



Mains Practice Question

Q. The Right to Privacy has evolved through judicial interpretation. Trace this evolution and discuss its implications on contemporary issues like data protection and surveillance. **(250 words)**

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Approach

- Introduce by mentioning the constitutionality of Right to Privacy
- Delve into the Evolution of the Right to Privacy
- Highlight its Implications on Contemporary Issues Related to Data Protection and Surveillance
- Conclude suitably.

Introduction

The **Right to Privacy in India** has evolved significantly through judicial interpretation. Initially, **not explicitly mentioned in the Constitution**, it has now been recognized as a fundamental right under **Article 21**. This evolution has had profound implications on contemporary issues such as data protection and state surveillance.

Body

Evolution of the Right to Privacy:

- **Early Interpretations (1950s-1960s):**
 - **MP Sharma vs. Satish Chandra (1954):** The Supreme Court ruled that **privacy was not a fundamental right**, upholding the practice of search and seizure.
 - **Kharak Singh vs. State of Uttar Pradesh (1962):** The Court examined police surveillance and concluded that **privacy was not a guaranteed constitutional right**, though it acknowledged the concept of personal liberty.
- **Expansion of Privacy Rights (1970s):**
 - **Gobind vs. State of Madhya Pradesh (1975):** The Supreme Court introduced the **"compelling state interest" test**, borrowing from American jurisprudence.
 - It recognized **privacy as a fundamental right** but subject to reasonable restrictions for larger state interests.
- **Recognition of Informational Privacy (1990s):**
 - **PUCL vs. Union of India (1997):** The Supreme Court, in the context of **telephone tapping**, recognized the privacy of communications as a part of the right to freedom of speech and expression under **Article 19(1)(a)**.
- **The Landmark Judgment (2010s):**
 - **Justice K.S. Puttaswamy (Retd) vs. Union of India (2017):** A nine-judge bench of the Supreme Court unanimously declared the **Right to Privacy as a fundamental right under Article 21**.
 - The Court stated that **privacy is intrinsic to life and liberty**, and encompasses personal autonomy, dignity, and informational self-determination.

Implications on Contemporary Issues Related to Data Protection and Surveillance:

- **Enhanced Corporate Responsibility:** The evolving right to privacy has forced companies to adopt stringent data protection measures. They are now held accountable for their **data practices through Digital Personal Data Protection Act 2023**, with users and courts scrutinizing privacy policies more closely.
- **Cross-Border Data Flows:** Privacy considerations are reshaping rules on cross-border data transfers.
 - In 2022, **India's Computer Emergency Response Team (CERT-In)** issued directives requiring VPN providers to store user data.
- **Consent and Data Minimization:** Recent privacy interpretations emphasize informed consent and data minimization.
 - The Digital Personal Data Protection Act 2023, reflects this, proposing stricter consent requirements and purpose limitation for data collection.
 - This shift is evident in recent practices, such as **apps providing more granular privacy settings** and **websites updating cookie policies**, indicating a move towards user-centric data practices.
- **Oversight on Intelligence Gathering:** Privacy rights have spurred debates on intelligence oversight.
 - The **2021 Pegasus spyware controversy** led to a Supreme Court-appointed committee to investigate alleged illegal surveillance.
 - This incident underscores the growing tension between national security needs and individual privacy, pushing for more transparent and accountable intelligence gathering practices.

Conclusion

The judicial interpretation of the **Right to Privacy in India** has evolved from being an unrecognized concept to a robust fundamental right. This evolution has had far-reaching implications on contemporary issues such as data protection, surveillance, and technological advancements, ensuring that **individual privacy is safeguarded in the digital age**.

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