

PHONE TAPPING AND RIGHT TO PRIVACY – POLITY

NEWS: The Madras High Court refused to **expand the scope of Section 5(2)** of the **Indian Telegraph Act of 1885**, and permit the Central and State governments to resort to phone tapping as a covert measure to detect crimes.

- The HC held that legislature, not judiciary, is responsible for expanding such laws.

WHAT'S IN THE NEWS?

What is Phone Tapping?

- **Definition and Nature:**
 - Phone tapping refers to the **interception of telephone conversations** by a **third party**, most commonly by **government agencies**, either for security or investigative purposes.
 - It is a form of **state surveillance** that can have legal backing, but when done without due process, it becomes a **violation of constitutional rights**, particularly the **Right to Privacy**.
- **Scope of Use:**
 - It may be used in the context of **national security, public emergency, crime investigation, or public safety**, but is **legally regulated** to avoid misuse.

Legal Framework Governing Phone Tapping in India

1. Indian Telegraph Act, 1885 – Section 5(2)

- **Permissible Grounds:**
 - Allows the **Central or State Government** to lawfully intercept communications **only under two conditions**:
 - **Public emergency**
 - **Public safety**
- **Authorisation Requirement:**
 - Interception can only be carried out if **reasons are recorded in writing** and approval is obtained from the **competent authority**, usually the **Home Secretary**.
- **Review Mechanism:**
 - A **Review Committee** must examine such orders to ensure compliance with statutory and constitutional safeguards.

2. Indian Telegraph (First Amendment) Rules, 1999

- **Background:**
 - These rules were notified in response to the **PUCL v. Union of India (1996)** Supreme Court judgment.
- **Purpose:**
 - To provide **statutory backing** to procedural safeguards by regulating:

- **Who may authorise interception**
- **Duration and purpose**
- **Oversight mechanisms** like the Review Committee

3. Information Technology Act, 2000 – Section 69

- **Scope Extended to Digital Communications:**
 - Provides for **interception, monitoring, and decryption of electronic data**, including:
 - Emails, social media messages, online chats, and digital content.
- **IT (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009:**
 - Reflect the **PUCL principles**:
 - **Authorisation by competent authority**
 - **Defined time limits**
 - **Purpose limitation**
 - **Review by Committee**

Key Supreme Court Guidelines – PUCL v. Union of India (1996)

- **First Judicial Recognition of Phone Privacy:**
 - This was the **first major ruling** linking **phone tapping to the right to privacy** under **Article 21**.
- **Procedural Safeguards Mandated:**
 - **Approval Authority:** Only the **Home Secretary (Centre/State)** can approve interception.
 - **Time Limits:**
 - Order valid for **2 months**, extendable up to a **maximum of 6 months**.
 - **Urgency Clause:**
 - In emergency situations, authorisation may be delegated to a **Joint Secretary-level officer** in the Home Department.
 - **Review Committee:**
 - Must **review all interception orders** within **two months** of issuance.
 - If found **inconsistent with Section 5(2)**, the order is to be invalidated and all data destroyed.
 - **Data Retention and Destruction:**

- Intercepted material must be **destroyed promptly** once it's no longer required under the stated legal purpose.

Reinforcement of Privacy – K.S. Puttaswamy v. Union of India (2017)

- **Right to Privacy Declared as a Fundamental Right:**
 - The **Supreme Court** ruled that **privacy is a fundamental right** under **Article 21** (Right to Life and Personal Liberty).
- **Three-Fold Test for Valid Infringement:**
 - **Legality** – Must have legal sanction.
 - **Necessity** – Must pursue a **legitimate aim**.
 - **Proportionality** – Means used must be the **least restrictive**.
- **Impact on Phone Tapping:**
 - Any surveillance or interception, including phone tapping, must **satisfy this constitutional test**.

Concerns and Challenges with Phone Tapping

- **Violation of Fundamental Rights:**
 - Arbitrary or unauthorised phone tapping infringes the **Right to Privacy**.
 - Often used as a **tool for political surveillance** or suppression of dissent.
- **Vague Legal Terminology:**
 - Terms like “**public emergency**” and “**public safety**” are **undefined** in the law.
 - This gives **wide discretion to the executive**, increasing the risk of **abuse**.
- **Lack of Accountability:**
 - **Weak oversight mechanisms, lack of transparency, and closed-door authorisations** make it difficult to detect misuse.
- **Absence of Robust Data Protection Law:**
 - Although the **Digital Personal Data Protection Act, 2023** has been introduced, India still lacks a **comprehensive surveillance regulation framework**.
- **Technological Challenges:**
 - New tools allow for **mass surveillance** and **remote interception** without physical access or **audit trails**, making regulation harder.

Role and Significance of Recent High Court Judgements

- **Enforcement of PUCL Principles:**
 - Recent High Court rulings have reiterated the **need for compliance** with procedural safeguards laid down in PUCL.

- **Reinforcement of Rule of Law:**

- Judicial review of phone tapping orders **checks executive overreach** and reinforces the **rule of law**.

- **Setting Precedents:**

- Courts have ruled that **interception without due process** is illegal, enabling citizens to **challenge misuse** and seek redress.

Conclusion

- The **PUCL v. Union of India (1996)** case laid the **foundation for surveillance regulation in India**, making **privacy a judicially protected right** even before it was formally declared as fundamental in **K.S. Puttaswamy (2017)**.
- While phone tapping can serve **legitimate security purposes**, it must be **tightly regulated, transparent, and subject to accountability**.
- In the digital age, India urgently needs a **comprehensive legal framework** for surveillance, aligned with **democratic norms, human rights, and constitutional safeguards**.

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