

## अनुसंधान प्रश्न

“क्या भारत में पुलिस की वीडियो रिकॉर्डिंग करना या अपनी संपत्ति पर सीसीटीवी लगाना कानूनी है, ऐसी रिकॉर्डिंग पर निजता और साक्ष्य के क्या नियम लागू होते हैं, और सार्वजनिक अधिकारियों की रिकॉर्डिंग तथा साझा जगहों में सीसीटीवी पर अदालतों ने क्या कहा है?”

## क्या भारत में पुलिस की वीडियो रिकॉर्डिंग करना, निजी संपत्ति पर सीसीटीवी लगाना तथा सार्वजनिक अधिकारियों की रिकॉर्डिंग करना कानूनी रूप से अनुमेय है, और इस पर निजता व साक्ष्य के क्या नियम लागू होते हैं?

## सारांश

भारत में अपनी संपत्ति पर सीसीटीवी लगाना और सार्वजनिक कर्तव्यों का पालन कर रहे पुलिस अधिकारियों या लोक सेवकों की वीडियो रिकॉर्डिंग करना कानूनी रूप से अनुमेय है, बशर्ते यह किसी की व्यक्तिगत निजता का अनुचित अतिक्रमण न करता हो। सर्वोच्च न्यायालय ने *Justice K. S. Puttaswamy (Retd.) v. Union of India* (2017) में निजता के अधिकार को अनुच्छेद 21 के तहत मौलिक अधिकार घोषित किया है, जिसके कारण सीसीटीवी कैमरों का स्थान या रिकॉर्डिंग की विधि ऐसी होनी चाहिए जो दूसरों के एकांत स्थानों (जैसे पड़ोसियों के शयनकक्ष) में सीधे न झाँके। डिजिटल रिकॉर्डिंग या सीसीटीवी फुटेज को अदालत में साक्ष्य के रूप में स्वीकार करने के लिए भारतीय साक्ष्य अधिनियम, 1872 की धारा 65B के तहत अधिमानतः इलेक्ट्रॉनिक प्रमाणन की आवश्यकता होती है, जिसे मुकदमे के दौरान प्रस्तुत किया जाना अनिवार्य है।

| सत्यापित मुकदमे                             | संविधियाँ | नवीनतम निर्णय               |
|---------------------------------------------|-----------|-----------------------------|
| 14<br>9 उच्च न्यायालय • 5 सर्वोच्च न्यायालय | 4         | 2025<br>Calcutta High Court |

## विषय-सूची

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Vitark AI द्वारा तैयार • अत्यंत गोपनीय • उपयोग से पहले उद्घरण सत्यापित करें

## I. विस्तृत विश्लेषण

### मुख्य सिद्धांत

#### 01 निजता का मौलिक अधिकार और अनधिकृत राज्यीय हस्तक्षेप

भारतीय संविधान के अनुच्छेद 21 के तहत निजता का अधिकार जीवन और व्यक्तिगत स्वतंत्रता का एक अनिवार्य अंग है; अतः पुलिस या राज्य द्वारा नागरिकों की मनमानी या अनधिकृत रूप से की जाने वाली बाधक निगरानी (obtrusive surveillance) पूरी तरह से असंवैधानिक है, जैसा कि *People's Union for Civil Liberties v. Union of India* (1996) में माना गया है।

#### 02 निजी और साझा संपत्ति पर सीसीटीवी कैमरे लगाने की वैधता

अपनी निजी संपत्ति या साझा आवासीय गलियारों (common passages) में सुरक्षात्मक कारणों से बिना दूसरों की सहमति के भी सीसीटीवी कैमरे लगाना पूरी तरह से कानूनी है, बशर्ते कैमरों का ध्यान सीधे तौर पर किसी अन्य व्यक्ति के निजी क्षेत्रों या शयनकक्ष के भीतर केंद्रित न हो, जैसा कि *Shuvendra Mullick v. Indranil Mullick* (2025) में स्पष्ट किया गया है।

#### 03 अवैध या अनधिकृत रिकॉर्डिंग की साक्ष्य के रूप में स्वीकार्यता

भारतीय कानून में साक्ष्य की स्वीकार्यता का प्राथमिक परीक्षण उसकी 'प्रासंगिकता' (relevancy) है। यदि रिकॉर्डिंग प्रासंगिक है, तो उसे केवल इस आधार पर खारिज नहीं किया जा सकता कि वह निजता का उल्लंघन करके या अवैध रूप से एकत्र की गई थी, जैसा कि *Deepti Kapur v. Kunal Julka* (2020) में निर्धारित किया गया है।

#### 04 इलेक्ट्रॉनिक साक्ष्यों की स्वीकार्यता हेतु धारा 65B का प्रमाणन

सीसीटीवी फुटेज, पेन ड्राइव या मेमोरी कार्ड में दर्ज वीडियो रिकॉर्डिंग को कानूनन 'दस्तावेज' माना जाता है। इसे साक्ष्य में साबित करने के लिए धारा 65B(4) के तहत इलेक्ट्रॉनिक प्रमाण पत्र की आवश्यकता होती है, हालांकि यदि मूल उपकरण (original device) ही सीधे अदालत में प्रस्तुत कर दिया जाए, तो प्रमाण पत्र की आवश्यकता समाप्त हो जाती है, जैसा कि *Sundar @ Sundarrajan v. State by Inspector of Police* (2023) में दोहराया गया है।

#### 05 प्रमाणन प्रस्तुत करने का समय और अपीलीय आपत्ति की सीमा

साक्ष्य अधिनियम की धारा 65B(4) के तहत प्रमाणपत्र प्रस्तुत करने का दायित्व ट्रायल के चरण (साक्ष्य प्रस्तुति के समय) में उत्पन्न होता है, चार्जशीट दाखिल करने के समय नहीं, जैसा कि *State by Karnataka Lokayukta Police Station v. M.R. Hiremath* (2019) में निर्धारित किया गया है। इसके अतिरिक्त, मोड ऑफ प्रूफ (प्रमाणन की विधा) पर कोई भी तकनीकी आपत्ति केवल ट्रायल के दौरान ही ली जा सकती है, अपीलीय स्तर पर पहली बार नहीं, जैसा कि *State of Madhya Pradesh v. Naveen @ Ajay* (2018) में स्पष्ट किया गया है।

## 06 अभियुक्त का डिजिटल प्रतियों पर अधिकार

निष्पक्ष सुनवाई (fair trial) सुनिश्चित करने के लिए अभियुक्त अभियोजन द्वारा प्रस्तुत सीसीटीवी रिकॉर्डिंग या अन्य इलेक्ट्रॉनिक साक्ष्यों की डिजिटल प्रतियाँ प्राप्त करने का अधिकारी है, बशर्ते कि बलात्कार जैसे मामलों में निजता की सुरक्षा के लिए अदालतें केवल निरीक्षण (inspection) की अनुमति देने जैसा संतुलन बना सकती हैं, जैसा कि *P. Gopalkrishnan @ Dileep v. State of Kerala and Anr.* (2019) में माना गया है।

न्यायालयों ने इसे कैसे लागू किया

### सर्वोच्च न्यायालय का दृष्टिकोण

सर्वोच्च न्यायालय ने माना है कि राज्य द्वारा अपराध नियंत्रण और कानून व्यवस्था बनाए रखने के लिए गैर-बाधक या अदृश्य निगरानी की जा सकती है, लेकिन जब बात किसी नागरिक की व्यक्तिगत जानकारी और रिकॉर्डिंग की आती है, तो निजता का अधिकार और निष्पक्ष सुनवाई के सिद्धांतों के बीच संतुलन बनाना न्यायालय का कर्तव्य है।

### उच्च न्यायालय की भिन्नताएँ

- तेलंगाना उच्च न्यायालय ने स्पष्ट किया है कि बरी होने के बाद भी नागरिकों की मनमानी निगरानी करना या बिना कानूनी प्राधिकार के उनके जीवन पर पुलिस की सतत नज़र रखना निजता के अधिकार का हनन है (*Mohammed Azmathullah Khan v. State of Telangana* (2019); *Md. Abdul Kareem v. State of Telangana* (2019); *Ragula Ramulu v. State of Telangana* (2020))।
- पंजाब और हरियाणा उच्च न्यायालय ने स्पष्ट किया कि सुरक्षा मानकों के तहत किसी आधिकारिक आवास या इमारत के बाहर लगाए गए सीसीटीवी कैमरे, जो पड़ोस के घरों के अंदर न झाँकते हुए केवल सड़क की सीमा तक केंद्रित हैं, वे निजता का उल्लंघन नहीं करते हैं (*N.K. Sodhi v. Union of India* (2021))।
- केरल उच्च न्यायालय ने निर्णय दिया कि आईटी अधिनियम के आगमन के बाद इलेक्ट्रॉनिक साक्ष्य एक दस्तावेजी साक्ष्य है, अतः अभियुक्त को सीसीटीवी फुटेज की डिजिटल प्रति देना अनिवार्य है (*Jisal Rasak v. State of Kerala* (2019))।
- मध्य प्रदेश उच्च न्यायालय ने आपराधिक मामलों में सीसीटीवी फुटेज और कंप्यूटर आउटपुट की साक्ष्य में स्वीकार्यता हेतु साक्ष्य अधिनियम की धारा 65B के तहत निर्दिष्ट आवश्यक तकनीकी शर्तों और संचालन मानकों की पुष्टि की है (*Akash v. State of Madhya Pradesh* (2023))।

अनिर्णीत क्षेत्र या चेतावनियाँ

*Deepti Kapur* के मामले के अनुसार, निजता का उल्लंघन करके प्राप्त साक्ष्य (जैसे अनधिकृत या चुपके से की गई रिकॉर्डिंग) साक्ष्य कानून में प्रासंगिक होने पर स्वीकार्य है। यह सिद्धांत *Puttaswamy* के उस संवैधानिक नियम के साथ एक वैचारिक तनाव पैदा करता है जहाँ निजता को मौलिक अधिकार माना गया है। अदालतों को अभी भी इस बात को पूरी तरह से स्पष्ट करना है कि क्या मौलिक अधिकारों का उल्लंघन करके एकत्र किए गए साक्ष्य को "fruit of the poisonous tree" के सिद्धांत के भारतीय समकक्ष के तहत पूर्णतः वर्जित किया जाना चाहिए या नहीं।

## II. सांविधिक प्रावधान 4 प्रावधान

### SECTION 354D, INDIAN PENAL CODE — STALKING

Defines and punishes the offence of stalking, which includes following and contacting a woman despite her disinterest, or monitoring her electronic communications.

"354D. Stalking.--(1) Any man who-- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking: Provided that such conduct shall not amount to stalking if the man who pursued it proves that-- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or (iii) in the particular circumstances such conduct was reasonable and justified." उद्धृत: कोई नहीं

### ARTICLE 21, CONSTITUTION OF INDIA — PROTECTION OF LIFE AND PERSONAL LIBERTY

Guarantees that no person shall be deprived of their life or personal liberty except in accordance with the procedure established by law.

"Article 21. Protection of life and personal liberty\nNo person shall be deprived of his life or personal liberty except according to procedure established by law." उद्धृत: People's Union for Civil Liberties v. Union of India, Md. Abdul Kareem v. State of Telangana, Mohammed Azmathullah Khan v. State of Telangana, Ragula Ramulu v. State of Telangana, N.K. Sodhi v. Union of India

### SECTION 65B, INDIAN EVIDENCE ACT, 1872 — ADMISSIBILITY OF ELECTRONIC RECORDS

Deems information contained in electronic records printed or stored on computer media as documents admissible in legal proceedings without original proof, subject to specific conditions.

"(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible." उद्धृत: Jisal Rasak v. State of Kerala, Akash v. State of Madhya Pradesh

**ARTICLE 19, CONSTITUTION OF INDIA — PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC.**

Guarantees freedom of speech and expression and other vital liberties to citizens, subject to reasonable restrictions by the State.

"19. Protection of certain rights regarding freedom of speech, etc. —(1) All citizens shall have the right — (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (g) to practise any profession, or to carry on any occupation, trade or business." उद्धृत: *Deepti Kapur v. Kunal Julka*, *People's Union for Civil Liberties v. Union of India*, *Md. Abdul Kareem v. State of Telangana*, *Mohammed Azmathullah Khan v. State of Telangana*, *Ragula Ramulu v. State of Telangana*, *N.K. Sodhi v. Union of India*

### III. चर्चित मुकदमे

14 मुकदमे • सारणी

| #  | मुकदमा                                                                                  | न्यायालय                          | वर्ष | मुख्य निर्णय                                                                                         |
|----|-----------------------------------------------------------------------------------------|-----------------------------------|------|------------------------------------------------------------------------------------------------------|
| 01 | <i>P. Gopalkrishnan @ Dileep v. State of Kerala and Anr.</i><br>ESCR010004292019        | SUPREME COURT OF INDIA            | 2019 | इलेक्ट्रॉनिक रिकॉर्ड दस्तावेज़ हैं; अभियुक्त को पीड़ित की निजता के अधीन डिजिटल प्रति पाने का अधिकार। |
| 02 | <i>Justice K. S. Puttaswamy (Retd.) v. Union of India</i><br>ESCR010000342017           | SUPREME COURT OF INDIA            | 2017 | निजता का अधिकार अनुच्छेद 21 के तहत मौलिक अधिकार है, पर यह निरपेक्ष नहीं है।                          |
| 03 | <i>Mohammed Azmathullah Khan v. State of Telangana</i><br>HBHC010102192019              | HIGH COURT FOR STATE OF TELANGANA | 2019 | पुलिस द्वारा की जाने वाली मनमानी, अवैध और अत्यधिक बाधक निगरानी असंवैधानिक है।                        |
| 04 | <i>Sundar @ Sundarrajan v. State by Inspector of Police</i><br>ESCR010003702023         | SUPREME COURT OF INDIA            | 2023 | मूल इलेक्ट्रॉनिक उपकरण सीधे पेश होने पर धारा 65B के तहत प्रमाणपत्र की आवश्यकता नहीं।                 |
| 05 | <i>Md. Abdul Kareem v. State of Telangana</i><br>HBHC010094792019                       | HIGH COURT FOR STATE OF TELANGANA | 2019 | बरी होने के बाद भी मनमानी पुलिस निगरानी निजता के अधिकार का उल्लंघन है।                               |
| 06 | <i>Jisal Rasak v. State of Kerala</i><br>KLHC010420792019                               | HIGH COURT OF KERALA              | 2019 | निष्पक्ष सुनवाई के तहत अभियुक्त को अभियोजन के सीसीटीवी फुटेज की डिजिटल प्रति पाने का अधिकार।         |
| 07 | <i>People's Union for Civil Liberties v. Union of India</i><br>ESCR010005121996         | SUPREME COURT OF INDIA            | 1996 | अनधिकृत रूप से संचार और निजी जीवन में पुलिस हस्तक्षेप निजता के मौलिक अधिकार का उल्लंघन है।           |
| 08 | <i>Ragula Ramulu v. State of Telangana</i><br>HBHC010339802020                          | HIGH COURT FOR STATE OF TELANGANA | 2020 | पुलिस निगरानी कानूनी अधिकार और ठोस आधार के बिना केवल उत्पीड़न का माध्यम नहीं बन सकती।                |
| 09 | <i>Akash v. State of Madhya Pradesh</i><br>MPHC020093682020                             | HIGH COURT OF MADHYA PRADESH      | 2023 | इलेक्ट्रॉनिक रिकॉर्ड/सीसीटीवी फुटेज को साक्ष्य में शामिल करने के लिए धारा 65B की तकनीकी शर्तें।      |
| 10 | <i>N.K. Sodhi v. Union of India</i><br>PHHC010576702021                                 | HIGH COURT OF PUNJAB AND HARYANA  | 2021 | सुरक्षात्मक सीसीटीवी कैमरे यदि पड़ोसी के घर में नहीं झाँकते, तो वे कानूनी हैं।                       |
| 11 | <i>State by Karnataka Lokayukta Police Station v. M.R. Hiremath</i><br>ESCR010009642019 | SUPREME COURT OF INDIA            | 2019 | धारा 65B(4) प्रमाणपत्र साक्ष्य प्रस्तुति (ट्रायल) के चरण में आवश्यक है, चार्जशीट के समय नहीं।        |
| 12 | <i>State of Madhya Pradesh v. Naveen @ Ajay</i><br>MPHC020131512018                     | HIGH COURT OF MADHYA PRADESH      | 2018 | इलेक्ट्रॉनिक साक्ष्य के मोड ऑफ प्रूफ पर आपत्ति केवल ट्रायल के दौरान ही उठानी होगी।                   |
| 13 | <i>Deepti Kapur v. Kunal Julka</i><br>DLHC010069982019                                  | HIGH COURT OF DELHI               | 2020 | निजता का उल्लंघन कर चुपके से प्राप्त रिकॉर्डिंग भी प्रासंगिक होने पर साक्ष्य में स्वीकार्य है।       |

| #  | मुकदमा                                                           | न्यायालय            | वर्ष | मुख्य निर्णय                                                                              |
|----|------------------------------------------------------------------|---------------------|------|-------------------------------------------------------------------------------------------|
| 14 | <i>Shuvendra Mullick v. Indranil Mullick</i><br>WBCHCA0256402024 | CALCUTTA HIGH COURT | 2025 | साझा आवासीय गलियारों में सुरक्षा हेतु बिना सहमति सीसीटीवी लगाना निजता का उल्लंघन नहीं है। |

## IV. मुकदमे का विवरण 14 केस फ़ाइलें

### 01 P. Gopalkrishnan @ Dileep v. State of Kerala and Anr.

SUPREME COURT OF INDIA • 2019-11-29 • 2019 INSC 1303

यह मामला मुख्य रूप से इस कानूनी प्रश्न पर केंद्रित था कि क्या एक memory card या pen drive की सामग्री, जो Information Technology Act के तहत एक 'electronic record' है, उसे Evidence Act के तहत 'document' माना जा सकता है। न्यायालय ने निर्णय दिया कि इलेक्ट्रॉनिक रिकॉर्ड भी 'document' की परिभाषा में आते हैं। परिणामस्वरूप, Cr.P.C. की Section 207 के तहत, अभियुक्त को मुकदमे के दौरान इस्तेमाल होने वाली ऐसी सभी सामग्री की नकल प्राप्त करने का अधिकार है। हालांकि, न्यायालय ने यह भी स्पष्ट किया कि बलात्कार जैसे मामलों में, जहां पीड़ित की निजता (privacy) और सम्मान का प्रश्न हो, वहां न्यायालय उचित संतुलन बना सकता है। ऐसी स्थिति में, पूर्ण प्रतिलिपि देने के बजाय, अभियुक्त और उसके वकील को केवल सामग्री के निरीक्षण (inspection) की अनुमति दी जा सकती है।

**निर्णय** सर्वोच्च न्यायालय ने स्पष्ट किया कि पेन ड्राइव या मेमोरी कार्ड में दर्ज कोई भी वीडियो फुटेज कानूनी रूप से एक 'दस्तावेज' है। निष्पक्ष सुनवाई के सिद्धांत के तहत अभियुक्त को इसकी डिजिटल कॉपी प्राप्त करने का अधिकार है, हालांकि, संवेदनशील मामलों (जैसे बलात्कार या यौन उत्पीड़न) में पीड़ित की निजता के अधिकार की रक्षा के लिए न्यायालय सुरक्षात्मक शर्तें लगा सकता है।

“A video recording of an incident which is in issue is admissible 37 . There is no difference in terms of admissibility between a direct view of an incident and a view of it on a visual display unit of a camera or on a recording of what the camera has filmed. A witness who sees an incident on a display or a recording may give evidence of what he saw in the same way as a witness who had a direct view 38 .” (emphasis supplied) 31. In order to examine the purport of the term “matter” as found in Section 3 of the 1872 Act, Section 29 of the 1860 Code and Section possession of the prosecutor or of a third person, its production may generally be compelled by issue of a witness order under the Criminal Procedure (Attendance of Witnesses) Act, 1965 s. 2 (as substituted and amended) or under the Magistrates’ Court Act, 1980 s. 97 (as substituted and amended) (see para 1409 ante). The defendant cannot, however, be served with such an order, lest he be forced to incriminate himself: *Trust Houses Ltd. v. Postlethwaite* (1944) 109 JP 12. 35 R. v. Maqsood Ali, R. v. Ashiq Hussain [1966] 1 QB 688, 49 Cr.App. Rep 230, CCA. For the considerations relevant to the determination of admissibility see *R. v. Stevenson*, *R. v. Hulse*, *R. v. Whitney* [1971] 1 All ER 678, 55 Cr.App. Rep 171; *R. v. Robson*, *R. v. Harris* [1972] 2 All ER 699, 56 Cr. App. Rep 450. See also *R. v. Senat*, *R. v. Sin* (1968) 52 Cr. App. Rep 282, CA; *R. v. Bailey* [1993] 3 All ER 513, 97 Cr.App. Rep 365, CA. Where a video recording of an incident becomes available after the witness has made a statement, the witness may view the video and, if necessary, amend his statement so long as the procedure adopted is fair and the witness does not rehearse his evidence: *R. v. Roberts (Michael)*, *R. v. Roberts (Jason)* [1998] Crim. LR 682, 162 JP 691, CA. 36 *R. v. Maqsood Ali*, *R. v. Ashiq Hussain* [1966] 1 QB 688, 49 Cr.App. Rep 230, CCA. As to the use of tape recordings and transcripts see *R. v. Rampling* [1987] Crim. LR 823, CA; and see also *Buteria v. DPP* (1986) 76 ALR 45, Aust. HC. As to the tape recording of police interviews see para 971 et seq ante; and as to the exclusion of a tape recording under the Police and Criminal Evidence Act, 1984 s. 78 (as amended) (see para 1365 ante) as unfair evidence see *R. v. H* [1987] Crim. LR 47, Cf *R. v. Jelen*, *R. v. Karz* (1989) 90 Cr. App. Rep 456, CA (tape recording admitted despite element of entrapment). P. GOPALKRISHNAN @ DILEEP v. STATE OF KERALA AND ANR. [A. M. KHANWILKAR, J.] A B C D E F G H 466 SUPREME COURT REPORTS [2019] 17 S.C.R. 3(18) of the General Clauses Act, and to ascertain whether the contents of the memory card can be regarded as “document”, we deem it appropriate to refer to two Reports of the Law Commission of India. In the 42nd Law Commission Report 39, the Commission opined on the amendments to the 1860 Code. Dealing with Section 29 of the 1860 Code, the Commission opined as under:- “2.56. The main idea in all the three Acts is the same and the emphasis is on the “matter” which is recorded, and not on the substance on which the matter is recorded.”

SUPREME COURT OF INDIA • 2019

स्रोत ESCR010004292019

## 02 Justice K. S. Puttaswamy (Retd.) v. Union of India

SUPREME COURT OF INDIA • 2017-08-24 • 2017 INSC 801

यह निर्णय भारत के सर्वोच्च न्यायालय की नौ-न्यायाधीशों की संवैधानिक पीठ द्वारा दिया गया एक ऐतिहासिक फैसला है। न्यायालय ने सर्वसम्मति से घोषित किया कि 'Right to privacy' (निजता का अधिकार) संविधान के Part III के तहत, विशेष रूप से Art. 21 के अंतर्गत जीवन और व्यक्तिगत स्वतंत्रता का एक अभिन्न अंग है। न्यायालय ने अपने पिछले फैसलों, *M. P. Sharma* और *Kharak Singh* को इस हद तक रद्द कर दिया, जहाँ उन्होंने निजता को संवैधानिक अधिकार मानने से इनकार किया था।

**निर्णय** नौ न्यायाधीशों की संविधान पीठ ने सर्वसम्मति से घोषित किया कि निजता का अधिकार अनुच्छेद 21 के तहत एक संवैधानिक गारंटीकृत मौलिक अधिकार है। यद्यपि अपराध की रोकथाम और जांच राज्य के वैध उद्देश्य हैं, फिर भी किसी नागरिक की स्वतंत्रता और निजता पर कोई भी प्रतिबंध कानून के अनुसार और आनुपातिक होना चाहिए।

"Prevention and investigation of crime and protection of the revenue arc among the legitimate aims of the state. Digital platforms arc a vital tool of ensuring good governance in a social welfare state. Information technology - legitimately F deployed is a powerful enabler in the spread of innovation and knowledge. [Para 181][839-F-H; 840-A-B] M P Sharma v. Satish Chandra, District Magistrate, Delhi [1954] SCR 1077; Kharak Singh v. State of Uttar Pradesh [1964] 1 SCR 332 - partly overruled. a Minister of Health v. Treatment Action Campaign (2002) 5 SA 721 (CC) - referred to. B. Shiva Rao, The Framing of India's Constitution, Indian Institute of Public Administration (1967), Vol. H 602 A B SUPREME COURT REPORTS [2017] 10 S.C.R. 2, at page 75; Amartya Sen, Development as Freedom, Oxford University Press (2000), at page 180; Amartya Sen, 'The Country of First Boys', Oxford University Press, Pg.80-81; Edwin Cameron and Max Taylor, 'The Untapped Potential of the Mandela Constitution', Public Law (2017); Anna Jonsson Cornell, 'Right to Privacy', Thomas Cooley, Treatise on the Law of Torts (1888), 2<sup>d</sup> edition - referred to. PERR. F. NARIMAN, J. 1. It is well settled that in the absence of any specific prohibition in municipal law, international law forms part of Indian law and consequently must be read into or as part of 'our fundamental rights. [Para 29] [866 • D-E] Bachan Singh v. State of Punjab (1980) 2 SCC 684; Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors. (1981) 1 SCC 608 : [1981] 2 SCR 516; Vishaka & Ors. v. State of Rajasthan & Ors. (1997) 6 SCC 241 : [1997] 3 Suppl. SCR 404; National Legal Services Authority v. Union of India (2014) 5 SCC 438 - relied on. E Semayne's case 77 ER 194; Huckle v. Money 95 ER 768 (1763); Entick v. Carrington 95 ER 807 (1765); Da Costa v. Jones 98 ER 1331 (1778); Burnet v. Coronado Oil & Gas Co. 285 U.S. 393 at 406 (1932) - referred to F 2. Given the fact that M.P. Sharma judgment dealt only with Article 20(3) and not with other fundamental rights; given the fact that the 1948 Universal Declaration of Human Rights containing the right to privacy was not pointed out to the Court; given the fact that it was delivered in an era when fundamental rights had to be read disjunctively in watertight compartments; and given the fact that Article 21 as we know it today only sprung into life in the post Mahatma Gandhi era, this judgment is completely out of harm's way insofar as the grounding of the right to privacy in the fundamental rights chapter is concerned. The majority judgment of 4 Judges in Kharak Singh case struck down the sub-clause (b) of Regulation 236 pertaining to domiciliary visits at night. JUSTICE K S PUTTASWAMY (RETD.) v. UNION OF INDIA 603 visits at night. This Court said that 'life' used in Article 21 must mean something more than mere animal existence and 'liberty' something more than mere freedom from physical restraint. The majority judgment held that Article 19(1) and Article 21 are to be read separately, and so read held that Article 19(1) deals with particular species or attributes of personal liberty, whereas Article 21 takes in and comprises the residue. If the passage in the judgment dealing with domiciliary visits at night and striking it down is contrasted with the later passage upholding the other clauses of Regulation 236, it becomes clear that it cannot be said with any degree of clarity that the majority judgment upholds the right to privacy as being contained in the fundamental rights concept as the majority judgment contradicts itself on this vital aspect, it would be correct to say that it cannot be given much value as a binding precedent."

### 03 Mohammed Azmathullah Khan v. State of Telangana

HIGH COURT FOR STATE OF TELANGANA • 2019-04-18 • WP/5404/2019

याचिकाकर्ता ने इस आधार पर रिट याचिका दायर की कि पुलिस द्वारा उसके विरुद्ध अवैध रूप से rowdy sheet खोली गई है, जो उसके Article 21 के तहत जीवन और निजता के अधिकार का उल्लंघन करती है। पुलिस का तर्क था कि याचिकाकर्ता कई आपराधिक मामलों में शामिल है, इसलिए जनहित और शांति व्यवस्था बनाए रखने के लिए यह आवश्यक है। न्यायालय ने निर्णय दिया कि rowdy sheet खोलना और निगरानी रखना एक गंभीर मामला है जो मौलिक अधिकारों को प्रभावित करता है। न्यायालय ने स्पष्ट किया कि Police Standing Orders (PSO) मात्र कार्यकारी निर्देश हैं और इनका उपयोग मनमाने ढंग से नहीं किया जा सकता। यदि पुलिस निगरानी रखती है, तो उसे यह सिद्ध करना होगा कि यह कानून के अनुरूप और उचित है। न्यायालय ने मामले को अधिकारियों के पास पुनः विचार हेतु भेजा।

**निर्णय** उच्च न्यायालय ने माना कि पुलिस द्वारा की जाने वाली अनधिकृत और अत्यधिक बाधक (obtrusive) निगरानी जिसमें रिमोट कंट्रोल ऑडियो-वीडियो गैजेट्स का मनमाना उपयोग शामिल हो, नागरिक की मानसिक शांति और प्रतिष्ठा को नष्ट करती है तथा अनुच्छेद 21 का उल्लंघन करती है। कानून के शासन में केवल गैर-बाधक और विधिवत समर्थित निगरानी की ही अनुमति दी जा सकती है।

“Such surveillance and watch which is not authorised by law may be unconstitutional. Such surveillance and watch even if it is authorised by law but if it is not in accordance with that law would equally be unconstitutional.” 8.2. In *Sunkara Satyanarayana*, it is held: “23. Surveillance by the police makes very serious inroads into the life of a person. It even grossly violates the right of persons to privacy. Obtrusive surveillance does not leave a citizen alone. With the subtle methods of telephone tapping, telescope watching, remote controlled audio and video recording gadgets, a citizen subjected to surveillance can never have mental peace and thus his life and liberty at every movement would be restricted. A person with lot of restrictions cannot be expected to lead a dignified life and exercise his right to liberty and other freedoms. A citizen's life would become miserable. Such a situation is worse than imal existence, For these reasons can it be said that there is a 'right' against surveillance? ... 30.....Before examining the case law as decided by this Court, it is apposite to note the intention and objectives behind such provisions dealing with surveillance. There cannot be two opinions that police should vigorously enforce the law. It does not however mean that they should rigorously violate the constitutional values and constitutional rights. In enforcing the law they shall not violate the Supreme law of the Nation. The police are charged with responsibility of controlling crime. Control of crime necessarily involve prevention of crime. To prevent crime it is permissible that police should keep a person known to be habitual offender or known to be 'trouble maker' under a watch. What is most objectionable to civilized mind is the use of extra legal methods by the police for prevention of crimes. Surveillance of a person in an arbitrary and unreasonable manner and contrary to the provisions of law, is one such extra legal method which cannot be countenanced by the Constitutional Court. 7 31. Illegal surveillance makes arbitrary and obtrusive intrusions into one's right to privacy and violates Article 21 of Constitution of India. But keeping a person under unobtrusive watch to prevent crime and to maintain law and order, as authorised by law, is reasonable restriction permissible under the Constitution. ... 53. Therefore the right to privacy under Article 21 of the Constitution is a Human right essential for human dignity without which social justice cannot be achieved.” 8.3. In paragraph 49 of *Sunkara Satyanarayana*, learned single Judge culled out principles on police surveillance against history/rowdy sheeters. It reads as under: “49. Therefore, in the context of police surveillance against history sheeters and rowdy sheeters, the following principles vis-a-vis right to privacy under Article 21 of the Constitution would emerge: (i) If the surveillance is not obtrusive, the same does not violate the right to privacy under Article 21 of the Constitution of India. The same does not either in material or palpable form affect the right of the suspect to move freely nor can it be held to deprive the history sheeter / rowdy sheeter of his personal liberty. (ii) In testing whether fundamental right of free movement or personal liberty is infringed or not, it is to be remembered that infringement should be direct as well as tangible. If surveillance hurts personal sensitivities, the same is not a violation, for the constitution makers never intended to protect mere personal sensitiveness.”

HIGH COURT FOR STATE OF TELANGANA • 2019

स्रोत HBHC010102192019

## 04 Sundar @ Sundarrajan v. State by Inspector of Police

SUPREME COURT OF INDIA • 2023-03-21 • 2023 INSC 264

यह मामला एक 7 वर्षीय बच्चे के अपहरण और हत्या से संबंधित है, जिसमें अभियुक्त को निचली अदालतों द्वारा दोषी ठहराया गया था और मृत्युदंड दिया गया था। सुप्रीम कोर्ट ने दोषसिद्धि की पुष्टि करते हुए कहा कि मामले में कोई संदेह नहीं है। हालांकि, सजा के निर्धारण पर विचार करते हुए, न्यायालय ने पाया कि अभियुक्त को अपनी बात रखने का उचित अवसर नहीं दिया गया था और 'Rarest of rare' सिद्धांत के तहत सुधार की संभावनाओं पर विचार नहीं किया गया था। परिणामस्वरूप, न्यायालय ने मृत्युदंड को आजीवन कारावास में बदल दिया, जिसमें कम से कम 20 वर्ष तक कोई छूट (remission)

नहीं मिलेगी। इसके अलावा, न्यायालय ने जेल के रिकॉर्ड छिपाने के लिए संबंधित पुलिस अधिकारी के खिलाफ स्वतः संज्ञान लेते हुए अवमानना (Contempt of Court) की कार्यवाही शुरू करने का निर्देश दिया।

**निर्णय** सर्वोच्च न्यायालय ने इलेक्ट्रॉनिक साक्ष्यों (जैसे सीसीटीवी रिकॉर्डिंग) को पेश करने की विधि को रेखांकित करते हुए दोहराया कि साक्ष्य अधिनियम की धारा 65B(4) का प्रमाण पत्र केवल तब आवश्यक होता है जब द्वितीयक इलेक्ट्रॉनिक रिकॉर्ड (secondary evidence) अदालत के समक्ष लाया जा रहा हो। यदि मूल इलेक्ट्रॉनिक उपकरण (जैसे मेमोरी कार्ड, हार्ड डिस्क) ही साक्ष्य में पेश कर दिया जाए, तो प्रमाण पत्र की कोई आवश्यकता नहीं होती।

“Sub-section (1) of Section 65-B makes admissible as a document, paper printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in Sub-section (2) of Section 65-B. Secondary evidence of contents of document can also be led Under Section 65 of the Evidence Act. PW 13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it. (emphasis supplied) 35. A two judge bench in Shafi Mohammed v State of Himachal Pradesh 13 strayed even farther away from Anvar P .V . and held that the Sections 65A and 65B cannot be held to be a complete code on the subject. It held that: 24. We may, however, also refer to the judgment of this Court in Anvar P .V . v. P .K. Basheer , delivered by a three-Judge Bench. In the said judgment in para 24 it was observed that electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act to which procedure of Section 65-B of the Evidence Act was not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act was required to be followed and a contrary view taken in Navjot Sandhu that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65-B of the Evidence Act. 25 . Though in view of the three-Judge Bench judgments in Tomaso Bruno and Ram Singh , it can be safely held that electronic evidence is admissible and provisions under Sections 65- A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted 13 2018 (2) SCC 801 A B C D E F G H 1039 subject to the court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4). 26 . Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P .V . , this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the court and the expression “document” is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. (emphasis supplied) 36. The Court in Shafi Mohammed even diluted the requirement of the Section 65B certificate. This led to contradictory positions in these cases vis-à-vis the law laid down by Anvar P .V . which was settled by a reference to a three judge bench of this Court in Arjun Panditrao Khotkar. The Court reiterated Anvar P .V . and held Tomaso Bruno per incuriam and overruled Shafi Mohammed . It held that: 73. The reference is thus answered by stating that: 73.1. Anvar P .V . , as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno , being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad and the judgment dated 3-4-2018 reported as Shafhi Mohd. v. State of H.P . , do not lay down the law correctly and are therefore overruled. 73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced.”

SUPREME COURT OF INDIA • 2023

स्रोत ESCR010003702023

## 05 Md. Abdul Kareem v. State of Telangana

HIGH COURT FOR STATE OF TELANGANA • 2019-04-09 • WP/4978/2019

यह मामला एक व्यक्ति द्वारा दायर की गई याचिका के बारे में है जिसके खिलाफ बरी होने के बावजूद पुलिस द्वारा 'rowdy-sheet' जारी रखी गई थी। याची पर IPC की विभिन्न धाराओं के तहत मामला दर्ज किया गया था, लेकिन बाद में निचली अदालत ने उसे बरी कर दिया। याची ने तर्क दिया कि बरी होने के बाद भी rowdy-sheet को जारी रखना उसकी प्रतिष्ठा और Article 21 के तहत निजता के अधिकार का उल्लंघन है। न्यायालय ने माना कि पुलिस का यह कदम मनमाना था और बिना किसी ठोस कारण के जीवन और स्वतंत्रता के मौलिक अधिकारों का हनन है। तदनुसार, न्यायालय ने rowdy-sheet को अवैध घोषित करते हुए याचिका स्वीकार कर ली।

**निर्णय** न्यायालय ने स्पष्ट किया कि पुलिस के पास मनमाने ढंग से नागरिकों पर निगरानी (surveillance) रखने या उनका डेटा अनधिकृत रूप से एकत्र करने का अधिकार नहीं है। पुलिस के कार्यकारी निर्देश (Standing Orders) कानून का स्थान नहीं ले सकते, और प्रत्येक व्यक्ति को गरिमा के साथ जीने और अपनी प्रतिष्ठा बनाए रखने का अधिकार है।

“Compelling public interest may require intrusion into privacy of a person but while doing so great care and caution has to be observed. Thus, if police open a rowdy-sheet to keep surveillance on a person it must show justification, impelled to ensure peace and order in the society. 8. The scope and width of Article 21 of the Constitution of India, scope of power of police to infringe privacy of a person and scope and ambit of Police Standing Orders (for short, ‘PSO’) were vividly analysed and dealt with extensively by two learned Judges of this Court, one of whom, Hon’ble Sri Justice B.Sudershan Reddy, adorned the office of Judgeship in the Supreme Court of India, in PNR,J W.P.No.4978 of 2019 4 Mohammed Quadeer and others Vs. Commissioner of Police, Hyderabad and another 1 and Sunkara Satyanarayana Vs State of Andhra Pradesh, Home Department and others 2. In both these decisions it is held that PSOs are non statutory executive instructions and have no binding force of law. 8.1. In Mohammed Quadeer and others, it is held: “31. Opening of a rowdy sheet against a citizen is undoubtedly fraught with serious consequences. Article 21 of the Constitution of India guarantees right to life with dignity and the right to live, as a dignified man, carries with it the right to reputation. Right to reputation is an integral part of right to life guaranteed by Article 21, and such a right cannot be deprived except in accordance with the procedure established by law. Such laws which authorise the Police to open rowdy sheets and exercise surveillance are required to be very strictly construed. Opening of the rowdy sheets and retention thereof except in accordance with law would amount to infringement of fundamental right guaranteed by Article 21 of the Constitution of India. It is true that the State is duty bound at all levels to protect the persons and property from the criminals and criminal activity. Prevention of organised crime is an obligation on the part of the State.” 8.2. In Sunkara Satyanarayana, it is held: “23. Surveillance by the police makes very serious inroads into the life of a person. It even grossly violates the right of persons to privacy. Obtrusive surveillance does not leave a citizen alone. With the subtle methods of telephone tapping, telescope watching, remote controlled audio and video recording gadgets, a citizen subjected to surveillance can never have mental peace and thus his life and liberty at every movement would be restricted. A person with lot of restrictions cannot be expected to lead a dignified life and exercise his right to liberty and other freedoms. A citizen's life would become miserable. Such a situation is worse than animal existence, For these reasons can it be said that there is a 'right' against surveillance? xxxxx 1 1999 (3) ALD 60 2 1999 (6) ALT 249 PNR,J W.P.No.4978 of 2019 5 31. Illegal surveillance makes arbitrary and obtrusive intrusions into one's right to privacy and violates Article 21 of Constitution of India. But keeping a person under unobtrusive watch to prevent crime and to maintain law and order, as authorised by law, is reasonable restriction permissible under the Constitution. xxxxx 53. Therefore the right to privacy under Article 21 of the Constitution is a Human right essential for human dignity without which social justice cannot be achieved.” 8.3. In paragraph-49 of Sunkara Satyanarayana, learned single Judge culled out principles on police surveillance against history/ rowdy sheeters. It reads as under: “49. Therefore, in the context of police surveillance against history sheeters and rowdy sheeters, the following principles vis-a-vis right to privacy under Article 21 of the Constitution would emerge: (i) to (vii) xxxxxx (viii) The above principles that emerge from various binding precedents are only general principles.”

HIGH COURT FOR STATE OF TELANGANA • 2019

स्रोत HBHC010094792019

## 06 Jisal Rasak v. State of Kerala

HIGH COURT OF KERALA • 2019-09-30 • CRL.MC/4148/2019

यह मामला आरोपी को CCTV फुटेज की डिजिटल प्रतियां उपलब्ध कराने के अधिकार से संबंधित है। याचिकाकर्ता, जिस पर IPC के तहत विभिन्न गंभीर अपराधों का आरोप लगाया गया था, ने अभियोजन पक्ष द्वारा अदालत में पेश की गई CCTV फुटेज, FSL रिपोर्ट और अन्य संबंधित दस्तावेजों की प्रतियां मांगी थीं। निचली अदालत ने अन्य दस्तावेजों को जारी करने का आदेश दिया लेकिन 'सामग्री साक्ष्य' (material object) होने का हवाला देते हुए CCTV फुटेज की डिजिटल प्रतियां देने से इनकार कर दिया। उच्च न्यायालय ने माना कि Information Technology Act, 2000 के आने के बाद, इलेक्ट्रॉनिक रिकॉर्ड 'दस्तावेजी साक्ष्य' (documentary evidence) की श्रेणी में आते हैं। न्यायालय ने निष्पक्ष सुनवाई के सिद्धांत पर जोर देते हुए आदेश दिया कि आरोपी को बचाव के लिए सभी प्रासंगिक डिजिटल साक्ष्य उपलब्ध कराए जाने चाहिए।

**निर्णय** उच्च न्यायालय ने माना कि आपराधिक मुकदमों में डिजिटल सीसीटीवी फुटेज को भौतिक वस्तु नहीं बल्कि 'दस्तावेजी साक्ष्य' माना जाएगा। इसलिए अभियुक्त अपने प्रभावी बचाव के लिए सीसीटीवी फुटेज की डिजिटल प्रतिलिपि प्राप्त करने का हकदार है, और धारा 65B की शर्तें इसकी स्वीकार्यता के लिए पूरी की जानी चाहिए।

“For instance, in a case of brutal sexual abuse, if the incident has been videotaped, in view of the element of privacy or to prevent misuse, copy may be refused. In a case in which the accused is being prosecuted for possessing pedophilic material, copies of the same can be refused. In such cases, the Court may grant permission to the counsel or the accused to have a private screening to have a proper defense. Same is the case in a terrorism prosecution, wherein national security interests demands non-disclosure of the digital evidence, which has been collected. These are merely illustrative and not exhaustive. As an adversarial system is followed in our country, the accused is entitled to a copy of the records so that he can bring to the notice of the courts exculpatory material or such other aspects in the prosecution case, which may be to his advantage. 36. At this stage, the question of certification under Section 65B of the Indian Evidence Act was raised by the learned counsel appearing for the petitioner. 37. Any documentary evidence by way of an “electronic record” under the Indian Evidence Act can be proved only in accordance with the procedure CRL.MC:4148/2019 23 prescribed under Section 65B of the Indian Evidence Act, 1872. This is what is provided under Sections 59 and 65A of the Indian Evidence Act. Section 59 provides that all facts except the contents of document or “electronic evidence”, may be proved by oral evidence. Section 65A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B of the Act. Section 65B deals with the admissibility of “electronic records”. Section 65A and Section 65B were introduced into the Evidence Act in 2000 providing special processes for proving copies of extracts of electronic records. It provided a method of certifying the authenticity of the copy and the integrity of the content of such copy. In other words, any electronic record, which is printed, stored, recorded or copies made on to an optical or magnetic media and produced by a computer will be deemed to be a document only if the conditions set out in Section 65B(1) of the Evidence Act are satisfied and it was held so in *Anwar P.V. v P.K. Basheer*<sup>9</sup>. However, in *Shafhi Mohammed v. State of H.P.*<sup>10</sup> the Apex Court revisited the principles laid down in *Anwar P.V.* (supra) and it was held that the applicability of procedural requirement under Section 65B(4) of the Evidence Act for furnishing certificate is not always mandatory. Later, in the case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (Civil Appeal No(s). 2407 of 2018 and connected cases) by interim order dated 26.7.2019, <sup>9</sup> (2014) 10 SCC 473 <sup>10</sup> (2018) 5 SCC 311 CRL.MC:4148/2019 24 their Lordships of the Apex Court had ordered that in view of *Anwar P.V.* (supra), the pronouncement of this Court in *Shafhi Mohammad* (supra) needs reconsideration and the matter was referred to be considered by a larger Bench. However, in the instant case, the said question is merely academic as Sri.Suman Chakravarthy, the learned Senior Public Prosecutor, submitted that the requisite certification under Section 65B of the Indian Evidence Act has been obtained for the electronic evidence. In that view of the matter, there is no embargo in providing to the accused a copy of the CCTV Footage, which is relied on by the prosecution in the subject case. 38. In the case on hand, I have no doubt in my mind that the investigating agency has committed a grave error by producing the CCTV footage as a material object and also in refusing to give a copy of the same to the accused. The accused is entitled to a digital copy of the CCTV footage, which is relied on by the prosecution to prove the charge. That being the case, the order passed by the learned Magistrate will stand set aside. 39. This petition will stand allowed. The digital copies of the electronic record relied on by the prosecution and sought for by the petitioner shall be issued to him by imposing appropriate safeguards that the jurisdictional court may deem fit and proper. CRL.MC:4148/2019 25 Before parting, I place on record my deep sense of appreciation to Sri.John S.”

## 07 People's Union for Civil Liberties v. Union of India

SUPREME COURT OF INDIA • 1996-12-18 • 1996 INSC 1509

यह मामला टेलीफोन टैपिंग की संवैधानिकता से संबंधित है। याचिकाकर्ता ने भारतीय टेलीग्राफ अधिनियम, 1885 की धारा 5(2) को चुनौती दी थी। न्यायालय ने स्पष्ट किया कि निजता का अधिकार (Right to privacy) संविधान के अनुच्छेद 21 के तहत जीवन और व्यक्तिगत स्वतंत्रता का एक अभिन्न अंग है और टेलीफोन पर बातचीत निजता के अधिकार में शामिल है। न्यायालय ने कहा कि टेलीफोन टैपिंग केवल तभी की जा सकती है जब सार्वजनिक आपातकाल या सार्वजनिक सुरक्षा का मुद्दा हो। चूंकि सरकार ने इस प्रक्रिया के लिए उचित नियम नहीं बनाए थे, इसलिए मनमारी को रोकने के लिए न्यायालय ने कुछ दिशानिर्देश जारी किए। इनमें सचिव स्तर के अधिकारियों द्वारा आदेश जारी करना, आदेशों की समय सीमा निर्धारित करना और इंटरसेप्ट की गई सामग्री के रिकॉर्ड रखने जैसे सुरक्षा उपाय शामिल हैं।

**निर्णय** सर्वोच्च न्यायालय ने माना कि "एक नागरिक का घर उसका किला है।" बिना किसी कानूनी अधिकार या प्रक्रिया के, पुलिस द्वारा किसी के घर में अनधिकृत घुसपैठ करना या उसकी निजी बातचीत को रिकॉर्ड करना (जैसे अनधिकृत टेलीफोन टैपिंग) अनुच्छेद 21 के तहत निजता और स्वतंत्रता के अधिकार का सीधा उल्लंघन है।

"We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment." Murphy, J. considered that such invasion was against "the very essence of a scheme of ordered liberty". It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." and that our constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man - an ultimate essential of ordered liberty, if not of the very concept of civilisation. An English Common Law maxim asserts "every man's house is his castle" and in Semayne's case (1604) 5 Coke 91, where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose". We are not unmindful of the fact that Semayne's case was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value. In our view cl.(b) of Regulation 236 is plainly violative of Art. 21 and as there is no "law" on which the same could be justified it must be struck down as unconstitutional." Suljba Rao J. (as the learned Judge then was) in his minority opinion also came to the conclusion that right to privacy was a part of Article 21 of the Constitution but went a step further and struck down Regulation 236 as a whole on the following reasoning; "Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle": it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J., in Wolf v. Colorado, (1949) 338 US 25, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movements have a direct effect on his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Art. 21 as a right of an individual to be free from restriction or encroachments on his person, whether those restriction or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Art. 21 of the Constitution."

SUPREME COURT OF INDIA • 1996

स्रोत ESCR010005121996

## Ragula Ramulu v. State of Telangana

HIGH COURT FOR STATE OF TELANGANA • 2020-12-02 • WP/20843/2020

यह याचिका पुलिस द्वारा याचिकाकर्ता के खिलाफ 'Rowdy-Sheet' खोलने के निर्णय को चुनौती देने के लिए दायर की गई थी। याचिकाकर्ता ने तर्क दिया कि यह कार्रवाई असंवैधानिक है और Article 21 के तहत उसकी निजता और स्वतंत्रता के अधिकार का उल्लंघन करती है। न्यायालय ने माना कि यद्यपि राज्य का शांति और व्यवस्था बनाए रखना प्राथमिक कर्तव्य है, लेकिन police को 'Rowdy-Sheet' खोलते समय अत्यधिक सावधानी बरतनी चाहिए। Surveillance का निर्णय केवल तभी उचित है जब ठोस सामग्री मौजूद हो और यह केवल उत्पीड़न का माध्यम न बने। न्यायालय ने मामले को पुलिस प्राधिकारियों के पास फिर से विचार करने के लिए वापस भेज दिया, ताकि वे यह सुनिश्चित कर सकें कि क्या वास्तव में 'Rowdy-Sheet' की आवश्यकता है।

**निर्णय** उच्च न्यायालय ने इस बात पर जोर दिया कि यद्यपि राज्य सुरक्षा का हित महत्वपूर्ण है, तथापि प्रत्येक नागरिक को किसी भी प्रकार के बाहरी हस्तक्षेप या अवलोकन के बिना अपनी शांतिपूर्ण गतिविधियों को संचालित करने का मौलिक अधिकार है। पुलिस द्वारा अत्यधिक बाधक निगरानी की अनुमति तभी है जब वह कानून सम्मत सीमाओं के भीतर हो।

"Both the competing interests are to be reconciled. This much is clear so far as our Constitutional system is concerned that P\l?r li /' \r, lfrfli \"/lrr\_-1r 6 tnir'ustolr LllLo Pllsolr:rl LLlJCil\ \\\lfo' 1 'ln aLLlhoil't\ oL lrr\$ is torbiclclcll Survcillar-lce and \\\al'hlllg ()l lno\\\lll\"( iis ol r 'Lr'iz'n b\ LLlr I)olic' ls not 'L matLe. ol coLlrsc Such rlgHls cLlrL bc excr'cisecl b\ rhc I'olccc onh trl a.cordance \$'ith law Nhrch pc'mils such su1eillilnce' l'he acLton tn lhis reg.rrd \\\'hich is in accordancc uith larv mal resLLlL in violarion of the fundamenlal righls guaranlccal b\ ArrlLle ll ol thc Cr'nrrrturrLun of India Ever]\ crriren has illndamenLal right and cntitiecl to indLrlge in harmlcss aclrvities u'ithout observation o. intel-lereccc It is ir right to be leli alone The gLlarantee in Article 8 ol the European Convelnion ol Human Rights that Everlone has the right to respect Ior his private and famlly life, his home and has correspondence\" reflects both the individual s psvchologit:al need lo preservc arn intrusion\_irec zone ol personalitS and lamil, and the anguish and stress which can be suffered \$,hen that zonc is violatcd The saving that 'an Englishman s home is his castle lvould be equalll applicable to Indian situation and it can be said that an Indian citizen s home is his castle. 1 1. Learned singlc Satyanarayana Vs State Judge of this Court in Sunkara of Andhra Pradesh, Home Department and others2, held as under \"23. Surveillance by the police makes very serious inroads into rhc lifc ofa person. It even grossh violarcs rhc right ol persons to privac,'... Obtrusive surveillance cloes not leave ii crliz('r'r alon,- With the subll: rn(r)rhods {r1 telephone tapping, telescopc rvaLching. rcmotc conlrollcll irudio and video ;cr:orcling gadgcts. a citizen sulrlr,cteci r() survcrlLirrr{r,(iirr nL,\|r lri,\,( r:l(nlal pcecr rrrrci thlrs hrs iili iLrrd Lrlr('r'rr ili r'r.cr\ iro!rnr.rl \\\u (l)r r'- 'strL(r(L A pcrrorr r'ith lot olrcstlictrons earnrLrL bc cxcpcLtc(l lo ltarl ir rlrgrnrlrt<1 lrlt and rixcr'cise h1s right to libcrtl irrrrl oLhcr lrcce.loms . { crLrzc n s Lric \\\oLlci bcc())Drc miserabie. Such a sruation is worse thtrn i.rnim:rl exrrstcnce. For' Lhese rcasons can it be said LhaL Lhere is a light agarnst survcillanr:L:? \"49. Therefore, in the context of police surveillance against history sheeters and rolvdy sheeters, the lollowing principles vis-a-vis right ro privacy under Article 21 of the Constitution would emerge: (i) II the surveillance is nL,t obtrusive, the same does not violate the right to privacy under Article 21 of the Constitution of India. The same does not either in material or palpable form aflect the right of the suspect to move freely nor can it be held to deprive the history sheetcr / rou,dy sheetcr of his pcrsonal liberty."

HIGH COURT FOR STATE OF TELANGANA • 2020

स्रोत HBHC010339802020

## Akash v. State of Madhya Pradesh

HIGH COURT OF MADHYA PRADESH • 2023-12-21 • CRA/3229/2020

यह मामला अपहरण और हत्या के प्रयास से संबंधित है। अभियोजन पक्ष के अनुसार, अपीलकर्ताओं ने पीड़ित Mridul को इसलिए अगवा किया क्योंकि वह उनकी एक परिचित लड़की Anjali के साथ मित्रता रखता था। अभियुक्तों ने पीड़ित को कार में जबरन बैठाया, उसके साथ मारपीट की, उसे जंगल में ले जाकर पत्थरों से गंभीर चोटें पहुंचाई और उसे एक गहरी खाई में फेंक दिया।

**निर्णय** मध्य प्रदेश उच्च न्यायालय ने साक्ष्य अधिनियम की धारा 65B के नियमों का कड़ाई से विश्लेषण किया। अदालत ने स्पष्ट किया कि सीसीटीवी फुटेज और कंप्यूटर जनित साक्ष्य को तब तक कानूनी दस्तावेज के रूप में स्वीकार नहीं किया जा सकता जब तक कि उस कंप्यूटर प्रणाली के नियमित संचालन और डेटा फीडिंग की सत्यता को प्रमाणित करने वाले उपधारा (4) के तहत हस्ताक्षरित प्रमाणपत्र की शर्तें संतुष्ट न हों।

“Therefore, this circumstance goes against accused Akash. 25. So far as the question of admissibility of CCTV footage in the evidence is concerned, it is apposite to reproduce here Section 65B of the Indian Evidence Act, 1872, which runs as under:- 65B. Admissibility of electronic records. -- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible. (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -- (a) the computer output containing the information was 17 Cr. A. Nos.3229/2020, 3259/2020 & 6434/2020 produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities. (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-- (a) by a combination of computers operating over that period; or (b) by different computers operating in succession over that period; or 18 Cr. A. Nos.3229/2020, 3259/2020 & 6434/2020 (c) by different combinations of computers operating in succession over that period; or (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly. (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -- (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection 19 Cr. A.”

HIGH COURT OF MADHYA PRADESH • 2023

स्रोत MPHC020093682020

## 10 N.K. Sodhi v. Union of India

HIGH COURT OF PUNJAB AND HARYANA • 2021-07-20 • CWP/12350/2021

याचिकाकर्ता, जो पंजाब और हरियाणा उच्च न्यायालय के पूर्व न्यायाधीश हैं, ने अपने आवास के सामने स्थित मुख्य न्यायाधीश के आधिकारिक आवास पर लगे CCTV कैमरों के कारण अपनी निजता (Article 21 of the Constitution) के उल्लंघन की आशंका जताई थी। उन्होंने कैमरों को हटाने और CCTV स्थापना के लिए नियम बनाने की मांग की थी।

**निर्णय** उच्च न्यायालय ने निर्णय दिया कि सुरक्षा आवश्यकताओं (जैसे खतरे की आशंकाओं) को पूरा करने के लिए स्थापित सीसीटीवी कैमरे यदि केवल बाहरी सड़क के किनारे या सार्वजनिक फुटपाथ तक ही सीमित हैं, और पड़ोस के घरों के निजी परिसरों को कवर नहीं करते हैं, तो वे किसी भी प्रकार की अनधिकृत घुसपैठ या निजता का उल्लंघन नहीं करते हैं।

“Second prayer made by the petitioner is for framing of Rules for regulating the installation of CCTV cameras in Chandigarh. [2] The apprehension raised is that the CCTV cameras installed at the official residence of Hon’ble the Chief Justice can invade the privacy of the house of petitioner, which is right in front of House No. 35, i.e House No. 36, Sector 4, Chandigarh. As per contents of the petition, the petitioner feels that the CCTV cameras, which are high resolution Infra-red capable ones can capture detailed images upto 150 meters and thus, can easily invade the privacy of petitioner, which is his Fundamental Right guaranteed under Article 21 of the Constitution. [3] Vide an application bearing CM No. 8560 of 2021, the petitioner has placed on record a letter dated 08.07.2021 written by the Registrar General of Punjab and Haryana High Court, Chandigarh to petitioner informing him that the matter was taken up with the Director General of Police, Union Territory, Chandigarh on receipt of letter dated 17.05.2021 by petitioner and in response thereto, it has been intimated by the Director General of Police, Union Territory, Chandigarh that after spot inspection, examining the footage and working of the CCTVs installed at DINESH KUMAR 2021.07.22 16:31 I attest to the accuracy and integrity of this document C.W.P. No. 12350 of 2021 (O&M) -3- the official residence of Hon’ble the Chief Justice, it was found that none of the cameras installed at the house cover the houses on opposite side of the street and only cover the area upto the road berm of House Nos. 34 and 36, Sector 4, Chandigarh. Relevant part of the communication dated 08.07.2021 is reproduced as under:- “ In response thereto, it has been intimated by the office of Director General of Police, U.T. Chandigarh that after the spot inspection, examining the footage and working of the CCTVs installed at the official residence of Hon’ble the Chief Justice i.e. House No. 35, Sector-4, Chandigarh, it was observed that the installation of the CCTVs has been done to secure the protected person from all possible apprehension of threats in accordance with the provisions of 'Yellow Book' and these cameras installed there do not cover the houses on opposite side of the street and only cover the area upto the road berm of House No. 34 and 36, Sector 4, Chandigarh and there is no trespass or breach into the privacy of House No. 36, Sector-4, Chandigarh. ” (Emphasis Supplied) [4] During the course of hearing, learned counsel for the petitioner has pointed out that although the letter written by the Registrar General, Punjab and Haryana High Court, Chandigarh, satisfies the apprehension raised by the petitioner, however, he has urged that the security agencies should be bound down in such a manner that in future as well there is no misuse of the CCTV cameras installed at House No. 35 so as to invade the privacy of petitioner. [5] In order to quell any doubts about any such alleged misuse in future by any security agency and in order to satisfy ourselves as to whether any such direction is required to be issued by us, we have perused the report sent vide Letter No. 21678/Spl./Security, Chandigarh, dated 07.07.2021 DINESH KUMAR 2021.07.22 16:31 I attest to the accuracy and integrity of this document C.W.P.”

HIGH COURT OF PUNJAB AND HARYANA • 2021

स्रोत PHHC010576702021

## 11 State by Karnataka Lokayukta Police Station v. M.R. Hiremath

SUPREME COURT OF INDIA • 2019-05-01 • 2019 INSC 611

यह मामला भ्रष्टाचार निरोधक अधिनियम (Prevention of Corruption Act) के तहत दर्ज की गई FIR से संबंधित है। उच्च न्यायालय ने यह तर्क देते हुए आपराधिक कार्यवाही को रद्द कर दिया था कि जांच के दौरान इस्तेमाल किए गए 'spy camera' के electronic record के लिए Section 65B(4) of the Evidence Act के तहत प्रमाण पत्र (certificate) चार्जशीट दाखिल करते समय प्रस्तुत नहीं किया गया था। सर्वोच्च न्यायालय ने इस निर्णय को खारिज करते हुए स्पष्ट किया कि Section 65B के तहत प्रमाण पत्र प्रस्तुत करने की आवश्यकता केवल तभी उत्पन्न होती है जब evidence को trial के दौरान साक्ष्य के रूप में पेश किया जाना हो। साथ ही, न्यायालय ने माना कि FIR से पहले की गई प्रारंभिक जांच (preliminary inquiry) कानून के अनुरूप थी और discharge application पर विचार करते समय साक्ष्यों का मूल्यांकन कानून के स्थापित सिद्धांतों के अनुसार होना चाहिए।

**निर्णय** सर्वोच्च न्यायालय ने माना कि स्पाई कैमरे (spy camera) या किसी छुपाए गए रिकॉर्डिंग उपकरण से प्राप्त डिजिटल सामग्री को साक्ष्य में शामिल करने के लिए धारा 65B(4) प्रमाण पत्र की अनुपस्थिति चार्जशीट दाखिल करने के स्तर पर घातक नहीं है। इस प्रमाण पत्र की वास्तविक आवश्यकता मुकदमे की सुनवाई (trial) के दौरान होती है जब उस रिकॉर्डिंग को औपचारिक साक्ष्य के रूप में प्रदर्शित किया जाना हो।

“Section 65B(4) of the Evidence Act, 1872 is attracted in any proceedings “where it is desired to give a statement in evidence by virtue of this section”. Emphasising this facet of sub-section (4) the decision in Anvar’s case holds that the requirement of producing a certificate arises when the [2019] 8 S.C.R. 713 713 A B C D E F G H 714 SUPREME COURT REPORTS [2019] 8 S.C.R. electronic record is sought to be used as evidence. In CDR Ravindra V Desai’s case it was held that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. Having regard to the said principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under Section 65B(4) at the stage when the charge- sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial . It is at that stage that the necessity of the production of the certificate would arise. [Paras 14, 16] [722-B, C, E, F; 723-A-B] Anvar P .V . v P .K. Basheer (2014) 10 SCC 473 : [2014] 11 SCR 399 ; Union of India and Others v CDR Ravindra V Desai (2018) 16 SCC 272 – relied on. 1.2 In the instant case, on 15 November 2016, the complainant is alleged to have met the respondent. During the course of the meeting, a conversation was recorded on a spy camera. Prior thereto, the investigating officer had handed over the spy camera to the complainant. This stage does not represent the commencement of the investigation. At that stage, the purpose was to ascertain, in the course of a preliminary inquiry , whether the information which was furnished by the complainant would form the basis of lodging a first information report. In other words, the purpose of the exercise which was carried out on 15.11.2012 was a preliminary enquiry to ascertain whether the information reveals a cognizable offence. The High Court erred on all the above counts. The High Court erred in coming to the conclusion that in the absence of a certificate under Section 65B when the charge sheet was submitted, the prosecution was liable to fail and that the proceeding was required to be quashed at that stage.”

SUPREME COURT OF INDIA • 2019

स्रोत ESCR010009642019

## 12 State of Madhya Pradesh v. Naveen @ Ajay

HIGH COURT OF MADHYA PRADESH • 2018-12-24 • CRA/3830/2018

यह मामला एक तीन महीने की बच्ची के अपहरण, बलात्कार और हत्या से संबंधित है। आरोपी Naveen @ Ajay ने शिकायतकर्ता की सोती हुई बच्ची को उठाया, उसके साथ दुष्कर्म किया और उसकी हत्या कर दी। घटना के बाद, आरोपी को CCTV फुटेज और गवाहों की पहचान के आधार पर पकड़ा गया। फॉरेंसिक साक्ष्य और DNA रिपोर्ट ने भी अपराध में आरोपी की संलिप्तता की पुष्टि की। विचारण न्यायालय ने उसे दोषी ठहराते हुए मृत्युदंड (death sentence) दिया था। मध्य प्रदेश उच्च न्यायालय ने मामले की गंभीरता और अभियोजन पक्ष द्वारा प्रस्तुत ठोस साक्ष्यों को देखते हुए विचारण न्यायालय के निर्णय को बरकरार रखा और मृत्युदंड की पुष्टि की।

**निर्णय** मध्य प्रदेश उच्च न्यायालय ने स्पष्ट किया कि यद्यपि साक्ष्य अधिनियम की धारा 65B(4) का प्रमाण पत्र न होना एक गंभीर तकनीकी कमी है, तथापि मोड ऑफ प्रूफ (mode of proof/साबित करने के तरीके) पर कोई भी आपत्ति ट्रायल कोर्ट के समक्ष दस्तावेज़ पेश करते समय ही ली जानी चाहिए। यदि ट्रायल के दौरान कोई आपत्ति नहीं उठाई गई, तो उसे अपीलीय न्यायालय के समक्ष पहली बार उठाने की अनुमति नहीं दी जा सकती।

“Section 65-A and 65-B were introduced in Chapter 5 relating to documentary evidence. Section 65-A of the Indian Evidence Act, 1872 provides that the contents of electronic records may be admitted as evidence with the criteria provided in Section 65-B is complied with. Computer electronic record in evidence are admissible at a trial, if proved in the manner specified by Section 65-A of the Indian Evidence Act, 1872. Sub Section (1) of Section 65-B of the Indian Evidence Act, 1872 makes admissibility as a document regarding any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer, subject to fulfillment of conditions specified in Section (2) of Section 65-B of the Indian Evidence Act, 1872. 51. Shri Amit Dubey, learned amicus curiae has submitted that the prosecution has failed to prove compliance of Section 65-B of the Indian Evidence Act 1872 regarding the conditions referred to admissibility 35 CRRFC No.03/2018 CRA No.3830/2018 of the electronic evidence, therefore, CCTV footage is not acceptable evidence, but we are not agree the argument advanced by the learned Senior Counsel for the appellant / accused. Because certificate of compliance of Section 65-B of the Indian Evidence Act, 1872 is enclosed with the CCTV footage produced by the prosecution as Ex.P/49; and no objection was taken when the CDRs of CCTV footage were adduced in evidence before the trial Court. Therefore, this objection cannot be raised at the appellate stage. Although in the certificate, it is not specifically mentioned that from where these CCTV footage have been taken. No detail particulars have been mentioned which require the admissibility of the electronic record / evidence. 52. In the case of Sonu @ Amar v. State of Haryana reported in AIR 2017 SC 3441 Hon'ble Apex Court while considering the admissibility of the electronic evidence without accompanied by certificate as contemplated under Section 65-B (4) of the Indian Evidence Act, 1872 has held in paragraphs No.26 and 27, as under: - “26. That an electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65B (4) of the Indian Evidence Act is no more res integra. The question that falls for our consideration in this case is the permissibility of an objection regarding inadmissibility at this stage. Admittedly, no objection 36 CRRFC No.03/2018 CRA No.3830/2018 was taken when the CDRs were adduced in evidence before the Trial Court. It does not appear from the record that any such objection was taken even at the appellate stage before the High Court. In Gopal Das v. Sri Thakurji, AIR 1943 PC 83, it was held that: “Where the objection to be taken is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of Appeal and then complain for the first time of the mode of proof.” In RVE Venkatachala Gounder, this Court held as follows: “Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.”

HIGH COURT OF MADHYA PRADESH • 2018

स्रोत MPHC020131512018

### 13 Deepti Kapur v. Kunal Julka

HIGH COURT OF DELHI • 2020-06-30 • CM(M)/40/2019

यह मामला एक वैवाहिक विवाद से संबंधित है जहाँ पति ने पत्नी की उसके एक मित्र के साथ निजी बातचीत को चुपके से रिकॉर्ड की गई CD को सबूत के तौर पर पेश किया। पत्नी ने इसे अपनी निजता के मौलिक अधिकार (fundamental right to privacy) का उल्लंघन बताते हुए विरोध किया। निचली

अदालत ने इसे सबूत के तौर पर स्वीकार करने का निर्देश दिया और इसके सत्यापन के लिए FSL जांच का आदेश दिया। उच्च न्यायालय ने इस याचिका में साक्ष्य की स्वीकार्यता और निजता के अधिकार बनाम निष्पक्ष सुनवाई (fair trial) के अधिकार के बीच संतुलन के कानूनी प्रश्न पर विचार किया।

**निर्णय** दिल्ली उच्च न्यायालय ने स्पष्ट किया कि भारतीय साक्ष्य अधिनियम, 1872 की धारा 5 के अंतर्गत 'प्रासंगिकता' (relevancy) ही साक्ष्य की स्वीकार्यता का एकमात्र कानूनी परीक्षण है। यदि कोई रिकॉर्डिंग या साक्ष्य प्रासंगिक है, तो न्यायालय उसे अस्वीकार नहीं कर सकता, भले ही वह साक्ष्य अनधिकृत रूप से, निजता का हनन करके या अवैध तलाशी व जब्ती के माध्यम से एकत्र किया गया हो।

“In the face of strong objection raised by the defence however, in exercise of his discretion, the trial judge admitted the tape recording in evidence. In this backdrop, the court of 22 (1966) 1 QB 688

\_\_\_\_\_ C.M.(M) 40/2019 page 19 of 46 criminal appeal held that there was no difference in principle between a tape recording and a photograph; accordingly, a tape recording was admissible in evidence provided that its accuracy could be proved and the voices properly identified and provided the evidence was relevant and otherwise admissible. The court did not lay down any exhaustive set of rules by which the admissibility of evidence could be judged but observed that such evidence had always to be regarded with caution and assessed in the light of all the circumstances of a particular case. The court further observed that but for the fact that the tape recorder was a mechanical device, it was no different from an eavesdropper, and since the accused were not in custody and no caution was required, the use of the tape recorder could not be said to operate unfairly against them. The court said that the method of taking the tape recording could not affect its admissibility, which still remained a matter for the discretion of the judge. The court however added that it should not be taken to be saying that such recordings are admissible whatever the circumstances, but it does appear wrong to deny to the law of evidence advantages to be gained by new techniques and new devices. 19. The law in India in relation to ‘admissibility’ of evidence is crisp, clear and consistent. A 5-Judge Constitution Bench of the Supreme Court in *Pooran Mal vs. The Director of Inspection (Investigation), New Delhi & Ors.*<sup>23</sup> (and connected matters) was considering a challenge to the seizure of articles consisting of account books, documents and valuables by Income Tax Authorities, purporting to exercise their authority for search and seizure under section 132 of the Income Tax Act 1961 and Rule 112-A of Income Tax Rules 1974) 1 SCC 345

\_\_\_\_\_ C.M.(M) 40/2019 page 20 of 46 Tax Rules. The legal challenge was that the said provisions were violative of the fundamental rights guaranteed under Articles 14, 19(1)(f), 19(1)(g) and 31 of the Constitution. Enunciating the law on the point, the Supreme Court observed as under: “23. \* \* \* \* \* Now, if the Evidence Act, 1872 which is a law consolidating, defining and amending the law of evidence, no provision of which is challenged as violating the Constitution — permits relevancy as the only test of admissibility of evidence (See Section 5 of the Act) and, secondly, that Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. Nor is it open to us to strain the language of the Constitution, because some American Judges of the American Supreme Court have spelt out certain constitutional protections from the provisions of the American Constitution. In *M.P. Sharma v. Satish Chander* already referred to, a search and seizure made under the Criminal Procedure Code was challenged as illegal on the ground of violation of the fundamental right under Article 20(3), the argument being that the evidence was no better than illegally compelled evidence. In support of that contention reference was made to the Fourth and Fifth Amendments of the American Constitution and also to some American cases which seemed to hold that the obtaining of incriminating evidence by illegal seizure and search tantamounts to the violation of the Fifth Amendment. The Fourth Amendment does not place any embargo on reasonable searches and seizures. It provides that the right of the people to be secure in their persons, papers and effects against unreasonable searches and seizures shall not be violated. Thus the privacy of a citizen's home was specifically safeguarded under the Constitution, although reasonable \_\_\_\_\_ C.M.(M) 40/2019 page 21 of 46 searches and seizures were not taboo.”

HIGH COURT OF DELHI • 2020

स्रोत DLHC010069982019

## 14 Shuvendra Mullick v. Indranil Mullick

CALCUTTA HIGH COURT • 2025-02-10 • FMAT/172/2024

यह मामला एक पैतृक आवास के भीतर प्रतिवादियों द्वारा CCTV कैमरे लगाए जाने से संबंधित है। अपीलकर्ता, जो इस संपत्ति का सह-न्यासी (co-trustee) है, ने तर्क दिया कि उसकी सहमति के बिना कैमरे लगाने से उसकी निजता के अधिकार का उल्लंघन हुआ है और यह उसके दैनिक जीवन में हस्तक्षेप है। निचली अदालत ने अंतरिम निषेधाज्ञा देने से इनकार कर दिया था।

**निर्णय** कलकत्ता उच्च न्यायालय ने माना कि आवासीय भवन के साझा गलियारों (corridors), साझा सीढ़ियों और प्रवेश द्वारों पर सुरक्षात्मक उद्देश्यों से सीसीटीवी कैमरे लगाना निजता के अधिकार का उल्लंघन नहीं है। अदालत ने सुरक्षा हितों (मूल्यवान कलाकृतियों या संपत्ति की चोरी की रोकथाम) को वैध माना और स्पष्ट किया कि जब तक कैमरे सीधे व्यक्तिगत शयनकक्षों या पूर्णतः निजी द्वारों के भीतर केंद्रित न हों, तब तक निषेधाज्ञा जारी नहीं की जा सकती।

“As such, appellant prayed for setting aside of the impugned order on the ground that the Learned Trial Judge passed this order without application of mind as he did not appreciate the photographs attached with the injunction application, which reveal how his right to privacy was continuously infringed, and the order suffers from infirmity and illegality, and is bad in law. 13. Mr. Suddhasatva Banerjee, Learned Counsel for the appellant, submitted that these cameras are installed in the corridors and in the common passage and are pointing towards the entrance of the bedroom, intentionally, to keep continuous vigil on the activities of appellant, which amounts to intrusion in his privacy, but the Ld. Trial Judge refused the prayer of ad-interim injunction on flimsy ground. Therefore, he prayed for setting aside of the impugned order. 14. On the other hand, Mr. Siddhartha Banerjee, Learned Counsel for the respondents, submits that the suit property was the dwelling house of late Gora Chand Mullick and his descendants. A number of old and valuable art and artefacts were preserved there. The possibility of theft of those articles or mischief with those articles by someone always remained. As such, proper steps for protection of these articles from imminent threat of theft or mischief could be provided by installing CCTV cameras. None of the CCTV cameras were focused on the door of the appellant. All are installed in the common passage and the entrance gate. These CCTV cameras were not installed with the intention to cause any intrusion on the privacy of any person. However, the respondents were ready to shift any of such cameras which caused any nuisance to the appellant, and they also agreed to provide common access to pictures, data and the records of CCTV cameras. One camera was installed inside the hall to protect many small pieces of valuable artefacts kept openly, which could be easily removed by anyone. 15. In reply, Learned Counsel for the appellant submits that there was no threat of theft to any of the articles. The respondents have suddenly taken the decision to install CCTV cameras unilaterally and such decision was unjustified. He further submits that in case of any security threat, security staff could have been deployed and the privacy of a person cannot be breached. 16. The pivotal issue involved in this appeal is whether installation of CCTV cameras in the residential portion of a dwelling house, without consent of co-trustee would amount to violation of his right to privacy? 17. In view of the order dated 13th January, 2025, Ms. Devlina Lahiri was appointed as a Special Officer for inspection of the premises i.e., Mallick Bhaban in respect of the position of the CCTV cameras and the possibility of infringement of privacy of appellant thereby. Accordingly, the learned Special Officer submitted her report along with photographs of CCTV cameras and details of location of each camera and focused towards the inside and outside of the building after inspection. This report reveals that: - i. Camera Nos. 1 & 2 were installed inside the boundary of Mullick Bhaban facing towards the main gate. ii. Camera No. 3 was installed at the south-east corner of the common corridor leading to the staircase and focused on the common corridor area and vacant space upon entering the inside the residential wing of Mullick Bhaban. iii. Camera No. 4 was installed on the first-floor staircase landing inside the residential wing, focused on the staircase leading to the second floor. iv. Camera No. 5 was installed at the north-east corner of the common corridor of the residential wing focused on the common corridor of the residential wing inside the building. v. Camera No. 6 was installed in the north-east corner inside the room of the Late Gora Chand Mullick on the first floor and focused on the inside of the room of Late Gora Chand Mullick. vi. Camera No. 7 was installed in the north-west corner of the common corridor of the building focused inside the room of Late Gora Chand Mullick. vii. Camera No. 8 was installed at the balcony adjoining the TV room on the first floor of residential wing, focused towards balcony and car parking area. viii. Camera No. 9 was installed at the connecting corridor between the residential and non-residential wing and focussed towards the car parking area and main entrance gate. ix.”

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**अस्वीकरण**

यह मेमो Vitark AI द्वारा सार्वजनिक रूप से उपलब्ध निर्णयों और उपयोगकर्ता के प्रश्न के आधार पर तैयार किया गया है। यह केवल रिसर्च सहायता के लिए है और कानूनी सलाह (legal advice) नहीं है। किसी भी filing, opinion, या correspondence में उपयोग करने से पहले सभी case citations, holdings और quotations को मूल निर्णय (source judgment) के विरुद्ध स्वतंत्र रूप से सत्यापित किया जाना चाहिए।