Chapter-III

Personal Liberty’ and ‘Preventive Detention’ –
Articles 21 & 22
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PERSONAL LIBERTY' AND 'PREVENTIVE DETENTION' - ARTICLES 21 & 22

Ultimately, as Granville Austin says, the story of ‘due process’ and ‘liberty’ in the Constituent Assembly was the story of preventive detention. The provisions for preventive detention contained in Article 22 of the Indian Constitution have not only provoked endless litigation and filled the pages of the law reports, but have, at the same time, aroused tremendous controversy in this country and abroad by virtue of their nature, extent and practice by the executive authority of the country. In justifying such a provision, Dr. Ambedkar said, on the floor of the Constituent Assembly that “in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order .... Or with the Defence Services of the country. In such a case I do not think that the exigency of the liberty of the individual should be placed above the interests of the State.”

There were, of course, many critics of this provision in the Constituent Assembly who remarked that Article 15 prepared by the Drafting Committee was ‘the crown of our failures because by virtue of Article 15 we have given the executive and the legislature power to do as they like with the people of this country so far as procedure is concerned’, that Article 15A was the most reactionary article that has been placed by the Drafting Committee before the House, that these provisions reduced "the chapter of fundamental rights into a

2. Ibid., p. 1501, (Pt. Thakurdas Bhargava)
3. Ibid., p. 1529, (Dr. Bakshi Tek Chand).
penal code worse than the D.L Rules of the old government"⁴, and that "It is not only restriction, but it is a case of contradiction, total contradiction of the rights"⁵. But, in spite of these critical sentiments, the provisions for preventive detention side by side with those for punitive detention found their place in the final Constitution that emerged. Although it was widely felt that the provision for preventive detention constituted a serious invasion of personal liberty, the Constitution, recognizing the need for the resurgent nation to protect itself adequately from anti-social, subversive elements, sought to give a legal status to preventive detention. In accordance with the authority so conferred, and subject to the safeguards incorporated, the Indian Parliament enacted the Preventive Detention Act in 1950. This Act enabled the Central Government or a State Government to place under detention any person, if it was satisfied that it was necessary to do so in order to prevent such, person from acting in any manner prejudicial to (i) the defence of India, the relations of India with foreign powers, or the security of India, or (ii) the security of the state or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community. Originally enacted as a temporary measure for a period of one year only, the Act continued to be on the statute book as a result of periodic extensions and renewals, until it lapsed on the 31st December, 1969. Under the Act, the jurisdiction of the Courts had been confined solely to the examination of the question whether a detenu had been furnished with the grounds of his detention to an extent sufficient to enable him to make, his representations to the Advisory Board. With the lapse

⁴. Ibid., p. 1548 (Shri Mahavir Tyagi).
⁵. Ibid., p. 1549.
of the P.D. Act, 1950, several State Governments have enacted the Prevention of Violent Activities, Acts and the Maintenance of Internal Supplies Acts for similar purposes and on the same lines as the former P.D. Act.

It is apparent that the scope for Judicial Review in the field of preventive detention is extremely limited since the jurisdiction of the Courts has been purposely kept confined to a very narrow range, as is evident from the provisions of the former P.D. Act, 1950, and the recently introduced P.V.A. Acts. It is familiar knowledge that the 'Gopalan' case was brought before the Supreme Court of India to decide the question whether the impugned Act, viz., the Preventive Detention Act (IV of 1950) was *ultra vires*, being in violation of Arts. 19, 21 and 22, of the Constitution. It may be recalled that the Judges, while admitting the odiousness of detention without trial, pleaded their utter helplessness in the matter, since the Constitution has specifically sanctioned preventive detention in Article 22.

**Significant cases decided by the Supreme Court:**

In Motilal Jain v. State of Bihar⁶, the Supreme Court held that individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by the Constitution. If that right is invaded except strictly in accordance with law, the aggrieved party is entitled to appeal to the judicial power of the State for relief. The interest of the society is no less important than that of the Individual. The provisions of the Constitution for safeguarding the interests of the society harmonise the liberty of the individual with social interests. The authorities have to act solely on the basis

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⁶ AIR 1968 SC 1509.
of those provisions. They cannot deal with the liberty of the individual in a casual manner. Such an approach does not advance the true social interest. This judgment, in a sense, sets the correct perspective in which the role of the Court is to be judged in the matter of reconciling Article 21 with Article 22, for, as laid down in Krishnan v. State of Madras\(^7\), Arts, 21 and 22 confer a fundamental right and constitute a fundamental guarantee, and it is the duty of the Court to see that the right is kept fundamental and that the fullest scope is given to the guarantee. Article 22 provides for protection against arrest and detention in certain circumstances, and provides for certain safeguards Clause (3) states, \textit{inter alia}, that nothing in Cls. (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention. The word 'preventive' is used in contradistinction to the word 'punitive'. As laid down by Mukherjea, J. in the 'Gopalan' case, preventive detention is not a punitive but a precautionary measure. Its object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. In preventive detention no offence is proved, nor any charge formulated; and the justification for such detention is suspicion or reasonable probability and not criminal conviction which can only be, warranted by legal evidence. Although it is a most unwholesome encroachment on the liberties of the people, preventive detention has been made an integral part of the Indian Constitution, and the Court was of the opinion that although such a law was odious at all times, it was not for the Court to question the wisdom and policy of the Constitution which the people have given to themselves. Any legislation relating to preventive detention

\(^7\) AIR 1951, SC 301: 1951 SCR 621.
would only have to conform to the requirements of Cls. (4) to (7) of Article 22, and provided that is done, there is nothing in the language employed, nor in the context in which it appears, which affords any ground for suggesting that such law must be reasonable in its character and that it would be reviewable by the Court on that ground.

**LIFE AND PERSONAL LIBERTY**

**Meaning and Significance:**

While Article 19 provides that a citizen shall have the various rights enumerated, and proceeds to lay down the extent to which these rights may be curtailed by the State by means of laws imposing 'reasonable restrictions', Articles 21 and 22 are couched in a negative form and purport to enact restrictions on the power of the State. Article 21 says, *"no person shall be deprived of his life or personal liberty except according to procedure established by law".* Certainly, this is the most primary, the most cherished, as well as the most 'fundamental' of all Fundamental Rights. The content or meaning of 'personal liberty' is not found in the Constitution itself, but a peep into the history of the framing of this Article shows that liberty was sought to be qualified by the word 'personal', because, otherwise, it might be construed very widely so as to include even the freedoms already dealt with in Article 13 (corresponding to the present Article 19) of the Draft Constitution. The Advisory Committee had recommended:

"*No person shall be deprived of his life or liberty without due process of law, nor shall any person be denied the equal treatment of the laws within the territory of Union*".

Apart from qualifying 'liberty' with 'personal', the Drafting Committee also substituted the expression 'except according to procedure established by law' for the words 'due process of law' on the ground that the former would be more 'specific' and would minimise the possibility of the intellectual yardstick of the judiciary being applied indiscriminately in interpreting such a vague and elastic phrase as 'due process of law'. As we all know now, there was 'fierce' controversy over this drafting. Supporters of 'due processes would have liked to preserve it for its procedural safeguards, primarily against executive action. But Sir B. N. Rau, who had met Justice Frankfurter of the United States Supreme Court, and convinced after his discussions that the power of Judicial Review implied in the due process clause was both undemocratic and burdensome to the Judiciary, pointed to the 'substantive' meaning of 'due process' and the impact of such substantive interpretation on legislation for social purposes. Among the supporters of the due process clause Sri K.M. Munshi delicate and the most critical issue of 'due process' versus preventive detention. While Dr. Ambedkar, in spite of presenting the two aides of the picture, refrained from committing himself to any categorical decision, it was Alladi Krishnaswami Ayyar, originally a strong advocate of the 'due process clause', who tilted the scale in favour of procedure established by law. While Ambedkar very correctly observed that "the question of the relationship between the legislature and the judiciary." Shri Alladi Krishnaswami Ayyar frankly admitted that this expression, as developed in

11. Ibid., p. 1000
the U.S. Supreme Court, had acquired, in a long course of American judicial decisions, a different meaning and import from those understood in England, that these decisions were mostly conflicting and inconsistent, and that, if adopted in India, "this clause may serve as a great handicap for all social legislation". There is no doubt that in changing his erstwhile stand on this question, Shri Alladi was heavily influenced by the abnormal conditions prevailing in the country at that moment. In any event, Articles 21 and 22 that finally emerged from the Constituent Assembly left the legislature virtually supreme in respect of the individual's right to life and personal liberty. It is interesting to see how the Supreme Court of India, faced with the delicate task of reconciling the fundamental right of life and liberty with the law of preventive detention, has lived up to the expectations of the Constitution-makers and the needs and demands of the moment.

Civil Liberties in the Scheme of Indian Constitution:

The bill of rights in the Indian Constitution has its genesis in the struggle for India's liberation. Civil liberties also evolved along with the growth of constitutional government and Parliamentary institutions from the time of the British rule in India. The nationalist movement and the Indian National Congress were the direct results of the oppressive rule of the British in India and, as Granville Austin says, India's desire for civil rights was implicit in the formation of the Indian National Congress in 1885. The nationalist leaders aimed at establishing an egalitarian society in which each man, while contributing his mite to the welfare of his fellow beings, could

12. Ibid., p. 853
develop his personality to the widest possible extent in an atmosphere of freedom. They insisted on human rights and civil liberties being placed beyond the reach of the legislature. These were the rights and liberties which were denied to them under the colonial regime and for which they were fighting. An explicit demand for these rights and liberties was made for the first time in a formal way in the Constitution of India Bill, 1895. This Swaraj Bill, believed to be inspired by Lokmanya Tilak, proposed to guarantee rights like freedom of speech, inviolability of one's home, right to property, imprisonment only by a competent authority, equality before law, etc. when the British Government of India attempted to repress the national movement and liberty of the press in the early years of the twentieth century, the charter of rights for citizens became an article of faith with the national leaders.

A series of Congress Resolutions adopted between 1917 and 1919 repeated the demand for civil rights and equality of status with the Englishman. As years rolled by, the demand became more and more insistent and forceful. Following the Montague-Chelmsford Report in 1918, the Indian National Congress at its special session held in Bombay in August that year made a demand for writing into the Government of India Bill, then on the anvil, a "a declaration of the rights of the people of India as British citizens", including therein, among other things, guarantee of equality before

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14. The Constitution of India Bill, 1895, Se B. Shiva Rao, ed., The Framing of India's Constitution: Selection Documents I (New Delhi: Indian Institute of Public Administration, 1966). p. 7. The author of the Bill is unknown but, in a brief preface, he explained that it contained the outlines of the constitution, which he wished India to get from the British Government. While admitting that at that time the people of India were "far from being able to exercise the rights proposed to be conferred," he said that they would "in future be able to enjoy and use them to the greatest advantage of their country and the British Government", p. 5

15. Granville Austin, n. 60, p.53
law, protection of liberty, life and property, freedom of speech and press, and right to association. In the same year, at its Delhi Session in December, the Congress passed another resolution claiming the recognition of India as a nation “to whom the principle of self-determination should be applied.” As a first step, the resolution demanded the immediate repeal of laws. Regulations and ordinances which denied basic civil liberties to the people, restricted free discussion of Political questions, or empowered the executive to arrest, detain, intern, extern or imprison without the process of ordinary civil or criminal law.

Inspired by the Irish Free State of 1921, which included a list of fundamental rights, the Commonwealth of India Bill, finalised by the National Convention in 1925, embodied a specific “declaration of rights”, visualising for every person certain fundamental rights which were almost similar to the relevant provisions of the Irish Constitution. The problem of minorities in India further strengthened the argument for incorporating a set of fundamental human rights in the Constitution. A resolution passed at the Madras Session of the Indian National Congress in 1927 reiterated that fundamental rights must constitute an integral part of any future Constitution for the country.

The demand for fundamental rights received an impetus when a committee was appointed by the Congress in May 1928 under the

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10 Subhash C. Kashyap, n. 27, p. 21
17 Congress Resolution on Self-Determination, December 1918, passed by the thirty-third session of the Indian National Congress held at Delhi on 26-31 December 1918
18 The Commonwealth of India Bill, 1925
19 Congress Resolution on Swaraj Constitution passed by the Madras Session of the Indian National Congress on 28 December 1927
Chairmanship of Motilal Nehru to frame a draft Constitution for India. The report of the Committee, known as the Nehru Report, insisted on the grant to Indians of all those fundamental rights which had so far been denied to them and it emphasised that "our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances." The fundamental rights of which the Nehru Report spoke were a "precursor" of the fundamental rights guaranteed by the Indian Constitution in a much as ten of the nineteen sub-clauses reappear, materially unchanged, and three of them are included in the directive principles. The first sub-clause of the section on rights, which said that all power and authority of government was derived from the people, was the raison d'être of the Constituent Assembly as expressed in the objectives Resolution.

The Simon Commission appointed by the British Government in 1927 totally rejected the demand for fundamental rights on the plea that abstract declarations were useless unless there existed the will and means to make them effective. The matter again came up for consideration at the Second Round Table Conference held in London in 1931 and the Indian leaders pressed for incorporation of a bill of rights in the proposed constitution, but the British Government finally rejected the demand on the ground of practical difficulties in enforcing such rights.

A new dimension was given to the demand for fundamental rights when the Congress at its Karachi Session in March 1931 adopted the

Resolution on Fundamental Rights and Economic and Social Change. In addition to the demand for the incorporation of negative rights imposing only negative obligations on the state, the resolution demanded the inclusion of socio-economic rights, which would, the effect, impose positive obligations on it to provide its people with the necessary social and economic conditions for the realisation of their negative rights. It showed that India wanted to bring about a socio-economic revolution, which would make the human rights and civil liberties meaningful. These provisions of the resolution, in fact, became the direct antecedents of the directive principles.

Another important step toward the realisation of fundamental rights was the Sapru Report, which was published at the end of 1945 and spoke not only of the fundamental rights but also of special provisions for the protection of minorities. The Sapru Committee Report made a distinction between justiciable and non-justiciable rights in the context of the rights of minorities in the country, though no such distinction was made earlier. It suggested that the breach of some of the rights of minorities be subjected to judicial scrutiny and that the violation of other rights be remedied without the court's intervention.

The members of the sub-committee on Fundamental Rights realised that it was not practicable to treat the declarations of social and economic policies as justiciable rights. Therefore, it decided to separate the non-

23. As a first step towards the framing of the Constitution, the Constituent Assembly constituted an Advisory Committee on Fundamental Rights and Minorities. The Committee, in turn, formed five sub-committees, one of them being the sub-committee on Fundamental Rights, February - April 1947.
justiciable rights from the justiciable ones and remove them from the chapter on Fundamental Rights. These were later designated as Directive Principles of State Policy. When the Constituent Assembly met, there was no opposition to the idea of including a chapter on Fundamental Rights as an integral part of the Constitution. In this way, the Constitution of India recognised some of the basic civil liberties, which had been struggling so long for unqualified recognition.

The inclusion of fundamental rights in the Constitution of India soon after the Universal declaration of Human Rights reflected the anxiety of the founding fathers to honour the basic principles enunciated in the Universal Declaration. The balance, which the Constitution makers struck between the political and civil rights, on the one hand, and the social and economic rights, on the other, as they laboured from 1947 to 1947, was very similar to that struck by the draftsmen of Universal Declaration and other international covenants. The civil and political rights are internationally enforceable through the machinery of the Human Rights Committee; of course, without minimising the importance of other rights. The provision only indicates the essential differences as far as enforcement and protection of rights are concerned. Similarly, in the Indian Constitution, civil and political rights are given statutory protection, and the economic rights are covered by the Directive Principles of State Policy.

The first and foremost tenet of humanism embodied in the Universal Declaration is that all men are born free and equal in dignity and rights. They are endowed with reason and conscience and should approach one another in a spirit of brotherhood.\textsuperscript{26} This basic principle has been embodied in the Preamble of the Indian Constitution.\textsuperscript{27} Article 2 to 21 of the Declaration of Human Rights deal, by and large, with civil and political rights, while Articles 22 to 28 set forth, mostly in general terms, the economic, social and cultural rights. The Indian Constitution has adopted in its two parts – the Fundamental Rights (Part III) and the Directive Principles (Part IV) – most of the principles of Universal Declaration. The traditional civil and Political Rights are enshrined in it as Fundamental Rights, and the economic and social rights are set forth as Directive Principles.

The Indian Constitution attempts to resolve the conflict between personal rights and social needs by achieving a delicate balance between them. It has incorporated the right to life and liberty which is of fundamental importance for the United Nations and finds expression in Articles 3 and 9 of the Declaration: Article 3 lays down that everyone has the right to life, liberty and security of person, whereas Article 9 refers to freedom from arrest, detention or exile. Article 10 enjoins that everyone is entitled in full equality

\textsuperscript{26} Article 1 of the Universal Declaration of Human Rights, 1948
\textsuperscript{27} The Preamble of the Indian Constitution reads:
We, the People of India having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: Justice, social, economic and political; liberty of thought, expression, faith, belief and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.
The words “socialist”, “secular” and “integrity” have been incorporated in the Preamble by the Constitution (Forty-Second Amendment) Act, 1976
to a fair and public hearing by an independent and impartial tribunal, while
deciding his rights and obligations or a criminal charge against him. These
rights were subsequently codified in various Articles of the International
Covenant on Civil and Political Rights. For instance, Article 3 of the Covenant
seeks to ensure the equal rights of men and women for the enjoyment of all
civil and political rights; and Article 9 guarantees the right to liberty and
security of person. All these rights are secured by Articles 21 and 22 of the
Indian Constitution.\(^\text{28}\)

The several freedoms which are preserved by Articles 13, 17, 19 and 20
of the Declaration\(^\text{29}\) are guaranteed to the citizens by Article 19 of the Indian
Constitution;\(^\text{30}\) and the individual’s right to marriage, privacy, honour and
reputation, preserved by Articles 12 and 16 of the Declaration, is included in
the personal liberty guaranteed under Article 21 of the Indian Constitution as

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person shall be deprived of his life or personal liberty except according to procedure
established by law.

29. Universal Declaration of Human Rights, 1948 reads:
   Article 13: Everyone has the right to freedom of movement and residence within the
   borders of each state.
   (2) Every one has the right to leave any country, including his own, and to
   return to his country.
   (2) No one shall be arbitrarily deprived of his property.
   Article 19: Everyone has the right to freedom of opinion and expression, this
   right includes freedom to hold opinions without interference and to seek,
   receive and impart information and ideas through any media and regardless
   of frontiers.

30. Article 19 of the Indian Constitution reads:
   1) All citizens shall have the right:
      a) to freedom of speech and expression; b) to assemble peaceably and without
      arms; c) to form associations or unions; d) to move freely throughout the territory
      of India; e) to reside and settle in any part of the territory of India; and ‘g) to
      practice any profession or to carry on any occupation, trade or business.
      ‘and’ inserted and sub-clause f) omitted by the Constitution (Forty-Fourth
interpreted by the Supreme Court in *Kharak Singh's case.* In fact, the traditional civil and political rights enumerated in the Declaration are substantially protected by the fundamental rights guaranteed by the Indian Constitution, and the Constitution also provides an effective machinery for their enforcement (which is the subject matter of Article 8 of the Declaration) by appropriate proceedings under Article 32, 226 and 227. A unique feature of the Indian Constitution is that it not only provides for an effective machinery for the enforcement of fundamental rights, but the right to move the Supreme Court for their enforcement also is a fundamental right guaranteed by the Constitution.

Article 21 serves as a restraint on the executive and not as a constitutional limitation on the power of the legislature to protect the individual's life and personal liberty. But the Constitution is fully alive to the social needs and the need to curtail personal rights for social good. It is true that clauses (1) and (2) of Article 22 confer certain constitutional rights on an arrested person, but subject to these limitations, the legislature is free to lay

32. Article 8 of the Declaration refers to the right of "an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".
33. Article 32 - in the Chapter on Fundamental Rights - guarantees the right of every person to move the Supreme Court of India for the issue of writs, including the writ of habeas corpus, and provides that the Supreme Court would have power to issue such writs and other appropriate orders or directions. Under Article 226 of the Constitution, the High Court in each State is empowered to issue five prerogative writs, including the writ of habeas corpus.
34. Article 227 refers to the power of superintendence over all courts by the High Court. Article 22 (1) reads: "No person who is arrested shall be detainted in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". (2) "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate".
down the procedure for deprivation of life and personal liberty of a person. Thus, the Constitution values personal liberties very highly but does not deem them absolute.

**Judicial interpretation of Article 21:**

The process started with the famous case of *Gopalan v. State of Madras* which is by far the most notable and the most exhaustive case concerning the Fundamental Right to Freedom and Personal Liberty under the Constitution of India. As defined in this case, personal liberty was an antithesis of physical restraint or coercion. The majority judgment rejected the contention of the petitioners that Article 21 guaranteed procedural rights while Article 19(1) guaranteed substantive rights, Mukherjea, J. observed that "the right to the safety of one's life and limbs and to enjoyment of personal liberty, in the sense of freedom from physical restraint and coercion of any sort, are the inherent birth rights of a man". The inter-relation between Arts. 19 and 21 was very exhaustively dealt with by different judges in this case, and while Fazl AH, J., in his minority opinion, held that Article 19(1) (d) controlled Art. 21 since, juristically, the freedom of movement is an essential requisite of personal liberty and, therefore, the reasonableness of law of preventive detention should be justiciable under Article 19(5), the majority of the judges, led by Kania, C.J., took the stand that Article 19 did not apply to the law of preventive detention and that the freedom of movement throughout the territory of India under Article 19(l) (d) was different from personal liberty under Article 21. All the four majority judges agreed that the concept of the

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35. AIR 1950 SC 27: 1950 SCR 88
36. Supra note 13
right 'to move freely throughout the territory of India' in Article 19(1) (d) is
entirely different from the right to 'personal liberty' referred to in Article 21.
The object of Article 19(1) (d) is to guarantee to a citizen the right to move
freely throughout the territory of India without any discriminating barriers.
Incidentally, the Court also laid down the distinction between 'restriction' and
'deprivation'. While Kania, C.J, observed that the word 'restriction',
as-distinguished from the word 'deprivation', indicated 'partial control', Das J.
expressed the same view in different words, by saying that the implication of
'restriction' is that the right is not entirely destroyed, but that parts of the right
remain. The Court decided that in respect of the fundamental right to life and
personal liberty, no person in India had any remedy against legislative action.
Provided the Legislature is competent to pass the law and no other
constitutional provision stands in the way, it can enact any law authorising
the deprivation of personal liberty. The judiciary shall have no power to
review the reasonableness or otherwise of such law37. The only object that
Article 21 shall serve is to put a restraint upon the Executive so that it may not
proceed against the life or personal liberty of an individual save under the
authority of some law and in conformity with the procedure laid down
therein.38 The Court was of the opinion that there were important differences
between the U.S, and the Indian Constitutions, and that the American
Supreme Court's unlimited power of review could not be a model for its
Indian counterpart. On the basis of this presumption, the Court established
that in using the words according to procedure established by law" in Article

38. Ibid.
21, Instead of the words "according to the due process of law", the Indian Constitution had deliberately abstained from adopting the 'due process clause' of the 5th and the 14th Amendments to the U.S. Constitution. As Mukherjea, J, so cogently pointed out, "it is quite clear that the framers of the Indian Constitution did not desire to introduce into our system the elements of uncertainty, vagueness and changeability that have grown round the 'due process' doctrine in America. They wanted to make the provision clear, definite and precise and deliberately chose the words 'procedure established by law, as in their opinion no doubts would ordinarily arise about the meaning of this expression".  

Further, according to him, "in the Supreme Court of America, stress has been laid uniformly upon the word 'due' which occurs before and qualifies the expression process of law'. 'Due' means what is just and proper according to the circumstances of a particular case. It is this word, which introduces the variable element in the application of the doctrine; for what is reasonable in one set of circumstances may not be-so in another and a different set. In the Indian Constitution the word 'due' has been deliberately omitted and this shows clearly that the Constitution-makers of India had no intention of introducing the American doctrine...." Regarding the meaning of 'law' as used in "procedure established by law", the majority decision in this case was that 'law' referred to State-made law and not law in the abstract or general sense embodying the principles of natural justice. 'Procedure established by law', therefore, means procedure established by law made by the State, that is to say, by the Union Parliament or the Legislatures of the States. The Court held that Arts. 21 and 22 constitute a distinct code, and therefore, if once a person

39. 1950 SCR 88, at pp. 275 and 276
is deprived of his personal liberty in accordance with the procedure established by law, no further question would arise under Article 19.

**Evaluation of 'Gopalan' decisions:**

Foreign commentators and critics have lamented over the majority decision in the 'Gopalan case as disquieting and as putting the judiciary into fetters. One commentator has criticised the decision as it eliminated from Indian law both the British concept of 'natural justice' and the American equivalent 'due process of law', so that the Court was rendered powerless to interfere with a law depriving citizens of personal liberty except on the ground of legislative competence. It has also been contended that the narrower interpretation given to Article 21 has reduced the same to represent the same situation as obtains under the underwritten Constitution of England. It has further been considered unfortunate that the word 'procedure' was used in Article 21 in respect of life and personal liberty, since the exact connotation of the word remains yet to be established, and the view has been advanced that the general expression 'law', as used in the Irish Constitution, would have avoided the controversy as it more easily covers both substantive rights as well as procedural rights. However, it cannot be doubted that although the 'Gopalan' case ushered in the period of strict and literal construction, it set the proper perspective in which the judiciary in India would act and move, especially during the initial period of the working of the Constitution. Being the first case to have come up before the Supreme

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42. P. B. Mukharji, Civil Liberties, 1968, p. 58
Court of India, it was looked upon with tremendous interest and expectancy, and the learned judges could ill-afford to follow the untrodden risky course of liberal interpretation. The reasoning adopted in this case was quite in line with the intention of the Constitution framers, and was consistent with the provisions of the Constitution.

Subsequent judicial decisions:

The interpretation given in the 'Gopalan' case was followed in some subsequent cases, namely, State of Bombay v. Atmaram Sridhar Baidya,\textsuperscript{43} Ram Singh v. State of Delhi\textsuperscript{44}, Krishnan v. State of Madras\textsuperscript{45} and Makhan Singh v. State of Punjab.\textsuperscript{46} However, the literal and somewhat restrictive interpretation of Article 21, given by the Supreme Court in the 'Gopalan' case, and followed in the above-mentioned cases, gradually gave way to a more liberal and individualistic opinion in the later years. That a law, depriving a person of life and personal liberty, enacted by the legislature, would have to satisfy the tests of "reasonable restrictions" and 'public interest', and would, therefore, come under the purview of judicial scrutiny, came to be accepted in many cases.\textsuperscript{47}

In the first 'Kochuni' case,\textsuperscript{48} in particular, Subba Rao, J. laid down some very liberal and far-reaching principles which were quite opposed to those laid down in the 'Gopalan' case. The Kharak Singh case marked a big step forward...
in the emerging process of expansion of the contours of the right to life and personal liberty. Reference has already been made to this case in connection with Article 19 (1) (d). It was held that ‘personal liberty’ is used in Article 21 as a compendious term to include within itself all the varieties of rights which go to make up the personal liberties of man other than those dealt with in the several clauses of Article 19 (1). While Article 19 (1) deals with particular species or attributes of that freedom, ‘personal liberty’ in Article 21 takes in and comprises the residue. While Ayyangar, J. representing the majority, pointed out that ‘in dealing with a fundamental right such as the right of free movement and personal liberty, that only can constitute an infringement which is both direct as well as tangible and it could not be that the Constitution makers intended to protect or protected mere personal sensitiveness”, Subba Rao and Shah, J.J. in their minority judgements, refused to fall in line with such restricted interpretation and declared that “the petitioner suspect under the shadow of surveillance is certainly deprived of this freedom”. While the majority judgment considered Cl. (b) of Reg. 236 of the UP Police Regulations which authorized ‘domiciliary visits’ as being violative of Article 21 of the Constitution, as there was no law by which it could be justified, Subba Rao and Shah, J.J, asserted that the entire Reg. 236 was unconstitutional on the ground that it infringed Article 19 (1) and Article 21 of the Constitution.