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Case Commentary on Additional District Magistrate Jabalpur vs Shivkant Shukla

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ABSTRACT

The current case commentary deals with ADM Jabalpur, one of the most horrifying judgements in Indian history. The case commentary is structured right from the Historical Background and facts of the case, which deals with how the case originated from that of Indira Gandhi vs Raj Narain and the Maintenance of Internal Security Act. The paper critically analyses how the judgement is flawed as it takes away the fundamental rights of the citizens, right from Articles 14, 19, 21 and 22. Citizens were not allowed file a Writ Petition to the Court under Article 226 and the entire reasoning for the same was illogical. Moreover, on various other things, right from their interpretation of the Makhan Singh case to that on the issue of Mala-fides and why the rights of citizens should be taken away, the Court's reasoning is extremely flawed. The paper however agrees with Justice Khanna's dissent and the way he interpretated the law correctly. A brief aftermath and conclusion include how the horrendous decision was overturned, the 44th Amendment was brought it and concluded on how till date, this judgement deems to be terrifying as the rule of law was completely ignored.

I. HISTORICAL BACKGROUND AND FACTS

On November 16, 1974, by a declaration issued by the President under Article 359(1), the right of individuals held pursuant to Section 3(1)(c) of the MISA[2] to move for enforcement of the rights granted by Article 14, Article 21, and Clauses (4), (5), (6), and (7) of Article 22 of the Constitution was suspended. In *State of Uttar Pradesh v. Raj Narain*, the petitioner contested Indira Gandhi's election to the Lok Sabha on the grounds that Rae Barelli, her electoral seat, was corrupt.[3] Justice Sinha found Indira Gandhi guilty on June 12, 1975, and declared her election void. Indira Gandhi went to the Supreme Court for a conditional stay of the High Court's decision. She was constrained by this on the Parliament's floor and her political influence was reducing. However, as the opposition gained strength, Indira Gandhi was forced to declare a state of emergency through the then-President Fakhruddin Ali Ahmed who declared

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[2] Maintenance of Internal Security Act, 1975
[3] The State of Uttar Pradesh v. Raj Narain, 1975 AIR 865

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it in accordance with Clause (1) of Article 352 of the Constitution on 25 June 1975. The Emergency was deemed serious because of "internal disturbance." Following this, on 27 June 1975, in exercise of powers conferred by Clause (I) of Article 359, the President also declared that the court cases that were pending regarding the enforcement of Articles 14, 21, 22 and other fundamental rights remained suspended for the duration of the emergency. Due to their political threat to Indira Gandhi, several opposition leaders, including Atal Bihari Vajpayee, Jay Prakash Narain, Morarji Desai, and L.K. Advani, were placed under MISA (Maintenance of Internal Security Act) protection which was passed in 1971. Following their arrest, these leaders petitioned several High Courts to overturn the arrest. Numerous High Court decisions in favour of these petitions forced the Indira Gandhi administration to take the case to the Supreme Court, which became known as *Additional District Magistrate Jabalpur v. Shivkant Shukla*, famously known as the Habeas Corpus case since typically a writ is filed in court when a person is arrested.[4] Here, the writ was not taken into consideration at the time the emergency was declared because Article 21 rights were still suspended. Here, the main issue brought before the Court was whether it was possible to maintain a writ petition under Article 226 before a High Court to uphold the right to personal liberty under Article 21 during an emergency declared in accordance with Article 359, Clause (1). Moreover, if the petition was maintainable, what would the scope of judicial scrutiny in view of such presidential order be?

II. CRITICAL ANALYSIS OF THE JUDGEMENT

The majority bench, consisting of Justice Ray, Justice Beg, Justice Bhagwati and Justice Chandrachud delivered one of the most terrifying judgements in our country's history. The Court held that nobody had the locus standi to file a petition under Article 226 of the Constitution before a High Court for a writ of habeas corpus or for any other writ, order, or direction to compel the release of a person detained under the Maintenance of Internal Security Act of 1971 on the grounds that the order of detention or the continuation of the detention is for any reason not in compliance with the Act or is illegal or mala fide.[5] The decision and reasoning behind this in my opinion is extremely flawed as the Supreme Court 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. Even though the Emergency Provisions under Article 359 (1) give the Executive special authority and status, they do not undermine the basic essential elements of the sovereignty of the separation of powers, creating a system of checks

[4] Additional District Magistrate Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521
[5] Maintenance of Internal Security Act, 1971

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and balances and limiting the Executive's power. I feel that the relationship between the State and the Executive is flawed and suspending these rights will only give the legislature more power and the potential to create laws that violate fundamental rights. This action shouldn't be viewed as the Executive's "power" or right. There is a legal limit to how far a State can intervene on behalf of or against its citizens, and in this case, there was a serious abuse of power for one individual's political personal gain. Nowhere does it mention that the state's authority "increases" from that of Article 162 during an emergency. Additionally, the State only has the authority to make an arrest if the alleged act is covered by Section 3 of MISA and all its requirements are met. If any condition is unfulfilled, detention would be beyond the State's power.

I also feel that the judgement is extremely bias, favouring quite literally everyone but the citizens of the country. Giving the executive the entire reign to manage all affairs of the country is not only arbitrary but also illegal in nature. Moreover, the political agenda is visible as Justice Bhagwati has been seen praising the Indira Gandhi various times during the Emergency period instead of keeping a neutral standpoint as a Judge of the Supreme Court. Moreover, Justice Chandrachud has taken immense pride on the fact that Article 359(1) is against the individuals and not Courts which is astonishing for someone of his standing to be proud of. Also, the majority has endorsed the view in cases of *Shamdasani*[6] and *Vidya Verma*[7] concluding that Article 21 is available only against executive action. The majority's own conclusion that Article 21 is the only source for the rights to life and personal liberty is in contradiction to their own observations where they mention how Article 21 is available only against executive action. In his decision, Justice Bhagwati noted that Article 21's protection of the right to personal liberty is the foundation of Section 342 of the Indian Penal Code, which makes it illegal to confine someone without lawful justification. Moreover, Justice Beg cited Justice Hidayatullah's view in *I.C. Golaknath v. State of Punjab*, according to which a murderer violates the victim's Article 21 right to life.[8] These observations must logically be supported by the fact that Article 21 can be used not only against the State but also private individuals. The majority has vividly restricted the natural rule of law while reviewing the executive's actions. The Court determined that the rule of law principle as stated in Article 21 does not exist as a distinct and separate principle conferring independently, and apart from that Article, the right to personal liberty. As a result, when a Presidential Order suspends the enforcement of the right to personal

[6] P.D. Shamdasani v. Central Bank of India, A.I.R. 1952 S.C. 59.
[7] Vidya Verma v. Shiv Narain Verma, A.I.R. 1956 S.C. 108.
[8] I.C. Golaknath and Ors. vs State of Punjab and Anrs., 1967 SCR (2) 762

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liberty granted by Article 21, the detenu cannot ignore the Presidential Order and challenge the legality of his detention by relying on the purported right to personal liberty based on the principle of rule of law. In my view, the dissenting opinion by Justice Khanna is of grave importance. His interpretation of *Makhan Singh v. State of Punjab* and mala-fide actions is far better than that of Justice Chandrachud as he interpreted that the detenu's right to file a lawsuit in any court to challenge the validity of his detention order is not suspended if he asserts any rights not listed in the order because those rights fall outside of Article 359(1) and, therefore, the Presidential order itself.[9] Furthermore, he gave an example looking at a situation where a detenu was held against Act's mandatory rules and may be able to argue that his detention is unlawful in this situation because the Act's mandatory provisions have been broken. Such a claim is in violation of Article 359(1), and the presidential order cannot affect the detainee's ability to move for release on that basis. Unlike Justice Bhagwati and the others, he was right in stating that the State did not have the right to deprive any individual of their life and liberty.

Moreover, in my opinion, the people should have been able to obtain writs from the court for their disastrous situation despite the removal of fundamental rights. Sections 3, 16, and 18 of the Maintenance of Internal Security Act's should have been declared unconstitutional because they violate Article 22's right that no one shall be denied knowledge of the reason for his arrest. As shown by Article 359(1), the State was not free to restrict rights other than the fundamental rights. The President has only the authority to restrict these fundamental rights, which is only granted under Articles 358 and 359. Hence, it can be argued that these rights are granted to citizens under Articles 245, 246, and other rights that aren't explicitly mentioned. Other rights cannot be directly impacted by a restriction on fundamental rights which hasn't been addressed properly by the majority bench. Other rights exist that are observed to be upheld in our society in addition to those stated in the constitution or laws. These rights should have been upheld and the respondents' rights in this situation shouldn't have been impacted because they explicitly derive from natural law, customs, and other forums.

III. AFTERMATH

The political and judicial future of India was shaped by this decision. It revealed what flaws there were in the system and how the Executive got around them to make decisions freely. In *Maneka Gandhi v. Union of India*[10], the ruling of *AK Gopalan*[11] was upheld, stating that Articles 14, 19, and 21 are not mutually exclusive and must be read together. Moreover, the 44th

[9] Makhan Singh v. State of Punjab, 1952 AIR 27
[10] Maneka Gandhi v. Union of India, AIR 1978 SC 597
[11] A.K. Gopalan v. State of Madras, AIR 1950 SC 27

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Constitutional Amendment Act, 1978 amended Articles 352, 358 and 359 amongst others partially removing the distortions caused by the 42nd Amendment, replacing the expression of "internal disturbance" with "armed rebellion" for a proclamation of emergency.[12] Article 352 was amended to say that now an emergency could only be declared after a written recommendation from the Cabinet.[13] Article 358 was now amended to suspend Article 19 only when an emergency takes place due to the basis of war or external aggression.[14] Article 359 was now amended to replace "the rights figured by Part III" to "the rights figured by Part III (except Articles 20 and 21)".[15] It is also to be noted that Justice Bhagwati apologized for his judgements in this case, completely agreeing with the dissent of Justice Khanna.

IV. CONCLUSION

This case illustrates how judges can have different perspectives on the same issue. This choice serves as an illustration of how complex a problem can be. However, it should also be noted and criticized that the Court acted with atrocious disregard in recognizing Right to Life as an unalienable human right. Justice HR Khanna's perseverance is commendable, and his opinions have served as a model for current and prospective juries and policymakers. An even more expansive interpretation of Article 21 was made possible by this case. In the end, it should be clear that, in order to ensure proper delegation and separation of powers, Rule of Law must be given top priority. Fortunately, in 2017, this judgement was overruled by the case of *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors*, where the Court upheld Justice Khanna's contention stating that it was a grave mistake on the part of the judiciary and "The power of the Court to issue a writ of habeas corpus is a precious and undeniable feature of the rule of law."[16]

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[12] 44th Constitutional Amendment Act, 1978
[13] Constitution of India 1950, Article 352
[14] Constitution of India 1950, Article 358
[15] Constitution of India 1950, Article 359
[16] Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors., AIR 2017 SC 4161

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