UNDERSTANDING THE LACK OF PRIVACY IN THE INDIAN CULTURAL CONTEXT

By Osama Manzar and Udita Chaturvedi

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What does the Right to Privacy mean

for India's masses?

By Osama Manzar and Udita Chaturvedi

Digital Empowerment Foundation

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On August 24, 2017, the Supreme Court of India ruled Right to Privacy is a fundamental right protected by the Indian Constitution

Privacy is not the state of maintaining secrecy. Rather, the Oxford English dictionary defines it as "the state of being alone and not watched or disturbed by other people"[1]. It is also defined as "the state of being free from the attention of the public".

However, what does privacy mean in the Indian cultural and behavioural context? Well, it means little.

Indians and their privacy

To understand why privacy means little in India, we need to go back to the cultural dynamics and societal structure of this country.

Culturally, India has neither looked at communication nor information as "private". There is also little understanding of private lives in India where almost every part of one's lives is open to, intertwined with and dependent on a family, a community, a village or a society.

> *"People [in India] are born into groups — families, clans, sub-castes, castes, and religious communities — and live with a constant sense of being part of and inseparable from these groups. A corollary is the notion that everything a person does properly involves interaction with other people… Social interaction is regarded as being of the highest priority, and social bonds are expected to be long lasting. Even economic activities that might in Western culture involve impersonal interactions are in India deeply imbedded in a social nexus. All social interaction involves constant attention to hierarchy, respect, honor, the feelings of others, rights and obligations, hospitality, and gifts of food, clothing, and other desirable*

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1.   Oxford Learner's Dictionary of Academic English. Accessed September 14, 2017. http://www.oxfordlearnersdictionaries.com/definition/american_english/privacy.

items. Finely tuned rules of etiquette help facilitate each individual's many social relationships." — James Heitzman and Robert L. Worden in India: A Country Study [2]

In a society where personal choices mean little and members of a family live together in the same room, the concept of privacy has always been hard to comprehend. This is the reason people have often confused 'privacy' with luxuries and associated 'security' with the rich. There is also little understanding of what is personal and what is private so much so that various personal and private discussions are taken at community gatherings in several parts of the country.

It is not uncommon in India for panchayats and kangaroo courts to discuss a family's personal matter at a public space, with members of the community sharing the views on the matter.

"It [privacy] is at times confused with shame. It's also confused with the emotion we feel when we do something that does not meet our standards or our sense of what is right. Modern Indian languages do not seem to have an exact word which captures the meaning of privacy; they're usually some variation of the words for isolation, intimacy or secrecy, once again hinting at a conceptual confusion. This explains the reactions of many who wonder what's the big deal about privacy because they have nothing to hide." — Alok Prasanna Kumar in The Right to be Left Alone[3]

Cultural practices are so strong in India that community practices and diktats take over personal choices and ownership. For example, a girl may have a personal mobile phone; however it is her family or even the community that decides how she can use her phone. There have been several cases in India where a khap panchayat (a kangaroo court popular in various parts of the country)[4] has issued a diktat, banning girls and women from using mobile phones. Most recently, a village panchayat in Dholpur, Rajasthan, ordered its women to not

2.   Worden, Robert L., and James Heitzman, eds. "Themes in Indian Society." In India: A Country Study. Washington: GPO for the Library of Congress, 1995.
3.   Kumar, Alok Prasanna. "The right to be left alone." The Indian Express. July 31, 2017. Accessed September 18, 2017. http://indianexpress.com/article/opinion/columns/aadhaar-card-data-privacy-the-right-to-be-left-alone-4774645/.
4.   "Khap Panchayat in India." Azad India Foundation. Accessed September 14, 2017. http://www.azadindia.org/social-issues/khap-panchayat-in-india.html.

use mobile phones or wear jeans as these are "ruining our culture"[5]. Here, privacy and patriarchy play an interdependent role.

Caste and creed are strongly embedded in the Indian culture, so much so that laws against discrimination on the basis of either have not been of much help. But that's another issue. Though caste and creed are personal identities, in India one has little chance or choice of keeping these private.

> *"People in general belong to many social categories that could either be achieved, such as one's profession, or inherited, such as one's gender. The consequences of social categorizations are often not only seen in the dynamics of social interactions, but also in the way social status is represented… The caste system provides a hierarchy of social roles that hold inherent characteristics and, more importantly, remain stable throughout life (Dirks, 1989). An implicit status is attached to one's caste which historically changed from the social roles to hereditary roles. This, created status hierarchies on hereditary basis with limited social mobility. For instance, individuals born into the highest caste, that is, the Brahmin caste have usually been priests and scholars. Individuals born into the Kshatriya caste have been warriors and kings. Individuals born into the Vaishya caste have been merchants. Finally, individuals born into the Shudra caste have been laborers. Besides, there was an additional 'out-casted' group called the Dalits or the 'untouchables' who occupied the lowest step of the social ladder (see Ambedkar, 1925/1989; Pick and Dayaram, 2006). In modern India, the Indian government introduced a categorization scheme in which the untouchable castes were categorized as Scheduled Castes (SC), the backward tribes were categorized as Scheduled Tribes (ST) and the disadvantaged castes as Other Backward Castes (OBC). The Forward caste (FC) community generally constitutes the high caste group… Even now, people in India continue to define their self-identity by means of the caste they belong to and the social group that they find themselves in. Caste membership is thus ingrained in the society and there is considerable reason to claim that caste as a type of social identity would probably be one of the most salient identities in the Indian context." – Sinduja Sankaran, Maciek Sekerdej and Ulrich von Hecker in The Role of Indian Caste Identity and Caste Inconsistent Norms on Status Representation [6]*

5.   Times, Suresh Foujdar Hindustan. "No mobile phones and jeans, khap panchayat tells girls in Rajasthan." Hindustan Times. July 02, 2017. Accessed September 14, 2017. http://www.hindustantimes.com/jaipur/no-mobile-phones-jeans-a-panchayat-in-ra-jasthan-tell-girls/story-rVVetLLsUYxvlVBHIbPloL.html.
6.   Sankaran, Sindhuja, Maciek Sekerdej, and Ulrich Von Hecker. "The Role of Indian

Traditionally, communities have been divided in Indian villages and towns on the basis of traditional occupations. These occupations have direct relation to a person's religion and caste. So these identities are usually public knowledge in smaller towns and villages where occupations have not diversified as much as in urban locations. The segregation is common knowledge, and rarely do people frown upon in. In states like Uttar Pradesh and Bihar when a person is asked his/her name, simply sharing the first name is not enough. It is the last name that holds within in the religion and caste of an individual.

> *"In India, people are quick to know the other person's caste: the full name of the person, the accent of the local language, place of origin, profession, dress, caste markers worn on the body are some of the various ways in which it is deciphered. In the personal sphere, caste inflects marriage, food habits, the circle of friends, the use of language, etc. Invariably, the personal spills over into the public sphere. Caste, thus, remains visible yet invisible. The invisible is rendered visible socially, culturally, politically and economically." – S Anand in The Caste System of India* [7]

Indians have a habit of asking too many questions and interfering in other's life more than they need to. Ironically, they don't even consider seeking personal and private information of an individual or a family as "interference" or "breach of privacy". What seems like an alien concept to many around the world, especially in the West, arranged marriages are still a more-than-common norm in India[8]. And it is still one of the most common routes to marriage even in the most metropolitan and cosmopolitan of cities where a person's marriage is not a personal decision but a decision arrived at after discussions and approvals from the immediate family, the extended family and often even the community and the village.

This interference in personal space is not enough, community members do not only decide who a person should marry but also want to know how much is being spent on a wedding, when will the

Caste Identity and Caste Inconsistent Norms on Status Representation." Frontiers. March 15, 2017. Accessed September 16, 2017. http://journal.frontiersin.org/article/10.3389/fpsyg.2017.00487/full.

7.   Anand, S. "The Power of Culture." The caste system in India | The Power of Culture. April 2006. Accessed September 16, 2017. http://www.powerofculture.nl/en/current/2006/april/castesystem.html.

8.   Das, Kavita. "Analysis | India has changed a lot in 70 years. But arranged marriage remains the norm." The Washington Post. May 02, 2017. Accessed September 14, 2017. https://www.washingtonpost.com/news/soloish/wp/2017/05/02/india-has-changed-a-lot-in-70-years-but-arranged-marriage-remains-the-norm/?utm_term=.dfb5642d170c.

couple have kids or why is a couple not having kids. And this intrusion into one's personal life starts from a very young age. As children, Indians are not taught to shut their bedroom doors, even when they go to bed. In many houses, both in rural and urban India, locking your door even as adults — unless you're changing clothes — is considered an act of secrecy and not privacy. Not only that but it is often the parents, the adults of the family or the community that decide what one can wear, what one can eat, who can one talk to or what can one can share with each other.

Intrusion into one's personal space is rarely considered an invasion or awkward in India. Be it people elbowing each other in a crowded bus or strangers sharing berths on a train without raising an eyebrow, personal space is not considered of significance at home or outside. Rarely in the West would you ever see a person walking into an ATM vestibule when another is withdrawing cash or trying to enter a subway coach before those who want to exit can deboard, but the same is far from rare in India. These acts will be highly frowned upon in a European country or the US; but in India they will be justified by merely a shrug of the shoulders. It is also common for employers in India to ask their maids about the whereabouts and personal lives of the other employers the maid serves.

> *"Our perspectives on personal space — the distance we keep between the person in front of us at an ATM, the way we subdivide the area of an elevator — are often heavily influenced by the norms of the places we inhabit." — Leila Fadel and Lulu Garcia-Navarro in How Different Cultures Handle Personal Space*[9]

Interestingly, most Indian languages have no word for privacy. The closest some Indian languages come to privacy are through words that mean private or shame. This could be because of the society-based community structure that is prevalent in India unlike the West that has a more individual-based approach to living.

9.   Fadel, Leila, and Lulu Garcia-Navarro. "How Different Cultures Handle Personal Space." NPR. May 05, 2013. Accessed September 18, 2017. http://www.npr.org/sections/codeswitch/2013/05/05/181126380/how-different-cultures-handle-personal-space.

India and its oral society

Historically, India is an extremely diverse country where its diversity lies not just in its geographical landscape, topography and state boundaries but also in its culture, traditions, food habits, attire, language, dialects, script, behaviour, religion and caste. As the proverb goes, "Every two miles the water changes, every four miles the speech"[10].

> *"Rural and urban areas of India present a plurality of cultures. It has tribal, rural and urban populations. It presents a diversity of culture and people in terms of language, religion, caste, food, dress and way of life. racy all constitute sub-cultures of a larger society, that is Indian society, This diversity is carried to urban areas as well, but it is not as clearly defined and demarcated and apparent as it is in tribal and rural areas. Urban areas present a complex and variety of sub-cultures." – Dr RK Chaudhary, Punjab University[11].*

Of the 1.3 billion people who live in India[12], as much as 68.84 per cent live in rural parts of the country, according to the Census of India 2011[13].

According to the modern-day yardstick of measuring education, 67.77 per cent of this rural population is considered literate; the rest are illiterate[14] and uneducated and thus form India's oral society. Overall, as many as 27.01 per cent of India's population, as per official figures (which may have a skewed mechanism of measuring literacy rate and also includes those who lack functional literacy), is considered illiterate. However, there is no denying that most of those who are considered illiterate or uneducated are financially poor, residing in rural or tribal parts of the country or hail from backward districts of India.

One of the reasons that mobile penetration is high in India — mobile subscriptions in India crossed the 1.1 billion-mark in October 2016[15]

10.   Pandey, Vishnupriya. "Hindi as The Official Language of the Union." Employment News, 2017. Accessed September 14, 2017. http://www.employmentnews.gov.in/newemp/MoreContentNew.aspx?n=SpecialContent&k=194.
11.   Chaudhary, R. K. "Society and Culture: Plurality of Culture in India." IGNOU. Accessed September 16, 2017. http://www.ignou.ac.in/upload/Unit%2016.pdf.
12.   Population. "India." The World Bank Data. February 8, 2017. Accessed September 14, 2017. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=IN.
13.   India. Government of India. Ministry of Home Affairs. Census of India 2011.
14.   India. Government of India. Ministry of Home Affairs. Census of India 2011.
15.   PTI. "India's telecom subscriber base crossed 1.1 billion in October 2016: Trai." ET

— is because it allows people to communicate instantly and orally, without the need to write messages or take other's help to write or read. For a similar reason, TV and radio transistors, too, are popular in India. According a Broadcast India Survey, rural India has 17 per cent more homes with television sets despite low income brackets[16]. Further, among the FM audience, almost 76 per cent of consumers listen to FM radio using their mobile phones, a study conducted by AZ Research states[17].

In such a scenario where most conversations and flow of knowledge between large populations of India takes place through oral communication, the idea of information protection or privacy of data has little resonance.

It must also be noted that while a lot of knowledge in India has been documented by scholars, researchers, writers and others, offline and online; there is a lot more that is yet to be documented or explored because those who hold this knowledge are illiterate and unskilled to document this information in the traditional sense. Culturally, India has been a country where much of its knowledge has been transferred from one generation to another orally. In such a community, where little is documented on paper or in audio-visual formats, there is little meaning of "privacy", or, at best, it needs serious deliberations.

> *"For millennia, people have sat around the fire and told stories. From origin stories to stories about supernatural beings, ancestors, key events from past history, places of special significance, and the relationship between humans and the natural world, to morality tales, educational tales, humorous tales, and just plain old gossip, storytelling has had a fundamental role in human lives. It has tied people together, connected generations, established cultural identity, grounded people in place, and helped transmit cultural values, beliefs, knowledge, practices, and languages. In other words, storytelling has had a fundamental role in sustaining the biocultural diversity of life. But the forces that are*

Telecom, January 11, 2017. Accessed September 14, 2017. http://telecom.economictimes.indiatimes.com/news/indias-telecom-subscriber-base-crossed-1-1-billion-in-october-2016-trai/56468761.

16.   Malvania, Urvi. "Rural India has 17% more homes with TVs than cities." Business Standard, March 3, 2017. Accessed September 14, 2017. http://www.business-standard.com/article/economy-policy/rural-india-has-17-more-homes-with-tvs-than-cities-117030300023_1.html.

17.   PTI. "Power of mobile penetration: 76% of India listen to FM radio on cell phones." DNA, June 30, 2017. Accessed September 14, 2017. http://www.dnaindia.com/technology/report-power-of-mobile-penetration-76-of-india-listen-to-fm-radio-on-cell-phones-2488929.

threatening biocultural diversity are also threatening storytelling [and oral knowledge]... In today's increasingly homogenized world, we are losing the many voices of the earth—mostly, the voices of indigenous peoples and local communities. Thousands of diverse human cultures and languages, and the oral traditions that they have nurtured, are being overpowered by just a few dominant voices that have spread their reach across the globe. Instead of achieving a vibrant unity in diversity, we are quickly sliding into a drab sameness without unity. This has profound consequences for humanity. The fewer voices that can be heard, the less likely it is that we can keep our collective options alive, and the more likely it is instead that we may encounter the same 'cultural blind spots'." — Dr Luisa Maffi in Documenting and Revitalizing Oral Traditions[18]

This lack of documentation of oral and ancient information applies to traditional knowledge about health, medicine, architecture, culture, craft, art, folk tales, folk music, language and more. There is no hard drive that stores this oral communication/knowledge of India[19]. Dissemination of personal, private and public information, all takes place through oral communication. In the absence of conventionally documented or archived information, how does one ensure its protection? Further, since traditional knowledge is created and owned by a community, rather an individual (who can claim Intellectual Property Rights), how does one ensure protection of traditional knowledge?

Let's take the example of folk tales and music for instance. Often the Mumbai film industry, more popularly known as Bollywood, lifts India's folk songs, tweaks them to suit their creative and commercial needs, and sell them to the audience as their own[20], on many occasions without even giving credit to the community that is originally credited for composing the song. Even neem and turmeric, Indian discoveries, have been patented by the US initially. Interestingly, after the Indian Council of Scientific and Industrial Research challenged the claim in March 1995 and won the battle, it became the first known case where the use of traditional knowledge base of a third world country patented in the US was successfully challenged.[21]

18.   Maffi, Luisa, Dr. "Biocultural Diversity Toolkit: Documenting and Revitalizing Oral Traditions." Terralingua. 2014. Accessed September 18, 2017. http://terralingua.org/wp-content/uploads/2015/07/tk_4_lit.pdf.
19.   Manzar, Osama. "Social media can save folk and oral wisdom." Livemint. March 02, 2016. Accessed September 14, 2017. http://www.livemint.com/Opinion/6hNsMS6l4kJiW8bJFWXIBL/Social-media-can-save-folk-and-oral-wisdom.html.
20.   Prasad, Trinaa. "10 Folk Songs That Bollywood Embraced And Made Its Own." NDTV. November 26, 2014. Accessed September 14, 2017. http://www.ndtv.com/offbeat/10-folk-songs-that-bollywood-embraced-and-made-its-own-704327.
21.   "Turmeric an Indian discovery, says US patent office." Rediff. 1997. Accessed September 16, 2017. http://www.rediff.com/news/aug/23tur.htm.

"In India, after the neem patent controversy[22] , the need to protect the traditional knowledge of India has gained importance. With the rise in need to protect traditional knowledge and to prevent its misappropriation, the main question that has to be answered is: Can IP protect traditional knowledge? However, the main criticism of protecting traditional knowledge with IPR is that IPR leads to the commodification of knowledge; it treats knowledge as a commodity with economic value, which is far way different from the perspective of indigenous people, who treat their knowledge as pious and sacred." – Zoya Nafis in India: Protecting Indian Traditional Knowledge as Intellectual Property[23]

Rural society and interdependence

Our cultural society is at a crossroads, thanks to the digital revolution. Given the cultural dynamics and societal structure of interdependence, coupled with the close-knit community structures, the lack of privacy in India's physical society is entering its digital society as well.

"What do I have to hide?" is a question people often use as a retort when asked if they would want to maintain privacy, even the privacy of the data on their mobile phones. Indians need to understand that privacy is not about what you want to hide but what others need not see.

As the country moves increasingly towards the digital medium, almost paradoxically, there is also interdependence on trust. To explain this, we will replay a scene from a recent visit to Rajasthan. New-Delhi based non-profit Digital Empowerment Foundation (DEF)[24] runs a project called SoochnaPreneur (Information-based Entrepreneurs) in Rajasthan to serve rural populations with information, digital services and access to government schemes and entitlements[25] .

22.   Shiva, Vandana. "The neem tree - A case history of biopiracy." Third World Network. Accessed September 16, 2017. http://www.twn.my/title/pir-ch.htm.
  Nafis, Zoya. "India: Protecting Indian Traditional Knowledge As Intellectual Property." Mondaq. October 6, 2014. Accessed September 16, 2017. http://www.mondaq.com/india/x/344510/Trade Secrets/PROTECTING INDIAN TRADITIONAL KNOWLEDGE AS INTELLECTUAL PROPERTY.
24.   "Digital Empowerment Foundation |." Digital Empowerment Foundation. Accessed September 14, 2017. http://www.defindia.org/.
25.   SoochnaPreneur. Accessed September 14, 2017. http://www.soochnapreneur.in/. SoochnaPreneur is a rural entrepreneurship-based project to empower youth in Indian villages to sustain their livelihood by providing information and access to government schemes and services to those living in information darkness. Under this project, SoochnaPreneurs (Information Entrepreneurs) have been identified and equipped with an Android app that holds a catalogue of welfare schemes, with comprehensive information on entitlements.

Last month, when a couple of us visited Ashok Kumar (name changed), a SoochnaPreneur, at his Alwar district centre from where he operates, we saw about 150 Aadhaar Cards carelessly placed in a tidy pile in the corner of the one-room unit. When questioned about the same, Ashok explained that since a lot of villagers do not have a postal address, they have given the address of the SoochnaPreneur centre for all communication. "This is easy for the postman, too. He doesn't have to go around looking for makeshift houses or locating individuals by name."[26] At the end of each week, Ashok collects these Aadhaar Cards or other documents received at his centre and then hand delivers the envelopes to their rightful owners at their doorsteps or when they visit Ashok at the centre to avail any service. "Since I work with the community, I know almost all the people in this village." Ashok holds a Common Services Centres (CSC) licence[27] and runs his centre from a government property leased to him by the local panchayat. Courtesy the various services he offers — agricultural, educational, vocational, health, banking, insurance, entitlements, entertainment, utility, commercial — he has access to all sorts of data of the people he is serving.

While we were observing the day's activities at the centre, a woman called Sarla Devi (name changed) walked in and asked Ashok, who is also a banking correspondent for the Punjab National Bank, to withdraw Rs. 5,000 from her account. Ashok immediately asked Sarla Devi to give her thumb impression on his 3M Cogent CSD 200 Fingerprint Scanner, clicked a few buttons and made some entries — credit for Rs. 5,000 — and gave Sarla Devi Rs. 1,500. He then gestured something with his hands to Sarla Devi. We noticed this and asked Ashok why wasn't he giving her the balance. He replied saying he didn't have enough cash on him and will have to visit the bank the next day to bring more cash. "I'll pay her the rest tomorrow," he told us and Sarla Devi backed him, saying she was more than okay with the arrangement and trusted Ashok enough to know he will deliver the rest of the cash at her doorstep.

What struck us most was how little knowledge she has of her personal data and how much she relies on memory. When she

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26.   "SoochnaPreneurs of Rajasthan." Interview by author. August 26, 2017.
27.   CSC Scheme. Accessed September 14, 2017. http://meity.gov.in/content/csc-scheme. Common Service Center (CSC) is an information and communication technology (ICT) access point created under the National e-Governance Project of the Indian government through village-level entrepreneurs.

placed her thumb on the biometric scanner, a window popped open on the screen in front of her. However, she could neither read nor understand what was written in front of her; and had to completely rely on Ashok's formal literacy and digital literacy to find out her details of her bank account. While Ashok holds her bank account details, she holds her trust in him. In fact, Ashok does not only have the banking details of Sarla Devi but hundreds of other villagers, carefully noted down in his register and in a digital database. This arrangement is not unique to SoochnaPreneurs.

In rural areas, where literacy rate is 67.77 per cent and rural female literacy rate is 57.93 per cent [28]— and functional literacy rate is even lower — people don't even know what documents they are signing or placing their thumb impressions for. They simply trust what they are told — and there is no denying that there are often cases of misuse of this lack of literacy and ignorance. Yet, just as India works on jugaad (a frugal and flexible approach to innovation or lifehacks), Indians work on trust. Even in urban spaces, it is fairly common for consumers to call out their debit card pins to waiters in India. Many Indians will justify this act, saying that they don't have too much balance in their account anyway, again confusing privacy with luxuries and associating security with wealth.

This lack of understanding of privacy has cultural ramifications today when the Supreme Court of India has declared Right to Privacy a Fundamental Right[29]. Indian's cultural context imposes challenges in understanding and implementing privacy as a right that is intrinsic to life and liberty.

Here, the definition of privacy must be reiterated. Privacy is not a verb for hiding something from someone. It is a noun that is defined as a state of being alone and not watched or disturbed by other people.

28.   India. Government of India. Ministry of Home Affairs. Census of India 2011.
29.   Rajagopal, Krishnadas. "Right to privacy is intrinsic to life and liberty, rules SC." The Hindu. August 24, 2017. Accessed September 14, 2017. http://www.thehindu.com/news/national/privacy-is-a-fundamental-right-under-article-21-rules-supreme-court/article19551224.ece.

Service providers and service seekers

The court in its judgment, on August 24, 2017, highlighted this essential aspect of privacy when it stated today: "The duty of the state is to safeguard the ability to take decisions — the autonomy of the individual — and not to dictate those decisions." [30]

However, we saw the incumbent government not just dictating its decisions over citizens but also defending itself by accusing consumers of providing data to private companies like Facebook without a fight, ignoring completely the fact that consumer rights are different from citizen rights. For example, when the Facebook app asks a consumer to share her contact details and photo gallery and the user denies access to the same, she is not deprived of basic rights like food, shelter and entitlements. However, when a citizen denies the government access to her biometrics, she is deprived of subsidised ration — on which a large share of rural India is dependent (the intention of using this example is not to imply that consumer rights are less important or it is acceptable for private companies to access/use any personal data without the prior knowledge/consent of its rightful owner). What is ironical is that even biometrics cannot guarantee the right to food to the poor, courtesy lack of efficient infrastructure. There have been thousands of cases reported in various parts of India, especially Rajasthan, Jharkhand and Delhi, where old or those engaged in manual labour have been denied their rightful benefits due to failed biometric authentication[31]. Between December 2015 and May 2016, only 45 per cent of 98 lakh ration beneficiaries could receive their ration after verification of Aadhaar Cards by handheld biometrics-reading machines, shows Rajasthan government data accessed by non-profit Mazdoor Kisan Shakti Sangathan[32].

Earlier in 2017, advocates Rishika Taneja and Sidhant Kumar had

30.   Justice KS Puttaswamy (Retd) & ANR vs Union of India & ORS Writ Petition (Civil) No 494 OF 2012, 99. (April 24, 2017).
31.   Manzar & Eshita, Osama, and Eshita Mukherjee. "Baseless Aadhaar and its many flaws: When the poor lose their thumb prints." Business Standard. May 09, 2017. Accessed September 14, 2017. http://www.business-standard.com/article/current-affairs/baseless-aadhaar-and-its-many-flaws-when-the-poor-lose-their-thumb-prints-117050900219_1.html.
32.   Yadav, Anumeha. "Six months after Rajasthan introduced it, only 45% beneficiaries used Aadhaar at ration shops." Scroll. January 03, 2017. Accessed September 14, 2017. https://scroll.in/article/809661/six-months-after-rajasthan-introduced-aadhaar-at-ration-shops-only-45-beneficiaries-accessed-food.

rightly noted, "Privacy (with data protection as its subset) in today's context is not an abstract human rights concern alone. Over time, it has acquired elevated importance owing to the increasing use of data in our social and economic interactions. Therefore, it is imperative that we have a clear legal basis for the fundamental right to privacy." [33]

However, since India's vast illiterate population cannot even read the Constitution, let alone understand its nuances, how does the State guarantee all its citizens understand their Right to Privacy or how does it promise to safeguard this privacy under the law of the land?

Further, under the colonial hangover that Indians are living in, we don't have a culture of questioning; be it our parents, our teachers, our bosses or the government. Instead, there is a culture of submission. A day after the Supreme Court judgment, legal researcher and activist Usha Ramanathan pointed out an irony of the Independent India, she noted that the land of the Civil Disobedience Movement[34] has extremely obedient people[35].

Most people almost immediately give their names, numbers, and Aadhaar details when asked by any person who may or may not be of authority. In rural India, this is even more so. It is believed that if a literate person is asking for any details, it must be provided to the person; and the service providers are taking advantage of this cultural behaviour, people's illiteracy and their lack of access to information. This brings us back to the government argument that poor don't need privacy[36].

While fighting the case against the Right to Privacy, the Government of India had made several attempts at defending its right to own and use, at its will, the public's personal information. It even went ahead to say that only "wrong doers need privacy" and that the "poor don't need privacy".

Terming the government's submission that the Right to Privacy is an elitist construct as "unsustainable", the Supreme Court judgment

33.	Taneja, Rishika, and Sidhant Kumar. "Setting the Record Straight: Clarifying the Right to Privacy." Bar & Bench. July 2, 2017. Accessed September 16, 2017. https://barandbench.com/setting-record-straight-clarifying-right-privacy/.
34.	"Gandhi leads civil disobedience." History.com. Accessed September 16, 2017. http://www.history.com/this-day-in-history/gandhi-leads-civil-disobedience.
35.	DEFdialogue with Usha Ramanathan. Recorded August 25, 2017. Digital Empowerment Foundation. http://defindia.org/defdialogue-with-usha-ramanathan.
36.	"State claims that only wrongdoers need privacy." Moneylife News & Views. August 2, 2017. Accessed September 14, 2017. http://www.moneylife.in/article/state-claims-that-only-wrongdoers-need-privacy/51257.html.

in favour of Right to Privacy further read, "The refrain that the poor need no civil and political rights and are concerned only with economic well-being has been utilised through history to wreak the most egregious violations of human rights. Above all, it must be realised that it is the right to question, the right to scrutinise and the right to dissent which enables an informed citizenry to scrutinise the actions of government. Those who are governed are entitled to question those who govern, about the discharge of their constitutional duties including in the provision of socio-economic welfare benefits."[37] This is a landmark comment that reminds the lawmakers that they cannot always speak for the masses and that simply because they're sitting up in their hierarchy, they cannot snatch the rights of the poor in the name of serving them. Yes, a poor person would prefer food over privacy but that is due to lack of an option and not because of a choice.

Even across urban cities, when citizens received text messages asking them to link their Aadhaar to PAN cards or lose out on ITR, for example, most people almost immediately complied without a question. They did the same when asked to link their Aadhaar to their bank accounts, their mobile connections and even dating apps!

The Indian government is collecting huge amounts of data in the name of providing welfare schemes to its people but there is no strong data protection mechanism — let alone laws — in place of the data that is collected. Further, there is no provision for consent when it comes to collecting this data. The beneficiary must provide this data to become eligible for the services the government has to offer. Rather, the process should be more democratic and introduce an option to allow citizens to not share their biometrics but still be eligible for the benefits — something like the NOTA (None of the Above) option in the Indian voting system[38] .

What makes all of this worse is that the government does not have

37.   Justice KS Puttaswamy (Retd) & ANR vs Union of India & ORS Writ Petition (Civil) No 494 OF 2012, 216. (April 24, 2017).
38.   "10 things to know about NOTA - A voter's right to reject." Hindustan Times. May 14, 2014. Accessed September 16, 2017. http://www.hindustantimes.com/india/10-things-to-know-about-nota-a-voter-s-right-to-reject/story-SkX0EsDQbjG5e2sz0L5N9H.html.

any strong data protection system or data protection laws. At a recent discussion in New Delhi, Member or Parliament Baijayant 'Jay' Panda said it might still take a couple of years for India to implement a strong data protection law[39]. But digital is the means of communication today for not only personal but public dissemination as well. Vast amounts of information is being collected online and dispersed online. More and more Indians continue to go online every day, consuming information and producing information — allowing service providers to capture data and digital footprints — even as India awaits a sound data protection mechanism.

eGovernance and digital communication

Now that biometric data of millions of Indians has already been captured and Right to Privacy has been upheld, what will be the fate of a person's personal data? Will the government safeguard a citizen's digital privacy? Will the government adopt the Estonian government's system of data protection and take a citizen's permission, every time, before using their data for any purpose?
Let's explore the example of Estonia, a country that has a population of nearly 1.3 million inhabitants — this is half of South Delhi's population. Every ID-card owner gets an official e-mail address, which is intended for official communication with the State and is defined as an "official electronic residence" of the citizen. More than 300,000 private individuals and over 56,000 companies are using this opportunity today in that country (April 2017). The country maintains an elaborate database, which can only be accessed if the concerned government department — or anybody else — states their purpose. Further, when this data is accessed, the citizen gets an official communication, informing him/her who has accessed the data and for what purpose[40].

Here at home, with the government collecting data for Aadhaar in billions, there is no such provision. And if the government was to

39.   Panda, Baijayant Jay. "New Age Data, Age Old Concerns." Speech, IIT, New Delhi , September 9, 2017.
40.   "The right mix: Estonia ensures privacy and access to e-services." Estonian World. March 03, 2016. Accessed September 14, 2017. http://estonianworld.com/security/right-mix-estonia-ensures-privacy-access-e-services-digital-age/.

create such a system, how will it communicate to its citizens about accessing the latter's data. We're a country of nearly one billion offline Indians in a world with 3.5 billion individuals who lack access to the Internet[41], emails as a means of communication for this purpose cannot be considered an option. Given the functional literacy levels in the country, which are lower than the national average, the government cannot even expect to send text messages and assume they will be read and understood. So if the Estonian system is adopted, will the Indian government make calls to every citizen — who does not have access to the Internet or does not know how to read and write — and communicate it to them?

Conclusion

After a landmark judgment as that made by a nine-judge constitutional bench of the Supreme Court on August 24, 2017, strengthening our Right to Privacy, India needs to find practical ways of ensuring its implementation, especially in the digital sphere, while navigating the cultural norms. There is no denying that Indian masses will take time to catch up with the fast-paced digital times we're now exposed to but both penetration and awareness are continuously growing. Hence, there is an even greater need to continue to educate the masses and create awareness among them — by breaking barriers of last mile, language, literacy and culture — not just about privacy per se but also about the risks of digital technologies and measures to protect one online.

Privacy is a complex issue for India, and Indians will have to learn to put individual rights ahead of community rights to truly enjoy privacy as a fundamental right.

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41.   "World Development Report 2016: Digital Dividends." World Bank. 2017. Accessed September 14, 2017. http://www.worldbank.org/en/publication/wdr2016.

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