

# **The Pegasus Spyware Attack on Indian Citizens**

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## **INTRODUCTION**

To begin with, spyware is a software that can meticulously enter your electronic devices like computers, laptops or phones and steal all the information stored in there and transfer it to a third party without your consent. The Pegasus spyware is one such very strong virus that has been developed by the NSO Group, an Israeli technology firm.<sup>1</sup>

A recent investigation by the name “The Pegasus Project” carried out by Amnesty International, a non-governmental organization campaigning to end abuses of human rights, revealed that around 50000 phone numbers were targeted in the recent Pegasus spyware attack out of which around 300 numbers were that of Indian citizens including lawyers, judges, journalists, social activists and businessmen.<sup>2</sup>

However, the NSO Group has denied the allegations saying that it is responsible for putting on surveillance the phones of these Indians and has claimed that it provides this spyware only to the authorized government agencies of different countries so that they can improve their national security by keeping tabs on criminals and terrorists to combat terrorism and other serious crimes.<sup>3</sup>

## **THE ROLE OF THE INDIAN GOVERNMENT**

If we look at the category of people that have been targeted in India, it includes those personalities who have been playing an instrumental role in bringing to light the working of the government, talking about the areas it lacks in and ultimately working towards making every person an informed citizen.

The data breach happened majorly during 2017-19 and included Mr. Rahul Gandhi, a member of the opposition party, Mr. Ashok Lavasa, former Chief Election Commissioner

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<sup>1</sup> ETtech Explainer: What is Pegasus spyware and how it works, The Economic Times, July 21, 2021, <https://economictimes.indiatimes.com/tech/trendspotting/what-is-pegasus-spyware-and-how-it-works/articleshow/84607533.cms>.

<sup>2</sup>*Id.*

<sup>3</sup> Kritika Bansal, Pegasus Spyware Report: Israeli Firm NSO Says Allegations of Govt Snooping Far From Reality, News India.com, July 19, 2021 10:31 AM IST, <https://www.india.com/news/india/pegasus-spyware-report-israeli-firm-nso-says-allegations-of-govt-snooping-far-from-reality-4825386/>.

(CIC) of India who had previously called out the Modi government for not being compliant with the norms set up by the Election Committee during the 2019 general election. It also involved the data breach of former Chief Justice of India, Mr. Ranjan Gogoi's staff member and his family who had accused him of sexual harassment in 2019, however, the in house committee of the Supreme Court did not find any substance in the allegations contained in the complaint.<sup>4</sup> Such trends show that the Central Government might have had ulterior motives if it did participate in this scandal. And is somehow aiming to take away the citizen's freedom of speech and expression which is a fundamental right guaranteed by the Indian constitution.

Mr Amit Shah, the Union Home Minister of India and a close aide of the Prime Minister replied to the allegations on the government saying that the Pegasus Project report published by the "disruptors" was timed to help the "obstructors" in the Parliament as it began its monsoon session. Referring to "disruptors" as those who don't want India to progress and "obstructions" as those people in Indian politics who don't wish to see India progress.<sup>5</sup>

## **RELATED LEGAL FRAMEWORK**

As per Sec. 43 of the Information Technology Act, 2000, (*hereinafter* referred to as the IT Act) any person, who without consent intrudes and steals the information stored in a person's device, is liable to pay compensation to that person, not exceeding one crore rupees, in such a scenario it is considered a civil offence.<sup>6</sup>

Sec. 66 of the IT Act, 2000 talks about hacking with computer systems, that when done with the knowledge that it will likely cause harm to the public, is punishable with imprisonment or fine or both, which essentially means it's a crime.<sup>7</sup>

For the government, there are legal provisions for intercepting calls and accessing digitally stored information without any judicial oversight in the interests of national security and public safety. This is provided under Sec.69 of the IT Act. However, in the present case, it is evident that some of those who were under surveillance posed no threat to public security, so the intrusion into their electronic devices can't be justified by the government.<sup>8</sup>

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<sup>4</sup> Bilal Kuchay, India's PM Modi accused of 'treason' over Pegasus spyware scandal, Aljazeera, July 20, 2021, <https://www.aljazeera.com/news/2021/7/20/pegasus-project-india-modi-treason-spyware-snooping-scandal>.

<sup>5</sup> *Id.*

<sup>6</sup> Information Technology (IT Act), Sec.43, No. 21 of 2000.

<sup>7</sup> Information Technology act, Sec 66, No. 21 of 2000.

<sup>8</sup> Information Technology act, Sec 69, No. 21 of 2000.

In the landmark judgement of *KS Puttaswamy v. Union of India*, it was upheld that the right to privacy is a fundamental right under Articles 14, 19 and 21 of the Indian constitution. It was further held provided that any surveillance conducted by the state should be reasonable, proportionate and necessary.<sup>9</sup> But the current case of Pegasus spyware surveillance does not confirm these preset conditions. The Personal Data Protection Bill that was introduced in the Lok Sabha in 2019 (it has not been passed yet), does not contain any rules relating to surveillance and it does not lie in its ambit.<sup>10</sup>

## **OTHER DATA BREACHES THAT HAVE HAPPENED IN 2021**

- In February 2021, Air India notified its passengers that it had become a victim of a major cyber-attack that compromised the personal details of around 45 lakh passengers registered between 26<sup>th</sup> August 2011 to 20<sup>th</sup> February 2021 that included their names, passport number, address and even their credit card information.<sup>11</sup>
- In May 2021, a hacker allegedly got into the food chain, Domino's pizza's data storage system and leaked the personal information of around 18 crore customers on the dark web. However, the customers' financial information was not exposed because of it.<sup>12</sup>
- Another incident of mass data leak that grabbed everyone's attention was that of the social media giant Facebook. It compromised the data of around 60 Lakh Indian users. This breach reportedly happened in 2019 but came to light only in 2021 and Facebook claimed that it fixed the issue in 2019 itself. However, many feel that it was the responsibility of the company to have informed them about such a breach as soon as it happened.<sup>13</sup>

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<sup>9</sup>Justice K.S.Puttaswamy(Retd) vs Union Of India, (2017) 10 SCC 1 (INDIA).

<sup>10</sup>The Personal Data Protection Bill, 2019, Ministry: Law and Justice, <https://prsindia.org/billtrack/the-personal-data-protection-bill-2019>.

<sup>11</sup>Pranav Mukul, Explained: What is the Air India data breach that has hit its customers?, The Indian Express, May 27, 2021, <https://indianexpress.com/article/explained/air-india-sita-data-breach-explained-7325501/>.

<sup>12</sup>Domino's India data breach: Name, location, mobile, number, email of 18 crore orders up for sale on dark web, Firstpost, May 25, 2021, <https://www.firstpost.com/tech/news-analysis/dominos-india-data-breach-name-location-mobile-number-email-of-18-crore-orders-up-for-sale-on-dark-web-9650591.html>.

<sup>13</sup>Facebook data leak includes personal info of 6 million users in India, the story so far, India Today, April 5, 2021, <https://www.indiatoday.in/technology/news/story/facebook-data-leak-includes-personal-info-of-6-million-users-in-india-the-story-so-far-1787186-2021-04-05>.

- Mr. Rajshekhar, a cybersecurity analyst, revealed that the data of around 9.9 crores Mobikwik users got hacked and leaked online. However, Mobikwik refuted any such claims saying it takes the security of its users seriously. But the hackers shared the data of Mobikwik founder Bipin Preet Singh and Mobikwik CEO Upasana Taku, reaffirming the fact that the data had been hacked. A France based researcher also called it the “largest KYC leak in history.”<sup>14</sup>

- Upstox, India’s second-largest brokerage company, had a massive data breach that leaked KYC and contact details of around 25 lakh users. Following this breach of its security systems, the company has taken steps to upgrade the same and has assured the customers that their funds and securities are safe with the company.

Such data leaks have become regular happenings. Despite various lawsuits being filed against these companies by private individuals questioning their data security systems and their liability when the user data gets leaked, little to no proper remedy or clarity has been provided. Due to the slow justice delivery system, many cases are still pending in courts. It is high time that the country comes up with robust laws to deal with such situations.

## **WHAT IS THE GOVERNMENT DOING**

Regarding the Pegasus virus, the Minister of State for External Affairs , Ms. Meenakshi Lekhi claimed that this Pegasus controversy was aimed at derailing the passing of the Data Protection Bill. She also mentioned that the allegations about this data leak are evidence-less, claiming that Amnesty International has stated that the snoop list was not actual but indicative, which indicated it was done to tarnish the country’s image.<sup>15</sup> But as per recent updates, Amnesty International has issued a statement saying that “Amnesty International categorically stands by the findings of the Pegasus Project, and that the data is irrefutably linked to potential targets of NSO Group’s Pegasus spyware. The false rumors being pushed on social media are intended to distract from the widespread unlawful targeting of journalists, activists and others that the Pegasus Project has revealed.”<sup>16</sup>

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<sup>14</sup>Manas Tiwari, Mobikwik user data has leaked, here is what happened and this is what you should do next, India Today, March 31, 2021, <https://www.indiatoday.in/technology/features/story/mobikwik-user-data-has-leaked-here-is-what-happened-and-this-is-what-you-should-do-next-1785435-2021-03-31>.

<sup>15</sup>Pegasus row aimed at derailing data protection bill: Meenakshi Lekhi, The Times of India, July 23, 2021, <https://timesofindia.indiatimes.com/india/pegasus-row-aimed-at-derailing-data-protection-bill-meenakshi-lekhi/articleshow/84662716.cms>.

<sup>16</sup>Amnesty International hits out at ‘false’ media reports, ‘fully stands by’ Pegasus project data, The Wire, July 22, 2021, <https://thewire.in/tech/fact-check-amnesty-international-pegasus-project>.

Further, during a discussion in the ongoing monsoon session of the parliament, as the IT minister, Mr. Ashwini Vaishnaw began reading out a statement regarding the Pegasus spyware attack, the opposition party TMC's (Trinamool Congress) MP Shantanu Sen rushed to the IT minister, tore the papers and flung them in the air and the opposition leaders were also witnessed chanting slogans despite being asked not to.<sup>17</sup> So, rather than understanding the problem and its cause and arriving at a solution that is aimed at increasing cybersecurity to protect the country's citizens, discussions in the parliament are taking the form of commotion. The aforementioned ultimately led to the adjournment of the session without getting any valuable output.

## **WHAT CAN BE DONE**

A PIL has already been filed in the Supreme Court seeking a proper court-monitored probe into these Pegasus snooping allegations.<sup>18</sup> The Editors Guild of India has also shown concern at how the government could allow surveillance with such impunity and demanded an urgent private inquiry committee to investigate this matter including members from various walks of life.<sup>19</sup> The truth about these allegations needs to be found out by the Supreme Court or by a joint parliamentary committee or by any other mechanism deemed fit to give the best result. Whether the snooping was done by a government entity, Indian or foreign, the truth remains that many citizens were victims of this vicious and unregulated surveillance of their electronic devices. Being the citizens of a constitutional democracy that offers the right to privacy as well as the right to speech and expression, everyone must deserve a proper justification of how and what has happened in this cyber attack and how the government plans to remedy the situation and restore the faith of citizens in the country's Constitution.

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<sup>17</sup> Stormy scenes in parliament : TMC minister tears IT minister speech copy, The Federal, 22 July, 2021, <https://thefederal.com/news/stormy-scenes-in-parliament-tmc-members-tear-it-ministers-speech-copy/>.

<sup>18</sup>PIL in SC demands court monitored SIT probe into Pegasus controversy, The Tribune, July 22, 2021 <https://www.tribuneindia.com/news/nation/pil-in-sc-demands-court-monitored-sit-probe-into-pegasus-controversy-286798>.

<sup>19</sup> Pegasus snooping row: Editors Guild of India demands urgent independent probe, The News Minute, July 22, 2021, <https://www.thenewsminute.com/article/pegasus-snooping-row-editors-guild-india-demands-urgent-independent-probe-152775>.