



# Explained: Law on phone-tapping, and two HC rulings

On June 26, the Delhi High Court rejected the plea of an accused who challenged a trial court's order accepting evidence gathered by the CBI through phone-tapping

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Once a phone-tap order is declared unlawful, any information gathered through the tap cannot be treated as evidence in a court of law. (File Photo)

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Can the government tap the phones of suspects to gather evidence before a crime is committed? Last week, in two separate cases, the Madras and the Delhi High Courts gave varying answers to this question.

What is the law on phone tapping in India, and how have High Courts interpreted it?

## The law on tapping

The government's powers to intercept communication is laid down in — and circumscribed by — three pieces of legislation.

- The Indian Post Office Act, 1898 allows for the interception of communication through post;
- The Indian Telegraph Act, 1885 is used for tapping voice calls; and
- The Information Technology Act, 2000 governs the interception of WhatsApp messages, emails, etc.

The 140-year-old Telegraph Act was originally meant for intercepting telegrams, but over the years it has been expanded to include telephonic conversations. Section 5(2) of the Act states that both state and central governments can, “on the occurrence of any public emergency, or in the interest of the public safety”, authorise interception.

Given that the right to free speech and the right to privacy are fundamental rights, any encroachment on these rights through surveillance is only permissible on narrow constitutional grounds.

These grounds — the interest of the sovereignty, and integrity of India; the security of the state; friendly relations with foreign states; public order; or preventing incitement to the commission of an offence — are enumerated as “reasonable restrictions” under Article 19(2) of the Constitution.

Section 5(2) of the Act also mentions these grounds for authorising interception. For actions to be deemed a threat to “public emergency, or in the interest of the public safety” and allow for interception, they have to necessarily fall into one of the reasonable restrictions.

## The High Court rulings

Both the Madras and [Delhi](#) High Court cases involved “preventing incitement to the commission of an offence”, which is one of

the valid grounds in law for authorising phone tapping.

Both courts separately examined the nature of economic offences to determine if they could be deemed as “public emergency” or “public safety.” While the Delhi High Court upheld the interception order, the Madras High Court quashed it.

**DELHI HC:** On June 26, the Delhi High Court rejected the plea of an accused who challenged a trial court’s order accepting evidence gathered by the Central Bureau of Investigation (CBI) through phone-tapping.

The case related to the accused allegedly seeking to secure a sub-contract for the redevelopment of the ITPO complex into an Integrated Exhibition-Cum-Convention Centre through corrupt means. In 2017, the Ministry of Home Affairs (MHA) had authorised interception of his phone on the suspicion that he was attempting to bribe a public official.

Justice Amit Mahajan stated in his order that given the contract was for Rs 2,149.93 crore, “the economic scale of the offence, in the opinion of this Court, satisfies the threshold of public safety”.

“The threat posed by corruption cannot be understated. Corruption has a pervasive impact on a nation’s economy and the same can impact anything from infrastructural development to resource allocation. Corruption by a public servant has far-reaching consequences as it serves to not only erode public trust and cast aspersions on the integrity of public institutions, but also renders the public at large susceptible and vulnerable by threatening the economic safety of the country,” the High Court said.

**Madras HC:** The Madras High Court on July 2 quashed an interception order issued by the MHA in 2011 for intercepting the phone of an accused in a bribery case. The accused was allegedly attempting to pay a bribe of Rs 50 lakh to a senior Income Tax officer to help the accused hide undisclosed taxable income.

Justice Anand Venkatesh in his order stated that a “public emergency” must be construed narrowly. In the petitioner’s case, the MHA’s objective to deal with tax evasion would not qualify as a “public emergency” under Section 5(2) of the Act, the court said.

The court also flagged in its order a press note that was released by the Press Information Bureau in April 2011, four months before the MHA order, saying that the law does not allow the monitoring of conversations through phone-tapping “to merely detect tax evasion”.

Additionally, the court said that the phone-tap was unlawful since it did not comply with the procedural standards set by the Supreme Court in a 1997 ruling.

Once a phone-tap order is declared unlawful, any information gathered through the tap cannot be treated as evidence in a court of law.

### **Procedural norms**

In its landmark 1997 ruling in *People’s Union Of Civil Liberties vs Union Of India*, the Supreme Court examined the constitutional validity of Section 5(2) of the Telegraph Act. While it upheld the law, the court laid down procedural safeguards for its application.

The SC said that an order for phone tapping can be issued only by the home secretary of the state and central governments, and that this power cannot be delegated to officers below the rank of joint secretary.

The authorising authority must also consider whether the information could “reasonably be acquired by other means”.

Within two months of ordering a phone tap, a committee comprising the cabinet secretary, the law secretary and the telecom secretary shall review the order. At the state level, the committee shall comprise the chief secretary, law secretary and another member other than the home secretary.

The scrutiny by the board has also been included under Rule 419-A (17) of the Telegraph Rules.