

THE MOB ON MY B

Your secrets are public, you're accosted by a host of unsolicited calls, even medical records are open. Is legislation the answer?

BY SANGHAMITRA CHAKRABORTY

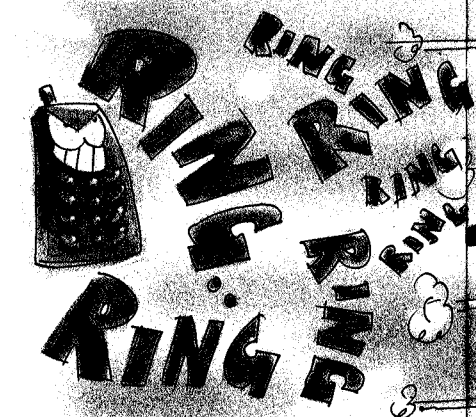
HARSH Pathak certainly touched a chord with the public this week. The 30-year-old Delhi-based lawyer filed a petition before the Supreme Court, asking it to ban unsolicited telemarketing calls to consumers as they were an "invasion of privacy and violation of the right to live a peaceful life." Harassed 'customers' welcomed it when the court issued notices to the government, cellphone companies and banks. "I responded as a customer totally pushed to the brink," says Pathak.

The notice asks such organisations why the petitioner should not be given relief. It doesn't specify any punitive action. Nor does it imply that there will be an actual ban immediately. It cannot, because India has no law to protect privacy.

But it may make companies more cautious and ensure a degree of self-regulation, which is why Pathak's initiative is seen as a positive beginning. "This may be the first step towards addressing privacy-related issues in India," says D.P.S. Seth, a member of the Telecom Regulatory Authority of India (TRAI).

That's encouraging, because the problem is much larger—and a lot more sinister—than a matter of pushy salesmen knowing your mobile phone number. A series of recent incidents involving teenagers, film stars and young women have shown just how shockingly privacy is on sale.

Take the relatively commonplace surveillance cameras. In the case of a prominent residential school in Sohna, near Delhi, "closed-circuit TV surveillance of all exits and entrances", as mentioned on the website, means much more. This is claimed to be in the interest of security. But the living spaces have security cameras too. Says a staff member, "Girls



either stay under the quilt at all times or play to the camera happily; they know the TV monitors in the security room are manned by male guards."

Unwary people everywhere are facing the fallout of hidden cameras. A group of young women in Pune recently discov-

ered to their horror that their landlord had been recording them on a web camera in their bathroom.

A young couple who filmed some intimate moments together must now cope with the fact that their unfortunately well-recorded video was leaked on the internet. It's now available on CDs.

Even confidentiality in doctor-patient relationships is not guaranteed in India. Seeking medical care for HIV/AIDS, sexually transmitted infections, safe abortions and even mental illnesses can be risky. Healthcare professionals can be biased, leading them to assume patients with such problems are immoral or somehow flawed. "This disrespect inspires zero confidence about the protection of privacy," says Leena Menghaney, a member of the HIV/AIDS unit of Lawyers' Collective, which gives legal aid to people living with or affected by HIV and works on advocacy and policy research on the affected human rights issues.

Worse, the right to privacy is not even

LEGAL AVENUES

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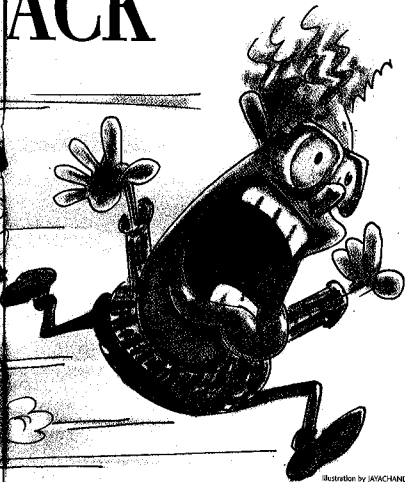


Illustration by JAYACHANDRAN

institutionalised in other medical settings. Nupur Sinha, a working woman in her thirties, says she was given a routine blood test during her pregnancy in a Bangalore hospital: "It was only when the report came that I realised I was tested for HIV (she had not consented to a test); it came as a shock to me."

An extreme example is the case of a medical professional who was required to donate blood in the course of his duties. His blood test revealed that he was HIV positive. He was to have been married soon, but the Chennai-based hospital informed his fiancée's family of his HIV status—without informing his first. He faced ostracism and sought damages, but the court rejected his plea, upholding the hospital's right to breach confidentiality.

While the absence of choice in any such case is shameful, even with choice the consequences of an indiscreet system are harsh. "It actively deters seekers of services in the public health sphere and in youth-friendly services (counselling and

aid); few recognise that confidentiality is in the public interest," says Menghaney.

Still, the absence of data protection is what affects most of us. A call centre employee in Delhi was recently caught using a UK-based customer's credit card number to buy himself fancy gadgets including a Sony video camera. This could happen to anyone who trusts their bank or insurance company with personal information, which might then be misused or sold.

Delhi adman Shekhar Mishra, who had had taken a home loan last year, has been getting calls from a rival bank which informs him that his recent salary hike entitles him to a top-up loan at better rates. "But how do they know?" he wonders.

They know because information finds its way into the market. Who is to blame? Cellphone companies say the leaks come

from banks and credit card firms who in turn claim that "dishonest, lower-level employees" sell databanks for easy money. But calls from cellphone companies are just as common as bank loan solicitations. "Please don't blame us, the regulator wanted to start a directory of cellphone numbers recently and we fought to stall it, why should we part with our customer's numbers? That would be damaging ourselves," says T.V. Ramachandran, director general of the Cellular Operators Association of India.

Whoever is to blame, the outcome is unfortunately the same. The customer pays; sometimes literally, through roaming charges, wasted time, harassment.

Is there a way out? The remedial route is still hazy. Vivek Kathpalia, an associate with Mumbai-based law firm Nishith Desai Associates, says, "A data protection and privacy law could take a while; the Indian Penal Code (IPC) could be amended." (See *Legal Avenues*)

Meanwhile, the Centre is said to be amending the IT Act to incorporate a data protection clause. Perhaps this week's Supreme Court notice may get the telecom ministry to speed up the process. And prominent human rights lawyer Rajinder Sachar offers hope to other victims of privacy abuse: "Articles 19 and 21 (of the Constitution of India), which safeguard the fundamental right to life and personal liberty, has been and should be invoked, whether it is data protection, SMS or phone tapping."

LEGISLATION CAN BE UNDERTAKEN ONLY AFTER THE BOUNDARIES OF PRIVATE AND PUBLIC ARE DEBATED.

Adds Kathpalia, "In today's context, courts could interpret this into private disputes or at least use it as a base." And an associate from Amarchand Mangaldas, one of India's leading law firms, cites both legal opinion and the medical profession's code of ethics in saying: "Though the right to confidentiality is not addressed under any statute in India, a doctor is bound by this duty. A patient whose confidentiality is violated may sue the doctor."

However, it's impossible to have a comprehensive draft legislation without a public debate preceding it. Says Pathak, "I hope we can start a conversation in civil society after this PIL." It is only after the boundaries of private and public are thrashed out, when the impact of violation of privacy in every sphere of our lives is understood, that legislation should be taken up. A good law can follow then. ■