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Divorce in the Digital Age: SC Allows Secretly Taped Calls Between Spouses

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PUBLISHED 15 July 2025

Introduction

In a landmark ruling that reshapes the admissibility of evidence in matrimonial disputes, the Supreme Court of India in Vibhor Garg v. Neha[1], has held that a secretly recorded telephonic conversation by one spouse is admissible in evidence in matrimonial proceedings such as divorce. The Court ruled that such recordings are not barred by spousal privilege under Section 122 of the Indian Evidence Act, 1872, particularly when the dispute is between the spouses themselves.

Background of the Case

The case arose from a matrimonial dispute between the appellant-husband and the respondent-wife, wherein the husband sought to introduce audio recordings of private telephonic conversations with his wife as evidence of cruelty in a divorce proceeding. The Family Court allowed the evidence, holding it relevant under Section 14 of the Family Courts Act, 1984. However, the High Court of Punjab and Haryana reversed this, citing violation of the wife's right to privacy under Article 21 of the Constitution. Aggrieved, the husband approached the Supreme Court.

Supreme Court's Ruling

The bench of Justices B.V. Nagarathna and Satish Chandra Sharma allowed the appeal and restored the Family Court's order, thereby permitting the audio recordings to be exhibited as evidence.

Key Findings:

1. Section 122 of the Evidence Act-Not a Bar in Spousal Disputes

The Court clarified that Section 122, which protects confidential marital communications, contains an explicit exception for suits between spouses. The privilege does not extend to matrimonial proceedings like divorce. Therefore, the husband's disclosure of communications made during marriage, even if recorded covertly, is not barred.

"In suits between married persons, the requirement of consent for disclosure under Section 122 does not apply."

2. Right to Privacy -Not Absolute in Matrimonial Litigation

The Court rejected the wife's argument that such recordings violate her fundamental right to privacy. Relying on the K.S. Puttaswamy and Kaushal Kishore[2] judgments, the Court held that while the right to privacy under Article 21 exists against both state and non-state actors, it is not absolute and must be balanced against the right to a fair trial.

"If a marriage has reached a stage where spouses are actively snooping on each other, it is itself a symptom of a broken relationship."

3. Test for Admissibility of Secret Recordings

The Court reaffirmed the three-pronged test laid down in R.M. Malkani v. State of Maharashtra[3] for admitting secretly recorded conversations:

- Relevance to the facts in issue
- Identification of the speaker(s)
- Accuracy of the recording (including safeguarding against tampering)

Mere lack of consent does not render the evidence inadmissible.

4. Electronic Evidence and Section 65B Compliance

The Court reiterated that electronic records, such as recordings stored on memory cards or compact discs, are admissible under Sections 65A and 65B of the Evidence Act, provided the requisite certificate is submitted.

Guidance for Family Courts

While the Supreme Court did not lay down binding procedural safeguards, it acknowledged the submissions made by the amicus curiae proposing certain factors that Family Courts may consider at their discretion under Section 14 of the Family Courts Act. These suggestions though not adopted as binding directions offer a useful framework for judicial evaluation of covertly recorded

evidence in matrimonial disputes. The recommended considerations include:

- The context and temporal proximity of the recording to the allegations;
- The authenticity of the recording and the potential for prejudice;
- Disparities in access to technology, particularly along gender lines; and
- The underlying intention behind producing the recording.

Author's View

The Supreme Court's ruling in Vibhor Garg v. Neha is a decisive affirmation of the principle that evidentiary relevance and the right to a fair trial must not be curtailed by an overbroad reading of privacy in matrimonial litigation. By clarifying that Section 122 of the Indian Evidence Act does not operate as a bar in proceedings between spouses, and that recordings though covert can be admissible if they meet standards of relevance, accuracy, and identification, the Court has brought much-needed consistency to an area marked by conflicting High Court judgments.

This judgment strikes an appropriate and necessary balance between privacy and justice. Matrimonial proceedings often unfold in private spaces where independent witnesses are unavailable, and digital recordings may be the only means to demonstrate patterns of cruelty, abuse, or harassment. To categorically exclude such evidence under the pretext of privacy would undermine the truth-seeking function of the court and embolden wrongdoing under a cloak of constitutional protection.

At the same time, the Court's recognition of the need for caution and the possible misuse of surveillance-like tactics is equally significant. While the ruling allows such recordings to be admissible, it does not give license for indiscriminate intrusion into private life. Rather, it calls for judicial discretion guided by proportionality, intent, and evidentiary safeguards.

Vibhor Garg v. Neha is a progressive precedent. It affirms that the right to privacy, while fundamental, must coexist with the imperatives of justice, particularly in deeply personal and often contested domains like marriage. The judgment offers a clear legal framework for courts to evaluate digital evidence without compromising either privacy or procedural fairness. Consistent adoption of these principles ideally supplemented by procedural guidelines will be essential to prevent misuse while preserving access to the truth.

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1. SLP(C) No. 21195/2021 ??
2. (2017) 10 SCC 1 ??
3. (1973) 2 SCR 417 ??

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