

Privacy Matters Far Beyond Aadhaar

Needed, separate law to secure personal data

The ongoing hearing before a nine-member bench of the Supreme Court on the right to privacy should focus more on the conditions that would warrant its infringement than on its constitutional validity. As Abhishek Manu Singhvi argues in the current issue of ET Magazine, India is party to international conventions that uphold the right to privacy, making it a part of the country's jurisprudence until a specific piece of legislation explicitly contravenes it. The right to free speech and assembly are fundamental rights, but subject to conditions. Hate speech or child pornography would not pass muster and a mob gathering to lynch someone would be unlawful, not an exercise of the fundamental right to assemble. Thus, even if a right to privacy exists, it would not be an absolute right, but allow similar constraints.

It is ridiculous in a country where it is increasingly routine for employees to log attendance pressing their thumb against a flashing electronic reader and for individuals to blithely use their fingerprints to unlock mobile phones to restrict privacy considerations to Aadhaar. The unique identity scheme promises immense benefits, particularly for the less-well-off and the health of the fisc, which outweigh the potential costs of its misuse. But Aadhaar is a minor part of digital intrusions into privacy. People sign away their consent to collection of their own and their contacts' data, when they download and instal assorted applications on their phones. India lacks any legal requirement for those who collect such data to safeguard the data. The focus of judicial engagement with privacy should be the degree to which individuals can have control over their personal data and the complex trade-offs in the digital world between having behavioural data of an entire population analysed, say, to train better artificial intelligence algorithms, than the existence of a right that, in any case, can be qualified.

That calls for a separate law on privacy that allows collection and portability of data while safeguarding people against the misuse of personal data.

Banks Need Capital; Bankers, Assurance

The National Company Law Tribunal (NCLT) has reportedly asked why the RBI needs to issue directions to banks to initiate bankruptcy proceedings against defaulters. Credit-rating agency Crisil's latest report on bad loans explains why. It estimates that banks will have to take a haircut of about 60%, worth ₹2.4 lakh crore, to resolve the top 50 stressed assets adding up to ₹4 lakh crore. Bankers would be loath to go ahead with haircuts unless they are assured against sleuths of the Central Bureau of Investigation and the Enforcement Directorate charging them with causing loss to the exchequer. Without such guarantee against present managers having to face the music for past decisions, they would sit tight. That is why the RBI has to step in.

Banks will need to make higher provisioning for bad loans that are referred to bankruptcy courts—100% in case of liquidation. Setting aside resources to cover losses will be tough at a time when banks, for the most part, are making losses. The RBI's latest financial stability report shows that the banking stability indicator worsened between September 2016 and March 2017 due to deterioration in asset quality and profitability. Clearly, banks need extra capital to underwrite the impact of a haircut or higher provisioning until asset reconstruction.

The government can directly infuse capital into banks. Alternatively, it can create a holding company for state-owned banks that can leverage capital to raise resources to capitalise banks. Another option is for the government to dilute its stake in banks and allow them to raise capital from the markets. Unless there is clarity on how the capital would be forthcoming, bankers would need to be prodded into invoking the bankruptcy code. It is up to the government to provide that clarity.

Smartphone apps and good transport facilities help conserve personal energy

What's So Smart About Walking That Mile?

Indonesians, far from smarting about their smartphones giving them away as the people who walk the least every day, are rightfully proud. The local media has highlighted the fact that smart people with cab-hailing services just a click away on their smartphones — the device used by researchers at Stanford University for their 46-nation survey of "activity inequality" tracking over seven lakh people — are hardly likely to hoof it in the heat and humidity instead. So, being at the bottom of such a list is a badge of honour, a testament to the Indonesians' ingenuity and the efficiency of transportation in their country. For this very reason, the cosmopolitan Hong Kong Chinese — not to mention mainland Chinese and the Japanese — may not be very pleased about topping this list with well over 6,100 daily steps — almost double the average Indonesian's 3,513.

That India ranks seven places above Indonesia in this "laziness" roll-call at 39th with 4,297 steps a day, is somewhat expected. After all, we smartphone-toting Indians are smart, but transportation often lets us down when it comes to the last-mile connectivity, which means adding at least 2,000 steps to our daily average. Otherwise, Indians would have beaten Indonesians to the bottom spot on conserving personal energy — the smart definition of lazy for tropical nations.

JAZZ BY THE BAY Lack of privacy laws is an invitation for everyone into our private lives

Why We Need Curtains



Milind Deora

Contemporary discussions on privacy must pay homage to Samuel Warren's and Louis Brandel's article in the 1890 Harvard Law Review, *The Right to Privacy* (goo.gl/3KB8nv). This writing essentially injected the idea of privacy rights into public discourse, pioneering a debate that continues unfettered today.

Although conceptions of privacy have since radically transformed with paradigm shifts in technology, the essence of Warren's and Brandel's argument remains steadfast: privacy must be a fundamental right. These paradigm shifts, and a world inundated with digital technology, legitimises — indeed, demands — a reconceptualisation of what constitutes a 'right'.

Cyber Cyborg

Judicial intervention, time and again, has reinterpreted and expanded the fundamental rights secured in the Constitution of India to accommodate these evolving conceptions of rights, as it should be with the right to privacy — without which the constitutionally guaranteed right to personal liberty would be severely compromised. During my tenure as Union minister of state for communications and information technology, I launched India's first National Cyber Security Policy in July 2013. The policy was aimed at tackling some of the threats that a rapidly digitising and information-driven world poses for individual privacy and national security in order to create a safe and secure

cyber world. But merely six years since I first assumed charge at the ministry, and four years since the introduction of the policy, the breakneck pace of evolution in the digital ecosystem has compelled me to restructure my opinion on this issue in order to assimilate those changes. I hope that our government and courts take cognisance of this evolution as they debate the fate of privacy rights in India.

The debate on privacy extends far beyond the Aadhaar-fuelled rhetoric within which it is currently ensconced in the country, and the images of an 'Orwellian State' that it conjures. Privacy in constitutional or legal vocabulary eludes a concrete definition precisely because of its vast and ever-evolving scope.

Addressing issues of consent and autonomy, the most obvious implication of privacy rights is a safeguard against unlawful surveillance, including an intrusion into different forms of personal correspondence, medical records, financial records and biometric and other kinds of personal data. Courts in the US have invoked the right to privacy in diverse cases, ranging from abortion and contraception to homosexuality, free assembly, defamation and identity theft.

The EU, on the other hand, has some of the world's most comprehensive privacy laws for its citizens, including the rather unconventional 'right to be forgotten', which grants an individual the freedom to erase her digital footprints.

Canada has a dedicated Privacy Commissioner to ensure oversight and implementation of the Privacy Act and the Personal Information Protection and Electronic Documents Act. The lack of such regulations in India is essentially akin to inviting the State, or any private player, into our homes and lives, granting them access to our private conversations, chats, emails, phone calls, gym sche-



Not a knock-knock joke

dules and dinner plans. In the absence of a privacy law regulating the collection, storage and use of private information, we are essentially surrendering control of our data, completely vulnerable to misuse and exploitation without connotations of illegality or mechanisms for redressal. A larger, more dangerous threat looms in potential attacks on sovereign data, the consequences of which could range from economic loss to a paralysis of essential government services such as electricity and transportation.

Privacy, Not Pry-vacy

This is why privacy laws are crucial. When we provide for strong privacy regulations, we create the infrastructure necessary to implement those laws, and this becomes our first line of defence against cyberattacks from hostile internal or foreign entities. This lacuna is analogous to leaving our national borders unmanned.

Opponents — that is, law enforcement agencies — who cite the 'existential terrorist threat' argument as the basis for rejecting the right to privacy must understand that this is an extremely slippery slope. We must strike the delicate balance between safeguarding national security and so-

vereign interest, and ensuring that individual privacy is not imperilled. Taking inspiration from the EU, we can circumvent the problem by establishing lawful mechanisms to intercept terrorist threats and prevent criminal activity, rather than subscribing to a blanket surveillance policy. There is a larger philosophical debate to be had here, however: What is lawful may not always be ethical. Sensationalised exposés of 'scandalous' information, even if obtained through means technically within the legal ambit, are still unethical in the context of privacy rights of the individuals involved. Any structures we establish for surveillance and monitoring of suspected anti-social elements must, therefore, be accountable not only to a legal framework but also to a moral one.

There is a compelling need to introduce accountability into the system, where stakeholders are able to seek legal redress for violation of their right to privacy and offenders are brought to justice. As the band Pearl Jam sang in their song 'Pry', 'P-R-I-V-A-C-Y is priceless to me.'

The writer is former Union minister of state for communications and information technology

The current debate on privacy extends far beyond the Aadhaar-fuelled rhetoric within which it is ensconced, and the images of an 'Orwellian State' that it conjures

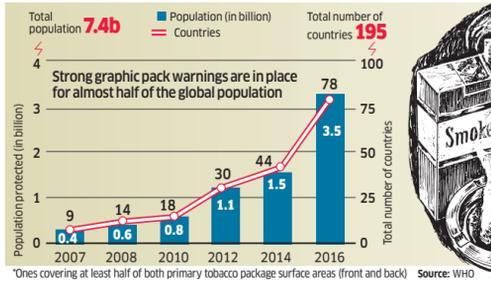
WIT & WISDOM

"We first make our habits, and then our habits make us."

John Dryden
Poet

Cigarette Pack Warnings

Large graphic warnings* are considered more effective in raising awareness and changing behaviours than smaller ones or those that contain only text. In 2007, only nine countries, with 364 million people, had large graphic pack warnings on cigarettes. Almost a decade later, such warnings are in place for almost 3.5 billion people in 78 countries — almost half of the global population (47%)...



MEME'S THE WORD



RED HERRING

Open Letter From Lutyenswood



Indrajit Hazra

To whomsoever it may concern,

Over the last few days, a lot has been said and written about the skit on the International Indian Film Academy (IIFA) Awards stage on July 14 by Karan Johar, Varun Dhawan and Saif Ali Khan. In an open letter (goo.gl/A6WwiW), Sharmila Tagore's son, who also happens to be Saif Ali Khan, wrote how the 'Nepotism Rocks' skit — in response to Karan Ranaut calling Karan Johar a "flag-bearer of nepotism" on a Koffee With Karan episode some six months ago — was "a joke on stage".

It was apparently a joke on the three Bollywood offsprings by the three themselves. It was very touching that Sharmila Auntie's son had also called Kangana, daughter of businessman Amardeep and teacher Asha Ranaut, and apologetic personally. This, he mentioned in the letter, adding that now, "Everybody needs to take a chill pill and back off." You take a chill pill, dude. Saif's letter and apology upset me and my lot here in Delhi quite a lot. 'Nepotism Rocks' even as a joke rekindled a belief in me that it had been cruelly snuffed out ever since Lutyens' Delhi's children were told to take a hike and stop moving and shaking. A new lot without pedigree slowly but surely took over.

So, it was nice to be reminded that even after being blinded into believing we were where we were because of pure ability, we were there in

power, in fashion, because of whose son or daughter or nephew or niece or classmate we are. Watching the IIFA skit made me proud, not ashamed, of dynasty.

In that 'joke', Yash Uncle's nephew, David Uncle's son and Sharmila Auntie's son made it clear to me that since India not only tolerates but actually celebrates a nepotistic Bollywood, it will surely again celebrate a nepotistic Lutyenswood. But despite the cringeworthy backtracking and apology to Kangana, Saif has held on to noble ideas in the letter that I will incorporate in my next campaign strategy.

As Saif points out, it's extremely relevant in a conversation on nepotism, which means family favouritism, to talk about genetics and eugenics. Eugenics means well born and, in a movie context, the genes of, let's say Dharmendra's son or Amitabh

Bachchan's son or Sharmila Tagore's son come into play. Because people, as Saif underlines, are interested in what their children will be like and whether they will have the genes of their parents, in terms of their talent.

He then cites the example of race horses. We take a derby winner mate him with the right mate and see if we can create another grand national winner. So, Pataudi Uncle's son argues, this is the relationship between genetics and star kids. Bonking to produce Bollywood perfection.

Saif, an amateur expert in genetics — despite Kangana pointing out that talent or ability isn't handed down through genes, something I will make a point to confirm by looking up Wikipedia later — makes the point that I always felt in my bones. I, along with Lutyens' Delhi's Chosen Lot, am honed through the couplings of India's most elite, most politically savvy, most baba of logs to become a great leader. My surname itself endows me with extraordinary abilities to lead people and manage a country. Ability is in my DNA — as was the publication where Saif published his open letter.

There is 'negative nepotism', as opposed to positive nepotism that, till recently, allowed GOFs (Grand Old Families) and old boy networks to operate and manage business and politics perfectly in tried-and-tested jolly oligarchies. The real flag-bearer of nepotism — negative nepotism — Saif rightly says, is the media. They photographed us and hyped us up to be the next big thing and we had no choice. From a young age, I have had to deal with being a youth icon. Surely, I was not destined to be a mall shop-owner or a chief minister. So, what is nepotism? I think nepotism means when you give somebody from your family a job that somebody else is better suited for. But is

that what happens in politics? Saif got my goat when he makes a distinction between Bollywood and what we do here in Delhi. Sorry, did.

Nepotism, he writes, is probably least prevalent in the movie industry and rampant in politics and business, adding that actors are the soft targets. What's sauce for the goose is sauce for the Nehru-gander, dude. Children of politicians who are in politics face the same arrows from the media (much of which, too, comprises products of negative nepotism) as actors' children in acting do.

So, if you say political kids had an advantage, of course, they did. It's an advantage created by the press because people were interested in them. It was supply and demand. People wanted it, media served it — before these upstart crows became the taste of town and took over Lutyenswood.

What was at play here were three systems. Aristocracy, the rule of the best. Ruled by the best. Also, meritocracy. It was ruled by the people with the most talent. And this was also ultimately tempered by democracy, which is people power. Negative nepotism cannot work in Indian politics because it is a democracy. So, yes, maybe I got a chance because of whose son I am. But that is more genetics than nepotism. It's a genetic investment that the electorate was making.

Compared to an outsider, I had a better chance of meeting people. But Mamata Banerjee is also an outsider. As is... well, never mind, you get the drift. If Bollywood can flaunt it — however jokingly, and despite the Kanganas dising it — so can Lutyenswood! It's time to bring back nepotism. I call it nepotism.

Sincerely,
Doesmysurname Reallymatter?
indrajit.hazra@timesgroup.com



Bathed in genetic meritocracy



Wealth is Important

SWAMI SWAROOPANANDA

It is absolutely false to think that spirituality or the right way of living is opposed to materialism and wealth. Everyone wants and desires wealth. The Vedas do not condemn wealth. It is worshipped as Goddess Laxmi and is necessary for the well-being of society.

The sages of India invoked the lord of wealth to create prosperity and success. The Ishavasya Upanishad clearly says that those who live a mere materialistic, acquisitive life dwell in ignorance, and those who live a life of spirituality neglecting the world plunge, as though, to greater darkness. Therefore, both have to be integrated. The advice is to remove poverty, reach a comfortable sphere to practice spirituality, and then rise above all needs and desires to gain freedom and eternity.

Wealth includes all natural resources. Intelligent use of these resources produces assets and affluence. Time is the most precious commodity we have; it is wealth and should be invested properly. To use time well, one must be clear about the goals and purpose of life and set them in such a way that they are long-lasting and satisfying.

Moreover, why settle for the least? The rishis ask us to gain the infinite. Why acquire something finite and limited? The problem is that our entire life is dissipated in the means and the goal is never accomplished. Wealth is a means; wealth is not the goal of life. It is not to be rejected; it is greed for wealth that has to be given up. Greed has no limits whatsoever and prompts man to wreak untold suffering on humanity.

Chat Room

Clean Ganga No Herculean Task

Appropos 'Bow to Ganga's Need, Don't Waste Money' (Jul 22), a lot of sewage treatment capacity along the Ganga has remained underutilised or non-functional and the river's rejuvenation depends on successful implementation of the Aviral Dhara plan. Some cost-effective solutions could include treatment of sewage and industrial effluents, and removal of solid waste. Trash skimmers should also be commissioned. Above all, corporates should take up this task as part of their corporate social responsibility.

SUBRAHMANYAN S H
Thane

Heed Pentagon on Doklam Mess

The US administration's counsel that India and China should engage in direct dialogue free of any "coercive aspects" to resolve the Doklam military standoff is a pragmatic suggestion. The two sides have been locked in a face-off for over a month after Indian troops stopped



the Chinese army from building a road in the disputed area. China is also said to be attempting to compel Thimphu to loosen its strong ties that have historically held India and Bhutan together. Coercion is not the way to settle border disputes. New Delhi and Beijing must have a dialogue. It makes sense for the government to take Bhutan into confidence at every step too.

N J RAVI CHANDER
Bengaluru

A Stable Interest Rate on PPF

The interest rate on the Public Provident Fund (PPF) has further dropped by 10 percentage points to 7.8% for the July-September quarter. This would hurt those who subsist on interest income, when the cost of living is rising every day and incomes are falling. People commit money in PPF for 15 years and reviewing interest rates on a quarterly basis is illogical. PPF interest rates should remain stable for at least a year for investors to plan their finances better.

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