

PRIVACY MATTERS

EVENT REPORT



**DON BOSCO, GUWAHATI
JUNE 23, 2011**

EVENT SUMMARY

On June 23, a public seminar on “Privacy Matters” was held at the Don Bosco Institute in Karhulli, Guwahati. It was organised by IDRC, Society in Action Group, IDEA Chirang, an NGO initiative working with grassroots initiatives in Assam, Privacy India and CIS and was attended by RTI activists and grass roots NGO representatives from across the North Eastern region: Manipur, Arunachal Pradesh, Tripura, Nagaland, Assam and Sikkim. The event focused on the challenges and concerns of privacy in India. Unfortunately many of the scheduled invitees had to drop out owing to developments on the Lokpal issue at the Centre, and simultaneously Guwahati was witnessing unrest following an agitation over land rights that left three persons dead.

Welcoming the participants, Prashant Iyengar, lead researcher for Privacy India, gave an introduction to the objectives of Privacy India, and briefed the gathering about the thematic “Privacy Matters” consultations previously held across the country in Kolkata, Bangalore and Ahmedabad. Mr. Iyengar also gave a background to issues that India is facing in concern with privacy, explaining the many contexts that privacy can be found in, and raising questions such as: Why is privacy important? How can it be maintained with the way technology is encroaching upon our lives? And how can we make privacy laws functional?



“Privacy objectives are to raise awareness, spark civil action and promote democratic dialogue around privacy challenges and violations in India. One of Privacy India’s goals is to build consensus towards the promulgation of a comprehensive privacy legislation in India through consultation with the public, legislators and the legal and academic community”- Prashant Iyengar, Privacy India.

EVENT SESSIONS

The structure of the event was one of open discussion, with presentations made by those who wanted to share. Throughout the day, the conversation fell into three main topics including: privacy and the RTI, privacy and the UID, and privacy and surveillance in the context of North East India.

PRIVACY AND THE RTI



Prashant Iyengar opened the discussion on privacy and the RTI by highlighting the tension between the need for transparency of the State, and the need to protect the privacy of public figures. For many participants privacy and transparency was a new concept that they had just started thinking about. Participant Rakesh (HRLN, Manipur)

spoke on the shortcomings that he saw in the RTI Act noting that though the RTI brings some transparency to society, many citizens still do not understand the extent of their Right to Information as it is protected under the Act. Furthermore, the RTI Act is still not applied equally across the country, and the transparency that the RTI tries to achieve is still in very nascent stages. Lowang, a participant from Arunachal Pradesh, shared the importance of drawing a line between privacy and transparency when it comes to information related to education and health. Anjuman Azra Begum, a research scholar working on indigenous people rights, noted the irony of the RTI as it is meant to bring transparency to the state, yet all ministers and MLA's take an oath of secrecy, not transparency. Anjuman also spoke on the fact that the RTI often fails to protect the privacy of sensitive issues, such as sexual abuse. She echoed Rakesh's comment on the inaccessibility of the RTI, sharing that for a common person to exercise his/her rights is a very daunting task. Anthony Debbarman, a human rights activist from Tripura noted that he felt that the North Eastern states are by and large seen as resource (land) by the centre and has shown no concern for citizens and their well-being. Government is seen as a dictator in this region, hence the question — Transparency for whom?, Privacy for Whom? The distinction between the transparency brought about by the RTI and individual privacy was also made. It was pointed out that the RTI is concerned with transparency of the State, but individual privacy is separate from this concept.

PERSONAL EXPERIENCES SHARED

Anjuman Azra Begum shared her sister's experience with the RTI. Her sister had applied for a job in 2008. Their family filed an RTI for details of the procedure, but was denied details by the RTI officer, who said that furnishing details would violate the privacy of other candidates. This example raises questions about when it is appropriate for RTI officers to withhold information in the name of privacy, and what mechanisms can be put in place to ensure that the RTI does not use privacy as a way to deny information. Lowang also shared his experience with the RTI. He had filed an RTI asking for answer sheets because he doubted the appointment of police personnel. He was told that the cost in total would be Rs.2000, when in reality each sheet costs Rs.2 — the misconstruing of facts was another example of how RTI officials restrict access information indirectly. From these examples the concern about RTI officials using privacy as an excuse to deny information was brought to the surface. To highlight the problems with the current implementation of the RTI and the lack of basic knowledge of how to use the RTI Mhao Lotha from the DICE Foundation shared a personal experience of his friend who had filed an RTI against the fishery department, and the RTI official simply shouted at her. L. Rima told a similar story as Mhao Lotha. In her experience the RTI is good in theory, but in practice it has become a commercial platform, where officers pay money to applicants for RTI cases to be taken off.

From the discussion and the shared experiences it was clear that the RTI, although a strong law on paper, still faces many challenges in implementation that a privacy law

could also face, and that the fact that if more privacy is brought into the RTI, it will become yet another way for the State to avoid disclosing information.

QUESTIONS TO CONSIDER

- Can a privacy law be made to be functional in the same way that the RTI is functional?
- In terms of the RTI who should have more privacy? Who should be more transparent? Can NGOs be held accountable under the RTI?
- What mechanism should be established to enforce the balance between privacy and transparency?

PRIVACY AND SECURITY/LAW ENFORCEMENT IN THE NORTH EAST OF INDIA



Another important discussion held during the conference was the practices of law enforcement in the North East, security, and privacy. Because the North East is in a state of armed conflict several laws such as the Armed Forces Special Powers Act, Sedition Act and provisions in the IPC give immunity to security forces. This has led to gross violation of citizens' privacy by law enforcement agencies — as the acts give large amounts of power to law enforcement agencies with little or no accountability, and the acts are often misused.

Furthermore, the security laws that exist in the North East explicitly prohibit access to individual personal information. For example, in the Assam Police Manual, which is followed by police in the North East — no papers can be given out to the public except to the investigation officer — this includes personal information such as medical records and post-mortem reports. Anjuman shared an example of how this rule violates individual privacy. In her example, a victim was not allowed access her own medical report, but her medical records were being circulated among police, doctors, and media. This example highlights how privacy and the right to information can go hand in hand as it was the victim's right to access her own medical file, and at the same time getting access to her own medical file is an act of personal privacy protection.

PERSONAL EXPERIENCES SHARED

Participants shared how individual privacy is often violated by the army, as it is allowed to enter and search any space without warrant, if there is any type of “suspicion”. They also shared how phone tapping and random monitoring is a common practice by both the army and civil police. For example, one day the police recorded a conversation by Director of the Police, Wireless who was giving a lecture on how to lead an effective agitation. The transcript was handed to the high court and the director punished. Other examples include policemen frisking women in public, newspapers publishing police frisking women in public, and law enforcement agencies compelling pregnant women to give birth in open in front of people. The discussion surrounding privacy and security/law enforcement highlighted an important way in which privacy is violated in the North East. The unregulated action of law enforcement acts as a very real and dangerous way in which individual privacy is violated on a daily basis.

QUESTIONS TO CONSIDER

- Can privacy legislation regulate the acts of law enforcement agencies?
 - Will privacy legislation be implemented differently in the North East because of the armed conflict?
 - Will a privacy law supersede other laws such as the AFSPA?
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PRIVACY AND THE UID

During the conference the discussion also briefly focused on the UID and privacy. It was shared that there had yet to be UID consultations in the North East of India. The only information individuals had about the UID was that it was going to allow individuals to access BPL benefits more easily.

Questions around the UID included: why is the UID needed for citizens living within their own country? How will the UID impact and help families who send their children to gather rations from the ration shops? What is the connection between the UID and the expected privacy law? What is the connection between the UID and intelligence agencies? What would UID mean to people living in boarder areas?



CONCLUSION

PRIVACY AS A FUNDAMENTAL RIGHT

In the closing discussion Prashant Iyengar shared different examples of privacy in Indian case law, and the various ways in which the Supreme Court has defined privacy as a right that is implicit in the right to life. The participants discussed what privacy means to them, and what they thought a right to privacy should entail. Among the points raised, it was brought up that privacy should be a right that is legally protected for sovereign individuals. The law should also include parameters and limitations in order to protect an individual's autonomy. Furthermore, privacy should be understood and linked to the concept of human rights and individual rights. 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:

- Property rights and privacy
- Privacy rights of minorities
- Privacy and the UID
- Privacy and law enforcement agencies
- Privacy as a fundamental right
- The interplay of privacy law and traditional law