

Hon'ble Justice M. Patanjali Sastri (Former Chief Justice of India)



"It is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all".

—Chief Justice M. Patanjali Sastri

**Mandakolathur Patanjali Sastri (04 January 1889 – 16 March 1963).
Second Chief Justice of India, held the position from 07 November 1951
to 03 January 1954.**

Justice Sastri was son of Pandit Krishna Sastri, senior Sanskrit professor/scholar of Pachaiyappa College, Madras. He graduated from Madras University in around 1910 and became a law graduate in 1912 from the same University.

Patanjali Sastri began his career as an advocate in the Madras High Court in 1914 and within a short time gained good reputation by acquiring special expertise in tax matters and solely represented famous Chettiar clients. In 1922, he was appointed Standing Counsel to the Commissioner of Income Tax in recognition of his formidable experience and standing in tax matters. He held this position till his elevation to High Court on 15 March 1939. During this time, he decided several complicated cases that followed after the passing of the Madras Agriculturists Debt Relief Act.

On 6 December 1947, at third in seniority level and served nine years as judge in the Madras High Court, he was again elevated as judge in Federal Court of India which subsequently became the Supreme Court of India. Sir Harilal

J. Kania, Chief Justice of India passed away untimely on 6 November 1951 with the consequence that Justice Sastri, as senior-most associate justice, was appointed as Chief Justice of India. Justice Sastri served in this position till he attained retirement age on 3 January 1954.

Justice Sastri authored 75 judgements and was a part of 171 benches in Supreme Court. Chief justice Sastri has given about 51% of his total decisions in constitutional matters followed by 17% in direct tax and 15% in criminal cases.

Discussions from that era suggest that Prime Minister Jawaharlal Nehru preferred Justice M.C. Chagla (who was third in seniority) to be the Chief Justice instead of Justice Sastri. In his autobiography, former Attorney General M.C. Setalvad mentions that Nehru ultimately conceded when Supreme Court judges “threatened to resign” if Justice Sastri’s seniority was overlooked.

Justice Sastri after his retirement remained active in different capacities in variable fields including his valuable contribution with the Delhi branch of the International Law Association and headed the Airlines Compensation Commission which oversaw the nationalisation of India’s airlines. He also served as Member of the Board of Directors of the Press Trust of India and served as legislator in Madras Legislative Council from July 1958 to April 1962.

Being an eminent Sanskrit scholar and active member of the Executive Council of Benares Hindu University, he remained active in its affairs, at the time of his death on 16 March 1963, he had Chaired the Central Sanskrit Board since 1959, as well as the Kendriya Sanskrit Vidya Peeth at Tirupati. Chief Justice Sastri also given notable contribution as Pro-Chancellor of Delhi University during 1953-1956.

Landmark decisions

A.K. Gopalan v. The State of Madras, AIR 1950 Supreme Court 27

A Constitution Bench of the Supreme Court by a majority of 4:2 upheld the constitutionality of the Preventive Detention Act, 1950. Petitioner A.K. Gopalan, a communist politician, was detained for his three political speeches which he delivered in 1947. He challenged his detention by filing a writ of habeas corpus under Article 32 of Constitution of India, alleging violations of his freedom and rights under Articles 13, 19, 21 and 22. Gopalan had importantly argued that his detention violated Article 21 as it was without a “procedure established by law”.

The majority, including Justice Sastri, found a violation concerning only one provision of the Act—Section 14, which prohibited disclosure of reasons for detention. The bench held that this provision was severable from the rest of the statute. The majority further observed that “law” in “procedure established

by law” was understood to be State-made law, distinct from the “due process of law” philosophy adopted in the US.

Justice Sastri wrote that “law” under Article 21 did not mean “*jus naturale* civil law”, meaning Article 21 could not be interpreted through natural law, but it was law in a positive sense. Justice Sastri also clarified that “procedure established by law” would not be any law enacted by a “competent legislature” — rather it should be understood as the well-established normative criminal procedure only.

This is the first case in which the different Articles of the Constitution of India contained in the Chapter on Fundamental Rights has come for discussion before Supreme Court of India.

A.K. Gopalan, the petitioner was under detention previously under orders passed by the Government of Madras under the Madras Maintenance of Public Order Act, 1947. At the time the validity of that Act and all other similar local public safety enactments were questioned in some of the High Courts in India. After the Constitution of India came into force, the Parliament enacted a comprehensive measure called the Preventive Detention Act, 1950, extending to the whole of India. The Act came into force on 25th February 1950, and, on the 27th February, the Government of Madras, in purported exercise of the powers conferred by the impugned Act and in supersession of earlier orders, directed the detention of the petitioner under the new Act i.e. Preventive Detention Act, 1950.

A.K. Gopalan, in his petition before Supreme Court of India had shown various dates of his detention since December, 1947. Petitioner already under the custody of the Superintendent, Central Jail, Cuddalore, on one of the Orders of the Madras State Government was served another Order dated 01 March, 1950 under section 3 (1) of the Preventive Detention Act, 1950. It was said in the Order that the Governor of Madras was satisfied that it was necessary to make the order with a view to preventing him from acting in any manner prejudicial to the security of the State and the maintenance of public order.

On 20th March 1950 a petition was presented to Supreme Court under Article 32 of the Constitution praying for the issue of a writ of habeas corpus directing the State of Madras to produce him before the Court and to set him at liberty.

He challenged the legality of the Order with the contention that it contravenes the provisions of Articles 13, 19 and 21 and the provisions of Preventive Detention Act are not in consonance with Article 22 of the Constitution of India. The contention of the petitioner was that the impugned legislation abridges or infringes the rights given by Articles 19-21 and is also not in accordance with the permissive legislation on preventive detention allowed under Articles 22

(4) and (7) and in particular is an infringement of the provisions of Article 22 (5). He has also challenged the validity of the order on the ground that it is issued with *mala fide* intention.

It is obvious that by the insertion of Part III, the powers of the Legislature and the Executive, both of the Union and the States, are further curtailed and the right to enforce the Fundamental Rights found in Part III by a direct application to the Supreme Court is removed from the legislative control. The wording of Article 32 shows that the Supreme Court can be moved to grant a suitable relief, mentioned in Article 32(2), only in respect of the Fundamental Rights mentioned in Part III of the Constitution.

The inclusion of Article 13(1) and (2) in the Constitution appears to be a matter of abundant caution. Even in their absence, if any of the fundamental rights was infringed by any legislative enactment, the Court has always the power to declare the enactment, to the extent it transgresses the limits, invalid. [By Article 13 it is expressly provided that all laws in force in the territory of India, immediately before the commencement of the Constitution, insofar as they are inconsistent with the provisions of this Part, to the extent of such inconsistency, are void. Therefore, all laws in operation in India on the day the Constitution came into force, unless otherwise saved, to the extent they are inconsistent with this Chapter on Fundamental Rights, become automatically void. Under Article 13(2) provision is made for legislation after the Constitution comes into operation. It is there provided that the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention, be void.]

In this case there is direct concern with the Articles under the caption "Right to Freedom" (Articles 19-22). As the preventive detention order results in the detention of the applicant in a cell it was contended on his behalf that the rights specified in Article 19(1) (a), (b), (c), (d), (e) and (g) have been infringed. It was argued that because of his detention he cannot have a free right to speech as and where he desired and the same argument was urged in respect of the rest of the rights mentioned in sub-clauses (b), (c), (d), (e) and (g).

Supreme Court observed that, "Article 19 has to be read without any pre-conceived notions. So read, it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for

instance, for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of Article 19 does not arise. **The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detainee's life.** On that short ground, in my opinion, this argument about the infringement of the rights mentioned in Article 19(1) generally must fail.

It was argued that by the confinement of the petitioner under the preventive detention order his right to move freely throughout the territory of India is directly abridged and therefore the State must show that the impugned legislation imposes only reasonable restrictions on the exercise of that right in the interests of the general public, under Article 19(5). The Court is thus enjoined to inquire whether the restrictions imposed on the detained person are reasonable in the interests of the general public."

What is sought to be protected by that Article 19 sub-clause (5) is the right to freedom of movement, i.e., without restriction, throughout the territory of India. Read with their natural grammatical... meaning the sub-clause (5) only means that if restrictions are sought to be put upon movement of a citizen from State to State or even within a State such restrictions will have to be tested by the permissive limits prescribed in clause (5) of that Article. It permits the imposition of reasonable restrictions on the exercise of such right in the interest of general public. Such restriction may be appropriate to prevent a person from going from one Province to another or one area to another, having regard to local conditions prevailing in particular areas.

Supreme Court said that, "in order to appreciate the true scope of Article 19 it is useful to read it by itself and then to consider how far the other Articles in Part III affect or control its meaning. It is the first Article under the caption 'Right to Freedom'. It gives the rights mentioned in Article 19(1) (a) to (g) to all citizens of India. These rights read by themselves and apart from the controls found in clauses (2) to (6) of the same article, specify the different general rights which a free citizen in a democratic country ordinarily has. Having specified those rights, each of them is considered separately from the point of view of a similar right in the other citizens, and also after taking into consideration the principle that individual liberty must give way, to the extent it is necessary, when the good or safety of the people generally is concerned. Thus, the right to freedom of speech and expression is given by Article 19(1) (a). But clause (2) provides that such right shall not prevent the operation of a law which relates to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State. Clause (2) thus only emphasizes that while the individual citizen has a free right of speech or expression, he cannot be

permitted to use the same to the detriment of a similar right in another citizen or to the detriment of the State. Thus, all laws of libel, slander, contempt of Court or laws in respect of matters which offend against decency or morality are reaffirmed to be operative in spite of this individual right of the citizen to freedom of speech and expression.

Similarly; that right is also subject to laws which prevent undermining the security of the State or against activities which tend to overthrow the State. A similar analysis of clauses (3) and (4) shows similar restrictions imposed on similar grounds. In the same way clause (5) also permits reasonable restrictions in the exercise of the right to freedom of movement throughout the territory of India, the right to reside and settle in any part of the territory of India or the right to acquire, hold and dispose of property, being imposed by law provided such reasonable restrictions on the exercise of such right are in the interest of the general public."

Reading Article 19 in that way as a whole the only concept appears to be that the specified rights of a free citizen are thus controlled by what the framers of the Constitution thought were necessary restrictions in the interest of the rest of the citizens. Under Article 19, the right to move freely throughout the territory of India is an entirely different concept from the right to "personal liberty" as contemplated by Article 21. "Personal liberty" covers many more rights in one sense and has a restricted meaning in another sense. For instance, while the right to move or reside may be covered by the expression, 'personal liberty', the right to freedom of speech (Article 19(1) (a)) or the right to acquire, hold or dispose of property (in Article 19(1)(f)) cannot be considered a part of the personal liberty of a citizen. The contents and subject-matters of Articles 19 and 21 are thus not the same and they proceed to deal with the rights covered by their respective words from totally different angles.

It was argued that Articles 19 and 21 should be read together as complementing each other Article 19 gave substantive rights to citizens while Article 21 prescribed that no person can be deprived of his life and personal liberty except by procedure established by law. Even so, on a true construction of Article 19, it seems that both preventive and punitive detention are outside the scope of Article 19.

"Right to Freedom" gives the rights mentioned in Article 19(1)(a) to (g) to all citizens of India. These rights read by themselves and apart from the controls found in clauses (2) to (6) of the same Article, specify the different general rights which a free citizen in a democratic country ordinarily has. Having specified those rights, each of them is considered separately from the point of view of a similar right in the other citizens, and also after taking into consideration the principle that individual liberty must give way, to the extent

it is necessary, when the good or safety of the people generally is concerned. Thus, the right to freedom of speech and expression is given by Article 19(1) (a) but clause (2) provides that such right shall not prevent the operation of a law. Similarly, that right is also subject to laws which prevent undermining the security of the State or against activities which tend to overthrow the State. Reading Article 19 in that way as a whole the only concept appears to be that the specified rights of a free citizen are thus controlled by what the framers of the Constitution thought were necessary restrictions in the interest of the rest of the citizens. Reading Article 19 in that way it appears that the concept of the right to move freely throughout the territory of India is an entirely different concept from the right to "personal liberty" contemplated by Article 21. The contents and subject matters of Articles 19 and 21 are thus not the same and they proceed to deal with the rights covered by their respective words from totally different angles.

Concept of "Personal Liberty."

Under the scheme and arrangement made in the constitution, specific limitations in respect of each right are provided. While the expression "personal liberty" in Article 21 is generally controlled by the general expression "procedure established by law." Constitution in Article 19, and also in other articles in Part III, thus attempts to strike a balance between individual liberty and the general interest of the society. The restraints provided by the Constitution on the legislative powers or the executive authority of the State thus operate as guarantees of life and personal liberty of the individuals.

Deprivation (total loss) of personal liberty is quite different from restriction (which is only a partial control) on the right to move freely which is relatively a minor right of a citizen as safeguarded by Article 19(1)(d). Deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India. Supreme Court said that, "unable to accept the contention that the word "deprivation" includes within its scope "restriction" when interpreting Article 21. Article 22 envisages the law of preventive detention."

Article 21 which in Part III under the caption "Right to Freedom" runs as follows: -

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

This article has been strongly relied upon by the petitioner in support of his contention that the impugned Act is ultra vires the Constitution as it abridges the right given by this article to every person. It was argued that under the Constitution of the United States of America the corresponding provision is found in the 5th and 14th Amendments where the provision, *inter alia*, is "that

no person shall be deprived of his life or liberty or property except by due process of law.”

It was contended by the petitioner that the Indian Constitution gives the same protection to every person in India, except that in the ‘United States “due process of law” has been construed by its Supreme Court to cover both substantive and procedural law, while in India only the protection of procedural law is guaranteed. It was contended that the omission of the word “due” made no difference to the interpretation of the words in Article 21.

As to the meaning of the word “law” it was argued that it meant principles of natural justice. It meant “jus”, i.e., law in the abstract sense of the principles of natural justice, as mentioned in standard works of Jurisprudence, and not “lex”, i.e., enacted law. It was argued that four principles of natural justice recognised in all civilized countries were covered, in any event, by the word “law”. They are:

- (1) An objective test, i.e., a certain, definite and ascertainable rule of human conduct for the violation of which one can be detained;
- (2) Notice of the grounds of such detention;
- (3) An impartial tribunal, administrative, judicial or advisory, to decide whether the detention is justified; and
- (4) Orderly course of procedure, including an opportunity to be heard orally (not merely by making a written representation) with a right to lead evidence and call witnesses.

Supreme Court said that, “In our opinion, this line of approach is not proper and indeed is misleading. To read the word “law” as meaning rules of natural justice will land one in difficulties because the rules of natural justice, as regards procedure, are nowhere defined and in my opinion the Constitution cannot be read as laying down a vague standard. This is particularly so when in omitting to adopt “due process of law” it was considered that the expression “procedure established by law” made the standard specific.

Further, in contrast to the American Constitution, the Indian Constitution is a very detailed one. The Constitution itself provides in minute details the legislative powers of the Parliament and the State Legislatures. The same feature is noticeable in the case of the judiciary, finance, trade, commerce and services. It is thus quite detailed and the whole of it has to be read with the same sanctity, without giving undue weight to Part III.

Four marked points of distinction between the clause in the American Constitution and Article 21 of the Constitution of India may be noticed at this stage. The first is that in U.S.A. Constitution the word “liberty” is used

simpliciter while in India it is restricted to personal liberty. (2) In U.S.A. Constitution the same protection is given to property, while in India the fundamental right in respect of property is contained in Article 31. (3) The word "due" is omitted altogether and the expression "due process of law" is not used deliberately. (4) The word "established" is used and is limited to "Procedure" in our Article 21.

Supreme Court further observed that, "whole argument of the petitioner is rounded on the meaning of the word "law" given to it by the Supreme Court of America. It seems unnecessary to embark on a discussion of the powers and jurisdiction of the Supreme Court of the 'U.S.A. and how they came to enlarge or abridge the meaning of law in the expression "due process of law". There is no justification to adopt the meaning of the word "law" as interpreted by the Supreme Court of U.S.A. in the expression "due process of law" merely because the word "law" is used in article 21. In American jurisdiction the meaning of "due process of law" got different interpretations in different circumstances and at different times mostly carrying meaning of law as 'reasonable law' in the understanding of various Supreme Court judges. Moreover, to control the meaning so given to that expression from time-to-time the doctrine of police powers was brought into play. That doctrine, shortly put, is that legislation meant for the good of the people generally, and in which the individual has to surrender his freedom to a certain extent because it is for the benefit of the people at large, has not to be tested by the touchstone of the "due process of law" formula.

No extrinsic aid is needed to interpret the words of Article 21, which in my opinion, are not ambiguous. Normally, read, and without thinking of other Constitutions, the expression "procedure established by law" must mean procedure prescribed by the law of the State. If the Indian Constitution wanted to preserve to every person the protection given by the due process clause of the American Constitution there was nothing to prevent the Assembly from adopting the phrase."

The phrase "procedure established by law" seems to be borrowed from Article 31 of the Japanese Constitution. Articles of the Japanese Constitution have not been incorporated in the Constitution of India in the same language. It is not shown that the word "law" means "jus" in the Japanese Constitution. In the Japanese Constitution these rights claimed under the rules of natural justice are not given by the interpretation of the words "procedure established by law" in their Article 31.

The word "due" in the expression "due process of law" in the American Constitution is interpreted to mean "just," according to the opinion of the

Supreme Court of U.S.A. That word imparts jurisdiction to the Courts to pronounce what is “due” from otherwise, according to law. The deliberate omission of the word “due” from Article 21 lends strength to the contention that the justiciable aspect of “law”, i.e., to consider whether it is reasonable or not by the Court, does not form part of the Indian Constitution. The omission of the word “due”, the limitation imposed by the word “procedure” and the insertion of the word “established” thus brings out more clearly the idea of legislative prescription in the expression used in Article 21. By adopting the phrase “procedure established by law” the Constitution gave the legislature the final word to determine the law.

A detailed discussion of the true limits of Article 21 will not be necessary if Article 22 is considered a code to the extent there are provisions therein for preventive detention. In this connection it may be noticed that the Articles in Part III deal with different and separate rights. Under the caption “Right to Freedom” Articles 19–22 is grouped but each with a separate marginal note. It is obvious that Article 22(1) and (2) prescribe limitations on the right given by Article 21. If the procedure mentioned in those articles is followed the arrest and detention contemplated by Article 22(1) and (2), although they infringe the personal liberty of the individual, will be legal, because that becomes the established legal procedure in respect of arrest and detention.

It is obvious that in respect of arrest and detention, Article 22 (1) and (2) provide safeguards. These safeguards are excluded in the case of preventive detention by Article 22(3). But safeguards in connection with such detention are provided by clauses (4) to (7) of the same Article. It is therefore clear that Article 21 has to be read as supplemented by Article 22. Reading in that way the proper mode of construction will be that to the extent the procedure is prescribed by Article 22 the same is to be observed; otherwise, Article 21 will apply. On the points of procedure which expressly or by necessary implication are not dealt with by Article 22, the operation of Article 21 will remain unaffected.

Article 22 in particular are the only restrictions on that power and but for those provisions the power to legislate on this subject would have been quite unrestricted. Parliament could have made a law without any safeguard or any procedure for preventive detention. Such an autocratic supremacy of the legislature is certainly cut down by Article 21. Therefore, if the legislature prescribes a procedure by a validly enacted law and such procedure in the case of preventive detention does not come in conflict with the express provisions of Part III or Article 22(4) to (7), the Preventive Detention Act must be held valid notwithstanding that the Court may not fully approve of the procedure prescribed under such Act.

Section 14 of Preventive Detention Act, 1950 was strongly attacked on the ground that it violated all principles of natural justice and even infringed the right given by Article 22 (5) of the Constitution.

“Section 14 of the Preventive Detention Act, 1950 runs as follows:

- (1) No Court shall, except for the purposes of a prosecution for an offence punishable under sub-section (2), allow any statement to be made, or any evidence to be given, before it of the substance of any communication made under Section 7 of the Act on the grounds on which a detention order has been made against any person or of any representation made by him against such order; and, notwithstanding anything contained in any other law, no Court shall be entitled to require any public officer to produce before it, or to disclose the substance of, any such communication or representation made, or the proceedings of an Advisory Board or that part of the report of an Advisory Board which is confidential.
- (2) It shall be an offence punishable with imprisonment for a term which may extend to one year, or with fine, or with both, for any person to disclose or publish without the previous authorisation of the Central Government or the State Government, as the case may be, any contents or matter purporting to be contents of any such communication or representation as is referred to in sub-section (1):

Provided that nothing in this sub-section shall apply to a disclosure made to his legal adviser by a person who is the subject of a detention order.”

By that section the Court is prevented (except for the purpose of punishment for such disclosure) from being informed, either by a statement or by leading evidence, of the substance of the grounds conveyed to the detained person under section 7 of the Preventive Detention Act on which the order was made, or of any representation made by him against such order. It also prevents the Court from calling upon any public officer to disclose the substance of those grounds or from the production of the proceedings or report of the Advisory Board which may be declared confidential.

Supreme Court said that, “it is clear that if this provision is permitted to stand the Court can have no material before it to determine whether the detention is proper or not, the grounds are sufficient or not. It even prevents the Court from ascertaining whether the alleged grounds of detention have anything to do with the circumstances or class or classes of cases mentioned in section 12(1)(a) or (b). In *Machindar Shivaji Mahar v. The King* (1)[1949-50] F.C.R. 827, the Federal Court held that the Court can examine the grounds given by the Government to see if they are relevant to the object which the

legislation has in view. The provisions of Article 22 (5) do not exclude that right of the Court.

Section 14 of the impugned Act appears to be a drastic provision which requires considerable support to sustain it in a preventive detention Act. The learned Attorney-General urged that the whole object of the section was to prevent ventilation in public of the grounds and the representations, and that it was a rule of evidence only which the Parliament could prescribe. I do not agree. This argument is clearly not sustainable on the words of Article 22 clauses (5) and (6). The Government has the right under Article 22 (6) not to disclose facts which it considers undesirable to disclose in the public interest. It does not permit the Government to refrain from disclosing grounds which fall under clause (5).

Therefore, it cannot successfully be contended that the disclosure of grounds may be withheld from the Court in public interest, as a rule of evidence. Moreover, the position is made clear by the words of Article 22 (5). It provides that the detaining authority shall communicate to such detained person the grounds on which the order has been made. It is therefore, essential that the grounds must be connected with the order of preventive detention. If they are not so connected the requirements of Article 22(5) are not complied with and the detention order will be invalid.

Supreme Court further said that, "it is open to a detained person to contend before a Court that the grounds on which the order has been made have no connection at all with the order, or have no connection with the circumstances or class or classes of cases under which a preventive detention order could be supported under section 12. To urge this argument the aggrieved party must have a right to intimate to the Court the grounds given for the alleged detention and the representation made by him. For the validity of the detention order, it is necessary that the grounds should be those on which the order has been made. If the detained person is not in a position to put before the Court this paper, the Court will be prevented from considering whether the requirements of Article 22(5) are complied with and that is a right which is guaranteed to every person."

Supreme Court ruled that Article 21 of the Constitution did not require Indian courts to apply a due process of law standard. In doing so, the Court upheld the validity of the Preventive Detention Act, 1950, with the exception of Section 14, which provided that the grounds of detention communicated to the detainee or any representation made by him against these grounds cannot be disclosed in a court of law thus the provisions of section 14 abridge the right given under Article 22 (5) and are therefore *ultra vires*.

JUSTICE PATANJALI SASTRI in his separate judgment viewed the whole background, application and fundamental issues of the problem with apt analysis and value attached to most precious rights to the citizen in Constitution. Justice Sastri took the note from the very inception and conceptions involved in formulation of Constitution.

Justice Sastri observed that, "**Article 13** is one of a fasciculus of articles which are comprised in Part III of the Indian Constitution headed "Fundamental Rights." This Part forms a new feature of the Constitution and is the Indian "Bill of Rights." It is modelled on the first ten Amendments of the American Constitution which declare the fundamental rights of the American citizen. **Article 12**, which is the first article in this Part, defines "the State" as including the Governments and Legislatures of the Union and the States as well as all local and other authorities against which the fundamental rights are enforceable, and **Article 13 (1) declares that all existing laws inconsistent with the provisions of Part III shall, to the extent of the inconsistency, be void.** Clause (2) of the article, on which the petitioner's contention is primarily founded reads as follows:

Article 13(2)-

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

As the constitutional inhibition against deprivation or abridgement relates only to "the rights conferred by this Part," it is necessary first to ascertain the nature and extent of the right which, according to the petitioner, Part III has conferred on him, and, secondly, to determine whether the right so ascertained has been taken away or abridged by the impugned Act or by any of its provisions. The first question turns on the proper interpretation of the relevant articles of the Constitution, and the second involves the consideration of the provisions of the impugned Act.

Petitioner advanced three main lines of argument-

1. Right to move freely throughout the territory of India referred to in Article 19(1)(d) is of the very essence of personal liberty, and inasmuch as the detention authorised by the impugned Act was not a "reasonable restriction" which Parliament could validly impose on such right under clause (5) of the article, the impugned Act is void.
2. Alternatively, the petitioner had a fundamental right under Article 21 not to be deprived of his personal liberty except according to procedure established by law, and the impugned Act by authorising detention

otherwise than in accordance with proper procedure took away that right and was therefore void.

3. Lastly, the provisions of the impugned Act already referred to were *ultra vires* and inoperative as Parliament in enacting them has overstepped the limitations placed on its legislative power by Article 22 clauses (4) to (7).

Justice Sastri viewed above objections/arguments to consider whether Article 19(1)(d) and (5) is applicable to the present case.

In the words of **John Stuart Mill** "*liberty consists in doing what one desires. But the liberty of the individual must be thus far limited. He must not make himself a nuisance to others.*" Man, as a rational being, desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals. Liberty has, therefore, to be limited in order to be effectively possessed. Accordingly, Article 19, while guaranteeing some of the most valued phases or elements of liberty to every citizen as civil right, provides for their regulation for the common good by the State imposing certain "restrictions" on their exercise.

The power of locomotion is no doubt an essential element of personal liberty which means freedom from bodily restraint, and detention in jail is a drastic invasion of that liberty. But the question is: Does Article 19, in its setting in Part III of the Constitution, deal with the deprivation of personal liberty in the sense of incarceration? Sub-clause (d) of clause (1) of Article 19 does not refer to freedom of movement simpliciter but guarantees the right to move freely "throughout the territory of India." The use of the word "restrictions" in the various sub-clauses seems to imply, in the context, that the rights guaranteed by the article are still capable of being exercised, and to exclude the idea of incarceration though the words "restriction" and "deprivation" are sometimes used as interchangeable terms, as restriction may reach a point where it may well amount to deprivation. Read as a whole and viewed in its setting among the group of provisions (Articles 19-22) relating to "Right to Freedom," Article 19 seems to my mind to pre-suppose that the citizen to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests.

But where, as a penalty for committing a crime or otherwise, the citizen is lawfully deprived of his freedom, there could no longer be any question of his exercising or enforcing the rights referred to in clause (1). Deprivation of personal liberty in such a situation is not, in my opinion, within the purview of Article 19 at all but is dealt with by the succeeding Articles 20 and 21. In other words, Article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while Articles 20-22 secure to all persons/citizens

and non-citizens, certain constitutional guarantees in regard to punishment and prevention of crime.

What the Court has to ascertain is the true scope and meaning of Article 19 in the context of Part III of the Constitution, in order to decide whether deprivation of personal liberty falls within that article. Article 19, as I have already indicated, guarantees protection for the more important civil liberties of citizens who are in the enjoyment of their freedom, while at the same time laying down the restrictions which the legislature may properly impose on the exercise of such rights, and it has nothing to do with deprivation of personal liberty or imprisonment which is dealt with by the succeeding three articles. Connotation of the expression "personal liberty," it was used in Article 21 in a sense which excludes the freedoms dealt with in Article 19, that is to say, personal liberty in the context of Part III of the Constitution is something distinct from the freedom to move freely throughout the territory of India.

Justice Sastri said, "I am unable to agree that the term "law" in Article 21 means the immutable and universal principles of natural justice. "Procedure established by law" must be taken to refer to a procedure which has a statutory origin, for no procedure is known or can be said to have been established by such vague and uncertain concepts as "the immutable and universal principles of natural justice." In my opinion, "law" in Article 21 means "positive or State-made law. It is difficult to accept the suggestion that "law" in Article 21 stands for the '*jus naturale*' of the civil law, and that the phrase "according to procedure established by law" is equivalent to due process of law in its procedural aspect, for that would have the effect of introducing into our Constitution those "subtle and elusive criteria" implied in that phrase which it was the deliberate purpose of the framers of our Constitution to avoid.

Counsel for petitioner lastly turned his attack on section 14 which prohibits the disclosure of the grounds of detention communicated to the person detained and of the representation made by him against the order of detention, and debars the Court from allowing such disclosure to be made except for purposes of a prosecution punishable under sub-section (2) which makes it an offence for any person to disclose or publish such grounds or representation without the previous authorisation of the Central Government or the State Government as the case may be.

The petitioner complains that this provision nullifies in effect the rights conferred upon him under clause (5) of Article 22 which entitles him to have the grounds of his detention communicated to him and to make a representation against the order. If the grounds are too vague to enable him to make any such representation, or if they are altogether irrelevant to the object of his

detention, or are such as to show that his detention is not *bona fide*, he has the further right of moving this Court and this remedy is also guaranteed to him under Article 32. These rights and remedies, the petitioner submits, cannot be effectively exercised, if he is prevented on pain of prosecution, from disclosing the grounds to the Court.

Justice Shastri found that there is great force in this contention. He viewed that section 14 contravenes the provisions of Articles 22(5) and 32 insofar as it prohibits the person detained from disclosing to the Court the grounds of his detention communicated to him by the detaining authority or the representation made by him against the order of detention, and prevents the Court from examining them for the purposes aforesaid, and to that extent it must be held under Article 13(2) to be void. This however, does not affect the rest of the Act which is severable.

Supreme Court cancels bail given by Madras High Court to 8 PFI members in UAPA case.

Supreme Court on 22 May, 2024 observing that national security is of paramount importance and reasonable restrictions could be imposed on civil liberties of the persons under UAPA in the interest of the country's sovereignty and integrity, cancelled the bail granted by the Madras High Court to 8 PFI members and directed them to go back to jail.

The Court agreed to the submission made by National Investigation Agency that High Court order was patently wrong as it failed to appreciate the seriousness of the charge against the accused.

A bench of Justices Hon'ble Ms. Bela M Trivedi and Mr. Pankaj Mithal said that High Court committed gross error in not considering the evidence in proper prospective and in recording a perverse finding to the effect that 'there was no material to suggest the commission of any offence.'

Hon'ble Court further said that, "this court has often interpreted the counter-terrorism enactments to strike a balance between the civil liberties of the accused, Human Rights of the victims and compelling interests of the state. It cannot be denied that national security is always of paramount importance and any act in aid to any terrorist act - violent or non-violent, is liable to be restricted. UAPA is one of such Acts which has been enacted to provide for effective prevention of certain unlawful activities of individuals and associations, and to deal with terrorist activities, as also to impose reasonable restrictions on the civil liberties of persons in the interest of sovereignty and integrity of India.

There are reasonable grounds to believe that the accusations against the accused are *prima facie* true as per the material/documents relied upon by NIA

and that the mandate contained in Section 43(D)(5) would be applicable for not releasing the respondent on bail. Supreme Court also considered plea of NIA that High Court failed to appreciate that the oral statements of the witnesses and the recoveries made during the course of investigation clearly made out a *prima facie* case against them."

NewsClick founder got bail as Supreme Court struck down his arrest and remands violative of his fundamental rights.

Prabir Purkayastha was arrested on 3 October, 2023 along with NewsClick's HR head Amit Chakraborty under Unlawful Activities (Prevention) Act for allegedly receiving illegal funding from China routed through US with the intention of undermining India's sovereignty and territorial integrity.

NewsClick founder and Editor-in-Chief Prabir Purkayastha was released on bail by Supreme Court on 15 May, 2024. Supreme Court found that Delhi Police blatantly violated his fundamental right by not informing him, in writing, grounds of his arrest and trial judge illegally remanded him in custody. Bench of Justice B R Gavai and Sandeep Mehta also noted that arrest memo also does not mention his ground of arrest. Further FIR which dated 17 August, 2023 was shared with the petitioner only on 5 October, 2023 while the petitioner was produced by the police on 4 October, 2023. On objection being taken by the arrestee/ petitioner that his lawyer was not made available with the remand application, it was found that the same was done 13 hrs. after the petitioner was produced before special judge.

Supreme Court in its judgment highlighted the requirement of following procedure along with constitutional and fundamental rights guaranteed to a citizen and impress upon this court in several rulings given time to time. Apex Court said the FIR copy was not provided to Purukayastha despite him making an application. The copy of the FIR was provided to him on 5 October, 2023, two days after he was arrested and a day after he was remanded in police custody the court said.

Bench comprising Justices B R Gavai and Sandeep Mehta observed, "arrest followed by remand order on 4 October, 2023 and order of Delhi High Court validating the remand, were contrary to the law and hence quashed. Non-intimation of grounds of arrest to petitioner and his counsel vitiated the arrest and remand order. There is no doubt in the mind of the court that any person arrested for allegation of commission of offences under provisions of UAPA or for that matter any other offences have a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest. In Pankaj Bansal case regarding

the rights of accused under PMLA-to be informed of the grounds of arrest in writing- applied also to those charged with offences under UAPA.”

Supreme Court laid down further that, “the purpose of informing the arrested person of the grounds of arrest is statutory and sacrosanct in as much as this information would be only effective means for the arrested person to consult his advocate oppose the police custody remand and seek bail.

Elaborating on the mandatory duty of the police to give written information on grounds of arrest, arrested person must be informed of ‘all basic facts on which he was being arrested’, so as to provide him opportunity to defend himself against custodial remand and to seek bail. Thus, the ground of arrest would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’ which are general in nature.

Right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution. Any attempt to encroach upon this fundamental right has been frowned upon by the court in catena of decisions. Thus, any attempt to violate such a fundamental right guaranteed by Articles 20, 21 and 22 of the Constitution would have to be dealt with strictly.”

Supreme Court concluded with remark that “apparently this entire exercise (remand hearing) was done in clandestine manner and was nothing but a blatant attempt to circumvent the due process of law; to confine the accused to the police custody without informing him the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the court.”

Following the Supreme Court findings, the trial court-Patiala Court ordered release of Purkayastha on furnishing of bail bond for Rs. One Lakh and on conditions that he shall not contact witness and approvers, he shall not talk about the merit of the case and finally he shall not travel abroad without permission of the court.

State of West Bengal v. Bela Banerjee, AIR 1954 (SC) 170

A five-judge bench led by Justice Sastri, by a 3:2 majority, struck down the West Bengal Land Development and Planning Act, 1948, a land acquisition legislation from West Bengal. The Act was made to simplify property development to accommodate large-scale immigration from East Pakistan after the partition.

Section 8(i) of the Act allowed the State to declare and acquire any land for “public purpose” without any challenge. Section 8(ii) fixed the upper valuation

of the amount to be paid for acquisition as the "market value of the land" as of 1946.

Justice Sastri, leading the majority, struck down the provisions, holding that the public purpose had to be "objectively" established. He relied on Article 31(2) of the Constitution, a provision later omitted by the 44th Amendment. Article 31(2), as it existed, stated that property could only be acquired by the state for public purposes and upon payment of compensation which was backed by the authority of law. Justice Sastri stated that "compensation" envisioned in Article 31(2) was the sum equivalent to what the owner was deprived of, and nothing less.

In view of the fact that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value on December 31, 1946, as on compensation without reference to the value of the land at the time of acquisition, is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirements of Article 31(2)(iii) the Act is not saved by Article 31(5) from the operation of Article 31(2).

West Bengal Land Development and Planning Act, 1948, was passed on October 1, 1948 primarily for the settlement of immigrants who had migrated into the province of West Bengal due to communal disturbances in East Bengal, and it provides for the acquisition and development of land for 'public purposes'.

On July 28, 1950, the owners of the lands, acquired under the Act, instituted a suit in the Court of the Subordinate Judge at Alipore, District 24- Parganas for a declaration that the impugned Act was void as contravening the Constitution and that all the proceedings taken thereunder for the acquisition aforesaid were also void, and of no effect and for other consequential reliefs. The State of West Bengal was impleaded as a necessary party. As the suit involved questions of interpretation of the Constitution owners of land also moved the High Court under Article 228 of the Constitution to withdraw the suit and go for determination of the constitutional question. The suit was accordingly transferred to the High Court and the matter was heard by a Division Bench (Trevor Harries C.J. and Banerjee J.) who, by their final judgment, held that the impugned Act as a whole was not unconstitutional or void save as regards two of the provisions contained in Section 8 which runs as follows: -

Section 8:

"A declaration under Section 6 shall be conclusive evidence that the land in respect of which the declaration is made is needed for a public purpose and after making such declaration, the Provincial Government may acquire the

land and thereupon the provisions of the Land Acquisition Act, 1894, shall, so far as may be apply:

Provided that-

(b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification under sub-section (1) of Section 4 for the notified area in which the land is included subject to the following condition, that is to say if such market value exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration. "

The provision making the declaration of the Government conclusive as to the public nature of the purpose of the acquisition and the limitation of the amount of compensation so as not to exceed the market value of the land on December 31, 1946, were declared *ultra vires* the Constitution and void.

The Attorney-General, appearing on behalf of State of West Bengal submitted while conceding that in as much as Article 31(2) made the existence of a 'public purpose' a necessary condition of acquisition, the existence of such a purpose as a fact must be established objectively and the provision in Section 8 relating to the conclusiveness of the declaration of Government as to the nature of the purpose of the acquisition must be held unconstitutional. He also contended that the provision was saved by Article 31(5) of the Constitution which says:

"Nothing in clause (2) shall affect the provisions of any existing law other than a law to which the provisions of clause (6) apply or....."

Clause (6) reads thus:

"Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and, thereupon, if the President so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this Article or contravened the provisions of sub-section (2) of Section 299 of the Government of India Act, 1935."

It was argued that the impugned Act having been passed within 18 months before the commencement of the Constitution and not having been submitted to the President for his certification, it was a law to which the provisions of clause (6) did not apply and, therefore, as an existing law, the impugned

Act was not affected by clause (2) of that Article. The argument is manifestly unsound. Article 31(6) is intended to save a state law enacted within 18 months before the commencement of the Constitution provided the same was certified by the President while, Article 31(5) saves all existing laws passed more than 18 months before the commencement of the Constitution. Reading the two clauses together, the intention is clear that an existing law passed within 18 months before January 26, 1950, is not to be saved unless it was submitted to the President within three months from such date for his certification and was certified by him.

Not delving upon on the above issue, Supreme Court said "the only serious controversy is centred round the constitutionality of the "condition" in proviso (b) to Section 8 limiting the compensation payable so as not to exceed the market value of the land on December 31, 1946.

The Attorney-General argued while conceding that the word "compensation" taken by itself must mean a full and fair money equivalent, urged that, in the context of Article 31(2) read with Entry No. 42 of List III of the Seventh Schedule, the term was not used in any rigid sense importing equivalence in value but had reference to what the legislature might think was a proper indemnity for the loss sustained by the owner.

It was argued that the term "compensation" in Entry No. 42 could not mean full cash equivalent, for then, the power conferred on the legislature to lay down the principles on which compensation is to be determined and the form and the manner in which such compensation is to be given would be rendered nugatory. On the other hand, the Entry showed that the compensation to be "given" was only "such compensation" as was determined on the principles laid down by the law enacted in exercise of the power, and, as the concluding words used in Article 31(2) are substantially the same as in the Entry, it was claimed left scope for legislative discretion in determining the measure of the indemnity.

Justice Sastri, leading the Bench, observed that, "We are unable to agree with this view. While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be **compensation**, that is, a just equivalent of what the owner has been deprived of.

Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which