

LEGAL DISCOURSE ON DETENTION AND DUE PROCESS: A.K. GOPALAN V STATE OF MADRAS

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INTRODUCTION

A K Gopalan v State of Madras¹ is one of the landmark judgments in the constitutional history of India. This case is also known as the Preventive Detention Case. The Supreme Court of India in this case thoroughly interpreted various articles including fundamental rights. This is the first case after the independence which brought a critical question ahead of the Supreme Court of India based on the relationship between articles 19, 21 and 22.

This historic judgment was delivered by a 6-judge bench of the Supreme Court consisting of the then CJI Harilal Kania and other judges concluding Justice Fazl Ali, Patanjali Sastri, M.C. Mahajan, B.K. Mukherjea and S.R. Das, JJ. This case is considered to be crucial because of its dissenting judgment given by Justice Fazl Ali who gave a more liberalized viewpoint.

FACTS OF THE CASE

Ayillyath Kuttari Gopalan, the petitioner, was the political opponent leader of the then government. He was a communist leader in Madras presidency (present-day Kerala). He has been in detention since December 1947. Under the ordinary criminal law, he was sentenced to imprisonment but those convictions were set aside by the authorities. On 1-3-1950, while he was in detention under one of the orders of the Madras State Government, he was served with an order made under Section 3(1) of the Preventive Detention Act 4 of 1950^[2].

Because of this, he filed a writ petition of habeas corpus under Article 32(1) of the Constitution of India against his detention order. He challenges the legality of the order by contending that the said act contravenes the provisions of Article 13 (laws inconsistent with or in derogation of the fundamental rights), 19(Right to freedom), and 21(protection of life and personal liberty) and also contended that the provisions of the act are not in accordance with Article

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¹ A.K. Gopalan v State of Madras (1950) SCR 88

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<https://www.scconline.com/Members/NoteView.aspx?enc=SIRYVC05MDAxMjc2MzQ1JiYmJiY0MCMYmJiYmU2VhcmNoJiYmJiZmdWxsc2NyZWVuJiYmJiZmYWxzZSYmJiYmMTk1MCMCBTQ1IgcCA4OCYmJiYmUGhyYXNlJiYmJiZGaw5kQnlDaXRhdGlvbiYmJiYmZmFsc2U=> > accessed 25 August 2023

22(protection against arrest and detention in certain areas) of the Constitution. He has also challenged the validity of the order because it is mala fide.

ISSUES OF THE CASE

1. Whether the Prevention Detention Act, 1950 is in accordance with Article 22 of the Indian Constitution.³
2. Whether the Prevention Detention Act, 1950 contravenes the provisions of Articles 13, 19, and 21 of the Indian Constitution.
3. Whether there is a connection between Articles 19 and 21 of the Constitution, or they are distinct.⁴
4. Whether the detention of the petitioner was lawful or unlawful.⁵

OBSERVATION OF COURT



The Supreme Court of India in this case observed and thoroughly analyzed Article 19 of the Indian Constitution in order to understand the scope of fundamental rights. The court highlighted the distinction between rights granted to citizens and persons (including citizens and foreigners) by comparing Article 19 with Articles 20, 21, and 22. The court said that in order to determine whether a right is curtailed or not, one must understand the extent of the rights granted by the articles and the limitations it has. The inclusion of Articles 13(1) and (2) in the Constitution is seen as a precautionary measure, in other words, it prevents the legislature from passing such enactments that abridges the fundamental rights of people.

The court also addresses arguments related to preventive detention and the alleged fundamental rights by the petitioner under Article 19(1)(a), (b), (c), (d), (e) and (g). It was contended that such detention could abridge rights such as free speech. It was said by the judge that Article 19(1) has nothing to do with preventive and punitive detention. It is outside the ambit of Article 19(1) and therefore, the Preventive Detention Act, 1950 does not violate Article 19, a fundamental right of the petitioner. It was also said that the right to freedom, does not apply to those citizens whose freedom is restricted by the law, and thus the question of abridgment of the said right does not arise.

³ Tanya Raj, 'AK Gopalan v. State of Madras 1950 SCC 228' (*Legal Vidhiya*, 14 June 2023) <<https://legalvidhiya.com/ak-gopalan-v-state-of-madras-1950-scc-228/>> accessed 25 August 2023

⁴ Aditi Sahu, 'AK Gopalan v State of Madras AIR 1950 SC 27' (*Law Corner*, 03 October 2021) <<https://lawcorner.in/a-k-gopalan-vs-state-of-madras-air-1950-sc-27/>> accessed

⁵ *ibid.* (n3)

The petitioner also contended that Article 19 and Article 21 should be read together as supporting each other. The court said that Article 19 gave substantive rights to its citizens while Article 21 underlying that no person can be deprived of his life and personal liberty contrary to which procedure established by law. Chief Justice Harilal Kania said:

“16. Reading Article 19 in that way it appears to me that the concept of the right to move freely throughout the territory of India is an entirely different concept from the right to “personal liberty” contemplated by Article 21. “Personal liberty” covers many more rights in one sense and has a restricted meaning in another sense.”^{6]}

Judges said that “Personal liberty” covers many more rights in one sense and has restricted meaning in another sense. In order to give support to this claim Justice Harilal Kania also said:

“16. For instance, while the right to move or reside may be covered by the expression “personal liberty”, the right to freedom of speech [mentioned in Article 19(1)(a)] or the right to acquire, hold or dispose of property [mentioned in Article 19(1)(f)] cannot be considered a part of the personal liberty of a citizen. They form part of the liberty of a citizen but the limitation imposed by the word “personal” leads me to believe that those rights are not covered by the expression personal liberty.”^{7]}

Therefore, the court said there is no conflict between Articles 19 and 21. The contents and subject matters of Articles 19 and 21 are not the same and they deal with the rights covered by their respective words from different angles.

It was also said by the court that “Personal liberty”, under Article 21 has an exception that is “procedure established by law” Deprivation of “Personal liberty” and restrictions imposed on free movement within the territory of India cannot go along together. It was also said by the court that for the validity of the detention order, it is necessary to show that the grounds should be those on which the order has been made. If the detained is unable to put this paper before the court, the court will then be prevented from considering whether the requirements of Article 22(5) are fulfilled or not. This is a right which is guaranteed to every person. Therefore, the court was of the opinion that provisions of Section 14 abridges the right given under Article

⁶ Ibid. (n2)

⁷ ibid.

22(5) and the impugned act without this section remains unaffected. And this the mission of this section will not change the nature of the said act.

JUDGMENT OF THE SUPREME COURT OF INDIA

The judgment of this landmark case was given by 6 judge bench in a ratio of 5:1. The judgment given by Justice Fazl Ali was opposite to the decision given by other judges and therefore his judgment was considered to be a liberalized viewpoint.

Majority's Decision: It was said by a majority of judges that Article 22 does not constitute a comprehensive set of constitutional protections against preventive detention. As is also aforesaid mentioned Section 14 of the Preventive Detention Act of 1950 violates Article 22(5) of the Indian Constitution. And therefore in their opinion Act 4 of 1950, except for Section 14, is not ultra-vires. It does not infringe any provisions of Part III of the Indian Constitution and the contention of the applicant that the whole act is violative of fundamental rights fails except for Section 14. Article 19 of the Indian Constitution does not apply to those acts which directly related to preventive detention. As per the majority "personal liberty" means freedom of the physical body only and not something else.

The right to freedom under Article 19 only applies to those men who are free and not to those who are detained by law as reasonable restrictions under the said act. This means that people who are in detention cannot enjoy the right to freedom. The court also said that there is no relation between Article 19 and Article 21. Because Article 19 protects against unreal restrictions and Article 21 guarantees against loss of personal life and liberty and both are two different things. Therefore, the Supreme Court dismissed the petition filed by A.K. Gopalan. Justices upheld the validity of the Preventive Detention Act 1950 and stated that this act was not in violation of Article 19 and Article 21 of the Indian Constitution.

Dissenting's Decision: Justice Fazl Ali said preventive detention amounts to a complete deprivation of the right guaranteed by Article 19(1)(d) of the Indian Constitution. In his opinion, it will be very technical to argue that deprivation of a right cannot be said to involve a restriction on the exercise of the right. There is no antithesis between the word 'Restriction' and "deprivation". He said that the constitution recognized that abridging one's right to personal liberty and putting them in preventive detention is arbitrary. They could be misused by the government to politically suppress their opposition. According to him, preventive detention

does take away even the limited freedom of movement directly and substantially, also Article 19(1)(d) is infringed as per him. He said:

“108. We have only to ask ourselves: Does a person who is detained retain even a fraction of his freedom of movement in howsoever restricted sense the term may be used and does he not lose his right to move freely from one place to another or visit any locality he likes as a necessary result of his detention?”.⁸

He delves into the argument that preventive detention not only abridges the right to freedom given under Article 19(1)(d) but also violates other rights guaranteed by Article 19(1), except the right to hold, acquire, and dispose of the property. He said that while the loss of freedom of movement by preventive detention is direct and immediate, the effect on other rights is more indirect. He mentioned that if preventive detention were affecting almost all rights of Article 19(1), then this matter deserves very serious consideration by potentially invoking Article 13(2) which talks about the existing laws which are inconsistent with or in derogation of the fundamental rights. Therefore, the said act violates the fundamental rights of the petitioner and the detention was unlawful.

Procedure established by law and due process of law: Procedure established by law finds its root in Article 21 which states *“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”*⁹. Due process of law finds its root in the Fifth and Fourteenth Constitutional Amendments of the United States which states that *“No person shall be deprived of life, liberty, or property, without due process of law”*.¹⁰

Majority's opinion: In the Indian Constitution, Article 21 only guarantees that a person cannot be deprived of life or personal liberty except by any procedure established by law. It means this also gives the right to an individual but also puts limitations. In the United States, the “due process of law” concept goes beyond mere procedural safeguards. It includes both substantive and procedural law.

One of the most important things to be noted is the insertion of the word “Established” by omitting the word “Due” from Article 21 of the Indian Constitution. Moreover, it means the term “established” is limited to the procedural aspect, indicating that the focus is on the

⁸ *ibid.*

⁹ The Constitution of India 1950, art 21

¹⁰ *ibid.* (n2)

procedure prescribed by law, rather than the broader principles of fairness and natural justice inherent in “due process”. It refers to state-made law and not natural law.

Dissenting's opinion: According to Justice Fazl Ali, “Legal procedure” must include the four principles of natural justice i.e. notice, a chance to be heard, unbiased tribunal and methodical course of the procedure.¹¹ These principles are part of the same rights i.e. right to be heard which is neglected by the majority's decision and needs to be condemned.

CONCLUSION

This authentic judgment of A.K. Gopalan v. State of Madras¹² was later criticized for its non-liberal and narrower interpretation of fundamental rights. This gave discretion to the executive in matters related to preventive detention which could be misused by the government. The majority of the judges took the restrictive view by doing a literary interpretation of the various provisions of the Indian Constitution.

The dissenting opinion given by Justice Fazl Ali later became the specimen for the more liberalized viewpoint of fundamental rights. He held that the Preventive Detention Act of 1950 was unconstitutional as it was violative of the right to freedom of citizens. Also said that such rights must conform to “personal liberty”. Later his judgment served as the basis for future decisions which not only expanded the scope of fundamental rights but was also considered to be the turning point in the Constitutional history of India. This narrower viewpoint of judges related to fundamental rights was later nullified in the case of Maneka Gandhi v Union of India^[13] where the court expanded the ambit of fundamental rights by including the right to life with dignity and liberty.

¹¹ ‘AK Gopalan v State of Madras AIR 1950 SC 27’ (*Thakur Foundation*) https://www.thakur-foundation.org/upload/judgements/1648549436_A.K.%20Gopalan%20v.%20State%20of%20Madras,%20AIR%201950%20SC%2027.pdf> accessed 25 August 2023

¹² *ibid.* (n1)

¹³ *Maneka Gandhi v Union of India* (1978) AIR 597