



Surveillance In India

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This article is based on **Surveillance reform is the need of the hour** which was published in The Hindu on 20/07/2021. It talks about the issues associated with the surveillance regime in India.

The **'Pegasus Project'** says that over 300 verified Indian mobile telephone numbers, including those used by ministers, opposition leaders, journalists, the legal community, businessmen, government officials, scientists, rights activists and others, were targeted using spyware made by the Israeli firm, NSO Group.

In India the government can surveillance through existing laws that offer impunity for surveillance. However, there are several issues associated with the surveillance regime.

Provisions For Surveillance in India

- The Indian government for surveillance relies on existing provisions of law under the **Indian Telegraph Act of 1885** and the **Information Technology (IT) Act of 2000**.
- These provisions are problematic and offer the government total opacity in respect of its interception and monitoring activities.
- While the provisions of the Telegraph Act relate to telephone conversations, the IT Act relates to all communications undertaken using a computer resource.
- Section 69 of the IT Act and the Interception Rules of 2009 are even more opaque than the Telegraph Act, and offer even weaker protections to the surveilled.
- No provision, however, allows the government to hack the phones of any individual since hacking of computer resources, including mobile phones and apps, is a criminal offence under the IT Act.
- Nonetheless, surveillance itself, whether under a provision of law or without it, is a gross violation of the fundamental rights of citizens.

Impacts of Surveillance

- **Threat to Press Freedom:** Surveillance affects press freedom. In 2019, similar allegations were made about the use of Pegasus against journalists and human rights activists.
 - The **World Press Freedom Index** produced by Reporters Without Borders has ranked India 142 out of 180 countries in 2021. The press requires greater protections on speech and privacy.
 - **Privacy and free speech are what enable good reporting.** They protect journalists against threats of private and governmental reprisals against legitimate reporting.
- **Against Right to Privacy:** The very existence of a surveillance system impacts the right to privacy and the exercise of freedom of speech and personal liberty under **Articles 19 and 21 of the Constitution**, respectively.
 - The fear of citizens knowing that their email is being read by the government may impact their ability to express, receive and discuss unorthodox ideas.
 - In the absence of privacy, the safety of journalists, especially those whose work criticises the government, and the personal safety of their sources is jeopardised.
- **Authoritarian Regime:** The surveillance promotes spread of authoritarianism in the government functioning since it allows the executive to exercise a disproportionate amount of power on the citizen and impacts their personal lives.
- **Against Due Process:** Surveillance, when carried out entirely by the executive, curtails **Articles 32 and 226 of the Constitution** as it happens in secret.

Thus, the affected person is unable to show a breach of their rights. This **violates not only the ideals of due process and the separation of powers** but also goes **against the requirement of procedural safeguards** as mandated in **K.S. Puttaswamy v. Union of India (2017)**.

Way Forward

- **Oversight By Judiciary:** In order to satisfy the ideal of “due process of law”, to maintain an effective separation of powers and to fulfill the requirements of procedural safeguards and natural justice, there needs to be judicial oversight.
 - Only the judiciary can be competent to decide whether specific instances of surveillance are proportionate, whether less onerous alternatives are available, and to balance the necessity of the government’s objectives with the rights of the impacted individuals.
 - The need for judicial oversight over surveillance systems in general, and judicial investigation into the Pegasus hacking in particular, is also essential because the leaked database of targeted numbers contained the phone number of a sitting Supreme Court judge, which further calls into question the independence of the judiciary in India.

- **Surveillance reform is the need of the hour** in India as a comprehensive reform of the surveillance framework is long overdue.

Not only are existing protections weak but the **proposed legislation** related to the **personal data protection** of Indian citizens fails to consider surveillance while also providing wide exemptions to government authorities.

- There needs to be **greater transparency in the system** as in the current system, Government agencies are not accountable to anyone other than the government itself.
- The current debate, therefore, is not only about **'whether surveillance at all'**, but about **'how, when, and what kind of surveillance'**.
- If the goal eg. protecting national security can be achieved by a smaller infringement upon fundamental rights, then the government is Constitutionally bound to adopt the method that does, indeed, involve minimal infringement.
- Reforms in the Indian surveillance regime should incorporate **ethics of surveillance** which considers the moral aspects of how surveillance is employed.

Conclusion

This is also the right time across the world, there is an increasingly urgent debate about how to protect basic rights against encroachment by an aggressive and intrusive state, which wields the rhetoric of national security like a sword.

Drishti Mains Question

Surveillance whether under a provision of law or without it, is a gross violation of the fundamental rights of citizens. Comment
