

# ADM Jabalpur v Shivkant Shukla

February 16, 2021

## Introduction

- April 28th, 1976 is considered to be the darkest day of Indian Judicial System because on that day the judgement for an infamous case of “ADM Jabalpur v Shivkant Shukla” was delivered. This case is also known as the “Habeas Corpus case”.
- This case pertained to the time when the emergency was proclaimed by the ruling government of Indira Gandhi who issued a Presidential Order when the court declared her Prime Ministerial election as illegal.
- The case arose out of the contention that whether a person has a right to approach the High Court or not when its Fundamental Rights are being violated, especially Article 21 which relates to Right to Life and Liberty and also Article 14 which relates to Right to Equality.
- The net result that came from the judgement was really harsh, as it was established that a person’s right to approach the High court under Article 226 for writ of Habeas Corpus or any other writ for challenging the legality of an order of detention at the time of proclamation of emergency will remain suspended. Moreover, the person cannot move to the High Court in order to seek remedy or justice. This was the main reason for considering ADM Jabalpur as the darkest spot in the history of Supreme Court.

## Facts Of The Case

- On 25th June, 1975, the President in exercise of his powers which have been granted by Article 352(1) of

Indian Constitution, declared that there was a grave emergency whereby security of India is threatened by the internal disturbances.

- On 27th June, 1975 , by exercising the powers that are granted under Article 359 of the Constitution, it was declared that the right of any person including the foreigners to move any court in order to enforce their rights which have been granted to them under Article 14, 21 and 22 of the Constitution and also all the proceedings that are pending in the court for the above mentioned rights will remain suspended during the period of proclamation of emergency which was made under Article 352 of Indian Constitution.
- On 8th January, 1976 by exercising the powers granted under Article 352 of Constitution, the President passed a notification declaring that right of any person to move to any court in order to enforce the right which have been granted to them under Article 19 of the Constitution and also all the proceedings that are pending in the court for the above-mentioned right will remain suspended during the period of proclamation of emergency.
- Thereupon, several illegal detentions were made including the detention of some most prominent leaders such as Jayaprakash Narayan, Morarji Desai, Atal Bihari Vajpayee and L.K. Advani who were detained without any charges and trial.
- Due to this many writ petitions were filed throughout the country. Nine High Courts gave a decision in favor of the detunes by laying down that even if Article 21 cannot be enforced, still the order of detention can be challenged as it was not in compliance of the Act or was mala fide. Moreover, against these orders many appeals were filed under the Supreme Court.

**Issue:**

- The issue in this case was whether a writ petition can be filed or not under Article 226 of the Constitution before the High Court in order to enforce the Fundamental Rights during the period of proclamation of emergency.

## **Judgement by SC**

### **Judgement By The Majority**

- The judgment came in the ratio of 4:1, Chief Justice A. N. Ray, M.H. Beg. J, Y.V Chandrachud. J and P.N. Bhagwati. J were for the majority of the judgment and whereas the H.R. Khanna J. was for the descent.
- The four judges except Justice Khanna were of the opinion that during the time of emergency if any action is taken by the government whether it is arbitrary or illegal, its actions cannot be questioned.
- This is because in such circumstances the government safeguards the life of the nation by using its extraordinary powers, and which are provided to them as emergency is also an extraordinary factor.
- Therefore, as liberty is a gift of law, it can also be forfeited by law.
- The purpose and objective of Article 359 (1) was to prevent the enforcement of any Fundamental Right mentioned in the Presidential order, and should be suspended during the emergency.
- Even the application for Habeas Corpus under Article 491 of Code of Criminal Procedure cannot be filed simultaneously before the High Court. Another purpose of Article 359(1) was not only to limit the actions of the legislative domain but also the actions of the executive branch.

### **Dissenting Judgement By Justice Khanna**

- Law of preventive detention, of detention without trial

is a curse to all those who love personal liberty. It is with a view to balancing the conflicting viewpoints that the framers of the Constitution made express provisions for preventive detention and at the same time inserted safeguards to prevent abuse of those powers and to mitigate the harshness of those provisions.

- There was a dilemma for the framers of the constitution that whether they should prioritize liberty of their citizens or the security of the state and this dilemma was not laid to rest during the drafting of the constitution.
- The state has got no power to deprive any person of their life and liberty without the authority of law, even in the absence of Article 21. This is the basic assumption of the rule of law and not of men in all civilized nations.
- Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning.

## Writs

- The Indian Constitution empowers the Supreme Court to issue writs for enforcement of any of the fundamental rights conferred by Part III of Indian Constitution under Article 32.
- Thus the power to issue writs is primarily a provision made to make available the Right to Constitutional Remedies to every citizen.
- There are five types of Writs: Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warranto.
  - **Mandamus:** A judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.
  - **Prohibition:** A writ of prohibition is a writ directing a subordinate to stop doing something the law prohibits. This writ is often issued by a

superior court to the lower court directing it not to proceed with a case which does not fall under its jurisdiction.

- **Certiorari:** In law, certiorari is a court process to seek judicial review of a decision of a lower court or government agency.
- **Quo warranto:** Quo warranto is a prerogative writ requiring the person to whom it is directed to show what authority they have for exercising some right, power, or franchise they claim to hold.

**Habeas Corpus:** It literally means “you may have the body.” The writ is issued to produce a person who has been detained, whether in prison or in private custody, before a court and to release him if such detention is found illegal.