

DE JURE NEXUS LAW JOURNAL

Author:

Keshav Chawla

Symbiosis Law School, Noida

1st Year, BBA LL.B.



AK GOPALAN VS. STATE OF MADRAS

Court- The Supreme Court of India

Citation- AIR 1950 SC 27

Coram- Chief Justice (C.J.) Harilal Kania, Justice M. Patanjali Sastri, Justice Mehr Chand Mahajan, Justice B.K. Mukherjee, and Justice Sudhi Ranjan Das, Justice Fazal Ali Saiyid

Subject- Constitutional Law

Judgment- India

Brief Facts About the Case-

This judgment was coined as Landmark because it was the first time when the Indian judiciary dealt with various articles protected in part 3 of the Indian Constitution. It is the beginning of extensive interpretation of Fundamental Rights.

A.K Gopalan (Petitioner), was a leader of a communist party. He was detained in jail under the Preventive Detention Act, 1950. The act gives legality to detain without giving any reason/explanation. He decided to file a writ petition of Habeas Corpus under Article 32 of the Indian Constitution to challenge the validity of the Preventive Detention Act, 1950, and claimed that it's Sections 7, 8, 10,12, and 13 violates Article 13, 19, and 21.

Preventive Detention Act, 1950

Section 7- “(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.”

Section 8- “(1) The Central Government and each State Government shall, whenever necessary constitute one or more Advisory Boards for the purposes of this Act. (2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as. Judges of a High Court, and such persons shall be appointed by the Central Government or the State Government, as the case may be. (3) The appropriate Government shall appoint one of the members of the Advisory Board who is or has been a Judge of a High Court to be its Chairman, and in the case of a Union territory the appointment to the Advisory Board, or any person who is Judge of the High Court of a State shall be with the previous approval of the State Government : Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952 (61 of 1952), to dispose of any reference under Section 9 pending before it at such commencement.”

Section 10- “The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if in any, particular case it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(2A) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(3) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified shall be confidential”

Section 12- “(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897-(10 of 1897), a detention order may at any time be revoked or modified-(a) notwithstanding that the order has been made by an officer mentioned to sub-section (2) of Section 3 by the State Government to which that officer is subordinate or by Central Government; (b) notwithstanding that the order has been made by a State Government, or by the Central Government, 33 (2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.”

Section 13- “(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897-(10 of 1897), a detention order may at any time be revoked or modified-(a) notwithstanding that the order has been made by an officer mentioned to sub-section(2) of Section 3 by the State Government to which that officer is subordinate or by Central Government;(b) notwithstanding that the order has been made by a State Government, or by the Central Government, 33(2) The revocation of expiry of a detention order shall not bar the making of a fresh detention order under Section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.”

Issues Raised-

- Regardless of whether the Preventive Detention Act of 1950 abuses Articles 19 and 21 of the Constitution?
- Regardless of whether there is an association between Articles 19 and 21 of the Constitution, or would they say they are unmistakable?
- Regardless of whether the Preventive Detention Act, 1950, under Article 22 of the Indian Constitution, 1950?

Judgment-

Here Supreme Court had rejected the petitioner’s arguments, noting that “Article 22 of the Indian constitution is a self-contained Code and that he was detained in accordance with the procedure established by law. The court also held that *“if the state takes away a person’s liberty in accordance with the procedure established by law, i.e., if the detention was done in accordance with the procedure of law, it cannot be said that it violates the provisions contained in Articles 14, 19, and 21 of the Indian Constitution.”*

Further, the court declared that the section 7,8,10,11,12,13 valid. However, section 14 was coined as unconstitutional as it violated fundamental rights.

The detention of the petitioner was determined legal by the high court, thus dismissing the writ petition of Habeas Corpus.

CONCLUSION-

In the **AK Gopalan** case, the Court had understood Article 21 extremely literally and went on to affirm that the expression procedure established by law meant any procedure which was laid down in the statute by the competent legislature that could deprive a person of his life or personal liberty.

However, in the year 1977 the apex court upheld the dissenting opinion of Justice Fazal Ali in the case of *Maneka Gandhi v. Union of India* [AIR 1978 SC 597].