

Compromising Citizen's Privacy for National Interest : A Fair Trade Off

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INTRODUCTION

Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Says Justice DY Chandrachud while drafting the judgment of the Landmark case Justice KS Puttuswamy V. Union Of India², uphealing the Right to Privacy as a Fundamental Right.

Privacy, as pronounced by J. Louis Brandeis is “*the most comprehensive of rights and the right most valued by civilized men.* It has been hailed as “an integral part of our humanity,” the “heart of our liberty,” and “the beginning of all freedom.”³ Although the notion of how one perceives Privacy varies from individual to individual, generally it means keeping such things secluded, which count in the domain of intimate in people's respective perspectives.

Thus to a higher note of accuracy Privacy may be defined as “*the ability to seclude some information from others and selectively showcasing relevant details to the world, subject to national and international rules and requirements, which goes without mentioning is not arbitrary and vital for nation in real sense.*”

1. FUNDAMENTAL RIGHT V. NATIONAL INTEREST

In the Indian Democracy, barring one, no other Fundamental Right can be exercised in its complete sense. Even the Golden triangle of the fundamental rights i.e. those under Article 14(Right to Equality), Article 19(Right to Freedom) and Article 21(Right to

Life) cannot be exercised in their truest sense, under National Emergency.⁴ Although it is said to be a bad law, but it clearly points out the conclusion that if for the nation, even the most crucial of all the fundamental rights may undergo certain limitations and restrictions, let alone the youngest Right to Privacy. Hence, it can be said that for the sake of the advancement and protection of the country, certain compromises can be made on and by the citizen to their Privacy, provided the means and methods to achieve the end is under due process of law, ensures safety to its citizens and leaves no room for fear of infringement of their privacy and security.⁵ Even the constitution of India provides for certain fundamental duties for Citizens to ensure a balanced cooperation between the State and its members for its smooth and harmonious functioning,-

- To uphold and protect the sovereignty, unity and integrity of India⁶;
- To defend the country and render national service when called upon to do so⁷;

Hence there lies a fundamental duty on the part of the citizen to contribute towards the welfare state up to a possible level, ensuring the betterment of his nation. In the democracy like ours, where the State provides us with Fundamental Rights fully exercisable by us without infringement, it is fairly reasonable for it to expect a minute cooperation from its inhabitants.

VITALITY OF PRIVACY- WITH OR WITHOUT RESTRICTIONS?

Privacy as a whole is a multi-fold act, and has layers when it comes to different strata of society or the Nation. To the same individual, it may and

in fact it does play different airs at distinct points of time in life. As pointed by Aristotle, Man is a social animal, he cannot survive without the society, it becomes fairly visible to clinch that he has diverse roles to play in the world around him. Hence, the notion of Privacy also fluctuates as per his roles. As a husband, privacy carries a different connotation, than that of being a parent. By the same token, the meaning of Privacy as a Citizen of India is pretty as like as chalk and cheese to other forms of the same. It in a sense implies his sovereignty provided to him by the State itself, to which he has delegated his rights and powers. By a Citizen's Privacy he infers some of his information, which he possess as a citizen of the nation and which, if altered may serve as a threat to him and the country at large, including information related to his identity, security, etc amongst other things.

However, irrespective of the vitality Privacy has on Citizens, it comes with certain don'ts, technically referred to as 'Restrictions', in the context of Public Policy, National and International interest, etc. Despite a general consensus on the value of privacy, it certainly has limits. For example, even before the CMS, India's information Technology (Amendment) Act, 2008, allowed the government to 'intercept, monitor, or decrypt' any information 'generated, transmitted, received, or stored in any computer resource' in the interest of 'sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States, or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence'⁸. For those in favour of compromise, the key point is that such surveillance is no big deal given the rationale behind it. Loren Thompson argues: ***“compared with the threat posed by terrorists bent upon destroying a Nation, tracking presents at worst only modest danger to our liberties. Its main purpose is to protect those liberties, not***

subvert them”⁹. In other words, privacy might be important, but is it so important that we should risk national and international security rather than compromise a little!¹⁰

A SENSIBLE TRADE OFF?

Not long ago, in the preceding paragraph, a vital need vis a vis need of reasonable restrictions on the concept of Privacy as a whole, was advocated. Redeploying unfathomable to the subject of Restrictions imposed by Government, for the sake of National interest, even the most skeptical of man would agree that for the upward mobility of the Nation, it becomes focal for the State to have access to the information of its Citizens, their records, conducts and identity amongst other things. With no trouble, it can be grasped that having gen of a resident's data, shall lead the Nation towards advancement, by minimizing chances of Tax evasion, Harboring, Fraud, Crimes, etc, and would also lead towards reaching of better incentives to all the Citizens, curbing chances of misappropriation and the like by the officials or members of the Family for that matter.

However, despite of the pros that are attached with making the Government cognizant of the minutiae of its inhabitants, it is very essential that there exists, the presence of a proper means on the side of the leaders to achieve the very End. One must assure that the procedure that needs to be followed for the same, is airtight and in no case, has the potency to harm or misuse the details of Citizens against the state, for instance giving birth to terrorism, wars, homicides, frauds, nuisance and the like. For that matter, the recent most verdict of the Supreme Court on Right to Privacy, being a fundamental right, triggered by the Aadhaar issue in the recent case¹¹, leaves room for doubts and discussions about the compromise made on the Privacy, inclusive of the biometrics of the citizens, being a Fair trade off or not!

AADHAAR ISSUE

The AadhaarCard, came in India, as an alternative to the identity cards possessed by the residents of the country. The amicable purpose of the same was to present a concrete proof about the citizenship of an individual in India. However, with passage of years, it started acquiring more of a compulsory document, which was not the case earlier. Conditions started getting negative response when it came to linking of Aadhaar cards with all the documents and details of the Citizens, and took the worst shape when it asked for linking Biometrics i.e. the fingerprints and eyescan of the residents.

According to the perspective in person, I comprehend the Aadhaar Issue as A JUST END BUT WRONG MEANS. I would support the notion that such information, if used by the State under complete confidentiality would not harm the citizens, as any such case should make the government directly liable, which even the government shall resist to carry. However the method and execution adopted by the same to implement it, is doubtful and can lead to threats to National sovereignty.

Cyber security concerns in the face of clandestine, untargeted surveillance are not only about national security but also citizens' right to privacy. Whether or not it succeeds in its declared primary aim of targeted welfare services for the poor, Aadhaar enables surveillance and tracking. Aadhaar promoters claim that access to its data base will not be permitted to any agency, and will be secure from intelligence agencies that spy on citizens. This claim is questionable since, according to its website, UIDAI contracted to receive technical support for biometric capture devices, from L-1 Identity Solutions, Inc. a US-based intelligence and surveillance corporation, whose top executives are acknowledged experts in the US intelligence community. Other companies awarded contracts for key aspects of the Aadhaar project, are Accenture Services

Pvt Ltd (implementation of Biometric Solution for UIDAI) which works with US Homeland Security, and Ernst & Young (setting up of Central Identities Data Repository (CIDR) and Selection of Managed Service Provider (MSP)).¹³ It is difficult to have confidence in the security of sensitive national information when the technical provider which creates, holds or manages the database is a business corporation with strong connections to foreign intelligence organizations. Furthermore US corporations are mandated by US law to reveal to the US government, information obtained during their legitimate operations, when necessary. The extent to which India's cyber security has been already invaded by surveillance is not even known, and when the security of the Aadhaar system is not water-tight, compromise on it will tantamount to compromise of national security. As far as institutional cyber security in India is concerned, barring one database protected by an indigenously developed network security system, official databases in India, including Aadhaar's Central ID Repository (CIDR), are protected by purchased commercial network security and cryptographic products. There is little need to emphasise the vulnerability of the Aadhaar database to access by unauthorized person/agency for data destruction, corruption or simply copying by surveillance or hacking. The effect on individual privacy is unquestionably adverse.

CONCLUSION

When it comes to a Tradeoff between Privacy and National Interest, even Etymologically it becomes next to impossible to maintain the maximum preciseness of balance between the two. However, if a reliable mean get carried out to attain the National Interest, assuring the Citizens that the compromise made by them for the upliftment of the realm, would never result in any sort of infringement or threat to their privacy and security, neither by domestic nor by any international enemy, and if so happens, in

all cases the state shall take stringent methods to reassure the dignity to its citizen, the Tradeoff can be said to be justified up to an extent. Though this has not yet been the case with India. Undoubtedly it has resolved to a resort to ensure advancement of the Citizens and the Nation as a whole, however the presence of loopholes in the due Execution of the same pushes it to an unfair side of Compromising Citizens Privacy and possessing a threat to it, which can never be justified until and unless it resorts to an unflinching modus.

(Endnotes)

- 1 GLS Law College, Gujarat University; Ahmedabad, Gujarat
- 2 Ks Puttuswamy V Union Of India Writ Petition (Civil) No. 494 of 2012
- 3 Warren & Brandeis, The Right to Privacy, 4 Harvard Law Review 193, 194 (1890), available at http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html
- 4 ADM Jabalpur v. SS Shukla, (1976)1207 AIR, 172 SCR (India).
- 5 U.S. CONST.
- 6 INDIA CONST. art.51A, cl.c.
- 7 INDIA CONST. art.51A, cl.d.
- 8 Human Rights Watch. (2017). *India: New Monitoring System Threatens Rights*. [online] Available at: <https://www.hrw.org/news/2013/06/07/india-new-monitoring-system-threatens-rights>
- 9 Anon, (2017). [online] Available at: <https://www.forbes.com/forbes/welcome/?toURL=https://www.forbes.com/sites/lorenthompson/2013/06/07/why-nsas-prism-program-makes-sense.pdf>.
- 10 Foreign Policy.(2017). *In Defense of PRISM*. [online] Available at: <http://foreignpolicy.com/2013/06/07/in-defense-of-prism/>.
- 11 Supra Note 1.
- 12
- 13 s.g.vombatkere, m. (2017). *AADHAAR Cuts Into Personal Privacy and National Security*. [online] The Citizen. Available at: <http://www.thecitizen.in/index.php/NewsDetail/index/1/7121/AADHAAR--Cuts-Into-Personal-Privacy-and-National-Security>