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# **GENDERED LENS TOWARDS WORKPLACE SURVEILLANCE- BALANCING SECURITY AND PRIVACY WITHIN LABOUR LAWS FRAMEWORKS**

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## **ABSTRACT**

Workplace Surveillance has become one of the most prominent issue of the present generation. Surveillance is considered as a tool of exercise of power by the dominant actors in the Society. Workplace is generally considered as the “public” domain which is being monitored by the closed circuit television, facial recognition technologies etc. The increase in surveillance technologies in the recent times raises questions regarding its legitimacy.

This article will critically examine the problem of workplace monitoring, focusing on the gender discrepancies that exist and the significant consequences they carry. It is argued that women experience an unequal distribution of the burden associated with workplace monitoring. This thesis is supported by an in-depth examination of the psychological and professional ramifications frequently experienced by female workers. Moreover, it is argued that the current labor regulations, while crucial, require urgent modification to manage the swiftly changing terrain of monitoring techniques effectively. Our argument strongly supports achieving an equitable equilibrium between security and privacy. This study underscores the need to prioritize security and privacy in workplaces, regardless of gender, to cultivate a fair and respectful work environment for everyone.

## DISCUSSION AND ANALYSIS

### Gender Disparities on Workplace Surveillance

Historically, women's concerns about privacy have differed from popular, generally masculine-dominated thought. Women are still more likely to be the targets of unwanted attention nowadays. Gender and power research suggests that men and women may perceive surveillance differently, particularly in the workplace.<sup>12</sup> Hirst and Schwabenland (2017) discovered in ethnographic observations and interviews in a workplace transitioning to an open-plan office space that workers were more conscious of their visibility in higher management, and women, in particular, were concerned about being continually monitored.<sup>3</sup> **It can be argued** that Surveillance systems function through the logic of disembodied control at a distance, which has gendered consequences for embodied actors. The disparities above leave women with technical disadvantages inside the workplace, **a predicament inadequately acknowledged or rectified by current federal and state legislation.**

“ Surveillance always involves an exercise of Power”. Recently<sup>4</sup>, Haryana ASHA workers were instructed to download a Mobile Device Management Application. Officials from the local health department forced them to install the application. The purpose of the application was to track the location of the ASHA workers and to add/remove information from handsets issued by the department., which amounts to an invasion of privacy. On other occasions, male superiors utilized their knowledge of cameras (the most used technology for surveillance) to harass workers sexually. An example such instance was an individual who would summon specific employees to the factory premises before the activation of surveillance cameras, exploiting them without fear of reprisal.

What is inherent in such scenarios is that knowledge of the cameras belongs solely to those undertaking the monitoring - the supervisors - and leaves the workers in the dark. This provides one group with significant influence over the other. The cameras might also be used to monitor

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<sup>1</sup> Elizabeth A. Brown, THE FEMTECH PARADOX: HOW WORKPLACE MONITORING THREATENS WOMEN'S EQUITY.

<sup>2</sup> Vitak, J., & Zimmer, M., Surveillance and the future of work: Exploring employees' attitudes toward monitoring in a post-COVID workplace. *Journal of Computer-Mediated Communication*, 28(4) (2023).

<sup>3</sup> Luke Stark, Amanda Stanhaus, Denise L .Anthony, “I Don't Want Someone to Watch Me While I'm Working”: Gendered Views of Facial Recognition Technology in Workplace Surveillance, December 30,2019.

<sup>4</sup> Siddharth Tiwari, *Privacy Concerns: Asha workers to shut track app*, TIMES OF INDIA (October 13,2021).

and check for possible power abuse, but it would necessitate manufacturing workers having access to the same information, which is unlikely at this time.<sup>5</sup>

Should employers have the right to access data about women's fertility or symptoms of menopause as a component of wellness programs? **To what degree should employers possess the authority to ascertain if female employees have undergone pregnancy terminations when the female workers do not willingly disclose this information?** These are some of the questions primarily raised by unregulated common practice. In the case of *Mrs. Neera Mathur Life vs. Corporation of India*<sup>6</sup> — In this case, the respondent questioned about the employee's menstruation history and past pregnancies. Article 21 of the Constitution ensures each citizen the right to life, liberty, which includes the right to privacy. This recognized the right to privacy of the female employees.

### **Legal Frameworks and Gender Equality**

The issue is the implementation of intrusive surveillance technologies, **the failure to get worker consent**, and the need for opportunities for public discourse. The systems above threaten the inherent entitlement to privacy as protected by Articles 14, 19, and 21 of Indian Constitution. The transformation of workplaces into panopticons not only infringes upon fundamental rights but also has detrimental effects on exercising free speech and forming labour unions.<sup>7</sup>

To address challenges based on data protection and privacy, Section 72A of the Information Technology Act, 2008 and Section 43A of IT Acts provide the rights. The IT Rules separate Sensitive Personal Data from personal data. Rule 5 of the IT Rules requires data collectors to get written consent and establish legality and need while collecting SDPI. Rule 5 further specifies that the person whose data is gathered must know the purpose and who will have access. Rule 8 and Section 43A of the IT Act make corporations civilly liable for SDPI mismanagement. The IT Act and SDPI Rules give body corporate checks and remedies for non-compliance, **yet there are still gaps.**

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<sup>5</sup> Nehmat Kaur, *What Studying the Impact of Surveillance on Women can Teach us about Power*, THE WIRE , (March 28, 2017).

<sup>6</sup> SC 1992 AIR 392

<sup>7</sup> Garg, R. *#PrivacyofThePeople - ASHA Workers and Employee Surveillance*. INTERNET FREEDOM FOUNDATION (2021, July 5).

Firstly, it should be noted that the act of providing notice and obtaining consent from individuals **does not impose an obligation on companies** to ensure that the terms and conditions pertaining to the data are explicitly articulated in a manner that enables the person giving consent to fully comprehend them. Moreover, the lack of the requirement for **renewed consent** would suggest that the first consent would serve as a basis for justifying further data collection and processing. For instance consent for CCTV monitoring might potentially be seen as **implicit agreement** for further utilization of face or gait recognition technologies.

Personal Data Protection Bill 2019<sup>8</sup> passed had been enacted to regulate control over data processing. However, it continues to undergo rigorous scrutiny.<sup>9</sup> The employees are labelled as **“data principal”** in this bill and are conferred with rights. This raises questions about who these provisions target. The Industrial Employment<sup>10</sup> (Standing orders) Act and the Employees Compensation Act<sup>11</sup> both have separate requirements to be termed as “employee” and may only sometimes only address to workers or “workmen”. Thus, the employee would bear the uncertainty caused by **the lack of clarity** as to who this clause applies to.<sup>12</sup>

The challenges women encounter in the gig economy due to monitoring strategies eventually contribute to creating an unsafe work environment for women. Over time, the government has implemented specific legislation aimed at safeguarding the interests of women within the realm of employment. One example of such legislation is the Equal Remuneration Act of 1976<sup>13</sup>, POSH<sup>14</sup> Act of 2013. The Factories Act<sup>15</sup> also incorporates provisions aimed at guaranteeing the safety and security of women throughout their working hours. However, there is a noticeable deficiency in gender surveillance legislation. Workplaces serve as more than just channels for women to attain autonomy; they also symbolize how societies uphold aspirational principles such as equality and freedom. Therefore, it is incumbent upon us to

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<sup>8</sup> The Personal Data Protection Bill 2019

<sup>9</sup> Malik, S., & Malik, S. (2021, June 22). *Changing forms of gender-based economic discrimination: Are Indian courts ready for challenges of algorithmic bias?* – THE LEAFLET.

<sup>10</sup> The Industrial Employment( Standing Order),1946.

<sup>11</sup> The Employees Compensation Act,1923

<sup>12</sup> Shweta Mohandas, Deepika Nandagudi, *The Boss Will See You Now - The Growth of Workplace Surveillance in India, is Data Protection Legislation the Answer? The Centre for Internet and Society*.(December 31,2020)

<sup>13</sup> The Equal Remuneration Act,1976

<sup>14</sup> Protection of Women from Sexual Harassment Act, 2013

<sup>15</sup> The Factories Act, 1948

guarantee that workplaces effectively utilize emerging technology in order to mitigate preexisting disparities in society rather than intensify them.<sup>16</sup>

### **Balancing Privacy and Security**

Employers argue that monitoring safeguards security enhances safety measures, and optimizes productivity within highly competitive marketplaces. They argue that they have the right to monitor them. Furthermore, it is claimed that workspace is a public domain that excludes the **'personal' aspect by default.**<sup>17</sup> Thus disregarding all the privacy claims. However, **I believe** that the private/public distinction is not useful in the context of workplace surveillance since it persistently permits the contention that it is exclusively and invariably 'public' depriving employees of the means of defending their rights.

Personal privacy ensures autonomy, establishes social capital for closeness, and is the foundation for organizing various social relationships.<sup>18</sup> It is customary for individuals to consider possessing complete authority over their privacy.<sup>19</sup> It is widely acknowledged that maximizing control over monitoring—here, interpreted to subjecting every individual within the organization in reasonable surveillance and judgment—is in collective's or institution's best interest. The institution may be deceived if individuals are permitted to act solely in their self-interest if granted an absolute right to privacy. Giving the institution fundamental transparency rights could potentially deprive the individual's right to autonomy and 'self-determination' by exercising ill-advised judgments that prioritize the institution's interests. Considering the conflict between employees and institutionalized workplaces, **how can we ensure equitable allocation of privacy and transparency rights?**<sup>20</sup> In the workplace setting, the employee has lesser bargaining power; thus, it would not be possible for an individual to ensure fair use of the data collected. On the other hand, the employer has a right to surveillance to ensure appropriate utilization of resources. Therefore, balancing the right to privacy and legitimate

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<sup>16</sup> Gopalakrishnan, V., Menon, V., & Kaur, S. (2023, April 17). *Rights of women in the workplace - laws every Indian employer should know*. Lexology

<sup>17</sup> Klare, K. E. (1982). The Public/Private Distinction in Labor Law. *University of Pennsylvania Law Review*, 130(6), 1358–1422.

<sup>18</sup> Christine Miller & F. Stuart Wells (2007) *Balancing Security and Privacy in the Digital Workplace*, Journal of Change Management.

<sup>19</sup> Markus Naarttijärvi, Balancing data protection and privacy – The case of information security sensor systems, *Computer Law & Security Review*, Volume 34, Issue 5, 2018.

<sup>20</sup> Lucas D. Introna *Workplace Surveillance, Privacy and Distributive Justice*, ACM SIGCAS Computers and Society. 2000, December, 12

monitoring is necessary. The employer needs to justify the obtaining of certain data in particular instances.<sup>21</sup>

## CONCLUSION

In conclusion, this initiative highlights the need to examine workplace surveillance from a gendered perspective. This argument sheds light on the gender discrepancies observed in surveillance encounters and the significant consequences they entail. Although current labor laws do not offer crucial protections, they necessitate adjustments to accommodate the ever-changing monitoring techniques. Achieving an equitable balance between security and privacy mandates implementing transparency, technological safeguards, and a societal transformation promoting inclusion. Experimental proof from real-world contexts substantiates the viability of implementing surveillance tactics sensitive to gender considerations.

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<sup>21</sup> Arshia Roy, Aastha Malhotra, In labour and in Love: Privacy through a gendered lens, November 18, 2019.