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No, it violates fundamental rights

May 18, 2011, 05.09am IST

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Tags: Union of India | samajwadi party | PUCL | phone taps | Pavan Duggal | India | Fundamental rights | amar singh

Pavan Duggal, Cyberlaw expert & Supreme Court Advocate

It is neither legally correct nor appropriate for illegally tapped conversations to be made public. We are living in a secular democratic republic that is governed by its sovereign Constitution. The Constitution is sacrosanct and has guaranteed the fundamental rights of its citizens.

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The Supreme Court, in various judgements, has held that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. In the case of PUCL v/s Union of India, the Court held that the right to privacy would certainly include telephone conversation in the privacy of one's home or office. Phone tapping would, thus, infract Article 21 of the Constitution unless it is permitted under the procedure established by law.

In Amar Singh's (former Samajwadi Party leader) case, the Court came up with detailed guidelines that must be followed prior to interception in order to prevent unauthorised violation of people's right to privacy. In case a conversation is intercepted illegally, by not following the processes that are prescribed under the law, then the entire act becomes null and void. If the act itself is null and void, then the output of the intercepted communication itself becomes illegal.

Making such illegally tapped conversation or output generated from a computer not in accordance with law public would be violative of not just the Constitution but also would put the people's fundamental rights in grave jeopardy. We are a nation of rule of law and we should not allow anarchy to prevail over the rule of law. If illegally tapped conversations are allowed to be made public, it could lead to bizarre and undesirable consequences, given the broad adoption of the electronic medium in our day-to-day world the preponderance of activities in the electronic ecosystem. Exercise of sovereign rights of interception itself has to be done in accordance with well-established norms.

At a time when the Supreme Court, in Amar Singh's case, has once again reaffirmed the need for far greater due diligence by service providers, it is imperative that service providers should comply with the provisions for interception as per the lawbook or else face exposure to legal liability.

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