

SC overrules Emergency-era habeas corpus verdict

‘Judgments rendered by all the four judges constituting the majority in ADM Jabalpur case are seriously flawed’

KRISHNADAS RAJAGOPAL
NEW DELHI

Over 40 years after the Supreme Court’s darkest hour when it said citizens had no right to life and liberty during the Emergency period, a nine-judge Bench condemned the decision in the infamous ADM Jabalpur case, better known as the habeas corpus case, as “seriously flawed.”

The habeas corpus judgment in 1976 upheld the Congress government’s move to unlawfully detain citizens, including political rivals, during the Emergency years.

Cost of dissent

Of the five judges on that Bench, only Justice H.R. Khanna dissented with the majority opinion of then Chief Justice of India A.N. Ray, Justices M.H. Beg, Y.V.

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JUSTICE CHANDRACHUD

Chandrachud and P.N. Bhagwati. Justice Khanna's dissent cost him the chief justiceship. He was superceded by Justice Beg, following which he resigned.

On Thursday, for the first time in Supreme Court's history, a nine-judge Bench, led by Chief Justice of India J.S. Khehar, officially condemned the Supreme Court’s majority opinion in the habeas corpus case.

The judgment, authored by Justice D.Y. Chandrachud, who, incidentally, is the son of Justice Y.V. Chandrachud, “expressly overruled” the 1976 majority judgment and removed a long-pending taint on the court's history as a people's champion.

Justice Chandrachud, writing for himself, Chief Justice Khehar, Justices R.K. Agrawal and S. Abdul Nazeer, held that “the judgments rendered by all the four

judges constituting the majority in ADM Jabalpur are seriously flawed. Life and personal liberty are inalienable to human existence”.

“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,” Justice Chandrachud wrote.

Hailing Justice Khanna for standing up to the government even at a personal cost, Justice Chandrachud said the majority judgments in the Jabalpur “should never have been”.

Justice Rohinton Fali Nariman, in his seprate judgment, described Justice Khanna's dissent as one of the “three great dissents” in the Supreme Court's history.

He calls the dissenting judgment of Justice Fazl Ali, who he describes as a "great judge", in the A.K. Gopalan case on preventive detention that fundamental rights in the Constitution are not watertight compartments as “a cry in the wilderness” and said that it took the Supreme Court 20 years to correct its view. Justice Nariman said the judgment took “his breath away”. The second great dissent was by Justice Subba Rao, who upheld the individual's right to privacy.

He pointed to the introduction of the National Human Rights Commission law, which recognises right to life as a human right and observed that “developments after this judgment (ADM Jabalpur) have also made it clear that the majority judgments are no longer good law and that Khanna, J.’s dissent is the correct version of the law”.

In his separate judgment, Justice Sanjay Kishan Kaul termed the ADM Jabalpur case as “an aberration in the constitutional jurisprudence of our country.”

Verdict impact

The fallout of the historic judgment by the nine-judge Bench is that an ordinary man can now directly approach the Supreme Court and the High Courts in case of any violation of his fundamental rights. The judgment would have an immediate effect on three key issues pending in the Supreme Court before various Constitution Benches



On Aadhaar

A five-judge Constitution Bench, which referred the matter to the

nine-judge Bench, would decide whether the scheme is a reasonable restriction on the fundamental right to privacy

- The Supreme Court would test whether the purpose of collecting the personal data is a "legitimate state interest" beneficial for the public

- The apex court's judgment on Thursday would also have an effect on a pending petition filed by parliamentarian Jairam Ramesh, challenging the passage of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 on March 11, 2016, as a Money Bill

- The judgment also may open the Aadhaar-Permanent Account Number linkage issue



On WhatsApp

- The judgment may have a bearing on the pending challenge to a 2016 contract

entered into between WhatsApp and Facebook in 2016 to share user information including messages, pictures and videos, among others

- The challenge was made by two students — Karmanya Singh Sareen and Shreya Sethi — who questioned the policy as a violation of users' right to privacy

- With the judgment holding that "informational privacy is a facet of the right to privacy", the government may soon bring in a "carefully structured" data protection regime



On Section 377 of IPC

- The judgment gives a new lease of life to the prolonged fight to

decriminalise Section 377 of the IPC, a colonial-era provision criminalising consensual sexual acts of LGBT adults in private

- In 2016, the court had agreed to set up a five-judge Bench to hear a batch of curative petitions challenging Section 377 as a threat to the right to privacy and dignity, resulting in gross miscarriage of justice

- The judgment gives renewed vigour for the petitioners to approach the Chief Justice for early setting up of the five-judge Bench to hear the curative petitions against the Section



Right to Privacy is an integral part of Right to Life and Personal Liberty guaranteed in Article 21 of the [Indian] Constitution. The right to privacy is intrinsic to the entire fundamental rights chapter of the Constitution

THE SUPREME COURT'S NINE-JUDGE BENCH

