

Surveillance and Privacy

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Payload, meta and big data.

Stories

- The burglary
- Rajat Gupta trial
- Murder of the jeweller in Bangalore
- Cultural cryptography – The Wire
- Rise of cryptography in the US

Ask your friends from Jamia

- Murder by Infosys HR manager
- Mobile camera
- Cyber cafe rules under the IT Act
- Osama Bin Laden's Abbottabad compound

Privacy vs. transparency & security

- Assumptions
 - Privacy is a precondition for security which in turn is a precondition for liberty (Bruce Schneier). Privacy vs. security is a false dichotomy.
 - Transparency is a precondition for security and free speech. Surveillance is essential for security.
- Proportionality
 - Via public interest test: privacy should be inversely proportional to power; transparency (openness) should be directly proportionate to power.
 - Effectiveness of surveillance can be represented as an inverted hockey stick curve on a graph with security on y-axis and percentage of population under surveillance on x-axis.

National privacy principles

1. Notice
2. Choice and Consent
3. Collection Limitation
4. Purpose Limitation
5. Access and Correction
6. Disclosure of Information
7. Security
8. Openness
9. Accountability

Necessary and proportionate

International Principles on the Application of Human Rights to Communications Surveillance

- Legality | Legitimate Aim
- Necessity | Adequacy
- Proportionality
- Competent Judicial Authority
- Due process
- User notification | Transparency | Public oversight
- Integrity of communications and systems
- Safeguards for international cooperation
- Safeguards against illegitimate access

Indian situation

- Not an explicit constitutional right. Read into Art. 21, Art. 19(1)(a) and Art. 14 by the SC.
- Inadequate data protection section in the IT Act. Sec. 43A + rules.
- Surveillance regime – CrPC 91 | Sec. 5(2) of Telegraph Act + Rule 419A | Sec. 69 of IT Act + rules. CMS, NATGRID, UID and Nethra
- No horizontal and omnibus privacy law yet. No regulator. But 50 odd sectoral laws and policies.
- DoPT has been working on a Privacy Bill for the last 3 1/2 years. Justice AP Shah Committee Report from the Planning Commission.
- Multistakeholder process lead by CIS, DSCI and FICCI on data protection

Thank you!

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