

## **KHARAK SINGH VERSUS STATE OF UTTAR PRADESH**

*Kharak Singh versus State of Uttar Pradesh* is a 1962 case which centred on the right to privacy of individuals and the legality of police surveillance. The Uttar Pradesh Police, by using a regulation dating back to 1861, conducted domiciliary visits and surveillance without any warrant. The petitioner Kharak Singh had to inform everytime to the authorities before travelling. Kharak Singh argued that the Police Surveillance and the domiciliary visit are violative of the Fundamental Right, which provides the right to move freely in Indian territory. The petitioner also challenged the constitutionality of these regulations and argued that there are no adequate safeguards against such arbitrary power of the state.

Kharak Singh, an individual residing in Uttar Pradesh, was put on trial in 1941. The charges were of armed robbery. However, he was released due to a lack of evidence. Uttar Pradesh Police, after his release, categorised him as a Class A history-sheeter and opened surveillance against him. Section 12 of the Police Act of 1861 validates the acts that were undertaken by the Police for surveillance. The petitioner stated that the police, other than looking for him throughout the day, also conduct domiciliary visits between 10 PM to 6 AM with the village guard. Every time the petitioner had to travel, he was supposed to inform the village guard or police, and if residing outside his permanent residence for a few days, he should inform the nearby police station about his whereabouts, and this nearby police station should closely look at his activities. Kharak Singh filed a writ petition against these draconian sets of laws, arguing that they not only hindered his right to move freely but also violated his right to live a dignified life. He further argued that there exists no reasonable basis for such surveillance, and it is done based on suspicion. The respondent, on the other hand, argued that such regulations are necessary for the prevention of crime and maintenance of public order.

### **Question of Law**

The major question of law in front of the court was regarding the validity of Section 12 of the Police Act of 1861, which empowers the police authorities to undertake such actions. The Court also made deliberations on the nature of surveillance and whether these actions violate Article 19(1)(d), to move freely throughout the country and Article 21, right to life and personal liberty. Major contentions were also made regarding the existence of the Right to Privacy and whether it is a right stemming from Article 21 of the Constitution. Constitutionality of domiciliary visits in the odd hours was also discussed in the court.

### **Judgment**

The Court, in its Judgment, held that Section 12 of the Police Act, 1861, is not a statutory provision, meaning they are not established by the law. The respondent, UP Police, had argued that

reasonable restrictions on fundamental rights for the prevention of crime are necessary. The court, by categorising Section 12 as a non-statutory provision, held that the regulations violate Articles 19 and 21. The court also held the domiciliary visits done by the UP Police unconstitutional as it breached the Right to personal liberty of the petitioner. Highlighting the importance of procedural safeguards, the court held that a warrant or other objective criteria should be followed for surveillance. However, regarding the Right to Privacy, the court agreed that privacy cannot be violated as it violates Article 19 and Article 21. The court subsequently stated that the right to privacy is not explicitly stated as a fundamental right and cannot be interpreted as one due to the importance of keeping surveillance and following necessary precautions in the case of habitual criminals. Thus, while the surveillance and domiciliary visits on Kharak Singh were considered unconstitutional, the court at the same time refused to make the right to privacy a fundamental right.