

ANALYSIS OF NEWS ITEMS AND CASES ON SURVEILLANCE AND DIGITAL EVIDENCE IN INDIA

BY LOVISHA AGGARWAL

INTRODUCTION

In a technologically advanced era, with preponderance of electronic communications in both professional and social interactions and the ability to store such information in digital form, digital evidence has gained significance in civil as well as criminal litigation in India. In order to match the pace with the progressive technology, the Indian Courts have embarked on placing more and more reliance on the digital evidence and a portion of such digital evidence is obtained through electronic surveillance.¹ Electronic Surveillance has proved to be of staggering importance to investigating authorities as it helps them in corroboration of evidence with information that they could not have obtained or would have been difficult to procure from other sources. The Indian legislature has conferred a legal status to electronic surveillance through The Information Technology Act, 2000² and The Indian Telegraph Act, 1885³ whereby the state authorities are authorised to intercept the content of electronic communications such as emails, messages, telephone calls, etc. under specific circumstances. However, in the past there have been instances of unlawful electronic surveillance by private individuals, government functionaries and investigating officers. This paper seeks to provide an account of instances where unlawful electronic surveillance has been undertaken by government functionaries and private individuals in connivance with investigating authorities without obtaining the proper authorization in the manner prescribed by the legislature, and discusses the cases related to publication of legally procured surveillance data. The benefits of authorized electronic surveillance and information available on digital platform are tremendous; therefore, the paper throws light upon particular instances which bring out the importance of such information for the authorities while investigating particular cases. The paper further discusses the over arching reaction of politicians and police officials to personally criticizing or dissenting content regarding their actions which has been uploaded on digital platforms, and the justification for such reactions.

UNAUTHORIZED ELECTRONIC SURVEILLANCE

Unauthorised Electronic Surveillance by Government Functionaries

Incidents of misusing of powers of the State by the government and the police machinery are not new to India. In the past, this has extended to the unobtrusive monitoring of a person without reasonable cause and a valid legal authorisation by the authorities in accordance with the provisions of section 69 of The Information Technology Act, 2000⁴ or Section 5(2) of The Indian Telegraph Act, 1885⁵. Over the years, an increased number of cases have come to light where government functionaries, politicians and investigating

authorities have undertaken electronic surveillance without adhering to the present legal provisions regarding the same either for their personal benefit or political rivalry. However, since unauthorized and illegal e-surveillance is mostly opaque, the concrete motive behind such surveillance is generally hard to be ascertained. The issue of unlawful surveillance by government functionaries was highlighted in the year 2013 when the unauthorised recorded telephonic conversations of a young woman dubbed 'Madhuri' (to protect her identity) from Bangalore were released to the Central Bureau of Investigation (CBI). This surveillance-cum-phone interception operation was undertaken by the Gujarat Intelligence Bureau, the Crime Branch and the Anti-Terrorist Squad of Gujarat in August 2009 allegedly on the instructions of the present BJP President and then minister of state for home, Amit Shah, without any valid legal authorization blatantly violating the phone tapping guidelines laid down by the Supreme Court in several landmark cases.⁶ The woman's private moments, personal conversations and daily movements were being recorded by these authorities on the informal, oral and unauthorized instructions of Amit Shah.⁷ The defence provided by BJP drew more criticism than the illegal surveillance operation⁸ as they contended that the surveillance was undertaken because the woman's father had asked the then Chief Minister of Gujarat and the present Prime Minister of India, Narendra Modi, to take care of his daughter who was away from her home town reposing confidence in Modi as a political head of the state⁹. The statements have been affirmed by the woman herself and her father.¹⁰ However, despite their consenting statements, this does not justify the illegality of surveillance as surveillance can be undertaken only for the reasons mentioned in the Information Technology Act or the Indian Telegraph Act¹¹ and it can in no circumstance be ordered by the government officials to 'take care' of an individual on the request of a friend. Furthermore, even consensual tapping is illegal as when an individual's telephone is intercepted, the conversations of the person whose telephone is tapped with other people would be recorded, and those other people would presumably not have given their consent to being recorded.¹² In this particular case, the illegal surveillance was aimed towards a single individual. The issue of illegal e-surveillance by the government functionaries is more complex than this. The enforcement agencies are authorized by the legislature to carry out electronic surveillance with regard to certain suspects which helps them in obtaining essential evidence. But questions were raised when central intelligence agencies discovered that nearly 90,000 call detail records (CDRs) of general public and entities were obtained by Gujarat Police over a period of three months in 2013.¹³ Recognising the common practice of enforcement agencies to monitor the activities of the suspects¹⁴, the intelligence agencies clarified that it is the unusually high number of CDRs over a very short period that surprises them.¹⁵ Sometimes, the authorities obtain the authorization as has been provided in law but collect data beyond the scope of access. An example of this happened in a case in June 2013 where an FIR was lodged against Prem Kumar Dhumal-led Bharatiya Janata Party (BJP) government by the vigilance and anti-corruption bureau of Himachal Pradesh for illegally tapping certain telephone numbers through the state Crime Investigation Department (CID) and the vigilance department. The case, which was popularly known as the 'mass phone

tapping case', revealed the total number of phones tapped, in violation of the Indian Telegraph Act to be over 1300, while the original order had only granted permission for the tapping of 170 phones.¹⁶ Out of these, most of the conversations were reported to be of Congress leaders while they were in the opposition and others were of government functionaries, BJP dissidents and journalists.¹⁷ Trends across these cases demonstrate that, the victims of illegal electronic surveillance by or on the directions of the government functionaries and politicians include both general public as well as eminent personalities such as politicians, journalists, businessmen, etc. and the unauthorized surveillance is mostly carried in connivance of the investigating officers who have the means and manpower to carry out such surveillance.

Illegal Electronic Surveillance by Private Individuals

Unauthorised eavesdropping is not limited to the investigating authorities and government functionaries, it has been carried out by the general public who make use of advanced technology for illicit purposes. Private individuals, nowadays, can possess equivalent or better encryption and surveillance technologies and equipments than India's enforcement agencies.¹⁸ A large number of these devices are procured from foreign countries by these individuals.¹⁹ The services of these individuals are engaged by all sections of the society, like politicians, businessmen and private individuals for their political, business and personal benefits in exchange of a hefty fees. Since, obtaining access to the communication devices of prominent personalities is difficult as opposed to the private individuals whose phones can be obtained easily to install interception software, illegal measures to obtain authorization and access of prominent figure's telephonic conversations through their service providers has been resorted to. In the year 2005, it was reported that Anurag Singh, a private detective, along with two other private detectives and Reliance Infocom employee, Kuldeep Singh, intercepted the telephonic conversations of former Samajwadi Party leader Amar Singh.²⁰ They allegedly contacted political leaders and media houses for selling the tapped telephonic conversation records. They had also contacted Amar Singh and informed him that his phone was being tapped at the behest of 32 political opponents.²¹ The interception was allegedly carried out by stealing the genuine government letters and forging and fabricating them to obtain permission to tap Amar Singh's telephonic conversations.²² Currently, Anurag Singh and his other accomplices are facing trial but have been released on bail.²³ The recent trends show that the politicians and other social figures are most sought after targets as their conversations can be used against them and hefty amount can be demanded in exchange.²⁴ For instance, Anurag Singh, in May 2013, along with few other Delhi police personnel²⁵ and private detectives allegedly obtained the Call Detail Records of Arun Jaitley, the Minister of Finance, Minister of Corporate Affairs and Minister of Information and Broadcasting of India to blackmail Jaitley for rescuing himself from the Amar Singh case.²⁶ During interrogation, without disclosing the identity, Anurag claimed that he was asked by certain persons to obtain Jaitley's CDRs and promised help in return in the trial he was facing in the Amar Singh case. One of the main accused in the case,

Delhi Police constable Arvind Dabas allegedly used an Assistant Commissioner of Police's (ACP's) computer and e-mail ID to send a request to the mobile service provider seeking information on Call Detail Records of Arun Jaitley. However, due to a cross-check by the telecom operator, the fraud was revealed and Dabas was arrested.²⁷ The cross-check by the telecom operator is commendable pursuant to the direction of Supreme Court in the Amar Singh Case where the court had asked the service provider Reliance Infocomm, who had initiated interception based on forged and fabricated orders received by it, to be more cautious in future and verify the authenticity of the interception orders from the author of the document considering the seriousness attached to interception orders if on a reasonable reading of the same, it appears to any person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication.²⁸ Further, Anurag Singh, Arvind Dabas and their other accomplices had illegally obtained call detail records (CDRs) of 12 VIPs including other BJP leaders and business tycoons.²⁹ The matter, like majority of the other unauthorised telephone tapping cases, is still sub judice and some of the accused including Anurag Singh have been released on bail.³⁰ It is pertinent to mention that Anurag Singh was a cyber expert and hacker who had worked for government agencies such as The Research and Analysis Wing (RAW), the primary foreign intelligence agency of India, and helped agencies track sleeper cells of terror groups. He had also worked with the Delhi police for several years, helping them in cases such as the cricket match-fixing row and DPS MMS scandal.³¹ The most striking aspect about the whole case of Anurag Singh is the fact that his business actually boomed after being charged in the case. He earned new high-profile clients for the supply of secure mobile phones and laptops on which conversations or e-mails could not be tapped.³² Pursuant to the Arun Jaitley Case, when the ACP's official email-id was used by constable Arvind Dabas to procure the CDRs of Jaitley, a probe into the illegal phone tapping was started and the special cell of Delhi Police unearthed a network of illegal phone tappers including various police personnel, private detectives and businessmen in 2013 who illegally procured around 500-1000 call detail records of top politicians including Arun Jaitley, bureaucrats and corporate professionals for their clients comprising of business and political rivals.³³ The investigating authorities suspected a larger racket involved in such unauthorised telephone tapping case and expected more arrests in future.³⁴

A perusal of above cases indicates that most of the instances of unauthorised electronic surveillance carried out are against high profile personalities of the society so that the illegally recorded information can be used against such personalities either for the benefit of the person conducting illegal tapping or for the person who has issued directions for such tapping. However, these high profile victims sometimes take undue advantage of the situation in furtherance of their political motives. For instance, in the Amar Singh phone tapping case, Amar Singh filed a writ petition in the Supreme Court accusing Government of India, the Government of National Capital Region of Delhi, Joint Commissioner of Police (Crime), New Delhi and Principal Secretary (Home), Government of National Capital

Territory of Delhi and his service provider M/s Reliance Infocom Ltd. for the offence of unauthorised interception of his telephonic conversations annexing forged and fabricated documents and orders purported to be issued by the Joint Commissioner of Police (Crime), New Delhi, and the Principal Secretary (Home), Government of National Capital Territory of Delhi.³⁵ Fabrication and forgery of documents and orders was affirmed by the Additional Police Commissioner (Crimes) after inquiry.³⁶ Furthermore, the main documents on which the writ petition of Amar Singh was based were obtained by him from Anurag Singh, who was one of the accused in this particular case and was arrested in the same.³⁷ Apart from this, Amar Singh was completely aware that four accused persons in the said case including Anurag Singh were already charged in 2010 and were facing trial at that time yet he placed reliance on the documents and information provided by Anurag Singh and filed a frivolous case against the government.³⁸ The court severely criticised and condemned this move of Amar Singh and the inconsistent position taken by him during the proceedings when he suddenly withdrew his allegations against the government authorities and stated that he was satisfied with the investigation of the Police in the case.³⁹ The illegal tracking by private individuals is not restricted to public figures. In November 2013, arrest of a private detective, Nikhil Giri and a software engineer was reported for installing snooping software on Android and Blackberry mobile phones for monitoring phone calls and text messages of hundreds of individuals who were reportedly their client's spouses, partners or business rivals. The software enabled them to access all the conversations, messages, e-mails, chats, pictures, videos and location data. They reportedly charged Rs. 65,000 to Rs. 1 lakh from the clients for the services. Both the accused were produced before the court and remanded in the police custody.⁴⁰ However, unlike the illegal tapping cases of eminent personalities, this case of private surveillance has not been followed up by the electronic or print media. The fact that such individuals are carrying out these illegal activities from their offices in an organised manner on a large scale is concerning. Anurag Singh runs a V-Detect Private Detective Agency in Delhi and Nikhil Giri ran Lynx Security & Detective Services Pvt. Ltd. in Bengaluru. Moreover, Anurag Singh had tapped the phones of around 12 VIPs but the same came to light only after Arun Jaitley reported about his tapping.⁴¹ Thus, there might be a significant amount of cases of unauthorised and illegal surveillance of both general public and public figures which goes unreported.

Publication of legally recorded telephonic conversations

Sometimes surveillance is conducted in a legal manner but the data collected and recorded is leaked and is made available for the general public because of the negligence of the authorities or owing to some other reason. In such circumstances, although the data recorded is authorised, the publication of such personal conversations or information of a person at the disposal of general public has been much debated. In one of the most controversial cases, Ratan Tata, the Chairman of the Tata Group, approached the apex court against the publication of intercepts of his conversation with Nira Radia, a professional corporate lobbyist. For a year commencing from 2008, the Indian Income Tax Department

after obtaining the authorisation from the Ministry of Home Affairs intercepted the telephonic conversations of Nira Radia, with various prominent personalities including politicians, journalists and business houses for suspected tax evasion, possible money laundering, and restricted financial practices. However, some of the tapes of such recorded conversations were subsequently leaked and made public. Although the surveillance was legal in this particular case owing to the Indian Telegraph Act, the publication of the recordings for access of the general public was challenged by Ratan Tata, one of the persons whose conversations with Nira Radia were leaked. Claiming the leak to be an infringement of his right to privacy, he accused the authorities for allowing the unauthorised publication of the recordings and not preventing the dissemination of the information.⁴² Although the case is sub judice, it has attracted a debate regarding the thin line between right to privacy and contours of public good as the media and the Tax Department contended the release of such tapes to be subservient to the need to protect public safety. The Indian courts are not incognisant of the issues involved with right to privacy in cases of leak of intercepted telephonic conversations. In the Amar Singh Case, the court had granted interim injunction in favour of Amar Singh and had restricted the print and the electronic media from publishing any telephonic conversations recorded during the surveillance, but the same was vacated afterwards since Amar Singh had not approached the court with clean hands and had based his petition on forged and fabricated documents.⁴³ . Furthermore, the case raises questions about the government's legal responsibility in ensuring the protection of the intercepted data material as it along with all the other information stored by the government and could be considered as a state secret. The differing paths that these cases have taken demonstrate that the conflict between right to privacy and public good in cases of leaked information depends on the facts and circumstances of each case.

ELECTRONIC SURVEILLANCE: AN AID FOR THE INVESTIGATING AUTHORITIES

The issue of electronic surveillance has been enjoining the debate regarding the contours of right to privacy for decades. While the secretive monitoring of a person's activities and conversations is argued by some as an invasion of a person's right to privacy, it has also been regarded as a necessary measure which serves as a means for obtaining vital information in particular cases where evidence is otherwise hard to obtain by others. Electronic surveillance has proved to be an effective tool for Indian agencies in gathering substantive evidence and information in a gamut of cases over the years. With proliferation of various technologies, a number of new sources like Social Network Communications, Internet Based Messaging and Mobile Communication Applications like Whatsapp, Viber, Skype, etc., have also proved to be of assistance while collecting evidence apart from the conventional sources of digital records like Emails, Video Recordings, Audio Recordings, Call Records, Text Messages, and Computer Stored/Generated Documents. In November 2013, Mohammad Farooq Abdul Kadar Khan, an extortionist and blackmailer, was arrested by circulating his whatsapp profile picture among the informers when all other methods of tracking him failed. A complaint of blackmail was filed with the police against him but the

police officials couldn't find any leads on the accused. They called on his phone number that he had left with one of the victims he had demanded money from. Since, the number was switched off, the officers saved his whatsapp display picture and after verifying it with the complainant, circulated it among their local informers who then helped the police officials in locating him. Kadar Khan was arrested thereafter and released on bail after some time.⁴⁴ Similarly, electronic surveillance conducted following the authorized procedure provides significant information to the police officials. Telephone tapping for a couple of months helped in corroborating charges against the chairman and managing director of Syndicate Bank S.K. Jain who abused his official position to enhance the credit limits of some companies in violation of laid down procedure.⁴⁵ He, along with five other persons, had allegedly received bribe from representatives of companies that have been involved in the coal scam.⁴⁶ Apart from this, in April last year, an international organ trafficking racket was identified with the help of a series of emails and Facebook messages.⁴⁷ The racket came to light when a youth from Hyderabad mysteriously died in Colombo, Sri Lanka. His brother checked the deceased's emails and Facebook account for information and chanced upon a string of email conversations between him and an organ trader. Subsequently, the police officials probed the matter and it was discovered that they worked for a Lankan doctor who used to arrange for donors from India according to the need in the Lankan hospitals. The racketeers used different websites to advertise and lure people from different parts of the country and had sent 21 people from Andhra Pradesh within few months for kidney surgeries.⁴⁸ Metadata has also been used in many instances to track down the source of a particular content. For instance, tracking of Internet Protocol (IP) address of the mobile phone, SIM card and handset ID helped in tracking down the perpetrator of a threat mail, signed by terrorist outfits, sent to the Kempegowda International Airport, Bangalore in August 2014.⁴⁹ The instances of authorized and legal electronic surveillance highlighted above brings out the significance of electronic surveillance which has been of utmost assistance to the investigating authorities in unearthing trafficking rackets, tracking down suspects, obtaining evidence, etc. as it can yield staggeringly important information.

USE AND MISUSE OF THE DIGITAL PLATFORM BY GENERAL PUBLIC

Use of the Digital Platform by General Public for Expressing Personal Opinion

With increased influence of social media in recent past, Facebook has emerged as a popular forum for people to express their opinion and disseminate information. However, these opinions and expressions have drawn in a lot of deliberations with respect to the thin line between freedom of expression and libel.⁵⁰ Various instances of arrests for generating content against political leaders have been witnessed within a short span. Most of the protesters consider the arrests to be arbitrary and the powers used by the government as dictatorial. In majority of the cases, the government has over-stretched the issue by arguing that the arrest was necessary because the messages could have been part of a deeper conspiracy.⁵¹ In May, last year, a young professional was arrested for defamatory comments

against Narendra Modi on Facebook before he was sworn in as the Prime Minister of India.⁵² Devu Chodankar, a young Goan ship building professional had put a post on Facebook in March, 2014 claiming that if elected to power, Modi would unleash a 'holocaust'. However, he deleted his post subsequently and while standing by the sum of his argument, apologised for his previous choice of words. Nevertheless, an FIR was filed against him by the head of BJP-led Goa government's committee on investment and industrial policy, Atul Pai Kane, alleged that he had made a complaint against Devu not for posting comments against BJP but for making inflammatory statements and trying to promote communal and social disharmony in the state. The court rejected the accused application for anticipatory bail and issued summons against him in May. This move attracted protests from various sections of the society and was led by cyber crime expert Samir Kelekar and Congress and Aam Aadmi Party representatives. Kelekar questioned the delay in issuing summons and clarified that he was not trying to justify the Facebook post but he was against the draconian act of putting someone behind bars for a mere Facebook post which had had no affect on the society-at-large.⁵³ A week after Devu's arrest, Sayed Waqar, an MBA student in Karnataka was arrested for originating and circulating an anti-Narendra Modi message on smartphone messenger WhatsApp.⁵⁴ The message was in the form of a picture which showed the final rites of Modi being performed, attended by L.K. Advani, Rajnath Singh, Sushma Swaraj, Baba Ramdev, Maneka Gandhi and Varun Gandhi along with a caption which read '*Na Jeet Paye Jhooton Ka Sardar — Ab Ki Baar Antim Sanskar* (A false leader will never win, this time it's final rites)'. After a complaint filed by an RTI activist who received this allegedly offensive message on whatsapp, police, during investigation, tracked the originator of the message, Waqar, and arrested him for issuing statements amounting to public mischief with intent to cause fear or alarm⁵⁵. In this case, although the message might be regarded as extremely distasteful, it could be argued that arresting Waqar and raising questions of a possible terror threat without any concrete proof was excessive.⁵⁶ However, Waqar was released the next day as police admitted that he was not the originator but just the recipient of the message and confirmed that the investigation of the actual originator would continue.⁵⁷ A total of 18 individuals were arrested within a month when the BJP had won the general election for allegedly originating, circulating or posting anti-Modi messages or content on digital platforms.⁵⁸ Apart from the two cases mentioned above, other notable cases involve the arrest of a Principal and 11 students of a Kerala college after its campus magazine was found to have used 'objectionable and unsavoury' language against Narendra Modi, in a cross-word puzzle⁵⁹. Similarly, six students of the Government polytechnic at Kerala were arrested along with their principal for adding Modi's photograph in the college magazine under a list of 'negative faces' along with Adolf Hitler, George W Bush, Osama bin Laden, Liberation Tigers of Tamil Eelam (LTTE) supremo V Prabhakaran amongst others.⁶⁰ The arrests are not limited to anti-Modi messages. Other politicians, police officers and people in power take immediate action as well when any sort of dissent or contempt is advanced towards them. The poet and writer Kanwal Bharti was arrested in Uttar Pradesh in 2013 for posting a comment on Facebook criticizing the Uttar Pradesh government especially the top four

leaders of the Samajwadi Party for arbitrary suspension of a civil servant, Durga Shakti Nagpal.⁶¹ Durga Shakti Nagpal was suspended allegedly for ordering the destruction of a wall that was to form part of a mosque. However, political and environmental activists and media reporters strongly believed that the suspension was actually because of the work she had been doing to curb illegal mining in the state.⁶² The arrest of Kanwal Bharti was justified by the party alleging that his post stirred communal feelings. The arrest was highly criticised by the public as being dictatorial and Bharti was later released on bail.⁶³ Similarly, a police officer, in Bengaluru, filed an FIR against a couple for criminal intimidation and assault aimed at obstructing him from discharging his duty after the couple had accused the officer of misbehaviour at Bangalore traffic police's Facebook page. In January 2015, while quashing the officer's FIR, the Supreme Court observed that mere expression of any word without any intention to cause alarm would not be sufficient to slap charges of criminal intimidation and held that that it was a public forum and the commoner had every right to complain against the authorities.⁶⁴ The inconsistent stand taken by the government and the police officials in such cases has been highly criticised by all the sections of the society and it has been contended that while the police is extremely expeditious in arresting individuals involved in messages that are critical of the politicians and the police officers on the pretext of investigating deeper conspiracy behind these messages, they have still not been able to determine the people behind anti-Shivaji and Bal Thackeray posts on Facebook and WhatsApp that actually caused a riot and resulted in the murder of an innocent Pune resident, Mohsin Shaikh which was alleged to be a well-planned conspiracy.⁶⁵ It was further condemned that BJP supporters have themselves abused many people on Facebook but there has not been any action against them.⁶⁶ Thus, although the contents of the message are never tried to be justified by the protesters, the reaction of the government and the public officers is questioned and challenged by them. Furthermore, all the cases mentioned clearly establish that it is not the content of the message that creates disturbance and havoc in the society but the arbitrary arrests and the actions taken by the police officers and government.

Misuse of the Digital Platform by General Public in furtherance of ill motive

The use of digital platform has not always been judicious. Some people misuse the advantages of digital platform and advanced technology to aid their ill motives towards harassing individuals. A large number of audiences can easily be catered by the social media sites and instant messaging applications these days and the same is being exploited by certain people for their ulterior motive. Few students were arrested in 2013 for defaming a doctor of a private hospital by spreading fake allegations on whatsapp that the doctor was conducting hysterectomies to all the female patients without their consent .⁶⁷ Similarly, an attendant at a Delhi college was charged with the offence of stalking for sending obscene text messages compelling and threatening a lady professor to establish personal relationship with him.⁶⁸ The exploitation of such medium has stooped to a disparaging extent. A fake Yahoo Messenger ID and Facebook profile of a woman was created by a

colleague for circulating nude and semi nude pictures of her in the year 2013. The accused impersonated her and chatted with her other colleagues. After he was arrested, he confessed that he carried out all this because she had refused his overtures towards her.⁶⁹ Similarly, a Tamil Nadu-based businessman created a fake Facebook account in a woman doctor's name on Facebook and posted her pictures and WhatsApp contact details for accessibility of others. He was sent to the judicial custody in December 2014 for further investigation.⁷⁰ All this, arises a need for stringent measures for protection as the advanced technology has both perks and cons. On one hand, it provides a platform to the general public to address a large audience and on the other hand, it opens new avenues for them to commit crime.

CONCLUSION

In light of the instances mentioned above, it is clear that electronic surveillance has proved to be of great assistance to the investigating officers when other means of obtaining important information is not easily available but it has also been misused by some private entities as well as government functionaries without proper authorization. Most of the times, unauthorized and illegal surveillance is carried out in collusion of investigating authorities demonstrating presence of undue influence or concordance on the part of the investigating officers. Amidst the recent upheaval over corruption in India and on account of the large number of scams, a critical issue like eavesdropping on another person's conversations and daily activities without proper authorisation is often disregarded by the public. Therefore, this paper seeks to bring the attention of the people towards this infringement of one's rights and privacy by giving a detailed account of the recent cases and incidents related to the misuse of such advanced technology and thus, calling for stringent, adequate and effective mechanism to curb this on account of increased and strident violation. It must be noted that the magnitude of the problem of unauthorized tapping, exercise of dictatorial powers by the government functionaries in the past and misuse of the digital platform may be significantly larger than the cases highlighted in the paper. Most of the instances mentioned relate to high profile individuals of the society or has come into light as a result of leaking of the illegally recorded data so one could well imagine the number of cases that go unreported without the knowledge of victims and the public machinery.

¹ Aman Malik, *CBI arrests Syndicate Bank CMD S.K. Jain for taking bribe*, LiveMint, August 02, 2014 and TNN, *Kidney racket: Emails lead to arrest of trio*, Times of India, April 18, 2014

² S. 69 of Information Technology Act, 2000- (1) Where the central Government or a State Government or any of its officers specially authorized by the Central Government or the State Government, as the case may be, in this behalf may, if is satisfied that it is necessary or expedient to do in the interest of the sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may, subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information transmitted received or stored through any computer resource.

³ S. 5(2) of Indian Telegraph Act, 1885- On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:
Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.

⁴ Supra Note 2

⁵ Supra Note 3

⁶ Ashish Khetan, *The Stalkers*, Gulail, November, 15, 2013

⁷ Ashish Khetan and Raja Chowdhury, *The Stalkers: Amit Shah's Illegal Surveillance Exposed*, CobraPost, December 05, 2013

⁸ Lakshmi Chaudhry, *Gujarat snoop scandal: Why BJP's 'daddy' defence is shameful*, Firstpost, November 19, 2013

⁹ TNN, Top Narendra Modi aide put woman under police watch for 'sahib': Websites, The Times of India, November 16, 2013

¹⁰ PTI, *New twist in Narendra Modi's Snooping scandal, woman approaches Supreme Court*, DNA, May 06, 2014

¹¹ Supra Notes 2 and 3

¹² Nandita Saikia, *The Legality of Recording Telephonic Conversations*, Indian Copyright (February 20,2012), <http://copyright.lawmatters.in/2012/02/recording-telephonic-conversations.html>

¹³ PTI, *Gujarat phone tapping spikes to 90,000 cases, intrigues central intelligence agencies*, The Indian Express, June 25, 2013

¹⁴ PTI, *Centre taps over 1 lakh phones a year, many more by states: Report*, IBN Live, September 04, 2014

¹⁵ Supra Note 13

¹⁶ IANS, *Himachal Pradesh: Case registered in mass phone tapping*, IBN Live, June 27, 2013

¹⁷ IANS, *Himachal Pradesh: Over 1,000 phones tapped during BJP rule*, IBN Live, March 02, 2013

¹⁸ Bhavna Vij-Aurora, *Detectives in India: Treading the thin grey line between legality and illegality*, India Today, March 08, 2013

¹⁹ Aman Sharma, *Phone tapping controversy: Anurag Singh from spy to a convict*, The Economic Times, March 04, 2013

²⁰ PTI, *Amar Singh phone tapping case: Court frames charges against four*, The Hindu, February 06, 2010

²¹ ET Bureau, *Arun Jaitley Case: Arrested pvt detective facing trial in Amar Singh phone tapping*, The Economic Times, February 20, 2013

²² Supra Note 20

²³ TNN, *Amar Singh phone-tap accused tracked Arun Jaitley's mobile*, The Times of India, February 20, 2013

²⁴ Rajesh Chopra, *Amar Singh's telephone conversations recorded*, Live India, January 01, 2014 and CNN-IBN, *Arun Jaitley phone-tapping case: All accused get bail*, IBN Live, May 30, 2013 and CNN-IBN, *Jaitley phone tapping case: Anurag Singh confesses, says he wanted to build contacts within BJP*, IBN Live, March 03, 2013

²⁵ PTI, *Arun Jaitley phone-tapping case: 6 more held*, The Hindu, November 14, 2013

²⁶ CNN-IBN, *Arun Jaitley phone-tapping case: All accused get bail*, IBN Live, May 30, 2013

²⁷ Ashok Kumar, *Policeman held for trying to access call details of Jaitley*, The Hindu, February 17, 2013

²⁸ *Amar Singh vs. Union of India & Ors.* sourced from <http://indiankanoon.org/doc/1082001/>

²⁹ Ibid

³⁰ PTI, *Court grants bail to 4 in Arun Jaitley phone tapping case*, Rediff, May 30, 2013

³¹ Supra Note 23

³² Aman Sharma, *Phone tapping controversy: Anurag Singh from spy to a convict*, The Economic Times, March 04, 2013

³³ Raj Shekhar, *Illegal phone tapping case: Delhi Police arrest three cops, three private detectives*, The Times of India, November 14, 2013

-
- ³⁴ Ibid and Political Bureau, *Jaitley Case: Arrested Pvt Detective Facing Trial in Amar Phone Tapping*, The Times of India, November 20, 2013 and PTI, *Delhi: one more arrested in politicians' phone tapping case*, NDTV, November 18, 2013
- ³⁵ Supra Note 28
- ³⁶ Ibid
- ³⁷ J. Venkatesan, *Supreme Court frowns upon Amar Singh for filing frivolous petition, vacates stay*, The Hindu, May 12, 2011
- ³⁸ Supra Note 28
- ³⁹ PTI, *Supreme Court slams Centre over Amar Singh phone-tapping case*, NDTV, February 12, 2011 and Dhananjay Mahapatra, *Phone-tapping case: Amar Singh withdraws allegations against Congress*, The Times of India, February 09, 2011
- ⁴⁰ Special Correspondent, *Illegal phone tapping lands detective, software developer in jail*, The Hindu, November 7, 2013
- ⁴¹ Supra Note 23
- ⁴² *The Radia Tapes*, Outlook, November 18, 2010
- ⁴³ Supra Note 28
- ⁴⁴ Sagar Rajput, *Police use WhatsApp to arrest extortionist*, Mid-day, November 28, 2013
- ⁴⁵ Aman Malik, *CBI arrests Syndicate Bank CMD S.K. Jain for taking bribe*, LiveMint, August 02, 2014
- ⁴⁶ Ibid
- ⁴⁷ TNN, *Kidney racket: Emails lead to arrest of trio*, Times of India, April 18, 2014
- ⁴⁸ K.K. Abdul Rahoof, *Kidney racketeers sent 21 victims to Sri Lanka*, Deccan Chronicle, April 23, 2014
- ⁴⁹ Express News Service, *19-year-old arrested in Gujarat for Bangalore hijack threat mail*, The Indian Express, August 6, 2014
- ⁵⁰ Ananya Sengupta, *'Anti-Modi' arrests worry netizens*, The Telegraph, June 16, 2014
- ⁵¹ Prasant Naidu, *Goan Youth Devu Chodankar Faces Jail For Anti-Modi 'Holocaust' Remark On Facebook*, Lighthouse Insights, May 24, 2014 and R Uday Kumar, *Man arrested for allegedly sending offensive MMS against Modi confirmed innocent by police, released*, The Times of India, May 27, 2014
- ⁵² *Protests over police action on Goan for anti-Modi Facebook comments*, The Economic Times, May 24, 2014
- ⁵³ Prasant Naidu, *Goan Youth Devu Chodankar Faces Jail For Anti-Modi 'Holocaust' Remark On Facebook*, Lighthouse Insights, May 24, 2014
- ⁵⁴ Arun Dev, *MBA student arrested for anti-Modi message*, The Times of India, May 25, 2014
- ⁵⁵ Section 505 of Indian Penal Code- (1) Whoever makes, publishes or circulates any statement, rumour or report,— (a) with intent to cause, or which is likely to cause, any officer, soldier, 3[sailor or airman] in the Army, 4[Navy or Air Force] 5[of India] to mutiny or otherwise disregard or fail in his duty as such; or (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to 6[three years], or with fine, or with both.
- (2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- ⁵⁶ Firstpost Staff, *Bangalore: Youth arrested for sharing anti-Modi messages on WhatsApp*, Firstpost, May 26, 2014
- ⁵⁷ R Uday Kumar, *Man arrested for allegedly sending offensive MMS against Modi confirmed innocent by police, released*, The Times of India, May 27, 2014
- ⁵⁸ Supra Note 50
- ⁵⁹ Shruti Dhapola, *Crackdown on anti-Modi slurs: College editors arrested in new Kerala case*, Firstpost, June 16, 2014
- ⁶⁰ *Principal, students arrested for putting Modi in 'negative faces' list*, Firstpost, June 11, 2014
- ⁶¹ Vibhuti Agarwal, *Poet Arrested for Durga Case Facebook Post*, The Wall Street Journal, August 07, 2013
- ⁶² Niharika Mandhana, *Explainer: The Durga Shakti Nagpal Case*, The Wall Street Journal, August 06, 2013

⁶³ Firtspost Staff, *Durga Nagpal case: Dalit writer arrested for FB post criticising UP govt*, Firstpost, August 06, 2013

⁶⁴ Shashidhar KJ, *Supreme Court of India quashes FIR filed against couple for Facebook comment*, Medianama, January 22, 2015

⁶⁵ Shruti Dhapola, *Crackdown on anti-Modi slurs: College editors arrested in new Kerala case*, Firstpost, June 16, 2014

⁶⁶ TNN, *Anti-Modi Facebook post case: Goa's chief minister denies govt involvement*, The Times of India, May 25, 2014 and Shruti Dhapola, *Crackdown on anti-Modi slurs: College editors arrested in new Kerala case*, Firstpost, June 16, 2014

⁶⁷ *Police arrests six students for defaming doctor in Whatsapp, Facebook*, Mangalore Today, October 18, 2013

⁶⁸ PTI, *Man arrested for sending lewd SMS to lady prof denied bail*, the Hindu, March 15, 2013

⁶⁹ Divyesh Singh, *Dombivli Man Held For Sending Nude Pics Of Woman To Colleagues*, Mumbai Mirror, August 08, 2013

⁷⁰ TNN, *Businessman in jail for defaming doctor*, The Times of India, December 23, 2014