
CLOSE CIRCUIT CAMERAS' (CCTV) SURVEILLANCE IN NEXUS WITH DATA PROTECTION LAWS, AND RIGHT OF PRIVACY IN PAKISTAN

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Abstract

The instant study is unique of its nature providing a comprehensive analysis on right of privacy and data protection laws in Pakistan with special reference to CCTV surveillance; its scope in the light of judgments of Apex or Higher Courts in Pakistan. It finds that right of privacy is interconnected with other fundamental right of life or right of dignity. CCTV surveillance in Pakistan is ever increasing and posing a threat to right of privacy; it deliberates the arguments about such surveillance in public or private domains and its legality. Further, it tries to intricate the existing legal framework in Pakistan either working as a mean of safeguard for privacy or a source of infringement for or against CCTV surveillance. Meanwhile, the study also presents critical analysis of the Proposed Data Protection Bill (PDPB), 2020 in the light of General Data Protection Regulations (GDPR), 2018.

Keywords: CCTVs' Surveillance, privacy, data protection laws & Pakistan.

1. Introduction

CCTVs' surveillance is enhancing worldwide, the situation in Pakistan is no different; she is using this technology for security, public order, and other relating objects. There is ever increase in usage of it by Government or in private capacity by public, for various reasons. Although right to privacy under Article 14 the Constitution of Pakistan, 1973 has been recognized, its application may be limited to privacy of home; such protection perhaps have not been given in the context of public places as there is no specific mention of it. It calls for new efficient laws or regulations which envisage privacy and personal data protection regime. In 2020, a fourth bill on subject was introduced for data protection and privacy; the legislation of which is still waiting.

Any new law made should be in accordance with global privacy laws or best international human rights standards on privacy and data protection. Internationally, two data protection regimes govern privacy and data protection; First, Fair Information Practice Principles (FIPPs) i.e., United States (US) based, secondly, General Data Protection Regulations (GDPR), 2018 of European Union (EU). The EU regulations have developed highest pedestal on privacy and data protection laws, and it has set best practices standards. However, these rules are non-binding for Pakistan. Meanwhile, there is no special enactment is available on the subject. The Personal Data Protection Bill, 2020 is still pending. There are some indirect provisions of laws which may somehow in some situations protect the privacy or data protection. But those provisions of laws may also allow surveillance techniques to be applied. In order to protect privacy and protect personal data from being infringed due to surveillance techniques, Pakistan should follow EU standards on privacy and data protection to bring balance between surveillance or protection of privacy and data protection. Meanwhile, Pakistan also needs to set up independent 'Privacy Commission or Authority' under these regulations. Before going into any further details, there is dire need to discuss research questions, objectives, methodology and examination of constitutional safeguards as to privacy in the Constitution of Pakistan, 1973.

1.1 Research Questions

- Whether right of privacy in Pakistan protects against the CCTV surveillance?
- How Pakistani Courts have interpreted right of privacy in Pakistan?
- Whether privacy is limited to private spaces or it is extended even in public domain?
- Whether the current legal framework available in Pakistan is suffice to provide safeguard against abuses of CCTV technology?
- Whether the Proposed Data Protection Bill, (PDPB) 2020 in Pakistan is a complete documents and at par with General Data Protection Regulations, 2018?

1.2 Research Objectives

- To determine the scope of right of privacy in Pakistan in special nexus to CCTV surveillance and data protection laws available nationally or internationally.
- To critically analyze the PDPB, 2020.

1.3 Research Methodology

It is a desk based study; analytically and comparatively, it tries to answer the research queries while analyzing the Pakistan's Constitutional provisions in special references to the case laws of Apex or Higher Courts pertaining to right of privacy, interconnected fundamental rights, data protection and CCTV surveillance in Pakistan. It also critically analyses the existing legal framework on privacy, data protection and CCTV surveillance or Proposed Personal Data Protection Bill, 2020 with reference to General Data Protection Regulations, 2018 and other literature available on the issue. Meanwhile, resort to secondary sources has also been made for better conduct of the research.

2. Right of Privacy under Constitution in Pakistan, 1973

As a right, privacy has been enunciated under Article 14(1) of Constitution of Pakistan. It states; "*The dignity of man, and subject to law, the privacy of home, shall be inviolable*". The "*dignity of man*" and "*privacy of home*" have been for the very first instance made part of our Constitution 1973. The above stated provision is unmatched in the Constitutions of states as it envisages dignity of person as fundamental human right; such right has been made part of very

few constitutions of the countries. Even the Constitution of India does not provide any such provision about privacy right; hence, Supreme Court of India in a recent case *K.S. Puttaswamy v. Union of India*, (2017) has to intervene and explain Article 21 pertaining to liberties and extending its scope for protection of right of privacy. While, in *Benazir Bhutto v. President of Pakistan, Supreme Court of Pakistan*, (1998), Pakistan's judiciary had already exhaustively interpreted Article 14 the Constitution, providing extending interpretation of the right of privacy which should not be limited to home, a private premise, 'rather it shall be available to any individual even in the public places'. It was discussed that dignity of man and privacy of home as inviolable. It interpreted the term 'home'. The construction provides that it such place where any individual cherishes liberty and freedom while having feeling of security. It clearly stated that privacy of individual is even sacrosanct in public places, '*subject to exceptions of national security or defense*'.

2.1 Interconnection of Dignity of Man, or Right of Life, or Right of Privacy

Further, in *Supra Banazir Bhutto Case*, (1998), it was held that dignity of man provided in Pakistan's Constitution is intertwined with privacy of home. Violation of any these rights amounts to violation of the other, *vice versa*. For instance, a person right of privacy is infringed; it also intrudes his dignity, it violates home's privacy, it intrudes peace of family, and the deleterious impact of it would also be that it put such person in grave situation of being blackmailed. Thus, violation of such rights is not permissible except on grounds already discussed. Similarly, these rights have also been interlinked with right of life. As Supreme Court of Pakistan in *Shahla Zia and others v. WAPDA*, (1994) categorically held, while interpreting the term "*life*" in connection with right of dignity, life does not amount to "*mere vegetative or animal existence*" rather it encompasses all the facilities or amenities or necessities as an inherent right of life. Thus, it is not limited to only physical existence of an individual, but also means that man is free to enjoy his life with these facilities. It implies that privacy of home is linked with right of life and *vice versa*.

2.2 Scheme of Criminal Procedure Code and Privacy in Pakistan

Implying the scheme of provisions of Cr. PC, 1898 for carrying on house searches in some particular manner provided in *Ghulam Hussain v. Addition Sessions Judge*, (2010), under Chapter VII of the Cr. PC, Section 96-105 of Cr. PC, 1898, the permission of Magistrate is mandatory for purpose of conducting search warrants. But the scope of such provisions is limited to the '*privacy of home*'. Similarly, section 165 Cr. PC specifically empowers Station House Officer (SHO) or Investigation Officer (IO), in case of emergent situation requiring no delay, may cause search to be placed in any place wherein thing necessary for purpose of investigation may be found, subject to other procedural requirements of Section 103 of Cr. PC, and the offence involved was cognizable in its nature. Nevertheless, *supra Ghulam Hussain Case* (2010) the provision allows for search of the 'thing' and not of person to arrest him. Despite procedural requirement for making such searches, there provisions imply privacy of home is not an absolute right in Pakistan.

2.3 CCTV and Privacy in Private or Public Domains in Pakistan

As the CCTV systems usage, in public or private places, in Pakistan is enhancing under various 'safe cities projects' or private usage. It has posed a threat to privacy of individuals as it may

record their personal data in the form of video or picture along with audio recording. It is indispensable to deliberate whether privacy is only limited to premises of the home, private premises, as the words used in the Constitution of Pakistan are only limited to “*privacy of home as inviolable*”.

2.3.1 Judicial Interpretation of Article 14(1) of the Constitution of Pakistan

Supra explanation of *Benazir Bhutto case* (1998) reveals that it is permissible to police or law enforcement authorities for intrusion into privacy of home when the national security or defense of the state is at stake or some offence of heinous or cognizable nature were going to be committed within the premises of the home. On the same premise, *Muhammad Hussain v. The State, Federal Shariat Court*, (2000), it was held; it is allowed for police to take necessary actions against the accused persons involved in such illegal activities. It was also held that privacy of home shall not be any more inviolable when secret information regarding commission of heinous crime in a house is available with security authorities, such right even becomes under suspension. This judgment certainly provides an exhaustive interpretation wherein even information about cognizable offences may subject to non-availability of right of privacy. However, there must be check and balance on authorities interfering with the privacy on mere suspicion of “*Cognizable Offence*”. As the list of Cognizable offences is very exhaustive in nature. Offence of heinous nature or offences amounting to threat to national security or defense should only be followed rather following the threshold of mere cognizable offence. For instance, offences of theft, gambling or likewise kinds are also cognizable in nature.

Karachi High Court in *Muhammad Yousaf and others v. The State*, (2007) tried to place check on authorities infringing privacy. It was held that arbitrary intrusion of privacy by police without adopting lawful procedure is ‘*absolutely not*’ allowed being repugnant to right of dignity and privacy of home. Similar view was taken in *Siddiquillah v. The State*, (2003), it was held that police raid or entering the house on the information of about *presence of gamblers* and their arrest shall be against the right of privacy of home and dignity. These rights have very high pedestal; making them non-inviolable needs strong footings. The perspective further strengthened from the view *Taufiq Bajwa v. CDGK*, (2010) in which Court held that height of adjacent park was of such height that it infringed the privacy of the house of the petitioner. The Court directed to construct the wall of park so that visitors of park did not investigate the house of the petitioner. All the jurisprudence reveals that privacy of home is an inviolable right as it is interlinked with dignity of man and right of life. However, it is not an absolute right and it is subject to exceptions as enunciated in *supra* judgment of Supreme Court of Pakistan in *Benazir Bhutto case*, 1998. Meanwhile, it may also be said there is lacuna in Constitution of Pakistan as it does not mention right of privacy in public places at all. However, Courts in Pakistan has extended such privacy right even in public spheres regardless to the fact there are certain exceptions available to it.

2.3.2 USA Supreme Court or European Union Human Rights Court View

The best international practices also consider right of privacy as inviolable even in the public places. In *Katz v. United States*, (1967), the Supreme Court of United States of America (USA), it was held that privacy is an inherent part of its Constitution. It was decided that there shall be protection from unlawful or unreasonable searches of persons, their houses, or communication of

any form and their effects. Without the lawful reasoning, no search warrants shall be issued in any case. It is mandatory for search warrants to specifically mention all the particulars about the territory, individual, or object to be searched. The significance about this judgment is that it declared the right of privacy shall not be restricted to personal premises rather it is enforceable in public places if someone intends to keep oneself to be reserved and private even at public areas (Khan, 2018). However, policy as privacy has been compromised in USA after 9/11 for protection of *national security, and law & order* (Gross, 2004). Whereas, EU privacy laws are more advanced; there are stringent laws for protection of privacy. Privacy is extended private places as well as public places; however, there are certain limitations in public domain. The issue of privacy in public space was considered in the *Pack v. United Kingdom*, (2003) it was held that surveillance through modern devices in public spaces does not violate personal right of privacy unless such devices record the data. Thus, even European Union allows surveillance in public spaces, but subject to the condition that no record be recorded or stored. However, the *Pack case* may not be of any help in Pakistan's scenario as there is no prohibition as to storing of the data.

2.3.3 Application of *supra* Judgments on CCTV Surveillance in Pakistan

Without any iota of hesitation, first, it can be said that CCTV in private places is not allowed at all; for instance, CCTV in public washrooms, or someone's house premises, hotel rooms etc., is strictly prohibited. Secondly, in public places CCTV surveillance may also pose threat to privacy. As per *supra Benazir Bhutto* case, (1998) privacy is not limited to private places. The word used '*home*' in Article 14 of the Constitution basically signifies that individual shall have the privacy even in the public places. Such interpretation may be applied on CCTV technology which is also posing intrusion into privacy of individual due to mushroom enhancement of CCTVs in Pakistan. CCTV in private spaces by some stranger is in no way allowed. While CCTV in public places may have certain exceptions; like national defense, and security, maintenance of law & order as discussed in *supra Shehla Zia* case, (1994) and *Benazir Bhutto* Case, (1998).

3. Purposes of CCTVs Surveillance

3.1 Maintenance of Law & Order

The role of CCTV cameras is certainly significant to maintain law and order in any country, but it may also not be difficult to deny that this technology can also be abused or misused either by the governments, private organization, or individuals. Security is certainly of paramount consideration for any state, but it does not mean that the state may take any step that may intrude into privacy or dignity of an individual through video surveillance. It has been recently observed in Pakistan that Government and Judiciary have adopted the approach favoring CCTV cameras installation in public places or transport for purpose of protection of citizens ("*CJ orders CCTV cameras in Special Educational Institutions and Buses*", 2017). What is continuously being ignored by these institutions of state is the fact that there is dire need to form mechanism to regulate this new technology in each facet of it. From buying of the CCTV system, installation of it and later personal stored data protection, all these stages must be strictly monitored and regulated with proper and effective statutes. Till today, there are no effective procedural or substantive laws to alleviate the infringements of someone's right of privacy through CCTV surveillance. The vacuum created through the non-availability of the suitable legislations

controlling CCTVs must be culminated as soon as possible (Singh, 2020). Apart from indirect provisions providing some sort of protection against violation of privacy.

3.2 Crime Prevention and Collection of Evidence

CCTV may also play significant role in decreasing the crime rate (Jamal, 2017). In many cases criminals were identified through CCTV footages. This leads to a fear or deterrence in the mind of the criminals and decrease in the crimes (“Six ways to CCTV can reduce Crime”, n.d.), but such ration of decrease in crime rate may vary as per nature of crime. For instance, in robbery offences in commercial shops, due to CCTV, may decrease as compared to crimes relating to drugs (Khabeki, 2016). This video also provides evidence against the delinquents during trials (“Six ways to CCTV can reduce Crime”, n.d.). It may be questioned about credence and weightage of CCTV footage; either it falls within the ambit of substantive or circumstantial piece of evidence? Such query was resolved in cases by Courts in Pakistan. In *Asfandiyar v. Kamran case*, (2016); *Arjamand Shahzadi v. The State*, (2019), It was held pertaining to the evidentiary significance of CCTV data that it was not sufficient to submit and exhibit the CCTV footage as a piece of evidence before the trial court, and court cannot rely upon such evidence unless it was substantiated that such footage is genuine. It is further decided that the genuineness of such footage can be proved by producing of witnesses who prepared and in control of such data. Meanwhile, it is compulsory for prosecution or defense to examine such witness. Thus, CCTV footage or pictures captured through it may serve as a corroborative piece of evidence.

Likewise, in *Ijaz Ahmad v. D.R.O, Lahore High Court*, (2001), it was held that about video film recorded or photographs captured, the corroboration is required; the witness who recorded footage or captured snaps, he needs to be examined. In *Zainab Qatl & Rape case*, CCTV camera was affixed on public place recorded footage of *Zainab* walking with culprit *Imran* was given credit as a corroborative piece of evidence. The culprit *Imran* was found taking *Zainab* along with him seen in the footage. Later, based on CCTV footage, police released sketch of the *Imran* (Riaz, 2018a). The culprit *Imran* was arrested, and his appearance matched with the CCTV footage (Riaz, 2018b). In *supra* cases *Asfandiyar case*, (2016); *Arjamand Shahzadi*, (2019), Supreme Court held that to credit the CCTV footage defense or prosecution must prove the genuineness of it. CCTV may have other benefits like for protection of the disabled children, Chief Justice of Lahore High Court, Lahore directed to install CCTV cameras in Special Education Institutions and institutions buses. It was done for protection of the special children from any sort of torture or humiliation (“CJ orders CCTV cameras in Special Educational Institutions and Buses”, 2017).

In a writ petition was filed against the Government of Punjab, *Dr. Yasin Zia v. Government of Pakistan & others*, (2016) it sought direction for compulsory affixation of CCTVs in public places including police stations and hospitals. It was held that such installation of CCTV in each police station would increase the public confidence when they would go to police station for redressal of their grievances. It would also decrease the abuse of public at large at the hands of the police. Ultimately, it would also help in to end “*thana*” culture being better supervised. A direction as time span of six months was also given to affix such cameras on directed spots. For protection of data, SHO was made responsible for preservation and proper working of the cameras at police station level. While at District Headquarter level, such responsibility would be of District Police Officer (DPO).

3.3 CCTVs' Data Abuse or Misuse and Privacy Protection Mechanism in Pakistan

Right of privacy is more under threat after mushroom growth of the CCTV in Pakistan. Safe City Projects are installed in Islamabad, later in on similar pattern in Lahore and other places. Around 8000 and 4000 CCTV cameras have been installed in safe city projects of Lahore and Islamabad, respectively. These are fitted out with artificial intelligence through which they can easily recognize the face of the people or the vehicle with their identification registration number, colour or model. This system stores the data of the individuals which may be used or abused for other purposes not only by the government itself but also by the other private individuals or organizations. This gives a very strong reason to evolve right of privacy based upon best standards or practices. In addition to this, there are millions of cameras being installed and controlled by the Pakistani citizens or companies in their private capacity. These are placed in public areas. The data stored is by these cameras. All this from installation of such cameras, their operation, to storage of data is done without any authorization of any government's regulatory body. One of the grey areas of this type of private surveillance either by private individuals or organizations in Pakistan is that no legal or constitutional framework regulates it unlike in other developed countries. This may make the whole process as vulnerable and subject to be abused (Khan, Oct, 21st of 2018).

It may be said that to some extent the data recorded under the domain of Punjab Safe Cities Authority project is protected under the legal regulations provided in Electronic Evidence Data Regulations (EEDR), 2016. But these regulations only deal with such safe city project. Whereas there is a need to regulate the CCTVs installed by individuals or organizations in public places; It calls for a universal legal regime to control installation of CCTVs, recording, and safety of data in line with Global or General Data Protection Regulations. Without such legal guidelines, data protection and privacy rights may be infringed (Khan, 2018). In 2016, a new law enacted to prevent electronic crimes. Section 21(1) (D), Prevention of Electronic Crimes Act, 2016 prohibits to make video and to upload it on social media without the consent of the data subject, the person whose footage is captured. Any person who acts against such prohibition shall be punished with imprisonment up to three years and fine of rupees two lacs. But to a very short extent, it protects any private individual from taking footage of other and uploading it on social media, so the law may not provide complete protection. The reason stems from the fact that offence only attracts when such video is uploaded on social media.

Lahore Emporium Cinema CCTV footage leakage of couple is one of worst instance of data abuse, recorded through CCTV, of couple involved in intimacy. The video was recorded through night vision CCTV. Adding salt to the wound, the same video was not only misused by the culprits themselves, but also it was made viral on social media. This is clear violation of right of privacy. There was no warning sign of CCTV. Meanwhile, the video was recorded without consent of the couple. This raises a lot of questions on our privacy. It also transpires that how CCTV footage recorded data in the name of security and protection can be abused or misused by its operators (Ghani, 2019), without going into details of legality to get involved in intimacy at public place. In addition to this, there are numbers of occasions, hidden CCTVs cameras have been installed in changing rooms or even in the washrooms in Pakistan ("Warning: CCTV cameras" 2018; "Two accused arrested" (June 24, 2020)).

A certain degree of privacy may be indispensable for anyone. Devoid of it, not only it is impossible to maintain human dignity and meaningfully interact with others to create relationship, but also it would be difficult for one to develop thoughts without being alone. Privacy empowers us to be alone and to control over surrounding environment. With the help of it, one can easily manage what to share with others. Meanwhile, it gives sense of freedom in terms of not being viewed by the persons in the surroundings. Therefore, numerous states recognize fundamental privacy protection at least on the basic level by imposing restrictions and regulating others' capability including the state or private organization from gathering data pertaining to others' lives without their permission or knowledge (Goold, 2010). At times, privacy is infringed when individuals' movement or their location is tracked with use of technology by storing such personal by anyone else including the state (Khilji, 2017).

4. Analysis of Salman Sufi v. Federation of Pakistan

In 2019, a writ petition against the Federation of Pakistan was filed in Lahore High Court against the safe city project to curb the abuse of the CCTV recordings of the citizens of Pakistan. The relief prayed from the High Court is to declare secretly filming, recording, or photographing individuals at public or private places without their knowledge and permission as unconstitutional and a breach of privacy. It is also contented in the writ petition that operation of CCTV cameras without a notice regarding the surveillance, and the retention of CCTV footage for an indefinite and unreasonably long time to be declared illegal. It also prays that public notice must be affixed wherever such CCTV cameras are installed for surveillance purposes, with this it must be declared as illegal (*Salman Sufi v. Federation of Pakistan*, 2019). A very significant point that is raised in the petition was that it seeks directions from the High Court to the affect;

“all public or private persons, bodies and institutions engaged in collection, storage or regulation of personal data of individuals including but not limited to CCTV footage, to: a) employ all necessary, reasonable, and proportionate safeguards against prevention of leakage of the said data. b) Identify all reasonable persons with access to data. c) Recognize vicarious liability in the event of breach due to a failure to meet a proper standard of care.”

Meanwhile, the writ petition further seeks “direction to the Ministry of Law and Justice in order to inter alia determine the scale of the prevalent use of public and private surveillance mechanism, the degree, if any, of control over the selling, distribution, and quality standard of surveillance equipment, conduct fact finding inquiries into violative incidents.” Writ petition is still pending in Lahore High Court before Hon’ble Mr. Justice Jawad Hassan. However, it points out the intrinsic loopholes in the CCTV system of surveillance and how right of privacy and personal data is exploited. Thus, it may not be wrong to suggest that CCTV may have benefits, but its abuses in Pakistan are also on rife. The Lahore Emporium CCTV leakage incident or CCTV cameras affixation in areas of expected privacy i.e., washrooms, hotel rooms or changing rooms amount to severe form of its abuses in Pakistan. Such incidents are not only deplorable, but these should be reprimanded by penalizing and executing strict punishments upon the culprits. However, it may not be possible without effective legal framework in Pakistan on data protection and privacy.

5. Legal Framework on CCTV surveillance, privacy, and data protection in Pakistan

Pakistan is one of the countries which have yet not adopted GDPR by enacting efficient laws in line with the GDPR. On the other hand, there are more than one hundred countries (Rasheed, 2020) which have adopted the GDPR, any sort of video surveillance wherein personal data is processed or recorded is subject to GDPR. Bare reading of the regulation may wrongly suggest that it is not applicable on video surveillance; this is a false interpretation (Sidlauskas, 2019). This may be very sham kind of interpretation. CCTV technology processes data of individual; thus, it shall be subjected to these regulations. Meanwhile, in Pakistan, other laws which may somewhat give little protection are; first, the law that deals with privacy and data protection is Electronic Transaction Ordinance (ETO), 2002 which under its Section 43 (2) (e) empowers the Central Government to frame rules on “privacy and protection of data of subscribers” should be framed. Further, ETO does not deal directly with protection of data. But it under its Section 36 provides penal punishment for those who has access or tried to access the data system, either intentionally or not, to get know about such information. However, rules have not yet been framed. Secondly, there is an enacted law on electronic devices is Prevention of Electronic Crimes Act (PECA), 2016. It provides punishment for data abuse or misuse.

Under Section 3 to 8 of PECA, it envisages types of data i) personal, a normal information system data relating to any individual or ii) Critical i.e., relating to infrastructure of any organization of the state e.g., NADRA or Safe City Project. In case a person tries to access i.e., view, or copy or interfere the data that is personal; these actions are punishable with imprisonment up-to 3 months or fine up-to 50000/- rupees, or up-to 6 months or fine up-to 100000/- rupees or up-to 2 years or fine up-to 5000000/- rupees, respectively. These three offences are non-cognizable. Whereas, a person who illegally accesses i.e., view, or copy or interfere the critical data; such actions are punishable with; imprisonment up-to 3 years or fine up-to one million rupees, or imprisonment up-to 5 years or fine up-to 5 million rupees, or imprisonment up-to 7 years & fine up-to ten million rupees, respectively. These three offences are cognizable. Likewise, under Section 20 of PECA defamation of natural person has been made a punishable offence while another provision protects children from sexual violence content under Section 22 of PECA.¹

There are also certain provisions in PECA which impose liability on investigation officer or members of agencies to keep the data acquired for investigation purposes in complete secrecy and without being subject to interfere under its Section 35(b). Any such infringement shall be punished with imprisonment up-to three years and fine up-to one thousand hundred rupees under Section 35(b) of PECA. However, under Section 29 of PECA requires service providers to retain data of the customers for about one year. Such provision of law is against the privacy laws of European Union provided in General Data Protection Regulation (GDPR), 2018 which prohibits storing or processing of data of the data subject without his consent. These provisions may penalize the data violation events, but these are not in accordance with the GDPR, and they will not serve the purpose as any special law on data protection. Rather, these laws are empowering government authorities to have access to personal data of citizens, and especially stipulate the penal provisions for those who try to interfere with government data (Khan, 2018). Further, Electronic Evidence Data Regulations (EEDR), 2016 is another law for data protection, but it

¹ Section 22 Ibid.

only covers Punjab Safe City Project only. Private CCTVs installed by individuals or private organizations are not falling within the ambit of such legislation. Ironically, there is no special law or enactment for protection of privacy or personal data of the people in Pakistan. Likewise, a privacy commission still does not exist in Pakistan. A draft was moved in the parliament in 2018 and 2020 for enactment of laws on privacy and establishment of the commission. However, it is still pending with no rapid progress (Khilji, 2017).

6. Proposed Personal Data Protection Bill (PDPB) 2020 and CCTV in Pakistan

6.1 Features of Draft PDPB and GDPR, 2018

In case, the proposed PDPB 2020 is enacted. It would be applicable for operation of CCTV systems in Pakistan. This bill may have improved version of EU GDPR, 2018 than the previous draft PDPB 2018. Several duties of data processor or rights of data subjects, similar to GDPR, have been proposed to be imposed relating to many aspects;

- i.** Under Clause 2 (f), 5.1, 6, of PDPB, 2020 Consent is compulsory to process the data, either personal or sensitive, of the individual of the individual concerned. Applying it, CCTV controllers would need consent of the data subject to record their data.
- ii.** Subject to lawful described purposes i.e., security, maintenance of peace and order, prevention of crimes and other as provided in Clause 3, 7 of PDPB; in this way, CCTV could only be installed for the purposes specified.
- iii.** Notice must be given to the data subject in clear manner that his data is going to be processed. This is utmost requirement that notice must be visible that CCTV cameras are in operation to collect the data and in case it is disclosed to any third party under the Bill's Clause 6. The Lahore Emporium Cinema video leakage is the worst case of how CCTV could be in operation even within the cinema and footages recorded were not only leaked, but they went viral on social media. Thus, notice for CCTV requirement under the new law shall be fulfilled.
- iv.** Under clause 7 of PDPB, 2020, there are also restrictions imposed in data transfer or disclosure; without the consent of the individual whose data is recorded except for lawful purposes the data was recorded or purpose was already consented.
- v.** Critical data shall only be processed in servers those are within Pakistan; it shall not be transferred to outside Pakistan.
- vi.** As per clause 8, 10, and 16, of PDPB, 2020, 'data security' and its 'integrity' (correction or safety) is the sole duty of the data collector. However, draft law empowers 'Data Protection Authority', which will be established under it, to frame standards to be applied by the controller of the data.
- vii.** Data controller is under obligation not to keep the data processed more than the time it was required to be stored for the specific object.
- viii.** For 'Sensitive data' more precautionary measures shall be required from data operator under clause 28 of PDPB.
- ix.** It is also incumbent upon the data controller to report the 'Authority' about the leakage or breach of the personal data with the period of three days except in case data breach does not affect the privacy or personal data of any individual.
- x.** Data subject has the right to have copy of his processed data under clauses 19 to 21, 23 and 27 of PDPB, request for correction or amendment in the data, where there is lacuna

in it, withdraw his assent for processing of the data, right to deletion of data and other rights under the proposed draft.

- xi.** There shall be a ‘supervising authority’ to be established for enforcement of data protection laws and any aggrieved data subject may file complaint against the unlawful processing or breach of their duties to the authority under Chapter 6 and 7 respectively.
- xii.** The PDPB, 2020 contains provision that gives it overriding impact over any other laws in case there is conflict between both under clause 45.

6.2 Criticism on PDPB, 2020

The proposed bill is the fourth draft. However, there is criticism over the draft bill;

- i.** The right to explanation, to seek ration of about data processing and its outcome, is processed is not available to data subject under the proposed draft. It is a right which would bring transparency and fairness in data recording.
- ii.** ‘Critical personal data’ needs to be defined in PDPB rather it be left for ‘authority’ to get its definition with the permission of the Central Government. Discretion given is so vast that it may corrupt absolutely.
- iii.** Another setback to personal freedom may be that PDPB allows the authority to keep the copy of data. This would surely be deleterious impact on privacy and data protection rights.
- iv.** Although bill requires data controller to intimate the authority about data breach, it do not give right of notice to individual to be served by the authority or by the data controller.
- v.** Another drastic aspect is that PDPB does not envisage about ‘*independent and autonomous supervising authority*’ rather it is under the control of executive. There would be seven members in authority and three would be from different mention ministries. It is surely alarming. For efficacious data protection regime and protection of privacy, independent Privacy Commission or authority is indispensable.
- vi.** Under PDPB, data can be retained for purpose of ‘*security or defense*’. It is also part of the GDPR, 2018. However, these words need to be specifically defined by the legislature rather leaving it on executive to define it. It is left upon the Federal Government to determine what falls within the domain of security or not, (*Accessnow*, May 15, 2020).
- vii.** In addition, ‘public interest’ term has not been defined in the bill.
- viii.** Exemptions are even provided in the GDPR; however, the scope of clause 31 of bill is as wide as it provided broad list of exemptions for non-application of proposed law, in a very generic way.
- ix.** Better protection should have been provided for minors (*Digital Rights Foundation*, 2020).
- x.** Licensing rules shall be later framed under the draft. This power has been bestowed in the proposed authority under Clause 34 (f) PDPB, 2020. Licensing is very significant regarding CCTV surveillance. Although there are huge numbers in thousands of CCTV operating in almost every street of Pakistan, there are no proper licensing rules or regulations in this regard. The backlash of it erupts in the form of abuse of such

technology. Any technology is beneficial; it is negative usage of it that may make it a vile.

The above criticism forms suggestions those are very significant for the better privacy rights and freedoms of individuals in Pakistan. These should be incorporated in the draft bill by the relevant Ministry of Information Technology in draft PDPB. Meanwhile, it is indispensable for IT Ministry and Parliament to improve the draft bill and get it passed as soon as possible. The PDPB, 2020 must not face the similar fate as that of previous bills. Despite criticism, passing of bill from parliament and becoming an Act, it would be great step in the right direction for protection of data and privacy. However, the changing recommended in the criticism should be made in the bill to be having effective and efficient laws on privacy and personal freedom. Such law would also regulate the CCTV data processing.

7. Conclusion

To conclude, Pakistan is one of the countries wherein usage of CCTV surveillance is drastically augmenting. Mushroom of CCTV may also adversely impact right of privacy and personal data of public recorded through these cameras. In this regard, Article 14 Constitution of Pakistan declares right of '*privacy of home*' as inviolable. It gives impression that privacy as a right in Pakistan is only available to individuals in their private places; whereas, in public places, privacy may subject to infringement; such right may not be available. Despite the provision of Constitution is one best of its nature among the states' Constitutions, it may not be wrong to say that it was one of the shortcomings left by the drafters of its Constitution. It does not mean that privacy in Pakistan is merely available in private places; first, right of privacy and dignity of man in Article 14 are intertwined, violation of one amount to violation of the other, *vice versa*. Right of dignity is further linked with right of life. Thus, without privacy right of life is not complete.

Secondly, in *supra Shahla Zia* case, Supreme Court categorically declared that "life includes all the amenities of life". It is not a mere animal or vegetative life. Jurisprudence of other countries may be helpful to determine privacy in public place. However, *supra Benazir Bhutto* case is one of the most significant and landmark case on privacy as it provides exhaustive interpretation of '*privacy of home*'. Any individual cherishes liberty and freedom while having feeling of security. It clearly stated that privacy of individual is even sacrosanct in public places, subject to exceptions as discussed earlier defense or security of state. Thus, privacy is available even in the public spaces; CCTVs installed in such places are causing huge amount of intrusion into these rights.

In Pakistan, CCTV surveillance may also serve different purposes. It may be used for security purposes, crime prevention and detection, use of audio or video footage or pictorial as electronic evidence against the culprits, protection of children and end of '*thana*' culture. But at the same time, it has severely impacted privacy in Pakistan. Abuse of CCTV is not only committed in public places i.e., cinema or hospitals etc., but also its misuse reported in private space i.e., rest rooms, washrooms or changing rooms etc. It is alarming. Certain protection is available in PECA, 2016, ETO 2002 and other laws, but it would not be sufficed. Pakistan should follow standards envisaged in GDPR, 2018 of EU which has primary focus on individual privacy rights and freedoms. In this regard, no progress has been made apart from proposing bills and then forgetting them into abeyance. The most recent bill, PDPB was moved in 2020. Certain

suggestions have been given inhere in the form of criticism are very significant for the better privacy rights and freedoms of individuals in Pakistan. These suggestions should be incorporated in the draft bill. Meanwhile, it is also indispensable to work on the bill in a rapid way. The fate of PDPB, 2020 should not be than that of its predecessor bills on the subject. Thus, Ministry of IT and Government of Pakistan's role in this regard is of paramount nature. They should act in a positive way towards legislation of data protection laws in Pakistan. Any such will also serve as a check on CCTV system abuse by data operator or controller or the other persons. As technology is beneficial; but it is negative usage of it that may make it vile.

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