Security, Law and Order - Judiciary's Role

What is the issue?

- A judgment of the Supreme Court of India on April 28, 1976 allowed the suspension of the writ of habeas corpus during Emergency. (Habeas Corpus Case)
- The implications of the judgement now find relevance with the Kashmir issue.

What are the key rulings?

- The protective law which gives citizens security and confidence in times of tranquility has to give way to interest of the State in period of public danger of apprehension.
- Enforceability, as an attribute of a legal right, and the power of the judicial organs of the State to enforce the right, are exclusively for the State to confer or take away in the legally authorised manner.
- Personal liberty is but one of the Fundamental Rights. Therefore, the suspension of the right to enforce the right conferred by Article 21 means the suspension of the right to file a habeas corpus petition.
- It also means the suspension of any other proceeding to enforce the right to personal liberty conferred by Article 21.
- Even if a person is detained otherwise than in accordance with the law, he shall not be entitled to enforce the right of personal liberty, if Presidential order under Article 359, clause (1) specifying Article 21 is in operation.

Why is this contentious?

- Article 21 cannot be considered to be the sole repository of the right to life and personal liberty.
- The right to life and personal liberty is the most precious right of human beings in civilised societies.
- In this light, the judgement was perceived by many as an anti-constitutional and anti-people decision.
- It made deep impact on the Constitution, constitutional morality and constitutionalism.

What does this mean now for Kashmir?

- Today, there is no Emergency, yet the constitutional and basic rights of many have been suspended in Jammu and Kashmir (J&K).
- Worryingly, the Supreme Court has virtually taken away their constitutional remedy to enforce those rights.
- A writ petition challenged the imposition of restrictions in Jammu and Kashmir, following the abrogation of Article 370.
- The court merely accepted the pleas of the Attorney General on behalf of Centre.
- [It was argued that there was a need to ensure that law and order situation in Jammu and Kashmir is maintained and that it would take a few days to return to normalcy.]
- This means that the top court, the custodian of the right to life and liberty, had handed over its duty to the Central government.

What are the concerns?

- The court has treated habeas corpus petitions in a most casual manner by justifying negation of the rule of law.
- In the first instance, the state failed "to ensure normalcy" from the day it abrogated Article 370.
- It has now tried to buy more time from the top court to do so.
- The situation is such that nobody knows what exactly is happening there.
- Precisely, it is important here that the court does its duty to ascertain the true facts.
- It cannot shy away from doing justice in the name of "security" and "law and order".
- Preservation of 'security' and 'law and order' should not be at the expense of the fundamental and basic human rights.
- In the former Union Minister P. Chidambaram's case too, the petitioner seems to have been made impossible to get relief from Supreme Court.
- The top court should have actually intervened here, but failed to do so; a case when individual right had been compromised.
- Simultaneously, it failed to extend the interim protection which was operating for that period.

What does it call for?

- The judiciary needs to dispel the perception that it is no longer the pillar created to protect constitutional and legal rights.
- In any failure, its stature and status as the "bulwark of the rule of law and the democracy" will be compromised; it has to act immediately.

Source: The Hindu

