Satwant Singh Sawhney

Vs

D. Ramarathnam, Assistant Passport Officer Government of India, New Delhi and Others

Writ petitions Nos. 230 of 1966 and 30 of 1967

(CJI K. Subha Rao, M. Hidayatullah, R. S. Bachawat, J. M. Shelat, C. A. Vaidialingam JJ)

10.04.1967

JUDGEMENT

SUBBA RAO, C.J. –

Satwant Singh Sawhney, the petitioner is a citizens of India. He carries on the business of Importer, Exporter and Manufacture of automobile parts and engineering goods in the name and style of Indi-Europeans Trading Corporation. he also carries on another business in engineering goods in the name of "Sawhney Industries". For the purpose of his business it is necessary for the petitioner to travel abroad. From the year 1958 he was taking passports for visiting foreign countries in connection with his business. On December 8, 1965 be obtained a regular passport form the Government of India which is valid upon March 22, 1969. So too, on October 27, 1965 be obtained another passport which was valid upto March 22, 1967. On August 31, 1966 the Assistant Passport Officer, Government of India, Ministry of External Affairs, New Delhi, the 1st respondent herein, wrote to the petitioner calling upon him to return the said two passports as the 3rd Respondent, the Union of India, had decided to withdraw the passport facilities extended tot he petitioner. So too the 2nd respondent the Regional Passport Officer, Bombay wrote to the petitioner a letter dated September 24, 1966, calling upon him to surrender the said two passports immediately to the Government and intimating him that in default action would be taken against him. Though the petitioner wrote letters to the respondents requesting them to reconsider their decision he did not receive any reply from them. The petitioner alleging that the said action of the respondents infringed his fundamental rights under Arts. 21 and 14 of the Constitution file the writ petition in this Court for the issuance of a writ of mandamus or other appropriate writ or write directing the respondents to withdraw and cancel the said decision contained in the said two letters, to forbear from taking any steps or proceedings in the enforcement of the said decision and to forbear form depriving the petitioner of the said two passports and his passport facilities.

The respondents contested the petition manly on the ground that the petitioner's fundamental right had not been infringed, that the petitioner contravened the conditions of import licence obtained by him, that investigations were going on against him in relating to offences under the Export and Import Control Act and that the passport authorities were satisfied that if the petitioner was allowed to continue to have the passports he was likely to leave India and not return to face a trial before a court of law and that therefore his passports were impounded. Further it was alleged that the passport was a document which was issued to a person in the pleasure of the President in exercise of his political function and was a political document, and the refusal to grant a passport could not be a subject of review in a court of law. For the same reason it was alleged that the petitioner had no right to have the passports issued to him.

It would be convenient at the outset to record briefly the respective contentions advanced by learned counsel on behalf of the petitioner and the respondents.

The arguments of Mr. Sorabji learned counsel for the petitioner, may be summarized thus; the right to leave India and travel outside India and return to India is part of personal liberty guaranteed under art. 21 of the Constitution (2) Refusal to give a passport or withdrawal of one given amounts to deprivation of personal liberty inasmuch as (a) it is not practically possible for a citizen to leave India or travel abroad or to return to India without a passport, (b) instructions are issued to shipping and travel companies not to take passengers on board without passport (c) under the Indian Passport Act reentering India without Passport is penalized, (3) The deprivation of personal liberty is not in accordance with the procedure established by law within the meaning of art. 21, as admittedly there is not law placing any restrictions on the citizens of the country to travel abroad. (4) The unfettered discretion given to the respondents to issue on nor to issue a passport to a person offends Art. 14 of the Constitution inasmuch as (a) it enables the State to discriminate between persons similarly situated and also because it offends the doctrine of rule of law, (b) the rule of law requires that tan executive action which prejudicially affects the rights of a citizen must be pursuant to law. And (5) the said orders offend the principle of fairplay.

The learned Additional Solicitor General presented hi argument from a different perspective. The gist of his arguments may be stated thus (1) Passport is an official political document to be presented to the Government of foreign nations and intended to be sued for the protection of the holder of the passport in foreign countries : it is only a facility provided by the Government and no person has a right to it. (2) The right to travel is not included in "personal liberty" guaranteed by Art, 21 of the Constitution for the following reasons : (a) the right to travel necessitating a passport cannot be a right because a passport gives only only a facility and does not confer a right; (b) no constitutional guarantee of he right to travel is conferred under out Constitution for such a guarantee would obviously be ineffective outside the territories of the count try governed by the said Constitution; and (c) as the right to travel depends entirely on the municipal law of the foreign country governing the right of entry into that country, in the very nature of things no Constitution can confer such a right on the people governed by that country.

Before we consider the validity of the conflicting arguments and the case-law on the subject it will be convenient to notice the factual position in India vis-a-vis the immersions of a passport in the matter of exit form India for foreign travel.

As a result of international convention and usage among nations it is not possible for a person residing in India to visit foreign countries, with a few exception, without the possession of a passport. The government of India has issued instruction to shipping and airline companies not to take on board passengers leaving India unless they possess valid passports. Under S. 3 of the Indian Passport Act, 1920 the Central Government may make rules requiring that persons entering into India shall be in possession of passports. In exercise of the power conferred under s. 3 of the said Act rules were made by the Central Government. Under r. 3 thereof no persons proceedings from any place outside India shall enter or attempt to enter India by water, land or air unless he is in possession of a valid passport conforming to the condition prescribed in r. 4 thereof. Under s. 4 of the said Act any such person may be arrested by an officer of police not below the prescribed rank; and under r. 6 of the Rules any person who contravenes the said rules shall be punishable with imprisonment for a term which may extend to 3 monthly or with a fine or with both. Under s. 5 of the Act the Central Government is authorised by general or special order to direct the removal of any such person from India. The combined effect of the provisions on the Act and the rules made

thereunder is that the executive instructions given by the Central Government to shipping and air-line companies and the insistence of foreign countries on the possession of a passport, before an Indian is permitted to enter those countries make it abundantly clear that possession of passport, whatever may be its meaning or legal effect, is a necessary requisite for leaving India for travailing abroad. The arguments that the Act does not impose the taking of a passport as a condition of exit from India, if we may say so, is rather hypertechnical and ignores the realities of the situation. Apart from the fact that possession of passport is a necessary condition of travel in the international community, the prohibition against entry indirectly prevents the person from leaving India. The State in fact tells a person living in India "you can leave India your pleasure without a passport, but you would not be allowed by foreign countries to enter them without it and you cannot also come back to India without it. " No person in India can possibly travel on those condition. Indeed it is impossible for him to do so. That apart, even that theoretical possibility of exit is expressly restricted by executive instructions and by refusal of foreign- exchange. We have, therefore, no hesitation to hold that an Indian passport is factually a necessary condition for travel aboard and without is no person residing in India can travel outside India.

If that be the factual position, it may not be necessary to consider the legal effect of the possession of a passport. But as much of the argument turned upon the question of its scope, it is as well that we noticed the law on the subject.

At the outset we may extract some of the forms of passport obtaining in different countries. The British form reads thus :

> "The Secretary of State requests and requires in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need."

The form obtaining in the United States of America reads :

> "The Secretary of State requests all whom it may concern to permit safely and freely to pass and in case of need to give all lawful aid to..... the named person..... a citizen of the United States."

In India the form reads thus :

> "These are to request and require in the Name of of the President of the Republic of India all those whom it may concern to all the bearer to pass freely without let or hindrance, and to afford him or her every assistance and protection of which he or she may stand in need."

These are also other forms. It will be seen form the phraseology used in the three forms that they are in the nature of requests from one State to another permitting the holder to pass freely through the State and to give him the necessary assistance. Alverstone, C.J., in R. V. Brailsford described a passport thus :

> "It is a document issued in the name of sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office in an official document vouches the respectability of the person named."

The same definition is given to passport in Wharton's Law Lexicon, XIV Edition, p. 741. The House of Lords in Jayco v. Director of Public Prosecutions accepted the statement of Alverstone, C.J., R. v. Brailsford and held that by its terms the passport requested and required in the name of His Majesty all those whom it might concern to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need. Lord Jowitt, L. C., proceeded to state :

> "It is, I think, true that the possession of a passport by a British subject does not increase the sovereign's duty of protection, though it will make his path easier. For him it serves as a voucher and means of identification. But the possession of a passport by one who is not a British subject gives him rights and imposes upon the sovereign obligations which would otherwise not be given or imposed."

A summary of the present law on passport is found in Halsbury's Laws of England, Volume IV, at p. 519 and it read thus :

> "Passports may be granted by the Crown at any time to enable British subjects to travel with safely in foreign countries, but such passport would clearly not be available so as to permit travel in any enemy's country during war."

A footnote to the above says :

> "The possession of a passport is now almost always required by the authorities to enable a person to enter a country."

P. Weis in his book "Nationality and Statelessness in International Law", after narrating briefly the earlier history of the passport system speaks of the position in the 19th Century and the beginning of the 20th Century thus :

> "Only since the First World War has the passport system in its modern sense been introduced in most countries, i.e., the system whereby aliens who wish to enter a foreign territory are required to produce a passport issued by the authorities of their country of nationality."

The learned author then described the character of the document thus :

> "..... the modern passport is largely an identity and travel document issued to the state's own nationals."

Then the learned author stated at p. 226 thus :

> "In the normal intercourse of State, a foreign national passport is, as a rule, accepted as prima facie evidence of the holder's nationality."

He also pointed out that British and American passports contained a request to whom it might concern to afford protection to the holder, but passports of most other countries did not contain such a request. Professor Harry Street in his book "Freedom, the Individual and the Law" in describing the essence of a passport says much to the same effect thus, at p. 271 :

> "In essence a passport is a document which identifies the holder and provides

evidence of his nationality."

In "The Grotius Society" Vol. 32-Transactions for the year 1946" under the heading "Passports and Protection in International Law" Kenneth Diplock, after tracing the history of the passport system from the earliest times, observed thus :

> "Passport in the modern sense is, in essence, a document of identity with which a State may, but not..... necessarily does- require alien travellers within its territories to be furnished."

The learned author concludes :

> "They (passport) are in the same category as any other evidence of the national status of an individual; and any rights to protection recognised in international law flow from national status, not from the evidence by which national status is proved. ""

It is, therefore, clear that in England a passport takes the form of a request to foreign countries and enables the British subjects to travel in safety in those countries. It is a documents of identity. It also affords prima facie evidence that the person holding the passport is a national of England. In the modern times without it, it is not possible to enter any State.

Now let us trace its history in the American law. In Domingo Urtetiqui v. John N. D.' Arcy the scope of a passport before relevant statutes were made is described thus :

> "It is a document which, from its nature and object, is addressed to foreign power; purporting only to be request that the bearer of it may pass safely and freely; and is to be considered rather in the character of a political documents, by which the bearer is recognised in foreign countries as an American citizen; and which, by usage and the law of nations, is received as evidence of the fact."

In Ballentine's Law Dictionary, 2nd Edition, at p. 940, the following meaning is given to "passport" :

> "A document issued on behalf of a citizen of the United States by the Secretary of State, addressed to foreign powers and purporting to be a request that the bearer of it may pass safely and freely. It is to be considered as a political document by which the bearer is recognized in foreign counties as an American citizen, and which by usage and the law of nations is received as evidence of the fact.

This definition is taken form the decision in Uretiqui v. D'Arbel. So too, in American Jurisprudence, Vol. 40, the same description is given of a passport and it is added that it is a political document.

But the Supreme Court a America for the first time had defined the scope of passport in Kent v. Dulles. There the Secretary of State refused to issue passport to each of the two plaintiffs because of the refusal to file affidavit concerning their membership in the Communist Party. To obtain the passport each of the plaintiffs instituted an action against the Secretary of State in the United States District Court for the District of Columbia. In due course the ease went up to the Supreme Court. Mr. Justice Douglas described the nature of the passport thus : "A passport not only is of great value-indeed necessary-abroad; it is also an aid in establishing citizenship for purposes of re-entry into the United /states. " At page 1212 he went on to say that the document involved more "in part,

of course, the issuance of the passport carries some implication of intention to extend the bearer diplomatic protection, though it does no more than request all whom it may concern to permit it safely and freely to pass, and in case of need to give all lawful aid and protection to this citizen of the United States. But that function of the passport is subordinate. Its crucial function today is control over exit". While in the earlier judgment the emphasis was laid on the request to protect the citizen. this judgment says that the main function of a passport is to control the exit. So a passport, whether in England or in the United States of America serves diverse purposes; it is a "request for protection", it is a document of identity, it is prima facie evidence of nationality, in modern times it not only controls exit from the State to which one belongs, but without it, with a few exceptions, it is not possible to enter another State. It has become a condition for free travel.

The want of a passport in effect prevents a person leaving India. Whether we look at it as a facility given to a person to travel abroad or as a request to a foreign country to give the holder diplomatic protection, it cannot be denied that the Indian Government, by refusing a permit to a person residing in India, completely prevents him from travelling abroad. If a person living in India, whether he is a citizen or not, has a right to travel abroad, the Government by withholding the passport can deprive him of his right. Therefore, the real question in these writ petitions is : Whether a person living in India has a fundamental right to travel abroad?

The relevant article of the Constitution is Article 21. It reads :

> "Art. 21 No person shall be deprived of his life of personal liberty except according to procedure established by law."

If the right to travel is a part of the personal liberty of a person he cannot be deprived of his right except according to the procedure established by law. This court in Gopalan's case has held that law in that article means enacted law and it is conceded that the State has not made any law depriving or regulating the right of a person to travel abroad.

Before we advert to the Indian decisions on the subject it may be useful to consider the American law on the subject. The 5th and 14th amendments embody a constitutional guarantee that no person shall be deprived of his liberty without due process of law. In American Jurisprudence, 2nd Ed. at page 359, it is stated that "Personal liberty largely consists of the right of locomotion-to go where and hen one pleases only so far restrained as the rights of others may make it necessary for the welfare of all other citizen."

Chief Justice Fuller in R. A. Williams v. Edgar Fears & Anr. says : "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right ordinarily, of free transit from or through the territory of any State is a right secured by the 14th Amendment and by other provisions of the Constitution."

In Leonard B. Boundin v. John Foster Dulles the law is put thus : "travel abroad is more than a mere privilege accorded American citizens. It is a right, an attribute of personal liberty, which may not be infringed upon or limited in any way unless there be full compliance with the requirements of due process."

The Supreme Court in Kent v. Dulles re-affirmed the said doctrine and declared that the right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment. It further emphasised that freedom to travel is an important aspect of

the citizen's liberty. No doubt the said statement of law was conceded by the solicitor General, but that fact does not detract from the validity of the view, as the decision was on merits and not solely on concession.

The Supreme Court again in Herbert Aptheker v. Secretary of State re-affirmed the view expressed in Kent's case. Douglas. J., in a concurring judgment pin-pointed the importance of that right thus : "Freedom of movement, at home and abroad, is important for job and business opportunities-for cultural, political and social activities-for all the commingling which a gregarious man enjoys. " Later on the learned Judge emphasised the importance of the said freedom and described it graphically thus : "America is of course sovereign; but her sovereignty is woven in an international web that makes her one of the family of nations. The ties with all the continents are planetary, beyond sunrises and sunsets. Citizenship implicates us in those problems and perplexities, as well as in domestic ones. We cannot exercise and enjoy citizenship in world perspective without the right to travel abroad; and I see no constitutional way to curb it unless, as I said, there is the power to detain."

An interesting article in the Yale Law Journal discusses the subject. There the content of the word 'Liberty' in the Fifth Amendment was described as "not a static conception" but a broad and pervasive view adaptable to the changing circumstance of American life and it was expressed that the right of locomotion, the right to move from one place to another according to inclination is an attitude of personal liberty. "Freedom to leave one's country temporarily for travel abroad was considered to be important to an individual, national and international well-being".

It is, therefore, clear that in America the right to travel is considered to be an integral part of personal liberty.

In England the right to go abroad was recognised as an attribute of personal liberty as early as in the year 1915 in Article 42 of the Magna Carta. The said article reads :

> "42. It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom : excepting prisoners and outlaws according to the laws of the land, and of the people of the nation at war against us, and merchants who shall be treated as it is said above."

True that this article was omitted in the final version of the Magna Carta and Article 39 only dealt with personal liberty, Article 39 read :

> "No free man shall be taken or imprisoned or disregarded or outlawed, or exiled, or any way destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land."

This article, no doubt, in terms does not guarantee a right to travel abroad. But it speaks in absolute terms. Blackstone, great authority on 'Common Law', speaking of personal liberty observed :

> "Personal liberty consists in the power of locomotion, of changing direction or moving one's person to whatever place one's own inclination may desire."

So too, another authority on Common Law, Odgers, in his book on Common Law in Ch. II under

the heading "Rights common to all" states this aspect of the personal liberty thus :

> "Every citizen enjoys the right to personal liberty; he his entitled to stay at home or walk abroad at his pleasure without interference or restraint from others."

In the Grotius Society, Vol. 32, under the heading "Passports and protection in the International Law", this facet of liberty was traced. In the early development of Common Law it is said that a subject was prohibited from leaving the Realm without the leave of the Crown, for to do so would deprive the King of a subject's military and other feudal services. But by the time of Blackstone, the subject has acquired a general common low right to leave the Realm, subject to the prerogative right of the Crown to restrain him by the writ, exeat Vegno. This prerogative writ later lapsed through desuetude. The result is that in England, subject to any special legislation, British subjects are entitled at Common Law to leave and enter the country at will. The right of exit is a common law right.

In India, the Supreme Court had made some observations on the scope of personal liberty in Art. 21 in some decisions which throw light on the content of personal liberty. In Gopalan's case the petitioner who was detained under the Preventive Detention Act, applied under Art. 32 of the Constitution for a writ of habeas corpus and for his release from detention on the ground that the said Act contravened the provisions of Arts. 13, 19, 21 and 22 of the Constitution and in consequence it was ultra vires and that his detention was, therefore, illegal. This Court, by majority, held that Art. 19 of the Constitution has no application to a law which relates directly to the preventive detention even though as a result of an order of detention the rights referred to in Art. 19 are restricted or abridged. This Court was not directly concerned with the question whether the expression 'personal liberty' in Art. 21 takes in the right to travel abroad. Some of the observations made in regard to the limits of the right to move throughout the territory of India in Art. 19(1) (d) of the Constitution are not of much relevance as the limits of the movement are circumscribed by the said clause itself. But we are concerned in this case with the question whether the right to travel abroad falls within the scope of personal liberty in Art. 21. At page 138, Fazal Ali J., says :

> "There can therefore be no doubt that freedom of movement is in the last analysis the essence of personal liberty, and just as a man's wealth is generally measured in this country in terms of rupees, annas and pies, one's personal liberty depends upon the extent of his freedom of movement to which reference has been made in article 19(1) (d) is not the freedom of movement to which Blackstone and other authors have referred, but is a different species of freedom which is qualified by the words 'throughout the territory of India'. How the use of the expression 'throughout the territory of India' can qualify the meaning of the rest of the words used in the article is a matter beyond by comprehension. In my opinion, the words 'throughout the territory of India' were used to stretch the ambit of the freedom of movement to the utmost extent to which it could be guaranteed by our Constitution."

This passage makes a distinction between freedom of movement, which is a part of personal liberty and the limits of that liberty under Art. 19(1) (d).

Das J., at page 299, also brings out this distinction when be says :

> "In my judgment, Article 19 protects some of the important attributes of personal liberty as independent rights and the expression "personal liberty" has been used in

> article 21 as a compendious term including within its meaning all the varieties of rights which go to make up the personal liberties of men."

Later on he points out that Art. 19(1) (d) comprehends only a specific and limited aspect of the freedom of movement. Again at page 301 the learned Judge reverts to the same position. He observes :

> "It purpose is not to provide protection for the general right of free movement but to secure a specific and special right of the India citizen to move freely throughout the territories of India regarded as an independent additional right apart from the general right to locomotion emanating from the freedom of person. It is guarantee against unfair discrimination in the matter of free movement of the India citizen throughout the Indian Union. It has nothing to do with the freedom of the person as such. That is guaranteed to every person, citizen or otherwise, in the manner and the extent formulated by article 21."

The observations of Mukherjee J., at page 258 must also be restricted to the scope of the free movement under Art 19(1) (d).

In Kochunni's case this Court pointed out that personal liberty in Art. 21 is a more comprehensive concept and has a much wider connotation than the right conferred under Art. 19 (1) (d).

In Kharak Singh v. The State of U. P. the question was whether the State by placing the petitioner under surveillance infringed his fundamental right under Art. 21 of the Constitution. This Court, adverting to the expression "personal liberty" accepted the meaning put upon the expression 'liberty' in the 5th and 14th Amendments to the U. S. Constitution by Field, J., in Munn v. Illinois but pointed out that the ingredients of the said expression were placed in two articles, viz., Arts. 21 and 19 of the Indian Constitution.

This Court expressed thus :

> "It is true that in Art 21 as contrasted with the 4th and 14th Amendments in the U. S., the word 'Liberty' is qualified by the word 'personal' and therefore its content is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those elements or incidents of "liberty" like freedom of speech or freedom of movement etc., already dealt within Art. 19(1) and the "liberty" guaranteed by Art. 21. ....."

The same idea is elaborated thus :

> "We..... consider that "personal liberty" is used in the Article 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 Art. 19(1). In other words, while Art 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue."

This decision is a clear authority for the position that "liberty" in our Constitution bears the same comprehensive meaning as is given to the expression "liberty" by the 5th and 14th Amendments to the U. S. Constitution and the expression "personal liberty" in Art. 21 only excludes the ingredients of "liberty" enshrined in Art. 19 of the Constitution. In other words, the expression "personal

liberty" in Art. 21 takes in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Art. 19. There are conflicting decisions of High Courts on this question. A division Bench of the Madras High Court, consisting of Rajamannar, C.J., and Venkatarama Ayyar, J. in V. G. Row v. State of Madras considered this question in the context of the application filed for the issue of a writ of mandamus directing the State of Madras to endorse passport of the petitioner as valid for travel to U. S. S. R. and other countries in Europe. The petitioner there complained that the refusal of an endorsement of the passport to any country was a violation of the fundamental right granted to him under Art. 19 (1) (d) of the Constitution and Art. 14 thereof. The learned Judges considered the scope of a passport and its place in the foreign travel and came to the conclusion that, as the law then stood, the State could not prevent the petitioner from leaving for U. S. S. R. merely on the ground that he did not hold a passport endorsed to that country and that there was no provision of law under which a citizen like the petitioner could be prevented from re-entering India after travel to foreign countries except with a passport. On the basis of that finding the Court held on the assumption that Art. 19 (1) (d) would apply to foreign travel, that there was no restriction on that right. It may also be noticed that no argument was advanced before the Bench on the basis of Art. 21 of the Constitution. This decision does not help the respondents.

A full Bench of the Kerala High Court in Francis Manjooran v. Government of India, Ministry of External Affairs, New Delhi held that the expression "personal liberty" took in the right to travel. M. S. Menon, C.J., observed :

> "The right to travel, expect to the extent provided in Article 19(1) (d), is within the ambit of the expression "personal liberty" is used in Art. 21. ....."

Raman Nayar, J., held that the right of free movement whether within the country on across its frontiers, either in going out or in coming in, was a personal liberty within the meaning of Art. 21. Gopalan Nambiyar, J., observed that the right to travel beyond India, or at least too cross its frontiers was within the purview of Art. 21 and that personal liberty in Art. 21 was not intended to boar the narrow or freedom from physical restraint.

Tharkunde, J., of the Bombay High Court in Choithram Verhomal Jeethawani v. A. G. Kazi held that the compendious expression "personal liberty" used in Art. 21 included in its ambit the right to go abroad and a person could not be deprived of that right except according to procedure established by law as laid down in Art. 21. On Letters Patent Appeal a division Bench of the same High Court in A. G. Kazi v. C. V. Jethwani came to the same conclusion. Tambe, C.J., after elaborately considering the relevant case law on the subject, came to the conclusion that the expression "personal liberty" occurring in Art. 21 included the right to travel abroad and to return to India.

A division Bench of the Mysore High Court in Dr. S. S. Sadashiva Rao v. Union of India came to same conclusion. Hedge, J., as he then was, expressed his conclusion thus :

> "For the reasons mentioned above, we are of the opinion :- (i) the petitioners have a fundamental right under Art. 21 to go abroad; (ii) they also have a fundamental right to come back to this country....."

But a full Bench of the High Court of Delhi in Rabindernath Malik v. Thee Regional Passport Officer, New Delhi and others, came to a contrary conclusion. Dua, Acting C.J., speaking for the Court, was unable to agree, on a consideration of the language of the Constitution and its scheme.

He held that "personal liberty" guaranteed by Art. 21 was not intended to extend to the liberty of going out of India and coming back. He was mainly influenced by the fact that Art. 21 applied to non-citizens also and that the Constitution not having given a limited right to move throughout the territories to non-citizens under Art. 19 (i) (d) could not have given a higher right to them under Art. 1.

For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Art. 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating depriving persons of such a right.

The next question is whether the act of the respondents in refusing to issue the passport infringes the petitioner's fundamental right under Art. 14 of the Constitution. Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This doctrine of equality before the low is a necessary corollary to the high concept of the rule of law accepted by our Constitution. On of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority : see The State of Madhya Pradesh v. Thakur Bharat Singh. Secondly, such a law would be void, if it discriminates or enables an authority to discriminate between persons without just classification. What a legislature could not do, the executive could not obviously do. But in the present case the executive claims a right to issue a passport at its discretion; that is to say, it can at its discretion prevent a person from leaving India on foreign travel. Whether the right to travel is part of personal liberty or not within the meaning of Art. 21 of the Constitution, such an arbitrary prevention of a person from travelling abroad will certainly affect him prejudicially. A person may like to go abroad for many reasons. He may like to see the would, to study abroad, to undergo medical treatment that is not available in our country, to collaborate in scientific research, to develop his mental horizon in different fields and such others. An executive arbitrariness can prevent one from doing so and permit another to travel merely for pleasure. While in the case of enacted law one knows where he stands, in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive. The argument that the said discretionary power of the State is a political or a diplomatic one does not make it anytheless an executive power. We, therefore, hold that the order refusing to issue the passport to the petitioner offends Art. 14 of the Constitution.

In the view we have taken, it is not necessary to express our opinion on the other points raised.

In the result we issue a writ of mandamus directing the respondents to withdraw and cancel the decision contained in their letters dated August 31, 1966, and September 20, 1966 and to forbear from taking any steps or proceedings in the enforcement or implementation of the aforesaid decision and further to forbear from withdrawing and depriving the petitioner of his two passports and of his passport facilities. The petitioner will have his costs.

Hidayatullah, J. On April 10, 1967, the Chief Justice of India on behalf of himself and our brethern Shelat and Vaidialingam delivered the majority judgment in these two writ petitions. Go reasons, into which it is not necessary to go here, our judgment could not be delivered with the judgment of the Chief Justice. We expressed our dissent and indicated that our reasons would follow. W expressed our dissent and indicated that our reasons would follow. We now state the grounds on

which our dissent to the judgment of the Court is founded.

Some of the facts of these cases have been set out by the learned Chief Justice in his judgment and they need not be repeated. What has not been stated is that in the affidavit in reply on behalf of the Union of India it is clearly stated why the passports had been withdrawn or cancelled. As the learned Chief Justice has not mentioned these facts, they need to be mentioned, before our appraisal of the so-called fundamental right to travel can be appreciated.

In Writ Petition No. 30 of 1967, Mr. R. D. Chakravarti, Under Secretary to the Government of India in the Ministry of External Affairs states on affidavit that Om Prakash Kapur was a member of a gang of passport racketeers and had got many students stranded in foreign countries, because, as a travel agent he had arranged for their travel with a company which did not exist. In another instance he countermanded the emigration laws of a foreign power. He was once refused a passport, but in a subsequent application he suppressed this fact and a passport was issued to him. The proposed journey was to visit his mother stated to be seriously ill in London. An attempt to impound his passport failed as he had already left India. In proof of the objectionable activities of the petitioner, the Union of India filed a photostat copy of his letter in which the petitioner had written in his own handwriting how tickets were to be manipulated. It was on this ground that the passport was refused to him.

In Writ Petition No. 230 of 1966, the affidavit in reply states that the petitioner Satwant Singh Sawhney obtained in 1961 an import hence under the Export Promotion Scheme for import of brake liners in ribbons and brass rivets of the face value of Rs. - lakhs on condition that he would export finished brake liners worth Rs. 4 lakhs to non-rupee account areas. He however sold away in Indian markets 91% of the imports. He was also alleged to have defrauded the import control authorities by showing fraudulent exports with a view to obtaining import licences under the Export Promotion Scheme. Investigations were going on into his doings in Kuwait and the passports were withdrawn, because Satwant Singh Sawhney, it was apprehended, wished to leave India to tamper with evidence. No doubt in a rejoinder affidavit he denied these allegations but the matter was not gone into at the hearing before us because the two petitions were heard and disposed of by the Court on the high plane of fundamental rights and their breach divorced from any facts whatever. The facts have, therefore, to be stated because persons seeking the facility of passports may have very different credentials. For example the case of an innocent traveller can never be the same as that of an anarchist who is suspected of going into another country with the object of assisting at a coup or to commit an offence or wanting to avoid his prosecution for offences committed in India.

Many questions have been raised but they resolve themselves into a single question in two parts which is : Is there a fundamental right to ask for a passport and does the Constitution guarantee such a right? It may be stated at once that in limiting the controversy, it is not intended to say that arbitrary action in refusing a passport or evidence of discrimination will not have any redress. Executive action has to comply with the equal protection clause of our Constitution, and a complaint of refusal of a passport on insufficient or improper grounds is capable of being raised, irrespective of whether there is a fundamental right to travel abroad or not. Judging of these cases on the evident of the affidavits it is possible to hold that the passports were properly refused or impounded; but as the question has assumed a constitutional hue, we express our opinion on the general question.

What is a passport is the first question. It is not necessary to go into the history of passports which have become very common from the days of the First World War. The character of the passports, however, has not changed had the classic definition of Alverstone, C.J. in R. v. Brailsford has been

generally quoted and applied in cases dealing with passports. It says that a passport

> "..... is a document issued in the name of Sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office in an official document vouches the respectability of the person named."

In essence this document serves as a means of establishing identity and nationality. See Weis : Nationality and Statelessness in International Law p. 226, Harry Street Pretion, the Individual and the Law p. 227, The Grotius Society-Vol. 32(1946) Passports and Protection in International Law by Kenneth Diplock.

In India the passport reads :

> "These are to request and require in the name of the President of the Republic of India all those whom it may concern to allow the barer to pass freely without let or hindrance, and to afford him or her every assistance and protection of which he or she may stand in need."

This form of passport follows closely that of the English passport. The American passport is slightly different. There the passport contains the following writing :

> "The Secretary of State requests all whom it may concern to permit safely and freely to pass and in case of need to give all lawful aid to..... a citizen of the United States."

The American form not only makes a request but also states that the holder is a citizen of the United States. In certain other countries, such as Switzerland, the passport only declares the holder's nationality but makes no request.

Whatever the form of the passport, it is clear that it is a political document and the ownership of it strictly speaking remains in the Government which grants it although a fee may be charged for it. In England a passport is considered to be a document of the Crown and can be recalled.

In India the Constitution does not make a mention of foreign travel at all. In the Legislative Lists the subject of passports is item No. 19 in the Union List. The entry reads :

19. "Admission into, and migration and expulsion from, India; passports and visas."

As the executive power of the Union extends to the topics included in the Union List, executive action is open on the topics mentioned in the entry. Admission into and emigration and expulsion from India may be subject of legislative action and equally of executive action. Similarly there may be executive action in respect of passport and legislation and not precede it, but the existence of statutory enactment is not a condition for the exercise of executive action.

Since it is questioned that the action to refuse a passport or to withhold one granted must be based on law, it is necessary to find out the true nature of a passport. It appears to us that passports must be treated as falling within the prerogative domain of foreign affairs, and authorities which grant or

withhold them must posses considerable freedom of action. In England, the passport is so regarded. Halsbury, summarising the law on the subject says :

> "Passports may be granted buy the Crown at any time to enable British subjects to travel with safety in foreign countries but such passports would clearly no be available so as to permit travel in an enemy's country during war."
>
> Note : "The possession of a passport is now almost always required by the authorities to enable a person to enter a country."

(Halsbury's Laws of England, Vol. IV, p. 519).

The history of passports in India is a chequered one. Before the First World War, passports were not so common. During the First World War, the necessity for a passport arose because several countries began to insist on the possession of a passport before allowing entry. The Indian Passport Rules of 1917 created a double obligation. There was an obligation to obtain passports to leave India and an obligation to obtain passports to enter India. In 1920, the Indian Passport Act was passed. The obligation to obtain a passport to leave India was abandoned. This, however, made no practical difference because almost all the countries of the would had begun to insist on the possession of a passport and no shipping company would take a passenger on board a ship bound for a foreign land unless the passenger was in possession of a passport endorsed for foreign country and a visa (if necessary) granted by that country. The Indian Passport Act, 1920 has continued to be the only legislation on the subject. It is an extremely short Act. The long title shows its purport by stating that it is an Act by which power is taken to require passports of persons entering India. After setting out the title and the extent of the Act and giving the necessary definitions, the Act proceeds to confer on the Central Government by s. 3 the power to make rules requiring that persons entering India shall be in possession of passports and for all matters ancillary and incidental to that purpose. Without prejudice, however, to the generality of this power, the Act gives illustrations of the topics on which rules may be made, such as to prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him; to prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of the Act; and to provide for the exemption either absolutely or on any conditions, of may person or class of persons from any provision of such rules. The Act also gives power to make rules for punishment of the contravention of the rules or orders issued under the Act and sets the maximum limit of such punishments. The rules so made have to be published in the Official Gazette and thereupon have effect as if enacted in the Passport Act. The last two sections give power of arrest and removal of persons who enter India without a passport or against whom a reasonable suspicion exists that they have contravened any rule or order made under the Passport Act. The Act is enabling. The force resides in the rules.

In Furtherance of the power, the Indian Passport Rules, 1950 have been framed and promulgated. They lay down in detail the condition for the grant of passports and of visas. These are to be read as part of the parent Act. No rule states specifically that a passport is needed by a person leaving India. Indeed there is no provision which compels a person to take a passport to leave India. The necessity for a passport arises from the fact that no travel agency would agree to take out a person who is not in possession of a valid passport, because if it did so, the agency would expose itself to the burden of bringing back such person to the place from where he started. No foreign country (except Nepal) today accepts in Indian citizen who is not in possession of a valid passport. The necessity for a passport also arises indirectly, because a citizen who leaves India needs a passport to re-enter his

own country. This is true of most of the countries of the world. France did attempt to exempt French citizens from the requirement of a passport to enter their own country but it was found that such persons were delayed considerably because they had to establish the fact of their French nationality independently. This was a very arduous process. In fact foreigners found it easier to enter France than a national, because very foreigner who possessed a passport issued by his country with a visa for entering into France could walk in whereas every national had to establish his nationality.

It is however not to be thought that a passport is the only means by which a person can be enabled to leave or to enter India. There exist two modes in which persons can leave and three in which they can enter, India. The first two modes are (a) passport and (b) identity certificate. The former are granted to Indian citizens and the latter to Stateless persons residing in India or to foreigners whose countries are not represented in India and who cannot obtain passports from heir countries or to persons whose nationality is in some doubt. Exit from India whether by an Indian or a foreigner through the ordinary traffic lines is only on the strength of on of these two documents. Similarly, exit through customs barriers is allowed only on the production of one of these two documents. For entry into India, one of three documents is needed : a passport, issued by a foreign country and visaed by Indian Diplomatic Mission or Government, serves for foreigners; the same is the case with person holding identity certificates. Then there is an emergency certificate which is issued for a single journey to a person not in possession of a passport. The emergency certificate is regarded as a passport for purposes of entry of an Indian into India.

It will therefore be seen that there is no compulsion of law that a passport must be obtained before one leaves India. Compulsion arises because no travel line will take an Indian out of India unless he possesses a passport. If an Indian wishes to leave India without a passport he may do so, if he can. There is nothing to prevent an Indian getting into a jolly boat and attempting to cross the Arabian sea; but a foreign country would refuse to receive him unless he possesses a passport and on his return to India he would not be able to enter India unless he produces the passport as required by the Indian Passport Act. The need for passport is indirect. Passport is necessary because it requests the foreign Governments to let the holder pass and it vouches for the re__spectability and nationality of the holder.

It is now necessary to consider whether there is a right to demand a passport. Is it a right of the same nature as the right to buy a railway ticket? The difference obviously is that before Government places in the hands of a person a document which pledges the honor of he country, Government is entitled to scrutinise the credentials of such person. The right therefore to obtain a passport is a qualified one, and not an absolute one. Since Government pledges its honour, it is a privilege which can be exercised with the concurrence of Government. Subject to this there arises a qualified right. A person refused a passport may ask that his case be considered by a court of law. But what is there in the document on which one can found an absolute right? Is the State compelled to grant a document pledging its honour to all kinds of person and must it vouch for the respectability of every one going abroad? The considerations which must enter in the appraisal of a person's worth, before his respectability can bee vouched, are so numerous and varied that they can never be the subject of a successful enumeration and categorisation. If a person is wrongfully refused a passport, he can complain that he has been discriminated against and the courts wld right the matter unless the State gives a valid reason. There is thus no absolute right that the State must grant a passport to whomsoever applies for it and subject to a question of arbitrariness or discrimination no one can really be said to possess a right enforceable at law.

It is however contended that the right to travel abroad is a fundamental right because it is a part of

the personal liberty of a person guaranteed by Art. 21 of the Constitution, which a person can only be deprived of according to procedure established by law. In support of the contention that foreign travel is a part of personal liberty, reliance is placed on certain observations in A. K. Gopalan v. The State of Madras and Kharak Singh v. The State of Uttar Pradesh and some cases of the High Courts following Gopalan's case, and drawing support from the cases of the Supreme Court of the United States. Reliance was placed in these judgments upon the classic definition of 'personal liberty' by Blackstone. Blackstone divided 'jus personarum' (rights attaching to the person) into two : "personal security" and "personal liberty "Under the former he included rights to life, limb, body, health and reputation and under the latter, the right to freedom of movement. Blackstone's words were :

> "personal liberty consists in the power of locomotion of changing situation or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint unless by due process of law".

(W. Blackstone : Commentaries on these Laws of England 4th Edn., Vol. 1, p. 134).

The expression 'life' and 'personal liberty' in Art. 21, it is said, incorporated these two meanings respectively.

There is no doubt that this Court has accepted the meaning of 'life' as 'personal liberty' according to Blackstone's definition. In Kharak Singh's case this Court considered Art. 21 in connection with the domiciliary visits and such other checks upon a person under police surveillance. The word 'life' was interpreted according to the definition of Mr. Justice Field in Munn v. Illinois. Mr. Justice Field observed in that case :

> "By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leeg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world..... by the term liberty, as used in the provision something more is meant than mere freedom from physical restraint or the bounds of a prison."

Mr. Justice Field was merely reaffirming Blackstone's definition in relation to the word 'life' in the 5th and 14th amendments of the U. S. Constitution. It may be pointed out that the American decisions on the subject of passports accept also Blackstone's definition of "personal liberty" and this has led to the acceptance of travel abroad as more than a privilege and as a right. These cases ar mentioned in the judgment of the learned Chief Justice.

The question, however, is whether this Court has accepted the definition of Blackstone to interpret the expression "personal liberty" in Art. 21 so that foreign travel or the right to leave India can be said to be included in the expression. The American cases cannot of course be used to establish a fundamental right to travel or alter to a fundamental right to leave India. The claim of such a right must be established strictly on the terms of our own Fundamental Law. The difference between the American and Indian Constitutions arises because of the existence of certain specified fundamental rights in Art. 19 guaranteed to a citizen of which sub-cl. (d) of cl. (1) read with cl. (5) deals with the right of a citizen to move freely throughout the territory of India. There is no doubt that the right of motion and locomotion throughout the territory of India is guaranteed to the Indian citizen. Does the Constitution speak again of a further right of motion or locomotion inn Art. 21 for the citizen and

the non-citizen? The Indian Constitution cannot, of course, guarantee the right of motion and locomotion in foreign land. Thus in so far is an Indian citizen is concerned, if Art. 21 adds anything to the right of motion and locomotion of a citizen guaranteed under Art. 19, it can only speak of the right to leave India. The learned Chief Justice gives this meaning to Art. 21. We respectfully disagree and think that it was not open to the learned Chief Justice to take this view of Art. 21 so long as the earlier decisions of this Court stand.

Now it is obvious that Blackstone, when he defined 'personal liberty' was not writing a commentary on the Indian Constitution. The generality of his observations cannot be woven into our Constitution without paying heed to the context in which the words occur. It seems strange that the Constitution should have guaranteed the right of motion, in one place, limited to the territories of India, and in another, without specifying the right of motion given an added fundamental right to leave India. This, in our opinion, has been earlier noticed indirectly in the two cases of this Court already referred to.

Gopalan's case is on of them. It was concerned with preventive detention and was not directly concerned with the question whether Art. 21 comprehends the right to travel abroad or to leave India as an attribute of personal liberty. The point now before us did not really arise. However, varied opinions were expressed by the Constitution Bench. Kania, varied opinions were expressed by the Constitution Bench. Kania, C.J. did not express any clear view. According to him there was no conflict between Arts. 19 and 21. He thought of personal liberty in terms of right to eat or sleep when one likes, to work or not to work. To him personal liberty meant liberty of the physical body. Fazl Ali, J. accepted that freedom of movement was the essence of personal liberty; but observed at p. 139 as follows :

> "In my opinion, the words 'throughout the territory of India' were used to stretch the ambit of the freedom of movement to the utmost extent to which it could be guaranteed by our Constitution. " (Italics added).
>
> Patanjali Sastri, J. (later C.J.) thought that personal liberty in Art. 21 was used in a sense which excluded freedoms dealt with in Art. 19, that is to say, personal liberty in the context of Part III of the Constitution was something distinct from the freedom to move freely throughout the territory of India. Das, J. (later C.J.) dealing with Art. 19 observed at p. 301 :
>
> "Its purpose, as I read it, is not to provide protection for the general right of free movement but to secure a specific and special right of the Indian citizen to move freely throughout the territories of India regarded as an independent additional right apart from the general right of locomotion emanating from the freedom of the person. It is a guarantee against unfair discrimination in the matter of free movement of the Indian citizen throughout the Indian Union. In short, it is a protection against provincialism. It has nothing to do with the freedom of the person as such. That is guaranteed to every person, citizen or otherwise, in the manner and to the extent formulated by article 21."

Mahajan J. (later C.J.) thought that in providing that life and liberty might be deprived only in accordance with procedure established by law, the intention was to give immunity against exercise of despotic power by the Executive. Mukherjea J. (later C.J.) thought that movement throughout the territory of India could be curtailed in the interest of other public but movement outside could only

be curtailed by law.

The learned Chief Justice has selected the views of Fazl Ali and Das JJ. and drawn the conclusion that personal liberty in art. 21 is a more comprehensive concept and has a much wider connotation than the right conferred by Art. 19(1) (d). The learned Chief Justice refers to Kharak Singh's case and observes as follows :

> "This Court, adverting to the expression "personal liberty", accepted the meaning put upon the expression 'liberty' in the 5th and 14th Amendments to the U. S. Constitution by Field, J. in Munn v. Illinois, but pointed out that the ingredients of the said expression were placed in two articles, viz., Arts. 21 and 19 of the Indian Constitution."

He then extracts two passages from Kharak Singh's case which are as follows :

> "It is true that in Art. 21 as contrasted with the 4th and 14th Amendments in the U. S., the word 'liberty' is qualified by the work 'personal' and therefore its content is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those elements or incidents of "liberty" like freedom of speech, of freedom of movement etc., already dealt with in Art. 19(1) and the "liberty" guaranteed by Art. 21. ....."
>
> "We..... consider that "personal liberty" is used in the Article as a compendious terms 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 Art. 19(1). In other words, while Art. 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue."

The learned Chief Justice then reaches the conclusion hat Kharak Singh's case was

> "a clear authority for the position that "liberty" in our Constitution bears the same comprehensive meaning as is given to the expression "liberty" by the 5th and 14th Amendments to the U. S. Constitution and the expression "personal liberty" in Art. 21 only excludes the ingredients of 'liberty' enshrined in Art. 19 of the Constitution. In other words, the expression "personal liberty" in Art. 21 takes in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Art. 19."

In our Judgment, these remarks, with due respects, involve a misreading of Kharak Singh's case. They are rather the minority view expressed in the same case by the learned Chief Justice. They are not the views of the majority.

In Kharak Singh's case, the concept of personal liberty was considered in connection with surveillance by the police under the Police Regulations. The expression "life" in Art. 21 was interpreted according to Mr. Justice Field's definition already quoted earlier. Domiciliary visits were considered violative of Art. 21 in the absence of a valid law. Other modes of surveillance such as secret picketing etc. were considered valid as they did not directly and tangibly impede either movement or personal liberty. Dealing, however, with Arts. 19(1) (d) and 21 together, it was pointed out that the right to move about was excluded from Art. 21. Article 21 represented other residuary personal liberties, not the subject of treatment in Art. 19(1). The majority stated its

opinion as follows :

> "Having regard to the terms of Art. 19(1) (d), we must take it that expression (personal liberty) is used as not to include the right to move about or rather of locomotion. The right to move about being excluded its narrowest interpretation would be that it comprehends nothing more than freedom from physical restraint or freedom from confinement within the bounds of a prison; in other words, freedom from arrest and detention, from false imprisonment or wrongful confinement. We feel unable to hold that the term was intended to bear only this narrow interpretation or wrongful confinement. We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that "personal liberty" is used in the Article 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 At. 19(1). in other words, while Art. 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue."

Referring to the observations of Mr. Justice Field, it was stated that 'life' meant "not merely the right to the continuance of a person's animal existence, but also a right to the possession of each of his organs-his arms and legs, etc. " Am invasion of one's house was therefore considered an invasion of personal liberty. The majority, however, did not attempt to add to the right of locomotion, the right to go abroad or to leave India. In fact the majority implies that the right of locomotion possessed by a citizen is all contained in Art. 19(1) (d) and is guaranteed only with respect to the territories of India.

Subba Rao J. (as he then was) read personal liberty as the -- of physical restraint or co-- and found that Arts, - and Art 19(1) (d) was not carved out of personal liberty in Act. 21. According to him, personal liberty could be ourtailed by law, but hat law must satisfy the test in Art. 19(2) in so far as the specific rights in Art. 19(1) (3) are concerned. In other words, the State must satisfy that both the fundamental rights are not infringed by showing that there is a law and that it does not amount to an unreasonable restriction within the meaning of Art. 19(2) of the Constitution. As in that case there was no law, fundamental rights, both under Art. 19(1) (d) and Art. 21 were held to be infringed. The learned Chief Justice has read into the decision of the Court a meaning which it dos not intend to convey. H excludes from Art. 21. He wants to see a law and if his earlier reasoning were to prevail, the law should stand the test of Art. 19(2). But since cl. (2) deals with matters in Art. 19(1) already held excluded, it is obvious that it will not apply. The law which is made can only be tested on the ground of articles other than Art. 19 such as Arts. 14, 20 and 22 which alone bears upon this matter. In other words, the majority decision of the Court in this case has rejected Ayyanger J.'s view and accepted the view of the minority in Kharak Singh's case. A similar reasoning had previously prevailed with the Chief Justice in the case of Kavalappara Kottarathil Kochuni and others v. The State of Madras and others. but there Art. 19 was held not excluded by Art. 31 after the latter ceased to be a self-contained article by reason of the fourth amendment and the addition of cl. 2-A and the amendment of cl. (2). The same exercise in the reverse direction i.e. extending protection to property beyond what is stated in Art. 31 by calling in aid something extra from Art. 19 was attempted. According to the learned Chief Justice there is an absolute right of property [Art. 19(1) (f)] curtailed to some extent by cl. (5) and Art. 31. The same reasoning is adopted here. There is an absolute right of locomotion in Art. 21 of which one aspect alone is said to be covered by Art. 19(1) (d). This view obviously clashes with the reading of Art. 21 in Kharak Singh's case, because there the right of motion and locomotion was held to be exclude from Art. 21.

In other words, the present decision advances the minority view in Kharak Singh's case above the majority view stated in that case.

We have shown above that the citizen's right of motion and locomotion in so far as it is recognisable. has been limited by the Constitution to the territories of India and that according to Kharak Singh's case that is the limit of the right. It is not possible to read more of that right in Art. 21. In any event, there is no absolute right to demand a passport because that is not a right to personal liberty even in the Blackstonian sense. Thee passport being a political document, is one which the State may choose to give or to withhold. Since that document vouches for the respectability of the holder, it stands to reason that Government need not vouch for a person it does not consider worthy. This is not to say that we are insensible to the importance of travel, so adequately described by writers and judgments. Those observations apply to the bulk of the people to whom passport is generally never refused. What we are concerned with is a slender body of parsons whose travel abroad is considered harmful to the larger interests of our country and who themselves are in any event undesirable emissaries of our nation and who might, if allowed to go abroad, cause many complications. A system of passports is thus essential and requires a wide discretion.

The Universal declaration of human rights-"Everyone has the right to leave any country including his own" is applicable to normal persons. It does not apply to criminals avoiding penalties or political agitators, etc. likely to create international tensions or persons who may disgrace our country abroad.

To conclude : whatever the view of countries like the U. S. A. where travel is a means of spending one's wealth, the better view in our country is that a person is ordinarily entitled to a passport unless, for reasons which can be established to the satisfaction of the Court, the passport can be validly refused to him. Since an aggrieved party can always ask for a mandamus if he is treated unfairly, it is not open, by straining the Constitution, to create an absolute and fundamental right to a passport where non exists in the Constitution. There is no doubt a fundamental right to equality in the matter of grant of passports (subject to reasonable classifications) but there is no fundamental right to travel abroad or to the grant of a passport. With all due respect we say that the Court has missed one for the other. The solution of a law of passports will not make things any better. Even if a law were to be mad the position would hardly change because the utmost discretion will have to be allowed to decide upon the worth of an applicant. The only thing that can be said is that where the passport authority is proved to be wrong, a mandamus will always right the matter. In the present cases we found no valid ground for the issuance of a mandamus. We had, therefore, earlier ordered the dismissal of the petitions.

ORDER

In accordance with the opinion of the majority a writ of mandamus will issue directing the respondents to withdraw and cancel the decision contained in their letters dated August 31, 1966, and September 20, 1966 and to forbear from taking any steps or proceedings in the enforcement or implementation of the aforesaid decision and further to forbear from withdrawing and depriving the petitioner of his two passports and of his passport facilities. The petitioner will have his costs.

R. K. P. S.

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