PETITIONER:
KHARAK SINGH

Vs.

RESPONDENT:
THE STATE OF U. P. & OTHERS

DATE OF JUDGMENT:
18/12/1962

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
IMAM, SYED JAFFER
SUBBARAO, K.
SHAH, J.C.
MUDHOLKAR, J.R.

CITATION:
1963 AIR 1295 1964 SCR (1) 332
CITATOR INFO :

F	1967 SC1836	(28,53,59,60,61,62)
E	1970 SC 898	(58)
R	1974 SC2092	(10)
RF	1975 SC1378	(6,13)
E	1976 SC1207	(59,288,289,520)
R	1977 SC1027	(23,30,42)
D	1978 SC 489	(9)
R	1978 SC 597	(3,10,54,209)
R	1978 SC1514	(5)
R	1978 SC1675	(55,56,226)
RF	1980 SC1579	(40)
R	1981 SC 746	(6)
RF	1981 SC 760	(5)
RF	1986 SC 180	(32)
RF	1986 SC 847	(12)
R	1987 SC 748	(15,16)
RF	1991 SC 101	(239)
RF	1991 SC1902	(24)

ACT:
Fundamental Right, Enforcement of-Scope-Right to freedom of movement and personal liberty, whether infringed-Surveillance-Whether infringes fundamental right-Constitution of India, Arts. 19 (1) (d),21,32 -U. P. Police Regulations, Regulation 236.

HEADNOTE:
The petitioner was challenged in a dacoity case but was released is there was no evidence against him. The police opened a history sheet against him. He was put under surveillance -is defined in Regulation 236 of the U. P. Police Regulations. Surveillance involves secret picketing of the house or approaches to the houses of the suspects, domiciliary visits at night, periodical enquiries by officers not below the rank of Sub-Inspector into repute, habits, association, income, expenses and occupation, the reporting by constables and chaukidars of movements and absences from home, the verification of movements and

absences by means of inquiry slips and the collection and record on a history sheet of all information bearing on conduct.

The petitioner filed a writ petition under Art. 32 in which he challenged the constitutional validity of Chapter XX of U. P. Police Regulations, in which Regulation 236 also occurs.

The defence of the respondent was that the impugned Regulations did not constitute an infringement of any of the freedoms Guaranteed by Part III of the Constitution, and even if they were, they had been framed in the interests of the General public and public order and to enable the police to discharge its ditty in a more efficient manner, and hence were reasonable restrictions on that freedom.

Held, (Subba Rao and Shah JJ., dissenting) that out of the five kinds of surveillance referred to in Regulation 236, the part dealing with domiciliary visits was violative of Art. 21

333

of the Constitution and as there was no law on which the same could be justified it must be struck down as unconstitutional, and the petitioner was entitled to a writ of mandamus directing the respondent not to continue domiciliary visits. The other matters constituting surveillance were not unconstitutional. The secret picketing of the houses of tile suspects could not in any material or palpable form affect either the right on the part of the suspect to move freely' or to deprive him of his 'Personal liberty' within the meaning of Art. 21. In dealing with a fundamental right such as the right to free movement or personal liberty, that only can constitute an infringement which is both direct as well as tangible, and it could not be that under these freedoms the Constitution-makers intended to protect or protected mere personal sensitiveness, 'The term 'picketing' has been used in the Regulation not in the sense of offering resistance to the visitor-physical or otherwise-or even dissuading him from entering the house of the suspect but merely of watching and keeping- a record of the visitors. Clauses (c), (d) and (e) of Regulation 236 dealt with the details of the shadowing of the history-sheeters for the purpose of having a record of their movements arid activities, and the obtaining of information relating to persons with whom they came into contact with a view to ascertain the nature of their activities, arid did not infringe any fundamental right of the petitioner. The freedom guaranteed by Art. 19 (1) (d) was not infringed by a watch being kept over the movements of the suspect. Art. 21 was also not applicable. The suspect had the liberty to answer or not to answer the question put to him by the police,and no Law provided for any civil or criminal liability if the suspect refused to answer a question or remained silent. The right of privacy is not a guaranteed right under our Constitution, arid therefore the attempt to ascertain the movements of an individual is merely a manner in which privacy is invaded and is not an infringement of a fundamental right guaranteed in Part III.

The term 'personal liberty' is used in Art. 21 as a compendious term to include within itself all the varieties of rights which go to make up the 'personal liberties' of man other than those dealt with in the several clauses of Art. 19 (I). While Art. 19 (1) deals with particular species or attributes 'of that freedom, 'personal liberty' in Art. 21 takes in and comprises the residue. The word "life" in Art. 21 means not merely the right to the

continuance of a person's animal existence, but a right to the possession of each of his organsarms, legs, etc.
The contention of the respondent that if an act of the police involved a trespass to property, that could give rise to a
334
claim in tort as that action was not authorised by law, and the remedy of the petitioner was a claim for damages and not a petition under Art. 32, was without any substance and wholly irrelevant for considering whether such action was -in invasion of a fundamental right. It is wholly erroneous to assume that before the jurisdiction of this Court uinder Art. 32 can be invoked, the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law affords and has yet not obtained pro. per redress, for when once it is proved to the satisfaction of this Court that by State action the fundamental right of the petitioner tinder Art. 32 has been infringed, it is not only the right but the duty of this Court to afford relief to him by passing appropriate orders in this behalf.
Per Subba Rao and Shah, JJ.-The petitioner was a class A history-sheeter and hence was subject to the entire field of surveillance. Policeman were posted near his house to watch his movements and those of his friends and associates who went to his house. They entered his house in the night and woke him up to ascertain whether he was in the house and thereby disturbed his sleep and rest. The officials, not below the rank of Sub-Inspector, made inquiries from others as regards his habits, associations, income, -expenses and occupations. They got information from others as regards his entire way of life. The constables and chaukidars traced his movements, shadowed him and made reports to their superiors. It was conceded that there was no law which imposed restrictions on bad characters.
Held, that the whole of Regulation 236 is unconstitutional and not only cl. (b). The attempt to dissect the act of surveillance into its various ramifications is not realistic. Clauses (a) to (f) of Regulation 236 are the measures adopted for the purpose of supervision or close observation of tile movements of the petitioner and are therefore parts of surveillance.
Both Arts. 19(1) and 21 deal with two distinct and independent fundamental rights. The expression "personal liberty" is a comprehensive one and the right to move freely is an attribute of personal liberty. But it is not correct to say that freedom to move freely is carved out of personal liberty and therefore the expression "Personal liberty" in Art. 21 excludes that attribute. No doubt, these fundamental rights overlap each other but the question of one being carved
335
out of the other does not arise. The fundamental rights of life and personal liberty have many attributes and some of them are found in Art. 19. The State must satisfy that both the fundamental rights are not infringed by showing that there is a law within the meaning of Art. 21 and that it does amount to a reasonable restriction within the meaning of Art. 19(2) of the Constitution.
The right of personal liberty in Art. 21 implies a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions 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.
As regards the fundamental rights guaranteed by Art. 19(1) (d), mere movement unobstructed by physical restritions cannot in itself be the object of a person's travel. A person travels ordinarily in quest of some objective. He goes to a place to enjoy, to do business, to meet friends, to have secret and intimate consultations with other and to do many other such things. If a man is shadowed, his movements are obviously constricted. He can move physically but it can only be a movement of an automation. A movement under the scrutinising gaze of a policeman cannot be described as a free movement. The whole country is his jail. The freedom of movement in Art. 19(1)(d) must, therefore, be a movement in a free country, i.e.. in a country where lie can do whatever lie likes, speak to whomsoever he wants, meet people of his choice without any apprehension, subject of course to the law of social control. The petitioner under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but be cannot do so freely, for all his activities are watched and the shroud of surveillance cast upon him perforce engenders inhibitions in him, and he cannot act freely as he would like to do. Hence, the entire Regulation 236 offends Art. 19(1) (d) of the Constitution.
Held, also that petitioner's freedom under Art. 19(1) (a) of the Constitution was also infringed. It was impossible for a person in the position of the petitioner to express his real and intimate thoughts to the visitor as fully as he would like to do.
A.K. Gopalan v. State of Madras [1950] S.C.R. 88; Munn v. Illinois, (1877) 94 U. S. 113; Wolf v. Colorado, (1949) 338 U. S. 25; Semayne's case (1604) 5 Coke 91 and Bolling v. Sharpe, (1954) 347 U. S. 497, referred to.
336

JUDGMENT:
ORIGINAL JURISDICTION : Petition No. 356 of 1961.
Petition tinder Art. 32 of the Constitution of India for the enforcement of fundamental rights.
J. P. Goyal, for the petitioner.
K. S. Hajela and C. P. Lal, for the respondents.
1962. December 18. The judgement of Sinha, C. J., Imam, Ayyangar and Mudholkar, jj., was delivered by Ayyangar, j., Subba Rao and Shah, jj., delivered a separate judgment.
AYYANGAR, J.--This petition under Art. 32 of the Constitution challenges the constitutional validity of Ch. XX of the U. P. Police Regulations and the powers conferred upon police officials by its several provisions on the ground that they violate the right guaranteed to citizens by Arts. 19(1)(d) and 21 of the Constitution.
To appreciate the contention raised it is necessary to set out the facts averred on the basis of which the fundamental right of the petitioner, is said to be violated, as well as the answers by the respondent-State to these allegations. The petitioner--Kharak Singh -was challaned in a case of dacoity in 1941 but was released under s. 169, Criminals Procedure Code as there was no evidence against him. On the basis of the accusation made against him he states that the police have opened a "historysheet" in regard to him. Regulation 228 which occurs in Ch. XX of the Police Regulations defines "history-sheets" as "the personal records of criminals under surveillance". That regulation further directs that a "history-sheet" should be opened only

for persons who are or are likely to become habitual criminals or the aiders or abettors of such criminals.
337
These history-sheets are of two classes : Class A for dacoits, burglars, cattle-thieves, and railway-goodswagon thieves, and class B for those who are confirmed and professional criminals who commit crimes other than dacoity, burglary, etc. like professional cheats. It is admitted that a history-sheet in class A has been opened for the petitioner and he is therefore "under surveillance."
The petitioner describes the surveillance to which he has been subjected thus : Frequently the chaukidar of the village and sometimes police constables enter his house, knock and shout at his door, wake him up during the night and thereby disturb his sleep. On a number of occasions they have compelled him to get up from his sleep and accompany them to the police station to report his presence there. When the petitioner leaves his village for another village or town, he has to report to the chaukidar of the village or at the police station about his departure. He has to give them information regarding his destination and the period within which he would return. Immediately the police station of his destination is contacted by the police station of his departure and the former puts him under surveillance in the same way as the latter. There are other allegations made about misuse or abuse of authority by the chaukidar or the police officials but these have been denied and we do not consider them made out for the purposes of the present petition. If the officials outstep the limits of their authority they would be violating even the instructions given to them, but it looks to us that these excesses of individual officers which are wholly unauthorised could not be complained of in a petition under Art. 32.
In deciding this petition we shall proceed upon the basis that the officers conformed strictly to the terms of the Regulations in Ch. XX properly construed and discard as exaggerated or not proved the
338
incidents or pieces of conduct on the part of the authorities which are alleged in the petition but which have been denied. As already pointed out it is admitted that a history-sheet has been opened and a record as prescribed by the Regulations maintained for the petitioner and that such action as is required to be taken in respect of history-sheeters of Class A into which the petitioner fell under the classification made in Ch. XX of the Police Regulations is being taken in regard to him. It is stated in the counter affidavit that the police keep a confidential watch over the movements of the petitioner as directed by the Regulations in the interests of the general public and for the maintenance of Public order.
Before entering on the details of these regulations it is necessary to point out that the defence of the State in support of their validity is two-fold : (1) that the impugned regulations do not constitute an infringement of any of the freedoms guaranteed by Part III of the Constitution which are invoked by the petitioner, and (2) that even if they were, they have been framed "in the interests of the general public and public order" and to enable the police to discharge its duties in a more efficient manner and were therefore "reasonable restrictions" on that freedom. Pausing here it is necessary to point out that the second point urged is without any legal basis for if the petitioner were able to establish

that the impugned regulations constitute an infringement of any of the freedoms guaranteed to him by the Constitution then the only manner in which this violation of the fundamental right could be defended would be by justifying the impugned action by reference to a valid law, i. e., be it a statute, a statutory rule or a statutory regulation. Though learned counsel for the respondent started by attempting such a justification by invoking s. 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Ch. XX bad no such statutory basis but were merely executive or departmental

339

instructions framed for the guidance of the police officers. They would not therefore be "'a law" which the State is entitled to make under the relevant clauses 2 to 6 of Art. 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art. 19 (1); nor would the same be " a procedure established by law" within Art. 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks to restrain the State from taking action under the regulations.

There is one other matter which requires to be clarified even at this stage. A considerable part of the argument addressed to us on behalf of the respondent was directed to showing that the regulations were reasonable and were directed only against those who were on proper grounds suspected to be of proved anti-social habits and tendencies and on whom it was necessary to impose some restraints for the protection of society. We entirely agree that if the regulations had any statutory basis and were a "law' within Art. 13 (3), the consideration mentioned might have an overwhelming and even decisive weight in establishing that the classification was rational and that the restrictions were reasonable and designed to preserve public order by suitable preventive action. But not being any such "law", these considerations are out of place and their constitutional validity has to be judged on the same basis as if they were applied against everyone including respectable and lawabiding citizens not being or even suspected of being, potential dangers to public order.

The sole question for determination therefore is whether "surveillance" under the impugned Ch. XX of the U.P. Police Regulations constitutes an infringement of any of a citizen's fundamental rights

340

guaranteed by Part III of the Constitution. The particular Regulation which for all practical purposes defines "serveillance" is Regulation 236 which reads :

> "Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures :
> (a) Secret picketing of the house or approaches to the house of suspects;
> (b) domiciliary visits at night;
> (c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits, associations, income, expenses

and occupation;
(d) the reporting by constables and chaukidars of movements and absence from home;
(e) the verification of movements and absences by means of inquiry slips;
(f) the collection and record on a history-sheet of all information bearing on conduct."

Regulation 237 provides that all ,,history-sheet men" of class A (under which the petitioner falls) ",starred" and "unstarred", would be subject to all these measures of surveillance. The other Regulations in the chapter merely elaborate the several items of action which make up the "surveillance" or the shadowing but we consider that nothing material turns on the provisions or their terms.

341

Learned Counsel for the petitioner urged that the acts set out in cls. (a) to (f) of Regulation 236 infringed the freedom guaranteed by Art. 19 (1) (d) "to move freely throughout the territory of India" and also that guaranteeing "personal liberty" in Art. 21 which runs:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

We shall now consider each of these clauses of Regulation 236 in relation to the "freedoms" which it is said they violate:

(a) Secret picketing of the houses of suspects:--

It is obvious that the secrecy here referred to is secrecy from the suspect; in other words its purpose is to ascertain the identity of the person or persons who visit the house of the suspect, so that the police might have a record of the nature of the activities in which the suspect is engaged. This, of course, cannot in any material or palpable form affect either the right on the part of the suspect to "'move freely" nor can it be held to deprive him of his "personal liberty" within Art. 21. It was submitted that if the suspect does come to know that his house is being subjected to picketing, that might affect his inclination to move about, or that in any event it would prejudice his "Personal liberty". We consider that there is no substance in this argument. In dealing with a fundamental right such as the right to free movement or personal liberty , that only can constitute an infringement which is both direct as well as tangible and it could not be that under these freedoms the Constitution-makers intended to protect or protected mere personal sensitiveness. It was then suggested that such picketing might have a tendency to prevent, if not actually preventing friends of the suspect from

342

going to his house and would thus interfere with his right "to form associations" guaranteed by Art. 19 (f) (c). We do not consider it necessary to examine closely and determine finally the precise scope of the "freedom of association" and particularly whether it would be attracted to a case of the type now under discussion, since we are satisfied that "picketing" is used in cl. (a) of this Regulation not in the sense of offering resistance to the visitor-physical or otherwise-or even dissuading him, from entering the house of the suspect but merely of watching and keeping a record of the visitors. This interpretation we have reached (a) on the basis of the provisions contained in the later Regulations in the Chapter, and (b) because more than even the express provisions, the very purpose of the watching and the secrecy which is enjoined would be totally frustrated if those whose duty it is to watch, contacted the visitors,

made their presence or identity known and tried to persuade them to any desired course of action.

(b) Domiciliary visits at night:-

"Domiciliary visits" is defined in the Oxford English Dictionary as "Visit to a private dwelling, by official persons, in order to search or inspect it." Webster's Third New International Dictionary defines the word as "'Visit to a private dweling (as for searching it) under authority." The definition in Chambers' Twentieth Century Dictionary is almost identical-"Visit under authority, to a private house for the purpose of searching it." These visits in the context of the provisions in the Regulations are for the purpose of making sure that the suspect is staying at home or whether he has gone out, the latter being presumed in this class of cases, to be with the probable intent of committing a crime. It was urged for the respondent that the allegations in the petition regarding the manner in which "domiciliary visits" are conducted, viz., that the policeman or chaukidar

343

enters the house and knocks at the door at night and after awakening the suspect makes sure of his presence at his home had been denied in the counter-affidavit and was not true, and that the policemen as a rule merely watch from outside the suspect's house and make enquiries from third persons regarding his presence or whereabouts. We do not consider that this submission affords any answer to the challenge to the constitutionality of the provision. In the first place, it is clear that having regard to the plain meaning of the words "domiciliary visits," the police authorities are authorised to enter the premises of the suspect, knock at the door and have it opened and search it for the purpose of ascertaining -his presence in the house. The fact that in any particular instance or even generally they do not exercise to the full the power which the regulation vests in them, is wholly irrelevant for determining the validity of the regulation since if they are so minded they are at liberty to exercise those powers and do those acts without outstepping the limits of their authority under the regulations.

Secondly, we are, by no means, satisfied that having regard to the terms of Regulation 236 (b) the allegation by the petitioner that police constables knock at his door and wake him up during the night in the process of assuring themselves of his presence at home are entirely false, even if the other allegations regarding his being compelled to accompany the constables during the night to the police station be discarded as mere embellishment.

The question that has next to be considered is whether the intrusion into the residence of a citizen and the knocking at his door with the disturbance to his sleep and ordinary comfort which such action must necessarily involve, constitute a violation of the freedom guaranteed by Art. 19 (1) (d) or "a deprivation" of the "personal liberty" guaranteed

344

by Art. 21. Taking first Art. 19 (1) (d) the "freedom" here guaranteed is a right "to move freely" throughout the territory of India. Omitting as immaterial for the present purpose the last words defining the geographical area of the guaranteed movement, we agree that the right to "'move" denotes nothing more than a right of locomotion, and that in the context the adverb "'freely" would only connote that the freedom to move is without restriction and is absolute, i. e., to move wherever one likes, whenever one likes and

however one likes subject to any valid law enacted or made under cl. 5. It is manifest that by the knock at the door, or by the man being roused from his sleep, his locomotion is not impeded or prejudiced in any manner. Learned Counsel suggested that the knowledge or apprehension that the police were on the watch for the movements of the suspect, might induce a psychological inhibition against his movements but, as already pointed out, we are unable to accept the argument that for this reason there is an impairment of the "'free" movement guaranteed by sub-cl. (d). We are not persuaded that Counsel is right in the suggestion that this would have any effect even on the mind of the suspect, and even if in any particular case it had the effect of diverting or impeding his movement, we are clear that the freedom guaranteed by Art. 19 (1) (d) has reference to something tangible and physical rather and not to the imponderable effect on the mind of a person which might guide his action in the matter of his movement or locomotion.

The content of Art. 21 next calls for examination. Explaining the scope of the words "life" and "'liberty" which occurs in the 5th and 14th Amendments to the U. S. Constitution reading "'No person ..... shall be deprived of life, liberty or property without due process of law", to quote the material words, on which Art. 21 is largely 'modeled, Field, J. observed:

345

> "By the term "'life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohabits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world..... by the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bonds of a prison."

It it true that in Art. 21, as contrasted with the 4th and 14th Amendment in the U. S., the word "liberty" is qualified by the word "personal" and therefore its content is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those elements or incidents of "liberty" like freedom of speech, or freedom of movement etc., already dealt with in Art. 19 (1) and the "'liberty" guaranteed by Art. 21-and particularly in the context of the difference between the permissible restraints or restrictions which might be imposed by sub-cls. 2 to 6 of the article on the several species of liberty dealt with in the several clauses of Art. 19 (I). In view of the very limited nature of the question before us it is unnecessary to pause to consider either the precise relationship between the "liberties" in Art. 19 (1) (a) & (d) on the one hand and that in Art. 21 on the other, or the content and significance of the words "'procedure established by law" in the latter article, both of which were the subject of elaborate consideration by this Court in A. K. Gopalan v. State of Madras (1). In fact, in Gopalan's case there was unanimity of opinion on the question that if there was no enacted law, the freedom guaranteed by Art. 21 would be violated, though the learned judges differed as to whether any and every enacted

(1) [1950] S.C.R. 88.

346

law satisfied the description or requirements of "a procedure established by law."

Before proceeding further a submission on behalf of the respondent requires notice. It was said that if the act of the police involved a trespass to property , i. e., the trespass involved in the act of the police official walking into the premises of the. petitioner and knocking at the door, as well as the disturbance caused to him, might give rise to claim in tort, since the action was not authorised by law and that for these breaches of the petitioner'strights damages might be claimed and recovered from the tortfeasor, but that the same could not constitute an infraction of a fundamental right. Similarly it was urged that the petitioner or persons against whom such action was taken might be within their rights in ejecting the trespasser and even use force to effectuate that purpose, but that for what was a mere tort of trespass or nuisance the Jurisdiction of this Court under Art. 32 could not be invoked. These submissions proceed on a basic fallacy. The fact that an act by the State executive or by a State functionary acting under a pretended authority gives rise to an action at common law or even under a statute and that the injured citizen or person may have redress in the ordinary courts is wholly immaterial and, we would add, irrelevant for considering whether such action is an invasion of a fundamental right. An act of the State executive infringes a guaranteed liberty only when it is not authorised by a valid law or by any law as in this case, and every such illegal act would obviously give rise to a cause of action-civil or criminal at the instance of the injured person for redress. It is wholly erroneous to assume that before the,jurisdiction of this Court under Art. 32 could be invoked the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law affords and has yet not

347

obtained proper redress, for when once it is proved to the satisfaction of this court that by State action the fundamental right of a petitioner under Art. 32 has been infringed, it is not only the right but the duty of this Court to afford relief to him by passing appropriate orders in that behalf.

We shall now proceed with the examination of the width., scope and content of the expression "personal liberty" in Art. 21. Having regard to the terms of Art. 19(1)(d), we must take it that expression is used as not to include the right to move about or rather of locomotion. The right to move about being excluded its narrowest inter pretation would be that it comprehends nothing more than freedom from physical restraint or freedam from confinement within the bounds of a prison; in other words, freedom from arrest and detention, from false imprisonment or wrongful confinement. We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that "'personal liberty" is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those deal with in the several clauses of Art. 19 (1). In other words, while Art. 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue. We have already extracted a passage from the judgment of Field, J. in Munn v. Illinois (1), where the learned judge pointed out that "life" in the 5th and 14th Amendments of the U. S. Constitution corresponding to Art.

21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs-his arms and legs etc. We do not entertain any doubt that the word "'life" in Art. 21 bears the same signification. Is then the word "'personal liberty" to be construed as excluding from its purview an invasion on the part

(1) (1877) 94 U.S. 113,142.

348

of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal ? It might not be inapropriate to refer here to the words of the preamble the Constitution that it is designed to "assure the dignity of the individual" and therefore of those cherished human value as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories. Frankfurter, J. observed in Wolf v. Colorado (1) :

> "'The security of one's privacy against arbitrary instrusion by the police..... is basic to a free society. It is therefore implicit in the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples..... We ha-Are no hesitation in laying 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

(1) (1949) 338 U.S. 25.

349

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 civilization. An English Common Law maxim asserts that "every man's house is his castle" and in Semayne's case (1), 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.

(1) (1604) 5 Coke 91 : I Sm. L.C. (13th Edn.) 104,105.

350

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.

Clauses (c), (d) and (e) may be dealt with together. The actions suggested by these clauses are really details of the shadowing of the history-sheeters for the purpose of having a record of their movements and activities and the obtaining of information relating to persons with whom they come in contact or associate, with a view to ascertain the nature of their activities. It was urged by learned Counsel that the shadowing of a person obstructed his free movement or in any event was an impediment to his free movement within Art. 19 (1) (d) of the Constitution. The argument that the freedom there postulated was not confined to a mere physical restraint hampering movement but that the term 'freely' used in the Article connoted a wider freedom transcending mere physical restraints, and included psychological inhibitions we have already considered and rejected. A few minor matters arising in connection with these clauses might now be noticed. For instance, cls. (d) & (e) refer to the reporting of the movements of the suspect and his absence from his home and the verification of movements and absences by means of enquiries. The enquiry for the purpose of ascertaining the movements of the suspect might conceivably take one of two forms : (1) an enquiry of the suspect himself, and (2) of others. When an enquiry is made of the suspect himself the question mooted was that some fundamental right of his was violated. The answer must be in the negative because the suspect has the liberty to answer or not to answer the question for ex concessis there is no law on the point involving him in any liability-civil or criminal-if he refused to answer or remained silent. Does then the fact that an enquiry is made as regards the movements of the

351

suspect and the facts ascertained by such enquiry are verified and the true facts sifted constitute an infringement of the freedom to move? Having given the matter our best consideration we are clearly of the opinion that the freedom guaranteed by Art. 19 (1) (d) is not infringed by a watch being kept over the movements of the suspect. Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned Counsel for the petitioner. As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which

privacy is invaded is not an infringement of a fundamental right guaranteed by Part III.

The result therefore is that the petition succeeds in part and Regulation 236 (b) which authorises "domiciliary visits" is struck down as unconstitutional. The petitioner would be entitled to the issue of a writ of mandamus directing the respondent not to continue domiciliary visits. The rest of the petition fails and is dismissed. There will be no order as to costs.

Subba Rao,J.- We have had the advantage ment prepared by our learned Ayyangar, J. We agree with him that Regulation 236 (b) is unconstitutional, but we would go further and hold that the entire Regulation is unconstitutional on the ground that it infringes both Art. 19 (1) (d) and Art. 21 of the Constitution.

This petition raises a question of far-reaching importance. namely, a right of a citizen of India to lead a free life subject to social control imposed by valid law. The fact that the question has been raised at the instance of an alleged disreputable character shall not be allowed to deflect our perspective. If the police could do what they did to the petitioner, they

352

could also do the same to an honest and law-abiding citizen. Let us at the outset clear the ground. We are not concerned here with a law imposing restrictions on a bad character, for admittedly there is no such law. Therefore, the petitioner's fundamental right, if any, has to be judged on the basis that there is no such law. To state it differently, what fundamental right of the petitioner has been infringed by the acts of the police? If he has any fundamental right which has been infringed by such acts, he would be entitled to a relief straight away, for the State could not justify it on the basis of any law made by the appropriate Legislature or the rules made thereunder.

The petitioner in his affidavit attributes to the respondents the following acts :-

> "Frequently the chaukidar of the village and sometimes police constables awake him in the night and thereby disturb his sleep. They shout at his door and sometimes enter inside his house. On a number of occasions they compel him to get up from his sleep and accompany them to the police station, Civil Lines, Meerut, (which is three miles from the petitioner's village) to report his presence there. When the petitioner leaves his village for another village or town, he has to report to the chaukidar of the village or at the police station about his departure. He has to give information regarding his destination and the period within which he will return. Immediately the police station of his destination is contacted by the police station of his departure and the former puts him under surveillance in the same way as the latter does."

"'It may be pointed out that the chaukidar of the village keeps a record of the presence and

353

absence of the petitioner in a register known as chaukidar's Crime Record Book."

"All the entries in this book are made behind the petitioner's back and he is never given any opportunity of examining or inspecting these records."

There are other allegations made about the misuse or abuse of authority by the chaukidar or the police officials.

In the counter-affidavit filed by the respondents it is admitted that the petitioner is under the surveillance of the police, but the allegations of abuse of powers are denied. A perusal of the affidavit and the counter-affidavit shows that the petitioner tries to inflate the acts of interference by the police in his life' while the respondents attempt to deflate it to the minimum. In the circumstances we would accept only such of the allegations made by the petitioner in his affidavit which are in conformity with the act of surveillance described by Regulation 236 of Chapter XX of the U. P. Police Regulations. The said Regulation reads :-

"Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures :-

(a) Secret picketing of the house or approaches to the houses of suspects;

(b) Domiciliary visits at night;

354

(c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits,, associations, income, expenses and occupation;

(d) the reporting by constables and chaukidars of movements and absences from home;

(e) the verification of movements and absences by means of inquiry slips;

(f) the collection and record on a history-sheet of all information bearing on conduct."

Regulation 237 provides that all "history-sheet men" of Class A, "starred" and "unstarred", would be subject to all the said measures of surveillance. It is common case that the petitioner is a Class A history-sheeter and, therefore, lie is subject to the entire field of surveillance.

Before we construe the scope of the said Regulation, it will be necessary to ascertain the meaning of some technical words used therein. What does the expression "surveillance" mean ? Surveillance conveys the idea of supervision and close observance. The person under surveillance is not permitted to go about unwatched. Clause (a) uses the expression "secret-picketing". What does the expression mean ? Picketing has many meanings. A man or a party may be stationed by trade union at a workshop to deter would-be workers during strike. Social workers may stand at a liquor shop to intercept people going to the shop to buy liquor and prevail upon them to desist from doing so. Small body of troops may be sent out as a picket to watch for the enemy. The word "picketing"' may, therefore, mean posting of certain policemen near the house or approaches of the house of a person to watch his movements and to prevent people going to

his house or having association with him. But the adjective "secret" qualifies
355
the word "picketing and to some extent limits its meaning. What does the expression "secret" mean ? Secret from whom ? Does it mean keeping secret from the man watched as well as from the people who go to his house ? Though the expression is not clear, we will assume that secret-picketing only means po-sting of the police at the house of a person to watch his movements and those of his associates without their knowledge. But in practice, whatever may have been the intention of the authorities concerned, it is well nigh impossible to keep it secret. It will be known to everybody including the person watched.

The next expression is "domiciliary visit" at night. Domiciliary means "of a dwelling place". A domiciliary visit is a visit of officials to search or inspect a private house.

Having ascertained the meaning of the said three expressions, let us see the operation of the Regulation and its impact on a person like the petitioner who comes within its scope. Policemen were posted near his house to watch his movements and those of his friends or associates who went to his house. They entered his house in the night and woke him up to ascertain whether lie was in the house and thereby disturbed his sleep and rest. The officials not below the rank of Sub-Inspector made inquiries obviously from others as regards his habits, associations, income, expenses and the occupation, i.e., they got information from others as regards his entire way of life. The constables and the chaukidars traced his movements, shadowed him and made reports to the superiors. In short, his entire life was made an openbook and every activity of his was closely observed and followed. It is impossible to accept the contention that this could have been made without the knowledge of the petitioner or his friends, associates and others in the locality. The attempt to dissect the act of surveillance into its various ramifications
356
is not realistic. Clause (a) to (f) are the measures adopted for the purpose of supervision or close observation of his movements and are, therefore, parts of surveillance. The question is whether such a surveillance infringes any of the petitioner's fundamental rights.

Learned Counsel for the petitioner contends that by the said act of surveillance the petitioner's fundamental rights under cls. (a) and (d) of Art. 19 (1) and Art. 21 are infringed. The said Articles read:-

Art. 21 : No person shall be deprived of his life or personal liberty except according to procedure established by law.

> Art. 19 (1): All citizens shall have the right:-
> (a) to freedom of speech and expression;
> x x x x x x
> (d) to move freely throughout the territory of India.

At this stage it will be convenient to ascertain the scope of the said two provisions and their relation inter se in the context of the question raised. Both of them are distinct fundamental rights. No doubt the expression "personal liberty" is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move freely is carved out of personal liberty and, therefore, the expression "personal liberty" in Art. 21 excludes that attribute. In our view, this is not a correct approach. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamen. tal right of life and personal liberty have many attributes and some of them are found in Art. 19. If a
357
Person's fundamental right under Art. 21 is infringed, the State can rely upon a law to sustain the action; but that cannot be a complete answer unless the said law satisfies the test laid down in Art. 19 (2) so far as the attributes covered by Art. 19 (1) are concerned. In other words, the State must satisfy that both the fundamental rights are not infringed by showing that there is a law and that it does amount -to a reasonable restriction. within the meaning of Art. 19 (2) of the Constitution. But in this case no such defence is available, as admittedly there is no such law. So the petitioner can legitimately plead that his fundamental rights both under Art. 19 (1) (d) and Art. 21 are infringed by the State.

Now let us consider the scope of Art. 21. The expression "life" used in that Article cannot be confined only to the taking away of life, i.e., causing death. In Munn v. Illinois (1), Field, J., defined "life" in the following words:

> "Something more than mere animal existence. The inhibtion against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

The expression "'liberty" is given a very wide mea. ning in America. It takes in all the freedoms. In Bolling v. Sharpe (2), the Supreme Court of America observed that the said expression was not confined to mere freedom from bodily restraint and that liberty under law extended to the full range of conduct which the individual was free to pursue. But this absolute right to liberty was regulated to protect other social interests by the State exercising its powers

(1) (1877) 94 U.S. 113.
(2) (1954) 347 U.S. 407, 499,
358
such as police power, the power of eminent domain, the power of taxation etc. The proper exercise of the power which is called the due process of law is controlled by the Supreme Court of America. In India the word "liberty" has been qualifie by the word "Personal", indicating thereby that it is confined only to the liberty of the person. The other

aspects of the liberty have been provided for in other Articles of the Constitution. The concept of personal liberty has been succinctly explained by Dicey in his book on Constitutional Law, 9th edn. The learned author describes the ambit of that right at pp. 207-208 thus:

> "The right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification."
>
> Blackstone in his commentaries on the Laws of England, Book 1, at p.134, observed :
>
> "Personal liberty" includes "the power to locomotion of changing situation, or removing one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless by due course of law."

In A. K. Gopalan's case (1), it is described to mean liberty relating to or concerning the person or body of the individual; and personal liberty in this sense is the antithesis of physical restraint or coercion. The expression is wide enough to take in a night to be free from restrictions placed on his movements. The expression "coercion" in the modern age cannot be construed in a narrow sense. In an uncivilized society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilization advances the psychological restraints are more. effective than physical ones. The scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical

(1) [1950] S.C.R.88.

359

fear channelling one's actions through anticipated and expected groves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. 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 lie 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 (1), 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 affect 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 restrictions or encroachments on his person, whether those restrictions 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 fund-amental right of the petitioner under Art. 21 of the Constitution.

This leads US Lo the second question, namely, whether the

petitioner's fundamental right under Art. 19 (1) (d) is also infringed. What is the content of the said fundamental right? It is argued for the
(1) (1949) 338 U.S. 25.
360
State that it means only that a person can move physically from one point to another without any restraint.' This argument ignores the adverb "freely" in cl. (d). If that adverb is not in the clause, there may be some justification for this COntention; but the adverb "freely" gives a larger content to the freedom Mere movement unobstructed by physical restrictions cannot in itself be the object of a person's travel. A person travels ordinarily in quest of some objective. He goes to a place to enjoy, to do business, to meet friends, to have secret and intimate consultations with 0thers and to do many other such things. If a man is shadowed, his movements are obviously constricted. He can move physically, but it can only be a movement of an automation. How could a movement under the scrutinizing gaze of the policemen be described as a free movement? The whole country is his jail. The freedom of movement in cl. (d) therefore must be a movement in a free country, i. e., in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control. The petitioner under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but he cannot do so freely, for all his activities are watched and noted. The shroud of surveillance cast upon him perforce engender inhibitions in him and he cannot act freely as he would like to do. We would, therefore, hold that the entire Regulation 236 offends also Art. 19
(1) (d) of the Constitution.
Assuming that Art. 19 (1) (d) of the Constitution must be confined only to physical movements, its combination with the freedom of speech and expression leads to the conclusion we have arrived at. The act of surveillance is certainly a restriction on the said freedom. It cannot be suggested that the said freedom is also bereft of its subjective or psychological content, but will sustain only the mechanics
361
of speech and expression. An illustration will make our point clear. A visitor, whether. a wife, son or friend, is allowed to be received by a prisoner in the presence of a guard. The prisoner can speak with the visitor; but, can it be suggested that he is fully enjoying the said freedom? It is impossible for him to express his real and intimate thoughts to the visitor as fully as he would like. But the restrictions on the said freedom are supported by valid law. To extend the analogy to the present case is to treat the man under surveillance as a prisoner within the confines of our country and the authorities enforcing surveillance as guards., without any law of reasonable restrictions sustaining or protecting their action. So understood, it must be held that the petitioner's freedom under Art. 19 (1) (a) of the Constitution is also infringed.
It is not necessary in this case to express our view whether some of the other freedoms enshrined in Art. 19 of the Constitution are also infringed by the said Regulation.
In the result, we would issue an order directing the respondents not to take any measure against the petitioner under Regulation 236 of Chapter XX of the U. P. Police Regulations. The respondents will pay the costs of the petitioner.

By COURT : In accordance with the opinion of the majority this Writ Petition is partly allowed and Regulation 236 (b) which authorises "domiciliary visits" is struck down as unconstitutional. The Petitioner would be entitled to the issue of a writ of mandamus directing the respondent not to continue domiciliary visits. The rest of the petition fails and is dismissed. There will be no order as to costs.
362