A K Gopalan v The State

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A K Gopalan v The State(1950,S.C.R.88) was a momentous case in the Constitutional history of India. Any discussion/ lecture on the Constitutional law is incomplete without first examining this case, whether critically or analytically. This case was decided at a time When the Country got independence from British rule and The Constitution of India had come into force, and more than it , for the first time a chapter on Fundamental Rights had been incorporated in the Constitution .The Supreme Court got a golden opportunity to interpret the Article 19,21 and 22 expansively against Executive or legislative power of the state.

Brief Fact of the case-

A K Gopalan, a radical leftist of the Madras Province was detained under the Preventive Detention Act ,1950,and in fact he was detained for several times under the Act. Under Entry 9 of Union list ,the Parliament has the power to enact law on Preventive Detention. Though Preventive Detention is an anathema in modern time, it was justified as a necessary evil to protect the unity and integrity of the state. Even in Britain and America it was used only during the war time ,that too against suspected enemy aliens

A K Gopalan filed a habeas Corpus writ petition under Article 32 of the Constitution and challenged the detention ordering a wide ground that the Detention Act ,under which he was detained was void for violating Articles 19 and 21 and also on a narrow ground that it did comply with the requirements of Article 22.Article 22 prescribes certain procedural safeguards against it.Learned Counsel M K Nambiyar on behalf of Gopalan contended that the Detention Act 1959 violated Article 21 and was void on following grounds

1.Personal liberty included the freedoms conferred by Article 19(1)(a) to (e) and (g) and the impunged act (detention act) did not satisfy the test of Article 19(2) to (6).

2.The Preventive Detention Act directly violated Gopalans right to move freely , because the freedom of movement is of essence of personal liberty.

3.Article 19 (1) and 21 should be read together because Article 19 dealt with substantive rights and Article 21 dealt with procedural rights.

4.The reference in Article 21 to Procedure established by law meant due process of law and the Act did not satisfy the requirements of due process of law.

5.The word law in Article 21 meant not the state made law but jus naturale, of the principles of natural justice.The law did not comply with the requirements of Natural justice

It will be seen that from 1 to 5 that the proposition that Article 21 applied to the Preventive Detention, was the foundation of all the reasons, and learned Attorney General M

C Seetlevad countered by contending that Article 22 was a complete code and Article 21 didnot apply to Preventive Detention law. All the questions raised some points of immense Constitutional importance and a Six Judge Bench comprising CJI H L J Kania ,Justices P .Shastri ,M C Mahajan, B K Mukherjee ,SS Das and Fazl Ali S was constituted to hear the matters .All the six judges delivered separate judgments after a lengthy hearings .Five learned judges(Fazl Ali dissenting) held that Article 19 did not apply to Preventive Detention thought the freedoms as a result of detention freedoms may be curtailed. Fazl Ali dissented and held that Preventive Detention was a direct infringement of Article 19 and was subject to Judicial review even it was narrowly construed

> The majority judges did not hold that Article 22 was a complete code ,so they disagreed with learned Attorney General contention and only M C Mahajan alone held Article 22 was a complete code on Preventive Detention. Fazl Ali dissented by holding that " No calamitous or untoward result would follow even if the Provisions of Penal code became justiciable".

CJI Kania, and Justices Shastri, Mukherjee and SS Das held the concept of right to move freely throughout the territory of India was entirely different from the Concept of the right to personal liberty.

Except Justice M C Mahajan who held that Article 22 was a complete code, majority held that Articles 19 (1) and Article 21 did not operate in the same field, because Article 18 conferred rights only one citizens, article 21 conferred rights on all persons. Again if article 21 conferred only procedural rights then the most precious right the Right to life was nowhere found in our Constitution. Therefore the majority held that Article 21 also conferred substanrive rights also. It may be observed that far from holding that fundamental rights were mutually exclusive, Mukherjee held that a substantive law authorizing the deprivation of life must conform to the requirements of Article 20.

The majority judges held that the Procedure established by law did not mean due process of law as understood in United States of America. The report of Drafting Committe showed that the words Procedure established by law were substituted for the words without due process of law. Our founding fathers were well aware of its abuse by American judges during the New Deal period.

So in this case, different views were expressed by different judges, so no common points emerged on the correlation of articles 19 to 20,21 and 22 or the meaning of the expression personal liberty.

But Justice Fazl Ali dissenting points are regarded as one of the greatest dissents of all time. Justice R Nariman paid a rich tribute to Fazl Ali foresight by saying "simply takes our breath away".