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CASE COMMENT ON A. D. M. JABALPUR V. SHIVKANT SHUKLA

AUTHOR: Tanya Bhadauria

INTRODUCTION

This article deals with the case of Additional District Magistrate Jabalpur v. S.S. Shukla[1] infamously known as the HABEAS CORPUS case.

The case dates back to 1975 when the nation was declared to be in a state of emergency, as a consequence of the ***'Raj Narain Verdict'.*** In this case the abrupt detention of the leaders of the opposition Party made on account of Maintenance of Internal Security Act in furtherance to an order of the president suspending the fundamental rights of the citizens especially, **Article 14** & **21** under **Article 359(1)** was challenged.

The judgment was delivered on April 28th, 1976 by a five judge Constitutional bench including the then **Chief Justice A.N. Ray**, out of which four were in favor of suspension of such rights and liberty and one dissenting opinion rejected the contention.
As far as majority of the judgment is concerned, it was established that a person's right to approach The High Court under **Article 226** of the Indian Constitution, for Habeas Corpus or any other writ challenging the legality of an order of detention at the time of Proclamation of Emergency remains suspended and that person cannot approach any High Court for the remedy or for enforcement of his right.

CASE FACTS

On june 25, 1975, The then government of India, led by **Mrs I.N. Gandhi,** proclaimed a state of emergency in the country by the virtue of **Articles 358** of the Constitution, on account of "internal disturbances". As the result of which the citizen's seven classic freedoms under **Article 19** stood automatically suspended.
On June 27, an order in furtherance to the emergency was issued in the name of the President of India, under article 359(1), suspending the enforcement of Articles 14, 21 and 22.

[1] A.D.M. Jabalpur v. S.S. Shukla, 1976 AIR 1207, 1976 SCR 172

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On June 25 midnight and thereafter, a large number of persons (mainly political leaders of the opposition party) were detained under **The Maintenance of Internal Security Act**[2]. The detentions hence made were not reasoned. A Number of writs of Habeas corpus were filed against detention orders challenging them as being illegal and unconstitutional.

When those petitions came up for hearing the court raised a preliminary objection as to Maintainability of the petitions, as the petitions were filed on the ground of deprivation of personal liberty in violation of a procedure established by law; but that was a plea available to them only under Article 21 of the Constitution and since enforcement of Article 21 was suspended by the presidential order of 27 June 1975, the petitions were liable to be dismissed at the threshold. This objection was overruled for one reason or the other by various high courts (writ states). The government of the concerned states (e. g. Jabalpur) and the government of India filed appeals in the Supreme Court against the decision of those high courts. The case was heard by a five judge bench consisting of Ray CJ and Khanna, Beg, Chandrachud and Bhagwati JJ.

ISSUES

Whether, a writ of habeas corpus filed by a person challenging his unlawful detention, maintainable after President's order for suspension of Article 21, during the period of emergency.

Whether there was any rule of law apart from and irrespective of Article 21.

Whether the detention holds locus standing in the court during the period of emergency.

ARGUMENTS

The state put forth the argument that the sole purpose of enforcement of emergency in the state is to establish an executive centered machinery which can ensure discretionary power of the state over the law. Filing writ petitions in High Courts under Article 226 are suspended and petitioners had no right to approach the Court for the implementation of the same and this would have logically dismissed such petitions.

While the counterparts argued that suspending the right of a person to move to any court for the enforcement of right to life and personal liberty is done under a constitutional provision and therefore it cannot be said that the resulting situation would mean the absence of the rule of law.

[2] Act 26 of 1971

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JUDGMENT

One of the essential attributes of the rule of law is that executive action to the prejudice of or detrimental to the right of an individual must have the sanction of some law. This principle has now been well settled in a chain of authorities of this Court. The majority of the bench (Ray CJ, Beg, Chandrachud and Bhagwati JJ) answered The issue in the negative and observed: The Constitution is the mandate. The Constitution is the rule of law. There cannot be any rule of law other than the constitutional rule of law. There cannot be any pre constitutional or post-constitutional rule of law which can run counter to the rule of law embodied in the Constitution, nor can there be any invocation to any rule of law to nullify the constitutional provisions during the time of Emergency. Article 21 is our rule of law regarding life and liberty. No other rule of law can have a separate existence as a distinct right. The rule of law is not merely a catchword or incantation. It is not a law of nature consistent and invariable at all times and in all circumstances. *"There cannot be a brooding and omnipotent rule of law drowning in its effervescence the emergency provisions of the Constitution."*[3]

Khanna J, however, did not agree with the majority view. In a powerful dissent, His Lordship observed: Rule of law is the antithesis of arbitrariness. It is accepted in all civilized societies. It has come to be regarded as the mark of a free society. It seeks to maintain a balance between the opposite notions of individual liberty and public order. The principle that no one shall be deprived of his life and liberty without the authority of law was not the gift of the Constitution. It was a necessary corollary of the concept relating to the sanctity of life and liberty, it existed and was in force before the coming into force of the Constitution. *Even in the absence of Article 21 in the Constitution, the State has got no power to deprive a person of his life or liberty without the authority of law.* This is the essential postulate and basic assumption of the rule of law and not of men in all civilized nations. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning. Article 21 incorporates an essential aspect of that principle and makes it part of the Fundamental Rights guaranteed in Part III of the Constitution. It does not, however, follow from the above that if Article 21 had not been drafted and inserted in Part III, in that event, it would have been permissible for the State to deprive a person of this life or liberty without the authority of law.[4]

[3] 3 See, for detailed discussion, SCC paras. (per Ray CJ, 41-52, 103, 136-139;
Beg J, 165, 176-193, 242-244, 278-280; Chandrachud J, 330, 347-350, 369-375, 419;
Bhagwati J, 435-439, 458-466, 472, 485-487. See, for scathing criticism of the majority view,
H.M. Seervai, Habeas Corpus case: Emergency and Future Safeguards (1977);
V.G. Ramachandran, Law of Writs, Part III (2006) Chap. I

[4] ADM, Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521, paras. 525-536, 575, 593: AIR 1976 SC 1207

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ANALYSIS

Even though Justice Khanna's decision was a dissenting opinion, it is one of the most powerful dissents in Indian judicial history and is regarded as one of the bravest actions at the time. In his book, "Neither Roses Nor Thorns"[5], Justice Khanna claimed that he was aware that his dissenting decision in the ADM Jabalpur case had cost him the position of Chief Justice of India. He was the lone defender of democracy who refused to give in to the majority in order to protect the Court's honor during these trying times. The majority judgment's delivery day was referred to as the Indian judicial system's darkest moment in history.

Only Justice Khanna's dissent, which defended personal freedom over the whims and caprices of the ruling class and preserved the Rule of Law, is worth reading in light of the disgraceful majority verdict. Justice Khanna's dissent would be a "contrapuntal," according to legal scholar Gautam Bhatia in Transformative Constitution, which is something that appears as a counterpoint, frequently lone, against the tide at the time, but something that conceals within the kernel of the future and the way ahead, which lives on to speak forcefully, another day.

The New York Times wrote an editorial about the case which has become locus classicus now: "If India ever finds its way back to the freedom and democracy that were proud hallmarks of its first eighteen years as an independent nation, someone will surely erect a monument to Justice HR Khanna of the Supreme Court. It was Justice Khanna who spoke out fearlessly and eloquently for freedom this week in dissenting from the Court's decision upholding the right of Prime Minister Indira Gandhi's Government to imprison political opponents at will and without court hearings. The submission of an independent judiciary to an absolutist government is virtually the last step in the destruction of a democratic society; and the Indian Supreme Court's decision appears close to utter surrender."[6]

The dissent of justice Khanna did not give up against the ambitions of an individual in power and upheld Rule of Law as the primary principle was deemed to be accepted by all and hence,
In 2011, In an interview, **Justice Bhagwati pleaded guilty for the wrong stand taken up by him thirty years ago.** He said " if not a disgrace, the case was something for which the Supreme Court should be ashamed." He did not absolve himself: "I was there — I plead guilty. I don't know why I

[5] Khanna HR, "Neither Roses Nor Thorns", Eastern Book Company (1985)
[6] The New York Times, Editorial, 30 April 1976.

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yielded to my colleagues. In the beginning, I was not in favor of the view that the majority took. But ultimately, I don't know why, I was persuaded to agree with them. I still feel that the whole judgment was against my conscience. I have always been for freedom, freedom of speech and freedom of expression; I have always believed and always stood by these principles. On Independence Day, Justice D Y Chandrachud, in a formidable lecture on Freedom as Art in Mumbai, made a revealing personal statement which holds great relevance today. The Supreme Court judge spoke of how "with seven to eight hours of dictation left in the day, when I finished dictating" the order annulling the infamous ADM Jabalpur judgment of 1976, he "told his Secretary that they would close for the day". He had "told a parent he was wrong." "I know he (former Chief Justice YV Chandrachud) believed throughout his life that ADM Jabalpur was wrong. It was an act of weakness on my part."[7]

The majority judgment was a disgrace. On various events the Supreme Court of India and eminent jurists have marked the majority judgment as one of the dark spots in the history of supreme courts.

"There is no doubt that the majority judgment of this court in the ADM Jabalpur case violated the fundamental rights of a large number of people in this country," Justice Ganguly observed.
The Supreme Court went on to elaborate the interpretation of Article 21 and introduced Public Interest Litigation to gain public legitimacy after it faced criticism over the judgment and damage it had done. The apex court recalled the comment of former Chief Justice M N Venkatachaliah, that the majority decision in the Emergency case be "**confined to the dustbin of history".**[8]

AFTERMATH OF THE JUDGMENT

Soon after the emergency came to an end the government faced criticism from the population. The majority rejected the view adopted by the apex court. The effect of which was nullified by **Maneka Gandhi V. Union Of India**[9] giving a fundamental character to Article 21.
The majority view in the *Shivkant Shukla case* has been completely negatived by the 44th Amendment of the Constitution as well as judicial pronouncements and therefore, it is no longer the law. The Court also noted that Article 21 binds both the executive and the legislature, correcting Justice Khanna's position that suspension of Article 21 releases the legislature from its restrictions but not the executive, which can never deprive a person of his life and liberty without the authority of law and such detention can be challenged on the grounds indicated in Makhan Singh Case. Now, the Court cannot suspend the enforcement of Articles 20 and 21 in any circumstance. Articles 352 and 359 have not been invoked since the revocation of the Proclamation of Emergency in 1971 and 1975 in early 1977. Also the

[7] Justice P.N. Bhagwati, Interview with myLaw.net (2011)
[8] Chief Justice M N Venkatachaliah, the Khanna Memorial Lecture on February 25, 2009
[9] 1978 AIR 597, 1978 SCR (2) 621

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phrase **"internal disturbance"** was changed by the 44th Amendment changed into **"armed rebellion"** and internal disturbance not amounting to armed rebellion would no longer be a ground to the issuance of Proclamation of emergency. Many such provisions in 44th Amendment for proclamation of Emergency were made specific and more stringent so as to avoid any further misuse of this provision of the Constitution by any Government which was interpreted unconstitutionally by the Supreme Court.

CONCLUSION

The Proclamation of Emergency and arbitrary use of power by the State machinery and discarding the personal liberty of the citizens along with a judicial stamp can be considered as the most erroneous judgment till date. The wrong interpretation led to infringement of fundamental rights over whims and fancy of political figures that had their agenda to fulfill. While the judgment is said to be a mistake on many occasions by jurists and the apex court, it may be mentioned here that the ruling has not been overruled formally till date. The same was observed by the bench of Justice Aftab Alam and Justice Ashok Ganguly. In today's scenario, Dicey's Rule of Law which was explained by Justice Khanna holds much greater relevance than what it was in 1976. However, There still has to be a clear overruling of this judgment so as to make clear the theoretical nature of the Rule of Law and its applicability in our justice system. Also, further provisions shall be made so as to prevent overshadowing of justice and equity because of political agendas.

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