



Privacy and surveillance

Issues: Need for data protection law in India

Following an exodus of its users from its messaging service, WhatsApp, to apps such as Signal and Telegram, which promise more privacy options, the Facebook-owned service postponed the date for users to accept its new privacy policy.

WhatsApp: From Messaging to Business using Data

1. WhatsApp, with 459 million users, had emerged as the leading communications application for most Indians.
2. What has caused patrons discomfort is WhatsApp's ability to seamlessly share user metadata and mobile information with its parent company and social media behemoth, Facebook.
3. Facebook Inc., which also owns Instagram, has sought to integrate the offerings from WhatsApp, Instagram and Facebook, with WhatsApp acting also as a tool that secures payments for services and ads posted on the latter two applications, beyond its primary use as a messaging service.
4. This integration of three large consumption products is a means to monetise their everyday use by consumers and considering the fact that Facebook's revenue model uses data on its platform to allow advertisers to target ads towards users, the algorithms would benefit from the WhatsApp data as well.

Differential Treatment of European and Indian Consumers

1. Such data transfer from WhatsApp to Facebook is not possible in regions such as the EU, where data protection laws have stringent restrictions on storage and transfer of user data.
2. This regionally differential treatment has attracted the attention of the Ministry of Electronics and IT, which has sent WhatsApp a series of queries, including on why Indian users would be sharing information with Facebook, unlike in Europe.

Way Forward:

1. The onus is also on the Indian government to quickly take up the legislation for robust data protection, that aligns with the recommendations of the BN



Srikrishna Committee, which tried to address concerns about online data privacy in line with the 2018 Puttaswamy judgment.

2. The committee advocated for data localisation for all personal data. But data localisation as proposed by the committee may not necessarily lead to better data privacy, as it carries the possibility of domestic surveillance over Indian citizens.
3. Privacy is better addressed by stronger contractual conditions on data sharing and better security tools being adopted by the applications that secure user data.
4. The proposed draft Bill has some of these features, similar to Europe's General Data Protection Regulation, but it also requires stronger checks on state surveillance before it is passed.

A case to dispose of mercy petitions swiftly

Issues: Capital Punishment, mercy petitions process

Crux: The prolonged detention of death row convicts in prison is inhuman and against the canons of justice.

The Chronology

1. Balwant Singh Rajoana, former Punjab Chief Minister Beant Singh's assassin, was sentenced to death in 2007 by a special CBI court. His mercy petition was filed in 2014.
2. In 2019, the Ministry of Home Affairs said it had taken an "in principle" decision to commute the death sentence as a "humanitarian gesture".
3. But its decision could not be implemented because the Cabinet did not send the file to the President.
4. Rajoana has been incarcerated for over 25 years. The Supreme Court pulled up the government for its laxity and fixed the next hearing for sometime in January 2021.

The Death Row Convict

1. The delay in the execution of death row convicts coupled with long years of solitary confinement leads to psychological trauma for them.



2. The prolonged detention of death row convicts in prison is not just inhuman but also against the canons of justice.

Time Frame Needed

1. A time frame needs to be fixed for the President to dispose of mercy petitions. The lack of accountability of various officials in the government and the courts have adversely affected our criminal justice system.
2. Delays in investigations, court hearings and administrative steps to be taken after the final verdict need to be inquired into, and responsibility fixed.

Background:

Abolishing capital punishment

1. The delay in carrying out the death penalty is one of the reasons to review India's position on capital punishment.
2. The debate on the efficacy of the death penalty in reducing crime has been going on for several decades.
3. Through its report in 2015, the Law Commission of India proposed abolishing the death penalty.
4. India figures among the 56 nations in the world that have retained the death penalty, while 142 have abolished it either by practice or by law.

Are courts encroaching on the powers of the executive?

Issues: Judicial overreach, Judicial review

On January 12, 2021, the Supreme Court stayed the implementation of three controversial farm laws passed in September 2020 and ordered the constitution of a committee of experts to negotiate between the farmers' bodies and the Government of India.

The Fault

Rather than deliberating on the constitutionality of the three laws, the court appears to be trying to move some of the parties towards a political settlement. In doing so, it is wading into the domain of the government. Also, By not deciding on the constitutionality of laws court is abandoning its responsibility. Indirectly



by trying to broker a political negotiation court seems to have taken the side of the government.

So, what we see is that the court is actually abdicating its constitutional responsibility of judicial review. At the same time, it's acting in the usurpation of executive and legislative powers, going beyond the standard areas of judicial behaviour.

Issues requiring Judicial scrutiny:

The issues are of federalism, of agriculture being a State subject, as well as the manner in which the voice vote was passed in the Rajya Sabha, which was controversial.

Legislative incompetence of centre

Under our constitutional scheme, agriculture and farm produce are matters reserved under entries 14, 18, 30, 46, 47 and 48 of List II of the Seventh Schedule to the Constitution, which lays out the subjects on which State Legislatures are competent to enact the law. The argument is that the Centre simply could not pass the farm bills as it did not have legislative competence.

Conclusion:

Courts are, of course, competent to issue stay orders on parliamentary laws, but they need to set out legal reasons, not administrative ones. To issue a stay, courts usually state the legal and constitutional arguments which make them take the view that the law, on its face, raises a question of a constitutional violation. But what we're seeing recently is the court is very reluctant to take up constitutional challenges to politically controversial moves. That's quite unfortunate.