



# FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 4<sup>th</sup> Semester

SUBJECT: ENGLISH-III

SUBJECT CODE: BAL. 403

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# Lecture-11



## **Summary of Facts**

The petitioner (Maneka Gandhi) was a journalist whose passport was issued on June 1, 1976, under the Passport Act, 1967. Later on July 2nd, 1977, the Regional Passport Officer, New Delhi, had ordered the petitioner to surrender her passport by a letter posted.

On being asked about the reasons for her passport confiscation, The Ministry of External Affairs declined to produce any reasons “in the interest of the general public.” Therefore, the petitioner had filed a writ petition under Article 32 of the Constitution of India stating the seize of her passport as the violation of her fundamental rights; specifically Article 14 (Right to Equality), Article 19 (Right to Freedom of Speech and Expression) and Article 21 (Right to Life and Liberty) guaranteed by the Constitution of India. The respondent counterfeited stating that the petitioner was required to be present in connection with the proceedings which was going on, before a Commission of Inquiry.

## **Identification of Parties (including the name of the judges)**

- Petitioner: Maneka Gandhi
- Respondent: Union Of India And Other
- Date Of Judgment: January 25, 1978
- Bench: Before M.H. Beg, C.J., Y.V. Chandrachud, V.R. Krishna Iyer, P.N. Bhagwati, N.L. Untwalia, S. Murtaza Fazal Ali and P.S Kailasam.

## **Issues before the Court**

- Whether the Fundamental Rights are absolute or conditional and what is the extent of the territory of such Fundamental Rights provided to the citizens by the Constitution of India?

- Whether 'Right to Travel Abroad' is protected under the umbrella of Article 21.
- What is the connection between the rights guaranteed under Articles 14, 19 and 21 of the Constitution of India?
- Determining the scope of "Procedure established by Law".
- Whether the provision laid down in Section 10(3)(c) of the Passport Act, 1967 is violative of Fundamental Rights and if it is, whether such legislation is a concrete Law?
- Whether the Impugned order of Regional Passport Officer is in contravention of principles of natural justice?

## **Contentions by Parties on issues**

- **Petitioner's Contention**

1. The 'Right to Travel Abroad' is a derivative of the right provided under 'personal liberty' and no citizen can be deprived of this right except according to the procedure prescribed by law. Also, the Passports Act, 1967 does not prescribe any procedure for confiscating or revoking or impounding a passport of its holder. Hence, it is unreasonable and arbitrary.
2. Further, The Central Government acted in violation of Article 21 of the Constitution of India by not giving an opportunity to the petitioner to be heard. Hence, the true interpretation of Article 21, as well as its nature and protection, are required to be laid down.
3. Any procedure established by law is required to be free of arbitrariness and must comply with the "principles of natural justice".
4. To upkeep the intention of the Constituent Assembly and to give effect to the spirit of our constitution, Fundamental Rights should be read in consonance with each other and in this case, Articles 14, 19 and 21 of the Constitution of India must be read together.

5. Fundamental rights are entitled to every citizen by virtue of being a human and is guaranteed against being exploited by the state. Hence, these fundamental rights should be wide-ranged and comprehensive to provide optimum protection.
6. To have a well-ordered and civilized society, the freedom guaranteed to its citizens must be in regulated form and therefore, reasonable restrictions were provided by the constitutional assembly from clauses (2) to (6) in Article 19 of the Constitution of India. But, the laid restrictions do not provide any ground to be executed in this case.
7. Article 22 confers protection against arrest and detention in certain cases. In this case, the government by confiscating the passport of the petitioner without providing her any reasons for doing so has illegally detained her within the country.
8. In *Kharak Singh v. the State of U.P*, it was held that the term “personal liberty” is used in the constitution as a compendium including all the varieties of rights in relation to personal liberty whether or not included in several clauses of Article 19(1).
9. An essential constituent of Natural Justice is “Audi Alteram Partem” i.e., given a chance to be heard, was not granted to the petitioner.
10. Passports Act 1967 violates the ‘Right to Life and Liberty’ and hence is ultra-virus. The petitioner was restrained from traveling abroad by virtue of the provision in Section 10(3)(c) of the Act of 1967.

### • **Respondents contentions**

1. The Attorney General of India argued that the ‘Right to Travel Abroad’ was never covered under any clauses of article 19(1) and hence, Article 19 is independent of proving the reasonableness of the actions taken by the Central Government.
2. The Passport Law was not made to blow away the Fundamental Rights in any manner. Also, the Government should not be compelled to state its grounds for seizing or impounding someone’s passport for the public

good and national safety. Therefore, the law should not be struck down even if it overflowed Article 19.

3. Further, the petitioner was required to appear before a committee for an inquiry and hence, her passport was impounded.
4. Reiterating the principle laid down in A.K Gopalan, the respondent contended that the word law under Article 21 cannot be comprehended in the light fundamental rules of natural justice.
5. Further, the principles of natural justice are vague and ambiguous. Therefore, the constitution should not refer to such vague and ambiguous provisions as a part of it.
6. Article 21 is very wide and it also contains in itself, the provisions of Articles 14 & 19. However, any law can only be termed unconstitutional to Article 21 when it directly infringes Article 14 & 19. Hence, passport law is not unconstitutional.
7. Article 21 in its language contains “procedure established by law” & such procedure need not pass the test of reasonability.
8. The constitutional makers while drafting this constitution had debated at length on American “due process of law” & British “procedure established by law”. The conspicuous absence of the due process of law from the Constitutional provisions reflects the mind of the framers of this constitution. The mind and spirit of the framers must be protected and respected.

## Judgement

It was held that:

1. Before the enactment of the Passport Act 1967, there was no law regulating the passport whenever any person wanted to leave his native place and settle abroad. Also, the executives were entirely discretionary while issuing the passports in an unguided and unchallenged manner. *In Satwant Singh Sawhney v. D Ramarathnam*, the SC stated that – “personal liberty” in its ambit, also includes the right of locomotion and travel abroad. Hence, no person can be deprived of such rights, except through procedures established by law. Since the State had not made any law regarding the regulation or prohibiting the rights of a person in such a case, the confiscation of the petitioner’s passport is in violation of Article 21 and its grounds being unchallenged and arbitrary, it is also violative of Article 14.
2. Further, clause (c) of section 10(3) of the Passports Act, 1967 provides that when the state finds it necessary to seize the passport or do any such action in the interests of sovereignty and integrity of the nation, its security, its friendly relations with foreign countries, or for the interests of the general public, the authority is required to record in writing the reason of such act and on-demand furnish a copy of that record to the holder of the passport.
3. The Central Government never did disclose any reasons for impounding the petitioner’s passport rather she was told that the act was done in “the interests of the general public” whereas it was found out that her presence was felt required by the respondents for the proceedings before a commission of inquiry. The reason was given explicit that it was not really necessarily done in the public interests and no ordinary person would understand the reasons for not disclosing this information or the grounds of her passport confiscation.
4. “The fundamental rights conferred in Part III of the Constitution are not distinctive nor mutually exclusive.” Any law depriving a person of his personal

liberty has to stand a test of one or more of the fundamental rights conferred under Article 19. When referring to Article 14, “ex-hypothesi” must be tested. The concept of reasonableness must be projected in the procedure.

5. The phrase used in Article 21 is “procedure established by law” instead of “due process of law” which is said to have procedures that are free from arbitrariness and irrationality.
6. There is a clear infringement of the basic ingredient of principles of natural justice i.e., audi alteram partem and hence, it cannot be condemned as unfair and unjust even when a statute is silent on it.
7. Section 10(3)(c) of the Passports Act 1967, is not violative of any fundamental rights, especially Article 14. In the present case, the petitioner is not discriminated in any manner under Article 14 because the statute provided
8. unrestricted powers to the authorities. the ground of “in the interests of the general public” is not vague and undefined, rather it is protected by certain guidelines which can be borrowed from Article 19.
9. It is true that fundamental rights are sought in case of violation of any rights of an individual and when the State had violated it. But that does not mean, Right to Freedom of Speech and Expression is exercisable only in India and not outside. Merely because the state’s action is restricted to its territory, it does not mean that Fundamental Rights are also restricted in a similar manner.
10. It is possible that certain rights related to human values are protected by fundamental rights even if it is not explicitly written in our Constitution. For example, Freedom of the press is covered under Article 19(1)(a) even though it is not specifically mentioned there.
11. The right to go abroad is not a part of the Right to Free Speech and Expression as both have different natures and characters.
12. A.K Gopalan was overruled stating that there is a unique relationship between the provisions of Article 14, 19 & 21 and every law must pass the tests of the said provisions. Earlier in Gopalan, the majority held that these provisions in itself are mutually exclusive. Therefore, to correct its earlier mistake the court held that these provisions are not mutually exclusive and are dependent on each other.



## **Difference between “procedure established by law” and “due process of law”**

A.K. Gopalan’s case has been the primer case where the Supreme Court declined to consider “procedure established by law” in consonance with “due process of law”. But, in 1978 this case was turned down in Maneka Gandhi where the Supreme Court itself stated the act of confiscating her passport as arbitrary. Justice Kania referring to A.K Gopalan had said that the term “due process” mentioned in the article had limited the powers of the judiciary, to interpret it further and seek its reasonableness. But, through Maneka Gandhi a new precedent was set by broadening the vision of these two phrases.

### **“Procedure established by Law”**

In lay man’s terms it is defined as a law that is duly enacted by the legislature to be held valid and be mandated to be followed, provided if it affirms correct procedure. This doctrine has the power to withdraw from any person of his life or personal liberty according to the procedure established by law. In short, it means that any law duly enacted is valid even if it is contrary to the principles of justice and equity.

### **“Due Process of Law”**

It is a doctrine that requires to check the efficiency of it as well as fairness and non-arbitrariness. Apex court can declare any law null and void if it is not just, fair and arbitrary. This doctrine safeguards all kinds of individual rights.

Judgment (Ratio and Obiter)

The judgment expanded the scope of Article 21 exponentially and became a landmark case in the legal world. The majority judgment was written by Justice Bhagwati, Untwalia & Fazl Ali JJ. while Chandrachud, Iyer & Beg (CJ) wrote separate but concurring statements.

## **Conclusion**

After this case, the Supreme court became the watchdog to protect the essence of the constitution and safeguard the intention of the constitutional assembly who made it. The majority of judges opined that any legislation or section should be just, fair and reasonable and in its absence even the established or prevailed law can be considered arbitrary.

The judges mandated that any law which deprives a person of his personal liberty should stand the test of Article 21, 14 as well as 19 of the constitution. Also, principles of natural justice are sheltered under article 21 and therefore, no person is deprived of his voice to be heard inside the court. Further, to declare any state action or legislation invalid, the “golden triangle” i.e, articles 14, 19 and 21 must be invoked.

## MCQ

### 1. What the issue before the court,

- (A) Whether 'Right to Travel Abroad' is protected under the umbrella of Article 21.
- (B) What is the connection between the rights guaranteed under Articles 14, 19 and 21 of the Constitution of India?
- (C) Determining the scope of "Procedure established by Law".
- (D) None of the above

### 2. On which date judgment pronounced in the case of Maneka Gandhi V U.O.I AIR 1978

- A. 25, Jan 1978
- B. 20 Jan 1978
- C. 11o Jan 1978
- D. 1 Jan 1978

### 3. Right to equality under which article

- A. Article 21
- B. Article 14
- C. Article 15
- D. None of the above

**4. In which case laid down Difference between “procedure established by law” and “due process of law”**

A. A.K. Gopalan’s case

B. Maneka Gandhi

C. Both A & B

5. None of these

**5. ‘Right to Travel Abroad’ Under which article**

A. Article 21

B. Article 20

C. Article 18

D. Article 19