

## **Right to Life as Basic Structure of Indian Constitution**

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### **ABSTRACT**

Right to life in the British India was not guaranteed as a constitutional right. However, its demand was tremendous. After Independence, it was incorporated in the Constitution under Article 21. However, it was not an absolute fundamental right, but could be taken away by an ordinary legislation. In early judicial challenges, it could not be recognized as a part of basic structure. Life, under right to life, was literally interpreted as a vegetative or an animal life. However, *Maneka Gandhi* case was a big bang in its evolutionary history, wherein the Supreme Court of India distinguished human life with an animal life, and held that it included all amenities necessary for human dignity. After recognition of the basic structure of the Constitution, it was also accepted as a part of the basic structure, which could not be taken away even by a constitutional amendment.

**KEY WORDS:** Right to life, Basic Structure of Constitution, Article 21, Indian Constitution, Fundamental Right.

### **Introduction**

The Indian constitutional history of conflict between Parliament, Judiciary and Executive revolves around the power of judicial review of a constitutional amendment under 13(2), the extent of power of Parliament to amend the Constitution under Article 368 and the abridgement of fundamental rights protected under Articles 14, 19 generally and 21 in particular. This paper examines that although right to life was never guaranteed in the British Raj, but a consensus was developing to include it, along with other fundamental rights, in the expected Constitution, after the election of 1946. Although its incorporation was one of the most debated issues, however, it finally got its place in the Constitution, under Article 21. The article highlights that how, at the outset, it suffered setbacks from the judicial interpretation. Instead of being recognized as a part of basic structure

of the Constitution, right to life was confined to a vegetative or equal to an animal life. Finally, the research focuses on the judicial activism, which not only unchained right to life from the shackle of rigid judicial approach, but enriched it with a lot of penumbra rights; how right to life eventually was recognized as a part of basic structure of the Constitution, along with other fundamental rights.

## **From Rigid Approach to Recognition**

The spike-story of Article 21 starts with the miserable tale of other human rights like right to property and other freedoms, protected under Article 19. The most debated two Articles: 14 and 19, after initial blow from *Sankari Prasad Singh v. Union of India*, 1951: 458) and *Sajjan Singh (Sajjan Singh v State of Rajasthan, 1965: 845)*, ruled the constitutional landscape of India whether under the doctrine of incapacity of the Parliament to amend fundamental rights or under the umbrella of the doctrine of basic structure of the Constitution from *Golak Nath (Golak Nath vs. The State of Punjab, 1967: 1643)* to *Kesavananda Bharati v. The State of Kerala, 1973: 1461*) and so on. On the other hand, right to life and liberty, guaranteed under Article 21 of the Constitution succumbed to the case of *A. K. Gopalan (A. K. Gopalan v State of Madras, 1950: 27)* and remained peripheral for the next twenty eight years. In the instant case, a Communist leader, A. K. Gopalan, was detained under the Preventive Detention Act 1950; he challenged the provisions of the Act that they violated his fundamental right under Article 21, along with other human rights. Naive with judicial activism, the Supreme Court opted for conservative approach of pre- Independence tradition. The Court dismayingly embraced that the contention advanced by the respondent that Article 21 was enacted devoid of American concept of 'due process of law' consciously; therefore, how grave unreasonableness and unfairness of law was, the Court could examine only the procedure laid down to pass the law, even it deprived life or liberty arbitrarily. (Nariman, 1992) In 1976, Article 21 received another severe blow, during the second emergency imposed on the ground of internal security concerns.

The Supreme Court, shaken by breach of seniority rule in the appointment of the Chief Justice, touched its last limit of textual and literal interpretation when in *Shiv Kant Shukla*,<sup>1</sup> *the Supreme Court held that* all access to the Courts could be debarred, during an emergency. On the contrary, the Supreme Court approached the zenith of sacrosanct status- quo when it inhibited the Parliament to amend any provision of fundamental rights and prohibited again to take away fundamental rights on the yardstick of basic structure; on the other hand, it rebuffed the contention that Articles 14, 19 and 21 of the Constitution would be reduced to a dead letter if the executive was permitted to take away the life and liberty of the people by an Ordinance, lacking the support of a law made by the legislature. (*A.K. Roy v Union of India, 1982: 710*) The Supreme Court observed that 'the ordinance-making power, if extended to cover matters mentioned in Article 21,

will destroy the basic structure of the separation of powers as envisaged by the Constitution.’ (Ibid). In *Satwant Singh*, (*Satwant Singh v Assistant Passport Officer*, 1967: 1836) the Supreme Court slightly attempted to extend the contours of Article 21 to include right to go abroad, but the effort was frustrated by an act of the Parliament curbing the right to get passport for specific people. (Sathe, 2001: 30).

Dissenting with the majority in *Sajjan Singh*, (*Sajjan Singh v State of Rajasthan*, 1965: 845). Mudholkar J wondered that ‘as long as the words "Justice, social economic and political etc.," are there could any of the rights enumerated in Articles 14, to 19, 21, 25, 31 and 32 are taken away? If they cannot, it will be for consideration whether they can be modified.’ (Ibid: 880). Applying the doctrine of ‘prospective over-ruling’ in *Golak Nath*, the majority of the Supreme Court saved all the previous amendments to the Constitution taking away or abridging fundamental rights from the judicial review. However, it was further declared that ‘future Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.’ (*Golak Nath vs. The state of Punjab*, 1967: 1643). In *Kesavananda Bharati*, Chief Justice Sikri observed that ‘the expression "amendment of this Constitution" does not enable Parliament to abrogate or take away fundamental rights or to completely change the fundamental features of the Constitution so as to destroy its identity.’ (*Kesavananda Bharati v. The state of Kerala*, 1973). In nutshell, right to life remained all along as a basic feature of the Constitution along with other fundamental rights, but with a conservative interpretation.

The Supreme Court was liberal in its approach to find out implicit limitations, embedded in Article 368, and, on the other hand, it kept close to its heart the conservative interpretation of *A. K. Gopalan*. Eventually, the Court realized its dichotomy, which was scarring its legitimacy. (Sathe, 2001 : 30) The monster of *A. K. Gopalan* was laid to rest for all the coming times in *Maneka Gandhi*.<sup>2</sup> Moreover, the right to go abroad, rejected as a minority view in *A. K. Roy*, was also recognized as a part of personal liberty.<sup>3</sup> The Court, comprising of the Bench of seven members also opined that ‘the procedure established by law in Article 21 had to be reasonable and not volatile of Article 14 and also that fundamental rights guaranteed by Part III were distinct and mutually exclusive rights.’<sup>4</sup> *Maneka Gandhi* was a watershed in the constitutional history of Article 21 of the Constitution. Now, Article 21 became a treasure-trove for the emerging rights. It was the most interpreted and expanded Article of the Constitution, in the immediate post emergency era. The past conservative approach, which perceived human life not more than an animal life, was categorically overturned. The dark history of *A. K. Gopalan*, *Shiv Kant Shukla* and *A. K. Roy* was over. It became a lead-in case for the variety of cases, touching prisoners’ rights, (*Hoskot v State of Maharashtra*, 1978: 1548) detainees’ rights, (*Charles Sobhraj v. Supdt*, 1978: 1514) children and family rights, (*Visakha v State of Rajasthan*, 1997: 241) under trial people’s rights, (*Hussanara Khaton*, 1979, 1369) torture in police custody

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rights, (*Sunil Batra v Selhi Administration*, 1978, 165) and even environmental rights. (*Francis Crrelli v Union of India*, 1981, 746).

Fundamental rights, due to the sustained efforts of the successive governments to take them away, and tooth and nail opposition by the people, became so dear to the public that the Janta Government, in accordance with its electoral commitments, moved 44<sup>th</sup> Constitutional Amendment Bill, which precluded Article 21 from suspension even during the promulgation of a constitutional emergency. The Constitution 44<sup>th</sup> Amendment Act, therefore, amended Article 359 of the Constitution to provide that even though other fundamental rights could be suspended during the emergency, rights conferred by Articles 20 and 21 could not be suspended. (Austin, 1999: 424) In *Minerva Mills*, the Supreme Court unequivocally declared that the relationship between Articles 21, 14 and 19 was a golden triangle, which would assure an egalitarian era.<sup>5</sup>

## Post Recognition Developments

Similarly, the pre-*Kesavananda* constitutional protection of the laws, thrown into the deep well of Ninth Schedule, was also averred to be reviewed. The Supreme Court categorically differed with the opinion of Khanna J in *Kesavananda*, when he held that the Parliament was competent to amend the Constitution, including doing away fundamental rights and their essence as they were not a basic feature of the Constitution. The Court, in *Waman Rao*, expressed clearly that 'Khanna J was misunderstood to mean that fundamental rights are not a part of the basic structure of the Constitution.' (*Waman Rao v. Union of India*, 1981: 607). Moreover, *inter alia*, an Ordinance issued during the proclamation of emergency imposed in 1975 was also challenged on the ground that it suspended the enforcement of fundamental rights protected under Articles 14, 21 and 22 unconstitutionally. However, the Court could not be convinced on the issue of protraction and issuance of the Ordinance as invalid, due to the insufficient proof and evidences, served before it (*Ibid*). The death penalty under Section 302 of Indian Penal Code was challenged as inconsistent with right to life; hence, contravening the basic structure of the Constitution. The Supreme Court did not agree with the ostensible cogent reason, but held that 'it cannot be said that death penalty for the offence of murder violates the basic structure of the Constitution.' (*Bachan Singh v State of Punjab*, 1983: 222).

Recently, the Supreme Court of India, in the case of *I.R. Coelho v State of Tamil Nadu* (*Coelho v State of Tamil Nadu*, 2007) after *Minerva Mills*<sup>6</sup> and *Waman Rao*, *Waman Rao v. Union of India*, 1981: 607 highlighted the penumbra of basic structure laid down in the landmark case of *Kesavananda*. It provided many answers with reference to fundamental rights, which the previous case law could not offer. (*I.R. Coelho v State of Tamil Nadu*, 2007) While determining the contours of judicial review, regarding the constitutional amendments and fundamental rights, the Court observed that in case of withdrawal by a

constitutional amendment or by 'an un-catalogued variety of laws, fundamental freedoms would become a 'parchment in a glass case' to be viewed as a matter of historical curiosity.' (Ibid). Therefore, in the opinion of the Court, the ratio of Kesavananda was 'very apt for deciding the extent and scope of judicial review in cases wherein entire Part III, including Articles 14, 19, 20, 21 and 32, stand excluded without any yardstick.' (Ibid). Developing the opinion of Justice Khanna in the case of Indira Nehru Gandhi, the Court held that fundamental rights were interconnected and some of them formed part of the basic structure as reflected in Article 15, Article 21 read with Article 14, and Article 14 read with Article 16(4) (4A) (4B). (I.R. Coelho v State of Tamil Nadu, 2007) Advancing the relationship of Article 14, 19 and 21 as interpreted in *Minerva Mills*, the Court observed that, as an element of basic structure they stood altogether on different footings. (Ibid). While applauding the principle of 'prospective overruling', regarding the laws protected in the Ninth Schedule applied in the case of *Waman Rao* to the post-Kesavananda protected laws, the Court, compensating the debt of clarification that had been due since last three decades, very comprehensively held that every amendment in the Constitution whether it be in the form of an amendment of any Article or insertion of an Act in the Ninth Schedule had to be tested by reference to the doctrine of basic structure, which included reference to Article 21 read with Article 14, Article 15. (Ibid). Accordingly, now every constitutional amendment, ordinance or legislative action must pass through the yardstick of the basic structure. The recognition of validity of the recent constitutional amendments and the legislative enactments reflect that the Parliament and the Government, whether of the Union or any State contemplate hundred times their potential invalidity. (*Kuldip Nayar v Union of India*, 2006; *M. Nagaraj v Union of India*, 2006: 212).

## **Conclusion**

In-depth study of the constitutional amendments and the developed case-law is evident that almost the whole constitutional history of India is suffused with abridgment or protection of fundamental rights, guaranteed under Article 14, 19 and 21, and the attempts to take them away from the judicial scrutiny, amending Article 13 and 368 of the Indian Constitution. After getting a fatal fist of interpretation in *A. K. Gopalan*, Article 21 remained hybrid till Forty Second Constitutional Amendment Act, wherein the laws against fundamental rights were protected, albeit their inconsistency, inter alia, with Article 21, during the second emergency. Now, the doctrine of 'Basic Structure' of the Constitution is not only well recognized and established in the Indian constitutional, legal and political jurisprudence, but also provides guidance, as a persuasive precedent, for other South Asian Countries, like Pakistan and Bangladesh. (*Anwar Hussain v Peoples of Republic of Bangladesh* 1989: 1) Although the conflict between the Parliament and the Judiciary started over fundamental right to property, but terminated on a deal, which transformed its status from a constitutional right to an ordinary right,

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by 44<sup>th</sup> Constitutional Amendment Act. On the other hand, Article 21: right to life succumbed to the conservative interpretation of A.K. Goपाल and could not resurrect till Maneka Gandhi. Nonetheless, after its broader and liberal elaboration and recognition as an integral part of the basic structure of the Constitution, no other fundamental right can envy, with reference to its expansion, as a repository of a number of emerging rights.

## Notes

1. AIR 1976 SC 1207. Only Khanna J dissented with the majority and held that the doors of the Courts could not be shut off, even during presidential emergency. Human right to life was almost denoted equal to animal life.
2. *Maneka Gandhi v Union of India* AIR 1978 SC 597 wherein the petitioner, Mrs. Gandhi, the widow of the former Prime Minister, Indira Gandhi's son and later turned politician, had not been given a right to hearing when her passport was impounded by the authorities. The first time, the Supreme Court not only broadened the meaning of the words 'personal liberty', but also adopted the concept of procedural due process within the words 'procedure established by law.' In the heat of post emergency judicial activism, the Court rejected the earlier view that personal liberty included all attributes of liberty except those mentioned in Article 19.
3. Ibid.
4. Ibid. Bhagwati J also speaking on behalf of Untwalia and Murtaza Fazal Ali JJ, observed that 'the fundamental rights in Part III of the Constitution represent the basic values cherished by the people of this country since the Vedic times and... create conditions in which every human being can develop his personality to the fullest extent.' Further, the landmark case removed the restriction imposed between the freedoms available under Articles 19 and 21.
5. *Minerva Mills v Union of India* AIR 1980 SC 1789. While extensively quoting to and relying on Granville Austin, on the question of giving priority of the Directive Principles over Fundamental Rights, the Court opined that any attempt 'to destroy the guarantees given by Part III in order purportedly to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic structure.' Due to the sanctity attached to them, the Court went on to say that those rights 'occupy a unique place in the lives of civilized societies and have been variously described as "transcendental", "inalienable" and "primordial".' Further, the Court made it clear that the doctrine of basic structure would become redundant and it would cause to destroy the golden triangle of Article 21 read with Articles 14 and 19, in its entirety for examining the validity of 9th Schedule laws.

## References

- A. K. Gopalan v State of Madras. (1950). AIR. SC 27.  
A. K. Roy v Union of India. (1982). AIR. SC 710.  
Anwar Hussain v Peoples of Republic of Bangladesh. (1989). BLD (Supplement).  
Austin, Granville. (1999). Working a Democratic Constitution: The Indian Experience.  
London: OUP.  
Bachan Singh v State of Punjab. (1983). SCR (1) 222  
Charles Sobhraj v. Supdt. (1978). AIR. SC 1514  
Francis Coralie Mullin v the Administrator, Union Territory of Delhi & Ors. (1981). AIR SC 746.  
Francis Crrelli v Union of India. (1981). AIR. SC 746

- Golak Nath vs. The State of Punjab (1967). AIR. SC 1643.  
Hoskot v State of Maharashtra. (1978). AIR. 1548  
Kesavananda Bharati v. The State of Kerala. (1973). AIR. SC 1461.  
Kuldip Nayar v Union of India (2006) 7 SCC 1, 8 SCC 212.  
Nariman, Fali S. (1992). 'Judicial Aspects of Human Rights Protection in India'. 17 Int'l Legal Prac.  
Olga Tellis v Bombay Municipal Corporation. (1986). AIR. SC 180  
Sajjan Singh v State of Rajasthan. (1965). AIR. SC 845.  
Sankari Prasad Singh v. Union of India. (1951). AIR. SC 458.  
Sathe, S.P. (2001). 'Judicial Activism: The Indian Experience'. Journal of Law & Policy. 6-29.  
Satwant Singh v Assistant Passport Officer.(1967). AIR. SC 1836.  
State of Himachal v Umedram. (1986). AIR. SC 84  
Sunil Batra v Delhi Administration. (1978). AIR. SC 165  
Visakha v State of Rajasthan (1997) 6 SCC 241.  
Waman Rao v. Union of India. (1981). 2 SCC 607.

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