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ADM Jabalpur v. Shivakant Shukla (1976)

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INTRODUCTION

The case of ADM Jabalpur v Shivakant Shukla¹ is popularly known as Habeas corpus case. This judgement is regarded as one of the most constitutionally sensitive topics of all times.

Senior Advocate of Supreme court in his autobiography writes, “The Emergency was a time when many of us failed the test of courage. The judiciary’s role during that time was a black spot.”²

As we know that the fundamental rights enshrined in Part III of Indian constitution are not absolute and can be curtailed under certain situations like during the time of proclamation of emergency. But what happens when government curtail these rights for a very longer span of time and even the right to life and personal liberty are curtailed, which are so rudimentary in nature that the very existence of the human is hampered? Through this case we will delve into this aspect when PM Indira Gandhi proclaimed emergency in 1975 when the judgement in Indira Nehru Gandhi v. Raj Narain³ found her liable of malpractices in elections.

DETAILS OF THE CASE

Case name- Additional District Magistrate, Jabalpur v. Shivkant Shukla

Petitioner- Additional District Magistrate, Jabalpur

Respondent- Shivakant Shukla

Date of Judgement- 28th April, 1976

Court- Supreme Court of India

¹ Additional District Magistrate Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207

² Fali S. Nariman, *Before Memory Fades: An Autobiography* 280 (Hay House India 2010).

³ Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299

Bench- Chief Justice AN Ray, Justice HR Khanna, Justice MH Beg, Justice PN Bhagwati, Justice YV Chandrachud

FACTS OF THE CASE

Prime Minister Indira Gandhi imposed emergency in the year 1975 after she was forbidden by Allahabad high court from holding the office for 6 years due to electoral malpractices.⁴ This period saw suspension of fundamental rights including Article 14, 22 and 21 as well as citizen's right to approach SC in case of breach.

Subsequently, Maintenance of internal security act was amended to arrest and detain individuals without trial. Various opposition leaders at time were detained. Among such individual was Shivakant Shukla who challenged his detention.

ISSUES BEFORE THE COURT

- Whether the writ petition is maintainable under article 226 when enforcing the article 21 during National emergency?
- Whether the ordinance issued by the president unconstitutional?
- Whether there was a scope of judicial review during emergency?

ARGUMENTS OF THE PARTIES

PETITIONER (THE STATE)

Petitioner argued that the time of emergency is marked by supremacy of executive orders that is vested upon it by the virtue of articles like **358, 359(1), and 359(1A)**. At the time of emergency, it is argued that the natural rights of the citizens i.e. the rights given since birth, takes backseat and positive law takes precedence. During emergency, state can curtail the fundamental rights by the virtue of article 359(1) and therefore individuals do not have the rights to approach the court for enforcement of any right in SC.

RESPONDENT (SHIVAKANT SHUKLA)

The respondent argued that while article 359(1) limits an individual to approach SC for the enforcement of fundamental rights however it does not prevent an individual from approaching the high court under article 226 for the enforcement of other rights. The petitioner also argues that executive is not above law and hence it should not be given unbridled powers that it starts

⁴ *ibid*

usurping the legislative powers. It also highlights that MISA under section 3 also provides for the conditions under which an arrest could not be made and these conditions should be adhered to.

RELEVANT LEGAL PROVISIONS

Article 352 -mentions National Emergency that can be implemented in the case of War external aggression or internal disturbance.

Article 356- provides for state emergency.

Article 360 -mentions financial emergency which is never imposed till date.

Article 358- suspension of provisions under article 19 during emergency.

Article 359 (1) -president may by order declared that the right to approach Court on account of violation of fundamental rights except article 20 and 21 stands restricted.

Maintenance of Internal Securities Act (1971)- This act empowered state to detain any person without trial. Later it was repealed in 1977.

JUDGEMENT

This judgement was given by five judge- bench with 4:1 majority. Justice HR Khanna was the only dissenting judge in this case. The court held that the writ petition under article 226 are not maintainable and therefore all the writs of habeas corpus in various courts stands quashed. Justice Chandrachud in this regard writes, “the suspension of the right to enforce the right conferred by article 21 means and implies the suspension of the right to file a Habeas Corpus petition”⁵. It also upheld the validity of MISA and its various challenged sections.

The court also talked about the scope of judicial review during the time of emergency. It says that judicial review has its limitations. The court cannot deviate from its strict reading of the wordings of the legal provisions.

The dissenting Judge, Justice HR Khanna writes for himself that article 359(1) restricts an individual from approaching supreme court when it comes to fundamental rights. However, various statutory rights protect and espouses individual rights. In such a scenario an individual shall not be prohibited to approach high court. Justice Khanna also emphasised that even while suspending rights, an individual cannot be deprived of his life and personal liberty except

⁵ *Additional District Magistrate Jabalpur v. Shivakant Shukla* (1976) 2 SCC 521 (per Chandrachud, J., concurring).

according to the procedure established by law. In this reference, he writes “Even in absence of Article 21, the state has no power to deprive a person of his life or liberty without the authority of law. Without such sanctity of life and liberty, even the enjoyment of all the oranges in the world would be meaningless.”⁶

CONCLUSION

The habeas corpus case remains as one of the most debatable judgements in Indian history. This case highlights the scars of emergency era and reminds of how the democracy was strangled by the Indira Gandhi. This judgement highlights the need of power balance between the organs of the state. When executive turns arbitrary, the whole nation and its people turn into puppets of the government and are used for the satisfaction of the government. Judiciary, which is considered as the guardian of the constitution as well as the guarantor of the rights of the citizens, also serves the ends of the government. This situation insinuates the need of an independent and fearless judiciary.

⁶ *Additional District Magistrate Jabalpur v. Shivakant Shukla* (1976) 2 SCC 521 (per Khanna, J., dissenting).