

CASE COMMENTARY - MANEKA GANDHI V UNION OF INDIA

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Introduction-

This case of *Maneka Gandhi v. Union of India*¹ deals with the basic principles of natural justice enshrined in the constitution of India in the form of fundamental rights under article 14 & 21 respectively. Whereas the article 14 guarantees the 'equality before law', article 21 explains the protection of life and personal liberty according to the procedure established by law. The ambit of article 21 of 'life and personal liberty' attained a wider and comprehensive nature. Before this case article 21 assured the right to life and personal liberty against the arbitrary actions of the executive only but since after this case, art 21 guarantees the right to life and personal liberty against the unfair and arbitrary actions of legislative also.

Here, an issue of contention arose between the parties when the passport authorities impounded the passport of the appellant, without even disclosing the statement of reasons to her. As they replied her that it was issued by Ministry of External Affairs on the directions of government. Aggrieved party thus filed a writ petition in Supreme Court under article 32 of the Indian constitution challenging the following act of the authorities as violating her fundamental rights guaranteed under article 21 of the constitution regarding this matter.

Taking into consideration article 14 'equality before law' and article 21 'protection of life and personal liberty' and principle of 'audi alteram partem', the court observed here infringement of following rights and hence, section 10 (3) c of the Passports Act, 1967 was declared void in this case as was conferring an arbitrary power and was also violative of article 21 as it did not give any right to other party such as to hear the other party, according to procedure established by law, before the passport was impounded.

Since after this case, the doctrine of post- decisional theory was evolved.

Background-

This concept of 'personal liberty' under article 21 first dragged attention through the case of *A.K. Gopalan*² which came for the consideration of the Supreme Court. In this case, the petitioner was being detained under Preventive Detention Act, 1950. The petitioner challenged the validity of his detention on the grounds of violation of his fundamental right of freedom of movement under article 19 (1) (d), which is very ethos of the personal liberty given under article 21 of constitution. Main issue of the argument in this case was whether the 'due process of law' is same as the 'procedure established by law' and follows the principle of natural justice.

Though in this case Supreme Court took into consideration a quite narrow ambit of personal liberty and restrained it to only the liberty of physical body. Hence, the court also rejected the application of principles of 'jus naturale' (natural justice) in this case.

Be that as it may, this prohibitive translation of the articulation 'personal liberty' was not trailed by Supreme Court in its later choices.

In the case of *Kharak Singh v State of U.P.*³, it was held that 'personal liberty' was not only restricted to physical constrain but as well as was utilized as concise term inclusive of the rights of all assortment which further deal with 'personal liberty' of people other than the rights guaranteed under article 19 (1).

¹ 1978 AIR 597.

² *A.K.Gopalan v State of Madras*, (1950), AIR 27, 1950 SCR 88.

³ 1963 AIR 1295, 1964 SCR (1) 332.

In Maneka Gandhi's case, the significance and substance of the words 'personal liberty' again came up for the thought of the Supreme Court. For this situation, the petitioner's identification had been appropriated by the Central Government under section 10(3)(c) of the Passport Act, 1967. Here, the Supreme Court not just overruled A.K. Gopalan's case yet additionally augmented the extent of words 'personal liberty' significantly. Bhagwati, J. watched: "The articulation 'personal liberty' in art 21 is of broadest abundance and it covers an assortment of rights which go to constitute the individual freedom of man and some of them have raised to the status of particular essential rights and given extra assurance under Article 19 concerning the connection between art 19 and art 21, 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 in this way presently be settled that art. 21 does not bar Article 19 and that regardless of whether there is a law endorsing a strategy for denying a man of individual freedom, and there is therefore no encroachment of the central right gave by Article 21 such a law in so far as it condenses or takes away any key directly under Article 19 would need to address the difficulties of that art." Thus a law "denying a man of 'personal liberty' has not exclusively to stand the test" of article 21 however it must stand the trial of art 19 and art 14 of the Constitution.

Issues –

The issues discussed in this case were as follows-

- I. Whether art. 21 'Right to personal liberty' in its ambit covers the right to go abroad as a part of it?
- II. Whether the sec 10 (3) (c) of Passports Act⁴, as mentioned in art. 21 prescribe a 'procedure' before the infringement of their fundamental right?
- III. Whether the sec 10 (3) (c) of the Passports Act is constitutionally valid?
- IV. Whether the restrictions imposed by the Passport Authority were in transgression of principle of natural justice?

Judgement –

It was held in the case that-

1. A wide interpretation of art. 21 was considered in respect of personal liberty 'Right to travel and go abroad' is though a fundamental right but is not included within the ambit of article 21.
2. Sec 10 (3) (c) of Passport Act did not prescribe a 'procedure' as per the opportunity of hearing before the passport is impounded and hence was infringement of fundamental rights.
3. The validity of sec 10 (3) (c) was declared unconstitutional, void and vague as it confers an arbitrary power and hence was also violative of art of constitution.
4. The restrictions imposed by Passport Authority were in contravention of principle of 'audi alteram partem' which states 'to hear the other party'.
5. Sec 10 (3) (c) of Passports Act was violative of art 19 (1) (a) & 19 (1) (g) since no restrictions can be imposed under these articles.

Analysis –

(1) The Court in this case decided to declare Sec 10 (3) (c) of Passport act unconstitutional and to give other party a fair chance to be heard as per the procedure established by law. This decision of the court was absolutely appropriate.

(2)The decision given in this case of Maneka Gandhi definitely challenged the judgements of previous cases. The reasoning given and usage of laws in the previous cases were contradictory as per this case. In the case of *Maneka Gandhi v Union of India* Supreme Court overruled the decision of *A.K. Gopalan vs. State of Madras*. From the case of A.K. Gopalan to Maneka Gandhi the conception of art 19 and 21 keep getting wider. We will discuss the increasing ambit of art 19 and 21 under the following cases respectively-

1. *A.K. Gopalan v State of Madras*

⁴ The Passports Act, 1967.

2. *Kharak Singh v State of Uttar Pradesh*
3. *Satwant Singh Sawhney v Union of India*⁵

A.K. Gopalan v State of Madras was a noteworthy choice since it spoke to the principal situation where the court genuinely inspected and deciphered key major rights enshrined in the constitution including article 19 and 21. A writ of habeas corpus was recorded. The dispute was whether under this writ and the clauses of The Preventive Detention Act, 1950, there was an infringement of his fundamental rights which were article 13, 19, 21 and 22. The solicitor in the interest of the plaintiff contended that the privilege to movement was a major right under article 19 and henceforth the opposite party must demonstrate that the law of preventive detention was an appropriate confinement according to the five sections of article 19(2).

Judge limited the extent of basic rights and by understanding them in separation of article 21 and 22 which gave direction to preventive confinement. Remote point of references like instances of UK and US were used as a part of restricting the extent of article 21. Judge Kania said that the term due process kept the courts from participating in substantive due process examination in deciding the sensibility of the level of process gave by the council.

In *Kharak Singh v State of Uttar Pradesh* an appeal under Article 32 of the Constitution of India questioned the legal plausibility of Chapter 20 of the Uttar Pradesh Police Regulations and the forces levied upon police authorities by its allocations on the ground that they infringe the rights ensured to subjects by art 19(1) (d) and 21 of the Constitution of India. Based on the allegations made against him, he had police constables going into his home and yell at his entryway, awakening him all the while. On various events they had constrained him to go with them to the station and had additionally put limitations on him leaving the town.

The judges made a leap forward while deciphering and finding the association between article 19 and 21 by commenting that on the off chance that a man's basic rights directly under art 21 is encroached the State can depend upon a law to maintain the activity; yet that cannot be an entire answer except if the said law fulfills the test set down in art 19(2) so far as the traits secured by Article 19(1) are concerned. As it were, the State must fulfill that both the essential rights are not encroached by demonstrating that there is a law and that it amounts to a sensible limitation inside the significance of Article 19(2) of the Constitution. In any case, in this appeal to no such barrier is accessible, as a matter of fact there is no such law.

So the counsel of Kharak Singh could have been argued that rights under art 19 (1)(d) and art 21 of their client have been infringed by the state. Consequently, on these grounds the plaintiff Kharak Singh was found eligible for getting issued a writ of *mandamus*⁶ against the defendant -State of Uttar Pradesh-directing not to proceed visits to his home.

In the case of *Satwant Singh Sawhney v Union of India* the plaintiff was a producer; shipper and exporter who was asked to surrender his travel permit on the ground that he was probably going to leave India due to some strategy of escaping from any court proceedings. Surprisingly, the Court could create a settlement with uniformity in a greater number and restricting point of reference in the territory of individual freedom that manufactured and depended on remote points of reference managing substantive due process. Additionally, Chief Justice Subba Rao used mix of American points of references, alongside the feelings in *Kharak Singh*, to decide that the expression 'individual freedom' is as wide in India as the expression 'freedom' is in the fifth Amendment of the U.S. Constitution. The court perceived that privilege to life and freedom could be taken away by a 'procedure established by law'. Anyway it dropped the administration's request to the candidate to surrender his travel permits. Its judgment was found on the constrained ground of the inability to accommodate any strategy directing the surrender of international IDs under the Indian Passports Act, 1920. The court's protest depended on the non-appearance of a strategy as opposed to the benefits of the current framework. Soon after the *Satwant Singh* Judgment, the parliament authorized the Passport Act, 1967 to manage how travel papers would be issued, denied, seized or disavowed matters on which enactment did not exist before.

⁵ 1967 AIR 1836, 1967 SCR (2) 525.

⁶ Indian Constitution, art 32, cl. 2.

At last, in the case of Maneka Gandhi the Supreme Court widened the importance of 'individual freedom' as well as embraced the hypothesis of 'due process' in methodology set up by law. The court perceived that when a law limits individual freedom, a court ought to look at whether the confinement on individual freedom likewise forced limitations on any of the rights given by article 19. The Court held that individual freedom incorporates 'an assortment of rights which go to constitute the individual freedom of man', notwithstanding those specified in Article 19, and that one such right incorporated into 'individual freedom' is the privilege to go abroad. The court additionally held that as per the 'audi alteram partem' hypothesis, seizing Mrs. Gandhi's passport without giving her a hearing disregarded technique built up by law. These were standards of common equity and reasonable technique. The court needed to choose whether Mrs. Gandhi was qualified for a hearing before her travel permit was seized. It was settled that as there was no post decisional hearing, the seizing was unconstitutional and void.

(3)The Court was very clear on its part and justified its reasoning with the reference of other above mentioned cases, though the judgement given in this case was little different and it established a benchmark.

(4)The implications of Maneka Gandhi case can be seen in present laws. Supreme Court has adopted new approaches, in the field of criminal justice, with the help of art 21 that now extends to all persons including prisoners, criminal offenders in cases of arrest, speedy trial, custodial torture, right to appeal, against inhuman treatment, fair trial etc.

Conclusion –

I agree with the decision of the court. The interpretation of law given by the Supreme Court was right and it clears the law. The doctrine of post – decisional theory was evolved by this case, it widened the ambit of personal liberty and judgement given in this case set a benchmark for upcoming cases.

