

MHA Notification on Computer Surveillance - II

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What is the stand of the government?

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- Ministry of Home Affairs (MHA) recently authorised 10 Central agencies to intercept, monitor, and decrypt online communications and data.

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- The notification was described as an incremental step towards a surveillance state by many experts.

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- However, the government defended that the notification created no new powers of surveillance.

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- It was only issued under the Information Technology Rules sanctioned in 2009.

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- It further mentioned that every specific surveillance requests had to be authorised by the MHA in accordance with law.

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What are the concerns?

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- The existing surveillance framework is carried out by -

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1. Telephone surveillance is sanctioned under the 1885 Telegraph Act (and its rules)

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2. Electronic surveillance is authorised under the 2000 Information Technology

Act (and its rules)

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- **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.

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- However, these decisions about surveillance are taken by the executive branch (including the review process), with no parliamentary or judicial supervision.

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- **Opacity** - An individual will almost never know that he/she is being under surveillance.

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- Thus, finding out about surveillance and then challenging it before a court, is a near-impossibility.

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- **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”.

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- **Faster clearance** - There is almost no information available about the bases on which surveillance decisions are taken, and how the legal standards are applied.

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- A 2014 RTI request revealed that, on an average, 250 surveillance requests are approved every day.

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- This shows that approvals are being cleared without an independent application of mind.

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What should be done?

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- The right to privacy is not absolute and hence surveillance is essential to ensure national security and pre-empt terrorist threats.

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- However, there must be a parliamentary oversight over the surveillance agencies that conduct surveillance.

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- All surveillance requests must necessarily go before a judicial authority, which can apply an independent legal mind to the merits of the request.
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- Every surveillance request must mandatorily specify a probable cause for suspicion and the proposed target of surveillance.
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- Also, evidence obtained through unconstitutional surveillance must be statutorily stipulated to be inadmissible in court.
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- Also, surveillance requests can be subject to judicial review, provided a lawyer to present the case on behalf of the target of surveillance.
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- The Right to privacy judgment has taken a firm stand on the side of fundamental rights.
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- Citizens' initiatives such as the Indian Privacy Code have also proposed legislative models for surveillance reform.
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- 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.
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Source: The Hindu

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