

## Citizen vs State: On right to privacy verdict

In a rare unanimous verdict pronounced by nine judges, the Supreme Court has ruled that **privacy is a fundamental right** that requires constitutional protection. It was always known or assumed to be a common law right. Occasionally, and somewhat grudgingly, it was recognised in some verdicts as a fundamental right. In concluding that “the right to be left alone” is an inalienable part of being human, the court has restated a fundamental principle, namely that some rights are natural and inherent; constitutions only recognise them and make them explicit. This restatement of first principles became necessary mainly due to a strange and perverse argument by the Union government in the course of the hearings on the validity of its Aadhaar-based unique identity scheme that privacy is not a fundamental right. The fact that all the judges unanimously came down on this argument shows how much the government misunderstood the constitutional underpinnings of privacy as a value in itself and as an ineluctable facet of human dignity. The government argued that privacy is “so amorphous as to defy description”, that it is needless to call it a fundamental right as it is one in common law, and that it has been given statutory protection in different forms. There was even a suggestion that privacy is an imported value and that it is elitist. All these arguments fell by the wayside.

The outcome was not entirely unexpected. Not many would have seriously believed a constitutional court would rule that privacy is not a cherished right in a democracy. What implications the ruling would have on state policy and citizens' rights will be the core issues in future. A welcome aspect of the judgment is that it makes it clear that sexual orientation is part of privacy and constitutionally protected, and that the 2014 verdict upholding Section 377 of the Indian Penal Code is flawed. This opens up the case for a much-needed reconsideration. As for Aadhaar, it is pertinent to note that the judges have referred to the restrictions and limitations that privacy would be subject to. The test to decide the validity of any such restriction is that it is reasonable, based on fair procedure and free from arbitrariness or selective targeting or profiling. It can also be based on compelling state interest. This is where a cautionary note is in order. Courts exercising writ jurisdiction should be cautious about the nature of the relief they grant based on wide and open-ended claims of breach of privacy. The verdict has advanced and revived core constitutional principles in an era in which privacy is pitted against state interest. Somehow, privacy as a value finds itself at loggerheads with notions of national security, the needs of a knowledge society and even socio-economic policy. Hopefully, this judgment will set many such concerns at rest and bring about a more equitable relationship between citizen and state.

Rajasthan's ordinance shields the corrupt, threatens the media and whistle-blowers

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