

# TRUTH HAS TO COME OUT IN SNOOPING ISSUE: SC

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The CJJ said that some of the petitioners have expanded the scope of their pleas beyond Pegasus to other issues, including a challenge on authorised interceptions under the Telegraph Act.

“There are a number of problems... We have to see which petitions we have to issue notice on. Some have even challenged the Telegraph Act... These are unnecessary complications,” Chief Justice Ramana and Justice Kant told the lawyers.

The hearing began with a barrage of questions from the Bench. For one, the Chief Justice noted that a “majority” of the petitions were based on reports in foreign newspapers. The court asked whether there was any other “verifiable material” based on which it could order an inquiry into the Pegasus allegations.

“We are not saying the petitions are based on hearsay and we cannot say there is no material, but with your access to international materials and resources, should you not have made more efforts?” Chief Justice Ramana asked the petitioners’ side.

Secondly, he said questions regarding surveillance had popped up over two years ago. “Why have you come now suddenly? What were you doing for two years?” Thirdly, the court asked why the “targets” have not taken criminal action. “If you knew your phone was hacked, why did you not file a criminal complaint?” he queried.

## NSO Group’s plea in U.S.

Responding to the first question about the need for “verifiable material other than foreign newspaper reports” to order an inquiry, senior advocate Kapil Sibal, appearing for Mr. Ram and senior journalist Sashi Kumar, said a California court had recorded that the Pegasus spyware was “only sold to government agencies”. The U.S. court had rejected a plea by NSO Group, the creators of the Pegasus spyware, for “sovereign immunity”. Mr. Ram’s petition clearly mentioned that the U.S. court was dealing with a suit filed by WhatsApp against the NSO Group “for targeting the mobile phones of around 1400 users with malware”.

But Mr. Sibal said there was anyway no dispute about Pegasus targeting Indian phone users. A statement was made by the Minister in the Lok Sabha in July, taking note of Pegasus surveillance of Indian users.

On the second question about why the petitioners have moved court in 2021 and not in 2019 when reports of unauthorised surveillance first came out, senior advocate Meenakshi Arora, for Mr. Brittas, stated that the issue was indeed raised in November 2019. “The Minister had then answered there was no unauthorised interception,” Ms. Arora submitted.

Senior advocate C.U. Singh, for the Editors Guild, said the names of targets came to be known only in July 2021.

On the third question regarding why ‘targets’ did not go to court individually, senior advocate Shyam Divan said this was not an individual case of surveillance. “The dimension of this surveillance is huge. This is an issue which requires the formation of an independent fact-finding body at the highest level,” he submitted.

Senior advocate Arvind Datar, for the five journalists, agreed that the enormity of the allegations and the number of persons targeted deserved the court to take up this case as a “class action suit”.

“Pegasus is a rogue technology. It is entirely illegal. It infiltrates our lives without our knowledge through our phones... It hears, it watches, it surveys our every movement. It destroys the constitutional values of our Republic like privacy and individual dignity. Moreover, it destroys our national Internet backbone and is a threat to our national security... Please issue notice to the government. Let the government come on board and say why and how Pegasus infiltrated in India... Let the government say why, if they knew of the surveillance, they did not register a case... Why did the Government of India keep quiet?” Mr. Sibal said.

He said he was informed that accessing a mobile phone using Pegasus costs \$55,000. “The NSO Group says its technology is used for fighting terror and crime... So all these journalists are terrorists now?” he inquired.

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