

SC overrules Emergency-era habeas corpus verdict

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 He was superseded by Justice Beg, following which he resigned.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

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Justice Chandrachud

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