



ADM JABALPUR V SHIVKANT SHUKLA, 1976 – CASE ANALYSIS

Neha Manjunath, Varshitha Kadem
Student
symbiosis Law School, Hyderabad

ABSTRACT

The case is a landmark judgment that sought to define the extent of the rights of One under emergency conditions. During the Emergency, the Supreme Court affirmed in a majority decision the suspension of fundamental rights, including the right to personal liberty under habeas corpus. This was disappointing as the decision allowed the government to detain people without approaching the courts, which was seen as a “violation of human rights” and an example of the executive branch's unbridled authority. But the dissented note stressed on the sanctity of right to life and obligation of courts to protect the constitutions liberties, let alone emergency situation. It became one of the most important benchmarks in Indian constitutional law, which has roused discussions regarding national security and the fundamental freedom as well as the significance of the judiciary as the defender of protected rights.

INTRODUCTION

One of the significant judgements of Supreme Court of India ADM Jabalpur vs. Shivkant Shukla deals with the issue of interaction of the emergency powers with the rights of the citizen under the constitution of India. It was during the Emergency declared in 1975 by the then Prime Minister Indira Gandhi whereby fundamental rights could be suspended.

The key to constitutional issues with law relation to “habeas corpus” was concerned with the “constitutional validity” of suspension of the provision of habeas corpus under ¹ Article 359 envisaged during emergency. Article 359 permits the suspension of basic rights during state of emergency although rights enshrined in Article from 20 to 21 cannot be suspended. It was a case where the constitutionality of the suspension was being questioned especially in regards to ²Article 21 which reads protection of life and personal liberty.

The majority judgment of the Supreme Court presided over by the Chief Justice “A. N. Ray and Other Justices P. N. Bhagwati, M. H. Beg and Y. V. Chandrachud “sustained the suspension and hinges on the fact that there was

no advent to the court during Emergency. On the other hand, conveyed under the dissent of Justice H. R. Khanna, it was said that even in emergent conditions the basic rights, especially those under Article 21, should not be violated, which raised a considerable paradox between the executive power and judicial review.

¹ INDIA CONST. art. 359, cl. 1.

² INDIA CONST. art. 21.

ANALYSIS

1. JUDGEMENT

The decision was arguably among the most considered decisions to surface over exceptional deliberation of all the nine judges of the Supreme Court where they by a margin of four for one upheld the constitutionality of the suspension of the right to move for habeas corpus during the emergency proclaimed by the Presidential Order of June 27, 1975. Chief Justices A. N. Ray, M.

H. Beg, Y. V. Chandrachud and P. N. Bhagwati upheld the decision that Clause (1) Article 359 banned judicial review of the arrest warrants and detentions under Emergency. During suspension of fundamental rights under Article 21 which protects life and personal liberty, those rights could be suspended and the actions of the executive during such suspension, cannot be supervised by the Courts. The special appeal was dismissed and only Justice H. R. Khanna dissented with the majority, he said that in emergent situations, the provision of Article 21 of the Constitution right to personal liberty has to be protected and there should be no suspension of the power of judicial review. This judgment has been summed up with words 'The darkest day of Indian democracy'. Comparing it with the Reichstag Fire Decree under Hitler fundamental rights were suspended in front of authoritarianism. This comparison brings out the extent of the Court's ill preparing it to handle cases involving violation of fundamental rights and judicial independence during the Emergency era.

2. RATIO DECIDENDI

The Supreme Court reviewed the constitutional provisions pertaining to the suspension of basic rights during emergencies as stipulated in Article 359(1) of the Constitution. In the said ruling it was held that during an emergency, petition against detentions under laws like MISA could not be filed under ³Article 226 or ⁴Article 32. It stated that during an emergency, the authorities' actions may be unjustified or unlawful but they cannot be challenged by the courts because of the issues of national security. The ratio decidendi was established that Article 359 (1) provides for the temporary removal of the provisions for accessing superior court for the exercise of some or all of the fundamental rights during emergencies. As such rights as "habeas corpus" were pointed out to be restricted by the scope of the presidential order. While the Court also reiterated that extraordinary powers are conferred during the emergency period only and the fundamental rights could be restricted to the extent required in the interest of national security. Also, as for constitutional implications, the ruling noted that, for the pert Section

⁵16A(9) of MISA, did not contravene Article 226 with regard to jurisdiction, and as for Section 18, despite arguments to the effect of excessive delegation, was held not to be invalid.

3. OBITER DICTUM

A. N. Ray: Noted that freedom is not complete but within the rule of law, a view further supported by Burke's doctrine of 'defined freedom.' Reminded the audience that extraordinary powers are given during crises but only for that duration of crisis stressing that such powers are out of law but are not the law.

H. R. Khanna: Noted that even though there are presidential orders, it was still possible to question the validity of arrest warrants as they may not strictly observe the orders. Procedures introduced by presidential orders were protected but discretionary and any detention contrary to those guarantees could be challenged.

M. Hameedullah Beg: Noted that many of the principles in the Constitution as doctrines of Natural law such as, Liberty of the individual and Freedom of assembly as some of the "principles of the rule of law" while in some foreign constitutions the individual rights seem to be protected by general principles.

³ INDIA CONST. art. 226.

⁴ INDIA CONST. art. 32.

⁵ The Maintenance of Internal Security Act, 1971, § 16, No. 27, Acts of Parliament, 1971 (India).

P. N. Bhagwati, J.: Named three sorts of crisis characteristic of democratic countries: military, separatist, and economic. In making his case, he stated that both necessitate extra-ordinary actions and sacrifice of freedoms to prevent the erosion of our constitutional system of governance.

Y. V. Chandrachud, J.: Replying the criticism on whether we can find the "principle of right to life and personal liberty" under Article 21 alone. He sought to summarize the arguments without undermining the main points of the matter because he recognized that they were a variety and dichotomous.

4. FUNDAMENTAL RIGHTS

The Constitution of India under the Article 21 ensures for protection of right to life and personal liberty of every person and to no one shall deprive such rights except in accordance with the law. It has been broadly defined to encompass a number of rights among them being right to privacy, health and dignity. The present case, the Supreme Court as mentioned previously again in the ruling on the Emergency declared Article 21 as non-justiciable thus the government has full discretion to detain individuals without any legal remedy.

In⁶A. K Gopalan v. State of Madras the SC approved the detention of A. K Gopalan under the ⁷Preventive detention act 1950. procedure established by law under Article 21 means any law made by the legislature however may be fair or may not be fair in the eye of law. The Court rejected the contention that "due process of law" is an element of Article 21 and held that Articles ⁸19 and 21 are severable, thereby permitting the state a rather free hand

to abridge the personal liberty through an enacted law. This judgment defined a very restrictive approach of the right of personal liberty.

⁹Article 22 ensures anti- arbitrariness in detention of a person arrested, must be informed of reasons thereof, allow contacting an advocate, and must be taken to a magistrate within the next 24 hours. However, authorities can refuse access to information which they believe is detrimental to the public interest and Parliament can prescribe as to how long a detainee can be held for as well as the Advisory Board provisions.

⁶ A.K. Gopalan v. State of Madras (1950) A. K. Gopalan v. State of Madras, AIR 1950 SC 27.

⁷ Preventive Detention Act, 1950, No. 4, Acts of Parliament, 1950 (India).

⁸ INDIA CONST. art. 19.

⁹ INDIA CONST. art. 22.

¹⁰Makhan Singh v. State of Punjab, Court has discussed on influence and impact of emergency provisions to right to equality and habeas corpus. In the case of National Emergency during the year 1962 the Court held, presidential order under Article 359 deprived the rights of the detainee to challenge the order of detention in criminal court including Section 491 of CrPC. However, it was acceptable for cases that can be raised concerning unconstitutional or illegal aspects including in cases of excessive delegation or improper application of law though it did not deem the appellants' detention as illegal.

The Indian Constitution under the article 19 guarantees various freedoms but with some exceptions under the categorization of threats to - national security and public order. Owing to challenges which the government deemed threatening to its stay in power, the government put into abeyance Article 19 of the constitution during the Emergency period so that the government could employ force to quell protest without the requisite reference to judicial intervention. This was criticized because it was perceived as a rather way of eroding democracy and other freedoms of people.

¹¹Prabha Dutt v. Union of India, which clearly laid down that, right to know news and information of government administration comes under the freedom of press guaranteed through Article 19 of Indian Constitution. This right is not indefinite; The Court said that while the press can seek information and the public can obtain records, such information must be provided willingly by people who are willing to release it; The rights of the people to freedom of press and speech are rights that have reasonable restrictions put on them in order to protect the public good.

5. DECLARATION OF EMERGENCY

¹²Article 352 gives the president of India a power to proclaim a state of emergency when there is "external aggression, armed rebellion or war". Affirming the philosophy of judicial self-restraint and non-intervention on defense policies of the state, the Supreme Court made the ¹³Naga People's Movement of Human Rights v. Union of India judgment, holding the ¹⁴Armed Forces (Special Powers) Act, 1958 (AFSPA) is constitutional to regulate localized disturbances and not national

¹⁰ Makhan Singh v. State of Punjab (1964) Makhan Singh v. State of Punjab, AIR 1964 SC 1120.

¹¹ Prabha Dutt v. Union of India (1982) Prabha Dutt v. Union of India, (1982) 1 SCC 1.

¹² INDIA CONST. art. 352.

¹³ Naga People's Movement of Human Rights v. Union of India Naga People's Movement of Human Rights v. Union of India, (1998) 2 SCC 109.

¹⁴ Armed Forces (Special Powers) Act, 1958, No. 28, Acts of Parliament, 1958 (India).

emergencies. Proclamation of emergencies requires notification of union cabinet, support of both Houses of parliament and can include the whole country or only particular regions. and has full term of six months but can be renewed every term of six months. The president can also amend or rescind existing emergency. A motion for a resolution to disapprove an emergency can be moved by not less than ten percent of the Lok Sabha and must be debatable for at most 14 days.

6. ADJOURNMENT OF FUNDAMENTAL RIGHTS

The idea of suspending fundamental rights during an emergency in India was adopted from Germany's Weimar Constitution. In an emergency, the President may prohibit the realisation of some basic rights, as specified by Article 359. The Supreme Court upheld the suspension of rights under Articles 14, 21, and 22, holding that such suspensions are permissible in times of emergency, in the case of Ghulam Sarwar v. Union of India. However, Mohd. Dominion Of India v. Yaqub eventually overturned this judgement, rejecting any administrative appeals based on Article 359 claims of fundamental rights violations. They do not apply to other laws or activities that do not involve emergencies or existing court proceedings, but they do apply to the basic laws and actions of the state and its inhabitants.

7. JUDICIAL REVIEW

Its power of courts to determine whether or not the acts of Parliament and the executive are legal and to ensure that they are constitutional. This system also has the role of guarding people's rights and ensuring that the rule of law prevails through checking on the state power. Preparation of these rights was affected in the present case where the Supreme Court has upheld the suspension of habeas corpus during Emergency thereby virtually eradicating the judicial check on detentions.

In the case of Santosh Nanta & Ors Vs State of H. P. & Ors., held that judicial interference should be forum pace while exercising the power of judicial review of selections made by expert committees particularly in the selection process. The court noted that it is quite elusive and privileging a court to step into such domains may be dangerous describing it as like treading on thin ice. Therefore, it should be concluded that unless there are paramount reasons that require interference of courts into such matters, such distortion of selection processes among professionals should not be encouraged since it may compromise the independence of expert selection.

It has been prescribed in the Indian Constitution vide article 32 & 226. Article 32 of the Constitution empowers the Supreme Court granting power to hear violations of fundamental rights whereas Article 226 empowers High Courts to also address similar issues and other legal issues.

Besides, they are both capable of issuing warrants in a given situation in order to defend rights and against injustice.

The judicial review is carried out in the higher courts and it is not applicable on the political or policy issues.

LNJ Power Ventures Ltd Vs. Rajasthan Electricity Regulatory Commission and Ors., it was held that the power of judicial review under the provision of Article 226 of the Indian Constitution is constitutional provision which is beyond doubt. In doing so it underlined the fact that even no legislation can take away this jurisdiction of the high courts and thereby underlining the judiciary's key task of constitutional policing.

8. PRINCIPLE OF RULE OF LAW

The rule of law is a foundation of the contemporary democratic state, declaring that every citizen and the official, without any distinction, has to obey legal norms and cannot act in accordance with one's own caprice and discretion. From concepts developed by Edward Coke, it is meant to serve as a curb to authoritarianism while at the same time bringing about the uniformity of laws. England's Dicey in 1885 defined the rule of law as an absence of arbitrary power: the predominance of legal right; equality of all before the law.

In India, the "Rule of Law" which is an enduring constitutional principle is enshrined in the Indian Constitution; under the Constitution of India article 14 provides for equality before the law.

In ¹⁵Keshavananda Bharati v. State of Kerala and ¹⁶Indira Nehru Gandhi v. Raj Narain are some illustrations of the work done for the Constitution where rule of law has been affirmed as part of the Constitutions basic structure. Newer interpretations who have given liberal inputs from the global frameworks stress on human dignity, equality and treatment through judicial supremacy for democracy and accountability.

9. DOCTRINE OF SEPARATION OF POWERS

According to the "doctrine of separation of powers" different departments of government such as the executive, legislative and the judiciary performs different tasks so as to act as a check and balance to and protect the powers from being abused. The existing case, issues arising from the

¹⁵ Keshavananda Bharati v. State of Kerala Keshavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁶ Indira Nehru Gandhi v. Raj Narain Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

executive's plan to exercise essential powers during emergency and the judiciary's role in protecting the constitutional rights of citizens was raised when it restricted the judiciary's power of reviewing the emergency laws.

9. CONSTITUTIONAL SUPREMACY

Constitutional Supremacy means that all the laws, the actions of the government must conform to the constitution which is the law of the land. It sanctions the annulment of any law and any official act contrary to the Constitution. The current case made a decision to decrease judicial review during the Emergency and this led to the lessening of the preeminence of the constitution and the impact of the checks and balances by limiting the defense

of basic rights.

¹⁷ R. C v. Union of India, the case primarily revolved around the constitutionality of the nationalization and the protection of property rights under the Indian Constitution. The Supreme Court ruled in favor of Cooper, holding that the right to compensation and property could not be disregarded arbitrarily.

10. PRESIDENTIAL POWERS

In Indian Constitution the President of India has been vested with powers to declare national emergencies, make laws, appoint important officers, and discharge other executive functions which are necessary to deal with integrity and to maintain the stability. In a state of emergency, the President is also allowed to suspend some of the constitutional provisions of the basic right and change the regular procedural legal norms to restore the peace. In this case, the President's emergency powers with strict references to the suspension of "habeas corpus", revealed the scope of these powers and the role of the judiciary in such circumstances.

¹⁸S. R. Bommai v. Union of India, the powers of the President to dissolve the state assembly and how it cannot be done at the President's whims without direction from the constitution was emphasized. In ¹⁹Golak Nath v. State of Punjab, the Supreme Court was of the opinion that

¹⁷ Rustom Cavasjee Cooper v Union of India Rustom Cavasjee Cooper v Union of India, (1970) 1 SCC 248.

¹⁸ S. R. Bommai v. Union of India S. R. Bommai v. Union of India, (1994) 3 SCC 1.

¹⁹ Golak Nath v. State of Punjab, AIR 1967 SC 1643

presidential acts and modifications are necessary for maintaining the authority of the constitution by asserting that the basic rights cannot be curtailed if such changes are made.

11. 44TH AMENDMENT ACT.

To undo those restrictions on basic rights during the Emergency, the 44th Amendment Act was passed in 1978. The 42nd Amendment Act of 1976 effectively reversed several of the laws that widened the president's control. The amendment that emphasized the protection of individual rights so much brought back the rights to petition the courts for personal freedom as well as altered the standards for declaring emergencies. The 44th Amendment was made in view of checking excesses of the executive branch especially through enhancing the judicial control as well as basic rights. In the present case this overreach was revealed where the Supreme Court upheld the suspension of habeas corpus during the Emergency.

²⁰L. Chandra Kumar v. Union of India, the court stated that no amendments shall be held to repeal the authority for judicial review because the power forms part of the Constitution. This case has justified the 44th Amendment of restoring balances in the executive branch by asserting the need for disparities from the judicial branch to call state into check.

²¹Vineet Narain v. Union of India, journalist Vineet Narain filed a PIL seeking accountability in the investigation of the Jain Hawala case, where politicians and officials were implicated in corruption. The Supreme Court intervened, issuing directives to ensure the independence of the CBI and protect it from political interference.

12. ADVANCEMENTS

²²KS Puttaswamy v. Union of India

It puts a legal validity to the right to privacy under Article 21 of the Constitution of India, raising question over Aadhaar scheme involving biometric data. The Supreme Court's decision reinstated

²⁰ L. Chandra Kumar v. Union of India L. Chandra Kumar v. Union of India (1997) 3 SCC 261.

²¹ Vineet Narain v. Union of India Vineet Narain v. Union of India, (1998) 1 SCC 226.

²² K.S. Puttaswamy v. Union of India K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

the principle of privacy as inherent in life and personal liberty in overturning the lawless ADM Jabalpur v. Shivkant Shukla. This decision marked the restoration of the very basic provision of checking the executive branch and the protection of human rights from overbearing state power as provided in the Constitution.

²³Menaka Gandhi v. union of India

In 1978, the Supreme Court overturned the decision made in ADM Jabalpur v. Shivkant Shukla. The case was Manaka Gandhi v. Union of India. When her passport was seized under section 10A of the Passport Act, 1967, she claimed that both Article 14—which addresses equality—and Article 21—which deals with the protection of life and personal liberty—had been violated. In response to a query about whether the action is subject to due process and appealable to a judge, the Supreme Court provided a ruling. By redefining Article 21 to indicate that all constitutional processes must be reasonable, just, and fair, the Court disproved the limiting feature of the ADM Jabalpur case. This ruling restored appropriate power balances and protected people's rights against irrational government acts..

13. RECENT JUDGEMENTS

In the case of Anuradha Bhasin v. Union of India, the court considered whether internet shutdowns and mobility restrictions were constitutionally permissible under Article 32 of the constitution. The Court stated that Article 19 guarantees the right to internet access as well as freedom of speech and expression. It also added that these rights should not be suspended unreasonably within the constitutional provisions regardless the state of emergency. The case clearly emphasized on the importance of data, more so in the area of technology considering the existing issues such as cyber incidents. It is apparent that data has become an essential element of national security and economic growth; thus, the need for a strong legal framework for managing cyber threats. India has shown strength in the digital payments sector; however, the threats of cyber wars require significant care for controlling the Internet freedoms and adopting adequate measures to preserve the national security and citizens' freedom.

CASE COMMENT

²³ Maneka Gandhi v. Union of India Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

this case can be considered as a turning point in relation to the judiciary's struggle for or against the constitution's core principles. It exposes the balance between the collective safety of the nation and rights of people, specifically under emergency circumstances. The majority decision in the government suspension of basic rights was the main highlight of the nature of the uncontrolled power of the administration. The ruling in essence removed the judiciary from a supervisory role thus negating the fundamental tenets of liberal democracy.

But the lone dissenting voice was the moral constitutional duty of the judiciary to declare any law that violates state's sovereignty unconstitutional and invalid despite the political pressure. The dissent also reminds that the rights are not the perquisites to be put on hold whenever a state decides so, but rather the state's obligation to protect citizens. This case is a reminder of the judiciary as the depository of civil liberties.

SUGGESTIONS

To prevent the abuse of power and protect individual rights during emergencies, judicial review of executive actions must be ensured, with the Constitution clearly limiting and defining the scope of emergency powers. Fundamental rights like life and liberty should be explicitly safeguarded, and laws should be amended to preserve the right to habeas corpus, allowing challenges to unlawful detentions. A clear legal framework should be developed to maintain judicial oversight, and constitutional safeguards should be strengthened through amendments. Independent oversight mechanisms should be established to ensure transparency and accountability in the use of emergency powers. Additionally, public and legal education initiatives should be implemented to raise awareness of constitutional rights and empower citizens and legal professionals to defend liberties during emergencies.

CONCLUSION

Thus, the ADM Jabalpur v. Shivkant Shukla case is well-known in the history of the constitutional law in India since it opposed the Suspension of habeas corpus during the Emergency and thus it considerably restrained judicial and constitutional control together with individual rights. However, subsequent rulings particularly in Maneka Gandhi v. Union of India and KS Puttaswamy

v. Union of India has reversed this decision, this has emphasized the importance of the protection of fundamental rights even during emergency. In the future, the legislative actions should uphold the separation of powers by limiting the powers of the executive branch, maintain strong judicial review over bureaucracy's disproportionate and excessive actions and guarantee individual rights, to avoid such infringement.

Lawless v. The Government of Ireland.²⁸

Lawless v. Ireland concerns the detention without trial of Gerard Lawless, a suspected member of the

IRA, under a state of emergency. He challenged his detention, claiming it infringed “the European Convention on Human Rights”. However, “the European Court of Human Rights” ruled that Ireland had valid justification to limit certain rights during an emergency.

A. vs the Home Department's Secretary of State.²⁹

In *A and Others v. Secretary of State for the Home Department*, foreign nationals were detained indefinitely under the Anti-Terrorism, Crime and Security Act. The House of Lords ruled that this detention violated Articles 5 and 14 of the European Convention on Human Rights due to its discriminatory and disproportionate nature.

28 A. H. Robertson, *Lawless v. The Government of Ireland* (Second Phase), 37 BRIT. Y. B. INT'L L. 536 (1961).

29 *A. v Secretary of State for the Home Department*, 68 MOD. L. REV. 654 (July 2005).

