

Misuse of Surveillance Powers in India (Case 1)

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In this series of blog posts, Pranesh Prakash looks at a brief history of misuse of surveillance powers in India. He notes that the government's surveillance powers have been frequently misused, very often without any kind of judicial or political redressal.

In December 2012, the government changed in Himachal Pradesh. The Bharatiya Janata Party (BJP) went out of power, and the Indian National Congress (INC) came into power. One of the first things that Chief Minister Virbhadra Singh did, within hours of taking his oath as Chief Minister on December 25, 2012, was to get a Special Investigation Team (SIT) to investigate phone tapping during the BJP government's tenure.

On December 25th and 26th, 12 hard disk drives were seized from the offices of the Crime Investigation Department (CID) and the Vigilance Department (which is supposed to be an oversight mechanism over the rest of the police). These hard disks showed that 1371¹ phone numbers were targeted and hundreds of thousands of phone conversations were recorded. These included conversations of prominent leaders "mainly of" the INC but also from the BJP, including three former cabinet ministers and close relatives of multiple chief ministers, a journalist, and many senior police officials, including the Director General of Police.

Violations of the Law

While the law required the state's Home Secretary to grant permission for each person that was being tapped, the Home Secretary had legitimately only granted permission in 34² cases. This leaves over a thousand cases where phones were tapped illegally, in direct violation of the law. The oversight mechanism provided in the law, namely the Review Committee under Rule 419A of the Indian Telegraph Rules, was utterly powerless to check this. Indeed, the internal checks for the police, namely the Vigilance Department, also seems to have failed spectacularly.

¹1385 according to a Hindustan Times report; archived also at <http://indiatoday.intoday.in/story/himachal-pradesh-police-registers-first-fir-in-phone-tapping-scandal/1/285698.html>

²A Zee News report states 34 while it's 171 according to a Mail Today report

Every private telecom company cooperated in this unlawful surveillance, even though the people who were conducting it did so without proper legal authority. Clearly we need to revise our interception rules to ensure that these telecom companies do not cooperate unless they are served with an order digitally signed by the Home Secretary.

While all interception recordings are required to be destroyed within 6 months as per Rule 419A of the Indian Telegraph Rules, that rule was also evidently ignored and conversations going back to 2009 were being stored.

Concluding Concerns

What should concern us is not merely that such a large number of politicians/police officers were tapped, but that no criminal charges were brought about on the basis of these phone taps, indicating that much of it was being used for political purposes.

What should concern us is that the requirement under Section 5 of the Indian Telegraph Act, which covers phone taps, of the existence of a “public emergency” or endangerment of “public safety”, which is a prerequisite of phone taps as per the law and as emphasised by the Supreme Court in 1996 in the *PUCL* judgment, were blatantly ignored.

What should concern us is that it took a change in government to actually uncover this sordid tale.