

## For a Law to Protect Privacy and Data

Don't just reinforce Aadhaar law for privacy

At Wednesday's conclave on financial inclusion organised by the UN, finance minister Arun Jaitley was confident that the Aadhaar law would stand the test of confidentiality. At the same event, Niti Aayog vice-chairman Rajiv Kumar felt that the law would need to be strengthened, in the wake of the Supreme Court ruling privacy to be a fundamental right under the Constitution. Privacy and data protection are issues that go beyond Aadhaar. Regardless of whether the Aadhaar law takes care of privacy in relation to the biometrics gathered by the Unique Identification Authority of India, India needs a separate law on privacy and data protection, ideally on the lines of the European Union's General Data Protection Regulation, adopted in 2016 and slated to come into force in May 2018.

Recently, the Chinese law enforcement agencies nabbed 25 wanted criminals using facial recognition software applied to security camera images from a beer festival. A Chinese airline has started using similar software in place of boarding passes. In India itself, a number of private enterprises ask employees to mark attendance by putting their thumbs to a fingerprint-scanning machine. Phones now unlock themselves reading the user's fingerprints or facial features. When people download and install apps on their smartphones, they accept all sorts of conditions, including many that invade privacy. Social media open up a great deal of private data. The use of GPS to navigate leaves a trail of your movements. All this data is out there, without a law securing their integrity and protecting the data subject against harm. This must be remedied, without losing time. We have to go beyond Aadhaar.

There must be specific protection for the individual against unjustified, and not merely unauthorised, snooping by government agencies. Any breach of privacy must be authorised by a court order and the agency responsible must be held to account by a committee of Parliament, and not merely the executive. We need a law to create data protection and a regulator who would be accountable for the job.

## Don't Dither on Judicial Reforms

It is welcome that four states and one Union territory — Haryana, Punjab, Himachal Pradesh, Kerala and Chandigarh — have reduced cases pending for over 10 years in the subordinate courts to near zero. Other states with greater pendency must follow suit. The National Judicial Data Grid shows there are 2.54 crore cases pending in subordinate courts. About 9% have been pending for more than 10 years and 46.3% for less than two years. Even if states improve lower courts, disputes could end up with the higher judiciary. Besides the backlog, the system is simply unable to keep pace with new cases being instituted in our increasingly complex and diverse economy. The judicial and legal fraternity must develop the expertise to draw up new kinds of contracts.

What kind of a contract is needed, and what are the safeguards to be built in it, for example, a bank that takes over the assets of a failed power generation company wants to outsource the management and running of the plant to a state-owned power utility? Or, consider the Smallest Saleable Patent-Practising Unit (SSPPU), a concept in intellectual property rights law, which calls for informed techno-economic determination by a judicial authority. Phone chip-making companies argue the entire phone should be deemed the SSPPU and, therefore, the royalty they are due should be linked to the value of the entire phone, while handset makers would dispute that and identify the SSPPU as a subset of components, of a smaller value. Are our lawyers and judges equipped to settle this dispute on rational grounds?

The country ranks poorly on enforcement of contracts in the World Bank's Doing Business report. We need judicial reforms: more judges, streamlining procedures using information technology, to reduce delays and cut costs.

The iPhone magic was visible again, in the glazed eyes of fans at new launches

## With This Apple, Anti-Gravity Works

Not one, but three new iPhone models were announced by Apple earlier this week. For those who swear by Apple products, it may have been the Second Coming. But for the rest of humanity, it did seem a bit of an underwhelming moment in the history of the universe. Especially when the face recognition unlocking feature, one of the radical new features in the iPhone X — the 'X', confusingly, is the Roman numerical 10, even as it is pronounced as the (overused) 'cool' letter of the alphabet — failed in the demonstration. As for the other two models unveiled, iPhone 8 and iPhone 8 Plus, Apple has done what it does best: sell an upgrade (of iPhone 7) and make it sound like a critical step in evolution of man.

But Apple fans love falling for this squeal-inducing, wallet-shaking incremental magic. If Apple was in the automobile business, it would have upgraded cars from one wheel, to two wheels, to three wheels, to four wheels... and keep adding wheels to the delight of its believers (read: consumers). The iPhone X is slated to cost ₹9,00,000 for the 64GB version, and ₹1,02,000 for the 256GB one. We just hope iPhone aficionados will one day explain how these phones — is it blasphemous to call them 'phones'? — are, like a Van Gogh, imbued with their own intrinsic value that can't be measured in the crass terms of utility or price.

Strong IP standards can lead to innovation, which, in turn, can lead to jobs and growth

# How to Give India Some Ideas



Hemal Shah

When it comes to promoting innovation, India is already taking the lead among emerging economies. Earlier this year, GoI launched the India Innovation Index, which ranks its states on innovation through an online portal. Then, in June, it unveiled an action plan for the Scheme for Intellectual Property Rights (IPR) Awareness, an important part of implementing the 2016 National IPR Policy. Now, GoI is working to develop an IP exchange to better capitalise on, and support, existing patents. India's states are also taking steps towards innovation. For example, Punjab recently welcomed India's first Technology and Innovation Support Centre — a World Intellectual Property Organisation (WIPO) initiative to stimulate a vibrant conversation on IPR protection.

### Emergence and Shine

These innovation-led growth strategies give India the opportunity to serve as an example for other emerging economies. According to a new Harvard University study, India is expected to remain among the fastest-growing economies with an estimated annual growth rate of 7.7% until 2025. Simultaneously, the 2017 Global Innovation Index — a joint initiative by business school Insead, the World Intellectual Property Organisation (Wipo), and Cornell University — ranked India 60 out of 127 countries, indicating steady progress from its rank of 81 in 2015.

However, a recent report by Niti Aayog-IDFC Institute that analyses state-wise development shows that job growth, particularly good quality job creation, remains a challenge. India will need to continue reforming to sustain its economic growth trajectory. It will need to create one million jobs a month, invest heavily in research and development, and integrate into the global value chain quickly. If its economy falters, India risks falling into the 'middle-income trap' — the point when rapidly growing countries are susceptible to a loss of economic momentum or even stagnation.

They are trapped in an impasse: they are no longer low-income, low-wage, resource-driven economies, but have failed to make the transition to high-income, high-innovation economies. This is when economic growth plateaus. The Brazilian and South African experiences are cases in point.

To realise India's innovation vision, and to avoid the middle-income trap, GoI must first fix the gaps in its National IPR Policy: the key to the growth of innovative and creative industries. An effective IPR framework is indispensable to attract foreign investors, disseminate creativity and encourage local innovators to invest in their own ideas.

India can further sharpen its National IPR Policy to realise the innovation-growth relationship by capitalising on specific sectors, such as its flourishing generic drugs industry and the thriving services sector. For instance, the policy should help India foster an environment that welcomes and protects life sciences investments, one that recognises genuine inventive steps in drug formulations.

As for services, the removal of the restrictive novel hardware requirement for computer-related inventions is an encouraging step towards recognising the patentability of all forms of technology. However, greater clarity on patentability can supple-



Release the genie

ment GoI's 'Startup India' initiative. Furthermore, GoI must follow through on updating legislative infrastructure in a way that enables domestic and foreign innovators to protect their trade secrets and accelerate technology transfers.

As GoI looks to address the shortcomings in its innovation and IP policies, it can also examine three opportunities more closely.

First, India can encourage and enhance a streamlined, market-based licensing business model for greater technology diffusion. New research from a joint study by the US Chamber of Commerce and Pughatch Consilium ([goo.gl/j8YH4H](http://goo.gl/j8YH4H)) indicates a strong relationship between effective licensing and innovative technology diffusion, job creation and economic growth.

### Learn From (Their) Mistakes

The study also shares examples from China, Brazil, South Africa and Indonesia, where a mix of administrative hurdles, legal barriers and coercive licensing issues pose serious barriers to technology diffusion. India can innovate by eliminating its peers' failed policies.

Second, India could consider strengthening its patent system and remove price control mechanisms on medical innovations. According to a 2016 study by the London School of Economics ([goo.gl/1a444C](http://goo.gl/1a444C)), policies that strengthen patent protection and remove price controls significantly reduce drug launch time and accele-

rate drug diffusion.

This data must be taken into consideration, especially as GoI considers extending price controls to more drugs along with the recent inclusion of orthopaedic knee implants to its list of medical devices. Also, additional price controls proposed in the recent draft pharmaceutical policy is at cross-purposes with the ultimate goal of spurring innovative research and improving drug quality.

Finally, India's transition from pro-innovation messaging to innovation-led growth merits the effective communication of benefits to all stakeholders. The growing introduction of IPR education in Indian law schools is welcome. GoI should collaborate increasingly with foreign law institutions to adopt IPR curricula in line with global best practices. It could work with the private sector to disseminate the positive outcomes of any joint collaboration, including, for instance, Pfizer's innovation accelerator programme, Qualcomm's 'Design in India' initiative, or partnerships with GoI's Jan Aushadhi programme.

Strong IP standards can fuel the growth of domestic innovative industries, help attract greater foreign investment and bolster India's economic prosperity. They can also provide an example to other emerging economies by showing how innovation leads to growth.

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India can further sharpen its National IPR Policy by capitalising on specific sectors, such as its flourishing generic drugs industry and the thriving services sector

### FUNNY BUSINESS

# Hello? Hello! HELLO?? #&%@!



Anuvab Pal



In all the years I've written this column, I've been careful not to write about cellphone networks because that's a topic that would suddenly cause such a swelling of collective blood pressures — both for readers and myself — that we would all spontaneously burst in anger.

And that's not a good thing. Both for reading and writing. Everyone says we now have 4G. But I have a more basic problem: I don't even have network. It's suffice to say that in the age of 4G or 5G — or whatever age we live in — I haven't been able to finish one phone call without

it dropping because of no network. Yes, not one call.

And I've had this happen in any circumstance you can imagine. Places you'd think the call doesn't drop is the place it drops first. An MLA from Bengal told me, "When I'm in the district campaigning in the remote border area, I'm convinced my cellphone won't work and it does. I even get signal from Bangladesh. When I am in the middle of the city in Kolkata, it says 'No service'."

I don't even get network inside the office of my telecom provider. Even if I was sitting on a network tower, chances are low I'd get to finish a call. Anywhere you go, it is unwinnable. In the middle of Hyderabad's hi-tech city, in five-star hotels that advertise '21st century conferencing facilities', in cars, stationary, at heights, at sea level, coming towards the person I'm speaking to, going away from the person, in big cities, in rural India, inside Parliament, inside the Bombay Stock Exchange, inside courts both high and low, on highways, on



Maybe this'll enhance reception

narrow streets.... Everywhere every telco says they have network are the very places I don't get it. Once the CEO of a telecom company couldn't finish a call at a telecom conference about the future of telecom. The only time I was able to have a full chat was at a crematorium outside a city.

When 5G is invented, and it won't be long till it is, they'll advertise it as a thing where you become the Wi-Fi instead of looking for a Wi-Fi area. For those searching on Google to check if that's what 5G is, it is not. That

is why this column is known as 'funny business'.

Then there's the internet. Every telecom provider is running ads saying I can stream entire cricket matches, Game of Thrones, Bahubali 23 (which hasn't been made) on speed so quick that it not only plays the show, it plays it at a speed so quick that it feels like you are watching the show in fast forward. That's apparently how quick their fantasy-streaming speed is. In reality, try to stream anything, and in three seconds, it is buffering with that little circle that never completes revolving.

Which made me wonder, is it just me? Maybe I don't want to come off like an idiot saying I chose a bad provider. So, I keep quiet about it, allowing this myth to grow that we live in 4G land. And that's the silence that allows us to think we live in 4G land.

When in reality, all our calls are dropping because there's 0G going on. The only G here is us, customers: gullible. I hope in the future we Jio differently.

### DATA PROTECTION LAW

# Saving Privacy for Public Good



Akriti Gaur & Namrata Mukherjee

The Supreme Court's judgement last month of Justice K S Puttaswamy vs Union of India ([goo.gl/vdAqSu](http://goo.gl/vdAqSu)) has been widely acclaimed as a significant milestone in the jurisprudence on fundamental rights in India. The court unanimously declared that the right to privacy is a fundamental right and recognised informational privacy as one of its facets.

The right to informational privacy requires that an individual is able to affirmatively control her life and personality by controlling her personal information. This means that the law must guarantee an individual the ability to exercise control over the collection, use and disclosure of her personal information. This right is of particular significance in the digital age in which people are giving up huge volumes of personal information to access digitised services.

Further, in an age where State and non-State actors alike have access to a citizen's personal data and activities — such as biometric information, internet-use patterns, geometric in-

formation, financial information — ensure data-security measures to protect personal data.

While India does not have a data protection statute, the Information Technology (Reasonable Security Practices and Sensitive Personal Data or Information) Rules, 2011, issued under the IT Act, seeks to introduce Fipps in India. While the rules are a first attempt towards framing a legal framework for data protection, they fall considerably short of internationally accepted data-protection standards.

First, they apply to a restricted category of data that are deemed 'sensitive' in nature. This includes data such as those pertaining to physical, physiological and mental health conditions, sexual orientation, medical records, biometric information, etc.

Second, they apply only to the private sector, thus, giving the government a free rein to collect and use people's personal information as per their discretion. Further, it allows for unlimited sharing of data with the GoI on broad grounds such as prevention, detection, investigation including of cyber incidents, prosecution and punishment of offences, etc. coupled with a limited obligation on the government to not disclose such data.

Finally, the absence of an independent and effective enforcement mechanism means that these rules are nothing but a paper tiger.

Other than the IT rules, scattered instruments across sectors such as

circulars issued by the Reserve Bank of India requiring the formulation of privacy policies, the Credit Information Companies (Regulation) Act, 2005, and allied rules, and provisions of licensing agreements for telecom service providers recognise limited Fipps. However, they fall short.

Given India's transition into a digital economy, an effective regime for the protection of personal data is the need of the hour. The creation of such a regime will be a complex exercise that involves balancing the rights of an individual vis-à-vis the benefits of big data and legitimate State interests such as national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits.

Attempts have been made in this regard in the past with private bodies and GoI coming up with multiple drafts of a Privacy Bill that recognises data protection as an intrinsic aspect of privacy in the digital age. Unfortunately, none of these Bills has seen the light of day.

With the Supreme Court judgement on privacy, and international trends such as the European Union revamping its data-protection framework, India can no longer take cover behind the ambiguity on the legal position pertaining to the privacy, or afford to lag behind the international narrative.

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## Looking in the Mirror

THICH NHAT HANH

Awareness is a mirror reflecting the four elements. Beauty is a heart that generates love and a mind that is open.

The moments during the day of looking in a mirror can be moments of deep awareness. The mirror can serve as a tool for cultivating mindfulness so that we develop a broad capacity to understand and love others. Anyone who maintains awareness in the present moment becomes beautiful and naturally emanates peace, joy and happiness. A calm half-smile and loving heart are refreshing, and they allow miracles to unfold. The Buddha's smile is beautiful because it expresses tolerance, compassion and loving kindness.

In traditional cultures, the four great elements were earth, water, fire and air. The Vietnamese poet Tru Vu wrote: The flower, whose fragrance is ephemeral, is made of the four elements. Your eyes, shining with love, are also made of the four elements.

The poet is saying that the four elements are neither mind nor matter. They are the universe itself revealed to us. When your mind is the clear mirror of meditative awareness, you will know that you are the outward expression of the essence of reality. So please smile. Smile with your eyes, not just with your lips. Smile with your whole being, reflecting the four elements in the mirror of mindful awareness.

### Chat Room

## Yes, Let's Leave Oilcos Alone

Apropos the news reporting, 'Oilcos to Retain Pricing Freedom, No Plans to Intervene: Pradhan' (Sep 14), it is gratifying to note the assurance of the petroleum minister that the oil companies will be allowed the freedom in fixing prices of their products based on the crude oil's import price. There is nothing that warrants reduction in duties and taxes by the finance ministry too. Any intervention by the government to reduce the selling prices of petrol or diesel will be counterproductive and increase the fiscal deficit and fuel inflationary pressures. This is an opportunity for the people to be conservative and use less so that the pressure on import bill can be mitigated.

S KALYANASUNDARAM  
Byemail

## Infrastructure Needs DFIs

This refers to the Edit, 'Politics, Not Funds, Curbs Infrastructure' (Sep 13). Infrastructure deficit in the country must be tackled for the economy to grow. For long, commercial banks that are laden with debt have financed infrastructure. It is imperative to revive development finance institutions (DFIs), bring uniform land acquisition laws, attract more foreign direct investment, and encourage insurance companies and pension funds to invest in the country's infrastructure projects. Such a policy is a prerequisite to ensure transparent practices in the appraisal of large projects.

SANJAY TIWARI  
Hisar

## Bangladesh Must Introspect

New Delhi has reported to have given humanitarian assistance for Rohingya refugees in Bangladesh by flying down food and other essential items. Over three lakh of these refugees have taken shelter in Bangladesh, which proposes to raise the issue at the UN. Does Bangladesh have a moral right to raise the issue? Dhaka should first take back more than 10 times of this number of illegal Bangladeshi immigrants who have entered India since 1948. They have become a social as well security problem for our country.

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The key to safety