

Business Standard

Right to Privacy: Four cases that may come up for review

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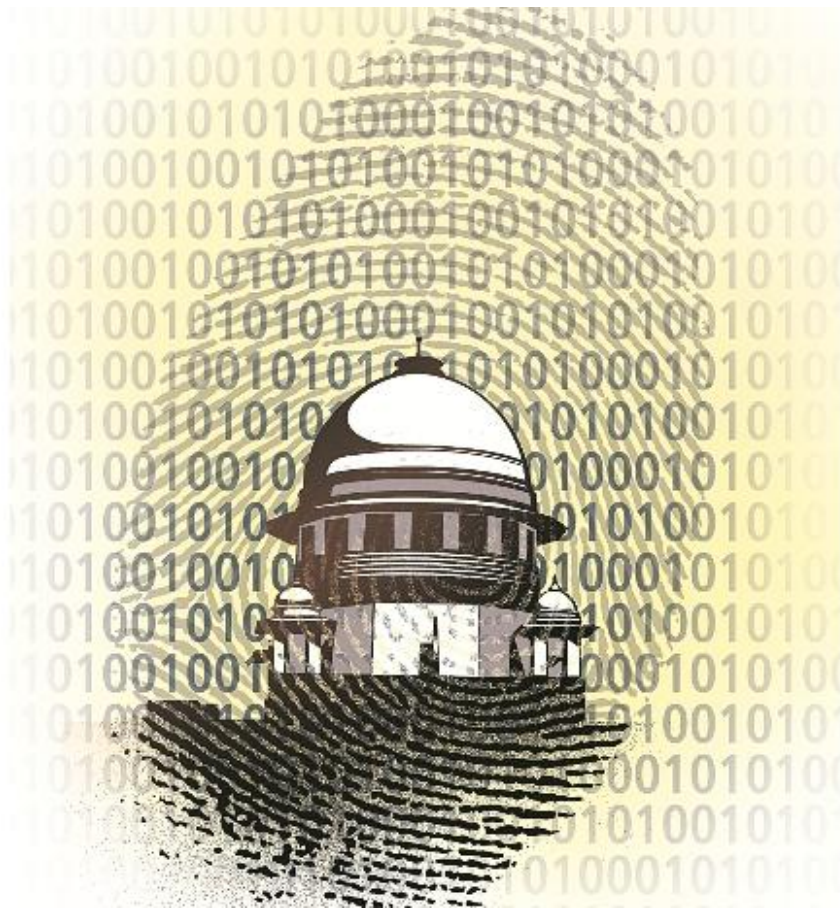


Illustration: Ajay Mohanty

The recent judgment by a nine-judge [Supreme Court](#) (SC) bench that declared the 'right to privacy' as a natural, inherent and inalienable fundamental right under Part III of the Constitution has paved the way for a new approach towards pending [privacy](#) matters, besides opening the doors to a swathe of reviews on previously decided cases.

Experts believe the [privacy](#) verdict marks a significant pillar in India's democratic journey and will usher in a new era of constitutional jurisprudence, in line with the Universal Declaration of [Human Rights](#) (1948) and the International Covenant on Civil and Political Rights (1966). The judgment lays down broad principles of privacy, which [it](#) says forms part of the constitutional core of [human liberty](#) and dignity.

However, the decision has not embarked on specific entitlements or interests that comprise this right, which [it](#) has said will be weighed on a case-by-case basis in light of a particular situation. As with all [fundamental rights](#) though, the [right to privacy](#) will also be subject to reasonable restrictions that may be placed by the government in appropriate circumstances.

“The future approach of the government in incorporating the principles of the [privacy](#) judgment while framing appropriate [privacy](#) laws and rules will determine the nature of new litigations,” says Supratim Chakraborty, associate partner, Khaitan & Co.

Chakraborty feels in light of the new dictum of the apex court, the government must eschew ambiguity in new regulations. A case in point is the [Information Technology](#) (Reasonable Security Practices) Rules, 2011, which had caused significant confusion in the applicability of the [law](#).

According to Salman Waris, partner, TechLegis, the [right to privacy](#) judgment will have far reaching consequences in every issue involving an aspect of [privacy](#). “All such cases will now have to be determined and re-determined through the governing principles laid down in this landmark judgment,” notes Waris.

One such case is the Facebook-[WhatsApp](#) data [privacy](#) matter (Karmanya Singh Sareen v Union of India) currently pending before the SC. The case first came up in the Delhi High Court (HC) over [privacy](#) concerns with a [WhatsApp](#) data sharing the policy with Facebook, which had acquired the messaging app. The [HC](#) questioned the effectiveness of the consent given by [WhatsApp](#) users while signing up for the services.

Although the court highlighted the lack of a data [privacy](#) policy and commented on the need for a comprehensive [law](#) on the subject, [it](#) finally took a take-it-or-leave-[it](#) approach on the matter. However, the court directed [WhatsApp](#) not to share any data collected before September 25, 2016, the date the data sharing policy came into force.

However, experts now feel the case will have to be looked at differently after the passage of the ‘right to privacy’ judgment, one of the reasons why the appeal had been kept aside till the pronouncement. “The Facebook-[WhatsApp](#) matter will now have to be adjudicated bearing the principles of the ‘right to privacy’ judgment in mind. Issues such as informed consent and the sufficiency of regulatory mechanisms for the protection of [privacy](#) may now feature at the forefront of such litigations,” adds Chakraborty.

Another burning issue that will have to be viewed in light of the 'right to privacy' decision is the challenge to the validity of the Aadhaar Act, 2016, (Justice K S Puttaswamy (retd.) v Union of India) — still pending before the SC. According to M S Ananth of Nishith Desai Associates, the challenge to the [Aadhaar Act](#) will now have to demonstrate the violation of [fundamental rights](#) and that the restrictions placed are unreasonable — or that due process according to [Article 21](#) has not been followed. "The government will have to demonstrate a clear objective to the statute and that the restrictions are constitutional," adds Ananth.

This view falls in line with the observations of 'right to privacy' decision, which has observed the need to balance the state's interest in collecting data with that of the [right to privacy of citizens](#).

Other significant judgments that may be liable for review after the passage of the 'right to privacy' judgment are Suresh Kumar Koushal v NAZ Foundation (SC - Section 377 - Unnatural offences - Indian Penal Code) and State of Maharashtra v Shaikh Zahid Mukhtar on the Maharashtra [beef ban](#) matter, which is currently pending before the apex court.

Both these cases have significant social and [privacy](#) concerns that are expected to be re-agitated in light of the decision in the [privacy](#) case, add experts.