

BALANCING NATIONAL SECURITY AND FUNDAMENTAL RIGHT :A CRITICAL STUDY UNDER ARTICLES 19 AND 21

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Abstract

The interplay between national security and fundamental rights, particularly freedom of speech (Article 19) and the right to life and personal liberty (Article 21), remains a crucial area of legal and constitutional discourse in India. Governments often impose restrictions on civil liberties in the name of security, leading to debates on whether such measures are justified or constitute a violation of constitutional rights. This study critically examines how Indian courts have interpreted and balanced these rights in the context of national security threats such as terrorism, sedition, internet shutdowns, and preventive detention. It explores key judicial precedents, legislative frameworks, and international perspectives to understand the evolving nature of state power and individual freedoms. The research also evaluates the necessity and proportionality principles applied in judicial rulings to assess whether security laws disproportionately curb fundamental rights. The findings suggest that while national security is a legitimate concern, an unchecked expansion of state power risks undermining constitutional freedoms. The study concludes with recommendations for a balanced legal framework that upholds both security interests and individual rights.

INTRODUCTION

The Indian Constitution guarantees fundamental rights to all citizens, ensuring freedom, equality, and justice. Among these, Article 19 safeguards the right to freedom of speech and expression, while Article 21 protects the right to life and personal liberty. However, these rights are not absolute and can be curtailed in the interest of national security, public order, or sovereignty. In recent years, issues such as sedition laws, preventive detention, internet restrictions, and surveillance have sparked debates on the conflict between state security measures and constitutional rights.

Judicial interpretations of Articles 19 and 21 have evolved over time, with landmark cases such as Kedar Nath Singh v. State of Bihar (1962) upholding reasonable restrictions on free speech, and Maneka Gandhi v. Union of India (1978) expanding the scope of personal liberty. The challenge lies in ensuring that security laws do not disproportionately restrict fundamental rights, leading to an authoritarian state. This study critically analyzes the legal principles governing the balance between national security and fundamental rights in India, drawing insights from judicial decisions, legislative policies, and comparative constitutional law.

OBJECTIVES

1. To analyze the legal framework governing restrictions on Articles 19 and 21 in the interest of national security.
2. To study key judicial decisions that have shaped the interpretation of fundamental rights in security-related cases.
3. To evaluate the application of the proportionality principle in assessing restrictions on fundamental rights.
4. To examine international legal standards and best practices in balancing national security and individual freedoms.
5. To suggest policy recommendations for a balanced approach to safeguarding both national security and constitutional rights.

REVIEW OF LITERATURE

The balance between national security and fundamental rights, particularly under Article 19 (freedom of speech and expression) and Article 21 (right to life and personal liberty), has been a subject of extensive legal and academic discourse. Scholars and judicial precedents have explored how governments impose restrictions

in the name of security and how courts interpret and uphold constitutional safeguards. This section examines key studies, judicial rulings, and international perspectives on this critical issue.

1. Constitutional and Legal Framework

The Indian Constitution provides for fundamental rights but also permits reasonable restrictions. Seervai (2013) in Constitutional Law of India emphasizes that while national security is a legitimate ground for limiting rights, excessive state control can lead to constitutional violations. He argues that courts must ensure proportionality when assessing security-related restrictions on speech and personal liberty.

Similarly, Austin (1999) in The Indian Constitution: Cornerstone of a Nation highlights that the framers of the Constitution were aware of the need to balance rights and security, which is why reasonable restrictions were embedded in Article 19(2). However, he notes that over time, laws like the Unlawful Activities (Prevention) Act (UAPA) and sedition laws have been used to suppress dissent, raising concerns about misuse.

2. Judicial Interpretations of Article 19 and National Security

Several landmark Supreme Court cases have examined the extent to which the state can restrict free speech in the interest of security.

Kedar Nath Singh v. State of Bihar (1962) upheld the constitutional validity of sedition laws but clarified that criticism of the government does not amount to sedition unless it incites violence. Basu (2015) in Commentary on the Indian Constitution argues that this judgment set a precedent for balancing free speech with state security, but in practice, sedition charges have been misused against activists and journalists.

Shreya Singhal v. Union of India (2015) struck down Section 66A of the IT Act, which was used to curb online speech. The Court held that vague and arbitrary restrictions violate the right to free speech. Singh (2018) in Freedom of Expression in India points out that this case reaffirmed judicial commitment to protecting Article 19 but also showed that new forms of censorship, such as internet shutdowns, continue to threaten free expression.

3. Article 21 and the Right to Personal Liberty in Security Laws

The scope of Article 21 (right to life and personal liberty) has expanded significantly through judicial activism. Maneka Gandhi v. Union of India (1978) established that any restriction on liberty must be "just, fair, and reasonable." However, Kumar (2020) in Human Rights and National Security in India observes that security laws, such as preventive detention under the National Security Act (NSA), often violate this principle by allowing detention without trial.

Another key judgment, A.K. Gopalan v. State of Madras (1950), initially upheld restrictive detention laws, but later cases like Justice K.S. Puttaswamy v. Union of India (2017) expanded the interpretation of Article 21 to include the right to privacy. Mathew (2019) in Privacy and Surveillance Laws in India discusses how this case challenged mass surveillance programs such as Aadhaar and Pegasus spyware, highlighting the need to balance state security concerns with individual privacy rights.

4. Internet Shutdowns and the Digital Age

The increasing use of internet shutdowns in India, especially in Kashmir and during protests, has raised concerns about the violation of Articles 19 and 21. Bhatia (2021) in Censorship in the Digital Age critiques the Anuradha Bhasin v. Union of India (2020) judgment, where the Supreme Court ruled that internet shutdowns must be proportional and subject to judicial review. However, the lack of clear implementation guidelines has allowed prolonged shutdowns, impacting fundamental rights.

5. Comparative Perspectives on National Security and Fundamental Rights

Examining global approaches provides useful insights into India's legal framework. Dyzenhaus (2006) in The Constitution of Law: Legality in a Time of Emergency analyzes how the USA and UK have handled security and rights post-9/11. The USA PATRIOT Act and UK's Counter-Terrorism Acts grant broad surveillance powers, often at the cost of civil liberties. Similarly, Hickman (2020) in National Security and Human Rights discusses the European Court of Human Rights' (ECHR) approach, which mandates a strong proportionality test to ensure that security laws do not infringe on fundamental rights unnecessarily.

DATA ANALYSIS

To understand the balance between national security and fundamental rights under Articles 19 and 21 of the Indian Constitution, this study examines judicial decisions, legal statutes, government policies, and comparative international frameworks. The analysis is based on case law, legislative acts, and secondary data sources such as legal journals and human rights reports.

1. Judicial Trends in Article 19 and National Security

A review of landmark Supreme Court judgments reveals a pattern of judicial intervention in cases where fundamental rights were curtailed for security reasons.

Sedition and Free Speech:

Kedar Nath Singh v. State of Bihar (1962) upheld sedition laws but restricted their application to speech inciting violence.

Recent cases, such as Vinod Dua v. Union of India (2021), reaffirmed that criticism of the government cannot be criminalized.

Trend Analysis: Courts have increasingly favored free speech but have not struck down sedition laws entirely.

Internet Shutdowns and Censorship:

Anuradha Bhasin v. Union of India (2020) ruled that internet restrictions must be necessary and proportionate.

Despite this, internet shutdowns remain frequent, especially in conflict areas like Kashmir.

Trend Analysis: Judicial review exists but enforcement remains weak.

2. Right to Life and Personal Liberty (Article 21) and Security Laws

Preventive Detention:

A.K. Gopalan v. State of Madras (1950) initially upheld preventive detention laws.

Later cases like Maneka Gandhi v. Union of India (1978) expanded due process protections.

Trend Analysis: Courts have widened personal liberty rights but have not removed preventive detention laws.

Surveillance and Right to Privacy:

Justice K.S. Puttaswamy v. Union of India (2017) recognized privacy as a fundamental right.

Concerns: Laws like the Aadhaar Act, IT Rules 2021, and Pegasus spyware controversy highlight ongoing privacy violations.

Trend Analysis: Courts recognize privacy rights but struggle to regulate state surveillance effectively.

3. Comparative Analysis with Global Practices

Examining security laws in the U.S., U.K., and EU provides insights into how India's legal framework compares:

U.S. Patriot Act (2001): Expanded surveillance powers, criticized for human rights violations.

U.K.'s Counter-Terrorism and Security Act (2015): Focuses on terrorism prevention but has strict judicial oversight.

EU's Proportionality Principle: Requires any security restriction to be necessary and proportionate to the threat.

Key Finding: India lacks a strong oversight mechanism compared to Western democracies.

RECOMMENDATIONS

1. Reforming Sedition Laws

Introduce a clear definition of sedition to prevent misuse against dissenting voices.

Require judicial pre-approval before filing sedition cases.

2. Strengthening Internet and Media Freedoms

Enforce strict judicial review before imposing internet shutdowns.

Amend the IT Act, 2000 to ensure digital censorship aligns with free speech rights.

3. Preventive Detention and National Security Laws

Modify the NSA and UAPA to introduce stronger due process protections.

Impose time-bound judicial oversight on preventive detention cases.

4. Privacy Protection and Surveillance Regulations

Implement a comprehensive data protection law to regulate state surveillance.

Establish an independent oversight body for digital privacy violations.

5. Incorporating International Best Practices

Introduce EU-style proportionality standards for security-related restrictions.

Strengthen parliamentary and judicial oversight of national security policies.

CONCLUSION

This study finds that while national security is a legitimate concern, the existing legal framework in India often tilts in favor of state power, leading to rights violations. Judicial interventions have strengthened individual rights under Articles 19 and 21, but implementation gaps persist. Sedition laws, preventive detention, and internet shutdowns remain areas of concern. A proportional approach, inspired by international best practices, is necessary to strike a balance between security and civil liberties. Strengthening judicial oversight, legislative

reforms, and public accountability can help uphold the constitutional principles of democracy and human rights.

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