

theirview

Privacy and the 'nothing to hide' argument

The argument wrongfully equates privacy with secrecy, even though the former is a distinct and much richer concept

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The right to privacy hearings before the nine-judge bench of the Supreme Court ended recently. During the conclusion, it was argued on behalf of the state of Gujarat that privacy claims are only made by those who have done something wrong.

Unfortunately, arguments such as these, namely the "I have got nothing to hide" argument, represent a common misconception of the meaning and value of the right to privacy. Under this view, only people with something to hide, or those who have done something wrong, are concerned about the loss of privacy. If you have nothing to hide, then information about you cannot really be used against you. Thus, the argument proceeds, no harm should be caused to you by the breach of your privacy.

But some harm is caused to us when our privacy is breached. It is why we draw curtains at our homes or keep private diaries. The right to one's privacy, family, home or correspondence, has long been recognized internationally. We do not want our neighbours, or the state, to know what happens inside our homes or inside our heads unless we choose to share that information with them. We cherish private spaces to do and be as we like, free from the gaze of others, and not because something immoral or illegal is transpiring inside our homes. The "nothing to hide" argument makes an incorrect moral judgement about the kinds of information people want to hide.

It also wrongfully equates privacy with secrecy, even though they are distinct concepts. Privacy is about exercising the choice to withhold information, which others have no need to know. Secrecy, on the other hand, is about withholding information that people may have a right to know.

As historian Jill Lepore explains, "Secrecy is what is known, but not to everyone. Privacy is what allows us to keep what we know to ourselves." The "nothing-to-hide" paradigm evaluates any breach of privacy only from the perspective of disclosure of unwanted information.

Nevertheless, privacy is a much richer concept than secrecy. The right to privacy includes a bundle of rights such as the privacy of beliefs, thoughts, personal information, home, and property. In fact, as far back as 1890, privacy was understood as the "right to be let alone", a fact missed by the "nothing to hide" paradigm.

Today, privacy is regarded as central to our identity, dignity, ability to have intimacy, and meaningful inter-personal relations. It determines our interaction with our peers, society, and the state.

Privacy should thus be viewed as an integral part of self-development, a shorthand for "breathing space", since individual autonomy is all about the ability to control and share information selectively. For instance, we do not always want all of our friends to know everything about us.

But surely, you may ask, the government has a right to monitor its citizens' actions? After all, if you have "nothing to hide", then you should not worry about government surveillance. First, such an argument justifying mass surveillance upends the long-standing principle of presumption of innocence.

Second, it fundamentally misunderstands the consequences of the perceived loss of privacy and ensuing chilling effects on speech and behaviour. The fear that who we meet, what we say, and which websites we visit could be subject to scrutiny, may result in an unconscious change in (even lawful) behaviour. When we believe we are being observed, we are more likely to behave according to socially accepted norms. The change in behaviour, thus, has less to do with the content of our actions, but more to do with the knowledge of being watched.

Such a modification of behaviour is also evident in the arena of free speech and expression. A person critical of the ruling government may be more likely to self-censor her views if she believes her communications are being monitored. The reduction in diversity of views only undermines the democratic process.

Third, surveillance programmes are problematic even when there is no "undesirable" information that people want to keep hidden. Law professor Daniel Solove explains this beautifully by using



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the example of Kafka's *The Trial*, where the problem is not prohibited behaviour. Rather, it is the protagonist's exclusion from the judicial process, both in terms of knowledge or participation, and the attendant suffocating powerlessness and vulnerability created by the system's use of his personal data.

Finally, justifying the invasion of privacy because "I have nothing to hide" takes a short-term view of privacy and data collection. Data once collected can be used, misused, shared, and stored in perpetuity. Worse, it can be combined with other individually inconsequential data points to reveal extremely significant information about an individual. For example, mere knowledge that an unmarried woman went to a gynaecologist does not tell us much. But if we combine this information with a visit to an abortion clinic later, we suddenly know much more about her, and more than she may want to reveal publicly.

It is true that both the private sector and the state can know this information. But in the hands of the state, which has the monopoly on coercion and violence, it is far more potent.

The multiple dimensions of privacy seem to have been lost in the arguments put forward by the state opposing the recognition of the fundamental right to privacy. We may have nothing to hide, but if the arguments of the state are accepted, we will certainly have something to fear.

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