Laws that govern Tapping a Phone

Why in news?

Sanjay Raut, a political party leader has accused the Centre of protecting IPS officer Rashmi Shukla, under probe for tapping the phones of political leaders in 2019.

How are phones tapped in India?

- During the times of fixed-line phones, mechanical exchanges would link circuits together to route the audio signal from the call.
- When exchanges went digital, tapping was done through a computer.
- Authorities make a request to the service provider, which is bound by law to record the conversations on the given number and provide these in real time.
- **Competent authority to tap phones**- In the states, police has the power to tap phones.
- At the Centre, 10 agencies are authorised to do so including the Intelligence Bureau, CBI, Enforcement Directorate, National Investigation Agency, R&AW and Delhi Police Commissioner.
- Tapping by any other agency would be considered illegal.
- The competent authority must record reasons for tapping in writing.

What laws govern phone tapping?

- **Act**- Phone tapping in India is governed by the The Indian Telegraph Act, 1885.
- **Time**- Phone tapping can be done
    - On the occurrence of any public emergency
    - In the interest of the public safety
- **Conditions**- Phone tapping can be done by the Centre or States if they are satisfied it is necessary in the interest of
    - Public safety
    - Sovereignty and integrity of India
    - Security of the State
    - Friendly relations with foreign States
    - Public order
    - Preventing incitement to the commission of an offence
- **Exception**- An exception has been given for the press.
- The press messages of correspondents accredited to the Central Government or a State Government that is intended to be published in India shall not be intercepted, unless their transmission has been prohibited under this sub-section.
- **Authorisation-** Rule 419A of the Indian Telegraph (Amendment) Rules, 2007 talks about the authorising orders that has to be conveyed to the service provider in writing.
- Phone tapping orders is issued by
    - The Secretary to the Government of India (Ministry of Home Affairs) in the case of Government of India

    - The Secretary to the State Government in-charge of the Home Department in the case of a State Government
- **Emergency situations**- In unavoidable circumstances, such an order may be issued by an officer, not below the rank of a Joint Secretary to the Government of India, who has been authorised by the Union Home Secretary, or the State Home Secretary.
- If it is not feasible to get prior directions, a call can be intercepted with the prior approval of the authorised officers.
- The order has to be communicated within 3 days to the competent authority, who has to approve or disapprove it within 7 working days.

What are the checks against misuse?

Telephone conversation is an important facet of a man's private life. Telephone tapping would thus infract Right to Privacy under Article 21 of the Constitution.

- **Last resort** - Interception must be ordered only if there is no other way of getting the information.
- **Directions for interception**- The directions for interception remain in force, unless revoked, for a period not exceeding 60 days.
- They may be renewed, but not beyond a total of 180 days.
- **Review Committee**- Any order issued by the competent authority has to contain reasons, and a copy is to be forwarded to a review committee within seven working days.
- When the Review Committee is of the opinion that the directions are not in accordance with the provisions, it may set aside the directions and orders for destruction of the copies of the intercepted messages.
- **Destruction of records**- Records pertaining to such directions shall be destroyed every six months.
- Service providers are required to destroy records pertaining to directions for interception within two months of discontinuance of the interception.
- **Unauthorised interception**- In case of unauthorised interception, the service provider may be fined or even lose its licence.

References

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