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FROM AK GOPALAN TO MANEKA GANDHI: THE EVOLUTION OF PERSONAL LIBERTY

~ Tushar Shahi

ABSTRACT

The given paper traces the evolution of the term personal liberty from 1950 to 1977. The literal interpretation drawn in A.K. Gopalan v State of Madras is discussed elaborately listing the merits and demerits of the said judgement. The article briefly examines RC Cooper v. Union of India and discusses the relationship between Article 19, 21 and 22. Lastly the article discusses the new approach adopted in the Maneka Gandhi v. Union of India. The approach of the said case laid down a number of propositions to make Article 21 much more meaningful. The role of RC Cooper and the expansive interpretation on “personal liberty” in Article 21 are discussed. Particular attention is devoted to the constitutional debate between “procedure established by law” and “due process of law”, and to the question of whether a law prescribing an unreasonable procedure may itself be declared unconstitutional under Article 21, or whether only executive action depriving an individual of personal liberty is subject to constitutional scrutiny. The article aims to create a chain between AK Gopalan and Maneka Gandhi with RC Cooper acting as an intermediary link.

INTRODUCTION

Article 21 of the Constitution of India enshrines the **protection of life and personal liberty**. It states that, ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law.’ The words worth noticing in this Article are ‘procedure established by law.’

It is believed that Article 21 is the replica of Article 31 of the Japanese Constitution. The said article reads as: ‘No person shall be deprived of his life or liberty, nor shall any other criminal penalty be imposed, except according to the procedure established by law.’

We must also refer to the Article 40(4)1 of the Irish Constitution. The said Article reads as: ‘No citizen shall be deprived of his personal liberty save in accordance with law.’

Comparing both the Articles we find that unlike Article 31 of the Japanese Constitution, it makes reference to ‘personal liberty’ and vests this right on every person. To this extent, Article 21 mirrors Irish Constitution whereas the usage of the term ‘procedure established by law’ aligns it with the Japanese Constitution. Dr. BN Rau on Article 21 revealed that he was not inclined to favor either of the two in their entirety and preferred a judicious combination of the same.¹

The terms ‘procedure established by law’ and ‘law’ must be understood as distinct segments of Article 21. Strictly speaking, the procedure established by this Article is a stable procedure and law envisaged by this article is not to be understood merely as legislative fiat in the sense of set of black letters².

It is also to be noted, duly, that the word ‘personal’ also has to be interpreted relative to time and space. In the earlier days of the Constitution, its meaning could have been well confined to physical being, but, with the passage of time, it has, now, come to be associated with the persona of an individual. It is this adoption of such interpretation that has enabled the Indian Courts to successfully tackle the problem of ‘deadhand of the past’.

This article traces the change in the interpretations of the said Article from 1950 to 1977.

AK GOPALAN: THE LITERAL INTERPRETATION OF THE CONSTITUTION

*AK Gopalan v. State of Madras*³ is a momentous decision of the Supreme Court. It was a preventive detention case. AK Gopalan, a communist leader, was detained by the Madras authorities by invoking the Preventive Detention Act, 1950. In a writ petition under Article 32, the validity of the detention and vires of the Act were challenged by Gopalan before the Supreme Court.

For the purpose of persuading the Supreme Court to hold that the Courts could adjudicate upon the reasonableness of the Preventive Detention Act, 1950, or for that matter, any law depriving a person of her personal liberty, a three-pronged argument was developed:

¹ M.P. Jain, *Indian Constitutional Law* 1290 (9th ed., LexisNexis 2026).

² *Id.*

³ *AK Gopalan v. State of Madras*, AIR 1950 SC 27.

1. The word 'law' in Article 21 does not mean merely enacted law but incorporates principles of natural justice so that a law to deprive a person of her life or personal liberty cannot be valid unless it incorporates these principles in the procedure laid down by it.
2. The reasonableness of the law of preventive detention ought to be judged under Article 19.
3. The expression "procedure established by law" introduces into India the American concept of "procedural due process" which enables the Courts to see whether the law fulfills the requisite elements of a reasonable procedure.

These attempts failed as the Supreme Court rejected all these arguments.

Dealing with the first issue, the Court ruled by majority of 5:1 that the word "law" in Article 21 could not be read as meaning rules of natural justice. These rules were vague and indefinite and the Constitution could not be read as laying down a vague standard. Nowhere in the Constitution the word "law" was used in the sense of abstract or natural justice.

It was stated that the word "law" was used in the sense of *lex* and not *jus*. "Procedure established by law", therefore, means the procedure as laid down in an enacted law.

In the lone dissenting opinion, however, Fazl Ali, J held that the principle of natural justice that "no one shall be condemned unheard" was part of the general law of the land and the same should accordingly be read into Article 21⁴.

Dealing with the second issue, the petitioner tried to persuade the court involving a relationship between Article 19, 21 and 22, to adjudge on the reasonableness of the said Act reading all three inclusively. It was argued that when a person was detained, her several rights under Article 19 were affected and, thus, the reasonableness of the law, and the procedure contained therein, should be justiciable with reference to Article 19(2) to (6).

The Court pointed out, rejecting the contention, that the word "personal liberty" in Article 21 in itself has a comprehensive content and, ordinarily, if left alone, would include not only freedom from arrest or detention, but also various freedoms guaranteed by Article 19. However, for reading Article 19 and 21 together, the former must be held to be dealing with a few specific freedoms mentioned therein and not with freedom from detention whether punitive or preventive.

Similarly, Article 21 should be read as excluding the freedoms dealt with in Article 19. The court ruled that Articles 20 to 22 constituted a comprehensive code and embodied the entire

⁴ M.P. Jain, *Indian Constitutional Law* 1291 (9th ed., LexisNexis 2026).

constitutional protection in relation to life and personal liberty and was not controlled by Article 19⁵.

Thus, article 19 can only be invoked by a freeman and not one under arrest. Further, Article 19 could be invoked only when a law directly attempted to control a right mentioned therein.

This judicial approach means that a preventive detention law would be valid, and 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.

Fazl Ali, J differing the majority, held that Article 19(1)(d) did control Articles 21 and 22, because juridically freedom of movement was an essential requisite of personal liberty, and, therefore, the reasonableness of the Preventive Detention Act should be justiciable under Article 19(5)⁶.

Except Mahajan, J, no one advocated the idea of reading the articles of the Constitution mutually exclusive.

Court's approach was very static, mechanical, purely literal and was too much coloured by the positive school of law⁷. The Court treated the Constitution as merely another statute.

Through subsequent analysis we reach the conclusion that, *Gopalan* has been undermined with regard to interpretation of the scope of Article 21. The observations of the judges in *Gopalan*⁸ reflect the positive and negative dimensions of Right to Life and Personal Liberty and be characterized as a foundation for evolution of Doctrine of Unenumerated Rights in India.

It was contended in *Gopalan* that the expression "procedure established by law" in Article 21 was the mirror of the American "procedural due process" and, therefore, the reasonableness of the Preventive Detention Act, or for that matter, of any law affecting a person's life or personal liberty, should be justiciable in order to assess whether the person affected was given a right of fair hearing. The Supreme Court gave the following reasoning:

1. The word "due" was absent in Article 21. This was a very significant omission for the entire efficacy of the procedural due process concept emanating from the word 'due'.
2. The draft constitution had contained the words "due process of law" but these words were later dropped and the present phraseology adopted instead⁹. This shows that the Constituent Assembly did not desire to introduce into India the concept of procedural due process.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1294.

⁸ *AK Gopalan v. State of Madras*, *supra* note 3.

⁹ M.P. Jain, *Indian Constitutional Law* 1293 (9th ed., LexisNexis 2026).

3. The American version of due process of law generated the countervailing, but complicated, doctrine of police power to resist the ambit of due process. If the doctrine of due process were imported to India, then the doctrine of police power might also have to be imported which would make things very complicated.
4. The word “due” is of variable content in the “due process” concept. It denotes that the law should be “just” but what is “just and reasonable” is not a static or rigid concept; it varies from situation to situation.

Yet again, Fazl Ali, J, disagreed with the majority view on this point. He interpreted the phrase “procedure established by law” in Article 21 as implying “procedure due process”, meaning thereby that no person could be condemned unheard, a principle well recognized in all modern civilized legal system¹⁰.

The Supreme Court ruled in *Gopalan* that in Article 21, the expression “Procedure established by law” meant the procedure as laid down in the law as enacted by the legislature and nothing more¹¹. A person could, thus, be deprived of his “life” or “personal liberty” in accordance with the procedure laid down in the relevant law.

The ruling thus meant that to deprive a person of his life or personal liberty:

1. There must be a law;
2. It should lay down a procedure; and
3. The executive should follow this procedure while depriving a person of her life or personal liberty.

Some of the arguments adopted by the majority in *Gopalan* cannot stand close scrutiny.

1. The concept of natural justice decreed by the Court as vague and uncertain is simply not true.
2. The majority in *Gopalan* characterized the concept of due process as vague and variable. But the same is incorporated by the Indian Constitution in Article 19 in the form of “reasonableness” of restrictions.
3. The argument that “due process” and “police power” concepts go together in reality only to “substantive due process” and not to “procedural due process” and it was the latter, not the former, which was sought to be imported in Article 21.
4. There is not much vagueness about the essentials of procedural due process because it basically means “fair hearing”, which is a very well-known concept and has been

¹⁰ *Id.*

¹¹ *Id.* at 1293.

applied a in multitude of case and recognized that this is a flexible and not a rigid concept.

Gopalan was attributed to two major points in relation to Article 21.

1. Article 19, 21, and 22 were mutually exclusive and independent of each other.
2. A “law” affecting life or personal liberty could not be declared unconstitutional merely because it lacked natural justice or due process.

RELATION BETWEEN ARTICLES 19, 21 AND 22

In *Gopalan*, the Supreme Court had delinked Article 19 from Article 21 and 22. This view held for quite some time. But by the end of the 1960s the foundation of the majority view in *Gopalan* was increasingly doubted by courts and scholars and finally abandoned by the Constitution Bench of Supreme Court in *RC Cooper (Bank Nationalization)*.¹²

Rustom Cavasjee Cooper, a director of one of the nationalized banks, challenged the Banking Companies (Acquisition and Transfer of Undertaking) Ordinance 8 of 1969 and the said Act on the ground that it violated Articles 14, 19 and 31 of the Constitution. The Supreme Court by a majority of 10:1 (AN Ray, J dissenting), declared the Act unconstitutional.

In the instant case, Article 19(1)(f) was applied to a law enacted under Article 31(2). At the period of this case the Supreme Court was inclined to protect the right to property rather than personal freedom. The Court, thus, laid down two propositions:

1. The extent of protection against the impairment of a fundamental right is not to be determined by the object of Legislature but by its direct operation upon the individual's right.
2. The Court rejected the *Gopalan* interpretation that each fundamental right was mutually exclusive.

Post RC Cooper, the Supreme Court endorsed the same in *Sambhu Sarkar*¹³.

In *Bennett Coleman*¹⁴, the Supreme Court declared that if a law affects freedom of speech, its reasonableness becomes assessable with the reference to Article 19(2) even though it is not enacted directly to control the freedom of speech.

The last nail in the coffin came in the judgement of *West Bengal v. Ashok Dey*¹⁵ when the court linked Articles 19, 21 and 22.

MANEKA GANDHI: THE NEW APPROACH

¹² *RC Cooper v. Union of India*, AIR 1970 SC 564, (1970) SCC 248.

¹³ *Shambhu Nath Sarkar v. State of West Bengal*, AIR 1973 SC 1425, (1973) 1 SCC 856.

¹⁴ *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106, (1972) 2 SCC 788.

¹⁵ *West Bengal v. Ashok Dey*, AIR 1972 SC 1660, (1972) 1 SCC 199.

*Maneka Gandhi v. UOI*¹⁶ is a landmark case post-Emergency. It is often seen as an act of atonement on the part of the Supreme Court to regain its legitimacy after *Shivkant Shukla*.¹⁷ As summarized by Prof Baxi: “Mrs. Maneka Gandhi’s passport was impounded by an order dated 2 July, 1977. The Passport Act 1967 provided not merely for the issuance of the passport but also for its refusal, revocation and even impounding in certain well-specified situations... If your passport is revoked or impounded on the grounds mentioned in Section 10(3) of the Act, the government may decide not to give you any reasons if this information is not “in the interest of sovereignty and integrity of India, the security of India, friendly relations with any foreign country or the interests of the general public.

The petitioner was affected by the exercise of this discretionary power. She challenged it on the grounds of mala fides and Article 14. Five weeks after the petition was filed, it was expanded by additional grounds that both Article 21 and Article 19 were also infringed by the Government action. Maneka, being a journalist, alleged that her rights were unreasonably affected by the order; and personal liberty was affected, in the shape of the right to travel abroad, by a procedure which was patently unfair and arbitrary.”¹⁸

The leading opinion was pronounced by Justice Bhagwati.

The question before the court was whether the freedom of Speech and Expression of a journalist would guarantee him/her by implication the right to go abroad under Article 19(1)(a)? The same was answered in the negative.

Seven judges in the Constitution Bench delivered five opinions. Only, Beg, J issued the writ of mandamus and quashed the decision of the government whereas the rest of the judges were satisfied with the conclusion made by the Attorney General and content with the post-decisional hearing given to Maneka by the state¹⁹.

The majority concluded that the right to travel abroad falls under Article 21, natural justice must be applied while exercising the power of impounding a passport under the said Act.

The whole case appears to be an asymmetry between the approach of Bhagwati, J, and Justice Kailasam. Kailasam, J, was reluctant to recognize any “extra-territorial” operation of Article 19(1)(a) and (g). He also gave a dissenting opinion²⁰.

The Court laid down a number of propositions to make Article 21 much more meaningful:

¹⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, (1978) 1 SCC 248.

¹⁷ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

¹⁸ Upendra Baxi, *The Indian Supreme Court and Politics*, cited in M.P. Jain, *Indian Constitutional Law* 1297 (9th ed. 2026).

¹⁹ M.P. Jain, *Indian Constitutional Law* 1300 (9th ed., LexisNexis 2026).

²⁰ *Id.* at 1299.

1. Drawing from *RC Cooper*²¹ the court held that Article 14, 19 and 21 are not mutually exclusive.
2. Placing expansive interpretation on “personal liberty” in Article 21, the Court emphasized that it is of the “wildest amplitude” covering a variety of rights “which go to constitute the personal liberty of a man”.
According to Krishna Iyer, J, “**the spirit of man is at the root of Article 21.**”
3. The most significant and creative aspect of this case, is the re-interpretation of the expression “procedure established by law” used in Article 21 with its innovative orientation.

Despite all its merits, *Maneka* does not answer one question directly, that is, “Can a law laying down unreasonable procedure be declared to be unconstitutional under Article 21, or only the action of the Administration depriving personal liberty?”

This question arises from the fact that concessions were made by the Attorney-General and they were accepted and the order was not set aside. However, with all being said, we should appreciate the decision in *Maneka* since, it was delivered by the Court in non-adversarial mode.

CONCLUSION

The *Maneka Gandhi* judgement marked the beginning of a new, reformatory and more inclusive interpretation of Article 21. It, further, led to the development of “Doctrine of Unenumerated Rights” which, in turn, led to the emergence of many new rights through the way of interpretation of Article 21. The most significant impact of this judgement is on the expression “personal liberty”. It does not merely mean the liberty of the body. It now means much more than mere freedom from arrest or detention, from false imprisonment or wrong confinement. The term personal liberty is no longer confined to the narrower interpretation drawn in *AK Gopalan* but has been used as a compendious term to encapsulate within itself a variety of rights of a person which go to make up the personal liberty of a person under Article 21. After the re-interpretation of Article 21 in *Maneka Gandhi* a number of new interpretations emerged expanding the ambit of Article 21. *Suchita Shrivastava v. Chandigarh Administration*, *UOI v. Chaya Ghosal*, *Francis Coralie v. Union Territory of Delhi* and many more cases have given Article 21, perhaps, the broadest application amongst all the fundamental rights. After elucidating on the timeline, however, it is crucial to make a course correction in the Constitutional history and *RC Cooper* rather than *Maneka Gandhi* must be recognized as an

²¹ *RC Cooper v. Union of India*, *supra* note 12.

authoritative judgement for abandoning the mutual exclusivity thesis *vis-à-vis* interpretation of articles of Part III. *Maneka Gandhi* surely has built the building but the foundation for it was laid by *RC Cooper*.

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