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# **SURVEILLANCE AND PRIVACY IN INDIA: A COMPREHENSIVE ANALYSIS**

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## **ABSTRACT**

This research delves into the relationship between surveillance and data privacy in Indian context. This study looks into the historical evolution of surveillance practices, government surveillance programs, ethical and social implications and the impact on civil liberties. In India, there has been an increase in adoption of surveillance technologies which has been the growing challenge for privacy issues. This has prompted the privacy advocacy groups for public activism and awareness in the digital space. Surveillance plays an important role in the security of a country but it does raise complex social and ethical questions. This research provides an understanding of surveillance and privacy in India and provides a foundation for future works.

## Introduction

With the advent of the pandemic, the world was forced to adopt digital ways. This provided many countries the pretext to extend their digital surveillance powers<sup>1</sup>. India, a country which is in middle of its digital boom has embraced technology in various facets of its use in daily lives. However, there remains various challenges regarding the protection of individual privacy. The paramount issue addressed through this paper is the impact on surveillance on individual privacy in India. As the country becomes technologically updated and starts embracing technology in its daily sphere of activities, it raises questions about the fundamental right to privacy as stated in the Indian constitution. According to the Constitution, privacy is the fundamental human right which maintains human condition and helps treat individuals with dignity and respect<sup>2</sup>. There has been an increase in surveillance cameras, digital monitoring and biometric identification systems which has triggered the concerns about data security, individual privacy and abuse of power.

## Objectives

This research looks into the individual privacy of Indian citizens and surveillance factors. This research will analyse the historical evolution of surveillance practices in India, assesses the current legal framework governing privacy and surveillance in India. This also examines the multifaceted impacts of surveillance on civil liberties, social norms and ethics to finally evaluate the role and effectiveness of government surveillance systems with a focus on NATGRID, Aadhar and Central Monitoring System. This will also provide an insight on the ongoing debate regarding surveillance practices and their impact on individual rights and national security.

## Literature Review

### Historical Perspective on Surveillance in India

Indian citizens for centuries have relied on cash and done payments through only one medium until demonetisation when they were forced to turn into a digital economy progressing towards a cashless society<sup>3</sup>. This forces one to look into India's rapidly developing technological

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<sup>1</sup> Maati, A. and Švedkauskas, Ž., 2020. Framing the pandemic and the rise of the digital surveillance state. *Czech Journal of International Relations*, 55(4), pp.48-71.

<sup>2</sup> Bhasker, M.S. and Singh, M.K., Right to Privacy is an Intrinsic Part of Right to Life and Personal Liberty. *of Legal Studies*, p.84.

<sup>3</sup> Aggarwal, K., Malik, S., Mishra, D.K. and Paul, D., 2021. Moving from cash to cashless economy: Toward digital India. *The Journal of Asian Finance, Economics and Business*, 8(4), pp.43-54.

domain. This has in turn prompted to investigate into the surveillance practices and privacy of Individuals. Historically, surveillance practices in India have developed through the changing socio-political landscape of the country. In ancient civilisations, rulers employed spies to track individual activities, gather information and maintain control over the empire. This was mainly seen with the Mughal empire and Mauryan empire<sup>4</sup>. With the British colonial period, this took a more formal tone with the establishment of Criminal Investigation Department (CID).

Post independence, India saw a new wave of surveillance. During 1975-77 emergency period, there was an expansion of surveillance powers which resulted in abuse of that power. As India is going through the digital boom, there is a new era of surveillance through initiatives like NATGRID, Biometric Identification System and Aadhar. This would result in modernising government's surveillance<sup>5</sup>. The legal framework for surveillance in India is based on the Information Technology Act of 2000, IT (Procedures and Safeguards for Interception, Monitoring, and Decryption) Rules, 2009 and Indian Telegraph Act of 1885. The Supreme Court of India validated the right to privacy in the landmark decision in the K.S. Puttaswamy case (2017)<sup>6</sup> and provided a legal framework and foundation for further protection of people's freedom. This helps with deeper exploration of upcoming challenges due to the increase in surveillance.

### Privacy Laws in India

India's approach to privacy is moulded through a combination of past privacy violations, data protection laws and constitutional provisions. The Constitution of India identifies privacy as one of the fundamental rights that one should get. This gets recognised in the fundamental laws of India under Article 21, drawn from right to life and personal liberty along with right to speech and expression under Article 19<sup>7</sup>. This is also backed up by the landmark case of K.S. Puttaswamy (2017)<sup>8</sup>. India has further taken steps to prioritise the safety of their citizens of data protection and privacy regulations with the Digital Personal Data Protection Act, 2023.

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<sup>4</sup> Sheikh, A.M., 2020. Kautilya, the Indian Machiavelli; On War and diplomacy in Ancient India. *Sheikh, A., M., & Rashid, S. (2020). Kautilya, the Indian Machiavelli*, pp.29-36.

<sup>5</sup> Kumar, I., 2020. Privacy and Surveillance: A Constitutional Conundrum of Essence of Right and Justification for Its Denial. *Issue 6 Int'l JL Mgmt. & Human.*, 3, p.1148.

<sup>6</sup> Bhandari, V. and Lahiri, K., 2020. The surveillance state, privacy and criminal investigation in India: Possible futures in a post-Puttaswamy world. *U. Oxford Hum. Rts. Hub J.*, p.15.

<sup>7</sup> Sharma, A., 2021. Data Protection, Privacy and Proposed Law in India: Tracing the Previous Challenges and Transition to the Bill of 2021. *Volume II*.

<sup>8</sup> Misra, B., 2020. Right to Privacy as a Fundamental Right in Absence of Express Statutory Provisions: A Critical Analysis of Justice KS Puttaswamy (Retd.) V. Union of India. *Indian JL & Just.*, 11, p.370.

This will align India with the international data protection standards by protecting individual data, obligations of data processors and the rights of individuals.

However, there have been numerous cases registered for data violation in the Indian court. These cases are mainly against the misuse of personal data collected from social media and data breaches of India's biometric identification system<sup>9</sup>. In spite of the growing securing and laws to protect individual data, there are challenges to effectively safeguard information in this digital age. In order to protect one from crimes, people look forward to installation of surveillance cameras which is highly effective of deterring crimes and aiding law enforcements. However, this brings in the question of privacy and potential misuse<sup>10</sup>. There has been the need for clear regulations to balance the benefits and concerns.

### **Government Surveillance Programs**

Unique Identification Authority of India's Aadhar program is one of the largest biometric identification systems globally. Although it has streamlined its access to government services, there are still concerns about the data safety and security issues<sup>11</sup>. The system itself has faced challenges regarding potential misuse. The National Intelligence Grid (NATGRID) is another project to centralise database in an attempt to counteract the terrorism efforts and facilitate intelligence. However, data breach and safety issues are there along with excessive government surveillance since there is lack of transparency and potential legal oversight<sup>12</sup>. India also is involved with data sharing and collection programs which questions the extent of foreign involvement. It is pertinent that there is a balance achieved between security and privacy. In order to effectively address these issues, one needs to understand the legal frameworks, accountability and transparency of surveillance programs to ensure security and privacy.

### **Surveillance and National Security**

Government of a country always tries to protect their citizens from unforeseen harms and for that surveillance is necessary. However, there is a complex relation between security and privacy and that tension is the cause of perennial debate<sup>13</sup>. There is the need of a legal

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<sup>9</sup> Datta, P., Bhardwaj, S., Panda, S.N., Tanwar, S. and Badotra, S., 2020. Survey of security and privacy issues on biometric system. *Handbook of Computer Networks and Cyber Security: Principles and Paradigms*, pp.763-776.

<sup>10</sup> Masiero, S. and Shakthi, S., 2020. Grappling with Aadhaar: biometrics, social identity and the Indian state. *South Asia Multidisciplinary Academic Journal*, (23).

<sup>11</sup> Pali, I., Krishania, L., Chadha, D., Kandari, A., Varshney, G. and Shukla, S., 2020. A Comprehensive Survey of Aadhar and Security Issues. *arXiv preprint arXiv:2007.09409*.

<sup>12</sup> Sebastian, J. and Sakthivel, P., 2020. Cyber Terrorism: A Potential Threat to National Security in India.

<sup>13</sup> Dabbagh, M. and Rayes, A., 2019. Internet of things security and privacy. *Internet of Things from hype to reality*, 621, pp.211-238.

framework for respecting individual's rights and privacy while also ensuring security measures. The 2008 Mumbai attacks<sup>14</sup> prompted India to enhance its surveillance capabilities. With the help of security tapes, one can effectively identify and capture suspects. There can be the implementation of AI<sup>15</sup> and other technologies to advance security measures and create more protection.

### **Social and Ethical Implications**

Surveillance technologies are now deeply entrenched into the layers of society but has raised questions about their impact on civil liberties. It can violate a person's right to freedom of speech and expression and right to peaceful assembly<sup>16</sup>, especially in the context of protests and political activism. Therefore, there is the need for strong legal frameworks to safeguard individual rights against this expansion of surveillance<sup>17</sup>. This can also lead individuals towards faking their interactions and censoring themselves in order to behave according to the societal norms since they are constantly being monitored<sup>18</sup>. There are always ethical concerns about issues of consent in surveillance.

### **Legal Challenges and Privacy Advocacy**

In a society rigged with surveillance and privacy issues, there are various legal issues. Legal cases have underlined the privacy issues in a surveillance rigged society. These include India's Puttaswamy judgement (2017) and US' Carpenter v. United States (2018)<sup>19</sup>. These cases have questioned data collection and the constitutionality of surveillance methods to promote the need for clear legal standards. Through these cases, some legal precedence has been set to protect people's privacies against the ever-expanding surveillance state. Organisation like Internet Freedom Foundation (IFF) and Electronic Frontier Foundation (EFF)<sup>20</sup> have promoted

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<sup>14</sup> Desai, D. and Bhatt, P., 2019. Securing India's cities: Remembering 26/11, learning its lessons. *Observer Research Foundation, Special Report*, (92).

<sup>15</sup> Sarker, I.H., Furhad, M.H. and Nowrozy, R., 2021. Ai-driven cybersecurity: an overview, security intelligence modeling and research directions. *SN Computer Science*, 2, pp.1-18.

<sup>16</sup> Drozd, O., Romanov, M., Moroz, V., Stremenovskyi, S. and Zelenyi, V., 2022. The right of citizens to assemble peacefully, unarmed, to hold rallies and demonstrations: historical origins and genesis of formation. *Amazonia Investiga*, 11(51), pp.257-266.

<sup>17</sup> Ribeiro-Navarrete, S., Saura, J.R. and Palacios-Marqués, D., 2021. Towards a new era of mass data collection: Assessing pandemic surveillance technologies to preserve user privacy. *Technological Forecasting and Social Change*, 167, p.120681.

<sup>18</sup> Clarke, S., 2023. The Panopticon of the Public Protest: Technology and Surveillance. *International Journal of Undergraduate Research and Creative Activities*, 5(2), p.21.

<sup>19</sup> Han, D.S., 2020. Constitutional rights and technological change. *UC Davis L. Rev.*, 54, p.71.

<sup>20</sup> Lindner, R. and Aichholzer, G., 2020. E-democracy: Conceptual foundations and recent trends. *European e-democracy in practice*, pp.11-45.

digital privacy. They help raise awareness among the general public and force government officials and corporations to stay accountable.

### Research Methodology

This research employs secondary research methodology to look into the multifaceted dynamics of privacy under increasing surveillance in India. Secondary research<sup>21</sup> involves collection, analysis and synthesis of the available data, information and literature from authoritative sources. This method is chosen due to the availability of prior research data and the need to draw from a number of sources. The research draws from a lot of sources like online government websites, legal databases and academic journals to finally synthesise the findings together for a holistic understanding of the historical evolution, technological advancement and legal, social and ethical implications of surveillance in Indian context.

### Data Analysis and Findings

In order to provide insights about the current state of affairs of surveillance technology of India, there is the need to investigate the existing data and statistics in the Indian context.

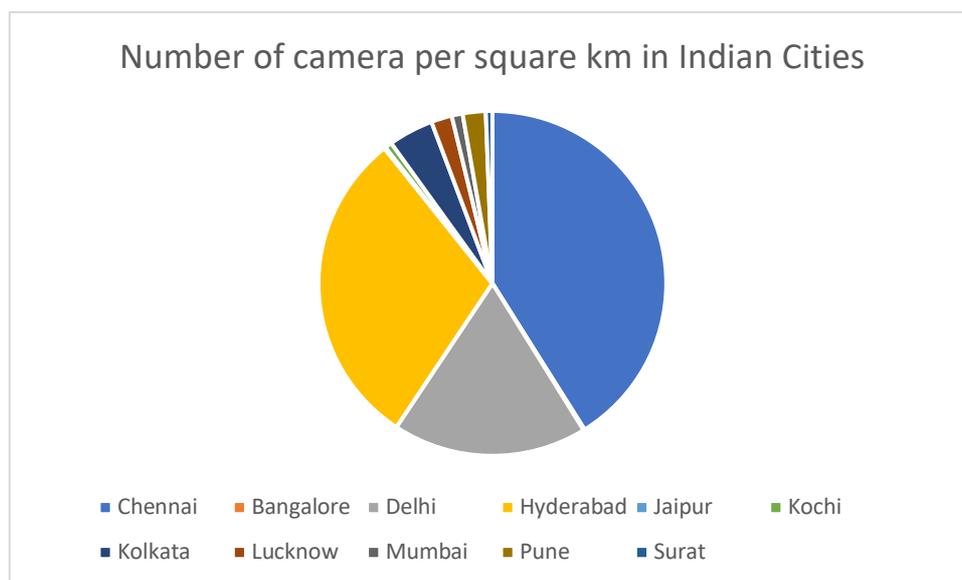


Figure 1: Number of cameras present in Indian Cities per square km

(Source: Surfshark 2023)<sup>22</sup>

<sup>21</sup> Siddiqui, N., 2019. Using secondary data in education research. *Social Research Update*, 68, pp.1-4.

<sup>22</sup> *Who has the most CCTV cameras in the world?* (2023) Surfshark. Available at: <https://surfshark.com/surveillance-cities> (Accessed: 28 October 2023).

For example, in the Indian urban context, there has been a significant rise in the surveillance technologies<sup>23</sup>. However, this increased surveillance does present legal issues which challenges the surveillance practices<sup>24</sup>. This prompts individuals to resort to legal issues to protect their rights. The government surveillance programs too collect data from diverse sources like Aadhar and NATGRID. However, there is the need for surveillance in national security as proved by the 2008 Mumbai attacks<sup>25</sup>. However, it is not clear if increased surveillance systems will promote decrease in terrorist activities even though it would help with investigations<sup>26</sup>. With the increase surveillance by government, there is the promotion of uneasiness among the people which has led to self-censorship<sup>27</sup>. The need for privacy is advocated by groups like Indian Freedom Foundation and Electronic Freedom Foundation. These highlight the need for continuous research, legal framework and public engagement to strike a balance between privacy and surveillance<sup>28</sup> in the evolving Indian context.

## Conclusion

To conclude, this study provides an understanding of the intricate relationship between privacy and security issues regarding surveillance issues in India. For this, there has been an analysis of the historical evolution, government surveillance programs along with legal, ethical and social implications which shed light upon the multifaceted dynamics at play. There is a need for a nuanced approach to privacy while keeping security issues in mind. Although surveillance technologies have advanced significantly, there are persistent concerns about public attitude, ethical concerns and civil liberties.

## Future Scope

There is an unmined potential for further research in this field. This would include investigation of specific case studies, surveillance programs and their impact on individual and national security. A comparative analysis of the surveillance practices in India compared with those of

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<sup>23</sup> Kumar, H., Singh, M.K., Gupta, M.P. and Madaan, J., 2020. Moving towards smart cities: Solutions that lead to the Smart City Transformation Framework. *Technological forecasting and social change*, 153, p.119281.

<sup>24</sup> Khan, P.W., Byun, Y.C. and Park, N., 2020. A data verification system for CCTV surveillance cameras using blockchain technology in smart cities. *Electronics*, 9(3), p.484.

<sup>25</sup> Kamal, M., 2020. Revisiting the Mumbai Mayhem '26/11' and India-Pakistan Response. *Journal of Indian Studies*, 6(2), pp.195-212.

<sup>26</sup> Elharrouss, O., Almaadeed, N. and Al-Maadeed, S., 2021. A review of video surveillance systems. *Journal of Visual Communication and Image Representation*, 77, p.103116.

<sup>27</sup> Stoycheff, E., Burgess, G.S. and Martucci, M.C., 2020. Online censorship and digital surveillance: the relationship between suppression technologies and democratization across countries. *Information, Communication & Society*, 23(4), pp.474-490.

<sup>28</sup> Allahrakha, N., 2023. Balancing Cyber-security and Privacy: Legal and Ethical Considerations in the Digital Age. *Legal Issues in the Digital Age*, 4(2), pp.78-121.

other nations to identify the best lessons and practices. Research into the technological developments which have led to the uprising of new surveillance technologies like facial recognition and their implications. An extensive analysis of the data protection and privacy policies and legislations in India. Finally, initiatives to make general public more aware about digital privacy and their civil rights.

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