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## Right to Privacy: The Torchbearer of Individual Rights

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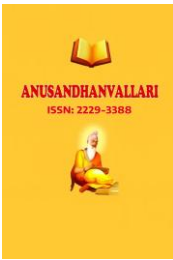
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### Abstract

From traditional boundaries of morality to the new definition of morality where personal liberty is treated at par with social obligations is what we consider a progressive society. Such a society is a result of transformative constitutionalism. The principles established by the Constitution at the time of its adoption have changed the dimensions from a restrictive connotation to an enlarged one. Indian Constitution is a dynamic one which keeps on adapting to new aspects of society as the need arises. The Constitution has always made sure that the struggle for independence should not go in vain and the people of India should not suffer from executive arbitrariness. This underlying theme has always motivated the law makers to interpret the principles of Constitution with a wide approach. Our judiciary has always tried to keep a balanced approach whenever there has been a conflict between social interest and individual interest. Irrespective of the fact that India is a socialist society rather than individualistic one, our Constitution never made a preference but always a priority. Social rights and community rights have always been the focus of law-making agencies, but a shift in this trend has been seen in the last decade. With the recognition of Right to privacy by the Supreme Court, the glass ceiling of limited personal liberty has been broken, and the roadmap is created for new avenues of rights. Along with the change in socio-legal dynamics, new rights are emerging on the lines of right to privacy. This right, also referred to as the master of all individual rights, has led to a revolution which has paved way for further discussions and judicial activism. New laws have been framed, and some are still under consideration which will further affirm the never-ending arch of this contemporary right. But the point of consideration is how far these laws can maintain the true



spirit of parent rights and not become over-arching. This paper will bring this point of consideration to light and discuss the future prospect of these laws revolving around the Right to Privacy.

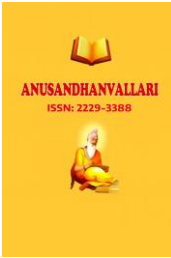
**Keywords-** Right to Privacy, Constitutionalism, Individual interest, Judicial activism.

**Introduction:** Change is the law of nature, and nothing is constant, these facts are the universal truth without any exception. Society and law are two facets of same coin. They are so interdependent that the change in one is evidently visible on the other. There is a concept of two conflicting interests, that is, social interest and personal interest which exist in society. These two are so intertwined that they overlap many a times. Law is the only tool which keeps a balance between them. As society progresses, laws need to be modified and updated to coordinate with it. Changes in society occur whenever there is any technological advancement or scientific development. This shift starts reflecting through the change in lives of people and in return demands an upgradation in law. This transition in society becomes a motivation for new laws. Society grows in all directions without any order. The tool to bring such an order and maintain it is law. Law is the only instrument which can give direction to the progress of society. As elaborated by former South African Chief Justice, Justice Pius Langa, they may also hold the key to a more equitable future, beyond mere course correction.

*“...transformation is not a temporary phenomenon that ends when we all have equal access to resources and basic services and when lawyers and judges embrace a culture of justification. Transformation is a permanent ideal, a way of looking at the world that creates a space in which dialogue and contestation are truly possible, in which new ways of being are constantly explored and created, accepted and rejected and in which change is unpredictable, but the idea of change is constant.”<sup>1</sup>*

We have a living Constitution as it keeps alive the current sentiments of people. It adapts according to the situation and changes are made through Amendment Acts. The word ‘socialist’ which was added through 42<sup>nd</sup> Amendment to the Preamble means democratic socialism which can be elaborated as democratic equal distribution of resources for development of all. Democratic terms themselves signify liberty to have choice and freedom to exercise it. A state is recognized as a socialist one when the aim of all the policies framed is to establish a welfare state. When we talk in terms of socialism, it means a state where all the decisions are taken

<sup>1</sup> [https://www.barandbench.com/columns/constitution-day-2019-note-on-transformative-constitutionalism#:~:text=For%20instance%2C%20the%20transformative%20value,the%20Basis%20of%20Reservation%20\(to; as accessed on 25 September 2024 at 11:04 pm.](https://www.barandbench.com/columns/constitution-day-2019-note-on-transformative-constitutionalism#:~:text=For%20instance%2C%20the%20transformative%20value,the%20Basis%20of%20Reservation%20(to; as accessed on 25 September 2024 at 11:04 pm.)



considering the welfare of majority. But sometimes securing individual rights becomes as important as establishing social welfare. Individual rights should not be overshadowed by social rights, but it should be nurtured and protected by the latter.

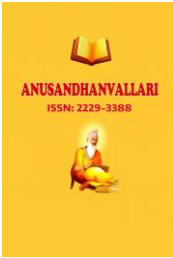
**Jurisprudence of Conflicting Interests:** The ever-evolving concept of law brings with it new challenges and issues to be dealt with. When we look at the jurisprudence of shift of laws, we come to the historical school of thought where Savigny said that ‘law grows with society’ which means, to grow with society law needs to transform with the developments thereby. This school, also known as Continental School of Jurisprudence, relies on the customs and habits of people, which change as their needs change.<sup>2</sup> The recognition of right to privacy is an apt application of this theory. This right was continuously under judicial purview since formation of the Constitution. But it was outrightly rejected by the Supreme Court on various occasions on the lines of absence of any such provision under the Constitution. Savigny’s concept of “volksgeist” highlighted the collective will of the people in moulding the law.<sup>3</sup> As the word itself consists of amalgamation of two phrases that is “volks” which means people and “geist” which means common will leading to the meaning common will of people. Every law and further every development in law is a result of changing social scenario of a state. While during the formation years of the Constitution, it was focused more on community rights rather than individual rights, to grow as a nation. We had a long history of colonial rule which was a result of fragmented society. So, to overcome this with a strong Constitution, we needed more community-oriented rights. This thought led to the inclusion of DPSP (Directive Principles of State Policy) along with fundamental rights in the Constitution.

Savigny drew an analogy between the development of law and the evolution of language. Just as language naturally evolves within a society to facilitate communication, law evolves in conjunction with a nation’s cultural and social development. This development is not a separate entity but an intrinsic part of the nation’s identity.<sup>4</sup> Since the formation of constituent assembly, where this was a topic of continuous debate, right to privacy was pitched in throughout the process, but it was rejected on the ground that it will hamper the working law enforcement agencies. Also, there is no such provision in the Constitution of USA. Dr. B R Ambedkar gave a more elaborate formulation favoring a collective right over an individual one: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches

<sup>2</sup> <https://lawbhoomi.com/historical-school-of-jurisprudence/>; as accessed on 26 September 2024 at 2:03 pm.

<sup>3</sup> Ibid.

<sup>4</sup> <https://lawbhoomi.com/volksgeist-theory/>; as accessed on 26 September 2024 at 11:05 pm.



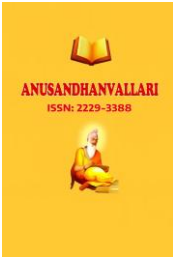
and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched and the persons or things to be seized." Dr. Ambedkar wanted to fit in a strong safeguard against violation of the right to privacy but at the same time allowing for State action where required under strict monitoring by the judiciary.<sup>5</sup> Relying on these reasons, the people of India were denied their right to privacy but not for long enough. Soon after, in 1954, the first case came where this right was mentioned in the court. This continuous struggle for a right is proof of the fact that society always comes upfront with its necessary demands as time requires. One of Montesquieu's most well-known works is his book 'The Spirit of Laws,' in which he expressed his belief in Enlightenment political ideas and advocated for the adaptation of laws to suit the evolving needs of both individuals and society.<sup>6</sup> We can see how the demand by different groups led to the recognition of this right in a landmark judgement.

Roscoe Pound gave the theory of Social Engineering where he talked about conflict between social interest and private interest. He believed that the law's primary goal is to establish equilibrium and concord in society, as individuals always priorities their own interests. He said that law and society are interdependent, and that the law's primary objective is to establish equilibrium and concord in society by resolving conflicts between self-interests and community interests. According to Pound, the law should be used as a means of social control to achieve the goals of maximum happiness and minimum friction in society. As specified by this theory, law is social engineering which means a balance between the competing interests in society. Judiciary also plays an active role in harmonizing the conflicts by interpreting the laws as needed case to case. To make social engineering with law, the importance of other factors like economic development needs to be realized. Law cannot, by itself, play a vital role unless it is accompanied by economic development. Public opinion also plays an important role. There should be awareness amongst the various sections of the society before legislation is enacted for its successful enforcement.<sup>7</sup> The Supreme Court in the past few years has been settling many decades long debates on the various issues and has passed many landmark and important

<sup>5</sup> <https://www.rtifoundationofindia.com/evolution-right-privacy-; India#:~:text=Constitution%20of%20India%20Bill%2C%201895&text=The%20text%20of%20the%20Bill,without%20lawful%20and%20legitimate%20reason; as accessed on 26 September 2024 at 11:06 pm.>

<sup>6</sup> <https://lawbhoomi.com/historical-school-of-jurisprudence/; as accessed on 26 September 2024 at 6:23 pm.>

<sup>7</sup> <https://manupatra.com/roundup/331/articles/law%20as%20tool.pdf manupatra article; as accessed on 27 September 2024 at 1:53 pm.>



judgments on the way, interpreting laws while expanding the ambit of fundamental rights and changing the course of the Constitution and of India.<sup>8</sup>

A gradual shift in society's attitude from a welfare state focusing more on public interest to a welfare state promoting more of individual interests is clearly visible. The theme of balancing privacy rights of an individual with the duty of the state to ensure public order can be seen through all the different circumstances in which various cases were decided by the US Supreme Court.<sup>9</sup> Combining the theories given by Savigny and Pound, we can conclude that it is not a new phenomenon of shift in attitude, but something which is already tried and tested. These thoughts are a result of experience which have been given the shape of words.

**Transformation from Social Interest to Individual Interest:** One of the landmark cases which changed the face of Indian legal system once and for all is the *Keshavananda Bharati Case*<sup>10</sup>. While adopting the Constitution, certain principles were made sure to be established which will reflect the core features of it. These principles were later confirmed as basic features in the celebrated case of *Keshavananda Bharti Case*. Socialism was one of them which was seen as core pillar of the Constitution. Our constitution farmers made sure that the struggle by our freedom fighters should not go in vain. Supreme Court judge Justice BV Nagarathna said that the Constitution of India is stronger now because of the Kesavananda Bharati judgment, which laid down the basic structure doctrine. She opined that the basic structure doctrine is a fine example of transformative Constitutionalism.<sup>11</sup>

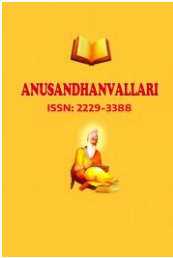
Our Constitution establishes a welfare state which will strive for equality. Social welfare of citizens is the core concern for any legislation. With changing scenarios, the meaning of welfare society has also changed. From a collective perspective to an individual one, now the focus has drifted towards individual growth, which will eventually help in society's growth. In the established framework of the Constitution, our judiciary is trying to accommodate more personal rights in harmony with community rights. Through various landmark judgements, the judiciary has tried to widen the narrow lanes of Constitutional principles. With each case, as the need emerged, it was considered on the sidelines of basic features of Constitution and wherever it was

<sup>8</sup> <https://www.radheykrishnafoundation.org/judicial-system-in-india-evolution-of-rights/>; as accessed on 27 September 2024 at 2:02 pm.

<sup>9</sup> <https://theleaflet.in/specialissues/right-to-privacy-in-the-united-states-of-america-by-nehmat-kaur/>; as accessed on 28 September 2024 at 7:02 pm.

<sup>10</sup> AIR 1973 SC 1461.

<sup>11</sup> <https://www.livelaw.in/news-updates/justice-bv-nagarathna-constitution-kesavandabharti-basic-structure-transformative-223532>; as accessed on 24 September 2024 at 7:24 pm.



found suitable, the rights were aligned with those features. The shift from social interests to private interests was a gradual one in which different institutions played their role.

The Judiciary has widened the scope of the Indian Constitution and Indian laws, and its interpretations has been time and again defined and redefined, giving it the broadest possible application. No doubt that the Indian Judicial System has played a very important role in lining up the actions of a welfare state.<sup>12</sup> The Supreme Court, which is the guardian and protector of our rights, is the flag bearer of identification of individual rights. By giving a liberal and comprehensive meaning to “life and personal liberty,” the courts have formulated and have established Plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In A.K. Gopalan’s Case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi’s case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation”.<sup>13</sup>

Several old laws from the pre- independence era which showed that India was stuck in the past in recognizing individual’s rights have been struck down. The Supreme Court has delivered many judgments interpreting various laws to expand the ambit of fundamental rights. It is not wrong to say that people in India have rights, which with the blessing of Indian Judiciary is evolving at a great pace. In the past few years our society has evolved at a rapid speed which is clearly reflected in the laws and hence, in the lives.<sup>14</sup>

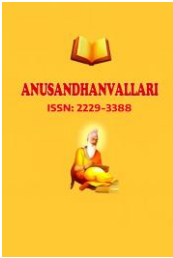
**Gradual Transition of Basic Structure of the Constitution:** Our Constitution is often referred to as a living document because it adapts to the need of the situation. These principles focus on the underlying vision of our great leaders. One such far-sighted vision was to see the people flourishing, especially in terms of their personal growth. For this purpose, there was a need to establish a stable and democratic law and order system. With this mindset, a welfare state was envisaged targeting to establish an equitable society. Speaking of the imperatives of social

<sup>12</sup> <https://www.radheykrishnafoundation.org/judicial-system-in-india-evolution-of-rights/>; as accessed on 26 September 2024 at 9:01 am.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.





democracy, Dr. Ambedkar said: "it was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."<sup>15</sup> India, after independence, Adopted the ideal of a socialistic pattern of society and has formulated programs of social welfare in various spheres. The aim is to establish a social order which would eradicate exploitation, secure equal opportunities for all citizens, ensure that they share just obligations and enjoy Social Security.<sup>16</sup> The preamble of our Constitution establishes certain principles to be followed while lawmaking which we refer to as basic features.

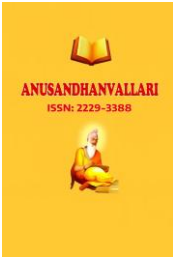
The shift from a socialistic society to an individualistic one started way back before the recognition of Privacy as a fundamental right. With the infusion of awareness among people regarding their rights, it has always been a subject of concern throughout. It was evident through various rulings by the Supreme Court that the fight for privacy rights has sparked a need for this shift. The judicial contribution to the synthesis and the integration of the Fundamental Rights and the Directive Principles in the process of "constitutionalizing" social and economic rights has been crucial to the realization of the Directive Principles not only as a means to effectuate Fundamental Rights but also as a source of laws for a welfare state.<sup>17</sup> The basic features, as mentioned by the Supreme Court, forms pillar of strength for the Constitution. While the idea that there is such a thing as a basic structure to the Constitution is well established and its contents cannot be completely determined with any measure of finality until a judgement of the Supreme Court spells it out. Nevertheless, the sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens etc. are some of the essential features of the Constitution that have appeared time and again in the Apex Court's pronouncements.<sup>18</sup> Article 21 forms a core part of this basic structure of the Constitution. Various other rights and duties for people have evolved based on these features. One such right among those evolved which is seen as a torchbearer for future rights is the "Right to Privacy". This right is a combined output of Article 14, Article 19 and Article 21.

<sup>15</sup> <https://legalaffairs.gov.in/sites/default/files/chapter%203.pdf>; as accessed on 24 September 2024 at 9:37 pm.

<sup>16</sup> <https://manupatra.com/roundup/331/articles/law%20as%20tool.pdf>, MANUPATRA PAPER; as accessed on 25 September 2024 at 2:10 pm.

<sup>17</sup> <https://legalaffairs.gov.in/sites/default/files/chapter%203.pdf>; as accessed on 27 September 2024 at 4:24 pm.

<sup>18</sup> <https://constitutionnet.org/vl/item/basic-structure-indian-constitution>; as accessed on 28 September 2024 at 11:17 pm.



**Right to Privacy: The Journey from Might to Right:** Privacy as a concept should not be seen as a right which needs to be granted by any state authority because it is already an inseparable part of human existence. We as humans have this instinct to protect our bodily integrity and keep private affairs to ourselves. We are used to living two lives which we call public life and the other life. It was never felt as a need to specify and define it in certain terms. But as the concept of state and community was developed, humans had to surrender certain rights to the state in order to get protection from external enemies. This surrender was in no way an absolute one, but slowly, as the powers were confined to a group of people, misuse was due to occur. Ages old saying that ‘power makes corrupt’ was evident from the exploitation by the state authorities. It was an unsaid rule that state can interfere and violate any right of the subject in the name of administration. This was the moment when the need was felt to recognize and protect privacy rights from unwarranted violations. The right to privacy is not a new right but it has always existed in some or other form ever since we can trace the initials of personal rights. Even when laws were not clearly identified for subjects, privacy of people was duly considered by the king while taking any decision.

Philosophical debates concerning definitions of privacy became prominent in the second half of the twentieth century and are deeply affected by the development of privacy protection in the law.<sup>19</sup> Since the concept of privacy has come into existence, it has always made headlines in some or the other form. Privacy is commonly understood to be equivalent to the right to be left alone.<sup>20</sup> Privacy is foundational to who we are as human beings, and every day, it helps us define our relationships with the outside world. It gives us space to be free of judgement and allows us to think freely without discrimination. It gives us freedom of autonomy, and to live in dignity. Privacy is also a right that enables our enjoyment of other rights, and interference with our privacy often provides the gateway to the violation of the rest of our rights.<sup>21</sup> Privacy can refer to a sphere separate from government, a domain inappropriate for governmental interference, forbidden views and knowledge, solitude, or restricted access, to list just a few.<sup>22</sup>

This right has been clearly mentioned on the international platform under Article 12 of UDHR (Universal Declaration of Human Right) which says- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or

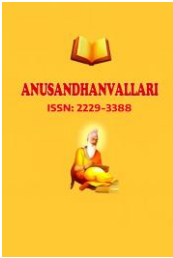
<sup>19</sup> <https://plato.stanford.edu/archives/spr2015/entries/privacy/>; as accessed on 24 September 2024 at 10:07 am.

<sup>20</sup> <https://www.vedantu.com/civics/right-to-privacy>; as accessed on 25 September 2024 at 3:08 pm.

<sup>21</sup> <https://digitalfreedomfund.org/digital-rights-are-human-rights/article-12-the-right-to-privacy/>; as accessed on 28 September 2024 at 4:34 pm.

<sup>22</sup> Supra 19.





attacks.<sup>23</sup> As regards with a nation, this right was first talked about in the USA. In 1890, Samuel Warren and Louis Brandeis wrote an essay titled “The Right to Privacy” where they talked about the concept of privacy. Citing “political, social, and economic changes” and a recognition of “the right to be let alone” they argued that existing law afforded a way to protect the privacy of the individual, and they sought to explain the nature and extent of that protection. The privacy principle, they believed, was already part of common law and the protection of one's home as one's castle, but new technology made it important to explicitly and separately recognize this protection under the name of privacy.<sup>24</sup> This paper could not bring significant changes in the law of the country but what it did was to start a conversation about this right. Not only the people but also the courts started seeing this right on the lines of fundamental rights. Various judicial authorities over time in the US have interpreted the right to privacy in varying contexts, but the seminal text for right to privacy can always be traced back to the essay written by Justice Louis D. Brandeis and Justice Samuel D. Warren on the Right to Privacy, that expands it to the right to be let alone.<sup>25</sup> Warren and Brandeis thus laid the foundation for a concept of privacy that has come to be known as control over information about oneself.<sup>26</sup>

This void in the law continued for a long duration, meanwhile, some other judgements were passed touching this part of the individual rights. In 1928, in the case of *Olmstead v. United States*<sup>27</sup>, The Supreme Court of USA outrightly rejected the contention of infringement of privacy through wiretapping but, a dissenting opinion was received there. Where the majority held that ‘only hearing of such conversations would not constitute the search and seizure, Justice Brandies, in his far-sighted dissent, hinted at the wrong precedent it would set. He poignantly wrote that, “*Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet. Moreover, in the application of a constitution, our contemplation cannot be only of what has been, but of what may be.*”<sup>28</sup> The Constitution of USA also never mentioned

<sup>23</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2012,against%20such%20interference%20or%20attacks.>; as accessed on 27 September 2024 at 4:37 pm.

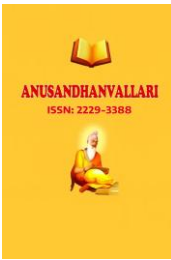
<sup>24</sup> Supra 19.

<sup>25</sup> <https://theleaflet.in/specialissues/right-to-privacy-in-the-united-states-of-america-by-nehmat-kaur/>; as accessed on 27 September 2024 at 12:10 pm.

<sup>26</sup> Supra 19.

<sup>27</sup> 277 U.S. 438.

<sup>28</sup> <https://theleaflet.in/specialissues/right-to-privacy-in-the-united-states-of-america-by-nehmat-kaur/m>; as accessed on 25 September 2024 at 7:30 pm.



this right anywhere, but it existed as ‘Right to be left alone’, as specified by Justice Louis Brandis.

1965 was the year when explicitly Right to privacy was acknowledged and accepted by the court of USA in the case of *Griswold v. Connecticut*<sup>29</sup>. This judgment upheld the right to access to contraceptives for a woman and stated that the right to privacy is an intrinsic part of an individual’s private and personal life, and hence, the State should not interfere in such private matters of family and reproduction.<sup>30</sup> Then in 1967, the previous judgement of *Olmstead v. United States*<sup>31</sup> was overruled in the case of *Katz v. United States*<sup>32</sup>, where the test of ‘reasonable expectation of privacy’ was ordained. This series of elaboration of the right continued further with *Roe v. Wade*<sup>33</sup> in 1973 and then in 2015 with *Obergefell v. Hodges*<sup>34</sup> where same sex marriage was upheld valid on the grounds of right to sexual orientation being a core of right to privacy. Today, the right to privacy stands tall as a fundamental right in the USA with its backing from Supreme Court judgements followed by different Constitutional Amendments. These amendments range from 1<sup>st</sup> amendment (privacy of beliefs), 3<sup>rd</sup> amendment (privacy of the home), 4<sup>th</sup> amendment (privacy of the person and possessions), 5<sup>th</sup> amendment (right against self-incrimination), 9<sup>th</sup> amendment (more general protection for privacy) and 14<sup>th</sup> amendment (prohibition clause on state laws).<sup>35</sup> There are also some federal state laws specifically providing this right.

It’s a well-established concept that strong people make a strong nation. The people in a country can feel empowered only when their rights are assured and protected from any unlawful violations. The concept of laissez faire where individual businesses flourish in absence of government control somewhere brings us the idea of a free space where new ideas develop. Same can be understood in the context of rights also. When they are limited in the boundaries of social obligations, at some point, their growth is compromised. Individual growth is seen only with the growth in individual rights. Here comes the roleplay of the right to privacy. It is seen as the master of all individual rights. India recognized this at a very later stage. With the *K.S. Puttaswamy and Anr. Union of India and Ors.*<sup>36</sup> judgement, a boom has been seen in this realm.

<sup>29</sup> 381 U.S. 479.

<sup>30</sup> <https://theleaflet.in/specialissues/right-to-privacy-in-the-united-states-of-america-by-nehmat-kaur/>; as accessed on 26 September 2024 at 2:26 pm.

<sup>31</sup> *Supra* 27.

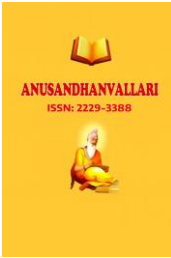
<sup>32</sup> 389 U.S. 347.

<sup>33</sup> 410 U.S. 113.

<sup>34</sup> 576 U.S. 644.

<sup>35</sup> <http://law2.umkc.edu/faculty/projects/ftirls/conlaw/rightofprivacy.html>; as accessed on 26 September 2024 at 2:27 pm.

<sup>36</sup> AIR 2017 SC 4161.



It was never explicitly granted in the Constitution, but our judiciary paved way for it through various cases thereby also giving exceptions to it. It has been a roller coaster ride for this right, from the first case of *MP Sharma vs Satish Chandra*<sup>37</sup> till it was finally recognized in the *Puttaswamy Case*. Since its inception, it has brought a drastic revolution kind of change among the legal fraternity. The Court's decision, holding that this right comes from the fundamental right to life and liberty, has far-reaching consequences.<sup>38</sup>

This right has seen many phases during these years of evolution. In its journey of the last 60 years, it has seen an era of sheer rejection of the flying colours of full-fledged acceptance. But to be specific, it is a newly recognized right which has made its way through the Indian Constitution. Summarizing the facts of case, it is as mentioned here, in 2012, retired Justice K.S. Puttaswamy filed a case in the Supreme Court questioning Aadhaar's legitimacy, claiming that it infringes on the right to privacy. During the hearings, the central government argued that privacy should not be classified as a fundamental right. The government's objection to the right was based on two early Supreme Court decisions, *MP Sharma Vs Satish Chandra*<sup>39</sup> in 1954 and *Kharak Singh Vs State of Uttar Pradesh*<sup>40</sup> in 1962, which concluded that privacy was not a fundamental right.<sup>41</sup> An eight-judge bench in Satish Sharma case found that the Indian Constitution did not include the same basic rights to privacy as Article 4 of the US Constitutional Amendment. The court refused to adopt the principles of Article 4 of the Constitutional Amendment in the form of right to privacy.<sup>42</sup> Therefore, a larger bench was formed to hear on this matter. This bench unanimously upheld the right to privacy as a fundamental right. The Supreme Court confirmed that the right to privacy is a fundamental right that can be drawn from Articles 14, 19, and 21 of the Indian Constitution without having to be stated separately, subject to reasonable restrictions.<sup>43</sup> The Court also laid certain criterion for test in case of violation of the right. Any infringement of the right to privacy under Article 21 of the Indian Constitution must be tested on the parameters laid down by the Supreme Court in the *Puttaswamy* case— legality, legitimacy and proportionality.<sup>44</sup> This judgement changed the idea of the Constitution which was shaped through the *Keshavananda Bharati* case<sup>45</sup>. When framed, the Constitution pitched in for a

<sup>37</sup> (1954) 1 SCR 1077.

<sup>38</sup> <https://www.vedantu.com/civics/right-to-privacy>; as accessed on 28 September 2024 at 11:05 pm.

<sup>39</sup> Supra 37.

<sup>40</sup> 1963 AIR 1295.

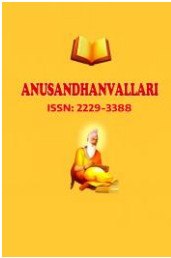
<sup>41</sup> Supra 38.

<sup>42</sup> <https://www.legallore.info/post/m-p-sharma-vs-satish-chandra-case>; as accessed on 27 September 2024 at 2:11pm.

<sup>43</sup> Supra 38.

<sup>44</sup> <https://jils.blog/2023/08/21/dna-databases-and-the-right-to-privacy-analysing-the-criminal-procedure-identification-act-2022-and-codis/>; as accessed on 25 September 2024 at 12:02 am.

<sup>45</sup> Supra 10.



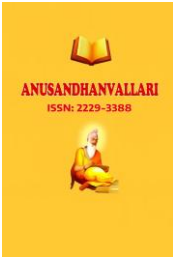
welfare state focusing on the social interests which was clearly visible through its provisions, but now with this judgement, we can see an inclination towards the individual interests of the subjects.

The biggest asset an individual can possess is the autonomy in making their decision regarding their personal life and the sphere surrounding that. This special freedom cannot be jeopardized at any cost. Rights and duties, when exercised efficiently, keep an equilibrium in society. There has been a constant plea after independence to amend the Constitution and mention the right to privacy explicitly but, with its recognition by the Supreme Court, now this has been taken care of. But there's also a sad reality that though the Judiciary is playing its part but executive authorities are seriously lacking behind. Even today many laws and rights laid by the judiciary are good on paper but fall flat in reality because either they are not properly executed or are not executed at all.<sup>46</sup> The newer concepts are difficult to put in one strait jacket category, and their fluid character does require a higher and stricter threshold for violation of an individual's privacy. The cases such as the Apple encryption case where the FBI sought backdoors inside Apple's encrypted systems for investigative purposes are an indication that with the digital revolution, balances will have to be maintained between privacy and interests of law enforcement.<sup>47</sup>

The journey of legal framework to govern privacy has been long and had multiple stages. From being recognized by judiciary to getting legislative sanction was a result of many deliberate discussions. After right to privacy verdict in 2017, government actively took efforts to build a data protection framework to uphold right to privacy. Justice BN Srikrishna committee submitted its report in 2018 which resulted into first draft of Personal Data Protection Bill, 2019 but was withdrawn in 2022 due to many ambiguities and inefficiency. Finally, Digital Personal Data Protection Act 2023 was enacted by parliament providing for protection of digital personal data of individuals and regulating processing of such data for lawful purposes. The Act regulates the role of Data Fiduciaries i-e-, government and private entities in collection, processing and storage of data. The Act provides for rights and duties of Data Principal and puts obligation on Data Fiduciaries. The concept of informed consent was incorporated into the Act along with providing right to be forgotten to the Data Principal. It has certain exemptions granted to state to maintain public order and prevent and investigation of crime. It mandates setting of Data Protection Board of India by central government to investigate the matters of data breach. It

<sup>46</sup> <https://www.radheykrishnafoundation.org/judicial-system-in-india-evolution-of-rights/>; as accessed on 27 September 2024 at 12:05 am.

<sup>47</sup> <https://theleaflet.in/specialissues/right-to-privacy-in-the-united-states-of-america-by-nehmat-kaur/>; as accessed on 27 September 2024 at 2:10 am.



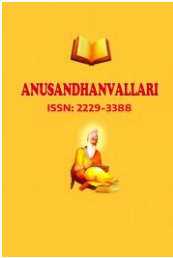
imposes penalties for breach of rights, duties and obligations. The Act is supplemented by Information Technology Act, 2000 which is proposed to be replaced by the Digital India Act, 2023.

**Conclusion:** In the current world, people's lives have been divided into two platforms, one is the real world, and the other one is the virtual world. People are so much into this virtual world that it has become a parallel universe for them. This is also a result of the technological advances which were focused on making lives easier for humankind. But as said, nothing comes free of cost and everything has a price to pay, this dependence on technology created a new world for us which has entangled humankind firmly. Now, as a source of entertainment and official use, it has become a necessity. Every day new cases of cyber fraud and data leaks are making headlines. There is a digital footprint for almost every aspect of our life today: where we go, who we communicate with, what we buy, what we search for, read and watch online, what health conditions we have.<sup>48</sup> The culprits are exploiting the opportunity created due to void in the legal arena. The victims are left with no remedy but just to suffer the loss. Rather than loss in the physical world, which can be estimated to some extent, loss from data leaks can go beyond that. Most of the people are still not aware of the repercussions of data leaks and the extent of damage. To harmonize our relations in society, it is essential that changes in law should be pre-conditioned by the existing public opinion in society. In other words, the changes in law should be only in those directions and to the extent which the people in general aspire in the society.<sup>49</sup>

The law-and-order system in a society needs to cater to the individual needs of the people to maintain a democratic system. Law and society are the counterparts where they stand in a directly proportional relationship with each other. The change in one can be visible on the other. Since the inception of the society a defined state of order has been there and in case of its absence there has been disarray. Lawlessness leads to anarchy and anarchy leads to revolt. The result of any revolt is revolution and that brings change in the order of society. We are shifting from a socialistic society towards an individualistic one which will further ensure to keep the fundamentals of socialism alive. Moreover, a change in discourse, when talking about privacy, shifting from the current discourse of extreme national security to that of protecting privacy

<sup>48</sup> <https://digitalfreedomfund.org/digital-rights-are-human-rights/article-12-the-right-to-privacy/>; as accessed on 28 September 2024 at 6:38 pm.

<sup>49</sup> <https://manupatra.com/roundup/331/articles/law%20as%20tool.pdf>; as accessed on 28 September 2024 at 7:07 pm.



would lead to a better balancing of interests.<sup>50</sup> Transformation never means moving away from your roots, but it signifies the spreading of your branches to bear more fruits. Inclusion of new fundamentals or expansion of the earlier ones further strengthens the Constitution. The basic features of the Constitution will always remain the same as they are fundamentals for governance.

**Suggestions:** Some of the suggestions from this paper can be summarized as follows:

- It is only when individual interests are protected can we ensure progress in social interests.
- The new era laws should be more centered around individual rights development so that it can empower the public at large.
- Right to Privacy, being the epicenter of all individualistic rights, there should be minimum compromise with this right.
- Privacy concerns in digital world should be addressed properly as most of the threats are coming from this space itself.
- Data being the fundamental unit of privacy, it should be well protected through robust legislation.
- Laws concerning scientific and technological developments should be more particular about the privacy concerns of the subjects.
- Any law where any kind of data is involved in any form should be cautiously framed.
- In case of any violation of the privacy rights there should be instant and adequate remedy available against it.

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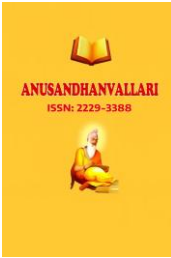
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