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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE ANALYSIS: KHARAK SINGH V. STATE OF U.P 1963 AIR 1295, 1964 SCR (1) 332

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INTRODUCTION

The acknowledgment and evolution of the right to privacy in India has been shaped by a series of judicial interpretations tracing back to the case of M.P Sharma & Ors v. Satish Chandra and Ors¹ and Kharak Singh v. State of Uttar Pradesh. The latter is a momentous case adjudged by the Hon'ble Supreme Court of India in developing outlines of privacy under the constitutional framework. However, it is vital to emphasize that the case did not unequivocally establish the right to privacy as a fundamental right, The majority opinion considered the impact on privacy irrelevant but Justice Subba Rao dissented from the opinion believing the right to an essential component of the right to liberty. This judgment set the stage for subsequent developments and interpretations of the legal framework in understanding the right to privacy.

RESEARCH METHODOLOGY

This doctrine has depended upon secondary data sources, including case laws, journals statutes, and commentaries. The research project content has been derived from these sources to reach inferences. The judgments are cited to understand statutes and their application.

LITERATURE REVIEW

1. *"The Right to Privacy: Tracing the Judicial Approach Following the Kharak Singh Case"*, Namit Oberoi, Indian Journal of Constitutional Law.

¹ 1954 SCR 1077.

This paper follows up on the judicial rulings and critically examines them in reference to the case of Kharak Singh Case. It also decisively examines the ambit of the specifically enumerated fundamental rights in light of the decisions of the Supreme Court and their recognition. It has also traced the existence of the right to privacy from its English common law roots and even manifested legal appreciation of individual rights by various International Covenants and conventions.

2. “*Evolution of Right to Privacy in India*”, Aryendra Singh, Indian Journal of Law and Legal Research Vol, IV Issue II.

The paper has tried to define the concept of privacy and has also tried to answer the question of whether it is a fundamental right or not while providing evidence through a series of landmark judgments. The paper has been insightful in providing a brief recollection of facts of the series of landmark developments for the right of privacy in the evolving legal landscape as well as the present judicial position of the right.

3. “*The Jurisprudence in the Right to Privacy*”, Poontamilan S, Indian Journal of Law and Legal Research, Vol V Issue I.

The paper focused on recognizing the right to privacy as a fundamental right and the need for India to provide better data privacy laws. This paper has also recognized the need for restrictions for protection and has commented upon the proportionality of safeguarding. It has provided for a comprehensive understanding and provides readers a thorough knowledge of the jurisprudential characteristics of ideas, precepts, and legal concepts relating to the nature of the law and how it relates to contemporary life.

4. “*The Fundamental Right to Privacy: A Case-by-Case Development Sans Stare Decisis*”, Sandeep Challa, Indian Journal of Constitutional Law Vol I.

This paper provides an instant case comment on the fundamental Right to Privacy in the context of the doctrine of Stare decisis. It covers a wide range of cases and aims to investigate the circumstances of judicial activism.

SCOPE OF RESEARCH

The scope and objectives of the research are to examine the evolution process of the right to privacy within the Indian legal landscape, tracing its origins from the Kharak Singh case by

studying and dissecting through a diverse range of legal interpretations, academic studies, and legislative amendments. The limitation of the research is that the independence is curtailed as the studies and observations of research are confined to theory and literature already existing and there is also a present limitation of time for conducting the research.

ANALYSIS

The case came into being as the petitioner (Kharak Singh) had questioned the legitimacy of the acts of the Uttar Pradesh Police of monitoring and surveillance against him being violative of the fundamental right of personal liberty under Art²21 and Art 19(1)(d) freedom of movement under the IC³. The petitioner had been suspected of involvement in a case of dacoity due to lack of evidence and was released from the investigation and not convicted. However, after being released, he was still subjected to shadowing and monitoring under Chapter XX of the UP Regulations Act (herein referred to as the act).

The reconnaissance consisted of invasive measures such as nocturnal home visits, waking him up at odd hours of the night, secret corralling of his house as well as maintenance of a history sheet on him.

The petitioner felt these activities as violative of his fundamental right and challenged these before the Hon'ble Supreme Court under Art 32 of IC contending the provisions of the Act were unconstitutional and intruded upon his rights granted by the IC.

The respondents contended that the act was valid and not violative of any constitutional freedoms granted and was formulated for the maintenance of public order and the efficiency of the police. It was also contended that regulations were reasonable and beleaguered only individuals with anti-social tendencies.

JUDGEMENT OF THE COURT

The majority opinion of the court held that Art 21 should be comprehensively deduced and not narrowly such as physical restraint but as a term consisting of various rights consisting of

² Article.

³ Indian Constitution.

individual freedoms other than those mentioned under Art 19(1). They were of the opinion that Art 21 was a safeguard and catch-all provision for individual liberties. The court also emphasized that the interpretation consists of rights relating to their home, security, and even the right to fall asleep which are all essential features of liberty and dignity of a person. The ruling demonstrated that while the right to privacy was not expressly protected by the Indian Constitution, it was still implicitly protected by the legal system. The Hon'ble Court was of the opinion that the term "personal liberty" was to be reasonably understood to include privacy rights. They acknowledged that the right was crucial but not absolute⁴ and were of the opinion that the imposition of reasonable restrictions should be supported by valid laws and not be arbitrary orders or regulations invalidating the respondents' first contention.

The court rejected the argument that Art 19(1)(d) did not include psychological restraints and was solely for physical ones and noted that the term "freely" mentioned includes psychological too. They also set aside the notion of infringement by the act for inquiries about movement as a violation of freedom to move and said that it did not infringe any constitutional rights.

They struck down regulation 236(b) as unconstitutional of home visits and granted a writ of mandamus for their prohibition but the rest of the contentions of the petitioner were dismissed without costs.

In his dissenting opinion, Justice Rao maintained that the entirety of Regulation 236 was unconstitutional and violative of Art 19(1)(d) and Art 21, emphasizing that the case was about the Fundamental rights of citizens to live a free life under a valid law regardless of one's reputation. He contended the action of police under the act as overstepping the petitioners' FR⁵. He also disagreed with Art 21 excluding movement freedom under Art 19(1)(d) considering them both as independent rights that overlapped with each other, contending that even limited physical movement related to freedom of speech and expression. He was of the opinion that the shadowing methods lacked justification and referred to the case of *A.K. Gopalan v. State of Madras*⁶ for liberty to include both physical and mental and encompassing a person's privacy and for the broader scope of Art 21.

⁴ (1978) 1 SCC 248.

⁵ Fundamental Rights.

⁶ 1950 SCC 228.

THE WAY FORWARD

In recent years, judicial activism has "read into" the right to privacy protected by Article 21 to "read into" it a basic right to privacy. The existence of any right to privacy was unequivocally denied by the courts in the cases of *M.P. Sharma v. Satish Chandra* and the *Kharak Singh* case that followed. It was noted that this privilege derives from Article 21 in the cases of *Govind v. State of M.P.*⁷, *R. Rajagopal v. State of T.N.*⁸, and *PUCL v. UOI*⁹. Even in the English case *Wolf v. Colorado*¹⁰ the court also held that "individual liberty" is under the ambit of Art 21 as a succinct term other than those mentioned in Art 19 (1).

Over time the courts in India have begun to creatively interpret Art 21 with the right to privacy. The judgment played an important role in admitting the right to privacy as a vital part of liberty under Art 21 having a profound impact on legal developments in India.

It highlighted the requirement for the existence of norms for the safeguarding of the privacy of an individual leading to states regulating the actions of the police to be within the boundaries of law.

It also has influenced subsequent judicial pronouncements on privacy rights in India. Cases such as *Maneka Gandhi v. UOI*¹¹ further distinguished between the named and unnamed right stating that the unnamed is an integral part of the named. This was further used in the case of *R. Rajagopal v. State of Tamil Nadu*¹² considering the right to privacy an unnamed but integral part of 21 in converse to the majority view of the *Kharak Singh* case. These and several other decisions in favor of the right to privacy as integral to liberty have been given by courts even though smaller benches have reinforced the right in India's legal framework.

This judgment also provided for the development of constitutional jurisprudence in India and marked a shift in the court's approach toward recognizing and protecting of FRs. it has also led to discussions and debates over the existing privacy concerns with the development of technology and has given rise to the importance of the concept of privacy in the recent data protection bill as well as fostered a better understanding of a person's rights and the role of the state protecting it.

⁷ 2021 SCC OnLine MP 1454.

⁸ 1995 AIR 264, 1994 SCC (6) 632.

⁹ AIR 1997 SC 568.

¹⁰ 1949 SCC OnLine US SC 102.

¹¹ (1978) 1 SCC 248.

¹² 1994 SCC (6) 632.

The case also accentuated the need to strike a balance between the rights of an individual and the legitimate interests of the state in matters of surveillance and law enforcement, continuing to be an important aspect of policy discussions on privacy and security.

This judgment and its successors as well as its predecessors have also highlighted the unabashed power of the police and the need for the state to take preventive to curb such arbitrary use of powers and protect its citizens from instances of police brutality which take place through the course of routine checkups and investigations. The Kharak Singh case had a long-lasting effect on judicial rulings, legislative changes, and popular perception of the right to privacy in India. It was a crucial step toward recognizing and defending this basic right, and it paved the way for later advancements in the nation's privacy laws and policies.

THE PRESENT POSITION

In the recent decision in the case of K.S Puttaswamy v. UOI,¹³ the court recognized the right to privacy as a fundamental right. The nine-judge bench unanimously decided in the case and reaffirmed that privacy is constitutionally guaranteed. It is rooted in both Part III of the constitution as well as Art 21 providing protection of life and liberty. It comes from diverse facets of freedom in varied settings and the dignity that the Constitution recognizes.

Worldwide, the right to privacy has been reinstituted in Article 21 of the Indian Constitution. However, due to a lack of legislative protections, data protection in a technologically advanced, international context is becoming more difficult. Privacy rights are more likely to be violated by the discriminating laws of the ruling majority. Data protection laws were created to preserve citizens' rights to privacy. To control the processing of personal data and safeguard people's rights to privacy, the Personal Data Protection Bill, 2019 (PDP Bill) was introduced.

CONCLUSION

The objective of the research which aimed to examine the development of the right to privacy in the Indian legal landscape has been achieved through the analysis of the position of the right in the present case and the impact of the judgments on its subsequent decisions and academic studies on the concept of privacy. The process of trailing the origin of the now fundamental right starting

¹³(2017) 10 SCC 1.

from Kharak Singh and M.P Sharma has shed light on the intricate and ever-evolving nature of privacy rights in India.

The research has revealed the transformation and recognition of an unnamed right to a fundamental right, from its first denial to its ultimate establishment as a central component of personal liberty under Art 21 the evolution has been intense. The research has also emphasized the importance of privacy in the digital age where data protection is of paramount concern posed by technological advancements. It demonstrates how flexible and ever-evolving the Indian legal system is in protecting the basic right to privacy in a dynamic environment.

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