BLOGS

CLAT 2022 GK: Supreme Court Order on Pegasus Spyware

ANNA PRIYA · 21 Dec 2021

Manohar Lal Sharma v. Union of India & Ors.[i]

Bench: NV Ramana, CJI; Surya Kant and Hima Kohli, JJ.

Background of the Pegasus Controversy

Earlier this year, investigative journalists broke the news regarding an alleged use of the Pegasus spyware on all categories of citizens, including public officials, judges and members of the opposition.

Concerns rose and the matter finally reached the Supreme Court. The apex Court had also, a few months ago, refused to stay West Bengal Government's Notification Constituting Judicial Commission[ii] in this regard.

In the present case order, the Court said that "compelling circumstances" caused the Court to make this order—specifically in light of the alleged violation of right to privacy and the resultant chilling effect on the exercise of Fundamental Freedoms of citizens.

Cases referred to in the Case

1. The Supreme Court has recognized the right to privacy in the Puttaswamy case[iii] in its 9-judge Bench decision, as a right central to human existence and inalienable to human dignity and autonomy.[iv]
2. There was a reference to Indian Express Newspapers (Bombay Private Limited) v. Union of India[v], regarding the freedom of press and the basis of our country's independence struggle structured around it.
3. The Court's observations in Anuradha Bhasin v. Union of India[vi] regarding the freedom of press were also referred to.

4. Ram Jethmalani v. Union of India[vii] was referred as to relying on the fact that the Union of India should not take an adversarial position when the Fundamental Rights of citizens of India are under threat.

Order of the Court

Prime Holdings

- The Court constituted a Technical Committee to look into the allegations regarding and around the use of the Pegasus spyware.
- The stand of the Central Government remained ambiguous in so far as they denied filing a 'complete affidavit'. The Court admitted the position of the Union of India was such that they could, indeed, decline information on grounds of national security.
- However, the Court said that it could not remain a mere "mute spectator" and that the State doesn't "get a free pass every time the spectre of national security is raised".
- The Court also disallowed the prayer of the Centre requesting permission to constitute the Committee, and constituted the Committee itself.

The Constitution of the Committee and Oversight

- The Committee was comprised of the following:

"i. **Dr. Naveen Kumar Chaudhary**, Professor (Cyber Security and Digital Forensics) and Dean, National Forensic Sciences University, Gandhinagar, Gujarat.

ii. Dr. **Prabaharan P.,** Professor (School of Engineering), Amrita Vishwa Vidyapeetham, Amritapuri, Kerala.

iii. **Dr. Ashwin Anil Gumaste**, Institute Chair Associate Professor (Computer Science and Engineering), Indian Institute of Technology, Bombay, Maharashtra."[viii]

The functioning of the committee was decided to be overseen by Justice RV Raveendran, a retired Supreme Court Judge, assisted by Mr. Alok Joshi [former IPS officer (1976 batch)] and Dr. Sundeep Oberoi [Chairman, ISO/IEC JTC1 SC7][ix].

Terms of reference of the Committee

- The Court allocated to the Committee two-fold functions: a) to enquire and investigate and b) to make recommendations.
- The task with respect to the former category included finding out whether the Pegasus spyware was acquired and by whom (Union of India, State Government or a State agency at the Union/State level) and whether it was used on the phones of citizens to intercept information/spy on citizens.
- The Court has also sought details of the persons affected by this alleged spyware attack. The Court also demanded investigation and report on the steps taken by the Central Government after the use of such spyware was alleged first, in 2019.
- The Court also sought answer to the legal justification behind this alleged attack, if it was perpetrated at the behest of the State.
- With respect to the second part of the Terms, the Court sought recommendations regarding the need for change in the Indian legal system vis-à-vis securing right to privacy and cyber security, and concurrent grievance mechanisms.
- Recommendations regarding the "setting up of a well-equipped independent premier agency" to investigate cyber-attacks and violations and any possible ad hoc protective arrangements as an interim measure were also sought.
- The Committee shall have flexibility of procedure in so much as it can "devise its own procedure" to answer the Terms of Reference posed by the Court. It is also authorized to hold enquiries and investigations, in addition to taking statements of any person or call for records of an authority in that regard.
- The terms of reference are not exhaustive, i.e., ancillary and related issues to the ones expressly stated may be dealt with by the Committee.

Conclusion

The Court has listed the next hearing after eight (8) weeks.

MULTIPLE CHOICE QUESTIONS FOR CLAT 2022 GK

1. Who among the following is not a part of the Supreme Court's Technical Committee regarding the Pegasus Issue?

- Former Justice RV Raveendran

- Naveen Kumar Chaudhary
- Prabaharan P.
- Ashwin Anil Gumaste

2. In which of the following cases, the Court constituted a Technical Committee with respect to the Pegasus-Spyware Case?

- Manohar Lal Sharma v. Union of India & Ors.
- Global Village Foundation Public Charitable Trust v. Union of India & Ors.
- Anuradha Bhasin v. Union of India
- None of These

3. The Court quoted which of the following famous authors in its judgment constituting the Pegasus Spyware Committee?

- Jane Austen
- JK Rowling
- George Orwell
- Joseph Heller

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[i] Writ Petition (Crl.) No. 314 of 2021 (Order dated 27.10.2021) [*'The order'*]

[ii] Global Village Foundation Public Charitable Trust v. Union of India & Ors. (Order dated 18.08.2021)

[iii] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

[iv] *Ibid*

[v] (1985) 1 SCC 641

[vi] (2020) 3 SCC 637

[vii] (2011) 8 SCC 1

[viii] *The order*, at p. 40-41

[ix] *See, id.,* at p. 39-40