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S.NO. TOPIC

1. **THE LEGAL GAPS IN INDIA'S UNREGULATED AI SURVEILLANCE**
2. **THE CONSTITUTION ON MINORITY RIGHTS**

THE LEGAL GAPS IN INDIA'S UNREGULATED AI SURVEILLANCE

The legal gaps in India's unregulated AI surveillance

In 2019, the Indian government made headlines by announcing its intention to create the world's largest facial recognition system for policing. Over the next five years, this ambition has materialised with Artificial Intelligence (AI)-powered surveillance systems being deployed across railway stations and the Delhi Police preparing to use AI for crime patrols. The latest plans include launching 50 AI-powered satellites, further intensifying India's surveillance infrastructure.

While technological integration in law enforcement is commendable, it raises substantial legal and constitutional concerns. The use of AI for surveillance has global parallels, often resulting in "dragnet surveillance", a term that refers to indiscriminate data collection beyond just suspects or criminals. As observed with Section 702 of the Foreign Intelligence Surveillance Act (FISA) in the United States, even well-intended surveillance laws can result in overreach, infringing on citizens' rights.

This article explores the legal frameworks, gaps, and concerns surrounding AI surveillance in India and how they intersect with constitutional rights, particularly the right to privacy.

The Telangana Police data breach earlier this year revealed deep-rooted concerns about the data collection practices of Indian law enforcement agencies. According to reports, Hyderabad police had access to databases from social welfare schemes, including "Samagra Vedika", raising questions about the scope of data being collected and the lack of transparency regarding its use.

Lack of proportional safeguards

While data-driven governance offers solutions for public welfare and crime prevention, these practices must be measured against the individual's right to privacy, as guaranteed under Article 21 of the Constitution. The Supreme Court of India, in *K.S. Puttaswamy vs Union of India* (2017), recognised privacy as a fundamental right, extending its scope to "informational privacy". The judgment emphasised that the era of "ubiquitous dataveillance" brings challenges that must be addressed through robust legal frameworks. However, the extent of surveillance infrastructure in India currently lacks proportional safeguards, leading to legitimate concerns about the implications of AI-driven data collection.

The Digital Personal Data Protection Act (DPDPA), passed in 2023, was meant to provide a framework for managing consent and ensuring accountability for data privacy in India. However, the law has been heavily criticised for broad exemptions that grant the government unchecked power to process personal data.

For instance, Section 7(g) of the DPDPA waives

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There needs to be a comprehensive regulatory framework that addresses AI's implications for civil liberties

the need for consent when processing data for medical treatment during an epidemic. Section 7(i) further exempts the government from consent requirements for processing data related to employment, a particularly concerning clause given that the government is India's largest employer. These exemptions raise red flags about the potential for misuse, especially when applied to AI-powered surveillance technologies that operate on vast quantities of personal data.

Moreover, the DPDPA introduces obligations for citizens that could further exacerbate privacy concerns. Section 15(c) mandates that citizens not to suppress any material information when submitting personal data. This provision, while intended to ensure data accuracy, could lead to punitive measures for something as simple as an outdated address or technical error in data collection systems.

In short, the DPDPA places heightened scrutiny on individual data while offering the government broad leeway in its use and collection. Given the profound implications of AI technologies in processing sensitive personal information, the legal framework appears unbalanced, skewed in favour of state surveillance over individual rights.

The approach in the West

India is not alone in grappling with AI and its impact on civil liberties. The European Union (EU) has enacted regulations that could serve as a useful guide for India. The EU's Artificial Intelligence Act takes a risk-based approach to AI activities, categorising them into unacceptable, high, transparency, and minimal risk levels. Unacceptable risk activities, such as real-time remote biometric identification for law enforcement, are prohibited under EU law unless exceptions apply, such as searching for victims of serious crimes or responding to imminent threats. In stark contrast, India has begun deploying AI-powered facial recognition technology and CCTV surveillance in public spaces with little to no legislative debate or risk assessment. For example, Delhi and Hyderabad have integrated AI into policing without any publicly available guidelines on how data is collected, processed, or stored, or how potential abuses of the technology will be prevented.

As of now, AI remains largely unregulated in India. In 2022, the government promised that AI technologies would be regulated under the upcoming Digital India Act, but draft legislation has yet to materialise. This regulatory void leaves citizens vulnerable to the risks associated with AI-powered surveillance, including the infringement of privacy, discrimination, and data breaches.

Countries such as the United States and members of the European Union have already begun to legislate on the use of AI in public

systems, with clear categorisations and restrictions for technologies that could pose a significant threat to civil liberties. The absence of a similar legal framework in India is troubling, especially given the government's ambitious plans to expand surveillance capabilities.

At its core, the debate over AI surveillance in India touches on fundamental constitutional questions. The right to privacy, as enshrined in Article 21, and the principle of proportionality, as outlined in the Puttaswamy judgment, demand that any intrusion into personal data be backed by law, pursue legitimate aims, and be proportionate to the goal pursued. However, the existing surveillance framework, bolstered by AI technologies, appears to stretch these principles to their limits.

Address the impact on civil liberties

It is not the use of AI in governance itself that is problematic, but rather its unchecked application without sufficient safeguards. A comprehensive regulatory framework that addresses AI's implications for civil liberties is urgently needed.

It would help protect public interest in consonance with the 'Right to Privacy' if such a framework includes provisions for transparent data collection practices, where it is publicly disclosed, what data is being collected, for what purpose, and how long it will be stored.

Furthermore, the framework must ensure consent gathering mechanisms have narrow and specific exemptions for processing data with independent and effective judicial oversight. This will not only ensure transparency in consent gathering but also safeguard the constitutionality of such applications of AI-based data processing. In this context, India could benefit from adopting a risk-based regulatory approach, such as the EU's, which categorises AI activities based on the risks they pose to citizens' rights.

India is at a crucial juncture in deploying AI-powered surveillance. While integrating advanced technologies in law enforcement and governance offers immense potential, it must be balanced against citizens' constitutional rights. Policy decisions that embed privacy measures into infrastructure before deployment, with inherent safeguards in surveillance protocols, are vital. Consent mechanisms, transparency reports, and judicial oversight at relevant stages of data collection and management can avoid costly retrofits and retraining.

Though the DPDPA addresses some issues, criticisms persist, and the long-awaited DPDP Rules remain unnotified. To mitigate risks from AI-driven surveillance, regulating "high-risk activities" through restrictions on digital personal data processing and transparent auditor oversight of data sharing is crucial. A proactive regulatory approach will ensure AI serves public interest without compromising civil liberties.

Background:

- ❖ 2019: Indian government announced plans for the *world's largest facial recognition system*.
- ❖ Current deployments: AI-powered surveillance in **railway stations** and **crime patrols (Delhi Police)**.
- ❖ Ambitious plans: Launch of **50 AI-powered satellites** for enhanced surveillance.





The Growing AI Surveillance in India

❖ Key Developments:

- Use of AI facial recognition across **policing and public spaces**.
- Hyderabad Police: Access to welfare scheme databases (**Samagra Vedika**).

❖ Concerns Raised:

- Indiscriminate data collection (Dagnet Surveillance).
- **Transparency and proportional safeguards** are absent.



The Legal Framework and Gaps

1. Supreme Court's Ruling (Puttaswamy Case, 2017)

- Recognized **Privacy** as a **Fundamental Right**.
- Stressed **informational privacy** and proportionality principles.
- **Challenge**: India's AI surveillance lacks compliance with these principles.

2. Digital Personal Data Protection Act (DPDPA), 2023

- Intended for data protection but has **broad exemptions**:
 - **Section 7(g)**: Waives consent for medical emergencies.
 - **Section 7(i)**: No consent needed for employment data.
- **Citizen Obligations**:
 - Section 15(c): Mandates citizens provide accurate data, risking **punitive actions**.

Result: Law skews in favor of state over individual rights.

Comparative Perspective – Approach in the West

1. European Union (EU)

- **AI Act**: Risk-based categorization – unacceptable, high, transparency, and minimal risk.
- **Unacceptable Risk**: Real-time **biometric identification** prohibited, with few exceptions.
- **India's Contrasting Approach**:
 - AI-powered surveillance deployed **without debate**, risk assessment, or transparency.

2. The United States

- Legislative frameworks like **Section 702 (FISA)** show surveillance overreach risks.
- India lacks similar protections, leaving citizens vulnerable to data breaches and discrimination.

Constitutional and Civil Liberty Concerns

❖ Core Principles:

- Right to Privacy (Article 21).
- Proportionality: Legal backing, legitimacy, and minimal intrusion.





❖ **Issues:**

- Lack of **safeguards** for transparency, consent, and judicial oversight.
- Surveillance infrastructure challenges constitutional principles.

Recommendations for AI Surveillance Regulation

❖ **Key Solutions**

- **Transparent Data Collection Practices:** Public disclosure of **what data is collected, purpose, and storage duration.**
- **Strong Consent Mechanisms:** Narrow exemptions with **judicial oversight** for sensitive personal data.
- **Risk-Based Regulation (EU Model):** Categorize AI activities based on **risks to civil liberties.**
- **Policy Safeguards:**
 - Build privacy protections **before deployment.**
 - Include transparency reports and data audits.
- **Independent Oversight:** Transparent monitoring and prevention of **abuse of surveillance systems.**

Key Takeaways

- ❖ AI surveillance must **balance technology and privacy.**
- ❖ Current frameworks (DPDPA) are insufficient to address AI-driven surveillance risks.
- ❖ **Lessons from the EU** and other global models: Implement risk-based, transparent, and proportional safeguards.

A proactive legal framework is critical to ensure **civil liberties** are not compromised

Conclusion

- ❖ India stands at a critical juncture in AI-powered surveillance.
- ❖ Immediate steps to regulate **high-risk activities** and embed constitutional safeguards are essential.
- ❖ A balanced approach will allow AI to **serve public interest** without infringing on individual rights.



THE CONSTITUTION ON MINORITY RIGHTS

The Constitution on minority rights

The preservation of diversity is the rationale behind minority rights in the Indian Constitution. On Minority Rights Day, it is essential to remember Franklin Roosevelt's words, 'no democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities'

LETTER & SPIRIT

Faizan Mustafa

The debate on minority rights should be lifted from its current framework of communalism versus secularism and placed in the theoretical field of democracy and substantive equality. Recognising the importance of minority rights, the UN General Assembly adopted a declaration on the 'Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities' on December 18, 1992. This date is celebrated as Minority Rights Day all over the world. Minority rights are essential in a democratic polity because as Franklin Roosevelt reminds us "no democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities".

Origin of minority rights

Article 19 of the Austrian Constitutional Law (1867) acknowledged that ethnic minorities have an absolute right to maintain and develop their nationality and languages. Similar provisions were found in Hungary's Act XLIV of 1868, and in the Constitution of the Swiss Confederation of 1874, which granted the three languages of the country equal rights in civil services, legislation and in courts. The provisions of the peace treaties after the First World War, focused particularly on the status of minorities. Minority protections were codified in the five treaties negotiated between the allied and associated powers on the one hand, and Poland, Czechoslovakia, Romania, Greece and Yugoslavia on the other. Special provisions for minorities were incorporated in the peace treaties with Austria, Bulgaria, Hungary and Turkey, while Albania, Finland and Iraq declared that they would protect their minorities. Article 27 of the Universal Declaration of Human Rights gives every individual a right to community – that is the right to enjoy their own culture and to participate in cultural forums, associations etc.

Debate in the Constituent Assembly

The framers of the Constitution showed profound sensitivity to the needs of minorities. Pandit G.B. Pant, moving the resolution to set up an Advisory Committee on Fundamental Rights and the Rights of Minorities, explicitly stated that the "satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of the free State of India... now it is necessary that a new chapter should start and we should all realise our responsibility. Unless the minorities are fully satisfied, we cannot make progress; we cannot even maintain peace in an undisturbed manner." The committee headed by Sardar Vallabhbhai Patel examined the issue of minority rights and accordingly Articles 25 to 30 were enacted in our Constitution. The underlying argument in these Articles is that individualistic universal rights are not of much use in a heterogeneous country such as India, and that one needs to have discussions on the basis of multiculturalism, difference, and the rights of minorities that mark contemporary political theory.

Rationale behind minority rights

The preservation of diversity is the rationale behind minority rights in the Indian Constitution. In fact, individualistic rights under Articles 14-18 (equality), 19 (free speech) and 25 (freedom of religion) are not enough for



Nation for all: A woman holds up a poster during a protest against the CAA during Republic Day at Shaheen Bagh, in New Delhi in 2020. SUSHIL KUMAR VERMA

the conservation of language, script or culture which comes under Article 29. One may not be individually unjustly treated but it hurts if the group to which one belongs is subjected to ridicule or denied any value. This also undermines an individual's right to dignity. An individual's right to culture holds little meaning or significance, unless the community of which a person is a member of, or is identified with, is accorded the right to exist in a viable form. It requires not only the presence of a group that shares a common culture but a conducive environment in which such cultures can flourish. Thus, under Article 30 both religious and linguistic minorities are allowed to establish and administer institutions of their choice so that such a space is created in these institutions.

Recently, a seven judge Bench in *Aligarh Muslim University* (2024) in unequivocal terms described Article 30 as a 'facet of equality and non-discrimination'. A nine judge Bench in *St. Xavier's College Society* (1974) too had observed that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In *Keshavnanda Bharati* (1973), rights under Article 30 were held to be part of the basic structure which even Parliament cannot change through a constitutional amendment.

What are minority rights?

Interestingly, though the term 'minority' has been used in four places in the Constitution no definition of the term 'minority' has been given. The Supreme Court has consistently held that minorities are to be defined at the level of the State. Since Hindus are a religious minority in Punjab, Kashmir and in the northeastern States, they too are entitled to minority rights. There are hundreds of Hindu minority institutions in India.

Article 29(1) lays down that 'any section of the citizens residing in the territory of India or any part thereof having a distinct

language script or culture of its own shall have the right to conserve the same'. This provision signifies two vital dimensions. First, it concedes that different groups do have different cultures and that all people may not have just one culture. Since these linguistic and religious cultures are valuable for their members, they need to be given explicit rights to conserve their own culture especially since such minority cultures can face disadvantages in a majoritarian society. Secondly, the right to culture is an individualistic right, that is, individuals have been given the right to preserve their distinctive culture.

Article 30 guarantees that all religious and linguistic minorities shall have the right to establish and administer educational institutions of 'their choice'. In the *re Kerala Education Bill* (1957), the Supreme Court said that the dominant word in Article 30 is 'choice' and minorities can expand their choice as much as they want. The court also said that the term 'educational institution' includes universities. The courts have also been consistent in extending protection under Article 30 to pre-Constitution institutions in cases like *S.K. Patro* (1969), *St. Stephens* (1992) and *Azeez Basha* (1967). In the latest judgment of *Aligarh Muslim University* (2024), the majority has held that even an institution of national importance can claim minority character.

Additionally, Article 350 A provides for instruction in the primary stages of education in the mother tongue, and Article 350 B for the appointment of a special officer for linguistic minorities. Their religion based personal laws have also been constitutionally protected, for example, the customary law of Nagas. There is no religious qualification attached to the holding of high constitutional positions. There is also a National Commission for Minorities and a National Commission For Minority Educational Institutions to deal with the problems of minorities.

Defining a minority

The 11 judge Bench in the *TMA Pai Foundation* (2002) case had left

unanswered the question of the indicia of minority institutions. Former Chief Justice Dr D.Y. Chandrachud in a historic judgment in the *Aligarh Muslim University* (2024) case has now laid down the indicia.

Interestingly, on the issue of indicia there was broad agreement amongst the seven judges. They all preferred holistic, broad and flexible yardsticks such as ideation – looking at the genesis or ideation or brain behind the idea. Moreover, the person taking the initiative must belong to the minority community. His intent must be to found an institution 'predominantly for the minority community' and other factors to be considered would be the collection of funds, getting land, construction of buildings and governmental approvals. It is not necessary that the administration must be vested within the minorities themselves. Right to administer is the consequence of establishment.

Though there is no right to get governmental aid, Article 30(2) explicitly says that the State cannot discriminate against a minority institution while granting aid. In the *re Kerala Education Bill* (1957) case, Chief Justice S.R. Das held that the State cannot impose such 'onerous' conditions either in granting aid or in giving affiliation to minority institutions that require surrendering the minority character of their institutions.

Furthermore, the Supreme Court has consistently maintained that minorities have no right to maladminister their institutions, and that the government can come up with reasonable regulations to insist on proper safeguards against maladministration, to maintain fair standards of teaching, and to ensure "excellence of the institutions." In *St. Xavier's* (1974), the top court explicitly observed that "under the guise of exclusive right of management, minorities cannot decline to follow the general pattern. In fact, they may be compelled to keep in step with others."

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THE GIST

Recognising the importance of minority rights, the UN General Assembly adopted a declaration on the 'Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities' on December 18, 1992.

Article 29(1) lays down that 'any section of the citizens residing in the territory of India or any part thereof having a distinct language script or culture of its own shall have the right to conserve the same'.

One may not be individually unjustly treated but it hurts if the group to which one belongs is subjected to ridicule or denied any value. This also undermines an individual's right to dignity.



Context:

- ❖ Minority rights are fundamental to preserving **diversity** in India.
- ❖ Franklin D. Roosevelt: *“No democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities.”*

Relevance:

- ❖ Minority Rights Day (December 18) marks the adoption of the UN Declaration on Minority Rights (1992).

Global Origins of Minority Rights

- ❖ **Historical Evolution:**
 - **Austria (1867):** Right to maintain nationality and language.
 - **Hungary (1868):** Recognized minority rights in law.
 - **Switzerland (1874):** Equal rights for multiple languages in courts and governance.
- ❖ **Post-World War I Treaties:** Protect minority status in countries like Poland, Romania, and Greece.
- ❖ **Universal Declaration of Human Rights (1948): Article 27:** Right to community and cultural participation

Indian Constitutional Debate on Minority Rights

- ❖ **Constituent Assembly Discussions:**
 - Pandit G.B. Pant: “Unless minorities are fully satisfied, we cannot make progress.”
 - Sardar Vallabhbhai Patel: Headed the Advisory Committee on Minority Rights.
- ❖ **Articles Enacted:**
 - **Articles 25-30:** Recognized the need for multiculturalism and minority-specific rights.
- ❖ **Underlying Argument:**
 - Universal individual rights are insufficient in a diverse country like India.
 - Minority rights address multiculturalism, difference, and equality.

Rationale Behind Minority Rights

- ❖ **Preservation of Diversity:**
 - Rights under **Articles 14-18, 19, and 25** are inadequate to conserve culture, script, and languages.
- ❖ **Significance:**
 - Protection of group identity upholds **individual dignity**.
 - Requires a conducive environment for cultural flourishing.
- ❖ **Article 30:**
 - Religious and linguistic minorities can establish and administer **institutions of their choice**.

Key Constitutional Provisions

- **Article 29(1):**
 - Right to conserve distinct **language, script, or culture**.
- **Article 30:**
 - Right to establish and administer **educational institutions**.
 - **Kerala Education Bill (1957):** Emphasized “choice” of minorities.
- **Article 350A:**
 - Instruction in **mother tongue** at the primary level.
- **Article 350B:**
 - Appointment of a **Special Officer** for linguistic minorities.
- **Article 30(2):**
 - No discrimination by the State in granting aid to minority institutions.





Judicial Interpretations

- ❖ **Key Cases**
 - **St. Xavier's College Society (1974):**
 - Minority rights ensure **equality** between majority and minority.
- ❖ **Keshavananda Bharati (1973):**
 - Article 30 rights are part of the **Basic Structure** of the Constitution.
- ❖ **TMA Pai Foundation (2002):**
 - Left the definition of minority institutions open-ended.
- ❖ **Aligarh Muslim University (2024):**
 - Defined **indicia of minority institutions**.
 - Considered **intent, community initiative, and use of funds**

Definition and Rights of Minorities

- **No Fixed Definition in the Constitution:**
 - Term 'minority' used but **not defined**.
 - Supreme Court: Minorities are to be defined at the **State level**.
 - Hindus are a minority in **Punjab, Kashmir, and Northeastern States**.
- **Rights Under Article 29 and 30:**
 - Protects **culture and institutions**.
- **Judicial Safeguards:**
 - State regulations ensure **fair standards**, not maladministration.

Regulatory Framework for Minority Institutions

- **Key Principles:**
 - Right to administer institutions cannot result in **maladministration**.
 - Reasonable State regulations ensure:
 - **Quality of teaching**
 - **Fair standards**
 - **Institutional excellence**
- **Judicial Observations:**
 - *St. Xavier's (1974): Minorities must align with general educational standards.*
 - Governmental aid cannot impose conditions that dilute minority character

Conclusion

- ❖ **Preservation of Rights:** Minority rights are critical for India's democratic and multicultural ethos.
- ❖ **Balancing State and Minority Interests:** Institutions must maintain **administrative standards** while ensuring **minority character**.
- ❖ **Franklin Roosevelt's Reminder:** Recognition of minority rights is **fundamental** to democracy's survival.

UPSC PYQ 2011

Q. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to?

1. It can establish and administer exclusive educational institutions.
2. The President of India automatically nominates a representative of the community to Lok Sabha.
3. It can derive benefits from the Prime Minister's 15-Point Programme.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only (c) 1 and 3 only (d) 1, 2 and 3

