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THE LEGAL GAPS IN INDIA'S UNREGULATED AI SURVEILLANCE

India's Growing AI-Powered Surveillance Infrastructure

- **Expansion of AI Surveillance:** India has made significant efforts to implement AI-driven surveillance, such as creating the world's largest facial recognition system for policing. In addition, AI systems have been installed in railway stations, and the Delhi Police uses AI for crime monitoring. Plans to launch 50 AI-powered satellites will further expand this surveillance network.
- **Raising Concerns:** These developments raise concerns about privacy and individual rights, as AI surveillance could lead to excessive monitoring of citizens without clear limitations.

Legal and Constitutional Concerns in AI Surveillance

- **Overreach of Surveillance:** The rapid growth of AI surveillance raises the question of whether it could infringe on citizens' rights. Global examples, like the U.S. Foreign Intelligence Surveillance Act (FISA), show how indiscriminate data collection can lead to privacy violations.
- **Threat to Privacy:** AI surveillance challenges the balance between security and privacy, potentially infringing on fundamental rights without proper safeguards in place.

Privacy Concerns and Data Breaches

- **Data Misuse:** A recent data breach in Telangana showed how personal data, such as social welfare records, can be misused by law enforcement, highlighting a lack of transparency and accountability in how data is handled.

Lack of Safeguards: The current systems of data collection and surveillance lack sufficient safeguards to protect privacy. There is a need for more transparency and clearer rules for data use.

Lack of Proportional Safeguards

- **Undermining Privacy Rights:** The Supreme Court in 2017 recognized privacy as a fundamental right, but India's surveillance practices undermine these protections. The current systems lack proportional safeguards, putting citizens' privacy at risk.
- **Flaws in the Digital Personal Data Protection Act (DPDPA):** While the DPDPA 2023 aims to protect privacy, it includes broad exemptions for government surveillance, such as in emergencies or for employment purposes, which may compromise individual rights.



Issues with the Digital Personal Data Protection Act (DPDPA) 2023

- **Government Exemptions:** The DPDPA allows government data processing without consent in certain cases, such as during health emergencies or for employment. This can lead to widespread surveillance without citizen control over their personal data.
- **Data Accuracy Requirements:** The Act places a burden on citizens to ensure the accuracy of their personal data, with penalties for minor errors, which could lead to unnecessary legal complications for individuals.
- **Favoring State Surveillance:** The DPDPA disproportionately prioritizes government surveillance over protecting individual privacy rights.

Contrasting Approaches in the West

- **The European Union's Approach:** In contrast, the EU has a more structured approach to regulating AI, where high-risk activities like real-time facial recognition are banned. The EU's laws are more focused on protecting citizens' rights and ensuring transparency in AI deployment.
- **Lack of Clear Regulations in India:** India has not yet implemented clear regulations for AI surveillance, leaving a gap in oversight. While there are plans to regulate AI under the Digital India Act, they have not been fully implemented.

Constitutional Questions and Civil Liberties

- **Challenges to Constitutional Rights:** India's surveillance practices challenge constitutional principles such as the right to privacy. Stronger legal frameworks are needed to ensure that AI surveillance is used in a way that is fair, necessary, and respectful of citizens' rights.
- **Need for Better Laws:** To ensure AI surveillance is justified, India needs clear laws that balance the state's security needs with the protection of civil liberties.

Recommendations for a Balanced Approach

- **Clear Regulations:** India needs a comprehensive regulatory framework that ensures AI surveillance is transparent and respects privacy. This includes setting clear rules for data collection and implementing independent oversight.
- **Risk-Based Approach:** Like the EU, India should adopt a risk-based approach to AI, classifying activities by the level of risk they pose to privacy and civil rights. This would help ensure that high-risk surveillance practices are carefully monitored.
- **Privacy by Design:** Privacy protections should be included from the start when designing AI systems. This can prevent privacy issues from arising later and ensure citizens' rights are safeguarded.



Need for Proactive Regulation

- **Complete the DPDPA:** While the DPDPA addresses privacy concerns, it is incomplete without specific rules and detailed regulations. Strong oversight is necessary to regulate AI technologies and prevent misuse.
- **Strengthen Data Oversight:** The government should have clear guidelines for how data is processed and shared, ensuring personal information is not misused.
- **Public Interest:** AI systems should be regulated to serve the public interest, ensuring that technology benefits society without compromising individuals' privacy rights. Proactive regulation can help achieve this balance.

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