



IS RIGHT TO PRIVACY IN PERIL DUE TO SURGE OF CCTV SURVEILLANCE?

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ABSTRACT

The present study analyzed the issue of right to privacy vis-à-vis CCTV surveillance. The usage of CCTV surveillance has grown in recent years. Governments and individuals are using CCTV surveillance for reducing the risk of crimes and to get proper information of crime. Technological enhancement should be used for making life better and safe. It has been found that mishandling of CCTV surveillance results in violation of the right to life with dignity. It has also raised the concern about liberty and freedom of individuals. The study put prominence on the proper usage of CCTV surveillances. It is essential that the right of privacy should not be violated and the usage will give fruitful results. There are always two sides of the coin. CCTV surveillance has its own pluses and drawbacks and the same is narrated in the present study. Whenever it is done without proper precautions then it may enter into the private life of a person without taking their consent. Photographs and clippings of private moments are divulged and it is the annexation of the privacy of people. It is uncomfortable. It is very difficult to keep balance between uprightness and evil in the era of technological advancement. The study put emphasis on the germane usage of CCTV surveillances rather than cluttered. The right to privacy is associated with dignity, freedom and liberty. It shall not be hampered by technological expansion.

Keywords: CCTV Surveillance, Privacy, Technological development, liberty, freedom

INTRODUCTION

Technological advancement is providing solutions but there are always side effects of it. CCTV surveillance is talk of the town because of the established nexus to anonymity expectations and privacy interests. There has been a fast growth in the usage of closed circuit television cameras (CCTV) in the United States after September 11, 2001, each and every part of cities have been put under CCTV surveillance (Goold, 2006:5). The wide usage of CCTV surveillance all over the world has amplified to fight against terrorism, crime and public disorder. The rapid growth of CCTV is expected in the republic of India in the near future. The dawn of CCTV surveillance that permits the government to guard, zoom in on, trail, and preserve the actions of everyone, wherever in the world, twenty-four hours a day, plea to edict in the interest of spotless privacy (Slobogin, 2002). Surveillance systems of automated identification systems are proliferating at borders and it also enters rapidly in everyday life (Lyon 2007). The enormous extent of numerical machinery has elevated new encounters in respect of certain morals and moralities and one of the noticeable and delicate challenges is to control the usage of CCTV (Volosevici 2018). CCTV surveillance violates the inherent poise right to privacy by snooping with the individual's knack to rheostat the appearance of the self (Purshouse, 2014:525). It is vital that the Government should establish a balance between protection and control while using CCTV surveillance. (Botello, 2007:331).



RESEARCH OBJECTIVES

The following research objectives are identified for the present study:

- (1) To study and investigate the notion of right to privacy
- (2) To analyze issues and challenges of right to privacy vis-à-vis usage of CCTV surveillance
- (3) To discover the usage guidelines for the CCTV surveillance
- (4) To understand the actual position of right to privacy vis-à-vis usage of CCTV surveillance with the help of case study and examples

METHODOLOGY

The qualitative and quantitative method of research is adopted. The data were retrieved on the research theme from Hein online, JSTOR, Westlaw India, Manupatra and SCC online. The documents were filtered on the basis of types, publication, year and source. The false positive (keywords cleaning) was done. Analyze international conventions and charter on right to privacy and list of cases dealing with right to privacy in India. Legal provision of India and other jurisdictions were examined. The advantages and threats of CCTV surveillance were examined keeping in mind the right to privacy. The guidelines and conclusions are drawn on the basis of the study.

NOTION OF RIGHT TO PRIVACY

The right to privacy detonates from time to time into the judicial outlook and yet it has to spark more (Barrett 1998). Privacy originates from the Latin word ‘privalus’ (Savoiu and Basarabescu 2013). The practice of using suave merchandise of technology – surveillance ruses are crafting dangers to freedom (Uniacke, 1977:14). The legal right to privacy shall avert and sequester annexation and inflate propositions for recompenses hurts and harms of individual’s freedom (Sweet 1952). The right to privacy is spawning the limits of the Governmental power (Rubinfeld, 1989:782). The soul of liberty is surrounded by personal dignity and independence (Goldman, 2006:5). The fundamental rights like life, liberty, dignity, happiness, and freedom are basic rights and it shall not be curtailed by legislation (Levine 2019). It is appropriate to say that three is a moral right to privacy surrounded by the spirit of freedom and liberty. (Rickless, 2007). Every person has the right to privacy and keep herself/himself free from undeserved publicity (Saeta, 1938). The right to privacy which exhibits that everyone has the right to keep himself alone (Luthra, 2019:13). The most sinister and perilous phenomena is purchasing, peddling and controlling the bosom niceties of private life (Thauberger, 1965:178). Surveillance violates the right to privacy when it openly or accidentally restricts or invades his person (Bhatia, 2014). Cell phone chat can certainly be claimed as personal and it shall be without snooping (Taneja, 1998:23). CCTV cameras need to be more visible with symbols indicating ‘under surveillance’ to answer the problem of privacy and video recording should be used only for law execution purposes (Goold, 2002:24). There is change in the sphere of privacy and we are enjoying less privacy compared to yesteryear (Wachtler, 1975:7). There is vast difference between privacy practices in the digital ecosphere as equated to our corporeal ecosphere (Chowdhury, 2018). ‘Right to Privacy’ allows one to determine if she/he wants to share her/his private information or not and let her/him separate themselves from others (Rai, 2020). Private Chat is no longer the source of the lazy and of the nasty, but has become a profession, which is followed with business as well as nerve. (Brandeis, 1890:1890-1891). Right to Privacy positions entrenched in the base of right to life and individual freedom (Pandey, 2019). While expressing the right to privacy there is need for a synthesis of elucidation techniques which offers it diverse scopes. (Mookherjee, 2017). There is a need to redefine the right to privacy in the modern society and technological era and ‘letting people alone’ cannot describe privacy in a real sense (Basu, 2010). Certain private matters are not business of law (Koppelman, 2002:111).

The international conventions and charters have strengthened the standard of right to privacy. It makes life more dignified. The international conventions and charters which endorses right of privacy are as follows:

Table 1 International Conventions and Charters which endorses the right to privacy

Sr. No.	International Convention/Charters	Article
1	Universal Declaration of Human Rights	12
2	The International Covenant on Civil and Political Rights	17
3	Arab Charter on Human Rights	16 and 21
4	The African Charter on the Rights and Welfare of the Child	10
5	The United Nations Convention on Migrant Workers;	14
6	The UN Convention on the Rights of the Child;	16
7	The African Union Principles on Freedom of Expression (the right of access to information	04



8	The American Convention on Human Rights	11
9	The American Declaration of the Rights and Duties of Man,	05
10	The ASEAN Human Rights Declaration	21
11	The European Convention on Human Rights	08

The notion of right to privacy has been examined by the Hon'ble Supreme Court of India and it has been interpreted as a fundamental right under Article 21 of the Constitution of India. The list of cases deal with right to privacy in India are as follows:

Table 2 List of cases deal with right to privacy in India

Sr. No.	Case	Year	Case Outcome
1	Kharak Singh v. State of UP	1962	Minority opinion of the judges opined that right to privacy as a fundamental right
2	Govind v. State of Madhya Pradesh	1975	Right to privacy include right to protect personal intimacies of the home, family, marriage, motherhood etc.
3	Maneka Gandhi v. Union of India	1978	The procedure established by law shall be just, fair and reasonable. It shall not be fanciful, oppressive and arbitrary. Right of personal liberty is guaranteed by Article 21 of the Constitution of India.
4	Rajagopal v. Union of India	1994	Right to privacy is actionable claim and fundamental right.
5	People's Union for Civil Liberties v. Union of India	1996	Right to privacy extend to right to communication.
6	District Register and Collector, Hyderabad and another v. Canara Bank and another	2004	Right to privacy gives rise to personal liberty, freedom of movement and freedom of expression.
	Rayala M. Bhuvanewari v. Nagaphanender Rayala	2007	Divorce petition filed in the court and to support his case husband sought to produce hard disc which recorded the conversation of his wife with others. The court said that act of recording results into the violation of the right to privacy. The records, even if true, cannot be admissible in evidence.
7	Naz Foundation v. Govt. of NCT of Delhi	2009	Consensual Homosexual sex between adults as a crime is violation of fundamental rights.
8	Petronet LNG Limited v. Indian Petro Group and another	2014	Unique Identity Authority of India (UIAI) had not to transfer any biometrics without the consent of the individual
9	Justice K.S. Puttuswamy (Retd.) & Anr. V. Union of India	2015	The Constitution of India has guarantees to each individual a fundamental right to privacy.
10	Navej Singh Johar & Ors. V. Union of India	2018	It has decriminalized all consensual sex among adults.

Right to privacy vis-à-vis usage of CCTV surveillance

CCTV may be practiced in surreptitious ways to blackmail the public who are involved in individual and private actions (Taylor, 2002). CCTV footage provides the particulars such as our expression, duration of our presence with exact time, vehicle number, or our relaxation time with intimate groups and results into the unwarranted interference in our personal life (Shrivastava, 2020). CCTV microphones deliver the recording of audio in combination with video and it may expose party-political sentiments, spiritual/religious feelings and other sensitive private beliefs. (Klitou2011). The innovative devices have definitely raised concern about the way in which companies can pile and gather workers' private information and data (Kaiser, 2018). CCTV surveillance shall be done under the guiding principles where minors gather (Perry-Hazen, 2016:424). CCTV 24-hour care guards the police against roguish accusations of abuse of power in the prison or custody. (Koppelman, 2002:11). Prison constables do not always gaze carefully at the pictures shown on the screens and it is a limitation of human beings (McCahill, 2002). Police can support instantly when anything uncommon appears on the monitor and modify the inspecting viewpoint center on suspicious illegal movement or action. (Robb, 1979). (Hier, 2004:551).



CCTV surveillance systems have not considerably condensed unlawful activity on the certain area or road (Cerez, 2013:230).

Right to privacy vis-à-vis usage of CCTV surveillance has been examined by Indian courts. The list of the cases are as follows:

Table 3 List of cases- right to privacy vis-à-vis usage of CCTV surveillance in India

Sr. No.	Case	Year	Details
1	Govind v. State of Madhya Pradesh	1975	Petitioner is dangerous criminal and he is put under surveillance to prevent him from committing offence.
2	Jorawarsingh v. State of Madhya Pradesh & Ors.	1984	Petitioner under surveillance violates fundamental right of privacy.
3	Shri Asim Takyar v. National highways Authority of India	2013	CCTV are installed to ensure proper toll collection and not for security and surveillance purpose.
4	Kerala Self Financing Engineering College Managements Association v. Mahatma Gandhi University	2015	The issues pertain to installation of CCTV in the examination centers. Installation of cameras in certain selective colleges violate right to equality. The installation shall be done in all the colleges.
5	Dr. Sharmistha Dhatt v. The State of West Bengal & others	2015	Installation of CCTV at such position that her privacy is being invaded. The court has asked to approach civil courts to remove the installation of CCTV.
6	Basant Jain v. Dilip Kataria & Ors.	2016	CCTV installed in front of house and violate right to privacy and order was passed to remove it within seven days.
7	Rituraj Mishra v. Govt. of Uttar Pradesh	2017	Shadow surveillance and open surveillance of a suspect is permissible, subject to the protection of fundamental rights guaranteed under the Constitution of India.
8	K. Ibrahim Manager v. State of kerala, RE	2018	Installation of CCTV cameras are indispensable to monitor the class and also to protect the students.
9	Indian Hotel and Restaurant Association (AHAR) and another v. State of Maharashtra and others	2019	The entrance of the bar room, other places of amusement or public entertainment and public places shall be covered by CCTV and record shall be preserved for 30 days for inspection by police authority.
10	Amber Tickoo v. Government of NCT Delhi	2019	The decision of the Delhi Government to install CCTV cameras in classrooms was challenged before the Hon'ble Supreme Court of India. The said Public Interest Litigation (PIL) was dismissed.
11	Paramvir Singh Saini v. Baljit Singh & Ors.	2020	Installation and recording of CCTV is compulsory in the interrogation rooms to protect the victim from violation of human rights.

There are legal provision in India which provide protection against abuse of CCTV surveillance. The list of legal provision are as follows:

Table 4 List of legal provisions provide protection against abuse of CCTV surveillance

Sr. No.	Legislation/Act	Provision/Section/Article
1	The Constitution of India	Article 21
2	Information Technology Act, 2000	Section 66 (E)
3	Information Technology Act, 2000	Section 69
4	Information Technology Act, 2000	Section 87
5	Information Technology Act, 2000	Section 43 (A)
6	Information Technology Act, 2000	Section 72 (A)
7	Indian Penal Code, 1860	Section 354 (c)
9	Indian Telegraph Act, 1885	Section 5 (2)
0	The Constitution of India	Article 19



There are legislations on the subject of privacy and video surveillance all over the world. The list of legislations are as follows:

Table 5 List of legislation on right to privacy and video surveillance in several jurisdictions

Sr. No.	Name of Country	Legislation
1	USA	US Privacy Act, 1974 and Electronic Communication Privacy Act, 1986
2	Canada	Privacy Act, 1882 and Personal Information Protection and Electronic Documents Act, 2001
3	China	National Security Law of the People's Republic of China, 2015
4	Germany	Federal Data Protection Act, 1977 and Article 201a, The German Criminal Code
5	Switzerland	Swiss Federal Protection Act and Article 179quarter of Swiss Criminal Code, 1937
6	UAE	Article 378 and 379, Federal Law Number 3 of 1987 of UAE Penal Code and Article 12 of Federal Law Number 05 of 2012
7	UK	Data Protection Act, 2018
8	France	Article 226-1 French Criminal Code, 1810
9	Turkey	Article 134, Turkish Criminal Procedure Code, 2004

We are living in the modern era of technology and usage of CCTV is a blessing for us. There are following benefits of CCTV surveillance:

Table 6 List of benefits of CCTV surveillance

Sr. No.	Benefits of CCTV surveillance
1	Public Safety – keep you and your personal property safe from criminal
2	Police can identify criminals from video recording and produce it as evidence to establish the crime and involvement of criminals
3	Provide safety to women in public places
4	Control nuisance of anti-social elements
5	Control terrorist activity
6	Control the violation of Civic Laws
7	Keep watch on public events and reduce chaos
8	Keep watch on public transport like airport, railway station, bus stand etc.
9	Keep watch on suspicious activities which creates danger for peace
10	Authorized recording of Government Institutions or organization helpful in improving work culture
11	Live recording of Parliament and courts provide better opportunity to understand the proceedings

It is difficult to imagine that 'everything is perfect'. There are drawbacks of each and every system. CCTV surveillance is blessing but sometimes results into the curse. The list of threats of usage of CCTV surveillance are as follows:

Table 7 List of threats of usage of CCTV surveillance

Sr. No.	Threats of usage of CCTV surveillance
1	Threat to privacy of women and possible misuse to blackmail her by capturing her private life
2	Keep watch on private movements of his/her house
3	Take video/picture in the objectionable position and put it on social media
4	Recording of metro train is put on social media and disclose the private movements
5	Recording of restroom and changing room is used to blackmail or sell it for uploading to internet sites
6	Recording of audio and video violates right to privacy because it disclose personal political, religious and social beliefs



7	Husband may record private movements of his wife and use it to take divorce
8	Keep watch on private movement of individual at public places
9	Children may be subject to blackmail or forceful sexual act on the basis of their private images or recording
10	Health related private issue may be disclose by using CCTV footage
11	Confidential business information may be leak due to CCTV
12	The movement of Army and other important agencies related to security may be come out in public
13	CCTV surveillance may be used for harassment
14	CCTV surveillance has not reduce the crime rate. There is increased of crime related to misuse of CCTV surveillance

There is a need to provide detailed guidelines for the usage of CCTV. The proposed guidelines for usage of CCTV surveillance are as follows:

1. The guidelines shall keep in mind the right to privacy. It should mention the usage of recording/data/image etc. It shall create awareness among the people of using CCTV surveillance. The recorded video and image shall be kept in the custody of authorized persons. There shall be a proper visible symbol – ‘under surveillance’ with an image of camera shall be put near the camera.
2. CCTV policy and the usage guidelines for the staff shall be disclosed to everyone in the organization.
3. The location of CCTV shall be identified on the basis of the local issues and problems. It shall not target religion, race, caste, or skin color.
4. CCTV usage training shall be provided to operators and specifically moral teaching should be part of it.
5. The accountability of the controller of CCTV shall be determined.
6. Do not disclose CCTV recording or images to the public.
7. Use CCTV recording for implementation of the legislation.
8. Unauthorized usage of CCTV footage shall be controlled by full proof mechanism.
9. The forensic audit of CCTV usage shall be done at the regular interval.

CONCLUSION

We are living in the digital world and CCTV is one of the gifts of the digital revolution. CCTV surveillance is beneficial to civilization. It is helping us to resolve our day to day problems and challenges related to public order and crime. There are legislations and guidelines available all over the world to curb the misuse of CCTV records and images. The actual position is that there is a rapid surge in the abuse of CCTV surveillance footage. There is a need for specific training and a taskforce to curb the challenges of right to privacy vis-à-vis CCTV surveillance. It is high time to create awareness among the people at large to save them from the abuse of CCTV surveillance. CCTV surveillance guidelines shall be strictly. CCTV surveillance violates the right to privacy – control space, action, and information.

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