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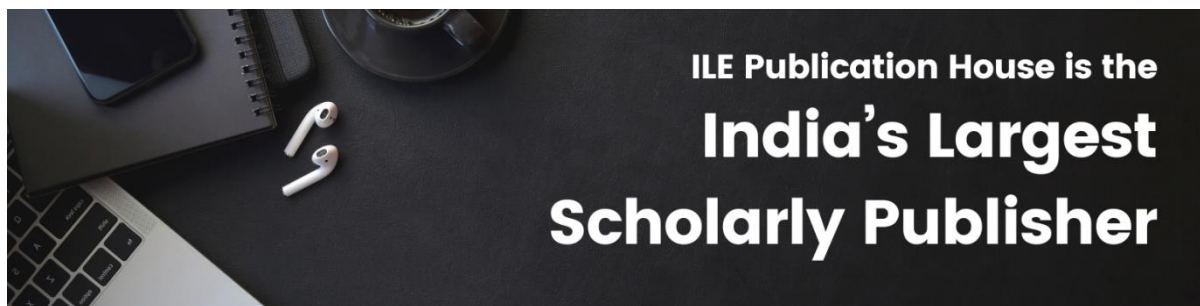
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CASE COMMENTARY ON ADM JABALPUR V. SHIVKANT SHUKLA (AIR 1976 SC 1207)

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ABSTRACT

When challenged over her Lok Sabha elections, Indira Gandhi imposed emergency in June 1975 under Article 352(1) of the Indian Constitution¹²⁶. Though expressed as for the public good, but emergency proved to be a debacle for Indian citizens. Opposition members were arrested under the Maintenance of Internal Security Act (MISA). The case of ADM Jabalpur vs Shivkant Shukla was one of the cases raised during this period and where the government had to show its presence. It is also known as the Habeas Corpus Case as the writ was not allowed to be used by the citizens. This is a case with still existing controversies. Example- Justice DY Chandrachud criticized his father- YV Chandrachud's decision and said that he should have supported Justice HR Khanna's dissenting judgement that the Right to Life and Personal Liberty under Article 21 even during emergency period as it's the most basic right inclusive of more Fundamental Rights for a person to live. This is the case commentary over this landmark case. Post this judgement and the trauma of Emergency, there were seen a lot of changes and amendments in the Indian Constitution including 44th Amendment and 42nd Amendment. In 2017, this particular case was overruled by K.S. Puttaswamy v. union of India 2017 10 SCC 1¹²⁷. The dissent of Justice HR Khanna in ADM Jabalpur vs Shivkant Shukla was given great recognition in K.S. Puttaswamy v. union of India. Infact, the concept of right to Privacy was added to Article 21 of the Indian Constitution as an inclusive right.

Keywords- Emergency, Maintenance of Internal Security Act, Habeas Corpus, Dissent, Right to Life, Personal Liberty, Amendment.

I. CASE DETAILS

CASE TITLE	ADM Jabalpur v. Shiv Kant Shukla, AIR 1976 SC 1207
CASE NO	1207
CITATION	AIR 1976 SC 1207, 1976 SCR 172
DATE OF JUDGMENT	28/04/1976
BENCH	A.N. Ray, M. Hameedullah Beg, Y.V. Chandrachud, Hans Raj Khanna, P.N. Bhagwati
PETITIONER	ADM Jabalpur
RESPONDENT	Shiv Kant Shukla

II. BACKGROUND

The case revolves around the imposition of Emergency in India under Article 352(1) of the Indian Constitution in 1975. Indira Gandhi, the Prime Minister of India, imposed the Emergency when she was challenged over her Lok Sabha elections. Under Emergency, all civil liberties and fundamental rights were suspended, including the right to approach the court under Article 32 or 226, and the use of the writ of Habeas Corpus was not allowed. The case, known as the Habeas Corpus Case, was raised during this

¹²⁶ INDIA CONST. art. 352, cl.1

¹²⁷ K.S. Puttaswamy v. union of India 2017 10 SCC 1

period and challenged the suspension of the writ of Habeas Corpus.

III. FACTS

On 12 June 1975, Indira Gandhi was declared ineligible to stand in any elections for six years by the Allahabad High Court, which led to protests by the opposition leader JP Narayan. In response, Indira Gandhi declared Emergency on 25 June 1975, which resulted in the arrest of opposition members under the Maintenance of Internal Security Act (MISA)¹²⁸ without trial. President Fakhruddin Ali Ahmad declared that the rights of every person under Articles 14, 21, and 22 of the Indian Constitution¹²⁹ were transferred to the court under Article 359(1). The use of the writ of Habeas Corpus was also suspended. Censorship imposed.

Herein the case, the plaintiff raised the objection to the fact that the Habeas Corpus writ was issued on the request for a release. The other party was of the view that rights under article 21 were taken away as the plaintiff went against the procedures established under rule of law. About 9 high courts held the maintainability of Habeas Corpus writ during emergency period. After the matter was discussed in several high courts, the case went to the Apex Court of India where the ratio of the judgement came out to be 4:1 with Justice HR Khanna in dissent.

IV. ISSUES

- Whether the writ petition before a high court under Article 226 is maintainable to enforce the right to personal liberty during emergency declared under Article 359(1)?
- Does the court have the power to judicially review such arbitrary presidential order?
- By such order, is the executive performing the role of the legislature in excess?

A. Ratio: (4:1)- The majority of the bench held that the writ petition under Article 226 was not maintainable during the Emergency period to enforce the right to personal liberty. The court also held that the presidential order under Article 359(1) was not justiciable and could not be reviewed by the court. The majority held that during the Emergency, the executive could perform the role of the legislature in certain circumstances.

B. Dissent: Justice Hans Raj Khanna dissented from the majority and held that the right to life and personal liberty under Article 21 could not be suspended during Emergency. He stated that even during Emergency, the right to life and personal liberty was the most basic right, which was inclusive of all other fundamental rights.

C. Impact: The decision in ADM Jabalpur v. Shivkant Shukla was heavily criticized for upholding the suspension of fundamental rights during Emergency. The dissenting opinion by Justice Khanna became a landmark in the protection of fundamental rights in India. The case led to several amendments to the Indian Constitution, including the 44th and 42nd Amendments.

V. ARGUMENTS

A. State Arguments

The state contended that during a state of emergency, the interests of the state hold supreme significance, surpassing all other considerations. This is the reason why, during an emergency, the constitution grants powers to the state executive to take over the enforcement of laws. The emergency powers were included in the constitution by the constituent assembly with the aim of prioritizing

¹²⁸ Maintenance of Internal Security Act, 1971, No. 26, Acts of Parliament, 1971 (India)

¹²⁹ INDIA CONST. art.22

the state's military and economic security above all else.

Furthermore, the state argued that the constitution itself confers the authority to restrict the fundamental rights of individuals to approach the courts in case of emergencies, by virtue of the application of Article 359(1)¹³⁰. Therefore, it is not a scenario of absence of law and order or justice, but rather the highest body of law that has imposed such limitations.

B. Respondent Arguments

The respondents argued that Article 359(1), which limits the approach to the apex court during an emergency concerning fundamental rights, does not hinder the enforcement of common law, natural law, or statutory rights pertaining to personal liberty in the High Court under Article 226¹³¹.

Furthermore, the respondents contended that the powers of the executive branch do not expand during an emergency, as the extent of its powers is already clearly and explicitly defined in the constitution.

A crucial argument put forth by the respondents is that while Article 21 grants the right to life, it is not the sole provision conferring such a right. They emphasized that the executive assuming the powers of the legislature goes against the basic structure of the constitution, and permitting such an occurrence would defeat the intention of the constitution's framers.

VI. JUDGMENT

Court coming to the conclusion of the Landmark Judgment, held in the majority of 4:1 that a person for the enforcement of the writ of Habeas Corpus to enforce any fundamental right which is detained under MISA because the claim is an enforcement of Right to life and Personal Liberty as per Article 21 of the Indian Constitution¹³². This is barred by Presidential Order. The Majority of Judges were in support of the appellant. To justify the

suspension of fundamental right the court held that "In period of public danger or apprehension the protective law which gives every man security and confidence in times of tranquility has to give way to interests of the State." A question related to the status of Article 21¹³³ was raised where the court stated that "Liberty is itself the gift of the law and may by the law be forfeited or abridged"

VII. COMMENTS

The framers of the Constitution have meticulously crafted Part III, which bestows fundamental rights upon all citizens of India from birth, subject to the condition that these rights do not infringe upon the rights of others. Article 22(2) of the Indian Constitution stipulates that a person who is arrested must be informed of the grounds of arrest and provided with the right to defend against the charges brought against them. They also have the choice to select legal counsel of their preference. If a person is arrested without adherence to these requirements, they possess the legal entitlement to file a lawsuit against the arresting police officer. However, in matters concerning national interest, the officers assigned to such cases are exempted from disclosing the reasons for arrest.

During the proclamation of Emergency in India, the then President of India, Fakhruddin Ali Ahmad, under Clause (1) of Article 352¹³⁴ of the Indian Constitution, suspended the fundamental rights of Indian citizens. Consequently, thousands of individuals were arrested and detained. In response to this, nine high courts in India opposed the decision of the government led by Indira Gandhi, asserting that the fundamental rights of individuals cannot be suspended even in times of emergency. The government of India then presented the matter to the Supreme Court in the case of ADM Jabalpur v. Shivkant Shukla. In this case, a bench of four judges (A.N. Ray, Justice M. Hameedullah Beg, Justice P.N. Bhagwati, Justice

¹³⁰ INDIA CONST. art.359. cl.1

¹³¹ INDIA CONST. art. 226

¹³² INDIA CONST. art. 21

¹³³ Supra note 8

¹³⁴ Supra note 2

Y.V. Chandrachur) delivered a judgment in favor of the government, declaring that the rights and freedoms enjoyed by Indian citizens are granted by the law and can be revoked by the government at any time. They further stated that citizens must comply with such revocations, and if they protest, they may be punished according to the provisions of the law.

Since it was a five-judge bench, a dissenting opinion was expressed by Justice H.R. Khanna. He stated that invoking Article 359(1) does not eliminate an individual's right to approach the Court for the enforcement of statutory rights. Justice Khanna added that Article 21 is not the exclusive repository of life and personal liberty. He further contended that during the declaration of an emergency, Article 21 only loses its procedural aspect, but its substantive aspect remains fundamental. According to Justice Khanna, the State does not possess the authority to deprive any person of life and liberty without legal authorization. It is worth noting that Justice Khanna's dissent incurred significant political pressure, ultimately preventing him from becoming the Chief Justice, as he was the next in line for the position at that time. Additionally, he viewed fundamental rights as natural rights, asserting that they existed even before the commencement of the Constitution, thus emphasizing that fundamental rights are inherent birth rights of citizens.

In the case of *Maneka Gandhi v. Union of India* (1978)¹³⁵, and subsequently in the landmark case of *Vishaka v. State of Rajasthan & Ors.* (1997)¹³⁶, specific principles were established to protect women from sexual harassment in the workplace.

Considering the above context, it can be said that the decision in *ADM Jabalpur* is widely regarded as a dark day in the history of the Supreme Court. Apart from the legal intricacies, the Court failed to adopt a constitutional approach and attitude. It neglected the

understanding that the law is merely a means to an end, and not an end in itself.

In the *K.S. Puttaswamy v. Union of India*¹³⁷ the decision of *ADM Jabalpur* was overruled. It was held that *ADM Jabalpur* case was flawed by DY Chandrachur and with other 3 Judges. It was observed by Justice Nariman and Justice Kaul that, "*No civilized state can contemplate an encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution. In recognizing the right, the Constitution does not become the sole repository of the right.*"

This is how Judiciary shaped this complex chapter of history. They had played a vital role during this development.

VIII. CONCLUSION

In conclusion, it can be stated that there are certain rights that are inherent to every human being and cannot be denied under any circumstances. This is reflected in the Universal Declaration of Human Rights (UDHR), specifically in Article 8¹³⁸, Article 9¹³⁹, and Article 10¹⁴⁰, which guarantee the right to an effective remedy for violations of fundamental rights, protection against arbitrary arrest or detention, and the right to a fair and public hearing by an independent and impartial tribunal.

The principle of Habeas Corpus should be upheld and followed, ensuring that no individual is unlawfully detained by the relevant authority. The person being arrested must be informed of the reasons for their arrest.

Therefore, we support the decision to overrule the *ADM Jabalpur* case in the *K.S. Puttaswamy* case, as it aligns with the principles outlined in the UDHR and upholds the fundamental rights of individuals.

¹³⁵ *Maneka Gandhi v. Union of India* (1978) AIR 1978 SC 597

¹³⁶ *Vishaka v. State of Rajasthan & Ors.* (1997) AIR 1997 SC 3011

¹³⁷ *Supra* note 3

¹³⁸ Universal Declaration of Human Rights, art. 8

¹³⁹ *Ibid*, art.9

¹⁴⁰ *Ibid*, art.10