

Phone tapping laws in India

April 26, 2022

In news—Maharashtra's Shiv sena party has accused the Centre of protecting IPS officer Rashmi Shukla, under probe for tapping the phones of political leaders in 2019.

Laws governing phone tapping in India-

- Phone tapping in India is **governed by the The Indian Telegraph Act, 1885.**
- **Section 5(2) of the act says** that “on the occurrence of any public emergency, or in the interest of the public safety”, 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, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence”.
- **There is an exception for the 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 subsection”.
- The competent authority **must record reasons for tapping in writing.**
- **Rule 419A of the Indian Telegraph (Amendment) Rules, 2007, says phone tapping orders** “shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India and by the Secretary to the State Government in-charge of the Home Department in the case of a State Government”.
- The order has to be conveyed to the service provider in writing; only then can the tapping begin.
- **In the states, police have the power to tap phones.**

- **At the Centre, 10 agencies are authorised to do so:** Intelligence Bureau, CBI, Enforcement Directorate, Narcotics Control Bureau, Central Board of Direct Taxes, Directorate of Revenue Intelligence, National Investigation Agency, R&AW, Directorate of Signal Intelligence, and the Delhi Police Commissioner.
- **Tapping by any other agency would be considered illegal.**
- In unavoidable circumstances/an emergency, 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.
- 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 authorised law enforcement agency at the central level, and by authorised officers, not below the rank of Inspector General of Police, at the state level.
- **The order has to be communicated within three days to the competent authority,** who has to 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.
- **For example, during the 26/11 attacks in Mumbai, the authorities had no time to follow the complete procedure, and so a mail was sent to the service provider by the Intelligence Bureau,** and phones of terrorists were put under surveillance.

The Indian Telegraph Act, 1885-

- It is the enabling legislation in India which governs the use of wired and wireless telegraphy, telephones,

teletype, radio communications and digital data communications.

- The act came into force on 1 October 1885.
- It gives the Government of India exclusive jurisdiction and privileges for establishing, maintaining, operating, licensing and oversight of all forms of wired and wireless communications within Indian territory.
- It also authorises government law enforcement agencies to monitor/intercept communications and tap phone lines under conditions defined within the Indian Constitution.