

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.

[Case Brief] Justice K.S. Puttaswamy (Retd.) And Anr. V/S Union of India And Ors.

Case name: Justice K.S. Puttaswamy (Retd.) And Anr. V/S Union of India And Ors.

Case number: WRIT PETITION (CIVIL) NO. 494 OF 2012

Court: Supreme Court of India

Bench: Hon'ble Chief Justice Shri Justice Jagdish Singh Khehar,
Shri Justice R K Agrawal,
Shri Justice S Abdul Nazeer,
Dr Justice D Y Chandrachud,
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

Decided on: AUGUST 24, 2017

Relevant Act/Sections: Constitution of India, Adhaar Act

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. The widely appreciated Aadhaar Scheme was launched in the year 2010 by the then Prime Minister Manmohan Singh and then Congress President Sonia Gandhi. This project was hailed as a part of Rajiv Gandhi's 'vision', and was aimed at the inclusive growth of the country.

2. Aadhaar is a 12-digit unique identification number that can be obtained by residents of India, based on their biometric and demographic data. The data is collected by the Unique Identification Authority of India (UIDAI), a statutory authority established in January 2009 by the government of India, under the jurisdiction of the Ministry of Electronics and Information Technology, following the provisions of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, benefits and services) Act, 2016.
3. In 2012, the first signs of Aadhaar becoming mandatory came to light, when three oil companies initiated a pilot project in Mysore to have LPG refills linked to the ID. Then, in 2013, banks began asking for Aadhaar to provide services. After coming into power in 2014, Narendra Modi decided to review the progress of the Aadhaar project and discussed the possibility of using the platform to resume the DBT of subsidised schemes.
4. The very first petition challenging Aadhaar was filed in 2012, the process for this case was kicked off by October 2015 judgment by the Supreme Court.
5. The case was brought by 91-year old retired High Court Judge Puttaswamy against the Union of India (the Government of India) before a nine-judge bench of the Supreme Court which had been set up on reference from the Constitution Bench to determine whether the right to privacy was guaranteed as an independent fundamental right following conflicting decisions from other Supreme Court benches.
6. The procedural history is:
 - a) The Government of India, initiated a project titled 'Unique Identification for BPL Families'. A Committee was set up for this purpose which suggested the creation of Unique Identification database.
 - b) In the writ petition the scheme has primarily been challenged on the ground that it violates fundamental rights of the innumerable citizens of India, namely, right to privacy falling under Article 21 of the Constitution of India.
 - c) Series of orders were passed in this petition from time to time, some of which would be referred to by us at the appropriate stage.

- d) In 2016, with the passing of the Aadhaar Act, these very petitioners filed another writ petition challenging the vires of the Act. All the writ petitions were clubbed together.
- e) In May, 2017 the Former Union minister and Congress leader Jairam Ramesh moved to SC Challenging the Centre's decision to treat Aadhaar bill as a money bill.

➤ **ISSUE BEFORE THE COURT:**

1. Whether there is a constitutionally protected right to privacy;
2. If there is a constitutionally protected right, whether this has the character of an independent fundamental right or whether it arises from within the existing guarantees of protected rights such as life and personal liberty;
3. The doctrinal foundations of the claim to privacy;
4. The content of privacy; and
5. The nature of the regulatory power of the state.

➤ **RATIO OF THE COURT**

1. Shri Tushar Mehta, learned Additional Solicitor General of India, According to him, privacy is an inherently vague and subjective concept and cannot, therefore, be accorded the status of a fundamental right. Further, codified statutory law in India already confers protection to the individual's right to privacy. According to him, no further expansion of the rights contained in Part III of our Constitution is at all warranted.
2. The Attorney General for India, leading the arguments before this Court on behalf of Union of India, has been critical of the recognition being given to a general right of privacy. The submission has several facets, among them being-
 - a) there is no general or fundamental right to privacy under the Constitution;
 - b) no blanket right to privacy can be read as part of the fundamental rights and where some of the constituent facets of privacy are already covered by the enumerated guarantees in Part III, those facets will be protected in any case;
 - c) where specific species of privacy are governed by the protection of liberty in Part III of the Constitution, they are subject to reasonable restrictions in the public interest as recognized in several decisions of this Court;

- d) privacy is a concept which does not have any specific meaning or definition and the expression is inchoate; and
3. The court observed that Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.
 4. The court while discussing origins of privacy observed the judgment of Justice Jeevan Reddy regards privacy as implicit in the right to life and personal liberty under Article 21. In coming to the conclusion, the judgment in **Rajagopal, (1994) 6 SCC 632** notes that while Kharak Singh had referred to the right of privacy, the decision turned on the content of life and personal liberty in Article 21. The decision recognises privacy as a protected constitutional right, while tracing it to Article 21.
 5. In addition the court observed, India's commitment to a world order founded on respect for human rights has been noticed along with the specific articles of the UDHR and the ICCPR which embody the right to privacy. In the view of the Court, international law has to be construed as a part of domestic law in the absence of legislation to the contrary and, perhaps more significantly, the meaning of constitutional guarantees must be illuminated by the content of international conventions to which India is a party. The judges also thought consequently, as new cases brought new issues and problems before the Court, the content of the right to privacy has found elaboration in these diverse contexts.
 6. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III. Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the Court embarking on a constitutional function of that nature which is entrusted to Parliament.
 7. Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.
 8. The court also settled that Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to

privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.

9. The Court did not embark upon an exhaustive enumeration or a catalogue of entitlements or interests comprised in the right to privacy. The Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law. The interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features.
10. The nine-judge bench also explained that if there will be a law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three-fold requirement of
 - a. legality, which postulates the existence of law;
 - b. need, defined in terms of a legitimate state aim; and
 - c. proportionality which ensures a rational nexus between the objects and the means adopted to achieve them;
11. Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.
12. The court also discussed **M P Sharma v Satish Chandra, District Magistrate, Delhi, (1954) SCR 1077** at great length. The judgment does not specifically adjudicate on whether a right to privacy would arise from any of the other provisions of the rights guaranteed by Part III including Article 21 and Article 19. The observation that privacy is not a right guaranteed by the Indian Constitution is not reflective of the correct position. **M P Sharma** was overruled to the extent to which it indicates to the contrary.

13. The also discussed **Kharak Singh v State of Uttar Pradesh, (1964) 1 SCR 332** has correctly held that the content of the expression 'life' under Article 21 means not merely the right to a person's "animal existence" and that the expression 'personal liberty' is a guarantee against invasion into the sanctity of a person's home or an intrusion into personal security but the second point where it holds that the right to privacy is not protected under the Indian Constitution is overruled.
14. The court also held that the judgments rendered by all the four judges constituting the majority in **ADM Jabalpur v Shivakant Shukla** are seriously flawed. Life and personal liberty are inalienable to human existence. These rights are, as recognised in *Kesavananda Bharati*, primordial rights. They constitute rights under natural law. A constitutional democracy can survive when citizens have an undiluted assurance that the rule of law will protect their rights and liberties against any invasion by the state and that judicial remedies would be available to ask searching questions and expect answers when a citizen has been deprived of these, most precious rights. The view taken by Justice Khanna must be accepted, and accepted in reverence for the strength of its thoughts and the courage of its convictions.
15. According to this the court declared ADM Jabalpur must be and is accordingly overruled. They also overruled the decision in *Union of India v Bhanudas Krishna Gawde*, which followed ADM Jabalpur.
16. The court also observed Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well and they commended to the Union Government the need to examine and put into place a robust regime for data protection.
17. The court also laid that Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve.
18. The court regarding section 377 of IPC held that Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection

of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.

19. After discussing the stand of USA on privacy the court held that the development of the jurisprudence on the right to privacy in the United States of America shows that even though there is no explicit mention of the word 'privacy' in the Constitution, the courts of the country have not only recognised the right to privacy under various Amendments of the Constitution but also progressively extended the ambit of protection under the right to privacy.
20. The court also made a list of the rights under Article 21, the rights which have been held to flow out of Article 21 include the following:
 - a. *The right to go abroad – Satwant Singh Sawhney v D Ramarathnam APO*
 - b. *The right against solitary confinement – Sunil Batra v Delhi Administration*
 - c. *The right of prisoners against bar fetters – Charles Sobraj v Supdt. Central Jail*
 - d. *The right to legal aid – M H Hoskot v State of Maharashtra*
 - e. *The right to speedy trial – Hussainara Khatoon v Home Secretary, State of Bihar*
 - f. *The right against handcuffing – Prem Shankar Shukla v Delhi Administration*
 - g. *The right against custodial violence – Sheela Barse v State of Maharashtra*
 - h. *The right against public hanging – A G of India v Lachma Devi*
 - i. *Right to doctor's assistance at government hospitals – Paramanand Katara v Union of India*
 - j. *Right to shelter – Shantistar Builders v N K Totame.*
 - k. *Right to a healthy environment – Virender Gaur v State of Haryana*
 - l. *Right to compensation for unlawful arrest – Rudal Sah v State of Bihar.*
 - m. *Right to freedom from torture – Sunil Batra v Delhi Administration*
 - n. *Right to reputation – Umesh Kumar v State of Andhra Pradesh*
 - o. *Right to earn a livelihood – Olga Tellis v Bombay Municipal Corporation*
21. The court also emphasised the lack of substance in the submission that privacy is a privilege for the few. Every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects. It is privacy as an intrinsic and core feature of life and personal liberty which enables an individual to stand up against a programme of forced sterilization.
22. The limitations which operate on the right to life and personal liberty would operate on the right to privacy. Any curtailment or deprivation of that right would have to take

place under a regime of law. The procedure established by law must be fair, just and reasonable. The law which provides for the curtailment of the right must also be subject to constitutional safeguards.

➤ **DECISION HELD BY COURT:**

1. The decision in M P Sharma which holds that the right to privacy is not protected by the Constitution stands over-ruled;
2. The decision in Kharak Singh to the extent that it holds that the right to privacy is not protected by the Constitution stands over-ruled;
3. 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.
4. Decisions subsequent to Kharak Singh which have enunciated the position in (iii) above lay down the correct position in law.