A Missed Opportunity – Appraising "Personal Liberty" In *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 (FC)

by

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Abstract

Although the facts in the Federal Court decision of *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 (FC) ('*Maria Chin Abdullah*') may look straightforward at first glance, the decision itself has brought forth a myriad of fascinating constitutional issues. These issues include the concept of constitutional supremacy and the Basic Structure theory, judicial powers under art. 121 of the Federal Constitution, the constitutional validity of ouster clauses, and the concepts of 'life' and 'personal liberty' under art. 5(1) of the Federal Constitution. It is impossible to analyse all these constitutional issues in one article. Hence, I have decided to focus my analysis of *Maria Chin Abdullah*'s case only on judgments that have discussed the term 'personal liberty' in art. 5(1) of the Federal Constitution. This article will analyse the majority and minority decisions on the term 'personal liberty' in art. 5(1) of the Federal Constitution and provide reasons why one of the decisions is better than the other.

Keywords: Article 5; Personal Liberty; Article 21; Minority; Travel

Introduction

On 15 May 2016, whilst Ms Maria Chin Abdullah was on her way to board a flight to South Korea, she was stopped by the immigration authorities at the Kuala Lumpur International Airport. Upon inquiry, she was informed by the authorities that a travel ban had been imposed on her. No further reasons were given, prompting Ms Chin to file a judicial review against the Director General of Immigration and the Minister of Home Affairs praying for various reliefs.

The application for judicial review went all the way up to the Federal Court.[1] Amongst the many reliefs which the appellant (Ms Chin) had prayed for was for "A declaration that the impugned decision made by the respondents to blacklist the appellant from travelling overseas in the circumstances is a breach of art. 5(1) [of the Federal Constitution]."[2]

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When the Federal Court was presented with the opportunity to decide on the issue of whether the travel ban against the appellant was in breach of art. 5(1) of the Federal Constitution, the Federal Court, by a majority decision[3] had sadly decided to follow its previous decision of *Government Of Malaysia & Ors v. Loh Wai Kong.*[4]

This article aims to comparatively evaluate the majority and minority judgments of the Federal Court's decision; particularly on the definition of "personal liberty" found in art. 5(1) of the Federal Constitution.

A Missed Opportunity

The Majority Decision In Maria Chin Abdullah

On behalf of the majority of the Federal Court, His Lordship Justice Abdul Rahman Sebli had made the following decisions concerning "personal liberty" in art. 5(1) of the Federal Constitution.

Firstly, the Federal Court had implicitly affirmed the narrow interpretation adopted by its previous decision in *Government Of Malaysia & Ors v. Loh Wai Kong*[5] in respect of "personal liberty" in art. 5(1) of the Federal Constitution when His Lordship quoted Suffian LP's decision in *Loh Wai Kong* at length, focusing specifically on the following:

> With respect, we agree with what Mukherjee J said at p 96 in *Gopalan* AIR 1950 SC 27: In ordinary language, 'personal liberty' means liberty relating to or concerning the person or body of the individual, and 'personal liberty' in this sense is the antithesis of physical restraint or coercion. According to Dicey, who is an acknowledged authority on the subject, 'personal liberty' means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification: *vide Dicey on Constitutional Law*, 9th Edn, pp. 207, 208. It is, in my opinion, **this negative right of not being subjected to any form of physical restraint or coercion that constitutes the essence of personal liberty**.[6] (emphasis added)

Subsequently, speaking on behalf of the majority, His Lordship had regretfully affirmed the decision of *Loh Wai Kong* when His Lordship made the following decision:

> Even if, for the sake of argument, that the constitutionality of s. 59A of the Immigration Act can be linked to art. 5(1) of the Federal Constitution (right to life and personal liberty) the appellant has no valid claim in any event to a right to travel overseas: see *Loh Wai Kong*.[7]
>
> By parity of reasoning, if it is not a right for a citizen to travel overseas, it cannot be a breach of the law for the respondents to impose a travel ban on a citizen.[8]

It is contended that the restrictive approach which the majority decision of the Federal Court had chosen to adopt as opposed to a progressive and liberal approach has effectively stifled the growth of the Malaysian Constitution (*viz* art. 5(1)). This will progressively stun and finally impede the development of the Malaysian Constitution.

A Progressive Approach

The Minority Decision Of Chief Justice Tengku Maimun In Maria Chin Abdullah

The minority decisions were delivered by two judges, namely Tengku Maimun Tuan Mat CJ and Nallini Pathmanathan FCJ.[9] Contrary to the majority, the minority judgments in *Maria Chin Abdullah*, in particular, Chief Justice Tengku Maimun, reflected a progressive view of the constitution as well as one which is in tandem with other similar jurisdictions, especially India. Adopting the view of the minority judgment will result in a realistic constitution (as opposed to an illusory one), where the constitution is applicable to the different areas of society.

Her Ladyship Chief Justice Tengku Maimun has rightly pointed out that, unlike legislation, the constitution "is a living and organic document which is constantly evolving." Hence, it must be interpreted more liberally and generously in comparison with other written laws.[10] Her Ladyship's view is supported by several cases of high authority; they include the Privy Council decision of *Minister of Home Affairs v. Fisher*[11] and the Federal Court decisions of *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus*[12] and *Badan Peguam Malaysia v. Kerajaan Malaysia*[13] to name a few. In *Badan Peguam Malaysia*, the Federal Court echoed a similar view where it held that the "Federal Constitution is a living document and without doing violence to the language" the "Federal Constitution should receive a fair, liberal and progressive construction so that its true objects must be promoted."[14]

As the Federal Constitution is a *sui generis* document, the canons of interpretation that apply to ordinary statutes cannot be applied to the Constitution.[15] This view is consistent with the sovereign status of the Constitution as the supreme law of the land. When the majority in *Maria Chin Abdullah* chose to interpret the Constitution literally, it is respectfully submitted that they have implicitly reduced the status of the Constitution to the level of ordinary statutes. This, it is argued, will contravene art. 4(1)[16] (the supremacy clause) of the Federal Constitution which essentially states that the constitution is supreme over Acts of Parliament.

Secondly, a literal interpretation will not only limit and stun the growth of the Federal Constitution, but it will also consign the Federal Constitution to history thus making the fundamental rights in the constitution irrelevant today. It is asserted that the words in the Federal Constitution were deliberately crafted in a broad and general fashion by our forefathers to

ensure that the Federal Constitution will always remain relevant and applicable. As Lord Sankey has most elegantly stated in *Edwards v. AG of Canada*,[17] a constitution is like a "living tree capable of growth and expansion within its natural limits." Indeed, His Lordship, Richard Malanjum CJ in the Federal Court decision of *Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal*[18] reminded us that:

> ... the courts should keep in tandem with the national ethos when interpreting provisions of a living document like the Federal Constitution, lest they be left behind while the winds of modern and progressive change pass them by. Judges must not be blind to the realities of life. Neither should they wear blinkers when approaching a question of constitutional interpretation. They should, when discharging their duties as interpreters of the supreme law, adopt a liberal approach in order to implement the true intention of the framers of the Federal Constitution ...

To do justice to the Federal Constitution, it is strongly argued that the courts should adopt a progressive and liberal approach to interpreting the Constitution instead of the strict pedantic approach. In this respect, the minority judgment of Chief Justice Tengku Maimun is favoured.

The judgment of the Chief Justice is also consistent with the decisions of other jurisdictions, namely, India. India is chosen because of the many similarities (and to some extent identical provisions[19] which it has with the Malaysian Constitution). Therefore, references to Indian cases are favoured over that of other Commonwealth countries (eg, the United Kingdom and Canada). The Federal Court in *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* reminded the parties that "[the Federal Constitution] was inspired from other written constitutions such as that of India's and the United States."[20] This similarity was also reiterated by Her Ladyship Chief Justice Tengku Maimun in her decision in *Maria Chin Abdullah* when she observed that "It will be recalled that our FC, especially Part II, was drafted upon inspiration from our American and Indian counterparts."[21]

Given the reasons above, judgments of the Indian courts should therefore be accorded greater weight in comparison to decisions of courts where there are no equivalent provisions.[22] Although case laws of India are not *prima facie* binding on Malaysian courts, nevertheless, their decisions are strongly persuasive, especially if the relevant provision of the law is similar or equipollent to the one in Malaysia.[23]

Lessons From India

The word "personal liberty" is found both in art. 21 of the Indian Constitution and art. 5 of the Malaysian Constitution. For this article, I have decided to juxtapose both these articles together.

Article 5(1) (Federal Constitution)	Article 21 (Indian Constitution)
No person shall be deprived of his life or personal liberty save in accordance with law.	Protection of life and personal liberty. – No person shall be deprived of his life or personal liberty except according to procedure established by law

In *Kharak Singh v. State of Uttar Pradesh*[24] (a case which was cited with approval by Her Ladyship Chief Justice Tengku Maimun)[25] the Indian Supreme Court had stated as follows:

> ... On the other hand, (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 ... while Art. 19(1) deals with particular species or attributes of that freedom, 'personal liberty' in art. 21 takes in and comprises the residue.[26]

In *Maneka Gandhi*[27] His Lordship Bhagwati J stated that the expression "personal liberty" is of the widest amplitude, and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under art. 19.[28] This view was also cited and quoted with approval by Her Ladyship Chief Justice Tengku Maimun.[29]

This approach (known as the "prismatic approach"[30] in the Malaysian context) was adopted by our Federal Court in *Lee Kwan Woh v. PP*[31] when it decided how art. 5(1) (and other fundamental rights found in the Federal Constitution) ought to be interpreted:

> In our view, it is the duty of a court to adopt a prismatic approach when interpreting the fundamental rights guaranteed under Part II of the Constitution. When light passes through a prism it reveals its constituent colours. In the same way, the prismatic interpretive approach will reveal to the court the rights submerged in the concepts employed by the several provisions under Part II. Indeed, the prismatic interpretation of the Constitution gives **life to abstract concepts such as** 'life' and **'personal liberty'** in art 5(1).[32] (emphasis added)

Although this approach was applied to various fundamental rights in the Federal Constitution which includes art. 5, the courts have not examined and expanded this approach specifically in the context of "personal liberty"[33] except that in *Lee Kwan Woh*, the Federal Court expanded "personal liberty" to include the right to travel abroad.[34] (which will be discussed later in this article).

In comparison to Malaysia, the Indian courts have adopted a more progressive approach in their interpretation of "personal liberty." The Indian decisions may serve as a helpful guide on the areas in which the term

"personal liberty" could be expanded to. It is submitted that the following situations, though not comprehensive, may be housed under the definition of "personal liberty" and accorded the constitutional protection of art. 5:

(i) The right to a speedy trial may form not only the right to life but also constitutes the right to liberty. Unless the procedure prescribed ensures a speedy trial for determining the guilt of the person, the said procedure would fall foul of art. 5 being in breach, amongst others, the right to personal liberty.[35]

In *Kadra Pehadiya v. State of Bihar*,[36] the Supreme Court expressing their shock that it took three years for the trial to begin making the following comment:

> 3 more years have passed, but they are still rotting in jail, not knowing what is happening to their case. They are perhaps reconciled to their fate, living in a small world of their own, cribbed, cabined and confined within the four walls of the prison. The outside world just does not exist for them. The Constitution has no meaning and significance, and human rights no relevance for them ...[37]

(ii) Right to bail may also constitute a constitutional right to the personal liberty of the individual. His Lordship, Khrisna Iyer J[38] recognising the importance of that right has held that if such a precious right is to be denied through the refusal of bail, it should be judicially and not casually decided.

Furthermore, the granting of bail must not be imposed with unreasonable conditions. It was held in the case of *Anurag v. State of Bihar*[39] that if there was a delay in hearing the appeals within a reasonable period, the accused must be released on bail, even if there were capital charges pending before it.[40]

(iii) In *Hussainara*,[41] His Lordship Bhagwati J, in his judgment had emphatically stated that free legal service to an indigent and poor accused is implicit in the guarantee given in art. 21 (Indian Constitution) and is emphasised in art. 39-A (Indian Constitution) (which is similar to art. 5(3) of the Federal Constitution).

It is submitted that the judgment of Bhagwati J is to be welcomed because if an individual is not granted free legal aid as soon as possible once he is arrested, his "personal liberty" may be in jeopardy because he faces the danger of conviction. This predicament was explicitly expressed in the US case of *Jon Richard Argersinger v. Raymond Hamlin*:[42]

> ... If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad .... Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent

> evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. **Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence** ... (emphasis added)

To make the right to legal aid a further reality to the individual, it was held that such right must be given to the accused at the earliest possible moment *ie*, at the stage of the first production before the Magistrate and that the presiding judge must inform him of such right;[43] failing which it is submitted amounts to a breach of the constitutional provision of "personal liberty" in art. 5.

The Right To Travel

Whilst the majority decision in *Maria Chin Abdullah* merely approved the strict approach of the Federal Court's decision in *Government Of Malaysia v. Loh Wai Kong*[44] without much analysis,[45] the minority decision of Chief Justice Tengku Maimun has meticulously distinguished the facts of *Loh Wai Kong* and the case before Her Ladyship, *ie*, *Maria Chin Abdullah*.

One can contend that Her Ladyship had rightly distinguished the facts of *Loh Wai Kong* with that of *Maria Chin Abdullah* when Her Ladyship observed that the issue in *Loh Wai Kong*'s case was concerned with "the Government's refusal to renew a passport and not the imposition of a travel ban on **a citizen who already possesses a valid and fully functional passpor**t."[46] (emphasis added). Based on this distinction (which the majority judgment had failed to discuss[47]) the decision of *Loh Wai Kong* is then merely an *obiter* and it should not apply to *Maria Chin Abdullah*.

It is submitted that the different facts which Chief Justice Tengku Maimun had pointed out between *Loh Wai Kong* and *Maria Chin Abdullah* is significant and makes absolute sense. Whilst it is true that the decision to issue a passport lies with the Government,[48] once the passport is validly issued, it is argued that the Government does not have the right to restrict how and where one should travel. To impose restrictions on an individual with a valid passport will contravene the individual's "personal liberty" under art. 5 of the Federal Constitution.

The omission by the majority decision to analyse the different facts and circumstances between *Loh Wai Kong* and *Maria Chin Abdullah* has effectively diluted the significance of their decisions in interpreting the term "personal liberty" in art. 5(1) of the Federal Constitution.

The decision of Chief Justice Tengku Maimun that the right to travel forms part of "personal liberty"[49] in art. 5(1) of the Federal Constitution also mirrors the position of the courts in India and the United States.

In India, the Supreme Court had in *Satwant Singh Sawhney v. D Ramarathnam*[50] held that the expression "personal liberty" in art. 21 (which is similar to Malaysia's art. 5(1)) carries with it the right of locomotion and to travel abroad and therefore the refusal of a passport violates art. 21 of the Indian Constitution.[51] This case was cited with approval by Chief Justice Tengku Maimun in *Maria Chin Abdullah*[52] where Her Ladyship, relying on *Satwant Singh*'s case and others, finally decided that "grounded on high *authority*, … 'personal liberty' in art. 5(1), read prismatically and purposively, encompasses the right to travel abroad."[53]

In *Francis Manjooran v. Government of India, Ministry of External Affairs, New Delhi*[54] the full bench of the Kerala High Court had decided that the expression "personal liberty" encompasses the right to travel. His Lordship, MS Menon, CJ observed that "The right to travel, except to the extent provided in art. 19(1)(d), is within the ambit of the expression "personal liberty" as used in art. 21."[55]

The same view is also reflected in American jurisprudence. In *Kent v. Dulles*[56] the U.S. Supreme Court had decided that "the right to travel is a part of the "liberty" of which a citizen cannot be deprived without due process of law under the fifth amendment."[57] Hence, the Secretary is empowered to prevent the issuing of a passport only in very limited circumstances which are where (i) the applicant is not a citizen or a person owing allegiance to the United States, or where (ii) the application was engaging in criminal or unlawful conduct.[58]

Similarly, in *Boudin v. Dulles*,[59] the District Court for the District of Columbia of the United States had observed that "that 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."[60]

Conclusion

When the Federal Court in *Maria Chin Abdullah* was presented with the opportunity to enlarge the definition of "personal liberty" in art. 5(1) of the Federal Constitution, it was unfortunate that the majority failed to capitalise on this and had instead decided to adopt the strict interpretation to art. 5(1). However, all is not lost, as the minority decision of Her Ladyship, Chief Justice Tengku Maimun demonstrates that there are judges who are still willing to expand and advance the fundamental rights of society. This gives us hope.

Endnotes:

1. See *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 (FC).
2. *Ibid*, at p. 610, the appellant filed an application for judicial review in the High Court against the Director General of Immigration as the first respondent and the Minister of Home Affairs as the second respondent, seeking the following prayers: (i) an order of *certiorari* to quash the decision made by the respondents to blacklist the appellant from travelling overseas, which was brought to the appellant's attention on the day she was scheduled to leave Malaysia on 15 May 2016 ('impugned decision'); (ii) a declaration that the impugned decision made by the respondents to blacklist the appellant from travelling overseas in the circumstances is a breach of art. 5(1), art. 8(1) and/or art. 10(1)(a) of the Federal Constitution and as a result, unconstitutional and void; (iii) a declaration that the respondents do not have the power to make the impugned decision and therefore acted in excess of jurisdiction; (iv) a declaration that the respondents do not have an unfettered discretion to arrive at the impugned decision; (v) a declaration that the respondents cannot act under s. 59 of Act 155 to deny the appellant a right to natural justice as this is in violation of the Federal Constitution in particular art. 160 read together with art. 4 of the Federal Constitution and relevant case law; (vi) a declaration that the following provisions of Act 155 are unconstitutional: (a) s. 59 which excludes the right to be heard; and/or (b) s. 59A which excludes judicial review; (vii) an order of prohibition to prevent the respondents from making any subsequent decisions to blacklist the appellant from travelling overseas in similar circumstances; and (viii) in the alternative to (vii), an order of prohibition to prevent the respondents from making any subsequent decisions to blacklist the appellant from travelling overseas without furnishing her with reasons and according her a right to be heard.
3. It was a 5-2 majority where the majority were Federal Court Justices Rohana Yusuf PCA, Abdul Rahman Sebli, Hasnah Mohamed Hashim, Mary Lim and Harmindar Singh Dhaliwal FCJJ.
4. See *Government Of Malaysia & Ors v. Loh Wai Kong* [1979] 1 LNS 22 (FC).
5. *Ibid*.
6. See *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at p. 660.
7. *Ibid,* at p. 625.

8. *Ibid*, at p. 660.

9. *Ibid*, at p. 791, the decision of Her Ladyship, Justice Nallini Pathmanathan focuses more on the definition of 'life' in art. 5. Her Ladyship decided to house the right to travel under the definition of 'life' in art. 5. [para. 779] of Her Ladyship's decision. Hence it is not relevant for this article.

10. *Ibid*, at p. 736 "a constitution is a document *sui generis* and governed by its own interpretive principles. It is a living and organic document constantly evolving and must therefore be construed with less rigidity and more generosity than mere Acts of Parliament and other written laws."

11. "... that a constitution should be construed with less rigidity and more generosity than ordinary law" *Minister of Home Affairs v. Fisher* [1980] AC 319, 329 (PC).

12. See *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 (FC).

13. See *Badan Peguam Malaysia v. Kerajaan Malaysia* [2008] 1 CLJ 521 (FC). Other cases include *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471 (FC) [188]; *PP v. Gan Boon Aun* [2017] 4 CLJ 41 (FC); *Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal* [2011] 8 CLJ 766 (FC).

14. See *Badan Peguam Malaysia v. Kerajaan Malaysia* [2008] 1 CLJ 521 at p. 568 [para. 134]

15. "A constitution *is sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation." *Dato' Menteri Othman Baginda & Anor. v. Dato' Ombi Syed Alwi Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 at p. 553.

16. "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void." art. 4(1) of the Federal Constitution (Mal).

17. See *Edwards v. AG of Canada* [1930] AC 124 at p. 136.

18. See *Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal* [2011] 8 CLJ 766 (FC).

19. "For completeness, I would add that Part II of the Federal Constitution which contains the fundamental liberties guaranteed by the supreme law, and which finds mention in para. 1 of the Schedule, is the equivalent of Part III of the Indian Constitution." per Edgar Joseph JR FCJ in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147 at p. 224.

20. Federal Court in *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581 at p. 677 [277].

21. See *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at p. 741.

22. "It follows that, because of the close resemblance in the language of these two provisions – para. 1 of the Schedule and art. 226 of the Indian Constitution – the decisions of Indian courts upon the analogous provision are to be accorded greater weight when determining the width of the power conferred by the paragraph, than decisions of courts in those jurisdictions where the equipollent provision is absent. These jurisdictions include England, Australia, New Zealand and Canada." per Edgar Joseph JR FCJ in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147 at pp. 224 to 225.

23. Normawati Hashim, "*The Need For a Dynamic Jurisprudence of Right to "Life" Under art. 5(1) of the Federal Constitution*," *Procedia – Social and Behavioral Sciences* 101 (2013): 299 – 306, 300. Cases that referred and applied Indian cases include (but is not limited to) *Nik Noorhafizi Nik Ibrahim & Ors v. PP* [2014] 2 CLJ 273 (CA) at p. 366; *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507 (FC) at pp. 520-521; *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265 (FC) at p. 289; *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2000] 3 CLJ 224 (CA) at p. 239 and *Michael Philip Spears v. Ketua Pengarah Penjara Kajang & Anor And Another Appeal* [2017] 3 CLJ 161 (CA) at para. 35.

24. See *Kharak Singh v. State of Uttar Pradesh* AIR 1963 SC 1295, https://indiankanoon.org/doc/619152/ (date accessed 22 August 2021).

25. "On the authority of the Indian Supreme Court judgment in *Kharak Singh v State of UP & Others* 1964 SCR (1) 332, the word 'personal' is used to qualify 'liberty' to avoid an overlap between the general use of the word 'liberty' which encapsulates the other rights contained in the constitution such as freedom of speech etc. This is because the header to Part III of the Indian Constitution (like our Part II) provides for 'fundamental liberties'. Ignoring the word 'personal' attached to 'liberty' would therefore render the word 'personal' otiose. 'Personal liberty' encompasses the residual source of rights which are not already covered by the other enumerated fundamental liberties provisions." *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at pp. 738 (Tengku Maimun Tuan Mat CJ).

26. See *Kharak Singh* AIR 1963 SC 1295 at 1297.

27. *Maneka Gandhi v. Union Of India* 1978 AIR 597, 1978 SCR (2) 621 https://indiankanoon.org/doc/1766147/ (date accessed 22 August 2021).

28. See *Maneka Gandhi* 1978 AIR 597, 1978 SCR (2) 621 at 610.

29. See *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at pp. 740-741.

30. Federal Court cases that adopted and affirmed the prismatic approach include *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581 (FC), *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471 (FC); *Letitia Bosman v. PP & Other Appeals* [2020] 8 CLJ 147 (FC); *Alma Nudo Atenza v. PP & Another Appeal* [2019] 5 CLJ 780 (FC).

31. See *Lee Kwan Woh v. PP* [2009] 5 CLJ 631.

32. *Ibid,* at p. 639.

33. In *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471 the Federal Court applied the prismatic approach to life in art. 5(1) to include the right to nationality whilst the Federal Court in *Lee Kwan Woh v. PP* [2009] 5 CLJ 631 at p. 643 read 'life' in art. 5(1) prismatically to mean more than mere animal existence and includes such rights as livelihood and the quality of life.

34. See *Lee Kwan Woh v. PP* [2009] 5 CLJ 631 at p. 643.

35. See *Hussainara* cases AIR 1979 SC 1360.

36. See *Kadra Pehadiya v. State of Bihar* AIR 1981 SC 939.

37. *Ibid*, at [2] (Bhagwati J).

38. ... to glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by 'law'. The last four words of art. 21 are the life of that human right." *Babu Singh v. State of UP* AIR 1978 SC 527 at para 8.

39. See *Anurag v. State of Bihar* AIR 1987 Pat 274, 1987 (35) BLJR 612.

40. "This really seems to be the more so in the expanded concept or liberty under art. 21 and the now universally accepted right of a speedy public trial thereunder. Recasting the words of Their Lordships above, if the High Court is not in a position to hear the appeal of an accused within a reasonable period of time, it must ordinarily (unless there are cogent grounds for acting otherwise) release the accused on bail in cases of substantive appeals on capital charges pending before it." *Anurag* AIR 1987 Pat 274, 1987 (35) BLJR 612 at para. 19.

41. *Hussainara* AIR 1979 SC 1369.

42. *Jon Richard Argersinger v. Raymond Hamlin* (1972) 407 US 25: 32 L Ed 2d 530.

43. *Khatri*'s case (commonly known as the *Bhagalpur Blinding* case) AIR 1981 SC 928.

44. *Government Of Malaysia & Ors v. Loh Wai Kong* [1979] 1 LNS 22.

45. *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 see *supra* of this article under the heading of "A Missed Opportunity. The Majority Decision In *Maria Chin Abdullah*."

46. *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at para. 524 (CJ Tengku Maimun).

47. The majority decision led by His Lordship Abdul Rahman Sebli FCJ merely identified the different facts between *Loh Wai Kong* and *Maria Chin Abdullah* without any analysis. "To travel overseas, the respondent *Loh Wai Kong* needed a passport, which he did not have. In our case, the appellant already had a valid passport at the time the travel ban was imposed on her. The question is whether travelling abroad is her right in law." *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at para. 205 (Abdul Rahman Sebli FCJ).

48. '... and here we would say that in our view he does not have a right, not even a qualified right, to a passport, though we must further add that in our view, though the citizen does not have a right under our Constitution and our law to a passport, the Government should act fairly and *bona fide* when considering applications for a new passport or for the renewal of a passport and should, like Government in the United Kingdom, rarely refuse to grant them.' *Government Of Malaysia & Ors v. Loh Wai Kong* [1979] 1 LNS 22.

49. *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at para. 539 (CJ Tengku Maimun).

50. *Satwant Singh Sawhney v. D Ramarathnam* AIR 1967 SC 1836. <https://indiankanoon.org/doc/1747577/> (date accessed 23 August 2021)

51. *Satwant Singh Sawhney* AIR 1967 SC 1836 at 1850.

52. "In *Satwant Singh*, Subba Rao CJ accepted that the term 'personal liberty' is wide enough to encompass the residual right of locomotion across the borders of India." *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at para. 162 (CJ Tengku Maimun).

53. *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 at para. 549.

54. *Francis Manjooran v. Government of India, Ministry of External Affairs, New* [1954] SCR 399, Delhi.

55. *Francis Manjooran* [1954] SCR 399, Delhi at para. 25.

56. *Kent v. Dulles*, 357 US 116 (1958).

57. *Kent* 357 US 116 (1958) at pp. 125 to 127.

58. *Kent* 357 US 116 (1958) at pp. 124 to 125, 127 to 128.

59. *Boudin v. Dulles* 136 F Supp 218 (DDC 1955). See also the Supreme Court decision of *RA Williams v. Edgar Fears, Sheriff, and RB Aycock*, *Jailer* 179 US 270 at para. 7 led by Chief Justice Fuller had decided that "the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty."

60. *Boudin* 136 F Supp 218 (DDC 1955) at 219. Other cases include *Shachtman v. Dulles*, DC Cir, 1955, 225 F 2d 938 and *Bauer v. Acheson*, DC 1952, 106 F Supp 445.