

Chapter XI

SURVEILLANCE UNDER THE POLICE ACTS

The regulations or rules made under the Police Acts provide for surveillance of habitual offenders. Under these regulations the police has been given the power to register certain persons, whether previously convicted or not, for subjecting them to surveillance. Registration of such persons is a one sided affair of the police and there is no requirement of an opportunity being given for hearing to the individual; or notification is issued by the state government after hearing the individual as is the case under the Habitual Offenders Act; or an order of a magistrate follows as in the case of s. 110 Criminal Procedure Code.

Typical of such provisions are contained in regulations 855 and 856 of the Madhya Pradesh Police Regulations made under the M.P. Police Act. These two regulations may be quoted in full.

855. Surveillance proper, as distinct from general supervision, should be restricted to those persons, whether or not previously convicted, whose conduct shows a determination to lead a life of crime. The list of persons under surveillance should include only those persons who are believed to be really dangerous criminals. When the entries in a history sheet or any other information at his disposal, leads the District Superintendent to believe that a particular individual is leading a life of crime, he may order that his name be entered in the surveillance register. The Circle Inspector will thereupon open a history sheet, if one is not already in existence, and the man will be placed under regular surveillance.

Regulation 856 provides :

856 Surveillance may, for practical purpose, be defined as consisting of the following measures :

- (a) Through periodical enquiries by, the station-house officer as to repute, habits, association, income, expenses and occupation.
- (b) Domiciliary visits both by day and night at frequent but irregular intervals.
- (c) Secret picketing of the house and approaches on any occasion when the surveillance (surveillant ?) is found absent.
- (d) The reporting by patels, mukaddams and kotwals of movements and absences from home.

(e) The verification of such movements and absences by means of bad character rolls.

(f) The collection in a history sheet of all information bearing on conduct.

Reasonableness & constitutional validity of surveillance

The surveillance measures may be divided into two major categories from the point of view of individual liberty—those which directly affect his liberty like domiciliary visits by police at night involving knocking at his door and arousing him from sleep in order to check his presence at home, or putting an obligation on him to inform the police of his movements from one place to another; and those which indirectly or mentally affect him without any physical interference with his liberty like secretly or silently picketing his house or watching his movements, or shadowing him—wherever he goes.

The two articles of the Constitution which are important in this connection are 19 (1) (d) (right to move throughout the territory of India) and 21 (the right to personal liberty). Both the articles require two conditions for the validity of an executive action affecting the rights under the two articles. Firstly, there should be a law in support of the executive action and without such a law the executive cannot interfere with the rights of an individual guaranteed by those articles. Secondly, the law has to be reasonable, both substantively and procedurally in the cases of art. 19 (1) (d), and procedurally in the case of art. 21 as interpreted by the Supreme Court in *Maneka Gandhi v. Union of India*.¹

There is no doubt that the direct surveillance requires the support of law. Thus, it was held in *Kharak Singh v. State of U.P.*² that domiciliary visits at night, which involves intrusion into the privacy of home of an individual and disturbing him at night, is violative of art. 21 without a law to that effect being there. The approach of the court in this case shows that the U.P. Police Regulations involved has no statutory force and were merely executive instructions, and thus they were not law. However, this view does not seem to hold ground now. Subsequently in *Govind v. State of M. P.*,³ the court held that the M.P. Police Regulations had statutory force and the view of the court in *Kharak Singh* about the U.P. Police Regulations was based on the concession of the counsel.

1. A.I.R. 1978 S.C. 597.

2. A.I.R. 1963 S.C. 1295.

3. A.I.R. 1975 S.C. 1378.

The majority, 4 to 2 in *Kharak Singh* held that no law was required for indirect surveillance, whether it was silent picketing of the house or shadowing or keeping a watch on the movement of the person.

"In dealing with a fundamental right such as the right to free movement or personal liberty, that only can constitute an infringement which is both direct as well as tangible and it could not be that under these freedoms the constitution-makers intended to protect or protected mere personal sensitiveness."⁴

However, the minority thought otherwise. Subba Rao, J., speaking for the minority stated :

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 channelling one's actions through anticipated and expected grooves. So also creation of condition which necessarily engender inhibitions and fear complexes can be described as physical restraints.⁵

Similarly, as regards shadowing and keeping a watch on movement he said: "How could a movement under the scurrying gaze of policemen be described as a free movement. The whole country is his jail." The minority opinion is more appealing on the point.

Assuming that the police needs the support of the law for surveillance, the police regulations have to be "reasonable" so as to save them from unconstitutionality. The question of reasonableness of the M.P. Police Regulations was examined by the court in *Govind v. State of M.P.*⁷ The court assumed that "the right to personal liberty, the right to move freely throughout the territory of India and freedom of speech create an independent right of privacy as an emanation from them".⁸ However, this right of privacy was not an absolute right and can be subjected to restriction on the basis of compelling public interest. Reading regulations 853 (c) and 857, the court found that under the former only persons suspected to be habitual criminals who are subjected to domiciliary visits, and under the latter it is provided that a comparatively short period of surveillance maintained, should suffice to show the suspicion of criminal livelihood was unfounded or not. Thus

4. *Supra* note 3 at 1300.

5. *Ibid.* at 1305-06.

6. *Ibid.* at 1306.

7. A I R. 1975 S.C. 1378.

8. *Ibid.* at 1385.

there are restrictions on the power of police-Surveillance is confined to the limited class of citizens who are determined to lead a criminal life or whose antecedents would reasonably lead to the conclusion that they will lead such a life. The crime in this context is confined to such crimes as involve public peace or security only, and if those involved are dangerous security risks. It does not include ordinary crimes. The narrow categorisation of crimes for the purposes of surveillance was done by the court by narrowly interpreting Regulation 856. Though the court upheld the regulations, yet it cautioned the executive to revise "these old police regulations verging perilously near unconstitutionality".

The court in this case did not answer the crucial question whether there were any procedural safeguards available to the individual relating to the existence of condition precedent for involving surveillance against him, that is, with regard to entering his name in the surveillance register. This is a one-sided act on the part of the police without the individual getting to know the case of the police or an opportunity of rebuttal, or without any intervention of another authority to determine the correctness of the entry. In such a situation the police is the absolute master and this could easily lead it to abuse its powers. This aspect was considered by the court in *Malak Singh v. State of Punjab*⁹, and ruled that the basis on which the name of the individual is entered into the surveillance register has necessarily to be confidential. Observance of natural justice will defeat the very object of the rule providing for surveillance. The court was, however, conscious of the fact that the police may abuse its powers. It held that court itself may examine the surveillance register to satisfy whether there were reasonable grounds for entertaining a reasonable belief about the criminality of the person. This safeguard is a tenuous safeguard. Such a matter will come to the High Court or the Supreme Court by way of writ which is an expensive and inconvenient remedy for the individual and is also now a time-consuming remedy (when the period of surveillance which the police may have in mind is already over). It is suggested that there should be a provision for an advisory board consisting of 3 sitting district and High Court judges, at least one of the three to be a High Court judge) to examine the record. Though the individual may not be supplied with the record or grounds, yet he should have the right to present his case with the committee to establish his non-criminality or to show that his name should not find a place in the surveillance register.

9. A.I.R. 1981, S.C. 760.