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Status of Individual Rights under Indian Constitution: A Critical Analysis of the Theory of Harmonious Construction Between Individual and Group Rights in India

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ABSTRACT

Since its inception, the Indian Republic has adopted a constitution with an extensive vision of envisaging a constitutional biosphere that would encompass individuals and the community as a whole and be woven into a single fabric of the state system. The Apex Court, in a plethora of judgments, reiterated the constitutional objective of harmonious construction between individual and group rights.

The status and role of an individual in a modern state system is a constant transformation but, at the same time, a constitutional question that hasn't changed much in its fundamental sense. The changes that had undergone in the structure of a state, as well as the newly gained characteristics of a welfare state, have indeed made changes to the administration of a state. On the other hand, the rights guaranteed to the citizens have remained the same in their original self, though the mode of executing such rights has transformed. Because of its inherent self, the welfare state system has resulted in the origin of many new rights, which has naturally brought about changes in the status and role of an individual in society.

This research intends to illuminate the constitutional dynamics between the status of rights guaranteed to an individual inside a democratic society and the changing characteristics of a state system. The author attempts to delve into the unfolding development of human rights and the acceptance of the need for inculcating such renewed facets of human rights into the national system, including recognition of novel facets of individual rights, including the emerging jurisprudence of privacy and bodily integrity.

Keywords: *Individual Rights, Transformative Constitutionalism, Essential religious Doctrine, Individual Self-Identity, Group Rights.*

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I. INTRODUCTION

The Indian Constitution is a conglomeration of values derived from various constitutions worldwide. The constitution is envisaged to preserve a platform with a harmonious existence between individual and collective rights. There is a conflicting relationship and understanding between the State, the Individual and the Community. The dominant entities will always be the State and the Community, which, in effect, can impose their mandates upon the interests and choices of the Individual. Therefore, we can observe a gradual decline in the importance of Individual rights under the Constitution. The Indian constitution, when envisaged, had the idea of constructing a system wherein there is a marriage between individual and collective rights. Therefore, Part III of the Constitution encompasses individual and collective fundamental rights and specific duties and obligations for individuals and groups. Thus, The essential constitutional idea is to preserve the sanctity of individual and collective rights, avoiding overlapping as far as possible under justice, fairness and equity.

The establishment of *Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966* incidentally magnified the spectrum of individual rights under International law, indirectly reflecting in the domestic laws of sovereign states. For example, through some historical judgments, the judiciary of the United States and India highlighted the importance of individual liberty and identity, existing hand-in-hand with collective rights. In India, under the auspices of Justice V R Krishna Iyer and Justice Bhagwati, the idea of the individual and their relationship with the state was redefined with a handful of historic decisions.² The concept of the right to life and personal liberty under Article 21 of the Constitution was developed in such a way as to imbibe the progressive values of individual human rights through its development.³ But when we critically analyse the present position of individual ‘identity’ *vis-à-vis* individual rights under the Indian constitution, we can observe the growing dominance of collective rights over the status of Individuals. This dominance is caused by several reasons, such as judicial decisions (predominantly), public policies, and a changing outlook of justice for society. This domination has a lot of detrimental effects on the democratic values of our republic due to the imbalance it causes to the legal system.⁴ This gradual degradation of the importance of individual rights would also extinguish the element of diversity and personal autonomy.

The Indian Apex Court, in the landmark decision of *K S Puttaswamy & Ors v. Union of India*,

² M P Jain, *The Indian Constitutional Law*, Lexis Nexis, 8th Edition, (2019).

³ Upendra Baxi, *Human rights Education: The Promise of the Third Millennium?* (2006).

⁴ See generally, Tom Campbell, *Human Rights: A Culture of Controversy*, 26 J.L & Soc’y, (1989).

undoubtedly held that the right to privacy is a quintessential facet of the right to life and personal liberty under Article 21 of the Constitution. In addition, the Court also remarked on the many dangers of interventions caused by the State and society into individual choices and liberty. This culture is an antithesis to the democratic values of equality and personal freedom. It is an understood fact that since the development of collective existence by the human species, there have been conflicts between individual and group interests. No state system in existence entirely relies on either Individual or collective rights. When the state system overly gives predominance to individual rights, the system will turn into an anarchic state system. On the other hand, if the predominance is provided solely to collective rights and interests, the system will end up as a Mobocracy. Therefore, there should be a harmonious balance between either of the systems, and it should be maintained by the State, which includes the legislature and judiciary.

The transformation and re-emergence of collective rights and the overt significance provided for collective rights over individual liberty and freedom is a common practice repeatedly occurring in different parts of the world, especially in India. The imbalance in the interpretation between individual and collective rights under constitutional law is detrimental to the values of democracy. The increasing significance of group rights over individual rights would lead to the degradation of individual liberty and the imposition of majoritarian interest over individual identity. This imbalance between individual and collective rights can be observed through specific judicial precedents and domestic policy decisions.

The concept of individual identity inside a collective identity is discussed extensively. Individual identity inside a collective identity would differ from the individual identity existing. Therefore, the legal systems must have a viable environment enabling such individual identities to prosper inside such collective identities without degradation. The identity of an individual is an essential facet of one's rights. Such identities must not be determined by the external society at large, which is further used by the society and the State to discriminate against such individuals. The relationship between individual identity and their rights is an exciting thought essential to understanding the detrimental effects of the domination of collective rights in a democratic state. There is a need to identify various facets of individual rights to critically understand the rising lapses on the part of the State system supporting the development of collective rights.

II. TRACING THE ORIGINS OF INDIVIDUAL RIGHTS

The concept of rights has always been there in the imagination of human beings, which is why we find some form of rights attached to individuals, even during early periods of history. The

Natural Law signifies certain rights as non-negotiable and essential for an individual. The proponents of social contract theory later defined those rights as definite under the Right to Life, Liberty, and Property. However, when we analyse Plato's Republic, we can understand that the concept of state he developed was antithetical to individualist thought.⁵ According to Plato, he wanted the state to be always a combination of men together, not in the sense of individual. There is value for an individual when he is part of society. The existence of separate 'individuals' would derail the harmonious relationship between such individuals and the state.⁶ A legitimate state will allow individuals to enjoy their rights, resulting in more significant growth in such states. The state always procured an amenable condition for the individuals to exist, but only when the individual was part of the society. The concept of individual free will was not promoted in any manner, as the individuals had to do their duty and receive the combined benefits of society.⁷ Therefore, we can understand that the concept of individual rights was promoted the least, and the State determined the status of individuals by their capacity.⁸

According to the proponents of natural law theory, all humans had to live according to the laws of nature. Locke defined the rights and duties of men as creatures of God in a Pre-civil society; he further stated that the law of God forbids the disturbance or dissolution of governments.⁹ The duties allotted to individuals under the theory of John Locke simultaneously assigned certain rights to them. The most important among such rights is the right to hold the other man responsible for breach of law. Even the Natural Theorists found themselves in a conflicting position as and when the definite idea of 'State' was developed. Specifically as to the role and relationship of such a state with the rights of the individuals, as even the state cannot be an entity that could intervene in such essential rights of an individual. But even then, the State or the Ruler was titled the protector of men's private property.¹⁰ With the later development of Analytical Positivists, there was a gradual attraction towards a 'sovereign' with strong powers who were looked up to decide for the entire population and demanded complete subordination. Under such systems, the status of individuals was reduced as it demanded total subordination to the sovereign, which was beyond questioning.

To an extent, the Second World War and the resultant socio-political situation worldwide kept their distance from consolidating all the powers in the hands of a single authority. Such systems

⁵ Sabine, G. H and Thorson, *A History of Political Theory* (4th. Edn) p. 53.

⁶ M McDonald M., *Should Communities Have Rights? Reflections on Liberal Individualism*, Canadian Journal of Law and Jurisprudence, 4(2), (1991), pp.217-238.

⁷ Bhandari D. R. *History of European Political Philosophy* (15th Edn.) p. 17.

⁸ even *ibid* p.49

⁹ J Dunn, *The Political Thought of John Locke*, (1969), p.49

¹⁰ J Dunn & J Tully, *A Discourse on Property*, (1980).

were associated with rampant abuse of power, arbitrariness, irrational administrative policies, and human rights abuses. Human rights' growing popularity and significance also contributed to developing a more people-centric state system; individual human rights were identified as quintessential facets of a modern state. Developing and establishing such a 'welfare state' also shifted focus to individual happiness and prosperity, which is ensured by protecting individual rights. The development and transformation of individual rights have been through various popular movements under the guidance of the United Nations and predominantly through significant judicial precedents.¹¹ With the global acceptance of human rights and their development, the idea of the individual and its relationship with the state has also been liberalised to the extent that the state must protect the essential features of liberty and autonomy of an individual. The state must ensure a transparent platform wherein individual freedom and liberty are exercised without intervention from collective demands.

When we try to understand individual rights and social justice, we need to thoroughly understand Dr B R Ambedkar's State and the status of individual justice as propounded by him. Ambedkar vehemently criticised the 'glorified past' rule of State in India, as, according to him, it was developed for the personal benefit of the upper class of the majority community, and it had placed the Dalits and other backward class communities entirely under suppressive forces of the State. This resulted in generational injustice and discrimination committed against such people. It is essential to read the works of Lokamanya Tilak, who declared that Indians (upper-caste Hindus) were descendants of the Aryans and they had the sovereign right to rule Hindustan; this theory of self-rule was known as '*The Artic Home in Vedas*'.¹² Thus, the commonly accepted notion of the State was dominated by conservative societal identities, which Ambedkar felt would limit social justice development and be a blockade for individual development. Ambedkar believed that equality in societal development is only consistently possible in a democratic form of state. Ambedkar envisioned such a constitutional democracy and widely wrote about such a State during the 1920s and 1930s. Every individual in society must be empowered by the state to actively participate and have the power to determine the legislation for their development. The socially discriminated classes should be enabled to project their needs without censoring from the dominant classes of society. The idea of citizenship was similar to that of the Aristotelian model of democracy, which provided power to the people to elect the government and determine the beneficial laws required for their

¹¹ L Jacobs, *Bridging the Gap between Individual and Collective Rights with the Idea of Integrity*, Canadian Journal of Law and Jurisprudence, 4(2) (1991), pp.375-386.

¹² A Ashalatha, Koropath Pradeep, Nambarathil, Saritha, *Indian National Movement*, Social Science: Standard VII; Part I, Department of Education, Government of Kerala (2009);

individual development.¹³ As Ambedkar observed, the status of individuals in such majority-controlled societies will be obsolete. In such societies, the capabilities of an individual, as Ambedkar stated, are determined by various other discriminatory grounds such as caste, religion, etc.¹⁴ The concept of social justice is adjudicated by the needs of the dominant collective groups, which will hamper the hope of individuals from the minority groups of self-development.

Under the Indian Constitution, the Fundamental Rights under Part III, inspired by the Bill of Rights of the United States Constitution, precisely defines the status of an individual, especially under Article 21, which ensures the right to life and personal liberty. The judiciary has magnified the dimensions of individual life and freedom into surmountable significance through several landmark judgments. This has also elevated the status of individual rights under constitutional law by imbibing progressive human rights values. The recognition of the right to privacy, choice, and dignity are all instances where the Court highlighted the importance of individual rights in a democratic system and the duty to protect such rights. The 42nd Constitutional Amendment, 1976 and the political situation in the country were later remarked by the Supreme Court as the greatest threat to individual liberty and freedom in the country.¹⁵ It was an instance in which the State intervened aggressively in individual privacy and freedom in the country under the pretext of a national emergency. Establishing an essential structure for our constitution is also intended to certify certain rights under the Constitution as non-amendable and crucial in sustaining the fundamental constitutional values, predominantly certain individual rights. We can understand from the fundamental rights of the Indian constitution that it envisages more individualism and its attainment of social justice.

III. INDIVIDUAL DEVELOPMENT AND RIGHT TO PERSONAL LIBERTY AND RIGHT TO PRIVACY

The Fifth Amendment of the United States Constitution states that the “*life and liberty of an individual cannot be deprived without due process of law*”. ‘Respect for Human Personality’ was the predominant theme in the International Commission of Jurists convened in 1959 under the auspices of UNESCO.¹⁶ The Indian Constitution makers understanding the value of life and personal liberty by closely studying the American Constitution and the rich precedents of the

¹³ Nussbaum Martha, *Aristotle and Modern Politics : The Persistence of Political Philosophy, Aristotelian Social Democracy*, University of Notre Dame Press, 2002;

¹⁴ Supra 8.

¹⁵ *Minerva Mills v. Union of India*, AIR 1980 SC 574.

¹⁶ O. Hoode Phillips, *Constitutional and Administrative Law*, 3rd Edn, See p.21 ;

House of Lords established the Right to Life and Personal Liberty under Article 21, which is another quintessential aspect of individual rights and identity, and most prominent in a post-modern democratic state system. The constitutional fathers of India also ensured that the State does not have an easy path to do away with such right to life by inserting the clause 'procedure established by law, just, fair and reasonable'. The Court is the final arbiter of whether such a procedure established by law is fair and reasonable in the eyes of the Constitution. The right to Privacy for citizens is a well-protected part under the shades of the Fifth Amendment and is considered an integral part of individual development. Certain aspects of individual lives must be kept beyond the control of the state to deny any chance of excessive state rule and lead to an authoritarian state. Moreover, the Fourth Amendment of the United States Constitution prevents unreasonable *search and seizure* of an individual's personal affairs. Fourth Amendment is considered a bastion of personal liberty and individual privacy.

There is also a need to understand the Fourteenth Amendment of the United States Constitution, which also includes a Due Process clause applicable to all people, including non-citizens, which states that no person can be deprived of his life, liberty and property without proper law procedure. It also has a remarkable Equality Clause, which mandates that everyone be treated equally, regardless of religion, race, caste, or gender identity. The origins of civil rights can also be traced to the Fourteenth Amendment. In summary, we can understand that the Fifth and Fourteenth Amendments to the United States Constitution ensure fair treatment of individuals by the State. It sets a mechanism for which an individual is considered and is given equal importance as that of group rights and, in some circumstances, more.

Article 21 under the Indian Constitution includes parallel values to those in the U.S. Constitution. It, too, mandates a procedure established by law that is just, fair, and reasonable to deprive any person of his right to life and personal liberty. The right to personal liberty is a stellar aspect of the Constitution and is integral to its functioning. When we equate a modern functioning democracy with individual rights, the prominence of the Right to Privacy is non-negotiable. The Constituent Assembly outrightly rejected the possibility of inserting the idea of the Fourth Amendment, which would require Due Process of law for having search and seizures into individual spaces. The Supreme Court had previously stated that the Fourth Amendment's power of search and seizure is considered an overriding power of the state to protect its social security. The constituent assembly makers have thought not to put any constraints on such overriding powers of the State by recognising the Constitutional limitation of the right to privacy as identified under the Fourth Amendment of the U.S. Constitution. There is no need to

import such ideas into the Indian Constitution.¹⁷ However, this remark was implied in the context of the right to property of a citizen under the Constitution. Concerning privacy, the Court has held that any law passed by the legislature must pass the tough test of Constitutionality. Suppose the legislature intended to limit the citizens' fundamental rights of the citizens. In that case, it must be done through legitimate legislation measures, and if it violates Articles 19 and 21, it must be held *void ipso-facto*.¹⁸ In the same case, the Court established a dangerous precedent stating that “*the right to privacy under the Constitution is not guaranteed and therefore claiming violation of privacy merely because of the State tracking a person's movements does not violate fundamental rights*”.¹⁹ The Court implied that it allowed the State to track an individual's location, movements, and communication on the ground and that there is no guaranteed right to privacy. Justice Subba Rao, in the same case, in his lone dissenting opinion, held that “*Though the Right to Privacy is not declared to be a guaranteed fundamental right under the Constitution, it is an integral part of personal liberty.*” He defined the Right to Privacy as being free from interventions and encroachments into his person or life, whether directly or through calculated measures.

The Apex Court has held that the right to privacy is a concomitant of the right of an individual to exercise their control over their personality.²⁰ A guaranteed right for individual privacy allows one to efficiently enjoy the other rights guaranteed under Part III of the Constitution. It must be noted that the U.S Supreme Court, by upholding the modern values of individual rights, held that the privacy of an individual is ‘penumbral’ and ‘undeniable’ and is integral in allowing an individual citizen to feel secure in a state system from any external intrusion into certain essential spheres of their lives. The right to privacy, being an individual right, cannot be absolute, and it must be under the limitation of ‘compelling public interest’, which enables the society and the collective groups to pressure the State to always place the interests of the community over individual freedom and autonomy. This culture of reliance on public interest over individual rights and interests is detrimental to many post-modern human rights movements, such as LGBTQI movements and feminist movements. Therefore, a harmonious construction should be adopted wherein the deserved value for individual privacy must be provided.

The *Aadhar case* initially instituted in 2012, was the second most extended case to be heard by the Supreme Court. Though it began as a challenge to maintaining a national database of

¹⁷ M.P Sharma v. Satish Chandra, AIR 1954 SC 300 ;

¹⁸ Kharak Singh v. State of U.P, AIR 1963 SC 1295 ;

¹⁹ *ibid*

²⁰ Gobind v. State of Madhya Pradesh, AIR 1975 SC 1378 ;

citizens' personal information, over time, it developed into an intense discussion on the fundamental elements of transformative constitutionalism.²¹ It posed questions on the relationship of the State with Individuals in a modern democratic republican State. The fact that the State is establishing a database which stores very personal biometric details of individuals and that private entities are involved in the system of storage and transactions is a gross violation of individual liberty and freedom. Senior Advocate Dhawan, arguing for the Petitioners, stated that a constitutional obligation to individuals does not mean 'servitude'. In the case, the apex Court discussed the need for the Court to ensure that the State does not trample on the essential values of individual liberty under the Indian Constitution. Moreover, the Indian Constitution is recognised as a living Constitution that can survive only when the Court constantly develops the principles over time. The right to privacy is an essential individual right.

Therefore, we can conclude that though in a democracy, the majority decision is always highlighted, the individual has a prominent part to play. The value of a democratic state increases not when the majority decision is consistently enforced but when it provides the deserving value and space for individual identity, too. The emergence of the international Human Rights movement has evolved the State functions to take the role of individuals more seriously.

IV. IDEA OF RELIGIOUS IDENTITY AND POSITION OF INDIVIDUAL RIGHTS IN THE INDIAN CONSTITUTION

We understood the development of individual rights through various schools of jurisprudence down the years of history, parallel with the changes happening in the world's political landscape. The relationship between individual rights and the development of the concept of the welfare state is a matter of great significance in understanding the status of individuals in the present version of the State system. It brings about the need to critically understand the inception of the modern idea of individual rights in jurisprudence and the evolution of various individual rights, including the right of self-identity and its independent determination in a democratic state system, especially in the Indian surroundings. Indian constitution hallmarked itself as the bastion of individual liberty and freedom, with Fundamental Rights, especially rights such as the Right to Equality, the Right to Freedom of Speech and Expression and the Right to Life and Personal Liberty, which all basically were inspired by the Universal Declaration of Human Rights, 1948 and the Constitution of United States. However, recognising the existence of individual identity inside a group's rights has yet to gain its deserved importance. However, it

²¹ Gautham Bhatia, *Transformative Constitutionalism*, 1st Edition, Universal Publications (2020) ;

is an observed reality that there should be a proper constitutional structure which recognises and protects distinctive individual identities inside a group identity, which would be the height of recognition of individual rights.

The basic argument for establishing individual rights an

d its evolution is the distribution of equitable justice, which is often absent in a grouped community under a peculiar identity. The individuals inside an identified group are forced to comply with the group-constructed identity from which there is no legitimate deviation. Therefore, there is an eventual curtailment of personal liberty and the development of individual self-identity.²² Human Rights development after the Second World War fueled the rapid movement for individual rights in the first half of the 20th century. Contributing to this uprising was the racial equality movement in the United States, which resulted in many landmark Supreme Court decisions in the early 1960s, which all could be categorised as the enormous leaps taken by Individual rights against the dictates of society, i.e., groups.

Gradually, judicial activism has shifted its emphasis on individual rights to more group rights-oriented decisions, as the Court's decision states that the right to privacy is not an absolute fundamental right that the State could curtail. ^{However,} the procedure established by law was too abstract to ascertain the actual grounds on which the state could interfere with an individual's privacy. Even after the liberalisation of the economy in 1990, the State slowly started putting clutches on the individual autonomy of the individuals with more State-sponsored privileges to groups, such as religious groups and Caste denominations.

The status of individual identity inside a collective identity is something that all authentic democratic state systems must preserve so that individual rights are not overlooked. The individual identity is shaped by the individual experience of each person, and out of such individual identity, there will be a diversity of opinions and orientations from the general pattern of collective identity, which must be protected as it is provided under the Indian constitution. There are increasing events of crimes committed by collective groups in the name of collective identity rights, for instance, Honour Killings. Even though the Indian Constitution under Article 15, equal rights should be treated irrespective of religion, caste, creed, etc. In such cases, women are predominantly victims, which adds an anti-feminine colour to it as well. Though the Court had encountered many honour killing cases before it, the Court never interpreted it under the fabric of depletion of individual identity under the concept of a collective whole. The actual cause of such social tyranny is persisting caste conflicts, which tend to mainstream the demands

²² Allen Buchanan, *Marx and Justice*, Rowman and Littlefield, Chapt. 6, 1982;

of the upper-class society, ultimately diminishing all the avenues for any individual from a lower-class society for self-development. The problem of inter-caste marriage has been persistent in India for a long time, even after having a solid provision in the Constitution which is meant to prevent such identity discrimination.

Therefore, identity as an individual right would be a peculiar factor that would be different from the generally accepted collective idea of freedom. Consequently, people's perception of their religion or faith will differ from their collective religious identity. As a democratic state which ensures freedom of speech and expression and personal liberty, the state must be able to construct a system wherein such individual identity must have enough platforms to develop and be appreciated in such a collective cultural ecosystem. Such identity issues cannot be determined or understood through the 'essential religious doctrine' lens, which is necessary for analysing collective religious practices. The Apex Court had previously held that the State should prevent exclusionary practices of any religion since they violate the fundamental rights of the individuals, which is the hallmark of Part III of the Constitution.²³ The approach of the Indian constitution is the harmonious construction of individual rights with group rights to avoid conflicts between the two, but in recent developments, we can observe that individual identity is finding it difficult to have a distinctive existence.²⁴ The new trend of modernism and feminism has tried to influence constitutional morality by supporting individual rights and preventing religious groups and denominations from superseding them. However, the passive approach of the State and judiciary against the religious forces and caste denominations has resulted in them gaining more power and control over the matters of the State.

Thus, we can understand that individual religious identity is what an individual understands and perceives inside the spectrum of that particular religion. The separate ideas about religion and religious practices are diverse and must be understood differently under the Constitution. Indian constitution has ample provisions to preserve and protect individual rights, including personal liberty, which includes the preservation and promotion of individual identity.

V. UNDERSTANDING SEXUALITY AS A FORM OF INDIVIDUAL EXPRESSION

The Supreme Court of India recognised the sexuality, sexual preferences, and sexual orientation of an individual to be his freedom of speech and expression and to constitute an integral part of it. However this was not the case with the way people expressed their sexuality, and it was not associated with one's identity in the same intensity as it is today. The sexuality of an individual

²³ Deepak Sibal v. Punjab University, AIR 1989 SC 903;

²⁴ H M Seervai, Constitutional Law of India (Universal Law Publishing Co., New Delhi, 4th edn., vol. 2, Reprint 2011)

was a closely guarded private matter, which has gradually evolved into something which is openly revealed to assert one's identity in the public sphere.

Homosexuality, on the other hand, was a concept which was more taboo and considered to be grossly unnatural. Therefore, the individuals who privately identified themselves as homosexual were forced to keep it to themselves. The social scientists point out that before the 19th century, the sexuality of an individual was more openly discussed and was not a private affair. But the changes that were brought about in society worldwide during the 19th century, which can be called Victorian Morality, set some rules and standards in a society which completely negated the space for homosexuality and even for heterosexual people to openly discuss their sexual orientation and sexual freedom as it was considered to be non-biblical. This sense of morality even forced homosexual people to realise that they were suffering from some natural sexual defect, and it needed to be treated.

It is pertinent to understand the discourse of societal take on sexuality with the help of the 'Panopticon' model of surveillance developed by philosopher and jurist Michael Foucault. The panopticon model is a metaphor for the power of discipline used over society.²⁵ The body and body parts of the people became factors of power, and the state and society constantly monitored them. This culture reduced the possibility for individual freedom and choice, but rather, the interests of society and the community as a whole were given paramount importance.²⁶

The next phase was the development of societal censorship, by which the State and the community began to shut down all communication and information, which was not comfortable for the standards of such communities. The permissible features of individual choice and freedom that could be shared and communicated publicly were more clearly defined. The appropriateness of one's sexuality and sexual orientation was now determined by a second entity, which is a blatant violation of one's liberty.²⁷

But in the latter parts of the 20th century, there were two significant shifts with regard to the recognition of the third gender and general recognition of freedom of sexual orientation, with widespread awareness about the normalcy of being a homosexual and the enforcement of the Universal Declaration of Human Rights, 1948. Both these changes impacted realising the State that there is a need to recognise individual rights and their choices. Such freedoms and rights should not be undermined simply because of collective interest or societal standards. But even

²⁵ *The Cambridge Introduction to Michael Foucault*, Cambridge University Press, 2012;

²⁶ Foucault, M. (1978). *The history of sexuality*. (Vol. 1). New York: Random House.

²⁷ Foucault, M. (2011). Questions of Method. In J. Paulson (Ed.), *SOCI 2005 A: Classical Social Theory Winter 2012* (pp. 23-131)

still, the State practices of shunning voices of difference, censoring, lack of provision for self-determination and mass surveillance of individuals turning the right to privacy into a virtual dream.²⁸ The modern constitutions, though when it was made, did not recognise such complex individual rights; it had left room open to imbibe such future values, just like it is done by the judiciary in India.

VI. RIGHT TO CHOICE AS AN INDIVIDUAL RIGHT

Choice or the ability to exercise their prerogative according to their judgment is an essential part of individual freedom and autonomy and a significant aspect of privacy. Even if we consider the right to privacy as a separate individual right, there should be a sufficient platform in a state system that will encourage the '*free will*' of individuals, which solely ensures individual development. The state's intervention in the essential individual decisions of people will hamper the societal fabric in the long run. The Patna High Court, in the case of *Confederation of Indian Alcoholic Beverage Companies v. State of Bihar*, the court, for the first time, highlighted the importance of personal right to choice and its significance in the subsistence of individual freedom and liberty. The Court held that unfiltered personal freedom and liberty without clutches on them is an integral part of the nation, which must be preserved at all costs.²⁹

The right to choose is a crucial facet of individual rights, quintessential in developing an individual and his dignity. In a democratic country, the liberty to have one's choices is given, provided it does not disable the right to choose another individual. Under the Constitution of India, this check on an individual's liberty is placed under Article 21. The Apex Court further elaborated on this by stating that the right to life under Article 21 includes the dignity of an individual and all other aspects of an individual's dignity, including food, clothing and shelter. Most importantly, it gives individuals the right to express their choices and the freedom to move freely across the country.³⁰ At the same time, the Court had negatively restricted the right to choose does not include the option to end one's life, i.e., to commit suicide.³¹ The right to choose is an intrinsic and essential element of life and personal liberty.³²

²⁹ Ibid p. 13.

³⁰ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 746

³¹ *Gian Kaur v. State of Punjab*, AIR 1982 SC 1473.

³² *Salamat Ansari v. State of Uttar Pradesh*, CrI. Mis. Writ Petition No. 11367 of 2020.

VII. CONCLUDING OBSERVATIONS

Rights under the Indian Constitution can be broadly classified between individual and group rights, and we can observe quite clearly that the predominance is provided for individual autonomy and freedom, especially in part III of the Constitution. However, it does not create such a situation in which group rights are allowed to be dominated by individual rights, which will destroy the ideals of a democratic society. The Indian Constitution, inherently, and also through the interpretation of the judiciary, established a harmonious balance between individual and group rights so that overlapping could be avoided to the maximum extent. It will also ensure a legal system which ensures that the individual identity inside a group is secured.

However, the present situation in India and worldwide is grim regarding individual liberty and freedom compared to community interests and societal dictates. The increasing prominence of religious groups in the state machinery and the Courts, to a great extent allowing such collective demands over individual claims of freedom, is detrimental to the stability of the ethos of democracy. The state must establish a system wherein the individual can verify his identity and, at the same time, they can associate with another societal culture.³³ Individual rights are commonly threatened in disadvantaged communities, which are different on the grounds of their culture, ethnicity or their livelihood. Autonomy must not be allowed to adhere to societal pressure and dictates.³⁴

³³ Halev-Spinner, *Multiculturalism, Oppression and the State*, *Ethics*, 112(1), (2001), pp.84-113.

³⁴ L Reidel, *What are Cultural Rights? Protecting Groups with Individual Rights*, *Journal of Human Rights*, 9(1), (2010), pp.65-80.