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Privacy in the public domain



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The greatest challenge to privacy is from the private sector. It also stems from an indifference to our own privacy

It is heartening to read the preliminary observations of the Supreme Court, made on July 19, regarding privacy as a fundamental right. Unfortunately, much of the debate on privacy seems to suffer from the leftovers of a certain traditional understanding of privacy and the private. In fact, it is no longer possible to decouple the idea of privacy from the mechanisms through which privacy is guaranteed. Since Aadhaar and many of the

contemporary discussions on privacy are related to deep technological developments, the question of privacy should be rethought in the context of these technologies.

Secrecy and security

Privacy is not a concept like the other fundamental rights. Moreover, our notions of privacy have changed and will continue to change. If there is one major catalyst for this change, it has been technology. Built homes are a simple example of how we develop a sense of privacy which is influenced by a technological development. Once we have a conception of home, we also have conceptions of bedroom, living room, toilet and kitchen. These spaces and conceptions created by very simple processes of technology create specific ideas of privacy.

Two common ways of understanding privacy are through secrecy and anonymity. We believe that our bank balance must be private. Companies do not normally make public the salaries of all their employees. Universities do not make public the marks or grades of their students in a way that violates the privacy of the student.

These notions of privacy are based on the need for security and protection. We do not want to divulge certain things about our wealth or life practices since they may be used by others to potentially harm us. So privacy becomes a way of protecting individuals or groups. But we also often overthrow privacy arguments for security purposes. We do not object to giving our biometrics when we apply for visas or when we join some private jobs.

Contemporary technology has made possible many new innovations that have changed the very meaning and significance of privacy. From smartphones to the darknet, the fundamental trajectory is one to do with privacy. However, there are two worrisome aspects. In any discussion on privacy, there is a deep suspicion of the government and state, most times rightly so. But this suspicion does not extend to technology and its private agents, those that are responsible for the breakdown of the value of privacy today.

Today, in times of growing privatisation, the greatest challenge to privacy comes from the private sector. It also stems from an indifference to our own privacy. We do not seem to value privacy today as in earlier times. Social experiments have shown that people are willing to have private information about themselves made public if they receive some monetary advantage.

We do this all the time. When we search for a book or a ticket, we start getting advertisements related to these searches in our supposedly private emails. What we read,

search, buy, talk and perhaps even think get stored, used and circulated. Everything is tracked and rerouted. We have no clue to the amount of information about our private lives that is out in the Web. All because we get free emails and free Internet access! Today, privacy has been deeply compromised through the offering of 'free' goods.

The state and private players

Very often when we worry about questions of privacy, it is about the role of the government or the state. The state too can do much with the information on individuals that it collects through various voluntary as well as coercive means. The concern about privacy thus was a concern about potential misuse of such information. However, information about individuals is arguably much more in the private domain today than it is within various governments. Moreover, the mining of this information is taken up far more assiduously by the private compared to government institutions.

The idea of privacy has always had a troubled relationship with privatisation. Private companies often have rules that protect them from being transparent in hiring policies, in affirmative action or even making public the salaries of all their employees. Private groups know best the power of the idea of privacy. They use this notion to protect themselves from governments and the public. They also realise that the greatest market that is perennially available to them is the market of trading information on privacy.

A related problem is that the government has begun to look more and more like the private sector. Today, almost all politicians are rich entrepreneurs and hold powerful business interests. The public-private binary does not function in any useful sense as far as the governing class is concerned. Thus, privacy is not only open to manipulation by the government but even more so by the private sector. This is so especially because it is the private sector that is at the forefront of developing technologies that facilitate this mining, storing and sharing of information.

No free lunches

The Trojan horse through which the state and private players enter our domains of privacy is through contemporary technologies. These technologies have now come to be seen as necessary. The fact that we so unthinkingly buy into this story shows the success of how these technologies have colonised us so effectively.

The price we pay for modern technologies is not only money. The economic model that runs consumerism of modern technologies is quite different from the model of selling

groceries. We are seduced by the amount of free things we get in a technological gadget. The websites are free; we can download millions of books and songs for which we had to pay earlier. Why are we being given so much that is free? Like almost everything else in this world, there are always hidden costs. The major cost that we pay is the cost of our privacy – the information on each one of our private lives and, through this information, more effective control on how we act and behave.

This raises deeply troubling questions about making privacy a fundamental right. How will the Supreme Court judges be able to give a judgment on privacy as a fundamental right without also making possession, and the making, of technology as ‘rights’? How can they do this without imposing controls on predator technologies that enter the social world in the guise of making our lives comfortable? Some might argue that technology is only an intermediary tool that enables certain things, both good and bad.

But to hold this view is to be blind to the changing modes of technological domination through digital and Internet technologies. Technology is no longer outside human and social processes; it co-creates and co-constitutes the human and the social.

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