**Unbridled paranoia**

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`FAR more critical and graver than the information procured` that`s how Justice Mansoor Ali Shah describes in his dissenting note what he claims was the surveillance of Justice Qazi Faez Isa and his family sans any judicial oversight. Highlighting a red flag the alarm bells had, in fact, already been rung by rights activists, lawyers, and journalists before Justice Shah refers to one of Pakistan`s most pressing concerns today: where to draw the bounds of monitoring and surveillance? Citizens` fundamental right to privacy is enshrined under Article 14 of the Constitution. Various superior court judgements have also expounded on this. A ruling in `Benazir Bhutto vs Federation of Pakistan` directly linked the inviolability of privacy to the dignity of man: `If a man is to preserve his dignity, if he is to live with honour and reputation, his privacy whether in the home or outside the home has to be saved from invasion and protected from illegal intrusion.

Despite this, the state`s ability and willingness to monitor citizens and their activities grow with each passing day. And while surveillance may be used as a tool to protect, we are concerned that it is instead quite often being used to exercise control.

In the case of the presidentialreference against Justice Isa, who, according to Justice Shah`s dissenting note, was survellled and investigated without any judicial oversight along with his family, it reminds us of how unlawful and uncontrolled surveillance poses severe threats to personal liberty, privacy and dignity. `The issue of unlawful surveillance and invasion of privacy of the Petitioner Judge and his family is far more critical and graver than the information procured,` Justice Shah points out.

The state of privacy in Pakistan is already dismal. But for us, this case begs an even more pertinent question: if the privacy of a Supreme Court justice is threatened, can a common person feel safe? Are we even safe? It is crucial to understand that such illegitimate and uncontrolled surveillance by both state and private actors not only infringes on citizens` privacy but also violates the very personhood of its victims.

Surveillance and illegitimate intrusion into privacy, in turn, impact the essential work of journalists, academics and activists, with such undue activity leading to a chilling effect on those critical of the state`s institutions and societal norms. Neil Richards, an expert on freedom of speech and privacy laws, wrote that `surveillance creates the risk of a variety of harms, such as discrimination, coercion and the threatof selective enforcement, where critics of the government can be prosecuted or blackmailed for wrongdoing unrelated to the purpose of the surveillance`.

Some may argue that a desire for enhanced national security trumps individual privacy. However, state surveillance should not overstep constitutional limits, and definitely not egg on paranoia.

On the other hand, many believe that a lack ofprivacyindigitalspacesisaforegone conclusion, a bitter by-product due to the vast number of intrusions through new technologies. But the lack of checks and balances on access to collected information is a cause of serious concern among civil society and digital rights activists.

At this point, there`s a need to reiterate the surveillance-related principles that must be adopted and implemented immediately. According to the UNGA Resolution on the Right to Privacy in the Digital Age, `surveillance of digital communicationsmust be consistent with international human rights obligations and must be conducted based on a legal framework, and that anyinterference with the right to privacy must not be arbitrary or unlawful`Moreover, any state surveillance ought to obey the principles of `necessity` and `proportionality` in letter and spirit. A state should demonstrate that any interference with the right to privacy is necessary to achieve a legitimate aim, requiring a rational connection between the means employed and the aim sought to be achieved as well as mandating that the chosen measures are the least intrusive ones in achieving the desired result.

Finally, adequate safeguards must be in place against an arbitrary use of power and to ensure that information about a person`s private life does not end up in the hands of any unauthorised individual, as per the law.

In today`s world, where almost all of our daily lives have migrated online, the opportunities for state surveillance as well as intervention into a person`s private communications have shot up drastically. It is, therefore,essentialthattheveryconceptof privacy be understood and interpreted in the light of this digital era. Otherwise, if the legal doctrine on the right to privacy continues to dwell in a pre-digital age, there will be no safe haven left for any of us.  The writer is a lawyer Twitter: @Nighat Dad