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# A study on Right to Privacy in light of K.S. Puttaswamy v Union of India

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MS. ALAKNANDA RAJAWAT<sup>1</sup>

## ABSTRACT

*We are living in the age of globalization which means we are connected with the whole world without being physically present there. This is possible because of rapidly improving internet sources. Now it is convenient for us to communicate trade, interact and connect with the world with the use of these sources. It becomes our necessity rather than just convenience.*

*But by using these internet sources, somehow we have to compromise with our privacy. A lot of discussions have been done and debates were going on this burning issue.*

*Puttaswamy Judgment is a landmark judgment on this issue which raised some bars of restrictions on the intruders of privacy. On analyzing this judgment Personal Data Protection Bill, 2019 and Data Protection Bill, 2021 came into existence but these are still struggling to come into force. A bench of nine-judges of the Supreme Court of India has upheld unanimously that the right to privacy is a constitutional right, like other freedoms given by the Indian Constitution. The petition was filed by Justice K. S. Puttaswamy(Retd.) and another. In that petition, he challenged the Government's proposed scheme for a uniform biometrics-based identity card which would be mandatory for access to government services and benefits. In opposing the petition, the central government argued that in the Constitution there is no provision for specific protection for the right to privacy. But the Supreme Court decided that privacy is an incident of fundamental freedom or liberty guaranteed under Article 21 which provides that: "No person shall be deprived of his life or personal liberty except according to procedure established by law". So, this is a landmark judgment which is going to lead to constitutional challenges to a wide range of Indian legislation, for example legislation criminalizing same-sex relationships as well as bans on beef and alcohol consumption in many Indian States. Experts are expecting that the Indian Government to establish a data protection act to protect the privacy of the every individual*

## I. FACTS OF THE CASE

This petition was filed by a retired High Court Judge Puttaswamy against the Union of India

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<sup>1</sup> Author is an Assistant Professor at Faculty of Law, Jagan Nath University, India.

(the Government of India) before a bench of nine-judges of the Supreme Court. This bench 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 or not.

The latest case was about a challenge to the government's Aadhaar scheme (a uniform biometrics-based identity card) which the government had proposed to make mandatory for the access to government services and benefits. The challenge was made before a three-judge bench of the Supreme Court that this scheme violated the right to privacy of every individual. The Attorney General argued on behalf of the Government of India that the Indian Constitution does not grant specific protection for the right to privacy. His arguments were based on the observations made in the judgments of *M.P. Sharma v. Satish Chandra, District Magistrate, Delhi* (rendered by a bench of eight judges) and *Kharak Singh v. State of Uttar Pradesh* (rendered by a bench of six judges). But, a subsequent bench of eleven-judges in *Rustam Cawasji Cooper v. Union of India*, had established that fundamental rights were not to be construed as distinct, unrelated rights, thereby upholding the dissenting view in *Kharak Singh* judgment. This also formed the basis of later decisions by smaller benches of the Supreme Court which expressly recognized the right to privacy.

It was in this context that a Constitution Bench was set up and concluded that there was a need for a nine-judge bench to determine whether right to privacy was a fundamental right within the Constitution of India.

The Petitioner argued before the bench of nine-judge that this right was an independent right, guaranteed by the right to life with dignity under Article 21 of the Constitution. The Central Government submitted that the Constitution only recognized personal liberties which may incorporate the right to privacy to a limited extent. The Court considered detailed arguments on the nature of fundamental rights, constitutional interpretations and the theoretical and philosophical bases for the right to privacy as well as the nature of the right to privacy.

## **II. DECISION OVERVIEW**

A bench of nine-judges of the Supreme Court of India has upheld unanimously that the right to privacy is a constitutional right, like other freedoms given by the Indian Constitution. The Court overruled the judgments of *M.P. Sharma* and *Kharak Singh* in so far as the latter did not expressly recognize the right to privacy.

The right to privacy was reinforced by the concurring opinions of the judges in this case which recognized that this right includes autonomy over personal decisions (e.g. consumption of beef

and alcohol), bodily integrity (e.g. reproductive rights) as well as the protection of personal information (e.g. privacy of health records). The concurring judgments included specific implications of this right, some of which are illustrated below:

Chief Justice Jagdish Singh Khehar, Justice R. K. Agrawal, Justice Dr. D. Y. Chandrachud, Justice S. Abdul Nazeer, Justice Chelameswar, Justice Bobde, Justice Nariman, Justice Sapre and Justice Kaul: in their opinion they stated that informational privacy is a facet of the right to privacy. Privacy was not surrendered entirely when an individual is in the public sphere. On this basis, the Judges commended to the Union Government the need to examine and put into place a robust regime for data protection. They observed that consent was essential for distribution of inherently personal data such as health records. They classified the facets of privacy into non-interference with the individual body, protection of personal information and autonomy over personal choices. They discussed the right to privacy with respect to protection of informational privacy and the right to preserve personal reputation. The law must provide for data protection and regulate national security exceptions that allow for interception of data by the State.

In this judgment, it is mentioned that the Union Government had informed that it had constituted a Committee chaired by Hon'ble Justice Shri B. N. Srikrishna, former judge of the supreme court, for the purpose to forming the law with provisions for the data protection of individuals with a careful and sensitive balance between individual interests and legitimate concerns of the state.

Hon'ble Shri Justice B. N. Srikrishna, former judge of the supreme court led panel had drafted the Data Protection Bill, 2019 which was reviewed by a joint committee of parliament that submitted its final recommendations and a revised draft bill in November, 2021.

Conclusively it can be said that Puttaswamy judgment is landmark in various aspects as it ends a controversy about the status of privacy, it declares Privacy as a part of the Right to life and Personal Liberty under Article 21 as Fundamental Right guaranteed by Part III of the Constitution. There are several examples where we have to compromise with our privacy for providing our data to different purposes. Artificial Intelligence is also being used to collect data without any consent while we are using search engines they take information and we start reviewing calls and messages from the different sites. We are in dire need of Data Protection Act to protect our privacy and protecting our data.

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