

## **Topic: Development Of The Concept Of Due Procedure Of Law: From Gopalan To Maneka Gandhi**

Name of the Case: AK Gopalan v. State of Madras, AIR 1950 SC 27

Bench: Chief Justice Hiralal Kania, Justice Syed Faisal Ali, Justice M Patanjali Sastri, Justice Mehr Chand Mahajan, Justice SR Das, Justice BK Mukherjea

Issue: There were several issues raised in this case including whether the Prevention and Detention Act 1950 violated Articles 14, 19, and 21 of the Indian constitution. Secondly is there any connection between Article 19 and 21 of the constitution?

Background: Just after the Constitution of India came into force, the question of interpretation Article 21 came into picture. The petitioner was detained under the Preventive Detention Act

He applied under Article 32 of the Constitution for the writ of habeas corpus and for his release from detention, on the ground that the said act contravened the provision of Article 14, 19 and 22 of the Constitution of India and consequently ultra vires Article 21.

Ratio: The Supreme Court analyzed the arguments of the parties and held that there is no connection between Article 21 and 19 of the constitution. The court further held that the principles of natural justice were not violated in this case. The court finally dismissed the writ petition filed by Mr Gopalan.

The A K Gopalan and the State of Madras is a landmark case in Indian legal history. It is one of the important cases in which the apex court of India interpreted the provisions of the Indian constitution. The case set the precedent for how the Indian courts would interpret and apply the provisions of the Indian constitution in future cases.

It is also significant because it was among the first cases in which the principles of natural justice were applied in India. The case is also important because it established the principle that the Indian constitution is a living document and that it can be interpreted in light of changing times and circumstances. The judicial approach means that a preventive detention law would be valid, and be within the terms of Article 21, so long as it conformed with Article 22, and it would not be required to meet the challenge of Article 19.

However, the Supreme Court rejected the said contention based on following reasons:

The word 'due' was absent in Article 21.

The draft constitution had contained the words 'due process of law' but these words were later dropped and the present phraseology adopted instead.

Thus, the Supreme Court ruled that the expression "Procedure established by law" meant the procedure as laid down in the law and enacted by the Legislature and nothing more. A person could thus be deprived of his "life" or "personal liberty" in accordance with the procedure laid down in the relevant law.

Another case on the said issue: Maneka Gandhi v. UOI, AIR 1978 SC 597

Fact of the case: The petitioner Maneka Gandhi's passport was issued on 1st June 1976 as per the Passport Act of 1967. On 2nd July 1977, the Regional Passport Office (New Delhi) ordered her to surrender her passport. The petitioner was also not given any reason for this arbitrary and unilateral decision of the External Affairs Ministry, citing public interest.

The petitioner approached the Supreme Court by invoking its writ jurisdiction and contending that the State's act of impounding her passport was a direct assault on her Right of Personal Liberty as guaranteed by Article 21. It is pertinent to mention that the Supreme Court in *Satwant Singh Sawhney v. Ramarathnam* held that right to travel abroad is well within the ambit of Article 21, although the extent to which the Passport Act diluted this particular right was unclear.

Issues Before the Court:

Are the provisions under Articles 21, 14 and 19 connected with each other or are they mutually exclusive?

Should the procedure established by law be tested for reasonability which in this case was the procedure laid down by the Passport Act of 1967?

If the right to travel outside the country is a part of Article 21 or not?

Is a legislative law that snatches away the right to life reasonable?

Ratio: The Supreme Court laid down following propositions seeking to make Article 21 much more meaningful:

The court retaliated the proposition that Article 14, 19 and 21 are not mutually exclusive. A nexus has been established between these three Articles. The theme of mutual relationship of Article 21 and 19 has already been discussed in several cases. This means that a law prescribing or procedure for depriving a person of personal liberty has to meet the requirement of Article 19. Also, the procedure established by law in Article 21 must answer requirement of Article 14 as well.

The expression personal liberty in Article 21 was given an expansive interpretation. The court emphasised that the expression personal liberty is of the widest amplitude covering a variety of rights which go to constitute the personal liberty of man. Some of these attributes have been raised to the status of distinct Fundamental Rights and give additional protection under Article 19.

The most significant and creative aspect of *Maneka Gandhi*, is the re-interpretation by the court of the expression procedure established by law and used in Article 21. The court gave following orientation to this expression:

a. Article 21 would no longer mean that law would prescribe some semblance of procedure, however arbitrary or fanciful, to the private person of his personal liberty. It now means that procedure must satisfy certain requisite in the sense of being fair and reasonable. The procedure cannot be arbitrary, unfair or unreasonable. The concept of reasonableness must be projected in the procedure contemplated by Article 21. The Court has now assumed the power to adjust the fairness and justice of procedure established by law to deprive a person of his personal liberty. The Court had reached this conclusion by holding that Article 21, 19 and 14 are mutually inclusive and interlinked.

b. The procedure contemplated by Article 21 must answer the test of reasonableness in order to conform with Article 14 for, in the word of Justice Bhagwati: "The principle of reasonableness which

legally as well as philosophically is in a sensual element of equality or non-arbitrariness permits Article 21 like a brooding omnipresence." Thus, the procedure in Article 21, must be right and just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

c. According to Justice Iyer the procedure in Article 21 means fairness, not formal, procedure; 'law' is reasonable law and not any enacted piece. This makes the word procedure established by law by and large synonymous with the procedural due process in the USA. This makes the right of hearing a component part of natural justice.

d. As the right to travel abroad falls under Article 21, natural justice mode must be applied while exercising the power of impounding of passport under the passport act. Although the passport act does not expressly provide for the requirement of hearing before a passport is impounded, yet the same has to be implied therein.