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**“An analysis of Telephone tapping as an investigation with reference to people’s union for civil liberties(PUCL) Vs Union of India,(1997) 1 scc 301”**

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**INTRODUCTION**

Telephone tapping is basically the monitoring of telephonic and Internet based conversations between one party and another party or a number of parties by a third party either authorized or not. Legal wiretapping or phone tapping by a government agency is called as lawful interception. Legal interception of telephonic conversations by an authority is allowed in some countries and is not in other countries. Lawful interception of telephonic conversations is officially strictly controlled in many countries to safeguard privacy which is one of the primary issues that are being taken into consideration. The question of permissions or having an authority to have a tapping on a telephonic conversation comes into the picture in liberal democracies. Liberal democracies are the kind of societies that give preference to freedom of individual considering all other things. In actual practice, the act of tapping a telephonic conversation has to be authorized by a court of law. Without an authority to control such activities, it would have been an uncontrollable situation. The permission from the court has to be certain in nature to tap a particular telephonic conversation where primary evidence is not enough to prove in the court of law. The evidence that has to be submitted has to be till a particular severity before a court of law. Unauthorized telephonic tapping is treated as a criminal offence widely over the world. However, in certain jurisdictions such as Germany and France, the courts of law will accept illegally recorded phone calls without the other party's consent as evidence, but the unauthorized telephone tapping will still be prosecuted. Speaking in the context of India, the lawful interception of communication by authorized law enforcement agencies (LEAs) is carried out in accordance with Section 5(2) of the Indian Telegraph Act, 1885 read with Rule 419A of Indian Telegraph (Amendment) Rules, 2007. Directions for interception of any message or class of messages under sub-section (2) of Section 5 of the Indian Telegraph Act, 1885 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.

### **RESEARCH OBJECTIVES**

- To analyze the essentials of tapping conversations of parties through telephone
- To analyze the position of authority that controls the activity of telephone tapping
- To compare the position of India with other countries in the context of telephone tapping and other means of tapping of conversations
- To observe the differences between developed countries and developing countries in the context of tapping of conversations of particular parties
- To analyze the permissions and authority that is needed to control a particular tapping of conversations between parties
- To observe the activity of telephone tapping in the light of decided cases in the country
- to observe the status of decided cases in the country in the context of telephone tapping

### **RESEARCH QUESTIONS**

- to find out whether the act of telephone tapping actually need any authority to control the activity
- to find out why the act of telephone tapping by third parties is considered illegal in the country
- to find out why the act of telephone tapping is allowed in certain countries
- can evidence in the form of telephonic conversations is actually admissible in the court of law or not
- Is there a breach of fundamental rights of an individual by the act of telephone tapping or not
- Is telephonic tapping by third party be allowed in the court of law as a legal form of evidence or not

### **RESEARCH DESIGN**

The research design of this particular research paper is based on the framework of various methods and techniques which will be lending a hand to make this research paper valid. The explanatory and analysis based research methodology clearly makes the research objectives more clear and distinct. The particular research design used in the paper makes it more transparent and easy to understand. The research design includes the following elements:

1. Accurate purpose statement of research design
2. Techniques to be implemented for collecting details for research
3. Method applied for analyzing collected details

4. Type of research methodology
5. Probable objections for research
6. Settings for research study
7. Timeline
8. Measurement of analysis

## **METHODOLOGY**

The methodology chose for this particular research paper is framed on both qualitative and quantitative methods of research development. The particular method chosen is based on a set of rules and objectives that chooses the topic of research i.e foreign judgment under civil procedure code of 1908. And then follows the selecting of research method for the research paper, after selecting of research methodology the objectives and other necessary elements have to be mentioned. The specifications of the research paper have to be mentioned. The suggestions for the flaws that are found in the decree that defines foreign judgment mentioned under civil procedure code of 1908. The conclusion and reviews and other suggestions for the topic of the research paper takes place after the elements of the paper are mentioned.

## **LITERATURE REVIEW**

The sources that are being used in this particular research paper are a set of law websites, a couple of journals, a set of books and a couple of research papers. The sources that are being used are empirical and constructive in nature. The sources have helped me in making the paper a bundle of information. The research paper consists of information that is theoretical and conclusive in nature. It even is collective in the context of the information that is being taken into consideration and also used in the particular research paper.

## **DESCRIPTION**

The term telephone tapping means wiretapping or interception of phone. The act of telephone taping was first used in the United States of America in the early 1890's<sup>1</sup>. After the invention of telephone recorder, the act of telephone tapping gradually came into limelight. The act of telephone tapping was gradually brought under the purview of law in the year 1928<sup>2</sup>. In 1928, the act of telephone tapping had to face a lot of hue and cry from the people at large<sup>3</sup>. One of the instances that happened during the American society's hue and cry over the act of telephone tapping was the conviction of Roy Olmstead, a Seattle bootlegger, on the basis of evidence so

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<sup>1</sup> The united states was one of the first countries to implement laws on telephone tapping.

<sup>2</sup> New set of rules and laws were being formulated for the control of the act of telephone tapping in the country.

<sup>3</sup> No proper means of using a law on telephone tapping

provided by telephone tapping a telephone line in his house<sup>4</sup>. The petitioner then stated that the act of telephone tapping in his house was a direct violation of fundamental rights that are enshrined in the constitution. The Honorable court of law after taking the suit into consideration and listening to both the sides held that the act of telephone tapping does not amount to any kind of physical violation or incursion of privacy of any individual. Before the attack that happened on Pearl Harbor and the ingress in the World War II by United States, the United States House of Representatives have held deliberations and discussions on the issue of legitimacy of the interception of an individual's telephone for defense by a nation<sup>5</sup>. After a lot of deliberations from the government and the opposition in the United States House of Representatives, important decisions and conclusions have taken place and were decided years before the happening of the World War II. The outcome of the issue of legitimacy of the act of telephone tapping came out to be contrasting to what was expected. In the case of "Katz vs. United States", the honorable supreme court of law of the United States has opined that the act of wiretapping or telephone tapping needs to be accompanied by a warrant given by a specific authority<sup>6</sup>. The Foreign Intelligence Surveillance Act or FISA was inducted in the year 1978 for monitoring the warrants for wiretapping or telephone tapping in the United States<sup>7</sup>.

The Indian constitution under article 21 says that, "No individual shall be deprived of his/her life or personal liberty except according to the procedure established by law in the country"<sup>8</sup>. The phrase 'personal liberty' also includes the term 'right to privacy' under the Indian constitution. An individual under the Indian constitution clearly mentions that a person may exercise his or her right to safeguard his personal privacy first and then the privacy of his family, issues of education, marital status, offspring and all other issues concerned. Lewis D. Bradies defined privacy in the year 1890 as "The right to be let alone", this was being subjected to a lot of criticism in the 1890's<sup>9</sup>. In the moral and ethical context, it is not right to poke the nose into others sensitive matters. On the other hand, it is taken into consideration that it's an act of constitutional obligation in the sacrosanct context. In the context of privacy, the state can neither bring the information into public about the issues such as political vendetta or the Watergate that is infamous, secretive matters and other selective matters of public interest, nor can the state make any investigation or any act of collecting evidence.

In case it does so, only when the law mandates, it can be considered that it violates the right to privacy, right to live with dignity and respect that are enshrined under the Indian constitution.

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<sup>4</sup> <https://www.newyorker.com/culture/culture-desk/the-bootlegger-the-wiretap-and-the-beginning-of-privacy>, an article written by Karen abbott in 2017.

<sup>5</sup> <https://www.britannica.com/event/World-War-II>, an article written by john graham.

<sup>6</sup> <https://supreme.justia.com/cases/federal/us/389/347/>, deals with the case of katz vs the United states

<sup>7</sup> <https://epic.org/privacy/surveillance/fisa/>, an analysis on FISA

<sup>8</sup> <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>, deals with article 21 of the Indian constitution.

<sup>9</sup> <https://g.co/kgs/XyBnhR>

Human rights as an element has taken into consideration that any person so recognized must be provided with protection from intrusions in the issue or privacy as a whole. Justice Frankfurter has clearly mentioned in the 4<sup>th</sup> amendment in the United states constitution that “The issue of privacy violations have to be condemned as inconsistent with in applying the 4th Amendment to the US Constitution, had said that the privacy violations are required to be taken into account as inconsistent in the context of human rights enshrined in the history and the also the basic constitutionally valid documents<sup>10</sup>.

The phrases of life and liberty are not be considered as empty words. The words include all those necessary materials which enumerate a meaning to the phrase. The issue of privacy of any individual is to be taken into account as a part of his or her life that is enshrined under the Indian constitution. Any kind of Infringement to this particular right will be considered valid only if it is in the constitutional limitations enumerated under the constitution of the country.

Right to freedom and expression enumerated under the Indian constitution will be directly affected in case the act of telephone tapping is exercised on any individual. Both these rights will be taken into consideration as those are the fundamental rights of any individual that are enshrined under the Indian Constitution. Article 21 of the Indian Constitution talks about the protection to the life and liberty of any individual mentioned under the Indian constitution<sup>11</sup>. The act of telephone tapping even violates the right to privacy that is enshrined under the Indian constitution upon the individuals. Protection of life and liberty mentioned under article 21 of the Indian constitution can only permit any such legislature made into law which agrees on the terms of constitutional requirements and also includes any such procedure which is fair, reasonable and just in nature. In addition, the violation of right to freedom of speech and expression is not acceptable except for the relevant right that article 19 of the Indian constitution provides in detail<sup>12</sup>.

The act of Telephone tapping includes listening to or recording a communication that is made in a telephone clandestinely with a skeptical intention of collecting the information about an individual’s activity<sup>13</sup>. The act of telephone tapping is also termed as ‘wire-tapping’ in some countries especially the United States. That act of telephone tapping is an act that violates right to privacy of an individual, but in some cases that act of telephone tapping may be considered legal in nature. The act of telephone tapping is legal when the permission for the act of telephone tapping is taken from a concerned authority. In cases where the act of telephone tapping is done

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<sup>10</sup> [https://www.law.cornell.edu/wex/fourth\\_amendment](https://www.law.cornell.edu/wex/fourth_amendment), describes the 4<sup>th</sup> amendment to the American constitution.

<sup>11</sup> <https://www.lawtopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>, deals with article 21 of the Indian constitution.

<sup>12</sup> <https://indiankanoon.org/doc/1218090/>, describes article 19 of the Indian constitution.

<sup>13</sup> <https://globalfreedomofexpression.columbia.edu/cases/peoples-union-civil-liberties-v-india/>, analysis of the act of telephone tapping with accordance with decided case laws.

in an illegal manner and for a mala fide purpose, the accused will be prosecuted for the same act of telephone tapping that is illegal in various laws.

In most of the countries, that act of telephone tapping is illegal and also held as a crime. The countries so having such kind of laws where it is held illegal, may follow due process of law that is enshrined in the code of conduct. In India, the act of telephone tapping can only be exercised with a duly attested permission from the concerned department. Only such acts which are acceptable before the authority can be held legal in the country. on the other hand, when the act of telephone tapping is exercised in an illegal manner, the individuals who have exercised that act will have to be held responsible before the court of law for breach of privacy of an individual.

The element of Telephone and other communication services are mentioned under 31<sup>st</sup> entry of the Union list under the Indian Constitution<sup>14</sup>. The act of telephone tapping is mentioned under 7<sup>th</sup> entry of the federal list under the government of India act of 1935<sup>15</sup>. As mentioned under the Indian constitution and the government of India act of 1935, the act itself has taken reasonable measures in the context of advancement of science under entry 7 of List I of the Indian Constitution. Posts and telegraphs, wireless broadcasting, telephones are very well versed in the 7<sup>th</sup> entry of list I of the Indian constitution and the government of India act of 1935. The act also includes entry 31 of list I of the Indian constitution, that talks about the preserved entry and therefore there is a requirement to construe the particular word, 'telegraphs' that consists of wireless broadcasting, telephone and other forms of communication.

Section 5(2) of the Indian telegraphic act of 1885 provides the necessary rights to both central as well as the state governments in the context of right to intercept telephones of individuals in the country<sup>16</sup>. There may arise situations where the authorities have to be record the telephonic conversations to be provided as evidence for investigative purposes or to be submitted before a court of law. The concerned authority needs to have a strong basis to suspect the acts of an individual and hence record the telephonic conversations of that individual to be permissible before that court of law. Any personnel seeking permission for exercising the act of telephone tapping need to take the permission of the hoe ministry before exercising the act of telephone tapping on any individual. The particular reasons along with detailed background report needs to be submitted to the concerned parties for permission of the act of telephone tapping on any individual. In addition to that report and other particulars, the dire need for interception of that particular telephonic conversation needs to be well versed and be submitted before the concerned authority. Only when the report and the need to intervene the telephonic conversations of an individual is mentioned and duly defined, only then the ministry will be considering the

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<sup>14</sup> [https://en.wikipedia.org/wiki/Union\\_List](https://en.wikipedia.org/wiki/Union_List), describes the union list of the Indian constitution

<sup>15</sup> [http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga\\_19350002\\_en.pdf](http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf), government of India act of 1935.

<sup>16</sup> <https://dot.gov.in/act-rules-content/2442>, Indian telegraphic act of 1885

application for the interception of telephonic conversation taking the merits of the case<sup>17</sup>.

An authorization slip needs to be duly attested and submitted before the concerned authorities before exercising the act of telephone tapping on an individual. After the slip is being submitted before the concerned authority, the Home secretary of that particular state after due examination will accept and provide with necessary warrants and permissions. A Qualifier in the slip explicitly states that politicians or political representatives who are elected have immunity from the act of telephone tapping under due process of law. After incorporation of various laws on wiretapping or telephone tapping, most of the cellular providers have a separate linkage of mobile data connectivity, where all the users of the mobile network of that company will be easily accessible for telephonic tapping by the concerned authority by the government. The mediators and other cellular data providers have a definite location where they exercise the act of telephonic conversations of any individual who are being suspected by the concerned authorities. There are two definite classifications of telephone tapping services that are exercised by the authorized parties<sup>18</sup>.

- Integrated services digital network. In this kind of classification of telephone tapping, a definite intercession server of the concerned authority, makes actions to tap a particular telephonic conversation and then directly conveys that telephonic conversation through a primary rate interface (PRI) line to an office of a government agency defined under the due process of law. In addition to that, the police will also have the authority to be able to eavesdrop to that particular telephone of any individual and collect the recording of the intercepted telephonic conversation of that individual in the linked computers. A sound file will also be stored and provided before the court of law if it is necessary in that case concurrently.
- A leased line is kind of private bi-directional or symmetric telecommunication circuit between two or more specific locations that are provided according to a commercial contact on specified terms. A private connection is sometimes also called as a private circuit. Leased lines of communication are not switched circuits unlike the traditional telephone lines that are used in the telephone lines in the public switched telephone network or PSTN and these lines are not generally switched circuits and hence these numbers do not specifically have any telephone number. Each other end of the line is permanently connected and completely dedicated to the other side of the communication. These leased lines can be used for telephonic, internet based and other wireless means of communication. Some of these leased lines of network are ring down service and based

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<sup>17</sup> [https://en.wikipedia.org/wiki/Telephone\\_call\\_recording\\_laws](https://en.wikipedia.org/wiki/Telephone_call_recording_laws), various laws across the globe in the context of telephone tapping.

<sup>18</sup> <https://www.right2info.org/cases/r2i-union-for-civil-liberties-pucl-and-another-v.-union-of-india-and-another>, detailed analysis on the act of telephone tapping with decided landmark case laws.

other kinds of services are private connection based that are mainly private branch exchange or network routed.

Leased lines are mostly used for businesses and other commercial works where it is necessary to connect geographically distant offices situated around the globe<sup>19</sup>. A leased line is always active contrasting to the dial-up based connections that are available. The recurring lease fees and the distance between the end points are the main roadblocks that the leased line kind of communication faces. Since the connection does not carry third-party communications, the carrier can assure a given level of quality. The carrier can assure a given level of quality as there is absence of third party communications in the connection that is established. Internet-leased line is a premium Internet connectivity product that uses fiber optics to deliver the data. The Internet based lease line provides the users an uncontested and a symmetrical bandwidth with complete duplex traffic. The synonyms for the internet based leased line are Ethernet leased line, dedicated line, data circuit or private based line.<sup>20</sup>

### **Landmark case Decision:**

“People’s union for civil liberties vs Union of India”

- Overview:

This particular case deals with the inherent rights of a voter as an individual to apply secrecy while casting his or her vote which thereby incorporates that individuals decision of not casting a vote or so called negative voting. In a similar context, a suit was being filed before the court of law in the case of, Kuldip Nayar and the association for democratic reforms and also peoples union for civil liberties dealing with the status of the individual to cast his or her vote as a fundamental right or a statutory right in the country which can very well verse the responsibility and the amenability to writ jurisdiction under article 32 of the Indian constitution<sup>2122</sup>. The question of whether the decision in the case of kuldip nayar case was overridden or not was also dealt with in the present case. The honorable supreme court of India, has decided in the latter two judgments that the right to information as a fundamental right under right to freedom of speech and expression enshrined in the Indian constitution under article 19(1)(a) that the Indian constitution includes the voters particular rights duly enshrined upon them and also to understand the antecedents of electoral representatives which also includes their criminal background, assets owned, liabilities, relations and other similar qualifications<sup>23</sup>.

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<sup>19</sup> [https://en.wikipedia.org/wiki/Leased\\_line](https://en.wikipedia.org/wiki/Leased_line), leased line defined and elaborated.

<sup>20</sup> <https://indiankanoon.org/doc/31276692/>, act of telephone tapping analyzed with decided case laws.

<sup>21</sup> <http://lawtimesjournal.in/kuldip-nayar-v-union-of-india-and-ors-case-summary/>, kuldip nayar case decided by the court of law.

<sup>22</sup> <https://indiankanoon.org/doc/981147/>, article 32 of the Indian constitution.

<sup>23</sup> <https://indiankanoon.org/doc/1218090/>, article 19 of the Indian constitution.

- Facts in brief:

Peoples union for civil liberties, an NGO which works on civil liberties and rights of an individual in the society has filed a writ petition under with accordance with law and the constitution under article 32, questioning the validity in the constitutional context and also the rules mentioned under the conduct of election rules,1961 to be precise, 41(2), 41(3) and 49-O which dealt with the provisions that violate the confidentiality of casting a vote which is considered as a fundamental to the element of free and fair election process and is also required to be maintained and regarded under the process defined and categorized under the law. Section 128 of the representation of peoples act of 1951 and also the rules (39) and (49-M) under the due process of law<sup>24</sup>

- Issues raised:

1. Whether or not a writ under article 32 of the Indian constitution can be raised in this particular case dealing with a statutory right of voting?
2. Whether or not the decision laid down in the case of Kuldip Nayar dealing with the right of a voter needs to be re-considered and whether or not the two judgements- Association for democratic reforms' and PUCL stand overruled?
3. Whether or not the rules 41(2)(3) and 49-O under the conduct of election rules,1961 violate the fundamental rights of the voter<sup>25</sup>?

- Judgment:

The honorable supreme court of India has opined that it is competent to hear the issues raised under the writ petition for the reasons mentioned below:

- i. The Honorable court of law in the case of union of India vs association for democratic reforms has decided upon the issue that the act of casting a vote is to be considered as a facet of the right of expression of an individual and be protected or defender by or under article 19(1)(a) of the Indian constitution<sup>26,27</sup>.
- ii. Taking the case of peoples union for civil liberties into consideration, the court of law has classified between right to vote and the freedom of casting a vote for an individual and thereby opined that by the right to vote or cast a vote it is to be considered as a statutory right but the choice made by the voters in the context of casting a vote taking their credentials into account is not to be taken into account

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<sup>24</sup> <http://legislative.gov.in/sites/default/files/A1950-43.pdf>, representation of peoples act of 1950

<sup>25</sup> <http://legislative.gov.in/sites/default/files/%282%29%20THE%20CONDUCT%20OF%20ELECTION%20RULES%2C%201961.pdf>, conduct of election rules of 1961.

<sup>26</sup> <https://indiankanoon.org/doc/1218090/>, article 19 of the Indian constitution.

<sup>27</sup> <https://globalfreedomofexpression.columbia.edu/cases/union-india-uoiv-respondent-association-democratic-reforms-another-peoples-union-civil-liberties-pucl-another-v-union-india-uoiv-another/>, case analysis of union of india vs association for democratic reforms.

as a form of expression mentioned under article 19(1)(a) of the Indian constitution. The act of casting his or her vote in the favor of one individual or the other individual candidates directly is linked to the expression of his or her opinion and preference and also that end stage in the exercise of voting rights takes into account the accomplishment of the freedom of expression of the voter and this indirectly includes article 19(1)(a) of the Indian constitution.

- iii. The fundamental right of freedom of speech and expression under article 19(1)(a) of the Indian constitution which is read with section 79(d) which is a statutory right is considered as a recognition of the right to refrain from voting, directly violated on unreasonable grounds if the right that includes not to vote effectively is denied and confidentiality is breached or compromised.
- iv. On the second issue raised before the court of law, both the previous judgments have not changed or altered the position that right to vote is to be held as a statutory right but that has to be added in the issue of right to know the detailed background of a particular candidate is a fundamental right of a particular voter so that he or she can take a step in rationality of expressing himself or herself while exercising the particular statutory right to vote an individual. Therefore, the case of kuldeep nayar does not overrule or supersede the two decisions given by the court of law in the case of association for democratic reforms and peoples union for civil liberties but that only reaffirms what decision was held in the two judgments pronounced by the court. In addition to that, the case of kuldeep nayar distinguished between the constituency that is directly based on the representation, indirect elections to lok sabha and legislatures of states in the country, and the element of proportional representation in a democratic country mentioning case of members as to be elected on party lines which is subjected to discipline of the party lines and also to be held liable to be expelled for discipline breach. In similar cases, a system of open ballot makes its works which will not decrease the value of free and fair elections in the country. In the former kind of election system, it's the people who make an act to vote and maintenance of confidentiality which becomes a must as it involves direct elections where the individuals cast the votes without any fear of being subjected to victimization if his or her vote is disclosed<sup>28</sup>.
- v. In the third issue, the court has upheld the rights of the citizens under the constitution in the issue of right to cast a vote as negative in the process of elections and also held that the constitutionality of rules mentioned under rules

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<sup>28</sup> <http://www.legalservicesindia.com/article/2216/Kuldeep-Nayar-V.-Union-of-India-AIR-2006-SC-3127.html>, case analysis of the case of kuldeep nayar case.

41(2),(3) and 49-O in the context of conduct of election rules which were impugned as<sup>29</sup>:

- a. In a particular system of direct elections, confidentiality is an essential part in order to sustain the effectiveness and subjectiveness of a vote which also means that action of elections could not be considered as free and fair unless and until the confidentiality is maintained. Since freedom to cast a vote impliedly includes the freedom not to vote, it would be taken into consideration as arbitrary in nature and also to extend secrecy to one individual and not to the other.
- b. The concept of effective democracy which functions on the issue of free and fair elections which is considered as a basic fundamental right of any individual under the Indian constitution as opined by the court of law in the case of *Indira Nehru Gandhi vs Raj Narain*<sup>30</sup> and also the issue of free and fair elections includes alongside the ambit of the right of an electoral which is registered, to cast his or her vote without any external force being exerted on them because of reprisal, coercion and duress. An important part of free and fair elections includes the protection of identity of the electoral's and also affording confidentiality. The element of arbitrary classification between the voter who casts his or her vote and also the voter who doesn't violate article 14 of the Indian constitution, and hence the confidentiality should be extended to both the classifications of the individuals<sup>31</sup>.
- vi. The act of voting and not voting or casting a vote deserves identical standards of protection as the act of not casting a vote is as much done as a positive exercise of free expression under article 19(1)(a) of the Indian constitution<sup>32</sup>.
- vii. The honorable court of law has therefore directed the election commission to thereby introduce a "None Of the Above" option in the electronic voting machine or EVM's, so that the voters have an option to choose none from the list of representatives and also not to discard their vote. In this manner, there will be both casting of vote and also election to be taken in a peaceful manner. This particular NOTA or none of the above option is related to the ABSTAIN preference provided to the members of parliament in the country. Thereby pressing NOTA or none of the above, the voter is in an effect that is abstaining

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<sup>29</sup> file:///C:/Users/nicky/Downloads/crpc%20sample%20research%20paper.pdf, case analysis of the act of telephone tapping.

<sup>30</sup> <https://indiankanoon.org/doc/936707/>, case analysis of indira Gandhi vs raj narain.

<sup>31</sup> <https://indiankanoon.org/doc/367586/>, article 14 of the Indian constitution

<sup>32</sup> <https://indiankanoon.org/doc/1218090/>, article 19 of the Indian constitution.

- from casting a vote as he or she doesn't find any of the mentioned candidates competent enough.
- viii. In the case of S.Raghubir Singh, the court has held that ballot confidentiality constitutes a postulate of the element of constitutional democracy and is also a privilege granted in the public interest in the country. Art 19 of the Indian constitution is infringed when this confidentiality is not maintained and also when an elector is compelled to disclose his or her vote<sup>33</sup>.
- ix. The honorable court of law has further stated that the right to confidentiality or secrecy is also recognized under article 21(3) of the universal declaration of human rights and article 25(b) of the international covenant on civil and political rights<sup>34</sup>.

### **CONCLUSION**

The particular act of telephone tapping was held to be valid in the American and other country's laws. Wiretapping or telephone tapping is a direct violation of right to privacy. The Right to privacy is considered to be a part of personal liberty which is enshrined under the Indian constitution. An individual has also a right to safeguard his or her privacy under different circumstances. Similar cases are evident that the government has to act in a contradictory manner to the fundamental rights of the individual and one of the noteworthy ones is the act of telephone interception. This particular act is considered as a major step taken by the government and also to intercept a conversation of an individual through a telephone and such a step directly violates upon the privacy of the individual. Any act of Interception of a telephonic conversation is not in violation of right to privacy except when it is done in the interest of the public at large and also in the time of emergency. This exception is mentioned under section 5(2) of the telegraph act. Interception of a telephonic conversation cannot be done in any case except when in the two different situations that is discussed above. Any kind of evidence that is acquired through an act of interception of a telephonic conversation is also not taken into consideration as a violation of right to privacy enshrined under the Indian constitution and it is even taken into account as admissible evidence before the court of law. Any act of Interception of telephonic conversation without seeking the permission or the grant of the government is in direct violation of right to privacy of a individual under the Indian constitution. The relative powers that are conferred upon the concerned authorities to intercept telephonic conversations are not absolute in nature; There are some defined reasonable restrictions that are attached to it. Telephonic conversations of an individual cannot be tapped unless and until some reasonable or justified grounds are provided to do such an act as no particular person shall be deprived of his or her personal liberty. Hence, an

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<sup>33</sup> <https://indiankanoon.org/doc/505842/>, case analysis of raghubir singh case.

<sup>34</sup> [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf), universal declaration of human rights.

act of phone tapping is not in violation of right to privacy mentioned under the Indian constitution unless and until it is executed so for the interest of public or in any case of emergency.

### **BIBLIOGRAPHY**

- <https://www.newyorker.com/culture/culture-desk/the-bootlegger-the-wiretap-and-the-beginning-of-privacy>, an article written by Karen abbott in 2017.
- <https://www.britannica.com/event/World-War-II>, an article written by john graham.
- <https://supreme.justia.com/cases/federal/us/389/347/>, deals with the case of katz vs the United states
- <https://epic.org/privacy/surveillance/fisa/>, an analysis on FISA
- <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>, deals with article 21 of the Indian constitution.
- <https://g.co/kgs/XyBnhR>
- [https://www.law.cornell.edu/wex/fourth\\_amendment](https://www.law.cornell.edu/wex/fourth_amendment), describes the 4<sup>th</sup> amendment to the American constitution.
- <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>, deals with article 21 of the Indian constitution.
- <https://indiankanoon.org/doc/1218090/>, describes article 19 of the Indian constitution.
- <https://globalfreedomofexpression.columbia.edu/cases/peoples-union-civil-liberties-v-india/>, analysis of the act of telephone tapping with accordance with decided case laws.
- [https://en.wikipedia.org/wiki/Union\\_List](https://en.wikipedia.org/wiki/Union_List), describes the union list of the Indian constitution
- [http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga\\_19350002\\_en.pdf](http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf), government of India act of 1935.
- <https://dot.gov.in/act-rules-content/2442>, Indian telegraphic act of 1885
- [https://en.wikipedia.org/wiki/Telephone\\_call\\_recording\\_laws](https://en.wikipedia.org/wiki/Telephone_call_recording_laws), various laws across the globe in the context of telephone tapping.
- <https://indiankanoon.org/doc/31276692/>, act of telephone tapping analyzed with decided case laws.
- [https://en.wikipedia.org/wiki/Leased\\_line](https://en.wikipedia.org/wiki/Leased_line), leased line defined and elaborated.
- <https://indiankanoon.org/doc/31276692/>, act of telephone tapping analyzed with decided case laws.
- <http://lawtimesjournal.in/kuldip-nayar-v-union-of-india-and-ors-case-summary/>, kuldip nayar case decied by the court of law.
- <https://indiankanoon.org/doc/981147/>, article 32 of the Indian constitution.
- <https://indiankanoon.org/doc/1218090/>, article 19 of the Indian constitution.
- <http://legislative.gov.in/sites/default/files/A1950-43.pdf>, representation of peoples act of 1950.

- <http://legislative.gov.in/sites/default/files/%282%29%20THE%20CONDUCT%20OF%20ELECTION%20RULES%2C%201961.pdf>, conduct of election rules of 1961.
- <https://indiankanoon.org/doc/1218090/>, article 19 of the Indian constitution.
- <https://indiankanoon.org/doc/505842/>, case analysis of raghubir singh case.
- [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf), universal declaration of human rights.
- Criminal law: cases and materials by K.D.Gaur
- R.V.Kelkars criminal procedure book, 1993
- Lectures on criminal procedure by R.V.Kelkars, 1980
- PSA. Pillai's criminal procedure, P.S.Atchutten Pillai, 2018