

THE SILENT OBSERVER: HOW SURVEILLANCE TECHNOLOGY HINDERS INDIA'S RIGHT TO PROTEST

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INTRODUCTION

Governments around the world are showing increasing interest in employing sophisticated surveillance technology, leaving people concerned about its potential impact on their rights, including the right to protest. In India, protests against laws like CAA and NRC have attracted the people's attention to the use of surveillance technology by Police to keep an eye on protesters. The report of Indian Express indicates that Delhi police have used face recognition, drones, and social media surveillance tools for this purpose¹. This situation has raised a major concern among the commoners regarding the possible misuse of the powers granted to the police and the violation of the rights of people. Some people say that surveillance tech is necessary to keep the peace, but others think it's just going to scare people away from speaking out against the government. In India, various surveillance gadgets are in use, including facial recognition machines, Internet traffic monitoring software, and surveillance cameras capable of closely tracking individuals' movements. For example, The Indian government has established the Central Monitoring System (CMS), which is designed to keep an eye on real-time internet traffic.² They're using a slew of new initiatives, like NATGRID, CCTNS, LIM systems, NETRA, CMS, and the National Cyber Crime Coordination Center, to gather data on people.³ In Telangana, there are reports of using CCTV cameras, with 36 cameras per 1,000 people!⁴ In December 2019, the police even used facial recognition technology to scan people going to a protest against a controversial new citizenship law.⁵ Technology allowed police to identify specific individuals and track their movements.

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¹ Jay Mazoomdaar, 'Delhi Police film protests, run its images through face recognition software to screen crowd' The Indian Express (New Delhi, 28 December 2019)

² Maria Xynou, 'India's Central Monitoring System (CMS): Something to Worry about?', The Centre for Internet and Society (30 January 2014)

³ Centre for Internet and society, 'State of Surveillance in India', Privacy International (29 March 2016)

⁴ Qadri Inzamam and Hadiq Qadri, 'This part of India is on a verge of becoming complete surveillance state' The Slate(13 July 2022)

⁵ Gautam Bhatia, 'India's growing surveillance state', Foreign State (19th February 2020)

OVERVIEW OF THE RIGHT TO PROTEST IN INDIA

In India, we, the citizens, have the right to peaceful protest, The presence of such surveillance technologies is an important aspect of our democratic structure. Our Constitution protects essential rights, namely, freedom of speech and expression, and the right to assemble peacefully, in Articles 19(1)(a) and 19(1)(b) respectively. These fundamental freedoms serve as a cornerstone in upholding the rule of law and protecting civil liberties. The Supreme Court also opined in the case of Ramlila Maidan Incident v. Home Secretary, Union of India & Ors, "The right to protest is a fundamental right under Article 19(1)(a) of the Constitution. The authorities have the power to specify the time and place of protests, but the power is subject to the law of reasonableness. The authorities should not interfere with the right to peaceful protest unless it is necessary in a democratic society, in the interests of national security, public safety, or public order."⁶ But we must know that this right isn't absolute, and there are rules we need to follow. We should keep public order, decency, and morality and avoid contempt of court while protesting. The Indian government made specific laws and regulations to keep us safe and help us have a peaceful protest. And, before we plan or hold any public gathering or demonstration, we have to ask the police for permission.

India has been hit by some mega protest movements in recent years that have left their mark on society. Among the most significant are the anti-CAA-NRC protests in 2020, the farmers' protests in 2020, and the 2021 protests against controversial farm reforms. Farmers' protests in 2020 focused on concerns about farm bills introduced by the government, with farmers demanding their repeal due to their potential impacts on their livelihoods and the agriculture sector. In 2021, protests continued, especially targeting the new farm laws, which were considered harmful to farmers' interests and agricultural rights. While both movements focused on agricultural issues, the context and targeted reform measures set the two protests apart. The farmers' protests of 2020 set the stage for further debates and demonstrations against farm reforms in 2021. The Indian government brought in the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC), which triggered the anti-CAA-NRC protests in 2020. Some sections of society have perceived the CAA as discriminatory against the Muslim community, seeing it as providing preferential treatment to non-Muslim immigrants⁷. Similarly, some have raised concerns about the NRC potentially being used to disenfranchise

⁶ Vidya Raja, 'Citizen Protests in India: Rights, Duties, and Permission Needed' The Better India (18 December 2019)

⁷ Kaushi Deka, 'Expert View: Does India need CAA,NRC,NPR?', India Today (10 January 2022)

India's Muslim population. These approaches have attracted attention and have been the subject of public debate. The farmers' protests of 2020–2021 were sparked by the Indian government's passing of three agricultural laws, namely:

THE FARMERS' PRODUCE TRADE AND COMMERCE (PROMOTION AND FACILITATION) ACT 2020

This law allows farmers to sell their produce outside government-regulated markets and promotes electronic trading. Critics fear it could lead to exploitation by unregulated traders and erode the minimum support price (MSP) guarantee, affecting farmers' income. Supporters argue that the bill expands markets, promotes competition, and eliminates middlemen, giving farmers greater market control.⁸

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020: This law enables farmers to enter into contracts with companies before the sowing season. Critics are concerned about potential exploitation by corporations and insufficient protection for small farmers. Supporters argue that the bill offers farmers an alternative marketing option with direct contracts, incentivizing high-quality produce and providing price assurance, gaining support from many backers.**Error! Bookmark not defined.**

The Essential Commodities (Amendment) Act, 2020: The law eases restrictions on the storage of agricultural commodities. Farmers are worried about hoarding, price fluctuations, and exploitation by corporations. The government has argued that relaxing the stockholding limit would lead to a more efficient market system, which would benefit farmers by stabilizing market prices.**Error! Bookmark not defined.**

GOVERNMENT SURVEILLANCE AND ITS IMPACT ON THE RIGHT TO PROTEST

The Indian government has used various types of surveillance technology to monitor its citizens in the past. Some of them include⁹:

⁸ Prabhash K Dutta, 'What is there in farm laws that makes them so contentious?' India Today (15 December 2020)

⁹ Kamesh Shekhar and Shefali Mehta, 'The state of surveillance in India: National Security at the cost of privacy', Observer Research Foundation (17 February 2022)

Facial Recognition Technology: The utilization of facial recognition technology by the Indian government to identify individuals and monitor their activities has been reported. As reported by reliable sources such as the Times of India this technology has been deployed in many public places including airports and railway stations¹⁰ for facial recognition and surveillance.

For example, in 2019, the Indian government announced its intention to create a nationwide facial recognition system linked to various databases, sparking significant debate on issues of privacy and data protection¹¹. While proponents argue that it increases security and aids law enforcement, opponents say that there should be stronger regulations and safeguards to prevent potential abuses and violations of civil liberties.

Closed-Circuit Television (CCTV) Cameras: According to Indian law, the installation and use of CCTV cameras by the government in public places are subject to certain legal provisions and regulations¹². The Indian Telegraph Act, of 1885, and the IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, certain laws govern the use of CCTV cameras in India.

The use of CCTV cameras is permitted by the Government of India only when it is necessary for public safety, crime prevention, and law enforcement¹³. The government should ensure that the data collected is used only for legitimate purposes and does not violate the privacy rights of individuals. If CCTV cameras capture personal information, the government must comply with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which mandate certain security and privacy standards for such data.¹²

However, despite legal provisions, the use of CCTV cameras by the Indian government has raised several concerns regarding privacy and data protection.¹⁴ There have been cases of CCTV cameras being installed without proper notice or consent and data collected being misused or stolen. Therefore, it is necessary to ensure that the government complies with the legal provisions and ensure that the privacy rights of the citizens are protected.

¹⁰ Ashok Upadhyay, 'Facial Recognition tech at 4 airports to costs Rs 165 crore', India Today(3 January 2022)

¹¹ Elonnai Hickok, Pallavi Bedi, Aman Nair and Amber Sinha, ' Facial Recognition Technology in India' The centre for internet and society (31 August, 2021)

¹² The Indian Telegraph Act, 1885.

¹³ IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

¹⁴ Rina Chandran, 'Public Private Surveillance: How India's citizen cops sharing CCTV footage with police for solving crimes' ET Government.com (11 January 2023)

Phone and Internet Monitoring: The Indian government has been monitoring phone calls and the internet activity of its citizens. Reports from reputed sources such as The Hindu¹⁵ and The Business Insider¹⁶ India highlight the implementation of surveillance software on mobile phones and computers to track and monitor the communication and internet activities of its citizens.

The Indian government justifies phone and internet surveillance as a means of preventing criminal activity, dealing with security threats, and combating terrorism. However, critics raise concerns about potential abuse, saying that widespread surveillance can stifle free speech, suppress dissent, and violate citizens' privacy and freedom of expression without adequate oversight and regulations.¹⁵¹⁶

Social Media Monitoring: Social media surveillance by the Indian government has been a subject of concern and scrutiny, as it raises important issues related to privacy and freedom of expression. Reports from reliable sources including The Hindu¹⁷ and the Indian Express¹⁸ have highlighted the government's commitment to monitoring the online behavior of its citizens on popular social media platforms such as Facebook and Twitter.

Social media monitoring by the Indian government aims to track and analyze public sentiment, identify security threats, and combat misinformation. However, civil liberties groups and privacy advocates criticize the lack of clear guidelines and oversight, expressing concern about potential infringements on privacy and free speech. Critics fear that such surveillance could target individuals based on their political views and affiliations. While the government defends the need for social media monitoring for national security, it is important to ensure transparency and public dialogue to strike a balance between security and protecting the rights and freedoms of citizens.¹⁷¹⁸

¹⁵ Rajesh Ahuja and Samarth Bansal, 'Govt already had power to intercept, monitor say officials', The Hindustan Times (22 December 2018)

¹⁶ Prabhjote Gill, 'India's three main surveillance project NATGRID, CMS and NETRA have been directed to stop collecting data citing breach of privacy' Business Insider India (2 December 2020)

¹⁷ Prashashti Awasthi, ' Social media users to be tracked by government under new guidelines: Report', The Hindu (13 February 2020)

¹⁸ Express News Service ' Government blocks 14 mobile apps on terror suspicion' The Indian Express 2 May 2023

Drones: Drones have been used by the Government of India to monitor public gatherings including protests and rallies. However, it is important to note that the use of drones in India is guided by legal rules and regulations

According to the Directorate General of Civil Aviation (DGCA) in India, the rules and regulations for the operation of drones are mentioned in the Civil Aviation Requirements (CAR) Section 3, Series X, issued in August 2018¹⁹. These regulations classify drones into five different categories based on their weight and intended use: nano, micro, small, medium, and large. Under these regulations, the operation of drones in India is subject to strict guidelines and compliance with safety standards. Operators are required to obtain a Unique Identification Number (UIN) and/or Unmanned Aircraft Operator Permit (UAOP) from the DGCA, depending on the weight and purpose of the drone.¹⁹ While the regulations focus primarily on security aspects and airspace restrictions, there are no specific laws that directly address the use of drones to monitor public gatherings. The legal regulations mainly revolve around the safe operation of drones and the protection of airspace.²⁰

The Indian government's use of surveillance technology to track protests and demonstrators raises significant legal concerns regarding the right to protest, privacy, and data protection. The right to protest peacefully is protected under Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression. However, the use of surveillance technology could potentially deter people from exercising this right, as they may fear being targeted or identified by facial recognition technology or social media surveillance. This can have a bad effect on free speech and assembly.²¹

Furthermore, the use of surveillance technology raises privacy and data security concerns. Facial recognition technology and social media surveillance allow governments to collect and analyze personal data without explicit legal safeguards, potentially infringing on an individual's right to privacy. The lack of proper regulations and guidelines for the use of such technology adds to these concerns.²¹

¹⁹ Madhav Gauri, 'Drone Regulations in India' YLCube (23 May 2020)

²⁰ Swapnil Tripathi, 'UP Police Drone Surveillance: A step towards 'orwellian' state?' The quint (30 January 2020)

²¹ Tathgata Satpathy, Karnika Seth, Anta Gurumurthy, 'Are India's laws on surveillance a threat to privacy?' The Hindu (28 December 2018)

There have been discrepancies between the use of surveillance technology and legal protections. While laws such as Article 21 protecting the right to privacy are in place, they have not explicitly addressed the use of modern surveillance technologies such as facial recognition or social media surveillance. This creates a gap in the legal provisions and leaves room for possible misuse.²¹

Relevant case law includes:

People's Union for Civil Liberties v. Union of India: This case established the right to protest as a fundamental right under Article 19(1)(a) of the Indian Constitution. It recognized the importance of peaceful assembly and expression of dissent in a democratic society. The judgment emphasized that fundamental rights should not be curtailed arbitrarily and any restrictions must be reasonable, proportionate, and in the interest of public order.

Puttaswamy v. Union of India: This landmark case recognized the right to privacy as a fundamental right under Article 21 of the Indian Constitution. It highlighted the need to protect an individual's autonomy and dignity, including their ability to control their personal information. The judgment held that any intrusion upon privacy must be justified by a legitimate state interest and comply with legal standards.

Shreya Singhal v. Union of India: It is crucial to consider the case of Shreya Singhal vs. Union of India, where the Supreme Court struck down Section 66A of the Information Technology Act, 2000, emphasizing the significance of freedom of speech and expression in the digital age. The Supreme Court highlighted that Section 66A of the Information Technology Act, 2000 was unconstitutional as it posed a threat to freedom of speech and expression. The judgment emphasized the need for laws that are in line with the evolving digital landscape and respect individuals' right to express their opinions without fear of censorship or punishment.

The Impact of Surveillance Technology on Civil Liberties in India

Here are some ways in which surveillance technology can affect these rights:

Right to Privacy: Surveillance technology can be used to collect and store vast amounts of personal data about individuals, which can be accessed by the government or other entities. As

a result, there is the possibility of an infringement of privacy rights and the potential improper utilization of personal information.

Furthermore, the implementation of surveillance technology may result in a chilling effect, where individuals become hesitant to exercise their rights to privacy and freedom of expression due to the perceived constant monitoring and potential repercussions for their actions and opinions.

After the Indian government revoked the special status of Jammu and Kashmir in August 2019, the region was placed under a lockdown. As part of the lockdown measures, the government utilized surveillance technology, including facial recognition and drones, to monitor the situation. This raised concerns about the potential impact on the right to protest and freedom of speech in the region.²²

The use of surveillance technology during the Kashmir lockdown has been criticized for its potential to infringe on individuals' right to protest and express their opinions. The deployment of facial recognition systems and drones for monitoring purposes can create an atmosphere of constant surveillance, leading to a chilling effect on freedom of speech and expression.

These surveillance technologies have the capacity to track and identify individuals participating in protests, potentially deterring people from exercising their right to assemble and voice their dissent. The fear of being identified and targeted by authorities can have a silencing effect, limiting the open expression of opinions and ideas.

Moreover, the wide-scale surveillance and monitoring of public spaces can also impede the organizing and coordination of protests. The comprehensive monitoring of communication channels and social media platforms can restrict the flow of information and disrupt the ability of protesters to mobilize and disseminate their messages effectively.

It is important to note that there have been reports and allegations of human rights violations during the Kashmir lockdown, including restrictions on freedom of expression and access to information. These reports further underscore the concerns regarding the impact of surveillance technology on fundamental rights in the context of protests and free speech.²²

²² 'Police uses eye-in-the-sky to enforce lockdown' Rising Kashmir (22 April 2020)

Freedom of Expression: Surveillance technology can create a pervasive sense of constant monitoring, leading to self-censorship and fear of expressing opinions, vital in a democracy. It may enable the government to target dissenters or protestors, further stifling freedom of speech and expression.

In the *PUCL v. Union of India* (1997) case, the Supreme Court said that the government has to control and have a judicial review over the use of surveillance technology, such as wiretapping. The court held, "The tapping or interception of a telephone conversation was held in *Sankar Prasad Singh Deo v. Union of India* to be a serious invasion of an individual's privacy. It is therefore abundantly clear that this power has no direct or indirect nexus with Article 19(2), and in our opinion, it is not saved by that provision. Telephone tapping would thus be violative of Article 21 unless it is permitted under the procedure established by law. The procedure so established must be just, fair, and reasonable. It must ensure that the citizen possesses the right to privacy recognized by this Court as a fundamental right. It must also ensure that the State's interest in the investigation of offenses is not jeopardized. The procedure could be either by a warrant issued by the Secretary, Home Department of the Union or State concerned, who would have to record reasons in writing for passing such an order, or by a Judicial Commissioner appointed by the State concerned."

The deployment of surveillance technology by the government gives rise to apprehensions regarding the potential for power abuse and encroachment upon civil liberties. Here are some ways in which surveillance technology can be abused by the government:

Political Repression: The government can use surveillance technology to monitor and suppress political dissent and opposition. This can involve identifying and tracking individuals who express dissenting views, monitoring their communication and online activity, and even using facial recognition technology to identify protesters and activists.²³

Discrimination: The issue of discrimination in surveillance technology has gained attention in recent years. Several statutes and regulations have been enacted to address this issue and promote fairness and transparency in the use of surveillance technology, for example, in the United States, the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, or national origin in programs and activities receiving federal financial assistance; this can be relevant in cases where surveillance technology is used by government agencies.

²³ Peter Knoigs, 'Government Surveillance, Privacy and Legitimacy' Springer Link (5 February 2022)

Additionally, the European Union's General Data Protection Regulation (GDPR) includes provisions to protect individuals from discriminatory practices, including those arising from automated decision-making processes²⁴.

However, despite these efforts, there are still loopholes that allow for potential discriminatory use of surveillance technology. For instance, there may be cases where the technology itself is biased, such as facial recognition algorithms that are less accurate for individuals with darker skin tones. This can lead to the disproportionate surveillance and targeting of minority groups.²⁵To address this, ongoing research and development are being conducted to improve the accuracy and fairness of surveillance technologies.

Misuse of Personal Data: Safeguarding personal data collected through surveillance technology is a major concern. Many countries have enacted privacy laws and regulations to protect individuals' personal information. For example, the California Consumer Privacy Act (CCPA) grants individuals certain rights regarding their personal data, including the right to know what information is being collected and the right to opt out of the sale of their personal information²⁶. These regulations aim to provide individuals with control over their personal data and prevent its misuse.

Nevertheless, there have been cases where personal information collected through surveillance technology has been misused or mishandled. For example, in 2018, it was revealed that the personal data of millions of Facebook users was harvested and used for political purposes without their consent. This incident highlighted the need for strict oversight and accountability in the use of surveillance technology to prevent the misuse of personal data.²⁷

Lack of oversight: Ensuring proper oversight and accountability in the use of surveillance technology is crucial to prevent abuses and protect individuals' rights. Laws and regulations vary from country to country, but many jurisdictions have established mechanisms to oversee the use of surveillance technology by government agencies. For example, in the United States, the Foreign Intelligence Surveillance Act (FISA) establishes the legal framework for

²⁴ Article 22, General Data Protection Regulation

²⁵ Alex Najibi, 'Racial Discrimination In face recognition technology'

²⁶ 'What is the California Consumer Privacy Act (CCPA)' True Vault available at <https://www.truevault.com/learn/ccpa/what-is-the-ccpa>

²⁷ Sahana Venugopal, 'Explained, What does Facebook's settlement in the Cambridge Analytica lawsuit mean for the platform?', The Hindu (5 September 2022)

conducting surveillance for the purpose of gathering foreign intelligence. The act includes provisions for judicial oversight and approval of surveillance activities.

However, there have been concerns about the lack of transparency and accountability in the use of surveillance technology. For instance, the revelations by Edward Snowden in 2013 brought attention to the extent of mass surveillance conducted by intelligence agencies, raising questions about the adequacy of oversight mechanisms²⁸. These cases emphasize the need for strong and independent oversight bodies to ensure that surveillance technology is used in a responsible and lawful manner.

INTERNATIONAL AND COMPARATIVE PERSPECTIVES ON THE USE OF SURVEILLANCE TECHNOLOGY IN PROTESTS

The use of surveillance technology varies widely between countries, with some countries having more extensive surveillance programs than others. There have been several real-life incidents and cases highlighting the impact of government surveillance on the right to protest. Here are a few examples:

Occupy Wall Street (2011): During the protests, it was revealed that various government agencies, including the Federal Bureau of Investigation (FBI), monitored the activities of the protesters²⁹. The surveillance included infiltrating his meetings, monitoring his communications, and even the use of drones for aerial surveillance.

Standing Rock protests (2016): Protests against the Dakota Access Pipeline prompted significant government oversight. Law enforcement agencies, including the Department of Homeland Security, conducted aerial surveillance, monitored social media accounts, and used facial recognition technology to identify protesters. This raised concerns about the cascading effect on the right to protest and the possibility of activists being targeted.³⁰

Black Lives Matter movement: In the wake of protests in recent years, such as the aftermath of the police killing of George Floyd, there has been increased scrutiny of government surveillance practices. Examples of surveillance include monitoring activists' social media

²⁸ Ewen Macaskill and Gabriel Dance, 'What the revelation means for you' *The Guardian* (1 November 2013)

²⁹ Colin Moynihan, 'Wall Street Protestors complain of Police Surveillance' *The New York Times* (11 March 2012)

³⁰ Julian Brave Noise Cat, 'Surveillance at Standing Rock exposes heavy handed policing of Native land' *The Guardian* (28June 2017)

accounts, tracking their movements through cell phone data, and even deploying surveillance technology such as drones and facial recognition to track protest activities³¹.

The usage of surveillance technology related to protests is regulated by diverse international and comparative legal frameworks that offer principles and guidelines to ensure that the employment of surveillance technology aligns with human rights standards. Here are a few examples:

International Covenant on Civil and Political Rights (ICCPR): The ICCPR is an international treaty adopted by the United Nations General Assembly to guarantee various civil and political rights, like freedom of expression and the right to assemble with others and form groups. Additionally, the ICCPR mandates that any limits on these rights should be necessary and reasonable to accomplish a legitimate goal, and courts must examine them.³²

European Convention on Human Rights (ECHR): The European Convention on Human Rights (ECHR) is a deal created by the Council of Europe to make sure people have rights like the right to express their opinions, assemble peacefully, and form associations. Plus, the ECHR says that any action that goes against these rights must be necessary and fair to achieve a legitimate goal, and the courts have to look into them.³³

General Data Protection Regulation (GDPR): The GDPR is a set of rules established by the European Union that governs how organizations handle personal data. They have to have a legit legal basis, like getting permission from the individual or having a good reason, to process personal data. Plus, they can only do it if it's really needed and fair to achieve a specific goal.³⁴

Inter-American Commission on Human Rights (IACHR): The IACHR (Inter-American Commission on Human Rights) watches over human rights in the Americas. They've issued numerous reports and resolutions about using surveillance technology, stressing how important it is to have proper protection and oversight to safeguard people's rights.

³¹ Anjali R. K. Shere, Jason R.C. Nurse, 'Police Surveillance of black lives matter shows the danger technology poses to democracy' *The Conversation* (24 July 2020)

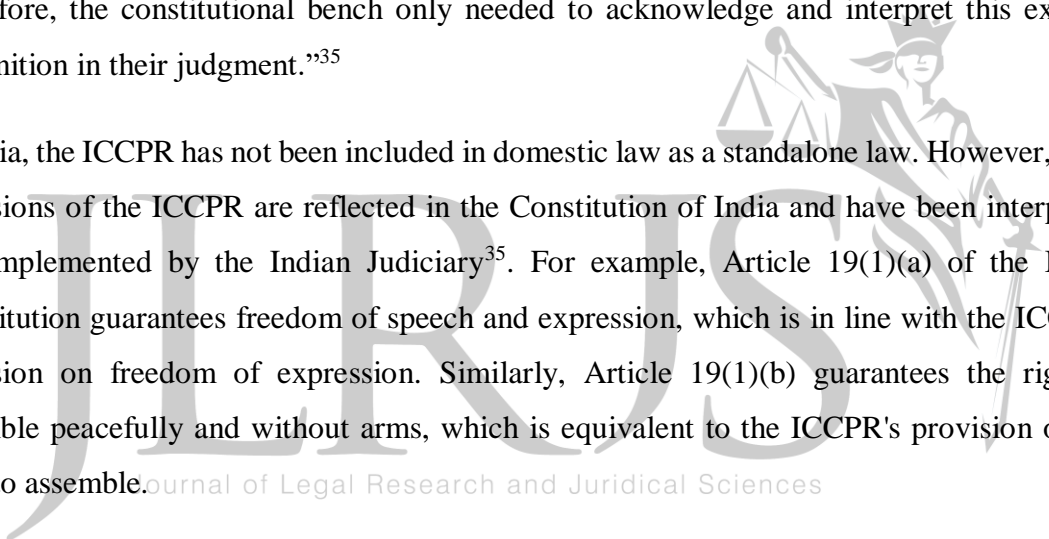
³² Samarth Suri, 'A critical analysis of Covenant of 1996' *ipleaders* (25 June 2020)

³³ 'Supreme Court of India declares Privacy is a Fundamental Right' *International Justice Resource Centre* (13 September 2017)

³⁴ Tarun Khurana, Mudit Saxena, Upasana Rana, 'India :GDPR vis-a vis Indian Data Protection Laws' *Mondaq* (15 November 2022)

These laws give important advice on how to use surveillance technology during protests, stressing that it's crucial to follow human rights rules and make sure any intrusion into individual rights is necessary and fair.

Is India a signatory? : India is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). However, it is important to note that signing and ratifying these treaties does not automatically incorporate their provisions into domestic law. As stated by Justice Rohinton Nariman, while delivering the ruling on privacy as a fundamental right, he emphasized “UN Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, had expressly recognized privacy as a fundamental and inalienable right. Therefore, the constitutional bench only needed to acknowledge and interpret this existing recognition in their judgment.”³⁵

In India, the ICCPR has not been included in domestic law as a standalone law. However, some provisions of the ICCPR are reflected in the Constitution of India and have been interpreted and implemented by the Indian Judiciary³⁵. For example, Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, which is in line with the ICCPR's provision on freedom of expression. Similarly, Article 19(1)(b) guarantees the right to assemble peacefully and without arms, which is equivalent to the ICCPR's provision on the right to assemble.


In the case of the ECHR, India has not ratified or incorporated it into domestic law. Therefore, the provisions of the ECHR are not directly applicable in Indian courts.

With respect to data protection, India has its own domestic legislation known as the Personal Data Protection Bill, 2019. The Bill seeks to regulate the processing of personal data and includes provisions relating to privacy and security of personal data. It draws inspiration from international data protection standards, including the principles outlined in the GDPR³⁶. However, the bill has not yet become law.

³⁵ Harish V Nair, 'Right to Privacy: International treaties back it for fundamental right', India Today (2August 2017)

³⁶ M Arjun ' The Personal Data Protection Bill 2019 and its repercussions', ipleader (17 january 2020)

CONCLUSION

To mitigate the impact of surveillance technology on civil liberties, including the right to protest, in India, several potential solutions can be explored:

Clear laws and regulations: Developing comprehensive laws and regulations that adhere to international human rights standards is essential. These should govern the collection, use, and storage of data obtained through surveillance technology.

Independent oversight mechanisms: Establishing independent oversight bodies involving civil society organizations, experts, and the judiciary can ensure accountability and adherence to human rights standards.

Strengthening data protection laws: Enhancing data protection laws can regulate the use of personal data obtained through surveillance technology and ensure compliance with human rights standards.

Public awareness and education: Raising public awareness about the implications of surveillance technology on civil liberties and promoting education programs can empower individuals to protect their rights and freedoms.

Promotion of alternatives: Exploring non-surveillance-based methods, such as community policing and dialogue, can help maintain public safety without compromising civil liberties.

Recent cases and international examples can provide insights and evidence to support these solutions. For instance, the landmark judgment of Justice K. S. Puttaswamy (Retd.) vs. Union of India in India recognizing the right to privacy as a fundamental right highlights the importance of protecting civil liberties. Additionally, international frameworks like the European Union's General Data Protection Regulation (GDPR) can serve as references for data protection laws.

By adopting these solutions and drawing on relevant legal cases and international examples, India can work towards striking a delicate equilibrium between national security and individual rights, ensuring a society where the right to protest remains protected and respected in the face of advancing surveillance technology.