

## NICTS, INDIVIDUAL PRIVACY, AND MEDIA ACCOUNTABILITY

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### ABSTRACT

The ongoing information and communication technology revolutions have substantially empowered people by making them information rich. The enormous volume of information- the main driver of the global information economy today- is at the disposal of anybody having the means and the willingness to acquire. Conversely, the technologies of new media have emerged as ubiquitous tools of privacy violation. The new media revolutions have facilitated information sharing even if it ends up in intrusion in the privacy of citizens. Despite wider recognition of the menace, we do not have credible deterrent mechanism and legal or constitutional remedy against it. The personalized nature of technologies makes safeguards difficult as they are judged against fundamental rights of citizens. The media claim immunity against privacy actions citing public interest in its reporting. The government, on the other hand argues action against privacy in national interest, especially in controlling economic crime, terrorist activities, and corruption. But, often cases of privacy violations are found to be beyond the fringe of public or national interest. The media cannot rightfully use its protective umbrella of constitutional and legal freedom to justify its invasions in individual privacy if such acts are driven by considerations other than national interest. It must honour the safeguards to individual privacy while performing its sacred duty, failing which external checks may be inevitable even if it is not to the media's liking.

### INTRODUCTION

The invention of printing technology, the advent of broadcast radio, the birth of electronic television, the launch of communication satellites and consequent cable TV revolutions are among the most important events that amazed mankind and revolutionized human communication beyond ones imagination. These new waves of communication technology innovations from time to time had made the communication systems increasingly sophisticated and user friendly. But, more than any previous wave of technology, the information and communication technology revolutions also known as new media have transformed the communication environment in a fundamental way to the extent of reproducing the society in the memory platform of the Internet. The interactions and communications in the so produced conceptual or semantic space has emerged to be a more powerful social resource-increasingly treated as social capital- than the social interactions in the real world.

The information and communication technology revolutions have substantially empowered people and emerged as the main driver of the global economy, popularly called the information economy. This new generation of information and communication technologies have, indeed, simplified life to an extent never happened before. But, with growing sophistication and reduction in their size coupled with digitalization, the technology seems to be getting itself

empowered at the cost of its users. The technology that helps one to get information from any part of the globe with the push of a button also invades the bedrooms and threatens the citizen's invaluable right to privacy.

The growing incidents of electronic surveillance on private life of individuals by governments, media, and individuals threaten to destroy the hitherto sacred line that separates the private sphere from the public domain. In the process, information predators use the technology to harass and exploit the vulnerable citizen whose privacy is invaded. Often it is difficult to effectively enforce safeguards against such surveillance, for most of these technologies are owned and operated at the individual levels. Adding to these woes is that we don't have in place any credible legal remedy or constitutional guarantee against this menace.

Against this backdrop, this paper explores the twin-issues of 'new media' and 'citizen's right to privacy' in the context of the technology driven changes that are ruling the emerging communication and interaction environment.

### **GROWTH OF NICTS IN INDIA**

The public demonstration of Tim Burners-Lee's revolutionary concept of the World Wide Web (Web) on January 15, 1991 and unleashing of Marc Anderson's "Mosaic" browser in 1993 was, in fact, a major technological upheaval in the history of mankind. The Web, one of the most revolutionary inventions in history, combined the word-processing abilities, data retrieval-and-storage power, and graphical-display capabilities of the personal computer with the publishing capacity of Guttenberg's printing press. It throws all the possibilities of TV, Radio, Photography, and Animation. The advent of the Web demonstrated that the Internet combined the characteristics of all the media that had come before it, while adding the unique, hypertext-driven power of interactivity to the mix. It offered any one with a computer and the motivation to become a part of the linked world of information, shrinking the world into what Marshal McLuhan conceptualized as the "global village".

New media refers to a host of new technologies of mediated communication, and more importantly their progressive convergence. But the service profiles of their convergence are so vast that it is difficult to propose a unified definition of new media comprehending all its uses and applications. Still, reasonably comprehending its various dimensions, new media can be defined as the "Information and communication technologies relative to the convergence of computer ethnology and telecommunications, such as e-mail, the World Wide Web, electronic publishing, video conferencing, computer supported communications services, and personal communication services. In relation to the Internet, new media include hypertext literature, Web pages, and all virtual reality systems used for work and leisure" Many people equate new media with advances in media technology. However, the most central feature of new media is not the technology itself but the convergence or combination of media technologies. Thus, in simple terms, new media refers to products and services that incorporate a variety of media. More often

than not, these technologies are combined in a way that permits interactive use. New media communication as a new media product or service combines elements of computing technology, telecommunications, and content. Web sites on the Internet are good examples of new media because they are accessed through telecommunications technology and they invariably incorporate a variety of media, including text, audio, and animation. Virtual reality devices, hand-held computers, mobile phones, and electronic book readers fall within the new media category in that they are combinations of several forms of media.

Some other popular new media communication technologies which have emerged as a mix of mass communication and interpersonal communication leading to a fundamental transformation in human communication, especially in the cyber space are: virtual reality worlds, wiki, blogs, micro blogs, photo sharing, video sharing, data sharing, digital storytelling, social networks, social bookmarks, tag clouds, content sharing, cloud computing, Google tools, conversion tools, podcasts, iTunes, writing communities, digital scrapbooking, internet calling, rich media and so on. In fact, the growing new media communication situations are beyond the comprehension of an ordinary human being, a new one gets added before one could comprehend the earlier.

Though some of these technologies are here for several decades, what is new about them is their convergence and scale of operation. For its most visible and ubiquitous nature, mostly people see the internet as being synonymous to new media.

**Table-1: Internet Users in selected Countries**

Country	Population	Internet users	Penetration among % of population	Face book users	Penetration among % of population
USA	310,232,863	239,893,600	77.3	132,810,940	42.8
China	1,330,141,295	420,000,000	31.6	24,060	0.0
India	1,173,108,018	81,000,000	6.9	13,188,580	1.1
Indonesia	242,968,342	30,000,000	12.3	27,338,560	11.3
Japan	126,804,433	99,143,700	78.2	1,348,860	0.6
Malaysia	26,160,256	16,902,600	64.6	1,331,800	
Pakistan	177,276,594	20,350,000	11.5	168,100	
Singapore	4,701,069	3,658,400	77.8	1,003,100	
Bangladesh	158,065,841	995,560	0.6	995,560	0.6
South Korea	48,636,068	48,636,068	81.1	15,474,900	

**Table-2: Internet and mobile Subscribers in India (in Millions)**

Year	Internet subscribers	Telecom subscribers		Teledensity	Broadband subscribers	No. of channels (31 Dec.)
		Wire line	wireless			
2005	5.55	41.43	52.22	9.08	0.18	134
2006		41.5	98.77	12.86	1.35	173
2007	9.27	40.75	165.11	18.23	2.34	247
2008	11.10	39.42	261.07	26.22	3.87	406
2009	13.54	37.96	391.76	36.98	6.22	485
2010 (Oct)	16.18	35.43	706.69	52.74	8.77	521

In addition, according to IMRB syndication 2008 data, there are 133 million TV homes in the country with a total viewership of 500 millions. There are 68 million cable TV subscribers and 21.30 million DTH subscribers in the country (March 2010).

Advances in mediated communication have always opened new avenues for information, education and entertainment, and more importantly, made the system increasingly enjoyable and user-friendly. It is understandable therefore that the new technologies of mediated communication are mostly favoured in terms of user friendliness and multiplicity of purpose.

Authenticating Ithiel deSola Pool's suggestion in *Technologies of Freedom* (1983) that, increasingly, a given physical network could provide any sort of media service, and that conversely, a media service that had once been constrained to one physical technology could be carried on any number of physical distribution networks, advances in electronic communication are allowing for a complex merging known as convergence of hitherto separate media systems. Convergence leads to one product with the advantages of all its constituents. For example, the PlayStation 2 is not only a games console, but also a CD player, DVD player and Internet connector. Mobile phones are another good example, in that they increasingly incorporate digital cameras, mp3 players, camcorders, voice recorders, and other devices. New generation mobile phones not only carry out phone calls, text messages, but also hold images, videos, music, television, camera, and multimedia of all types. Convergence appears to be leading to the idea of accessing all media through a single device, though the nature of this device also changes with technology.

Another visible phenomenon of convergence of technology and media is online journalism, which combined the best, and in some cases the worst, aspects of all previous traditional news

media. It offers a level of interactivity-direct communication between news organizations and audiences-never before known, made possible by online news forums. It has brought text, audio, video, and graphics together in a single presentation. Interactivity represented by hyperlinks, in fact represents the beginning of a new form of journalistic communication. These new forms of communication media make news stories nonlinear by empowering citizens to select and interpret news stories according to their own preferences.

As such, new media has a host of benefits to the users including unlimited access to information, entertainment and online services. But these user friendly technologies have also raised our anxiety for human rights-the most worrying development is Internet crime and communication technology aided invasion of one's privacy.

### **NICT REVOLUTIONS AND THE RISE IN PRIVACY CONCERNS**

Privacy refers to the desire to control the flow of information about oneself and thereby reveal the self only selectively. It is the wish to remain unnoticed in the public realm. It is the denial to disclose certain kind information, considered as private life. But the boundaries and content of what is considered private differs between cultures and individuals, which make defining privacy a challenging job and leaves much scope for its misinterpretation. As such the concept of privacy has varying interpretations and so also the extent of protection guaranteed.

Right to privacy is the right against unsanctioned invasion of the privacy of a person by a government, a corporation, an individual or by the media. The right to privacy has as its basis the inherent uniqueness of every human being and his or her right to private life free from unwanted interruption and disclosure. The interest in privacy is not the same as the right to privacy. For the purpose of the law, it is only appropriate to speak of right to privacy where the legal system affords an enforceable remedy for interference with the interest in privacy. As the boundaries of the concept itself are yet to be settled, so also the status of law or statutes which protect privacy. In some countries this right is protected under the provisions of privacy laws where as in some others it is protected by constitutions.

While opening up new avenues for the citizen to receive information from various sources by the push of a button, the new media have also led to potential deterioration of the privilege of privacy. New media are misused to access information from sources unwilling to disclose, including information relating to privacy of individuals. In this dubious mission, again, human being is the main driver. The predator of information abuses the new features of technology, unlawfully, to invade the privacy of the vulnerable citizen. The convergence and multicasting of technologies makes the problem far more serious.

The revolution in mediated technology has thrown up devices like wiretapping, eavesdropping and bugging which enable others to probe into the deepest and farthest corners of a man's house, even without his knowledge. Spying cameras and new generation multi-task mobile phones,

coupled with the high bandwidth communication networks are increasingly misused to flash news about the private life of citizens. Increasing sophistication of photography technology, copying and storage devices has made the individual's privacy more vulnerable to exposure. The advent of miniaturised audio and video technology, specially the pin-hole camera technology, enables one to clandestinely make a video/audio recording of a conversation and actions of individuals. The danger of an uncontrolled use of clandestine video and audio equipment and closed circuit TV, in fact, has created the threat of a surveillance society. Obscene and indecent materials, mostly on privacy of citizens, flood the online communication media. As these technologies are, primarily, individually owned and used, collective action to enforce safeguards also becomes difficult.

We are yet to forget the MMS clips of a high school girl and a boy showing intimate acts which were circulated across the country, followed by more clips, shot from hidden cameras placed in night clubs, bathrooms, swimming pools and hotel rooms. In most cases, the victims never had an inkling of the fact that their activities would be recorded and circulated around the country. Several other similar cases of MMS involving the private activities of either students, actresses ect., testifies to the fact that new media technologies are grossly abused to invade the privacy of citizens. The so-called 'casting couch' that trapped several Bollywood and television stars recently represents another case of violation of privacy, in which, unfortunately, the media is directly or indirectly involved. The latest example of gross violation of privacy is the sting operation on a Delhi school teacher, in the name of exposing her involvement in immoral practices, which never took place. What is more disturbing is that some media personnel were involved in that conspiracy. The use of such miniature devices to expose the private life of individuals to the public domain cannot be justified by citing the few cases of exposure of corruption, this way.

### **LEGAL STATUS OF PRIVACY IN INDIA**

The right to privacy received international recognition in 1948 with the universal declaration of human rights. Article- 12 of the declaration states that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Every one has the right to the protection of law against such interference or attack". The U.N. General Assembly in article 17 of the International Covenant of Civil and Political Rights reiterated the right to privacy enunciated in article 12 of Universal Declarations. Right to Privacy has also been recognized by the European Convention on Human Rights.

In India, there is no specific provision in our constitution conferring right to privacy on citizens. It is not also protected by any law of the country. However, from a number of legal pronouncements delivered by the Supreme Court of India from time to time, it appears that right to privacy flows from the right to personal liberty (article 21) or from the right to freedom (article 19).

Adjudicating on personal liberty, in the *Kharak Singh V State of UP* (AIR 1963 SC 1295), the Supreme Court (Justice Subba Rao) has said that “it is true, our constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.... If physical restraints on a person’s movement affects his personal liberty, physical encroachment on his private life affect it in a larger degree. ...”

In the case of *Govind V State of M.P.*, the Supreme Court has observed that “rights and freedoms of citizens are set forth in the constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except when a reasonable basis for intrusion exists.

The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, right to move throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them, which one can characterize as a fundamental right, we do not think that the right is absolute.” In the case of *R. Gopal v. State of Tamilnadu*, right to privacy was carved out of Article 21, which relates to right to life and personal liberty of citizens.

Reading the right to privacy into the fundamental right to ‘freedom of speech and expression’ granted under Article 19 (1), in the *PUCL v. Union of India*, the Supreme Court has said that “if any person is speaking on the telephone, he is exercising his or her right to freedom of speech and expression and any tapping of the phone will be a violation of this freedom. If the state exercises any undue interference with an individual's right to communicate through such medium then it would be a violation of the person's right to privacy”.

The above observations reveal that the right to privacy exists as a second level right, which is not expressly articulated in the Constitution, but has been read into it. But the fundamental rights are subject to reasonable restrictions provided under the provisions of the constitution. So if the right to privacy in terms of any communications that a person has with any body else is part of the freedom of speech and expression of the person, then naturally it is subject to the same restrictions as well. Hence, right to privacy is not an absolute right, and is subject to many other conditions. As such, these observations do not categorically recognize a general right to privacy as a fundamental right even as an emanation from other fundamental rights granted to citizens. The cases of violation of privacy can be adjudicated on the basis of the merits of each case. The right to privacy, as such, does not also find an exclusive position in any law in India, though the laws relating to trespass, defamation, criminal breach of trust, copyright etc., protect certain aspects of privacy of citizens.

Our failure to have a comprehensive law on privacy, may perhaps be attributed to our dilemma on whether we need a general law in this regard or not. Reflecting our unwillingness to have a

comprehensive legislation on the citizens' right to privacy, the Law Commission has observed that "it is not advisable to have a comprehensive legislation to deal with all aspects of invasion of privacy; rather we can begin with those invasions which would amount to eavesdropping and unauthorized photographs". Reiterating the law commissions' views on the right to privacy of citizens, the Mathew commission has said that "it would not be advisable to undertake either an amendment of the constitution or the enactment of a general law on the subject. The commission has said that, for cases other than eavesdropping and unauthorized photographs, the Press Council should be entrusted with the task of taking cognizance of the cases of invasion of privacy by the media."

In the Communication Convergence Bill 2001, no categorical provision was made to protect privacy. The bill provided only lip service in the form of authorizing the commission under clause 20(vi) to specify codes against unwarranted infringement of privacy.

The Information Technology (Amendment) Act, however, introduced a series of provisions on protection of privacy and personal data. They provide for penalizing any intermediary who discloses subscriber information to which it is privy by reason of that subscriber availing of the services provided by the intermediary. The amendment provisions also address the issue of violation of privacy in cases where mobile phone cameras are surreptitiously used to take photographs or video clippings of private moments and private parts and then used to circulate these snaps or clips around using either the telecom network or the Internet. The amended provision penalises intentional captures or broadcast of an image of a private area of an individual without his consent.

### **PROTECTING INDIVIDUAL PRIVACY –THE NEED FOR MEDIA ACCOUNTABILITY**

Individual's right to privacy is universally recognized, India is no exception. In fact, India is one of the few countries, where a genuine concern for right to privacy is commonly recognized and expressed. But the dilemma is how to protect it? and what should be the limits of such protection? Should it be through arousing moral consciousness the individual users, or through moral policing by the groups related, or through statutory legal action by the governments, or through the efforts of the manufacturers 'of new media products themselves through appropriate technology?

A major challenge in protecting privacy arise when the claim to privacy tends to conflict with the claim to public information. Knowing about the lives and activities of the other members of a society are inevitable for they are the building blocks of public opinion, customs and morales. But the claim for such public information often extends into the personal activities of individuals where the borderline between the private and public domain is less distinct. To strike a balance between these two interests is like walking a tightrope. This becomes more complicated when

the claimed information relates to the private activities of a public figure since they are entitled to lesser privacy particularly in public issues, information about their private domain comes to the public domain when public or national interest is involved.

Another aspect of the issue is against whom privacy is protected? Is an individual or the state or the media? When media's disclosure of information about the private life of a person is concerned, competing interests of 'freedom of speech and expression' and 'right to privacy' come to the fore. When media is the claimant of such public information, deciding what is unreasonable invasion of privacy is extremely difficult. In the event of stern legal provisions against privacy, the potential cost of possible actions of invasion of privacy might inhibit the media from proceeding with an investigative story. For the victim, apart from expenses, the court would become a place for washing of dirty linen in public and the very purpose of right to privacy would be defeated. But in the absence of a legal remedy, the citizens' privacy is vulnerable to exposure. This is here that the right to privacy of citizens is viewed as a double-edged weapon, which can cut either way, if misused. Owing to this dilemma, perhaps, we have avoided to have in place any effectively legal remedy against invasion of privacy.

As suggested by the Mathew commission, sensitive private facts relating to the health, private behaviour, home life or personal or family relationships should not be published, except when it is in public interest to do so. Even a determined and substantial invasion of privacy may be justified, if it can be shown that the object is to give 'news in public interest' different from 'news of public interest'. The media view investigative or exposure journalism as an important public service and claim immunity against law relating to right to privacy. But it cannot be rightfully allowed to invade the privacy of citizens purely for catering to audience curiosity, often introduced as a sinister to achieve marketing goals. A correct balance must be struck between the citizens' claim to privacy and the public's right to know. What we often find today is the media often exploit our dilemma, and interpret the situation to its advantage by using the public's right to information as a protective shield.

The media, possibly, do not have an unfettered right of expression. It is subjected to certain degree of restrictions under different circumstances, including the issue in question. Invasion in privacy, beyond a certain extent is unreasonable and leads to betrayal of the media's public trust. The media cannot abdicate itself from such immoral acts of violation of privacy either by its own members or by private individuals. Appropriate intervention strategies are inevitable, for we have to protect the privacy of citizens.

The US experience shows that three kinds of mass media actions have generally led to privacy suits. Firstly, the most common form of invasion of privacy by the media is publication about private affairs of individuals, things that would be offensive or embarrassing to a person of ordinary sensibilities. Second, the media uses an individual's name or photograph in an

advertisement without his consent. Thirdly, the press may publish matters, which are false and, while not defamatory, place the individual in a false light in the public eye. In the first case, if the publication is “newsworthy” it is protected. The concept of newsworthiness has three basic parts: (a) public interest, (b) public figure, and public record. When publications is in public interest (different from what is ‘of public interest’), or it relates to a public figure, or reveals public record, violation are admissible to some extent.

In several countries including the US, it is illegal to use the new media technologies clandestinely against another person in his or her house or office to collect private information. Watergate is a famous example of a President leaving office in disgrace and his lieutenants being jailed for trying to have recording equipment clandestinely fixed inside the office of a political adversary. A couple of countries have laws to protect online privacy, but often the culprits escape from the clutches of those laws for one reason or the other. For example, despite the legal safeguards in the US, there have been growing complaints of the misuse of media technology for surveillance. In the US, such cases of surveillance make the media owners and their journalists liable for arrest and prosecution and for damage suits for damaging the reputation of individuals through covert means. Even the law enforcement agencies are allowed to use those technologies only selectively, under carefully-controlled conditions. No private individual, not even a journalist is authorized to do so.

In India there are no laws regulating the use of covert surveillance equipment by private individuals. Neither our manufacturing companies show any concern for the privacy of citizens. In many countries, reputed companies manufacturing and selling clandestine, miniature cameras and recording equipments generally carry the statutory warning against performing or engaging in any recording, covert surveillance or any transmission of radio frequencies. The companies in India as well as the citizens should be motivated to realize the need for such action.

The media should observe the safeguards to protect privacy while performing its sacred duty. It should devise a system of checks and balances, failing which it might instigate the system to enforce external checks. Being in an advanced stage in terms of new media, India needs to have appropriate legislation to deal with the menace. In addition, strict ground rules for any kind of sting operations have to be laid down. The mass media should also use this option rarely, only against persons with prior evidence of criminality. For such acts, prior permission from courts should be made mandatory, and there must be a concurrent record in writing of the various stages of any such operation. Further the recorded films and tapes should not be edited, as editing raises doubts about authenticity of the recordings.

## **CONCLUSION**

Having been offered a host of advantages, the vulnerable citizen faces the risk of deterioration of the privileges of privacy due to the advent of new media technologies. Growing sophistication

and diminishing size of photography technology, copying and storage devices, and more importantly the advent of the Web having possibilities for all kinds of media services, have made the individual's privacy more vulnerable to exposure. But despite being in an advanced stage in terms of new media technology, and their widespread misuse to invade the privacy of citizens, we in India, do not have appropriate legal remedy against violation of privacy.-we are yet to have credible safeguards against its violations. Alongside a legal approach, voluntary efforts should also start at the level of the media persons, perceived as the largest violator of the right, to avoid such violations. This obligation indeed lies on them as a precondition on media freedom. The producers and proprietors of new media technologies should also play a proactive role, either by way of providing for statutory warning or introducing appropriate technology, to check the cases of violation of citizen's right to privacy. What can be more enduring a solution to privacy violations is the realization that it is not new media which is threatening privacy; rather it's misuse by us. So the anus is on us, either as individual or as groups, who are to observe restraint to make new media innovations emancipate the misery and make life a pleasant experience for one and all.

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