



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

The Telecommunications Act, 2023: Legal Evolution, Constitutional Scrutiny under Article 21, and Contemporary Judicial Trends

Suhana singh

Abstract

The Telecommunications Act, 2023, is a major reform in India's regulatory landscape. It repeals colonial-era statutes like the Indian Telegraph Act, 1885, and introduces a consolidated framework for the regulation of telecommunications, including digital services. However, despite modern provisions, the Act revives key surveillance mechanisms that have constitutional implications—especially in light of Article 21 of the Indian Constitution and landmark privacy judgments like *PUCL v. Union of India* and *Justice K.S. Puttaswamy v. Union of India*. This article presents a comprehensive comparison of the old and new regimes, analyzes judicial precedents, and examines whether the 2023 Act conforms to constitutionally mandated privacy safeguards.

Introduction

Telecommunication is the backbone of India's digital economy, governance, and civil engagement. Until recently, India relied on three archaic laws—the Indian Telegraph Act, 1885; the Indian Wireless Telegraphy Act, 1933; and the Telegraph Wires (Unlawful Possession) Act, 1950. These statutes were products of a colonial state and lacked the conceptual or technical ability to govern the complexities of modern communications such as encrypted messaging, 5G, and OTT (Over-the-top) services.

In 2023, the Government of India introduced the Telecommunications Act, 2023, to unify and update the legal architecture governing telecommunication services, infrastructure, and users. Although this Act modernizes many aspects, it continues to empower the central government with interception and surveillance powers—raising concerns under Article 21, particularly post the Supreme Court's 2017 judgment in *Puttaswamy* that declared privacy a fundamental right.

2. The Indian Telegraph Act, 1885: Legacy and Criticism

2.1 Overview and Colonial Purpose

The Indian Telegraph Act, 1885, was enacted by the British to control telegraphic communications across the subcontinent. The Act vested the state with exclusive authority over telegraphy and allowed it to monitor communications, which served administrative and colonial security interests.

2.2 Relevant Provisions

Section 4: Gave the government exclusive privilege to establish, maintain, and operate telegraphs in India.¹

Section 5(2): Empowered the government to intercept communications during public emergencies or in the interest of public safety, sovereignty, or national integrity.²

These provisions were used extensively by post-independence governments, including during the Emergency (1975-77), for curtailing dissent and surveilling political opponents. However, with technological advances, the law became increasingly misaligned with modern standards of digital privacy and constitutional rights.

3. Article 21: The Foundation of Privacy Jurisprudence

Article 21 of the Indian Constitution guarantees:

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

3.1 From Maneka Gandhi to PUCL

In *Maneka Gandhi v. Union of India*, the Supreme Court expanded the interpretation of Article 21 by holding that "procedure established by law" must be fair, just, and reasonable—not arbitrary.³ This became the cornerstone for procedural fairness and privacy protections.

In *People's Union for Civil Liberties (PUCL) v. Union of India*, the Supreme Court examined the constitutionality of Section 5(2) of the Telegraph Act.⁴ The Court acknowledged that phone tapping violated the right to privacy and laid down safeguards:

Prior approval from the Home Secretary

Review by a Review Committee within two months

Necessity based on public emergency or safety

Recording and storage procedures

Periodic oversight

PUCL became the de facto privacy standard for surveillance in India until 2017.

4. *Justice K.S. Puttaswamy v. Union of India (2017)*: Privacy as a Fundamental Right

The 2017 landmark case, decided by a nine-judge Constitution Bench, recognized privacy as a fundamental right protected under Articles 14, 19, and 21.⁵ The Court introduced the “triple test” to assess the constitutionality of any infringement of privacy:

1. Legality: The action must have a valid law.
2. Legitimate Aim: The action must pursue a legitimate state interest.
3. Proportionality: There must be a rational nexus between the means and the ends.

This ruling set a new threshold for legislative scrutiny. Any law enabling surveillance must pass this triple test to be constitutionally valid.

5. The Telecommunications Act, 2023: Overview and Continuity

The new Act repeals:

The Indian Telegraph Act, 1885

The Indian Wireless Telegraphy Act, 1933

The Telegraph Wires (Unlawful Possession) Act, 1950

However, while the legal packaging has changed, the core interception powers resemble those under Section 5(2) of the 1885 Act.

5.1 Key Provisions

Section 20: Empowers the central government to suspend telecommunications or direct interception "in interest of sovereignty, integrity, or public order."⁶

Section 19(f): Permits the government to set standards for encryption and access to data.⁷

Sections 43–44: Authorize search and seizure of telecom equipment and data.⁸

Section 61: Validates continuation of existing surveillance rules, notably Rule 419A of the Telegraph Rules, 1951.

These powers mirror the broad and vague standards under the 1885 Act, raising similar constitutional concerns.

6. Judicial Precedents Post-Puttaswamy

6.1 Madras High Court (2025)

The Court quashed a 2011 interception order issued by the Ministry of Home Affairs, finding it violated both PUCL and Puttaswamy. The state failed to justify proportionality or necessity.⁹

6.2 Jatinder Pal Singh v. CBI (2022)

The Delhi High Court held that evidence collected through unauthorized phone tapping is inadmissible. It reiterated that procedural safeguards are not optional but mandatory.¹⁰

6.3 Dr. S.M. Mannan v. CBI (2024)

The Karnataka High Court held that interception without review committee approval was illegal. It ruled that continuation of Rule 419A without legislative oversight was insufficient.¹¹

These cases underline the judiciary's insistence on procedural integrity and constitutional conformity.

7. Comparative Table: Telegraph Act vs. Telecommunications Act

Feature	Indian Telegraph Act, 1885	Telecommunications Act, 2023
Year of Enactment	1885	2023
Scope	Telegraph/telephony	Telecom, internet, OTT
Surveillance Basis	Section 5(2)	Section 20
Encryption Access	No	Yes (Section 19(f))
Data Seizure Powers	Limited	Broad (Sections 43-44)
Privacy Safeguards	PUCL Guidelines	Continued, not codified
Judicial Oversight	Absent	Absent
Procedural Review	Rule 419A	Rule 419A continues (Section 61)

8. Article 21 Analysis of the 2023 Act

Applying the Puttaswamy Triple Test:

Legality: ✓ The Act is passed by Parliament.

Legitimate Aim: ✓ National security, sovereignty, and public order are recognized aims.

Proportionality: ✗ Not clearly met. The Act lacks:

Mandatory review mechanisms

Time-bound data retention/deletion

Independent judicial oversight

Transparency in interception procedures

Thus, while the 2023 Act is legal and addresses legitimate concerns, its proportionality is questionable under Article 21.

9. Criticism and Concerns

Several civil society groups, constitutional scholars, and privacy advocates have criticized the Act for:

Retaining colonial-style state surveillance powers

Overbroad delegation to the executive

Inadequate safeguards for data and encryption

Lack of independent oversight or parliamentary scrutiny

Vague definitions such as “public emergency” or “public interest”

10. Recommendations

Codify PUCL safeguards into the statute.

Establish independent review committees with judicial participation.

Create a parliamentary oversight mechanism for surveillance.

Mandate transparency reports from the Ministry of Home Affairs.

Introduce sunset clauses for interception orders.

11. Conclusion

The Telecommunications Act, 2023 represents a legislative update long overdue. While the law modernizes licensing and digital infrastructure regulation, it perpetuates expansive surveillance powers under a legal structure that does not yet conform to the constitutional vision of privacy post-Puttaswamy.

The courts have increasingly emphasized procedural fairness, necessity, and proportionality. Going forward, balancing national security with individual liberty under Article 21 will be crucial. For meaningful reform, Parliament must ensure the Act embodies judicially mandated privacy protections rather than merely rebranding outdated state powers.

Footnotes

1. The Indian Telegraph Act, No. 13 of 1885, § 4, India Code (1885).

2. *Id.* § 5(2).

3. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

4. *People's Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301.

5. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

6. The Telecommunications Act, No. 47 of 2023, § 20, India Code (2023).

7. Id. § 19(f).

8. Id. §§ 43–44.

9. [Anonymous Party] v. Union of India, Madras HC, W.P. No. 9456/2011 (July 2025).

10. Jatinder Pal Singh v. CBI, 2022 SCC OnLine Del 1974.

11. Dr. S.M. Mannan v. CBI, 2024 SCC OnLine Kar 219.

