

**America's New Cyber Surveillance**

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In March 2013 there were news reports about series of cyber attacks on commercial entities in the US. The US government on investigation found that these attacks originated from China and the Chinese military were behind the attacks<sup>1</sup>. There was public outrage in US regarding the rogue behaviour of China and many Americans concluded that due to the authoritarian nature of China it was natural on their part to engage in cyber surveillance at home and cyber attacks outside its territorial borders. Perhaps many American politicians doled out lectures on internet freedom not realizing the fact or perhaps hiding the fact that US had long history of state surveillance. On 13<sup>th</sup> June, 2013 the well-known newspaper *Guardian* and *Washington Post* through investigative journalism revealed that US is engaged on a large scale cyber surveillance that spans across the world<sup>2</sup>. This programme is called as Prism which is run by National Security Agency the spy agency specializing in electronic surveillance. Many were shocked to know about the scale of cyber surveillance carried out by US across the world and on its own citizens. Interestingly, the information about the Prism programme was exposed by a whistle blower Edward Joseph Snowden , an employee of Booz Allen the private contractor that was hired by NSA to gather information. Many questions have been raised by this revelation. These include:

- Is surveillance indispensable part of modern or postmodern condition?
- How can democracy successfully justify such surveillance practices?
- Does discussion on privacy make sense or do we need to reconcile to the fact that we live in a post privacy world?
- How the rise of information technology has enhanced the surveillance ability and power of the state.
- What is the nature of private corporations' involvement or complicity in such surveillance programme.

The research paper will first explain the meaning of panoptican followed by explanation of Prism programme and the historical evolution of US as national security state. Finally, it will explore the politico security discourse that woven around state surveillance.

**Meaning of Panoptican**

In 1780s, a Brigadier General in the Russian service designed an architectural design to improve the industrial discipline in Russia. His brother uses this Panoptican model to draw a jail design that would induce discipline in the jail inmates. The design consisted of central tower surrounded

<sup>1</sup> C Raja Mohan, 'The New Cyber Axis', *Indian Express*, March 18,2013.

<sup>2</sup> Glenn Greenwald and Ewen MacAskill, 'Boundless Informant: the NSA's secret tool to track global surveillance data', *Guardian*, June 11, 2013, accessed June 21, 2013, <http://www.guardian.co.uk/world/2013/jun/08/nsa-boundless-informant-global-datamining>.

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by circular prison in such a way that the guard in the watch tower can keep watch on the jail inmates permanently. More crucially, the guard can watch the inmates but the latter cannot see the guard in the watch tower. Thus the inmates will be in the state of perpetual fear of being watched by the guard and they will follow the rules of the jail manual on their own. In other words, the fear of being watched by the guard will induce discipline in the minds of the prisoner and it will reduce the need of coercion or physical violence. For Bentham, the Panopticon was a great invention that would allow rationalizing all forms of human organization based on utilitarian principles. It would also open unprecedented possibilities of systematic collection of information and thus development of various branches of practical knowledge. The panoptican model was later used by Foucault in his work to explain the operation of power in the modern societies. According to him, panoptic is a mode of power, Foucault calls it disciplinary power, that induces discipline in the society through various institutions. Foucault says “the major effect of Panoptican : to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power<sup>3</sup>.” Foucault considers Panoptican, “polyvalent in its application; it serves to reform prisoners, but also to treat patients, to instruct school children, to confine the insane, to supervise workers, to put beggars and idlers to work”<sup>4</sup>. Panoptic is a surveillance mechanism to keep watch on the target be it prisoners, patients or population. Foucault in his later work says that modern states have made population as point of their application of sovereign power. The growth of new disciplines, scientific knowledge, and new technologies will be integrated in the institutional apparatus of the state to increase and intensify its surveillance power. Gary T Marx says that the advent of computers and information technologies will tremendously increase the surveillance power of the state or other entities because now gathering of personal information will become automated. The use of computer related technology will conflate the spatial and temporal difference as the storage, processing, retrieving, and transferring of personal information is easier<sup>5</sup>. Oscar Gandy says that after 9’11 data mining on large scale is happening which will pose threats to the rights of the citizens and aliens<sup>6</sup>.

### **Prism – A Global Digital Panoptican**

Prism is a secret cyber surveillance programme used by US National Security Agency to gain access to various forms of digital data. The data include e-mail, chat services, videos, photos, stored data, file transfers, video conferencing and logins. NSA is running the programme for more than five year. The programme allows seamless flow of internet and phone data in the Prism database which has become possible due to involvement of private companies voluntary sharing data with NSA. Several major internet firms were inducted in to this programme. The first company to share data was Microsoft which is known for its slogan ‘Your privacy is our priority’. Many other US companies joined the league Yahoo in 2008; Facebook and Pal Talk in

<sup>3</sup> Michel Foucault, ‘Panopticism’ in Sean Hier and Josh Greenberg (eds.), *The Surveillance Studies Reader*, Open University Press, 2007,p.70.

<sup>4</sup> Michel Foucault, ‘Panopticism’ in Sean Hier and Josh Greenberg (eds.), *The Surveillance Studies Reader*, Open University Press, 2007,p.72.

<sup>5</sup> Gary T Marx, ‘What’s new about the ‘new surveillance’? Classifying for change and continuity’ in Sean Hier and Josh Greenberg (eds.), *The Surveillance Studies Reader*, Open University Press, 2007,pp. 86-89.

<sup>6</sup> Oscar H. Gandy, ‘ Data mining and surveillance in the post 9/11 environment’ in Sean Hier and Josh Greenberg (eds.), *The Surveillance Studies Reader*, Open University Press, 2007,pp. 153-155.

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2009; You Tube in 2009; AOL and Skype in 2011 and Apple in 2012. Collectively, the companies cover the vast majority of online email, search, video and communications networks<sup>7</sup>. Companies are legally obliged to comply with requests for users communications under US law, but the Prism program allows the intelligence services direct access to the companies servers. The NSA document notes the operations have assistance of communications providers in the US<sup>8</sup>. The US has strategic advantage in the cyber space as it houses large number of internet firms within its territory; one of the reasons why US always champions internet freedom. The main reason why NSA got automatic and sweeping access to the internet data was due to changes in the Foreign Intelligence Surveillance Amendment Act (FAA) in 2008. Before understanding the implications of the amendment it is important to understand the US policies and laws that came into effects after 9'11 attacks.

After 9'11 attacks the Congress enacted several federal laws to strengthen the hands of President Bush in his fight against global terror. The 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act,' later known as the "USA Patriot Act" is a draconian law was passed by the Congress giving the intelligence agencies unrestrained surveillance power to access any information that they believed could posed threat to the US national security. The Act included the following features

*Enhanced Police Wiretap Authority*

Patriot Act provisions broaden police investigative capabilities by reducing some of the legal constraints of the Omnibus Crime Control and Safe Streets Act of 1968, Title III (Wiretap Act). The police was given the power to request wire tap search warrant from the court to engage in electronic surveillance to investigate matters related to foreign intelligence information, terrorism, chemical weapons or computer related crimes.

*Roving wiretap*

Roving wiretap court warrant allows the intelligence community to track mobile phone, VOIP, satellite phone, voice mail messages etc. This provision was necessary to deal with new forms mobile technology. In the traditional hardwire technology the particularity standard was followed whereby police to acquire warrant, had to give details of the person, location etc.

*Pen Register and Trap Traces*

This provision allowed intelligence agencies to record Internet Protocol address of any person within US jurisdiction<sup>9</sup>.

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<sup>7</sup> Glenn Greenwald and Ewen MacAskill, 'NSA Prism program taps in to user data of Apple, Google and others', *Guardian*, June 06,2013, accessed June 20, 2013, <http://www.guardian.co.uk/world/2013/jun/06/us-tech-giants-nsa-data>.

<sup>8</sup> Glenn Greenwald and Ewen MacAskill, 'NSA Prism program taps in to user data of Apple, Google and others', *Guardian*, June 06,2013, accessed June 20, 2013, <http://www.guardian.co.uk/world/2013/jun/06/us-tech-giants-nsa-data>

<sup>9</sup> William Boss, 'Escalating U.S. Police Surveillance after 9/11: an Examination of Causes and Effects', *Surveillance and Society* Part 1, 4(3): p. 215, accessed June 20, 2013, [http://www.surveillance-and-society.org/articles4\(3\)escalating.pdf](http://www.surveillance-and-society.org/articles4(3)escalating.pdf).

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*Monitoring and Reporting Financial Transactions*

Several revisions of the U.S. bank reporting statutes are contained in the Patriot Act. Financial Institutions are now required to report potentially unlawful activity on current or former bank customers or employees to the federal authorities. Financial institutions bear the burden of determining what may be potentially illegal activity. If related to a terrorism investigation, the law also allows the federal police to obtain financial information (i.e., credit reports, bank statements, financial reports, etc.)<sup>10</sup>.

Several provisions of the PATRIOT ACT were renewed by the US Congress in 2008 thus enhancing the surveillance powers of the intelligence community. It would be wrong to assume that US created draconian laws after 9'11. The institutional culture of national security was developed during the heydays of cold war when both the US and the erstwhile USSR were engaged in intense ideological battle for world dominance. The National Security Act of 1947 paved the way for establishment of bodies like Department of Defense, Central Intelligence Agency and National Security Agency<sup>11</sup>. At present some agencies are involved in the field of defence, security and intelligence gathering. During the cold war there was growing concern about the misuse of powers from the members of the intelligence community. The Congress in 1975 set up the Church Committee which published reports on abuses committed by intelligence communities especially the NSA for listening to conversations and communication under the PROJECT MINARET. The Church Committee recommended creation of walls to limit the powers of intelligence communities which led to the enactment of Foreign Intelligence Surveillance Act (FISA 1978)<sup>12</sup>. The primary purpose of FISA was to ensure that the US government would be barred from ever monitoring the electronic communications of Americans without first obtaining an individualized warrant from the FISA court, which required evidence showing "probable cause" that the person to be surveilled was an agent of a foreign power or terrorist organization. Post 9'11 President Bush violated the Act when he secretly authorized NSA eavesdropping on international calls made by Americans without obtaining warrant from the FISA court. The US Congress legalized the questionable order of President Bush by amending the FISA Act in 2008 and thus diluting the provisions regarding obtaining warrant prior to eavesdropping. In 2012 the FISA amendments were renewed for another five years and no warrants are needed for the NSA to eavesdrop on a wide array of calls, emails and online chats involving US citizens. Individualized warrants are required only when the target of the surveillance is a US person or the call is entirely domestic. But even under the law, no individualized warrant is needed to listen in on the calls or read the emails of Americans when they communicate with a foreign national whom the NSA has targeted for surveillance.

In the politically charged environment created soon after the attack on the twin tower, several laws were changed to enable the intelligence community to intensify surveillance within and

<sup>10</sup> William Boss, 'Escalating U.S. Police Surveillance after 9/11: an Examination of Causes and Effects', *Surveillance and Society* Part 1, 4(3): p. 217, accessed June 20, 2013, [http://www.surveillance-and-society.org/articles4\(3\)escalating.pdf](http://www.surveillance-and-society.org/articles4(3)escalating.pdf).

<sup>11</sup> J. Ransom Clark, *Intelligence and National Security: A Reference Handbook*, 2007, 16.

<sup>12</sup> Deeva Shah et al, 'The Surveillance State: A Glance at the Structure, Constitutional and Societal Impacts, and Solutions' p.9, accessed June 20, 2013, [https://www.rutherford.org/files\\_images/general/Surveillance-State-2009.pdf](https://www.rutherford.org/files_images/general/Surveillance-State-2009.pdf).

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outside America<sup>13</sup>. Though political and security establishments have provided the rationale for such privacy invasive programmes and policies, what is surprising is that there has been no public outcry against PRISM. On the contrary public opinion is sharply divided on the issue of surveillance as many tend to believe that such surveillance practices are necessitated by the existential threat faced by America. A poll taken in the days after the metadata programme was exposed found that a majority of respondents (56%) believe that monitoring their phone calls is an “acceptable” way to investigate terrorism—though a substantial minority (41%) disagreed. On the question of e-mail monitoring, the split went the other way: 52% said it was unacceptable while 45% approved<sup>14</sup>. It is in this context we need to review the entire discourse on security.

### **Discourse of Security**

“The one thing people should understand about all these programs, though, is they have disrupted plots, not just here in the United States but overseas as well...we are increasing our chances of preventing a catastrophe like that through these programs<sup>15</sup>.” President Obama gave the above defense before the media in order to pacify the simmering public criticism against him and the establishment. Obama also said that he has directed the intelligence agencies to declassify some information about the programme to assure the American public that there was no invasion of privacy and the PRISM programme has been helpful in thwarting impending terror attacks on America. The White House has used Obama’s interview as a public relation campaign to tone down the criticism against the administration. Many have been surprised on witnessing the different shades of Barack Obama whose coming to power was welcomed not only by the liberals in America but also by the world community. He was awarded Nobel Prize for peace in 2009 for his extraordinary efforts to strengthen international diplomacy and co operation between people<sup>16</sup>. However, it was the same President who ordered extensive use of Drones for targeted killings and authorized cyber attacks on Iran. Perhaps, as a President of United States which is acting as a global empire he has to protect the hegemonic interest of United States. Since US has healthy democracy and free press it is difficult to use coercive practices by the government. The only way left is to secure consent of the masses by trapping them in the discourses of security by using sophisticated tools of public relations, public diplomacy, press etc. Thus government manufactures consent to secure support to their policies. Alexander Hamilton called the people ‘Great Beast’ that must be tamed so that it does not escape from its confines<sup>17</sup>. Advanced democracies like UK and US pioneered the creation of Ministry of Information to mould public opinion in support of government policies. As said by Noam Chomsky, “Problems of domestic control become particularly severe when the governing

<sup>13</sup> Guardian, ‘Fisa court oversight: a look inside a secret and empty process’, *Guardian*, June 19, 2013, accessed June 20, 2013, <http://www.guardian.co.uk/commentisfree/2013/jun/19/fisa-court-oversight-process-secrecy>.

<sup>14</sup> Article, ‘America’s National Security Agency collects more information than most people thought. Will scrutiny spur change?’, *Economist*, June 15, 2013, accessed June 23, 2013, <http://www.economist.com/news/briefing/21579473-americas-national-security-agency-collects-more-information-most-people-thought-will>.

<sup>15</sup> Peter Baker, ‘Obama Defends Authorization of Surveillance Programs’, *New York Times*, June 17, 2013, accessed June 23, 2013, [http://www.nytimes.com/2013/06/18/us/politics/obama-defends-authorization-of-surveillance-programs.html?\\_r=0](http://www.nytimes.com/2013/06/18/us/politics/obama-defends-authorization-of-surveillance-programs.html?_r=0).

<sup>16</sup> BBC News, ‘Obama wins 2009 Nobel Peace Prize’, *BBC NEWS*, October 9, 2009, accessed June 23, 2013, <http://news.bbc.co.uk/2/hi/8298580.stm>.

<sup>17</sup> Noam Chomsky, *Hegemony or Survival: America’s Quest for Global Dominance*, Viva Books, 2007, p.6.

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authorities carry out policies that are opposed by the general population. In those cases, the political leadership may be tempted to follow the path of the Reagan administration, which established an Office of Public Diplomacy to manufacture consent for its murderous policies in Central America”<sup>18</sup>. It is not enough to say that post 9’11 the US government was continuously manufacturing consent to wage its war on global terror. Beneath the propaganda machinery of the US government lie the discourses on democracy and security which generates the notion of American Republic in the minds of the American citizens. We can make sense of discourse of democracy and security by analyzing some extracts of speech ‘Justice will be done’ delivered by former President George Bush after 9’11 attacks<sup>19</sup>.

*'Justice Will Be Done'*

*“On September the 11th, enemies of freedom committed an act of war against our country. Americans have known wars, but for the past 136 years they have been wars on foreign soil, except for one Sunday in 1941. Americans have known the casualties of war, but not at the center of a great city on a peaceful morning... All of this was brought upon us in a single day, and night fell on a different world, a world where freedom itself is under attack... Americans are asking "Why do they hate us?" They hate what they see right here in this chamber: a democratically elected government. Their leaders are self-appointed. **They hate our freedoms: our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.** Americans are asking, "How will we fight and win this war?" **We will direct every resource at our command — every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war — to the destruction and to the defeat of the global terror network.** Now, this war will not be like the war against Iraq a decade ago, with a decisive liberation of territory and a swift conclusion. It will not look like the air war above Kosovo two years ago, where no ground troops were used and not a single American was lost in combat. Our response involves far more than instant retaliation and isolated strikes. **Americans should not expect one battle, but a lengthy campaign unlike any other we have ever seen.** It may include dramatic strikes visible on TV and covert operations secret even in success...The hour is coming when America will act, and you will make us proud. **This is not, however, just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom...**Fellow citizens, we'll meet violence with patient justice, assured of the rightness of our cause and confident of the victories to come...**Freedom and fear are at war. The advance of human freedom, the great achievement of our time and the great hope of every time, now depends on us...**In all that lies before us, **may God grant us wisdom and may he watch over the United States of America”.***

The speech delivered by former president Bush focus on words like freedom, democracy, war on terror, tolerance etc. It is a political discourse with binary division between good and bad, just and unjust, divine and evil, tolerant and fanatic. America as embodiment of good and the world is incarnation of evil. Bush is constantly emphasized that terrorist have not just attacked the material objects like Twin Towers but the universal values of freedom and liberty which American practice in their daily life. The terrorist are constructed as the ‘other’ who poses existential threat to the US. Further, the attacks are portrayed as not just on US but on all freedom loving countries and hence it is sacrosanct duty of the US to protect the globe from terror. Terms like war on terror are fraught with ambiguity and have been used to secure strategic

<sup>18</sup> Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance*, Viva Books, 2007, p.7.

<sup>19</sup> Transcript of President Bush's Speech To Joint Congress, 'Justice will be Done', September 20, 2001, accessed on June 23, 2013, [http://www.greatdreams.com/bush\\_speech\\_92001.htm](http://www.greatdreams.com/bush_speech_92001.htm).

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interest of US. Finally, the speech subtly justifies all means including violence and surveillance.

Nation state as a form of political community produces and is product of narratives and discourses which includes history, geography, culture, ideologies, aesthetics etc. The United State of America was born after the famous American Revolution of 1776 which proclaimed the ideals of liberty, justice, equality and democracy as universal values. This universalism of democratic values and exceptionalism of America as land of freedom is a deeply embedded narrative in the political culture that makes the ordinary American believes their country occupies special position in the world. They believe US is beacon of liberty and the world has lot to learn from it. Many Americans believe that US role was crucial in the defeat of Nazism and Fascism that pose threat to the world peace. These narratives were reified when US plunged itself in the cold war against erstwhile USSR. Here again a binary narrative was created: benign US empire against evil Soviet empire. When cold war ended many academic discourses cherished and glorified American values. Francis Fukuyama went to the extent of proclaiming liberal democracy as inevitable fate of the humankind and predictably US was posited as a model to be emulated by the world. Samuel Huntington in his work *Clash of Civilization* stated that fault line between the civilizations will become the battle lines in future and this clash will be between US and the Islamic world. Post 9'11 the above narratives have gripped the minds of the Americans. The political and security establishment have used the same narratives of existential threat, freedom, justice, democracy, human rights and the like to justify its policies whether it is PATRIOT ACT, Homeland Security Act, Guantanamo Bay and Abu Gharib prisons etc. It can be said the above narratives are like deep structures on which the edifice of American empire stands.

### **Conclusion**

The existence of cyber surveillance programme called Prism is not an anomaly but continuation of surveillance practice which originated during the cold war period. Over a period of time United States has been perfecting the surveillance machinery by integrating new technologies like information technology, biotechnology, genetic engineering, etc., into the security apparatus of the state. But US alone is not engaged in such surveillance practices. Other countries like Russia, China, India, the UK, run their own versions of cyber surveillance. The intensification of globalization has created new kind of threats that are transnational in nature and states tend to rely on technological surveillance to deal with new forms of transnational crimes and terrorism . Further, the expansion of neoliberal market economy after the end of cold war has led to the proliferation of surveillance industrial complex which is a billion dollar industry. Surveillance is no more restricted to state since it has become part of society and market. Functional creep and mission creep has become possible in the age of meta data where all attributes of individual life are extracted from the physical form and reduced to data. The continuous flow of data through the society ( facebook, twitter etc) and state ( administrative records) often converge in the vastness of cyber space. Prism roving eyes track, trap, store and process this data and transform it into usable information and intelligence.