Surveillance Laws in India and Privacy

Why in News

Recently, a global collaborative investigative effort has revealed that, at least 300 **individuals in India, were potentially identified for targeted surveillance** using sophisticated **spyware called** Pegasus**.** However, the government has claimed that all interception in India takes place lawfully.

- Communication surveillance in India takes place primarily under **two laws** - the **Telegraph Act, 1885 and the Information Technology Act, 2000.**
- While the **Telegraph Act deals with interception of calls**, the **IT Act was enacted to deal with surveillance of all electronic communication.**

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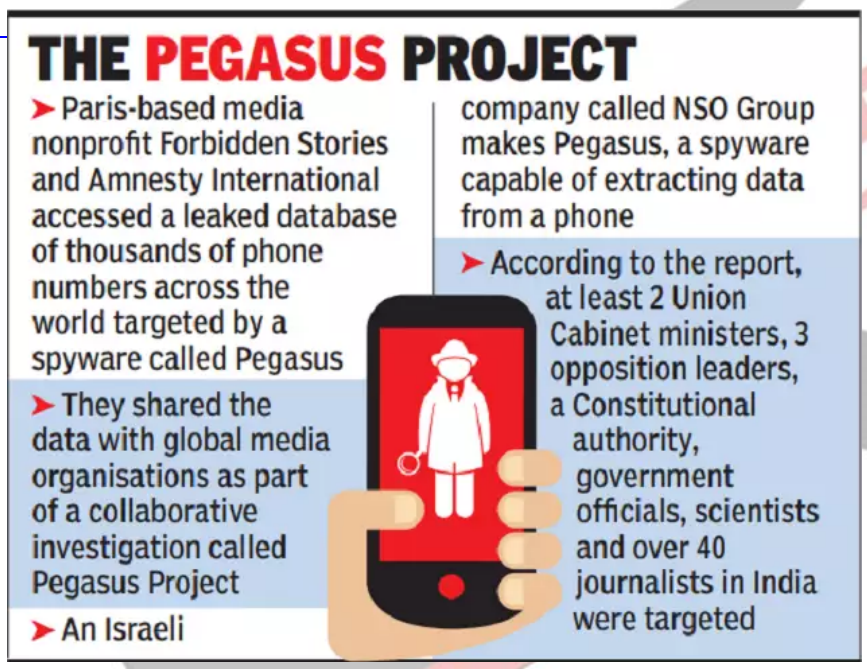

Key Points

- **Telegraph Act:**
  - Under **Section 5(2) of this law**, the government can intercept calls only in certain situations:
    - Interests of the sovereignty and integrity of India,
    - Security of the state,
    - Friendly relations with foreign states or public order,
    - Preventing incitement to the commission of an offence.
  - These are the same restrictions imposed on free speech under **Article 19(2) of the Constitution.**

    - However, these restrictions can be imposed only when there is a **condition precedent** - the **occurrence of any public emergency, or in the interest of public safety.**
    - Further, the grounds of selecting a person for surveillance and extent of information gathering has to be **recorded in writing.**
    - This lawful interception **cannot take place against journalists.**
        - Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government, unless their transmission has been prohibited under this subsection.
    - **Supreme Court Intervention:** In ***Public Union for Civil Liberties v Union of India (1996)***, the SC pointed out lack of procedural safeguards in the provisions of the Telegraph Act and laid down following observations:
        - Tapping is a **serious invasion of an individual's privacy.**
        - It is no doubt correct that every Government exercises some degree of surveillance operation as a **part of its intelligence** outfit but at the same time **citizen's right to privacy has to be protected.**
    - **Sanction for Interception:** The abovementioned Supreme Court's observations formed the basis of **introducing Rule 419A** in the Telegraph Rules in 2007 and later in the rules prescribed under the IT Act in 2009.
        - Rule 419A states that a **Secretary to the Government of India (not below the rank of a Joint Secretary)** in the Ministry of Home Affairs can pass orders of interception in the case of Centre, and similar provisions exist at the state level.
- **IT Act, 2000:**
    - **Section 69 of the Information Technology Act and the Information Technology (Procedure for Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009** were enacted to further the legal framework for electronic surveillance.
    - However, the scope of **Section 69 the IT Act** is much broader and vague than the Telegraph Act as the only condition precedent for engaging electronic surveillance is for the **"investigation of an offence".**
    - These provisions are problematic and offer the **government total opacity in respect of its interception and monitoring activities.**
- **Associated Issues with the Surveillance:**
    - **Legal Loopholes:** According to the Centre for Internet & Society, the **gaps in laws allow surveillance and affect privacy.** For example:
        - **Ambiguity on issues** like type of interception, granularity of information that can be intercepted and the **degree of assistance from service providers** helps in bypassing the law and aids surveillance by the state.
    - **Affects Fundamental Rights:** The very existence of a surveillance system impacts the right to privacy (held by the SC in K.S. Puttaswamy v. Union of India case, 2017**)** and the exercise of freedom of speech and personal liberty under **Articles 19 and 21 of the Constitution.**
    - **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.
    - **Threat to Freedom of Press:** Current revelations over the use of Pegasus highlights that surveillance was also conducted on many journalists. This affects freedom of press.

Way Forward

- There is a need for reforms in the Indian surveillance regime, which should incorporate **ethics of surveillance** and considers the moral aspects of how surveillance is employed.
- In this context, there is a need for a holistic debate before the **Personal Data Protection (PDP) Bill, 2019** is enacted.
- So that the law can be tested against the **cornerstone of fundamental rights** and **growth of**

the digital economy and security of the country can be balanced.

Source: IE