

MHA Notification on Computer Surveillance - III

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What law covers tapping phones/computers?

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• Lawful interception of phones and computers can be done by the governments at the Centre and in the states under <u>Section 5(2)</u> of the <u>Indian Telegraph Act</u>, 1885.

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 \bullet If it is done illegally, it is punishable under sections 25 & 26 that provide for imprisonment up to three years, with or without a fine. \n

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When is tapping by the government lawful or illegal?

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• The Supreme Court laid down the following guidelines in this regard in the **PUCL vs Union of India** case.

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- Section 5(2) of ITA,1985 does not confer unguided and unbridled power on investigating agencies to invade a person's privacy.
- Tapping of telephones is prohibited without an <u>authorising order from the Home Secretary</u> of the Union government or of the state government concerned.

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- The order unless is valid for two months and if renewed, it <u>cannot remain</u> in operation <u>beyond six months</u>.
- Phone tapping or interception of communications must be limited to the address specified in the order or to addresses likely to be used by a person specified in the order.

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• All copies of the intercepted material must be destroyed as soon as their retention is not necessary under Section 5(2). $\$

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Who oversees if interception is done without misuse of powers?

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• There is <u>no judicial or parliamentary oversight</u> to review cases of lawful interception.

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 However, the orders of the competent authority clearing lawful interception are reviewed by a <u>review committee</u> at both the central and state levels under Rule 419-A of the Indian Telegraph Rules, 1951.

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• The review committee investigates whether its passing is relevant within two months of an order.

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 Rule 419-A also provides for the procedure and precautions for handling lawful interception cases to ensure that unauthorised interception does not take place.

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What are the rules for monitoring of emails and social media content?

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• This is done by invoking the provisions of "public emergency", "interest of sovereignty" or "integrity of India".

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 Under <u>Section 69 of the IT Act, 2008</u>, the central and state governments are empowered to issue directions to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resources.

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- Accordingly, the Ministry of Home Affairs in 2011 issued standard operating procedures (SOPs) to law enforcement agencies.
- The Department of Telecom has also issued SOPs for lawful interception to the telecom service providers.

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What does the SOP contain?

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• It requires setting up of an <u>internal evaluation cell</u> that will examine a monthly statement from law-enforcement agencies on the fifth of succeeding month.

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 These statements are to detail the authorisation orders received for interception, numbers and emails intercepted including period of interception, number of telephones and emails authorised but not intercepted, etc.

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• The SoPs also mention the need for destruction of data and phone-tapping records beyond six months.

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• It further says that for surveillance in remote areas, the competent authority should be informed within 3 days and permission must be obtained in 7 days, failing which the interception will not be valid.

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Source: The Indian Express

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