

Workplace Surveillance and Employee's Privacy: An Analysis

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ABSTRACT

The relationship of employer and employee prevail from a long time. Earlier the employers believe in their employees based on their conscience and the need of surveillance was not necessary before. The world advances in technology which made the people believe in machine more than human. Here the work of surveillance has been introduced, where the employees are monitored through various methods like wiretapping, camera, etc, by their employers.

The surveillance has been installed due various reasons like prevention from theft, prevention of organization's asset, protect employee from violence, prevent them from indulging in any unlawful activities, monitoring employees as to avoid them from slacking off their work, etc.

In a statistic data, it was said that,

“Employees are 7% more productive when they are known they are being monitored, leading to increased profits”.

The method of surveillance helps the employers to get profit. There are many modes of surveillance.

Everything in the universe has both positive and negative aspects. There are some companies who misuse the power of surveillance. Some monitor employee's personal conversations and information without their consent and awareness. This amounts to **violation of right of privacy** of the employees. They do fix cameras in inappropriate areas which not to the knowledge of the employees using those areas. These are said to illegal. The companies also use this surveillance for unlawful purposes. The **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011** deals with legal aspects of workplace surveillance. Violation of these rules will be punishable under **(Indian) Information Technology Act, 2000**.

The author through this paper tries to analyze the various aspects of workplace surveillance and its invasion in the employee right of privacy, provided to them by the Constitution of India. The author also tries to provide some suggestions over the workplace surveillance.

Keywords: Workplace surveillance, consent, right to privacy, illegal and unlawful surveillance

INTRODUCTION

Workplace surveillance is monitoring the employees by the employers or other superiors for various reasons relating to work. Technology plays a wide role in the developing world. It reduces more work of humans and replaces us at some places. There were many modes of surveillance of workers in the advanced technology world. Surveillance of employees has been done due to various reasons like protective, emergency, preventive, work monitor, etc.

Employers started to monitor their employees for the reason to protect them from dangers, prevent theft, violence among them, and to monitor those who slack off from work. The surveillance make the workers work properly. The surveillance made by the organization helps them to protect their asset, save them from fraudulent activities of their workers, see the safety of their workers and a lot more.

Surveillance not only says about fixing Closed Circuit Television (CCTV), it also includes wiretapping, examining employees emails, logs of websites they visited, and searching in their personal workspace. The mode of surveillance changes according to the technology advancement.

The surveillance is legal only when it is monitored with the consent of workers, otherwise it is illegal and it is punishable. The rules regarding the surveillance of workers are made as “Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011” by the Central government. The punishment these activities are mentioned under (Indian) Information Technology Act, 2000.

Some companies for their **own benefit** do surveillance which is unlawful and illegal. They do surveillance as a separate business. They sell the personal information of employees to others for money; do fix cameras in inappropriate areas like restroom, dress change room, etc, which is of no notice to the employees using those areas. Companies sometimes overhear their employees personal conversations, wiretap their personal information like account number, etc.

There were two sides of workplace surveillance where it would render both positive and negative aspects. Taking alone the positive aspect which is legal would make the surveillance effective and efficient. Surveillance with consent and limit would be legal.

This paper deals with the aspects of surveillance and its invasion into the employee’s **privacy**, which is the fundamental right provided to them through **the Article 21 of the Constitution of India**. It also deals with other aspects of the surveillance and compares various other countries law with that of India regarding workplace surveillance.

OBJECTIVES OF THE PAPER

- To know the meaning of workplace surveillance.
- To know the various aspects of workplace surveillance.
- To check the invasion of surveillance in employee privacy.
- To compare workplace surveillance laws of India and other countries.
- To provide suggestions over this aspect.

WORKPLACE SURVEILLANCE

The **employees** of a company or organization will be **monitored** by their employers or other superiors in their workplace. The surveillance will be conducted by the employers in the place where the employees work for the organization. The surveillance extends to monitoring of the e-mails, phone calls and messages which are connected with business and not else.

The surveillance was made for **various reasons**. The purposes of the surveillance are as follows.

- Protecting organization asset
- Preventing theft
- Protecting employees from indulging in unlawful activities
- To ensure the safety of the employees
- To monitor the work of employees

- To avoid creation of unnecessary situations
- To prevent employees from slacking off from the work
- To identify and solve the work related issues
- To prevent insider threats
- To increase the security of the organization
- To prevent the disclosure of confidential data of the company

These were the various reasons for the act of surveillance. The surveillance increases the production of the company. It enhanced the communication of employer and employee. It helps the employer to track down the training and development of an employee under him. The surveillance method increases the employee accountability by making them focus on the work rather than other activities. It makes the workers work efficiently and effectively in the work time by avoiding chit-chats with co-worker and slacking off. It monitors each and every stages of employee in the workplace, which ensures safety of the worker. It

prevents from disclosing company's secrets through an employee. It helps the employer to stop the employees from indulging in unlawful activities by monitoring their unusual conduct. The surveillance helps in finding the criminal for theft. The surveillance monitors every employee's effective work for receiving benefits from the organization, like promotion, high pay, and appreciation from the superior and other benefits.

There are various ways of monitoring the employees. The rapid rise of **technology** introduces many advanced **monitoring ways**. Some of them are mentioned below.

- Video monitoring
- Keycards
- Network monitoring
- Email monitoring
- Employee monitoring software (or) Project Management Apps
- GPS tracking
- Website browsing, application monitoring and social media tracking

The installation of Closed Circuit Television (CCTV) in the workplace monitors the employees for full hours of their working time. Keycards are like computer chips which are provided to the employees by the company. Keycards let the employer track their employee's location in the workplace. Keycards are similar to entry cards with which only they can enter and exit the workplace. The employers also monitor their employee through their network which emit around the organization. Employees are provided with an official email for business purposes, access of which is also maintained by the company administrators. If the official email is used by the employee for personal, it will be known to the organization. The company also uses GPS tracking system in case of failure of other monitoring systems. Employers also track their employee website, application and social media. This gives a clear picture of the time the employee slacking off during working hours. Remote employees are monitored through specific software designed for monitoring employees.

Workplace surveillance can be done by the company or the organization for the various reasons mentioned above. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 allows the company to monitor their employees for specified reasons. Workplace surveillance is said to be legal only when it is done with the knowledge

and consent of the employee. The (Indian) Information Technology Act, 2000 provides punishment for the violation of Information Technology Rules.

INDIVIDUAL PRIVACY: A FUNDAMENTAL RIGHT OF EVERY PERSON

Fundamental rights are basic human rights provided to every citizen of India through the Constitution of India. These are the rights which are possessed by each and every human being by the reason of citizen of India. These are the rights which are inviolable. There is no discrimination in use of these rights. These rights are equal for all. People of every category have these rights. Any person or any act of them obstruct these fundamental rights of others will be punishable by the law. Article 12 to 35 in Part III, of the Constitution of India, deal with these fundamental rights of citizen.

Article 21 of the Indian Constitution states that,

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The article 21 of the Constitution provides every citizen of India a fundamental right, **Right to Privacy**. It was held in the case, **R. Rajagopal v. State of Tamil Nadu** that the right to privacy is provided through the Article 21 of the Indian Constitution. It was said that, “every individual has a right to be left alone and so they have a right to try to safeguard their and their family’s privacy”.

In **Naz Foundation Case**, it was said that “right to privacy held to protect a private space in which man may become and remain himself”. It was defined through this case that a man need a separate place when they can be themselves, free from the societal influence, and be themselves for themselves.

The right to privacy was not directly mentioned through the article 21 but it was inferred through various case laws by the Supreme Court of India. The right to privacy was a new dimension interpreted from the article 21 read along with the Directive Principles of the State Policy.

In **Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.** Case, the bench unanimously said that “the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution”. This case has overruled previous judgment of the Supreme Court in M.P. Sharma and Kharak Singh, where the right to privacy was not recognized as a fundamental right. This case also brings the need to establish new law regarding data privacy, expanding the scope of privacy and considered privacy as an intrinsic value.

The word privacy means a person free from all influences from society and **enjoys the space** where one can be oneself. The privacy creates a space where one can remove the mask one wears in the society due to the influence. In the space one created no one can change anything except him. No one can impose any thoughts onto them in that space. No one can monitor them in that space.

This was the basic fundamental right provided to every citizen of the country. Every citizen of India has the right to privacy. No one can violate them or obstruct them. If they violate, they will be liable under the law. Thus a person’s right to privacy is protected under the Constitution of India through the Article 21.

WORKPLACE SURVEILLANCE AND RIGHT TO PRIVACY

In the previous parts, workplace surveillance and right to privacy has been discussed separately. Now, I would like to discuss how the workplace surveillance affects the individual right to privacy.

Workplace surveillance itself won't affect a person's privacy. If the surveillance method crosses its limits and enter the privacy space of individual, it would be considered as violation of law. Anything with limits is for good.

Workplace surveillance should be done by the organization only with the consent of the employee whom the organization is monitoring. The surveillance should be to the knowledge of the employee. It should be visible to the employees or any notice indicating the hidden surveillance should be provided to the employee.

The Information Technology Act, 2000 failed to cover up the privacy protection of the individual. For the purpose of protection of privacy and data, Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 has been introduced.

According to **Rule 4 of Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (IT Rules)**, a body corporate that collects, receives, possess, stores, deals or handle the data of employee should provide a privacy policy. The policy should mention the type of data they have collected about employees, purposes of such collection and assurance of security to such data.

According to **Rule 5**, Consent should be obtained in writing by the body corporate from the employee for collection their information. Body corporate shall collect information which is only lawful, connected with the body corporate and the collected information is for necessary and valid purpose. The employee should be aware that the body corporate is collecting such information of him and its use by them. The body corporate should not hold the information more than the period they need. The information collected should be used only for the purpose they have collected and not anything else. The employee has the right to review the information collected. The employee has every right to withdraw his consent which is conveyed through writing. The body corporate should keep the information secured. According to **Section 43A of the Information Technology Act, 2000**, the body corporate shall be liable to pay damages by way of compensation if they have failed to protect the data of the employees.

The above mentioned rules apply for personal information and sensitive personal data or information. Personal information here refers for any information which makes the other to identify that person.

Sensitive personal data, according to **Rule 3 of IT Rules**, refers to information like passwords, financial information, physical, psychological and health conditions, sexual orientation, medical history, and biometric information. It also states that any information which is freely accessible in public domain does not come under the definition of sensitive personal data.

The body corporate here mentions any company which employs employee. The body corporate that collects this information should adhere to the rules mentioned in the IT Rules.

The installations of cameras in the workplace are well to the awareness of the employees. If these cameras are hidden, the body corporate should provide that there are hidden cameras in that specified place. There are places where there should be no cameras to monitor the employee even it is in the workplace. The place like restroom, dress change rooms, locker room, and break room of employees which are considered to be **inappropriate place to install cameras**. The installation of which would lead to crime. There are cases were the employers fix cameras at dress change rooms to see and record the employee naked to satisfy their own pleasure or for any other purposes like selling of video footages for monetary purposes. These activities are not allowed by the law and it leads to criminal offence. The company should also not monitor the trade union activities of the corporation.

The **official e-mail id** would be monitored by the administrators and which should be known by the employee by default as it is provided business purpose and not for personal use. The company can monitor the employee only to the extent of which the information relates to business purpose. Some companies would monitor the employee's private messages without their consent and knowledge. They use this information to blackmail them in any way or sell this information to others for monetary value. When there are any remote workers, they will be monitored by the body corporate through **employee monitoring software** as mention above. This should be to the knowledge of the remote worker. The software may also monitor employee other activities other than business.

There are some companies would take financial information of employee like bank account number, passwords, etc. without the employee knowledge and cheat on their employee or sell the information for other for benefits.

These acts would be done either by the company itself or the employer of that employee for his own benefit.

The workplace surveillance is for the safety purpose of the body corporate and not for the benefits of them. The workplace surveillance of a body corporate should not invade into the privacy of individual by the reason that he is an employee.

OTHER ASPECTS OF WORKPLACE SURVEILLANCE

There are other aspects of workplace surveillance. The workplace surveillance also serves many benefits to the body corporate in a positive and lawful way. The surveillance helps the company to find the culprits of theft. It also helps in case of emergency. It helps to monitor workers who slack off from the work during working hours. The surveillance make the employee work more and which in turn increases the production of the company. It also helps to prevent any unlawful activity that happens to be in the company. It helps to prevent any unnecessary situations. The surveillance helps the organization in many good and lawful ways.

COMPARISON OF INDIA AND OTHER COUNTRY'S WORKPLACE SURVEILLANCE ACTS

In this part, workplace surveillance in many countries would be compared to India's workplace surveillance act.

○ **India**

In India, the workplace surveillance is governed by the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 and the Information Technology acts. The details have been discussed above.

○ **United States (US)**

The **Federal Law of USA**, employers of the body corporate can monitor their employees even without their consent and knowledge. The employees can expect only limited privacy. Still, they have right over their personal records.

○ **European Union (EU)**

In EU, the companies follow **General Data Protection Regulation (GDPR)**. There is no specific law for governance. Under GDPR, the company before introducing a new employee monitoring system should do a **Privacy Impact Assessment (PIA)**. PIA ensures the privacy security of employees.

- **Australia**

Australia has **Australian Workplace Surveillance Act**. The employers can monitor only with the “**Covert Surveillance Authority**” from the court. They should provide prior notice to employees before 14 days.

- **Canada**

Canada has Canadian Privacy statutes. Employers have limited permission to collect information of employee as put forth by the **Canadian Personal Information Protection and Electronic Documents Act**. The employee should be provided with prior notice of the monitoring system.

- **United Kingdom (UK)**

UK also follows **GDPR**. They balance the rights of the employer and employee. They also have **Regulation of Investigatory Powers, 2000** and Lawful Business Practice to ensure employee right to privacy.

- **United Arab Emirates (UAE)**

In UAE, the **federal laws** impose strict regulations on employee monitoring to protect their privacy. Prior notice and consent should be provided to the employees.

- **Russia**

In Russia, there prevail **strict laws** to ensure employee privacy. Employer can monitor only with the consent and knowledge of the employee.

CONCLUSION

There are acts which governs the workplace surveillance. The company and the employers should adhere to the rules and regulations of the statutes. There are companies that escape from the surveillance of government and its acts. They should be monitored regularly and properly.

The workplace surveillance is important in many ways. It is helpful and beneficial for the organization and society if it is used lawfully by the organization. Otherwise it turns a negative impact to the organization in future. The proper and lawful use of workplace surveillance would provide good benefits.

RECOMMENDATIONS AND SUGGESSTIONS

The workplace surveillance is an important need in today world of technology. The workplace surveillance is created for good but many abuses it. Many use it for unlawful purpose and in illegal manner. The workplace surveillance would serve well if it is done according the rules described for such activity. If the surveillance crosses its limits and invade into the privacy of the employee it would amount to illegality.

Many workers or employees are not aware of these act enacted to protect their rights. People should be educated about these. The organizations or the body corporate should follow the rules and regulation relating to workplace surveillance in order to protect individual basic fundamental rights. The violation of these rules should be punished severely.

Thus the workplace surveillance should be done in a way that it won't affect others rights. Both the surveillance should be done and individual right should be protected.

REFERENCES

1. Employee monitoring statistics, GITNEX market data report 2023

2. Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011
3. (Indian) Information Technology Act, 2000
4. Monitask Blog, “Benefits of employee Monitoring”
5. Desktrack Blogs, “Guide on An Employee Monitoring Tool: Types and Methods”
6. The Constitution of India
7. Blog.ipleaders.in, R. Rajagopal and ors. v. State o TN,119 SCC(6) 632: case study
8. Legalservicesindia.com, Right to privacy under Article 21 and Related conflicts
9. Ccgnlud.org, Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.
10. Khaitan & Co., Data Protection in India: Overview
11. EmpMonitor, 7 Workplace Monitoring Laws of Different Countries: Legal Restrictions and Best Practices.