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Case Comment: Govind v State of Madhya Pradesh

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INTRODUCTION

"Right to Privacy of any individual is inherently a natural right, such a right remains with an individual till he/ she breathes last[as stated by Justice Sapre, brings us to ponder on how privacy is itself a requirement for maintaining life with dignity and respect in consonance with the essence of Article 21[1]of the Indian Constitution. However, the contention arises whether this right is absolute or to be safeguarded by reasonable restrictions and the periphery of the term "reasonable restrictions". The case of Govind vs State of Madhya Pradesh[2] is one of the landmark cases under the ambit of the right to privacy in India wherein, the MP Police Regulations 855 and 856 framed by the Government under Section 46(2)(c) of the Police Act[3] relating with surveillance and domiciliary visits on persons deemed as "habitual criminals" was challenged before the Supreme Court on the ground of non-compliance with the Right to Privacy. Despite rejecting the petition, the Supreme Court recommended reforms in the regulations as they are "dangerously on the verge of violating the Constitution". This judgement

[1] Constitution of India, art 21
[2] *Govind v State of Madhya Pradesh* AIR 1975 SC 1378
[3] Police Act 1861, s 46(2)(c)

enables us to examine the overlapping proximity between the right to privacy as comprehensive within the scope of Article 21 and overriding restrictions imposed on the basis of reasonable grounds. Maneka Gandhi vs Union of India[4] overruled A.K Gopalan's[5] case wherein the latitude of any legislative implementation must be in compliance with the procedure established by law which intends both the law and the executive mechanisms to be just, fair and reasonable thus replacing "due process of law" with "procedure established by law" to enhance the concept of check on the reasonability of legislations and thereby safeguarding the "Basic structure of the Constitution".[6] This judgement provided a bird's eye view of the legislative boundations on right to privacy and acknowledged it as a fundamental right.

FACTS OF THE CASE

Govind, the petitioner being a citizen of India was accused of a number of crimes during the period 1960-1969, however, some of which are contended to be false. In 1962, he was convicted of trespass and served with imprisonment of two months, and a fine of Rs.100 was imposed. Next, he was convicted of housebreaking and was served with imprisonment of one month and a fine of Rs.501. Meanwhile, the Government of Madhya Pradesh instituted Regulations 855 and 856 of the Madhya Pradesh Police Regulations under Section 46(2) of the Police Act. According to the regulations imposed the people suspected of indulging in some or other criminal activity in a way that the person shows a "determination to lead a criminal life"[7] or can be termed as a habitual criminal should be registered in a history sheet and such people are to be kept under constant surveillance to maintain the security and public order. It included domiciliary visits meaning visits which should be irregular in nature by the police in the night to the private house for making sure that the suspect is staying at home or has gone out.[8] Govind was registered as a habitual criminal and was subjected to regular surveillance. Govind claimed that the visits were regular and he was been beaten and assaulted by the policemen and was kept under the supervision of the village headman along with the neighbors. He contested before the Apex

[4] *Maneka Gandhi v Union Of India* AIR 1978 SC 597
[5] *AK Gopalan v State of Madras* AIR 1950 SC 27
[6] *Kesavananda Bharti vs State of Kerala* AIR 1973 SC 1461
[7] Police Act 1861, s 46(2)
[8] *Ibid*

Court that Regulations 855 and 856 were not in accordance with the right to privacy, superseding Article 21 of the Indian Constitution and 19(1)(d)[9]subsequently and was also not backed by law.

ISSUES

1. Whether the right to privacy is absolute or can be subjected to restrictions and whether regulation 856 can be declared to be reasonable and justifiable.
2. Whether the aforementioned regulations made by the Government has any statutory backing or are in consonance with the law?
3. Whether Right to Privacy, Article 19(1)(d), and Article 21 of the petitioner are hindered under the Regulations of MP Police?
4. Whether domiciliary visits can be declared unconstitutional?

CONTENTION

ARGUMENTS BY THE PETITIONER

The petitioner claimed that the police has filed several false cases against him in the criminal court, but he was acquitted in all cases except two and thereby the police opened a background check sheet claiming he was a habitual criminal. He also contested that the police made frequent house visits contrary to irregular visits as mentioned in the regulation which included both during night and day. The police would secretly picket his house and all the movements were monitored by the village chief in a way preventing him to lead a "honest life" by continuous scrutiny and overriding his reputation in the evaluation of the neighbors. His movement was also restrained, thereby restraining his right to movement enshrined in Article 19(1)(d), as he has to report to the Chowkidar or the police station and has to provide further information on his destination and return time, infringing wide scope of Article 21. The Counsel on Petitioner's side argued that the state government can make rules under Section 46(2)(e) only to implement the provisions of the act while the provisions of Section 856 on visiting residences and other

[9] Constitution of India, art 19(1)(d)

matters do not apply to the police law. The Regulations in contentions were found in -pari materia to Section 236(b) in the judgement of Kharak Singh vs State of UP[10] and thus should be declared unconstitutional as the nature of the regulation is violative with the very essence of Fundamental Rights; Article 21 and 19(1)(d). It was argued on behalf of the petitioner that the right to privacy is a fundamental right that is encroached upon and note right to life includes the right to live with dignity and not mere animal existence which needs to be stressed upon to understand the essence of "life" as mentioned in Article 21.[11]

ARGUMENTS BY THE RESPONDENT

The Counsel on the respondent's side read that the petitioner committed numerous crimes between 1960 and 1969. It was contested that the Right to Privacy does not have its mention explicitly in the Fundamental Rights and such a right is not absolute. It was argued that reasonable restrictions on right to privacy are validated upon the security of the state and public interest at large. The regulations had a statutory basis under Section 46(2)(c) of the Police Act. Since the petitioner is a dangerous criminal whose behavior shows that he has a determination towards leading criminal life should be monitored to safeguard against any extreme conditions which may go against public order and the state of affairs of the country at large. The Regulations were imposed to provide a deterrent impact on habitual criminals. The right of one individual should not be seen as an encroachment on society as a whole.

LEGISLATIVE ENACTMENTS IN RELATION TO THE CASE

REGULATION 855: It provided that surveillance should be conducted against persons whose conduct showed determination to lead a life of crime and if the district superintendent suspects the person indulging in some criminal activities. The name of the person is to be included in the history sheet if not already in existence.

REGULATION 856: It provided the following provisions:

[10] *Kharak Singh v State of UP* AIR 1963 1295
[11] *Ibid*

- Periodic inquiries regarding an individual's habits, conduct, expenses, income, and occupation by the station house officer.
- Domiciliary visits at irregular intervals.
- Secret Picketing of the house on an occasion when the person is not at home.
- Tracking of person and reporting absences from home and verification of movement.
- Collection of all the gathered information in the history sheet.

SECTION 46(2)(c) of the Police Act,1888: It states that the state government can make rules which are consistent with the act for the purpose of giving effect to provisions of the act.

JUDGEMENT AND REASONING (RATIO AND OBITER)

The Court dismissed the petition made by Govind. The Court contended that Regulations 855 and 856 made by the Government have the statutory basis and force of law as they have been created under Section 46(2)(c) of the Police Act,1888. The provision states that the Government can make rules which would aid in the prevention of crimes. The judges in the esteemed bench contended that through regular surveillance and domiciliary visits to the house of the people who are suspected of being habitual criminals, the people would stop committing crimes out of fear of such provisions provided by Regulations 855 and 856. The Court also declared that since the right to privacy is not explicitly mentioned under the Indian Constitution and therefore it is not absolute in nature. Thus, restrictions that assert the test of reasonability and proportionality can be imposed on the right to privacy and this is to be determined in a case-to-case development depending on the facts of the particular case. The Court stated that domiciliary visits by the Police were not regarded as violating the fundamental rights of the individual as it is reasonable to secure the public interest and objectives of the welfare state. Domiciliary visits were applicable to people suspected to be dangerous criminals and thus upheld to be valid. To arrive at an appropriate conclusion, the judges went ahead to distinguish the case of Kharak Singh vs the State of UP and said that regulation 236 was considered to be unlawful as they did not have the force of law. The Court made a definitive understanding of the "force of law", thus requiring the regulation to be backed by competent law making authority. Mere departmental functions will not be considered within the ambit of the force of law. Regarding the test of reasonability

of restrictions, it is to be determined only when the laws and legislations that are violating the right to privacy are subjected to the compelling state interest test subjected to the respective facts of the case concerned. Only after the compelling state interest is satisfied is, the right to privacy can be restricted which further justified the backing of Regulation 856. However, the Court urged the police officers to take steps under regulations with extreme caution. Only persons with the clearest cases of criminal activities and not mere suspicion should be subjected to such surveillance. It advised reforms in the police regulations as they were near to 'verging perilously near unconstitutionality'. The Court observed that privacy-dignity claims could only be denied when an "important countervailing interest is shown to be superior". The Court interpreted that even if freedoms under Article 19 and Article 21 gave rise to the distinct fundamental right of privacy, it was subjected to the compelling public interest as under Article 19(5)[12]. The Court also relied on Article 8 of the European Convention on Human Rights which recognizes reasonable restriction in the enjoyment of the right to privacy. The decision of the Court to revise the regulations was equated with that they do not sit well with the" essence of personal freedoms".

JUDICIAL PRECEDENTS

Kharak Singh vs State of UP and others]: This provided a basis that personal liberty in Article 21 is comprehensive to include all varieties of rights including the right to privacy.

Wolf vs Colorado[13]: It was ruled that the security of one's privacy against arbitrary intrusion by police is basic to a free society and such surveillance was considered inconsistent with human rights. This led to the focus on the difference between arbitrary intrusion and reasonable surveillance by the Police.[14]

[12] Constitution of India, art 19(5)
[13] *Wolf v Colorado* 338 US 25
[14] *Ibid*

Griswold vs Connecticut[15]: It was held that 'privacy is a fundamental personal right, emanating from the totality of the constitutional scheme in which we live' and fundamental principles of liberty and justice lie at the base of all civil and political institutions.[16]

DEFECTS OF LAW

- The right to privacy remains vague in numerous judgements. The nature and extent of the right need to be clarified depending on the facts of the respective cases. The aforesaid case does not consequently clarify the extent and scope of the particular right to be deemed as a fundamental right thus there is a grey area for its misuse.
- The regulation that the court stated there is 'under the force of law' needs much clarity about its function, when it is said that there should be surveillance and a list has to be made, the people on the list are very important. The Police while working for the same should look into the severity of crimes conducted and his behavior after the completion of his punishment. It is vital for the Police staff to not raise issues towards people for their private use or as a defaming agent towards the person but for the actual reason of the safety of the state.
- The surveillance should be time-barred. The domiciliary visits can be in nature considered to violate basic freedoms and regular and frequent visits can be seen as an intrusion into the honest life of the individual. This discourages the individual even if he wants to lead an honest life.
- Regulation 855 provides that a person may be subjected to surveillance on the mere suspicion of the police even if he has never committed a crime. Thus, there can be circumstances where the right to privacy can be compromised along with the dignity of the individual restraining their meaningful life as the person can be put under such surveillance without strong evidence which is clearly against the principles of natural justice and constitutional validity. A more systematic approach needs to be applied to deal with the aforementioned regulations.

[15] *Griswold v Connecticut* 381 US 479
[16] *Ibid*

CONCLUSION AND ANALYSIS

The judgement of Govind vs State of MP led to certain clarifications on the Right to Privacy. This case led to the principle that the nature and scope of the right to privacy need to be ascertained through case-to-case development. It was held that the Right to Privacy is not absolute but rather subject to certain reasonable restrictions where the public interest is superior. Though the court did not consider the gravity and the quantum of the crime to be a determinant for imposing the regulations on the individual, it examined and suggested reforms to the regulations in contention. There is a need to scrutinize the very nature of the regulations in themselves, though the Court interpreted in the narrow segment to prioritize the essence of public order, a line of difference must be ascertained according to the 'procedure established by law' enshrined in Article 21 of the Indian Constitution. Right to Privacy as defined in R.Rajagopal vs State of Tamil Nadu [17]as the right to be left alone. In, Govind vs State of M.P, the extent was defined of this was defined as corresponding to the question of unity, integrity, and security of the nation. The right to Privacy is an important constituent of the "dignity of the individual. There lies a juxtaposition on how privacy affects an individual to live a dignified life. Article 21 of the Indian Constitution defines the right to life as living with dignity rather than mere animal existence. It is an obligation on the part of the Union to respect the dignity and personality of an individual and create conditions to enhance their significant role in life. The Court ruled on the principle of compelling state interest to view it from a broad perspective of society as a whole. Therefore, the case of Govind v State of MP is one of the most significant Indian cases dealing with the right to privacy which has significantly helped in developing the rule regarding the right to privacy and its nature with respect to the test of reasonability.

[17] *R Rajagopal v State of Tamil Nadu* 1994(6) SCC 632