MHA Notification on Computer Surveillance – II

Click **here** to know more on the issue

\n\n

What is the stand of the government?

\n\n

\n
- Ministry of Home Affairs (MHA) recently authorised 10 Central agencies to intercept, monitor, and decrypt online communications and data.
\n
- The notification was described as an incremental step towards a surveillance state by many experts.
\n
- However, the government defended that the notification created no new powers of surveillance.
\n
- It was only issued under the Information Technology Rules sanctioned in 2009.
\n
- It further mentioned that every specific surveillance requests had to be authorised by the MHA in accordance with law.
\n

\n\n

What are the concerns?

\n\n

\n
- The existing surveillance framework is carried out by -
\n

\n\n

\n
1. Telephone surveillance is sanctioned under the 1885 Telegraph Act (and its rules)
\n
2. Electronic surveillance is authorised under the 2000 Information Technology

Act (and its rules)
\n

\n\n

\n

- **Bureaucratisation** - Under both these acts, surveillance requests have to be signed off by an official who is at least at the level of a Joint Secretary.
\n
- However, these decisions about surveillance are taken by the executive branch (including the review process), with no parliamentary or judicial supervision.
\n
- **Opacity** - An individual will almost never know that he/she is being under surveillance.
\n
- Thus, finding out about surveillance and then challenging it before a court, is a near-impossibility.
\n
- **Vagueness** - The surveillance regime is vague and ambiguous which includes very wide phrases such as “friendly relations with foreign States” or “sovereignty and integrity of India”.
\n
- **Faster clearance** - There is almost no information available about the bases on which surveillance decisions are taken, and how the legal standards are applied.
\n
- A 2014 RTI request revealed that, on an average, 250 surveillance requests are approved every day.
\n
- This shows that approvals are being cleared without an independent application of mind.
\n

\n\n

What should be done?

\n\n

\n

- The right to privacy is not absolute and hence surveillance is essential to ensure national security and pre-empt terrorist threats.
\n
- However, there must be a parliamentary oversight over the surveillance agencies that conduct surveillance.
\n

- All surveillance requests must necessarily go before a judicial authority, which can apply an independent legal mind to the merits of the request.
  \n
- Every surveillance request must mandatorily specify a probable cause for suspicion and the proposed target of surveillance.
  \n
- Also, evidence obtained through unconstitutional surveillance must be statutorily stipulated to be inadmissible in court.
  \n
- Also, surveillance requests can be subject to judicial review, provided a lawyer to present the case on behalf of the target of surveillance.
  \n
- The Right to privacy judgment has taken a firm stand on the side of fundamental rights.
  \n
- Citizens' initiatives such as the Indian Privacy Code have also proposed legislative models for surveillance reform.
  \n
- Thus, it is right time for the parliament to take these measures forward and ensure a balance between security of the state and privacy of the individual.
  \n

\n\n

\n\n

Source: The Hindu

\n

