

Topic: Police Surveillance, Freedom Of Movement And Residence Under Article 19 (1) (D) And 19 (5)

Name of the Case: Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295

Bench: Chief Justice Bhuvaneshwar P Sinha, Justice NR Ayyangar, Justice Syed Jafar Imam, Justice K Subbarao, Justice JC Shah, Justice JR Madholkar

Background: There have been instances of police surveillance of activities of person suspected of criminal habits or tendencies. This includes secret picketing of the house, domiciliary visit at night, and showing the movements of the suspects. The purpose of police evidence is prevention of commission of crime by such person.

The petitioner was charged in a dacoit's case but was released as there was no evidence against him. The police opened a history sheet against him. He was put under surveillance under regulation 236 of UP Police Regulations.

Ratio: The Supreme Court observed that no aspect of police surveillance falls within the scope of Article 19 (1) (d). The purpose of the street picketing was necessary to identify the visitor to suspect so that police might have some idea of activities and this did not affect his right of movement in any material form. Against the validity of showing of the suspects moment, it was argued that if a person suspected that his movements was being watched by police, it would induce him in a psychological inhibition against movement and this would infringe Article 19 (1) (d) which should be interpreted as postulating freedom not only from physical, but even psychological, restraints on a person's moment. Rejecting this augment which advocated two broad view of the scope of safeguards granted by Article 19 (1) (d), The court ruled that Article 19 (1) (d) guarantees freedom from physical, direct and tangible restraints; it has no reference to 'mere personal sensitiveness', or 'the imponderable effect on the mind of person which might guide his action in the matter of his moment or locomotion'.

It was further held that domiciliary visit were also held to fall outside the scope of Article 19 (1) (d) as a knock at the door, or rousing a man from his sleep, does not impede or prejudice his locomotion in any manner.

The minority view was that all acts of surveillance result in a close observation of suspect's movement which infringes Article 19 (1) (d). If a man is shadowed, his movement is constricted.

The flaw in the majority view of Kharak Singh that if there was no physical restraint on a person's movement, then reasonableness of police surveillance could not be scrutinized under Article 19 (1) (d).

The flaw in the judgement of Kharak Singh was removed by Supreme Court in Govind v. State of Madhya Pradesh, AIR 1975 SC 1378. The court has now held that police surveillance will have to be restricted to such person only against whom the reasonable materials exist to induce the opinion that they show a determination to lead a life of crime. Similarly domiciliary visit and secret picketing by the police would be restricted to the clearest case of danger to community security and should not be restored as a routine follow-up at the end of conviction or release from prison or at the whim of a police officer. The court gave a warning that these old regulation 'ill-accord with the essence of personal freedom', verge 'perilously near unconstitutionality' and, therefore, need to be revised.
