CASE STUDY OF MANEKA GANDHI V. UNION OF INDIA[1]

Eshita Baghel, BA.LL.B., Rajiv Gandhi National University of Law, Punjab

ABSTRACT

Maneka Gandhi case is a classic landmark. The case brought the existing jurisprudence into an entire new dimension. Maneka Gandhi case was not just about right to travel abroad, but it was also about establishing procedural due process, purposive interpretation of Article 21, interlinking of fundamental rights. In light of this, this work is a case analysis of Maneka Gandhi judgement. In this, the entire judgement is analysed and its interpretation in light of current happenings is made.

[1] AIR 1978 SC 597

1. INTRODUCTION

1.1. Facts

In this case, a writ petition was filed under Article 32 of the Constitution for the writ of certiorari against Union of India and Regional Passport Office, in order to call the record of the case numbered under order July 2, 1977.

The facts were as follows, the petitioner, a journalist held passport under the Passport Act 1967. On July 4, her passport was impounded by the Government of India under Section 10(3)(c) of Passport Act, on the ground of "*interest of the general public*." On this, the petitioner, under S. 10(5) of the act, asked for the reasons for impounding it. The Government of India refused to give the reasons on the excuse of "*interest of general public.*" The reply by the Ministry of External Affairs stated:

> *"The Government has decided to impound your passport in the interest of general public under Section 10(3)(c) of the Passports Act, 1967. It has further been decided by the Government in the interest of general public not to furnish you a copy of statement of reasons for making such orders as provided for under Section 10(5) of the Passports Act, 1967."*

The petitioner was the wife of Sanjay Gandhi and a Commission of Inquiry was set up for some charge. According to the Government, the authority refused to give passport inorder to prevent her to move out of the country. The respondent alleged that the petitioner was about to leave the country and she might be needed to be examined by the Commission.

1.2. Ground

Due to this, the petitioner challenged the order with two initial grounds

- The Section 10(3) (c) of the act is violative of Article 14 till it gives power to impound the passport '*in the interests of the general public*.' This authorization confers vague and undefined power on the passport authority
- The Section 10(3) (c) is void as it denies the fair opportunity of hearing to the passport holder. This power to deny is discriminatory

Later on the petitioner filed application for two additional grounds

- The Section 10(3)(c) is ultra vires of Article 21 as the impounding of passport is without any proper procedure as the procedure under Passport Act is arbitrary and unreasonable
- The Section 10(3)(c) infringes the petitioner Fundamental Right to Free Speech and Expression and Right to carry profession, hence is ultra vires of Article 19(1)(a) and 19(1)(g)

1.3. Judgement

This writ petition was heard by Seven Judges Bench consisting of the then *Chief Justice M.H. Beg, Justice Y.V. Chandrachud, Justice V.R. Krishna Iyer, Justice P. N. Bhagwati, Justice N.L. Untwalia, Justice S. Murtaza Fazal Ali and Justice P.S. Khalisam*. In this case, the Court disposed off the petition on assurance of the government to consider the petitioner's representation and give her a chance of hearing.

The beauty of the judgement is, the judges gave concurring opinion, separately expounded the interpretation of law, although everyone arrived at the same decision. This is classified as judgement by *Justice P.N. Bhagwati (wrote on behalf of Justice N I Untwalia and Justice S. Murtaza Fazal Ali), and concurring judgement by Justice Y.V. Chandrachud, Justice V.R. Krishna Iyer, Justice P.S. Kailasam, and the Chief Justice CL. M.H. Beg.* Due to this method, different approaches and ratio's behind the reason came forward. For instance, *Justice Krishna Iyer's* philosophical analysis, *Justice Chandrachud's* comprehensive approach, and *Justice Bhagwati's* elucidative approach. However, these judgements should be taken supplementary to the main judgment of *Justice Bhagwati*.[2]

Enlightened by the majority view, the court on assurance of the Attorney General to provide the petitioner with the opportunity of hearing, ordered to dispose of the writ petition. Further, the petitioner claim to get damages is unsustainable.

2. ISSUES

2.1. Whether the Fundamental Rights are Interlinked?

> "*The fundamental rights represent the basic values cherished by the people of this country since Vedic times….These rights weave a pattern on the basic-structure of*

[2] Justice V.R. Krishna Iyer in Maneka Gandhi case

human rights"[3]

Earlier, through the *A.K Gopalan's case*,[4] the rule was that Article 19, 21, 22, and 23 are mutually exhaustive and independent. In this case, the court, by majority overruled the *A.K. Gopalan's* theory. However, this was not the first time that the *Gopalan's Principle* was overruled. The *R.C. Cooper v. Union of India or Bank Nationalisation Case*[5] overruled the Gopalan's theory. This was also accepted in future cases, like by five judges bench in *Haradhan Saha v. State of West Bengal.*[6]

On this point *Justice Kailasam*, dealt with the issue, whether, in construction of deprivation of personal liberty, the use of procedure of law is sufficient and there is no need of looking the Article 19(1). In this he studied the line of cases on the point. These are discussed as below:

In *A.K. Gopalan Case*, it was held that Article 19 deals with rights and 21 deals with the loss of rights. Due to this, reasonableness of Article 21 cannot be questioned by considering the Article 21. This was affirmed by the Supreme Court in *Ram Singh v. State of Delhi*,[7] then in *State of Bihar v. Kameshwar Singh*.[8] The *Kharak SIngh's case*[9] approved the prevention and avoidance of overlap and interlink between 19 and 21. However, the minority view of *Justice Subba Rao* stated that in order to determine the infringement of a. 21, the test in 19(2) should be applied. Later, his dissent was appreciated in *Bank Nationalisation Case.* In *Bank Nationalisation case*, it was held that A. 19(1)(f) and 31(2) are non-mutually exclusive. Thus, the limitation imposed by law under 31 should be tested by considering the restrictions under 19. The ratio applied was that, all the fundamental rights whether under A. 29 or 31 are derived from the basic human rights of the people. Thus, though the rights are different, but a common thread runs through each of them. Hence, restriction under 31(2) must not be checked by this article alone, other articles must be given due consideration. On similar lines, the life and personal liberty under Article 21 must fulfill the ingredients of Article 19(1). However, J. *Kailasam* noted that this was an *obiter dicta* and not a correct law.

[3] AUSTIN GRANVILLE, INDIAN CONSTITUTION: CORNERSTONE OF A NATION, (Oxford India Paperbacks, Delhi, 1999)
[4] [1950] SCR 88
[5] [1973] 2 SCR 530
[6] [1975] 1 SCR 778
[7] [1951] SCR 451
[8] [1952] SCR 889
[9] Kharak Singh v. State of U.P. [1967] 3S.C.R.525.

Justice Chandrachud, in the concurring opinion added that, if the *A.K. Gopalan case* was upheld, the right to travel abroad is a part of personal liberty under Article 21 only. This would still be a good law. He viewed *the Bank Nationalisation case* as incorrect.

According to *Justice V. R. Krishna Iyer*, the fairness is implied in Article 21, hence, it includes the relevant Articles 14 and 19. Thus they are interlinked.

Chief Justice Beg also emphasized that the Articles 14, 19 and 21 are the mostly used to check the validity of executive and legislative actions. Moreover, in this, both substantial and procedural laws as well as actions performed should pass tests of Article 14 and 19.

2.2. There is violation of Principles of Natural Justice

Justice P.N. Bhagwati expounded that the importance of the principle of Natural Justice in administrative law is ever increasing and these principles must be deployed in administrative action.[10]

The natural justice means "*fair-play action."* It is also referred as the humanistic principle for ensuring justice. The principle of Natural Justice has become a universal principle and is followed in the United States, England, etc. It is also prevalent in the Commonwealth countries like Canada, Australia and New Zealand. Even the UN Charter recognizes it. There are two principles of Natural Justice-which are: *Nemo judex in causa sua (*no man can be a judge in his own case) and *Audi alterem partem* (hear the other party). Here the first principle of rule against bias is not present.

2.2.1. Application of Natural Justice

Earlier, the accepted notion was that Natural Justice only applies to judicial and quasi-judicial bodies. The quasi judicial bodies are given the authority by law to act in a judicial manner. It has no application in the administrative proceedings. The cases like *Rex v. Electricity Commissioner*[11] and *Rex v. Legislative Committee of the Church*[12] *Assembly* were examples of earlier view.

[10] Maneka Gandhi case at 413
[11] [1924] 1 K.B. 171
[12] [1928] 1 K. B. 411

However, later on the legal perspective advanced to recognize these principles for the administrative decision as well. This is because, even as administrative action can have more harsh consequences then the judicial or quasi judicial one. Hence, all the bodies should try fair and non discriminatory treatment. Furthermore, the main purpose of an administrative and judicial inquiry is to come to a decision. In order to ensure justice, it should apply to administrative body.

Hence, there is no distinction between quasi-judicial and administrative function. The courts recognized this when the case of *Ridge v. Baldwin*[13] came as a climax. In this, the doctrine of excluding administrative action in the previous cases was ended. In India, this was applauded in the cases of *Associated Cement Companies Ltd.* v. *P.N. Sharma,*[14] *State of Orissa v. Dr. Binapani Dei*[15] *and A.K. Kraipak v. Union of India.*[16] The A.K. Kraipak decision is a historic decision in this branch of law.

> "*If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries…Arriving at just decision is the aim of both quasi-judicial enquiry as well as administrative enquiry.*"

This was reiterated in *D.F.O. South Kheri v. Ram Sanehi Singh*.[17] Thus, this is considered as the present law.

From this, *the Maneka Gandhi Case* widened the application of natural justice. Justice *P.N. Bhagwati* noted that the "*duty to act judicially need not be superadded, but it may be spelt from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted.*"

Apart from this, the Natural Justice can operate where there is no law on the issue. As noted by Lord Parker in *A.K. Kraipak Case*, The Natural Justice principles "*do not supplant the law of the land but supplement it.*"

[13] [1964] A. C. 40
[14] [1965]2 SCR 366
[15] [1967] 2SCR 625
[16] [1970] 1 SCR 457
[17] [1973] 3 S.C.C. 864

In the present case, the issue is the Passport Act, 1967 does not give reasonable opportunity of being heard. Hence, it is unfair and unjust clear infringement of Art 21. The court held, as the Passport authority can impound the passport, and there is an Appellate Authority to challenge the reasons, hence, the Passport Authority is a quasi-judicial authority and the rules of Natural Justice would apply.

In *Maneka Gandhi* case, the court considered the second rule of Natural Justice, i.e. *audi alterem partem*. Being realistic, the court mentioned that a Passport can be impounded but the opportunity of being heard should be given. If this is done, the procedure does not suffer from arbitrariness or unreasonableness. Then procedure established is in conformity with Article 21. As in the present case, the Passport Act, 1967 requires Passport Authority to provide the reason for denial of passport, and give him an opportunity of present his part for the denial. Due to this, the act is right, just and fair and doesn't the ingredients of Article 21.

However, the Central Government not only eschewed from giving opportunity of being heard but also failed to furnish the reason for impounding. As noted by *Justice Kailasam,* the reason given by the Central Government that there is report which alleges that Maneka Gandhi would leave the country and she should first give the evidence to Commission of Inquiry, were unjustified reasons. Thus, the Central Government's order was clear infringement of natural justice principles. However, on account of assurance given by the Attorney General to provide the opportunity, this is removed as well.

In addition to the judgement of *Justice Bhagwati*, *Justice Kailasam* added that the Rules of natural justice should be read in consonance with the statutory provisions. If the statutory provision expressly or impliedly excludes the principles, then the court should consider the rule of legislature. Due to this, the right to be heard is not presumed in cases of secrecy, emergency, etc. Hence, in this case the refusal to give reason of impounding passport must be given until and unless there are other reason for not furnishing the copy.

2.3. The Section 10(3) (c) of the Passport Act violates the Petitioner Right to Equality under Article 14

Justice P.N. Bhagwati remarked equality as the pillar on which the foundation of the democratic republic rests. Enunciating the concept of equality, he remarked the view in *E.P*

Royappa v. State of Tamil Nadu,[18]

> "*From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14*"

In this, the principle of reasonableness is an essential ingredient of equality. Due to this, the procedure under Article 21 must pass the test of reasonableness. He said it should be "*right and just and fair and not arbitrary, fanciful or oppressive*."

The court held the Section 10(3)(c) as not violative of Article 14. Section 10(3) c gives the power to the Passport authority to impound the passport on the ground of violation of "*interest of the general public.*" The argument was this ground gives unrestricted power to the authority and especially to the Central Government. The court noted that this is very vague. Though a law providing discretionary power has tendencies to suffer from discrimination, but it is difficult to conclude that the **discretion is arbitrary.** Furthermore, the expression "*in the interest of general public*" is also used in the Constitution. It is heresy to conclude that the thinking of the constitution-makers is vague. Further, the courts have in various cases decide that the scope of "*public interest."* Hence, the power conferred to the Passport Authority is not unguided or unfettered. Moreover, this power is furnished to the Central Government and the abuse of the power is less likely. Even is there is such misuse, the arms of the court are very long to strike such power down. Due to this, the power bestowed by Section 10(3)(c) is not violative of Article 14.

Further, as per the concurring judgement of *Justice Chandrachud*, the power conferred to Passport Authority to impound the passport is of exceptional nature. This power should be used in special and rare circumstances. The reason given by the authority can be subject to judicial review. *Justice Kailasam* added that the natural justice apply for judicial and quasi judicial bodies. Moreover, since the refusal of giving reasons would happen in the rare cases, and by the highest authority, hence it is not violative.

[18] (1974) 4 SCC 3

2.4. The Section 10(3)(c) of the Passport Act does not violates the Petitioner Right to Freedom under Article 19?

Justice Kailasam, compares the passport and freedom to movement abroad in United States. He then, explains the Article 19 its link with Article 20, 21, 22. The explanation for Article 19 draws similar conclusions. The footprints of the Constituent Assembly debates, also explains the difference between Article 19 and 21. In the Constituent Assembly discussion for Article 15, the word '*liberty*' was discussed. According to the founding fathers, the use of word liberty in Article 21 should be preceded by "*personal*," as to avoid the similarity with Article 19. This also shows the freedom under a. 19 is different from other.

Test of directness: According to *Justice P.N. Bhagwati*, the statute or action challenged should have a direct effect on the Fundamental Right. If it remotely affects the Fundamental Right then it cannot be held to be violative of fundamental right. The roots of test can be drawn from the application of test in *Naresh Mirajkar v. State of Maharashtra*[19] in which the order prohibiting publication was upheld as its object was the protection of witness. And the impact on free speech was incidental only. Hence, it was not considered.

Justice Krishna Iyer fully concurred with the judgement of *Justice Bhagwati*. He emphasized that the restrictions on Article 19 should be reasonable and bona fide. One important observation to test the law or executive actions unfettering the Fundamental Rights can be made by a test as mentioned in *V. G Row case*,[20] given as:

> "The reasonableness of a restriction depends upon the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others."

2.5. The Passport Act does not violate the Petitioner right to free speech and expression under Article 19(a)

In the petition, the petitioner alleged that prohibition to travel abroad violates his right to speech. In other words, he alleged that violation of freedom to travel has violated freedom of speech. Freedom to travel was considered by Justice Douglas as a necessity of livelihood.[21]

[19] [1966] 3 SCR 744
[20] State of Madras v. V.G. Row, 1952 SCR 597
[21] Kent v. Dulles quoted in Maneka Gandhi case

This was accepted in the present case. *Justice P.N. Bhagwati* said "*Freedom of movement at home and abroad is a part of our heritage*"

However, freedom to travel does not always mean the exercise of freedom of speech and expression only. A person going abroad can do it for a variety of reasons, and not just for expressing himself. Every activity that may be necessary for the right of free speech and expression cannot be elevated to the same status as the Fundamental Right. Otherwise, such practice would make every activity as a Fundamental Right and would the purpose of these right would be nullified.

Hence, the court cannot welcome every peripheral or concomitant right as Fundamental Right. This was also accepted in *All-India Bank Employees' Association v. National Industrial Tribunal*[22]. Due to this, the court held, the Right to go abroad cannot be regarded as Freedom of Speech and Expression.

Justice Chandrachud agreed with *Justice P. N. Bhagwati*. According to Justice Chandrachud, the right to travel abroad and the freedom of speech and expression are made of totally different constituents, due to which they cannot be understood together. But he added although the right to go abroad is not under Article 19(1)(a), however, if an order made under Section 10(3)(c) violates free speech and expression then the order can be adjudged unconstitutional.

However, ***Justice Krishna Iyer*** viewpoint differ on this issue. He wrote, free speech and free practices of profession are interwoven with the travel abroad. This comes when a person has to travel to gather reported news, or to deliver a lecture abroad, or a lawyer's/doctor's/exporter's/missionary's/guru's professional visit in a foreign country. In this, the unreasonable refutation on passport authority eschews the person's liberty.

2.6. The Passport Act does not violate the Petitioner Right to Profession under Article 19(g)

By applying the similar reasoning as above, the right to travel abroad does not include right to carry trade, practice, business, profession guaranteed under Article 19(1) (g). Thus, the right to go abroad does not violate Article 19(1) (a) or (g). The reason being, the direct and inevitable consequence of the right to go abroad is not freedom of speech or freedom to carry trade,

[22] [1962] 3 SCR 269. In this case, the court held, the right to form unions does not include the concomitant right to fulfill the purpose of the union.

business, profession. The test of direct and inevitable consequence was laid down In *Express Newspaper case*.[23] This was affirmed in *Hamdard Dawakhana Lal Kuan v. Union of India*,[24]in the test of which the reality and substance was emphasized.

Although the court did not recognize the act as infringement of Right to Freedom of Profession, but it gave a very comprehensive analysis of the expression "*within the territory of India.*"

2.6.1. Scope of "Within the territory of India"

Though this aspect was not directly considered by *Justice Bhagwati*. However, his judgement drew some traces when he mentioned the extent of territoriality. According to him, the term "*territory of India*" does limit the extent of Article 19 to India only. Even if the State (as defined by Article 12) by any action violates the right of the person outside the territory of India, and then too the fundamental right of the citizens is contravened. *Chief Justice Beg* agreed with this and stated that the validity of law might be ineffective if the person is outside the territorial jurisdiction. Thus territoriality extends beyond India, but it can be limited by restrictions under Article 19(2) to (6) should be seen.

Justice Kailasam, dealt with the territoriality. After referring to various textbook on Interpretation of Statutes, Jurisprudence, and the Constitution, he concluded that usually law is applicable in the territory only, however, it can be expanded for the citizens outside. The question of whether it is applicable outside or not must be decided after studying the legislation itself. Thus, the parliamentary legislations are normally for the citizens within the territory only.

However, for *Justice Chandrachud*, the right to move is limited due to the boundary drawn by the phrase "*territory of India*."

On this, the parliament can make laws to control the activities of citizens abroad. This intention to apply the law outside the territory must be expressed or implied in the law. Lastly, the statute must be interpreted in such a way so as not to destroy the comity of nations or international law rules.

2.7. The Right to Life includes Right to travel abroad

[23] Express Newspapers (P) Ltd. & Anr. v. Union of India & Ors. [1959] SCR 12
[24] [1960] 2 SCR 671

Drawing the philosophy and history of travelling rights and passport, *Justice Krishna Iyer*, noted the Indian cases, *Satwant Singh*[25] *and A.K Gopalan. Justice Krishna Iyer's* gave a beautiful judgement and noted about the embezzlement of passport process by the government to impede the denouncing writers, statesman, scientists, etc. from leaving the native country. He made a worthy notice of the *European Convention on Human Rights* and the *Universal Declaration of Human Rights* which states that the freedom of movement and the right to leave one's country are the basic Human Rights. From this, he concludes that the right to travel round the globe is beyond human right and constitutional freedom. It promotes tourism and hence development. He gave examples of *Swami Vivekananda's* visit to West which marked as a revolution. Citing the Landmark cases of America on personal liberty, i.e. *Kent v. Dulles*, A*ptheket v. Secretary of State* and *Zemel*, in which the balloon of freedom to travel abroad is inflated to include the air of right to travel without passport.

Justice Bhagwati mentioned that before the Passport Act, 1967, the process of issuing the passport was unregulated and unchanneled. It was on the discretion of the executive to issue the Passport. Due to these problems the court in *Satwant Singh Sawhney case* held that right to travel and locomotion was a part of personal liberty in Article 21. This resulted in the enactment of the Passport Act. The court held by a majority that no person can be denied of his right to locomotion and travel abroad except according to procedure established by law. And as, at that time there was no law regarding this, hence the State's refusal of passport was a violation of Fundamental Right. Looking into the unregulated executive discretion, the court held that this is arbitrary and discriminatory, and hence clear violation of Article 14.

Thus, the Passport Act, 1867 was enacted. According to the act, the passport authority issues the passport; it can refuse to do so, on the basis of grounds prescribed by the act. In Maneka Gandhi, the ground empowered the Central Government to approve that the applicant's presence in the foreign country is against general public interest. However, in the refusal, the passport authority must give the reason to applicant unless it is against security of India, friendly relations or interest of the general public.[26] In this case, the government refused to give information stating it was against public interest.

[25] Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi & Ors [1967] 3 S.C.R.525.
[26] The Passports Act, 1967, s. 10(3)(c)

However, in the affidavit of the Central Government, the reason for refusal of disclosure showed unreasonable. There was no violation of interest of general public even if the reason was disclosed. This shows the arbitrary usage of the government's discretion. Hence, the petitioner's right to travel was violate**d**.

2.8. The Passport Act violates the Petitioner Right to Life under Article 21

In this, *Justice V. R. Krishna Iyer*, contemplated this by examining the term "*procedure established by law.*" For this, he analysed it as the procedure which is established by law. According to him, Law becomes law when it receives conscience and acceptance of the community. Due to this, any mala fide command does not become law as there is no consent. This philosophy enriches the principles of equity and reasonability in the law. He says any unreasonable law passed by majority in three readings cannot be sustained due constitutional humanism. He said the human rights secured by the freedom struggle and "do or die" slogans cannot be buried by formalistic words. In his words:

"*To frustrate Article 21 by relying on any formal adjectival statute, however flimsy or fantastic its provisions be, is to rob what the constitution treasures.*"

Viewing that, reasonableness is implicit under Article 21, he concluded procedure in Article 21 means fair and just procedure and not arbitrary and formal. "*Law is reasonable law, not any enacted piece.*" Thus, he rejected the notion stated by the Attorney General, that procedure prescribed by law means nothing but a law made by a legislature. Hence, the right to travel under Article 21 cannot be unfettered unfairly by any passport legislation. The legislation should take fair norms.

In Passport and personal liberty, the comment of *Chief Justice in A.G. Kazi*[27] is worth mentioning.

> *"In our opinion, the language used in the Article (Article 21) also indicates that the expression 'Personal liberty' is not confined only to freedom from physical restraint i.e. freedom from arrest, imprisonment or any other form of physical restraint, but includes a full range of conduct which an individual is free to pursue within law, for instance, eat and drink what he likes, mix with people whom he likes, read what he likes, sleep when and as*

[27] A.I.R. 1967 Bom. 235. quoted by Justice Chandrachud

> *long as he likes, travel wherever he likes, go wherever he likes, follow profession, vocation of business he likes, of course, in the manner and to the extent permitted by law."*

According to Petitioner, the right to travel is a part of right to live, which can be restricted only by procedure established by law. However, the act provided no proper procedure for the denial of passport refusal. Hence, it violates the Fundamental Right.

Justice P.N. Bhagwati interpreted the term "*personal liberty*" by considering its legal history. In the past, in *A.K. Gopalan v. State of Madras, gave a very* narrow interpretation of term personal liberty was given. According to it, right to life means protection against unlawful detention. Then, the court in *Kharak Singh v. State of U.P.* the majority of the judges gave wider meaning of personal liberty, according to which, it includes all the varieties of right other than Article 19(1). However, *Justice Bhagwati* rejected this view and both art. 21 and 19 are independent rights although there is overlapping. As was decided in *Satwant Singh*, the right to go abroad is a Fundamental Right, hence; *Justice Bhagwati* said person cannot be denied of his right to go abroad unless the law provides for a particular procedure. This procedure cannot be arbitrary and unreasonable.

2.8.1. Current Position

From the *Maneka Gandhi case*, to prove that the law or action violates personal liberty under Article 21, the tests of other articles must be satisfied as well. For instance in 2008, the Supreme Court put the triple tests to determine that personal liberty is violated. The law in question should:[28]

- Prescribe a procedure
- The procedure must withstand the test of one or more of the Fundamental Rights conferred under Article 19 which maybe applicable to a given situation
- The procedure must also pass the test of Article 14[29]

3. CASE ANALYSIS

Before Maneka Gandhi case, the construction of Article 21 was very narrow. "*The article 21 was only a guarantee against executive action unsupported by law.*"[30] Article 21 which states

[28] District Registrar and Collector, Hyderabad v. Canara Bank, AIR 2005 SC 186
[29] D.D. BASU, COMMENTARY ON THE CONSTITUTION, (Lexis Nexis, Butterworths, Mumbai,) 3107
[30] ibid

that no one should be deprived of his right to life and personal liberty except according to procedure established by law. Thus, if the right is violated by a government action and that is backed by a law passed by legislature, then the fundamental rights are not said to be violated. In other words anything passed by parliament gives the privilege to violate the Article 21. But, the Maneka Gandhi Case widened the horizons of this. It opened up new dimensions and subjected the procedure itself to judicial scrutiny. Now, the procedure should pass the test of reasonableness, fairness and equity. In other words, it established substantive due process.

By some critiques, the Maneka Gandhi case is described as a revolutionary step after the dictatorial methods and approaches in Indira Gandhi's period. In this, the court put a step forward from the formalistic approach.

4. CURRENT POSITION

Maneka Gandhi v. Union of India was the repentant Court's mea culpa for its abdication during Indira Gandhi's Emergency, the first concrete embodiment of its will to make amends, a precursor to the age of public interest litigation. Maneka Gandhi was the point at which the Court abandoned three decades of formalist interpretation, and inaugurated a new path where Courts would expand the rights of individuals against the State, instead of limiting or contracting them.

But neither the Court's repentance, nor its ringing words about interpreting Articles 14, 19, and 21 together, and not even its inauguration of the substantive due process doctrine was of any use to the petitioners in the constitutional challenges to the preventive detention provisions of the National Security Act in 1980; or, in 1994, to the constitutional challenges to the TADA's departure from CrPC safeguards such as confessions to police officers, upheld on the justification of fighting terrorism; or, perhaps most glaringly, to the constitutional challenge to the Armed Forces Special Powers Act a few years later.

To take just three examples, after Maneka Gandhi, the Supreme Court continued to uphold book bans, (total) cattle slaughter bans, and "anti-sodomy" legislation. When future benches of the Court are called upon to apply Puttaswamy, it will not be quite so straightforward. There will be challenges to dragnet surveillance, where the State will claim that the only way to catch terrorists is to surveil the entire population, and will submit "evidence" in a sealed envelop to the Court. There will be challenges to DNA profiling laws, where the State will argue that everyone must give up their privacy to help in the national effort

to detect and prevent crime. There will be challenges to data collection and data mining, where the State will argue that the loss of privacy is a small price to pay for the gain in efficiency.

This is predictable, because it has happened before, for the last sixty-five years. The law of sedition was upheld because the Court believed that the State must have the means of "preserving itself", and freedom of speech was an acceptable casualty. TADA was upheld because the Court felt that police abuse was an acceptable compromise in the fight against terrorism. The Court did not strike down police surveillance in Gobind, despite holding that there existed a fundamental right to privacy. In PUCL, the Court did not even mandate a judicial hearing as a pre-requisite to telephone surveillance under the Telegraph Act. As the Court itself has reminded us many times, in the last analysis, individual interests must "yield" to larger social interests — and that effectively, it is the State's prerogative to both define the social interest, and to prescribe the means to prescribe the means towards achieving it.[31]

5. CONCLUSION

From the case study, it is concluded that the every person has a right to travel abroad. This is enshrined as a basic human right. In this case, the petitioner had a right to travel abroad, but such can be restricted by procedure established by law. This procedure, i.e. the Passport Act, was challenged as unconstitutional as it used vague terms like interest of general public. However, the concept of in the interest of general public is often enunciated by the courts in various cases, hence it not vague and the procedure not unconstitutional.

Further, the procedure should be reasonable and non-arbitrary (Article 14) and it must also satisfy the test of restrictions under Article 19(2) to (6). Thus, the fundamental rights are interwoven together. Apart from this, the principles of natural justice should be hold in high regards for judicial as well as quasi-judicial actions. Mrs. Maneka Gandhi should be given a right of being heard (which she was denied), however, the Attorney General assured to the court that it will be granted in near future. Thus, from this, the importance of human rights and its widening scope vis-à-vis the fundamental rights is diversified.

[31] Gautam Bhatia, *The Supreme Court's Right to Privacy Judgement – X: Conclusion: The Proof of the Pudding,* LIVELAW, (20 October 2017, 11:00 A.M.), https://www.livelaw.in/supreme-courts-right-to-privacy-judgment-x-conclusion-proof-pudding/