

Privacy a fundamental right: SC

Justice Sanjay Kishan Kaul said privacy, dignity and personal liberty were parts of the same “tree of justice”.

When this happens, the government has to prove that the encroachment into privacy was a reasonable restriction on the fundamental right to privacy. Plus, the court would also test whether the law in question stipulates an invasion into a person's privacy through a procedure which is fair, just and reasonable.

“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 subject to certain reasonable restrictions,” Justice A.M. Sapre said in his separate judgment.

The nine-judge Bench was composed of Chief Justice J.S. Khehar, Justices J. Chelameswar, S.A. Bobde, R.K. Agrawal, Nariman, A. M. Sapre, D.Y. Chandrachud and Sanjay Kishan Kaul.

Judgment overruled

With this, the court has overruled its own eight-judge Bench and six-judge Bench judgments of M.P. Sharma and Kharak Singh delivered in 1954 and 1962, respectively, that privacy is not protected under the Constitution.

The nine-judge Bench was deciding a reference from a five-judge Constitution Bench, which is considering the validity of the Aadhaar scheme as a breach of privacy, informational self-determination and bodily integrity. The five-judge Bench wanted to know first whether privacy was a fundamental right or not before delving into the question of validity of Aadhaar.

Holding that “privacy is a constitutionally protected right”, Justice Chandrachud observed that this fundamental right is multifaceted — it preserves personal intimacies, sanctity of family life, the home, sexual orientation. It protects heterogeneity and recognises the plurality and diversity of our culture. His views were endorsed by Chief Justice of India J.S. Khehar, Justices R.K. Agrawal and S. Abdul Nazeer in the same judgment.

Constitutional firewall

“Fundamental rights are the only constitutional firewall to prevent state's interference with those core freedoms constituting liberty of a human being. The right to privacy is certainly one of the core freedoms, which is to be defended. It is part of liberty within the meaning of that expression in Article 21,” Justice J. Chelameswar held in his concurring judgment.

Justice S.A. Bobde said the “first and natural home for a right of privacy is in Article 21 at the very heart of personal liberty and life itself”.

Justice Sanjay Kishan Kaul said privacy, dignity and personal liberty were parts of the same “tree of justice”.

“Thus, from the one great tree, there are branches, and from these branches there are sub-branches and leaves. Every one of these leaves are rights, all tracing back to the tree of justice. They together form part of that ‘great brooding spirit’. Denial of one of them is the denial of the whole, for these rights, in manner of speaking, fertilise and nurture each other,” said Justice Kaul.

Global significance

The nine-judge Bench's judgment gains international significance as privacy enjoys a robust legal framework internationally, though India has remained circumspect. The judgment, if it declares privacy as a fundamental right, would finally reconcile Indian laws with the spirit of Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, which legally protects persons against the "arbitrary interference" with one's privacy, family, home, correspondence, honour and reputation.

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