

EDWARD SNOWDEN: NATIONAL SECURITY VS. HUMAN RIGHTS

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ABSTRACT

In these testing times of a pandemic, with the government monitoring people in its jurisdictions to contain the spread, the issue of mass surveillance has taken the centre once again. In 2013, revelations made by Edward Snowden sparked a high intensity debate regarding 'legal' mass-surveillance, but over the years no substantial actions have been taken to counter the same. The revelations exposed the reality of several nations, who claimed moral high ground over others. However, with the passage of time the debate has become dormant. Snowden's conscience forced him to blow the whistle on the most powerful organizations of eminent countries. The revelations were terrifying at the least. Reports have shown that mass surveillance programmes undertaken by governmental agencies monitored people without any warrant from court and without cause. It was happening in the name of national security but serving the personal interests of a few. Surveillance of such a high magnitude violates the most basic human rights. There is a need to constantly question the current status-quo. The risks took by Edwards Snowden should not go in vain and reforms regarding the mass surveillance should be undertaken at the earliest.

INTRODUCTION

Tyrannical countries have been known to control the internet services of their people, for e.g., China, Libya.¹ These countries have often received harsh criticism from activists, citizens and even from the governmental agencies of developed and 'free' nations. In June of 2013, it became evident how these 'free' countries are strikingly similar to the tyrannical ones they themselves condemn. This article will talk about the events that made this evident. This article is divided into three parts. The first part of the article gives a brief introduction about Edward Snowden and his revelations. The second part of the article will build on the revelations made by Edward Snowden about United States of America (U.S.A), United Kingdom (U.K.) and other countries on how they exploit humans and violate their basic rights by the use of mass surveillance. The last segment of the article entails conclusive remarks and measures that need to be under-taken to prevent the blunders and human rights violations that are being committed at a larger scale. It was in June of 2013, when revelation made by Edward Snowden, former Central Intelligence Agency (CIA) employee and sub-contractor of National Security Agency (NSA), made the world aware of the mass surveillance programs that U.S.A and other nations engage in. He himself aided intelligence agencies in creating programs that helps them to monitor people.² These programs were not just monitoring criminals, but they were used to monitor ordinary citizens of U.S.A as well as other countries, without any court order. For ethical reasons and moral reasons, Snowden wanted to bring these pervasive activities to the attention of people. Being a contractor to NSA, Snowden had access to classified information. He copied this classified information consisting proof of mass surveillance programmes from the offices of NSA in order to expose the wrongdoings of the agencies. He made these revelations to journalists (The Guardian and The Washington Post) in a hotel room in Hong-Kong and left for Cuba in order to avoid getting arrested. He was charged under Espionage Act 1917, and for theft of government property by the United States Department of Justice. He had intention of going to Cuba through Russia. He took a flight from Hong-Kong to Moscow but on landing in Russia, he realised that his passport has been revoked by the United States Department of Justice on the grounds of aforementioned criminal charges and he cannot board another flight. Thus, in

¹ Richard Stallman, What We Need to Learn from Snowden: Only by organising politically for human rights, including privacy rights, can we raise awareness of the dangers of Big Brother state surveillance, 48 Eco. & Pol. Weekly 82-83, 82 (2013)

² The Guardian, <https://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance> (last visited Oct. 30, 2020)

Russia he exercised his right to asylum and was provided with one.³ He continues to live in Russia since 2014 and in 2020, Russia granted Edward Snowden permanent residency status.⁴ Since 2014, he has been hailed as a patriot by many for exposing the ‘illegal’ practices of the agencies, but also has been referred to as a traitor by few for revealing classified information and giving the world a peak into highest-level of operations of the CIA and NSA and several other intelligence agencies. Government defends the practices of surveillance by advocating that it’s in the larger interest of community, national security, terrorism, etc.

CONCERNS REGARDING MASS-SURVEILLANCE

Every click, every search, every word uttered in front of the screen has a record of it. Conversations with friends, families, colleagues are being recorded, as it is a “threat to national security”. The documents revealed also point out how the governmental agencies themselves weaken the encryptions just so it gets easier for them to gain access into other people’s devices.⁵ Intelligence agencies have kept information about loopholes with technologies to themselves, so they can continue to exploit them. This has increased the vulnerability of people to fall victims to cyber-crime as there is no assurance that only governmental organisation can identify these loop holes. It is ironic how the government is pushing their agenda of mass surveillance under garb of national security, when in reality by doing so they are actually leaving the people more vulnerable to attacks. Fear of increased surveillance has a detrimental impact on people who are being honest to their respective professions. From journalists to human rights activists, anyone who criticizes government is on the list to be monitored. Eventually, interfering with the work of people erodes the nature and outcome of their work. This severely affects the news coverage, especially with respect to matter pertaining to national security and government criticism. Hindrance in the work of human rights organization is directly impacting the welfare of their fellow citizens. Along with right to privacy, attorney-client privilege is also being held of no relevance, when it comes to these agencies. Documents released in 2014, show that in U.K, intelligence agencies were monitoring calls of lawyers and their clients, where the agencies were named defendants in a law suit.⁶ Journalists along with lawyers have to resort to using burner phones

³ The Washington Post, https://www.washingtonpost.com/world/europe/snowden-russian-citizenship-espionage/2020/11/02/9543ac80-1cdc-11eb-ad53-4c1fda49907d_story.html (last visited Oct. 30, 2020)

⁴ The Guardian , <https://www.theguardian.com/us-news/2020/oct/23/edward-snowden-granted-permanent-residency-in-russia> (last visited Nov 5, 2020)

⁵ Human Rights Watch, World Report 2015 14 (Bristol University Press)

⁶ Id.

in order to keep their conversations private. To do justice to their job and maintain their right to privacy, they have to resort to the tactics used by criminals. Since these agencies also monitor people who are not citizens of their countries and live elsewhere, they offer the defence that they do not owe any responsibility to the people who do not belong to their nations. This argument is extremely dangerous and opens the citizens of the nation making this argument susceptible to being subjected to similar type of surveillance as the government will not have a moral or legal ground to stand on. Every government seeks to control the lives of the people to establish control. The records of calls, emails, and messages of a person which are obtained illegally are often shown during police in order to intimidate them.⁷ This is neither legal nor advisable in any way.

WAY FORWARD

Edward Snowden is often shamed for showcasing the classified works of secret agencies to the whole world, which has made the situation extremely complex for the government and put them on a defensive situation. But the question to ask is what other choices he had? If he wanted to correct these violations, practically, he did not have any other recourses. Ineffective whistle-blower mechanisms are to be blamed for this. If there would have been a swift mechanism to address these issues and the system was not deeply corrupt, Snowden would not have to resort to revealing classified information to the world. Issues might have been rectified internally. A robust whistle-blower mechanism is needed, especially for cases where there are human rights violations of this magnitude. Government should not be able to escape accountability and should maintain transparency, at all-times. Intelligence agencies obtain their warrants, permits from special courts, like FISA Court in U.S.A.⁸ However, with time these courts have turned obsolete. There is need to ensure proper functioning of the courts and not allow intelligence officers to circumvent went the courts. No agency is above the rule of law. Protecting the rights of fellow humans is at the heart of every democracy. If anywhere these basic rights are not being respected, then fall of the democracy in that nation is inevitable.

Under observation, we act less free, which means we effectively are less free. -Edward Snowden

⁷ Id.

⁸ U.S Senate Select Committee on Intelligence, <https://www.intelligence.senate.gov/laws/foreign-intelligence-surveillance-act-1978-originally-enacted> (last visited Sept. 1, 2020)

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