'UNIVERSALIST' RIGHTS AND 'PARTICULARISTIC' RESTRICTIONS: NOTE ON *JUSTICE K. S. PUTTASWAMY (RETD.) CASE*

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ABSTRACT

This paper critiques the Supreme Court of India's application of comparative constitutional law in its judgment in Justice K. S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors (recognizing privacy as a fundamental right in Indian Constitution). Using the framework provided by Sujit Choudhry cataloging the different approaches that court can take while using comparative law, this paper analyses that in the Puttaswamy case, the Court adopted an excessively 'universalistic' paradigm to exposit a fundamental right to privacy. However, it took a very 'particularistic' frame of interpretation so as to couch the imposable justificatory restrictions on such a right. This allowed the Court to interpret the right widely and the restriction narrowly. However, a factor for such universalist application of comparative materials may have been the abstract nature and scope of the adjudication in the case. While this is a theoretical understanding of the disposal of this nine-judge bench reference, a realistic understanding is posed in the conclusion where the 'motivating' reasoning behind such particularistic reading of restriction is given a make-over as its 'justificatory' reasoning.

INTRODUCTION

The terrain of comparative constitutional reasoning is characterized by a vibrant multiplicity of approaches. These approaches differ in terms of how and when national courts may resort to judgments and materials from foreign jurisdictions. However, these foreign jurisprudence do not carry with them any binding or persuasive force;[1] though the global trend to inter-link constitutional cultures across national jurisdictions has otherwise been on the rise.

Visualizing legal systems as being inherently common and uniform with an ubiquitous similarity of principles and concepts has provided a fertile ground for knowledge-based interaction(s) to take place. An overarching political philosophy espousing common ideals and values may be a factor for this. However, such understanding is coupled with underlying drawbacks. First, there is a deep-rooted ideation that constitutions constitute a particular state with their own schemas

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[1] BARAK AHARON, COMPARATIVE CONSTITUTIONAL LAW, 5 (1990).

and philosophy unfounded in other jurisdictions. This problematizes the very allusion to foreign materials in judicial opinions. Second, if judges acknowledge that they do not treat foreign material as binding, then the question is—what do they do with it? Sujit Choudhry's '*How To Do Comparative Constitutional Law in India*' specifically analyses the second prong where the High Court of Delhi in *Naz Foundation v. Union of India* perfected what is called application of comparative law through a dialogical reasoning.[2] The same work can also be used as laying down a general framework on analyzing the use of comparative materials in constitutional adjudication.

Choudhry classifies the possible approaches in comparative constitutional law as a tripartite spectrum. First is the '*particularistic*' model where courts are averse and apprehensive of resorting to any foreign jurisprudence in the garb of recognizing and giving effect to the *sui generis* identity of the domestic constitutional framework. The second model is at the other end of the spectrum where the premise of legal similarity nourishes an instantaneous borrowing from foreign jurisprudence. This is the *universalist* paradigm where constitutional reasoning is seen as being very easily amenable to easy cross-border transmission. Thirdly and most importantly, Choudhry advocates a dialogical interpretation rejecting either a wholesome affirmation or absolute rejection of foreign materials. Herein he emphasizes a better and nuanced understanding of constitutional similarities and differences through perusing foreign materials on the subject under consideration.

This paper applies this framework to the recent judgment of the Supreme Court of India (hereinafter "Court") in *Justice K. S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*[3] (hereinafter "*Justice Puttaswamy*") where a nine-judge bench of the Court unanimously affirmed the existence of the right to privacy as a Fundamental Right in Part-III of the Constitution of India. Notwithstanding the specific factual background which gave rise to this reference to a nine-judge constitution bench, the terms of reference were very specific to the Constitution of India without any focus on factual backdrop and therefore abstract. We shall show how such adjudication in abstraction provided a fertile ground for a 'motivating'[4] a universalist understanding of 'rights.' However, the Court attempts at 'justifying'[5] a subtle and nuanced

[2] Sujit Choudhry, *How to Do Comparative Constitutional Law in India in* SUNIL KHILNANI (ED.) COMPARATIVE CONSTITUTIONALISM IN SOUTH ASIA (Oxford Scholarship Online, 2012).

[3] Justice K. S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., AIR 2017 SC 4161.

[4] JAKAB ET.AL. , COMPARATIVE CONSTITUTIONAL REASONING, 11 (Cambridge University Press, 2017).

[5] *Ibid.*

differences between the domestic legal position and foreign materials when it comes to interpreting the permissible restrictions on such rights. Hence, specific factual challenges to state-action on the ground of right to privacy may entail a more dialogical interpretation giving an equal if not more weightage to the particularistic concerns.

COMPARATIVE LAW IN *JUSTICE PUTTASWAMY*

The Court in *Justice Puttaswamy* was dealing with a reference[6] from a smaller bench as to a question of seminal and "far-reaching" constitutional significance. The Union of India (one of the respondents) in a hearing concerning the constitutionality of *Aadhar (Targeted Delivery of 53 Financial and other Subsidies, Benefits and Services) Act, 2016* had assailed the existence of privacy as a Fundamental Right protected by the Constitution of India.[7] The challenge to the very recognition of a Fundamental Right to privacy was based on judicial incongruence and doctrinal confusion resultant out of the antique 'silo'-based approach of the Supreme Court arising out of *A.K. Gopalan v. State of Madras*.[8] The treatment of different provisions in Part-III as separate silos with no interaction among them had led some to believe and the Union of India to contend that the lack of a single locus for a right to privacy meant that no such right was acknowledged by the Constitution of India. The Court in *Justice Puttaswamy* was hence tasked with deciding whether or not the Constitution of India recognizes the right to privacy as a Fundamental Right in its Part-III. The Court held in the affirmative with a unanimous majority.

While doing so, the nine judges on the bench authored six opinions. Chandrachud J. was joined by three other judges including the Chief Justice of India. While all other opinions refer to foreign jurisprudence, Sapre J.'s opinion stands out when it states that since "*the answer to the* [referral] *questions can be found in the law laid down in the decided cases of this Court alone…one may not require taking the help of the law laid down by the American Courts.*"[9] This is somewhat problematic as the assailed and disputed Indian Case-law on the subject which recognizes a Fundamental Right to privacy, is itself based on much of the United States jurisprudence. The most comprehensive

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[6] Order of the three-judge bench dated 11 August 2015, *See Justice Puttaswamy per* Chandrachud J. at 6.

[7] *Citizens do not have fundamental right to privacy: Centre tells SC*, Hindustan Times (Jul. 23, 2015, 1.50 P.M.), https://www.hindustantimes.com/india/citizens-do-not-have-fundamental-right-to-privacy-centre-tells-sc/story-ykRepEFYCvWteceqLNuz9O.html.

[8] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

[9] K.S. Puttaswamy v. Union of India, AIR 2017 SC 31.

opinion is that of Chandrachud, J. both generally and even in its particular treatment of comparative law where he refers to the analogous and parallel jurisprudence from the United Kingdom, United States, South Africa, and Canada apart from analyzing the decisions of supra-national courts such as the European Court of Human Rights, European Court of Justice and the Inter-American Court of Human Rights.

Hence, the judgment is one which is conducive and amenable to an analysis of its use of comparative constitutional law due to the attacked and impugned domestic jurisprudence on the right to privacy by the respondents. The approach in this paper would be to first look at the Supreme Court's exposition of a right to privacy and its content and scope. Thereafter, it shall seek to uncover the attempts of the Court to localize and familiarize the right into the Indian constitutional framework. Lastly, the paper shall look at the justifiable restrictions that the Court holds to be imposable on the constitutionally guaranteed right.

DOCTRINAL COALESCE OF THE RIGHT TO PRIVACY

The most unequivocal assertion of the universalist recognition of the right to privacy comes across in the opinion of Sanjay Kishan Kaul J. when he remarks:

> "*It is not India alone, but the world that recognizes the right of privacy as a basic human right.*"

Justice Puttaswamy exemplifies a constitutional adjudication where comparative law guides the Court to recognize a fundamental right in Indian law. The apparent gap in Indian law arose, as has been previously said, due to the doctrinal confusion resultant out of *A.K. Gopalan's* ratio that had governed the adjudication in *M.P. Sharma v. Satish Chandra*[10] and *Kharak Singh v. State of Uttar Pradesh*[11]. The Court's reasoning that privacy is an essential attribute to uphold 'liberty' of an individual through her 'dignity' is quintessentially '*motivated*' by a juxtaposition of two otherwise different constitutional philosophies. While the former finds unequivocal expression in the individual-centric constitutional ideology of the United States;[12] the latter is credited to the jurisprudence evolved by the Constitutional Court in South Africa.

[10] AIR 1954 SC 300.

[11] AIR 1963 SC 1295.

[12] Chandrachud J. in paragraph 38 of his opinion notes as follows: "The right to privacy evolved as a "*leitmotif*" representing "*the long tradition of American individualism*".

Like the Constitution of India, the American Constitution does not enlist an express right to privacy. However, Chandrachud J. notes that "*the concept of privacy plays a major role in the jurisprudence of the First, Third, Fourth, Fifth, and Fourteenth Amendments.*"[13] As early as in 1886,[14] the Supreme Court of the United States noted how the "purposes of despotic power" ought not and cannot override "the pure atmosphere of political *liberty* and personal freedom." Justice Brandeis' dissent in *Olmstead v. United States*[15] is reproduced by Chandrachud J. as a celebrated passage articulating the importance of privacy:

> "*The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be left alone – the most comprehensive of rights, and the right most valued by civilized men…*"

Thereafter a reference is made to Justice Douglas's main opinion in *Griswold v Connecticut*[16] which observed that privacy sprang from what he understood as the "penumbras", the Bill of Rights in the US, thus cumulatively giving rise to ascertainable "zones of privacy". Chelameswar J. notes like Justice Douglas as to how the Constitution of India too creates certain inviolable zones of privacy—that of '*repose'* and 'intimate decision.[17].

The most direct impact of US jurisprudence on *Justice Puttaswamy* as recorded by Chandrachud J. has been the transformation of the doctrinal position from that of '*trespass*' property-centric spatial privacy to the person-centric informational self-determination.[18] This would mean that the right to privacy no more means to sit calmly between closed doors, but implies that the person wields his or her privacy even in the public sphere in his or her relationship with the State. This ultimately finds expression in his articulation of the three-pronged privacy as recognized by the

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[13] K.S. Puttaswamy v. Union of India, AIR 2017 SC 141.

[14] Boyd v. United States, 116 US 616 (1886).

[15] Olmstead v. United States, 277 US 438 (1928). The majority opinion was later overruled in Katz v. United States, 389 US 347 (1967).

[16] Griswold v Connecticut, 381 US 479 (1965).

[17] K.S. Puttaswamy v. Union of India, AIR 2017 SC 267.

[18] *See* Katz v. United States, 389 US 347 (1967) *per* Harlan J.

Constitution of India laid down by Chandrachud J. when he observes the distinct elements of the concept of privacy as "spatial control", "decisional autonomy" and "informational control."[19]

The South African experience is distinct as its Constitution expressly recognizes a right to privacy.[20] Yet, the South African Constitutional Court felt it necessary to couple or rather find a trace of this with well-worded and textual right as:

> "*Highlight[ing] the inter-relationship between privacy, liberty and dignity as the key constitutional rights which construct our understanding of what it means to be a human being. All these rights are therefore inter-dependent and mutually reinforcing.*"[21]

Chandrachud J. while noting a line of precedents from South Africa observes how such a holistic interpretative framework "may prove to have a catalytic effect on a country transitioning from an apartheid state to a democratic nation."[22]

Notwithstanding Chandrachud J.'s contextualizing remarks post every reproduction of comparative material, there does not seem to be much on ground when it comes to engaging in what Sujit Choudhry has termed as a "dialogue" between the domestic and foreign legal positions. Hence, we find it appropriate to call the resultant articulation of right to privacy in *Justice Puttaswamy* as coming together of different ideations and conceptions of privacy. Yet we must underscore the efforts of Chandrachud J.'s opinion on trying to find justifications in the Indian constitutional discourse for emphasizing liberty and dignity.

ATTEMPTS AT LOCALIZATION OF THE RIGHT TO PRIVACY

Of course, according primacy to individual autonomy buttressed with claims based on dignity from foreign jurisdictions would, by itself, have been a weak doctrinal position to recognize privacy as a fundamental right in India. Localization of foreign inputs makes the resultant legal position stronger and resilient to arraignment. Therefore, in order to fortify its reasoning, the Court had to necessarily engage with domestic materials.

The Court did so by localizing and familiarizing the Indian constitutional jurisprudence with such foreign materials. The Court observed how the Constitution of India was a promise to the

[19] K.S. Puttaswamy v. Union of India, AIR 2017 SC 201.

[20] Section 14, Bill of Rights of the South African Constitution, 1996.

[21] NM and Others v Smith and Others, 2007 (5) SA 250 (CC).

[22] K.S. Puttaswamy v. Union of India, AIR 2017 SC 172.

people to spin a 'social revolution' on a post-colonial fabric. It recounted how the constitutional framers led by Dr. B.R. Ambedkar visualized the individual to be the central focal point of the Indian constitutional model. Chandrachud J. notes

> "*The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).*"[23] (Emphasis supplied)

The necessity of such a juxtaposition of a "universalist" paradigm of human liberty and dignity coupled with a "particularistic" orientation to contextualize the doctrines in the apposite understanding of Indian constitutionalism is explained by Chelameswar J. when he notes:

> "*The Constitution of any country reflects the aspirations and goals of the people of that country voiced through the language of the few chosen individuals entrusted with the responsibility of framing its Constitution. Such aspirations and goals depend upon the history of that society. History invariably is a product of various forces emanating from religious, economic and political events.*"[24] (Emphasis supplied)

Though Chandrachud J. cites two articles[25] published by the Centre for Internet and Society according to which privacy is a concept known and recognized in Islamic and Hindu law, the articulation is clearly given effect to by Bobde J. when he describes how the concept of privacy is profound even in the Indian socio-political context:

> "*Even in the ancient and religious texts of India, a well-developed sense of privacy is evident. A woman ought not to be seen by a male stranger seems to be a well-established rule in the Ramayana. Grihya Sutras prescribe the manner in which one ought to build one's house in order to protect the privacy of its inmates and preserve its sanctity during the performance of religious rites, or when studying the Vedas or taking meals. The Arthashastra prohibits entry into another's house, without the owner's consent.…Similarly, in Islam, peeping into others'*

[23] K.S. Puttaswamy v. Union of India, AIR 2017 SC 94 .

[24] K.S. Puttaswamy v. Union of India, AIR 2017 SC 19.

[25] *See* Ashna Ashesh and Bhairav Acharya , *Locating Constructs of Privacy within Classical Hindu Law*, THE CENTRE FOR INTERNET AND SOCIETY, available at https://cis-india.org/internetgovernance/blog/loading-constructs-of-privacy-within-classical-hindu-law (12 March, 2018); and Vidushi Marda and Bhairav Acharya, *Identifying Aspects of Privacy in Islamic Law*, THE CENTRE FOR INTERNET AND SOCIETY, available at https://cis-india.org/internet-governance/blog/identifying-aspects-of-privacy-in-islamic-law (12 March, 2018)

> *houses is strictly prohibited. Just as the United States Fourth Amendment guarantees privacy in one's papers and personal effects, the Hadith makes it reprehensible to read correspondence between others. In Christianity, we find the aspiration to live without interfering in the affairs of others in the text of the Bible. Confession of one's sins is a private act. Religious and social customs affirming privacy also find acknowledgement in our laws, for example, in the Civil Procedure Code's exemption of a pardanashin lady's appearance in Court.*"[26]

Hence, what is seen is a rather wholehearted recognition of the doctrinal position on privacy as against a contextualized and homegrown understanding taking the centre stage. The Court seems to be motivated to recognize a Fundamental Right to privacy for its recognition elsewhere in most corners of the democratic world instead of deriving it from the Indian socio-political context. Hence, what is displayed as an Indian perspective on the constitutional landscape texturing privacy is only a justificatory tool and ploy so as to legitimize its conclusion. In that task, it was helped by a series of judgments[27] recognizing a fundamental right to privacy in the post-*Gobind v. State of Madhya Pradesh*[28] era spanning some forty odd decades.

JUSTIFIABLE RESTRICTIONS ON THE RIGHT TO PRIVACY

There is a great constitutional convergence across jurisdictions that rights are not absolute. Restrictions can be imposed on the exercise of rights. However, of considerable debate is the nature and type of restrictions that can be imposed on these rights. Different rights can be curtailed by different justifiable forms of restraints recognized by the constitutional framework.

This understanding of the interplay between rights and restrictions makes the application of comparative constitutional law even more interesting in *Justice Puttaswamy*. While the Supreme Court may have borrowed the understanding of the scope and contents of privacy from US jurisprudence, it seemed unwilling to borrow restrictive elements on that right from the same place.[29]

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[26] K.S. Puttaswamy v. Union of India, AIR 2017 SC 21.

[27] Malak Singh v. States of Punjab and Haryana, (1981) 1 SCC 420; State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57; R Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632; People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301; Mr. X v. Hospital Z, (1998) 8 SCC 296.

[28] Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148.

[29] K.S. Puttaswamy v. Union of India, AIR 2017 SC 246.

The Constitution of India is unique for its elaborate enlisting of restrictions alongside the available rights.[30] This is unlike the position in the United States where the courts had to invent the doctrine of 'police powers' to restrict the textually unrestricted rights.[31] The operative order of the Court which answers the reference posed to this nine-judge bench speaks the following when it comes to narrowing it down to the places where the right to privacy can be found in the Constitution of India:

> "*The right to privacy is protected as 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.*"[32]

Hence, the right is recognized as a part of Articles 19 and 21 of the Constitution. While the former is sub-divided into a number of clauses detailing the scope of different forms of freedoms, the latter is a catch-all right recognizing everybody's entitlement to a dignified life.[33] Only a just, fair and reasonable law can restrict the operation of the fundamental right recognized by Article 21.[34] For rights contained in Article 19 (1) there are corresponding restrictions provided for in subsequent clauses of Article 19.

Two observations are relevant in this context. First, the repudiation of the concept of '*substantive due process*' in Indian law by Chandrachud J. alongside which he nonetheless notes:

> "*The expression 'procedure established by law' in Article 21 does not connote a formalistic requirement of a mere presence of procedure in enacted law. That expression has been held to signify the content of the procedure and its quality which must be fair, just and reasonable…. The quality of reasonableness does not attach only to the content of the procedure which the law prescribes with reference to Article 21 but to the content of the law itself… The law is open to substantive challenge on the ground that it violates the fundamental right.*"[35] (Emphasis supplied)

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[30] For instance, while Article 19 (1) delineates various freedoms available to citizens, its sub-articles 2 to 6 list out the permissible reasonable restrictions on those freedoms.

[31] *See* MP JAIN, INDIAN CONSTITUTIONAL LAW 1013, 7th Ed. (LexisNexis Publications,2014).

[32] Order of the Court in *Justice Puttaswamy*.

[33] For instance, the right to go abroad [Satwant Singh Sawhney v. D Ramarathnam APO New Delhi, (1967) 3 SCR 525 and the right to speedy trial [Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81].

[34] For an account of the just, fair and reasonableness standard, reference may be made to Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

[35] K.S. Puttaswamy v. Union of India, AIR 2017 SC 238.

In this regard, given the Indian constitutional history, Chandrachud J. rejects the US position where courts are empowered to test laws on substantive due process.[36] Secondly, there is variance in terms of how tests to determine the constitutionality of any infringement of privacy by a state action are articulated. Chandrachud J.'s differentiation between India's "procedure established by law" and "due process of law" is illusory as his three-pronged test of *legality*, *need* and *proportionality* to determine the constitutionality of a restriction on the right to privacy enacts a very high threshold for the State to fulfil. It is almost tantamount to a 'substantive due process' standard.

Chelameswar J.'s opinion articulates that restrictions which may be justifiably imposed on the right to privacy must be determined on a case-to-case basis. He advocates different standards for different rights.[37] For instance, if a claim of violation of privacy is brought on the pretext of Article 19 (1) (a) of the Constitution of India, then the state action must stand the test of Article 19 (2) of the Constitution of India apart from the general reasonableness standard. However, what keeps surfacing is the test propounded by Justice Brennan in *Carey v Population Services International.*[38] The US Supreme Court laid down that any infringement of privacy by the State must satisfy the test of '*compelling state interest.*' The test finds a toned-down mention in Chandrachud J.'s opinion as 'legitimate state interest'. The test was brought home in the case of *Gobind v State of Madhya Pradesh*[39] but has been critiqued by Chelameswar J. in *Justice Puttaswamy* being a concept which "does not have definite contours in the US." [40] He escapes a thorough analysis when he remarks that "only in privacy claims which deserve the strictest scrutiny is the standard of compelling State interest to be used." Rohinton J. also follows the path treaded by Chelameswar J. when he remarks that "*when it comes to restrictions on this right, the drill of various Articles to which the right relates must be scrupulously followed.*"[41]

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[36] Id. at 214.

[37] Id. at 41.

[38] Carey v. Population Services International, 431 US 678 (1977).

[39] Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148.

[40] K.S. Puttaswamy v. Union of India, AIR 2017 SC 43.

[41] Id. at 105.

It would also be reasonable to look at the way in which the possible areas on which the right to privacy can be restricted have been articulated in the judgment. Exemplifying his '*legitimate state aim'* test, Chandrachud J.'s opinion notes as follows:

> "*The legitimate aims of the state would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits. These are matters of policy to be considered by the Union government while designing a carefully structured regime for the protection of the data."*[42]

Even before this, the opinion discusses the conception of the Indian state as a "*social welfare state.*"[43]In this regard, the restrictions are localized to suit the needs of the Indian constitutionalism where the idea of a limited government is not as strongly found as is in the United States. The Constitution of India is not marked by what is said for its US counterpart: a "deep distrust of power."[44]

Therefore, we see a higher degree of localization in terms of applying comparative law when it comes to determining the restrictions to the right to privacy than the right itself.

CONCLUSION

Reference to comparative materials has its own set of merits and demerits. But it must be credited for the insight that it provides in terms of understanding the divergences and convergences of one's own constitutional setting within the larger network of constitutionalism.

This paper has shown how judges can use comparative constitutional law in differing manners to delineate 'rights' and 'restrictions' thereto. While interpreting the Constitution of India to find a right to privacy, the Supreme Court seems to have been motivated to recognize a right in a wide amplitude across various articles of Part-III. To do so, it also invokes developments in foreign jurisdictions only to return to India and lay down the right in clear places within the constitutional text. However, when caught with the task of laying down the scope of restrictions that can be placed on the right to privacy, the Court localizes and familiarizes the right with the specific and particular Indian conditions. In this regard, while rights may be seen as '*universal*',

[42] . Id. at 265.

[43] Id. at 255.

[44] Uday Singh Mehta, '*Constitutionalism,*' 25 as cited in ANUJ BHUWANIA, COURTING THE PEOPLE 18 (Cambridge University Press, 2016).

justifiable restrictions upon these rights have been viewed upon as '*particularistic*.' What this in turn provides for is a broad interpretation of the right while narrowly interpreting the imposable restriction. Such deployment of comparative constitutional law is, we submit, a sound arrangement; for it recognizes the overarching similarity in terms of people and individuals across constitutions while giving effect to national differences in terms of state interests. We also opine that the cause for the '*universalist*' mode of interpreting the right to privacy was due to the abstract nature of this adjudication. It remains to be seen in the future as to whether courts will lean towards '*particularistic*' understandings when they deal with specific factual situations.

At yet another level of constitutional reasoning, we may see how the 'motivating reasons' behind a particular position may be different from the 'justificatory reasoning' used by the courts. In *Justice Puttaswamy*, the real motivating reason for the court to provide for such restrictions could be the ongoing *Aadhar* controversy which has already entailed huge expenditure in terms of time, money and effort by the state. Hence, the way in which the Supreme Court has articulated the permissible restrictions on the right to privacy may be closely tied to its covert motivation to save *Aadhar* from any constitutional infirmity. It however does this through apparently leaving a door open to justify it when it hears and adjudicates the matter on the pretext of Indian constitutionalism placing the State as a benevolent welfare actor, the limits on which are in turn very limited.