

General Studies – 2; Topic: Important aspects of governance, transparency and accountability.

Right to Privacy in India

1) Introduction

- The right to privacy is to restrain government and private actions that threaten the privacy of individuals.
- Privacy is a human right enjoyed by every human being by virtue of his or her existence.
- Privacy also extends to bodily integrity, personal autonomy, compelled speech and freedom to dissent or move or think.
- Since the global surveillance disclosures of 2013, the right to privacy has been a subject of international debate.

2) Legal and constitutional status

- Article 21 – Protection of life and personal liberty also include right to privacy
- In People’s Union for Civil Liberties vs Union of India, Kharak Singh vs State of UP --- Supreme Court held that the right to privacy is a part of right to protection of life and personal liberty under Article 21.

3) Support to Right to Privacy

- Ensure the dignity of the individual as mentioned in our Preamble.
- Privacy helps to avoid unwanted and intrusive interference in an individual's personal affairs.
- Without privacy, there would be nothing to stop a Big Brother-like entity from taking control of every aspect of life.
- Rights to liberty and freedom of expression cannot survive if the right to privacy is compromised.
- Mr. Nandan Nilakeni mentions, "We need a larger privacy bill, not just for Aadhaar but also for many other things like privacy in telephone tapping and in other online systems"
- Art.12 of Universal Declaration on Human Rights and Art.17 of the International Covenant on Civil and Political Rights provide for the right of privacy.

4) Negatives

- It can hinder the implementation and performance of welfare schemes -like Aadhar and Direct Benefits Transfer-which requires personal data of citizens.
- Right to Privacy will also restrict police and intelligence agencies to collect private information about accused, dead persons etc.

5) Recent Developments

- The Supreme Court stated that the right to privacy cannot be an absolute right and that the state may have some power to put reasonable restrictions.
- A nine-judge Constitution bench is hearing arguments to determine whether the right to privacy is a fundamental right.
- Data (Privacy and Protection) Bill, 2017 is introduced in the lok sabha.

6) Why there is a need to protect citizen information?

- The current focus on the right to privacy is based on the realities of the digital age.
- India is rapidly becoming a digital economy. Problems of ID theft, fraud and misrepresentation are real concerns.

- In recent years, several national programmes and schemes are implemented through information technology platforms, using computerised data collected from citizens.
- With more and more transactions being done over the Internet, such information is vulnerable to theft and misuse.
- Therefore any system of data collection should factor in privacy risks and include procedures to protect citizen information.

7) **Concerns / Challenges**

- No law has been passed and the term “privacy” has also remained undefined.
- Huge multinationals are taking data about millions of Indians abroad.
- Privacy consciousness is rather low in India compared to western countries.
- Indian institutions like joint family, temple festivals, marriage celebrations and community life do not encourage privacy.

8) **Government's role**

- The government's most basic obligation is to protect its citizens' rights.
- Address concerns about data safety, protection from unauthorised interception, surveillance, use of personal identifiers and bodily privacy.
- The data controller should be made accountable for the collection, processing and use to which data are put.
- The government should also provide internal procedural safeguards with independent external monitoring for the protection of rights.
- There needs to be active user education that makes them aware of their choices.
- The government needs to start with aligning its technology laws with the evolving Internet landscape.

9) **Aadhaar and privacy**

- Petitioners argue that Aadhaar scheme which collects personal details and biometrics is a breach of privacy.
- **Security concerns**
 - a. Aadhaar is mass surveillance technology which undermines security.
 - b. Concerns about rising data leaks of sensitive information online
 - c. Cyber security architecture is not very strong in India.

10) **Way Forward**

- We need a constitutional definition and guarantee of the right to individuality, personal autonomy and privacy in the digital age.
- State must put a robust personal data protection mechanism in place in this digital age
- Recognition of privacy as a fundamental freedom is an essential deterrent against intrusion into personal space.
- Protection to citizens against surveillance
- Balance must be maintained to protect privacy and to promote national interest.
- Impartial investigation and the option of criminal prosecution for gross violation.
- Judicial backing against violation of right to privacy.
- The Right to Privacy shall not be limited against the State, but also a right against the private corporations which collect citizen data.