



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Maneka Gandhi vs Union Of India

Shreya Bhattacharya^a

^aAdamas University, Kolkata, India

Received 19 December 2022; *Accepted* 02 January 2023; *Published* 06 January 2023

INTRODUCTION

The case *Maneka Gandhi v Union of India* stands as a bulwark to the fundamental Right of Personal Liberty guaranteed under Article 21 of the Indian Constitution. It all started with the seizing of Maneka Gandhi's passport by the Ministry of External Affairs which resulted in direct infringement of her above-mentioned right. A seven-judge bench of the supreme court subsequently issued a unanimous ruling in response to this arbitrary confiscating of the passport. Just before the decision of this case, Article 21¹ which guarantees the fundamental Right to life and personal liberty was applicable only against the executive's arbitrary action but this got eventually reversed after this case. Gradually, the Article gave protection to legislative actions. The Supreme Court's ruling, in this case, is recognised as one of its best decisions since it helped restore public confidence in the legal system and constitutional principles.

The Supreme Court framed the Golden Triangle rule after this case and solidified its position as the guardian of democracy. With a decision given by our Hon'ble Supreme Court after this case,

¹ Constitution of India 1950, art. 21

it began with the new age of interpretation of these rights under articles 14², 19³, and 21⁴. This ruling changed the Indian Constitution fundamentally and inaugurated a new phase in the evolution of the idea of the right to personal liberty. After the ruling of this case, the definition of Fundamental Rights under Part 3 of the Constitution has been expanded.

FACTS OF THE CASE

In this case, the petitioner – Maneka Gandhi's passport was seized by the authority of the External Affairs Ministry. On the 1st of June, 1976 Maneka Gandhi's passport was issued under the Passport Act of 1967. In the very next year, that is in the year 1977, her passport was seized by the authority without giving any prior notice or without ascertaining any reason as to why her passport was seized. She was not given any reason for this unilateral decision taken by the Ministry of External Affairs.

A writ jurisdiction under Article 32⁵ was invoked by her before the Hon'ble Supreme Court of India. Maneka Gandhi appealed before the Court that the State had impounded her passport and this resulted in the direct infringement of her fundamental Right to Personal Liberty guaranteed under Article 21 of the Indian Constitution. It is important to note that in *Satwant Singh Sawhney v Ramarathnam*,⁶ The Supreme Court held that the right to travel abroad is well within Article 21 of the Indian Constitution. But it was not clear to what extent the Passport Act dilutes this right mentioned well within the meaning of Article 21. The authorities who seized her passport said that the reasons cannot be specified considering the “larger interest of the public.” The petitioner then contended that not stating the reasons directly infringes her fundamental rights under Articles 14, 19, and 21. Hence, the writ petition was filed under Article 32⁷ for the violation of these fundamental rights.

² Constitution of India 1950, art. 14

³ Constitution of India 1950, art. 19

⁴ Constitution of India 1950, art. 21

⁵ Constitution of India 1950, art. 32

⁶ *Satwant Singh Sawhney v Ramarathnam* (1967) AIR 1836

⁷ Heart and soul of the Constitution

CONTENTIONS OF THE PARTIES

Appellant's Contentions

According to the petitioner, the seizing of her passport in the year 1977 without giving prior notice has resulted in the breach of the following rights- The right to freedom of speech and expression⁸, the Right to travel abroad, and the Right to life and personal liberty⁹, and the Right to move freely¹⁰. According to the petitioner's claim, the provisions mentioned under Articles 21, 19, and 14 are not in consonance. They are not mutually exclusive. An in-depth analysis and a thorough interpretation are necessary for determining the true spirit of our constitution. In the petitioner's view the "procedure established by law"¹¹ should not be unfair and arbitrary. The Indian Constitution has not adopted the American phrase: due process of law but the British phrase that is accepted must be fair and just!

It was claimed that section 10(3)© of the Passport Act 1967 infringes the right to life and personal liberty guaranteed under Article 21 of the Constitution. The legal maxim Audi Alteram Partem which means the right to be heard is not comprehended properly as an important component of the natural justice principles. Although these natural rights principles are not specifically mentioned in any article of the Constitution, the thinking behind the spirit of fundamental rights embodies the essence of those principles categorised as fundamental rights.

Respondent's Contentions

It was stated by the respondent before the court that the passport was seized by the authority without ascertaining any reason. The Petitioner had to present herself before the government committee just for a hearing. Considering the principles mentioned in the AK Gopalan Case¹² the respondent argued that the word "law" within the meaning of Article 21 cannot be easily comprehended as reflected in the natural justice fundamental rules.

⁸ Constitution of India 1950, art. 19(a)

⁹ Constitution of India 1950, art. 21

¹⁰ Constitution of India 1950, art. 19(d)

¹¹ Constitution of India 1950, art. 21

¹² *AK Gopalan v State of Madras* AIR (1950) SC 27

The phrase “procedure established by law” is mentioned under Article 21¹³. These procedures need not clear the reasonability test nor is it necessary to be consistent with Articles 19¹⁴ and 14¹⁵ of the Indian Constitution. Our Constitution framers had long debates about two phrases- the American phrase: due process of law and the British phrase: procedure established by law. The apparent lack of due process in the provisions of the Constitution of India demonstrates the intentions of the framers.

LEGAL ISSUES

- Whether the ‘Right to Travel Abroad’ has any protection within the meaning of Article 21.
- What is the scope of the phrase ‘Procedure established by law’?
- Whether the fundamental rights guaranteed under the Articles are conditional or absolute.
- Whether the disputed regional passport officer's order violates natural justice principles.

OBSERVATIONS OF SUPREME COURT

According to the Supreme Court, section 10(3)© of the Passport Act 1967 infringes the rights and provisions mentioned under Articles 21 and 14. The court held that it is void and vague in nature as it gives the authority extraordinary power. Section 10(3)© even does not provide the opportunity to be heard hence it is violative of the principles of natural justice. It also violates the provisions of Article 21 and does not abide by the procedure established by law. The court was of the view that the passport should remain in their custody until further observation.

This landmark judgement widened the scope of article 21 and brought changes to many things. When a person sought to leave his country of origin and relocate overseas, there was no law governing the passport before the Passport Act of 1967 was passed. Additionally, the executives issued the passports in an unquestioned manner, exercising complete discretion. In the case of

¹³ Constitution of India 1950, art. 21

¹⁴ Constitution of India 1950, art. 19

¹⁵ Constitution of India 1950, art. 14

Satwant Singh Sawhney v Ramarathnam,¹⁶ it was held by the Supreme Court that the right to travel and move freely is also included in the meaning of Personal Liberty. All these rights cannot be taken away without the procedure established by law. The court observed that since there is no rule restricting these rights of citizens hence the seizing of her passport is considered to be a violation of Article 21¹⁷ as well as Article 14¹⁸.

The court was also of the view that the authority should state reasons for the confiscation of her passport and keep a record of that as proof if it is seized considering the friendly relations with the foreign states, keeping in mind the sovereignty and integrity of India, security and the interest of larger public groups. But the Central Government failed to cite any reason for confiscating her passport; rather they stated it was done only in the interest of larger groups of people. Later, it was made clear that this was not necessarily done in the public interest and that no regular person would comprehend the justifications for withholding this information or the reasons for the seizure of her passport.

DECISION

The fundamental rights guaranteed in Part III of the Constitution are not unique or exclusive of one another. "Any law restricting an individual's freedom must pass a test involving one or more of these rights." There has also been an infringement of the legal maxim Audi Alteram Partem which provides us with the principles of natural justice. A.K. Gopalan was overruled because every law must pass the requirements of the aforementioned articles and there is a special relationship between Articles 21¹⁹, 19²⁰, and 14. Before this, the majority ruled that these provisions alone are mutually incompatible. As a result, the court determined that these rules are dependent on one another rather than being mutually exclusive to address its prior error.

¹⁶ *Satwant Singh Sawhney* (n 3)

¹⁷ Constitution of India 1950, art. 21

¹⁸ Constitution of India 1950, art. 14

¹⁹ Constitution of India 1950, art. 21

²⁰ Constitution of India 1950, art. 19

ANALYSIS AND CONCLUSION

It is only after this case that the Supreme Court is more watchful to protect the essence of the Indian Constitution and to safeguard those rights of the people which are being infringed. According to the majority of judges, any law or provision should be reasonable and not unfair in nature; otherwise, even previously established or preeminent law can be viewed as arbitrary. Similarly, the judges were of the view that if any person is deprived of his/her right then that should undergo a test under Articles 14, 19, and 21. These three Articles form a Golden Triangle and the principles of natural justice are mentioned within the ambit of Article 21 which means that "No one should be left unheard." It is this case which is so amazingly derived logically by a seven-judge bench. Justice is, in essence, the idea of a fair process, as it was in this case. Last but not the least, justice is maintained by the spirit rather than the letter of the law.

The meaning of "life and personal liberty" which has been interpreted after this case under Article 21 is no more restricted within the boundaries of the territory. Judicial Activism got its higher level of position after this case and this marked the beginning of a new period that expanded the scope of fundamental rights, particularly under Article 21. The Hon'ble Supreme Court appreciated the challenge of reading Articles 21, 19, and 14 at once which is together commonly known as the "Golden Triangle." In the *AK Gopalan case*, the court had previously concluded that a legal process might limit a person's right to life and personal liberty even if it was unfair and unreasonable. In this case, "procedure established by law" means laws that are fair and reasonable and which align with the fundamental rights of citizens. This judgement nullified the straightforward interpretation of legal procedure and for the first time incorporated the idea of due process of law into the Constitution of India. Thus, with the help of this judgement, the meaning and the scope of Article 21 got expanded and interpreted in such a manner that it serves the interest of the larger public.