A.K. Gopalan v. State of Madras, AIR 1950 SC 27

1) Material facts

The petitioner, detained under the Preventive Detention Act, 1950 ("Act") filed a writ of habeas corpus under Article 32 of the Constitution for his release on the basis that the Act was in contravention with Articles 13, 19, 21 and 22 of the Constitution, therefore ultra rites and consequently, his detention was illegal.

2) Issue

Whether the Detention Order of the Central Government was mala fide or otherwise legal.

3) Ratio

As per Kania C.J., Patanjali Sastri, Mukherjea and Das JJ. (majority)	*As per Fazl Ali and Mahajan JJ. (dissenting)*
That the Act, except Section 14, is not contravention with any of the Articles of the Constitution. Even though Section 14 of the Act is ultra rites as it is in contravention with the provisions of Article 9.9(5) of the Constitution, its invalidity does not affect the status of validity of the entire Act, as this section can be severed from the rest of the Act, and therefore, the petitioner's detention was not illegal.	That Section 12 of the Act is also ultra vires because it is in contravention with the very provision of the Constitution pursuant to which, the Parliament derives its power to enact the law, and therefore, the detention was illegal.

4) Rationale

Issue	Majority Opinion	Minority Opinion
Whether Section 14 of the Act is in contravention with provisions of the Constitution?	*Full court* – Section 14 of the Act is in contravention with the provisions of Article 9.9(5) of the	–

	Constitution, as it forbids a detenu from revealing to the court, the reasons of the detention order or the representations given against the order and to that extent, it is void and ultra vires.	
Whether the provisions of the Act can be judged under Article 19 of the Constitution?	*Kania C.J., Patanjali Sastri, Mahajan, Mukherjea and Das JJ.* – Article 19 of the Constitution does not apply to a law that is directly related to preventive detention even after pursuant to an order of detention, the rights in sub-clauses (a)-(e), (g) and (d) of Article 19(1) can be abridged or restricted, and the constitutional validity of such a law related to preventive detention shall not be adjudged as per the test given in Article 19(5). *Das JJ.* – Article 19(1) supposes a legal capability of exercising the rights prescribed within it, and in case a citizen is deprived of the freedom of his person due to lawful detention	*Fazl Ali J.* – Preventive detention directly infringes the rights given under Article 19(1)(d), even if the provisions are constructed narrowly and consequently, laws related to preventive detention can come under the purview of limited judicial review as allowed by Article 19(5).

	because of conviction due to an offence or otherwise, he cannot take up the rights under Article 19(1)(a) to (e) and (g). The rights under these provisions end at the place where lawful detention stars and due to this reason, the validity of the Act is not capable of being judged by Article 19(5). *Mahajan J.* – Irrespective of the exact scope of Article 19 (1)(d) and (5), Article 19(5) shall not apply to laws related to preventive detention, to the extent there is a special self-contained clause in Article 22 to regulate it.	
	Kania C.J., Patanjali Sastri, Mukherjea and Das JJ. – The freedom "to move freely throughout the territory of India" provided for in Art. 19 (1) (d) of the Constitution is wholly distinct from the right to "personal liberty" provided for in Art. 21, therefore Art. 19 should not be	*Fazl Ali J.* – Even if it is assumed that Art. 19 (1) (d) does not mean " personal liberty" and that it has the limited meaning ascribed to it, that is, R denotes simply the freedom to move from one location to another, preventive detention must be held to directly and

	interpreted as being governed by the provisions of Art. 21. It is wrong to believe that Art. 19 provides substantive rights while Art. 21 regulates the procedure. *Das JJ.* – Article 19 protects some of the most essential aspects of personal liberty as autonomous rights, while the phrase "personal liberty" has been used in Art. 21 as a broad term that encompasses all of the Rs that go into making up men's personal liberties.	substantially affect this limited right of movement. One of the goals of preventive detention would be to keep a detenu from travelling from place to place in order to avoid spreading disaffection or engaging in dangerous actions in the areas he visits. Persons who are interned or externed are subject to the same considerations. As a result, externment, interment, and other types of movement restriction have always been viewed as though they were all part of that group or family, and any law that applies to one must also apply to the others.
	Kania C.J., Patanjali Sastri, Das JJ. – Article 22 does not constitute a comprehensive set of constitutional protections against preventive detention. Art. 9.9 cannot be governed by Art. 9.1 to the extent that provision is made under it, but Art. 9.1	*Mahajan J.* – Art. 99. includes a self-contained code of constitutional protections pertaining to preventive detention that cannot be subject to the rules of Art. 21. However, the ideas that underpin Art. 21 are maintained in Art.

	will apply to issues of procedure that are explicitly or by necessary inference not covered by Art. 22. *Das JJ.* – Art. 21 safeguards substantive rights by mandating a procedure, while Art. 9.9 establishes the minimum procedural requirements that even the Parliament cannot ignore.	22, thus there is no dispute between two articles. *Mukherjea J.* – Even if Art. 22 is not a self-contained law dealing with preventive detention and Art. 21 applies instead, it is not permitted to supplement Art. 22 by using natural justice principles. *Fazl Ali J.* – Art. 22 does not constitute an entire law pertaining to preventive detention on its own. Parliament has the power to adopt additional provisions, and if it does, Art. 19 (5) can be used to determine whether such provisions are unreasonable.
What does "law" and "procedure established by law" entail in Section 9.1?	*Kania C.J., Mukherjea and Das JJ.* Article 9.1 uses the term "law" to refer to state-created law, not to natural law. Second, "procedure established by law" refers to the procedure established by the state,	*Fazl Ali* "Legal procedure" must incorporate four fundamental tenets of justice: 1) notice, (2) chance to be heard, (3) unbiased tribunal, and (4) methodical course of procedure. These four are

	which is the legislature or parliament. This term must not be provided the same interpretation as "due process of law" in the American Constitution. *Patanjali Sastri* "Law" refers to state-created law, not to natural law. "Legal procedure" refers to the established criminal procedure, i.e. the process authorised by the CrPC.	part of the same right i.e., right to be heard before one is condemned.
Whether Section 3 of the Act is constitutionally valid?	*Kania C.J., Fazl Ali, Patanjali Sastri, Mahajan and Das JJ.* Section 3 of the Preventive Detention Act, 1950, does not vest an executive officer with legislative authority, but rather vests such officer with prerogative to implement the law enacted by the parliament, and thus is not void on this contention. *Fazl Ali* Section 3 is a rational clause for the initial phase specifically, for imprisonment and initial detainment, and should be accompanied by a process	

	for determining the so-called personal satisfaction.	
Whether Section 7 is valid	*Kania C. J., Mahajan and Das JJ* Section 7 is not invalid as the right to lead evidence or make oral representation is not inherent in Article 22. It is enough to provide for a right to make representation.	
Whether Section 12 complies with the requirements of Article 22(7)	*Kania. C.J., Patanjali Sastri, Mukherjea and Das JJ.* Article 22(7) provides that Parliament could specify the situations, or the class or classes of cases whereby a person may be detained for more than 3 months without consulting an advisory board, Parliament does not have to prescribe both. The matters referred to in clauses (a) and (b) of sub-section (1) of Sec. 12 adequately describe such circumstances or classes of cases.	*Fazal Ali and Mahajan* Article 22(7) means that both the situations and the class or classes of cases (two distinct expressions with distinct meanings and connotations) must be prescribed, and prescribing one without another is insufficient.