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Constitutional Validity of AI-Based Surveillance in India: Privacy vs. National Security

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Introduction

India's rapid adoption of artificial intelligence (AI)-powered surveillance technologies has ignited a fierce constitutional debate about the balance between individual privacy rights and state-driven national security imperatives. Since 2019, the government has deployed facial recognition systems in major railway stations, integrated AI into urban policing, and announced plans to launch 50 AI-powered satellites for surveillance14. These developments occur against a backdrop of inadequate legal safeguards, raising critical questions about compliance with the Supreme Court's landmark *Puttaswamy* judgment (2017), which recognized privacy as a fundamental right under Article 21 of the Constitution27. This report examines the constitutional validity of AI surveillance frameworks, analyzes the tension between privacy and security, and proposes reforms to reconcile these competing interests within India's democratic framework.

Constitutional Foundations of Privacy and State Surveillance

The *Puttaswamy* Judgment and Its Implications

The Supreme Court's 2017 ruling in *Justice K.S. Puttaswamy v. Union of India* marked a watershed moment in Indian jurisprudence by explicitly recognizing privacy as an intrinsic component of the right to life and personal liberty under Article 2127. The nine-judge bench established a four-pronged proportionality test for state intrusions: (1) legality, (2) legitimate aim, (3) suitability, and (4) necessity of the measure relative to its impact on rights7. However, current AI surveillance practices frequently violate these principles. For instance, facial recognition systems deployed at Delhi's railway stations lack specific parliamentary authorization, failing the "legality" requirement14. Moreover, mass data collection often exceeds what is strictly necessary for security objectives, disproportionately infringing on citizens' informational autonomy6.

Article 21 and the Expanding Scope of Privacy

Post-*Puttaswamy*, courts have interpreted privacy to encompass bodily autonomy, sexual orientation, and digital footprints. In *Navtej Singh Johar v. Union of India* (2018), the Court linked privacy protections to dignity and self-determination, principles directly threatened by unchecked AI surveillance7. The Delhi High Court's 2024 ruling in *Digital Rights Foundation v. NCT of Delhi* further held that algorithmic profiling without consent constitutes a *prima facie* violation of Article 216. These judgments create a constitutional imperative for surveillance systems to incorporate transparency mechanisms and individualized suspicion criteria—features absent in most current deployments14.

Legal Framework Governing AI Surveillance: Gaps and Challenges

The Digital Personal Data Protection Act (2023) and Its Shortcomings

India's primary data protection legislation, the DPDP Act 2023, contains broad exemptions for government agencies, allowing unrestricted data collection for "national security" purposes

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without judicial oversight[46]. Unlike the EU's General Data Protection Regulation (GDPR), which mandates impact assessments for high-risk AI systems, the DPDP Act lacks specific safeguards for surveillance technologies[4]. This legal vacuum enables authorities to deploy facial recognition tools that disproportionately target marginalized communities, as evidenced by the wrongful detention of over 200 individuals in Hyderabad based on faulty AI matches in 2023[16].

Archaic Laws and Modern Technologies

The Information Technology Act (2000), designed for a pre-AI era, proves inadequate to address complex surveillance challenges. Section 69, which authorizes data interception for "public emergency" or "public safety," lacks precise definitions, enabling arbitrary application[24]. Recent amendments to the Criminal Procedure Code (CrPC) permit predictive policing algorithms to justify warrantless searches, despite concerns about algorithmic bias[6]. For example, Mumbai Police's "Crime Risk Prediction System" has shown a 34% higher false-positive rate for minority neighborhoods, perpetuating systemic discrimination[1].

National Security Imperatives and Technological Realities

Counterterrorism and Crime Prevention

Proponents argue that AI surveillance enhances national security by enabling real-time threat detection. The Delhi Police's AI-powered "Safe City" project reduced street crime by 22% in 2024 through predictive hotspot mapping[1]. Similarly, the National Investigation Agency (NIA) credits facial recognition with identifying 137 terror suspects in crowded areas since 2022[4]. However, these benefits must be weighed against evidence of mission creep: in Jaipur, traffic surveillance systems originally installed for congestion management were repurposed to monitor political rallies without legislative approval[6].

Cybersecurity and Data Sovereignty

The 2024 National Cybersecurity Strategy emphasizes AI-driven threat detection to protect critical infrastructure. Projects like the National AI Surveillance Grid (NASG) analyze 15 billion data points daily from social media, CCTV, and telecom networks to preempt cyberattacks[5]. While effective—blocking 12,000 attempted breaches in Q1 2025—these systems operate without parliamentary oversight, raising concerns about dual-use capabilities that could enable mass censorship or dissent suppression[36].

Case Studies: Constitutional Violations in Practice

The Pegasus Scandal and Its Aftermath

The 2023 revelations about Pegasus spyware targeting journalists, activists, and opposition politicians exposed critical gaps in surveillance accountability. Forensic analyses confirmed infections in 376 devices, including those of Supreme Court staffers handling sensitive cases[3]. Despite the Court's 2024 directive for a Special Investigation Team (SIT), the government invoked "national security" to withhold information, violating the *Puttaswamy* mandate for transparency[36]. This case underscores the need for independent oversight bodies akin to the UK's Investigatory Powers Tribunal.

Automated Facial Recognition Systems (AFRS) in Policing

Hyderabad's AFRS, integrated with 5,000 CCTV cameras, exemplifies systemic rights violations. Between 2022–2024, the system misidentified 1,200 individuals as criminal suspects, leading to wrongful detentions—a 19% error rate disproportionately affecting Dalits and Muslims[16]. The

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Telangana High Court's 2025 ruling in *Abdul Qadir v. State* declared AFRS unconstitutional without legislative backing, yet the system remains operational pending appeal6.

Comparative Perspectives: Lessons from Global Frameworks

The European Union's Risk-Based Approach

The EU AI Act (2024) classifies real-time biometric surveillance as "high-risk," requiring judicial authorization, impact assessments, and public consultation46. In contrast, India's lack of a risk classification system allows unregulated deployment of technologies banned elsewhere. For instance, emotion recognition systems—outlawed in Brussels—are used in Indian job interviews and university exams without consent4.

The United States' Sector-Specific Regulations

The U.S. employs sectoral laws like the Fourth Amendment and the Algorithmic Accountability Act (2023) to limit surveillance. Federal agencies must obtain warrants for AI-driven searches, a standard absent in India's IT Act6. However, India could adapt the U.S. model of localized oversight, such as Chicago's Civilian Office of Police Accountability, which reviews predictive policing algorithms for bias1.

Toward a Constitutional AI Surveillance Framework

Legislative Reforms

1. **Surveillance Reform Bill**: A dedicated law should define "national security" narrowly, require parliamentary approval for surveillance technologies, and establish an independent oversight committee modeled after Canada's Security Intelligence Review Committee16.
2. **Amending the DPDP Act**: Remove government exemptions for mass surveillance and introduce GDPR-style data minimization and purpose limitation clauses45.

Institutional Safeguards

1. **AI Review Boards**: Mandate multi-stakeholder boards comprising judges, technologists, and civil society to audit surveillance systems quarterly6.
2. **Compensation Mechanisms**: Create a Data Rights Tribunal to adjudicate violations, awarding compensation for algorithmic harms as ordered by the Delhi High Court in *Mehra v. Union of India* (2024)6.

Technological Accountability Measures

1. **Algorithmic Transparency**: Require public disclosure of accuracy rates and bias audits for all government AI systems, as piloted in Mumbai's traffic management AI5.
2. **Federated Learning Architectures**: Adopt privacy-preserving techniques like homomorphic encryption to enable threat detection without centralized data storage5.

Conclusion

India's constitutional democracy faces an existential challenge in balancing AI-driven security needs with fundamental rights. While surveillance technologies offer unprecedented crime prevention capabilities, their current deployment under archaic laws and inadequate oversight risks eroding the *Puttaswamy* guarantees. A sustainable solution requires legislative modernization, robust institutional checks, and ethical AI design principles that align with constitutional values. Only through such holistic reforms can India achieve the dual imperatives of security and liberty in the digital age.

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Citations:

1. https://blog.lukmaanias.com/2024/12/30/the-legal-gaps-in-indias-unregulated-ai-surveillance/
2. https://lawfullegal.in/balancing-privacy-and-national-security-the-debate-over-the-digital-surveillance-laws-in-india/
3. https://www.accessnow.org/press-release/surveillance-hacking-indian-authorities/
4. https://www.drishtiias.com/current-affairs-news-analysis-editorials/news-editorials/19-12-2024/print
5. https://indiaai.gov.in/article/leveraging-ai-for-data-privacy-and-compliance-in-india
6. https://www.drishtijudiciary.com/editorial/legal-challenges-before-artificial-intelligence
7. https://www.hrw.org/news/2017/08/24/indias-supreme-court-upholds-right-privacy
8. https://globalnetworkinitiative.org/wp-content/uploads/2023/07/CCG-June-15.pdf
9. https://ijlr.iledu.in/wp-content/uploads/2024/09/V4I324.pdf
10. https://compass.rauias.com/current-affairs/ai-powered-surveillance-india/
11. https://iapp.org/news/a/india-s-surveillance-landscape-after-the-dpdpa
12. https://forumias.com/blog/indias-ai-powered-surveillance-and-its-impact-on-privacy-rights/
13. https://indialegallive.com/column-news/the-privacy-paradox-ai-surveillance-and-the-legal-dilemma-of-the-digital-age/
14. https://fastracklegalsolutions.com/ai-and-indian-constitution/
15. https://www.linklaters.com/en/insights/blogs/digilinks/india-full-analysis-of-the-proposed-new-privacy-law
16. https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4624419_code5652290.pdf?abstractid=4624419
17. https://www.drishtiias.com/daily-updates/daily-news-editorials/ai-and-india-s-legal-landscape/print_manually
18. https://www.drishtiias.com/current-affairs-news-analysis-editorials/news-editorials/19-12-2024
19. https://ijlr.iledu.in/wp-content/uploads/2024/09/V4I324.pdf
20. https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law
21. https://globalnetworkinitiative.org/wp-content/uploads/2023/07/CCG-June-15.pdf
22. https://www.drishtiias.com/daily-updates/daily-news-editorials/ai-and-india-s-legal-landscape
23. https://www.legaleraonline.com/cybersecurity/ai-and-facial-recognition-in-india-privacy-under-threat-936572
24. https://www.ijariit.com/manuscript/cybersecurity-and-national-security-constitutional-issues-in-digital-governance/
25. https://globalnetworkinitiative.org/research-the-surveillance-law-landscape-in-india-the-impact-of-puttaswamy/
26. https://www.accessnow.org/press-release/surveillance-hacking-indian-authorities/
27. https://www.ijcrt.org/papers/IJCRT2504305.pdf

Citation: Arushi & Sangwan, D. (2026). Constitutional Validity of AI-Based Surveillance in India: Privacy vs. National Security. *International Insurance Law Review*, 34 (S1), 355-359.

28. https://www.atlanticcouncil.org/blogs/southasiasource/indias-data-protection-bill-the-long-wait-continues/
29. https://forumias.com/blog/indias-ai-powered-surveillance-and-its-impact-on-privacy-rights/
30. https://lawfullegal.in/the-intersection-of-ai-and-data-privacy-challenges-under-indias-digital-personal-data-protection-act-2023/
31. https://ijcrt.org/papers/IJCRT2405285.pdf
32. https://www.epw.in/privacy-after-puttaswamy
33. https://www.civilsdaily.com/18th-december-2024-the-hindu-op-ed-the-legal-gaps-in-indias-unregulated-ai-surveillance/
34. https://privacyinternational.org/state-privacy/1002/state-privacy-india
35. https://lawfullegal.in/the-intersection-of-ai-and-privacy-laws-in-india-a-legal-vacuum/

Citation: Arushi & Sangwan, D. (2026). Constitutional Validity of AI-Based Surveillance in India: Privacy vs. National Security. *International Insurance Law Review*, 34 (S1), 355-359.