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## CASE COMMENTARY ON A.D.M JABALPUR V. SHIVAKANT SHUKLA (1976) 2 SCC 521

- *PRAKRITI TYAGI*

### INTRODUCTION

A.D.M Jabalpur v. Shivakant Shukla, popularly known as the Habeas Corpus Case, is regarded as one of the most controversial judgments in the history of Indian constitutional law. Decided by a Constitution Bench of the Supreme Court on 28 April 1976, the case arose during the National Emergency declared by Prime Minister Indira Gandhi on 25 June 1975. It concerned one of the most fundamental questions of constitutional governance: whether a citizen could seek judicial protection of personal liberty when the enforcement of Fundamental Rights had been suspended during an Emergency. The judgment tested the independence of the judiciary and the balance between State security and individual liberty. While the majority upheld the unrestricted powers of the executive, Justice H.R. Khanna delivered a historic dissent that later became the accepted constitutional position. Today, although the majority decision has been expressly overruled, the case continues to be studied as a reminder of the importance of judicial review and the rule of law.

### FACTS OF THE CASE

Following the declaration of Emergency under Article 352 of the Constitution, the President issued an order under Article 359(1), suspending the right of citizens to move any court for the enforcement of the Fundamental Rights guaranteed under Articles 14, 21 and 22. During this period, thousands of political leaders, journalists, students and social activists were arrested under the Maintenance of Internal Security Act, 1971 (MISA) without trial.

Several detenus challenged their detention before different High Courts through writ petitions of habeas corpus under Article 226 of the Constitution. The High Courts of Allahabad, Delhi, Karnataka, Madhya Pradesh and several other States held that even though Fundamental Rights had been

suspended, the courts could still examine whether the detention was lawful, mala fide or beyond the authority of law.

The Union Government challenged these decisions before the Supreme Court, contending that during the Emergency no person had the right to question his detention before any court.

### **ISSUES BEFORE THE COURT**

The Constitution Bench was required to determine the following legal issues:

- Whether a writ petition for habeas corpus under Article 226 was maintainable during the Emergency.
- Whether the suspension of Article 21 completely barred judicial review of preventive detention.
- Whether the right to life and personal liberty existed independently of Article 21 or was solely a constitutional creation.
- Whether the executive could detain a person without any judicial scrutiny during the Emergency.

### **ARGUMENTS OF THE PARTIES**

The Union Government argued that the Presidential Order issued under Article 359 suspended the enforcement of Articles 14, 21 and 22. Consequently, no citizen could approach any court challenging his detention. According to the Government, once an Emergency had been proclaimed, national security and public order became paramount, and the judiciary could not interfere with executive action. It further argued that Article 21 was the sole source of the right to personal liberty; therefore, once its enforcement was suspended, no legal remedy survived.

The detenus, on the other hand, argued that the right to life and personal liberty is not created by Article 21 but merely recognised by it. They contended that personal liberty is a natural and inherent human right that survives even during an Emergency. It was further argued that High Courts retained their constitutional jurisdiction under Article 226 to examine whether detention orders were passed in accordance with law or were mala fide.

### **JUDGMENT OF THE SUPREME COURT**

By a majority of 4:1, the Supreme Court allowed the Government's appeal. Chief Justice A.N. Ray and Justices M.H. Beg, Y.V. Chandrachud and P.N. Bhagwati held that during the operation of the Presidential Order issued under Article 359, no person had the right to move any court for the enforcement of the right to personal liberty. According to the majority, once Article 21 became

unenforceable, even an illegal or arbitrary detention could not be challenged through a writ of habeas corpus.

The Court held that Article 21 was the exclusive constitutional source of the right to life and personal liberty. Consequently, when the enforcement of Article 21 stood suspended, courts lacked jurisdiction to examine the legality of executive detention. The majority reasoned that extraordinary constitutional situations required extraordinary governmental powers and that judicial intervention could frustrate the effective functioning of the executive during a national emergency. This decision effectively placed executive authority above judicial scrutiny for the duration of the Emergency and denied citizens any effective legal remedy against unlawful detention.

### **JUSTICE H.R. KHANNA'S DISSENT**

Justice Hans Raj Khanna delivered the lone dissenting opinion, which is now regarded as one of the finest judicial opinions in Indian constitutional history. Rejecting the majority's reasoning, he held that the right to life and personal liberty is not dependent solely upon Article 21. According to him, these rights existed even before the Constitution and were recognised under the principles of natural law and the rule of law.

Justice Khanna observed that the suspension of the enforcement of Fundamental Rights did not authorise the State to act without legal authority. If a detention order was illegal, mala fide or unsupported by law, the courts retained the power to examine its validity. He warned that accepting the Government's interpretation would mean that even if an innocent person were unlawfully detained or deprived of life without authority of law, the courts would remain powerless to intervene. Such a position, according to him, was inconsistent with constitutional democracy and the rule of law. His dissent cost him the office of the Chief Justice of India, as he was superseded despite being the senior-most judge. Nevertheless, history has vindicated his constitutional vision.

### **CRITICAL ANALYSIS**

The majority judgment in A.D.M Jabalpur has been criticised as one of the gravest judicial failures in independent India. Instead of acting as the guardian of Fundamental Rights, the Supreme Court adopted an excessively differential approach towards the executive. The decision virtually legitimised arbitrary detention by denying citizens access to judicial remedies during the Emergency.

The judgment reflected a narrow interpretation of Article 21 by treating it as the sole source of personal liberty. This approach ignored the broader constitutional philosophy based upon human dignity, natural justice and the rule of law. The Court failed to recognise that constitutional rights cannot be entirely extinguished merely because their enforcement has been temporarily suspended.

Another significant criticism concerns the Court's approach towards judicial review. Judicial review forms part of the basic structure of the Constitution, and the judiciary has a constitutional obligation to ensure that executive power remains subject to legal limitations. By refusing to examine the legality of detention orders, the majority effectively abandoned this constitutional responsibility. In contrast, Justice Khanna's dissent reflected a deeper understanding of constitutional governance. His opinion recognised that the Constitution does not create liberty; rather, it protects a liberty that already belongs to every human being.

The case also demonstrates how constitutional interpretation is influenced by political circumstances. Delivered during one of the darkest periods of Indian democracy, the judgment illustrated the dangers of excessive judicial deference during constitutional crises. It remains an enduring lesson that courts must remain independent, particularly when civil liberties are under threat.

### **SUBSEQUENT DEVELOPMENTS AND PRESENT POSITION**

The constitutional position established by the majority in *A.D.M Jabalpur* did not survive the Emergency. The 44th Constitutional Amendment Act, 1978<sup>1</sup> substantially altered the constitutional framework by ensuring that Articles 20 and 21 cannot be suspended even during an Emergency. This amendment was enacted specifically to prevent the recurrence of the constitutional abuses witnessed during the Emergency period.

More importantly, the nine-judge Constitution Bench in *Justice K.S. Puttaswamy v. Union of India*<sup>2</sup> expressly overruled the majority decision in *A.D.M Jabalpur*. The Court unanimously held that the majority judgment was seriously flawed and inconsistent with the constitutional guarantee of liberty and human dignity. It declared that Justice H.R. Khanna's dissent correctly stated the law and reaffirmed that the right to life and personal liberty cannot be extinguished by executive action during an Emergency. Thus, the present legal position is that judicial review remains an essential feature of the Constitution, and personal liberty continues to enjoy constitutional protection even during exceptional circumstances.

### **CONCLUSION**

*A.D.M Jabalpur v. Shivakant Shukla*<sup>3</sup> occupies a unique place in Indian constitutional jurisprudence, not because it laid down enduring legal principles, but because it demonstrated the consequences of judicial failure during a constitutional crisis. The majority judgment gave precedence to executive power over individual liberty and has rightly been condemned by constitutional scholars and later

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<sup>1</sup> The Constitution (Forty-fourth Amendment) Act, 1978 (Act 44 of 1978).

<sup>2</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

<sup>3</sup> *A.D.M Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521.

judicial decisions. At the same time, Justice H.R. Khanna's dissent has emerged as one of the greatest affirmations of constitutional morality, judicial independence and the rule of law. The subsequent constitutional amendments and the decision in Justice K.S. Puttaswamy have restored the primacy of personal liberty and confirmed that no government, even during an Emergency, is above the Constitution. Consequently, ADM Jabalpur remains an indispensable case for understanding both the strengths and vulnerabilities of India's constitutional democracy.