

CENTRIC APPROACH TO PHONE TAPPING VIA PEOPLE'S UNION OF CIVIL LIBERTIES V. UNION OF INDIA (UOI) AND ANR

J. Jerry Bastin*

ABSTRACT

Phone tapping means connecting to a phone surreptitiously to listen to the other person converse on the phone. With the advancement of highly sophisticated communication technology, many crimes have evolved, of which, phone tapping is one of them. People's Union of Civil Liberties v. Union of India (UOI)¹ And Anr is one of the landmark judgments which laid down guidelines and rules to be adhered to by the concerned authorities while tapping the telephone under Section 5(2) of the Indian Telegraph Act, 1885.

INTRODUCTION

Section 5 (2) of the Indian Telegraph Act, of 1884 gives immense power to the Central and State Governments to tap the Telephone, in case if they are satisfied that the sender or a group of senders are suspicious of leaking out information regarding the security of the Nation, relations maintained with foreign states, law and order among the public or for thwarting incitement to the commit such an offense by a person who is an officer who is specially authorized on behalf of both the Government, i.e., Central and State. This affects the Right to Privacy listed under Article 21 and is abused.

FACTS OF THE CASE

- PUCL, a voluntary organization, has filed a Writ Petition in front of the Hon'ble Bench of the Supreme Court of India, highlighting the incidents regarding phone tapping, and questioning the Constitutional Legitimacy of Section 5 (2) of the Indian Telegraph Act, 1885.
- The phones of the politicians were tapped and it abused their right to privacy under Article 21 by the Central Bureau of Investigation (CBI).
- The authorities who were phone tapping, i.e., MTNL had foremost intervals in maintaining the record of the captured element during the taping of telephones. Nearly

*BA LLB, SECOND YEAR, SATHYABAMA INSTITUTE OF SCIENCE AND TECHNOLOGY.

¹ AIR 1997 SC 568

111 cases were under interception in a period of 180 days and it was authorized by the government.

- After further investigation, it was found that no proper records were being held and the reason for inception was vague and unclear.

ISSUES:

- Whether Section 5 (2) of the Act was used in order to infringe on the Right to privacy?
- Whether there was a need to read down Section 5(2) of the Act to add procedural safeguards for precluding arbitrariness as well as prevent indiscriminate phone tapping?

ARGUMENTS OF THE PETITIONER

The petitioners put forth their arguments laying down that Right to Privacy is included under the Fundamental Rights listed under Article 19(1), i.e., the Right to freedom of speech and expression, and Article 21, i.e., the Right to Life and Personal Liberty of the Indian Constitution. As telephone tapping is invading the privacy of an individual, the Petitioners pleaded to declare Section 5(2) of the Indian Telegraph Act, 1885 to be null and void. They also submitted saying that it is deemed to be important to read the provisions under the said legislation to safeguard privacy, The Petitioners also argued that former judicial sanction, an ex parte was the only safeguard that eliminated the component of arbitrariness and/or unreasonableness.

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ARGUMENTS OF THE RESPONDENT

The Respondents laid down that making Section 5(2) of the Indian Telegraph Act, 1885 null as well as void would trigger public interest and jeopardize the security of the state. They also denied all the allegations raised by the Petitioners claiming that only an officer who is authorized by the concerned governments, i.e., Central or State can pass an order to tap the phone of an individual, and thus, no misuse of power was present. They also contended that the party whose phone is being tapped should not be informed as it would disturb the main objective of phone tapping.

JUDGMENT BY THE HON'BLE SUPREME COURT

The Two Judge bench has laid down a few guidelines to be followed for phone tapping under Section 5(1) of the Indian Telegraph Act, 1885. These are:

- Only the Home Secretary, the Government of India, and the State Government have the rights vested in their power to command phone tapping under Section 5(2) of the Indian Telegraph Act, 1885.
- The order must have the name and details of the person to whomsoever it is addressed, to block during the transmission, via a system of public telecommunication, and similar dispatches as pronounced in the said order. Furthermore, it shall contain the details of the concerned individual to whom it is said to expose such interdicted materials to a similar person in the same way as a term in the said order.
- Information that has been acquired, has been acquired for a reason by lawful means. The information collected and the interception must be deleted if the information is deemed to be unnecessary or illegal.
- Detailed reports and logs must be maintained of the information that has been collected by the concerned authorities.
- Phone tapping order must be passed only if it is affecting the following:
 - Sovereignty as well as the integrity of the Nation
 - National Security
 - Public order
 - Preventing persuasion to committing such an offense

The Hon'ble Court also observed that every individual has the right to have conversations with themselves in their private zone as it is their right vested in Article 21 of the Indian Constitution. Furthermore, Court held that the Right to communicate via telephone is a right under Article 19(1) and violation of such right must be protected by Article 19 (2) of the Indian Constitution.

CONCLUSION

- The relation between 'personal liberty and 'the right to privacy is specifically in the observation in the Hon'ble Court, along with the inevitabilities to tap communications of the individuals.
- PUCL V, Union of India was considered a landmark decision for two causes:
 - Firstly, the Hon'ble Court mirrored the existence of a right to privacy in Indian law and regarded the question of whether or not the proper to privacy was a basic right warranted by the Constitution. This was necessary to the end result of the case as, if phone sound infringed on a basic right, it might have a stricter level of review.

- Secondly, the Court has listed detailed guiding principles for exercising the powers vested in the concerned authorities.
- The Court has also recognized a just and fair process to retain the checks and balances in order to prevent the misuse of power.
- These guidelines help in the protection of Fundamental Rights, particularly under Article 19(1) and Article 21.

