

# Digital Surveillance to Combat Covid-19 Crisis: How to Strictly in Line With Human Rights?

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***Abstract--** Surveillance is one of the most effective ways for the government to maintain and control the societies to achieve a common good for its citizens, especially in the time of crisis. Digital Surveillance is an essential way during the combat against COVID-19 pandemic that leads the government to maintain the spread of the virus by using personal data to locate and track risk individual'. However, the government must be facing the crisis responsibly and do not disregard any human rights at any cost. This study analyzes how to execute digital surveillance in line with human rights. Digital surveillance must be executed transparently about the time of the surveillance, the government must protect the collected data by ensuring the security of any personal data collected, and any uses of digital surveillance must be for emergency purposes only. Human Rights still apply under any circumstances, including state of emergency, to prevent the state's abuse of power.*

***Keywords--**Digital Surveillance, Government, Human Rights.*

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## I. INTRODUCTION

Pandemic is an epidemic occurring worldwide or over a large area, crossing international boundaries and usually affecting a large number of people. World Health Organization (WHO) in March 2020 declared that COVID-19 as global pandemic and called the government to take urgent and aggressive action to stop the spread of the virus. More than 1,400,000 people have been infected by the virus, according to the WHO. Firstly found in Wuhan, China, this virus turns into serious matters and becoming a global health crisis. Government all over the world is taking steps to protect the nation by stating public health emergencies and quarantine the country due to the COVID-19 pandemic.[1]

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COVID-19 pandemic leads the government to use digital surveillance as one of the actions such as facial recognition and location data to tracking risk individuals, so this is an emergency occurring in a much more digitized and connected world —Technology playing an essential role in the combat against the virus. As an example, China using a traffic light system and software that obligate for all their citizens to rate the individuals' capability to go outside. Italy, Austria, and Germany were leveraging location data provided by mobile operators to map citizens in high-risk areas. Furthermore, advanced computational models, such as those based on machine learning, have shown great potential in tracing the source or predicting the future spread of infectious diseases. So, using big data and smart analytics and using them well for public health is very important to use.[2]

The States cannot merely disregard rights such as privacy and freedom of expression in the name of tackling a public health crisis. Data privacy challenges not only are technical but also depend on political and judicial decisions. Other governments are also busy obtaining citizen smartphone data. The UK government is in talks with mobile phone companies about access to data, as is the US government. However, full transparency in government procedures and motivations need and also reassurances that civil rights are not put second to all else. In this new era of digital pandemics, Germany adjusted the wording of GDPR to allow legislation to process the personal data in the event of an epidemic. The data handled in aggregated and anonymized form and assurances and not about tracking people. Therefore, there are still concerns that this action taken without sufficient analysis of legal and human rights implications.[3]

During a crisis like this, there is a particular right that can be derogated according to Article 4 International Covenant on Civil and Political Rights. Digital surveillance by the government must strict in line with human rights protection. This action is threatening individual privacy, freedom of expression, and freedom of association if the government disregard this right in the name of emergency. Estelle Masse, a senior policy analyst at access now, said: "We must ensure that the measures governments are taking right now do not transform this health crisis into a global human rights crisis." [4]

Privacy Rights are the most vulnerable rights to be violated by digital surveillance. To protect data, the way that can be done by setting a rule regarding the use of personal data from civilians to support monitoring. The rules must be designed, taking into consideration the objectives of public health. Personal data is a derogable right that can be restricted. It means that the exercise of the right must be done by paying attention to and respecting the rights of the freedom of others. It should not interfere with national security or public order. Restrictions or exceptions to the right to privacy can also only be done for valid reasons through consent and based on the law. In this case, the data is someone personal that may not be desired to be published or known by other people or the public. The right to protection of personal data evolved from the right to respect personal life or called the right to private life. [5]

The European Union Data Protection Directive (EU DP Directive) differentiates data based on the level of danger that will be felt to individuals in the event of unprocessed data processing into "sensitive data" and

"non-sensitive data" groups. Sensitive data usually gets more excellent legal protection; for example, consent must be explicitly through a written statement. The European Union Data Protection Directive prohibits the processing of sensitive data unless explicit approval has been obtained from the data owner. These data include information related to ethnicity, political opinions, religion, and beliefs, membership of trade organizations, including data relating to a person's health and sex life. To be able to process sensitive personal data requires explicit approval. Health data is particularly sensitive, and the publication of information online can pose a significant risk to affected persons and, in particular, people who are already in positions of vulnerability or marginalization in society.[5]

Big Data, first, may be the best thought of as "the capacity to search, aggregate and cross-reference large data sets". Big Data processors look further to encapsulate life into data, space, and time to understand how the latter is programmed, algorithmically computed, visually represented. To use these data and algorithms responsibly, in compliance with data protection regulations and with due respect for privacy and confidentiality. Because failing to do so will undermine public trust. It will make people less likely to follow public-health advice or recommendations and more likely to have poorer health outcomes. The Siracusa Principles, adopted by the UN Economic and Social Council in 1984, and the UN Human Rights Committee general comments on states of emergency and freedom of movement provide authoritative guidance on government responses that restrict human rights for reasons of public health or national emergency. Any measures are taken to protect the population that limits people's rights ,and freedoms must be lawful, necessary, and proportionate.[6]

Available data come from health services, but there is massive potential in harnessing smartphone location and other data for comprehending the dynamics of the pandemic. The government must give us transparent communication about data processing because it makes good be pursued. For example, Data-processing agreements should disclose which data is transmitted to third parties and for which purpose. It can make people whose personal data is accessed believe and do not have a suspicion of anyone.[7] The danger of the COVID-19 pandemic rises to the public health emergency that justify derogation to individual rights. However, the government must be careful about how they act to prevent their action from human rights violations. Digital surveillance must be in line with human rights safeguards and protecting individuals' rights. The government must be transparent about the time of the surveillance, the government must protect the collected data by ensuring the security of any personal data collected, and any uses of digital surveillance must be for emergency purposes only.

## II. RESULTS AND FINDING

### *Human Rights Protection During Pandemic*

Human Rights are understandably to be the rights that one has because one is human. As such, they are equal rights, because we either are or are not human beings, equally. Human rights are thus "universal" rights in the sense that they are held "universally" by all human beings. Human Rights defined by the United

Nations as rights for all human beings, regardless of their race, sex, their nationality, ethnicity, language, religion, and any other status, and Human rights are also including the right to life and liberty, the freedom from slavery and torture, the freedom of opinion and expression, and the right to work and education. Everyone is entitled to these rights, without discrimination.[7]

However, there is an individual right that can be reduced temporarily under state emergencies; it also known as derogable rights. Article 4 International Covenant on Civil and Political Rights specifies derogation as follows in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

COVID-19 pandemic causes the government to act and to do whatever necessary. The practical challenge for the government that many of the gravest and systematic human rights abuses occur during public emergencies when states employ extraordinary powers to address threats to public order. Human Rights must be protected, and the governments must protect the right of any individual regardless of frontiers. The Siracusa Principles provide authoritative guidance on human rights restrictions under national emergency or public health crisis. Any restriction must be lawful, necessary, and proportionate, directed toward general interest, strictly necessary to achieve the objective based on scientific evidence, and under limited duration.[8]

Derogation of the rights guaranteed in the international instruments becomes possible when there is an emergency which constitutes an exceptional threat, followed by a proclamation of the existence of that emergency, and notification to the authority concerned with the supervision of the instrument whose provisions it intends to derogate. It is because of the “exceptional” nature of the threat that specific derogation clauses have been introduced rather than relying, as might have been expected upon ordinary limitation provisions. In attempting to redress the balance, it is necessary, however, for improved human rights to be matched by accommodations in favor of the reasonable needs of the State to perform its public duties for the common good. Derogations are those which allow suspension or breach of certain obligations in circumstances of war or public emergency.[9]

Pandemic is one of the reasons for the derogation of human rights, and the governments are obligated to take adequate steps for the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases. However, it is vital that during combat against the pandemic, the government act in line with the rule of law and human rights principal. Human rights are not just one type of social or moral goal coequal with others; instead, in ordinary circumstances, rights have prima facie priority over utilitarian calculations or considerations of social policy. One of the primary purposes of human rights seems to be able to insulate right-holders from claims based on such principles. Otherwise, it would be not only appropriate but decisive reasons for political and even individual action. According to Human Rights Watch, the governments must protect the following things during the COVID-19 pandemic:[10]

1. Protecting the freedom of expression and access to information;
2. Protecting the quarantines, lockdowns, and travel bans comply with right norms;
3. Protect people in custody and institutions;
4. Ensure the protection of health workers;
5. Fulfill the right to education;
6. Protecting people from stigma and discrimination;
7. Protect the confidentiality of any patients;
8. Guarantee marginalized populations can access health care without discrimination;
9. Protect the community and civil society organizations;
10. Promote the rights to water and sanitation;
11. Ensure humanitarian aid continues; and
12. Target economic relief to assist low-wage workers.

During a global health crisis like this, it is important to the government to remember that human rights law still applies. Any abuse of power that threatens an individual's rights such as freedom of expression, freedom of association, and right to privacy is only going to cause public to disregard the government. It is important for the government to strict in line with Human Rights during this pandemic at any cost.[11]

### ***Digital Surveillance Restriction to Protect Human Rights***

David Lyon defines surveillance as systematic, focused, and routine attention to personal details for purposes of influence, management, protection, or direction. The definition tries to convey how surveillance has historically functioned as a necessary aspect of maintaining modern society. Surveillance becomes the government tool to control the society, but it is possible if digital surveillance disregard privacy right, it will be the tool for authoritarianism to creep in. The government's job is to provide security and common good for its citizens, but the uses of digital surveillance must not violate an individual's right; therefore, the fine line between them is needed. [12]

Surveillance is a compelling way that disregards the privacy of individuals and groups to protect the rights of other individuals and groups. It does not only target specific information, but it usually captures much more information than was initially sought. While the uses of surveillance are debatable, it is an inevitable truth that surveillance is one of the most effective ways to maintain societies, especially in the time of crisis. Right now, information processing has become an essential component for all parties. Forty-two countries were using digital help to combat the global health crisis COVID-19 pandemic. As an example, Canada's government release guidance: Privacy and the COVID-19 outbreak, Australia releases Privacy and COVID-19 and How to respect privacy and protect public sector information when working remotely for their society and Finland releases Data protection and limiting the spread of coronavirus. [13]

Digital surveillance may be in its infancy. Governments collect any personal data, but they do not know how to process effectively. How to make facial recognition can be accurate and tracking databases with correct information. When there is no limit for access to personal data, it harmful to society because personal data is an asset or commodity of high economic value. So, to access personal data, it is must be done by paying attention and respecting the rights of freedom to others. Data is personal data if the data is related to someone, so it can be used to identify that person, which is the owner of the data. Article 4 (1) General Data Protection Regulation (GDPR) defining personal data means any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. It means personal data can be identified directly or indirectly by ID number or more factors specific identification of physical, psychological, mental, cultural, or social. [14]

The right to privacy is the most vulnerable in the time of digital surveillance. Data protection is a crucial element for individual freedom and dignity. The right to privacy of personal data is a manifestation of recognition and protection of basic human rights. It is classified as a basic human right because it is protecting a human being as an individual who needs to develop his personality by providing a zone (space) for himself. Adequate protection of privacy regarding data and personal will be able to give the public confidence to provide personal data for a variety of more significant public interests without being abused or violating their rights. Thus it will create a balance between the rights of individuals and the community whose interests are represented by the state.[15]

Digital surveillance can be achieved by giving priority to the interests of human rights as individuals who must be protected by a country. The state must guarantee that everyone who gives their data to help combat this COVID-19 pandemic must be secured. In this case, information disclosure must be carried out by the state. The state must not use this pandemic for profit. The right country is a country that can respect the privacy of its citizens. Data is valuable for commercial purposes; many companies use their customer data by capture and analyzing data for understanding what the market needed. As an asset, it is inevitable that data not being used ethically. As an example, Cambridge Analytics Company and Facebook have crossed the line by violating privacy right multiple times. If the government decides to collaborate with the private sector, it is must be clear that the collected data is being used for emergency purposes only with limited duration and not being used for commercial purposes. [16]

Digital Surveillance is necessary during extraordinary times like this, but honoring human rights is an obligation for any state worldwide. The government must protect freedom of expression, freedom of association, and the right to privacy during this time. Human Rights Protection can be achieved by ensuring government transparency about how they collected and managed the data, the duration of the surveillance, how they protect the security of the collected data, and to ensure that collected data are uses for COVID-19

pandemic anticipation purposes only. This pandemic existence means to encourage people's behavior in terms of humanity. By this, indeed, our efforts need to be taken to fight the spread of the virus and not to harm other people's rights. The alternative to governments using their powers to get hold of data collected by tech companies is to encourage citizens to install applications for non-profit research purposes and donate data from the smartphone and other mobile devices.[17]

### III. CONCLUSION

During global health crisis like this, it is important to the government to remember that human rights law still apply. Any abuse of power that threaten individual's right such as freedom of expression, freedom of association, and right to privacy is only going to cause public to disregard the government. It is important for the government to strict in line with Human Rights during this pandemic at any cost. As the most vulnerable rights to be violated, ensuring the right to privacy can be achieved by government transparency about how they collected and managed the data, the duration of the surveillance, how they protect the security of the collected data, and to ensure that collected data are uses for COVID-19 pandemic anticipation purposes only. The importance of protecting the human rights during time like this is to prevent the state's to disregard individual's rights by abuse of power.

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