

CURSOR All rights are limited, the point is to delineate the limits to invasion of privacy

For a Law to Protect Data



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Much of the debate on whether a right to privacy exists in Indian jurisprudence misses the point. Suppose the Supreme Court reiterates an earlier view that such a right is implicit in the rights to life and liberty. Will it invalidate Aadhaar's infringements of privacy? After all, no right is absolute. The point is to have a separate privacy law that would delineate the limits to curtailment of privacy and the conditions in which any such curtailment would be valid and legal.

The point is to lay down the rights of the individual, information about whom is gathered, the data subject, in European Union jargon. The law must also specify the obligation of those who collect data to protect the data they collect and prevent it from doing harm. There must be a mechanism to supervise the use of data and to hold data collectors and data users to account. The law must also specify the penalty for violating the rights and obligations specified with regard to personal data.

Aadhaar Links Citizens

Writing in the Economic Times Magazine, Abhishek Manu Singhvi pointed out that an individual's right to privacy is implicit in Indian law, by virtue of India signing up to several international conventions on human rights that include the right to pri-

vacancy and because this right can be derived from other fundamental rights (<https://goo.gl/ZKeMgG>). But just because the Constitution holds out a right, it does not mean that it cannot be infringed on various grounds.

The right to free speech cannot be used to spread hatred, or the right to assemble will not override a curfew declared to prevent violence. A search warrant will most certainly prevail over the right to privacy. Mere assertion that the right to privacy is part of the country's legal guarantees to its citizens does not mean it would contravene Aadhaar.

Some make a distinction between invasion of someone's privacy because there is reasonable ground to believe that he has committed a crime and the systemic trespass into someone's personal domain represented by Aadhaar. This is less persuasive than it might seem at first glance.

Consider credit scores that are generated by a credit-rating agency, based on people's credit history. A person who diligently services his loans gets a high score and those who default get poor ones. These scores are extremely useful for a bank when it processes a loan application.

The score is obtained by systematically breaching a population's data privacy (an individual's data is not enough, it has to be put in relation to the credit behaviour of others). Since banks lend their depositors' money, using a credit score to make a credit decision improves social welfare, as compared to a situation in which personal data remains inviolate and credit scores do not exist.

The state disburses funds. These funds belong to the people in general. If the funds are spent as intended, and not diverted to line the pockets of influence peddlers, society itself stands to gain. Aadhaar is of immense



Oh damn, it's a privacy law!

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help in avoiding diversion of funds from intended use to pockets of power brokers. The short point is that Aadhaar represents a relationship not just between the state and the numbered, biometered individual but among the totality of citizens, improving the utilisation of their collective resources.

Data Revolution Afoot

But what about the potential for Aadhaar's misuse by the state? Will it not increase its powers of surveillance and control? This is a genuine worry and must be addressed.

Even without Aadhaar, the powers of the state to spy on citizens are immense and unchecked. If the state wants to eavesdrop on citizens or follow them around, it just does. There is no mechanism to hold it to account. In the US, a court order is required to invade the privacy of a citizen in this fashion. And the agency that conducts such acts is accountable to the Senate committee on intelligence. In theory, an institutional mechanism is in place to regulate the state when it breaches a citizen's privacy and to hold it to account.

India lacks such an institutional

mechanism. An explicit law on privacy would be the place to create one. The law is required not only in relation to the state but also vis-à-vis commercial entities, which collect tonnes of personal data. Absence of a law that calls for protection of the data they collect and for its benign use is not so much a void as a pit full of unknown menace.

India needs a privacy law not just to hold harm at bay but also to benefit from the world's personal data, to corner a chunk of the huge, emerging data processing business. Personal data from other countries will not flow to India to be processed here, if India does not have a specific law on data protection and if the law is not in line with similar laws in the countries from where the data comes.

Artificial intelligence depends on self-learning algorithms applied to reams of data. If India is to be a vibrant member of the world of knowledge, it must have the capacity to handle zettabytes of data and laws to protect them. Time we focused on this, moving on from an existential debate on the right to privacy.

Indians need a law to prevent misuse of their data by not just the state but also by companies, and to gain from the explosive growth in data in the near future

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