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PEGASUS SPYWARE AND CONSTITUTIONAL PRIVACY: A CRITICAL ANALYSIS OF MANOHAR LAL SHARMA V. UNION OF INDIA, 2021

~Hitesh Bhootra

Case: Manohar Lal Sharma v. Union of India, 2021

Court: Supreme Court of India.

Citation: 2021 INSC 682 / AIR 2021 SC 5396

Date of decision: 27 October 2021

INTRODUCTION:

The Pegasus case is one of the more significant constitutional law decisions of the digital time, because it basically deals with the way state power, technology, privacy, and free speech fit together. The petitions came out of reports saying that Pegasus spyware had been used against almost 300 Indians, which included members of the media, and people working in civil society. The Supreme Court was then asked to order an independent probe, or at least something like that. The judgment is important because it raises a real question, like whether constitutional rights can stay meaningful when the surveillance is kept in the shadows, it is technological issue, and it's also hard to show in normal court battles. At the heart of the decision is the Court's position that national security cannot be treated as a blanket shield, just to dodge judicial scrutiny.

FACTS AND BACKGROUND:

This whole controversy started when reports claimed that Pegasus spyware was sort of deployed, to get into mobile devices used by journalists, activists, politicians, and also others. Petitioners then pushed for disclosure on a more basic point like, whether the Union of India

or any of its agencies had procured or actually used that spyware, and also whether any such surveillance was lawful. The Union, however, didn't want to share too much in detail and said national security concerns, should be taken seriously. In the end, the Supreme Court viewed that reply as inadequate, especially because the allegations involve a pretty serious intrusion into constitutional rights and so the Court ordered an independent inquiry.

ISSUES BEFORE THE COURT:

The matter before the Court really brought up three main problems, kind of:

1. It asked whether the claims about Pegasus based surveillance amounted to a prima facie breach of core rights, especially privacy and free speech, which is pretty central.
2. whether the State can decline meaningful disclosure just by pointing at national security in very broad terms, not much more, you know.
3. The Court had to decide whether it should require an independent fact-finding process when the executive response was kind of hard to read opaque and also incomplete.

DECISION OF THE COURT:

The Supreme Court said that the seriousness of the allegations needed some independent, pretty real scrutiny and that the Union could not simply wriggle out of review by leaning on a vague national security angle. It basically set up a technical committee, kept under the watch of former Justice R.V. Raveendran, to figure out whether Pegasus had in fact been used, who exactly procured it, if the use was lawful, and what safeguards had to be put in place so unlawful monitoring would not happen. The Court also made a point that if the State brings up constitutional concerns or leans on statutory immunity, it cannot be hand-wavy, it has to specifically plead and justify those claims on affidavit, with supporting detail. In the end, this decision became quite an important nod to procedural accountability in constitutional litigation.

CONSTITUTIONAL SIGNIFICANCE:

The whole case is sort of important because it treats surveillance as a direct constitutional issue under Article 21, not just as some narrow administrative thing or intelligence matter, kind of separate and small. Ever since *K.S. Puttaswamy*¹, privacy is understood as linked with dignity

¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) AIR 2017 SUPREME COURT 4161

and self-direction, and the Pegasus decision then kind of applies that idea to covert digital intrusion. The Court's reasoning indicates that privacy also covers protection from invisible state monitoring, you know the kind that can change the way people act, quiet down speech, and mess with association. so, in that sense, the case pushes Indian privacy doctrine closer to a more concrete anti-surveillance framework, rather than staying at the level of abstract principles.

PRESS FREEDOM AND CHILLING EFFECT:

One of the key strengths in the judgment is that it kind of, actually acknowledges spyware surveillance as a thing that endangers press freedom, not just "security." Journalists live off confidential sources, and if those sources get the impression that their conversations or messages are being watched or recorded, they may simply stop sharing useful info altogether. That ends up creating a sort of chilling effect, and it can work even without any real formal censorship, like in a straight forward sense. So, the end result sort of shows that this kind of surveillance is not only a privacy harm, but also a more structural risk for democratic accountability, and for the press role as watchdog.

NATIONAL SECURITY AND JUDICIAL REVIEW:

This judgment is also notable for how it handles national security. The Union basically said it could not disclose details due to security concerns, but the Court did not accept national security as a sort of blanket excuse. Rather than that, it required the State to clearly specify and explain why disclosure would actually endanger constitutional interests, or why it would fall within a recognized statutory immunity. That point matters doctrinally, because it keeps the Court's power to review executive assertions intact, and it also stops national security from being treated as a completely non-reviewable category.

CRITICAL EVALUATION:

The judgment's greatest strength is mostly institutional, in a way. The Court basically did not let the government's silence close up the whole inquiry, and it moved the dispute from what was effectively political denial, to some sort of technical fact-finding. The expert committee appointment was realistic too, because spyware cases need cybersecurity know-how, which courts simply do not have in-house. Still, the decision has limits, since it does not finally determine whether Pegasus was indeed used, so the core question of substantive illegality stays

open. In that sense, it protects the process, but the broader fixes surveillance law reform, transparency benchmarks, and practical remedies for victims remain kind of incomplete.

COMPARATIVE AND DOCTRINAL READING:

If you read this alongside *K.S. Puttaswamy*², it looks like the shift from privacy as a broad principle to privacy as something enforceable, like a safeguard you can actually rely on. When read with *Ram Jethmalani v. Union of India*³, it also underlines that the State can't just shrug and avoid disclosure when fundamental rights are at stake. The case further matches how global surveillance jurisprudence is going, where legality, necessity, proportionality, and oversight are expected for any state monitoring. So overall, it shows a wider constitutional insistence that technology, shouldn't quietly grow executive power beyond the actual constitutional limits.

CONCLUSION:

Manohar Lal Sharma v. Union of India is kind of a landmark since it sort of constitutionalizes the issue around digital surveillance, yes. The Court said that privacy, freedom of the press, and accountability cannot just get pushed aside by loose appeals to national security. What feels like the main legacy here is the idea that when the State deploys advanced technology against citizens, it still has to answer to legality, particularity and judicial scrutiny, not just vibes. So, in this sense the case works like a warning: liberty in the digital era depends not only on rights mentioned in general terms, but on enforceable transparency that actually happens in practice, not something abstract on paper.

² supra

³ Ram Jethmalani v. Union of India, 2011 AIR SCW 6194