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Surveillance of Journalists: A Violation of Free Speech

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Abstract

The nation monitoring of journalistic interest is an extensive hazard to the ideas of constitutional democracy by means of adverse the proper of press freedom, chilling investigative reporting, and doing away with the confidentiality of journalists' assets. even though there may be a tendency for countrywide security worries to be used as a cause for engaging in kingdom tracking activities, there's a threat that an imbalance among govt department authority and the right to freedom of speech and/or expression as well as privateness rights below Article 19(1)(a) of the constitution of India ¹might also arise whilst country authorities act without appropriate barriers with recognize to limits placed upon their authority. the existing article will look at the structure of the constitution of India with reference to unfastened speech, assessment court docket selections concerning privacy and surveillance, and argue that indiscriminate kingdom tracking of journalists isn't always well suited with either democratic responsibility or constitutional proportionality.

I. Introduction

A free press acts as the 'fourth pillar' of democracy by way of selling transparency, accountability, and an informed public debate. The chilling effect of surveillance towards reporters — whether or not via wiretapping, digital interception, or adware — deters independent reporting from taking region and endangers confidentiality among newshounds and their assets. The query to decide is whether the kind of surveillance finished towards journalists, no matter whether it is justified in the name of country wide security, is also a violation of Article 19(1)(a) of the constitution, which guarantees the right to freedom of speech, and Article 21 of the constitution, which offers the right to private privateness . .This

¹ INDIA CONST. art. 19, § 1, cl. (a).

paper concludes that that indiscriminate or disproportionate surveillance of journalists does infringe unfastened speech rights, as assured via the charter, and fails to meet the criminal, critical, and proportionality criteria set forth via the preferred court docket.

II. Constitutional and Statutory Frameworks: Constitutional Framework

A. Freedom of Speech and Freedom of the click

Beneath Article 19(1)(a), the constitution offers the proper of freedom of speech and expression to everyone; the Courts have interpreted this to mean additionally giving the proper of freedom of the click. whilst the constitution does no longer expressly outline press freedom inside its text, in the case of **Romesh Thappar v. state of Madras (1950)**,² the ultimate court stated that the capacity to flow into and explicit idea via publishing is fundamental to a democracy. The ideal courtroom, in its ruling in the case of Indian specific **Newspapers v. Union of India (1985)**,³ stated that any law immediately infringing at the proper of the press must be held to strict scrutiny under the constitution.

Article 19(2) permits restrictions to be placed at the proper to freedom of speech and of the clicking on the basis of: (1) defence of the integrity and sovereignty of India;⁴ upkeep of public order; and (3) preventing the security of India. That stated, the regulations invoked underneath Article 19(2) want to be as specific as feasible and proportionate to the behaviour that is sought to be constrained.

B. Laws That Regulate Surveillance in India

The primary governing laws with admire to surveillance in India are as follows:

- **Indian Telegraph Act, 1885 – S. 5(2)** Authorises the interception of communications for motives of sovereignty, integrity and protection of the kingdom.⁵
- **Information technology Act, 2000 – S. 69** Authorises the interception of electronic communications for motives of sovereignty, integrity and protection of the state.⁶

The number one difficulty is that once procedure safeguards are weak, oversight is not impartial, and no judicial approval has been sought, these legal guidelines can also permit unlawful and arbitrary acts of surveillance on residents.

² *Romesh Thappar v. State of Madras*, A.I.R. 1950 S.C. 124 (India).

³ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 S.C.C. 641 (India).

⁴ INDIA CONST. art. 19, § 2.

⁵ The Indian Telegraph Act, No. 13 of 1885, § 5(2), Acts of Parliament, 1885 (India).

⁶ The Information Technology Act, No. 21 of 2000, § 69, Acts of Parliament, 2000 (India).

III. The right to privateness and Surveillance

In **Justice k.S. Puttaswamy v. Union of India**,⁷ the 9 judges who dominated that privacy turned into a essential right beneath Article 21 modified the character of our constitutional rights for all time. In popular, the three fold test calls for that any of the nation's capability to intervene upon the non-public existence of an individual must be satisfied.

2) there must be a legitimate aim;

3) The means used must be rationally related (proportionate).

When surveillance is indiscriminately used against journalists or there is no showing of necessity, it not only violates their right to privacy, but is also a form of indirect censorship in that it will deter whistleblowers and other confidential informants from communicating with the media.

IV . Chilling Effect and Democratic Accountability

The **Shreya Singhal v. Union of India**⁸ case explicitly recognized the chilling effect doctrine. The Court decided that vague or overbroad limitations on speech can deter legitimate expression.

For example, journalists may avoid sensitive investigations when they suspect that their activities or contacts with confidential sources will be monitored. In this scenario, journalists may engage in self-censorship of critical reporting.

When journalists avoid these types of reporting due to fear, the press' function as a democratically accountable institution is compromised. The comparative jurisprudence of many jurisdictions, inclusive of the european court of Human Rights, has hooked up the protection of journalistic sources as a essential thing of freedom of the media.

V. National Security Versus Constitutional Morality

Security and civil liberties can be thought of as combining to help keep the population safe against terrorism through prevention methods. In **Anuradha Bhasin v. Union of India**,⁹ the Supreme Court has restated that the limitation of individual rights under the Constitution, or fundamental rights, as imposed by a statute must be proportional to the severity of any infringement and subject to independent judicial review.

Without independent oversight, the executive may impose a constitutional infringement by way of nondisclosure under the guise of executive discretion, and therefore would be deemed an abuse of power. In other words, without independent oversight, the executive has discretion to

⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

⁸ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

⁹ *Anuradha Bhasin v. Union of India*, (2020) 3 S.C.C. 637 (India).

impose constitutional infringements upon individuals; without independent oversight, that discretion can be gross abuse.

VI. Counter Arguments

Some may argue there is no immunity from the law for a journalist and that an investigation into a journalist's activities would be permitted when there are credible threats of harm to the journalist. Furthermore, press freedom does not provide a blanket immunity to journalists for violating the law.

However, there is a significant difference between conducting targeted and authorized judicial surveillance versus conducting "mass" or politically motivated surveillance. A constitutional objection arises when the surveillance is:

- Random or indiscriminately conducted
- Disproportionate to the issue requiring surveillance
- Not conducted with appropriate procedural safeguards
- Not conducted with oversight of the judicial system.

Conclusion

Journalist surveillance provides a right away challenge to democratic government. despite the fact that national security is customary as a valid prerogative for the kingdom, the boundaries placed upon government energy by using the constitution beneath Articles 19(1)(a) and 21 of the charter are extraordinarily difficult to triumph over (because of them being taken into consideration a Constitutional proper). The outcome of the Puttaswamy case imposed widespread liability on the state when going through demanding situations of legality, necessity, and proportionality with recognize to surveillance in such situations. The indiscriminate tracking of journalists will maintain to have a 'chilling effect', erode source confidentiality and weaken democratic accountability in addition to be in violation of constitutional morality (if implemented as a device of surveillance without the utility of judicial oversight, judicial authorisation or transparency mechanisms). As a end result, this kind of gadget will serve the motive of violating unfastened speech instead of serving protection.