

Privacy is a natural right

“We need a meaningful national dialogue on what personal privacy ought to mean in the Indian context before we move on to the right to privacy” reads the headline of Raju Rajagopal’s op-ed in [Mint published](#) on 16 August 2017. As a young advocate working on the privacy case, I have some fundamental concerns with the arguments.

Rajagopal’s stance appears confused about what the issue before the court exactly is. He also assumes a fundamental right necessitates a dialogue in the Indian context. True, all rights and freedoms have cultural contexts. That argument cannot be used, however, to presuppose whether there is a fundamental right. And, contrary to what Rajagopal writes, the recently concluded hearing has little to do with Aadhaar. The question before the nine-judge bench is simply whether there is a fundamental right to privacy implicit in the Indian constitution. It is to answer this question, that the bench was formed after which the Aadhaar hearings will continue before a three-judge bench.

The question is not one of “elevating” privacy to a fundamental right. Instead it is only one of recognition. Privacy is not just the right to be left alone but is liberty and freedom in action, already guaranteed under Article 21 of our Constitution. Liberty is privacy and privacy is liberty. If it were not so the right to freedom of expression, guaranteed by Article 19, itself would be in danger.

Further, the idea of privacy is embedded in the notion of dignity and is also protected by the right to equality guaranteed by Article 14. This aspect is particularly important in the “Indian context” because dignity extends to all human beings in equal measure. It is not a concept limited to the elite. Even those who seek to be “acknowledged by the state” have the right to dignity and to privacy.

The concern that “privacy” as an amorphous concept should be not be recognized as a fundamental right because it might create a situation of administrative paralysis is also faulty. Amorphous concepts like liberty depend upon individual selfhood, spatial autonomy and other multiple choices including control over the mind. Liberty, dignity and freedom inform the three Articles 14, 19, and 21, and privacy is inbuilt in all of them.

Mr. Rajagopal’s core concern seems to revolve around the fact that there has been no public debate on what should be privacy in the Indian context. He goes on to say that the ground reality today is that there is very little understanding of personal privacy at “all levels of society.” He gives some examples where our privacy is unduly compromised in daily modern undertakings such as filing a bank form etc. This notion confuses privacy with secrecy.

While secrecy may be a kind of privacy, privacy itself is a much wider concept. When a person makes a private judgement in society and discloses some information to another member for any purpose, he does so within the realm of his constitutionally protected right of liberty. It does not mean that once certain information has been given out in the public domain he loses his right to privacy over it. The information must be used only for the purpose which it is handed for. This is all the more true with a scheme like Aadhaar where citizens hand out their personal data to the state in order to receive certain benefits. It is the responsibility of the state to ensure that each citizen’s privacy is protected.

It is true that India does not have a data protection law and lags behind several countries in this aspect. Of course, we need a data protection law, but one might want to recognize that we lag behind most nations which recognize privacy as a constitutional right. The Supreme Court has in several landmark judgements emphasized that there are some rights which are natural and which

inhere in individuals. The court has always striven to ensure that such rights be recognized as fundamental.

The expression “democracy” in the preamble of the constitution contemplates that the judiciary can interpret the constitution in a meaningful, purposive and relevant manner to meet the needs of the time. The real failure for India would be if courts fail to act as a citadel of justice and to protect the freedom and liberty of each individual.

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