CASE COMMENT: ADM JABALPUR v. SHIVKANT SHUKLA

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Citation:

(1976) 2 SCC 521; AIR 1976 SC 1207

Bench:

Ray, A.N. (Cj), Khanna, Hans Raj, Beg, M. Hameedullah, Chandrachud, Y.V., Bhagwati, P.N.

Introduction-

The said case pertains to the time of Proclamation of Emergency by the then ruling government of Indira Gandhi and Presidential order of the same was issued when election of Indira Gandhi were termed to be illegal. The case arose out of a contention that whether the right of a person to approach respective High Court gets quashed when his fundamental rights are not given or suppressed, especially Article 14, and 21 during the emergency and enforcement of such rights remain suspended for the period of Proclamation of Emergency in force. The judgment was delivered on April 28th, 1976 by the Constitutional bench of five judges including the then Chief Justice A.N. Ray, out of which four were in favour of suspension of such right and liberty and one dissenting rejected such contention. As far as majority of the judgment goes, it was established that a person's right to approach 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 get his right. This case was infamously called as *Habeas Corpus* case. Till date, the decision taken by the Court holds badly on the ground of equity, justice and good conscious. The Latin term Habeas Corpus means "you may have the body" and writ of securing a person's liberty is called Habeas Corpus.

Historical Background and Facts-

In *State of Uttar Pradesh v. Raj Narain*[1], the election of Indira Gandhi from Lok Sabha was challenged by petitioner on the grounds of corruption from her constituency, Rae Barelli. On June 12, 1975, Justice Sinha held Indira Gandhi guilty and declared her election invalid. After this judgment, Indira Gandhi moved to Supreme Court and asked for conditional stay on the decision of High Court. This made her handicapped on the floor of Parliament and she was losing her political footprint. The opposition on the other hand became powerful which made Indira Gandhi to declare Emergency under Clause (1) of Article 352 of the Constitution through the then President Fakhruddin Ali Ahmed and the Emergency was termed as serious due to "internal disturbance". During that period, India suffered a war with Pakistan and faced drought which turned economy bad in shape. After the proclamation of Emergency, the fundamental rights under Article 14, and 21 remained suspended and proceedings pending in Court concerned with enforcement of these Articles remain suspended for the period of Emergency. Any person who was considered to be a political threat or anyone who could voice his opinion politically was detained without trial under Preventive Detention Laws. This situation led to arrest of several opposition leaders such as Atal Bihari Vajpayee, Jay Prakash Narain, Morarji Desai and L.K. Advani under MISA (Maintenance of Internal Security Act) because they were proving to be a political threat to Indira Gandhi. These leaders then filed petitions in several High Courts challenging the arrest. Many High Courts ruled in favour of these petitions which made Indira Gandhi government to approach the Supreme Court on this issue which infamously became *Additional District Magistrate Jabalpur v. Shivkant Shukla.* It is also called as *Habeas Corpus* because usually this is the writ filed in Court when a person is arrested. At the time of Proclamation of Emergency, this writ was not entertained as Rights under Article 21 remained suspended.

Issues-

The issues in the said case were-

- Whether, under Proclamation of Emergency after President's order, can the writ of Habeas Corpus be maintained in High Court by a person challenging his unlawful detention?

[1] 1975 AIR 865, 1975 SCR (3) 333

- Was suspension of Article 21 fit under rule of law?
- Does detenue hold locus standi in Court during the period of Emergency?

Rules-

Upon the issues, it was discussed by the State that the only purpose of Emergency in the Constitution is to guarantee special power to the Executive machinery which can hold discretion over the implementation of law and whatever State considers, it shall be held valid. Filing writ petition 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. The fact that Emergency provisions in Part XVIII of the Indian Constitution including Article 358, Article 359(1) and Article 359(1A) are necessities in regard to economy and military security of the State. The validity of the law under Presidential Order cannot be challenged on the ground of violating fundamental rights which were suspended by such order. This answers all the issues like "Whether, under Proclamation of Emergency after President's order, can the writ of Habeas Corpus be maintained in High Court by a person challenging his unlawful detention" for which the answer is No, one cannot approach the High Court for restoration of his fundamental right under any Article of the Indian Constitution. Upon the issue of locus standi, the petitioner holds no ground for any relief.

Judgment-

In view of the Presidential order dated 27 June 1975 no person has any locus standi to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an, order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by malafides factual or legal or is based on extraneous consideration.

2. Section 16A (9) of the Maintenance of Internal Security Act is constitutionally valid;

3. The appeals are accepted. The judgments are set aside;

4. The petitions before the High Courts are now to be disposed of in accordance with the law laid down in these appeals.

The above said judgement was given by four out of five judges. They were the then Chief Justice A.N. Ray, along with Justices M.H. Beg, Y.V. Chandrachud and P.N. Bhagwati. The dissenting Judgment was given by Justice Khanna who ended his judgment by saying "As observed by Chief Justice Huges, Judges are not there simply to decide cases, but to decide them as they think they should be decided, and while it may be regrettable that they cannot always agree, it is better that their independence should be maintained and recognized than that unanimity should be secured through its sacrifice. A dissent in a Court of last resort, to use his words, is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possible correct the error into which the dissenting Judge believes the court to have been betrayed." He paid the price of his opinion when his junior M.H. Beg was appointed as Chief Justice bypassing him in seniority. In *M.M. Damnoo v. State of J&K*[2] the Court required the State Government to produce the file confining the grounds of detention so that the Court could satisfy itself That "the grounds on which the detenu has been detained have relevance to the security of the State". It would, therefore, be seen that if there is a legislative provision which prohibits disclosure of the grounds, information and materials on which the order of detention is based and prevents the Court from calling for the production of such grounds, information and materials, it would obstruct and retard the exercise of the constitutional power of the High Court under Article 226 and would be void as offending that Article.

Analysis-

Upon the analysis of the judgment, there are multiple observations on the given case. The Supreme Court in this case observed that Article 21 covers right to life and personal liberty against its illegal deprivation by the State and in case of suspension of Article 21 by Emergency under Article 359, the Court cannot question the authority or legality of such State's decision. Article 358 is much wider than the Article 359 as fundamental rights are suspended as whole whereas Article 359 does not suspend any rights. Even being Emergency provisions under Article 359 (1) grants special power and status to the Executive, it does not undermine the essential components of sovereignty of separation of powers, leading to a system of check and balance and limited power of the Executive. The nexus between State and Executive is erroneous and the effect of suspension of such rights will only result in extra power to

[2] 1972 AIR 963, 1972 SCR (2) 1014

legislature which might create laws against fundamental rights. This act should not be considered as a "power" of the Executive or right of it. There is a legal extent till which a State can act in or against the citizens and in this case, it was high misuse of power of personal political gain of a single person. During Emergency, it is nowhere mentioned that the power of State "increases" from its original power under Article 162. Also, State only holds the right of arrest if the alleged act falls under Section 3 of MISA and its every condition is fulfilled. If any condition is unfulfilled then detention is beyond the power of State. The decision by the Supreme Court is said to be the biggest erroneous judgment till date. The dissenting opinion of Justice Khanna still holds more value than the majority judgment including the then Chief Justice. The wrong intent of Indira Gandhi's government was seen when Justice Khanna was to ask the first uncomfortable question. "Life is also mentioned in Article 21 and would Government argument extend to it also?" There was no escape. Without batting an eyelid Niren De answered, 'Even if life was taken away illegally, courts are helpless'. Before Proclamation of Emergency there was strong political instability in the Country after the Lok Sabha election of Indira Gandhi was termed as illegal. This whole exercise was to put opposition under pressure and during the process, even Supreme Court made major errors in the judgement and it can be said to be purely unconstitutional. Only the courage of single judge is said to be worth reading and it was in favour of humanity and liberty. Justice Bhagwati was quoted as "I have always leaned in favour of upholding personal liberty, for, I believe, it is one of the most cherished values of mankind, without it life would not be worth living. It is one of the pillars of free democratic society. Men have readily laid down their lives at its altar, in order to secure it, protect it and preserve it. But I do not think it would be right for me to allow my love of personal liberty to cloud my vision or to persuade me to place on the relevant provision of the Constitution a construction which its language cannot reasonably bear." The day when this judgment was pronounced, it was termed as "darkest day of the democracy" and it was matched with the regime and rise of Hitler. On top of all, this judgment did not favour rule of law. As a judge, the focus is on public benefit or on something which is good for population but this judgment seemed to favour only one person. The judgment in this case can be compared to the judgment of Raj Narain's case where Indira Gandhi was given a clean chit by the Supreme Court after being held guilty by Allahabad High Court. One can say that common man's trust on judiciary has been shaken by these two judgments which happened almost simultaneously.

Justice Khanna solely relied on the judgment of *Makkhan Singh v. State of Punjab*[3] in which he noted: "If in challenging the validity of his detention order, the detenu is pleading any right outside the rights specified in the order, his right to move any court in that behalf is not suspended, because it is outside Article 359(1) and consequently outside the Presidential order itself. Let us take a case where a detenu has been detained in violation of the mandatory provisions of the Act. In such a case, it may be open to the detenu to contend that his detention is illegal for the reason that the mandatory provisions of the Act have been contravened. Such a plea is outside Article 359(1) and tile right of the detenu to move for his release on such a ground cannot be affected by the Presidential order". Suspension of Article 21 would simply mean deprivation of right of life and liberty and this is against the basic right along with the Articles of Universal Declaration of Human Rights of which India is a part. This single case became example of how four able judges of the apex court of the country made a blunder under the wrong influence of the wrong person. The Supreme Court violated all fundamental rights with that decision. It was the darkest hour of Indian judiciary which struck at the very heart of fundamental rights. All four judges with the exception of Justice Khanna went on to become Chief Justices of India. In 2011, Justice Bhagwati expressed regret by saying: "I was wrong. The majority judgment was not the correct judgment. If it was open to me to come to a fresh decision in that case, I would agree with what Justice Khanna did. I am sorry. I don't know why I yielded to my colleagues. Initially, I was not in favour of the majority view. But ultimately, I don't know why, I was persuaded to agree with them. I was a novice at that time, a young judge…I was handling this type of litigation for the first time. But it was an act of weakness on my part." Such acceptance from the judge mean how grave the situation was that time and what impact it left on India. The apex court recalled the comment of former Chief Justice M N Venkatachalliah in the Khanna Memorial Lecture on February 25, 2009 that the majority decision in the Emergency case be "confined to the dustbin of history"[4].

Aftermath of the judgment-

Soon after the Emergency and all which was done for it were rejected by the majority of population in 1977, the Supreme Court in *Maneka Gandhi v. Union of India*[5] changed the

[3] 1964 AIR 381, 1964 SCR (4) 797
[4] Supreme Court regrets Emergency era verdict,, The Times of India, (Jan 3, 2011, 4:38AM), http://timesofindia.indiatimes.com/india/Supreme-Court-regrets-Emergency-era-verdict/articleshow/7206252.cms
[5] 1978 AIR 597, 1978 SCR (2) 621

position and gave fundamental character to the right in Article 21 by establishing a link between Articles 14, 19 and 21 which was denied in *A.K. Gopalan v. State of Madras*[6] particularly in respect of Articles 19 and 21. Both these Articles cannot be separated and not exclusive of each other. It was further contended that the object of Presidential order under Article 359 was to remove legal problems and it was easier to make laws against fundamental rights. The obligation of the government to act according to the law and suspension of Article 21 did not automatically entail the suspension of rule of law. Following *Shivkant Shukla Case*, the Supreme Court in *Union of India v. Bhanudas Krishna Gawde*[7] went one step further and held that Presidential order issued under Article 359 were not circumscribed by any limitation and their applicability was not dependent on fulfilment of any condition laid before. These order impose a blanket ban on any and every judicial enquiry into validity of an order depriving someone of his liberty, no matter how it originated whether from an order directing the detention or from an order laying down the condition of his detention. The majority view in the *Shivkant Shukla case* has been completely negatived by 44th Amendment of the Constitution as well as judicial interpretation and therefore, it is no more longer a law. Now the enforcement of Article 20 and 21 cannot be suspended in any situation and the Court observed that Article 21 binds not only the executive but also the legislature and thereby correcting Justice Khanna's stance that suspension of Article 21 relieves the legislature of its constraints 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 grounds indicated in *Makhan Singh Case.* Articles 352 and 359 have not been invoked since revocation of Proclamation of Emergency in 1971 and 1975 in early 1977. Also, 44th Amendment changed "internal disturbance" into "armed rebellion" and internal disturbance not amounting to armed rebellion would not be a ground to the issue of Proclamation of emergency. Many such provisions in 44th Amendment for proclamation of Emergency were made so that no government in future can misuse this provision of Constitution which was interpreted unconstitutionally by the Supreme Court.

[6] 1950 AIR 27, 1950 SCR 88
[7] 1977 AIR 1027, 1977 SCR (2) 719

Conclusion-

The Proclamation and arbitrary use of power by the State machinery and taking away the personal liberty of a number of people along with judicial stamp can be considered one of the most erroneous judgment till date. 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 wrong interpretation led to infringement of fundamental rights on whims and fancy of a political figure that had her agenda to fulfil. While the judgment is said to be a mistake on many occasions by jurists and apex court, the ruling has not been overruled formally even after admitting the error. This was noted by the bench of Justice Ashok Ganguly and Justice Aftab Alam. In today's context, Dicey's Rule of Law which was explained by Justice Khanna holds much greater force than what it was in 1976. There has to be a clear overruling of this judgment so that theoretical nature of Rule of Law can be made clear along with its applicability to our justice system. Also, further provisions shall be made to ensure that no political agenda should overshadow justice and equity of citizens.