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**SURVEILLANCE CAPITALISM AND AI: THE FUTURE OF INDIAN
PUBLIC HEALTHCARE AMONG EMERGING PRIVATISATION**

- Riddhi Dey¹

Abstract

Shushana Zuboff, a Harvard professor, in her book – “The Age of Surveillance Capitalism”, asserted the need to critically analyse a new economic order that extracts the lived experiences of humans in their life which is now intrinsically digital, as ‘free raw material for hidden commercial practices of extraction, prediction and sales’. In this incontrovertible profit-hungry world economy, surveillance-based ecosystems and use of artificial intelligence, has grappled its way to all sector of society and social institution, be it healthcare, finance, labour market or education. It’s inevitable and omnipresent and implausible to exist without partaking in a digitalised economy. In the west its growth has been substantial and dangerous; in the developed countries the progression has been slower but inescapable. India, a significant player in the global economy and tech-markets, is catching up to the new ways of digitalised living fast. Healthcare in India is at stage where the bridge between urban and rural areas is staggering, even in urban areas; the difference between affordability of better healthcare among different economic classes is atrocious. While privatisation can supposedly and theoretically have economic benefits that justifies its enforcement but the result is always exploitation and unethical practices throughout modern history. With surveillance capitalism as the new economic order, how it will affect the privatisation of healthcare with AI at its fingerprints is a matter of rigorous inter-disciplinary research. The paper contends to examine the current and future implication of AI in an environment of surveillance capitalism, focusing on public healthcare and existing laws that protect human rights. It’s an interdisciplinary approach of sociological and legal

¹ Student at ILS Law College, Pune

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understanding of public healthcare with privatisation as a measure. The research explores three broad questions, first, how Surveillance capitalism and AI governs social institutions like healthcare economy, second how public healthcare and human rights law correlates with privatisation and finally wrapping it all together, how surveillance capitalism via AI can affect the future of public healthcare and its laws, for better or for worse. There exists plethora of research on the legal implication of Indian public healthcare and its privatisation as well as AI's affect on it. This paper contributes to the existing knowledge by highlighting the fatalistic nature of AI within the theoretical framework of Surveillance Capitalism and how it will unavoidably affect public healthcare and the human rights in this era of privatisation. The qualitative and comparative method analysis with existing theorisation and information has been applied here as well as infusing interdisciplinary approach with doctrinal research.

KEYWORDS: Privatisation, Surveillance Capitalism, Healthcare, Human Rights, Artificial Intelligence

Introduction

George Orwell, in his celebrated novel '1984' coined the phrase- 'Big Brother is watching you'. It encapsulates the idea of constant surveillance and the pervasive control the party exerts over every aspect of life in the dystopian society. The omnipresent and omnipotent aspect of a higher power, be it a government or a system in place, like capitalist corporations, has a ubiquitous impact on every sector. This paper particularly navigates Public Healthcare in a theoretical background of Surveillance Capitalism². The term envisions the reality of the new economic system where personal data is commoditised to control people's behaviour on a macro-level and to engage in unethical profit-making. It has the capability to manipulate in its finger like a puppeteer, numerous socio-economic as well political institutions that govern our lives. As we navigate the uncharted territory of AI and surveillance, we are compelled to confront the prescient warnings of Orwell's prophetic utterance – "Big Brother is Watching You."

The intersection of healthcare and artificial intelligence (AI) is one of the most promising and transformative areas of technology today. AI has the potential to revolutionize healthcare by improving diagnostics, personalizing treatment, optimizing operations, and even predicting

² Shoshana Zuboff, *The Age of Surveillance Capitalism* (PublicAffairs, 1st Edition, 2019)

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and preventing disease. However, the integration of AI into healthcare also raises important ethical, privacy, and regulatory concerns. Surveillance, loss of privacy, and the possibility of systemic discrimination being perpetuated by these systems that a digital world can create is a plain attack on our Constitution and our fundamental rights. The Public Healthcare system currently in place in India faces insurmountable challenges in terms of infrastructure gaps, Human resources shortages as well poor accessibility, and equity. Privatization is one way out of it for certain classes of society, and with privatization and Neo-liberalism³ at work, digitalization of healthcare systems is inevitable. In theory, even capitalism was made appealing, capitalism was supposed to bring prosperity and not wealth-gap, exploitation of workers, or depletion of our natural resources, but that is the reality. This new order is “as significant a threat to human nature in the twenty-first century as industrial capitalism was to the natural world in the nineteenth and twentieth”⁴. How with this system in place, privatization of public healthcare will play out, not theoretically but practically is what this article explores. While we briefly look into other countries that faced adverse effects of digital healthcare systems operated by the big techs without much state regulation, we imagine its consequences on the Indian healthcare system. We imagine what human rights will further be violated due to this new system and provide a way forward, towards an ethical use of AI through a better legal system in place.

Towards an understanding of Surveillance Capitalism and AI

"The Age of Surveillance Capitalism" by Shoshana Zuboff explores the rise of a new economic system where personal data is commoditised and used to predict and shape human behaviour. Zuboff argues that this system, which she calls "surveillance capitalism," is fundamentally different from traditional capitalism. Instead of focusing on the production and exchange of goods, it centres on the extraction of personal data from individuals' online activities and experiences. Companies like Google, Facebook, and others harvest vast amounts of behavioural data from users, often without their explicit knowledge or consent. This data is then analysed using advanced algorithms and artificial intelligence to create detailed profiles and predict future behaviour. These predictions are sold to advertisers and other third parties who use them to target individuals with personalized content and ads.

³ Neoliberalism is contemporarily used to refer to market-oriented reform policies such as "eliminating price controls, deregulating capital markets, lowering trade barriers" and reducing, especially through privatization and austerity, state influence in the economy.

⁴ *ibid*

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Zuboff introduces the concept of "instrumentation power,"⁵ a form of control that relies on monitoring and influencing behaviour rather than direct coercion. This power allows tech companies to subtly shape individuals' choices and actions, often in ways that benefit the companies' bottom lines while eroding personal autonomy. The book also discusses the broader societal implications of surveillance capitalism, including its potential to undermine democracy. Zuboff warns that as a few powerful corporations gain unprecedented control over personal data and behaviour, they also gain the ability to influence price markets and demand, corporations thoroughly affect the economy as well as laws.

Artificial intelligence, like the 'Big Brother' in Orwell's literature⁶, has become omnipresent surveillance in our daily lives, the question remains "Whose?". It is everywhere, from the moment we open our eyes to the minute before we close them, its eerie presence in every part of life is inescapable. We were unaware of how, when, and at what exact moment all our personal, public, and social lives became enmeshed with artificial intelligence. While we are critical of the use of artificial intelligence, this author would never underestimate the beneficial characteristics of this technological marvel that can occur if used ethically. One just has to look at whether the benefits have the capability to outweigh the challenges, mostly the human rights issues.

In a world run by AI, the problems related to the design and nature of AI as well as the application of AI become substantial human rights issues. The issues include⁷-

- Lack of algorithmic transparency
- Cyber security vulnerabilities
- Unfairness, Bias, Discrimination
- Legal personhood Issues
- Privacy and Data Protection Issues
- Lack of accountability

These are just some of the basic problems that arise while dealing with AI, and these issues will be dealt with broadly in the context of Public Healthcare further.

⁵ ibid

⁶ George Orwell, *Nineteen Eighty-Four* (Secker & Warburg, 1949)

⁷ Rowena Rodrigues, *legal and human rights issues of AI: gaps, challenges and vulnerabilities*, Journal of Responsible Technology, 2020

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Before we dive into how Surveillance Capitalism and AI affect the domain of Public Healthcare, it is crucial to have an understanding of how these systems can govern our social institutions and affect fundamental legal rights. There are recent cases that call attention to this urgency, cases that highlight the breach of the right to privacy and AI's hunger to use massive personal data for machine learning. In the case of *Mutnick v. Clearview AI, et al*⁸. Clearview AI created a facial recognition database acquired from 3 billion photos of Americans from social media and other internet-based platforms like Venmo resulting in a class action suit. The plaintiff contended that without consent and knowledge, the facial recognition database was traded to over six hundred law enforcement agencies as well as private entities, their biometric data. The preliminary injunction of the use of those biometric data, monetary compensation as well as affirmation from Clearview to implement more resilient security measures were prayed for. In another class action suit, *Dinerstein V. Google*⁹, it was claimed that Google illegally procured hundreds of thousands of patients' medical files, breaching HIPAA¹⁰. The plaintiff claimed that Google employed these healthcare personal data for machine learning diagnostic and search algorithms to use for commercial purposes. Google, for this, partnered with a data-mining company called DeepMind as well as the University of Chicago and other healthcare systems. There have been countless lawsuits against various AI companies regarding privacy rights as well as some for intellectual property rights like copyright. Data collection and behavioural manipulation have moved beyond digital interactions to influence physical spaces and real-world behaviour¹¹. We humans, our needs and problems have become raw materials for big-tech companies to profit from, for them to manipulate our choices through our exorbitant digital dependence. Most of the time, we are unaware that our rights are being breached. However, when it comes to important spaces like healthcare, which is our basic human right in a democratic country, something that our government should ensure to each and every citizen, how AI will affect them positively and more so negatively is what this paper aspires to pen down.

Privatization of Public Healthcare and Human Rights Law

⁸*Mutnick v. Clearview AI, et al.*, 1:20-Cv-00512

⁹*Dinerstein v. Google*, 1:19-Cv-04311

¹⁰ The Health Insurance Portability and Accountability Act, 1996.

¹¹ *ibid*

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WHO defines the healthcare system as, “ all of the activities whose primary purpose is to promote restore or maintain health”. Thus apart from the apparent list, it also includes health-enhancing interventions like maintenance of roads or environmental safety efforts. To comprehend the healthcare system of any country, the ‘Iron-triangle of Healthcare’ is taken into consideration. The triangle consists of – Efficiency/ Cost Containment, High-Quality Care, and Patient Access¹². Balancing all three should be the goal of every government, however, no country provides equal attention to all three in order to form an equilateral triangle. India affronts challenges to pursue each of these three goals-

- Cost- Concerning this, seventy percent or more of all healthcare is financed out of pocket by the population, with little to no health insurance or accountability of providers. The thirty percent of the healthcare system financed by government sources lacks efficiency and people in general either can't access it or have significant scepticism of the public sector overall.¹³
- Quality- Treatments, providers, or medical products have hardly any regulation in terms of quality, wherein there is clear evidence of poor health outcomes among the Indian population. India's rank regarding life expectancy at birth or infant mortality is also low compared to other countries. In comparison to other developing countries as well India still is far behind.¹⁴
- Patient Access- India's most number of population resides outside of the cities where most healthcare facilities exist. The low-income families, marginalized groups, and women in rural areas are extremely detached from access to any kind of healthcare, even among different state variations in access exists. India has the largest share of the global burden of maternal deaths, neonatal deaths, under-vaccinated children, leprosy as well as tuberculosis.¹⁵

The public sector of healthcare is deplorable at best. The decentralized system of India's healthcare gets most of its help from the private sector, with a certain class of people (mostly upper class, upper middle, and occasionally middle-middle) having the privilege to access it.

¹² Lawton R.Burns, *India's Healthcare Industry: a system perspective*, University of Pennsylvania,(2014)

¹³ Bibek Debroy and Ajay Mahal, “Health Reform: A Historical Perspective and the Future.” In India Health Report 2010, edited by Ajay Mahal, Bibek Debroy, and Laveesh Bhandari, chapter 9. New Delhi: Business Standard Books,2010

¹⁴ Ajay Mahal and Victoria Fan, “*The Case for Improving Health in India.*” In India Health Report 2010, chapter 1,2010.

¹⁵ Laveesh Bhandari and Aali Sinha, “*Access to Healthcare.*” In India Health Report 2010, chapter 2,2011

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Privatization seems to be the only way when India barely spends 4% of GDP on healthcare. Even central and state governments account for little more than one-fourth of the total spent on healthcare¹⁶

Privatization of healthcare in India has resulted in a mixed landscape. While it has improved access to high-quality care for those who can afford it and contributed to medical advancements, it has also exacerbated health inequities, created a two-tiered healthcare system, and placed a significant financial burden on the poor. Balancing private sector efficiency with public sector equity and accessibility remains a critical challenge for India's healthcare system. Private healthcare institutions often provide better infrastructure, advanced technology, and a higher standard of care compared to many public hospitals. This has made high-quality healthcare more accessible to those who can afford it. However, The privatization of healthcare has increased the cost of medical services, making it difficult for low-income and rural populations to access quality care. Private healthcare providers are predominantly concentrated in urban areas, exacerbating the gap in healthcare access between urban and rural populations¹⁷. With the focus on private healthcare, the public healthcare system has often been underfunded and neglected. This has led to overcrowded, understaffed, and under-resourced public hospitals. This two-tier system has emerged where the wealthy access private care, while the poor are left with the underfunded public system, leading to inequities in healthcare outcomes. At best, healthcare privatization has rarely led to improvements in the quality of care. Outsourcing, though it may lower costs, often does so by sacrificing care quality. Overall, our review provides evidence that questions the rationale for healthcare privatization and concludes that there is limited scientific support for further privatization of healthcare services¹⁸.

The privatization of healthcare intersects with human rights in complex and often contentious ways. This dynamic raises critical questions about the right to health, equity in access, and the responsibilities of the state versus private entities. Here's a breakdown of the key issues¹⁹:

1. Right to Health

¹⁶ ibid

¹⁷ Benjamin Goodair, Aaron Reeves, *The effect of health-care privatisation on the quality of care*, Lancet Public Health 2024

¹⁸ Benjamin M. Hunter, et al, *Decentred regulation: The case of private healthcare in India*, Elsevier, 2022

¹⁹ ibid

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- **Universal Access:** The right to health is recognized as a fundamental human right in various international treaties, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Privatization can challenge this right if it leads to unequal access to healthcare services, particularly for marginalized populations.
- **State Responsibility:** Under human rights law, the state has an obligation to ensure that all individuals have access to necessary healthcare services. When healthcare is privatized, there is a risk that the state may abdicate some of its responsibilities, leading to gaps in coverage and access.

2. Equity and Access

- **Economic Barriers:** Privatization often results in increased costs for healthcare services, which can create significant barriers for low-income individuals and families. This undermines the principle of equity, a cornerstone of human rights, as those who cannot afford private care may be left without necessary medical services.
- **Disparities:** Privatization can exacerbate existing disparities in healthcare access, particularly between urban and rural areas, and between different socio-economic groups. This unequal access to healthcare services is a violation of the principle of non-discrimination in human rights.

3. Quality of Care

- **Profit Motive vs. Patient Care:** The profit-driven nature of private healthcare can sometimes lead to a focus on financial returns over patient care, potentially compromising the quality of services. This raises human rights concerns, as individuals have a right to receive adequate and appropriate medical treatment.
- **Accountability and Regulation:** Ensuring that private healthcare providers meet the necessary standards of care is crucial for protecting human rights. However, in some cases, insufficient regulation and oversight can lead to abuses, neglect, or exploitation.

4. Vulnerable Populations

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- Impact on Marginalized Groups: Privatization often disproportionately affects vulnerable groups, including the poor, elderly, and disabled, who may find it more difficult to access private healthcare services. This can lead to violations of their right to health and deepen social inequities.
- Public Health Services: The shift towards privatization can lead to underfunding of public health services, which are often the primary source of care for vulnerable populations. This reduction in public services can further marginalize these groups.

5.State's Role and Public Good

- Privatization vs. Public Interest: There is an ongoing debate about whether healthcare should be treated as a commodity or a public good. From a human rights perspective, healthcare should be universally accessible, with the state playing a key role in ensuring this access.
- Balancing Private and Public Interests: While the private sector can play a role in healthcare delivery, it is essential that privatization does not undermine the public interest. The state must ensure that private sector involvement aligns with human rights obligations, particularly the right to health.

6. Legal and Ethical Considerations

- International Human Rights Law: States are bound by international human rights law to respect, protect, and fulfil the right to health. Privatization must be carefully managed to ensure that it does not violate these legal obligations.
- Ethical Implications: The ethical implications of healthcare privatization include concerns about justice, equity, and the moral responsibility of the state to provide care for all citizens, regardless of their ability to pay.

The privatization of healthcare presents significant challenges to the protection and fulfilment of human rights, particularly the right to health. While privatization can bring efficiency and innovation, it can also lead to increased inequality, reduced access for vulnerable populations, and potential violations of human rights. Therefore, it is crucial that states carefully consider the human rights implications of healthcare privatization and ensure that any such initiatives are aligned with their obligations to provide equitable and accessible healthcare for all.

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In the historical and cultural context of India, shaping and limiting policy initiatives in healthcare includes the decreased focus on public health, the state's responsibility for health, and the existence of a two-tier system. This system divides the population, with the poor mainly using public and rural health facilities, while the urban middle and upper classes opt for private healthcare. Culturally, the healthcare system is influenced by the caste structure—Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Castes (OBCs)—which limits their access to urban and private healthcare. Additionally, only a select group of physicians are trained in and practice allopathic medicine, while others focus on traditional healing methods. Women's lower social status also restricts their access to healthcare. India's cultural practices, like extended festivals involving overeating, contribute to reduced access to healthcare providers during these times. Social and community networks, such as grandparents' involvement in family care and the use of family helpers (e.g., for dementia care), provide informal care systems that fill the gaps left by organized home health and long-term care services. These networks have also enabled the growth of voluntary insurance schemes, which have significantly expanded coverage for severe illnesses. Finally, environmental factors, like the high incidence of infectious diseases, have influenced governmental health policy since independence, leading to a focus on "vertical health programs" targeting specific diseases rather than adopting a comprehensive public health approach²⁰. Let's first have a brief of the current laws that exist in India regarding healthcare to understand how privatization can affect them.

India has a comprehensive set of public healthcare laws designed to regulate healthcare services, protect public health, and ensure citizens' rights. Although the Constitution does not explicitly mention the "right to health," it has been interpreted by the Supreme Court as part of the "right to life" under Article 21. Article 47 of the Directive Principles of State Policy directs the state to improve public health, nutrition, and living standards. Key policies like the National Health Policy (2017) aim for universal access to quality healthcare, emphasizing preventive care and improved infrastructure. Programs such as the National Rural Health Mission and National Urban Health Mission focus on equitable healthcare delivery for rural and urban populations, especially vulnerable groups. Regulatory laws like the Clinical Establishments (Registration and Regulation) Act, 2010, ensure standardization of healthcare facilities, while the Drugs and Cosmetics Act, 1940, oversees the safety and quality of

²⁰ *ibid*

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medicines. The Medical Termination of Pregnancy Act, 1971, provides a legal framework for safe abortion services.

Public health laws such as the Epidemic Diseases Act, 1897, grant the government powers to manage epidemics, as seen during the COVID-19 pandemic. Efforts to modernize this framework include the proposed Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism, and Disasters) Bill. Laws regulating healthcare professionals, such as the Indian Medical Council Act, 1956, and the Nursing Council Act, 1947, ensure standardized education and practices across medical, nursing, and dental fields. Social security and insurance schemes like the Employees' State Insurance Act, 1948, and Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana provide financial protection and access to healthcare for economically weaker sections of society. The Mental Healthcare Act, 2017, guarantees access to mental health services while protecting individuals from inhumane treatment. Similarly, the Rights of Persons with Disabilities Act, 2016, ensures non-discrimination and equal access to healthcare services for persons with disabilities.

Food safety and environmental health are also critical aspects of public health governance. The Food Safety and Standards Act, 2006, regulates the manufacture, distribution, and sale of food to ensure safety, while the Environment Protection Act, 1986, addresses environmental factors impacting public health. Together, these laws reflect India's commitment to addressing diverse health challenges and ensuring accessible, equitable healthcare for all citizens.

India's public healthcare laws provide a comprehensive framework aimed at regulating healthcare delivery, protecting public health, and ensuring that citizens have access to essential healthcare services. While the laws are broad and cover various aspects of healthcare, their effective implementation remains key to ensuring that the right to health is fully realized across the country. In development studies, the regulation of commercial activities in social sectors like healthcare has often focused on state legislation and the delegation of governance to self-regulating professions. However, in contexts where legislation is incomplete, enforcement is weak, and professional self-regulation is compromised, the "regulatory state" perspective may lead to the belief that such activities are "unregulated." By applying a broader definition of regulation, commonly used in other public policy and regulation studies, we argue that a wider range of actors engage in regulatory

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activities to serve their own constituencies' interests. These activities should be seen as part of a broader framework of regulatory capitalism, where regulation exists but is fragmented, uneven, and spread across multiple centres²¹.

How all of these issues and lack of implementation are played out in the context of the Digitalization of healthcare in a surveillance economy is a terrifying thought in a political climate like India's.

The Future Ahead: Privatization of Healthcare in a Surveillance Economy

The ethical implications of surveillance capitalism are profound. Issues of consent, data ownership, and the right to privacy are central to debates about how society should respond to this new economic model. While we have a plethora of laws in place, however laws that will target how big corporations will engage with our medical data and how biases will be tackled are still a big debate in any aspect where AI is used. AI has the potential to significantly improve healthcare in India by enhancing diagnostic accuracy, personalizing treatment, and increasing access to care, supposedly. However, addressing challenges related to data privacy, integration, and regulation is crucial for maximizing the benefits of AI while ensuring equitable and ethical use. As India continues to advance its digital health infrastructure, AI is likely to play an increasingly central role in shaping the future of healthcare in the country. In a country like India where corruption is so deeply pervasive that it can't be avoided, where even the laws can't help the citizens, where the judiciary is already over-burdened with millions of cases, how the positive side will ever outweigh the negative? To have a fair discussion let's first understand what is the negative and can be the positive with AI coming into our healthcare economy.

Artificial intelligence can potentially revolutionize Indian healthcare through diverse applications that enhance efficiency, accuracy, and accessibility. In diagnostics and imaging, AI algorithms analyse medical images such as X-rays, MRIs, and CT scans, helping detect abnormalities like tumours or fractures with high precision, while supporting the diagnosis of diseases such as tuberculosis, diabetic retinopathy, and cancer. Predictive analytics powered by AI predicts disease likelihood based on patient data and trends, facilitating outbreak management, chronic disease care, and personalized treatment strategies. AI also enables personalized medicine by creating tailored treatment plans using genetic, lifestyle, and

²¹ *ibid*

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medical history data, while accelerating drug discovery through the analysis of extensive datasets. In healthcare administration, AI automates tasks like appointment scheduling, data management, and billing, improving operational efficiency, while Chatbots and virtual assistants handle patient queries and initial consultations, easing the burden on healthcare providers. Telemedicine and remote monitoring are further enhanced by AI, with remote consultations benefiting from diagnostic support and wearable devices providing real-time health data, bridging the gap between urban and rural healthcare systems.

The integration of artificial intelligence (AI) in Indian healthcare holds immense potential to deliver significant benefits by improving access to care, enhancing diagnostic accuracy, reducing costs, and enabling personalized treatment. AI-driven telemedicine and diagnostic tools are bridging the healthcare divide between urban and rural areas, providing remote populations with access to advanced diagnostic and treatment options. By leveraging its analytical capabilities, AI improves diagnostic accuracy, minimizes human error, and expedites processes such as image analysis, resulting in faster and more effective treatments. The automation of administrative tasks reduces operational costs for healthcare providers, while early detection through predictive analytics facilitates timely intervention, lowering the long-term costs associated with advanced-stage disease management. Furthermore, AI enables the development of personalized treatment plans tailored to individual patient characteristics, including genetic, lifestyle, and medical history factors, ensuring more precise and targeted therapeutic outcomes. These advancements underscore AI's transformative potential in addressing the multifaceted challenges of Indian healthcare.

Challenges and Considerations that can arise-²²

Despite its transformative potential, the adoption of artificial intelligence (AI) in Indian healthcare is accompanied by several challenges that must be addressed to ensure equitable and effective implementation. The handling of sensitive patient data raises significant concerns about privacy and security, necessitating strict compliance with data protection regulations to maintain trust and confidentiality. Integrating AI into existing healthcare infrastructure poses compatibility challenges, requiring substantial investment and adaptation to align with current systems. Quality issues, including algorithm bias inherited from training data, can exacerbate disparities in healthcare delivery, emphasizing the need for fairness and

²² *ibid*

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accuracy in AI models. Additionally, the rapid pace of AI development often surpasses the establishment of regulatory frameworks, creating a gap in standards and guidelines essential for ensuring the safety and efficacy of AI applications. Finally, the successful deployment of AI tools requires extensive training and adaptation by the healthcare workforce, demanding time and resources to incorporate these technologies seamlessly into clinical workflows. Addressing these challenges is critical to harnessing AI's potential for improving healthcare outcomes in India. These are all the basics of the positive and negative, the complexity arises when one takes into account the implication of any regulation, the lobbying of big corporations that profit from this data extraction. The discrimination that will occur, apart from the obvious breach of the right to privacy would be thoroughly based on the classist and casteist nature of Indian society. The problem is that, more often than not in machine learning, these biases are enmeshed as they are fed into humans who inherit them systematically in the first place. In the healthcare system, which is getting privatized, where only a certain class of people can afford good healthcare, these systems of AI will further deepen the discrimination and the gap between the rich and the poor²³

In America, lawsuits regarding these issues are coming up where AI has been used. Insurers Humana, Cigna, and United Healthcare are facing class-action lawsuits from consumers and their estates, alleging that they use advanced technology to unjustly deny claims. These lawsuits come as Congress and the Biden administration work to create a legal framework for the growing role of artificial intelligence (AI) in healthcare. Ryan Clarkson, founder of Clarkson Law Firm, which is leading the lawsuits, noted that while AI is increasingly integrated into various aspects of life, regulatory and legislative efforts to manage its impact are lagging. Two of Clarkson's cases target technology used to make coverage decisions in Medicare Advantage plans. These plans are under scrutiny for their use of advanced approval processes, or "prior authorization," which often denies coverage that would typically be approved under traditional Medicare. Over 30 House Democrats have expressed concern that the problem has worsened due to the use of AI and algorithmic software by companies like naviHealth and CareCentrix to assist in these decisions²⁴

²³Vivek Krishnamurthy, AI and Human Rights Law, LexisNexis, 2021

²⁴ Ian Lopez, et al, AI Lawsuits Against Insurers Signal Wave of Health Litigation, Bloomberg Law(Feb.1 2024)

In India, there can be even worse conditions. AI systems rely on historical data to make predictions and recommendations. If the data reflects existing societal biases, including caste-based disparities, the AI can perpetuate or even exacerbate these biases. For example, if lower-caste populations have historically received poorer healthcare, AI systems trained on such data might make biased or less accurate recommendations for these groups. The availability of AI-powered healthcare technologies may not be evenly distributed. Lower-caste individuals in rural or economically disadvantaged areas might not have access to these advanced tools, reinforcing existing healthcare inequities. These are not only issues of caste but also gender and class. In India, while trans genders are getting somewhat token representation, their access to healthcare is still substandard at best. With privatization and the digitalization of healthcare, these deep issues in Indian society will eventually become much more systematic. Now the big companies can have access to data that is as big as the Indian population. We currently don't have any special legal framework that protects us against the evils of AI and the greed of the big corporations and the corruption that the Indian government has allowed in every sector. The future of whether AI in healthcare in these surveillance capitalism economies will be good or bad depends solely on our legal and justice system. If legislation makes stringent laws and has better regulation in the process, then positive results might be achieved otherwise our human rights will be gravely breached at every moment we access our right to health.

Conclusion

In conclusion, the intersection of surveillance capitalism and artificial intelligence presents profound challenges and opportunities, especially within the realm of public healthcare. Shoshana Zuboff's concept of surveillance capitalism underscores a troubling shift from traditional economic models to a system where personal data becomes a primary commodity, manipulated for profit and control. This shift, coupled with the pervasive reach of AI technologies, raises significant concerns about privacy, fairness, and the erosion of individual autonomy. In the context of public healthcare, the implications are particularly pressing. While AI holds the promise of enhancing diagnostic capabilities and improving patient care, it also poses risks related to privacy breaches, bias, and accountability. The challenge lies in harnessing the benefits of AI while safeguarding human rights and ensuring equitable access to healthcare services. Addressing these concerns requires a concerted effort from policymakers, technology developers, and civil society to create robust frameworks for data

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protection, algorithmic transparency, and ethical AI use. It is imperative to strike a balance between leveraging technological advancements for the public good and preserving the core values of privacy, fairness, and individual autonomy. Only through careful regulation and ethical practices can we hope to navigate the complex landscape of surveillance capitalism and AI, ensuring that these technologies serve the greater good without compromising fundamental human rights.

In a country like India, where systemic inequalities and corruption are entrenched, the introduction of AI could exacerbate these problems, reinforcing classist, casteist, and gender biases rather than alleviating them. The future impact of AI in Indian healthcare will largely depend on how these challenges are addressed through legislative and regulatory measures. Robust data protection laws, transparent AI practices, and equitable access to technology are crucial for ensuring that AI's benefits outweigh its potential harms. The effectiveness of these measures will determine whether AI can be harnessed to genuinely improve healthcare outcomes for all or whether it will perpetuate and even magnify existing inequities. The balance between leveraging AI's potential and safeguarding human rights will shape the future of healthcare in India, making it imperative to prioritize ethical considerations and equitable practices as this technology continues to evolve.

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