

***Title: Digital Surveillance And Human Rights Of Individual Citizens In India,  
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### **ABSTRACT:**

*“Privacy is a right recognized by the United Nations. At the same time, the recent advancements in the technological sector and the equipments invented by the technologists, being used by individuals have raised several conflicts between the right to individual’s privacy and probable misuse of those equipments against state. Such misuse will affect public safety, security and sovereignty of the state at large. The inherent clash between the Indian Constitution’s guarantee of individual private rights and the need for monitoring to maintain public safety and security highlights the complexity of this problem. The use of digital monitoring is having a lot of new consequences for society, the law, and ethics. For a variety of reasons, the relationship between digital surveillance and privacy rights is especially complicated in India. In this article we will discuss how balance between individual rights and security of state can be maintained in our country”.*

**KEYWORDS: Privacy Rights In India, Security & Sovereignty of The Country, Digital Surveillance Within Legal Framework Etc.**

### **I. PRIVACY RIGHTS IN INDIA WITH REGARDS TO SECURITY & SOVEREIGNTY OF THE COUNTRY:**

The right to privacy is now an integral part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. *What is the scope of the right to privacy guaranteed under Article 21 of the Constitution in the context of private conversations over the telephone/mobile phone? Does unauthorized phone tapping violate Article 21 of the Constitution?* The Court observed that the right to privacy has long been regarded as one of the most sacred liberties of the individual. It is noted that even before the concept was formally rooted in Indian jurisprudence, its existence had been recognised and upheld by courts in various jurisdictions. The Court affirmed that the right to privacy is an integral feature of the right to life and personal liberty under Article 21 of the Constitution of India. It is held that this principle is well-settled, and any attempt by the State to restrict an

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individual's right to privacy must be justified by a procedure established by law. Unless such a restriction meets the test of legality, necessity, and proportionality, the right remains protected. Regarding the question of whether phone tapping constitutes a violation of the right to privacy under Article 21, It held that there can be no doubt that telephone tapping infringes Article 21 unless such infringement is backed by a procedure established by law. Telephone tapping constitutes a violation of the right to privacy unless justified by a procedure established by law. **Section 5(2) of the Indian Telegraph Act** provides the legal basis for lawful interception of communications in India in the event of a public emergency or in the interests of public safety. Both these contingencies are not secretive conditions and would be apparent to a reasonable person. As laid down in ***People's Union for Civil Liberties (PUCL) vs. Union of India, (1997) 1 SCC 301***, it is only when these two situations exist that the Authority may pass an order directing interception, after recording its satisfaction that it is necessary or expedient to do so in the interest of: (1) The sovereignty and integrity of India, (2) The security of the State, (3) Friendly relations with foreign States, (4) Public order, or (5) Preventing incitement to the commission of an offence.<sup>1</sup>

***What is the scope of the right to privacy guaranteed under Article 21 of the Constitution in the context of private conversations over the telephone/mobile phone? Does unauthorized phone tapping violate Article 21 of the Constitution?***<sup>2</sup> The Court observed that the right to privacy has long been regarded as one of the most sacred liberties of the individual. It noted that even before the concept was formally rooted in Indian jurisprudence, its existence had been recognised and upheld by courts in various jurisdictions. The Court affirmed that the right to privacy is an integral facet of the right to life and personal liberty under Article 21 of the Constitution of India. It is held that this principle is well-settled, and any attempt by the State to restrict an individual's right to privacy must be justified by a procedure established by law. Unless such a restriction meets the test of legality, necessity, and proportionality, the

<sup>1</sup> People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301

<sup>2</sup><https://www.scconline.com/blog/post/2025/07/07/madras-high-court-verdict-phone-tapping-and-right-to-privacy/>

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right remains protected. Regarding the question of whether phone tapping constitutes a violation of the right to privacy under Article 21, the Court relied on *People's Union for Civil Liberties (supra)*. It held that there can be no doubt that telephone tapping infringes Article 21 unless such infringement is backed by a procedure established by law. The Court emphasised that any such intrusion must meet the constitutional standards of legality, necessity, and proportionality. The Court took note of Section 5 of the Act and observed that the effect of the amendment was to align Sections 5(1) and 5(2) with the permissible grounds of restriction under Article 19 of the Constitution. It noted that the phrases "*public emergency*" and "*in the interest of public safety*" take colour from one another and must be interpreted in conjunction. In the first part of Section 5(2), these phrases appear together, and the context is clarified further, a "public emergency" under this section refers to situations affecting public safety, the sovereignty and integrity of India, State security, foreign relations, public order, or the prevention of incitement to commit an offence. After considering the decisions in *Hukam Chand Shyam Lal vs. Union of India, (1976) 2 SCC 128* and *People's Union for Civil Liberties (supra)*, the Court observed that certain conditions must be cumulatively satisfied to invoke powers under Section 5 of the Telegraph Act. Keeping these principles in view, the Court noted that, in the present case, a perusal of the impugned order revealed that it was purportedly passed under *Section 5(2) of the Act and Rule 419-A of the Telegraph Rules*. (2) *Does the impugned order meet the requirements of Section 5(2) of the Act?* The Court observed that a reading of the impugned order indicated that the Secretary to the Government had mechanically reproduced the language of *Section 5(2) of the Telegraph Act* without referencing any factual basis. It emphasised that when an authority is required to record its satisfaction while passing an order, there must be clear evidence of application of mind to the specific facts of the case. This requirement is particularly crucial as an order passed under *Section 5(2) is subject to review under Rule 419-A(17)* by the Review Committee, making the presence of a reasoned and fact-based order essential<sup>3</sup> The Court noted that there appeared to be no serious application of mind by the Secretary to the Government, as the

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<sup>3</sup> *ibid*

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order merely stated that it was passed for “*reasons of public safety*.” The Court emphasised that it cannot simply presume this to mean “*in the interests of public safety*” as required under Section 5(2) of the Telegraph Act. Such a vague recital, without a factual foundation or demonstrable urgency, fails to meet the legal threshold for invoking surveillance powers under the Act. The Court highlighted that the entire operation in this case involved covert surveillance of the petitioner’s mobile phone and the consequent interception of conversations between the accused persons. This was clearly a covert operation. The term “*interests of public safety*,” as explained in *People’s Union for Civil Liberties (supra)*, contemplated a situation that was not secretive and was apparent to a reasonable person. By no stretch of imagination could the facts of this case be characterized as meeting the aforesaid requirements to bring it within the rubric of “*interests of public safety*” as explained by the Supreme Court. The Court said that the effect of a breach of public order would have involved a wide spectrum of the public and would not have involved a covert operation hatched and carried out in secrecy, as in the case at hand. In fact, the use of Section 5(2) of the Act to detect the commission of ordinary crimes, de hors the requirement of public emergency or the interests of public safety, appeared to be clearly misconceived. Where phone tapping had been found necessary to tackle crimes, such power had been expressly conferred, as in certain special statutes like the *Maharashtra Control of Organized Crime Act, 1999*. Section 14 of the said Act authorized interception of wire, electronic, or oral communication for the purposes of investigating organized crime. The words of Section 5(2) of the Act could not be strained to include the detection of ordinary crime. The Court concluded that it was not open to the CBI to say that the requirement of public emergency and the interests of public safety should be confined to situations that were secretive, especially when the Government themselves had understood the scope of Section 5(2) of the Act in that manner. However noble and well-intended the objective may have been, tapping of phones de hors a ‘public emergency’ or in the ‘interests of public safety,’ as stipulated in Section 5(2) of the Act, could not be legally justified as the law stood at the time. The Court stressed that the boundaries for the invasion of a fundamental right through the medium of



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enacted law were a function of the Legislature and not the Court. Section 5(2) of the Act had set out the Lakshman Rekha, and the role of the Court was confined to ensuring that the threshold was not crossed. As sentinels on the qui vive, the Courts were gatekeepers of fundamental rights. Gatekeepers could not become gate makers to reposition the gates as and when the Executive required, without the intervention of the Legislature. The Court held that the impugned order did not pass muster under either of the two conditions precedent, i.e., ***‘public emergency’ and ‘interests of public safety,’*** required for the exercise of jurisdiction under Section 5(2) of the Act. Consequently, the impugned order was, on the face of it, without jurisdiction and was liable to be quashed on this short ground. (3) ***Have the respondents complied with the procedural safeguards set out in Rule 419-A of the Rules?*** The Court noted that the exercise of power under Section 5(2) of the Act was coupled with a duty to forward the same under Rule 419-A(17) of the Rules to examine whether the jurisdictional requirements under Section 5(2) had been satisfied. Admittedly, in the instant case, the intercepted material had not been placed before the Review Committee at all. Thus, there had been a complete disregard for compliance with the mandatory provisions of law. The Court noted that under Sub-Rule (9), if the Review Committee was of the opinion that the directions were not in accordance with the provisions of Rule 419-A of the Rules, it was empowered to set aside the directions and order the destruction of the copies of the intercepted messages. The fact that the consequences of non-compliance with the procedure prescribed under Rule 419-A were also provided under the same Rule further reinforced the intention of the Legislature to make the said procedure mandatory. Hence, the non-compliance with the procedure under Rule 419-A was undoubtedly fatal. At any rate, since the impugned order was also in contravention of the substantive law as laid down in Sub-Section (2) of Section 5 of the Act and was declared illegal, the consequential action of respondents 2 and 3 in intercepting the mobile telephone of the petitioner was automatically rendered unauthorized. Hence, whatever information was obtained pursuant to the order dated 17-11-2003 could not be taken into consideration for any purpose whatsoever. The Court said that in view of the fact that the intercepted material had not been placed before the

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Review Committee in a manner contemplated under Rule 419-A(17) of the Rules for scrutinizing whether the requirements of Section 5(2) of the Act were satisfied or not, it must necessarily follow that the impugned order was also vitiated by non-compliance with the mandatory requirements of the aforesaid provisions<sup>4</sup>

## **II. LAWS GOVERNING PHONE TAPPING IN INDIA:**

### **II.I THE INDIAN TELEGRAPH ACT, 1885:**

According to Section 5(2) of the Act on the occurrence of any public emergency, or in the interest of public safety, phone tapping can be done by the Centre or states.<sup>5</sup> The order can be issued if they are satisfied it is necessary in the interest of public safety, “*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*”.

### **II.II EXCEPTION FOR PRESS:**

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. The competent authority must record reasons for tapping in writing.

### **II.III AUTHORIZATION OF PHONE TAPPING:**

*Phone tapping is authorized by Rule 419A of the Indian Telegraph (Amendment) Rules, 2007. Rule 419A of the Indian Telegraph Rules, 1951* was implemented in March 2007 with specific safeguards. In the case of the Central Government: The order can be issued by an order made by the Secretary to the Government of India in the *Ministry of Home Affairs*. In the case of a State Government: By the Secretary to the State Government in-charge of the Home Department.

### **II.IV IN EMERGENCY SITUATION:**

<sup>4</sup> <https://www.scconline.com/blog/post/2025/07/07/madras-high-court-verdict-phone-tapping-and-right-to-privacy/> & 2025 SCC Online Mad 3053 Before N. Anand venkatesh, J.

<sup>5</sup> Universal's The Telegraph Act, 1885 with The Indian Wireless Telegraphy Act, 1933 alongwith allied rules, published by LexisNexis, Edition-2025, SKU : BCULN00324, HSN No: 49011010.

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In such a situation, an order may be issued by an officer, not below the rank of a Joint Secretary of India, who has been authorized by the Union Home Secretary, or the State Home Secretary. In remote areas or for operational reasons, if it is not feasible to get prior directions, a call can be intercepted with the prior approval of the head or the second senior-most officer of the authorized law enforcement agency at the central level, and by authorized officers, not below the rank of Inspector General of Police, at the state level. The order must be communicated within three days to the competent authority, who must approve or disapprove of it within seven working days.<sup>6</sup> If confirmation from the competent authority is not received within the stipulated seven days, such interception shall cease.

### **III. HUMAN RIGHTS RISKS & USE OF THE SURVEILLANCE TECHNOLOGY PEGASUS ON THE LIGHT OF INTERNATIONAL CONVENTION & COVENANTS:**

Human Rights Risks and Violations Digital surveillance carries substantial risks to human rights, particularly in terms of privacy. Instances such as the use of the surveillance technology Pegasus, which targeted journalists and politicians globally, stand as notable violations. Surveillance also affects freedom of expression and association; the knowledge of being under observation can lead to self censorship, which limits democratic discourse. Such surveillance practices can cultivate an atmosphere of fear and mistrust and can amplify discriminatory practices. Moreover, the misuse of digital ID systems can further compromise individual privacy. Governments and organizations may use these systems to track people's movements, purchases, and even political beliefs without their knowledge or consent, creating an additional layer of human rights infringement. Similarly, abuse of counter-terrorism plans poses another threat, as seen in some instances where such measures have been used to target activists under the guise of national security, thereby suppressing dissent and infringing upon the freedom of expression. Relevant Human Rights Principles The right

<sup>6</sup> [usof.gov.in/en/archive-act-rules](https://usof.gov.in/en/archive-act-rules) <https://share.google/ddoG5nw8D1eQNIu33>

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to privacy, central to the debate on surveillance, is protected under Article 12 of the Universal Declaration of Human Rights. However, it is under threat due to digital surveillance practices. Other affected rights include freedom of expression and association, which are stifled due to surveillance-induced fear. The ongoing debate revolves around achieving the balance between national security requirements and individual rights.<sup>7</sup> Human Rights are the most important rights, which are made on the fundamental principle to bring freedom, justice and equality, and peace in the world, and *The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948 and The International Covenant on Civil and Political Rights came into force on March 23, 1976.* Both these Human Rights organizations are applicable around the world. Article 12 of the Universal Declaration of Human Rights protects and Article 17 of the International Covenant on Civil and Political Rights, protect promotes the privacy of the individuals' it clearly states that no unlawful or arbitrary interference with the privacy of an individual and that the individual has right to the protection of against any such interference.

The International Covenant on Civil and Political Rights, in 1988 stated that state surveillance should be subject to legality through laws, and that law should be congruent and must safeguard the Right to Privacy. The article19 under The Universal Declaration of Human Rights and The International Covenant on Civil and Political Rights and Article10 under the Equality and Human Rights commission protects Freedom of Expression; it protects your right against any governmental interference in freely forming and expressing opinions. This right is of utmost importance to journalists and people associated with the media fraternity. The order to form a committee to investigate whether the Pegasus spyware was used in the devices of Indian citizens for surveillance is a reasonable towards to protection the fundamentals of privacy and freedom of speech of Indian citizens.<sup>8</sup>

<sup>7</sup> Pegasus project- a conspectus of laws of surveillance and the concerns over privacy | International Bar Association <https://share.google/DfiXxDu4Y33XDah40>

<sup>8</sup> Pegasus Spyware Probe - Supreme Court Observer <https://share.google/t3Bv52jQ5oOhS0Vmo>

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#### **IV. ORDER OF APEX COURT ON SURVEILLANCE BY PEGASUS TECHNOLOGY & VIOLATION OF INDIVIDUALS'**

##### **RIGHT:**

***The Apex Court in Manohal Lal Sharma vs. Union of India, WP(Crl)314/2021<sup>9</sup>,***

ordered for the formation of an independent expert committee to investigate the allegations related to surveillance of politicians, activists, journalists, and constitutional authorities using the Pegasus spyware, the committee is headed by Justice RV Raveendran, former Supreme Court judge. Pegasus spyware is developed by the Israeli cyber firm NSO, it has targeted hundreds of phones in India, the spyware can enter the device of the targeted person without even their knowledge, this is because it is designed in such way that it can impersonate itself a downloaded application in the phone and transmit itself through the notification via the application's server. There are complaints from different users about the cracking of their mobile phone through this virus. The Supreme Court in its October 2021, has led to an effective step to protect the citizens from unlawful; surveillance to protect their fundamental right to privacy, the Supreme Court also stated that protection of Journalistic interventions as it is an essential condition of Freedom of Press, and if this is not followed then there would be a significant loss to the citizens of India as it would hamper the process of providing safe and authorized news to the citizens. The court took a strong stand against surveillance on individuals and said that in a democratic society spying on individuals cannot be allowed except by following due procedures established in the constitution with sufficient statutory safeguards. Unlawful surveillance affects society at large and violates major rights that an individual has. First and most important right that is violated is that of privacy because major requirement of privacy right is to be free from observation, interference, and intrusion; surveillance violates privacy in multiple ways this is because we are under a continuous observation and under the Article 21 of the Indian Constitution an individual is provided an integral and fundamental right, Right to Privacy. Unlawful spying also violates

<sup>9</sup> Manohal Lal Sharma vs. Union of India, WP(Crl)314/2021



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right to freedom of speech and expression, protected by the Indian Constitution under Article 19(1)(a), it's because surveillance submits us under the government authorities and it impacts the way in which people thinking and communicate with other about their opinions on social and political issues and it restricts the flow of important information in the society because many things get censored or there are chances that citizens don't speak up their minds in fear of getting caught by the state authorities. These aspects of surveillance poses a major threat to the security of citizens, as it increases the threats of blackmail, spread of false information, manipulated and discriminatory profiling of issues.

## **V. JOURNALISM: INDISPENSABLE PART OF DEMOCRACY:**

Media is considered as the fourth pillar of democracy because of the major role it plays in shaping the opinions of individuals in the society, Journalists are some of the people who very closely view working of the government, how the society works, latest happenings in the judiciary, and many times normal citizens don't have a direct access to all these things and they get all the information through a media, which plays a major role in the way a society thinks and forms a perception about a particular issue.<sup>10</sup> Supreme Court in its order kept the freedom of press, an essential part of the democracy in mind. The court noted that protection of journalistic sources is one an integral part of freedom of press, as without proper protection such sources may dissuade the press in providing legitimate information to the public on matters of public interest. Surveillance forces the Journalists to act like what the spies want, which deviates them from the actual issue and responsibility that they have towards society. The main element of Freedom of Press is noninterference from the government or its agencies, and this surveillance is presumed to violet this arena of Freedom of Press. Supreme Court bench cited a quote from George Orwell's 1984 novel *"If you want to keep a secret hide it from yourself."* Reference of this quote is very insulting for any state and working of its government, this because the book 1984 is about a state where everyone is suppressed and

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<sup>10</sup> <https://www.livewlaw.in/lawschoolcolumn/pegasus-spyware-article-21-of-the-indian-constitution-article-191a-184980>

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it revolves around the theme of government surveillance, mass media control and dictatorship and how it controls the thoughts and lives of its citizens and there is no way for the people to escape this affliction. The main reason for the formation of the committee is to find the answer to the question if the government has bought the Pegasus Spyware, which the government is escaping in the name of National Security so they avoided to talk about the spyware, the other reasons were violation of most important human right that is right to privacy and other freedom of press in India because there are reports mobiles of around 40 journalists were targeted in India. In France, Paris when there where apprehensions of surveillance through Pegasus within two days the investigations were started but in India the government did not even speak about it in the name of National Security.

## **VI. OBSERVATION OF DELHI HIGH COURT IN AKASH DEEP CHOWHAN VS. CBI & ANOTHER (CRL.M.C. 204/2020, DECIDED ON 26<sup>TH</sup> JUNE 2025):**

In this case, Hon'ble Justice Amit Mahajan points out in para 26 that, *"Although every person has a fundamental right to privacy, the said right is not absolute, and it can be curtailed by procedure established by law. The aforesaid provision empowers the Central Government or a State Government, or any officer specially authorised in this behalf by the Central Government or a State Government to legally carry out interception or surveillance in the event of any public emergency or in the interest of public safety. In the case of People's Union for Civil Liberties (PUCL) vs. Union of India: (1997) 1 SCC 301, while considering the verse of Section 5(2) of the Indian Telegraph Act, 1885, the Hon'ble Apex Court had expounded upon what comes under public emergency or public safety."*

Do note, the Bench notes in para 27 that, *"It is argued on behalf of CBI that destruction of the intercepted calls is not warranted and the condition precedent of public safety, as prescribed under Section 5(2) of the Indian Telegraph Act, 1885, is met in the present case as the allegations pertain to corruption which poses a risk on the economic well being of the country and its people."* To put it tersely, the Bench most significantly observes in para

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28 that, “This Court finds merit in the said argument. The threat posed by corruption cannot be understated. Corruption has a pervasive impact on a nation’s economy and the same can impact anything from infrastructural development to resource allocation.<sup>11</sup> Corruption by a public servant has far reaching consequences as it serves to not only erode public trust and cast aspersions on the integrity of public institutions, but also renders the public at large susceptible and vulnerable by threatening the economic safety of the country. The pervasive nature of corruption has been recognised by many Courts, and it has been noted that the same undermines the core values of Indian Preambular vision [Ref. *Subramanian Swamy vs. Manmohan Singh: (2012) 3 SCC 64*]. In the case of *Sanjay Bhandari vs. Ministry of Home Affairs: 2020 SCC OnLine Mad 28021*, the Hon’ble High Court of Madras had dismissed the writ petitions that were filed challenging the order directing interception of certain mobile number.” It is worth noting that the Bench notes in para 30 that, “In the present case, the allegations relate to the accused persons seeking to secure a sub-contract, by way of corruption, from a company that was awarded the task of redevelopment of ITPO Complex into Integrated Exhibition-Cum-Convention Centre on the basis of personal influence rather than merit of the bid. The allegations are grave in nature and, if proven, would render dubious the entire process of awarding of tenders and bids on the basis of personal influence with senior officers rather than benefit of the public at large. Although it cannot be generalized that all allegations in relation to corruption would have the capacity of influencing the public at large, the allegations herein don’t relate to a trivial project but one that was awarded for Rs 2149.93 crores where the work sought by way of influence would have been of a substantial sum as well. The economic scale of the offence, in the opinion of this Court, satisfies the threshold of “*public safety*”.” Quite significantly, the Bench points out in para 52 holding that, “In a nutshell, at this stage, prima facie, the material on record including the calls cast grave suspicion against the petitioner which shows that even though he may not be the ultimate beneficiary to the offence, he was participating in the transfer of bribe despite knowing about the nature of the transaction. While the guilt of the petitioner would be

<sup>11</sup> Aakash Deep Chouhan Vs. CBI & Anr. 2025:DHC:5019

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ascertained in trial, at this stage, the conversations and the statement of the petitioner's driver cast grave suspicion against him." Be it noted, the Bench notes in para 53 that, "It is also pertinent to note that the present case has been pending before this Court since the year 2020 and the trial has since proceeded. Needless to say, it is open to the petitioner to raise all arguments before the learned Trial Court." Resultantly, the Bench then holds in para 54 that, *"In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order or to order destruction of the intercepted call recordings."*<sup>12</sup>

## **VII. CONCLUSION:**

Digital surveillance might be a necessary step towards safeguarding the country as most persons agreed. However, knowledge of mass surveillance may cause some significant levels of change among users of communication technologies and this will yield a negative return for governance and society in general. Digital surveillance should be carried out on a need-to-know basis with some level of clarification on the type of data collected and assurance of its safety and use only for the purposes stated. This way, users may come to develop confidence in the actors and the process thereby maintaining the use of the technologies to meet their various needs.

### **Under the circumstances it may be accepted by us the following:**

- Citizens should be enlightened on the crucial need for digital surveillance.
- Digital surveillance should be conducted only as a matter of necessity and in a manner that is proportionate to immediate need or circumstance.
- Government agencies, service providers, and other third parties should be transparent on the type of data they intend to collect, and the scale and duration of time they intend to collect such data. This will ensure some level of trust from the users.
- Those who collect data should also ensure the highest level of security for the data they are collecting as data breaches have been seen in recent times as one of the major factors that lead to a lack of confidence in the surveillance process.

<sup>12</sup> <https://taxguru.in/corporate-law/intercepting-phone-calls-tackle-large-scale-corruption-valid-delhi-hc.html>.