



The ADM Jabalpur Dissent: Justice H.R. Khanna and Article 21

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When a state declares an emergency, civil liberties are almost always the first casualty. The ADM Jabalpur v Shivkant Shukla (1976) judgment remains one of the most controversial decisions in Indian constitutional jurisprudence. Delivered during the Emergency imposed by the Indira Gandhi government, the majority of the Supreme Court held that the right to life and personal liberty under Article 21 of the Constitution was effectively inactive and could not be upheld in court. This decision effectively placed the executive's authority above the Constitution and sanctioned a period of authoritarian excess. However, one judge, Justice Hans Raj Khanna, dissented. His opinion upheld the supremacy of constitutional values and the principle of the rule of law. He argued that even in the absence of Article 21, no individual could be deprived of life or liberty without the authority of law, thus grounding his view in the concept of inalienable human rights and the basic structure of the Constitution. This paper examines how Justice Khanna's solitary opinion shaped the modern framework of Indian rights jurisprudence. Decades later, in Justice K.S. Puttaswamy v Union of India (2017), a nine-judge bench of the Supreme Court resurrected and embraced Justice Khanna's dissent. The Court unanimously declared that the Right to Privacy is a fundamental right under Part III of the Constitution, inherently protected under Articles 14, 19, and 21. In doing so, the Court overruled the majority in ADM Jabalpur, characterising it as a grave constitutional mistake. Justice D.Y. Chandrachud observed that ADM Jabalpur was an embarrassment to constitutional democracy and lauded Justice Khanna's dissent as "the voice of the Constitution." This article examines how a solitary dissent, once ignored and punished, became the foundation of a transformative constitutional moment in Indian democracy. It traces the historical and philosophical underpinnings of both the ADM Jabalpur and Puttaswamy decisions, and analyses how Khanna's reasoning aligns with the principles of constitutional morality. Justice Khanna's dissent is more than a legal opinion; it is an affirmation of the idea

that fundamental rights are not mere concessions of the state but are intrinsic to the human condition. Its revival in Puttaswamy stands as a reminder that while majority opinions may shape law, it is often the dissenting voice that preserves justice.

Keywords: *constitutional dissent, fundamental rights, rule of law.*

INTRODUCTION

About Justice Hans Raj Khanna: Justice Hans Raj Khanna (July 3, 1912 – February 25, 2008) was a distinguished Indian jurist and Supreme Court Judge (1971–1977) renowned for his unwavering judicial integrity. Widely celebrated as one of the most principled figures in Indian judicial history, Justice Khanna left a lasting legacy through his defence of constitutional values, fundamental rights, and the rule of law.

Historical and Constitutional Context: Justice H.R. Khanna: Guardian of Civil Liberties: Justice Khanna's most notable contribution lies in his steadfast defence of fundamental rights during the 1975–1977 National Emergency. As a lone voice of dissent in a historic ruling, he demonstrated exceptional courage by refusing to compromise constitutional principles under severe political pressure. His commitment to protecting individual liberty even at the cost of his prospective elevation to Chief Justice of India remains an iconic symbol of judicial independence and moral courage.

India's Constitutional Crisis and the Emergency Era: The internal Emergency declared between 1975 and 1977 represents a pivotal challenge to Indian democracy, marked by the severe suspension of fundamental rights and executive overreach.

This period followed the landmark decision in *Kesavananda Bharati v State of Kerala* (1973), where the Supreme Court established the 'Basic Structure Doctrine,' holding that Parliament's amending power under Article 368 does not extend to altering the fundamental framework of the Constitution.

The constitutional durability of this principle was severely tested during the Emergency in *ADM Jabalpur v Shivkant Shukla* (1976). The core legal question before the Court was whether citizens retained the right to seek a writ of habeas corpus against unlawful detention during a state of Emergency. While the majority held that even the right to life and personal liberty could be suspended under executive power, Justice Khanna authored a sole, powerful

dissent, maintaining that the state possesses no authority to deprive a person of life or liberty without the authority of law.

LITERATURE REVIEW AND ANALYTICAL SCOPE

The emergency jurisprudence of 1975–1977 remains one of the most intensely analysed periods in Indian constitutional history. Foundational legal scholarship has extensively documented the structural collapse of institutional checks during this era. Upendra Baxi, in his seminal critiques of the Supreme Court, characterised the majority verdict in *ADM Jabalpur v Shivkant Shukla* (1976) as a period of profound judicial retreat, wherein the Court subordinated human dignity to statutory positivism. Similarly, constitutional historian Granville Austin emphasised how the suspension of Fundamental Rights exposed the fragility of India's constitutional democratic guardrails when confronted with unchecked executive dominance.

In contemporary constitutional discourse, legal scholars such as Gautam Bhatia have re-examined *ADM Jabalpur* through the lens of legal philosophy, contrasting the majority's strict adherence to legal positivism, which views rights as sovereign concessions, with Justice H.R. Khanna's grounding in Natural Law and the non-negotiable Rule of Law.

However, much of the existing academic literature evaluates *ADM Jabalpur* predominantly as a historical failure or a cautionary tale of judicial surrender. A noticeable research gap exists regarding the continuous, transformative trajectory of Justice Khanna's solitary dissent. Existing works frequently treat his opinion as an isolated act of personal bravery rather than an active doctrinal catalyst that reshaped Indian constitutionalism over four decades.

This research paper addresses that precise gap. The analytical scope of this study extends beyond a historical recap of the Emergency. Instead, it systematically traces the jurisprudential evolution of Justice Khanna's dissent from a minority opinion in 1976 to its statutory incorporation via the 44th Constitutional Amendment Act (1978), its implicit judicial adoption in *Maneka Gandhi v Union of India* (1978), and its ultimate explicit vindication by the nine-judge Constitution Bench in *Justice K.S. Puttaswamy (Retd.) v Union*

of India (2017).¹ By analysing this trajectory, this paper evaluates how a single dissenting opinion successfully preserved the core tenets of constitutional morality and natural rights in Indian jurisprudence.

RESEARCH QUESTIONS, HYPOTHESIS AND METHODOLOGY

1. Did Article 21 constitute the sole repository of personal liberty during a state of Emergency?
2. How does Justice Khanna's application of Natural Law dismantle legal positivism within emergency jurisprudence?
3. In what ways did the dissent shape legislative guardrails (44th Amendment) and the post-1978 expansion of Article 21?
4. How did the 9-judge bench in Puttaswamy (2017) institutionalise Khanna's dissent as modern constitutional morality?

Research Hypothesis: This research paper explores the pivotal intersection of judicial courage and civil liberty through a critical analysis of Justice Hans Raj Khanna's solitary dissent in *ADM Jabalpur v Shivkant Shukla* (1976). Set against the backdrop of the 1975 National Emergency, the study examines how the Supreme Court majority succumbed to legal positivism by declaring Article 21 the 'sole repository' of personal liberty, thereby stripping citizens of basic constitutional remedies against arbitrary detention. In stark contrast, Justice Khanna invoked Natural Law and the fundamental Rule of Law to argue that the right to life and liberty is inalienable and predates the written Constitution. Although his principled stance resulted in his executive supersession for the post of Chief Justice of India, his dissent established a lasting precedent that transcended immediate political repression. Tracing its historical trajectory, the paper demonstrates how Khanna's opinion inspired the 44th Constitutional Amendment Act of 1978, catalysed the post-Emergency expansion of substantive due process in *Maneka Gandhi* (1978), and ultimately received complete judicial vindication in *Justice K.S. Puttaswamy v Union of India* (2017), where a nine-judge bench formally overruled *ADM Jabalpur* as a 'great constitutional mistake' and institutionalised Khanna's dissent as the foundational bedrock of modern Indian constitutional morality.

¹ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

Doctrinal Methodology: This study adopts a doctrinal and qualitative legal research methodology to evaluate the jurisprudential impact of Justice H.R. Khanna's dissent in *ADM Jabalpur v Shivkant Shukla* (1976). The research relies on primary legal sources, including constitutional provisions (Articles 14, 19, 21, 352, and 359), emergency statutes such as the Maintenance of Internal Security Act (MISA), 1971, the 44th Constitutional Amendment Act, 1978, and landmark Supreme Court judgments ranging from *A.K. Gopalan* (1950) and *Maneka Gandhi* (1978)² to *Justice K.S. Puttaswamy v Union of India* (2017). These primary materials are critically analysed alongside secondary scholarly literature, historical inquiry reports (Shah Commission Report), and constitutional commentaries. Utilising a comparative analytical framework grounded in legal philosophy, specifically contrasting legal positivism with Natural Law theory, this research traces how a solitary dissent evolved into modern constitutional doctrine.

THE PROCLAMATION OF EMERGENCY (JUNE 1975) AND EXECUTIVE OVERREACH

The Invocations under Article 352 and 359: On the night of June 25, 1975, President Fakhruddin Ali Ahmed, acting on the advice of Prime Minister Indira Gandhi, proclaimed a National Emergency³ under Article 352(1) of the Constitution of India, citing threats to security posed by 'internal disturbance.' On 27 June 1975, Articles 358 and 359 were invoked. Article 358 suspended protections under Article 19, affecting freedom of speech, expression, assembly, and movement. This was swiftly followed by executive orders issued under Article 359(1),⁴ which suspended the right of any person to move any court for the enforcement of fundamental rights under:

Article 14 (Equality before law),⁵ Article 19⁶ (Protection of certain rights regarding freedom of speech, assembly, etc.), and Article 21 (Protection of life and personal liberty).⁷

Core Legal Shift: The suspension under Article 359 did not extinguish the fundamental rights themselves, but rather stripped citizens of their judicial remedy to enforce them,

² *Maneka Gandhi v Union of India* (1978) 1 SCC 248

³ The Constitution of India 1950, art 352(1)

⁴ The Constitution of India 1950, art 21; The Constitution of India 1950, art 359(1)

⁵ The Constitution of India 1950, art 14

⁶ The Constitution of India 1950, art 19

⁷ The Constitution of India 1950, art 21

creating a dangerous constitutional vacuum where executive actions were completely insulated from judicial review.

Weaponisation of Preventive Detention: MISA and the CrPC Amendments: Thousands of citizens, political leaders, and people were detained across the country under many preventive detention laws like MISA, the Maintenance of Internal Security Act, which was enacted in 1971, without even being informed of the grounds for the arrest⁸ or given access to courts. Opposition leaders, including Jayaprakash Narayan, Morarji Desai, Atal Bihari Vajpayee, L. K. Advani and others, were arrested under the Maintenance of Internal Security Act (MISA).⁹ The Maintenance of Internal Security Act (MISA) 1971 was used extensively. Nearly 35,000 people were detained under preventive detention without trial, as per the Shah Commission.¹⁰ The maintenance of the Internal Security Act faced widespread criticism for undermining democratic values and enabling misuse of power. Legal experts describe MISA as one of the darkest phases in India's legal and political history.

MISA was seen as infringing personal liberty and due process, contradicting constitutional guarantees under Articles 20, 21, and 22. Broad discretionary powers allowed detention without clear evidence, leading to misuse against political opponents. During the emergency, it was used to silence dissent, weakening democratic institutions and political competition. Non-disclosure of detention grounds created secrecy, preventing accountability and a fair legal process. Limited court intervention reduced checks and balances, enabling executive dominance. Officials could detain individuals based on suspicions, leading to widespread abuse of power. Human rights organisations criticised the act for violating democratic norms and individual freedoms, as the law created an atmosphere of fear among citizens, restricting freedom of expression and participation.

To execute state control, Parliament heavily amended the Maintenance of Internal Security Act, 1971 (MISA). These amendments introduced severe clauses that neutralised procedural safeguards:

⁸ The Maintenance of Internal Security Act 1971

⁹ Upendra Baxi, *The Indian Supreme Court and politics* (Eastern Book Company 1980)

¹⁰ Shah Commission of Inquiry, *Third and Final Report* (Ministry of Home Affairs 1978)

Section 16A of MISA:¹¹ Exempted the executive from disclosing the grounds of detention to the detainee or to the court, declaring such grounds to be a 'state secret.'

Elimination of Natural Justice: Detainees were deprived of the opportunity to make representations against their detention orders.

Amendment to the Code of Criminal Procedure, 1973: Severely curtailed the grant of bail, making preventive detentions virtually indefinite without trial.

DECONSTRUCTING ADM JABALPUR AND JUSTICE KHANNA'S DISSENT

ADM Jabalpur v Shivkant Shukla, often labelled as the 'Habeas Corpus case,'¹² is a judgment of the Supreme Court of India which was pronounced in the year 1976. Such an important landmark came out of a stage in Indian history when then Prime Minister Indira Gandhi declared an Emergency from 1975 to 1977. For such a judgment to be relevant, it is not only because of its legal consequences but also because of its impact on civil liberties and the state's association with individual rights in India.

History of the Case: The case was started by Shivkant Shukla, a lawyer and political activist. He was detained without trial under the Maintenance of Internal Security Act (MISA). MISA was enacted purportedly to maintain public order during the Emergency while granting powers to the government to detain anybody without formal charges or trial. The detention was challenged by Shukla's wife, who filed a writ application for a writ of habeas corpus in the court, claiming that his detention was unlawful.

This case was appealed to the Supreme Court, which had to establish whether the detention of Shukla was legal or not. Moreover, the case had broad implications for how MISA affected individual rights.

Facts of the Case: In 1975, the Prime Minister of India declared a national Emergency under Article 352 of the Indian Constitution, citing 'internal disturbances.'¹³ This allowed the government to curtail many fundamental rights, including the right to life and liberty under Article 21. Many opposition leaders, journalists, and activists were incarcerated without trial

¹¹ The Maintenance of Internal Security Act 1971, s 16A

¹² *Additional District Magistrate, Jabalpur v Shivkant Shukla Etc Etc* (1976) 2 SCC 521

¹³ The Constitution of India 1950, art 352 (unamended)

under the Maintenance of Internal Security Act (MISA). A spate of habeas corpus petitions was filed around the country challenging these detentions. The question of significance was: Can a person detained under MISA during an emergency challenge the detention through a writ of habeas corpus?

One very influential case was that of a journalist, Shivkant Shukla, who was held under MISA. His case went to the Supreme Court: The petitioners submitted that their detention was illegal and sought relief by way of habeas corpus, which is a writ that requires the government to justify the grounds of detention before a court.

Legal Issues: The Validity of MISA: The petitioners contended that MISA infringed on fundamental rights that are protected under the Constitution. Such included a person's right to personal liberty under Article 21, and whether statutory provisions enabling indefinite executive detention without disclosing grounds could survive constitutional scrutiny.

Judicial Review: Supreme Court review limits over the executive, more particularly in issues of national security and public order, and whether the suspension of enforcement remedies under Article 359 completely ousted the High Courts' writ jurisdiction under Article 226.¹⁴

Interpreting Article 21: Right to life and personal liberty and whether this right could be abridged without due process, specifically questioning whether Article 21 was the sole repository of the right to life or if such rights existed as common law and natural rights independent of the written Constitution.

JUDGEMENT OF SUPREME COURT

The Supreme Court, in its majority judgment, held MISA to be constitutionally sound and dismissed the writ petition. A five-judge Constitution Bench delivered the judgment, comprising Chief Justice A.N. Ray and Justices M.H. Beg, Y.V. Chandrachud, P.N. Bhagwati, and H.R. Khanna. ¹⁵Chief Justice A.N. Ray, along with Justices Beg, Chandrachud, and Bhagwati, formed the 4:1 majority. The salient points of the judgment were as follows:

Article 21 Interpretation: The Court inferred that Article 21, which granted the right to life and personal liberty, was not absolute. The majority opinion held that, being incorporated in

¹⁴ The Constitution of India 1950, art 226

¹⁵ *Additional District Magistrate, Jabalpur v Shivkant Shukla Etc Etc* (1976) 2 SCC 521

the right to life, it could be curtailed by law. And since MISA was enacted by Parliament, it passed constitutional muster. The majority established the ratio decidendi that Article 21 was the sole repository of the right to life and personal liberty under the Constitution. Consequently, when the enforcement of Article 21 was suspended under Article 359, a detainee lost their locus standi to move any court to challenge the legality, arbitrary nature, or mala fide intention of a detention order.

Judicial Restraint: The Court resorted to the judicial restraint approach, with its dictum that the judiciary should not interfere with the decision of the executive as far as national security questions are concerned. The majority opinion advanced the proposition that it is within the discretion of the executive to decide what would pose a threat to the public order.

Separation of Powers: The judgment echoed the principle of separation of powers, as it indicated that, as a matter of law, the judiciary has no role in encroaching on the powers of the executive, particularly on issues of national security.

Dissenting Views: Very importantly, Justice H.R. Khanna gave dissenting views mainly because the right to life and personal liberty cannot be subjected to the whims of the state. He would argue that the Constitution should safeguard the rights of individuals even in cases of an emergency and that it was the responsibility of the judiciary to safeguard the rights of individuals. In his solitary, powerful dissent, Justice Khanna rejected the majority's 'sole repository' theory. He held that the right to life and personal liberty predates the Constitution and is an inalienable natural right inherent to human dignity. He reasoned that Article 21 is not the exclusive source of this right, nor did the Presidential Order under Article 359 deprive citizens of their fundamental locus standi to seek a writ of habeas corpus.

Justice Khanna emphasised that the Rule of Law is a non-negotiable basic feature of the Constitution; even during an Emergency, the State possesses no statutory power to deprive a person of life or liberty without valid authority of law. He famously concluded that an executive officer cannot detain or take away a citizen's life without legal sanction, warning that a state of lawlessness would prevail if the courts shut their doors to victims of arbitrary executive action. Knowing fully well that his dissent would cost him the post of Chief Justice of India, as he was subsequently superseded, his opinion stood as a testament to judicial courage and constitutional morality.

IMPACT OF THE JUDGEMENT

The ADM Jabalpur case went on to have a huge impact on civil liberties in India:

Denial of Fundamental Rights: The verdict has been termed as allowing the state to accumulate hundreds of personal rights without the necessary protections. There was a precedent set that in times of crisis, fundamental rights, including the fundamental right to life and liberty under Article 21, could be suspended, leaving citizens entirely at the mercy of arbitrary executive action.

Activism of Judiciary v Restraint: The case turned out to be a landmark for the clash between activism and restraint of the judiciary. Justice Khanna's dissenting judgment is regarded as an appeal to let the judiciary act more forcefully while dealing with personal rights and overreach by the state, serving as a reminder that judicial restraint must not turn into judicial surrender.

Public Response and Aftermath: This judgment stoked public anger and culminated in street protests, which led to Indira Gandhi's defeat in the 1977 elections. The case served as a rallying point for the advocates of civil liberties as well as the restoration of democracy, highlighting the public's demand for strong institutional checks on power.

Subsequent Developments: The Supreme Court of India, from time to time, overruled the ADM Jabalpur principle delineated above. This case is often referred to whenever questions of balance between state security and individual rights come up for consideration, especially in the context of preventive detention acts. Subsequent judicial rulings, such as *Maneka Gandhi* (1978) and *Puttaswamy* (2017), systematically dismantled the majority ratio to re-establish the supremacy of fundamental rights.

THE PERSONAL COST OF DISSENT: THE SUPERSESSION OF JUSTICE H.R. KHANNA

While the majority judges maintained their career trajectories within the judiciary, Justice Hans Raj Khanna paid an immense personal and professional price for his uncompromising stance on civil liberties:

Denial of the Post of Chief Justice of India: By tradition and seniority rules, Justice H.R. Khanna was next in line to become the Chief Justice of India following Chief Justice A.N. Ray's retirement in January 1977. However, as a direct consequence of his dissenting judgment in ADM Jabalpur, the Indira Gandhi government bypassed his legitimate claim and superseded him by appointing Justice M.H. Beg (who had authored part of the majority decision) as the Chief Justice of India. (Note: This historic supersession involved Justice H.R. Khanna, whereas Justice S.H. Kapadia served as the Chief Justice of India much later, from 2010 to 2012).

Resignation in Protest: Refusing to compromise judicial dignity or accept executive interference in judicial appointments, Justice Khanna resigned from the Supreme Court on January 28, 1977,¹⁶ the very day the supersession was announced.

Legacy of Judicial Integrity: Although denied the highest judicial office, Justice Khanna's willingness to sacrifice his career for constitutional morality cemented his legacy as the 'conscience keeper of the Indian judiciary.' His portrait hangs in Courtroom No. 2 of the Supreme Court of India as an enduring symbol of judicial courage.

THE ENDURING IMPACT OF JUSTICE KHANNA'S DISSENT

Legislative Impact: The 44th Constitutional Amendment Act, 1978: Objectives of the 44th Amendment Act, 1978:¹⁷ The 44th Amendment Act, 1978 was introduced for achieving the following objectives:

- To ensure the Fundamental Rights were not restricted or taken away by a transient majority in Parliament, it was necessary to provide adequate safeguards against recurrence of such a contingency in the future.
- To ensure that the power to proclaim an emergency under Article 352 must be used properly and after due consideration and deliberation.

¹⁶ 'Number of times the senior most judge was not appointed the CJI' (SCO, 10 March 2018) <<https://www.scobserver.in/journal/number-of-times-the-senior-most-judge-was-not-appointed-the-cji/>> accessed 27 July 2026

¹⁷ The Constitution (Forty-fourth Amendment) Act 1978

- To ensure that the basic features of the Constitution were not lightly interfered with by Parliament in the exercise of the power of constitutional amendment under Article 368.

Modification made by the 44th Amendment Act 1978: The 44th Amendment has made the following modifications to the Constitution of India.

FUNDAMENTAL RIGHTS

- The property right was removed from the list of fundamental rights and elevated to the status of a legal right under Article 300A.
- Removal of Article 19(1)(f) and Article 31 from the Constitution of India.
- Article 31(1) became Article 300A, which states that no person shall be deprived of his property save by authority of law.
- The safeguard contained in Article 31(2) was incorporated in Article 30. Thus, a new clause (1A) has been added after Article 30(1).

Article 30(1A): In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

Restraint on the Power of Parliament: The 44th Amendment introduced a new provision to put a restraint on the power of Parliament to extend a proclamation issued under Article 356 beyond one year.

Judicial Impact: The Birth of Public Interest Litigation (PIL): Judicial Self-Correction & Penance: Following the public and legal outcry over the majority ruling, judges who formed the majority in ADM Jabalpur (such as Justice P. N. Bhagwati and Justice Y. V. Chandrachud) later expressed deep regret over their decision.

Expanding Access to Justice: To rebuild public trust in the Supreme Court as the guardian of fundamental rights, the judiciary actively developed Public Interest Litigation (PIL) and

broadened the scope of locus standi, making human rights protections more accessible to ordinary citizens.

Constitutional Location: PIL operates primarily through Article 32 (Supreme Court – right to move directly for enforcement of Fundamental Rights) and Article 226 (High Courts – writs for Fundamental Rights and ‘any other purpose’). It draws strength from the remedial architecture of the Constitution and the court’s duty to protect fundamental rights. Article 142 (complete justice) and the High Courts’ inherent powers often assist in fashioning effective remedies.

Institutional & Cultural Impact: Moral Courage & Judicial Independence: Setting the Standard for Judicial Integrity: Justice Khanna delivered his dissent knowing full well that he would be passed over for the position of Chief Justice of India, leading to his eventual resignation.

The ‘Voice of Conscience’: His decision transformed his opinion into a global benchmark for judicial independence. It established the principle that a judge's oath to the Constitution takes precedence over career advancement or political pressure.

Doctrinal Impact: Expanding ‘Procedural Due Process’ (Maneka Gandhi Case): Shift in Constitutional Interpretation: Shortly after the Emergency, the Supreme Court decided *Maneka Gandhi v Union of India* (1978).¹⁸

Natural Justice & Fair Law: Building on Justice Khanna’s idea that ‘The fundamental rights conferred in Part III of the Constitution are not distinctive nor mutually exclusive.’ Any law depriving a person of his personal liberty has to stand a test of one or more of the fundamental rights conferred under Article 19. When referring to Article 14, ‘ex-hypothesis’ must be tested. The concept of reasonableness must be projected into the procedure. The phrase used in Article 21 is ‘procedure established by law’ instead of ‘due process of law,’ which is said to have procedures that are free from arbitrariness and irrationality. There is a clear infringement of the basic ingredients of the principles of natural justice, i.e., audi alteram partem; hence, it cannot be condemned as unfair and unjust even when a statute is silent on it. Executive power cannot be arbitrary; the Court ruled that any procedure

¹⁸ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

depriving a person of life or liberty must be 'just, fair, and reasonable,' not merely statutory. This permanently shifted Indian constitutional jurisprudence away from formalist interpretations toward substantive human rights protections.

UNDERSTANDING ARTICLE 21 OF CONSTITUTION OF INDIA

The Indian Constitution is considered the focal point of all the laws and is also the supreme law of the land. The Latin maxim "salus populi suprema lex¹⁹" adequately explains the importance of constitutional ideals and their role in governing the legal regime in India. As a consequence, the fundamental rights prescribed in the Indian Constitution are the strongest defence every citizen has against the state and any action by the state that affects the full realisation of the fundamental rights entitled to all citizens through the force of the Constitution. Any law which violates the fundamental rights of an individual is unenforceable and unconstitutional. Similarly, Article 21 of the Indian Constitution is one of the most significant and crucial provisions of all the fundamental rights, as Article 21 protects an individual's 'Right to Life and Personal Liberty'. Due to this implied importance, Article 21 has a very expansive and comprehensive scope, which has been interpreted by the apex court in many cases. The right to life and liberty as enshrined in the Indian Constitution under Article 21 is an internationally recognised right, and all major jurisdictions like the United States of America, the United Kingdom, Canada, Australia, etc. recognise the right to live a life with dignity in a similar manner. The only difference that arises in terms of comparison is between the American jurisdiction and the Indian jurisdiction. This comparison is between the phrases 'due process of law' and 'procedure established by law' for depriving an individual of their personal liberty.

THE FINAL VINDICATION: JUSTICE K.S. PUTTASWAMY (RETD.) V UNION OF INDIA (2017) AND THE FORMAL OVERRULING OF ADM JABALPUR

Four decades after the Emergency, a nine-judge Constitution Bench of the Supreme Court of India in Justice K.S. Puttaswamy (Retd.) v Union of India (2017) unanimously affirmed the Right to Privacy²⁰ as a fundamental right under Article 21. In doing so, the Court used the

¹⁹ Garner, *Black's Law Dictionary* (11th edn, Thomson Reuters 2019)

²⁰ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

opportunity to formally overrule the majority decision in ADM Jabalpur and officially elevate Justice H.R. Khanna's dissent as the controlling law of the land.

The salient points regarding Justice Khanna's dissent in the Puttaswamy ruling are as follows:

Formal Overruling of the Majority Ratio: The nine-judge bench explicitly declared that the majority judgments delivered by Chief Justice A.N. Ray and Justices M.H. Beg, Y.V. Chandrachud, and P.N. Bhagwati were gravely flawed. The Court held that ADM Jabalpur was a black mark on Indian constitutional jurisprudence that stripped citizens of their basic human rights during times of crisis.

Recognition as the 'Voice of the Constitution': Writing for the Court, Justice D.Y. Chandrachud highlighted the historical importance of the sole dissent, stating that Justice Khanna's opinion was the true reflection of constitutional law. The Court acknowledged that while the four majority judges succumbed to the executive, Justice Khanna preserved the core values of civil liberty and human dignity.

Rejection of the 'Sole Repository' Doctrine: The Puttaswamy judgment permanently dismantled the majority's theory that fundamental rights are mere statutory gifts from the State. The Court affirmed Justice Khanna's Natural Law approach, holding that rights such as life, personal liberty, bodily autonomy, and privacy are inalienable, pre-date the written Constitution, and cannot be extinguished by executive decree or emergency proclamations.

Institutionalisation of Constitutional Morality: The Court emphasised that Justice Khanna's willingness to risk his judicial career and accept supersession demonstrated the highest standard of constitutional morality. His dissent was recognised not merely as a historic legal opinion, but as an enduring institutional guide for future judges facing executive overreach.

Declaration of a 'Grave Constitutional Mistake': In Puttaswamy, the Supreme Court acknowledged that the majority decision in ADM Jabalpur was a grave constitutional mistake that compromised the fundamental freedoms of Indian citizens. The nine-judge bench observed that when the legal instruments of our purpose, specifically Part III of the Constitution and the writ jurisdiction of the judiciary, were declared suspended by the

majority in 1976, it represented a grave judicial misstep. By explicitly recognising this error, the Court restored the sanctity of constitutional remedies and ensured that the power to protect civil liberties can never be surrendered by the judiciary again.

CONCLUSION

The evolution of Indian jurisprudence proves that democratic resilience relies on principled dissent rather than judicial compliance. The majority decision in *ADM Jabalpur v Shivkant Shukla* (1976) compromised human dignity by allowing legal positivism to reduce constitutional guarantees to empty statutory text.

Justice Hans Raj Khanna's landmark dissent rejected the premise that fundamental freedoms are revocable state privileges. Grounding Article 21 in Natural Law and the Rule of Law, he sacrificed his career advancement to preserve the moral foundation of constitutional rights for future generations.

Absolute Judicial Independence: Protecting civil liberties requires judges who prioritise constitutional principles over personal career progression.

Inherent Rights: Personal liberty and human dignity pre-date the state; legislative or executive acts cannot strip citizens of judicial remedies against arbitrary power.

The Power of Dissent: Dissenting judgments act as seeds for future jurisprudence, reinforcing the court's role as a guardian of the Constitution rather than an executive arm.

Justice H.R. Khanna's commitment to liberty ensures that when state power overreaches, his reasoning remains, as recognised in *Puttaswamy*, the true voice of the Constitution.