



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DATA PRIVACY AND TOTALITARIAN TEMPTATIONS: EXAMINING THE ORWELLIAN DYSTOPIA IN 1984 FROM THE EYES OF THE DIGITAL AGE DATA PRIVACY LAWS

AUTHORED BY - KOOMAR BIHANGAM CHOUDHURY

"Big Brother is watching you."

ABSTRACT

This paper explores the intersections between George Orwell's dystopian novel "1984" and contemporary data privacy laws, with a specific focus on the Indian Government's Digital Personal Data Protection (DPDP) Act, 2023. George Orwell's "1984" remains a seminal text for understanding surveillance and privacy's dystopian implications. The novel's portrayal of a totalitarian regime's pervasive surveillance and manipulation underscores critical concerns about individual autonomy and data privacy. For students of data privacy laws, "1984" offers a profound examination of the consequences of unchecked state control over personal information. Comparing Orwell's vision with contemporary regulations such as the Data Protection and Digital Privacy Act (DPDA) provides a valuable framework for anticipating potential erosions of privacy and the societal impacts of surveillance technologies. This comparative analysis is crucial for evaluating and safeguarding data privacy in an increasingly digital world. Orwell's "1984" paints a harrowing picture of a totalitarian regime characterized by pervasive surveillance and control, encapsulated by the omnipresent figure of Big Brother.

This narrative serves as a cautionary tale in the digital age, where data collection and processing have reached unprecedented levels. The research aims to draw parallels between the mechanisms of surveillance depicted in few selected chapters of "1984" and those enabled by modern data privacy laws, evaluating their implications for individual freedoms and the potential for authoritarian overreach. However, the paper also critically examines the loopholes within the Act that could be exploited for authoritarian purposes, such as provisions allowing data collection for

"national security" and profiling. Through a comparative analysis, this paper compares the ethical and legal dimensions of data privacy, the safeguards in place, and the persistent risks despite these protections. The study concludes with recommendations for strengthening data privacy laws to prevent misuse and protect individual freedoms, drawing lessons from Orwell's warning about the dangers of unchecked government power and the erosion of personal autonomy.

KEYWORDS: Data Privacy, Surveillance, DPDP ACT, Technology, Profiling

A. INTRODUCTION

George Orwell's iconic novel "1984" presents a chilling vision of a dystopian society under the grip of an all-seeing and all-controlling government. The novel introduces readers to the omnipresent figure of Big Brother, who embodies the state's absolute authority and invasive surveillance. Within the narrative, citizens are subjected to constant scrutiny, where even their thoughts and emotions are not their own. "1984" is not merely a work of fiction but a cautionary tale that resonates in the digital age, where data has become a powerful tool for governments and organizations to monitor individuals on an unprecedented scale.

In parallel with Orwell's nightmarish vision, the modern world is grappling with the challenges and opportunities posed by the digital age. The proliferation of technology has led to an explosion in data collection and processing, raising critical questions about privacy, individual rights, and the potential for government overreach. To address these concerns, governments have introduced modern and digital age data privacy laws, with the European Union's General Data Protection Regulation (GDPR) and Indian Government Digital Personal Data Protection Act, 2023 serving as a prominent example.

This research paper embarks on an exploration of the intersection between "1984" and contemporary data privacy laws, seeking to unravel how modern governments and organizations navigate the delicate balance between surveillance and individual rights. In a world where data has become the lifeblood of economies and governance, examining the extent to which surveillance and data privacy laws align or diverge is essential.

By comparing the themes and mechanisms of surveillance in "1984" to the principles and provisions of modern data privacy laws, we aim to understand the implications for individual freedoms and the potential for authoritarianism in the digital age. Through this inquiry, we hope to shed light on the ethical and legal dimensions of data privacy, the safeguards in place to protect citizens, and the risks that persist, despite these safeguards.

In the following sections, we will delve into the nuances of these themes, offering a comprehensive analysis of surveillance, privacy, and the potential for authoritarianism in a digital world guided by both Orwell's timeless warning and the realities of contemporary data privacy legislation.

B. THE ORWELLIAN WORLD OF 1984

George Orwell's "1984" stands as a seminal work of dystopian fiction that portrays a totalitarian regime's capacity for surveillance and control. Within the narrative, the government employs mechanisms such as the Thought Police and telescreens to monitor every facet of citizens' lives, creating an atmosphere of perpetual surveillance and fear. The novel illustrates the chilling implications of unchecked government power, where individual privacy and personal autonomy are subjugated to the state's unrelenting control.

We are introduced to a society where the ruling Party exercises absolute control, facilitated by pervasive surveillance. Citizens live under the watchful eye of Big Brother, both metaphorically and literally, with telescreens in every home monitoring their every move and word. This portrayal is a stark reminder of the ever-present data collection and surveillance mechanisms in today's digital world.

The novel further underscores the erosion of personal autonomy as even thoughts are subject to scrutiny, and dissent is swiftly quashed. The manipulation of history, the suppression of free thought, and the coercion of conformity reflect the dangers of authoritarian control over information and individual expression. These themes resonate deeply with the contemporary concerns surrounding data privacy and the potential for misuse of personal data which we will explore in further sections.

C. WHEN SURVILLANCE IN 1984 MET DPDP ACT

We shall now visit a few chapters from the book and contrast them with the existing provisions of DPDP Act:

I. Chapter 1: The Surveillance State's Foundation¹

In the opening chapter of "1984," we witness the establishment of the novel's surveillance state. The government's objectives, mechanisms, and their impact on the individual's psyche are introduced. In the opening chapter, readers are introduced to the omnipresent telescreens, which are both a symbol and a manifestation of the Party's control. These screens are not merely passive devices; they watch and listen to citizens 24/7. This constant monitoring creates a sense of unease and reinforces the idea that privacy is a luxury citizens cannot afford. The fact that these screens cannot be turned off and transmit both ways instills a feeling of vulnerability and surveillance in every individual's life.

The thought police, introduced through posters and propaganda, further emphasize the theme of surveillance. The thought police's mandate is to identify and eliminate any form of dissent or independent thought, a concept known as "thoughtcrime." This notion of thoughtcrime, even before any action is taken, sets a chilling tone of control and conformity, where even one's innermost thoughts are not safe from surveillance. The state's manipulation of information and the rewriting of history become apparent in this chapter. Newspeak, the official language of the Party, demonstrates how language is used to control thought and limit the range of possible ideas. This control over information, combined with surveillance, creates a distorted sense of reality where citizens are unable to discern truth from propaganda.

Citizens are not free to think, speak, or act independently, as even their facial expressions can betray disloyalty. This loss of individuality and the suppression of dissent set the stage for the broader narrative, where the protagonist, Winston Smith, begins to rebel against this loss of personal autonomy. DPDP Act is a strong piece of legislation that helps to protect individuals from the dangers of totalitarianism, surveillance, and thought control. The act is an important step

¹ George Orwell, Nineteen Eighty-Four ch. 1 (Penguin Publ'ns).

forward for data protection in India, and it is an example of how governments can use technology to protect the privacy of their citizens. Data Minimization requires data fiduciaries to only collect and process the personal data that is necessary for the purpose of processing. This helps to prevent mass surveillance, where data fiduciaries collect more personal data than necessary and use it for purposes unrelated to the original purpose of collection.² Storage Limitation requires data fiduciaries to only store personal data for as long as necessary for the purpose of processing. This helps to prevent thought control and propaganda, where data fiduciaries store personal data for long periods of time and use it to influence or manipulate individuals' thoughts or behaviour.³ Consent requires data fiduciaries to obtain consent from individuals before collecting or processing their personal data. This helps to empower individuals and give them control over their personal data.⁴ Security of Personal Data requires data fiduciaries to implement appropriate technical and organizational security measures to protect personal data from unauthorized access, use, disclosure, alteration, or destruction. This helps to protect individuals from the dangers of mass surveillance and thought control.⁵ Data Protection Authority establishes a data protection authority that is responsible for enforcing the provisions of the act. The data protection authority has the power to investigate complaints, issue orders, and impose penalties. This helps to ensure that data fiduciaries comply with the provisions of the act and that individuals' privacy is protected.⁶

II. *Chapter 5: Thought Police and Personal Intrusion.*⁷

Chapter 5 introduces the notorious Thought Police and their intrusive methods of monitoring citizens' thoughts and behaviours. Chapter 5 of "1984" portrays the depth of surveillance and its impact on personal autonomy. Winston and Julia's love affair is betrayed, revealing the Party's pervasive monitoring. The Thought Police's arrest, torture, and betrayal highlight the loss of control over thoughts and identity. Surveillance breeds fear and mistrust, stifling personal autonomy and making even intimate moments subject to scrutiny, exemplifying the Party's stranglehold on individual freedom.

² Digital Personal Data Protection Act, S. 5.

³ Id. S. 6.

⁴ Id. S. 11.

⁵ Id. S. 25.

⁶ Id. S. 35.

⁷ George Orwell, Nineteen Eighty-Four ch. 5 (Penguin Publ'ns).

One of the key ways in which the DPDP Act protects individuals from the dangers of mass surveillance and thought control is by prohibiting data fiduciaries from engaging in mass surveillance.⁸ The DPDP Act prohibits mass surveillance by requiring data fiduciaries to only collect and process personal data for specific and lawful purposes, and to obtain consent from individuals before doing so. This means that data fiduciaries cannot simply collect personal data about everyone without a clear reason, and they cannot use personal data for purposes other than those for which it was collected.

Another way in which the DPDP Act protects individuals from the dangers of mass surveillance and thought control is by prohibiting data fiduciaries from processing personal data in a way that is intended to influence or manipulate individuals' thoughts or behaviour.⁹ This is known as "profiling," and it is a technique that is used by data fiduciaries to create detailed psychological profiles of individuals based on their personal data. Profiling can be used to target individuals with personalized advertising, but it can also be used to manipulate individuals' thoughts and behaviour in more subtle ways. For example, profiling could be used to target individuals with propaganda or to create social media algorithms that promote certain viewpoints and suppress others.

D. DATA PRIVACY LAWS AS TOOL FOR AUTHORITARIANISM?

Section 4 of the DPDP Act prohibits data fiduciaries from engaging in mass surveillance, but it also allows the government to collect personal data for "national security" purposes. This loophole could be exploited by an authoritarian government to justify mass surveillance of its citizens.

An authoritarian government could use Section 4 of the DPDP Act to justify: Installing CCTV cameras in public places and collecting data on people's movements, Using facial recognition technology to identify and track individuals, Collecting data on people's online activity, including their search history, social media posts, and emails or Collecting data on people's travel, including their flight records and hotel reservations.

The DPDP Act also allows the government to process personal data for "profiling" purposes, if it

⁸ Digital Personal Data Protection Act, S. 4.

⁹ Id. S. 17.

is necessary for "national security" or to prevent crime. This loophole could be exploited by an authoritarian government to use profiling to target its citizens with propaganda or to suppress dissent when they use the loopholes to justify when they identify potential political opponents and target them with propaganda or people who are critical of the government and monitor their activities, Create social media algorithms that promote certain viewpoints and suppress others or Use profiling to predict people's behaviour and target them with pre-emptive policing measures.

In addition, Section 36 of the DPDP Act¹⁰ gives the government the power to exempt itself from certain provisions of the act, including the requirement to obtain consent from individuals before collecting or processing their personal data. This means that the government could collect and process personal data without the consent of individuals, if it claims that it is necessary for "national security" or to prevent crime. This means they could collect and process personal data without the knowledge or consent of the individuals concerned or collect and process personal data for unlawful purposes, such as suppressing dissent or persecuting minorities

E. LESSONS LEARNT AND WAY FORWARD FROM HERE

Numerous instructive precepts may be culled from George Orwell's "1984," which lend themselves to cogent application within the contemporary context framed by the Data Protection and Privacy (DPDP) Act. Primordially, a strict and unwavering sentinel must be exercised in the custodianship of individual sanctum of privacy. The DPDP Act confers upon the state a panoply of dominion, authorizing the accumulation and adroit manipulation of personal datum. The onus lies with the citizenry to exact a rigorous and inexorable vigilance over the executive's deployment of these prerogatives, ensuring their deployment refrains from the transgression of the sacrosanct confines of personal autonomy.

Secondarily, a heightened perspicacity concerning the attendant dangers enmeshed with the purview of surveillance and profiling stands as an ineluctable dictate. The DPDP Act, in its intricate provisions, empowers the state to harness personal data for the ambit of surveillance and profiling, thereby engendering the grim spectre of citizens being subjected to propagandistic

¹⁰ Id. S. 36.

stratagems, the stifling of discordant voices, and the discrimination of disenfranchised echelons. As ardent custodians of our civil liberties, it becomes incumbent upon us to vociferously champion the cause of heftier impositions of privacy safeguards, while vehemently contesting the state's recourse to surveillance and profiling stratagems.

Tertiary, the defence of the hallowed precincts of free expression and harmonious assembly attains paramountcy. The DPDP Act, within its labyrinthine strictures, harbours the latent potential for circumscribing these foundational freedoms. It is of the essence that we fervently rise in defence of the sacrosanct demesnes of free speech and peaceable congregations.

To ameliorate the vulnerabilities susceptible to exploitation by authoritarian regimes, it is judicious to espouse amendments to the DPDP Act. These prospective revisions may encompass the circumscription of the state's potential to amass and manipulate personal data, the proscription of the utilization of surveillance and profiling for objectives estranged from the precincts of national security or the prevention of criminality, and the mandating of informed consent antecedent to the state's foray into the collection and manipulation of personal data.

Lending approbation to organizations resolutely dedicated to the propagation of privacy and human rights within the Indian panorama is equally salient. These vanguards of civil liberties labour with indefatigable zeal to raise the consciousness of the public about the potential pitfalls of comprehensive surveillance and profiling, all while lobbying for more robust safeguards enshrouding the sphere of privacy.

The inculcation of public awareness concerning the pitfalls inherent to mass surveillance and profiling may be consummated through intimate colloquia with kinsfolk, the prolific composition of treatises and blog dissertations, and the orchestration of symposia and didactic convocations.

The enlistment of robust cryptographic armaments for the aegis of personal datum heralds an efficacious deterrent against the state's collection and manipulation of this information sans unambiguous consent. Equally pivotal is the exercise of judicious circumspection in the dissemination of online information, proscribing the promulgation of personal minutiae via social

media portals and other publicly accessible forums. Similarly, prudential reticence must be exercised in the divulgence of information to applications and web platforms.

By dint of scrupulously adhering to these precepts, we may play a pivotal role in the conservation of our private sanctuaries and preclude the DPDP Act from transmuted into an instrumentality for the propagation of authoritarian tenets. It is important to bear in mind, however, that these laws can also serve as a potent tool in the fight against terrorism. The equipage of governmental entities with the competency to garner and scrutinize personal data may furnish the requisites for the identification and tracking of prospective terrorist malefactors, the disruption of machinations underpinning acts of terrorism, and the prophylaxis of terrorist depredations.

The advocacy for the state's utilization of data privacy statutes in the rubric of counterterrorism is bolstered by a concatenation of cogent rationale. Foremost amongst these underpinnings resides the gravitas of terrorism as an extant and severe threat to public safety and security, thus constituting the cogent rationale for the aforesaid deployment. In conjunction with these stratagems, one ought to assimilate the teachings proffered by "1984" by adopting an unwavering vigilance and circumspection vis-à-vis governmental actions. The impregnability of our liberties should never be held in abeyance, necessitating the readiness to vehemently champion our rights, even amidst the crucible of adversity. "1984" reverberates as a poignant clarion call, underscoring the inexorability of safeguarding the sanctity of privacy and freedom vis-à-vis prospective vicissitudes.

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