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, iIntelligence gathering needs to be professionalised, parliamentary oversight introduced, and liberties and law protected.

Source: The Hindu