



Legal Research On
**Telephone Tapping in Bangladesh: Violation of
Constitutional, Human rights**

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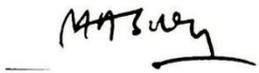
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Letter of Approval

“This is to certify that the work is done **"Telephone Tapping in Bangladesh: Violation of Constitutional, Human Rights"** is a real work done by done by Md. Rashedujjaman Rashed, ID: 193-38-341, Batch: 29th Department of Law, Daffodil International University, done under my supervision in the partial fulfillment for the research, work is done for the fulfillment of course requirements of Law-812, 812 from the Department of law, Daffodil international University.”



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Declaration

I am Md. Rashedujjaman Rashed, the student of LL.M., Hereby do solemnly declare that the work presented in the thesis was completed by me and has not been previously submitted to any other institution. The work I've presented does not breach any copyright. The work was performed by me and was filed in the satisfaction of this requirement for the level of the LL.M. Program.

I declare that this paper never submitted to any school, college university, or any other organization previously. This paper is presented by me is original work, and it's not submitted before.



Md. Rashedujjaman Rashed

(Candidate)

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First of all, I'm deeply and ever grateful to Allah, the most gracious, the most compassionate, for providing me the capacity, health, understanding, and patience to finish this job.

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Dedication

Firstly I am showing very much respect and gratitude to my Allah. Finally, I'd like to thank my parents Md Fazlul Haque and Rokeya Haque, for giving birth to me in the first place and inspiring, encouraging me spiritually throughout my life. They are still guiding me being a good human being and motivated me to dedicate myself benefit of the country.

Abstract

Advanced technology is now within reach of everyone, due to which the number of online crimes is increasing day by day. The protection of personal information is very important because it is used for terrorist activities. Eavesdropping on the phone is a big crime all over the world. Under Bangladeshi law, eavesdropping on someone's phone is a punishable offense. The Constitution of Bangladesh places the exchange and communication of personal information of citizens on the list of fundamental rights and gives the state the responsibility to protect it. There is ambiguity in the law of Bangladesh regarding eavesdropping and phone conversations. In recent time we see a lot of political telephone conversation of the opposite party has been published on the internet in Bangladesh. The ruling party took advantage of the phone call conversation scandal.

List of Abbreviations

BTA	Bangladesh Telecommunications Act
GDPR	General Data Protection Regulation
UDHR	Universal Declaration of Human Rights
UNHRC	United Nations Human Rights Council
HCD	High Court Division
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ACLU	American Civil Liberties Union
APEC	Asia-Pacific Economic Cooperation
ATIP	Access to Information and Privacy
CCPR	United Nations Covenant on Civil and Political Rights
EU	European Union
EC	European Commission
EHRR	European Human Rights Report
EPIC	Electronic Privacy Information Center
BOR	Bill of Rights
DPA	Data Protection Act
EUECJ	Court of Justice for the European Communities
FOI	freedom of information
ETS	European Treaty Series
IACHR	Inter-American Commission on Human Rights
UN	United Nations
HRC	Human Rights Committee
MP	Member of Parliament
USDA	United States Department of Agriculture
HKBORO	Hong Kong Bill of Rights Ordinance
PUCL	Peoples Union for Civil Liberties
PI	Privacy International

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CHAPTER I

INTRODUCTION

1.1 Background:

The constitution of Bangladesh does not explain anything about telephone eavesdropping. In recent times government agencies use this diabolic methods for the best protection of the country. Although it is used for security, it violates our right to privacy. The practice of this procedure harms our fundamental right, and the constitution of Bangladesh does not accept it.

Article 43, Constitution of Bangladesh guarantees correspondence and communication of all citizens. Article 43 (b) of the constitution which states that, “Every citizen shall have the right to the privacy of his correspondence and other means of communication” [1].

Article 12 of the Universal Declaration of Human Rights states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation [2]. Everyone has the right to the protection of the law against such interference or attacks” [2].

Article 17 of the International Covenant on Civil and Political Rights states: “1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation, 2) Everyone has the right to the protection of the law against such interference or attacks” [2].

The United Nations General Assembly Resolution on the right of privacy in the digital age passed on December 18, 2013 and the General Comment of the United Nations Human Rights Committee on the right of privacy, family, home, correspondence, and protection of honor and reputation, under the International Covenant of Civil and Political Rights (ICCPR), expressed in 1988, demands that working of State Surveillance be subject to legality through clear and precise law, which law itself must look to safeguard the right to privacy [2].

Article 82 of the GDPR, an individual who has suffered any damage, either material or non-material, has the right to seek compensation against the company responsible for the damages [3].

Call record leaks are happening all over the world. These horrible incidents happen in Bangladesh regularly. Disclosing someone's private conversations in public is a punishable offense. Phone eavesdropping is a major crime in all countries of the world. And there is a provision of punishment for this. Under Bangladeshi law, eavesdropping on someone's phone and leaking call records is a punishable offense. The phone conversation's first incidents leaked in the country on Oct 26 2013 [4]. Prime Minister Sheikh Hasina called BNP chairperson Khaleda Zia to overcome the heated political crisis. They had a conversation for about 36 minutes. A day later, a private television channel aired the conversation. The two leaders found themselves in an embarrassing situation. Not only the leaders of the two parties but also the telephone conversations of some politicians have been leaked recently. But no official statement has been made about the source of these phone conversations. No one has taken responsibility for this, and it is not known who is leaking these. The latest Dakshu VP Nurul Haque Nur's conversation worth Tk 13 crore was leaked, and the issue came up for discussion again. The issue of eavesdropping on mobile phones has, in many cases, gone beyond personal and political boundaries. Many issues of personal privacy are being brought to the public. Power is being misused in many cases as the matter is not managed under clear principles. Clearly, no one is saying who is spying, who is spreading it. Even after the phone conversations of the highest level people of the country were leaked, it has not been possible to identify those involved and bring them to justice. But how legal is it to leak these phone conversations or eavesdrop on someone's phone? In this regard, there is no mention in the law about eavesdropping on phone and disclosure of phone conversations. And so far, there is no evidence that anyone involved in the phone conversation has been convicted. So experts like to say that there was no benefit without this law. They claim that the punishment mentioned in the amendment of Bangladesh Telecommunication Act-2010 for a heinous crime like leaking call records is nominal. The punishment should have been more in this law. Experts also say that if someone thinks that their rights have been violated for such incidents, they can seek remedy to the courts. Experts claim that the right to record other people's telephone conversations through eavesdropping is not available to anyone other than the organization concerned. Therefore, the government needs to take the role to find the source. Recently, telephone conversations of some of the opposition political leaders have been leaked. Journalist Abdur Rob Majumder's conversation with Moinul Hossain, a former adviser to the caretaker government, was leaked a few months ago. Later, BNP leaders Tarique Rahman and Shamsheer Mobin Chowdhury, Sadek

Hossain Khoka, and Mahmudur Rahman Manna, Mahi B Chowdhury and Mahmudur Rahman Manna, Amir Khasru Mahmud Chowdhury - several such phone conversations have been leaked. S. 71 of the Bangladesh Telecommunication Act-2001 states, “if a person intentionally intercepts a telephone conversation between two other persons, the act of the first person will be a crime and the punishment is, imprisonment, not more than six months, or fined not more than Tk 50,000, or both”. The section was amended in 2007 to add another paragraph, “Provided that, under section 97 (a), government agencies such as government intelligence agencies, law enforcement agencies, national security agencies, and investigative agencies are excluded from the law.” The law was later amended in 2010. Under this law, eavesdropping has been made a punishable offense. However, there is a provision of detention 2 years and a fine of Tk 5 crore for recording or broadcasting a conversation to eavesdrop on a person. But if government agencies want to intercept a citizen's phone in the interest of investigation or for state needs, do they have to take permission from the authorities? Meanwhile, Article 43 of the Constitution states, “Every citizen shall have the right to the privacy of his correspondence and other means of communication subject to reasonable restrictions imposed by law in the interests of the security, public order, public morality or public health [5].” According to the interpretation of the law, in case of intercepting someone's telephone, permission must be obtained from the government and the Ministry of Home Affairs. The permission should state who, for what reason, and for how long will be kept under surveillance. Asked about the law on eavesdropping and phone conversations, Supreme Court lawyer Manzil Morshed said the law made eavesdropping a punishable offense [6]. Again in some cases, the punishment has been waived. Sections 26, 31, and 35 of the recently passed Digital Security Act do not permit eavesdropping on the phone. if the actions of a particular citizen are not harmful or threatening to the state, then no one can legally intercept someone's phone without the direction of the court. However, Morshed said there is a provision of two years imprisonment and a fine of Tk 5 crore for recording or broadcasting conversations of any person outside them [6]. In this regard, lawyer Jyotirmoy Barua told Amar Sangbad last October that there is ambiguity in the law of Bangladesh regarding eavesdropping and phone conversations [6]. There is a section in the Bangladesh Telecommunications Act, which states that if the security agencies deem it necessary, they can investigate.

Now the question is, on what basis are the telephone conversations of opposition leaders or those who believe in opposition doctrines being recorded? Does it involve questions of public order, public morality, state security, or public health?

1.2 Objectives of the Research

Law enforcement agencies adopted Phone tapping procedures for prevention and detention of crime, which is declared by section 97 (A) of the Telecommunications Act 2001. In recent years, they're a lot of phone tapping controversy occur for political reasons, and the government took benefit of the controversy. But it is very shocking that no case was filed against the crime.

- a) Critically review the law of telephone tapping.
- b) To analysis telephone tapping and rights to privacy.
- c) To find the remedy for illegal telephone tapping by the government.
- d) To analysis some other countries about telephone tapping.
- e) To help the future research work of telephone tapping.

1.3 Research Questions

1. What is the legal status of telephone tapping in Bangladesh?
2. Is section 97(a) Constitutional?
3. What are the remedies against telephone tapping?

1.4 Methodology of the research

In this research I have been used qualitative, analytical, doctrinal methodology and includes fact finding inquires of different kinds. It is primarily analytical based on primary and secondary sources. I would use the Constitution of Bangladesh and case laws as a primary source of information. I would interpret the different provisions of the constitution to ascertain its constitutional validity. The case laws will help me to find the scope of interpretation. As a

secondary source of data, I would study different books, journal articles, conference articles, and online articles of different countries and would try to show how telephone tapping violated our constitutional rights and article 97(a) is unconstitutional.

1.5 Literature review

Some literature does exist on Telephone Tapping. However, few writers have covered the particulars, and there is not any up-to-date monograph. In other words, the subject requires additional research that provides a critical analysis of phone tapping, and that highlights its deficiencies and shortcomings. Some works are already done on the Telephone tapping. I read a lot of things on Telephone tapping. Besides, I also read so many statutory law, international reports, articles, interviews, books, journals, case studies on this topic.

Telephone tapping was legally provided for in the Spanish legal system by introducing the Ley orgánica 4/1988, dated Mar 25 [7].

In the case *Katz v. United States* supreme court of U.S held that search and seizure include both tangible as well as intangible items for the protections guaranteed under the Fourth Amendment, hence making it mandatory for the authorities to take a judicially sanctioned warrant before wiretapping any individual's conversation. The Court of Appeals affirmed the conviction, finding that there was no Fourth Amendment violation since there was "no physical entrance into the area occupied by" petitioner [8].

The Supreme Court of Canada has ruled that Section-184.4 Criminal Code, which declared that without a judicial warrant intercept private telecommunication by the police officer, is constitutionally invalid, in a recent judgment [9].

1.6 Significance

The findings of this research are the Bangladeshi government takes advantage of Telephone tapping for their political benefit. Further, this study would also review the basic law of Bangladesh and finds how telephone tapping violated the law of Bangladesh. This connected Telephone tapping and the right to privacy, freedom of speech. Furthermore, this study provides the necessary

information on different laws and treaties about telephone tapping. This study gives reference to relevant case law to give you better knowledge that telephone tapping is unconstitutional and find the remedies of telephone tapping. To future researchers, This study can provide baseline information on the current status of Telephone tapping.

Chapter Two: Phone Tapping In Bangladesh

2.1 Introduction

Advanced technology is now within reach of everyone, due to which the number of online crimes is increasing day by day. The protection of personal information is very important because it is used for terrorist activities. It is important to consider how our personal information will be used in questions of freedom, security, and justice. The right to privacy and freedom of expression are both essential human rights in modern information society [10]. Both are Fundamental Rights under the Bangladeshi Constitution. Telephone Tapping comes with not only benefits, but it comes with problems for the enjoyment of human rights [5]. In Bangladesh, Government agencies use this technology in some cases for political reasons. This is completely a violation of the right to privacy and the freedom of expression, which is protected by the Bangladeshi Constitution and also several laws of GDPR. This paper examines legislative and structural means to telephone tapping in Bangladesh and finds out remedies when it happens by the government or individual.

There is a section in the Bangladesh Telecommunications Act 2001, which states that if the security agencies deem it necessary, in the interest of investigation or in the interest of the case, the telephone service provider will be obliged to provide them with all kinds of information.

But they can intercept anyone's phone - there is no legal provision with clear direction or power. On the contrary, the Constitution of Bangladesh guarantees the privacy of any citizen's personal communication.

The Bangladesh Telecommunications Act was passed in 2001 and was later amended in 2010. Under this law, eavesdropping on the phone has been made a punishable offense. However, there is a provision of imprisonment for two years and a fine of Tk 5 crore for recording or broadcasting conversations of any person outside government agencies like intelligence agencies, law enforcement agencies, national security agencies, investigative agencies.

But if government agencies want to intercept a citizen's phone for the sake of investigation or for the needs of the state, do they have to get permission from the authorities? Any official had to seek the government's permission on issues such as national security and public order, but since the law did not say anything clearly, there were often no restrictions on the issues.

However, if the actions of a particular citizen are not fatally harmful or threatening to the state, then no one can legally intercept someone's phone without the direction of the court.

2.2 History of Telephone Tapping

Telephone tapping is also called wiretapping (in America) or interception of the phone. After the invention of the telephone recorder in the USA, telephone tapping was first started. Before 1928 the Supreme Court of the USA didn't become a valid law for prohibition. Many state legislatures did not consent to listen to anybody from telegraph communication, and they enacted statutes for prohibited it in the US. Telephone tapping procedures start after the invention of the telephone recorder, and constitutionality was established by the bootlegger Roy Olmstead's judgment. Prior to most tapping telephone procedures, the President's permission was required. Sometimes this was done through legal warrants. Attorney General Robert F. Kennedy permits the FBI to begin wiretapping the communications of Rev. Martin Luther King Jr. on Oct 19 1963. Voice communication technology begins after the invention of Alexander Graham Bell's telephone in 1876 [11]. Wiretapping start by the law enforcement agencies in 1890 [12].

The United States House of Representatives held hearings on the legality of wiretapping for the national defense before they are going into World War II [13]. The citizen was worried about the decision concerning wiretapping that the legislative and judicial branches were decided.

In *Katz v. United States* united states supreme court declared that "wiretapping needs warrant" [14]. In 1968 Congress enacted a statute for wiretapping in criminal investigations which provision says wiretapping needs a warrant. In 1978, a confidential federal court was set up by the FISA for issuing wiretap warrants in the question of national security case [15].

2.3 Legal Status of Phone Tapping in Bangladesh

Spying on the phone is a big crime all over the world. And for this, you have to get punishment. Under Bangladeshi law, eavesdropping on someone's phone is a punishable offense [16]. The Constitution of Bangladesh places the exchange and communication of personal information of citizens on the list of fundamental rights and gives the state the responsibility to protect it [17]. However, in the interest of the security of the state, with the approval of the Ministry of Home Affairs, some people's phones can be recorded for a specified period of time, the lawyers said.

In the international arena, there were reports of eavesdropping on the phones of various political leaders. But for several years now, telephone conversations of political leaders have been leaked in Bangladesh. Among the highlights of the last few years was the phone call to Prime Minister Sheikh Hasina by BNP Chairperson Khaleda Zia, followed by BNP leaders Tarique Rahman and Shamsher Mobin Chowdhury, Sadek Hossain Khoka and Mahmudur Rahman Manna, former caretaker government adviser Barrister Moinul Hossain and journalist Abdur Rob. Conversations of Majumdar, Mahi B Chowdhury, and Mahmudur Rahman Manna, Amir Khasru Mahmud Chowdhury - telephone conversations of several such political personalities have been leaked.

But no official statement has been made about the source of these phone conversations. No one is responsible for this, and it is not known who is doing this. But how legal is it to leak these phone conversations or eavesdrop on someone's phone? In this regard, the lawyers say, there is no mention in the law of Bangladesh about eavesdropping on phone and disclosure of phone conversation.

There is a provision of imprisonment for two years and a fine of Tk 5 crore if anyone other than government agencies such as intelligence agencies, law enforcement agencies, national security agencies, and investigative agencies record to intercept conversations. Section 71 of the Act states: 'If a person intentionally intercepts the telephone conversations of two other persons, the act of the first person shall be an offense and he shall be liable to imprisonment for a term not exceeding 2 (two) years or to a fine not exceeding 5 (five) crores Both will be punishable [18]. Provided, however, that the provisions of this section shall not apply to any officer of an intelligence agency, a national security agency, an investigating agency, or a law enforcement agency authorized by the government under section 97A [18].

Section 97(A) states, “The Government shall, from time to time, intercept, record or collect information relating to messages and conversations transmitted by any telecommunication service user in the interest of the security or public order of the State, regardless of this Act or any other law.” May authorize any officer of the agency, national security agency, investigative agency, or agency in charge of law enforcement and direct the telecommunications service provider to provide overall assistance in such activities, and the operator shall be bound to comply with such instructions.

The government's decision to set up a national center to monitor telephone conversations of these public has been predicted by the Odhikar report for a breach of constitutional rights. The decision clearly violates the individual's rights to privacy enshrined in Article 43 (b) of this Bangladeshi Constitution and International law, said Odhikar [17].

Justice Md. Rahul Quddus recently handed down a landmark judgment in the matter. According to the verdict, all public and private mobile phone operators, including BTRC, have a responsibility to protect the privacy of citizens. The constitution itself guarantees the protection of the privacy of the citizens. This constitutional right of the citizen cannot be violated in any interest if he wants to. “We have recently noticed that some vested interests are collecting audio-video conversations and publishing them on social media,” the verdict said. The practice of leaking audio-video records of conversations on social media should be stopped. We must not forget that Article 43 of the Constitution guarantees the protection of a person's privacy. So it is the responsibility of the phone company and BTRC to protect it. So BTRC has to take the necessary steps to stop it. The verdict further said that the collection of call lists or call records from public-private mobile phone companies must be stopped without informing the official demand form and the customer. Mobile phone companies also cannot provide any information related to the call list of a citizen of the country or a customer unless it is approved by law in accordance with the constitution. Otherwise, he will be accused of violating the fundamental rights of the citizens by the constitution.

The HCD issued a rule on the government to explain within three weeks the legality of the provisions that entitled the law enforcers and intelligence agencies to tap the telephone conversations of any individual [18]. The High Court Division gives the government three weeks to explain, “Why wouldn't it be illegal for law enforcement and intelligence agencies to tap a person's telephone conversations?”. Moreover, the High Court Division asked the government to

explain why not the Amendment of Bangladesh Telecommunication Act, 2006 should not be declared unconstitutional and void [18].

2.4 Controversy

There is ambiguity in the law of Bangladesh regarding eavesdropping and phone conversations. There is a section in the Bangladesh Telecommunications Act, which states that if the security agencies deem it necessary, in the interest of investigation or in the interest of the case, the telephone service provider will be obliged to provide them with all kinds of information. But there is no legal provision with any clear direction or power that they can intercept anyone's phone. On the contrary, the Constitution of Bangladesh guarantees the privacy of any citizen's personal communication.

Law enforcement agencies powerd telephone tapping under section 97(a), Telecommunication Act 2001. If any person intentionally listens to a telephone conversation between two other persons is an offense [18]. Illegal or unauthorized telephone tapping is a crime. But many Governments misuse telephone tapping for their political benefit. In recent time we see a lot of political telephone conversation of the opposite party has been published on the internet in Bangladesh. The ruling party took advantage of the phone call conversation scandal. Before the election 2019 of Bangladesh, we saw lots of phone call scandals of the opposition party leader published on the internet. Mentionable "Mahi B Chudhury and Mahmudur Rahman Manna Leaked phone conversation" Leaked phone call': Golam Maula Rony Barrister Mainul Hosein leaked phone call" It is very shocking no case was filled for this controversy. It's not only happened in Bangladesh, but the Indian opposite party has also face the same problem.

In the last few years, BNP chairperson Khaleda Zia has received phone calls from Prime Minister Sheikh Hasina, followed by BNP leaders Tarique Rahman and Shamsheer Mobin Chowdhury, Sadek Hossain Khoka and Mahmudur Rahman Manna, Mahi B Chowdhury and Mahmudur Rahman Manna, Amir Khasru Mahmud Chowdhury. Telephone conversation leaked.

But no official statement has been made about the source of these phone conversations. No one is responsible for this, and it is not known who is doing this. But how legal is it to leak these phone conversations or eavesdrop on someone's phone? In this regard, the lawyers say, there is no clear

mention in the law of Bangladesh about eavesdropping on phone and disclosure of phone conversation.

2.5 Remedies

The incidence of phone tapping has increased significantly over the past few years. Many phone records have been published online. But no incident has been tried till date. Nowadays, phone tapping is being done for political purposes in Bangladesh. The government in power is tapping the phones of the opposition leaders for their needs and using them as they need. There is no sign of government accountability in the case of phone tapping. The aggrieved party can file a Writ Petition in the Supreme Court of Bangladesh [19].

Telephone tapping is a big crime all over the world. And for this, you have to get punishment. Under Bangladeshi law, spying on someone's phone is a punishable offense. The Constitution of Bangladesh places the exchange and communication of personal information of citizens on the list of fundamental rights and gives the state the responsibility to protect it. However, in the interest of the security of the country, with the approval of the Ministry of Home Affairs, some people's phones can be recorded for a specified period of time.

Spying on someone's phone is a violation of the constitution. The constitution guarantees the privacy of the exchange of personal information of every citizen. Anyone violating it would be against the fundamental rights of the constitution. Remedy for such crimes can be found in the courts. In addition, phone tapping is considered a punishable offense by law.

Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the state, public order, public morality or public health –(a) to be secured in his home against entry, search and seizure; and(b) to the privacy of his correspondence and other means of communication [5].

Meanwhile, the Bangladesh Telecommunication Act was passed in 2001, and later the law was amended in 2010. Under this law, spying has been made a punishable offense. However, there is a provision of imprisonment for two years and a fine of Tk 5 crore for recording or broadcasting

conversations of any person outside government agencies like intelligence agencies, law enforcement agencies, national security agencies, investigative agencies.

Section 71 of the Act states, “If a person intentionally intercepts the telephone conversations of two other persons, the act of the first person shall be an offense, and he shall be liable to imprisonment for a term not exceeding 2 (two) years or to a fine not exceeding 5 (five) crores, Or both.”

Provided, however, that the provisions of this section shall not apply to any officer of an intelligence agency, national security agency, investigative agency, or law enforcement agency empowered by the government under section 97A.

Unauthorized telephone tapping infringes on our privacy, so the victim can file a complaint with the Human Rights Commission [20].

An FIR can be lodged with the police against illegal telephone tapping [20].

According to Article 14 of the BOR, the right to privacy means not only privacy but also privacy and personal information. It has been reintroduced in ICCPR Article 17, which is in line with Article 8 of the EHRC. Not only is eavesdropping on home telephones a crime, but eavesdropping on office telephones is also a crime. It was pre-determined that eavesdropping on the telephone curtailed our right to freedom of speech, and law enforcement agencies eavesdropped on the telephone to detect serious state crimes and protect the state's security. However, in this case, a warrant has to be issued, and three conditions have to be fulfilled before the warrant can be issued, A) Must be a serious crime B) The investigation has already been carried out in the usual manner, but the investigation has failed, and there is no chance of success C) There must be a valid reason, in which case the person will be found guilty and arrested.

While the words "phone," "telephone," and "voice" do not appear in the text of the law, all personal data collected are subject to certain protections under the GDPR [21]. As phone calls often include personal data such as names, addresses, health status, and other potentially sensitive information, the recordings must be protected in accordance with the law [21].

Chapter Three: Experiences in Some Other Countries

3.1 American Legislature on Wiretapping

The 4th amendment to the U.S. Constitution prohibits unnecessary searches, sets probable cause as a prerequisite for issuance of search warrants. The amendment says:

“The right of the people to be protected in their persons, papers, houses, and effects, against unreasoning searches and seizures, shall not be violated, and no warrants shall issue, but upon the possible cause, supported by oath or willingness, and particularly describing the place to be searched, and the persons or things to be seized.” [8]

The U.S. Courts strictly interpreted the Fourth Amendment of the American Constitution until 1967. As a result, the Fourth Amendment included search and seizure of tangible items only. Owing to such interpretation, wiretapping, which does not include any physical intrusion into an individual's private space, was never covered under the right bestowed by the Fourth Amendment, resulting in having no requirement of obtaining a Court warrant for conducting the same [22].

Katz v. United States altered the court's stance when in 1967 the Supreme Court of United State of America held that search and seizure include both tangible as well as intangible items for the protections guaranteed under the Fourth Amendment, hence making it mandatory for the authorities to take a judicially sanctioned warrant before wiretapping any individual's conversation. The Court of Appeals disallowed the argument that the recordings had been obtained in violation of the Fourth Amendment because “There was no corporal entrance into the area occupied by [the petitioner] [23].”

The court, while bringing wiretapping within the meaning of 'search and seizure' under the Fourth Amendment, concluded that the 'trespass' doctrine enunciated in Olmstead and Goldman had been

eroded by subsequent decisions and the same could no longer be held to be controlling [24]. Further, it was held that the government's activities in electronically listening to and recording telephonic conversations of its citizens violated the privacy and thus constituted 'search and seizure' within the meaning of the Fourth Amendment.

It was clear that the authorities were working properly. But they were doing it themselves and did not feel the need to seek approval from any judicial authority. Prior to the commencement of the search, they did not need permission to conduct a search for possible reasons before a neutral magistrate. They were not forced to seek permission from the court prior to the investigation [25]. The court later declared that “it is illegal for officers to make any inquiries without the court's permission, despite the possible reasons.”

As in Goldman, the only relevant factor considered by the Court in Silverman was the method of search used by the government: " The court never ruled that a federal officer could physically enter someone's home or office without a warrant or consent. Will enter or intercept there, then relate it to the individual's criminal trial."

Justice Douglas made a pressing observation regarding the executive branch being the final decision making authority in cases of national security:

“Magistrate does not mean the President or the Attorney General. Where they believe that national security may be involved and must be a neutral court or Magistrate. The executive branch is not assumed to be neutral under the separation of powers created by the constitution. It needs to investigate and prosecute those who violate the federal laws and protect to breach of national security.”

Although the U.S. Supreme Court sought to limit the scope of the word 'search' under the Fourth Amendment in a post Katz judgment Present Stand, it has still maintained judicial warrant as a prerequisite.

The Supreme Court favored a judicial warrant to conduct an investigation, in line with the Fourth Amendment and the court in Katz. Held:

The Fourth Amendment states that human rights, homes, and documents will be protected against unreasonable search and seizure and that these rights will not be violated. The main body of the

Fourth Amendment states that a person has the right to return to his home and be free from unreasonable government intrusion. However, there are some exceptions.

3.2 Position in Canada

In Canada, there is a clear provision for phone tapping. Under section 186, Criminal code investigative authority can intercept a private communication. But there is a condition, the investigative authority needs permission from the court, and it depends on the judge is satisfied or not. Under section 184.4, a police officer without judicial authorization can intercept private communication in exigent circumstances.

Canadian Supreme Court deals with wiretapping very strictly. For effective of these procedures, the supreme court of Canada under section 186(1)(b) permits police for a wiretap on the occasion when there no chance of success of other investigative procedures.

The British Columbia Supreme Court in *R. v. Araujo* The court, while holding wiretapping as highly intrusive, laid down a few necessities [20]:

"In order to meet the investigative necessity requirement, the applicant must establish in the affidavit that, practically speaking, there is no other reasonable alternative method of investigation, in the circumstances of the particular criminal inquiry [20]."

In a recent judgment, the Supreme Court of Canada has ruled that Section-184.4, Criminal Code, without a judicial warrant if a police officer intercepts private telecommunication, then it is constitutionally invalid.

3.3 Position in India

In the P.U.C.L. case, the Supreme Court of India tries to remove inconsistency and command the government to follow a specific modus operandi before proceeding with the interception of telecommunication. The Supreme Court tries to force to Indian central government to make rules about the right to privacy and protect an individual right.

After following the command of the supreme court in the P.U.C.L case, they brought out an amendment to the Indian Telegraph Rules, 1951. They added a rule 419-A vide G.S.R. 123 (E), dated 16.02.1999. But the rule was failed to remove the unnecessary interception of communication, and the decision making authority still remained with the executive branch of the Indian Constitution [20].

Entry 31 of the Constitution's Union List and Entry 7 of the Federal List of the Government of India Act 1935 mention Telephone with supplementary communication devices [26].

Section 5 (2) of the Indian Telegraph Act 1885 empowers the Government of India to intercept messages. And section 7 (2) (b), the Indian Telegraph Act, 1885, which empowers the Central Government to regulate eavesdropping illegally.

However, a plain reading of S. 5(2), Indian Telegraph Act, 1885, “does not confer any unguided power on the government to intercept the messages, as it only permits the interception in accordance with provisions” of the said section. Central Government, empowered under S.7(2) (b), failed to provide for rules to prevent improper interception of message hence rendering the substantive provision unregulated. According to S.5(2), 'the occurrence of any public emergency,' or 'in the interest of the public safety,' are the prerequisites for the application of the provisions of the section. In the absence of these prerequisites, the concerned authorities have no power to enforce the provisions of the said section.

Justice Kuldeep Singh succinctly concludes on the applicability of section – 5(2) in the PUCL case

The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency or the existence of a public-safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the

security of the state, (iii) friendly relations with foreign States, (iv) public order or (v) for preventing incitement to the commission of an offense [20].

In *K.L.D Nagasree v. Government of India*, " After reading in general, Section 5(1),(2) Telegraph Act, 1885 give the details when and how interception of messages can do. In the occurrence of any public emergency or the existence of public safety, the interception of messages can be valid [20].

Supreme Court on Maneka Gandhi case declares:

Article 21, Constitution of India, 1950 protects our right to privacy. Procedures that conflict with Article 21 protected by our constitution and infringe on our right to privacy are unconstitutional. The interception of a communication violates our right to privacy, so it is unconstitutional.

Chapter Four: Privacy and the Bangladeshi Constitution

4.1 Protection of Right to Privacy Under the Constitution of Bangladesh

Bangladeshi constitution declares "the right to privacy" as a fundamental right. Privacy is an essential requirement of a human being. It helps a person to carry on their autonomy and individuality. The right to privacy is identified as a person's "the right to home privacy', 'the right to the privacy of correspondence and other means of communication' and 'the right to privacy of private life.'" The right to privacy is currently a fundamental human right, and it is considered an inalienable human right.

Among the particular basic rights of the citizens of the People's Republic of Bangladesh, the right to privacy is just one of these rights. A number of provisions under Part III of this Constitution of the People's Republic of Bangladesh specify the fundamental rights of their citizens of the country. However, there's absolutely no such provision that directly investigates the right to privacy as a fundamental right. Here the question arises regarding the status of this right to privacy, whether the right is fundamental under the constitution or not. However, Article 43 of the Constitution of Bangladesh has acknowledged 'the right to privacy' by saying, ' every citizen will have the right, subject to any reasonable restrictions imposed by law in the interests of the security of this state, public order, public morality or public health -- (a) to be procured in his home against entry, search and seizure; and b) into the privacy of his correspondence and other means of communication.' Article 43 falls in Part III of this Constitution, which instills Fundamental Rights protected under Article 26 of the Constitution; therefore, the rights under article 43 are fundamental rights.

When we analyze sub-article (a) of Article 43 of the Constitution of Bangladesh That states, ' every citizen shall have the right to be Procured in his House from entry, search and seizure then we can perceive its similarity with the Supply of the This Fourth amendment of the U.S Constitution,' Article 16 of the Constitution of Belgium, Article 15 of the Constitution of Luxembourg, 1868, Article 29 of the Constitution of Moldova where the word "house" was used to refer to as the 'privacy protected zone' that entitles a person to have the right "to be secure against unreasonable searches and seizures." Consequently, it could be said that this provision resembles the 19th-century old idea of the right to privacy' -'the right to home privacy' which was influenced by the maxim' each man's home is his castle.'

Moreover, sub-article (b) of Article 43 of the Constitution of Bangladesh states, ' every citizen shall have the right to the privacy of his correspondence and other means of communicating.' Here, the right to the Privacy Policy of correspondence and other means of communicating means the privacy of letters, telegrams, and other postal dispatches, in addition to telephone calls and other legal ways of communicating. In fact, this is the only source under the constitution in which the word "Privacy" is specially mentioned no matter their wordings" right to privacy" as the subset of Privacy correspondence and other methods of communicating. Similar provisions are also found in the constitutions of Germany, Kuwait, Guinea Bissau, Gabon, and Ethiopia, and so on. Assessing these constitutions Shows that the Right to Privacy of correspondence and other Methods of communication Have Been seen as a separate right from the right to privacy of private life since the 20th century.

One might argue that 'the right to home privacy' and 'the right to the privacy of correspondence and other means of communication' includes 'the right to privacy of private life.' However, when we perusal Article 12 of the UDHR along with Article 8 of the ECHR and Article 17 of the ICCPR, it accords a different understanding. Perusing UDHR along with ECHR and ICCPR, we discern that these international human rights instruments have considered the Right to Privacy in three different facets, the right privacy of private life', the right to home privacy,' and 'the right to the privacy of correspondence.' Though the Constitution of Bangladesh has not ensured 'the right privacy of private life,' but by protecting 'the right to privacy of correspondence and other means of communication,' it has implicitly protected our emails and text messages on social media, providing us 'e-privacy' over our 'e-communication.'

Apart from the constitutional identity of the right to home privacy' and the right to the privacy of his correspondence and other means of communicating,' there are certain national laws which recognized these rights of the citizen. Under sections 405, 407, 408, and 409 of the Penal Code 1860, if an individual dishonestly moves trade secrets of business or information shall be subject to criminal offenses. Sections 122, 124, 126, 127, and 129 of the Evidence Act 1872 also recognize the right to privacy regarding disclosure of information without any consent or authorization. Additionally, the Code of Criminal Procedure 1898 along with also the Code of Civil process 1908 also has adopted provisions relating to privacy. Under section 47 of the Criminal Procedure Code, imposes restrictions on police officers to enter any house without appropriate permission.

Additionally, section 132, under the Code of Civil Procedure 1908, "Girls who, according to the customs and etiquette of the country, ought not to be forced to appear at people shall be exempt from personal appearance in court."

4.2 Is Section 97(a) Constitutional?

Article 26 ensures that Parliament cannot enact any law contrary to fundamental rights in our constitution, and Article 65 of the Constitution empowers the National Assembly to enact laws subject to the provisions of the constitution. So our Parliament has been made subject to the Constitution, Parliament can enact laws within the constitutional constraints. Even if an unconstitutional law is passed in the National Assembly, the court can declare it invalid by virtue of Articles 7, 26, and 102 of the Constitution. Thus the High Court acts as the guardian of the constitution.

Article 43(b) of the Bangladeshi Constitution says that "Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health to the privacy of his correspondence and other means of communication." And article 39 guaranteed our freedom of speech, thought, and expression. General comments issued by the United Nations Human Rights Committee (HRC) and jurisprudence of the HRC and ECHR are of persuasive value in interpreting ICCPR.

Article 32 of the Constitution states, "No person shall be deprived of life or liberty except in accordance with the law." Communication between persons is part of individual liberty. There is a section in the Bangladesh Telecommunication Act, which states that telephone service providers will be obliged to provide all kinds of information to the security agencies in the interest of investigation or case. According to this, eavesdropping on the phone is also a punishable offense.

Section 97A does not provide any protection against telephone tapping. By empowering the Chief Executive and authorized public officers to make orders for the interception, it enables interception without making any unauthorized interception unlawful. The Telecommunications Act provisions which can be invoked to prohibit unauthorized interceptions are sections 39,

43(b). The sections do not bind the government. Nor, it appears, is there any other legislation or common law to make telephone tapping by the government an offense.

We can say that section 97(a) is ignored right to privacy and freedom of speech, which is our fundamental right and guaranteed by the Bangladeshi Constitution. So section 97(a) is unconstitutional.

Conclusion

The current practice of telephone tapping violates the right to privacy and to freedom of expression guaranteed by the Basic Law. Provisions like wiretapping can help to maintain this country a safe place. Wiretapping is an essential, nonetheless controversial application in the war on terror. It's very important that any future alterations to the law contain criteria for integrating more judicial supervision into surveillance laws. A balance has to be struck in allowing law enforcement agencies enough freedom to perform their job effectively while at the same time, ensuring that safeguards are in place that protect people's civil liberties. Law enforcement agencies have to be maintained answerable with the energy that's given them in the war on terror, and nevertheless, they need to continue to be granted the essential resources and power to continue to act quickly and efficiently in tracking suspects. The requirement to reach a balance between maintaining Bangladeshi civil rights and correctly securing Bangladeshi from assault is a difficult yet necessary aim to achieve, and it is the potential of the citizens of this fantastic country to achieve that.

The distance between our world has moved to people in the last century is minuscule compared with the distance it will proceed from the following. We're in the process of creating a world where future people will live, as definitely as the very first town dwellers did 5,000 decades ago. Communication is essential to our own species; private communication is essential to our national safety and our own democracy. Our challenge will be to keep this solitude in the midst of new communications technologies and severe national security threats. However, it is critical to make decisions that maintain privacy, communications protection, and the capacity to innovate. Otherwise, all hope of getting a totally free society will evaporate.

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