

ARTICLE 21: WIDENING HORIZONS BY BOBBY JAIN & BHAVINEE SINGH*

INTRODUCTION

Article 21 of the Indian Constitution significantly lays down that “No person shall be deprived of his life and personal liberty except according to the procedure established by law”¹. The significance of the term “procedure established by law” was principally examined and construed by the Hon’ble Supreme Court of India in *A.K. Gopalan v. State of Madras*²

*A.K. Gopalan v. State of Madras*³, set the stage of interpretation of Article 14, 19 & 21 to be mutually exclusive of each other. Similarly, while upholding the Constitutional validity of the Preventive Detection Act, 1950, *A.K. Gopalan’s case*⁴ made it disputably clear that a legislation affecting or infringing life or personal liberty of an individual cannot be termed to be ultra-vires to the constitution, on the ground that it lacked Natural Justice and due process.⁵

In the landmark case of *Bennett Coleman Co. v. Union of India*⁶ the Hon’ble Supreme Court held that if any legislation restricted freedom of speech as mentioned under Article 19(a), its equanimity becomes measureable in the context of its restrictions mentioned under Article 19(2) although it wasn’t legislated primarily to regulate the freedom of speech and expression. Hence, the decision of the Hon’ble Supreme Court in *A.K. Gopalan’s case*⁷ that legislations which fall under the ambit of Article 19 can be regulated under the restrictions mentioned under Article 19(2) was no longer plausible.

Similarly, in the case of *West Bengal v. Ashok Dey*⁸ the Hon’ble Supreme Court of India inter-linked Articles 19, 21 and 22 of the Constitution of India. Other cases before Maneka Gandhi’s case wherein the Hon’ble Supreme Court of India linked Articles 19, 21 and 22 under varied circumstances are *Haradhan Saha v. State of West Bengal*⁹, *John Martin v. State of West Bengal*¹⁰ and *P.L. Lakhanpal v. Union of India*¹¹

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¹ Article 21 of the Constitution of India.

² *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

³ Id.

⁴ Supra 5.

⁵ Evolution and Expounding of Article 21, Pratham & Rohit anant sahay, International Journal of Research and Analysis, Volume 1 Issue 3.

⁶ *Bennett Coleman Co. v. Union of India*, AIR 1973 SC 106

⁷ Supra 5.

⁸ *West Bengal v. Ashok Dey*, AIR 1972 SC 1660

⁹ *Haradhan Saha v. State of West Bengal*, AIR 1974 SC 2154

¹⁰ *John Martin v. State of West Bengal*, AIR 1975 SC 775

¹¹ *P.L. Lakhanpal v. Union of India*, AIR 1967 SC 1507

Brief Facts:

The Petitioner i.e. Maneka Gandhi was dispensed her passport on June 1, 1976 under the Passport Act, 1967. In the garb of "Public Interest", she was informed by the Regional Passport Officer Delhi that her Passport has been impounded by the Central Government under Section 10(3)(c) of the Passports Act 1967, by a letter dated 2nd July, 1977. Maneka Gandhi was required to capitulate and surrender her passport within 7 days from the receipt of Regional Passport Officer's letter.

As Section 10(5) of the Passports Act, 1967 provided for reasons to be furnished, the petitioner instantaneously addressed a counter-letter to the Regional Passport Officer, Delhi to furnish reasons for this decision of the Government of India, Ministry of External Affairs. The Government of India, Ministry of External Affairs on 6th July 1977, sent their response to the petitioner, stating significantly that the Government decided not to furnish her copy of the statement of reasons for the making of the order "in the interest of the general public".

Hence, Maneka Gandhi, filed a Writ Petition, under Article 32 of the Constitution of India, challenging the act of the Government to impound her passport and rejecting to give reasons for this decision.

The Passports Act, 1967 was enacted by the legislature following the guidelines of the Hon'ble Supreme Court in the Case of Satwant Singh Sawhney v. D. Ramarathnam¹². Prior to the act, the position which obtained prior to the coming into force of the Act was that there was no law regulating the issue of passports for leaving the shores of India and going abroad. The issue of passport was entirely within the unguided and un-channelled discretion of the Executive.

It was only after Satwant Singh's Case¹³ that Right to go abroad was embedded under Article 21 which could not be taken away except by a procedure established by law.¹⁴

Issues Raised:

1. Is Section 10(3)(c) of the Passport Act 1967, violative of the Article 14 of the Constitution of India.
2. Is Section 10(3)(c) of the Passport Act 1967, violative of the Article 19(1)(a) or Article 19(1)(g) of the Constitution of India.
3. Whether the Freedom of Speech and expression as mentioned under Article 19(1)(a) of the Constitution of India, restricted to the territory of India.
4. Whether the Right to go beyond the territory of India, i.e. abroad embedded under article 19(a) or Article 19(g) of the Indian Constitution.
5. Whether the impugned order is according to Section 10(3)(c) of the Passport Act 1967, and whether it is constitutionally effective and valid?

¹² Satwant Singh Sawhney v. D. Ramarathnam AIR 1967 SC 1836

¹³ Id

¹⁴ Original Judgment, Page 3&4, Maneka Gandhi v. Union of India, taken from www.manupatra.com.

6. Whether Principles of Natural Justice be taken away even when it is a matter of “national interest”.
7. Whether there exists an inter-relation between Article 14, 19 and 21 of the Constitution of India.

Judgement:

1. Section 10(3)(c) of the Passports Act, 1967, as it permits the passport administration to confiscate a passport in the interests of the general masses, it is violative of Article 14 of the Constitution because it confers ambiguous, vague and indeterminate authority on the passport administration.
2. Section 10(3)(c) is unconstitutional since it confers an arbitrary and ambiguous authority as it does not give a chance to be heard to the passport bearer, before his passport gets confiscated or impounded
3. Section 10(3)(c) is contrary to Article 21 of the Constitution of India because it bypasses the mandate of a 'procedure' within the confines of Article 21 and the procedure established is arbitrary and vague.
4. Section 10(3)(c) is contrary to Articles 19(1)(a) and 19(1)(g) as it authorizes the impositions of unreasonable constraints on the rights assured by Articles 19(1)(a) and 19(1)(g) even when these ambiguous constraints cannot be lawfully imposed under the restrictions mentioned under Articles 19(2) and 19(6).
5. The doctrine of “*Post decisional hearing*” was propounded in this case.
6. Articles 14, 19 & 21 do not operate in water-tight compartments, these are entirely inter-linked to form a Golden Triangle. Violation of one of these Articles, in certain circumstances may lead to a violation of the other two Articles as well.
7. Principles of Natural Justice have few exceptions, however the Hon’ble Supreme Court significantly held that in this case, these principles must guide the behaviour of the authority.

INTERPRETATION

Maneka Gandhi v. Union of India¹⁵ is a land mark judgment of the post-emergency phase. This decision of the Hon’ble Supreme Court depicted the liberal outlook of the Apex Court in interpreting Fundamental Rights mentioned under Part III of the Constitution of India, particularly, Article 21.

It significantly showed that Article 21 as interpreted in A.K. Gopalan’s case¹⁶ was vastly unsuccessful in providing a relief against harsh laws enacted by the legislature. Maneka Gandhi’s case¹⁷ has acted as a catalytic agent for the beginning of the process of transformation of the Apex Judiciary’s view on Article 21.

The Hon’ble Apex Court repeated the principle that Articles 14, 19, and 21 are inter-related i.e. a legislation propounding a procedure for restricting or controlling a person’s ‘life’ or ‘personal liberty’ is duty bound to satisfy the prerequisites of Articles 19 and 14 as well.

“Personal liberty” as mentioned under Article 21 was termed with an extensive interpretation. The Apex Court again reemphasized that the term, “personal liberty” is of broadest amplitude

¹⁵ Maneka Gandhi v. Union of India, AIR 1978 SC 597

¹⁶ Supra 5.

¹⁷ Supra 18.

which covers a numerous rights which strive to go to constitute the personal liberty of an individual. The Hon'ble Apex Court further held that the term, "personal liberty", must not be interpreted in a contracted and restricted manner in order to eliminate those characteristics of the term "personal liberty" which are explicitly mentioned in Article 19. The Courts should endeavour enlarge the influence and domain of the fundamental rights rather than weakening their connotation by judicial interpretation, and therefore a person's Right to travel abroad lies within the ambit of Article 21 of the Constitution of India.

Unequivocally, the most substantial facet of this case is the reconsideration of the expression "procedure established by law" as mentioned under in Article 21 of the Constitution of India. Article 21 excluded the erroneous meaning from itself that a legislation could recommend some impression of any procedure, irrespective of the fact that how arbitrary or whimsical or far-fetched, to deprive a person of his life or personal liberty. The prevalent position now entails that "procedure" as under Article 21 of the Constitution is bound to fulfil numerous fundamentals in the light of being just, fair, reasonable and un-arbitrary. Thus, the "procedure" under Article 21 is ought to be fair, just and reasonable and not arbitrary, whimsical and tyrannical. The Apex Court touched it decision by propounding that Articles. 21, 19 and 14 are mutually inclusive.¹⁸

IMPACT OF MANEKA GANDHI CASE

Reinterpretation of Article 21 of the Constitution of India by the landmark case of Maneka Gandhi v. Union of India¹⁹ has brought and exercised a grave influence on contemporary Jurisprudence of the Constitution of India. The Gopalan's²⁰ view has been completely over-ridden by Maneka Gandhi's case as the Apex Court in Gopalan's case ruled the field for nearly thirty years.

Maneka Ganshi's case has significantly brought the Fundamental Right of Life and Personal Liberty i.e. Article 21 of the Constitution of India into eminence and hence it is now observed as the heart and lifeline of Fundamental Rights under Part III of the Constitution of India.

Numerous cases, in the post-Maneka Gandhi's era, the Hon'ble Apex Court has given significance to the notion of procedural fairness in context of personal liberty under Article 21. As a nexus has been established between Article 14, 19 and 21, it is now unambiguously clear that the concept of 'procedure' envisaged under Article 21 should stand the assessment of reasonability.

Hence, Article 21 of the Indian Constitution has significantly emerged as the Indian description of the American Constitution's notion of 'due process of law' and hence it has laid the foundation to the source of numerous substantive safeguards and procedural rights to the citizens.

The Hon'ble Supreme Court has also observed that even though Article 21 is couched in a negative language, it significantly upholds the notion of Fundamental Right to life and personal liberty under Article 21, and it has also intensely influenced the proper supervision

¹⁸ Evolution and Expounding of Article 21, Pratham & Rohit anant sahay, International Journal of Research and Analysis, Volume 1 Issue 3.

¹⁹ Supra 18.

²⁰ Supra 5.

of criminal justice and prison administration²¹, just as in the landmark Judgment of Sunil Batra v. Delhi Administration²²

There are numerous cases²³ where the Hon'ble Supreme Court of India has explicated numerous proposals in order to humanize the functioning of criminal justice system in totality. Article 21 has also significantly attested to be a highly prolific source of numerous Fundamental Rights mentioned under Part III of the Constitution of India, particularly mentioned under Articles 14 and 19.

PRESENT VIEW AND RELATED CASE LAWS

Maneka Gandhi's case has laid down a strong foundation in order to reconstruct the whole Jurisprudence of the Constitution of India and its application in order to reform the whole Judicial Interpretation of Article 21.

'LIFE'- UNDER ARTICLE 21

The term 'life' as under Article 21 of the Indian Constitution has been construed by the Hon'ble Apex Court in a liberal and comprehensive manner. Over a period of time, the Hon'ble Apex Judiciary provided an extensive interpretation to the term.

In the landmark case of Francis Coralie v. Union of India,²⁴ the Hon'ble Apex Judiciary has decided that the term 'life' under Article 21 of the Indian Constitution cannot imply just a corporeal or animal existence or a physical existence but holds rather more concrete aspects. It involves the Right to live with utmost dignity to all and everything containing it.

The Hon'ble Apex Court also, in the case of Shantisar Builders v. Narayanan Khimalal Totame²⁵, upheld that the Right to life under Article 21 of Indian Constitution includes Right to reasonable accommodation to live in, food, decent environment and clothing. Hence, the notion of 'life' under Article 21 has been lavishly construed in recent and contemporary years which implies a host of all the Fundamental Rights under Part III.

'PERSONAL LIBERTY' UNDER ARTICLE 21

Personal Liberty, the term, is of broadest scale, and it significantly involves numerous rights like Right to travel abroad, Right to locomotion, Rights of a prisoner to speedy trial,²⁶ Rights to take legal aid²⁷ etc.

According to numerous decisions of the Hon'ble Apex Court, the term 'life and personal liberty' are interpreted very liberally and broadly and now they being raised as a residuary rights of Individuals. For enhancing the interpretation, protection of cultural heritage, right of

²¹ Supra 18.

²² Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

²³ Id.

²⁴ Francis Coralie v. Union of India, AIR 1981 SC 746

²⁵ Shantisar Builders v. Narayanan Khimalal Totame, AIR 1990 SC 630

²⁶ Hussainara Khatoon v. Home Secretary, AIR 1979 SC 1360

²⁷ A.K. Roy v. Union of India, AIR 1982 SC 710

person to reside in hilly areas to have access to road²⁸ and right to education,²⁹ have all found their way into this Article.

‘PROCEDURE ESTABLISHED BY LAW’ UNDER ARTICLE 21

There are numerous cases where the Hon’ble Apex Court has specified that a ‘procedure of law’ must be right and just and fair and not capricious, arbitrary and oppressive and fanciful and if it is such a procedure then it will be no procedure at all since it will not stand the prerequisite of Article 21 of the Constitution of India would not be fulfilled.

Similarly the Hon’ble Apex Court recommended numerous alterations and adjustments in the Special Court Bill 1978. The Apex Court advised that there is a requirement for a provision for transferring of a case from one Special Court to the other as it is essential to evade trail of the suspected accused by a judicial mind who may be biased or prejudiced against him.

The Hon’ble Apex Court also highlighted the responsibility and obligation of the State to preserve and conserve the spirit of law and order in the society. State has the obligation to ensure that the concept of ‘rule of law’ enshrined under Article 21 of the Constitution is available to everybody.

Similarly, in the landmark case of *Olga Tellis v. Bombay Municipal Corporation*³⁰ the Hon’ble Apex Court of India has reiterated that the concept of ‘procedure established by law’ for the denial of Rights given under Article 21 of the Constitution of India, ought to be just, fair and reasonable. Similarly, it ought to abide the principles of Natural Justice. Procedure which is unreasonable or crooked or draws in the bad habit of nonsensicalness, there by vitiating the law which endorse that strategy and thus, should be declared void.

CRITICAL ANALYSIS

It may be reasonably opined that the landmark *Maneka Gandhi’s* decision, provided the expression ‘personal liberty’ with the broadest possible explanation and actually effectuated the original intention of the Constitutional Framers.

This case, not only added a completely new facet to the notion of ‘personal liberty’, it also protracted Right under Article 14 of the Indian Constitution and also to the personal liberty of every citizen and similarly gave a supplementary protection under Article 19 of the Indian Constitution, to the personal liberty of every individual. Similarly, in this landmark Judgment the Hon’ble Apex Court of India construed numerous Articles of the Constitution of India in an unprecedented manner.

Maneka Gandhi’s case has significantly brought the Fundamental Right of Life and Personal Liberty i.e. Article 21 of the Constitution of India into eminence and hence it is now observed as the heart and lifeline of Fundamental Rights under Part III of the Constitution of India.

Numerous cases, in the post-*Maneka Gandhi’s* era, the Hon’ble Apex Court has given significance to the notion of procedural fairness in context of personal liberty under Article 21. As a nexus has been established between Article 14, 19 and 21, it is now unambiguously

²⁸ *State of Himachal Pradesh v. Umed Ram*, AIR 1986 SC 847

²⁹ *MohiniJain v. State of Karnataka*, AIR1992 SC 1858

³⁰ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

clear that the concept of 'procedure' envisaged under Article 21 should stand the assessment of reasonability.

Hence, Article 21 of the Indian Constitution has significantly emerged as the Indian description of the American Constitution's notion of 'due process of law' and hence it has laid the foundation to the source of numerous substantive safeguards and procedural rights to the citizens.

But the post decisional doctrine, which was given in this case, I think is not good. A person should be given the chance of defending himself, before the before the decision. Since there was no reason why in this case post decisional hearing was given, as there was no requirement.

And in this case the petitioner should have been compensated with a heavy amount as it restricted her numerous fundamental rights. As recently Priya Pillai was also stopped by the Central Government, she has also been compensated by the Government.

Unequivocally, the most substantial facet of this case is the reconsideration of the expression "procedure established by law" as mentioned under in Article 21 of the Constitution of India. Article 21 excluded the erroneous meaning from itself that a legislation could recommend some impression of any procedure, irrespective of the fact that how arbitrary or whimsical or far-fetched, to deprive a person of his life or personal liberty. The prevalent position now entails that "procedure" as under Article 21 of the Constitution is bound to fulfill numerous fundamentals in the light of being just, fair, reasonable and un-arbitrary.³¹

CONCLUSION

Article 21 of the Constitution points out that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Maneka Gandhi's case is not just a milestone case for the elucidation of Article 21 yet it additionally gave a completely new perspective to take a gander at the Chapter III of the Constitution. Before Maneka Gandhi's decision, Article 21 ensured the privilege to life and individual freedom just against the self-assertive activity of the officials and authorities and not from the administrative activity. Comprehensively speaking what this case did was amplify this insurance against administrative activity as well.

In Maneka Gandhi's case, the importance and substance of the words 'individual freedom' again came up for the thought of the Supreme Court. For this situation the Supreme Court not just overruled A.K. Gopalan's case additionally extended the extent of words 'individual freedom' impressively. Bhagwati, J. opined:

"The interpretation 'individual freedom' in Article 21 is of broadest amplitude and it covers a mixture of rights which go to constitute the individual freedom of man and some of them have raised to the status of different central rights and given extra insurance under Article 19."³²

³¹ Evolution and Expounding of Article 21, Pratham & Rohit anant sahay, International Journal of Research and Analysis, Volume 1 Issue 3

³² Supra 18.

LAW MANTRA THINK BEYOND OTHERS
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Regarding the relationship between Articles 19 and Articles 21 of the Indian Constitution, the Court held that Art. 21 is controlled by Art. 19, i.e., it must fulfill the necessity of Art. 19. The Court watched:

The law should consequently now be settled that Article 21 does not bar Article 19 and that regardless of the possibility that there is a law endorsing a procedure for denying an individual of his individual freedom, and there is therefore no encroachment of the crucial right presented by Article 21 such a law in so far as it condenses or takes away any basic directly under Article 19 would need to meet the difficulties of that Article.

Consequently a law denying a man of individual freedom has not just to stand the test of Article 21 yet it must stand the test of Art. 19 and Art. 14 of the Constitution.