

RIGHT TO

privacy



WHY IN NEWS?

Recently, in Justice K. S. Puttaswamy vs Union of India, the Supreme Court (SC) ruled right to privacy to be an intrinsic part of life and liberty under Art. 21

Welfare benefits through IT platforms

Using computerized data collected from citizens

Why right to privacy is needed in India?

Increasing internet users

Around 400 million Indians are using internet

Rapid digitization in India

May result into problems of ID theft, fraud, misrepresentation

Huge personal data collection

By MNCs without including protection procedures

BACKGROUND

A Committee was set up under Justice A P Shah to study the proposed draft Bill on Privacy 2011

In spite of several bills being tabled in the Parliament, for e.g. draft Bill on Privacy 2011, privacy is still not provided in any law

In M.P. Sharma (1954) and Kharak Singh (1961) cases, SC held that privacy is not protected under the Constitution

After Independence, Constituent Assembly decided not to put right to privacy in the constitution

Maneka Gandhi (1978) case held that any law interfering with personal liberty must be just and not arbitrary

The IT Act, 2003 was silent on privacy laws

KEY FEATURES OF JUDGEMENT

Expands individual's fundamental rights

By including in Article 21 freedom from intrusion into one's home, the right to choice of food etc.

Shows capacity of judiciary to self-correct

The judgement overrules its previous stand

Increase responsibility of state to protect data

Which are collected from individuals for national programmes, any breach in personal data collected from national programmes would have to be compensated

Independent external monitoring

Citizens can now directly approach SC or HC under Article 32 and 226

Etches firmer boundaries for the state

Now right to privacy cannot be abrogated except by a constitutional amendment

Ensures dignity

As citizens cannot exercise liberty and dignity without privacy

Data (Privacy and Protection) Bill, 2017 was tabled in the Lok Sabha

Ensures checks on accessibility of data by MNCs like Facebook and Google

International significance

As privacy is a part of ICCPR, which India has also signed and ratified

Preventing digital colonisation

Ensures checks on accessibility of data by MNCs like Facebook and Google

Recommendations of AP Shah Panel

New and comprehensive law to protect privacy in the private and public spheres

Privacy commissioners at the Centre and in states

Self-Regulating Organisations by the industry which would develop a baseline legal framework enforcing right to privacy

Nine principles of privacy to be followed by data controllers - Notice, Choice & consent, Collection limitation, Purpose limitation, Access and correction, Disclosure of information, Security, Openness, Accountability

Exceptions national security, public order and public interest, tackling criminal offences, protecting rights of freedom of others

CONCERN ARISING FROM JUDGEMENT

Bearing on RTI - Disclosure of information should not encroach upon someone's personal matters

Misuse by accused in investigations - on using personal information by law enforcement agencies

Data (Privacy and Protection) Bill, 2017

Rights-based approach where consent of individual is mandatory for collection, processing, storing and deletion of personal data with very limited exceptions

Differentiate data collectors & data processors and mandates them to collect, store or access personal data in a lawful & transparent manner & implement security measures for the same

Data intermediaries must inform individuals of data breach within a time frame

Data protection officer for grievance redressal, and users can appeal to Data Privacy and Protection Authority

However, bill skips the issue of data sovereignty. Unless explicitly specified, Indian IT laws are not applicable to data stored outside India and data intermediaries can claim immunity by exploiting this loophole

WAY FORWARD

India is still lagging behind in data protection law. In this direction, India should resolve the following concerns

Developing a national data protection framework

To define the contours of personal privacy in a broader context beyond just data

Horizontal application of privacy

Where this right is available against private players also so as to protect the interests of weaker sections as well

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), signed by European Council in 1981, is the first legally binding international treaty on privacy

European Union is planning to enforce its General Data Protection Regulation (GDPR) by May 2018

Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, legally protect persons against "arbitrary interference" with one's privacy, family, home, correspondence, honour and reputation

VISIONIAS INSPIRING INNOVATION

Related International laws

Encouraging use of privacy enhancing technologies (PET)

It puts the end user in control over what information they share and with whom

Balance individual's privacy right with benefits of data mining and big data

By clearly laying down a legal framework

Increasing privacy consciousness is required due to rapid changes in technology

By clearly laying down a legal framework

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