



# NEWSLETTER

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## **Privacy In India- A Constitutional Imperative**

-By Ravi Prakash Mehrotra (Advocate, Supreme Court of India), MC Member, FRNV

*“Privacy” in the context of the Indian society is an extremely nebulous term. Its impact and importance is understood and applied differently in a country as varied and dichotomous as ours. The meaning, scope and extent of privacy in India, given its multi-dimensional social, cultural and economic ethos and contradictions; the facets, safeguards and reasonable restrictions in regard to this subject, have been the subject matter of numerous debates, discussions and discourses. However, the issue of fundamental importance and of paramount socio-legal relevance in the context of the individual and society at large, is whether and to what extent, Indians have the right to claim privacy as a Fundamental Right under the Constitution.*

*On 24th August 2017, a Constitution Bench comprising 9-Judges of the Hon’ble Supreme Court of India, delivered the landmark judgment in Justice K.S Puttaswamy (retd.) & another v. Union of India & others, reported in AIR 2017 SC 4161, wherein it was unanimously and authoritatively held that the Right to Life and Personal Liberty guaranteed under Article 21 of the Constitution as a Fundamental Right, includes with its ambit the Right to Privacy as an intrinsic and integral part guaranteed under Part III of the Constitution.*

*This judgment on the Right to Privacy, although unanimous and without any discordant note, was rendered in the form of six concurring opinions of the learned Judges, which are both erudite and scholarly, giving a comprehensive insight into various facets and forms of this inalienable and sacrosanct right. In so ruling, the Nine Judge Bench*

considered a plethora of judgments rendered earlier on related subjects touching on issues relating to privacy, including judgments to the contrary rendered by Benches comprising eight and six Judges of the Apex Court.

The referral order by the Five Judge Bench on 18.7.2017, which culminated in the landmark judgment delivered on 24.8.2017, itself reflects the importance and amplitude of the subject, as under:

***“During the course of the hearing today, it seems that it has become essential for us to determine whether there is any fundamental right of privacy under the Indian Constitution. The determination of this question would essentially entail whether the decision recorded by this Court in M.P. Sharma and others v. Satish Chandra, District Magistrate, Delhi & others (AIR 1954 SC 300) by an eight-Judge Constitution Bench, and also, in Kharak Singh v. The State of U.P. & others (AIR 1963 SC 1295) by a six-Judge Constitution Bench, that there is no such fundamental right, is the correct expression of the constitutional position.”***

***“Before dealing with the matter any further, we are of the view that the issue noticed hereinabove deserves to be placed before the nine-Judge Constitution Bench.”***

While the Constitution Bench has accorded primacy and protection to the inviolable right of privacy as a constitutionally protected right, holding privacy to be the constitutional core of human dignity, including therewith the preservation of personal intimacies and safeguarding individual autonomy and recognizing the ability of the individual to control vital aspects of his or her life, the Supreme Court has underscored

and recognized that technological changes have given rise to concerns which were not present seven decades ago, and the fact that the rapid growth of technology may render obsolescent many notions of the present. The Constitution Bench has deeply reflected on the aspect that while informational privacy is a facet of the right to privacy, the dangers to privacy in an age of information can originate not only from the State but from non-State actors as well, particularly in the context of data protection, which postulates the requirement of a robust regime for data protection, thus necessarily requiring a very careful and sensitive balance between individual interests and legitimate concerns of the State. The Court has also accepted that while no legal right can be absolute, even the fundamental right to privacy has limitations, which are to be identified on case to case basis depending upon the nature of the privacy interest claimed.

It may be noted that the judgment recognizing privacy as a Fundamental Right arose in the context of a constitutional challenge to the Aadhaar project of the Government of India, which aims to build a database of personal identity and biometric information covering every Indian, and to make Aadhaar mandatory to avail benefits from social welfare schemes. The proposition raised is noteworthy and relevant, as to whether the biometric and personal details of an individual, collected by an Authority under the Government of India, can be shared with non-Government and commercial organizations as their data base, will tantamount of breach of privacy, and how such data is to be protected and utilized, which would not compromise this inviolable and sacrosanct right. In the light of the landmark judgment on privacy rendered by the 9-Judge Constitution Bench, the issue of Aadhaar, its constitutional validity, contours and parameters, are likely to be examined and adjudicated by a Five Judge Constitution Bench of the Supreme Court shortly.

In conclusion, the authoritative pronouncement by the Supreme Court of India on privacy, while clearing the earlier doubt and ambiguity on the subject, is truly path breaking, signaling the recognition and upholding of the Fundamental Right to Privacy as the constitutional core of human dignity, functionality and existence. This ruling of the Supreme Court constitutes not just a binding precedent, but as far reaching consequences for the social fabric of this country, for the concept and characteristics of privacy do not entail a singular meaning, rather there are myriad facets of privacy,

extending to and impacting issues of sexual autonomy, data protection, reproductive rights, relationships and policing about food choices and religion.

This judgment by the highest court of the land would undoubtedly serve as the constitutional and jurisprudential fountainhead and fulcrum, from and around which the contours of the right to privacy would evolve and revolve.

The value of this right could not be better stated than in the following words of the Supreme Court:

***“Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the state is to safeguard the ability to take decisions - the autonomy of the individual – and not to dictate those decisions.”***

## NEWS AND EVENTS

❑ A community-based activity was organized on November 2, 2017 at Sangam Park to celebrate International Day of Girl Child. About 24 children, 10 mothers and 2 Learning Centre teachers actively participated in the programme. Children participated in poetry recitation, drama and speech.



❑ On 14th November 2017, Children's day was celebrated at Sangam Park. About 30 children, 15 parents, learning centre teachers and Dr. Garima Bharti , Principal, Delhi University Social Science Centre Secondary School, Maurice Nagar also participated. The children participated in singing, dancing, painting and drama. The objective of

of this programme was to spread awareness about children's rights like education, play and care by their parents and family.



On November 30, 2017, a workshop was conducted in Govt. Boys Senior Secondary School, New Ashok Nagar, New Delhi. About 22 teachers participated in the workshop. The objective of the workshops was to help teachers to identify values from the chapters or lessons, they are going to teach in December and to weave into the teaching process those identified positive values. The Resource Person for the workshop was Prof. Daya Pant, Retd. Professor, NCERT.



On November 20, 2017, World Toilet Day was celebrated in Hauz Rani in partnership with anganwadies of the area. All the nine anganwadi from the area actively participated.



### Upcoming Events

Dear Friend & Members,

FRNV is planning a National level meeting on Saturday, 20-January-2018 @ 5:00 pm at Metro Bhawan, New Delhi.

You all are cordially invited to be a part of this event.

Dear Readers,

FRNV invites stories from its readers on deep-rooted values that have helped us in our everyday lives. Some of these stories will be featured in the next issue of our newsletter. So put your thinking caps on, recall the values integral to your life which you cherish and write to us at [shilpi@valuefoundation.in](mailto:shilpi@valuefoundation.in).