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**Advanced Surveillance Devices: Drones, CCTTV etc. and
Right to Privacy.**

ABSTRACT

In the era of globalization, technological advancement has brought us many conveniences and advantages which has made our life more-easier and comfortable. Thus, such advancements in field of technology has given rise to lots of invention and development in different arenas. Whereas, advancement in the field of surveillance technology has been one of the new creations in the world of Technology. To describe the word surveillance, it was derived from the French word which means "Watching over". Surveillance can be defined as the close observation of someone or something in order to gather any kind of information or data. The major objective of surveillance is to keep a watch on the activities of an individual or a group of individuals, and can also be used for various other reasons as well. Thus, surveillance can be for different purposes such as health agencies use surveillance to prevent the spread of contaminating diseases, Government

enforcement bodies use surveillance so as to keep a watch and prevent threats in regards to the integrity and national security of the country and law enforcement bodies use surveillance to prevent crimes.

INTRODUCTION

Many government bodies, all over the world have the discretion to carry out surveillance in these countries. Whereas, the intention behind the surveillance is to eradicate terrorism and many other illegal activities, in order to maintain peace and national security, but the practice of surveillance has been criticised a lot on the grounds of breach of privacy and freedom of expression. Thus, if we come to know that we are being monitored at every single second, it is quite obvious that this will affect our right to privacy and we cannot express our personal opinion in such cases. The author would also like to state that since government has kept on collecting all source of information including highly personal information of millions of people without their consent, is itself a breach of privacy and violative of fundamental rights guaranteed by the Constitution of India, to its citizen, thus by this it can be said that the government is being dominant on its citizen.

TYPES OF SURVEILLANCE TECHNOLOGIES

Some of the surveillance technologies are discussed below:

- **Biometric Surveillance Technology:** This kind of surveillance are the methods by which certain features such as face identification, fingerprint is used to identify and authenticate an individual identity.
- **Social Media Monitoring Software:** This kind of software are used in collecting data and important information from a social media account such as Twitter, Facebook, Instagram and etc.
- **Closed Circuit Television Cameras (CCTV)-** Closed Circuit Television Cameras helps in watching the public or the property by

way of producing images, videos and recordings in order to reduce crime and illegal activities.

- **Automatic Licence Plate Readers:** Automatic Licence Plate Readers are the special kind of camera system which are generally placed over the streetlights, poles, police cars, so as to capture images of licence plate of the still and moving vehicles.
- **Hacking Software and Hardware:** This kind of technology allows law enforcing bodies to access individual computer and other electronic devices including laptops, cell phones or personal accounts of that person, thus the motive is to have a check over the citizens of the country.

LEGAL REGIME

There were some cases where surveillance had invaded privacy. In the case of *Katz vs. The United States*¹, the petitioner was accused of passing wagering information from Los Angeles to Boston and Miami by making the use of public phone booths, thus with an intention to gather the evidence, FBI placed tape recorders on those phone booths, whereas it was argued by Katz that the activity of recording the phone calls was the violation of privacy, to which the Court of Law held that the conversation of Katz must be protected under the fourth amendment Act of US Constitution. The second case is of *R.M. Malkani vs. State of Maharashtra*², where the tape recording of the appellant was the one and only evidence against him, which also proved the appellant guilty of bribery, to which he claimed that mere recording was done without the consent of the appellant, it is still relevant to the court. Thus, in both of

¹ 1967 U.S. Lexis 2 (U.S. December 18, 1967).

² 1973 AIR 157.

the cases there is a breach of right to privacy, but still the questions whether such surveillance was illegal or not depends upon the Laws of the country.

Moreover, in United States the Rule of the Exclusionary was incorporated in the Fourth Amendment Bill of the American Constitution, which lays down that evidence which is against a person would be inadmissible in the Court of Law if it is obtained through an unlawful search of that person's property and this is the very rule that is followed in the case of *Katz Vs. The United States*³.

Whereas, India follows the Rule of Relevance which lays down that even if the evidence were obtained by the unlawful means, where relevancy of evidence is the main principle of making it admissible in the Court of Law.

SURVEILLANCE SYSTEM ACROSS THE WORLD

UNITED STATES OF AMERICA

The surveillance system in United States are very efficient which also keeps an eye on each and every person. Now, what happens in United States is that, when there is a conflict between two persons, the police officers through different surveillance can rewind the circumstances of case and initiate fair legal proceedings against the wrongdoer, which also helps in proving evidence against the wrongdoer and further provides justice to the innocent, and this is the foremost reason behind citizens showing positive response towards the system.

NSA SURVEILLANCE

National Surveillance Agency is a national level intelligence agency which is a part of United States Defence department. This agency has been involved in illegal surveillance on its citizens and has obtained personal information

³ Supra Note 1.

by phone tapping and monitoring computer resources, hence such has been seriously criticised by Americans as because it is directly hampering their privacy.

UNITED KINGDOM

Recently, European Courts of Human Rights has ruled the UK Mass Surveillance as illegal as the Surveillance programmes in Britain are directly infringing human rights. The Court held that there was a terrible mismanagement in the way the data was accumulated and thus was violative of an individual's right to privacy.

INDIA

India is a developing country and has gone through various changes in the past in regards to its policy on Information Technology where a lot of changes are still required. In India, there are not much information that has been provided in regards to carrying out the surveillance in India. Surveillance in India is just at the beginning stage and the most important question that arises in the minds of the citizens is that, whether the current Indian Legal Framework contain provisions related to surveillance and are the privacy of the citizens of the country in safe hands?

SURVEILLANCE AND PRIVACY IN INDIA

Recently ten Federal Government agencies were authorized by the Ministry of Home Affairs, to intercept and scrutinize information from any computer and decrypt the information generated, transmitted, received and stored in any computer source. Thus, this can be evident about the extreme measures that have been adopted by the government with an intention to deny people their right to privacy. Though the agencies such as Delhi Police, Central Bureau of Investigation and etc have been authorized to intercept the information but it lacks a statutory basis. Thus, to argue, the author would like to state that such

agencies cannot be classified as organization and it also increases the ambit of arbitrariness while exercising powers. Thus, it is quite evident that this logic of the government is unconstitutional and is a breach of telephone tapping guidelines and further keeping computers under such kind of surveillance, hampers the privacy and independence of the people by infringing the fundamental rights to privacy which is guaranteed by the Constitution of India under Article 21.

THE NOTION OF PRIVACY IN INDIA

In simpler terms privacy means to be left alone to oneself which is an inherent right of a person. The right to privacy is one of the important rights in India which has been put forth under Article 21 of the Constitution of India. Thus, in India right to privacy was identified as a fundamental right after the landmark judgment of *K S Puttaswamy Vs. Union of India*⁴. Whereas, the right to privacy evolved from the landmark judgment of *Kharak Singh Vs. State of Uttar Pradesh*⁵, where in this case Kharak Singh was tortured by the Police Officers who used to make domiciliary visits to his house at night, where under Section 236(b) of UP Regulation, such kind of visits were allowed but the Court had later struck off the mentioned section as unconstitutional because it was an interference with the privacy of Kharak Singh. Thus, the main aim behind the establishment of the right to privacy is to protect the dignity of the people of India and protect the rights of those individuals from being contravened by others.

⁴ Decided on September 26, 2018.

⁵ 1963 AIR 1295.

ARTICLE 21 OF THE INDIAN CONSTITUTION

Article 21 of the Indian Constitution states that each and every individual by virtue of being human has the right to life and personal liberty of which none can be deprived of except according to a procedure established by law, other than this if any individual who violates this right of any person shall be punishable by law.

SURVEILLANCE LAWS IN INDIA

It is agreed that the government agencies of India have indirect powers to carry on the surveillance process through many acts and legislation passed by Parliament but still there exist a lack of legislation which specifically deals with surveillance.

- Section 69 of Information Technology Amendment Act, 2008- Under Section 69 of the IT Amendment Act, government of India is authorized to intercept, decrypt or monitor any computer source code with an intention to maintain public order, integrity and security of the nation.
- Right to Privacy Bill, 2019- Right to Privacy Bill has clearly defined the stance of the Right to privacy and has mentioned the circumstances under which the Surveillance can be conducted, but it has also laid down the penal action which can be imposed if the information that has been obtained through surveillance is misused. Whereas, the surveillance can be conducted only by the prior recommendations and approval of the Home Secretary, Ministry of Home Affairs and Government of India.

NATIONAL HEALTH STACK BILL

Recently, there was a new plan that has been initiated by the Niti Aayog which released the proposal to create a National Health Stack, which is a health record of individuals at the central level. The work of the stack would be to store the personal health records and service provider records which will bring down the medical expenses, provide easy access to health records, avoid duplication of registries and promote wellness in the country. For this, the unique identity will be created and will be given to the person registering it so as to enable access to the records after the KYC requirements are fulfilled. Now creation of such a digitalised medical record has raised the question of privacy among the citizens of the country as because if the personal information gets leaked about a person suffering from any kind of diseases, with disgrace associated with it would definitely lead to a discriminatory behaviour against that individual. To which the National Health Stack has stated that it would ensure that the data of the people are protected from any abuse.

CONCLUSION

Thus, to conclude the paper, the author would like to state that each and every aspect of something has got two sides, positive as well as negatives. If the advance surveillance devices such as Drones, CCTV, Licence Plate Readers, Biometric Surveillance and etc, are one of the most effective ways to eradicate terrorism, but it should not be implemented at the cost of privacy of the innocent individuals. Now, every person has his own life, privacy and dignity but when such surveillance is adopted on citizens by the government, it would infringe the privacy of the individuals and gain security by giving up their civil liberties. Thus, it is all about conquering an individual's ideas, thoughts and freedom of speech and expression by controlling all the words and actions and creating hegemony.