



## Phone Tapping in India

**For Prelims:** Central Bureau of Investigation (CBI), Enforcement Directorate, Narcotics Control Bureau, Central Board of Direct Taxes, Directorate of Revenue Intelligence, National Investigation Agency

**For Mains:** Phone Tapping in India and related issues

### Why in News?

Recently, a political leader claimed that the Centre is protecting an **Indian Police Service** officer who is facing a **First Information Report (FIR)** in Mumbai and is being probed for allegedly tapping the phones.

### What is Phone Tapping and how are Phones Tapped in India?

- Phone tapping or cell phone tracking/tracing is an **activity where a user's phone calls, and other activities are tracked** using different software.
  - This procedure is majorly carried out without the targeted person being notified of any such activity.
- It can be done by authorities making 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 through a connected computer.
- However, **Article 21 of the Indian Constitution** says that **“No person shall be deprived of his life or personal liberty except according to procedure established by law.”**
  - **The expression ‘personal liberty’ includes ‘right to privacy’.** A citizen has a right to safeguard his personal privacy and his family, education, marriage, motherhood, childbearing, and procreation, among other matters.

### Who can Tap Phones?

- **State Level:**
  - In the states, police have the power to tap phones.
- **Central Level:**
  - 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 (R&AW), Directorate of Signal Intelligence, **Delhi Police Commissioner**.

### What are the Laws that govern Phone Tapping in India?

- **The Indian Telegraph Act, 1885:**
  - According to **Section 5(2) of the Act** on the occurrence of any public emergency, or in the interest of public safety, phone tapping can be done by the Centre or states.
  - The order can be issued **if they are satisfied it is necessary in the interest of public safety, “sovereignty and integrity of India**, the security of the State, friendly relations

with foreign States or public order or for preventing incitement to the commission of an offence”.

- **Exception for Press:**
  - **Press messages intended to be published in India of correspondents accredited to the Central Government or a State Government** shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.
  - The competent authority **must record reasons for tapping in writing**.

## Who Authorizes Phone Tapping?

- Phone tapping is authorized by **Rule 419A of the Indian Telegraph (Amendment) Rules, 2007**.
  - **In the case of the Central Government:** The order can be **issued by an order made by the Secretary to the Government of India in the Ministry of Home Affairs**.
  - **In the case of a State Government:** By the Secretary to the State Government in-charge of the Home Department.
- **In Emergency Situation:**
  - In such a situation, an **order may be issued by an officer**, not below the rank of a **Joint Secretary of India**, who has been **authorized by the Union Home Secretary, or the State Home Secretary**.
  - In **remote areas or for operational reasons**, if it is **not feasible to get prior directions**, a call can be intercepted with the prior approval of the head or the second senior-most officer of the authorized law enforcement agency at the central level, and by authorized officers, not below the rank of Inspector General of Police, at the state level.
  - The **order must be communicated within three days** to the competent authority, who must **approve or disapprove it within seven working days**.
    - If the confirmation from the competent authority is not received within the stipulated seven days, such interception shall cease.
- It can be noted here that in 2021, the Central Government notified the [Indian Telegraph Right of Way \(Amendment\) Rules, 2021](#).

## What are the Checks against Misuse?

- **Last Resort:**
  - The law is clear that interception **must be ordered only if there is no other way of getting the information**.
- **Renewal of Interception:**
  - The directions for interception remain in force, **unless revoked earlier, for a period not exceeding 60 days**.
    - They may be **renewed, but not beyond a total of 180 days**.
- **Reasons Needed:**
  - Any order **issued by the competent authority** must contain reasons, and a copy is to be forwarded to a review committee within seven working days.
    - At the Centre, the committee is **headed by the Cabinet Secretary** with the Law and Telecom Secretaries as members.
    - In states, it is **headed by the Chief Secretary** with the Law and Home Secretaries as members.
      - The committee is expected to meet at least once in two months to review all interception requests.
- **Destruction of Records:**
  - Under the rules, **records pertaining to such directions shall be destroyed every six months** unless these are, or are likely to be, required for functional requirements.
  - Service providers too are required to destroy records pertaining to directions for interception within two months of discontinuance of the interception.

## Way Forward

- The relation between the **‘right to privacy’ and ‘personal liberty’** was distinctly observed by

the court of law, along with the necessities to tap communications of the individuals.

- The need of safeguarding the rights of the individuals and maintaining privacy is paramount but when it comes to public emergencies or safety 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.
- The court has **established a fair and just procedure to keep the checks** and balances so that no misuse of power takes place.

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