

Authors:

Chinmayi Arun, Research Director, Centre for Communication Governance & Assistant Professor of Law, National Law University Delhi

Smitha Krishna Prasad, Project Manager, Centre for Communication Governance, National Law University Delhi

Topic: Set in Stone: The Fundamental Right to Privacy in India (Tentative)

Abstract:

The Supreme Court of India first discussed the right to privacy in *M P Sharma v. Satish Sharma* (decided in 1954), in which it made an observation about the absence of an explicit / written right to privacy under the Constitution. It has since discussed and recognised this right in the context of a range of issues from the legality of phone tapping to the disclosure of patients' HIV positive status by doctors. Over the years, the judiciary has seen the right to privacy as integral to the rights to life, personal liberty, expression and dignity. However, since *M P Sharma*, in which an eight judge bench discussed the right to privacy in 1954, there has never been a bench of equal or a greater size that adjudicated the right to privacy.

In 2015, the Government of India argued before the Supreme Court that there is no right to privacy under the Indian Constitution. It used the 1954 case, specifically the fact that the case was adjudicated by the largest ever bench to rule on the right to privacy, to support its argument. The Supreme Court therefore constituted an even larger bench – consisting of nine judges – to settle the question. The bench is currently hearing all the parties to the case and we expect that it will publish its judgment by the end of this month.

Our paper will discuss the judgment in the context of (a) the history of the right to privacy in India (b) the arguments presented to the Supreme Court (c) its effects on the biometric based unique identity project, in the context of which it was it was challenged in the first place, (d) its potential impact on emerging technology and databases such as the proposed DNA profiling database and (e) its implications for other human rights such as liberty and freedom of expression. We will also present a brief analysis of the judgment in the context of international law and theoretical material on privacy.'