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## CASE COMMENTARY – PEOPLE’S UNION FOR CIVIL LIBERTIES (PUCL) & ANOTHER VS. UNION OF INDIA

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### I. ABSTRACT:-

Phone tapping, often known as wiretapping, is the activity of covertly attaching a particular device to a person’s phone in order to discreetly listen to their phone calls. In India, only a few number of special authorities, such as the Government, are allowed to spy telephones, and only under extremely particular conditions that ensure the integrity, security, and safety of the entire country. Private individuals do not have the right or power to listen in on private conversations or trace phones. While active wiretapping, which involves changing the signal, is prohibited and punishable by a three-year prison sentence, passive wiretapping is approved and legal when done by the authorities.

II. **KEYWORDS:-** Telecommunications , Information , Emergency , Telephone tapping , Politicians , Writ petition

III.

|                                   |   |
|-----------------------------------|---|
| <b>Case Title</b>                 | <b>People’s Union for Civil Liberties (PUCL) vs. Union of India</b>   |
| <b>Citation</b>                   | <b>AIR 1997 SC 568 , JT 1997 (1) SC 288</b>   |
| <b>Judgement Date</b>             | 18/12/1996  |
| <b>Court</b>                      | The Supreme Court Of India  |
| <b>Quorum</b>                     | 1. The Hon’ble Justice K Singh<br>2. The Hon’ble Justice S S Ahmad  |
| <b>Author of the Judgement</b>    | K. Singh  |
| <b>Appellant</b>                  | <b>People’s Union for Civil Liberties (PUCL)</b>  |
| <b>Respondent</b>                 | <b>Union of India</b>   |
| <b>Acts and Sections Involved</b> | 1. Article 32 of Indian Constitution<br>2. Sec 5(2) of the Indian Telegraph Act<br>3. article 21 of Indian Constitution<br>4. Article 19 of Indian Constitution |

#### IV. INTRODUCTION AND BACKGROUND OF THE JUDGEMENT:-

It is apparent that as social media and advanced technologies have developed, our lives have become less private. Protecting people's privacy so become more crucial than ever. The Right to Privacy is protected under Article 21 of the Indian Constitution for its inhabitants.

No one may be deprived of their life or personal freedom until doing so in accordance with the legal process, according to Article 21 of the Indian Constitution. Everything that gives a man's life meaning, completion, and value is present here. According to our Constitution, a person's privacy is an element of his life and freedom.

#### V. FACTS OF THE CASE:-

In the Supreme Court petition, the People's Union for Civil Liberties cited recent instances of telephone tapping. The petitioner claimed that Indian Telegraph Act of 1885 Section 5(2) was invalid.

Alternately, it is asserted that the aforementioned phrases should be suitably interpreted down to include procedural safeguards that ban indiscriminate telephone tapping and eliminate arbitrariness. In response to the Central Bureau of Investigation's (CBI) report on "Tapping of Politicians' Phones," a writ of mandate was filed.

A public interest appeal citing recent instances of telephone tapping has been submitted under Article 32 of the Indian Constitution by the nonprofit organization People's Union of Civil Liberties.

The petitioner argues that Section 5(2) of the Indian Telegraph Act, 1885 (the Act), which challenges its constitutional validity, should be sufficiently interpreted down to include procedural protections to prevent arbitrary and indiscriminate telephone tapping.

In response to the Central Bureau of Investigation's (CBI) report on "Tapping of Politicians' Phones," a writ of mandate was filed. A copy of the report as it appeared in "Mainstream" volume XXIX on March 26, 1991, has been added to the record along with the petitioner's response.

MTNL made the following mistakes, which were found throughout the investigation. MTNL's list of telephone interceptions for the same period did not contain 279 telephone lines, despite the fact that these numbers had authorisation letters from several approved authorities. Investigations have also revealed that numerous legitimate organizations are not maintaining data on telephone interceptions in a secure manner. One agency does not even keep the interception logbooks up to date. Additionally, the justifications for keeping a phone number on the watch list have been disregarded.

#### VI. ISSUES RAISED:-

1. Is it against Article 19(1)(a) and Article 21 of the Constitution to intercept phone calls? Also, does Article 19(2) of the Constitution apply to such a restriction?
2. Is the Indian Telegraph Act of 1885's Section 5(2) legally and procedurally valid?

#### VII. CONTENTIONS RAISED BY PETITIONER:-

The petitioner strongly maintained that Article 19(1) and Article 21 of the Indian Constitution safeguard the fundamental right to privacy. The petitioner contends that Section 5(2) of the Act must be read narrowly in order to offer adequate safeguards for the right to privacy in order to avoid being ruled unconstitutional.

Only a prior judicial penalty, which is ex-parte in nature, can erase the element of arbitrariness or unreasonableness. Additionally, it was maintained that both the methods laid out in the actual legislation as well as its core provisions have to be just, fair, and reasonable.

The petitioner claimed that Articles 19(1) and 21 of the Constitution safeguarded the fundamental right to privacy. The Petitioner added that in order to protect the right to privacy from being ruled unconstitutional, Section 5(2) of the Act must have its provisions read down. While Section 5(2) was crucial for numerous state reasons, it was also important to provide procedural safeguards. The petitioner further stated that the only protection that could get rid of the element of arbitrariness or unreasonableness was a prior, ex parte judicial sanction.

#### VIII. CONTENTIONS RAISED BY RESPONDENT:-

According to the Respondent, messages may be intercepted for India's security and sovereignty, as well as to handle any other emergency for the protection of national interest. Determining whether there are enough procedural safeguards in place to prevent the Act's arbitrary exercise of power is therefore the key issue at hand.

Although Section 5(2) of the Act outlines the requirements/circumstances that must be present for the authority to be used, it was argued that the manner in which the power must be used was not indicated. In order to shield Section 5(2) of the Act from the vice of arbitrariness, procedural safeguards must be read into the provision in the absence of prior judicial review.

#### IX. JUDGEMENT:-

##### The Court gave the judgement as follows:

Only the Home Secretary, the Government of India, and state governments are authorized to issue a telephone-tapping order, according to Section 5(2) of the Act.

The person to whom the order is addressed is required to intercept the specified communications while they are being transmitted via a public communications network. The person to whom the order is addressed might also be obligated to disclose

the content that was intercepted to the people and in the way that the order directs.

It is important to evaluate if the information sought might have been obtained more affordably in other ways before deciding whether such an order was necessary.

Communications sent to or from one or more addresses listed in the order that are likely to be used for the transmission of communications to or from a specific person listed or described in the order, or a specific set of premises listed or described in the order, are considered intercepted communications for the purposes of Section 5(2) of the Act.

The order issued under Section 5(2) of the Act expires at the end of the two months from the date of issue unless renewed earlier if its continuation is deemed suitable. The total period of operation of the order shall not exceed six months.

The basic minimum permitted under Section 5(2) of the Act shall be the extent of the use of intercepted material, etc.

#### IX.CASE LAWS:-

1. In *Munn v. Illinois*, Justice Field declared that "life" encompasses not only the right to maintain one's animal existence but also the right to own each of one's parts, such as one's arms and legs. This is how the Court has understood the term "life" as established by Article 21 of the Constitution.

2. The protection of one's private against arbitrary police action is essential to a democratic society, the Supreme Court ruled in another seminal case on the idea of privacy and individual liberty as provided by the Constitution. It is protected by the Due Process Clause because it is rooted in the "idea of ordered liberty."

3. Examining Section 5(2) of the Act makes it apparent that certain circumstances/conditions must exist in order for the ability to intercept messages or

conversations to be used lawfully. To be utilized properly and sensibly, this power needs procedural backing, though. The process must be rational, just, and fair. The problem was solved in Maneka Gandhi v. UOI.

#### **X.CONCLUSION:-**

According to the Court, the right to privacy is a component of the rights to "life" and "personal liberty" that are protected by Article 21 of the Constitution. Article 21 is invoked in every situation where the right to privacy is involved, and this right cannot be curtailed unless the legal procedure is followed. The writ petition is disposed off, PUCL wins. Sec7(2b) of Indian Telegraph Act 1885, provides power to Central Government, For the precautions need to be taken to prevent improper interception of telephone tapping. Guidelines for Issue Interception order:

1. Order's issued only by Home Secretary of Central and State, Government of India (only for emergency).

2. Order should be passed to Review Committee within one week State Review Committee = Chief Secretary, Law Secretary, another member other than Home Secretary. Central Review Committee = Cabinet Secretary, Law Secretary, Telecommunication at central level.

2. Review Committee checks whether the order is necessary, reasonable by means.

3. Case be renewed for every two months and Case should not exceed 6 months.

4. Order record/details should be maintained by authority:

- Intercepted communication records
- Identity of person
- Material copied
- No of copies made

5. Each copy intercepted record should be destroyed no longer necessary.

#### **XI.REFERENCES:-**

1. <https://thelegallock.com/peoples-union-of-civil-liberties-pucl-v-union-of-india/>

2. <https://www.indianbarassociation.org/constitutionality-of-phone-tapping/>