

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO. 494 OF 2012

Justice K.S. Puttaswamy (Retd.)
& Anr.

.....Petitioner (s)

VERSUS

Union of India & Ors.

.....Respondent(s)

WITH

T.C.(C) No. 151 of 2013

T.C.(C) No. 152 of 2013

W.P.(C) No. 833 of 2013

W.P.(C) No. 829 of 2013

W.P.(C) No. 932 of 2013

Cont. Pet. (C) No. 144 of 2014

IN

W.P. (C) No. 494 of 2012

T.P. (C) No. 313 of 2014

T.P. (C) No. 312 of 2014

S.L.P. (Cri.) No. 2524 of 2014

W.P. (C) No. 37 of 2015

W.P. (C) No. 220 of 2015

Cont. Pet. (C) No. 674 of 2015

IN

W.P. (C) No. 829 of 2013

T.P.(C) No. 921 of 2015

Cont. Pet. (C) No. 470 of 2015

IN

W.P. (C) No. 494 of 2012

Cont. Pet. (C) No. 444 of 2016

IN

W.P. (C) No. 494 of 2012

Cont. Pet. (C) No. 608 of 2016

IN

W.P. (C) No. 494 of 2012

W.P. (C) No. 797 of 2016

Cont. Pet. (C) No. 844 of 2017

IN

W.P. (C) No. 494 of 2012

W.P. (C) No. 342 of 2017

AND

W.P. (C) No. 372 of 2017

J U D G M E N T

Abhay Manohar Sapre, J.

1) I have had the benefit of reading the scholarly opinions of my esteemed learned brothers, Justice J. Chelameswar, Justice S.A. Bobde, Justice Rohinton Fali Nariman and Dr. Justice D.Y. Chandrachud. Having read them carefully, I have nothing more useful to add to the reasoning and the conclusion arrived at by my esteemed brothers in their respective opinions.

2) However, keeping in view the importance of the questions referred to this Bench, I wish to add only few words of concurrence of my own.

3) In substance, two questions were referred to this Nine Judge Bench, first, whether the law laid down in the case of **M.P.Sharma and others vs. Satish Chandra, District Magistrate Delhi & Ors.**, AIR 1954 SC 300 and **Kharak Singh vs. State of Uttar Pradesh & Ors.** AIR 1963 SC 1295 insofar as it relates to the "*right to privacy of an individual*" is correct and second, whether "*right to privacy*" is a fundamental right under Part III of the Constitution of India?

4) Before I examine these two questions, it is apposite to take note of the Preamble to the Constitution, which, in my view, has bearing on the questions referred.

5) The Preamble to the Constitution reads as under:-

**“WE, THE PEOPLE OF INDIA, having
solemnly resolved to constitute India into a
SOVEREIGN SOCIALIST SECULAR**

DEMOCRATIC REPUBLIC and to secure to all its citizens:

**JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
And to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;"**

6) Perusal of the words in the Preamble would go to show that every word used therein was cautiously chosen by the founding fathers and then these words were arranged and accordingly placed in a proper order. Every word incorporated in the Preamble has significance and proper meaning.

7) The most important place of pride was given to the "People of India" by using the expression, **WE, THE PEOPLE OF INDIA**, in the beginning of the Preamble. The Constitution was accordingly adopted, enacted and then given to ourselves.

8) The keynote of the Preamble was to lay emphasis on two positive aspects – one, "*the Unity of the Nation*" and the second "*Dignity of the individual*". The expression "*Dignity*" carried with it moral and spiritual imports. It also implied an obligation on the part of the Union to respect the personality of every citizen and create the conditions in which every citizen would be left free to find himself/herself and attain self-fulfillment.

9) The incorporation of expression "*Dignity of the individual*" in the Preamble was aimed essentially to show explicit repudiation of what people of this Country had inherited from the past. Dignity of the individual was, therefore, always considered the prime constituent of the fraternity, which assures the dignity to every individual. Both expressions are interdependent and intertwined.

10) In my view, unity and integrity of the Nation cannot survive unless the dignity of every individual citizen is guaranteed. It is inconceivable to think of unity and integration without the assurance to an individual to preserve his dignity. In other words, regard and respect by every individual for the dignity of the other one brings the unity and integrity of the Nation.

11) The expressions "*liberty*", "*equality*" and "*fraternity*" incorporated in the Preamble are not separate entities. They have to be read in juxtaposition while dealing with the rights of the citizens. They, in fact, form a union. If these expressions are divorced from each other, it will defeat the very purpose of democracy.

12) In other words, liberty cannot be divorced from equality so also equality cannot be divorced from

liberty and nor can liberty and equality be divorced from fraternity. The meaning assigned to these expressions has to be given due weightage while interpreting Articles of Part III of the Constitution.

13) It is, therefore, the duty of the Courts and especially this Court as sentinel on the *qui vive* to strike a balance between the changing needs of the Society and the protection of the rights of the citizens as and when the issue relating to the infringement of the rights of the citizen comes up for consideration. Such a balance can be achieved only through securing and protecting liberty, equality and fraternity with social and political justice to all the citizens under rule of law (see-**S.S. Bola & Ors.** vs. **B.D. Sardana & Ors.** 1997 (8) SCC 522).

14) Our Constitution has recognized certain existing cherished rights of an individual. These rights are

incorporated in different Articles of Part III of the Constitution under the heading-Fundamental Rights. In so doing, some rights were incorporated and those, which were not incorporated, were read in Part III by process of judicial interpretation depending upon the nature of right asserted by the citizens on case-to-case basis.

15) It was not possible for the framers of the Constitution to incorporate each and every right be that a natural or common law right of an individual in Part III of the Constitution. Indeed, as we can see whenever occasion arose in the last 50 years to decide as to whether any particular right alleged by the citizen is a fundamental right or not, this Court with the process of judicial interpretation recognized with remarkable clarity several existing natural and common law rights of an individual as fundamental

rights falling in Part III though not defined in the Constitution. It was done keeping in view the fact that the Constitution is a sacred living document and, hence, susceptible to appropriate interpretation of its provisions based on changing needs of "We, the People" and other well defined parameters.

16) Article 21 is perhaps the smallest Article in terms of words (18) in the Constitution. It is the heart of the Constitution as was said by Dr. B. R. Ambedkar. It reads as under: -

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

17) This Article is in Part III of the Constitution and deals with Fundamental rights of the citizens. It has been the subject matter of judicial interpretation by this Court along with other Articles of Part III in several landmark cases beginning from **A.K.Gopalan**

vs. **State of Madras**, AIR 1950 SC 27 up to **Mohd Arif @ Ashfaq vs. Registrar, Supreme Court of India** (2014) 9 SCC 737. In between this period, several landmark judgments were rendered by this Court.

18) Part III of the Constitution and the true meaning of the expression "*personal liberty*" in Article 21 and what it encompasses was being debated all along in these cases. The great Judges of this Court with their vast knowledge, matured thoughts, learning and with their inimitable style of writing coupled with the able assistance of great lawyers gradually went on to expand the meaning of the golden words (*personal liberty*) with remarkable clarity and precision.

19) The learned Judges endeavored and expanded the width of the fundamental rights and preserved the freedom of the citizens. In the process of the judicial

evolution, the law laid down in some earlier cases was either overruled or their correctness doubted.

20) It is a settled rule of interpretation as held in the case of **Rustom Cavasjee Cooper vs. Union of India**, (1970) 1 SCC 248 that the Court should always make attempt to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and the content by process of judicial construction. Similarly, it is also a settled principle of law laid down in **His Holiness Kesavananda Bharati Sripadagalvaru vs. State of Kerala & Anr.**, (1973) 4 SCC 225 that the Preamble is a part of the Constitution and, therefore, while interpreting any provision of the Constitution or examining any constitutional issue or while determining the width or reach of any provision or when any ambiguity or obscurity is noticed in any provision, which needs to

be clarified, or when the language admits of meaning more than one, the Preamble to the Constitution may be relied on as a remedy for mischief or/and to find out the true meaning of the relevant provision as the case may be.

21) In my considered opinion, the two questions referred herein along with few incidental questions arising therefrom need to be examined carefully in the light of law laid down by this Court in several decided cases. Indeed, the answer to the questions can be found in the law laid down in the decided cases of this Court alone and one may not require taking the help of the law laid down by the American Courts.

22) It is true that while interpreting our laws, the English decisions do guide us in reaching to a particular conclusion arising for consideration. The law reports also bear the testimony that this Court

especially in its formative years has taken the help of English cases for interpreting the provisions of our Constitution and other laws.

23) However, in the last seven decades, this Court has interpreted our Constitution keeping in view the socio, economic and political conditions of the Indian Society, felt need of, We, the People of this Country and the Country in general in comparison to the conditions prevailing in other Countries.

24) Indeed, it may not be out of place to state that this Court while interpreting the provisions of Indian Companies Act, which is modeled on English Company's Act has cautioned that the Indian Courts will have to adjust and adapt, limit or extend, the principles derived from English decisions, entitled as they are to great respect, suiting the conditions to the Indian society as a whole. (See - **Hind Overseas (P)**)

Ltd. vs. Raghunath Prasad Jhunjhunwala & Anr.

(1976) 3 SCC 259). The questions referred need examination in the light of these principles.

25) In my considered opinion, “*right to privacy of any individual*” is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguish with human being.

26) One cannot conceive an individual enjoying meaningful life with dignity without such right. Indeed, it is one of those cherished rights, which every civilized society governed by rule of law always recognizes in every human being and is under obligation to recognize such rights in order to maintain and preserve the dignity of an individual regardless of

gender, race, religion, caste and creed. It is, of course, subject to imposing certain reasonable restrictions keeping in view the social, moral and compelling public interest, which the State is entitled to impose by law.

27) "*Right to privacy*" is not defined in law except in the dictionaries. The Courts, however, by process of judicial interpretation, has assigned meaning to this right in the context of specific issues involved on case-to-case basis.

28) The most popular meaning of "**right to privacy**" is - "**the right to be let alone**". In ***Gobind vs. State of Madhya Pradesh & Anr.***, (1975) 2 SCC 148, K.K.Mathew, J. noticed multiple facets of this right (Para 21-25) and then gave a rule of caution while examining the contours of such right on case-to-case basis.

29) In my considered view, the answer to the questions can be found in the law laid down by this Court in the cases beginning from **Rustom Cavasjee Cooper** (supra) followed by **Maneka Gandhi vs. Union of India & Anr.** (1978) 1 SCC 248, **People's Union for Civil Liberties (PUCL) vs. Union of India & Anr.**, (1997) 1 SCC 301, **Gobind's case** (supra), **Mr. "X" vs. Hospital 'Z'** (1998) 8 SCC 296, **District Registrar & Collector, Hyderabad & Anr. vs. Canara Bank & Ors.**, (2005) 1 SCC 496 and lastly in **Thalappalam Service Coop. Bank Ltd. & Ors. vs. State of Kerala & Ors.**, (2013) 16 SCC 82.

30) It is in these cases and especially the two – namely, **Gobind**(supra) and **District Registrar**(supra), their Lordships very succinctly examined in great detail the issue in relation to "*right to privacy*" in the

light of Indian and American case law and various international conventions.

31) In **Gobind' case**, the learned Judge, K.K.Mathew J. speaking for the Bench held and indeed rightly in Para 28 as under:

“28. The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.”

32) Similarly in the case of **District Registrar**(supra), the learned Chief Justice R.C.Lahoti (as His Lordship then was) speaking for the Bench with his distinctive style of writing concluded in Para 39 as under :

“39. We have referred in detail to the reasons given by Mathew, J. in *Gobind* to show that, the right to privacy has been implied in Articles 19(1)(a) and (d) and Article 21; that, the right is not absolute and that any State

intrusion can be a reasonable restriction only if it has *reasonable basis* or *reasonable materials* to support it.”

33) In all the aforementioned cases, the question of “*right to privacy*” was examined in the context of specific grievances made by the citizens wherein their Lordships, *inter alia*, ruled that firstly, “*right to privacy*” has multiple facets and though such right can be classified as a part of fundamental right emanating from Article 19(1)(a) and (d) and Article 21, yet it is not absolute and secondly, it is always subject to certain reasonable restrictions on the basis of compelling social, moral and public interest and lastly, any such right when asserted by the citizen in the Court of law then it has to go through a process of case-to-case development.

34) I, therefore, do not find any difficulty in tracing the “*right to privacy*” emanating from the two

expressions of the Preamble namely, "liberty of thought, expression, belief, faith and worship" and "Fraternity assuring the dignity of the individual" and also emanating from Article 19 (1)(a) which gives to every citizen "a freedom of speech and expression" and further emanating from Article 19(1)(d) which gives to every citizen "a right to move freely throughout the territory of India" and lastly, emanating from the expression "personal liberty" under Article 21. Indeed, the right to privacy is inbuilt in these expressions and flows from each of them and in juxtaposition.

35) In view of foregoing discussion, my answer to question No. 2 is that "*right to privacy*" is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but is subject to certain reasonable restrictions,

which the State is entitled to impose on the basis of social, moral and compelling public interest in accordance with law.

36) Similarly, I also hold that the “*right to privacy*” has multiple facets, and, therefore, the same has to go through a process of case-to-case development as and when any citizen raises his grievance complaining of infringement of his alleged right in accordance with law.

37) My esteemed learned brothers, Justice J. Chelameswar, Justice S.A. Bobde, Justice Rohinton Fali Nariman and Dr. Justice D.Y. Chandrachud have extensively dealt with question No. 1 in the context of Indian and American Case law on the subject succinctly. They have also dealt with in detail the various submissions of the learned senior counsel appearing for all the parties.

38) I entirely agree with their reasoning and the conclusion on question No. 1 and hence do not wish to add anything to what they have said in their respective scholarly opinions.

39) Some learned senior counsel appearing for the petitioners, however, argued that the law laid down by this Court in some earlier decided cases though not referred for consideration be also overruled while answering the questions referred to this Bench whereas some senior counsel also made attempts to attack the legality and correctness of Aadhar Scheme in their submissions.

40) These submissions, in my view, cannot be entertained in this case. It is for the reason that firstly, this Bench is constituted to answer only specific questions; secondly, the submissions pressed in service are not referred to this Bench and lastly, it is a

settled principle of law that the reference Court cannot travel beyond the reference made and is confined to answer only those questions that are referred. (See - **Naresh Shridhar Mirajkar & Ors. vs. State of Maharashtra & Anr.** (1966) 3 SCR 744 at page 753).

41) Suffice it to say that as and when any of these questions arise in any case, the appropriate Bench will examine such questions on its merits in accordance with law.

42) Before I part, I wish to place on record that it was pleasure hearing the erudite arguments addressed by all the learned counsel. Every counsel argued with brevity, lucidity and with remarkable clarity. The hard work done by each counsel was phenomenal and deserves to be complimented. Needless to say, but for their able assistance both in terms of oral argument as well as written briefs (containing thorough

submissions, variety of case law and the literature on the subject), it was well nigh impossible to express the views.

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
August 24, 2017.