

CASE COMMENTARY ON AK GOPALAN VERSUS STATE OF MADRAS (1950 AIR 27, 1950 SCR 88)

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I. Abstract

The preventive detention act 1950 was enacted to detain the human in order to maintain peace and public order and national defence. The petitioner was detained under this act without reason. The petitioner challenged the constitutionality of the act and he said that it violated article 19,21 and 22 of Indian constitution. But the court held that this act was not violative of article 21 Indian constitution. Then this case was overruled by the supreme court in maneka gandhi versus union of India(1978) case.

II. Key words

Detention - Right To Life - Freedom Of Movement - Constitutionality - Unreasonable

RESPONDENT	
ACTS & SECTIONS INVOLVED	INDIAN CONSTITUTION, 1950 1. ARTICLE 19,21&22 THE PREVENTIVE DETENTION ACT,1950

III. Introduction

It is a very important and one of the landmark judgments in India. In this case more than one articles of Indian constitution such as article 19, 21 and 22 were connected in this case. The persons detained for the reason of their unlawful activities. Under Indian penal code or under any other law people get punishment and undergone imprisonment for a particular period. In some cases people are unlawfully detained. Habeas corpus is a writ which gives protection against the unlawful detention. In this case article 21 of Indian constitution was restricted and the court uphold the validity of the preventive detention act, 1950.

IV. Facts of the case

A.K.Gopalan was detained in the madras jail under the preventive detention act, 1950. He was an active communist leader in madras presidency. Whenever he came out of the prison new detention was ordered against him without any reason and he went to jail again. After some years of detention, he filed writ petition under article 32 of Indian constitution, 1950 to challenge the detention. Ak gopalan argued that this detention violated his right to life and personal liberty which was guaranteed in article 19,21 and 22 of the Indian constitution. He also added that this preventive detention act, 1950 is unconstitutional.

CASE TITTLE	AK GOPALAN VERSUS STATE OF MADRAS . UNION OF INDIA : INTERVENER
CASE NO	1950 AIR 27, 1950 SCR 88
DATE OF THE ORDER	19.05.1950
CITATION	1950 AIR 27, 1950 SCR 88
JURISDICTION	SUPREMECOURT OF INDIA
QUORUM	KANIA , HIRALAL.J
AUTHOR OF THE JUDGEMENT	H.J. KANIA
APPALENT	AK GOPALAN
RESPONDENT	STATE OF MADRAS
COUNSEL FOR APPALENT	M. K. Nambiar (S. K. Aiyar and V.G. Rao, with him)
COUNSEL FOR	K. Rajah Aiya

V. Issues involved

1. Whether the preventive detention act is constitutional or unconstitutional?
2. Whether the detention is violated of article 19,21 and 22 of the Indian constitution or not?

VI. Arguments on behalf of the petitioner

- The petitioner argued that the order passed under the preventive detention act contravenes the provisions of article 19,21 of Indian constitution .
- They didn't disclose the grounds for his detention and the detention was unreasonable.
- This detention was made with the malafide intention .
- Article 13 of Indian constitution made for legislation after the constitution comes into operation .
- It's provided that any law which violates the right conferred by in this part 3 of Indian constitution shall not be made by state. If any law contravenes the provisions of part 3 of indian constitution that law shall be held void .
- In Indian constitution Article 19 guarantees the freedom of movement and article 21 guarantees the right to life. But the provisions of the preventive detention act not comply with those provisions.
- Thus this preventive detention act is unconstitutional.

VII. Arguments on behalf of the respondent

- ✓ Fundamental right conferred in part 3 of Indian constitution is not absolute.
- ✓ In order to determine whether the provisions of act is violated of constitution or not, it is necessary to notice that the extent and limitation of the article.
- ✓ The person who's already in imprisonment cannot exercise the right to freedom of movement.
- ✓ As per the article 21 of Indian constitution, no person shall be deprived

of his life except according to the provisions established by law.

- ✓ As per the schedule VII list 1 entry 9 and list III, entry 3 the parliament is empowered to enact the law of preventive detention.

VIII. Order of the court

- ❖ The judgement of this case was given by 6 judges constitutional bench of supreme court. Justice fazal ali gave the dissenting opinion.
- ❖ The court held that the personal liberty means only the physical body freedom and nothing beyond it.
- ❖ The article 19&21 are not related to each other
- ❖ The court restricted the ambit of article 21 of indian constitution
- ❖ The petition was rejected and the supreme court held that this act is not violative of Indian constitution.
- ❖ Justice Fazl ali said that detaining without valid reason is illegal and violative of article 21 of Indian constitution.

IX. Conclusion

In this case the honourable Supreme Court held that the Preventive detention Act does not violates the provisions of Indian constitution. This Act came under the exception of Article 21 of Indian constitution. Article 21 of Indian constitution is procedure established by law. This case was overruled by the judgement of Menaka Gandhi versus union of India in 1978. In this case the court held that the opinion of justice FAZL ALI said it to be correct and the supreme court widens the scope of the article 21 of Indian constitution by including the mental level such as dignity.

X. Relevant case laws

1. Administrator general of Bengal v. Premlal Mullick
2. The king v. The secretary of state



XI. References

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