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Pegasus Revelations - Need for Surveillance Reforms

What is the issue?

- At least a 1,000 Indian phone numbers are in a list of potential targets of surveillance using the [Pegasus spyware](#) sold by Israeli company the NSO Group.
- This necessitates a relook into India's surveillance laws and agencies.

Why are the revelations so significant?

- There are legal provisions for intercepting communication and accessing digitally stored information.
- This is allowed in the interests of national security and public safety.
- But the capture of a handheld device by Pegasus turns that into a real-time spy on the target.
- The potential targets include journalists, politicians, probably a Supreme Court judge and a former Election Commissioner.
- This does not indicate that the surveillance was necessitated by national security or public safety concerns.

What should the government have done?

- Indian citizens were indeed targets of a vicious and uncivil surveillance campaign.
- The evidence is strong, and the credibility of these revelations is extremely high.
- The 'by whom?' with the revelations of these extensive surveillance is still uncertain.
- But signs point to the Indian government.
- The Government of India (GoI) should have come clean and explained what it intends to do to protect citizens.
- But instead, the GoI has fallen back on a disingenuous claim that no illegal surveillance is possible in India.

What is the complexity with surveillance?

- One cannot enjoy the liberties provided under the Constitution without national security.
- And a small amount of surveillance is necessary for national security.
- But national security is not meaningful if it comes at the cost of the very liberties.
- Excessive and unaccountable surveillance shatters the bedrock of the rule of law upon which a constitutional liberal democracy is built.
- There are numerous examples of surveillance powers being misused for personal and political gain, and to harass opponents.

What are the earlier instances of unlawful surveillance?

- In 2012 in Himachal Pradesh, the new government raided police agencies.
- It recovered over a lakh phone conversations of over a thousand people.
- These were mainly political members, and many senior police officials.
- In 2013, India's current Home Minister Amit Shah was embroiled in a controversy dubbed "Snoopgate."
- Phone recordings alleged to be of him speaking to the head of an anti-terrorism unit were found.
- It was in relation to a covert surveillance on a young architect and her family members without any legal basis
- In 2009, the UPA government swore in an affidavit in the Supreme Court that the CBDT had placed Niira Radia, a well-connected PR professional, under surveillance due to fears of her being a foreign spy.
- Yet, while they kept her under surveillance for 300 days, they did not prosecute her for espionage.
- Non-state actors such as the Essar group, have also been shown to engage in illegal surveillance.
- Despite such numerous examples, there are few examples of people being held legally accountable for unlawful surveillance.

What are the concerns with laws in place?

- Currently, the laws authorizing interception and monitoring of communications are:
 - i. Rule 419A of the Telegraph Rules
 - ii. the rules under Sections 69 and 69B of the IT Act
 - iii. Section 92 of the CrPC (to seek the call records from above provisions)
- **Shortfalls** - It is unclear when the Telegraph Act applies and when the IT Act applies.
- A limited number of agencies are provided powers to intercept and monitor.
- It is also unclear which entities count as intelligence and security agencies.

- Further, there are programmes such as CMS, TCIS, NETRA, CCTNS, and so on.
- [Content management system; Telephone Call Interception System; Network TRaffic Analysis; Crime and Criminal Tracking Network and Systems]
- But none of them has been authorised by any statute.
- They thus fall short of the 2017 K.S. Puttaswamy judgment.
- [The judgement clarified that any invasion of privacy could only be justified if it satisfied three tests:
 1. the restriction must be by law
 2. it must be necessary (only if other means are not available) and proportionate (only as much as needed)
 3. it must promote a legitimate state interest (e.g., national security)]
- In 2018, the Srikrishna Committee on data protection noted that post the K.S. Puttaswamy judgment, most of India's intelligence agencies are "potentially unconstitutional."
- Because they are not constituted under a statute passed by Parliament.

What are the key priorities now?

- Unlawful and unrestrained surveillance is antithetical to the basic creed of democracy.
- There is a need for reworking on the international regulation of unaccountable sale of spyware by shadowy entities such as the NSO Group.
- While this is true, it is equally important to ensure that surveillance in India is made more accountable.
- The truth about these revelations must be unearthed through an investigation.
- This could be by a Joint Parliamentary Committee or by the Supreme Court or any other credible mechanism.
- A starting point for the Government must be in clarifying the foremost question: Has any Indian agency bought Pegasus?
- In the long term, intelligence gathering needs to be professionalised, parliamentary oversight introduced, and liberties and law protected.

Source: The Hindu



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