The Fundemental Right to Privacy

Why in news?

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The Supreme Court recently pronounced its verdict upholding right to privacy as a fundamental right.

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What are the main aspects of the verdict?

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- In a unanimous verdict, a nine member Constitution Bench of the Supreme Court declared that privacy is intrinsic to life and liberty and thereby a part of the Art-21 of the fundamental rights.
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- It held that privacy is a natural & inherent right available to all humans and the constitutional recognition is only to make it explicit.
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- But the court also clarified that it is not an absolute right.
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What are the larger implications?

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- **Right to life & personal liberty –** This bench has become the 1st t0 explicitly overruled the Emergency era judgment in ADM Jabalpur v Shukla case, that had ruled that fundamental right to life & personal liberty could be suspended during Emergency.
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- **Homosexuality –** The judgment also implicitly overrules the 2013 judgment of the Supreme Court that upheld the validity of IPC Section 377, which criminalises homosexuality.
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- The verdict held that the sexual identity of the LGBT community is

inherent in the right to life.
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- Currently, Section 377 is pending before a Bench of five judges and in this backdrop, its striking down is the most likely outcome.
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- **Right to die -** As an individual's rights to refuse life prolonging medical treatment is another aspect that falls within the zone of the right of privacy, this revives the question of passive-euthanasia.
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- This was originally dealt in Aruna Shanbaug's case were it was then held that no violation of fundamental rights had been established.
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- The matter is now pending re-consideration before a Bench of five judges and this verdict is bound to influence that case.
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- **Beef & Alcohol -** While Bombay High Court held that consumption of beef is a part of the right to be left alone, the Patna High Court struck down the total ban on alcohol in Bihar.
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- While both these judgments is now being challenged before the Supreme Court, the current judgment has held that the right to food of one's choice is part of the right to privacy.
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- It is therefore clear that the 'privacy judgment' will have a bearing on matters like consumption of beef and alcohol.
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- **Data Protection -** As India has no statute regarding privacy or data protection, concerns were raised by the court.
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- It expressed hope that the government would undertake this exercise after a careful balancing of privacy concerns and legitimate state interests.
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- The court had previously been informed that the Ministry of Information Technology has constituted a Committee of Experts to deliberate on a data protection framework.
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- **Whatsapp & Facebook case -** The verdict has recognized the threat of Big Data in private hands and the need to establish a statuatory framework to safeguard them.
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- It was observed that information, when shared voluntarily, may be said to

be in confidence, and any breach of confidentiality is a breach of trust.
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- This assumes great significance, given that privacy concerns over WhatsApp and Facebook are pending adjudication before another Bench of five judges.
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- **Future of Aadhar -** The immediate trigger for the privacy case being taken up was Aadhar & hence the judgment's impact will also be felt the most there.
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- Attorney Genreal's argument regarding Aadhar, that the right to privacy is not fundamental in a developing country where people do not have access to food & shelter was severely rebuked by the SC bench.
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- This will significantly limits the stand that the union governemnt will be able to take before the bench that finally hears the validity of the Aadhaar Act.
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How does the future look?

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- **Reasonable Restrictions -** It is pertinent at this juncture to note that the judges have referred to the reasonable restrictions and limitations that privacy would be subject to.
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- The verdict also elaborated that such restriction should be based on compelling state interest and on a fair procedure that is free from arbitrariness, selective targeting or profiling.
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- The verdict also made a note for future courts that would exercise writ jurisdiction to be cautious about the nature of the relief they grant based on wide and open-ended claims of breach of privacy.
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- **State Surveillance –** Privacy as a value finds itself at loggerheads with notions of national security, the needs of a knowledge society and even socio-economic policy.
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- While surveillance of the state for security & administrative reasons would help better governance, the tendency to slip into an era totalitarian

control is very much real.
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- Hopefully, this judgment will put such concerns to rest and bring about a more equitable relationship between citizens and the state.
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Source: The Hindu, Indian Express

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