



Ayana Legal

THE BUZZ

Monthly Newsletter By Team Ayana Legal

Right to Life and Liberty

Article 21 of the Constitution:

Through various judgements the Supreme Court has interpreted right to life and liberty under Article 21 to include the right to travel.

In **Satwant Singh Sawney v. D. Ramarathnam, Asst. Passport Officer**, the Supreme Court has held that the right to travel is a Fundamental right under Article 21 of Indian Constitution and the government has no right to refuse a passport to a person who has applied for the same.

In the case of **Deepak Dwarkasingh Chhabria v. Union of India** and another in which it was held that for renewal of passport, the pendency of criminal case is not a bar if a person seeking renewal obtains permission from the concerned jurisdictional court for travel

Right to hold a Passport and to Travel

Freedom of movement is a Constitutional right. A citizen is given the liberty to travel, work and reside at any place where he or she wants.

The Passports Act is an act of the Parliament of India "for the issue of passports and travel documents, to regulate the departure from India of citizens of India and for other persons and for matters incidental or ancillary thereto."

After committing a crime, fleeing away from the country seems to be a feasible option for many offenders. This can be a major setback in realising the justice system of the country. Time and again criminals have left the country to escape prosecution. The country then had to extradite the person from the foreign land following long and arduous process.

One of the Landmark judgements regarding right to personal liberty was delivered by a 7-judge bench of the Hon'ble Supreme Court on 25th January 1978 in *Maneka Gandhi v Union of India*, this decision in *Maneka Gandhi v Union of India* marked the development of a new era with respect to the interpretation of fundamental rights guaranteed in the Constitution. This decision completely changed the meaning of personal liberty given under the constitution.

Code of Criminal Procedure deals with impounding of documents (Section 104). Passports Act, 1967 specifically deals with the impounding of passports (Section 10 (3)). Therefore, it can be argued that the best way to prevent one from leaving the country would be by impounding his/her passport.

The grant of permission to attain a passport will be a process of

505 -506, 5th Floor, Brigade Towers, 135, Brigade Road, Bangalore - 560025

Email - contact@ayanalegal.com

Tel - +918029548996.

II© Ayana Legal, 2020II.

In the case of **Maneka Gandhi vs. Union of India**, the court held even though the phrase used in Article 21 is “procedure established by law” instead of “due process of law” as found in the American constitution, the procedure must be free from arbitrariness and irrationality. The court widened the scope of “personal liberty” clause under Article 21. It was held that the scope of “personal liberty” is not to be construed in a narrow and stricter sense. The court said that personal liberty has to be understood in the broader and liberal sense. Therefore, Article 21 was given an expansive interpretation.

Thank You

Team Ayana Legal thanks you for the trust. Till we are back with our next edition, stay safe and keep smiling.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

balancing the fundamental right of a citizen to travel abroad and ensuring that persons accused in crimes are present during their trial.

The parameters that shall govern the grant of permission by the criminal courts in the matter of issuance of passports to those involved in criminal proceedings pending in courts shall be as follows:

- The stage of the criminal proceeding and the duration of time within which the trial may take place;
- The criminal antecedents and past conduct of the accused;
- The nature and gravity of the crime; offences under Statutes dealing with acts of terrorism and acts of smuggling should require a different consideration;
- In heinous crimes, if the court decides to grant permission, the period for which permission is granted can be limited;
- Chances of the accused fleeing or evading the trial in the case;
- Mode in which the presence of the accused can be ensured during trial, including stipulating conditions like providing the address/ change of address in the country of residence abroad, either with the Indian Consulate at the country of residence abroad or with the Court where the trial is pending;
- Since in cases where time is not fixed by the Magistrate while granting permission, the passport authorities are issuing passports only for one year, the period for which the accused can be permitted to travel can also be fixed by the Magistrate, while granting permission.

The Court clarified that this is not an exhaustive list and that criminal courts may incorporate other reasonable safeguards to ensure the presence of the accused during trial into the order granting permission, if the circumstances warrant it.

Though it is necessary that there should be checks and balances to issuance of passport to those accused in heinous crimes and who may be a flight risk, it is necessary to weigh that against the personal liberty of a person.