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Sitaram Yechury vs. Union of India

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ABSTRACT

Covid Pandemic giving us all tough time. But thankfully we have internet services which basically is a savior. Starting from Netflixing to Youtubing recipes to work out and food orders, work from home and whatnot. Internet is like a spouse to us. We who cannot even imagine stuck at home without the internet supported the ban on the internet and other movements that were imposed in Jammu & Kashmir. We were so against the lockdown when groceries were limited and we kept panic bought almost everything in the store, even the things we won't use. But we were okay when it was the people of Jammu & Kashmir who were hungry and the economy was no were near stable or good. Even the basic necessities weren't available. People were far from them. On 5th August 2019, when Art 370 was abrogated from the Indian Constitution, a ban on communication and the internet was imposed on the State of Jammu & Kashmir. Various cases of preventive detention came forward such as of political leaders Mehbooba Mufti, Omar Abdullah, Md. Yousuf Tarigami etc. followed by Lockdown when Centre passed Jammu & Kashmir Reorganization Act, 2019. The objective was simply to unite the nation and laws as well as Constitution. The case comment on Sitaram Yechury vs. Union of India will shed some astounding light on some important issues which were casting clouds on the liberties of some people detained in state of Jammu & Kashmir.

I. FACTS

The *habeas corpus plea* has been filed by party's general secretary Sitaram Yechury (Petitioner) alleging that there has been no contact with Tarigami since a clampdown was imposed on the state on August 4 evening, a day before government scrapped social status of the state and divided it into two Union Territories.

The writ petition that has been filed under *Article 32* of the Constitution stated that the senior political leader is under illegal detention by the Centre without any reasoning or order passed. The petitioner complains that inspite of best efforts, he has not been able to enquire about the welfare of his said colleague and his attempt to meet him personally by going to the State of Jammu & Kashmir has also not succeeded, as he has been refused entry into the State.

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II. STATUTORY PROVISIONS

Constitution of India: - Article-, 21, 32

III. ISSUES

- Whether a citizen's fundamental right to life and liberty as granted under Article 21 of the Constitution has been violated or not by the state?

IV. ARGUMENTS

On Behalf of Petitioner:

The **Counsel of petitioner** submitted that inspite of best efforts, petitioner has not been able to enquire about the welfare of his said colleague and his attempt to meet him personally by going to the State of Jammu & Kashmir has also not succeeded, as he has been refused entry into the State.

On Behalf of Respondents:

Counsel for Respondents claimed that Tarigami's health was monitored every day and "he is hale and hearty". He objected to Yechury's (petitioner) plea and said: "What can happen to him [Tarigami]? He is provided Z-category security".

Observations by Supreme Court

The court asked the respondents what was the harm if a citizen of India wanted to meet his friend. "*Whether he has Z or Z Plus category, if a citizen wants to go and meet him, you have to let him,*"

V. JUDGMENT

The Court held that "*if the petitioner is found to be indulging in any other act, omission or commission save and except what has been indicated above i.e. to meet his friend and colleague party member and to enquire about his welfare and health condition, it will be construed to be a violation of this Court's order.*" And when the petitioner comes back to Delhi, he will have to file a report supported by an affidavit in connection with the purpose of the visit as indicated in the order of the court.

VI. ANALYSIS

A writ of *habeas corpus* involves determination of whether a detention is legal and if due process has been followed. The court isn't expected to go into the issue of the alleged crime of the detainee.

The *normal process* in a habeas corpus case is for the court to order the production of the detainee, verify for itself if the detention is legal and, if found violative of the Constitution, quash the detention.

By asking Yechury (Petitioner) to travel to Kashmir, meet his colleague but not indulge in any political activity and then return and file a report, wasn't the Supreme Court breaching its mandate?

Here's a hypothetical situation for the court to examine or ask itself: what if, in its report, Yechury (Petitioner) had claimed that Tarigami was being tortured in detention? What would the court have done then?

In *Ram Manohar Lohia vs State of Bihar*², a Constitution bench ruled that "*even in a situation where an emergency may have been imposed or where law and order is cited to detain a person, detention orders can be challenged through a writ of habeas corpus – if the detention order was passed in a mala fide manner or was otherwise invalid.*"

In *Chiranjit Lal Chowdhuri v. Union of India and Others*³, the apex court ruled that "*the Supreme Court drawing its powers from Article 32 can issue directions or orders or writs like habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by part III of the Constitution of India.*"

- **Whether the detention is Constitutionally and legally valid?**

Preventive Detention is not meant to Punish, but to prevent the detainee from doing something which is prejudicial to the State. *Alladi Krishnaswamy Ayyar*, a distinguished jurist described preventive detention as 'a necessary evil' because in his view "*there were people detained to prevent them from undermining the sanctity of the Constitution, the security of the State and even liberty of an individual.*" However there are certain safeguards in the constitution to prevent reckless use of Preventive Detention. In this judgement the bench did not stress upon the *issue of violation of the fundamental rights of Mr Tarigami even though he was medically unwell*. As said by *Justice D.Y. Chandrachud* in the case of *Khaja Bilal Ahmed vs State of Telangana*⁴, "*A proximate link must exist between the past conduct of a person and the imperative need to detain him.*"

² 1966 AIR 740, 1966 SCR (1) 709

³ 1951 AIR 41, 1950 SCR 869

⁴ ICL 2019 SC 1463 : 2020 (1) ALT(Cri) 66

Setting a bad precedent

These are the examples that the Supreme Court bench led by CJI Gogoi should have followed and, if it deemed fit, expanded on as it heard Yechury's petition. Instead, the court chose to follow the case of *Additional District Magistrate, Jabalpur vs. S.S. Shukla*⁵.

The case is regarded as a blot on the Supreme Court of India's judicial history. The majority on the Constitution bench allowed itself to be completely swayed by the specious arguments of then-Indira Gandhi government in curtailing the liberty of citizens during the Emergency. In this case, Even *Justice Khanna* dissented that "*When the void is left by the Executive regarding any legal remedy, then judiciary should not shy away to fulfill that void*". This dissent was later affirmed by Former *CJI Justice Verma* in *Vishakha vs. State of Rajasthan*⁶. *Justice Khanna's dissent* was praised again in *K.S. Puttaswamy v. UOI*⁷; When 9 judge bench overruled *Adm Jabalpur case* and held that "*No civilized state can contemplate an encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution. In recognizing the right, the Constitution does not become the sole repository of the right.*"

And the Supreme Court's treatment of the habeas corpus in this case is certainly more worrisome than the Indian state's actions, because it sets the tone for the rest of the judiciary across the country.

VII. CONCLUSION

India is a democratic country and to safeguard its citizen's fundamental rights is equally important. A writ of habeas corpus requires determination of whether detention is legal and if due process has been followed. The court is not expected to go into the issue of the alleged crime of the detainee. New and somewhat questionable kind of jurisprudence is being set by the Supreme Court of India for some time. The court of the last resort should be brazenly upholding citizens' fundamental rights and protecting them from unconstitutional actions of the state. Even if the court were to be given the benefit of doubt with the usual riders like the security situation in Kashmir and sovereignty, the court should have assumed its constitutionally-mandated role as the protector and defender of the citizen's fundamental rights rather than leaving it to others. Failure to do so amounts to the court abdicating its duty under

⁵ 1976 AIR 1207, 1976 SCR 172

⁶ (1997) 6 SCC 241

⁷ AIR 2017 SC 4161

the Constitution.

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