



The case against surveillance

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The case against surveillance-Regardless of which government enhanced powers of surveillance, reform is long overdue

- Last week, a Ministry of Home Affairs (MHA) notification authorising 10 Central agencies to intercept, monitor, and decrypt online communications and data caused a furore in both Parliament and the wider civil society.
- The notification was described as an incremental step towards a surveillance state.
- The government's defence was equally swift: it protested that the notification created no new powers of surveillance.
- But whatever one makes of the government's defence, the MHA notification lays bare the lopsided character of the surveillance framework in India, and highlights an urgent need for comprehensive reform.

The problem

- The existing surveillance framework is complex and confusing.
- There are three features about the current regime.
- First, it is bureaucratised.
- Second, the surveillance regime is vague and ambiguous.
- Third, and flowing from the first two features, the regime is opaque.

The illusion of a trade-off

- To arguments such as these, there is a stock response: the right to privacy is not absolute.
- Surveillance is essential to ensure national security and pre-empt terrorist threats, and it is in the very nature of surveillance that it must take place outside the public eye.
- Consequently, the regime is justified as it strikes a pragmatic balance between the competing values of privacy and security.
- This is a familiar argument, but it must be examined more closely.

- First, let us clear a basic misconception: it is nobody's case that privacy is absolute.
- The debate, therefore, is not about 'whether surveillance at all', but about 'how, when, and what kind of surveillance'.
- In this context, the evidence demonstrates clearly that a heavily bureaucratised and minimally accountable regime of surveillance does nothing to enhance security, but does have significant privacy costs.
- Indeed, such a system often has counterproductive effects: a government that is not checked in any meaningful way will tend to go overboard with surveillance and, in the process, gather so much material that actually vital information can get lost in the noise.
- In the famous 'privacy-security trade-off', therefore, it is exceedingly important to assess the balance on the basis of constitutional principles and fundamental rights, rather than blindly accepting the government's rhetoric of national security.
- Under these parameters, there is little doubt that on the three counts described above — its bureaucratic character, its vagueness, and its opacity — the existing surveillance framework is unconstitutional, and must be reconsidered.
- To start with, it is crucial to acknowledge that every act of surveillance, whether justified or not, involves a serious violation of individual privacy; and further, a system of government surveillance has a chilling effect upon the exercise of rights, across the board, in society.
- Second, judicial review will not achieve much if the grounds of surveillance remain as broad and vaguely worded as they presently are.
- Therefore, every surveillance request must mandatorily specify a probable cause for suspicion, and also set out, in reasonably concrete terms, what it is that the proposed target of surveillance is suspected of doing.

Root and branch

- To implement the suggestions above will require a comprehensive reform of the surveillance framework in India.
- Citizens' initiatives such as the Indian Privacy Code have also proposed legislative models for surveillance reform.