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CASE COMMENTARY ON ADM JABALPUR VS SHIV KANT SHUKLA (AIR 1976 SC 1207)

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Abstract

The Maintenance of Internal Security Act was a controversial law passed by Indian Parliament in 1971 giving the administration of Prime Minister Indira Gandhi and Indian law enforcement agencies very broad powers indefinite preventive detection of individual search and seizure of property without warrant. The act was enacted on July 2, 1971 and replaced the previous ordinance, the "Maintenance of Internal Security Ordinance" promulgated by the President of India on May 7th, 1971. This act was the violation of article 21 and article 14 of the Indian Constitution.

Key Words: Constitution, Supreme Court, Emergency, Parliament, State, Power, Fundamental Rights, Judgement, Government.

Case title	ADM Jabalpur Vs Shri Kant Shukla
Date of order	28th April, 1976
Jurisdiction	Supreme court
Quorum	Chief justice A.N. Ray, Justice M. Hameedullah Beg Justice P.N. Bhagwati Justice Y.V. Chandrachud Justice H.R. Khanna
Author of the judgement	Justice A.N. Ray
Appellant	Shiv Kant Shukla
Respondent	ADM Jabalpur
Acts and Sections involved	Articles 14, 19, 21, 226 and 359(1A) of the Constitution read with Maintenance Of Internal Security Act, 1971

Introduction:

On 25th June, 1975, the president of India in exercise of power granted by clause (1) Article 352 of the constitution declared an emergency. With this news broadcast emergency provision was initiated on 27th June, 1975, in exercise of power given to the President by clause (1) of Article 352 of the Constitution, the President declared that the right of any person to approach a Court for violation of rights conferred by Articles 14, 21 and 22. Black's Law defines emergency as "a failure of the social system to deliver a reasonable condition of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the Public authority under the power socially granted to them. According to Dr. B.R. Ambedkar, the Indian federal system should use the emergency as a last resort and the government changes itself to a unitary system from a democratic one to save the Constitution. This power to government is gained from the Constitution itself. There are three types of emergencies in the Indian Constitution,

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- National Emergency
- Failure of Constitutional machinery in states
- Financial Emergency

Article 352 of the Constitution states about the national emergency which can be declared in case of war, external aggression and rebellion the central government takes all the powers namely legislative, executive and judiciary. During national emergency except article 20 and 21, all our fundamental rights are suspended. The President may suspect the right to move to courts by enforcing article 359. The Union government can make legislation on state list items by article 250. This case is also known as the Habeas Corpus Case.

Historical Background and Facts :

In the **State of Uttar Pradesh v Raj Narain**[103], the election of Indira Gandhi was challenged by the petitioners on the grounds of corruption. On June 12, 1975, Justice Sinha held Indira Gandhi guilty and declared her election invalid. After this judgement Indira Gandhi moved to the Supreme Court and asked for the conditional stay. This made her handicapped on the floor of the parliament and she was looking for political footprints. The opposition on the other hand became powerful which made her to declare emergency under clause (1) of Article 352 of the Constitution so the then President Fakru Din 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 the economy bad in shape. After the proclamation of emergency the fundamental rights under article 14 and 21 remained suspended and proceedings pending in court with enforcement of these articles remained 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 Law. This situation led to the arrest of several opposition leaders such as Atul Bihari Vajpayee, Jai Parkash Narayan, Morarji Desai and L.K. Advani under MISA (Maintenance of Internal Security Act) because they were proving political threat to Indira Gandhi. These leaders can file a petition in several High Courts challenging the arrest. Many High Courts ruled in the favour of the petition which make Indira Gandhi government to approach the Supreme Court of this issue which infamously became Additional district Magistrate Jabalpur vs Shivkant shukla It is also called as habeas corpus case because usually this is the writ filed in a court when a person is arrested. At the time of proclamation of emergency ,this writ was not entertained as right under article 21 remained suspended .

Issue:

The issue in the said case were:

- Whether under proclamation of emergency after the president's order, can the writ of Habeas corpus be maintained in High Court by a person challenging his unlawful detention?
- Was suspension of article 21 fit under rule of law?
- Does detenu hold locus standi in court during the period of emergency?

Petitioner's Argument:

- It was argued by the State that the main aim of provision of emergency was to vest special powers in the executive so that it holds complete control over the law and order of the nation.
- It was held that curtailment of such a right was done under the President's order and it could not be questioned.

Respondent's Argument:

- Respondents argued that the very objective of article 359 was to remove any type of power of legislature from

[103] (1975 AIR 865, 1975 SCR (3) 333)

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legislating at the time when an emergency is imposed.

- It was contended that this presidential order was against the principle of Natural law and other underline fundamental principles of law. And it was the violation of article 21 of Indian Constitution

Rules :

Upon the issues it was discussed by the state that only purpose of the emergency in the constitution is to guarantee special power to executive machinery which can hold discretion over the implementation of law ,and whatever the state considers ,it shall be held valid .Filing writ petition under article 226 are suspended and the petitioner has 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 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 law under presidential order cannot be challenged on ground of violating fundamental rights which were suspended by such order . Upon the issues of the local standi ,the petitioner hold no ground for any relief .

Judgement :

1. The judgement in this case was laid down by a 5 judge bench consisting of justice Ray, Beg, Bhagwtati , Chandrachud and Khanna.

2. The majority rule pronounced by four judges while Justice Khanna delivered a powerful dissent. The court held- given the presidential order dated 27th 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 malafide factual or legal or is based extraneous consideration.

3. The Court also held the Constitutional validity of Section 16A (9) of MISA (Maintenance of Internal Security Act).

4. Justice HR khanna in his dissent stated that invoking article 359(1) does not take away the right of an individual to approach the Court for the implementation of Statutory rights.

    - He added that article 21 is not the sole repository of life and personal liberty.

    - He further stated that during the proclamation of emergency article 21 only loses the procedural power but the substantive power of this article is very fundamental and that state does not have the power to deprive any person of life and liberty without the authority of the Law.

5. There was so much political pressure during that particular hearing that this dissent Court of Justice Khanna is an instance of becoming the Chief Justice of India and he was the second in line to the chair of CJI at that time.
6. Even Justice Bhagwati expresses his regret for later siding with the majority by saying that he was wrong not to uphold the cause of individual liberty.

Analysis:

Upon the analysis of judgement there are multiple observations on the given case the Supreme Court in this case observed that article 21 Right to life and personal liberty against its illegal deprivation by the state and in 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 article 359 as fundamental right are suspended as whole

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whereas article 359 does not suspend any rights .Even being emergency provision under article 359(1) grant special power and status to the executive . The Nexus between state and executive is erroneous and the effect of suspension of such rights will only result in the legislature which might create laws against fundamental rights. This act should not be considered as a power or executive or right of it. There is the legal extent to which a state can act in or against the citizen in this case, it is a high misuse of power for the political gain of a single person. During an emergency it is nowhere mentioned the power of state increases from its original power under article 162.. Also the state only holds the right of arrest if the alleged acts falls under section 3 of MISA and it's every condition is fulfilled. If any condition is unfulfilled then detention is beyond the power of state. The Supreme Court is said to be an erroneous judgement till date. The dissenting opinion of justice Khanna holds more value than the majority judgement including the then chief justice of India. The wrong intent of the Indira's Gandhi government was seen when Justice Khanna was to ask the first uncomfortable question. Life is also mentioned in article 21 and would government arguments extend to it also? There was no escape. Without batting an eyelid Niren De answered, Even if life was taken illegally, the courts are helpless. Before the proclamation of emergency there was strong political instability in the country after the Lok Sabha election of Indira Gandhi termed as illegal .This exercise was to put opposition under pressure during the process, even the Supreme Court made major errors in the judgement and it can be said to be purely unconstitutional. Only the courage of a 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 accommodation 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 a free democratic society." 'The day when this judgement was pronounced it turned out to be the darkest day of democracy' and it was matched with the regime rise of the Hitler.

In **Makhan Singh V State of Punjab**[104]**,** in which he noted if in challenging the validity of his detention order, the detenue is pleading any right outside the rights specified in the order his right to move any court in that behalf is not suspected because it is outside 359(1) and consequently outside the presidential order itself.

Suspension of article 21 would simply mean deprivation of right of life and liberty and this is against the basic right along with the article of Universal Declaration of Human Rights of which India is a part. All four judges with the exception of Justice Khanna on to become Chief Justice of India in 2011 Justice Bhagwati expresses regret by saying, 'I was wrong'. The majority judgement was not the correct judgement if it was opened to me to a fresh decision in that case I would agree with what Justice Khanna did.

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 stamps can be considered one of the most erroneous judgements till date. The Supreme Court went on to elaborate the interpretation of article 21 and introduce Public Interest Litigation to gain public legitimacy after it faced criticism of the judgement and damage it has done. The wrong interpretation led to the infringement of the fundamental rights on whims and fancies of political figures that had her agenda to fulfil. While the judgement 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.

Related Case Laws :

1. State of Uttar Pradesh Vs Raj Narian
2. Makhan Singh Vs State of Punjab

[104] 1952 AIR 27 1952 SCR 36

3. KS Puttta Swami Vs Union of India[105]
4. Maneka Gandhi Vs Union of India[106]
5. Poona Municipal Corporation Vs D.N. deodher[107]
6. Bharat Kala Bhandar Vs Municipal Committee[108]
7. Indore municipality Vs Niamatullah[109]
8. Dwarkadas Shrinivas Vs the Sholapur Spinning. & Weaving company Ltd and Ors.[110]

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[105] ((2017) 10 SCC 1), (Puttaswamy I)
[106] AIR 1978 SC 597
[107] 1965 AIR 555, 1964 SCR (8) 178
[108] 1966 AIR 249, 1965 SCR (3) 499
[109] 1972 (2) SCR 47
[110] 1954 AIR 119, 1954 SCR 674