

Phone tapping cannot be permitted for crime detection, rules Madras High Court

Justice N. Anand Venkatesh says, the Indian Telegraph Act of 1885 sets out the 'Lakshman Rekha' and the role of the court is confined to see whether it is crossed or not

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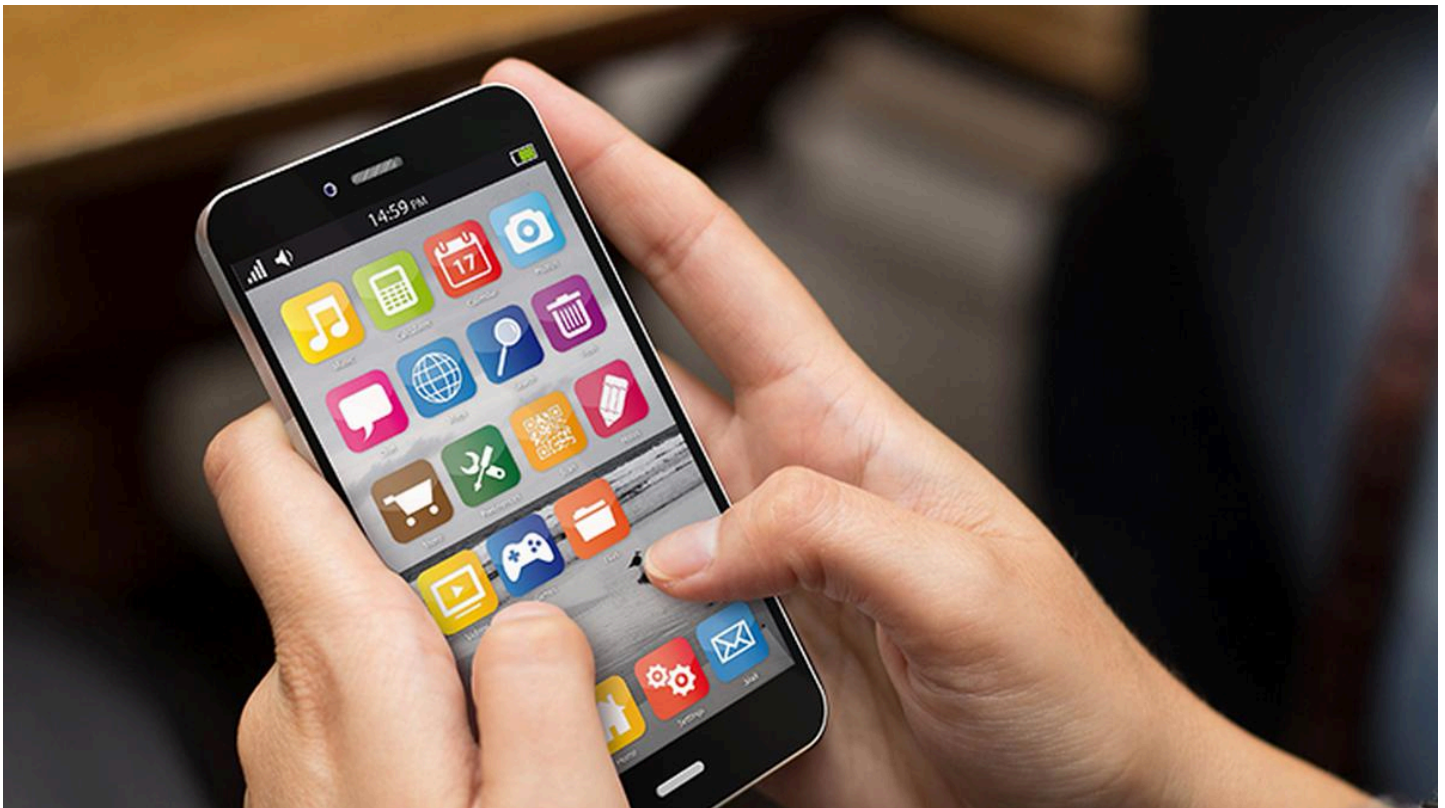


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In a significant verdict, the Madras High Court on Wednesday refused to expand the scope of Section 5(2) of the Indian Telegraph Act of 1885 and permit the Centre as well as State

governments to resort to phone tapping as a covert measure for detection of crimes related to corruption and so on.

Justice N. Anand Venkatesh rejected such a request made on behalf of the Union Ministry of Home Affairs (MHA). “This court is unable to accept this submission since the boundaries for invasion of a fundamental right through the medium of enacted law is a function of the legislature and not of the court,” he wrote.

The judge said, Section 5(2) sets out the “Lakshman Rekha” for resorting to the extreme measure of phone tapping which amounts to invasion of the right to privacy, a right that had now been recognised as an integral part of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution.

As per Section 5(2), the Centre or the State governments could authorise phone tapping only in case of two contingencies: on the occurrence of any public emergency or in the interest of public safety. “The role of the court is confined to seeing as to whether this threshold is crossed or not,” the judge said.

Declining to expand the scope of the legal provision any further, he went on to state: “As sentinels on the qui vive, the courts are gate keepers of fundamental rights. Gate keepers cannot become gate makers to reposition the gates as and when the executive requires without the intervention of the legislature.”

The judge traced the history of the right to privacy since 1604 and said, it finally came to be recognised as a part of Article 21 by the Supreme Court in the 1996 People’s Union for Civil Liberties (PUCL) case and the PUCL verdict was affirmed by a Constitution Bench of the top court in the 2019 K.S. Puttaswamy case.

Stating he had no choice but to follow the decisions of the Supreme Court, the judge said, it was another reason why he could not accept the request to expand the scope of Section 5(2) in order to help the law enforcing agencies to prevent serious crimes such as corruption involving public servants and others.

“However noble and well intended the objective may be, tapping of phones, dehors a ‘public emergency’ or in the ‘interests of public safety’ as stipulated in Section 5(2) of the Act,

cannot be legally justified as the law presently stands,” the judge said while allowing a 2018 writ petition.

P. Kishore of Everonn Education Limited based in Chennai had filed the petition to quash an authorisation issued by the Union Home Secretary on August 12, 2011 for the CBI to intercept his phone calls. The intercepted phone calls had led to arrest of Additional Commissioner of Income Tax Andasu Ravinder for allegedly receiving a bribe of ₹50 lakh.

Holding that there was absolutely no question of ‘public emergency’ or ‘public safety’ involved in the present case requiring the tapping of the petitioner’s phone, the judge ordered the intercepted calls should not be used for any purpose not even as evidence in the criminal trial against the petitioner.

Justice Venkatesh held the Home Secretary’s order to be unconstitutional since it had been passed in violation of Section 5(2) of the 1885 Act. Further, the procedural requirement of placing the Secretary’s authorisation before the review committee too had not been followed, he pointed out.

Highlighting that the review committee was empowered to order destruction of the intercepted materials if it was convinced that they had been collected in violation of Section 5(2), the judge said, therefore, such material could not now be allowed to be used by the CBI for any purpose whatsoever.

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