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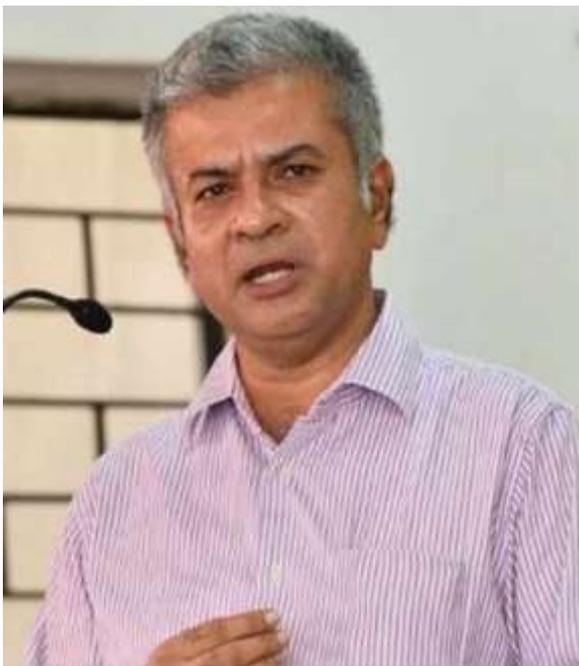
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

ARE FUNDAMENTAL RIGHTS ABSOLUTE IN NATURE?

AUTHORED BY - MUSKAN KAUR

ABSTRACT

This paper examines the complex nature of fundamental rights within the Indian Constitution, analysing the debate surrounding their absolute versus limited nature. Fundamental rights, enshrined in Part III of the Constitution, are essential for safeguarding individual freedoms and dignity while simultaneously accommodating the needs of society through reasonable restrictions. Through an analysis of landmark judicial precedents, such as *A.K. Gopalan v. State of Madras*, *Maneka Gandhi v. Union of India*, and *K.S. Puttaswamy v. Union of India*, the paper illustrates how the judiciary has shaped the understanding of these rights, emphasizing the necessity of balancing individual liberties with collective interests. The paper highlights key arguments against absolutism, including the need for public order, protection of others' rights, social welfare, and national security. Ultimately, the paper concludes that while fundamental rights are critical to personal liberty, they cannot be exercised in isolation from societal needs, affirming their non-absolute nature within a democratic framework.

KEYWORDS: *Fundamental Rights, Indian Constitution, Absolute Rights, Reasonable Restrictions, Judicial Precedents, Personal Liberty, Public Order, Collective Interests, Social Welfare, National Security.*

INTRODUCTION

Pandit Jawaharlal Nehru said: "A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something you want to make permanent in the Constitution."¹ Since, fundamental rights are permanent and crucial in the constitution they act as its backbone and therefore, are viewed as universal. These rights, enshrined in Part III of the Indian Constitution² forms a framework through which the state is obligated to respect and uphold individual freedoms. Since they are crucial in nature, the

¹ [Indian Liberals], [<https://indianliberals.in/content/the-light-of-the-indian-constitution/>]

² INDIA CONST. pt. III.

constitution provides for reasonable restrictions on these rights to maintain social order, public safety, and the broader welfare of society. This dual commitment—to protect rights and, at the same time, to allow for their limitation under certain circumstances— shows the need to balance between individual liberties and collective interests.

The question of whether fundamental rights are absolute in nature or not has been debated in constitutional law for a long period of time. On one hand, these rights are seen as essential to the protection of individual freedom from state overreach, making them universal in nature. On the other hand, no democratic society can function without some restrictions on personal liberty, especially when these liberties conflict with the rights of others or the public good.

THE NATURE OF FUNDAMENTAL RIGHTS

Fundamental rights, by their very definition, are considered inalienable and as the bedrock of the Indian Constitution. These rights are not granted by the state but are inherent to all individuals by virtue of their existence. These rights are meant to protect individuals from any exploitation by the state and ensure their dignity and freedom.

However, the makers of the Indian Constitution were aware of the potential conflicts between individual rights and the needs of society and that is why they included provisions for reasonable restrictions on certain fundamental rights making them not completely absolute in nature. They recognized that fundamental rights, though essential, could not be absolute.

What do absolute rights really mean? An absolute right means that in any situation, you could always conclude that someone has a clear duty to respect that right, no matter the circumstances. For example, if the right to have promises kept was absolute then the person who made the promise would always have the obligation to keep it, regardless of the situation or any other factors involved.³ In simpler words, an absolute right is any right which cannot be restricted or limited in any manner irrespective of the circumstances, including the period of emergency. If such crucial rights remain absolute then it would most likely create a lot of chaos specifically in a society as complex as India. For instance, the exercise of one individual's rights could conflict with the rights of another or undermine the common good. Therefore, reasonable restrictions were built into the Constitution to ensure that fundamental rights do not

³ Schamis, J.B., 1972. *ABSOLUTE RIGHTS* (Doctoral dissertation, The University of Chicago).

destabilize the social order.

If we will look into the philosophical aspect of this, the idea that rights must have reasonable restrictions are widely accepted. John Stuart Mill's "harm principle" states that individual liberty should only be restricted when its exercise causes harm to others.⁴ Mill's theory finds resonance in the Indian constitutional context, where restrictions on fundamental rights are designed to protect public order, morality, health, and national security. The balance between personal autonomy and societal welfare is crucial in maintaining harmony in a democratic society.

JUDICIAL PRECEDENTS AND INTERPRETATIONS

The Indian judiciary has played a significant role in shaping the understanding of fundamental rights through its interpretation of the Constitution. Over the years, several landmark judgments have examined how the courts have balanced between protecting individual liberties and upholding the broader interests of society.

1. A.K. Gopalan v. State of Madras⁵

One of the earliest cases that took into consideration the limits of fundamental rights was A.K. Gopalan v. State of Madras. The petitioner, Gopalan, challenged his detention under the Preventive Detention Act, arguing that it violated his right to personal liberty under Article 21 of the Constitution. The Supreme Court, however, upheld the validity of the Act. They took a narrow view of the term "due process," interpreting it as "procedure established by law," rather than as substantive fairness. This judgment established that the state can impose restrictions on fundamental rights, provided such restrictions were authorized by law.

2. Maneka Gandhi v. Union of India⁶

A significant shift in the judiciary's approach to fundamental rights came with the Maneka Gandhi v. Union of India case. In this case, Maneka Gandhi's passport was impounded by the government, and she challenged the decision on the grounds that it violated her right to personal liberty under Article 21. The Supreme Court ruled in her favour and expanded the interpretation of Article 21. The court held that the "procedure established by law" must

⁴ Bell, M.C., 2021. John Stuart Mill's harm principle and free speech: expanding the notion of harm. *Utilitas*, 33(2), pp.162-179.

⁵ A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

⁶ **Maneka Gandhi v. Union of India**, 1978 AIR 597.

not only be lawful but also "just, fair, and reasonable." This marked the beginning of a more expansive view of fundamental rights, where restrictions were permissible only if they met the standards of fairness and proportionality.

The Maneka Gandhi case led to the development of the jurisprudence on fundamental rights. It established that even when restrictions were placed on rights, such restrictions could not be arbitrary or disproportionate to the objective they had to achieve. Here, the **doctrine of proportionality**⁷ comes into picture. This doctrine emphasizes a careful balancing of rights and interests, ensuring that any limitations imposed do not undermine the essence of the rights themselves. **Balancing test** helps in determining the constitutionality of laws and regulations that affect constitutional rights. It is a subjective test that the judges use to compare different interests of the parties and the importance of opposing rights and based on that, they analyse which interest is considered greater and give the judgement accordingly.⁸

3. **K.S. Puttaswamy v. Union of India**⁹

The landmark K.S. Puttaswamy v. Union of India case further looked into the evolving understanding of fundamental rights. In this case, the Supreme Court recognized the right to privacy as a fundamental right under Article 21. While acknowledging that privacy, like other fundamental rights, was not absolute, the court laid down the criteria for restricting this right. Any invasion of privacy had to satisfy the tests of legality, necessity, and proportionality. This meant that restrictions on the right to privacy could be imposed only if they were sanctioned by law, pursued a legitimate aim, and were proportionate to the need being addressed.

4. **Kesavananda Bharati v. State of Kerala**¹⁰

This case introduced the basic structure doctrine, asserting that certain fundamental features of the Constitution, including fundamental rights, cannot be amended, or destroyed. The judgment reinforced the idea that while rights may be subject to reasonable restrictions, their core essence must be preserved to protect the democratic fabric of the nation.

⁷ Kyritsis, D., 2014. Whatever works: proportionality as a constitutional doctrine. *Oxford Journal of Legal Studies*, 34(2), pp.395-415.

⁸ McFadden, P.M., 1987. The balancing test. *BCL Rev.*, 29, p.585.

⁹ **Justice K.S. Puttaswamy (Retd) v. Union of India**, AIR 2018 SC (Supp) 1841.

¹⁰ **Kesavananda Bharati v. State of Kerala**, AIR 1973 SC 1461.

KEY JUDICIAL CASES ON THE NON-ABSOLUTE NATURE OF FUNDAMENTAL RIGHTS

Several other important cases further illustrate how the judiciary has approached the issue of whether fundamental rights are absolute or can be restricted.

1. St. Francis De Sales Education Society v. State of Maharashtra¹¹

In this case, the court addressed the issue of reservations in minority educational institutions, particularly between Article 15(4),¹² which promotes welfare for backward classes, and Article 30(1),¹³ which protects the rights of minorities to establish and administer their educational institutions. The court ruled that minority institutions are not exempt from national policies on reservation, as such policies are rooted in social justice. The judgement stated that while Article 30(1) grants significant autonomy to minority institutions, this right is not absolute and must be reconciled with broader constitutional principles, such as equality and social justice.

2. Rev. Sidhajibhai Sabhai v. State of Bombay¹⁴

This case involved government regulations imposed on private educational institutions. The court held that while Article 30(1) provides minorities with the right to establish and administer educational institutions, this right is not unrestricted. The state could impose reasonable regulations to ensure that such institutions maintain proper standards of education, efficiency, and management. This case highlights the principle that even rights granted to minority institutions are subject to reasonable restrictions, particularly when public welfare is at stake.

3. Deepti Kapur v. Kunal Julka¹⁵

This case involved the right to privacy, a fundamental right recognized under Article 21. The court ruled that while privacy is a protected right, it is not absolute and can be subject to limitations in certain circumstances. The husband in this case sought to use evidence obtained from his wife's private communications in a divorce proceeding. The court held that the right to privacy must give way to the right to a fair trial, thereby limiting the absolute nature of privacy rights in cases where competing interests, such as justice, are at stake.

¹¹ St. Francis De Sales Education Society v. State of Maharashtra, (2002) 3 UPLBEC 2415 (May 4, 2001).

¹² INDIA CONST.art.15

¹³ INDIA CONST.art.30

¹⁴ Rev. Sidhajibhai Sabhai and Others v. State of Bombay, 1963 AIR 540 (Aug. 30, 1962)

¹⁵ Deepti Kapur v. Kunal Julka, AIR 2020 Delhi 156 (June 30, 2020).

4. Milli Trust v. The State of Bihar ¹⁶

The Milli Trust case further affirmed that rights granted under Article 30(1) are not absolute, especially in relation to minority educational institutions. The court ruled that the administration of such institutions must comply with reasonable state-imposed regulations to ensure efficiency and quality in education. This ruling demonstrates the courts' approach to balancing individual rights with the public interest, particularly in areas where broader societal goals, such as education, are concerned.

5. Gandhi Sewa Sadan Rajsmand v. State of Rajasthan ¹⁷

The Rajasthan High Court addressed restrictions on the right to trade and occupation under Article 19(1)(g). ¹⁸The court upheld the validity of state regulations, emphasizing that fundamental rights must be interpreted in a way that serves broader societal goals rather than individual benefit alone. This case shows the judiciary's approach to interpreting fundamental rights in a manner that ensures they contribute to the common good, even if it means curtailing individual freedoms.

ARGUMENTS AGAINST ABSOLUTISM IN FUNDAMENTAL RIGHTS

While there are strong arguments in favour of protecting fundamental rights as sacrosanct, there are equally compelling reasons to argue against their absolutism. One of the key justifications for restricting fundamental rights lies in the need to balance individual liberties with the collective interest of society.

PUBLIC ORDER AND SECURITY

No society can function without some degree of public order. Absolute rights, particularly the right to free speech or assembly, can disrupt public order and security if not properly regulated. For example, hate speech, incitement to violence, and the spread of misinformation can undermine social cohesion and endanger the safety of citizens. The protests against the Citizenship Amendment Act (CAA) in India ¹⁹ shows how people actually exercise their right to freedom of speech and expression. The government's response included imposing restrictions on gatherings, which showcases the gaps between individual freedoms and state interests.

¹⁶ Milli Trust v. The State of Bihar & Ors., [2016] INHC PAT 5038.

¹⁷ Gandhi Sewa Sadan Rajsamand v. State of Rajasthan, 2021 SCC OnLine SC 70.

¹⁸ INDIA CONST.art.19

¹⁹ **Why is India's Citizenship Amendment Act so controversial?**, Al Jazeera (Mar. 12, 2024), <https://www.aljazeera.com/news/2024/3/12/why-is-indias-citizenship-amendment-act-so-controversial>.

PROTECTION OF OTHER'S RIGHTS

In a democratic society, individuals must coexist with others, which inevitably means that the exercise of one's rights may impinge on the rights of others. For instance, freedom of speech cannot be exercised in a way that defames or harms the reputation of another person (Rahul Gandhi case). Similarly, religious freedom cannot justify practices that infringe upon the rights of others or violate laws intended to protect public health or morality.

For example, in the case of *S.R. Bommai v. Union of India*²⁰, the Supreme Court held that the dismissal of a state government on the grounds of the imposition of President's Rule was unconstitutional if done solely for political reasons. The ruling enhanced the importance of protecting the rights of religious minorities, especially in states where communal tensions exist, emphasizing the state's duty to maintain religious harmony.

Therefore, limitations on fundamental rights are necessary to ensure that the rights of one individual do not trample the rights of others.

SOCIAL WELFARE AND ECONOMIC STABILITY

Economic stability and social welfare are also valid justifications for limiting fundamental rights. The state must have the authority to impose regulations that promote economic development, protect vulnerable populations, and ensure equitable access to resources. For example, the National Security Act (NSA), 1980 is used to prevent black-marketing of goods and under this Act individuals can be detained without a trial if their actions include hoarding, threatening public order and economic stability. This restricts their fundamental right under Article 19 (freedom of movement) and Article 21 (personal liberty) but these limitations are justified in ensuring the **equitable distribution** of resources and maintaining economic balance during crises, prioritizing the collective welfare over individual freedoms.²¹

NATIONAL SECURITY

National security is another area where fundamental rights may need to be curtailed. In times of war or internal unrest, the state must have the power to take measures that protect the sovereignty and integrity of the nation. For instance, restrictions on free speech or movement

²⁰ *S.R. Bommai v. Union of India*, 1994 AIR 1918.

²¹ Chopra, S., 2015. National security laws in India: The unraveling of constitutional constraints. *Or. Rev. Int'l L.*, 17, p.1.

may be necessary to prevent the spread of sensitive information or to maintain public order during emergencies. While such restrictions may seem draconian, they are often justified on the grounds that they are temporary and aimed at safeguarding the long-term survival of the state and its citizens. For example, during India's 1975 Emergency declared by Prime minister Indira Gandhi, Article 19 and 21 were suspended. Media censorship was imposed, political leaders were detained without trial, and public gatherings were restricted. The government justified these actions by citing internal unrest and threats to national security, claiming these temporary measures were necessary to maintain public order and protect the nation's integrity.²²

CONCLUSION

The question of whether fundamental rights are absolute is answered by the recognition that rights, while significant to personal liberty, cannot be exercised in isolation from the needs of society. The makers of the Indian Constitution recognized that individual freedoms must sometimes be carved for the greater good. The judiciary, through its evolving interpretations of the Constitution, has helped to strike a balance between personal autonomy and societal welfare.

Fundamental rights, therefore, are not absolute in nature. While they are crucial to protecting individual liberties and ensuring the dignity of every citizen, they must be exercised within the confines of reasonable restrictions. These restrictions, however, should always be subject to judicial scrutiny to prevent the arbitrary exercise of state power. By maintaining this balance, India can uphold its commitment to both liberty and social order, ensuring that fundamental rights serve the broader objective of creating a just and equitable society.

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