

A CREDIBLE PROBE: THE HINDU EDITORIAL ON SUPREME COURT VERDICT ON PEGASUS ROW

Relevant for: Security Related Matters | Topic: Basics of Cyber Security and related matters

The [Supreme Court order instituting an independent probe](#) into the possible [use of Israeli spyware Pegasus](#) is an effective intervention to protect citizens from unlawful surveillance, as well as a stern rebuff to the Government's attempt to cover up the issue by [using the bogey of 'national security'](#). It was clear from day one, following the revelations that nearly 300 of some 50,000 phone numbers allegedly identified for surveillance belonged to Indians, that the Government would choose to brazen it out rather than hold or facilitate a credible inquiry. Ultimately, its tactic of sticking to [a blanket denial of any wrongdoing](#), without acknowledging whether or not the spyware was available to government agencies, failed. The 46-page order by a Bench headed by the Chief Justice of India, N.V. Ramana, stands out for the enunciation of two clear principles: that surveillance, or even the knowledge that one could be spied upon, [affects the way individuals exercise their rights](#), warranting the Court's intervention; and that there is [no omnibus prohibition on judicial review](#) merely because the spectre of national security is being raised. The Court deemed unacceptable the Government's refusal to shed any light on a controversy that involves possible violation of citizens' rights and made it clear that national security considerations cannot be used by the state "to get a free pass". The Court has approached the issue as one that raises an "Orwellian concern", recognising that intrusive surveillance not only violates the right to privacy but also has a chilling effect on the freedom of the press.

When damning revelations emerged that many [phones of journalists, activists and even doctors and court staff were targets of military-grade spyware](#) designed not only to grab data but also take control of devices, the Government ought to have responded, as some nations did, with alarm and alacrity. Instead, it resorted to a bald claim that illegal surveillance is not possible in India, and that the disclosure of whether or not a particular software suite was used by its agencies would compromise national security. The Court is right in making it plain that any such concern or claim of immunity ought to have been substantiated on affidavit. What is quite appalling is that the Government was unwilling even to disclose what action had been taken after it admitted in Parliament in 2019 that it was aware of some WhatsApp users being targeted by Pegasus. Its offer of ordering an inquiry on its own has been rightly rejected by the Court — it would command little credibility. The Court-supervised panel appears to have the required expertise and independence, but its success in unravelling the truth may depend on how much information it can extract from the Government and its surveillance agencies. For its part, the Government would do well to depart from its record of obfuscation and stonewalling and cooperate with the inquiry.

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