



Justice Chelameswar: Teleological and comparative schools of Interpretation

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Abstract

The fundamental right guaranteed in Article 21 of the Constitution is broadly drafted to incorporate everything that was, is and is going to be necessary to lead a life with personal liberty and dignity. Right to privacy is one of the aspects of the wide umbrella of the article. It has been, for certain years, in debates as to whether it should be a right guaranteed under the said article due to the evolution of society. The research paper argues that right to privacy has been rightly established as a fundamental right and therefore the reasons for the decision given by Justice Chelameswar, in specific, should be understood by applying different schools of interpretation. The two approaches applied for observation and analysis are teleological approach which was developed by Plato and Aristotle and comparative approach which was established through major contributions of Danish scholars Rasmus Rask and Karl Verner and a German scholar Jacob Grimm. These approaches have been chosen to comprehend Justice Chelameswar's decision because the structure of his arguments attracts the basic elements of these two approaches.

The researcher will employ qualitative research approach in the form of content analysis and analyze various research articles to understand the concept of the two approaches used by Justice Chelameswar.

Keywords: article 21, right to privacy, justice chelameswar, qualitative research approach, schools of interpretation and teleological, comparative

Introduction

It was Chief Justice Marshall's conviction that the Constitution ought to be perused as a document 'intended to endure for ages to come, and consequently, to be adapted to the various crisis of human affairs.' But he likewise implied that the development placed upon the document must have respect for its "great outlines" and "important objects"^[1]. This opinion is reflected in the judgments on constitutional issues in India as well where the judges directed that the Indian Constitution can be amended by the legislature to keep up with the changing society and its needs however the basic structure of the constitution cannot be amended^[2].

There are two stages to the adoption of the Constitution in the society - the first is when the organs of the government interpret the Constitution and the second is how the Constitution is received by the society as a whole^[3]. In the first stage, while deciding the cases on constitutional issues, there is a minimum of 5-judge bench that presides over the case. Each judge has different beliefs and ideals, which tend to influence the school of interpretation they would adopt when analyzing a particular article of the Constitution. These different schools of interpretation, for example, textual, teleological, comparative, structural and other different schools reflect in the decision taken by the judges in a case.

The judgment on right to privacy where it was finally made a fundamental right under the ambit of Article 21 in 2017 by a

9-judge bench also shows the schools of interpretation in the decisions laid down by individual judges^[4]. However, there is a story behind the guaranteed status of this right. The most striking thing about the right to privacy is that nobody seems to have a very clear idea about what it is^[5]. Every case that has been decided by a constitutional bench on this issue has not only built a history for the emergence of this article as a fundamental right but has also created a scope for the application of this newly defined fundamental right. Every Constitutional right has certain exceptions and limitations and this right's exceptions should be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality^[6].

This right, though in discussion for a long time, has not been an applicable right for the public due to which citizens of India were not aware of the problems they were facing because the right to privacy was not acknowledged. However, through the cases above, various issues like surveillance of public by the State, rights of prisoners about their own lives and secrets and whether the state can make AADHAR linking to various areas mandatory. There are certain other areas where right to privacy could have been infringed if it existed as a right. The recent event where Mark Zuckerberg was accused of selling his users' personal information to advertisers, if true, would have been a case of infringement of

¹ Terrance Sandalow, 'Constitutional Interpretation' (1981) 79 Michigan Law Review.

² *Kesavananda Bharti v State of Kerala*, (1973) 4 SCC 225.

³ David A. Strauss, 'Common Law Constitutional Interpretation' (1996) 63 The University of Chicago Law Review 880.

⁴ Justice K.S. Puttaswamy (Retd) vs Union of India & Ors, Writ Petition (Civil) No. 494 of 2012.

⁵ Mark Alfino and G. Randolph Mayes, 'Reconstructing The Right To Privacy' (2003) 29 Social Theory and Practice.

⁶ Alfred Thompson Denning, *What Next in the Law* (Aditya Books Private Limited 1993)

right to privacy. Another example would be the power given to the state under Section 377^[7] of the Indian Penal Code to enter the premises of a citizen who might have been indulging in homosexual activities.

The first case where the right to privacy as a fundamental right began to be recognized was *Kharak Singh v. State of UP*^[8], the Supreme Court had the event to consider the ambit and scope of this right when the power of surveillance conferred on the police by the provisions of the U.P. Police Regulations came to be challenged as being violative of Articles 19(1) (d) and Article 21 of the Constitution. The Court repulsed the contention of infringement of freedom ensured under Article 19(1)(d) of the Constitution, and the endeavor to ascertain the movements of an individual was held not to be an infringement of any fundamental right. The minority judgment, however, emphasized the need for acknowledgment of such a right as it was a basic element of personal liberty.

A decade later, the Supreme Court realized the need to recognize the right to privacy in *Govind v State of M.P.*^[9], wherein Mathew J., imagining its steady advancement, expressed that “the right to privacy in any event will necessarily have to go through a process of a case-by-case development^[10].”

The extent and ambit of the right of privacy or right to be left alone came up for thought under the steady gaze of the Supreme Court in *R. Rajagopal v. State of T.N.*^[11] during 1994. In this case the right of privacy of a condemned prisoner was in issue. One Auto Shankar, a censured detainee, composed his collection of memoirs while confined in prison and handed it over to his significant other for being conveyed to an advocate to guarantee its production in a certain journal edited, printed and published by the petitioner. This personal history purportedly set out close nexus between the detainee and several officers including those having a place with IAS and IPS some of whom were without a doubt his accomplices in several crimes. The distribution of this collection of memoirs was limited in more than one manner.

The court in conclusion held that:

1. The right to privacy is indirectly embedded in the right to life and liberty ensured to the citizens of this nation by Article 21. It is a “right to be left alone”. A citizen has a right to defend the privacy of his own, his family, marriage, reproduction, parenthood, childbearing and education among other matters. None can distribute anything concerning the above issues without his assent – whether truthful or otherwise and whether commendatory or basic. On the off chance that he does as such, he would be abusing the right to privacy of the person concerned and would be liable in an action of damages. Position may, in any case, be extraordinary, if a person willfully pushes

himself into controversy or voluntarily invites or raises a controversy.

2. The rule aforementioned is subject to the special case, that any distribution concerning the previously mentioned features becomes unobjectionable if such production depends on open records including court records. This is for the reason that once an issue turns into a matter of open record, the right to privacy no longer subsists and it turns into a permissible subject for input by press and media among others. The court was, nonetheless, of the opinion that in the light of the legitimate concerns of decency Article 19(2) a special case must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnapping, abduction or a like offence ought not further be subjected to the outrage of her name and the occurrence being broadcasted in the press/media.
3. There is yet another exemption to the rule in (1) above. This is not a special case, rather an independent rule. On account of public officials, it is self-evident, right to privacy, or far as that is concerned, the remedy of action for damages is essentially not available as for their acts and conduct pertinent to the discharge of their official duties. This is so even where the production depends on facts and statements, which are not accurate, unless the authority establishes that the production was made (by the respondent) with reckless disrespect for truth. In such a case, it would be sufficient for the respondent to prove that he acted after a reasonable confirmation of the facts; it is not essential for him to prove that what he has written is genuine. Obviously, where the production is proved to be false and impelled by vindictiveness or individual ill will, the respondent would have no defense and would be liable for damages. It is similarly evident that in issues not significant to the discharge of his obligations, the public official enjoys the same protection as any other citizen, as clarified by first two points discussed above. It needs no emphasis that judiciary, which is secured by the power to punish for contempt of court and the Parliament and legislatures ensured as their benefits are by Articles 105 and 104 respectively of the Constitution of India, represent exemptions to this rule.
4. So far as the Government, local authority and various organs and institutions practicing legislative forces are concerned, they cannot keep up a suit for damages for defaming them.
5. Rules 3 and 4 do not, notwithstanding anything, imply that Official Secrets Act, 1923 or any comparable enactment or provision having the power of law does not bind the press or media.
6. There is no law engaging the State of its authorities to prohibit or to force an earlier restraint upon the press/media^[12].

The Court likewise forewarned that the above standards are not exhaustive and left the scope of this right to develop through a case-by-case method^[13]. The final Supreme Court decision through the nine judge bench had Justice

⁷ Section 377 of the IPC - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

⁸ AIR 1963 SC 1295

⁹ (1975) 2 SCC 148

¹⁰ *Id.* at 157 (para 28)

¹¹ (1994) 6 SCC 632

¹² *Id.* at 649-651

¹³ *Id.* 651

Chelameswar as one of the judges who employed teleological and comparative schools of constitutional interpretation to decide that right to privacy is a constitutionally guaranteed fundamental right under Article 21.

Objective of the study

- To understand the meanings and scope of the two schools of interpretation that is teleological school and comparative school of interpretation.
- To apply the schools of interpretation and understand Justice Chelameswar's conclusion through them.

Two schools of statutory interpretation

The legislature enacts various statutes and laws depending on the prevalent situations and issues of the society that need to be addressed. Despite their efforts, there is a possibility that applying the enacted statutes directly does not solve certain complex situations. In such cases, the schools of statutory interpretation are used as tools to perceive various underlying concepts of the statutes to give a justified and fair decision. The application of these schools of interpretation differs from situation to situation and also from judge to judge. Some examples of these schools are teleological, textual, historical, original, structural and comparative approach.

A. School 1 – Comparative school of interpretation

It is a widely known fact that the Constitution of India is an amalgamation of various ideas that have been prevalent in constitutions of other countries of the world. This was done to ensure that the Indian Constitution had the best for its citizens in its written document. However, with changing times and needs of the society, new concepts and rights need to be incorporated in order to safeguard the interests of the people. Comparative interpretation becomes relevant and important here because it helps the judiciary understand the functioning of a particular concept in another country and its benefits before acknowledging it in India. Hence, comparative adjudication comes to assume a central place in constitutional adjudication in an era where constitutional interpretation is taking on an increasingly cosmopolitan character across the globe^[14]. Comparative Constitutionalism is a broad school of interpretation that helps seek answers to common constitutional questions^[15]. It can be stated as 'borrowing' solutions developed in one system to resolve problems in another^[16]. Comparative study is sometimes said to allow a person embedded in one system to gain some distance from it. Having become intellectually estranged from that system, one can then see that seemingly unchangeable arrangements actually might be altered without substantial loss and sometimes with substantial gain^[17].

There are two legs to the comparative school of interpretation. First, extensive analysis of foreign materials and its

¹⁴ Sujit Choudhry, 'Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation' 74 *Indiana Law Journal* 75.

¹⁵ Ruti Teitel and others, 'Comparative Constitutional Law in a Global Age' (2004) 117 *Harvard Law Review*

¹⁶ Mark Tushnet, 'The Possibilities of Comparative Constitutional Law', (1999) 108 *the Yale Law Journal*.

¹⁷ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press 1993)

application to the situation at hand. Second, comparative case law that does not only figure in judicial decisions but also permeates constitutional argument and academic commentary. The former becomes problematic because the materials have been written with respect to the society they target and its application in a society that might not resemble the one in question whereas the latter is better because there can be two cases with similar facts and the judgment of another court can be referred to while deciding a case here^[18].

There are many constitutional issue cases where comparative school of interpretation is applied by the judges to come to a conclusion. For example, in *Bachan Singh v. State of Punjab*^[19] the courts have tried to look at *Gregg v. Georgia*^[20] and *Dennis v United States*^[21] while deciding the case that challenged death penalty as a punishment for the accused. The courts also referred to the decision of the Supreme Court of USA in *P. Ramachandra Rao v. State of Karnataka*^[22], which repeated the decision of this court stating that there shouldn't be any outer limit fixed because it doesn't in effectuate the guarantee to speedy trial.

B. School 2 – Teleological school of interpretation

Teleological argumentation, on the other hand, is a means of legal interpretation. It is close in meaning to other arguments like the historical ones and appears under various names: contextual arguments, functional arguments and even arguments from purpose^[23]. For example, the argument is that "the world has a pattern and therefore have a purpose." Different terms are used to express what is meant by "pattern," such as "design," "structure," "order." The argument is stated to involve a purpose. Therefore, beginning with the assumption that the world has a design, the argument deduces that "there can be no design without a designer and that is a designer produced a design he must have done so for a purpose. Thus, if the world has a design, it must have a purpose^[24]."

In the legal sense, a legal text has some bounded flexibility around its language along with the text's literal constrains. The teleological or purposive school of interpretation helps to analyze the intention of the drafter behind the statute rather than focusing on the literal language because the words alone will not tell you, in part because, given the (limited) multi-locality of language, they will tell you too many things. The interpreter, on the other hand, wants to understand the reason behind the existence of the statute^[25]. The theory of purposive interpretation is rooted in the concept of law as a means to select social ends – a method of social engineering. It seeks to define legal standards in terms of the purposes they are designed to implement. It denies that either statutory

¹⁸ Sujit Choudhry, 'Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation' 74 *Indiana Law Journal* 75.

¹⁹ *Bachan Singh v. State of Punjab*, 1982 AIR 1325

²⁰ *Gregg v. Georgia*, 428 US 153: 49 L.Ed. 2nd 859

²¹ *Dennis v United States*, 341 US 294, 525

²² *P. Ramachandra Rao v. State of Karnataka*, Appeal (crl.) 535 of 2000

²³ Zaklina Harasic, 'More About Teleological Argumentation in Law', (2015) Original Scientific Paper.

²⁴ Bahm Archie J., 'Teleological Arguments' (1944) 58 *the Scientific Monthly* 377.

²⁵ Stanley Fish, 'Intention Is All There Is: A Critical Analysis of Aharon Barak's Purposive Interpretation in Law' 29 *Cardozo Law Review* 38.

provisions or common law doctrines can be adequately understood by reference to a standard of ordinary or plain usage ^[26]. Justice Holmes declared, “A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used ^[27].”

Importance and stance on both the schools

All these observations made by the scholars about comparative constitutionalism and its application become relevant to understand the decision and reasoning of Justice Chelameswar. There are instances throughout his judgment where he tries to take inspiration from the Constitution of United States of America and cases decided by its Supreme Court in order to build on his opinion and justify it with reasoning.

It can thus be concluded that teleological school of interpretation acts as a tool for the interpreter to interpret the statutes in a broader perspective and ensure incorporation of many rights and duties that may not be enshrined in the language of the statute literally.

Methodology

The paper has analyzed various case laws that is *Kharak Singh v. State of UP*, *Govind v. State of M.P.*, *R. Rajagopal v. State of T.N.* and the remarkable judgement in *Justice K.S. Puttaswamy (Retd) vs Union of India & Ors* to grasp right to privacy as a fundamental right. The paper also attempt to understand the justifications laid down for the ruling given by Justice Chelameswar by applying teleological and comparative schools of interpretation. While teleological school gives the reasons for the decision before stating the decision itself, comparative school attempts to put multiple countries on the same pedestal of the problem and analyze and compare the solutions of each country.

Discussion

Teleological and Comparative schools of interpretation are being employed to comprehend the reasons behind the decision of Justice Chelameswar in *Justice K.S. Puttaswamy (Retd) vs Union of India & Ors*. These approaches were established by various scholars and authors not only for the Justices to apply these schools while giving their judgments but also for the readers to perceive the rulings and judgments through these schools.

A. School 1 – Comparative School of Interpretation

The first instance is therefore the analysis of MP Sharma case as a precedent by the defense. A reference is made to adoption of revulsion of inquisitorial methods the Star Chamber of England and the Fifth Amendment of the American Constitution to establish the origin of the rule against self-incrimination. *Boyd v. United States* ^[28] was also looked at by

the Justice to state that the rule of self-incrimination was expanded to documents procured during the course of a constitutionally impermissible search from oral evidence. He also cited *Grisworld v Connecticut* ^[29] in which Douglas J. decided that the first, second, fourth, fifth and ninth Amendments create zones of privacy. Goldberg, J. on the other hand opined that even the XIV Amendment creates a zone of privacy. This undoubtedly grounds a right of privacy beyond the IV Amendment. These references contributed to his opinion of discrediting MP Sharma case as a precedent.

The second instance was the relevancy of Kharak Singh case as a precedent in the case at hand. While analyzing the issue of the case, Justice Chelameswar takes note of the American decision of *Wolf v. Colorado* ^[30] wherein it was held that State lacks the authority to sanction incursion into privacy of citizens. The maxim “every man’s house is his castle” was borrowed from this case to be applied in the Kharak Singh case.

The third instance is to comprehend whether the right to privacy is a Fundamental Right falling within the sweep of any of the Articles of Part III. The first comparison is made to the constitutions of various countries like Australia, Canada and the United States of America, as mentioned above, to prove that many rights exist for citizens and non citizens for better administration and right to privacy is one of them. A parallel is then drawn between the provisions of Fundamental Rights in our Constitution and the constitution of United States of America. International Treaties and Conventions are also referred to establish the existence and recognition of the right to privacy in the various parts of the world and have opined that they are to be read into our Constitution in order to conclude that there exists a Fundamental Right to privacy under our Constitution. These references, at the end, made Justice Chelameswar conclude that right to privacy is incorporated under Article 21 of our Constitution, which will be subject to reasonable restrictions under strict scrutiny situations and in general would follow fair and reasonable standards of Article 21.

B. School 2 – Teleological School of Interpretation

Justice Chelameswar, in the issue of right to privacy, applies the school of teleological interpretation in some parts of his judgment to come to the conclusion that right to privacy has been incorporated in article 21 ^[31] of the Constitution. The first instance of this school can be observed when he is discrediting the first precedent case presented by the defense that is *MP Sharma v Satish Chandra* where the issue was whether seizure of documents from the custody of a person accused of an offence would amount to testimonial compulsion prohibited under Article 20(3) of our Constitution ^[32]. He lays down the base of his decision when he states the origin of the concept of self-incrimination and tries to draw a parallel between the issue in MP Sharma case and the issue in the case at hand. He then comes to a conclusion that the

²⁶ Julian B. McDonnell, 'Purposive Interpretation of the Uniform Commercial Code: Some Implications for Jurisprudence' (1978) 126 University of Pennsylvania Law Review.

²⁷ Julian B. McDonnell, 'Purposive Interpretation of the Uniform Commercial Code: Some Implications for Jurisprudence' (1978) 126 University of Pennsylvania Law Review.

²⁸ *Boyd v. United States*, 116 U.S. 616 (1886)

²⁹ *Grisworld v Connecticut*, 381 US 479

³⁰ *Wolf v. Colorado*, 338 US 25

³¹ Article 21 of the Constitution – “Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.”

³² *M.P. Sharma v Satish Chandra*, AIR 1954 SC 300.

question of whether the rule against testimonial compulsion, entrenched as a fundamental right under our Constitution create a right to privacy has not been examined in MP Sharma. Furthermore, he quotes a paragraph from the judgment of MP Sharma case to establish the context in which the court had referred to right to privacy. Therefore, after laying down the justifications of his final decision first, he mentions his decision that the citation of MP Sharma case as a citation is faulty because there is no warrant for a conclusion that their lordships in that case has held that there is no right to privacy under our Constitution.

The second instance of this interpretational school is *Kharak Singh v. State of UP* [33]. The issue was the constitutionality of police regulations of UP which inter alia provided for surveillance of certain categories of people by various methods, such as, domiciliary visits at night, verification of movements and absences etc. the question was whether the impugned regulations violated the fundamental rights of Kharak Singh guaranteed to him under Articles 21 and 19(1)(d). Justice Chelameswar, again, establishes the grounds for his opinion before giving it thereby applying the teleological school of interpretation. He begins with mentioning the logical inconsistency that exists in the said judgment according to him which is that while on one hand, their Lordships opined that the maxim 'every man's house is his castle' is a part of the liberty under Article 21, concluded on the other, that absence of a provision akin to the U.S. Fourth Amendment [34] would negate the claim to right to privacy. He, then, states that in the case of Kharak Singh, the expression personal liberty in Article 21 takes within its sweep a bundle of rights. Both the majority and minority agree on this conclusion but the divergence appears when the minority decides that right to privacy is a part of this bundle while the majority disagrees with this decision. After establishing the base, Justice gives his opinion stating that the "approach adopted by the majority is illogical and against the settled principles of interpretation or even an ordinary statute; and wholly unwarranted in the context of constitutional interpretation [35]."

The final significant instance where teleological constitutionalism has been justified is when the Justice discusses whether the right to privacy is a Fundamental Right falling within the sweep of Articles of Part III. The discussion of this question starts by understanding what fundamental rights are and what right to privacy conceptually means. He states the origin of rights and how the constitution has certain values and beliefs that is these rights that form the core of the document. He then suggests how right to privacy is believed to exist in all the democratic countries and how the constitutions of other countries like Australia, Canada and United States of America which are comparable to our Constitution enshrines certain rights for citizens and non

citizens for better administration. He further builds his point by stating the very purpose of creating a written Constitution, which is to secure justice, liberty and equality to the people of India. These arguments are used by Justice Chelameswar to decide that like every other fundamental right enshrined in Part III; this right will also be adopted with some clarity and strictest scrutiny will apply only in certain cases whereas for others, the fair and reasonable standards of Article 21 will apply while incorporating right to privacy in the article.

By observing both the schools and applying them to the instances from the judgment, it can be concluded that one school of interpretation alone cannot justify a particular opinion of the Justice. Both the schools have led him to come to the same conclusion. Furthermore, in this analysis, there has been an overlap between the application of teleological and comparative approach to come to the conclusions mentioned. Hence Justice Chelameswar uses teleological and comparative interpretational schools in parallel to come to the ultimate decision that right to privacy is envisaged under Article 21 of the Constitution.

Conclusion

With the establishment of right to privacy as a fundamental right guaranteed under the Constitution, many situations where life of a citizen would be affected could be curbed. For example, AADHAR linking to various areas would not be mandatory anymore because personal information would be at the risk of being exposed which is now curbed. Another example could be the alleged issue where Mark Zuckerberg, developer of Facebook sold personal information of its users to advertisers. If the accusations are true, the Indian users could claim damages by claiming right to privacy as a fundamental right. Even the homosexuals who did not enjoy privacy in their own homes because of Section 377 could now be safe in their homes and claim damages under this right in case any unfair means are used to arrest them or curb them. The establishment of this right as a fundamental right will not only improve the solutions to the situations known but also help in other situation of which we aren't yet aware that affect or might affect the personal life of a citizen could also be understood and solved.

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³³ *Kharak Singh v State of UP*, AIR 1963 SC 1295.

³⁴ U.S. Fourth Amendment – "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

³⁵ *Justice K.S. Puttaswamy (Retd) vs Union of India & Ors*, Writ Petition (Civil) No. 494 of 2012.

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