

# Recent trends related to basic human needs

Case Summary: Justice K. S. Puttaswamy (Retd.) vs. Union of India, 2017

Title of the Case: Justice K.S.Puttaswamy (Retired). vs Union of India And Ors., 2017.

Citation: Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1

Court: Supreme Court of India

Parties Involved:

Appellant: Justice K S Puttaswamy (Retired)

Respondent: Union of India and Others.

Bench: Sanjay Kishan Kaul, Dhananjaya Y. Chandrachud, R. K. Agrawal, J. S. Khehar, S. A. Bobde, S. A. Nazeer, R. K. Agrawal, J. Chelameswar, A.M. Sapre JJ.

Brief facts:

A retired High Court Judge K.S. Puttaswamy filed a petition in 2012 against the Union of India before a nine-judge bench of the Supreme Court challenging the constitutionality of Aadhaar because it is violating the right to privacy which had been established on reference from the Constitution Bench to determine whether or not the right to privacy was guaranteed as an independent fundamental right under the constitution of India following past decisions from Supreme Court benches.

Issues:

1. Whether or not there is any fundamental right of privacy under the Constitution of India?
2. Whether or not the decision made by the Court that there are no such fundamental rights in M.P. Sharma & Ors. vs. Satish Chandra, DM, Delhi & Ors. and also, in Kharak Singh vs. The State of U.P., is that the correct expression of the constitutional position?

Petitioner's Argument:

- It was argued from the side of the petitioner before the court is that the right to privacy is 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 and same is to be protected by the constitution of India.
- It was also put forward to evaluate the correctness of the decision noted in Karak Singh vs. The state of Uttar Pradesh and M. P. Sharma vs. Satish Chandra on the ground that it violates the Right to Privacy under Article 21 of the constitution.

Respondent's Argument:

- It was argued from the side of the defendant that the constitution of India does not specifically protect the Right to privacy and on this ground that the right of privacy was not guaranteed under the Constitution, and hence Article 21 of the Indian Constitution (the right to life and personal liberty) had no application in the case of both M. P. Sharma vs Satish Chandra and Karak Singh vs. State of UP.

The court has discussed various issues regarding privacy to felicitate the clear analysis

1. Privacy Concerns Against state and Non-State Actors.

It was held that the claim of protection of privacy can be against both state and non- state actors as the danger in the age of technological development can originate not only from the state but from the non-state entities as well.

## 2. Informational Privacy (Not an absolute right).

It was held that Informational privacy is an aspect of the right to privacy. The right of an individual to exercise control over his data and to be able to control his/her existence on the internet and unauthorized use of such information may, therefore, lead to violation of this right.

3. The ambit of Article 21 broadens by agreeing on opinions of the judges which recognized that rights which have been held to flow out include the following:

- i. Food preferences and animal slaughter – *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat & Ors.*
- ii. Reproductive rights – medical termination of pregnancy – *Suchita Srivastava & Anr vs. Chandigarh Administration.*
- iii. Protection of personal information – privacy of health records – *Mr. X v Hospital Z, 1998*
- iv. The right to go abroad – *Satwant Singh Sawhney v D Ramarathnam APO New Delhi*
- v. The right of prisoners against bar fetters – *Charles Sobraj v Supdt. Central Jail.*
- vi. The right to legal aid – *M H Hoskot v State of Maharashtra.*
- vii. The right to a speedy trial – *Hussainara Khatoon v Home Secretary, State of Bihar.*
- viii. The right against handcuffing – *Prem Shankar Shukla v Delhi Administration.*
- ix. The right against custodial violence – *Sheela Barse v State of Maharashtra.*
- x. The right against public hanging – *A G of India v Lachma Devi.*
- xi. Right to doctor's assistance at government hospitals – *Paramanand Katara v Union of India.*
- xii. Right to shelter – *Shantistar Builders v N K Totame.*
- xiii. Right to a healthy environment – *Virender Gaur v State of Haryana.*
- xiv. Right to compensation for unlawful arrest – *Rudal Sah v State of Bihar.*
- xv. Right to freedom from torture – *Sunil Batra v Delhi Administration.*
- xvi. Right to reputation – *Umesh Kumar v State of Andhra Pradesh.*
- xvii. Right to earn a livelihood – *Olga Tellis v Bombay Municipal Corporation.*

### **Judgment:**

A nine-judge bench of the Supreme Court of India passed a landmark judgment on 24th August 2017, upholding the fundamental right to privacy under Article 21 of the constitution of India.

Article 21 of the Constitution reads as:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

It is stated in the judgment that the privacy is to be an integral component of Part III of the Indian Constitution, which lays down the fundamental rights of the citizens. The Supreme Court also stated that the state must carefully balance the individual privacy and the legitimate aim, at any cost as fundamental rights cannot be given or taken away by law, and all laws and acts must abide by the constitution. The Court also declared that the right to privacy is not an absolute right and any invasion of privacy by state or non-state actor must satisfy the triple test i.e.

1. Legitimate Aim
2. Proportionality
3. Legality

Decision that has been passed by all nine judges holds:

- (i) The decision in *M P Sharma vs. Satish Chandra* which holds that the right to privacy is not protected by the Constitution of India stands over-ruled;
- (ii) The decision in *Kharak Singh vs. State of UP* to the degree that it holds that the right to privacy is

not protected by the Constitution also stands over-ruled;

(iii) The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 of the constitution of India and as a part of the freedoms guaranteed by Part III of the Constitution.

Conclusion:

The Supreme Court of India has once again appeared as the sole protector of the constitution creating a legal framework for privacy protections in India. The judgment covers all the issues and established that privacy is a fundamental inalienable right, intrinsic to human dignity and liberty under article 21 of the constitution of India. The judgment gives a way for the decriminalization of homosexuality in India in *Navtej Singh Johar v. Union of India* (2018) and abolishing the provisions of the crime of Adultery under in the case of *Joseph Shine v. Union of India* (27 September 2018).