

GOVERNMENTAL POWER CREATING SURVEILLANCE COUNTRY: EXCESSIVE OR ENOUGH

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Abstract –

The question of the security of the State is always of a grave concern. As technology advances, there are new threats to the nation and this throws up new challenges before the State machinery. To combat these challenges, Section 69 of the Information Technology Act, 2000 was drafted. It provides the Government with the power to monitor decrypt or intercept any information in any computer resource. It also enables the Government to appoint certain agencies to carry out these functions. The order of government is nothing but establishment of that country in which government tries to control every part of people's lives which is nothing but making and set up of Orwellian society. Hence it may be concluded by this order that it's not worth for the people to live in this country. We the people of India also want our country to be safe and secure but there should be some proper, just and fair procedural way to be followed by government. If central and state government agencies don't stop their so called as lawful activity of interception or monitoring or decryption of information then this small word of seven letters 'privacy' going to cause disaster, fraud in the life of people. Thus government activity of securing country can lose the trust of their own citizens. The police is there in police station not in our house so why government want to be our relative for all the time out these functions.

Introduction–

The question of the security of the State is always of a grave concern. As technology advances, there are new threats to the nation and this throws up new challenges before the State machinery. To combat these challenges, Section 69 of the Information Technology Act, 2000 was drafted. It provides the Government with the power to monitor decrypt or intercept any information in any computer resource. It also enables the Government to appoint certain agencies to carry out these functions.

Section 69 came into the spotlight due to the recent order of the Government which nominates 10 agencies to monitor, intercept, decrypt any information in any computer. This list includes major security agencies like the Criminal Bureau of Investigation. The Intelligence Agency (RAW) as well as the Commissioner of Police, Delhi. In light of the recent judgement of the KS Puttaswamy case, this order has been perceived as been excessive and infringing on the right to privacy of the citizens. It has been heavily criticised and has been deemed to be allowing for disproportionate State action.

The authors of this paper will critically analyse both the aspects of this debate. The paper will cover within its ambit what the Section entails and its implications. Whether such a massive amount of power is necessary in times where the nation can be facing threats from the cyber world as well as the physical world or can the security of the state be maintained without awarding such powers to the State?

Historical background

Section 69 of IT act has its link with Indian telegraph act, 1885. In Indian telegraph act, 1885 section 5(2) government is exercising the powers of interception of message as per the guidelines and directions issued by Supreme Court. The working of section 5(2) deals with telephone tapping. in the same way section 7(2)(b) of the Indian telegraph act, 1885 says that precaution to be taken while sending or receiving any messages for preventing improper interception or disclosure of messages. Now the question arises that what are the precaution which should be taken for avoiding improper interception. Then Supreme Court issued some directions and procedures to be followed in telephone tapping. In this procedure Supreme Court says that operation of any order arises under section 5(2) of Indian telegraph act, 1885 shall not exceed the total period of six months. And authority which issued the order shall maintain the records of intercepted communications on which order issued, extent to which the material is disclosed, number of persons involved in intercepted communications and their identity, extent to which the material is copied, number of copies made of any of the material. But it was necessary to destroy all number of copies which is in no longer necessary in terms of that order issued under section 5(2).

Now in the case of People's Union for Civil Liberties (PUCL) v. Union of India,¹ it was held by the court that power of interception is there under section 5(2) of Indian telegraph act, 1885 but there should be some procedural safeguard to support section 5(2) so that procedural should be happen in just, fair and reasonable way. And in section 7(2)(b) precautions should be taken is given but what type of precautions to adopt is not specified thus this various question in courts mind gave rise to a new act that is Information Technology Act, 2000 and in that act, amendment in 2008 gave rise to a new section that is section 69 which deals with interception, monitor and decryption of information and data stored in any computer resource. Recently in April, 2017 government introduces 10 agencies in a bill called as Information Technology amending rules, 2009 to monitor, intercept and decrypt information and data of any computer resource.

Objectives-

Section 69 of information technology is a vast concept about government and its powers which extends the powers given in section 5(2) of Indian telegraph act, 1885.

The very first objective is to intercept, monitor or decrypt any information of the citizens of country which if any of 10 agencies authorised by central government is satisfied by the fact that it is necessary to do so in the interest of points given in clause (1) of section 69.

¹ 1997 (10) SCC 301

This powers of intercept, monitor or decrypt information is vested with the central government and state government to interfere in this. Interception power which is given in clause 33 of the bill proposes to amend 69 should be allowed for the prevention of any cognizable offence. The main purpose of section 69 is to an eye on every citizen data, messages, emails, pictures and other information stored in any computer resource.

The agencies appointed and directed under section 69(1) extend all facilities and technical assistance to decrypt the information. The section 69(2) to call upon by any agency, which has been directed by the controller under the circumstances prescribed under section 69(1).

Encryption deals with the key pair mechanism of encryption and decryption. It may imply that the subscriber or any person in charge of the computer resource should disclose his private key in order to decrypt the message, which has been encrypted by the sender using subscriber's public key available in subscriber's digital signatures certificate.

Apart from allowing physical and /or virtual access to such computer resource, the subscriber or any person in charge of the computer resource may also be called upon under the section 69(2) to give access to information, data or electronic record whether available in electronic or physical form.

Description of cases -

1. In *R.M. Malkani v. State of Maharashtra*² court held that telephonic conversation of innocent citizen of country should be protected by law in such a way that article 21 that is right to privacy of a person should not be breached and should be protected from against wrongful or high handed interference.

2. In *State of Maharashtra v. Bharat Shanti lal shah*³ court held that law authorizes the interception of wire, data in computer resource, electronic or oral communication only if it is intended to prevent the commission of an organized crime or if it is intended to collect the evidence to the commission of such an organized crime.

Thus the court is required to see is that the procedure itself must be fair, just and reasonable and non-arbitrary, fanciful or oppressive.

Section 69 requires that interception is allowed if the controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of state, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the government to intercept any information transmitted through any computer resource. And interception on my client data is allowed only if government agencies have some evidence against him. And it is not only the matter of my client but also important matter for other innocent citizens of country.

² R.M. Malkani v. state of Maharashtra (1973) 1 SCC 471

³ State of Maharashtra v. bharat shanti lal shah (2008) 13 SCC 5

Drawbacks in implementation -

•LACK OF ADEQUATE SAFEGUARDS

Any statute that confers such powers is bound to have adequate safeguards. The powers conferred by Section 69 are wanting in this aspect. Neither does the legislation contain any such safeguards nor are there any rules providing for such safeguards.

•LACK OF JUDICIAL OR LEGISLATIVE OVERVIEW

Another major drawback of this section is that it lacks any kind of judicial or legislative overview. The section does not require the Government or the authorised agencies to acquire any kind of permission from the judiciary or the legislative body. This makes it prone to arbitrary use.

•LACK OF TRANSPARENCY

As there is no judicial or legislative overview, the actions of the Government lack transparency. There is lack of regulation. This further leads to arbitrariness.

•HEAVY HANDED PENALTIES FOR NON-COMPLIANCE

The penalties that have been awarded for non-compliance are heavy handed and disproportionate. It therefore compels an individual to part with the computer resource unwillingly. This would bring about a culture of force in execution of these powers.

•LACK OF LEGAL BACKING AND OVERSIGHT MECHANISM FOR INTELLIGENCE AGENCIES

The intelligence agencies that would be authorised to monitor, intercept and decrypt information would not be governed by any legal aspect. They would thus acquire a free reign. Moreover, there is a lack of oversight mechanism over these very intelligence agencies.

•AGAINST BASIC PRINCIPLES OF NATURAL JUSTICE

All authorisation orders issued by the government under Section 69(1) must be reasoned and written and must be subject to the procedure laid down in the Information Technology Rules. As per these rules, all such orders must be scrutinised by a review committee of the Centre, or the state in question, set up under Rule 419A of the Indian Telegraph Rules, 1951. All review committees set up under Rule 419A comprise only of government secretaries.

•THREAT TO PRIVACY

Section 69 of the Information Technology Act, 2008 will pose a great threat to the right of privacy of a person. It invades a person's private virtual space without their consent. This legislation appears to be entirely in contradiction of the right to privacy upheld by the Supreme Court in KS Puttaswamy case.

Conclusion -

The scope of section 69 of the Information Technology Act, 2000 includes both interception and monitoring along with decryption for the purpose of investigation of cybercrimes.

The government cannot suspect every citizen to be criminal. It is just creating a country in which citizen is being watched without his/her permission which is also called as creation of 'surveillance country'. This order of government is a very important step taken by government for security of state with defence taken in rule so as to create a fearless country and better relation with foreign state. But there should be some proper procedure to be established and followed by government so as to maintain privacy of citizens and to protect the country from any type of harmful activity. The order of government is nothing but establishment of that country in which government tries to control every part of people's lives which is nothing but making and set up of Orwellian society. Hence it may be concluded by this order that it's not worth for the people to live in this country. We the people of India also want our country to be safe and secure but there should be some proper, just and fair procedural way to be followed by government. If central and state government agencies don't stop their so called as lawful activity of interception or monitoring or decryption of information then this small word of seven letters 'privacy' going to cause disaster, fraud in the life of people. Thus government activity of securing country can lose the trust of their own citizens. The police is there in police station not in our house so why government want to be our relative for all the time.

At last I want to say that, Police is there because thief is there, compensation is there because breach of privacy is there in the same way public is there because called as private is there and this privacy should be maintain by government because government is of the people, by the people and for the people.

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