There Are No Easy Answers When It Comes to India’s Right to Privacy

BY VISHWAJEET CHAUDHARY ON 31/07/2017 • LEAVE A COMMENT

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Not only do difficult questions need to be answered and competing interests be weighed, but consequent policy also needs to be made to ensure a balanced state of affairs.
The essence of personal liberty is the freedom of conscience and thought. It is through these that the freedom of expression and other freedoms, such as carrying out a profession or trade of choice and moving freely, arise.

The freedom of thought, in some ways, is also tied to the idea of privacy; the idea that each person can think and act within her private domain without being monitored and censored. The centuries-old question, and one currently being answered by the Supreme Court to a certain extent, is where the line between a person’s privacy and the greater good is to be drawn? At what point does privacy take a backseat, for what greater good and to what extent?

A few aspects of privacy need to be kept in mind. The first is the question of what privacy is. Perhaps components of privacy include the right to be left alone and to control the information about oneself. Of course, these are not unbridled rights and have their limitation – but where these lines are to be drawn is the question.

In 2006, the UK government wanted to introduce a national identity card project. The card would have stored individual data and, in addition to being a proof of identity, allowed travel through the
European Union. There was a huge uproar and the project was abandoned. All the data collected was thus destroyed.

The groups lobbying against such a card relied on various arguments – the primary being breach of privacy – both inherent and possible in the future. George Orwell, in his land of dystopia in 1984 (written in 1949), had feared a ‘nanny’ state where there was no sense of privacy. Each individual was under constant surveillance. The almighty state was able to track individual thoughts and act on them – to maintain control and to further her propaganda. Arguments like this weakened the scheme. It was argued that the access to personal data by the state opened gateways to misuse and manipulation, including possible minority rights encroachment and racial profiling. Additionally, the ability to ensure the safety of the data was questioned. The scheme was finally scrapped.

What helped was that the UK’s 1998 Data Protection Act already prevented misuse. It lays strict guidelines on collection, retention and use of data – to ensure data is collected ethically and not misused. The obligation on both public and private bodies is to ensure compliance with this Act.

The Indian constitution has not guaranteed the right to privacy as a fundamental right. In the past, the Supreme Court has read into already existing rights, and the parliament and the court have added these to the constitution. For instance, the right to education is one such right. Additionally, the right to a clean environment has also been identified as a fundamental right.

The right to privacy is an inherently problematic one. The query is multi-dimensional: rights of the citizens and the state, the nature of these rights and their limits. The task before the Supreme Court is mammoth. Not only do difficult questions need to be answered and competing interests be weighed, policy also needs to be made to ensure a balanced state of affairs.

What the court decides will not only have a lasting impact on the citizens of India, but other common law countries that very frequently look towards the Indian courts for guidance will also be looking closely.

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