

## **Analysing Judicial Overreach vs. Activism in the KS Puttaswamy vs. Union of India Judgement**

*by*

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### **ABSTRACT**

The transformational goal of the Constitution is the betterment of the individual's life and the courts play an important role in furthering this transformational goal by applying its judicial mind<sup>1</sup>. The *KS Puttaswamy vs. Union of India* judgement by the Supreme Court of India is a historic ruling, especially in light of its impact on data privacy and protection against invasive data practices. Amid rapid technological advancements, this landmark decision serves as a pivotal moment in the evolution of data protection laws in India. The analysis focuses on the balance court sought between its private duty to protect the individual's liberty or its possible exceeding of judicial mandate and stepping into the shoes of the legislature and the executive. By recognizing privacy as a fundamental right, the *KS Puttaswamy* judgment set the stage for a more balanced approach to the challenges posed by data collection and surveillance, ensuring that technological advancements do not come at the expense of constitutional values.

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<sup>1</sup> Anubhuti Singh, *The Right to Privacy as a Fundamental Right - A Critical Examination with Respect to the Case of K.S. Puttaswamy vs Union of India*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

## Introduction

The development of technology and the way people in the 21st century are overdependent on these online platforms makes data protection regulatory frameworks an inevitable part of modern governance and societal functioning. “The so-called IT revolution has helped in transforming many ambits of both society as well as the economy. One of the Famous quote from Google; "we no longer surf online, we live online" describes the need and the demand for data driven society in today's time".<sup>2</sup> The KS Puttaswamy judgement which was delivered on 24th August 2017 by a nine judge bench in the Supreme court of India aims to address these issues pertaining to protection against invasive data practices. However there has been intense debates with regards to whether the Supreme court overstepped its mandate by declaring privacy as a fundamental right and extending its scope beyond the explicit provisions of the Constitution, thereby encroaching into the domain of legislative policy-making. In this judgement the Supreme court Recognised the right to privacy as a fundamental right. The supreme court has, however held that the right to privacy which is recognised as a fundamental right is not an absolute right, rather it can be subjected to overriding state and competing individual interests.

The concept of judicial overreach talks about the court overstepping its limits and encroaching upon the function of another organ. Addressing a conference of Chief Ministers and Chief Justices of High Courts at the Vigyan Bhawan in New Delhi, on April 18, 2007, Prime Minister Manmohan Singh told the Judiciary not to overstep its limits. He claims that the dividing line between judicial activism and judicial overreach is a thin one. A takeover of the functions of another organ may at times become a case of overreach. He cautioned the Judiciary against substituting its power of mandamus with the takeover of the functions of other organs.<sup>3</sup> Judicial activism on the other hand means that the judge goes beyond existing laws and guidelines to consider the wider implications of their own decisions to seek the ends of justice. The KS Puttaswamy case questioned the constitutionality of the Aadhar scheme which required collection of biometric data for the issuance of a unique identification number to the residents of India. The judgement also addresses and places an obligation on the legislature to implement laws and guidelines to regulate data related issues in India.

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<sup>2</sup>Bhavesh Vashisht, Data Protection Laws: A Contemporary Study of EU and Indian Laws, 6 INT'L J.L. MGMT. & HUMAN. 793 (2023).

<sup>3</sup> The Hindustan Times, Lucknow, March 9, 2007.

## What constitutes judicial activism?

The Indian constitution has not defined the term “judicial activism”, In Black's Law Dictionary Judicial Activism is defined as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find Constitutional violations and are willing to ignore precedent". Judicial activism mainly deals with the precedents that are pronounced by the judges who take into account the spirit of the law along with the changing times. In the arena of judicial activism, Judges play an active role in rectifying any unfairness especially when the other established bodies are tenuous.<sup>4</sup> The concept of judicial activism became popular in India after the proclamation of emergency in the year 1975. Judicial activism and its growth can be evaluated through a series of case laws emanating from the courts, Article 13 of the Indian constitution enables the court to declare any law unconstitutional if the same is found to be infringing upon the fundamental rights of an individual. Judicial activism refers to the discretionary power exercised by judges or benches to deviate from established norms in admitting and resolving writ petitions, without explicitly violating the law. This approach is often driven by the principles of natural or social justice. For example, a judge might accept a petition filed on behalf of affected individuals by an NGO or a socially conscious citizen. Such petitions could even be submitted through unconventional means, like a postcard, plain paper, or telegram. Additionally, courts may act on their own initiative (*suo motu*) in certain cases. The underlying goal is always to safeguard broader public interests. The resolution of such petitions often delivers swift justice, giving judicial activism the potential to transform legal courts into institutions of justice. This characteristic explains its widespread appeal across the country.<sup>5</sup>

## What constitutes judicial overreach?

The line dividing judicial review and judicial overreach is very thin, mechanisms like public interest litigation are widely used today which showcases the faith the public has in judiciary.<sup>6</sup> Judicial overreach occurs when the judiciary exceeds its mandate by interpreting laws in a manner that encroaches on the functions of the legislature and executive, effectively assuming a lawmaking role.

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<sup>4</sup> M. V. Devi Raksha & L. Preethi, Judicial Activism in India, 27 SUPREMO AMICUS [264] (2021).

<sup>5</sup> Nilanjana Jain, judicial power : *from judicial review to judicial overreach*, 2 Indian journal of public administration.331.2010

<sup>6</sup> Shukla, Shalini. “Judicial Overreach: The Role of the Judiciary in Contemporary India.” *South Asia Research & Development Institute* XXVI, no. Year-VIII (n.d.): 25–28.

Judicial overreach in the Indian context can be observed in the case of *IC Golaknath vs State of Punjab*<sup>7</sup>, following which the apex court held that article 368 of the Indian constitution only laid down the procedure to amend the constitution, i.e., the same did not confer upon the parliament the power to amend the constitution. The judiciary on the contrary held in the *keshavananda bharati*<sup>8</sup> case that art. 368 of the constitution expressly contains the procedure for amendment of the constitution and impliedly confers the power to amend the constitution. So, in this instance the golaknath case can be considered as an example for judicial overreach and the kesavananda bharati case that of judicial activism.

The constitution through article 50 states that the state should take necessary steps to separate the functions of the executive and judiciary, also through articles 121 and 211 forbids the legislature from questioning the conduct of judges and similarly through article 122 and 212 precludes the court from interfering with internal proceedings of the legislature. Any form of activism, whether by the judiciary or the legislature, raises concerns about potential breaches of the separation of powers outlined in the Constitution. The Constitution itself does not explicitly address such violations, instead relying on lawmakers and courts to ensure they operate within their respective boundaries.<sup>9</sup>

### **Redefining privacy: analysing the KS Puttaswamy judgement**

In the year 2015 a 3 judge bench was constituted in the supreme court questioning the constitutionality of the aadhar scheme, the scheme introduced by the government of India under the unique identification authority of India, assigns a 12- digit unique identification number to the citizens of India. Its purpose was to streamline welfare delivery, reduce corruption, and ensure targeted delivery of subsidies and benefits. The Aadhar scheme faced multiple challenges, giving rise to legal concerns about privacy, surveillance and constitutionality. The Attorney General contended that while several Supreme Court rulings had acknowledged the right to privacy, Part III of the Constitution does not explicitly guarantee it as a fundamental right. This argument was based on earlier decisions by larger benches in *M.P. Sharma* (eight-judge bench) and *Kharak Singh* (six-judge bench), which did not recognize privacy as constitutionally protected. As a result, the issue was referred to a five-judge bench to uphold "institutional integrity and judicial discipline." Subsequently, the five-judge bench escalated the matter to a

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<sup>7</sup> 1967 AIR 164,

<sup>8</sup> 1973 4 SCC 225

<sup>9</sup> Munmun Singh, Judicial Overreach in India: The Current Scenario, 4 INT'L J.L. MGMT. & HUMAN. 1329 (2021).

nine-judge bench to provide a definitive ruling on the constitutional status of the right to privacy<sup>10</sup>. The operating part of the judgement is the only one which has been signed by all the nine judges and it reads as follows,

“The eight-judge bench ruling in *M.P. Sharma* (1954)<sup>11</sup>, which concluded that the Constitution does not protect the right to privacy, is overruled. Similarly, the decision in *Kharak Singh* (1962) is overruled to the extent that it denied constitutional protection to the right to privacy. The right to privacy is now affirmed as an inherent aspect of the right to life and personal liberty under Article 21, as well as a component of the freedoms guaranteed under Part III of the Constitution. Furthermore, the subsequent case law following *Kharak Singh*<sup>12</sup>, which recognized the right to privacy, accurately reflects the correct legal position”.<sup>13</sup> Individual autonomy and liberty are the main focal points of the constitution; the court observed that privacy constitutes the foundation for protection of individual autonomy, recognising the same as a fundamental right was crucial in protecting the true spirit of the constitution.

**Impact of the European union’s General data protection bill:** The EU GDPR deals with data protection laws governing the data protection rights of the citizens of the EU. The GDPR is applicable in cases where the data processing is carried out by a controller or processor established within the EU. It also extends to scenarios where the controller or processor is located outside the EU but processes personal data related to offering goods or services to individuals within the EU, or when monitoring the behavior of individuals within the EU. Consequently, numerous businesses outside the EU that serve EU-based customers must adhere to the GDPR's data protection regulations.<sup>14</sup> The act implements certain principles which aims at forming the foundation upon whose basis the act is established; these include principles like legality, transparency, fairness, accountability, discretion and ethics etc. Post the Puttaswamy judgement the supreme court issued guidelines and hinted on the requirement of data protection laws mainly attributed to the development of GDPR in the European union. Responding to the Supreme Court's emphasis on privacy, the Central Government took the initiative to form the Justice B.N. Srikrishna Committee. The committee submitted its report and a draft legislation, titled the Personal Data Protection Bill, 2018, which later went through several iterations and is now known as the Digital Personal Data Protection Act, 2023.

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<sup>10</sup> Bhandari, V., Kak, A., Parsheera, S., & Rahman, F. (2017). An Analysis of Puttaswamy: The Supreme Court's Privacy Verdict. *IndraStra Global*, 11, 1-5. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-54766-2>

<sup>11</sup> 116(2005)DLT628

<sup>12</sup> 1963 AIR 1295

<sup>13</sup> *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

<sup>14</sup> Bhavesh Vashisht, *supra* note 2, at 793 .

### **KS Puttaswamy: Activism Within Constitutional Bounds**

The judiciary's proactive role in addressing the changing societal norms and safeguarding fundamental rights can be viewed while analysing the KS Puttaswamy judgement, this highlights the emphasis judiciary places on placing itself as the guardian of constitutional values and individual liberty as mentioned in the work of Granville Austin, this transformative role enhances the faith public has in the judiciary.<sup>15</sup> As defined earlier in the article activism refers to the instance wherein judges make decisions based on their personal views along with adherence to other factors like principles of natural justice and changing societal tendencies about public policy rather than strict adherence to existing rules or legal precedents. This often involves interpreting the Constitution in ways that may go against established rulings.

Private companies, especially big corporate entities, collect extensive data from individuals through online activities, this is specifically applicable to big-tech companies and social media platforms. This includes data on browsing habits, purchasing behavior, location tracking, and even biometric details. While such data collection enables companies to personalize services and improve user experiences, it often comes at the cost of user privacy.

**The issue of mass state surveillance:** on the contrary governments often justify large-scale surveillance programmes under the guise of ensuring national security or prevention of crimes from taking place. Measures like phone tapping, internet monitoring, or facial recognition systems, allow states to gather and process personal information on an unprecedented scale, the KS Puttaswamy judgement addresses these concerns directly, by holding privacy as a fundamental right the judgement places checks on the powers of both corporations and the state, emphasizing the need for data protection frameworks that balance individual rights with public interest.<sup>16</sup> In cases involving the State, the Court has consistently demanded a much stricter standard of compelling State interest. This distinction is logical, as it emphasizes the critical need to protect individuals' private spheres from government intrusion. Given the vast powers the State possesses to interfere in personal lives—something that has become increasingly evident in recent times—this heightened scrutiny is essential. Such considerations are fundamental to preserving the core principles of a free and democratic society, making a stricter threshold not only justified but indispensable.<sup>17</sup>

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<sup>15</sup> Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford Univ. Press 1999).

<sup>16</sup> *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

<sup>17</sup> Gautam Bhatia, *State Surveillance and the Right to Privacy in India: A Constitutional Biography*, 26 NAT'L L. SCH. INDIA REV. 127 (2014)

## Conclusion

“If India doesn't want to look like an authoritarian regime, it needs to be transparent about who will be authorized to collect data, what data will be collected, how it will be used, and how the right to privacy will be protected.”<sup>18</sup> Post-Puttaswamy both the judiciary and legislature recognised the need for a comprehensive data protection legal framework which after a series of amendments was recognised as the Digital personal data protection act 2023. Courts now play a vital role in ensuring that state surveillance programs are used judiciously and remain within constitutional boundaries. Judicial intervention is essential to prevent violations of privacy rights under the guise of national security. For corporate data collection, individuals must have the right to informed consent, allowing them to control what personal information they share and with whom. Deeper analysis of the KS Puttaswamy judgement suggests that the court by recognising privacy as a fundamental right did not exceed its mandate rather upheld the transformative role of the constitution which is to advance individual rights and liberty.



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<sup>18</sup> Cynthia Wong, an Internet researcher at New York based Human Rights Watch.