



## Privacy Judgement and the Aftermath

The article is based on [Privacy no longer supreme](#) that was published in *The Hindu* on 26<sup>th</sup> August. It talks about the course of Privacy issue after the landmark Puttaswamy Judgement on the same.

### Context

- Two years ago, in August 2017, a nine-judge bench of the Supreme Court in **Justice K. S. Puttaswamy (Retd) Vs Union of India** unanimously held that Indians have a constitutionally protected **fundamental right to privacy** that is **an intrinsic part of life and liberty under Article 21**.
- It held that **privacy is a natural right** that inheres in all natural persons, and that the right may be restricted only by state action that passes each of the three tests:
  - First, such state action must have a legislative mandate;
  - Second, it must be pursuing a legitimate state purpose; and
  - Third, it must be proportionate i.e., such state action — both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

### Privacy Judgement as a guiding tool

- This landmark judgement fundamentally changed the way in which the government viewed its citizens' privacy, both in practice and prescription.
- It requires governments to undertake structural reforms and bring transparency and openness in the process of commissioning and executing its surveillance projects, and build a mechanism of judicial oversight over surveillance requests.
- It demands from the authorities to demonstrate great care and sensitivity in dealing with personal information of its citizens.
- It requires to legislate a transformative, rights-oriented data protection law that holds all powerful entities that deal with citizens' personal data (data controllers), including the state, accountable.

### Steps taken by Government to strengthen Privacy Regime

- Government appointed a committee of experts for Data protection under the chairmanship of [Justice B N Srikrishna](#) that submitted its report in July 2018 along with a [draft Data Protection Bill](#)
  - The Report has a wide range of recommendations to strengthen privacy law in India. Its proposals included restrictions on processing and collection of data, Data Protection Authority, right to be forgotten, data localisation, explicit consent requirements for sensitive personal data, etc.
- **Information Technology Act, 2000:** The IT Act provides for safeguard against certain breaches in relation to data from computer systems. It contains provisions to prevent the unauthorized use of computers, computer systems and data stored therein.

### Two Years of Privacy Judgement

The judgment in *K.S. Puttaswamy* **effected little change** in the government's thinking or practice as it related to privacy and the personal data of its citizens.

- **National Security Vs Privacy:** Government continued to commission and execute mass surveillance programmes with little regard for necessity or proportionality, with justifications always voiced in terms of broad national security talking points.
  - The Ministry of Home Affairs, in December 2018, authorised 10 Central agencies to “intercept, monitor and decrypt any information generated, transmitted, received or stored in any computer in the country”. This notification is presently under challenge before the Supreme Court.
  - In July 2018, it became known that the Ministry of Information Broadcasting had floated a tender for ‘Social Media Monitoring Hub’, a technical solution to snoop on all social media communications, including email. The government had to withdraw the project following the top court's stinging rebuke.
  - A request for proposal for a similar social media surveillance programme was floated in August 2018 by the *Unique Identification Authority of India (UIDAI)*, which is presently under challenge before the Supreme Court.
  - The Income-Tax department has its ‘Project Insight’ which also has similar mass surveillance ends.
- **Data use Vs Privacy:**
  - The government has shunned a rights-oriented approach in the collection, storage and processing of personal data and has stuck to its ‘public good’ and ‘data is the new oil’ discourse.
  - This is evident from this year's Economic Survey as it commends the government for having been able to sell and monetise the vehicle owners' data in the Vahan database and exhorts it to replicate the success with other databases.
  - The Draft Personal Data Protection Bill that urged for a ‘free and fair digital economy’, has the digital economy as the end and the notion of privacy merely being a shaper of the means.

## Way Forward

- A **rights-oriented data protection legislation** is the need of the hour
  - which includes comprehensive surveillance reform prohibiting mass surveillance and institution of a judicial oversight mechanism for targeted surveillance, and
  - which recognises the principle that the state ought to be a model data controller as it deals with its citizens' personal information.
- For the privacy judgment to fulfil its true promise, it needs to go beyond spirited dissents to firm, binding judgments that keeps the political executive within clear, limited constitutional boundaries.

### **Drishti Input**

“Critically discuss the course of Privacy issue after the landmark judgement of the Supreme Court in the Puttaswamy case. Highlights the areas where privacy comes in conflict with the concept of ‘Public Good’.”