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## **ARTICLE 19: THE CHILLING EFFECT OF SURVEILLANCE IN THE 21<sup>ST</sup> CENTURY**

*Mrinalini Menon*

### **ABSTRACT**

*Article 19 of the Constitution of India grants the right to free expression and free speech; yet every action and inaction in physical and virtual spaces remains acutely surveilled, suppressed and scrutinised in the 21<sup>st</sup> century. The effect of this confining governance leads to the phenomenon of the chilling effect, where citizens censor their beliefs, opinions and social interactions in public, private and virtual spaces due to fear of censorship itself. This leads one to question whether constitutionally granted rights and freedoms indirectly curb freedom itself. The following paper attempts to analyse the repercussions of surveillance mechanisms in the 21<sup>st</sup> century by delving into the rights and responsibilities under Article 19 with reference to cases of privacy, expression and data transfer in the Indian legal landscape. Furthermore, the consequences of excessive surveillance on shaping democratic governance are also studied. Scrutiny does not cease to be surveillance, even if the enforcement is mild. The actions of citizens always alter when they become aware of being watched. The central argument is whether one should censor to safeguard patriotism or prioritise authenticity over filtered expressions.*

### **INTRODUCTION**

Often described as a negative impact of cautious communication, *the chilling effect is used to describe overt censorship*<sup>1</sup> on constitutionally enshrined rights of free expression and free speech in society. The major constraints revolve around the same issues and are not limited to

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<sup>1</sup> JUDITH TOWNEND, *Freedom of Expression and the Chilling Effect* (Version 1, Univ. of Sussex 2017), <https://hdl.handle.net/10779/uos.23442671.v1>.

facial recognition monitoring systems, artificial intelligence cameras, and third-party communication data systems accessing personal information. Article 19 (1)(a) of the Indian Constitution presents a socio-political dilemma in this scenario, when human freedom and privacy are monitored under national surveillance mechanisms. Technology has advanced at a rapid pace in this Digital Age to the point that the lines between security and privacy blur, creating mixed perspectives on where privacy ends and censorship begins. It is pertinent to observe these challenges to safeguard the necessity of free expression and digital privacy for a democratic future. Let us explore some of the landmark cases surrounding the debate of privacy, restriction and scrutiny for national security in the digital era and the subtle loopholes that are overlooked in the systematic adjudication of Article 19 (1) (a) in the Indian judiciary. Furthermore, we will delve into virtual platforms and social media applications that induce a chilling effect on their users to express their personal ideologies and to propagate creative ideas out of fear of censorship due to polarizing views.

### **ARTICLE 19 AND THE PERILS OF CONSTITUTIONAL OVERSIGHT**

When one speaks about the freedom of expression, the term entails the broader sphere of expressive freedoms in various domains such as creative freedom, the freedom of the media and the press, the right to information of all citizens and most importantly, the right to oppose and dissent from political authorities or political decisions on matters concerning public welfare. This freedom is not absolute, as Article 19 (2) mandates the State to impose “reasonable restrictions” in circumstances where national sovereignty, security and integrity are threatened by external forces. Perspectives contrary to the dominant ideology of the nation tend to be curtailed in the priority of national interest in matters of international significance, as geopolitical relations thrive on public manifestations of cordiality among different countries. It is at this juncture that we witness an indirect method of censorship and subtle monitoring; a legal system that claims to safeguard democratic expression while censoring the same in the guise of patriotic governance, like an unwritten rule.<sup>2</sup>

The chilling effect operates in multiple stages in this scenario: it begins with **self-censorship**, when individuals practice restraint in expressing their real opinions in public spaces out of fear of legal sanctions and the uncertainty of how governing agencies would react to opposing perspectives. It transitions into the next stage of **fear of surveillance**, where self-censorship driven by the fear of retaliation from political authorities and public backlash

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<sup>2</sup> Mohd Shoaib Taj *Censorship on Creativity vis-à-vis Chilling Effect in India*, *The Society for Constitutional Law Discussion* (Nov. 29, 2023), <https://www.tsclcd.com/chilling-effect-in-india>

materialises in reality. It can be interestingly linked to the Hawthorne experiments conducted by Elton Mayo, which hypothesised that participants in an overt experiment behave differently when they become aware of being observed, exhibiting socially desirable traits. The resulting action leads to the third stage: **misinformation and uncertainty**, with no real knowledge of the extent of monitoring mechanisms in public activities, leading to a lack of symmetry and deepening self-restraint, creating ambiguous notions of freedom and scrutiny. Surveillance in the 21<sup>st</sup> century is distinct in different forms such as mass surveillance, algorithmic and biometric surveillance and platform surveillance. Algorithmic surveillance has resulted in a society where anonymity and the concept of privacy is being increasingly eroded. The developments in AI tools and facial recognition algorithms, coupled with predictive databases has created new methodologies to trace individual movements, activities and associations in the virtual sphere. Advances in identification and tracking programs make it possible to trace a person's digital footprint within precise, calculated timelines based on simple personal credentials and online addresses. We are living in a monitored society governed by the weapon of platform surveillance, where algorithms listen, evaluate and tailor our social media feeds by picking up information stored on our smartphones. Ever viewed a product on Amazon and received offers on the same product on Instagram? Or spoken about something in a private messaging app that materialised into a reel on your Instagram homepage? Attention and information fuel the market economy in the 21<sup>st</sup> century, where global technological giants guarantee innovation and creative systems in exchange for personal data. Controversies are increasingly being censored and erased from the internet when dissent is expressed towards the State or ruling elites. This perpetuates the notion that democracy functions only on paper and not in the regular exercise of public autonomy in the 21<sup>st</sup> century.

Previously enacted statutory acts, such as Section 5(2) of the **Indian Telegraph Act, 1885**, which mandated the interception of personal communications for the protection of public order, sovereignty and national security emphasizes the existence of the chilling effect long before the term was formally acknowledged in public discourse. One of the most relevant judgments that legally recognised the effect of limiting internet freedom is the *Shreya Singhal v. Union of India*, where Section 66A of the Information Technology Act, 2000, was deemed unconstitutional in 2015. The clause was argued to remove ambiguous terms about internet freedom, limiting it to words like “annoying”, “offensive”, etc., that hindered individual freedom to express their authentic opinions on social media platforms. Moreover, the

petitioners reiterated that the law has a *chilling effect on the freedom of expression*.<sup>3</sup> The court also held that open-ended and undefined terminologies under Section 66A could be an obstacle curtailing the freedom of expression of a wide segment of the population and invalidated the same in its entirety. Similarly, the *K.S. Puttaswamy v. Union of India* judgement recognised the right to privacy as a fundamental right under Part III of the Constitution.<sup>4</sup> The use of Aadhaar as a national system that surveys citizens by biometric profiling and demographic data enabled excessive centralised surveillance of citizens' personal data for the State, violating the right to privacy. The *Puttaswamy v. Union of India* judgement of 2019 held that the use of Aadhaar for public welfare schemes is permissible, but prohibited as a means of authentication by private companies to safeguard citizens' personal data.<sup>5</sup>

### **CENSORED VOICES AND WEAKENING DEMOCRACIES: WHO GAINS MORE?**

In Europe, the rapid transmission of Metadata and breaches of data privacy and security have contributed to a growing shift from democratic expression to authoritarian censorship, highlighting the broader risk of surveillance in the structural stability of European politics. Articles 8 and 10 of the European Convention on Human Rights (ECHR) grant the right to respect private life and the freedom of expression to receive and impart information, respectively. However, the adjudication of constitutional paperwork is disjointed and solely based on national importance in cases where both privacy and expression come into play. Political instabilities in Serbia under authoritarian rule bear testament to the fact that mass surveillance may culminate in political flux. Contrary to European laws on surveillance and privacy, which hold more weight in theory than in real-life situations, the United States passed a landmark legislation on the *reasonable expectation of privacy* in *Carpenter v. United States*.<sup>6</sup> The case restricted the unlicensed access to location information on mobile phones, applying constitutional mechanisms to balance modern surveillance.<sup>7</sup>

The chilling effect is not just a theory of surveillance that limits freedom to address interests and opinions that matter to collective welfare in modern times. It is the silent erosion of association, where individuals receive tailored information propagated by the dominant

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<sup>3</sup> *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

<sup>4</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

<sup>5</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

<sup>6</sup> *Carpenter v. United States*, 585 U.S. 296 (2018).

<sup>7</sup> Anna Calabrese, *Public Surveillance and Human Rights: The Chilling Effect of Surveillance Technologies and Legal Debates in Europe* (2025),

[https://digitalcommons.odu.edu/gsis\\_studentconference/2025/globalsecurity/1](https://digitalcommons.odu.edu/gsis_studentconference/2025/globalsecurity/1).

ideologies of State rule. Arthur R. Miller famously argued that surveillance results in a “dossier society” where “people may increasingly base their decisions and fashion their behavior in terms of enhancing their record image in the eyes of those who may have access to it in future”.<sup>8</sup> Individuals hesitate to explore innovations that truly enrich and fuel healthy views.

## CONCLUSION

Article 19 (1) (a) and its correlation with surveillance mechanisms in the 21<sup>st</sup> century portrays the political tensions of privacy, freedom and democratic governance. Indirect forms of censorship have become more prominent through intensive digital monitoring via algorithmic profiling and biometric recognition, as a silent weapon in which silencing one’s opinion becomes normalised as a form of self- censorship for the national good. Landmark cases such as the *Shreya Singhal* and *Puttaswamy* reiterate and recognise the centrality of privacy and personal liberty to the socio-political development of the country. However, these statutory frameworks offer their proper direction on paper, and the realities of the Indian judicial system reflect heavy executive reliance and vast oversights in implementation.

A democratic and responsible future where democratic participation meets responsible governance requires a strong institutional readjustment. This readjustment must begin with a strong review of the operation of surveillance in society and consistent judicial sanction as a necessary precaution. Next, transparency and accountability must be strengthened in narratives of public surveillance. The legislature is responsible for the same owing to its role as the main law-making body of the government. Additionally, time- bound retention of data for specific authentication purposes should be consistently monitored and codified. Last and most importantly, predictive policing and other developing technologies should be strictly regulated.

Surveillance is a global challenge, inherent to all democracies in the 21<sup>st</sup> century. It is an inherent component, necessary for sustainable and responsible governance in geopolitics. It cannot be eradicated in its entirety, but it can be safeguarded to protect privacy and foster a citizen’s right to free speech and expression in the Constitution. In an age where digital identity stands equally to one’s physical identity, the breach of personal data and subtle censorship contribute to the extinction of healthy participatory democracy.

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<sup>8</sup> Tina Butoiu & Carolyn Islam, *Chilling Effects of Surveillance*, Freedex (Dec. 1, 2019), <https://freedex.org/2019/12/01/chilling-effects-of-surveillance/>

