Phone Tapping in India

Why in news?

Recently two senior police officials has been arrested in Telangana for their involvement in phone tapping and destroying official data.

What is phone tapping?

- Phone tapping, also known as ***wiretapping*** or ***telephone interception***, refers to the unauthorized monitoring or recording of telephone conversations or electronic communication.

Authority to tap phone	
At State level	Police have the authority to tap phone
At national level	10 agencies are granted this power • Intelligence Bureau • Central Bureau of Investigation (CBI) • Enforcement Directorate • Narcotics Control Bureau • Central Board of Direct Taxes • Directorate of Revenue Intelligence • National Investigation Agency • Research and Analysis Wing • Directorate of Signal Intelligence • Delhi Police Commissioner

- Any phone tapping conducted by agencies other than these is considered illegal.
- **Legal provision**-*Telegraph Act of 1885*, which sets the legal precedent for phone surveillance and interception in the interest of national security and public order.

How phone tapping is regulated under Telegraph Act 1885?

- **Condition for phone tapping-** Phone tapping can occur under specific circumstances
  - On the occurrence of any public emergency
  - In the interest of the public safety
- **Eligible criteria to phone tap-** The decision to tap phones must be based on satisfying the criteria related to
  - Public safety
  - Sovereignty and integrity of India
  - State security
  - Foreign relations
  - Public order or prevention of incitement to commit offenses.
- **Exception for press-** The press messages intended for publication by accredited

press correspondents should not be intercepted or detained unless explicitly prohibited.

- **Press freedom**- The exception for press acknowledges the importance of press freedom and imposes limitation on interception activities concerning journalist's communications.
- **Authorisation procedure-** Rule 419A of the Indian Telegraph (Amendment) Rules, 2007 says that the authorization must be communicated *in writing* to the service provider before interception can commence.
- **Authority-** Phone tapping orders is issued by designated government officials such as
    - **National level-** The Secretary to the Government of India in *Ministry of Home Affairs*
    - **State level-** Secretary to the State government in charge of Home department.
- **Rule-** The law is clear that interception must be ordered only if there is no other way of getting information
- **Tenure-** The directions for interception remains in force with a maximum duration of 60 days, extendable up to 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.
    - **At national level-** It is headed by Cabinet Secretary with the Law and Telecom Secretaries as members.
    - **At State level-** It is headed by the Chief Secretary with the Law and Home Secretaries as members.
- **Power of review committee-** 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 6 months and service providers must destroy records within 2 months of discontinuance of interception.
- **Unauthorised interception-** In case of unauthorised interception, the service provider may be fined or even lose its licence.

Judiciary view on intercepted conversation as an evidence
• **R.M.Malkani vs State of Maharashtra-** The Supreme Court allowed the use of tape-recorded conversation as evidence under *Indian Evidence Act, 1872.* • The Court also clarified that such evidence should be used sparingly under proper direction. • In another case husband tapped wife's conversation with friends and parents which was declared as *illegal* by Supreme Court as it infringed wife's constitutional right to privacy.

What is the protocol for issuing phone tapping orders in exceptional circumstances under Telegraph Act 1885?

- **Emergency authorization-** In unavoidable circumstances where prior authorization is not feasible, the order can be issued by an officer not below the rank of a Joint Secretary to the Government of India who has been authorised by Union Home Secretary or State Home Secretary.
- **Exceptional circumstances-** In remote areas or for operational reasons it is not

possible to get prior directions.
    - A call be intercepted with prior approval of the head or
    - At national level-Second senior most officer of the authorised law enforcement agency
    - At State level- By authorized officers not below the rank of Inspector General of Police.
- **Approval-** The interception order has to be communicated within 3 days to the competent authority who has the authority to approve or disapprove it within 7 working days.
- **26/11 Mumbai attack-** A mail was sent to the service provider by the Intelligence Bureau, and phones of terrorists were put under surveillance as adherence to the complete interception procedure is not feasible, the proper procedure would be followed later.

Does India needs reforms in Indian Telegraph Act 1885?

- **Violates Article 21**- Telephone conversation is an important facet of a man's private life hence telephone tapping would infringe Right to Privacy under Article 21 of the Constitution.
- **Outdated law**- The Act is introduced during colonial era, it must be reformed to align phone tapping with modern requirements and to address the privacy concerns associated with phone tapping.
- **Telecommunication bill, 2023**- It provides a more updated set of guidelines of lawful interceptions of communications, ensuring the process is transparent, accountable and respectful of individual's right to privacy.
- **Follow judiciary guidelines**- In the public interest the *procedure established by the court* is to be followed while breaching the privacy of an individual and keeping it secretive because of the sensitive nature of the information gathered.

References

1. Indian Express- Phone tapping case in Telangana
2. PRS- Telecommunication Bill 2023

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