

PRESTIGE INSTITUTE OF MANAGEMENT OF RESEARCH  
DEPARTMENT OF LAW



**Gender Justice and Feminist Jurisprudence Assignment**

Topic – \_\_\_\_\_ Submitted by-

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Secondly I would also like to thank my parents and friends who helped me a lot in finalizing this project within the limited time frame.

# **Certificate of Declaration**

I certify that this assignment is my own work, based on my personal study and research and that I have acknowledged all materials and sources used in its preparation, whether they be books, articles, reports, lecture notes, and any other kind of document, electronic or personal communication and that I have not copied in the part or whole or otherwise plagiarised the work of other student and/or persons.

Name.

Date.

## INTRODUCTION

This case is often referred to as the black spot on the Indian judiciary because this judgement had far-reaching consequences on the life and liberty of a citizen of India. The consequences were such that even today to this particular case.

During the 1970s when the emergency was imposed all the institutions of the country were highly politicised and polarised and even the Supreme Court of India was not left untouched from the same.

On June 25, 1975, the President in the exercise of the powers conferred by paragraph (2) of article 352 of the Constitution, declared that there is a serious emergency for which Indian security is threatened by internal disturbances. On June 27, 1975, in the exercise of the powers conferred by Clause (1) of article 352 of the Indian Constitution, the President declared that the right of any person (including a foreigner) to approach a court for the application of his rights conferred by articles 14, 21 and 22. The Constitution and all proceedings pending before a court for the enforcement of the aforementioned rights shall remain suspended during the period in which the urgency is proclaimed.

Black law's dictionary defines emergency " as a failure of the social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them"

According to Dr B.R. Ambedkar, the Indian federal system should use the emergency as a last resort and the government changes itself to a unitary system from a democratic one to save the constitution. There are three types of emergencies in the Indian constitution,

.National Emergency

.Failure of constitution machinery in states

.Financial Emergency

Article 352 of the constitution talks about the national emergency which can be declared in case of war, external aggression and rebellion the central government takes all the powers namely executive, legislative and financial.

During national emergency except article 20 and 21, all other fundamental rights are suspended. The president may suspend the right to move to courts by enforcing article 359. Union government can make legislation on state list items by article 250.

## Facts

Indira Gandhi's election was imposed on 27.06.1975 under A. 359(1) of the constitution and the order imposing the emergency which suspended A14, A21 and A22 of the constitution of India

Several people were unlawfully jailed, detained and put behind bars who opposed the moves of the Prime Minister .As a result, several people moved the High Court under the provision of Article 226 of the Constitution of India to secure the liberty of their loved ones by way of using the Writ of Habeas Corpus which provides relief when someone is unlawfully detained.

The High Court gave relief to such individuals and set them free .However, this was not liked by the ruling leaders and the State filed petitions in the Supreme Court challenging the orders of the High court's whereby individuals were set free.

On June 25, 1975, the President, in exercising the power conferred by article 352(2) of the Constitution, declared that there was a serious emergency for which the security of India was threatened for internal problems. On June 27, 1975, in the exercise of the powers conferred by article 359(1), the President declared that the right of any conferred by article 14, 21 and 22.

The Constitution and all proceedings pending before a court for the application of the aforementioned rights will remain suspended during the period of proclamation of urgency. The President Ordinance of June 27, 1975, also specified that it would be additional and not negligible to any order issued before the date of the order mentioned in the article 359 of clause(1) of the Constitution. On June 29, 1975, by another decree, the President made the order of June 27, 1975, applicable to the state of Jammu and Kashmir.

The President promulgated Amendment Orders Nos. 1 and 7 of 1975 and replaced them with the 1975 Domestic Security Maintenance Act No.39, which introduces a new article 16A and gives effect to Article 7 of the law. Law in force on June 25, 1975, the other provisions that came into effect on June 29, 1975. By the same Act, a new section 18 was inserted with effect from June 25, 1975.

On October 17, 1975, the order of September 16, 1975, introduced new amendments to section 16A of the Maintenance of Homeland Security Act, which introduced paragraphs 16(8) and (9) of section 16A.

On November 16, 1975, Ordinance No. 22 of 1975 was enacted. It introduced some changes to the law on the maintenance of the internal security, also inserting paragraph 2A in article 16A. All the amendments made by the order had retroactive effect to validate all the previous law, The aforementioned orders were published on January 5, 1976 , under the Maintenance of Internal Security Act of 1971, 2014(Law No. 14 of 1976).

Defendants detained under article 3(IA) (2<sup>nd</sup>) read with article 3(2) of the Internal Security Maintenance Act. The law has been challenged in many superior courts by virtue of the order of the President of India on June 27, 1975, declaring it unconstitutional and inoperative and invoking.

The annulment of that order, and

The pronouncement of his release immediate

In some cases, they questioned the validity of the amendments to the laws of article 38 and 39. When these hearing requests were filed, the plaintiff raised the preliminary objection of maintenance for the fact that the request for release, a writ of Habeas corpus was issued. The accused alleged, in essence, to have been deprived of their personal liberty in violation of the procedure established by law, whose motive was at their disposal.

Only article 21 of the Constitution and taking into account presidential order of June 27, 1975, which suspended the right to request execute of the right conferred by this article, the petitions could be rejected at the threshold. While the superior courts of Andhra Pradesh, Kerala and Madras confirmed the primary objection, the present dispute has not been favourably received by the superior courts of Allahabad, Bombay (Nagpur Bench), Delhi, Madhya Pradesh, Punjab and Haryana. The state and the central government Aggravated by the decision of several superior courts, he appealed the decision of the supreme court of the kingdom.

## **Issues**

The main issue before the Court was that when an emergency was imposed under the provisions of the constitution and when the A. 14, A.21 and A.22 had been suspended then can a writ of Habeas Corpus be maintained in the front of the court and can a relief be granted to an individual.

## **Petitioners Arguments-**

It was argued by the State that the main aim of the provisions of emergency was that they vest special powers in the executive to hold complete control over the law and order of the country since an emergency situation is of extreme importance when the situation is delicate.

It was further argued that when a person had been detained it could not be challenged that the order of detention was wrong and that there were no strong reasons to detain a person. When an emergency is announced a person forfeits A.19 of the Constitution and if he is held in contravention of the A.22 of the Constitution the same cannot be questioned in the proceeding of Habeas Corpus since the option to petition the court is closed during the emergency.

It was contended that the curtailment of such a right was done under the provisions of the constitutions and a President's Order cannot be questioned. A presidential order under A.359 is made under special circumstances and thus it was not open for the court to question the rationale behind the same and entertain a Habeas Corpus petition.

## **Respondents Arguments**

The respondents argued that the object of A.359 was to remove any type of curtailment on the power of the legislature from legislating during the emergency. The article prohibits moving to the Supreme Court for enforcing certain rights but there was no prohibition on moving to the High Court under A226 for enforcing statutory rights of personal liberty.

It was also contended that the presidential order was against the principle of nature law and other underlying fundamental principles of law. When there was a law which regulated preventive detention then the same must confirm to the conditions set out by the law.

It was also contended that ARTICLE 21 was not the sole holder of the right to life and personal liberty. There were rights which were not fundamental rights but statutory rights or nature rights. These rights were not affected by the Presidential Order and could not be taken away.

It was further argued that where the state had made a law for making detentions then the detentions should be within the confines and conditions of the statute. If the conditions were not met then the detention would go beyond the power of the state.

## **Judgement**

This case was heard by the five judges of the Supreme Court of India. Four of the five judges ruled in the favour of the state and held that during an emergency the fundamental rights were not available to a citizen. All rights will be extinguished in the light of the presidential order.

It was further held that an individual would not have the option of moving the High Court for a writ of Habeas Corpus if the President order said so all the proceedings in the court will remain suspended till the duration of the emergency.

One judge (J) H.R. Khanna, however, gave a dissenting judgement i.e., view taken against the finding of the majority judgement and this is regarded in today's times the correct view and the best dissent. It paves way for the future development of the law.

He held that during an emergency under A. 359 even if a fundamental right is taken away, a person can move the court for the enforcement of his statutory right. He was of the view that A.21 is not the only place for life and liberty. Even if it takes away the right to life and



personal liberty are the basic tenants of the society. The State cannot deprive a person of his life and personal liberty without the authority of law.

## **Case Analysis**

The observations in the above-mentioned cases show that the validity of the warrant of arrest could be annulled despite the presidential orders of 1962 and 1974 under section 359 if any right was not covered by these presidential orders. The protection granted by the absolute presidents was conditional and limited to abandoning the challenge of the arrest warrants and other measures adopted under the provisions mentioned in these presidential orders with respect to the violation of the articles specified in these presidential orders.

If the detention of a detainee did not comply with the provisions mentioned in the presidential orders, the presidential orders did not have the effect of protecting the warrant of arrest and it was permissible to question the validity of the detention at the prison. The reason was not made under the specified provisions but in violation of those provisions.

We can say that the Constitution is dominated by the rule of law because its general principles were. For example, the right to individual liberty or right of public assembly. He rights of private persons in special cases presented to the courts; whereas in many foreign constitutions the security (as it is) conferred on the rights of individuals results or seems to result from the general principles of the constitution.

## **Conclusion**

. Article 21 was misinterpreted in this case. This is because, the procedure which was not established under the law was established under the law later on.

. Whenever any internal aggression takes place in a country. It does not mean that the govt. can take away the life of their citizens and the foreigners.

. It is correct that during the emergency, U/A 359(1), president by order can suspend all the fundamental rights, but such order should have effect on or from the date on which it was passed, but should not be enforced from the prior date

. 44<sup>th</sup> amendment which was made in the year 1978 was the result of the decision which was held by the Hon'ble Supreme Court

. In an interview with mylaw.net on 15/9/2011, Justice P.N. Bhagwati confesses that the Supreme Court decision in ADM Jabalpur was wrong and he pleads guilty for the same. The reason attributed for him joining the majority in the case was that he was persuaded by his colleagues and he admits it was an act of weakness on his part. He also says that "It was against my conscience. That judgement is not Justice Bhagwati's"

## **Bibliography**

Books referred –

1. J.N. Pandey, the Constitution of India, Central Law Agency
2. M.P. Jain, Constitution of India, Central Law Agency

Status referred –

The constitution of India, 1950

Articles referred –

1. ADM Jabalpur v. Shivkant Shukla, blog. Pleadings

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E-mail id -