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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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**CRITICAL ANALYSIS OF JUSTICE K.S. PUTTASWAMY V.  
UNION OF INDIA (2019) 1 SCC 1 & 10 RELATED  
JUDGEMENTS IN THE LIGHT OF THE RIGHT TO PRIVACY**

AUTHORED BY - BEEHU SAWHNEY

**ABSTRACT**

*Privacy is a very essential word for every individual, and it is their fundamental right. More than freedom, 'privacy' is a power bestowed on a person. This right is critical for establishing limits and maintaining a healthy mental state. The privacy issue essentially erupted in the late twentieth century with the necessity for data privacy regulations and human rights of privacy for all individuals. Privacy is a very essential aspect of life and an integral part of the Indian Constitution. It emerges in all people, regardless of background, socioeconomic status, ethnicity, or sexual orientation. It is essential in the development of one's self, honesty, and dignity. However, privacy is not an absolute right but an intrinsic part of the rights given to us but intervention in this legality must be made in order to check the need and proportionality for safeguarding this valuable right and such an intervention must be justified by law. The authors of this study examined the beginnings of privacy via several court decisions, acknowledging privacy as a constituent of Article 21 of the Indian Constitution.*

*Article 21 'and its numerous variants' is a prime illustration of the Constitution of India's transformational nature. The Indian judiciary has given Article 21 a broader interpretation and significance that goes beyond the vision of the Constitution's drafters. These interpretations of the 'right to life' provide distinct complications. It is hard to comprehend the vast legislation on Article 21 within the confines of this study. Therefore, the authors comprehend the numerous aspects of freedom that flow from the 'right to life' and will offer a clear and complete explanation of the case laws that have been used to evaluate the right.*

**Keywords: Article 21, Indian Constitution, Privacy**

## INTRODUCTION

Though the general notion as held by the philosopher Aristotle states that man is a social man, there are certain things that a person might not be comfortable enough to share with other people either because they fear that sharing such information can be used against them or simply because they do not want to. There are certain parts of our life that we might not be comfortable enough to share with other people. Sometimes it is important to respect people's right to be left alone and live in peace but sometimes it is important for larger interests to know what a person is hiding. For instance, if a whistle-blower wishes to remain anonymous then it is expected from the state to respect their wish to be left alone and respect their privacy. On the other hand, if a person is a criminal suspect and they do not wish to reveal the details relating to the crime scene and states that the investigation officers need to respect his privacy, then such privacy cannot be respected as the interference done by the government official is meant for the larger good. The government has a responsibility to safeguard its citizens, but when it comes to monitoring, it frequently oversteps its bounds. Edward Snowden "exposed the NSA's espionage operation in 2013, putting the issue of privacy to the forefront. It's difficult to strike a balance between national security, freedom of expression, surveillance, and privacy rights. It is widely acknowledged that the government should not spy on someone unless there is a compelling reason to do so. No one wants to live in a state ruled by Big Brother."

In order for a democracy to function properly, it is essential that citizens have the freedom to express their opinions and have discussions about the same with other people. There may also be days when they might want to contemplate an idea that is not in consonance with the current ideas of the state but are not anti-national per se. If a safe ground for exploring and enhancing the ideas is not given then there would be no space for development. Taking into account the importance of privacy it becomes essential to determine the extent to which the governmental intrusion into people's privacy can be allowed. The same question was brought to the judiciary's light in the landmark case of K.S Puttaswamy v. Union of India. In this research paper, the researcher would be analyzing the Right to privacy in relation to the above cases and would also be discussing other cases which became detrimental to understanding the importance of privacy in India.



## **SCOPE**

This study has a look at pursuits to critically analyze the case of Justice K. S. Puttaswamy (Retd.) v. Union of India. The authors will examine the reality of whether or not the right to privacy is an assured unbiased essential proper right under the constitution of India. The case would be associated with all of the intrinsic information given below in Article 21: Right to Life within the Constitution of India.

## **RESEARCH METHODOLOGY**

This paper will employ the method of doctrinal research. This method enables the researcher to use the library and e-library for the conduction of research. In this research paper, the researcher has included many primary sources like existing data and some of the laws (drawn from cases) to validate the statements put forth in this paper. Puttaswamy's Case judgment has been critically analyzed. For this research paper, books, other research articles, case laws, journal articles, and relevant landmark judgments in the field of Constitutional law will be used. Apart from these databases like SCC Online, AIR online, Manupatra, Hein Online, Jstor, and Lexis Nexis will also be used. Hence, in the researcher's view, these tools adopted for the current research are apt for the topic discussed.

### **Research Questions:**

1. Is the Right to Privacy an absolute right?
2. How effective are the laws pertaining to data protection and safeguarding the privacy of individuals?
3. How can state surveillance be detrimental after a threshold infringing the privacy of citizens?
4. Why was Right to Privacy included under Article 21 as a fundamental right?

### **Research Objectives:**

1. To understand the enforceability and scope of Right to Privacy under Article 21
2. To get a deeper understanding of the term 'privacy' through judicial decisions
3. To look closely at the drawbacks due to the lack of data protection laws.
4. To analyse the conditions pertaining to safeguard an individual's privacy in different spheres through laws.

## BRIEF ANALYSIS OF THE ISSUE

KS Puttaswamy brought a petition against the proposed scheme which made AADHAR compulsory to take benefits of the govt. schemes. SC of India issued a significant decision in it declaring the “Right to Privacy” a constitutional right and intrinsic part under A. 21 of the Constitution which provides that: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The SC overruled its earlier judgment in MP Sharma <sup>1</sup>and Kharak Singh’s <sup>2</sup>case which held that the Right to privacy is not protected by the constitution. However, this right isn’t absolute in nature but can be restricted as provided by law.

In the judgement, the Apex court held that: “it stands established, without any pale of doubt that privacy has now been treated as a part of the fundamental rights. The Court has held that, in no uncertain terms, that privacy has always been a natural right which is given an individual freedom to exercise control over his or her personality. The judgement further affirms three aspects of the fundamental rights to privacy, namely: (i) Intrusion with an individual’s physical body; (ii) Informational privacy; (iii) Privacy of choice.” The extent of the Right to Privacy is very wide and it safeguards an individual's right to make personal decisions. like the right to refuse medical facilities, right to wear religious symbols, right against arbitrary, protection of data and personal information, personal intimacies including sexual orientation, etc.

Justice Chandrachud examines the nature of privacy as, “Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognized. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.” Privacy isn’t an absolute right, and the government has the authority to intrude on an individual's privacy under some conditions. The Court, on the other hand, established three criteria that must be met in order to violate a person's basic right to privacy: the object's legality, the requirement of a reasonable goal and proportionality. The State can only contravene an individual’s basic right to privacy if these three requirements are met.

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<sup>1</sup> M.P Sharma vs. Satish Chandra, 1954 AIR 300

<sup>2</sup> Kharak Singh v. State of UP, AIR 1963 SC 1295

The Apex Court's wide elucidation of the “right to privacy” in this decision has prepared the stage for a large number of asserts. In the case of RTI, however, because there is no clear order among the numerous fundamental rights of the Indian Constitution, each case would be decided on its own facts and situation. According to the researcher, the majority of doubts and discussions about the right to privacy have been resolved as a result of this decision. In the absence of any explicit legislation governing the right to privacy, this decision will be used to resolve controversies involving the right to privacy.

## LITERATURE REVIEW

In order to analyze the nuances surrounding The Right to Privacy and the recent developments through the cases thoroughly, it was essential for the researchers to gain extensive knowledge through sources like journal articles and published papers. The researchers used JSTOR as a medium to go through various sorts of papers and journal articles for the same. Through the journal article titled *Right to Privacy*<sup>3</sup> the researcher got a better understanding of the landmark judgments given in the Indian context which highlights the judicial interpretation of individual privacy as a need. *STATE SURVEILLANCE AND THE RIGHT TO PRIVACY IN INDIA: A CONSTITUTIONAL BIOGRAPHY*<sup>4</sup> assisted the researcher in analyzing the different aspects considered while surveillance is done by the enforcement agencies under the state. It further lays down to criticize the nature of surveillance conducted by the state on several individuals and the threat it poses to individual privacy.

The paper titled *PUBLICITY RIGHTS AND THE RIGHT TO PRIVACY IN INDIA*<sup>5</sup> gave an account of the laws pertaining to publicity rights and the development of privacy pertaining laws in the context of common law jurisdictions in a comparative form. In order to gauge a perspective of the digital complications and the need for stern data protection laws, the researchers thoroughly went through *DATA PROTECTION: INDIA IN THE INFORMATION AGE*<sup>6</sup> & *Privacy and Data*

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<sup>3</sup> A. G. Noorani, Right to Privacy, 40 Econ. Polit. Wkly. 802, 802 (2005)

<sup>4</sup>Gautam Bhatia, STATE SURVEILLANCE AND THE RIGHT TO PRIVACY IN INDIA: A CONSTITUTIONAL BIOGRAPHY, 26 N.L.S.I.R. 127, 136-158 (2014)

<sup>5</sup> Samarth Krishan Luthra, PUBLICITY RIGHTS AND THE RIGHT TO PRIVACY IN INDIA, 31 N.L.S.I.R. 125, 132-148 (2019)

<sup>6</sup> Atul Singh, DATA PROTECTION: INDIA IN THE INFORMATION AGE, 59 I.L.I. 78, 78-101 (2017)

*Protection in India*<sup>7</sup> to furnish the role of privacy in a different medium. *Civil Society and Privacy: A Critique*<sup>8</sup> assisted the researchers to get a core understanding of privacy in a societal setup and the importance of changing standards of personal liberties in a democratic setup.

The researcher went through the famous paper titled *Digital Surveillance and the Threat to Civil Liberties in India*<sup>9</sup> to get an all-around understanding of strict digital laws in India and the historical backdrops due to the lack of it. The paper criticizes the executive and questions the public policy-making machinery as well.

*Justice K.S. Puttaswamy (Ret'd) and Anr v. Union of India and Ors, Writ Petition (Civil) No. 494 of 2012*<sup>10</sup> helped the researchers to form the core of the following analysis from a holistic perspective.

Several articles, blogs, and expert reviews of legal luminaries were also explored, the account of which is given further in this paper. The researchers found it quintessential to cover all the facets impacting the legalities and used SCC Online, Live law, Bar and Bench, and Legal Services India to understand the broader concepts as well.

## **CRITICAL ANALYSIS OF K.S PUTTASWAMY**

### **V. UNION OF INDIA**

The Supreme Court has declared privacy as a basic right of individuals under Article 21 of the constitution. The judgment not just considered the protection of privacy in terms of physical intervention and a sub-part of Article 21 but also included the right to privacy in different aspects such as the body and mind, including the freedom to make decisions, choices, and have knowledge that they would rather prefer to keep to themselves. Part III of the Constitution was interpreted in such a manner that it gave a multi-faceted view of the right to life. Considering the vast scope of this right, it has also been one of the most debated articles. Earlier opinions were held in the cases of M.P.

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<sup>7</sup> Dhiraj R. Duraiswami, Privacy and Data Protection in India, 6 J.L.C.W. 166, 166-186 (2017)

<sup>8</sup> Arun K Patnaik, Civil Society and Privacy: A Critique, 63 I.J.P.S. 167, 167-182 (2002)

<sup>9</sup> Sangeeta Mahapatra, Digital Surveillance and the Threat to Civil Liberties in India, 3 G.I.G.A. 11, 11-14 (2021)

<sup>10</sup> **Menaka Guruswamy, Justice K.S. Puttaswamy (Ret'd) and Anr v. Union of India and Ors, Writ Petition (Civil) No. 494 of 2012, 111 A.J.I.L. 994, 994-1000 (2017)**

Sharma and Kharak Singh where it was considered that the Right to Privacy did not form a part of Article 21. Supreme Court in this judgment overruled the views observed in both of these cases by declaring that the said right in fact is very much a part of the Article. In the case of M.P. Sharma, the Court upheld the judgment, “stating that the Indian Constitution does not contain any limitations on search and seizure provisions comparable to the Fourth Amendment in the US Constitution. The Court found, however, that the Fourth Amendment was not an exhaustive idea of privacy, and that the lack of equivalent protection in the Constitution did not suggest that India had an inherent right to privacy - and therefore the decision was overturned.” The Court also considered whether the right to privacy was safeguarded by the right to life, personal liberty, and the freedoms granted by Part III of the Constitution in the case.

The judge was also of the view that privacy was not just a right that is to be provided to the elites but to the common man as well. It rejected the Attorney General's issue that the “right to privacy must be sacrificed in order for the state to give social benefits”. It also said that the right to privacy is not an absolute right and laid down three factors that are to be considered when governments interfere in the privacy of the people- the legality of the invasion, purpose of the intervention, and proportionality of the same. Justice J. Chelameswar, on the other hand, found that the "compelling state interest" criterion should only be used for privacy issues that require "strict scrutiny." He held that the just, fair, and reasonable test set forth in Article 21 would apply to other privacy claims. The adoption of the "compelling state interest" threshold, according to his decision, would be contingent on the facts of the case. The Supreme Court also “emphasized the importance of sexual orientation as a factor in privacy. It went on to highlight the bad and good aspects of the right to privacy, stating that the government was not only prohibited from infringing on the right but also required to take reasonable steps to protect an individual's privacy.”

## **OTHER LANDMARK JUDGMENTS RELATED TO**

### **THE RIGHT TO PRIVACY**

*Kharakh Singh v. State of U.P and Ors.*

This case is of paramount importance as it was the first case where the aspect of privacy was in question. The petitioner was arrested on the suspicion of dacoity but was later released because of

lack of evidence. Though he was released, his actions were being monitored to the extent that the police made domiciliary visits at night. This authority was granted to the police by Regulation 236 of the U.P Police Regulations. Kharakh Singh had filed the case questioning the constitutionality of the U.P Police Regulations as it was violative of his fundamental rights under Article 21 and his right to privacy. The respondent in their defence stated that these laws were made for the public interest and the petitioner's fundamental rights were not violated. The petitioner here was not arrested because they were guilty of the crime but on mere suspicion and as the general principle held by the courts in India, "A person is innocent until proven guilty". Considering there was no prove by the police that in anyway pointed out he was guilty, this kind of vigilance becomes arbitrary and uncalled for. The court in its judgment had relied upon the judgements in the cases of *Munn v. Illinois* and *Wolf v. Colorado*. In the former case, Justice Field held that "Right to Life means not merely the right to the continuance of a person's animal of existence, but a right to the possession of each of his organs- his arms and legs, etc". From this judgment, it can be said that the right to life under Article 21 also covers the scope of Article 19(1)(d) and the regulations were not just violative of his right to life but were also violative of his freedom to move freely. It can also be said that these rights are violative of Article 19(1)(a) as this kind of surveillance can affect a person's ability to express their views. As far as the question of privacy is concerned in this case, this regulation clearly violated the petitioner's privacy as it also included circumstances where he could secretly be picketed. Every person has a right to privacy and this right of theirs cannot be infringed until it is absolutely necessary. However, in this case, the respondent's way of maintaining peace and order at the cost of compromising the privacy of others is unconstitutional and arbitrary. However, the court in its final judgment, the court held that though the regulations were violative of Articles 19(1)(a), Article 19(1)(d), and Article 21 but they did not violate the petitioner's Right to Privacy as this right was not recognized by the constitution. In 2017, the Supreme Court overruled the judgment in the *K.S Puttaswamy v. UOI* by recognizing the Right to Privacy as a fundamental right.

***Smt. Maneka Gandhi v. Union of India & Ors.***

A seven-judge panel of the Apex Court declared in *Smt. Maneka Gandhi v. Union of India & Ors.*<sup>11</sup> that "personal liberty" within Article 21 encompasses "a range of rights, many of which have the character of basic rights and are afforded particular shelter under article 19." Any state intervention

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<sup>11</sup> *Smt. Maneka Gandhi v. Union of India & Ors.*, AIR 1978 SC 597.

that curtails personal liberty ought to pass three tests:

1. it must have a procedure;
2. this same procedure must be able to withstand an examination of one or more of the fundamental rights vested in Article 19 that could be effective in just a given scenario; and
3. it must advance the test of Article 14.

The ruling's most prominent factor was the link it made between certain standards of Articles 19, 14, as well as 21. The scope of civil liberty was considerably broadened as a result of this ruling, yet the fundamental and constitutional right to life was preserved. The judgement preserved the credibility of parliamentary law by declining to repeal **Sections 10(3)(c) as well as 10(4) of The Passport Act**<sup>12</sup>, in addition to protecting individuals from the Executive's unregulated operations.

The Apex Court's judgement laid the groundwork for the right to clean water, clean air, freedom from noise pollution, standard education, swift trial, fair trial, right to livelihood, legal assistance, food, and a clean environment to be included in Article 21.

### ***District Registrar and Collector v. Canara Bank***

In the case of ***District Registrar and Collector v. Canara Bank***<sup>13</sup>, the Supreme Court of India, held that the State cannot have unrestricted access to bank records related to any person. It laid down that under article 21<sup>14</sup> of the Constitution which speaks of the right to privacy of the citizens of India, a State cannot inspect, seize or make inquiry into private bank records of a person owing to their right to privacy. There needs to be reliable sufficient information justifying the inquiry into the bank records prior to the inspection. Also considering

This case cited the Maneka Gandhi case<sup>15</sup> about personal liberty under article 21<sup>16</sup> to support the judgment as well as the R. Rajagopal case<sup>17</sup> that held that a life free from encroachments falls under the ambit of personal liberty. Citing these cases, analyzing the facts of the case, and extensive consideration of the law of privacy which established that this right could be drawn out of the article

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<sup>12</sup> The Passports Act, 1967, § 10, No. 15, Acts of Parliament, 1967 (India)

<sup>13</sup> District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496

<sup>14</sup> INDIA CONST. art. 21.

<sup>15</sup> *Supra* 27

<sup>16</sup> INDIA CONST. art. 21.

<sup>17</sup> *Infra* 50

21, right to life, article 19(1)(a)<sup>18</sup>, freedom of speech and expression and article 19(1)(d)<sup>19</sup>, freedom to move. Therefore, following this thorough evaluation, the court held that the seizure of documents from any person's bank records without reasonable cause results in a breach of confidentiality and the right to privacy of the bank's customers.

### ***Govind v. State of Madhya Pradesh***

The judgment given in the case of ***Govind v. State of Madhya Pradesh***<sup>20</sup> laid stress on the recognition of the right to privacy as a crude derivation from Articles 19(a), (d), and 21 of the Constitution of India, but it is subject to certain restrictions and is not of absolute nature. The Court further stated that by "Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, the fundamental right must be subject to the restriction on the basis of compelling public interest". The objective and bounds of the monitoring, tracking by domiciliary visitation often does not encompass an unwarranted invasion of privacy. "People, not places" are indeed the emphasis of the right to privacy.

### ***Smt. Selvi v. State of Karnataka***

This case was filed by Smt. Selvi questioned the legality of the Narcoanalysis, BEAP, and Polygraph tests. The petitioners filed criminal appeal objections against the state because of non-consensual tests being undertaken on the suspects and accused of the purposes of investigation. There are several aspects of privacy that are in question in this case, the first one being consent. Every person has a right to remain silent and if they want to exercise their right by not providing their consent for the said tests then this kind of test cannot be conducted forcefully on them as it would be violative of Article 21 of the Indian Constitution. In addition to the above article, it also violates the principle of "Audi alteram partem" which is very well covered under the ambit of Article 14 of the Constitution. Forcing a person to give up their fundamental rights is not just unconstitutional but is inhuman and cruel as well. It is also violative of Article 20(3) which gives a personal right against self-incrimination. The court while delivering the judgment had said that the use of neuroscientific tests is violative of Articles 20(3) and 21 and could not be administered on the suspects or accused of the case until the accused himself consents to it.

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<sup>18</sup> INDIA CONST. art. 19, cl.1(a).

<sup>19</sup> INDIA CONST. art. 19, cl.1(d).

<sup>20</sup> Govind v. State Of Madhya Pradesh & Anr., 1975 AIR 1378.



### ***Naz Foundation vs Government Of NCT Of Delhi***

The Delhi High Court provided a ground-breaking ruling by giving its consent to homosexuality in the matter ***Naz Foundation vs Government Of NCT Of Delhi***.<sup>21</sup>

Section 377 of IPC with Articles 14, 19, and 21 of The Constitution of India were the major pillars in assessing the elements of this matter. The court interpreted Right to Privacy to preserve "a private area in which a man may develop and be himself."

Through this judgement it was widely accepted that the right to life and liberty guaranteed under Article 21 encompasses the right to privacy. The right to privacy was deduced as "the right to be alone.". Anyone who publishes anything relating to the aforesaid matters without the permission of that particular individual will be accounted responsible and will be held liable for the damage. However, if that individual actively pushes his own self into a dispute or deliberately seeks and generates a controversy, this position will be different.

### ***Unique Identification Authority of India v. Central Bureau of Investigation***

In a case related to the release of biometric information in ***Unique Identification Authority of India v. Central Bureau of Investigation***<sup>22</sup>, fingerprints held by the UIDAI<sup>23</sup>, in case of rape of a minor, the CBI<sup>24</sup> required to obtain the same. The CBI collected certain fingerprints from the place of the incident which was to be compared with the fingerprints that UIDAI holds. The petitioner, in this case, cited the District Registrar and Collector case<sup>25</sup>, to shed light on the fact that there needs to be reasonable cause to obtain private information of a person. As it was also held in this case that necessary reasonable searches do not violate the fundamental rights under Article 20(3)<sup>26</sup>, which guarantees that no person must be obliged to incriminate himself. Therefore, in this petition, the High Court of Bombay in Goa, considering the Supreme Court's examination, is required to determine if the need for the fingerprints is an absolutely reasonable cause for the CBI to seize the biometric information of a person.

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<sup>21</sup> Naz Foundation v. Government of NCT of Delhi, 2009 SCC Del 1762.

<sup>22</sup> Unique Identification Authority of India v. Central Bureau of Investigation, 2014 SCC OnLine Bom 4753

<sup>23</sup> Unique Identification Authority of India

<sup>24</sup> Central Bureau of Investigation

<sup>25</sup> *Supra* 29

<sup>26</sup> INDIA CONST. art. 20, cl.3.

## Telephone Tapping

Telephone tapping is a major violation of someone's right to privacy.

The Apex Court thoroughly considered the queries asked regarding Telephone tapping in the matter of People's *Union for Civil Liberties v. Union of India*<sup>27</sup> wherein, a PIL had been filed to oppose the CBI's widespread phone tapping of politicians' phones. According to the court, "telephone talk is a vital aspect of a man's private life." The right to have a telephonic dialogue or conversation in a state of solitude in someone's private premise without interruption is unquestionably a "right to privacy." Thus, telephone tapping is a major infringement of privacy. This entails that telephone tapping would be a violation of Article 21 unless authorised by law.

The Court established detailed benchmarks in order to oversee the discretionary powers granted to the State by *Section 5 of the Indian Telegraph Act*<sup>28</sup> in relation to the objective of telephone tapping and intercepting any such communication, in order to address the people's concerns and protect their interests from the Government's arbitrary and illegal exercise of authority.

The "occurrence of any public emergency" or "in the interest of public safety" is the pre requisite essential "for the application of provisions under section 5(2) of the Act unless a public emergency has occurred or the interests of public safety demand, the authorities have no jurisdiction to exercise the powers under the said legislation." According to the Court, a 'public emergency' is defined as a sudden occurrence or state of circumstances that affects the general public and necessitates quick action. The term 'public safety' refers to a state or condition in which the general public is in considerable danger or risk. When any of the above two conditions do not exist, the Court stated, the Central Government, State Governments, or permitted security personnel cannot engage in telephone tapping in any condition even if inherent gratification persists that the actions are essential or expedient to perform for the importance of the country's sovereign nature or its integrity.

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<sup>27</sup> People's Union Of Civil Liberties v. Union Of India And Anr., AIR 1997 SC 568.

<sup>28</sup> Indian Telegraph Act, 1885, § 5, No. 13, Acts of Parliament, 1885 (India)

## Privacy Rights of Prisoners

Even prisoners are privy to be beneficiaries of protection under Article 21. The prisoners are not deprived of the fundamental rights just on the premise of them being held captive in a prison or being convicts. After the conviction, the right to roam freely may be terminated for the prison term but that does not lead to the suspension of other essential rights and liberties.

The right to be left alone was raised in the landmark judgment of *R. Rajagopal vs. State of T. N*<sup>29</sup>, commonly called as the “Auto Shankar Case”. The prisoner wrote memoirs of his experiences, exposing the situation inside the prison and also about the connections between convicts and various police personnel. The convict has handed his wife the pieces of his write-ups about the prison so she can approach some editorials for getting it published. However, this publishing was constrained in a number of ways by the inspector general who stated that the book is fictitious and baseless and publishing it is against prison rules which raised the query of prisoner’s liberties pertaining to them being left alone.

The book was authorized to be published by the court to safeguard his right to freedom of speech and expression. The right to privacy was directed to be implied in Article 21 in this matter as well (*R. Rajagopal v. State of Tamil Nadu, 1994*) to protect the privacy of the convict and his family

## THE PRIVACY BILL, 2011

The bill tends to provide protection to citizens’ identity theft which further includes theft of financial identities and criminal nature as well as a variety of other lapses stemming from the invasion of privacy. Interception of communications is restricted according to the bill, except in limited circumstances with the authority of a Secretary-level officer.

The bill establishes a specialized body called the "*Central Communication Interception Review Committee*" in order to evaluate and then assess the intercepting orders issued. It also provides authority to rule that such interceptions violated **Section 5 present in The Indian Telegraph Act**<sup>30</sup>

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<sup>29</sup> *R. Rajagopal and Ors. v. State of Tamil Nadu, 1994 SCC (6) 632.*

<sup>30</sup> *Indian Telegraph Act, 1885, § 5, No. 13, Acts of Parliament, 1885 (India)*

and reserves the right to destroy the intercepted material with immediate effect.

It forbids monitoring which includes following a person and using closed-loop-circuits television or other electronic and other modes of monitoring, except in limited instances as demanded by the lawful process.

According to the bill, no such individual who has a business premise in India who also uses data processing components or machinery in India may acquire, store, distribute, or disseminate any kind of data associated with an individual to any third person without the consent of that particular individual who the data belongs to.

Privacy Bill also stipulates incorporation of the “*Data Protection Authority of India*”, whose operation will be to supervise and report developments with regards to data computation and information software; to analyze legislation and measure the impact it has on data protection, and to give suggestive guidelines and collect depictions from the general people on data protection concerns.

The Authority has the jurisdiction to examine any security lapses including data breaches and issue decrees to reinstate the security of the implicated individuals with terms of private information that can be or is already compromised as a result of such intrusion.

Disobedience of the laws on interception will amount to an offence which is punishable by term of imprisonment of up to five years or a penalty of up to Rs. 1,00,000, or both, applied in every such intercept. Additionally, disclosing that kind of data amounts to serious offence punishable by up to 3 years in jail with a penalty of up to Rs. 50,000.

## **CONCLUSION**

Dignity and privacy work together. It is evident through this extensive research that various articles of the Indian constitutions have a broad interpretation that protects the right to privacy, both, dignity and privacy are valuable rights that the Indian citizens are entitled to. In the long history of the law of privacy in the largest democracy in the world, we have seen different courts dwell on this concept in innumerable cases, some of these, have made remarkable breakthroughs when it comes to the right

to life of the Indian citizens. After the authors, critically analyzed one such landmark case of K.S. Puttaswamy v. Union of India<sup>31</sup>, they have gradually made way for the obvious inferences that this right to privacy brings with itself. Observing, analyzing, and considering what courts have said in not only the Puttaswamy case but ten more cases regarding the right to privacy, this study concludes that this freedom has been looked at from different perspectives and been held up in most cases, which speaks for the value of the same.

Concluding this study, the authors, in addition to learning and studying various different judgments, analyze the Puttaswamy case, the privacy bill, and the legal provisions of this right to privacy. It can be inferred that this right has had steady growth throughout the years since it was initially brought up, undoubtingly, the law being dynamic in nature, there is always room for improvement. The right to privacy in association with the data protection laws must be worked on to be conserved and widen the boundaries of article 21 and other articles this right finds itself in.

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15. <sup>1</sup> *Supra* 27

16. <sup>1</sup> INDIA CONST. art. 21.

17. <sup>1</sup> *Infra* 50

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