

Privacy Matters

Conference Report



March 26, 2011. Ahmedabad Management Association,
Ahmedabad

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Privacy Matters

Conference Summary

On 26 March 2011, civil society, lawyers, judges, students and NGO's, gathered together at the Ahmedabad Management Association to take part in 'Privacy Matters' – a public conference organised by Privacy India in partnership with IDRC and Research Foundation for Governance in India (RFGI) — to discuss the challenges of privacy in India, with an emphasis on national security and privacy. The conference was opened by Prashant Iyengar, head researcher at Privacy India and Kanan Druhu, director of RFGI. Mr. Iyengar explained Privacy India's mandate to raise awareness of privacy, spark civil action, and promote democratic dialogue around privacy challenges and violations in India. RFGI is a think tank established in 2009 which aims to research, promote, and implement various reforms to improve the legal and political process in Gujarat and across India. 'Privacy Matters – Ahmedabad' is the third conference out of the eight that Privacy India will be hosting across India. The next conference will take place in Hyderabad on 9 April 2011. It will focus on human rights and privacy.



Keynote

Usha Ramanathan, Expert on Law and Poverty



Ms. Usha Ramanathan opened the conference by examining the links not often made between privacy and personal security, between databases and national security, and the centrality of dislodging privacy in projects of social control. In her presentation she spoke about the inverse relationship between national and personal security, making the point that an important part of privacy is the ability of an individual to secure their own person. Today, because national security follows a policy of ubiquitous surveillance, it is almost impossible for an individual to secure their person from the state. Ms. Ramanathan also traced the beginnings of ubiquitous surveillance to the increasing global fear of terrorism, and the national break down of the criminal justice system in India. Instead of looking to the roots of terrorism and the roots of failure in the criminal justice system, the Indian State has responded to both these factors by superimposing a system of surveillance on top of the existing rule. Consequently, the state has become pan-optical — closely following the movement of its entire population. The state has been able to achieve this level of surveillance through technology, which it has used to create identifiers for its population. The use of technology by the state mediates a link between corporate interest and state interest. Thus, by facilitating the easy and ubiquitous creation of identifiers and surveillance, technology is changing the idea and the nature of privacy. For example, it is now important that a privacy law allows for individuals to protect and secure their identity, something that every individual has and every individual controls, while regulating the creation and external use of identifiers — something that is used by another (not you) to distinguish a person from the rest of the population.

Questions to Consider

- How can privacy legislation work to positively regulate the use of technology by the government, so that invasion of privacy does not consequently become state policy?
- How can privacy legislation distinguish between and work to protect an identity while regulating the creation and use of personal information as identifiers?

**Session I of the Conference featured a Judicial Perspective of Privacy
and a Presentation on the Connections between Privacy and the
Federal Income Tax regime in India**

Justice Bhatt, former Chief Justice of Gujarat

Professor Amal Dhru, Indian Institute of Management, Ahmedabad

J N Bhatt, the former Chief Justice of Gujarat and Bihar, and currently the head of the Gujarat State Law Commission, spoke about privacy as a fundamental right that has been written into articles 19 and 21 of the Constitution of India. Important points from his presentation include:

- As privacy is already a recognized fundamental right, the question at hand is not if there is a right to privacy, but instead how can the right to privacy be best proliferated.
- Within the question of how a privacy can best be proliferated, is a question about rights and duties. Wherever there is a right to privacy there is also a corresponding duty to privacy — as rights and duties are interdependent.
- Though privacy has been recognized as a fundamental right in India, when looking at the actual assertion of the right, it is important to be aware of the cultural realities of India. India is a country with 39 per cent of her population living below the poverty line, with an even lower literacy rate, and there is a direct connection between the assertion of civil liberties, an individual's civic sense, and education.
- When looking at how to best proliferate the right to privacy, governance and common law, a methodology to reach the poorest of the poor should be laid out first.



Questions to Consider

- What is the best way to proliferate the right to privacy?
- What legal structures need to be in place to ensure that the poor can assert their right to privacy?
- What social structures need to be in place to ensure that the poor can assert their right to privacy?



Professor Amal Dhru, visiting professor from the Indian Institute of Management, Ahmedabad and a practicing Chartered Accountant spoke on the connections between privacy and the federal income tax regime in India. In his presentation he explained how the information collected by the federal income tax regime in India can be both useful in holding a citizen accountable, and invasive of one's personal privacy if mis-used. Important points from his presentation include:

- The Indian tax regime highlights the tension between public interest as tax evasion is considered an exception to the right to privacy as it is a matter of public interest.
- There is a lack of confidence in the existing banking and tax system in India. For example in the business sector, Indian investors have deposited over 700 billion dollars abroad as they are given complete privacy and security over their money.
- Though there is a lack of confidence in the current banking and tax system, a tighter law is not necessarily the solution. For example, studies have found that tighter tax regimes lead to greater evasion, while looser tax regimes have higher compliance rates.
- On April 1, 2011 the new tax codes for India will be implemented. The reform will give enormous power to tax offices, and as the tax authorities will become equipped to do taxes smarter – this will come at a cost to citizen's privacy.

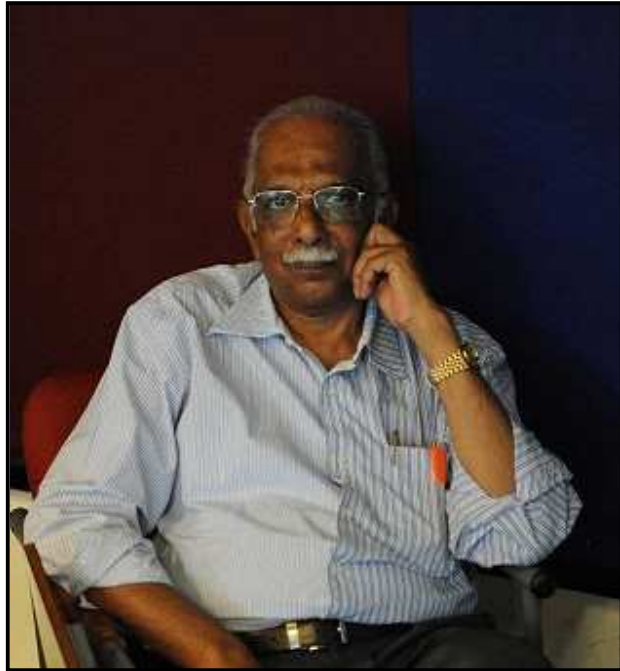
Questions to Consider

- Just as a tighter tax law leads to a higher percentage of tax evasion, will a tight privacy law simply lead to greater numbers of privacy violations?
- What creates public confidence in a law?
- Should privacy legislation be responsible for defining the public good?
- Should privacy protection of tax-related information be incorporated into privacy legislation or contained only in tax law?
- To what extent should tax authorities be allowed to investigate potential tax evasion i.e., one's computer, house or e-mail?
- How does one balance the private vs. the public good?

Session II of the Conference focused on National Security and Privacy, and Cultural Conceptions of Privacy

Colonel Mathew Thomas

In the second session on Privacy and National Security, Colonel Mathew Thomas spoke on privacy and national security. Colonel Thomas is a management consultant and activity leader for development centers and has held top positions in the Indian Army, and the Defence Research and Development Organisation, where he headed the missile manufacturing facility. Sharing his personal experiences in the army he explained the connection between privacy and national security. Important points from his presentation include:



- National security is often not an internal threat, but instead an external threat.
- There is a connection between the increase in surveillance and liberalization of government.
- More surveillance does not bring more security.
- Foreign software poses as a threat to national security.
- Greater security is gained through intelligent use and analysis of data.
- A strong national security plan should not rely solely on surveillance of its citizens. Instead national security should be brought about through strong economic policies, non-reliance on foreign software, neutrality in foreign policy, fair trade policies, rural development and prevention of migration to cities, and having a politically honest and accountable governance.

Questions to Consider

- Is it effective for privacy to be compromised in the name of anti- terror laws?
- Can the development and distribution of indigenous software protect national privacy?
- How can strong economic policies indirectly protect an individual's privacy?



- How can a strong foreign policy protect an Indian citizen's privacy when it is stored or sent abroad?

Gagan Sethi from the Centre for Social Justice, Ahmedabad shared his opinion on privacy. Important points from his presentation include:

- Privacy is a cultural construct that changes with context, perspective, and time.
- When considering a privacy policy it is important to create a policy that does not strictly define what privacy is and what it is not, but instead create a

policy that defines and promotes a common respect for human dignity.

Questions to Consider

- If a privacy policy is developed to promote a common respect for human dignity – will it be effective?
- Can you develop a policy that has a loose definition and mandate, but has strong legal teeth?

Session III of the Conference focused on Minority Identities and Privacy, Prisoner Rights, and Cyber Security.

Bobby Kunhu, Lawyer & Activist

**Yash Sampat, Aditya Yagnik, Vimmi Surti, Ramswaroop Chaudhar,
Interns for RFGI**

Bobby Kuhnu, a lawyer and activist, presented in the third session on Privacy, Minority Identities, and Security. In his talk Mr. Kuhnu through the use of three examples examined the ideological underpinnings of the discourse on privacy and its bearings on socially marginalized identities in the context of the Indian State and the constitutional right to privacy. Important points from his presentation include:

- In India, names can be sensitive and personal information like one's religion, family, caste, and background can all be known through a name.
- Because of the sensitivity of a person's name, many people do not feel safe or comfortable in their own identity.
- Reservation lists and public postings of information can and have been used to discriminate and violate another's privacy.



Questions to Consider

- Should there be a privacy legislation requirement throughout institutions and government bodies that names should not be publically displayed to the point of identification?
- What is the most effective way of legally protecting an individual from discrimination based on their name?



Yash Sampat and Aditya Yagnik spoke on the origins of privacy and privacy in the cyber world. Vimmi Surti spoke on prisoner's rights and privacy and Ramswaroop Chaudhary presented on minority identities in South Asia and privacy. Important points from their presentation include:

- Internet has led to an increase in privacy violations.
- The result of privacy infringements is often the deprivation of individuals from safe access to services availed to them.
- When looking at privacy as the protection of human dignity, prisoner's rights are violated through overcrowding in prisons, poor health, and poor sanitation.

Questions to Consider

- Are there legal mechanisms that can be put in place to ensure the least amount of deprivation to services when an individual's privacy is invaded?
- To what extent should prisoners be availed the right to privacy?

Conclusion

The Concluding Session was a Time for Discussion and Opinion Sharing

From the closing session, and the above sessions many themes and questions pertaining to privacy came out that will need to be addressed when considering the way forward for a privacy legislation including:

- Regulation of ubiquitous surveillance in the name of national security
- Regulation over public display of names and personal information
- The need to distinguish between identity and identifier.
- The need to protect an individual's identity while regulating the production and use of identifiers.
- Privacy rights and prisoners: what does the right to privacy mean to a prisoner, i.e., clean facilities and health care.
- Can the right to privacy be a platform for individuals to claim sanitary/safe working and living conditions.
- Recognize the changing nature of privacy rights in a technological society.
- Privacy implications of biometric usage.
- Creation of a definition of when privacy rights will supersede identification needs.
- How can government institutions, like the tax department, incorporate and protect the right to privacy with the collection of large amounts of data for more efficient services.
- Privacy and the family





Privacy Matters

March 26, 2011, 10:30 – 4:30 pm

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Agenda

10:00 to 10:30 **Registration and Welcome**

Prashant Iyengar

Prashant Iyengar is a practicing lawyer and lead researcher for Privacy India. He will present who Privacy India is, and the objectives of Privacy India's research. Lastly he will outline the present scenario of Privacy in India.

10:30 to 11:15 **Keynote Address**

Usha Ramanathan

Dr. Usha Ramanathan is an internationally recognized expert on law and poverty. Her research interests include human rights, displacement, torts and environment. Ms. Ramanathan will speak about the coerced decline of privacy, national security, corruption, pragmatism, and the emergence of technologies that often work to establish that privacy is an irrelevant notion. She will look at links not often made between privacy and personal security, between databases and national security, and that the centrality of dislodging privacy in projects of social control are, perhaps deliberate.

11:15 to 11:30 **Tea break**

11:30 to 1:00 **Opinions on Privacy**

Justice J N Bhatt, Professor Amal Dhru

In this session key officials from Gujarat will share their experiences and opinions on privacy in the context of India. The speakers include:

Justice J N Bhatt, the former Chief Justice of Gujarat and Bihar, and the present head of Gujarat State Law Commission. He has had a successful career including having: joined the Office of the Government Pleader, at Jamnagar in 1976, worked as Central Government Counsel in special matters of armed forces and labour cases, and has authored more than 50 articles on Jurisprudence, Constitution, International Law, A.D.R, Legal Aid and Lok Adalat and Judicial Reforms.

Professor Amal Dhru, visiting Professor, Indian Institute of Management, Ahmedabad will present his perspectives on 'Privacy in the Income-tax regime in India'.



1:00 to 2:00 **Lunch Break**

2:00 to 2:30 **Privacy and National Security**

Mathew Thomas

Mathew Thomas is a management consultant and activity leader for development centres. Mathew has held top positions in the Indian Army, and the Defence Research and Development Organisation, where he headed the missile manufacturing facility. His presentation will focus on national security and privacy.

2:30 to 3:00 **Privacy, Minority Identities, and Security**

Bobby Kuhnu

Bobby Kuhnu is a lawyer, social activist, and writer. Mr. Kuhnu will examine the ideological underpinnings of the discourse on privacy and its bearings on socially marginalized identities particularly in the context of the Indian State and the constitutional right to privacy.

3:00 to 3:15 **Tea Break**

3:15 to 4:00 **Perspectives of Privacy**

Yash Sampat: The origins of privacy and perspectives

Aditya Yagnik: Privacy in the cyber world, the legal issues

Vimmi Surti: Prisoner's rights and privacy

Ramswaroop Chaudhary: Minority identities in South Asia

4:00 to 4:30 **Open discussion and summary**

Other Distinguished Participants

Justice Madhukar: Former Judge, Trial Court, Gujarat

Kanan Divatia: Lawyer and Professor of Law, L A Shah Law College

Gaurang Raval: Drishti Media

Rahul Chimanbhai Mehta: Independent Candidate, IIT Delhi Alumnus

Madhusudan Agarwal: Founder, Ma'am movies