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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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“DATA PRIVACY AND EMPLOYEE MONITORING: BALANCING RIGHTS AND INTERESTS”

AUTHORED BY - SHAURYA VARDHAN SINGH & TISHA PATTNAIK

BA-LLB (2021-26)

Symbiosis International Deemed University

Symbiosis Law School, Hyderabad

ABSTRACT:

The evolution in technology and continuous altering workplace arrangements and monitoring have become an important component of contemporary employment practices. Even though employee monitoring is required and is justified on security, productivity and regulatory compliance, it has serious impact on privacy, ethics, and legal limitations. The introduction of the Digital Personal Data Protection Act 2023, has changed the legal framework for workplace surveillance in India. It needs reviewing of the methods used to protect employee privacy. The many types of employee monitoring, and its consequences under the Indian data privacy law are all studied upon by the researchers in this paper. The paper delves into the hazards of privacy breach and excessive monitoring. The researchers stress upon the necessity of striking a balance between employee monitoring and individual privacy rights while complying with legal requirements and ethical standards.

KEYWORDS: *Employee monitoring, Digital Personal Data Protection Act, workplace surveillance, employee privacy, fair work environment.*

INTRODUCTION:

Workplace surveillance requires to maintain a balance between right of individual privacy in regards to their personal data and activities. The employers' need to monitor and manage their workforce. There has been widespread of workplace monitoring in the current digital era, as technology is deeply placed into professional setup. Such surveillance raises questions regarding ethics and privacy infringement, although it is frequently used to improve security, guarantee efficiency, and prevent breach of data. The just balance between company supervision and employee privacy, fosters a free, open and civil workplace. Workplace surveillance has changed drastically. Due to the result of the quick development of digital

technology, there are both benefits and drawbacks. The employers check emails, keep a check on internet activity. They also track employees' whereabouts using GPS. Though these technologies improve data security and efficiency, they lead to possible abuse of privacy and excessive monitoring.

Digital reliance was increasing due to the COVID-19 pandemic, making online communication and remote work essential. As a result of this change, monitoring systems have been used more often to guarantee accountability and reduce data security threats. The employers utilise a variety of surveillance techniques, like as apps that monitor phone conversations and texts on company-owned devices or official platforms like Google Suite and Microsoft Teams. Many organisations now limit the usage of external storage devices and personal email accounts to prevent illegal data transfers.

Global Positioning System (GPS) tracking has been adopted to track employees' locations using business devices. In order to avoid security breaches and preserve productivity, access to specific social networking sites and unprotected websites is also frequently limited. CCTV surveillance has been used as a workplace monitoring technique. The positioning of CCTV cameras is done thoughtfully in the office buildings to keep a watch on activity, improvise security, and adhere to corporate regulations. Moreover, access cards, biometric punch-in systems, and facial recognition software are used to track employee attendance.

It is required to make sure that employee monitoring is morally and legally sound. As workplaces tend to change with change in technology, employers must use surveillance techniques that protect worker privacy while paying attention to business needs. In the digital age, defending employee rights, guaranteeing workplace security, and preserving trust depends upon finding the balance between surveillance and privacy protection.

LITERATURE REVIEW:

The paper "*Data Privacy and Labor Law: Balancing Employee Rights and Employer Interests*"¹ looks at collecting data in the workplace but doesn't touch on the psychological impact of surveillance in real time. But it overlooks how excessive surveillance thwarts personal freedom, generates suspicion, and reduces productivity. It focuses on compliance. But

¹ Madhushree, *Data Privacy and Labor Law: Balancing Employee Rights and Employer Interests*, 2 WHITE BLACK LEGAL LAW JOURNAL (2024).

however, overlooks how monitoring using AI. It shifts the power dynamics in the workplace, thus complicating privacy protection.

The article "*Employee Privacy in the Digital Age: Balancing Rights and Interests*²" prioritizes legal guidelines and office spying. The privacy problems are skipped with distant employment and biases of AI monitoring. The over checking procedures causes imbalances in powers that impact equality and worker agency.

The paper "*Employee Monitoring and Privacy in India*³" focuses on employer compliance requirements and rights. It provides a legal perspective regarding workplace monitoring. It fails, however, to critically analyze the psychological and ethical implications of continuous employee monitoring. While it mentions legal safeguards, it does not go as far as to illustrate how vague permission processes and lack of clear data retention policies can lead to indiscriminate access and misuse of employee information.

The paper "*Navigating Workplace Surveillance: Balancing Privacy and Productivity*⁴" discusses how surveillance could boost productivity while keeping privacy in mind. It fails to critically evaluate how excessive surveillance could lead to stress and demotivation among employees, which will ultimately lower productivity. It promotes surveillance as a performance tool. It lacks in considering the need for open standards that ensure surveillance remains morally upright and suitable.

The paper "*Employee Monitoring: Balancing Productivity and Privacy in the Digital Age*⁵" analyses monitoring in the workplace as a tool for boosting productivity with consideration for privacy. It doesn't analyse how continuous monitoring impact the fear of being watched, and deplete employee trust. It promotes balance. It lacks in discussing the requirement for stricter regulation and employee involvement in formulating fair monitoring procedures.

² Smith Dollar PC, *Employee Privacy in the Digital Age: Balancing Rights and Responsibilities*, (Oct. 31, 2024), <https://www.smithdollar.com/blog/2024/october/employee-privacy-in-the-digital-age-balancing-ri/>.

³ Aakarsh Chandranahu, *Employee Monitoring And Privacy In India*, (Aug. 30, 2024), <https://ksandk.com/labour-employment/employee-monitoring-privacy-india/>.

⁴ *Navigating Workplace Surveillance: Balancing Privacy & Productivity*, <https://www.timechamp.io/blogs/navigating-workplace-surveillance-balancing-privacy-and-productivity/>.

⁵ *Employee Monitoring: Balancing Productivity and Privacy in the Digital Age*, (Sept. 7, 2023), <https://medium.com/@theemployerdomain/employee-monitoring-balancing-productivity-and-privacy-in-the-digital-age-416d838e9a2d>.

RESEARCH METHODOLOGY:

This research paper is based on the doctrinal methodology to achieve its objective. The paper focuses on qualitative method of research to evaluate the legal, ethical, and practical elements of employee surveillance and data privacy. This research paper relies upon sources that are both primary and secondary. The primary sources which constitute the legal framework enabling workplace monitoring in India. This paper also acquires information from legitimate websites and online platforms and the credit for the same has been duly given. The study also examines the moral drawbacks of employee surveillance, emphasising how it affects compliance, productivity, and privacy.

RESEARCH QUESTIONS:

1. What is the legal framework regulating workplace surveillance and its implications of employers and workmen?
2. What are the challenges faced by employers while complying with the privacy laws and maintaining confidentiality of employees at workplace?
3. How the rights of the employees can be protected while maintaining the interest of the employers?

RESEARCH OBJECTIVES:

1. To study about the laws governing workplace surveillance in India
2. To analyse the legal and ethical challenges in workplace monitoring while maintaining balance between rights of the employees and interest of the employer.
3. To study about the compliance of effective measures in workplace monitoring,

LEGAL FRAMEWORK GOVERNING WORKPLACE

SURVEILLANCE IN INDIA:

There has been an increase in concern in relation to workplace monitoring in India, with an increase in speed of development of technology and data collecting techniques in particular. The Supreme Court of India has often affirmed the right to privacy as one of the essential elements within individual liberty and dignity.

While the specific constitutional provision does not mention the right to privacy, the Indian Supreme Court has seen the scope of Article 21-a protector of the right to life and personal

liberty-widened in favour of ones like the right to privacy. Thus, in its historic judgment in “*Justice K.S. Puttaswamy (Retd) vs. Union of India*”⁶, the Supreme Court held that the “right to privacy” was an innate and enforceable right to Indian law as envisaged within “Article 21 under Part III of the Constitution” that deals with fundamental rights.

Currently, India does not have a clear law governing employee monitoring in the workplace. However, data protection and privacy rules are the ones that ensure legality in any employee monitoring. “The **Information Technology Act of 2002** ⁷and the **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules of 2011**”⁸ provide a primary form of a body of legislation for collecting and safeguarding data. According to these rules, a company must obtain a worker's consent before the collection of any sensitive personal data as well as take reasonable steps to secure that information.

Despite these provisions, there are nevertheless wide legal loopholes as the IT Act and SPDI Rules fail to entirely cover the repercussions of workplace surveillance by employees. The new Digital Personal Data Protection Act, 2023 (“DPDP Act”) that has come into force will reshape India's data protection framework and provide better guidance on collecting, storing, and using data considering the rising digital workplace monitoring practice.

India does not have a centralised data protection authority currently, compared to other countries. In India, the “Ministry of Electronics and Information Technology (MeitY)” is responsible for data protection and privacy matters. Under the DPDP Act, “the Data Protection Board of India (DPBI)” is to be established as a regulatory body responsible for safeguarding digital personal data. Once established and in operation, the DPBI will be capable of monitoring compliance, acting on complaints regarding data privacy violations, and penalizing organizations that break the prescribed standards. To ensure adherence to the law, the DPBI will also possess powers of investigation, such as calling individuals, inspecting evidence under oath, and inspecting relevant documents.

It remains essential to balance employee privacy and business interests with the increase in

⁶ Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors., (2018) 1 SCC 809.

⁷ The Information Technology Act, 2002

⁸ Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

workplace monitoring in India. An organised data protection regime is looked for by the judicial recognition of the “Right to Privacy under Article 21”⁹ and working on data protection laws like the DPDP Act. Nonetheless, the enforcement mechanisms provided, particularly through the DPBI, will take a significant role in the effective implementation of these policies. In the future, firms need to ensure that their monitoring practices are in compliance with the law in order to ensure openness, fairness, and conformity to privacy requirements in the workplace.

IMPACT OF DIGITAL PERSONAL DATA PROTECTION ACT, 2023 ON EMPLOYERS:

The accumulation and handling of personal data by the employer is highly impacted by the Digital Personal Data Protection Act, 2023. This Act modifies India's initiation towards data privacy. This act ensures that permission is received from employees in written form before processing their personal data. Employers must tell workers of the kinds of information they collect, how it will be used, and their legal rights under the Act.

The DPDP Act focuses on the importance of permission while acknowledging the justifications for processing personal data without consent. The Act ensures the standard of security on employers is maintained and their personal information is shielded from unauthorised access. The employers must have strong and strict policies for protection of data of the employees and ensure compliance.

According to the DPDP Act, the personal data of the employees must only be gathered and utilised for required purposes only as informed to the employees while taking their consent. For example, continual location tracking may be deemed excessive unless an employee's role warrants it is unnecessary and unethical. The DPDP Act, which requires employers and other data fiduciaries to monitor all data processing activities, conduct impact assessments for risky surveillance, and make sure that employees know about the kind of data collection.

The DPDP Act focuses on the shift on how industries in India take care of employee's personal data. The industries must establish explicit consent processes and adhere to it to ensure compliance. The data governance practices must be aligned with the DPDP Act lowering risks

⁹ India Const. art. 21

for employers and protect employee privacy.

LEGAL AND ETHICAL CONSIDERATIONS IN EMPLOYEE

MONITORING:

Legal Boundaries:

Monitoring employees has become increasingly important in enterprises as a means of improving performance, conformity, and resource preservation. But as technology advances, corporations have ethical concerns about using such systems in ways that jeopardize their employees' privacy or weaken their trust. The notion of ethical employee monitoring should be approached by taking into account the importance of balancing organizational needs and employees' rights.

There has been instances where many staffs, workers, employees have left the office due to the increased popularity of telecommuting, digital surveillance etc. which has emerged as a prominent trend. Software's are being installed by the employers that will help them monitor the work-related materials such as email, documents, and it helps the employers to deny access to the employees to sensitive information.

As we all know, employees by human nature require more freedom and less surveillance. There are several organisation and people who are against surveillance of the activities of people in the work place. Though in India, it is considered to be a big challenge to balance an employer's right to monitor with an employee's right to privacy. As per the Indian constitution, "Article 21¹⁰ guarantees the right to life and personal liberty"; which the judiciary has interpreted through there judgements that the ambit of Article 21 also includes right to privacy. The Landmark judgement of *KS Puttuswamy*¹¹ recognised "privacy as fundamental right", laying the foundation for the future data protection and privacy regulations at work places.

But there are several justifications which can be put forward which justifies monitoring. Some of them are as follows

- **Safeguarding the organisational assets-** One of the major justifications for monitoring is considered for the need to protect private information and assets from

¹⁰ India Const. art. 21

¹¹ Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors., (2018) 1 SCC 809

unauthorised access, which can cause deep harm or damage to the working of the company. Such type of data if accessed by the employee's can create a huge risk, and can be accessed by the competitors.

- **Maintaining Compliance-** Here, in this case the monitoring plays an essential role for ensuring compliance with legal and regulatory standard which have been set. in order to have a better understanding for the same, in financial institutions monitoring practices are complied with regulations like the PMLA, 2002 to ensure that whatever transactions are been done are conducted as per the legal requirements.
- **Ensuring Productivity-** Another important part of the monitoring comes into picture when it links to the productivity of the workplace. For an employer, employer's organisation success is one the major goals and employee's being a part of the same also contributes towards the success of the organisation. Monitoring enhances the productivity by ensuring that the employees remain focused and adhere to the company standards. It also helps in finding out the employees performance evaluation.

Above mentioned pointers were some areas which justify the case of employee monitoring. With respect to that there are several rights which are available to the employees of an organisation. The rights are as follows-

- **Right to Privacy** - The Puttaswamy decision reaffirmed the basic right to privacy, which must be safeguarded from arbitrary or intrusive surveillance by employers. In various cases, Indian courts have affirmed the right to privacy. For example, in "*Kharak Singh v. State of Uttar Pradesh*"¹², the "Supreme Court of India" acknowledged that the "right to privacy" applies to both personal and professional worlds, which has an impact on workplace monitoring.
- **Right to informed consent** – Various regulations like the IT Act and the SPDI rules mandates that informed consent need to be taken by the employers before collecting their personal data. The DPDP Act of 2023 also introduced more stringent requirements for processing personal data.
- **Right to Data Protection** – According to the IT Act and SPDI rules, employers must implement certain adequate safety measures with regard to personal information that is sensitive, such as preserving those data from illicit access and guaranteeing secure storage and dissemination, thereby decreasing the risk of breach of data. Even the DPDP Act of 2023 emphasizes critical criteria such as data reduction, purpose

¹² Kharak Singh v. State of U.P., 1962 SCC OnLine SC 10

limitation, and accountability, which businesses must closely adhere to when employing monitoring techniques.

- **Right to Grievance Redressal** – The DPDP Act also establishes grievance procedures, allowing employees to protest excessive or inappropriate monitoring methods. These methods ensure that employees have a legal means of protecting their privacy rights and seeking recourse for any abuses.

Ethical Boundaries:

Employee surveillance raises ethical issues that necessitate serious consideration. While monitoring can improve efficiency and security. It also raises concerns about invasion of privacy and the possibility of data misuse. Employers must evaluate the ethical implications of their monitoring procedures. They must attempt to strike a balance between the need for oversight and respect for employee autonomy and dignity. This equilibrium is critical for sustaining a pleasant working culture while avoiding potential legal and reputational problems. Implementing ethical boundaries plays a crucial role in employee monitoring. Aspects like trust and morale, transparency, proportionality etc. comes into picture. Some important aspects which constitute that ethical boundaries are necessary and principles underlying are as follows-

- **Trust & Morale** – It cannot be denied that constantly monitoring employees can undermine their confidence whereas if there is an increase in transparency and self-organising management tends to give employees their best by creating a work culture that they anticipate and embrace.
- **Privacy and Personal Autonomy** – Keeping reasonable expectation of privacy on company property especially when there no visible limitation between workplace and personal place in a remote working arrangement is not wrong. Employees do have the right of reasonable expectation.
- **Transparency** – it is the right of the employees that they must be aware of the mode of monitoring, the kind of data being collected and the purpose behind the same. It also creates a sense of trust, and the person feel respected and valued.
- **Consent and Autonomy** - it is very important to have some level of autonomy on the part of the employee in relation to monitor activities where possible. Whereas it is also acceptable on part of the organisation to request consent and permission from the employees to deny from being watched on aspects not relating to their functions.

- **Legal Standard Compliance** – As discussed earlier, there are several legal system which prevents employers from conducting central monitoring of the employees or prohibit them from certain types of monitoring.

BALANCING SURVEILLANCE WITH EMPLOYEE RIGHTS:

The workplace is continually changing, and organizations must adapt to new conventions and expectations about privacy. As working remotely becomes more common and digital capabilities progress, businesses must establish tactics for cultivating a privacy-conscious workplace culture. This involves not just implementing stringent privacy regulations, but also encouraging open communication and collaboration among staff. Integrating staff supervision with data privacy necessitates balance and need. Corporations must establish that tracking is essential for legitimate business purposes while not jeopardizing employees' privacy rights. This trade-off is often examined through the prism of a reasonable expectation of privacy. Individuals anticipate reasonable secrecy in their job, particularly in private discussions. In the case of “*People’s Union for Civil Liberties (PUCL) v. Union of India & Anr*”.¹³ Where the Apex court highlighted the need of safeguards against the misuse of surveillance, emphasizing the importance of confidentiality even in context of national security.

CHALLENGES & FUTURE ADVANCEMENT IN THE FIELD:

Arguably the most significant issues in managing privacy and oversight in India is a lack of clear legislative norms. While the DPDP Act is a positive move, its execution will call for a thorough understanding of the Indian workplace's specific characteristics. Organizations must establish fair monitoring rules that specify the extent and purpose of surveillance while guaranteeing compliance with legal obligations.

An additional obstacle is the constantly shifting nature of technology. Considering the growth of artificial intelligence and big data analytics, employer surveillance has become increasingly complex, making it difficult to distinguish between authorized and invasive techniques.

Businesses may respond to these developments by investing in training and resources that help employees understand and use their privacy rights. Companies may increase employee happiness and loyalty by building a culture that values and respects privacy. Furthermore,

¹³ People’s Union for Civil Liberties (PUCL) v. Union of India and Anr., (1997) 1 SCC 301.

cultivating a culture of trust and openness may lead to greater productivity and creativity, so contributing to the organization's long-term success.

CONCLUSION:

Employee Surveillance at workplace to monitor the activities of the employees can be used to obtain the performance of the employees helping the employer protect the interest of the organization. However, legality, ethics, and employee trustworthiness must all be taken into account while implementing such systems. Therefore, there is a need to balance workplace monitoring while ensuring there is no privacy breach of the data of the employees and adopting fair workplace practices. The Digital Personal Data Protection Act, 2023 (DPDP Act), places strict requirements on employers in relation to the collection, use, and protection of personal data of the employees. There should be a careful approach by the employers to ensure compliance due to the challenges by other labour laws like the Factories Act 1948 and the Industrial Disputes Act, 1947. There should be a balanced approach to protect the interest of the employers through employee monitoring while protecting the personal data of the employees. Employers must try to find out what they include, employ appropriate monitoring techniques, and refrain from abusing them. The monitoring aspects, use of appropriate and safe techniques should be used by the employer to avoid misuse.

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