

## **Surveillance, Privacy and Law of Evidence**

Surveillance is the act of watching someone else in order to obtain information. It is one of the most popular ways used by law enforcement to obtain evidence and investigate suspects. It can be done with or without the awareness of the person being monitored. Surveillance is usually either electronic or fixed. Wiretapping, bugging, videotaping, GPS tracking, data mining, social media mapping, and internet data and traffic monitoring are all examples of electronic surveillance. Covert monitoring of persons in person, sometimes known as "stake-outs," is a type of fixed surveillance.

These methods are adopted to gather evidence and more often than not, they violate basic rights of those being observed. Illegal searches, eavesdropping, and other unethical methods of obtaining evidence in an overzealous manner clearly violate fundamental rights of human beings. Fundamental rights, as defined in Part III of the Indian constitution, are the inherent and though restricted, are possessed by all citizens. Illegal evidence collection is a violation of human, constitutional and basic rights. Every piece of evidence must be free of manipulation and must not be unjust to the accused if it is to be used against him illegally.

Until proven guilty, everyone is presumed innocent. Illegal methods of obtaining evidence are a significant impediment to ineffective methods of pursuing justice. It not only infringes an accused's fundamental rights, but it also fosters prejudice towards the accused. As a result, illegally obtained justice should not be acceptable in court. This broad rule of rejecting evidence obtained illegally through search and seizure is intended to deter police misbehavior and eliminate injustice.

Evidence obtained in such manner also at times infringes privacy of the accused. For more than a decade, India has debated the fundamental subject of the right to privacy as a basic human right. In *MP Sharma v. Satish Chandra*, the company challenged the investigation of malpractice against the company, claiming that private documents were also searched under this, infringing on its right to privacy, and it was held that there is no concept of right to privacy under the Indian constitution. Another case of illegal surveillance was that of *Kharak Singh v. State of U.P.*, in which a person was detained on the basis of dacoity accusations and the U.P. police used the U.P. police regulation act to impose a surveillance order on him, allowing domiciliary visits as his dwelling and tracking his travels. The individual filed a writ petition, claiming that the act is unconstitutional and infringes his basic rights. In terms of domiciliary visits, the majority ruled they were

unconstitutional. The regulations as a whole were unconstitutional because they infringed on people's right to freedom of movement and life. Article 21 protected personal liberty against direct or indirect interference.

Former Prime Minister Chandra Shekhar claimed in *PUCL v. Union of India* that the government is listening in on politicians' phone calls. The CBI looked into this claim, and PUCL (People's Union for Civil Liberty) filed a PIL in the Supreme Court, requesting clarification on phone tapping laws and public safety. The Supreme Court ruled that the right to privacy is protected under Article 21 of the Constitution's right to life and personal liberty. However, in this situation, none of the instructions were followed. However, in *Justice K.S Puttaswamy v. Union of India*, where the national identity project, Aadhaar, was challenged, a larger bench of nine decided that the right to privacy is a basic right guaranteed by Articles 14, 19, and 21. This significant decision held that any violation of a basic right must be done in accordance with the law, which must provide for a just, fair, and reasonable approach. With this expanded definition of the right to privacy, the question of its application and limitations under Indian criminal and evidence laws arises.

In *Pooran Mal v. Director of Inspection* the Supreme Court had two writ petitions under Article 32 of the Constitution and two appeals from orders passed by the Delhi High Court under Article 226 claiming relief in respect of action taken under Section 132 of the Income-tax Act, 1961 by way of search and seizure, on the ground that the authorization of search and seizure was illegal. The petitioners/appellants argued that Sections 132(1) and (5) of Rule 112(A) are unconstitutional because they violate Article 14, Article 19(1) (f) and (g), and Article 31 of the Constitution. It was also suggested that a writ of prohibition be issued to prevent the government from utilising the information gleaned from the seized documents. The actual search and seizure were challenged in the writ petitions on the grounds that they were carried out in violation of section 132 and Rule 112-A. Issue was whether the information gathered from such search and seizure can be used under section 5 of the Indian Evidence Act and the Court observed that the Evidence Act of 1872, is a law consolidating, defining, and amending the law of evidence, and no provision of which has been challenged as violating the Constitution. Section 5 of the act permits relevancy as the only test of admissibility of evidence, and secondly, that any other Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained through an illegal search or

seizure, it will be incorrect to invoke the alleged spirit of ouster. Court reiterated *M.P. Sharma v. Satish Chander* and observed it is not open to the Court to strain the language of the Constitution.

The Supreme Court's general practice is to focus on the relevance of the facts that are admitted in court rather than the channel or method through which they are obtained. The technique and manner in which the evidence was obtained have no bearing on its admission in court. With few circumstances, such as where the accused has been influenced by law enforcement personnel, the judiciary normally accepts unlawfully obtained evidence, although such evidence should be treated with caution. Officers of the law and government officials get evidence through a variety of inhuman and unlawful means. This practice does not deter the officers from violating law and endangers basic rights of citizens.

Fundamental rights are considered Magna Carta in India. It imbues the constitution with life. They are inextricably linked to the Indian Constitution. With the recent recognition of the right to privacy as a fundamental right of citizens, it is expected that this aspect of the law will improve and that the exclusionary rule of American jurisprudence will be applied in cases of violations of citizens' privacy rights in order to obtain evidence. In the United States, a judge-made rule known as the exclusionary rule is utilised when evidence acquired by government agents breaches a person's constitutional right, and that evidence cannot be used against that individual. In order to strike a balance between the right to privacy and the interests of the state, the requirements for obtaining justice cannot be lowered. And it certainly cannot be done by jeopardising a person's own liberty and choice.