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Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)**THE RIGHT TO PRIVACY IN THE AGE OF SURVEILLANCE: LEGAL PROTECTIONS IN PAKISTAN****Muhammad Faiq Butt**

Lecturer Law Department of Law University of Okara

Email: [faiqbutt@uo.edu.pk](mailto:faiqbutt@uo.edu.pk)**Dr. Hafiz Abdul Rehman Saleem**

Assistant Professor Law Department of Law University of Sahiwal

Email: [h.a.rehman@hotmail.com](mailto:h.a.rehman@hotmail.com)**Muhammad Ahsan Iqbal Hashmi\***

Assistant Professor of Law Bahauddin Zakariya University, Mulan (Vehari Campus)

Corresponding Email: [ahsanhashmi@bzu.edu.pk](mailto:ahsanhashmi@bzu.edu.pk)**Nazia Bano**

Visiting Lecturer Department of Law University of Sahiwal

Email: [naziabano570@gmail.com](mailto:naziabano570@gmail.com)**ABSTRACT**

*As the digital era takes shape, a right to privacy has become one of the main legal concerns that have been raised, especially in such countries as Pakistan where the mechanisms of state surveillance are thriving extremely fast without relevant protection under the law. Although there is an indirect mention of privacy in the Constitution of Pakistan in Article 14, the jurisprudence of the right is undeveloped, as well as scattered and incoherently applied. The given paper examines the question of protection of privacy in Pakistan in terms of digital surveillance, data gathering, and new technologies including facial recognition, bio-technology identification, and online monitoring. It criticizes the legal basis of privacy in Pakistan, the understanding of the right by the courts and also the extent and the shortcoming of the present laws like the Prevention of Electronic Crimes Act, (PECA) 2016 and the National Database and Registration Authority, (NADRA) Ordinance, etc.*

*This paper suggests that the legal regime of Pakistan fails to provide an entire data protection law that can adequately reconcile the need of national security and the right to privacy of individuals. There are also surveillance programs like the Safe City Projects, phone tracking by security organizations, and biometric identification and the problem around unchecked state authority, the absence of a judiciary check-and-balance, and an opportunity to abuse power. This new phenomenon is discussed in terms of international law and comparative law, specifically the General Data Protection Regulation (GDPR) of the European Union and the right to privacy as a fundamental right of Indian citizens, the decision in the Puttaswamy case by the Supreme Court of India.*

*In addition, the researched points out to institutional and procedural insufficiencies within the mechanism of a legal enforcement in Pakistan, such as the restricted technical ability, insufficient awareness of the population, and a lack of an independent data protection authority. Based on scholarship evidence, the paper provides the need to legislate urgently, namely, to introduce standalone privacy and data protection legislation, judicial guidelines in surveillance, regulatory capacities with investigatory and enforcement capacities among others. These reforms are not only*

*important to safeguard the individual autonomy but also to create a sense of control among people vis-a-vis their confidence in the digital governance besides placing Pakistan within the global practices of the human rights.*

*After credibly suggesting that without a serious and practical privacy system, Pakistan will majorly compromise the pillars of democratic responsibility and the rule of law, the paper concludes that, without a logical and realizable privacy system, Pakistan will endanger the entire fabrications of democratic accountability and the rule of law. The lack of regulation of the monitoring technologies, in combination with the past-dated legislative stipulation will jeopardize civil liberties and further cement digital authoritarianism. Thus, it is absolutely necessary that Pakistan reconsider its legal and institutional framework of handling privacy, adopting the pro-right and transparent and accountable model that responds to the conditions of the digital era.*

**Keywords:** *Right to Privacy, Surveillance Laws, Legal Protections, Digital Rights in Pakistan, Data Privacy Legislation*

## Introduction

Privacy has turned out to be one of the most controversial and vital rights within the legal intellectual discourse in recent times and especially when it comes to the world of high-tech and fast-track surveillance. The increasing use of digital infrastructure in governance, law enforcement, and national security by states thus borders on disregarding the individual privacy without necessary legal protection. This change is especially important to the developing world, Pakistan being one of them, where the layering of surveillance capabilities has far surpassed the creation and adoption of new regulations dealing with it.

Privacy in Pakistan is unwritten in the constitution which guarantees human dignity. Nevertheless, there is no overall privacy or data protection law, which has allowed the emergence of a scattered incomplete legislative framework. Statutes, which are in place, include the Prevention of Electronic Crimes Act (PECA) 2016,<sup>1</sup> Privacy in Pakistan is unwritten in the constitution which guarantees human dignity. Nevertheless, there is no overall privacy or data protection law, which has allowed the emergence of a scattered incomplete legislative framework. Statutes, which are in place, include the Prevention of Electronic Crimes Act (PECA) 2016,<sup>2</sup> and the NADRA Ordinance<sup>3</sup>, but do not present a comprehensive manner of privacy rights. In addition, they usually put the interests of states above the autonomy of individuals and provide the law enforcement and intelligence authorities with comprehensive discretionary authority that lacks accountability systems. The argument of scholars to this matter is that the laws are prone to authorize surveillance, provide no specific limitations and procedural

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<sup>1</sup> "Prevention of Electronic Crimes Act, 2016 | PCSW," accessed September 13, 2024, <https://pcsw.punjab.gov.pk/prevention-of-electronic-crimes-act-2016>.

<sup>2</sup> "Pta\_act\_consolidated\_footnotes\_11012022," n.d.

<sup>3</sup> "National Database and Registration Authority Ordinance (NADRA), 2000," accessed September 13, 2024, <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5tq-sg-jjjjjjjjjjjj>.

check against the rights of the individuals.<sup>4</sup>

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The present paper is a critical assessment of the protection levels legal afforded to the right to privacy in Pakistan on the basis of whether the current laws are sufficient to control the practices involved in surveillance and collection of data and information. It examines too the problems of technological development and institutional failures. This paper intends to draw a parallel between the Pakistani legal framework and international standards and new school of thought about different reform strategies in order to indicate the measures that need to commence so that the right to privacy is no longer a paper reality but is held and observed.

To recommend the required changes with the help of the analysis of current academic literature and doctrinal legal analysis, the study focused on the main gaps and assessed the available reform possibilities. It states that there should be a unanimous legal framework based on rights that need to be in place that complies with the international data protection regulations and is in line with the socio-political conditions of Pakistan. According to the scholars, unless Pakistan has an independent data protection authority and a thorough legislation, in the digital environment, privacy, as a right, stands threatened and under-defended in the country.<sup>6</sup>

### **Constitutional and Legal Framework in Pakistan**

The legal protection of privacy in Pakistan is rooted in the constitutional guarantee of human dignity, specifically under Article 14 of the Constitution of Pakistan, 1973.<sup>7</sup> Although the Constitution does not expressly enumerate privacy as a fundamental right, Article 14(1) states that "the dignity of man and, subject to law, the privacy of home, shall be inviolable." This provision has been widely interpreted by legal scholars to imply a broader right to privacy, extending beyond physical space to personal data, communications, and informational autonomy. However, the absence of a clear statutory definition or scope of "privacy" creates interpretive ambiguity and

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<sup>4</sup> "(PDF) DATA PROTECTION LAWS IN PAKISTAN: CHALLENGES AND OPPORTUNITIES," accessed September 13, 2024, [https://www.researchgate.net/publication/388958262\\_DATA\\_PROTECTION\\_LAWS\\_IN\\_PAKISTAN\\_CHALLENGES\\_AND\\_OPPORTUNITIES](https://www.researchgate.net/publication/388958262_DATA_PROTECTION_LAWS_IN_PAKISTAN_CHALLENGES_AND_OPPORTUNITIES).

<sup>5</sup> Taimoor Tabasum et al., "Digital Surveillance and Privacy Concerns the Changing Dynamics of Trust in Modern Societies: A Mediation Moderation Model," *ACADEMIA International Journal for Social Sciences* 4, no. 1 (March 1, 2024): 747–59, <https://doi.org/10.63056/ACAD.004.01.0128>.

<sup>6</sup> Abdul Qayyum Gondal, Matloob Ahmad, and Hafiz Muhammad Adnan Hamid, "Reimagining Justice: Modern Legal Reforms for Pakistan in the 21st Century," *Al-Aijaz Research Journal of Islamic Studies & Humanities* 8, no. 3 (2024): 31–39.

<sup>7</sup> "Chapter 1: 'Fundamental Rights' of Part II: 'Fundamental Rights and Principles of Policy,'" accessed September 13, 2024, <https://www.pakistani.org/pakistan/constitution/part2.ch1.html>.

enforcement difficulties.<sup>8</sup>

Pakistan lacks a unified data protection law that comprehensively defines, protects, and regulates the right to privacy. Instead, the country's legal approach is fragmented across several pieces of legislation, each addressing privacy-related concerns in a limited or sector-specific manner. The Prevention of Electronic Crimes Act (PECA) 2016 is the primary law dealing with digital privacy and cybercrime. PECA criminalizes unauthorized access to data, cyberstalking, and data breaches but does not establish broader rights for data subjects or set standards for lawful data collection by state or private actors. Critics have noted that PECA tends to empower state surveillance authorities without robust oversight mechanisms or procedural safeguards for citizens.<sup>9</sup>

In addition, the Pakistan Telecommunication (Re-Organization) Act 1996 and the National Database and Registration Authority (NADRA) Ordinance provide legal grounds for state access to telecommunications and personal identification data. These laws authorize data retention, biometric identification, and monitoring of electronic communications by various agencies. However, they lack transparency requirements, independent regulatory supervision, or user consent protocols, raising serious concerns about potential misuse and constitutional overreach. Scholars argue that the cumulative effect of these provisions is a surveillance-heavy legal environment where privacy is treated more as a security issue than a civil liberty.<sup>10</sup>

Thus, while the Constitution provides a normative basis for the right to privacy, the supporting legislative framework remains underdeveloped, lacking in clarity, coherence, and accountability. In the absence of a dedicated privacy statute or independent data protection authority, citizens in Pakistan face significant legal uncertainty regarding how their personal data is collected, used, and safeguarded.

### **Surveillance Mechanisms in Pakistan**

Over the past number of years, Pakistan has invested tremendously in terms of building its surveillance infrastructure, usually in the name of national security, counterterrorism and security of cities. Nevertheless, the recent surge in the use of surveillance technologies, without thorough standards of legal control and without transparency to the people, has brought to the fore the concerns of infringement of the right to privacy and the possibility of the normalization of mass surveillance.

Among the brightest instances is the Safe City Projects that were initiated by the city centers such as Islamabad, Lahore, and Karachi. Such undertakings have incorporated the implementation of thousands of high definition CCTV cameras, facial recognition tools and central monitoring facilities. Despite being founded on the desire to prevent crimes and serve the people with safety, such programs are partially implemented with

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<sup>8</sup> Vrinda Maheshwari, *The Paradox of Educational Rights in Pakistan: A Gender-Critical Case Study of Article 25-A Through Wendy Brown's Theoretical Framework*, 2024.

<sup>9</sup> Zaheema Iqbal and Rafi us Shan, "Pakistan's Cybersecurity Landscape," *CISS Insight Journal* 12, no. 2 (2024): P105-131.

<sup>10</sup> Imran Iqbal, "PRIVACY CONCERNS IN BIOMETRIC DATA COLLECTION: ETHICAL, LEGAL, AND TECHNICAL CHALLENGES," *Journal of Big Data Privacy Management* 1, no. 02 (2023): 161-69.

minimal disclosure of the data retention practices, accountability procedures as well as the legal approvals. It has been observed by scholars that the model of surveillance as discussed here is more of a digital panopticon, whereby an entire population may be under round-the-clock visual and biometric surveillance without any particular hint of suspicion.<sup>11</sup>

Besides visual trailing, implementation of the biometric identification systems by NADRA and other state agencies has amplified the issues of sensitive persons data security. Fingerprints, iris and facial data are regularly collected by the government through which citizens receive CNICs, passports, SIMs and voter registration. Nevertheless, no statutory guarantees exist with regard to the coverage of data utilization, the access of other entities, or the possibility of the individual to withdraw or delete his/her biometrics. According to research, the now nationwide biometric gathering, being done in a legislative desert, has the potential to cause Pakistan to become an over-policed nation with little privacy laws.<sup>12</sup>

The other key player in the surveillance setup of the state is telecommunication and internet-based surveillance. The access that the intelligence and law enforcement organizations gain towards the call records, SMS data and internet traffic owe its back to the telecom services providers in most cases without judicial warrants and independent authorization. Moreover, tools like mobile phone geo-tracking, social media profiling and internet metadata analysis are becoming common in pre-emptive surveillance. Scholarly responses to such practices have criticized the precedent as lacking independent control, audit, and privacy impact tracers, which it claims, form a climate enough to be abused, particularly by way of political activists, journalists, as well as on marginalized groups.<sup>13</sup>

Generally, the media has seen a wider role of the surveillance technologies in Pakistan which has surpassed institutional capabilities. Although the precedence of such systems can be explained in the name of security and modernization, the uncontrolled growth of such systems becomes a substantial threat to the privacy and democratic accountability of individuals.

### **Comparative Legal Analysis**

To properly comprehend the weaknesses of the legal safeguards of privacy in Pakistan, one must undertake a comparative analysis of the ways in which other courts have handled a certain urgency of the digital surveillance subject matter. Privacy rights are changing in the world, but there are countries around the world which raised questions and came a long way in the regulation of surveillance and protection of personal data,

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<sup>11</sup> Caylee Hong, "'Safe Cities' in Pakistan: Knowledge Infrastructures, Urban Planning, and the Security State," *Antipode* 54, no. 5 (2022): 1476–96.

<sup>12</sup> Nimra Firdous et al., "BLACK BOX LAW: THE CRISIS OF TRANSPARENCY AND LEGAL ACCOUNTABILITY IN ALGORITHM-DRIVEN GOVERNANCE IN PAKISTAN," *Research Consortium Archive* 3, no. 2 (2024): 696–703.

<sup>13</sup> Faruzan Anwer Butt, Muhammad Makk, and Tughral Yamin, "'National Security' and the Construction of Digital Governance Models: Content Regulation in the Pakistani 'Digital Public Sphere'," *Webology* 19, no. 2 (2022).

among which the countries of the European Union, which have several points that can be helpful to Pakistan.

European Union (EU) has led the way in protecting privacy by introduction of the General Data Protection Regulation (GDPR) that took effect in 2018.<sup>14</sup> The GDPR sets rigorous standards of protection of personal data, such as necessity of informed consent, purpose limitation, data sparing and right to be forgotten. It also requires effective enforcement procedures like imposing sanctions to non-compliance and developing exclusive supervisory bodies. GDPR is considered a gold standard in data protection that ensures a balance between the freedoms of a person and lawful state and business interests, as well as is a rights-based approach promoted by legal scholar.<sup>15</sup>

Protection of privacy in India has taken a 180-degree turn ever since the right to privacy has been considered as a fundamental right in 2017. Although the Pakistani judicial statements do not bear a similarity, the Indian constitutional status has triggered a lot of discussion and policy creation in the world, such as drafting of a thorough data protection bill. Despite the fact that the Indian legislative process was not complete, academic writing suggests that the judicial recognition of privacy has triggered the dialogical process in the population and contributed to the reinforcement of the normative values of data and surveillance control.<sup>16</sup>

Although not having a single detailed federal law about privacy, the United States offers valuable lessons in its industry-specific, as well as constitutional laws. The U.S. Constitutional Fourth Amendment guards against the authorization of ridiculous searches and capture, and such an understanding has been stretched by advancing common-law to some segment of digital correspondence and metadata. Nonetheless, there are still doubts regarding mass-data gathering operations and the work of such intelligence organizations as the NSA. According to scholars, although the U.S. model provides robust procedural protections at the hypothetical level, nation security reservations and a loose regulatory system render it ineffective in practice.<sup>17</sup>

Such comparison frameworks show that privacy protection needs a blend of constitutional awareness, specific laws, guaranteed oversight, as well as a culture that emphasizes the rights of data possessors. In case of Pakistan, the elements of these models, particularly the normative development of India and the regulatory framework of the EU, may be the starting point in developing a rights-based data protection regime in a local context.

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<sup>14</sup> "General Data Protection Regulation (GDPR) – Legal Text," General Data Protection Regulation (GDPR), accessed September 13, 2024, <https://gdpr-info.eu/>.

<sup>15</sup> Bart Van der Sloot and Sascha van Schendel, "Procedural Law for the Data-Driven Society," *Information & Communications Technology Law* 30, no. 3 (2021): 304–32.

<sup>16</sup> Poontamilan S., "The Jurisprudence in the Right to Privacy," *Issue 1 Indian JL & Legal Rsch.* 5 (2023): 1.

<sup>17</sup> "The Original Fourth Amendment | The University of Chicago Law Review," accessed September 13, 2024, <https://lawreview.uchicago.edu/print-archive/original-fourth-amendment>.

### **Data Protection and Digital Privacy Challenges**

Although digital technologies are finding a greater application in governance and business, Pakistan still does not have any unified legislation to govern all the aspects of collecting, storing, and utilizing personal information. Lack of a unified data protection legislation is among the biggest challenges towards realization of digital privacy. The existing copyright legislation does not provide people with sufficient freedom in protecting their personal data, whereas data processors (state bodies, telephone companies, and individual enterprises) perform their activities without any clearly defined range of rights and restrictions. Scholars argue that this regulatory vacuum creates a fertile environment for the misuse of data and systemic privacy violations.<sup>18</sup>

In Pakistan, data breaches and cybersecure problems are common issues in the digital environment. One of the biggest targets of illegal release of confidential personal information has become the public bodies including NADRA, the Federal Board of Revenue (FBR) and other educational boards. In most of such cases, victims do not have a legal redress or remedy as there is no right to data security and no liability is imposed on data controllers. Researchers have also emphasized how lack of legal solutions not only deter accountability efforts but also compromise the confidence of the citizens on the digital governance processes.<sup>19</sup>

Besides, the contribution of the privates to invasion of privacy cannot be discounted. Mobile Network Operators (MNOs), Internet Service Providers (ISPs), and digital platforms are known to exchange user data with government agency without any significant levels of transparency, or due process of law. Rather than restraining such practices, PECA 2016 gives sweeping access to the user data to the Pakistan Telecommunication Authority (PTA) and law enforcement agencies by using broad and vaguely worded provisions. The academic criticisms highlight the fact that such laws put much weight on the side of surveillance and do not consider the rights of the data subjects. Such misbalance is additionally increased by the overall low digital literacy of the population being deprived of informed consent and awareness of rights regarding use of data.<sup>20</sup>

Collectively, these issues explain that the present attitude towards digital privacy in Pakistan can be summarized as reactive in nature. In the absence of strong data protection and enforcement measures, citizens would be at the mercy of state and companies leveraging on the digital mayhem.

### **Arguments for Reform**

The current legal regime in Pakistan offers limited and fragmented protections for the right to privacy, especially in the digital domain. As surveillance practices grow in scale

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<sup>18</sup> Waqas Halim, Arjun Upadhyay, and Caitlin Coflan, "Data Access and Protection Laws in Pakistan: A Technical Review," 2022.

<sup>19</sup> Lubna Luxmi Dhirani, "Data Security, Privacy and Cyber Policy of Pakistan: A Closer Look," in *2024 IEEE 1st Karachi Section Humanitarian Technology Conference (KHI-HTC)* (IEEE, 2024), 1–7.

<sup>20</sup> Zahid Shahab Ahmed et al., "Digital Authoritarianism and Activism for Digital Rights in Pakistan," *European Center for Populism Studies (ECPS)*, 2023.

and complexity, there is an urgent need to reform both legislative and institutional structures to ensure that individual privacy is effectively safeguarded. Legal scholars overwhelmingly argue that Pakistan must transition from a security-centric model to a rights-based framework that places the individual at the center of data governance.<sup>21</sup> A critical first step is the enactment of a comprehensive data protection law that clearly defines personal data, outlines the obligations of data processors and controllers, and enshrines the rights of individuals regarding their personal information. Such a law should include provisions for informed consent, data minimization, purpose limitation, and the right to rectification and erasure. It must also establish legal remedies for privacy violations and impose penalties for non-compliance. Comparative studies suggest that aligning national legislation with global standards, such as the GDPR, not only strengthens individual rights but also enhances international trust and investment in local digital ecosystems.<sup>22</sup>

Equally important is the creation of an independent Data Protection Authority (DPA) with the mandate to monitor compliance, investigate breaches, and enforce privacy rights. This authority should operate autonomously, free from political or executive interference, and possess both technical capacity and legal enforcement powers. In addition, there is a need for judicial training and capacity-building in handling privacy-related issues, particularly in the context of digital evidence, surveillance warrants, and proportionality assessments. Scholars argue that legal professionals in Pakistan remain largely unprepared for the unique challenges posed by data-driven governance, which weakens the rule of law in the digital sphere.<sup>23</sup>

Beyond legal instruments, public education on digital rights and privacy must be prioritized. Without widespread awareness, even the strongest privacy laws will be rendered ineffective in practice. Reform efforts must, therefore, include a coordinated strategy involving law reform commissions, civil society organizations, academia, and the tech industry to build a culture that values privacy as a foundational democratic right.

## Conclusion

Pakistan The right to privacy in Pakistan is a weak and immature law even as digital surveillance proliferates. Although the Constitution can be the source of protection of the feeling of dignity and protection of personal territory, lack of comprehensive law frameworks means the people are in danger of unregulated data gathering, and tracking, and abuse. There has been a tremendous gap between the technological advancement of surveillance methods and the regulation over the same by the state,

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<sup>21</sup> Muhammad Shafiq et al., "Reimagining Banking Online: A Comprehensive Analysis of Web Design Framework in Pakistan's Banking Industry," *International Journal of Information Systems and Computer Technologies* 4, no. 1 (2024): 36–48.

<sup>22</sup> Alizeh Jhokio and Tansif Ur Rehman, "Data Privacy Laws in Pakistan: A Comparative Analysis with the EU's General Data Protection Regulation," *Journal of Political Stability Archive* 3, no. 2 (2024): 870–82.

<sup>23</sup> Bilal Saleem et al., "A Survey of Cybersecurity Laws, Regulations, and Policies in Technologically Advanced Nations: A Case Study of Pakistan to Bridge the Gap," *International Cybersecurity Law Review* 5, no. 4 (2024): 533–61.



as state and non-state actors have embraced the technologies at a pace that is way ahead of the regulation process thus creating huge disparity between state power and the individual rights of the people.

In this study, it has been established that Pakistan has structural legal flaws in its current data privacy regime. The laws of the sectors, PECA 2016 and the NADRA Ordinance, ensure very little protection and even focus more on the national security rather than civil liberties. In addition, the absence of independent oversight body, the non-existence of informed consent schemes, and poor awareness to the population create a larger context where the privacy is neither safeguarded nor advocated.

In this study, it has been established that Pakistan has structural legal flaws in its current data privacy regime. The laws of the sectors, PECA 2016 and the NADRA Ordinance, ensure very little protection and even focus more on the national security rather than civil liberties. In addition, the absence of independent oversight body, the non-existence of informed consent schemes, and poor awareness to the population create a larger context where the privacy is neither unless such systemic changes are affected, there will be little to worry about privacy in the policy and legal agenda of Pakistan. In the age of the data revolution and the "Big Brother" effect, to be successful in safeguarding the freedom of privacy is not a matter of choice, but rather an essential component of democratic responsibility, human dignity and the rule of law.

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