

## Privacy is not considered as supreme

### What is the issue?

- Two years ago in this month, a 9-judge bench of the Supreme Court (SC) held that Indians have a constitutionally protected fundamental right to privacy.
- This was the judgment given in Justice K.S. Puttaswamy (Retd) vs Union of India case.

### What was the case?

- It held that privacy is a natural right that inheres in all-natural persons.
- It also said that this right may be restricted only by state action that passes each of the following three tests:
  1. Such state action must have a legislative mandate.
  2. It must be pursuing a legitimate state purpose.
  3. It must be proportionate i.e., such state action (both in its nature and extent) must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

### What are the prescribed high standards?

- This judgment fundamentally changed the way in which the government viewed its citizens' privacy (both in practice and prescription).
- It undertook structural reforms and brought transparency and openness in the process of commissioning and executing its surveillance projects, and built a mechanism of judicial oversight over surveillance requests.
- It demonstrated great care and sensitivity in dealing with the personal information of its citizens.
- It legislated a **transformative, rights-oriented data protection law** that held all powerful entities that deal with citizens' personal data, including the state, accountable.

### What was the data protection law about?

- This law embodied the principle that the state must be a model data controller and prescribed a higher standard of observance for the state.
- It banned the practice of making access to essential services contingent on

the citizen parting with irrelevant personal information.

- This law established an effective privacy commission that is tasked with enforcing, protecting and fulfilling the fundamental right to privacy implemented through the specific rights under the legislation.
- This law also revolutionised the technology sector landscape in the country, paving way for innovative privacy-aware and privacy-preserving technical solution providers to thrive and flourish, and establishing the country as a global leader in the space.
- This fairytale would have been the story of the last two years if the government had followed the script. But it did the exact opposite.
- The judgment in K.S. Puttaswamy case affected little change in the government's thinking or practice as it related to privacy and the personal data of its citizens.

### How was national security used as a reason?

- The law continued to execute mass surveillance programmes with little regard for necessity or proportionality, with justifications always voiced in terms of broad national security talking points.
- **Ministry of Home Affairs** (December 2018) - Authorised 10 Central agencies to intercept, monitor and decrypt any information generated, transmitted, received or stored in any computer in the country.
- This notification is presently under challenge before the Supreme Court.
- **Ministry of Information Broadcasting** (July 2018) - Floated a tender for 'Social Media Monitoring Hub', a technical solution to snoop on all social media communications, including e-mail.
- The government had to withdraw this following the SC's stinging rebuke.
- **Unique Identification Authority of India (UIDAI)** (August 2018) - Has had a request for proposal for a similar social media surveillance programme was floated which is also presently under challenge before the SC.
- **The Income-Tax department** has its 'Project Insight' which also has similar mass surveillance ends. These are but a few examples.

### How is data usage against privacy?

- The government has rejected the rights-oriented approach in the collection, storage and processing of personal data and has stuck to its 'public good' and 'data is the new oil' discourse.
- This convenient revival of the idea of privacy to mere information security appears to inform all its policies.
- This is evident from Economic Survey 2018-19 as it commends the government for having been able to sell and monetise the vehicle owners' data in the Vahan database.

- The government also urged to replicate the above success with other databases.
- The Justice Srikrishna committee which has published the draft Personal Data Protection Bill uses a similar language of 'free and fair digital economy'.
- This means that digital economy is its end and the notion of privacy is merely a shaper of the means, which not only misrepresents the bill's purpose, but also its history and the mischief that it intended to tackle.
- The committee made the choices it made despite being aware that the courts are likely to interpret every provision of the legislation purposively.

### **What is still hopefully possible?**

- As the K.S. Puttaswamy case ages and steps into its third year, the script is still on the table and the rights-oriented data protection legislation is hopefully still possible.
- This legislation should include comprehensive surveillance reform prohibiting mass surveillance and institution of a judicial oversight mechanism for targeted surveillance.
- It should recognise the principle that the state should be a model data controller as it deals with its citizens' personal information.

**Source: The Hindu**