

## SURVEILLANCE FRAMEWORK IN INDIA

**GS 2, MAINS:** Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

The existing surveillance framework is complex and confusing. Two statutes control the field: telephone surveillance is sanctioned under the 1885 Telegraph Act (and its rules), while electronic surveillance is authorised under the 2000 Information Technology Act (and its rules). The procedural structure in both cases is broadly similar, and flows from a 1997 Supreme Court judgment: surveillance requests have to be signed off by an official who is at least at the level of a Joint Secretary.

### FEATURES ABOUT THE CURRENT REGIME:

- It is bureaucratised. Decisions about surveillance are taken by the executive branch (including the review process), with no parliamentary or judicial supervision; indeed, the fact that an individual will almost never know that she is being surveilled means that finding out about surveillance, and then challenging it before a court, is a near-impossibility.
- The surveillance regime is vague and ambiguous. Under Section 69 of the IT Act, the grounds of surveillance have been simply lifted from Article 19(2) of the Constitution, and pasted into the law. They include very wide phrases such as “friendly relations with foreign States” or “sovereignty and integrity of India”.
- The regime is opaque. There is almost no information available about the bases on which surveillance decisions are taken, and how the legal standards are applied. Indeed, evidence seems to suggest that there are none: a 2014 RTI request revealed that, on an average, 250 surveillance requests are approved every day. It stands to reason that in a situation like this, approval resembles a rubber stamp more than an independent application of mind.

### ARGUMENT THAT THE EXISTING SURVEILLANCE FRAMEWORK IS UNCONSTITUTIONAL:

- 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. 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.
- After the Supreme Court’s 2017 judgment in *K.S. Puttaswamy v. Union of India* (‘the right to privacy case’), it is clarified that any impingement upon the right to privacy must be proportionate. One of the factors of the proportionality standard is that the government’s action must be the least restrictive method by which a state goal is to be realised.

- It is crucial to acknowledge that every act of surveillance, whether justified or not, involves a serious violation of individual privacy. Consequently, there must be parliamentary oversight over the agencies that conduct surveillance. They cannot simply be authorised to do so through executive notifications. And equally important, all surveillance requests must necessarily go before a judicial authority, which can apply an independent legal mind to the merits of the request, in light of the proportionality standards.
- 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. As a corollary, evidence obtained through unconstitutional surveillance must be statutorily stipulated to be inadmissible in court.
- This too will be insufficient if surveillance requests are unopposed — it will be very difficult for a judge to deny a request that is made behind closed doors, and with only one side presenting a case. There must exist, consequently, a lawyer to present the case on behalf of the target of surveillance — even though, of course, the target herself cannot know of the proceedings.

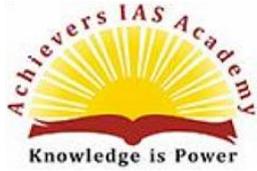
## **WAY FORWARD:**

To implement the suggestions above will require a comprehensive reform of the surveillance framework in India. Such a reform is long overdue. This is also the right time: across the world, there is an increasingly urgent debate about how to protect basic rights against encroachment by an aggressive and intrusive state, which wields the rhetoric of national security like a sword. In India, we have the Supreme Court's privacy judgment, which has taken a firm stand on the side of rights. Citizens' initiatives such as the Indian Privacy Code have also proposed legislative models for surveillance reform. We now need the parliamentary will to take this forward.

**Q. Discuss the problems inherent with the existing surveillance framework of India, and suggest reforms.**

## **PREVIOUS YEARS UPSC MAINS QUESTIONS:**

- To enhance the quality of democracy of India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful? (2017)
- Is the national commission for women able to strategize and tackle the problems that women face at both public and private spheres? (2017)
- Initially Civil services in India were designed to achieve the goals of neutrality and effectiveness, which seems to be lacking in the present context. Do you agree with the view that drastic reforms are required in Civil Services? Comment. (2017)



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- “Traditional bureaucratic structure and culture have hampered the process of socio-economic development in India.” Comment. (2016)
- Public health system has limitation in providing universal health coverage. Do you think that private sector can help in bridging the gap? What other viable alternatives do you suggest? (2015)
- For achieving the desired objectives, it is necessary to ensure that the regulatory institution remain independent and autonomous. Discuss in the light of experiences in recent past. (2015)
- Has the Cadre based Civil Services organization been the cause of slow change in India? Critically examine. (2014)
- Two parallel run schemes of the Government, viz the Adhaar Card and NPR, one as voluntary and the other as compulsory, have led to debates at national levels and also litigations. On merits, discuss whether or not both schemes need run concurrently. Analyse the potential of the schemes to achieve developmental benefits and equitable growth. (2014)
- Electronic cash transfer system for the welfare schemes is an ambitious project to minimize corruption, eliminate wastage and facilitate reforms Comment. (2013)
- A national Lokpal, however strong it may be, cannot resolve the problems of immorality in public affairs.’ Discuss. (2013)