



# A study on law on phone tapping in India

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## **Abstract:**

Telephones along with other communication devices find mention under Entry 31 of the Constitution's Union List and is based on Entry 7 in the Federal List of the Government of India Act 1935. Telephones of politicians cannot be tapped officially a qualifier on the slip says the surveyed person is not an elected representative. Today, every cellular service provider has an aggregation station which is a clutch of servers called mediation servers because they mediate between the cellular operators and the law enforcement agencies to intercept phones. There are two kinds of interception facilities available today-Integrated Services Digital Network and the leased line. In this study sampling technique is applied with the help of the respondents participated in this study. The dependent variables are gender, age, monthly income and occupation. The independent variable is made to know about the phone tapping in India and to know about the admissibility of taped conversations as evidence. And to check their view towards it. The findings reveal that the Phone tapping does not affect the right to privacy unless it is done illegally.

**Keywords:** Phone tapping, privacy, legal, telephone, constitution.

**Introduction:**

Phone tapping means secretly listening or recording a communication in telephone in order to get information about others activities. It is also known as 'wire-tapping' in some countries. Phone Tapping can only be done in an authorized manner with permission from the department concerned. However, if it is undertaken in an unauthorized manner then it is illegal and will result in prosecution of the person responsible for breach of privacy. The evolution of phone tapping is that telephone wiretapping began in the 1890s, following the invention of the telephone recorder, and its constitutionality was established in the Prohibition-Era conviction of bootlegger Roy Olmstead. The government initiatives are that both the Central and the State Governments have a right to tap phones under Section 5(2) of Indian Telegraphic Act, 1885. Factors affecting the topic is that phone-tapping be done to some extent, but only in an authorized manner. If done in an unauthorized manner, it can lead to a breach of the right to privacy and may lead to prosecution. The right to privacy - by itself - has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.

The current trend of the topic is Bombay High Court nixes government's phone-tap orders as they 'violate right to privacy'

The comparison of phone tapping in India and America, Under entry 31 of the Union List of the Constitution and Entry 7 of the Federal List of the Government of India Act, 1935, telephonic along with other communication devices is mentioned. The United States of America has tended to favor the exclusionary rule of evidence but more attention has been given to the right to privacy enshrined in the American Constitution.

**Objectives:**

- To know about phone tapping laws in India
- To determine the evidentiary value of phone tapping
- To analyse right to privacy on phone tapping

**Review of literature:**

In the article, Security, Privacy and Politics in India: A Historical Review it says about the direction that “A further direction was also given that original order would have to be reviewed by Committee consisting of Cabinet Secretary, Law Secretary and Secretary for Telephone Communication (Acharya et al.,2010)

In the article, Surveillance and democracy in India: Analysing challenges to constitutionalism and rule of law it traces that a legal regime, which authorises the State to intercept as per the procedure established by law clash between the two recently bifurcated States (Telengana and Andhra Pradesh) in phone-tapping row in ... Major changes in India came about in the post-26/11 scenario to address (Jain et al.,2017)

In the article, PUCL v. Union of India Revisited: Why India's Surveillance Law Must Be Redesigned for the Digital Age it traces that Secret Report by CBI contains shocking details of phone tapping ordered by Congress(I) Govt (Ramachandran,2014)

In the article, Data Protection Law in India: A Business Perspective It traces that, The Indian Telegraph Act of 1885 empowered the government to do phone tapping in case of the public interest or ... government agency to comply with certain procedures and then it is possible to listen to phone calls (Verma et al,2014.)

In the article, Phone Tapping Laws-A Comparative it says about examining the constitutionality of phone-tapping and the role of judiciary in curbing invasion (Jai,2011)

In the article, Making Itself a Home-Understanding Foreign Law in Domestic Jurisprudence: The Indian Case It lists out various Indian cases and South Asian human rights cases which includes phone tapping (Smith,2006)

In the article, From Telephone Tapping to Interception of Computers-Are we heading towards a Snooping State? It raises various laws in India which allows phone tapping in a legal manner (Chandra et al.,2014)

In the article, Challenges for Mobile Governance in India: A Legal Perspective it states that Any tapping of mobile communication except in the gravest of grave circumstances would be considered . Presently, there are seven CAs and thirteen mobile phone operators in India. Digital certificates are created and used as per Turkish Digital Signature Law (Srivastava and Hossain,2014)

In the article, Communication Law and Policy: Asia Says that In India, an activist who criticized the government for human rights violations was sentenced in 2010 to life imprisonment for sedition Australia also enacted a covert surveillance law that allows phone tapping against journalists and other (Weisenhaus,2018)

In the article, *Historical Consciousness of Cybersecurity in India* It illustrates that in the country may be deprived of his life or personal liberty except according to procedure established by law” Phone Tapping in India Wiretapping (or phone tapping) private citizens' telephones has routinely been employed (Subramanian, 2016)

In the article, *Media and Law-A Theoretical Understanding* it traces that contrast with slow working of the Indian judiciary. Norms protecting privacy in India are rudimentary to say the least. (Tanwer et al., 2010)

In the article *PRIVACY AND DATA PROTECTION IN INDIA: A CRITICAL ASSESSMENT* it states that Kuldeep Singh J opined in *People's Union for Civil Liberties v. Union of India* 22 that to winds in recent directives from government bodies as is evident from phone tapping incidents that ... right to privacy it can be curtailed in accordance with procedure validly established by law (Singh et al, 2011.)

In the article, *Conceptualising Interaction between Cryptography and Law* It traces various laws in India in phone tapping and other legal provisions regarding phone tapping (Dixit, 2018)

In the book, *A People's Constitution: The Everyday Life of Law in the Indian Republic* It states about phone tapping and right to privacy in India. (Medina et al., 2018)

In the article, *Admissibility and evidentiary value of confession: conflicts and harmony between rules of law and rules of prudence in Bangladesh, India and Pakistan* states that if the prosecution wants to prove a confession contained a telephone conversation or e-mail which was collected by tapping his phone or hacking ... However, all judicial acts and official acts may be presumed by law to be regularly performed. (Anisuzzaman et al. 2015)

In the article, *Legal education reform in India: Dialogue among Indian law teachers* It talks about the domestic laws and transnational dimensions about various laws on human rights (Schukoske, 2019)

In the article, *To Tap or Not to Tap? That is the Ugandan Phone Question* it states that In 2006, Hong Kong's legislature passed the controversial new law on the use of covert surveillance and phone tapping, which critics fear will harm liberties. In India, it is illegal to tap telephones unless the tapping has to be approved by a designated authority. (Kaduuli, 2011)

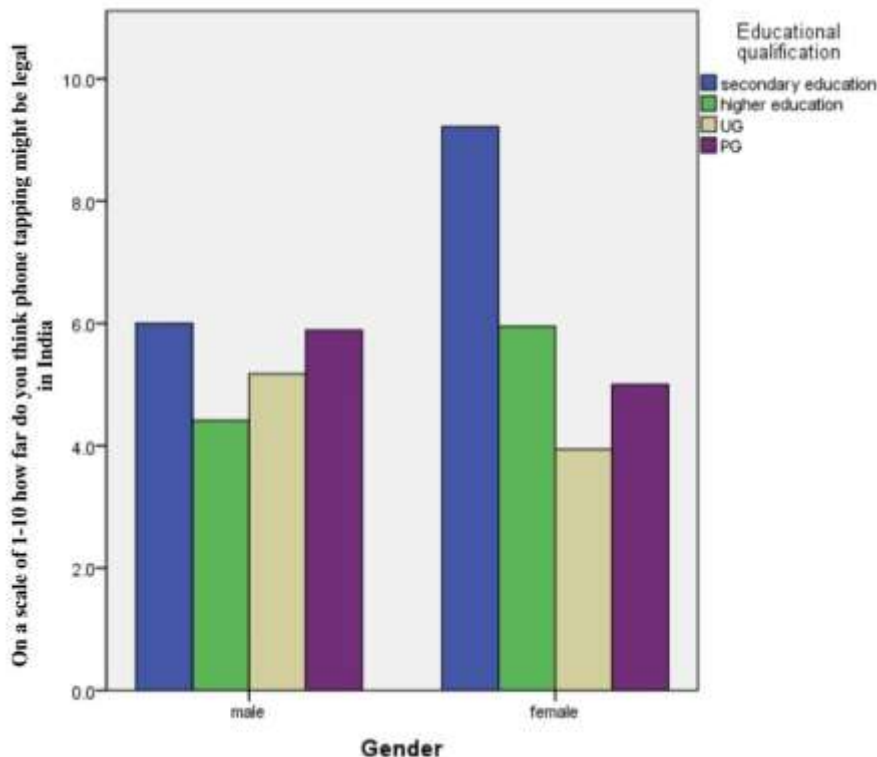
In the article, *Impact of Information Technology in banking-Cyber Law and Cyber Security in India* it states that Electronic information's are retained and validated under any law by identifying the origin, destination, date and time of receipt and audit ... Attacking a Bank's Server, Media tapping and Denying service and suggested to limit the fraud (Pradeep et al., 2015)

The article, *State surveillance and the right to privacy in India: A constitutional biography* it traces that an innocent citizen will be protected by Courts against wrongful or high handed interference by tapping the

conversation ... not for the guilty citizen against the efforts of the police to vindicate the law and prevent (Holowka and Bhatia,2014)

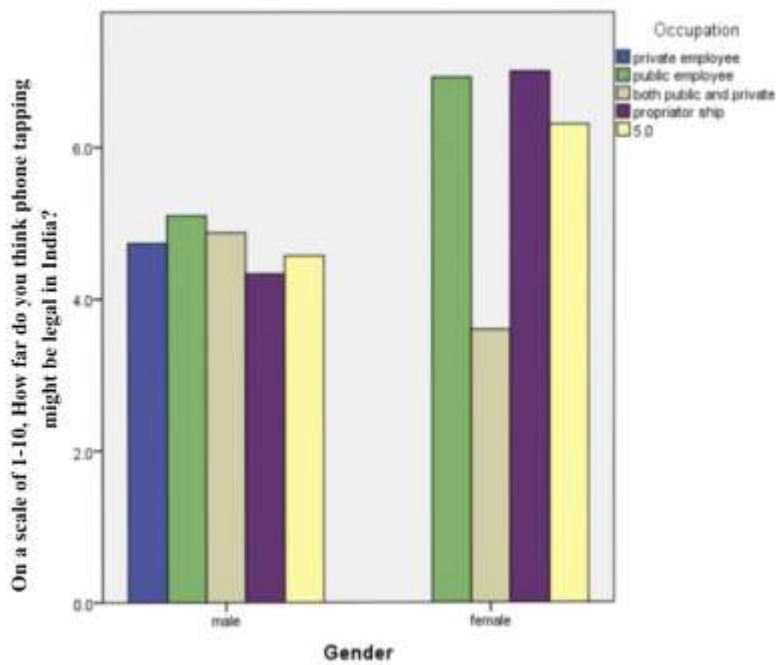
In the book,Manufacturing Terrorism: Kashmiri Encounters with Media and the Law it says that all-India campaign for Geelani's acquittal was a unique campaign in the annals of the Indian human rights Says about various media laws(Newman,2006)

### Analysis:

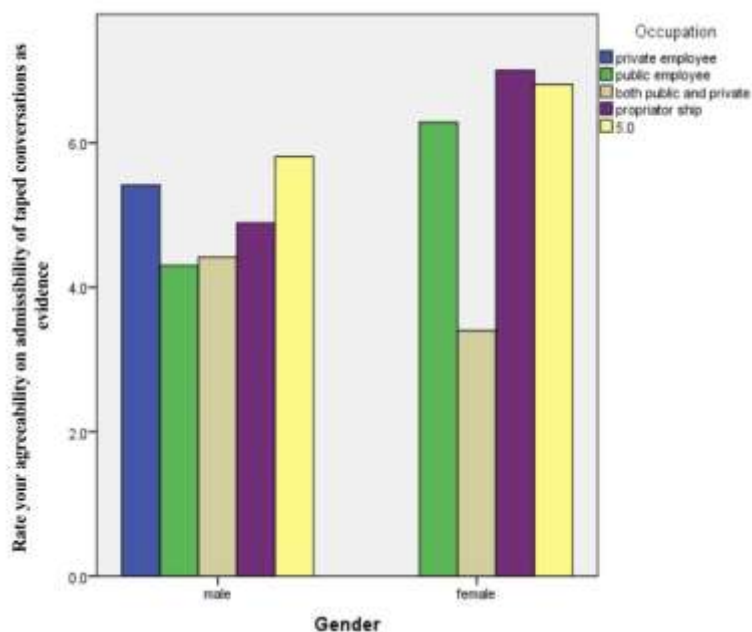


**Legend:** The data has been collected through the online survey in which their gender and educational qualifications factors are made as the variables and are compared with their opinion on legality of phone tapping in India. (Figure1.1)

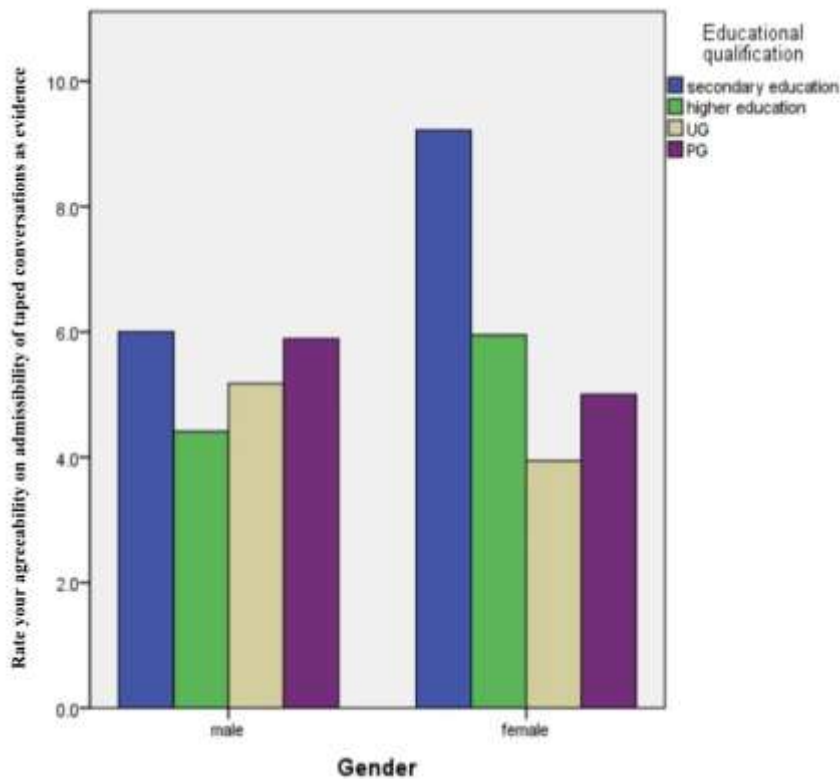




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**Legend:** The data has been collected through the online survey in which their gender and occupational factors are made as the variables and are compared with their opinion on credibility of phone tapping as evidence in India . (Figure 2.1)



**Legend:** The data has been collected through the online survey in which their gender and educational qualification factors are made as the variables and are compared with their opinion on credibility of phone tapping as evidence in India . (Figure 2.2)

### Result:

It shows that both the genders have actively participated in the survey made online except the respondents below the age of 18 in females. Here, almost everyone accepted That phone tapping is legalised in India. They also feel that they haven't heard about any cases against phone tapping which is done legally.(Figure1).

It shows that almost all the respondents from varied occupations have participated in the sampling method survey made online. The occupation category was filled with the monthly gender variables. Here considering the gender of the respondents, almost all the respondents Especially the female respondents have accepted that the Phone tapping can be admissible in court as evidence(Figure 2)

**Discussion:**

From the survey it can be seen that almost everyone has actively participated in the online survey method. It has been observed that mostly the female respondents have actively participated and given opinion that phone tapping is legalised in India and from which it can be used as an evidentiary value“. They have also said that The phone tapping would not affect the right to privacy for us. All the crime dark areas must be shown light before the justice. Das they have said that phone tapping can be the only way to get an eye on their crime parts and to bring before justice. The other respondents also accepted these views and said that it cannot affect the right to privacy until and unless it is done by the part of the government or any legal authorities But for a legal past purpose. It may be illegal only when it is under the hands of the criminals.

**Conclusion:**

The vast strides that have been made in the field of technology in the recent past have brought people closer like never before. So, as long as criminals and terrorists seek to misuse technology in pursuance of their evil motives, Governments all over the world will continue to use technology to invade our private spaces..Article 21 was invoked by submitting that the privacy of the appellant's conversation was invaded. Article 21 contemplates procedure established by law with regard to deprivation of life or personal liberty. The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or high handed interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. It must not be understood that the Courts will tolerate safeguards for the protection of the citizen to be imperilled by permitting the police to proceed by unlawful or irregular methods. There is also a growing body of opinion both in India and abroad that supports telephone tapping and describes it as a necessary evil. The emergence of terrorism on a global scale has made most nations enact tough anti-terror legislations like the PATRIOT Act in the USA and the Indian POTA .These laws curtail civil liberties greatly and their most important provisions deal with telephone tapping.

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