

**Research Article**

## **EVOLUTION OF PREVENTIVE DETENTION AND PERSONAL LIBERTY IN INDIA**

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### **Abstract**

The Indian Constitution embodies a delicate balance between individual liberty and collective security. While Part III guarantees fundamental rights designed to shield citizens from arbitrary State action, the same Constitution—through Article 22—permits preventive detention even in the absence of a criminal offence. This inherent contradiction has generated one of the most enduring constitutional debates in India’s democratic evolution.

From the early years of independence, the judiciary has grappled with reconciling this tension. In *A.K. Gopalan v. State of Madras* (1950), the Supreme Court adopted a narrow and formalist interpretation, treating each fundamental right as distinct and confining “procedure established by law” to any legislatively enacted procedure, however harsh. The subsequent decision in *R.C. Cooper v. Union of India* (1970) marked a decisive shift, introducing the “effect and impact” test and recognizing the integrated nature of fundamental rights. This conceptual development paved the way for the transformative judgment in *Maneka Gandhi v. Union of India* (1978), which redefined personal liberty under Article 21 to include fairness, reasonableness, and non-arbitrariness as essential elements of any State action.

The evolution of preventive detention jurisprudence must also be understood in light of the Constituent Assembly Debates, where members such as Thakur Das Bhargava warned against the dangers of arbitrary detention, while Dr. B.R. Ambedkar defended it as a necessary safeguard for national security. The dialectic between these two positions continues to influence constitutional adjudication.

By tracing this trajectory—from Gopalan’s formalism to Maneka’s humanism—this paper demonstrates how the Indian judiciary progressively transformed the concept of “procedure established by law” into a doctrine of substantive due process. The study underscores that liberty in a constitutional democracy is not a mere privilege granted by the State, but a fundamental condition of human dignity, sustained only when preventive detention laws operate within the limits of fairness, justice, and reason.

**Keywords:** Law, Democracy, Constitution, Fundamental rights.

### **I. Introduction**

Preventive detention has always presented a constitutional paradox: it curtails liberty in order to safeguard liberty itself. Articles 21 and 22 of the Constitution reflect this tension. While Article 21 guarantees that no person shall be deprived of life or personal liberty except according to “procedure established by law,” Article 22 expressly permits preventive detention within prescribed limits.

The debates of the Constituent Assembly reveal that the inclusion of preventive detention provisions was not unanimous. Members like Thakur Das Bhargava and K.M. Munshi

expressed deep concern that such power would endanger the very liberty the Constitution sought to protect.<sup>1</sup> However, Dr. B.R. Ambedkar defended its inclusion as a necessary evil for safeguarding the nascent State against subversive threats, asserting that “no liberty can be absolute” and that preventive detention was justified only within reasonable limits.<sup>2</sup>

## **II. Constituent Assembly Debates on Preventive Detention**

During the debates on Draft Article 15A (later Article 22), Thakur Das Bhargava argued that preventive detention “cuts at the very root of liberty” and that such a provision would be “a slur on the name of democracy.”<sup>3</sup> He moved several amendments seeking its deletion or severe limitation, warning that executive detention without trial could become a tool of political oppression.

Dr. Ambedkar, replying to the criticisms, acknowledged the “inherent contradiction” between liberty and security but emphasized that the framers had introduced safeguards such as the requirement of parliamentary approval, maximum detention periods, and the establishment of Advisory Boards.<sup>4</sup> He declared that the provision was not meant to confer arbitrary power but to “provide for exceptional cases where preventive action is essential in the interests of the State.”<sup>5</sup>

The debate thus encapsulated the enduring constitutional tension: liberty versus security. The framers ultimately adopted preventive detention, but only as a limited and reviewable measure under Article 22.

## **III. A.K. Gopalan v. State of Madras (1950)**

Citation: AIR 1950 SC 27.

The Preventive Detention Act, 1950 was challenged by communist leader A.K. Gopalan on the grounds that it violated Articles 19, 21, and 22. The Supreme Court, by a majority of 5:1, upheld the Act except for Section 14, which denied detainees the right to know the grounds of detention.<sup>6</sup> The majority held that each fundamental right was distinct and self-contained; Article 21 was independent of Article 19. The expression “procedure established by law” was interpreted literally, validating any legislatively enacted procedure, even if harsh or unreasonable.

Justice Fazl Ali’s dissent advocated a holistic reading of fundamental rights, insisting that “procedure established by law” must be fair, just, and reasonable.<sup>7</sup> Although a minority view at the time, it later became the governing principle of constitutional liberty. Gopalan thus marked a formalist phase in Indian constitutional law.

## **IV. R. Cooper v. Union of India (1970) — the Bank Nationalisation Case**

Citation: AIR 1970 SC 564.

Background

In 1969, the Government of India issued the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969 (later replaced by an Act) to nationalize 14 major private banks. The decision was part of Prime Minister Indira Gandhi’s policy of extending State control over key sectors to achieve economic equality and social justice.

R.C. Cooper, a shareholder and director of the Central Bank of India, challenged the legislation before the Supreme Court, contending that the Act violated his fundamental rights to property, equality, and freedom of trade and occupation under Articles 14, 19(1)(f), 19(1)(g), and 31 of the Constitution.<sup>1</sup>

Issues for Determination

1. Whether the nationalization of private banks amounted to unconstitutional deprivation of property without compensation under Article 31.
2. Whether the legislation violated the freedom to carry on trade or business under Article 19(1)(g).

3. Whether the validity of the law should be tested only with reference to the specific article it invoked, or in light of the combined operation of all fundamental rights.<sup>2</sup>

#### Judgment

By a majority of 10:1, the Supreme Court struck down the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 as unconstitutional. The Court held that:

1. The law did not provide fair and adequate compensation for the acquisition of property, thus violating Article 31(2).
2. The restrictions imposed on shareholders and directors were unreasonable and arbitrary, infringing Article 19(1)(g).
3. Most importantly, the Court rejected the doctrine followed in *A.K. Gopalan v. State of Madras* (1950) that each fundamental right was distinct and mutually exclusive.

Justice Shah, writing for the majority, observed that a single State action can simultaneously affect multiple fundamental rights, and therefore its constitutionality must be tested on the combined effect and impact on all such rights.<sup>3</sup>

#### Significance

The R.C. Cooper ruling revolutionized constitutional interpretation by discarding the “compartmentalized” approach of Gopalan and adopting an integrated view of fundamental rights. It recognized that the protection of individual liberty could not be fragmented under separate articles.

This shift had far-reaching implications beyond property rights. When *Maneka Gandhi v. Union of India* (1978) later revisited the scope of Article 21, the Court explicitly relied on R.C. Cooper to hold that Articles 14, 19, and 21 form a unified code of liberty.<sup>4</sup> Thus, R.C. Cooper laid the intellectual foundation for the expansion of personal liberty and due-process jurisprudence in India.

#### Doctrinal Impact

1. **Integrated Rights Doctrine:** Fundamental rights are not isolated silos; any law or State action must satisfy the cumulative requirements of equality, liberty, and reasonableness.
2. **Effect and Impact Test:** The constitutionality of a law is determined by its practical consequences, not its formal classification.
3. **Transition to Substantive Due Process:** Although R.C. Cooper itself concerned property rights, it introduced analytical tools that would later be used in *Maneka Gandhi* and *Puttaswamy* to protect life and liberty.
4. **Judicial Activism and Economic Policy:** The case signalled a willingness of the judiciary to review even major policy decisions for compliance with constitutional guarantees.

#### **V. Haradhan Saha v. State of West Bengal (1975)**

Citation: AIR 1975 SC 2154.

The Maintenance of Internal Security Act (MISA), 1971, was challenged as violative of Articles 14, 19, and 21. The Court upheld the statute, distinguishing preventive detention from punitive detention, and reaffirmed that laws enacted under Article 22 do not per se contravene fundamental rights.<sup>9</sup> The subjective satisfaction of the detaining authority was held sufficient, and judicial review remained limited to examining mala fides or procedural violations.

Delivered on the eve of the Emergency, the judgment reflected a cautious balance between liberty and national security, confirming the constitutionality of preventive detention while endorsing strong executive discretion.

#### **VI. Maneka Gandhi v. Union of India (1978)**

Citation: AIR 1978 SC 597.

In a turning point for constitutional jurisprudence, the petitioner’s passport was impounded “in the public interest” without disclosure of reasons. The Supreme Court expanded Article 21’s scope, holding that the phrase “procedure established by law” means a procedure that is fair, just, and reasonable.<sup>10</sup> It ruled that Articles 14, 19, and 21 are interdependent, and any law restricting liberty must satisfy tests of fairness, reasonableness, and non-arbitrariness.

By overruling Gopalan’s narrow interpretation, Maneka Gandhi infused the concept of substantive due process into Indian constitutional law, transforming Article 21 into the heart of the Constitution.

### **VII. Post-Maneka Developments**

<b>Case</b>	<b>Year</b>	<b>Significance</b>
A.D.M. Jabalpur v. Shivkant Shukla (Habeas Corpus Case)	1976	Upheld suspension of liberty during Emergency; later criticised and expressly overruled.
K.S. Puttaswamy v. Union of India	2017	Recognised the right to privacy as part of Article 21, reinforcing dignity, autonomy, and fairness.

These rulings consolidated the principle that personal liberty cannot be curtailed without adherence to substantive and procedural fairness.

### **VIII. Comparative Summary**

<b>Case</b>	<b>Year</b>	<b>Judicial Approach</b>	<b>Principle Established</b>	<b>Outcome</b>
A.K. Gopalan	1950	Formalist, narrow	Rights treated separately; any procedure valid	Preventive detention upheld
R.C. Cooper	1970	Integrated, liberal	Rights interrelated; “effect and impact” test	Law struck down
Haradhan Saha	1975	Cautious, security-oriented	Preventive detention valid under Art. 22	Law upheld
Maneka Gandhi	1978	Progressive, rights-oriented	Procedure must be fair, just, and reasonable	Liberty widened

### **IX. Conclusion**

The trajectory from A.K. Gopalan to Maneka Gandhi represents the transformation of the Supreme Court from a formalist interpreter of constitutional text to a dynamic guardian of human liberty. While preventive detention remains constitutionally permissible, its exercise is circumscribed by the doctrines of fairness, reasonableness, and non-arbitrariness.

The Constituent Assembly debates foreshadowed this evolution—what Thakur Das Bhargava feared, and Ambedkar justified has remained a living constitutional dilemma. The evolution underscores that liberty in a constitutional democracy is not merely the absence of restraint but the presence of justice, ensuring that State power operates under the rule of law and in service of human dignity.

### **Footnotes**

1. Constituent Assembly Debates, Vol. VII, 16 Dec. 1948, Speech of Thakur Das Bhargava, p. 1220.
2. Constituent Assembly Debates, Vol. VII, 16 Dec. 1948, Reply by Dr. B.R. Ambedkar, p. 1226.
3. Ibid., p. 1220.
4. Ibid., p. 1225.

5. Ibid., p. 1227.
6. A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
7. Ibid., at 117 (Fazl Ali, J., dissenting).
8. R.C. Cooper v. Union of India, AIR 1970 SC 564.
9. Haradhan Saha v. State of West Bengal, AIR 1975 SC 2154.
10. Maneka Gandhi v. Union of India, AIR 1978 SC 597.

**Citation:** T. JAYAPRAKASH 2026. "EVOLUTION OF PREVENTIVE DETENTION AND PERSONAL LIBERTY IN INDIA". *International Journal of Academic Research*, 13(1): 08-12.

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