



United States and the Surveillance Controversy

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Series of leaks have rocked the US intelligence establishment for a while now. It started with the WikiLeaks controversy and the latest is the surveillance controversy. In a leak, former Central Intelligence Agency worker Edward Snowden has stated that the US has a surveillance network that is much more intrusive than previously claimed by the government and with much less oversight. It was revealed that the US National Security Agency (NSA) was conducting surveillance on people by sweeping vast amounts of telephonic and electronic data. As a result, the US finds itself answering questions from not just its citizens but also facing the outrage of people from across the world.

According to the 'leak', the surveillance programme is called PRISM, and is authorised under Section 702 of the Foreign Intelligence Surveillance (FIS) Act. Under the Act, the NSA has the power to obtain telephonic and electronic records of non- US persons. Director of National Intelligence Agency (NIA) James Clapper said in a statement, "The program is an internal government computer system used to manage foreign intelligence collected from Internet and other electronic service providers." One of the NSA's programme gathers hundreds of millions of US phone records to search for possible links to known terrorist targets abroad. The other allows the government to tap into nine US Internet companies and gather all communications to detect suspicious behaviour that began overseas. However, it has been clarified that surveillance on US citizens was not intentional. Nonetheless, details of individuals

under surveillance are a secret. It is on this last point the US Administration is facing criticism, as it has been felt that the NSA may have over stepped its boundaries.

While the US government and the NSA have claimed that the surveillance was conducted under US domestic laws, governments and activists point out that these domestic laws do not provide any protection to foreign nationals. They point out that in a bid to defend itself, the US has violated privacy laws protecting citizens of other states. The European Union has lodged a strong protest as domestic privacy laws in Europe are more stringent than those in the US. Likewise China too has protested against the violation of the right to privacy of its citizens. Similar protests have also been lodged by India, and the activities by the US have been termed as "unacceptable" violation, of domestic laws relating to privacy of information of its citizens. It has been revealed that India is the fifth largest target country for surveillance conducted under this programme. According to the NSA data mining tool, 'Boundless Informant: Heat Map', which maps countries by information it collects from computer and telephone networks, 6.3 billion pieces of intelligence were gathered from India, for a 30 day period ending in March 2013. The focus of the internal NSA tool is on counting and categorising the records of communications, known as metadata, rather than on the content of an email or instant message.

With the growing use of internet in global communication, it is crucial that the Indian government take steps to protect the private rights of its citizens and ensure that 'unquestioned dominance' by the US over the source be made accountable. At present, the governance of the internet is effectively done by multiple stakeholders. Nonetheless, it has to be kept in mind that the final approval on much of what is decided by these organisations is formally within the purview of the US Department of Commerce. While there are a number of suggestions to pass the mantel of supervising the internet to the United Nations, the US has understandably been against the idea.

With the US government making clear that it would not be closing the programme in the near future, the questions that come to mind are

- (a) Since most of the popular services are provided by US companies and much of the infrastructure is located and controlled by the US, does it have right of access to information on these servers?

- (b) Would laws of the US have precedence, as the information collected is located within the boundaries of the country and how can countries ensure the privacy of their citizens from surveillance?

It has been argued by the US government and NSA that since the surveillance was conducted under the FIS Act they are legal. The other argument that has been brought forward is that when people make use of electronic means of communication, it no longer remains a private dialogue after it is sent, as the information is stored somewhere and then transmitted to the receiver.

Apart from issues of right to privacy of people along with freedom of speech and expression, this controversy has to address legal queries arising out of it. It also may have diplomatic consequences for the US's relations with its allies like Germany and with other nations like China. The fallout for the US from this incident has been a major blow to its principled standing to question the surveillance tactics of other regimes as well as its credibility as an advocate of internet freedom. And as the programme continues it is possible that the future could witness more revelations and leaks which could expose the full extent of PRISM as well as bring to light other US surveillance programmes.

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