

Right to privacy not just for privileged few, it's a part of what makes us human

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Abstract

The assurance to dignity of the individual enshrined in the Constitution has finally found its de jure place through this judgement as the core of personal liberty and the right to privacy.

In a verdict that will surely count as one of the most important for human rights in recent times, the Supreme Court of India has resoundingly and in a unanimous 9-0 judgment, held the right to privacy to indeed be a fundamental right protected by the Constitution of India.

This means that laws that violate the right to privacy can be struck down on that ground by a High Court or the Supreme Court.

The assurance to dignity of the individual which is enshrined in the Preamble of the Constitution has finally found its de jure place through this judgement as the core of personal liberty and the right to privacy. One of the most important implications of this in jurisprudential terms is that the right to privacy is to be viewed not just in instrumentalist terms — what harms will befall us if we don't have privacy — but also in purely inherent terms — we need privacy for its own sake, because it is an intrinsic part of what makes us human.

By firmly holding that privacy is joined at the hip with dignity and liberty, the Supreme Court has put India on a progressive path of societal and technological evolution. A majority of the judges recognise the need to ensure the horizontal applicability of the right to privacy.

The government argued against the right to privacy by countering that companies like Facebook and Google collect your data. The judgment rightfully holds that this doesn't in any way diminish the need for privacy: it enhances it.

The judges realised the importance of privacy in the age of technology, and discuss the privacy concerns from data aggregation, from big data, and emerging areas like the right to be forgotten. However, they have left addressing these concerns up to the government, which has constituted a new committee on data protection chaired by Justice Srikrishna.

It is commendable that women's bodily integrity (in the context of abortion) and citizens' sexual orientation are among those aspects of privacy that were recognised in this judgment. After this judgment, it is difficult to see how Section 377 of the Indian Penal Code, which criminalises even consensual and private gay sex, will be upheld by the review bench of the Supreme Court.

Though the central government (along with four NDA-ruled states) opposed privacy being a fundamental right, while four opposition-ruled states had supported the petitioners in the case, this case was about far more than politics: it was about the ethos of our Republic.

If the judgement can be captured in a nutshell, then in the seminal words of Justice Chandrachud: "The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individuals."

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