

Analyzing K.S. Puttaswamy vs Union of India Using Various Comparative Methodologies

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ABSTRACT

The landmark judgment in *K.S. Puttaswamy v. Union of India* (2017) marked a paradigm shift in Indian constitutional law by recognizing the right to privacy as an inherent fundamental right under Article 21. This analysis examines the Supreme Court's reasoning through the lens of four distinct comparative constitutional interpretation methodologies. It explores the dialogical approach, which allowed the Court to engage with evolving global jurisprudence on privacy, and the functionalist method, which focused on the core purposes of privacy rights: protecting autonomy and dignity across different legal systems. The analysis further highlights the Court's use of structuralist interpretation to derive the right to privacy from the interconnected principles and architecture of the Indian Constitution itself, particularly linking it to the Preamble's guarantee of liberty. Finally, the historical methodology is examined, tracing the evolution of privacy within Indian case law and its alignment with international human rights norms to correct past judicial errors. The paper concludes that the Court's nuanced, multi-methodological approach was instrumental in situating the right to privacy within the Indian constitutional framework, ensuring its relevance in the face of contemporary digital-age challenges while remaining grounded in domestic legal traditions.

Keywords: Right to Privacy, Comparative Constitutional Law, K.S. Puttaswamy Judgment, Fundamental Rights, Constitutional Interpretation

INTRODUCTION

“The Right to Privacy is a subject that the Indian legal system has historically explored only sparingly. In previous rulings, the Supreme Court denied recognizing the right to privacy as a fundamental right, notably in two landmark cases: *MP Sharma v. Satish Chandra*,⁸² adjudicated by an eight-judge bench, and *Kharak Singh v. State of UP*,⁸³ decided by a five-

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⁸² *MP Sharma v. Satish Chandra*, (1954) 1 SCR 1077

⁸³ *Kharak Singh vs The State Of U. P. & Others*, 1963 AIR 1295

judge bench. In both instances, the Court rejected claims that privacy was an integral part of Part III of the Constitution.”

However, this stance was reversed in 2017 with the landmark judgment in *K.S. Puttaswamy v. Union of India*.⁸⁴ “In this case, a nine-judge constitutional bench of the Supreme Court declared that the right to privacy is an inherent right under Part III of the Indian Constitution. The Court ruled that privacy, being linked to Article 21 (which falls under Part III), is a fundamental right.

While acknowledging privacy as a fundamental right, the judgment also emphasized that, like other fundamental rights, it is not absolute and must be subject to reasonable restrictions. This highlights the judiciary’s effort to balance individual rights with the authority of the state to impose limits when necessary. A noteworthy aspect is that, unlike Article 10 of the German Constitution or Article 13 of the Swiss Constitution, the Indian Constitution does not explicitly mention the right to privacy. This raises the question of how the Supreme Court could establish such a right without explicit constitutional text.”

“To address such challenges, the Court often uses its power of Constitutional Interpretation. This refers to the judiciary’s ability to derive broader meanings and applications from the law when the text itself is insufficient. In the Puttaswamy judgment, the Court used various interpretative methods to read the right to privacy into Article 21, which guarantees the right to life and personal liberty. This assignment will analyze the judgment using four methods of interpretation within comparative interpretation: **Dialogical, Functionalist, Structuralist & Historical Methodologies.**”

COMPARATIVE CONSTITUTIONAL INTERPRETATION

“Comparative Interpretation refers to the form of legal interpretation wherein the derivation of a definition or exegesis from a hard law is done by comparing a particular statute in reference to another country's constitutional provision(s) or case law(s). This is a method that needs extreme caution because any given case law needs to be read contextually with the domestic law.”

⁸⁴ Justice K. S. Puttaswamy v Union of India, (2017) 10 SCC 1, AIR 2017 SC 4161.

“This opinion is also backed by a renowned scholar **Mr. Sujit Choudhry**, in his article *Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation*, in the *Indiana Law Review*:”

“The globalization of the practice of modern constitutionalism generally, and the use of comparative jurisprudence in particular, raise difficult theoretical questions because they stand at odds with one of the dominant understandings of constitutionalism: that the constitution of a nation emerges from, embodies, and aspires to sustain or respond to that nation's particular history and political traditions.”⁸⁵

“Considering how much South Africa's constitution has been influenced by those of other nations, comparative interpretation is regarded as a fundamental technique of interpretation. For example, Article 31(1)(b) and (c) of Chapter II of the South African Constitution, which lays out the Bill of Rights, state unequivocally that any interpretation of the Bill of Rights must take into account international law, which includes treaties, conventions, and other international statutes to which South Africa has ratified or signed. This is also true with regard to Article 51(c) of the Indian Constitution, which mandates that the state uphold its duties under international law and any treaties to which it is a party.

Common law nations often utilise the United States of America and the United Kingdom as anchors for comparative interpretations. *The State v. Makwanyane*,⁸⁶ ruling also made reference to this, stating that the interpretation of the South African Bill of Rights is guided by comparative constitutional interpretation. Furthermore, in *Printz v. United States*, Justice Scalia of the US Supreme Court noted that the comparative interpretation approach is improper for interpreting the constitution.”⁸⁷

In the *KS Puttaswamy case*, the Supreme Court established a distinct segment discussing comparative interpretation and its legitimacy in recognising the right to privacy as a basic liberty under the right to life. However, the ruling itself is subject to the arguments put out by Peter N. Boukaert and Bernard E. Harcourt, who contend that the vast majority of cases serve only as citations with no clear conclusion.

⁸⁵ Choudhury, Sujit, *Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation*, *INDIANA LAW JOURNAL*: Vol. 74: Iss. 3 (1999).

⁸⁶ *State v. Makwanyane* 1995 (3) SALR 391 (CC).

⁸⁷ *Printz v. United States*, 521 U.S. 898, 921 n.11 (1997).

The judgement, in my opinion, is not very applicable because it just lists various case laws from various countries, international organisations, and laws without providing any justification for how these might affect the Indian Constitution's provisions on privacy under Article 21 other than the shared goal of protecting each person's integrity and privacy.

METHODOLOGIES OF COURT IN USING COMPARATIVE MATERIALS

Dialogical Approach

“A dialogical method, broadens the interpretive scope of the constitutional text, enabling Indian courts to consider evolving jurisprudence from other jurisdictions and update their constitutional understanding, particularly on issues like privacy. While the dialogical method serves as an initial framework for incorporating comparative materials,⁸⁸ the functional approach of comparative law supports the deeper academic discernment necessary for achieving a well-rounded comparative analysis.⁸⁹”

The second aspect of Dialogical Interpretation is effectively illustrated by **Günter Frankenberg** in “Critical Comparisons: Re-Thinking Comparative Law.” This concept highlights the “road not taken,” which refers to the potential trajectories that the Constitution could have pursued. If certain provisions were included, they might enhance the legal realities within the nation.⁹⁰ This idea is supported by various case laws and legislations discussed in Part K of the judgment, which details the historical context of privacy-related rulings in different countries.”

For instance, in *Wainwright v. Home Office*,⁹¹ the court concluded that the right to privacy can be restricted under specific circumstances. This case contributed to the development of one of the initial frameworks for limiting the right to privacy, emphasizing the need to balance public interest against the interest in disclosure.

⁸⁸ A.M. Smith, Making Itself at Home: Understanding Foreign Law in Domestic Jurisprudence: The Indian Case, 24 BERKELEY J.L. OF INT'L L., (2006).

⁸⁹ Pierre Legrand, The Same and the Different, in COMPARATIVE LEGAL STUDIES: TRADITIONS AND TRANSITIONS, 240 (Pierre Legrand & Roderick Munday eds., Cambridge University Press 2003)

⁹⁰ Günter Frankenberg, Critical Comparisons: Re-Thinking Comparative Law, 26 HARV. INT'L L.J. 411 (1985).

⁹¹ *Wainwright v Home Office*, [2004] 2 AC 406.

The court recognizes that not all provisions from foreign case law can be directly integrated into the Indian legal system due to the differing institutional frameworks in various countries. Instead, the court seeks to illustrate how incorporating the right to privacy into the Indian Constitution could enhance citizens' rights and how certain doctrines and tests from these foreign cases might be applicable in Indian courts concerning privacy issues. Furthermore, the judgment identifies both the advantages and disadvantages of the constitutional guarantee of the right to privacy that all citizens would possess.

Functional Approach

“The functional approach enables a detailed analysis of the functions of comparative legal objects across jurisdictions without emphasizing the structural relationships between legal institutions and individuals.⁹² This comparative method facilitates an impartial constitutional examination of the specific role or “function” that a particular law serves. For example, if the right to privacy were officially recognized, it would affirm an Indian citizens fundamental right to free speech and promote a free internet. According to **James Gordley**, the functional method enables comparativists to discern the purposes of different laws and assess these purposes across jurisdictions with minimal bias, thereby fostering the harmonization of laws internationally.

The author argues that the functional method, when combined with a dialogical approach to comparative material, is most effective in situating the right to privacy within Indian constitutional logic. This is particularly relevant as the nature and scope of this right will largely draw from European and American discussions on data protection and free speech. Therefore, the emphasis should be on comparing the purposes and effects of privacy regulations in India with those in the EU and the U.S., a process that the functional-dialogical method effectively facilitates.”

The functional method focuses on the purposes and effects of laws and rights across different jurisdictions without being constrained by the structural or institutional differences between legal systems. In the *Puttaswamy* judgment, the Court analyzed the functions of privacy rights, emphasizing how they contribute to the overall protection of individual autonomy and dignity.

⁹² H. Patrick Glenn, *Against Method?*, in *THE METHOD AND CULTURE OF COMPARATIVE LAW*, (Maurice Adams & Dirk Heirbaut eds., Hart Publishing, 2014)

The Court in Puttaswamy assessed how privacy serves vital functions in promoting human dignity, freedom of expression, and personal autonomy. By recognizing the right to privacy, the Court underscored its role in enabling individuals to lead a life free from unwarranted state interference, thereby fostering a conducive environment for the exercise of other fundamental rights.

The Court compared the implications of privacy laws in different jurisdictions, particularly in the context of data protection and personal liberties. By evaluating how various countries have recognized and protected privacy rights, the Court was able to articulate the necessity of such rights within the Indian legal framework. This functional analysis revealed that privacy is essential for safeguarding individual rights in an increasingly digital world, where personal information is often vulnerable to misuse.

Structuralist Constitutional Interpretation

“In order to conclude that the right to privacy is an inherent part of the right to life, the Court did not solely rely on comparative constitutional interpretation but employed various constitutional interpretative methods. One of the key approaches used was the structuralist method. This section focuses on the structuralist approach in recognizing the right to privacy as a fundamental right under the Indian Constitution.

The structuralist method, as described by *Professor Charles L. Black Jr.*, involves deriving constitutional rules from the intricate relationships between different constitutional institutions.⁹³ Professor Laurence Tribe later expanded on this, arguing that constitutional interpretation should adopt a holistic approach, considering the document's logic, premise, underlying principles, and structure.⁹⁴ Similarly, **Professor Akhil Reed Amar** emphasized reading overarching principles and themes within the Constitution to guide structural interpretation.⁹⁵

Although these modern interpretations broaden **Professor Black's** original idea, sometimes diluting the clarity of constitutional text, this paper adheres to Black's foundational

⁹³ Charles L. Black, Jr., *Structure & Relationship in Constitutional Law* (1969).

⁹⁴ Laurence H. Tribe, *Sans Prophecy: Does the Privileges or Immunities Revival Portend the Future-or Reveal the Structure of the Present*, 113 HARV. L. REV. 110, 110 n.3 (1999)

⁹⁵ Akhil Reed Amar, *Foreword: The Document and the Doctrine*, 114 HARV. L. REV. 26, 30 (2000)

understanding of the structuralist approach. The Puttaswamy judgment, in particular, draws multiple connections between various constitutional articles and the Preamble, exemplifying this method. Structural interpretation emphasizes the language of the law and its relationship to the broader Constitution, including the values, philosophies, and theories embedded within it.⁹⁶

A prime example is the connection between the term “liberty” in both the Preamble and Article 21. The Preamble outlines fundamental guiding principles, including liberty, which is further reinforced by Article 21 guarantees of the right to life. This relationship suggests that the right to privacy, as an interpretation of the right to life, is a core component of Part III of the Constitution, from which no individual can be deprived.

Justice Bobde further supported this interpretation by asserting that privacy is an inherent right for every individual. Any violation of this right by the state, or entities defined as the state under Article 12, would warrant a claim against such entities. This demonstrates that the right to privacy is embedded in the Constitution itself, and its recognition as a fundamental right through structural interpretation was grounded in references to other constitutional provisions.”

Historical Approach

The Supreme Court applied historical methodology to recognize the right to privacy as a fundamental right. The Court traced the evolution of privacy in India by examining constitutional debates from the Constituent Assembly, revealing that the framers intended for personal liberties, including privacy, to develop through judicial interpretation. The Court revisited earlier decisions like *M.P. Sharma* and *Kharak Singh*,⁹⁷ which had denied privacy as a right, and analyzed how societal and legal views had since evolved. It also considered the progression of privacy rights in Indian case law, such as in *Gobind v. State of Madhya Pradesh*,⁹⁸ where privacy began to gain recognition in a limited form.

Along with this, the Court placed privacy within international human rights frameworks, like the Universal Declaration of Human Rights and the ICCPR, noting how international norms had influenced the meaning of privacy. It was precisely such a historical lens that the Court turned to in order to correct past judicial misunderstanding of privacy as not being part of

⁹⁶ *Id.*

⁹⁷ *supra* note 82.

⁹⁸ *Gobind v. State of Madhya Pradesh*, 1975 AIR 1378.

individual liberty under Article 21. It is thus framed as a part of India's commitment towards the constitutional promise of protecting personal dignity and autonomy, modified with the changed realities of modern times, like privacy of data flow over the internet.

AUTHOR'S OPINION

In my opinion, the approaches undertaken in comparative interpretation of constitutional law, on matters relating to the KS Puttaswamy case, show a sophisticated approach in dealing with the understanding of the right of privacy from the Indian Constitution. I especially appreciate the critical caution urged in developing comparisons with foreign jurisdictions because it underlines the need to contextualize legal principles within their distinctive domestic frameworks. Indeed, the dialogical approach captivates me, and of course, it's because broadening the scope of interpretation is rather anchored within Indian legal traditions. The functional approach similarly effectively underscores purposes and implications of privacy, showing its value for individual autonomy and dignity in a basically digital society that is increasingly developing.

I find structuralist method very entrancing because it shows a string of connections between other constitutional provisions and demonstrates that the right to privacy is not just some isolated concept that floats around, but is pretty deeply intertwined with the core principles of liberty and life. Adding great value to the historical approach, traceability of this type of evolution finds the contours of privacy rights in India and links the contemporary understanding to the intentions of the framers and the general international human rights framework. Further, in my view, though my assignment has truly explored many ideas with implications across jurisdictions, it leaves plenty of scope for further exploration, particularly on how these methodologies practically can function within the Indian legal system. Discussions about special jurisdictions would also have been useful to explore how privacy rights have been interpreted elsewhere, giving proper scope to our understanding of possible influences on Indian law; in addition, engagement with counterarguments about the risks of over-reliance on foreign jurisprudence would balance the discussion. Overall, I see these methodologies as essential tools toward situating the right to privacy within the Indian constitutional landscape, hence making the right relevant yet sensitive to modern realities.

CONCLUSION

The judgment in *K.S. Puttaswamy v. Union of India* now stands as a landmark decision in Indian constitutional jurisprudence because it establishes the "right to privacy as a fundamental right under Article 21. The methodology of the Court in this landmark decision stands for an exemplification of a nuanced approach that embodies several interpretative strategies that have to include comparative constitutional interpretation, structuralist analysis, and historical methodology. The Court's comparative interpretation that intertwined international human rights norms and foreign legal precedents was together with the structuralist approach, which underscored the interconnections within the Constitution itself, linking privacy to broader principles of liberty and dignity. The historical approach also enabled the Court to look back at earlier judicial positions that rejected the concept of privacy and correct them in order to allow for its evolution with the times. After all, it not only strengthens the legal framework on individual rights within India but also underlines the role of judiciary in making constitutional interpretation suitable to current issues of digital privacy. Affirmation of the right to privacy reflects a promise to uphold personal autonomy and dignity, thus paving the way for stronger empowerment of individual rights against state intrusion and modern technological challenges".

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