Supreme Court of India
Maneka Gandhi vs Union Of India on 25 January, 1978

PETITIONER:
MANEKA GANDHI

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT25/01/1978

BENCH:
BEG, M. HAMEEDULLAH (CJ)
BENCH:
BEG, M. HAMEEDULLAH (CJ)
CHANDRACHUD, Y.V.
BHAGWATI, P.N.
KRISHNAIYER, V.R.
UNTWALIA, N.L.
FAZALALI, SYED MURTAZA
KAILASAM, P.S.

CITATION:
1978 AIR 597 1978 SCR (2) 621
1978 SCC (1) 248
CITATOR INFO :

R	1978 SC1514	(12)
E&R	1978 SC1548	(4,10,23)
R	1978 SC1594	(6,15)
E&R	1978 SC1675	(53,55,57,127,167,171,197,227,
E&R	1979 SC 478	(90,91A,129,159)
D	1979 SC 745	(20,30,36,37,52,77)
RF	1979 SC 916	(15,54)
R	1979 SC1360	(2,5)

R	1979	SC1369	(6)
R	1979	SC1628	(21)
R	1979	SC1725	(25)
R	1979	SC1803	(7)
R	1979	SC1918	(14)
E	1980	SC 470	(2,10)
R	1980	SC 847	(4)
R	1980	SC 882	(7)
RF	1980	SC 898	(11,41,46,47,57,63,135,136)
E	1980	SC 962	(116)
RF	1980	SC1535	(3,21,30)
RF	1980	SC1579	(30)
RF	1980	SC1632	(26)
RF	1980	SC1762	(12)
F	1980	SC1992	(12)
F	1980	SC2147	(39,63)
RF	1981	SC 487	(16)
R	1981	SC 613	(9)
RF	1981	SC 674	(6)
RF	1981	SC 679	(20)
R	1981	SC 746	(3,5,8)
R	1981	SC 814	(5,6)
R	1981	SC 818	(19,25,37,39,92)
RF	1981	SC 873	(10)
R	1981	SC 917	(22,23)
RF	1981	SC1621	(10)
RF	1981	SC1675	(1)
RF	1981	SC1767	(10)
R	1981	SC1829	(96)
RF	1981	SC2041	(8,9)
RF	1981	SC2138	(16,27,30,31)
R	1982	SC 710	(63)
RF	1982	SC1315	(29)
MV	1982	SC1325	(2,11,16,18,73,75,80)
RF	1982	SC1413	(13,38)
R	1982	SC1473	(11,14)

R	1982	SC1518	(21)
R	1983	SC 75	(7)
R	1983	SC 130	(10,13,14)
R	1983	SC 361	(2,12,13,14,15)
RF	1983	SC 465	(5)
R	1983	SC 473	(6,24,25)
R	1983	SC 624	(8)
D	1983	SC1073	(22,23)
F	1983	SC1235	(6)
RF	1984	SC1361	(19)
RF	1985	SC 231	(2)
RF	1985	SC 551	(35)
E&R	1985	SC1416	(81,93,100,101,102,103,104)
RF	1985	SC1737	(13)
R	1986	SC 180	(39)
RF	1986	SC 555	(6)
RF	1986	SC 872	(71)
RF	1986	SC1035	(11)
RF	1986	SC1370	(101)
RF	1988	SC 157	(9)
RF	1988	SC 354	(15)
R	1988	SC1531	(64)
D	1988	SC1737	(87)
F	1989	SC1038	(4)
E&D	1989	SC1335	(52)
F	1989	SC1642	(25)
R	1990	SC 334	(104)
R	1990	SC1031	(12)
R	1990	SC1277	(46,48)
R	1990	SC1402	(29)
R	1990	SC1480	(109)
R	1991	SC 101	(31,32,34,65,157,223,239,257,2
RF	1991	SC 345	(6)
RF	1991	SC 564	(4)
RF	1992	SC 1	(133)
D	1992	SC1020	(23,28)

RF	1992 SC1701	(21,26,27,28)
F	1992 SC1858	(19)

ACT:

Constitution of India Articles 14, 19 (1) (a) and 21--Personal liberty--Whether right to go abroad is part of personal liberty--Whether a law which Complies with Article 21 has still to meet the challenge of Article 19--Nature and ambit of Article 14--Judging validity with reference to direct and inevitable effect--Whether the right under Article 19(1) (a) has any geographical limitation.

Passports Act, 1967-Ss. 3,5,6,10(3)(c), 10(5)--Whether s.10(3)(c) is violative of Articles 14, 19(1) (a) (b) & 21--Grounds for refusing to grant passport--Whether the power to impound passport arbitrary--"in general public interest" if vague.

Principles of Natural Justice--Whether applies only to quasi judicial orders or applies to administrative orders affecting rights of citizens--When statute silent whether can be implied--Duty to act judicially whether can be spelt out--In urgent cases whether principles of natural justice can apply.

HEADNOTE:

The petitioner was issued a passport on June 1, 1976 under the Passport Act, 1967. On the 4thof July 1977, the petitioner received a letter dated 2nd July, 1977, from the Regional Passport Officer Delhi intimating to her that it was decided by the Government of India to impound her passport under s. 10(3)(c) of the Act "in public interest". The petitioner was required to surrender her passport within

7 days from the receipt of that letter. The petitioner immediately addressed a letter to the Regional Passport Officer requesting him to furnish a copy of the statement of reasons for making the order as provided in s.10(5). A reply was sent by the Government of India, Ministry of External Affairs on 6th July 1977 stating inter alia that the
Government decided "in the interest of the general public" not to furnish her copy of the statement of reasons for the making of the order. The petitioner thereupon filed the present Writ Petition challenging action of the Government in- impounding her passport and declining to give reasons for doing so. The Act was enacted on 24-4-67 in view of the decision of this Court in Satwant Singg Sawhney's case. The position which obtained prior to the coming into force of the Act was that there was no law regulating the issue of passports for leaving the shores of India and going abroad. The issue of passport was entirely within the unguided and unchannelled discretion of the Executive. In Satwant Singh's case, this Court bell by a majority that the
expression 'personal liberty' in Article 21 takes in, the right of locomotion and travel abroad and under Art. 21 no person can be deprived of his right to go abroad except according to the procedure established by law. This decision was accepted by the Parliament and the infirmity pointed but by it was set right by the enactment of the
Passports Act, 1967. The preamble of the Act shows that it was enacted to provide for the issue of passport and travel documents to regulate the departure from India of citizens of India and other persons and for incidental and ancillary matters. Se
ction 3 provides that no person shall denart
from or attempt to depart from India unless he holds in this

'behalf a valid passport or travel document. Section 5(1) provides for making of an application for issue of a passport or travel document for visiting foreign country. Sub-section (2) of section 5 says that on receipt of such application the Passport Authority, after making such enquiry, if any, as it may consider necessary, shall, by order in writing, issue or refuse to issue the passport or travel document or make or refuse to make that passport or travel document endorsement in

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-respect of one or more of the foreign countries specified in the application. Sub-section (3) requires the Passport Authority where it refuses to issue the passport or travel document or to make any endorsement to record in writing a brief statement of its reasons formaking such order. Section 6(1) lays down the grounds on which the Passport Authority shall refuse to make an endorsement for visiting any foreign country and provides that on no other ground the endorsement shall be refused. Section 6(2) specifies the grounds on which alone and on no other grounds the Passport Authority shall refuse to issue thePassport or travel document for visiting any foreign country and amongst various grounds set out there the last is that in the opinion of the Central Government the issue of passport or travel document to the applicant will not be in the public interest. Sub-section (1) of section 10 empowers the Passport Authority to vary or cancel the endorsement on a passport or travel document or to vary or cancel it on the conditions subject to which a passport or travel document has been issued having regard to, inter alia, the provisions of s. 6(1) or any notification under s. 19. Sub-section (2) confers powers on the Passport Authority to vary or cancel the conditions of the passport or travel document on the

application of the holder of the passport or travel document and with the previous approval of the Central Government. Sub-section (3) provides that the Passport Authority may impound or cause to be impounded or revoke a passport or travel document on the grounds set out in cl. (a) to (h). The order impounding the passport in the present, case, was made by the Central Government under cl. (c) which reads as follows :-

> "(c) If the passport authority deems it necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with the foreign country, or in the interests of the general public."

Sub-section (5) requires the Passport Authority impounding or revoking a passport or travel document or varying or cancelling an endorsement made upon it to record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same, unless, in any case, the Passport Authority is of the opinion that it will not be in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interest of the general public to furnish such a copy. The Central Government declined to furnish a copy of this statement of reasons for impounding the passport of the petitioner on the ground that it was not in the interest of the general public to furnish such copy to the petitioner.

The petitioner contended.

1.The right to go abroad is part of "personal liberty" within the meaning of that expression as used in Art. 21 and no one can be deprived of this right except according to the

procedure prescribed by law. There is no procedure prescribed by the Passport Act, for impounding or revoking a Passport. Even if some procedure can be traced in the said Act it is unreasonable and arbitrary in as much as it does not provide for giving an opportunity to the holder of the Passport to be heard against the making of the order.
2.Section 10(3) (c) is violative of fundamental rights guaranteed under Articles 14,19(1) (a) and (g) and 21.
3.The impugned order is made in contravention of the rules of natural justice and is, therefore, null and void. The impugned order has effect of placing an unreasonable restriction on the right of free speech and expression guaranteed to the petitioner under Article 19(1) (a) as also on the right to carry on the profession of a journalist conferred under Art. 19 (1) (g).
4. The impugned order could not consistently with Articles 19(1)(a) and (g)be passed on a mere information of the Central Government that the presence of the petitioner is likelyto be required in connection with the proceedings before the Commission of Inquiry.
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5.In order that a passport may be impounded under s. 10 (3) (c), public interest must actually exist in present and mere likelihood of public interest .arising in future would be no ground for impounding the passport.
6. It was not correct to say that the petitioner was likely to berequired for .giving evidence before the Shah Commission.
The respondents denied the contentions raised by the petitioner.
BEG, C. J., (Concurring with Bhagwati, J.)
1.The right of travel and to go outside the country is included in the fight to personal liberty. [643 G]
Satwant Singh Sawhney v. D. Ramarathnam Assistant Passport Officer, Covernment of India, New Delhi & Ors. [19671 3 SCR 525 and Kharak Singh v. State of U.P. & Ors. [1964] 1 SCR

332 relied on.

2.Article 21 though framed as to appear as a shield operating negatively against executive encroachment over something covered by that hield, is the legal recognition of both the protection or the shield as well as of what it protects which lies beneath that shield. [644 B]

A.K. Gopalan v. State of Madras, [1950] SCR 88 and Additional District Magistrate, Jabalpur v. S. S. Shukla [1976] Suppl. SCR 172 @ 327 referred to.

Haradhan Saha v. The State of West Bengal & Ors. [1975] 1 SCR 778, Shambhu Nath Sarkar v. State of West Bengal [1973] 1 S.C.R. 856 and R. C. ,Cooper v. Union of India [1973] 3 SCR 530 referred to.

3.The view that Articles 19 and 21 constitute watertight compartments has been rightly over-ruled. The doctrine that Articles 19 and 21 protect or regulate flows in different channels, was laid down in A. K. Gopalan's case in a context which was very different from that in which that approach was displaced by the counter view that the constitution must be read as an integral whole, with possi, ble overlappings of the subject matter, of what is sought to be protected by its various provisions, particularly by articles relating to fundamental rights. The ob. servations in A. K. Gopalan's case that due process with regard to law relating to preventive detention are to be found in Art. 22 of the

Constitution because it is a self-contained code for laws. That observation was the real ratio decidendi of Gopalan's case. Other observations relating to the separability of the subject matters of Art. 21 and 19 were mere obiter dicta. This Court has already held in A. D. M. Jabalpur's case by reference to the decision from Gopalan's cast that the ambit of personal liberty protected by Art. 21 is wide and comprehensive. The questions relating to either deprivation or restrictions of per sonal liberty, concerning laws falling outside Art. 22 remain really unanswered by the

Gopalan's case. The field of 'due process' for cases of preventive detenu tion is fully covered by Art. 22 but other parts of that field not covered by Art 22 are 'unoccupied' by its specific provisions. In what may be called unoccu -pied portions of the vast sphere of personal liberty, the substantive as well as procedural laws made to cover them must satisfy the requirements of both Arts 14 and 19 of the Constitution. [646 E-H, 647 B-D, 648 A-B]

Articles dealing with different fundamental rights contained in Part HI of the ,Constitution do not represent entirely separate streams of rights which do not ,mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow unimpeded .and impartial justice (social, economic and political), freedom (not only of thought, expression, belief, faith and worship, but also of association, movement vocation or occupation as well as of acquisition and possession of reasonable property), or equality (of status and of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups and classes), and of fraternity (assuring dignity-of the individual and the unity of the nation)

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which our Constitution visualfses. Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor beneficial but would defeat very objects of such protection. [648 B-D]

Blackstone's theory of natural rights cannot be rejected as totally irfelevantIf we have advanced today towards higher civilization and in a more enlightened era we cannot lag behind what, at any rate, was the meaning given to

'personal. liberty' long ago by Blackstone. Both the rights of personal security and personal liberty recognised by what Blackstone termed 'natural law' are embodied in Act. 21 of the Constitution. [649 A-C, 650 H, 651 A-B]

A.D. M. Jabalpur vs. S. S. Shukla [1976] Supp. S.C.R. 172

relied on.

The natural law rights were meant to be converted into our constitutionally recognised fundamental rights so that they are to be found within it and not outside it. To take a

contrary view would involve a conflict between natural law and our constitutional law. A 'divorce between natural law and our constitutional law would be disastrous. It would defeat one of the basic purposes of our Constitution. [652 B-C]

The total effect and not the mere form of a restriction would determine which. fundamental right is really involved in a particular case and whether a restriction. upon its exercise is reasonably permissible on the facts and circumstances of that case. [652 H, 653A]

If rights under Art. 19 are rights which inhere in Indian citizens, individuals carry these inherent fundamental constitutional rights with them-wherever they go, in so far as our law applies to them, because they are part of the

Indian National just as Indian ships, flying the Indian flag are deemed in international law to be floating parts of Indian territory. This analogy, however, could not be pushed too far because Indian citizens, on foreign territory, are only entitled by virtue of their Indian Nationality and Passports to the protection of the Indian Republic and the assistance of its Diplomatic Missions abroad. They cannot claim to be governed abroad by their own constitutional or personal laws which do not operate outside India. [653 A-C]

In order to apply the test contained in Arts. 14 and 19 of the Constitution we have to consider the objects for which the exercise of inherent rights recognised by Art. 21 of the Constitution are restricted as well as the procedure by which these restrictions are sought to be imposed, both substantive and procedural laws and actions taken under them will have to pass the test imposed by, Arts. 14 and 19,
whenever facts justifying the invocation of either of these Articles may be disclosed, for example, an international singer or dancer may well be able to complain of an unjustifiable restriction on professional activity by denial of a passport. In such a case, violation of both Arts. 21 and 19(1)(g) may be put forward making it necessary for the authorities concerned to justify the restriction imposed by showing satisfaction of tests of validity contemplated by each of 'these two Articles. [653 F-H]
The tests of reason and justice cannot be abstract. They cannot be divorced' from the needs of the nation. The tests have to be pragmatic otherwise theywould cease to be reasonable. The discretion left to the authority to impound a passport in Public interest cannotinvalidate the law itself. We cannot, out of fear, that such power will be misused, refuse to permit Parliament to entrust even such power to executive authorities as may be absolutely necessary to carry out the purposes of a validly exercisable power. In matters such as, grant, suspension, impounding or cancellation of passports, the possible dealing of an individual with nationals and authorities of other States have to be considered. The contemplated or possible activities abroad of the individual may have to be taken into account. There may be questions of national safety and welfare which transcend the importance of theindividual's inherent right to go where he or she pleases to go.
Therefore, the grant of wide discretionary power to the exe-

cutive authorities cannot be considered as unreasonable yet there must be procedural safeguards to ensure that the Power will not be used for purposes extraneous to the grant of the power. The procedural proprieties must be insisted upon. [654 A-E]

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A bare, look at the provisions. of s. 10(3) shows. that each of the orders which- could be passed; under s. 10(3) (a) and (b) requires a satisfaction of the Passport Authority on certain objective conditions which must exist in a case before it passes an order to impound a passport or a travel document. Impounding or revocation are placed side by side on the same footing in the provisions [654 G-H]

It is clear from the provisions of the Act that there is a statutory right also acquired, on fulfilment of the prescribed conditions by the holder of a passport, that it should continue to be effective for the specified period so long as no ground has come into existence for either its revocation or for impounding it which amounts to a suspension of, it for the time being. It is true that in a proceedings. under Art. 32, the Court is concerned only with the, enforcement of fundamental constitutional rights and not with any statutory rights apart from fundamental. rights. Article 21 , however, makes it Clear that violation of all law whether statutory or of any other kind is itself an infringement of the guaranteed fundamental right. [655 B-D]

The orders under s. 10(3) must be based upon some material even if that material concerns in some cases of reasonable suspicion arising from certain credible assertions made by reliable individuals. In an emergent situation, the impounding of a passport may become necessary without even giving an opportunity to be heard against such a step which

could be reversed after an opportunity is given to the holder of the passport to show why the step was unnecessary. However, ordinarily no passport could be reasonably either impounded or revoked without giving a prior opportunity to its holder to show cause against the proposed action. [655 D-E]

It is well-settled that even when there is no specific provision in a statute or rules made thereunder for showing case against action proposed to be taken against an individual, which affects the right of that individual the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be perform,,,' by the authority which has the power to take punitive or damaging action. [655 G]

State of Orissa v. Dr. (Miss) Binapani Dei & Ors. AIR [1967] SC 1269 @ 1271 relied on.

Cooper v. Wandsworth Board of Works, [1863] 14 C.B. (N. S.) 180 quoted with approval.

An order impounding a passport must be made quasi-judicially. This was not done in the present case. It cannot be said that a good enough reason has been shown too exist for impounding the passport of the petitioner. The petitioner had no opportunity of showing that the ground for impounding it given in this Court either does not exist or has no bearing on public interest or that the public interest can be better served in some other manner. The order should be quashed and the respondent should be directed to give an opportunity to the petitioner to show cause against any proposed action on such grounds as may be available. [656 E-G]

There were no pressing grounds with regard to the petitioner that the immediate action of impounding her passport was called for. The rather cavalier fashion in which the

disclosure of any reason for impounding of her passport was denied to the petitioner despite the fact that the only reason said to exist is the possibility of her being called to give evidence before a Commission of Inquiry. Such a ground is not such as to be reasonably deemed to necessitate its concealment in public interest. [656 G-H]

Even executive authorities when taking administrative action which involves any deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice [657 A-B]

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As the undertaking given by the Attorney General amounts to an offer to deal with the petitioner justly and fairly after informing her of any ground that may exist for impounding her passport, no further action by this Court is necessary. [657 C-D]

The impugned order must be quashed and Passport Authorities be directed to return the passport to the petitioner. Petition allowed with costs. [657D]

Chandrachud, J. (concurring with Bhagwati, J.)

The power to refuse to disclose the reasons for impounding a passport is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation. The reasons if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order impounding the passport, the refusal to disclose the reasons would also be open to the scrutiny of the court; or else the wholesome power of a dispassionate judicial examination of executive orders could

with impunity be set at nought by an obdurate determination to suppress the reasons. The disclosure made under the stress of the Writ Petition that the petitioner's passport was impounded because, her presence was likely to be required in connection with the proceedings before a Commission of Inquiry, could easily have been made when the petitioner called upon the Government to let her know the reasons why her passport was impounded. [658 A-D]

In Satwant Singh Sawhney's case this Court ruled, by majority, that the expression personal liberty which occurs in Art. 21 of the Constitution includes the right to travel abroad and that no person can be deprived of that right except according to procedure established by law. The mere prescription of some kind of procedure cannot even meet the mandate of Article 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The question whether the procedure prescribed by law which curtails or takes away the personal liberty guaranteed by Art. 21 is reasonable or not has to be considered not in the abstract or on hypothetical considerations like the provision for a full-dressed hearing as in a court room trial but in the contest, primarily, of the purpose which the Act is intended to achieve and of urgent situations which those who are charged with the duty of administering the Act may be called upon to deal with. Secondly, even the fullest compliance with the requirements of Art. 21 is not the journey's end because a law which prescribes fair and reasonable procedure for curtailing or taking away the personal liberty granted by Art. 21 has still to meet a possible challenge under the other provisions of the Constitution. In the Bank Nationalisation case the majority held that the assumption in A. K. Gopalan's case that certain Articles of the Constitution exclusively deal with specific matters cannot be accepted as correct. Though the Bank Nationalisation case was concerned with the inter-relationship of Arts. 31 and 19 and not of Arts. 21

and 19, the basic approach adopted therein as regards the construction of fundamental rights guaranteed in the different provisions of the Constitution categorically discarded the major premise of the majority judgment in Gopalan's case. [658 D-G, 659 A-B]

The test of directness of the impugned law as contrasted with its consequence was thought in A. K. Gopalan and Ram Singh's case to be the true approach for determining whether a fundamental right was infringed. A significant application of that test may be perceived in Naresh S. Mirajkar's case where an order passed by the Bombay High Court prohibiting the publication of a witness's evidence in a defamation case was upheld by this Court on the ground that it was passed with the object of affording protection to the witness in order to obtain true evidence and its impact on the right of free speech and expression guaranteed by Art. 19 (1) (a) was incidental. N. H. Bhagwati J. in Express Newspapers Case struck a modified note by evolving the test of proximate effect and operation of the Statute. That test saw its fruition in Sakal Paper's case where the Court giving precedence to the direct and immediate effect of the order over the form and object, struck down the Daily Newspapers (Price and Page) Order, 1960, on the ground that it violated Article 19(1)(a) of the Constitution. The culmi-

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nation of this thought process was reached in the Bank Nationalisation case where it was held by the majority, speaking through Shah J, that the extent of protection against the impairment of a fundamental right is determined by the direct operation of an action upon the individual's rights and not by the object of the Legislature or by the

form of the action. In Bennett Coleman's case the Court reiterated the same position. It struck down the newsprint policy restricting the number of pages of newspapers without the option to reduce the circulation as offending against the provisions of Art. 19(1)(a). [659F-H, 660 A-C]

Article 19(1)(a) guarantees to Indian Citizens the right to freedom of speech and expression. It does not delimit the grant of that right in any manner and there is no reason arising either out of interpretational dogmas or pragmatic considerations why courts should strain the language of the Article to cut down amplitude of that right. The plain meaning of the clause guaranteeing free speech and expression is that Indian citizens are entitled to exercise that right wherever they choose regardless of geographical considerations. [661 A-D]

The Constitution does not confer any power on the executive to prevent the exercise by an Indian citizen of the right of free speech and expression on foreign soil. The Constitution guarantees certain fundamental freedoms except where their exercise is limited by territorial considerations. Those freedoms may be exercised wheresoever one chooses subject to the exceptions or qualifications mentioned in Art. 19 itself. The right to go out of India is not an integral part of the right of free speech and expression. The analogy of the freedom of press being included in the right of free speech and expression is wholly misplaced because the right of free expression incontrovertibly includes the right of freedom of press. The right to go abroad on one hand and the right of free speech and expression on the other are made up basically of constituents so different that one cannot be comprehended in the other. The presence of the due process clause in the

5th and 14th amendments of the American Constitution makes significant difference to the approach of American Judges to the definition and evaluation of constitutional guarantees. This Court rejected the contention that the freedom. to form associations or unions contained in Article 19(1)(c) carried with it the right that a workers , union could do all that was necessary to make that right effective in order to achieve the purpose for which the union was formed. [See the decision in All India Bank Employees Association. [661 F, H, 662 A-13, E]

Bhagwati, J. (for himself Untwalia and Murtaza Fazal Ali, JJ)

The fundamental rights in Part III of the Constitution represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. But these freedoms are not and cannot be absolute, for absolute and unrestricted freedom of one may be destructive of the freedom of another. In a well ordered civilised society, freedom can only be regulated freedom. It is obvious that Article 21 though couched in negative language confers fundamental right to life and personal liberty. The question that arises for consideration on the language of Art. 21 is as to what is the meaning and content of the words .personal liberty' as used in this Article. In A. K. Gopalan's case a narrow interpretation was placed on the words 'personal liberty.' But there was no definite pronouncement made on this point since the question before the court was not so much the interpretation of the words 'personal liberty' as the inter-relation between Arts. 19 and 21. [667 G-H, 668 D-E, G, H, 669 A]

A.K. Gopalan v. State of Madras [1950] SCR 88 and Kharak Singh v. State of U. P. & Ors. [1964] 1 SCR 332 referred to.

In Kharak Singh's case the majority of this Court held that 'personal liberty' is used in the Article as a compendious term to include within itself all varieties of Tights which go to make up the personal liberties of man other than those dealt with in several clauses of Article 19(1). The minority however took the view that the expression personal liberty is a comprehensive one and the right to move freely is an attribute of personal liberty. The minority observed that it was not right to exclude any attribute of personal liberty from the scope

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and ambit of Art. 21 on the ground that it was covered by Art. 19(1) It was pointed out by the, minoritythat both Articles 19(1)and 21 are independent fundamental rights though there is a certain amountof overlapping; and there is no question of one being carved out of another. The minority view was upheld as correct and it was pointed out that it wouldnot be tight to read the expression 'personal liberty' in Art. 21 in a narrowand restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Art. 19(1). The attempt of the Court should be to expand, the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by the Court in R. C. Cooper's case and the approach ofthe Court in, the interpretation of the fundamental rights must now be in tune with this wave length. The expression 'personal liberty' in Art. 21 is of the widest amplitude and covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct

fundamental, rights and given additional protection under Art. 19(1). Thus Articles 19(1) and 21 are not mutually exclusive. [669 B-670 A-H]

R. C. Cooper v. Union of India [1973] 3 SCR 530 relied on.

Shambhu Nath Sarkar v. The State of West Bengal & Ors.

applied.

Haradhan Saha v. The State of West Bengal & Ors. followed.

This Court held in case of Satwant Singh that personal liberty within the meaning of Art. 21 includes with its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Obviously, the procedure cannot be arbitary, unfair or unreasonable. The observations in A. K. Gopalan's case support this view and apart from these observations, even on principle, the concept of reasonableness must be projected in the procedure contemplated by Art. 21, having regard to the impact of Art. 14 on Art.21. [671 A, D, G-H]

The decision of the majority in A. K. Gopalan's case proceeded on the assumption that certain Articles in the Constitution exclusively deal with specific matters and where the requirements of an article dealing with the particular matter in question are satisfied and there is no infringement of the fundamental right guaranteed by that Article, no recourse can be had to a fundamental right conferred by another article. This doctrine of exclusivity was overruled by a majority of the Court in R. C. Cooper's case. The ratio of the majority judgment in R. C. Cooper's case was explained in clear and categorical terms in Shambhu Nath Sarkar's case and followed in Haradhan Saha's case and Khudi Ram Das's case. [672 B-C, G, 673 A]

Shambhu Nath Sarkar v. State of West Bengal [1973] 1 SCR 856

referred to.
Haradhan Saha v. State of West Bengal & Ors. [1975] 1 SCR 778 and Khudiram Das v. The State of West Bengal & Ors. [1975] 2 SCR 832 relied on.
The law must therefore be now taken to be well-settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing procedure for depriving a person of personal liberty and there is consequently no infringement of the fundamental right conferred by Art. 21, such law ill so far as it abridges or takes away any fundamental
right under Article 19 would have to meet the challenge of that Article. Equally such law would be liable to be tested with reference to Art. 14 and the procedure prescribed by it would have to answer the requirement of that Article. [673 A-G]
The State of West Bengal v. Anwar Ali Sarkar [1952] SCR 284 and Kathi Raning Rawat v. The State of Saurashtra [1952] SCR 435 referred to.
Article 14 is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic and, therefore, it
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must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all
embracing scope and meaning, for to do so would be to violate its magnitude. Equality is a dynamic concept with
many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. [673 H, 674 A]
E.P. Royappa v. State of Tamil Nadu & Another [1974] 2 SCR 348 applied.
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. Article 14 strikes at

arbitrariness in State action and ensures fairness and equality ,of treatment. The principle of reasonableness which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omni-presence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article
14. It must be right and just and fair and not arbitrary, fanciful or oppressive.
[674 B-C]
It is true that the Passports Act does not provide for giving reasonable opportunity to the holder of the passport to be heard in advance before impounding a passport. But that is not conclusive of the question. If the statute make itself clear on this point, then no more question arises but even when statute is silent the law may in a given case make an implication and apply the principle. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. [674 F-G, 675 A-B] Wiseman v.
Borneman [1971] A.C. 297 approved.
Schmidt v. Secretary of State for Home Affairs
[1968] 112
Solicitor General 690 approved.
There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it
'negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial enquiry and not to administrative enquiry. It must

logically apply to both. It cannot be said that the
requirements of fairplay in action is any the less in an administrative enquiry than in a quasi-judicial one.
Sometimes an unjust decision in an administrative enquiry may have far more serious consequences than a decision in a quasi-judicial enquiry and hence rules of natural justice must apply, equally in an administrative enquiry which entails civil consequences. [676 G-H, 677 A]
Rex v. ElectricityCommissioners [1924] 1 K.B. 171 referred to.
Rex v. LegislativeCommittee of the Church Assembly [1928] 1 K. B. 411 and Ridge v. Baldwin[1964] A. C. 40 referred to.
Associated Cement Companies Ltd. v. P. N. Sharma & Anr. [1965] 2 SCR 366, State of Orissa v. Dr. Binapani [1967] 2 SCR 625 and A. K. Kraipak & Ors. v. Union of India & Ors. [1970] 1 SCR 457 relied.
The duty to act judicially need not be superadded but it may be spelt out 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. Fairplay in action requires that in administrative proceedings also the doctrine of natural justice must be held to be applicable. [678 B-C]
In re : H. K. (An Infant) [1967] 2 Q.B. 617 and Schmidt v. Secretary of State for Home Affairs referred to.
D F.O. South Kheri v. Ram Sanehi Singh [1973] 3 S.C.C. 864 relied on
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The law is not well settled that even in an administrative proceeding which involves civil consequences the doctrine of natural justice must be held to be applicable. [680 A]
The power conferred on the Passport Authority is to impound

a passport and the consequence of impounding a passport would be to impair the constitutional right of the holder of the passport to go abroad during the time that the passport is impounded. The passport can be impounded only on certain specified grounds set out in section 10(3) and the Passport Authority would have to apply its mind to the facts and circumstances of a given case and decide whether any of the specified grounds exists which would Justify impounding of the passport. The authority is also required by s. 10(5) to record in writing a brief statement of the reasons for making the order impounding a passport and save in certain exceptional situations, the authority is obliged to' furnish a copy of the statement of reasons to the holder of the
passport. Where the Passport Authority which has impounded a passport is other than the Central Government a right of appeal against the order impounding the passport is given by section 11. Thus, the power conferred on the Passport Authority to impound a passport is a quasijudicial power. The rules of natural justice would in the circumstances be applicable in the exercise of the power of impounding a passport even on the orthodox view which prevailed prior to A. K. Kraipak's case. The same result must follow in view of the decision in A. K. Kraipak's case, even if the power to impound a passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences. The argument of the Attorney General however was that having regard to the nature of the action involved in the impounding of a passport, the audi alteram partem rule must be held to be excluded because if notice were to be given to the holder of the passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded he might immediately on the strength of the passport make good his exit from the country and the object of impounding etc.,

would be frustrated. Now it is true that there may be cases where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action may warrant exclusion of the audi alteram partem rule. Indeed, there are certain wellrecognised exceptions to the audi alteram Partem rule established by judicial decisions. These exceptions, do not in any way militate against the principle which requires fair play in administrative action. The word exception is really a misnomer because in these exceptional cases the audi alteram partem rule is held inapplicable not by way of an exception to fairplay in actionbut because nothing unfair can be inferred by not conferring an opportunity to present or meet a case.The life of the law is not logic but experience. Therefore, every legal proposition must in the ultimate analysis be tested on Me touch-stone of pragmatic realism. [680 B-F, H, 681 C-F]

The audi alteram partem rule may, therefore, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But, at the same time, it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where Compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the Court should not be too ready to eschew it in its application to a given case. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. The audi alteram partem rule is not cast in a rigid mould and

judicial decisions establish that it may stiffer situational modifications. The core of it must, however, remain, namely, that the person affected must have reasonable opportunity' of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. It would, not therefore be right to conclude that the audi alteram partem? rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport. The passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the
order impounding
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the Passport is made, an opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the
Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the Passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act. If such a provision were held to be incorporated in the Act by necessary implication the procedure prescribed by the Act for impounding a passport would be right, fair and just and would not suffer from arbitrainess or unreasonableness. Therefore, the procedure established by the Passport Act for

impounding a passport must be held to be in conformity with the requirement of Art. 21 and does not fall foul of that Article. [681 G-H, 682 A-C, E-H, 683 A-B]

In the present case, however, the Central Government not only did not give an opportunity of hearing of the petitioner after making the impugned order impounding her passport but even declined to furnish to the petitioner the reasons for impounding her passport despite requests made by her. The Central Government was wholly unjustified in withholding the reasons for impounding the passport and this was not only in breach of the statutory provisions but it also amounted to denial of opportunity of hearing to the petitioner. The order impounding the passport of the petitioner was, therefore, clearly in violation of the rule of natural justice embodied in the maxim audi alteram partem and was not in conformity with the procedure prescribed by the Act. The learned Attorney General, however, made a statement on behalf of the Government of India that the Government was agreeable to considering any representation that may be made by the petitionerin respect of the impounding of her passport and giving her an opportunity in the matter, and that the representation would be dealt with expeditiously in accordance with law. This statement removes the vice from the order impounding the passport and it can no longer be assailed on the ground that it does not comply with the audi alteram partem rule or is not in accord with the procedure prescribed by the Act. [683 C-G]

The law is well settled that when a statute vests unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority,, in exercise of the power, it would be affected by the vice of discrimination since it would leave it open to the authority to discriminate between persons and things similarly situated. However, it is

difficult to say that the discretion conferred on the passport authority is arbitrary or unfettered. There are four grounds set out in section 10(3)(c) which would justify the making of an order impounding a passport. [684C-D]

The words "in the interest of the general public" cannot be characterised as vague or undefined. The expression "in the interest of the general public" has clearly a well defined meaning and the Courts have often been called upon to decide whether a particular action is in the interest of general public or in public interest and no difficulty has been experienced by the Courts in carrying out this exercise. These words are in fact borrowed ipsissima verba from Art 19(5) and it would be nothing short of heresay to accuse the constitution makers of vague and loose thinking. Sufficient guidelines are provided by the Act itself and the power conferred on the Passport Authority to impound a passport cannot be said to be unguided or unfettered. Moreover the exercise of this power is not made dependent on the subjective opinion of the Passport Authority as regards the necessity of exercising it on one or more grounds stated in S.10(3)(c), but the Passport Authority is required to record in writing a brief statement of reasons for impounding the passport and save in certain exceptional circumstances, supply a copy of such statement of reasons to the person affected so that the person concerned can challenge the decision of the Passport Authority in appeal and the Appellate Authority can examine whether the reasons given by the Passport Authority are correct and if so whether they justify the making of the order impounding the passport. It is true that when the order impounding the passport is made by the Central

Government there is no appeal against it. But it must be remembered that in such a case the power is exercised by the Central Government itself and it can safely be assumed that the Central Govt. will exercise the power in a reasonable and responsible manner. When power is vested in a high authority like the Central Government abuse of power cannot be lightly assumed and in any event, if there is abuse if the power the arms of the Court are long enough to reach it and to strike it down. The power conferred on the Passport Authority to impound a passport under section 10(3)(c)
cannot be regarded as discriminatory. [684-D-H, 685 A-C]
The law on the point viz. the proper test or yard-stick to be applied for determining whether a statute infringes a particular fundamental right, while adjudging the constitutionality of a statute on the touchstone of
fundamental rights has undergone radical changes since the days of A.K. Gopalan's case [1950] SCR 88, which was
followed in Ram Singh and Ors. v. State of Delhi [1951] SCR 451 and applied in Naresh Shridhar Mirajikar & Ors. v. State of Maharashtra & Anr. [1966] 3 SCR 744, [685 D-G, 686-B]
According to these decisions, the theory was that the object and form of state action determine the extent of protection which may be claimed by an individual and the validity of such action has to be judged by considering whether it is "directly in respect of the subject covered by any
particular article of the Constitution or touches the said article only incidentally or indirectly". The test to be applied for determining the constitutional validity of state action with fundamental right therefore was : what is the object of the authority in taking the action : What is the subject matter of the action and to which fundamental right does it relate ? This theory that "the extent of protection

of important guarantees, such as the liberty of persons and right to property, depend upon the form and object of the state action not upon its direct operation upon the individual's freedom" held sway, in spite of three decisions of the Supreme Court in Dwarkadass Srinivas v. The Sholapur Weaving Co. Ltd. [1954] SCR 674; Express Newspaper (P) Ltd.
JUDGMENT: