



Mains Practice Question

Q. Examine the scope of Fundamental Rights in the light of the K.S. Puttaswamy vs. Union of India judgement. (250 words)

28 Jan, 2019 GS Paper 2 Polity & Governance

Approach:

- Examine the provisions laid out by K.S. Puttaswamy judgement on privacy
- Discuss how these provisions would impact other related issues related to fundamental right

Introduction

- A nine-judge bench of the Supreme Court of India held unanimously that the right to privacy was a constitutionally protected right in India.
- The Court reasoned that privacy is an incident of fundamental freedom or liberty guaranteed under Article 21 which provides that: "No person shall be deprived of his life or personal liberty except according to procedure established by law"

Body

The Supreme Court's landmark verdict making individual privacy a fundamental right will impact daily lives in ways that range from eating habits to online behaviour, and from sexual preferences to welfare scheme benefits

- **Aadhaar:** A challenge was put against the validity of Aadhaar Act; however Supreme Court has dismissed apprehension that the Aadhaar scheme violates citizens' Right to Privacy, saying minimal data was collected in the enrolment process. It said collection of demographic and biometric data under the Aadhaar Act does not violate the fundamental right of privacy as the information sought is limited and only for the purpose of identification.
- **Consent/Choice:** Nobody could be told by the State as to what they should eat or how they should dress or whom they should be associated with either in their personal, social or political life.
- **Euthanasia:** Indian law disallows medically assisted suicide. But the Bench said the right to privacy includes the right to refuse food or even medicine.
- **Health records:** These are important, private documents, whose publication can lead to social embarrassment and worse.
- **Information control:** It empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.
- **Laws:** Court said infusing a right with a constitutional element gives it a sense of immunity from popular opinion and, as its reflection, from legislative annulment, which a common law right would not have.
- **Sexuality and Privacy:** Section 377, criminalises consensual homosexual activity between two consenting adults has been invalidated.
- **Reproductive rights:** The Supreme Court counts reproductive rights as inherent to the right to life and liberty. Like privacy, this right is not mentioned in the text of the Constitution, but is a penumbral right — one derived from rights mentioned in the text.
- **Unauthorised taps:** Though guidelines on phone taps are already in place, the privacy ruling has

further reinforced protections against unauthorised surveillance.

- **Zero tolerance:** By making privacy a fundamental right by a 9-0 verdict in Puttaswamy case, SC has immunised it against attacks by simple legislative majorities.

Concerns

- Right to privacy must not be utilized as a cover to conceal and assert patriarchal mindsets.
- The Supreme Court judgment has clearly established the vertical application of the right to privacy against the state. However, its horizontal application, against non-state actors, has been left open to case-by-case adjudication in the future.
- It should not create any issues in the investigation of terror related cases.

Conclusion

The judgment demolished the argument that privacy is an elitist construct imported from western countries. It categorically rejected the premise that the poor in the third world were more concerned with “economic well-being”, and “privacy is a privilege for the few”. The judgement provides that every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects.

PDF Refernece URL: <https://www.drishtias.com/mains-practice-question/question-108/pnt>

