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Dr. Ashraf Azmi

Dr. Tulika Singh

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CHAPTER - 3

Constitutional Proportionality in the Age of Surveillance

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Abstract

The rapid expansion of digital technologies has transformed the nature of state power, enabling governments to collect, process, and analyze unprecedented volumes of personal data. While surveillance mechanisms are often justified in the name of national security, public order, and technological efficiency, they simultaneously raise profound constitutional concerns regarding privacy, autonomy, and democratic accountability. This chapter critically examines the evolving relationship between state surveillance and data privacy through the lens of proportionality, drawing from both global and Indian perspectives. Beginning with the theoretical foundations of the surveillance state, the chapter explores how modern constitutional democracies attempt to reconcile security imperatives with fundamental rights. It analyses the doctrine of proportionality as a central constitutional safeguard, particularly in light of judicial developments such as *Justice K.S. Puttaswamy v. Union of India* and comparative jurisprudence from Europe and other democratic systems. The discussion further evaluates India's emerging data protection regime and surveillance framework, assessing whether current legal structures adequately protect citizens against excessive state intrusion. The chapter argues that the legitimacy of surveillance in a democracy depends not merely on statutory authorization but on rigorous constitutional justification, transparency, and institutional oversight grounded in proportionality.

Keywords: *Constitutional Democracy, Data Privacy, Digital Governance, Fundamental Rights, National Security, Proportionality Doctrine, State Surveillance.*

I. Introduction: Surveillance State in the Digital Age

In the twenty-first century, the idea of a surveillance state has shifted from dystopian fiction to everyday reality. Modern governments are increasingly relying on digital technologies not just to investigate crime, but to collect, store, analyze, and link data from citizens, online and offline activities. In many countries, this transformation has been driven by rapid advancements in artificial intelligence, ubiquitous mobile connectivity, and the explosion of data created by social media, smart devices, and public infrastructure. The state, once limited by physical borders and analogue mechanisms, now operates within a vast digital ecosystem that can monitor human behavior in real time.¹

Digital surveillance includes a wide range of technologies from smartphone monitoring to facial recognition, integrated databases, and internet traffic analysis. Citizens are often unaware of the depth of data being harvested or the purposes for which it is used. The power imbalance between individuals and institutions has become pronounced: recent studies indicate that 84 % of people feel they lack control over their personal data once it is collected, and most perceive a significant imbalance in data power between themselves and governments or corporations.² This perception is not limited to any single country, but is a shared global experience as digital data becomes the basis of governance, commerce, and security.

¹ See “Surveillance and Privacy in the Age of Big Data,” *Global Insights Journal*, Vol. 5 No. 02 (Apr.–Jun. 2025), at 1–12

² Human Clarity Institute, *How People Experience Privacy and Surveillance in Digital Life 2025*, <https://humanclarityinstitute.com/data/privacy-surveillance-data-2025/> (last visited Feb. 24, 2026)