the basis for significant rulings like *Navtej Singh Johar v. Union of India*^[11] (2018), which decriminalized consensual homosexual relationships by emphasizing that sexual orientation is an essential aspect of privacy, dignity, and identity. Similarly, in *Joseph Shine v. Union of India*^[12] (2018), the Supreme Court struck down the adultery law under Section 497 of the IPC, stating that marriage does not deprive individuals of their right to personal autonomy and privacy. Beyond these, the judgment spurred discussions on data protection, leading to efforts to draft robust privacy laws, and brought attention to issues of surveillance and state powers. The principles established in *Puttaswamy* continue to influence the protection of individual rights in India, ensuring a more inclusive and progressive interpretation of the Constitution.

Conclusion:

The *K.S. Puttaswamy* judgment was a turning point in India's legal history, declaring privacy a fundamental right under Article 21 of the Constitution. It emphasized the importance of protecting personal dignity, autonomy, and freedom in today's world, where technology and state surveillance are rapidly growing. The decision set the stage for stronger data protection laws and highlighted the need to balance individual rights with societal interests. This case remains a vital example of how the Constitution can adapt to safeguard fundamental rights in a changing world.

[1] Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors. , [2017] 10 SCC 1, AIR 2017 SC 4161

[2]Kharak Singh vs. The state of Uttar Pradesh, 1963 AIR 1295

[3] M.P. Sharma vs. Satish Chandra, (1954) 1 SCR 1077

[4] Maneka Gandhi v. Union of India, AIR 1978 SC 597

[5] M.P. Sharma v. Satish Chandra, (1954) 1 SCR 1077

[6] Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295

[7] ADM Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207

[8] Govind v. State of Madhya Pradesh, 1975 AIR 1378

[9] See Menaka Guruswamy, India's Supreme Court Expands Freedom, N.Y. TIMES (Sept. 10, 2017).

[10] Menaka Guruswamy, *Justice K.S. Puttaswamy (Retd.) and Anr v. Union of India and Ors*, *Writ Petition (Civil) No. 494 of 2012*, 111 the American Journal of International Law 994 (2017).

[11] Navtej Singh Johar v. Union of India, 2018 INSC 790

[12] Joseph Shine v. Union of India, 2018 SC 1676