

## ***CHAPTER- 4***

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### ***PRIVACY OF HOME***

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- A. Right to Sleep and Comfort**
- B. Right against Police Surveillance**

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The first and foremost natural requirement of a person is to have a private home without any interference and unwanted intervention by others. This natural requirement attracts various dimensions including the right to sleep and comfort which are discussed here. Some of these aspects forming part of the right to privacy have been recognized as the basic right included in the right to life and personal liberty through case to case development. Such relevant cases have been analysed here in order to determine the area of this aspect as a part of the right to privacy. One important aspect regarding invasion of privacy is police surveillance. This issue has come up before the court to determine in which case the right to privacy protects against the police surveillance and where the police surveillance would be permissible and the protection of the right would not be available. These developments have been discussed here with the help of relevant judicial decisions.

## A. Right to Sleep and Comfort

In *Francis Coralie vs. Union Territory of Delhi*.<sup>1</sup> the Supreme Court was of the opinion that the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival.

Earlier in *Kharak Singh vs. State of U.P.*<sup>2</sup> dealing with the question whether the intrusion into the residence of a citizen and the knocking at his door with the disturbance to his sleep and ordinary comfort, which such action must necessarily involve, constitutes violation of the freedom guaranteed by Article 19(1)(d) or a deprivation of the personal liberty guaranteed by Article 21 of the Constitution, the Apex Court held that “personal liberty” in Article 21 is comprehensive to include all varieties of rights which go to make up the personal liberty of a man other than those dealt with in article 19(1)(d). According to the Court, while Article 19(1)(d) deals with the particular types of personal freedom, Article 21 takes in and deals with the residue. The Court in this case raised the following issue:

“Is then the personal liberty to be construed as excluding from its purview an invasion on the part of the police, of the sanctity of a man’s home and an intrusion into his personal security and *his right to sleep which is the normal comfort and dire necessity for human existence even as an animal .*”<sup>3</sup>

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1. AIR 1981 SC 746.

2. AIR 1963 SC 1295.

3. *Ibid, at* 1302.

The Court then quoted a passage from the judgment of Frankfurter J. in *Wolf vs. Colorado*<sup>4</sup> to the effect that the security of one's privacy against arbitrary intrusion by the police is basic to a free society and that the knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of the English speaking people. The Court then said that at common law every man's house is his castle and that embodies an abiding principle transcending mere protection of property rights and expounds a concept of "personal liberty" which does not rest upon any element of feudalism or any theory of freedom which has ceased to exist<sup>5</sup>. The majority came to the conclusion that only cl.(b) of Regulation 236 of U. P. Police Regulations which authorises "domiciliary visits" is violative of Article 21 of the Constitution.

Subba Rao, J., dissenting in *Kharak Singh's* case opined that in the above case, policemen were posted near the house of petitioner to watch his movements and those of his friends or associates who went to his house. They entered his house in the night and woke him up to ascertain whether he was in the house and thereby disturbed his sleep and rest. It may be relevant here to refer to the observation of the Court with regard to the scope of Article 21. It was observed "the expression 'life' used in that article cannot be confined only to the taking away of life, i.e., causing death". The court quoted and followed the opinion of Field. J., in *Munn*

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4. (1948) 338 U.S. 25.

5. *Ibid, at 1302.*

“Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, of the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world”.

The expression liberty is given a very wide meaning in America. It takes in all the freedoms. In *Bolling vs. Sharpe*<sup>7</sup>, the Supreme Court of America observed that the said expression was not confined to mere freedom from any bodily restraint and that liberty under law extended to the full range of conduct which the individual was free to pursue.

In *A. K. Gopalan*<sup>8</sup> ‘personal liberty’ was described to mean liberty relating to or concerning the person or body of the individual ; and personal liberty in this sense was the antithesis of physical restraint or coercion. The expression is wide enough to take in a right to be free from restrictions placed on his movements. The expression “coercion” in the modern age cannot be construed in a narrow sense. In an uncivilized society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilization advances, the psychological restraints are more effective than physical ones. The scientific methods used to condition a man’s mind are in a real sense physical restraints, for they engender physical fear channeling one’s actions through anticipated and expected grooves. So also creation of condition which necessarily

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6. (1876) 94 U.S. 113.

7. (1954) 347 U.S. 497 at 499.

8. *A.K.Gopalan vs. State of Madras*, AIR 1950 SC 27.

engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle"; it is his rampart against encroachment on his personal liberty. The pregnant words of that famous judge, Frankfurter, J., in *Wolf vs. Colorado*<sup>9</sup>, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movement affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy.

The minority in *Kharak Singh's* case, therefore, defined the right to personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. In effect, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution.

Similarly, in *Govind vs. State of M. P.*<sup>10</sup>, it was observed that any

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9. (1948) 338 U.S. 25.

10. AIR 1975 SC 1378 at 1385.

right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing. It was further said that there are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such harm is not constitutionally protectable by the state. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures.

## B. Right against Police Surveillance

Surveillance is obviously a fundamental means of social control. Parents watch their children, teachers watch students, supervisors watch employees, religious leaders watch the acts of their congregants, policemen watch the streets and other public places and government agencies watch the citizen's performance of various legal obligations and prohibitions. Records are kept by authorities to organize the task of indirect surveillance and to identify trends that may call for direct surveillance. Without such surveillance, society could not enforce its norms or protect its citizens, and an era of ever increasing speed of communication, mobility of persons, and coordination of conspiracies requires that the means of protecting society keep pace with the technology of crime. Yet one of the central elements of the history of liberty has been the struggle to install limits on the power of economic, political and religious authorities to place individuals and private groups under surveillance against their will. The whole network of constitutional rights – especially those of free speech, press, assembly, and religion; forbidding the quartering of troops in private homes; securing "persons, houses, papers and effects" from unreasonable search and seizure; and assuring the privilege against self-incrimination – was established to curtail the ancient surveillance claims of governmental authorities.<sup>1</sup> In its most visible sense, the power of the state over the citizen is embodied in the police force. Many aspects of police work – inquiry, detection, pursuit and arrest – obviously cannot be carried out without intrusion on privacy,

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1. Alan F. Westin, *Privacy and Freedom*, Atheneum, New York (1970), 57.

and the concern of society is to strike a balance between the disadvantages of this intrusion and the advantage of security against crime.<sup>2</sup>

Alan F. Westin observed that analysis of what is being done to penetrate individual's privacy through current surveillance technology and the prospects for technological advance as well as the counter-measures available, may be divided into three categories: these are *physical surveillance*, the observation without his knowledge or consent of a person's location, acts, speech, or private records through listening or watching devices; *data surveillance*, the collection, storage, exchange, and integration of comprehensive documentary information about individuals and groups through computers and other data-processing systems; and *psychological surveillance*, the use of mental testing, drugs, emotion-measuring devices and other process to extract information which the individual does not know he is revealing, reveals unwillingly, or discloses without full awareness of the exposure of his private personality<sup>3</sup>.

### *I. Physical Surveillance*

Locating and shadowing an individual has been a major aspect of surveillance since antiquity. In order to "tag" an individual and follow him efficiently and secretly, radio transmitters have been developed which are smaller than a quarter coin and can transmit for a range of several city blocks when equipped with a thin wire antenna 12 to 15 inches long, or for 50 to 100 feet without antennas. These signal devices can be secreted in a subject's auto, briefcase, or luggage; if no antennas are needed they can now be built into his eyeglasses, hearing aid, or pocket watch; they can also be installed in his clothing in such guises as false coat buttons

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2. Mervyn Jones ( Compiled and Edited), *Privacy*, 1971, 84.

3. Alan F. Westin, Science, Privacy, Freedom: Issues and Proposals for the 1970's, 66 CLR. 1003.

with the antenna sewed into the collar, belt buckles with the antenna threaded through the belt, or in the heels of his shoes with antennas placed in the laces. The "radio pill" developed for medical research, permits investigators with access to a subject's large-sized anti-allergy or anti-histamine pills to lodge the "tag" in the stomach of the subject himself. Though it will be passed out of the body in due course, the pill emits a signal that can be followed at ranges of 10 to 20 yards. Another major form of tagging is the application of fluorescent dyes or radioactive substances to the person, his clothing, or effects. These substances are invisible to the eye but glow when seen through ultra-violet light sources or cause pulsing signals on portable scintillation detectors. Tiny quantities of gamma-ray emitting substances can even be put into a person's food or medication and trailed by radiation detectors <sup>4</sup>.

Watching the individual and inspecting physical objects in private rooms is a second major aspect of physical surveillance. One method of watching is through one-way screens, such as the familiar glass that appears to be a mirror in the room under observation but permits viewing from the adjoining rooms. More sophisticated screens are now used which seem to be solid wall panels but are made of special substances that permit infra-red light to pass through; this allows investigators to observe or photograph by means of infra-red light projectors. Miniature still and movie cameras with automatic light meters can be secreted within rooms under surveillance and triggered at periodic intervals by signals from outside or by movement within the room. Even more useful for optical surveillance is the closed-circuit television unit. These TV cameras can be, and are, secreted in offices and residences in a host of available

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4. *Ibid*, 1005.

locations – air conditioning and heating grills, the speaker portion of radios and television sets, even behind wall sockets. Pictures are carried by cables leading from the camera units to the investigator's viewing screen and can operate in darkness if an infra-red energy source is planted or beamed into the room under surveillance. One closed-circuit television system operating without infra-red energy can transmit clear pictures of an entire room from the illumination given off by a cigarette lighter<sup>5</sup>.

Persons who seek privacy for their meetings or acts by moving about in public - on the streets, in parks, or at public events and places of public accommodation – can be photographed through long range cameras at distances of 500 to 1000 yards. As popular accounts of "spy satellite" camera work have made clear to the public, photography for distances of miles is possible with special camera equipment<sup>6</sup>.

Listening to private speech is probably the most important type of physical surveillance, and it is here that the greatest advances in technology have been made. The most complete audial surveillance is obtained by making the subject a walking transmitter. This is accomplished by building sub-miniature radio transmitters into his clothing or personal effects in much the same way that signal tags are planted. One such unit places a microphone in one button of a person's suit, a sub-miniature transmitter in a second button, and the battery source in a third and uses conductive wire that matches the thread of seams and decoration as the unit's antennae. Such installations can be made in a matter of minutes if access can be obtained to a person's clothing through,

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5. *Ibid.*

6. *Ibid.* 1006.

for example, his dry cleaner or a public check room.<sup>7</sup>

New technology has supplemented the direct connection and induction coil tap of earlier decades and has produced far more sophisticated induction devices than were previously available. For example, miniature devices are now available that fit within the telephone handset itself, and portable induction coils attached to miniaturized recorders make it possible for a person to sit in waiting rooms and lobbies outside business, law and government offices and record all the calls going on inside. This can often be done even from the street outside a ground floor office or residence, from hotel rooms adjoining those of the subject, and at distances of 10 to 20 feet from a telephone booth.<sup>8</sup>

Vital information passing over new data-communication systems has also become a target of new surveillance technology. A growing volume of business and governmental data is being transmitted from point to point by teletype machines, data-phone systems and computers. Surveillance devices are available to intercept teletype signals and feed them into the investigator's teletype printer; the same can be done with data-phone transmissions that are not transmitted in scrambled form. Computer tapping is also possible through direct connections to a parallel computer or, if fairly close contact can be achieved, by radio tapping of the electrical signals produced by the print-out mechanism.<sup>9</sup>

Many other possible devices could be discussed and the vulnerability of new communication systems to surveillance could be

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7. *Ibid.*

8. *Ibid.* 1008.

9. *Ibid.*

described. But to cut it short, there will be even more serious problems for privacy from physical surveillance in the future as the sciences of light and sound continue their rapid advances.

## *II. Data Surveillance.*

The computer-born revolution in human capacity to process data is obviously an enormous boon to mankind. Businessmen, government officials, behavioural scientists, and many others are now better able to make more fact based, logical, and predictable decisions than they ever could before the age of electronic information storage and retrieval systems. To understand the current pressures on privacy created by the information processing revolution, we should note six basic trends at work.<sup>10</sup>

First is the general expansion of information-gathering and record-keeping even apart from computers. The growing complexity of our economic system, the increase of government regulatory functions, the domination of large bureaucratic organisations in our private sector, and social science's heavy commitment to data manipulation have combined to make this possible. To help himself, to help science, and to help society run efficiently, the individual now pours a constantly flowing stream of information about himself into the record files. New forms of financial operations have produced the credit card, which records the where, when and how-much of many once-unrecorded purchasing, travel and entertainment transactions of the individual's life. Through miniaturization, previous physical limits on such data storage have been overcome; the microfilm of earlier decades has now given way to

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10. Alan F. Westin, *Privacy and Freedom*, Atheneum New York (1970), 158.

photochromic micro images that make it possible to reproduce the complete Bible on a thin sheet of plastic less than two inches square, or to store page-by-page copies of all the books in the library of Congress in six four-drawer filing cabinets.<sup>11</sup>

Second, the mobility of persons and the standardization of life in mass society have led to the development of large private and governmental investigative systems whose function is the amassing of personal dossiers. This has become the method by which a large organization makes judgments about people when it wants to hire or fire them, lend them money, or give them passports to travel abroad. The dangerous aspect of such dossiers is that the raw facts about individuals take on added weight because they are part of an official file compiled by an investigative agency. Because individuals often do not know of the existence of many of the dossiers about them, or what is in those they do know to exist, there is usually no process to challenge the accuracy of fact, opinion, or rumour the files contain.<sup>12</sup>

Third, general information gathering and the dossier have been radically accelerated by the advent of the electronic digital computer, with its capacity to store more records and manipulate them more efficiently and rapidly than was ever possible before. The present-generation computer, with thin-film memory cores and ultra-high-speed tunnel diodes can store millions of bits of information and perform calculations on these bits at speeds of billionth of a second.

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11. *Ibid.* 159

12. *Ibid.*

The most significant fact for the subject of privacy is that once an organisation purchases a giant computer, it inevitably begins to collect more information about its employees, clients, members, taxpayers, or other persons in the interest of the organisation. The result may be to provide better service, make more efficient use of personnel, know more facts on which to base decisions, pinpoint wrongdoers and the like. But the inevitable result is that the investigation acquires two or three times as much personal information from respondents as was ever collected before because of the physical or cost limits of acquisition. The impact of computers on organisational life is to destroy practical boundaries of privacy in record giving which were once as meaningful in this area as walls and doors were to conversational privacy before the advent of new physical surveillance technology.<sup>13</sup>

Fourth, the development of many new public programs has produced a requirement for more personal data about individuals than in the previous research or record keeping. The data are then stored in computer memory centres, usually with the individual's name attached.<sup>14</sup>

Fifth, advances in the computer field are rapidly accelerating the sharing of data among those who use the machines. Standardization of computer languages and the perfection of machines that translate one machine language system into another have made it possible for computers to communicate directly with one another, so that data can flow in and out of separate systems. This innovation has led to information exchanges among units within the same large organization, such as police and health agencies in a state, or among independent organizations with

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13. *Ibid.* 161.

14. *Ibid.*

common interest, such as life-insurance companies. A more significant aspect of this trend is the growth of central data pools which are based not only on the desire to collect and collate all significant information about individuals or events in a particular field but are also a response to the technology development that allows remote-stations access to central data banks.<sup>15</sup>

Sixth, we have entered in an era in which automatic data processing will gradually replace many of the cash transactions of the past, providing an increasing trial of records about significant transaction of the individual's life. The credit-card system that spread in the 1950s was the first stage of this process. But the increase in records about personal life from such direct computerized transactions is apparent.<sup>16</sup>

### *III. Psychological Surveillance.*

Psychological surveillance encompasses scientific techniques which seek to extract information from an individual that he does not want to reveal, or does not know he is revealing, or is led to reveal without a mature awareness of its significance for his privacy. Public attention in recent years has focused on two main types of psychological surveillance, the polygraph and personality testing.

The polygraph is a combination of sensing instruments which measures an individual's bodily responses in an attempt to determine whether he is answering questions truthfully. The theory of the polygraph is that persons who know they are lying when asked about matters of consequence cannot control all the physical indicators of stress that are prompted by conscious lying and that a trained polygraph operator

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15. *Ibid.* 162.

16. *Ibid.*

matching known true answers with answers to questions about guilt or innocence can identify the lies. As a result of researches into space medicine, new sensors such as eye-pupil dilation have been added to those used on polygraphs since the 1920s and by using special chairs, hidden cameras, and special heat measuring instruments, it is possible to administer the tests without the subject's knowledge.<sup>17</sup>

Such uses of polygraphs raise serious privacy issues: the scope of questioning into past conduct, beliefs, and tendencies; the creation of a confessional psychology in millions of persons working for government and industry; and the intrusion into the inner realm of emotions rather than reliance on objective evidence, outward appearance, and formal interviewing to make judgments as to the suitability of individuals.

A similar issue is raised by personality tests – psychological measurements that attempt to discover traits of personality and thus judge an individual's psychological strengths and weaknesses. The tests are most often used to predict the subject's future performance in some particular role. They may be pencil and paper quizzes in which the subject answers questions about himself, his emotions, his preferences, or his attitudes, or they may be "projective" tests, in which he is asked to draw a picture, interpret ink blots, comment on ambiguous pictures, or perform similar tasks that provide psychological clues about personality. In general, the personality test differs from tests of intelligence or aptitudes in that it does not measure more or less objective factors such as language skills, logic or physical dexterity but seeks to measure emotions, attitudes,

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17. Alan F. Westin, *Science, Privacy and Freedom: Issues and Proposals for the 1970's*, 66 *CLR* 1003, 1014.

propensities and levels of personal adjustments.<sup>18</sup> When used for career counseling or for therapeutic diagnosis, there is no serious issue of privacy but the question of privacy does arise, however, when personality tests are adopted on a large scale in order to facilitate personnel selection and promotion by industry and government.

Surveillance of industry and group conduct – a primary means of social control – can be carried to lengths that seriously impair freedom in democratic societies. Observation, extraction and reproducibility, the three basic types of surveillance inevitably exercise a restrictive influence on individual and organisational behavior, thus impairing many of the crucial functions that privacy performs. The rapid development and widespread use of surveillance techniques have upset the classic balance between surveillance and privacy. Now the task of law and social intervention is to see to it that the balance is restored.

A rapidly developing technology which makes it easily possible to exercise surveillance over the activities and conduct of individual by the use and exploration of a variety of devices has become a matter of increasing and anxious concern. The American Supreme Court in *Katz vs. United States*<sup>19</sup> held that the attaching by FBI agents, of an electronic listening and recording device to the outside of a public telephone booth from which a suspect placed his call, constitutes a violation of the Fourth Amendment's prohibition of unreasonable searches and seizures, in the absence of an antecedent order judicially sanctioning such surveillance.

The Supreme Court of India had an occasion to deal with the

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18. *Ibid.*

19. 389 U.S. 347 (1967).

question of police surveillance in *Kharak Singh vs. State of U.P.*<sup>20</sup> In this case, the Court had to consider the validity of Regulation 236 of the U.P. Police Regulations. It was held that Regulation 236(b) providing for domiciliary visits was unconstitutional for the reason that it abridged the fundamental right of a person under Article 21 and since Regulation 236(b) did not have the force of law, the regulation was declared bad. Thus in *Kharak Singh's* case, police surveillance was struck down as unconstitutional because an unauthorised intrusion into a person's home caused the violation of a common law right of man. But as there is no invasion till there is such intrusion or trespass, secret picketing was held permissible. Only that much concession was conceded to the police, but obviously "no knock at the door" to ascertain the whereabouts of suspects will be tolerated. Thus *Kharak Singh's* case includes the sanctity of a man's home within the ambit of personal liberty under Article 21.

The Court in *Kharak Singh's* case relied, *inter alia*, on the judgments of Field J. in *Munn vs. Illinois*<sup>21</sup> and Frankfurter J. in *Wolf vs. Colorado*<sup>22</sup> as it observed:

"We have already extracted a passage from the judgment of Field J. in *Munn vs. Illinois* where the learned judge pointed out that life in the Fifth and the Fourteenth Amendment of the US Constitution corresponding to Article 21 means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs – his arms and legs etc".

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20. AIR 1963 SC 1295.

21. (1877) 94 U.S. 113.

22. (1949) 338 U.S. 25.

The Court further referred to the Preamble and broad objectives of the framers of the Constitution when it said:

"It might not be inappropriate to refer here to the words of the Preamble to the Constitution that it is designed to "assure the dignity of the individual" and therefore of the cherished human value as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by means to stretch the meaning of the phrase to square with any pre-conceived notions or doctrinaire constitutional theories "<sup>23</sup>.

The court then quoted a passage from the judgment of Frankfurter J. in *Wolf vs. Colorado*<sup>24</sup> to the effect that the security of one's privacy against arbitrary intrusion by the police is basic to a free society and that the knock at the door, whether by day or night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English speaking people. The court then said that at common law every man's house is his castle and that embodies an abiding principle transcending mere protection of property rights and

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23. AIR 1963 SC 1295, 1302.

24. *Ibid*, note 22.

expounds a concept of “personal liberty” which does not rest upon any element of feudalism or any theory of freedom which has ceased to exist.<sup>25</sup>

Subba Rao, J., writing for the minority was of the opinion that the word liberty in Article 21 was comprehensive enough to include privacy also. He said that although it is true our Constitution does not expressly declare a right of privacy as a fundamental right, but the right is an essential ingredient of personal liberty, that in the last resort a person’s house, where he lives with his family, is his “castle”, that nothing is more deleterious to a man’s physical happiness and health than a calculated interference with his privacy and that all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution. And as regards Article 19(1)(d) he was of the view that that right also was violated. He said that the right under Article 19(I)(d) is not mere freedom to move without physical obstruction and observed that movement under the scrutinizing gaze of the policemen cannot be free movement, that the freedom of movement in clause(d), therefore, must be a movement in a free country, i.e., in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject, of course, to the law of social control and that a person under the shadow of surveillance is essentially deprived of this freedom. He concluded by saying that surveillance by domiciliary visits and other acts is an abridgement of the fundamental right guaranteed under Article 19(1)(d) and under Article 19(1)(a).<sup>26</sup>

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25. *Ibid*, note 23.

26. AIR 1963 SC 1295, 1306.

In *Govind vs. State of M.P.*,<sup>27</sup> the petitioner in a petition under Article 32, challenged the validity of Regulations 855 and 856 of the M.P. Regulation made by the Government under the Police Act, 1861. Regulation 855 provides that where on information the District Superintendent believes that a particular individual is leading a life of crime, and his conduct shows a determination to lead a life of crime, that individual's name may be ordered to be entered in the surveillance register, and he would be placed under regular surveillance. Regulation 856 provides that such surveillance *inter alia* may consist of domiciliary visits, both by day and night, at frequent but irregular intervals.

The Court, in this case, observed that the police regulations were framed by the Government of Madhya Pradesh under Section 46(2)(c) of the Police Act. The Government is empowered to make rules consistent with the Act. One of the objects of the Act is to prevent commission of offences. The provision in Regulation 856 for domiciliary visits and other actions by the police is intended to prevent the commission of offences. The object of domiciliary visits is to see that the person subjected to surveillance is in his home and has not gone out of it for commission of any offence. Therefore, Regulations 855 and 856 have the force of law.<sup>28</sup>

The Court further observed that depending on the character of the person subjected to surveillance as also the objects and the limitation under which surveillance is made, it cannot be said surveillance by domiciliary visits would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a

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27. AIR 1975 SC 1378.

28. *Ibid.* at 1381.

fundamental right, that fundamental right must be subject to restriction on the basis of compelling public interest. As regulation 856 has the force of law, it cannot be said that the fundamental right of the petitioner under Article 21 has been violated by the provisions contained in it: for what is guaranteed under that Article is that no person shall be deprived of his life or personal liberty except by the procedure established by ‘law’. The procedure is reasonable having regard to the provisions of Regulations 853(c) and 857. Even if it be held that Article 19(1)(d) guarantees to a citizen a right to privacy in his movement as an emanation from that Article and is itself a fundamental right, the question will arise whether Regulation 856 is a law imposing reasonable restriction in public interest on the freedom of movement falling within Article 19(5) does not apply in terms, as the right to privacy of movement cannot be absolute, a law imposing reasonable restriction upon it for compelling interest of state must be upheld as valid.<sup>29</sup>

The court said that on interpreting the Regulations in a narrower sense it would be clear that Regulation 855 empowers surveillance only of persons against whom reasonable materials exist to induce the opinion that they show ‘a determination to lead a life of crime’ – crime in this context being confined to such as involve public peace or security only and if they are dangerous security risks. Mere convictions in criminal cases where nothing gravely imperils safety of society can be regarded as warranting surveillance under this Regulation. Similarly, domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security and not routine follow-up at the end of a

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29. *Ibid.* at 1386.

conviction or release from prison or at the whim of a police officer. In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the state will do well to revise these old police regulations verging perilously near unconstitutionality<sup>30</sup>.

In *Prem Chand vs. Union of India*,<sup>31</sup> Krishna Iyer, J., who delivered the judgment, observed that any police apprehension is not enough for passing order of externment. Some ground or other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his presence in the locality or any part thereof is hazardous to the community and its safety. A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedoms. Natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution. All power, including police power, must be informed by fairness if it is to survive judicial scrutiny.

Another leading case on police surveillance was *Malak Singh vs. State of Punjab*,<sup>32</sup> where the action of the police in entering the name of the petitioner in the surveillance register was challenged. The Court held that intensive police surveillance encroaching on the privacy of a citizen so as to infringe his fundamental right under Article 21 was

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30. *Ibid*, at 1386.

31. AIR 1981 SC 613.

32. AIR 1981 SC 760.

impermissible. The purpose of police surveillance was the prevention of crime but this did not mean that the police had a license to enter names of whoever they like or dislike. It was observed in this case that Section 23 of the Police Act prescribes it as the duty of police officers “to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances”, in connection with these duties it will be necessary to keep discreet surveillance over reputed bad characters, habitual offenders and other potential offenders. Organized crime cannot be successfully fought without close watch of suspects. But surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by Article 21 of the Constitution and the freedom of movement guaranteed by Article 19(1)(d). That cannot be permitted. The Court held that so long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 of the Punjab Police Rules a person whose name is included in the surveillance register cannot have a genuine cause for complaint. However, surveillance of persons who do not fall within the categories mentioned in Rule 23.4 of the Punjab Police Rules or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules will entitle a citizen to the court’s protection which the court will not hesitate to give. Surveillance, therefore has to be unobtrusive and within bounds. While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the court when an entry is challenged that there are grounds to entertain such reasonable belief.