

## IMPACT OF EMERGENCY ON FUNDAMENTAL RIGHTS

By Pathik Choudhury<sup>188</sup>

*“On 26th January, 1950, India will be an independent country. What would happen to her independence? Will she maintain or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by treachery of some of her own people.*

*Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realisation of the fact that in addition to our old enemies in the form of castes and creeds, we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or above their country? I do not know, but this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost forever. This eventuality we all must resolutely guard against. We must be determined to defend our independence with the last drop of our blood!”*

- Dr. Bhim Rao Ambedkar

### INTRODUCTION

The Constitution of India guarantees fundamental rights to the citizen of India. Part III of the Constitution of India contains the fundamental rights. The rights which the constitution guarantees to the citizen of India are called fundamental because they are the basic to the development of human personality. Fundamental rights in the constitution has been borrowed from the United States of America. There are six categories of fundamental rights mentioned in the Constitution of India. These are:

- I. Right to equality (Art. 14-18)
- II. Right to freedom (Art. 19-22)
- III. Right against exploitation (Art. 23-24)
- IV. Right to freedom of religion (Art. 25-28)

---

<sup>188</sup> 2nd Year BBA LLB Student, School of Law, KIIT University

- V. Cultural and educational rights (Art. 29-30)
- VI. Right to constitutional remedies (Art. 32-35)

These fundamental rights given by the Constitution of India to the citizen of India have certain restriction and are not absolute. The fundamental rights can be suspended during emergency by the Central Government. Part XVIII of the Constitution of India talks about the emergency provisions (Art. 352-360 of the Constitution of India). There are three kinds of emergencies:

- I. National Emergency (Art. 352)
- II. State Emergency (Art. 356)
- III. Financial Emergency (Art. 360)

The President can declare emergency in a country when there is a war, external aggression or armed rebellion, failure of constitutional machinery in a state or financial emergency. During the time of emergency, the central have the right to take full legislative and executive control of any state and can also suspend the fundamental rights of the citizen.

### **NATIONAL EMERGENCY**

Art. 352 of the Constitution of India lays down that *“Proclamation of Emergency: (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.*

*Explanation- A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof”*

The President can declare emergency in a country when there is a war, external aggression or armed rebellion. During the time of emergency, the central have the right to take full legislative and executive control of any state and can also suspend the fundamental rights of the citizen. The President can declare such an emergency when he gets a written request from the Council of ministers headed by the Prime Minister. The proclamation must be approved by both the houses of the Parliament with an absolute majority of total members of the houses and there has to be 2/3<sup>rd</sup> majority of the members present and voting within one month and emergency can be imposed for six months. The emergency can be extended by six months by repeated parliamentary approval.

## **STATE EMERGENCY**

Art 356 of the Constitution of India expressly states that if, the President is satisfied by the report of the Governor of a state that the state is unable to function according to the constitution, then the President can assume to himself all or any of the powers and functions vested in the government of the state or any authority of the state except the legislature of the state. The power of the legislature of the state is given to the Parliament. The proclamation must be presented to both the houses and it must be approved by both the houses within two months to bring state emergency into force. During the time of consideration of proclamation by the houses, if the Rajya Sabha have approved the proclamation but the Lok Sabha is unable to do so due to not being in session or it being dissolved, the proclamation has to be passed within thirty days of the Lok Sabha coming into session. If the parliament approves it then the emergency can be imposed for six months. State emergency can be extended for another six months but not for one year. State emergency can be extended for 1 year on two grounds which are when there is a national emergency already in operation and when the Election Commission says that the election of the State Assembly cannot be held. The maximum period for the existence of Presidents rule in a state is three years, beyond which the time period cannot be extended by the parliament or by the President and efforts must be made to restore the constitutional machinery in the state.

## **FINANCIAL EMERGENCY**

Art 360 of the Constitution of India says that if the president is satisfied that there is a situation in India where the financial security has been threatened, he may call for a financial emergency. During financial emergency the executive and legislative powers will go in the hands of the centre. Financial emergency must be approved by the Parliament within two months. Financial emergency has never been declared in India but once a situation has arisen which could have led to financial emergency but it was avoided by putting the gold assets of the country as collateral to get foreign credits. During financial emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Court. All money bills passed by the State legislatures are submitted to the President for his approval. He can direct the state to observe certain principles relating to financial matters but fundamental rights cannot be suspended during financial emergency.

## **BACKGROUND**

In the history of independent India, there have been three times when state of emergency was declared. During the Indo-China war in the year 1962, emergency was declared as the security of India was threatened by external aggression. During the Indo-Pakistan war, emergency was declared in the year 1965 as the security of India was threatened by external aggression. The third time emergency was declared in India was between 26<sup>th</sup> June 1975 to 21<sup>st</sup> March, 1977 as the security of India was threatened by internal disturbances. In the case *State of Uttar Pradesh v. Raj Narain*<sup>189</sup>. Indira Gandhi defeated Raj Narain in the Lok Sabha election from the Rai Bareilly constituency. Raj Narain had filed a petition in the Allahabad High Court stating that Indira Gandhi have used fraudulent means to win the election. Allahabad High Court found her guilty and declared her election void and disqualified her from contesting in any election for six years. She challenged the decision of the Allahabad High Court in the Supreme Court on 24<sup>th</sup> June, 1975 where the Supreme Court Upheld the judgement of the High Court and ordered that all the privileges that she used to get as MP should be taken away but she was allowed to continue as Prime Minister. On 26<sup>th</sup> June, 1975, President Fakhruddin Ali Ahmed proclaimed an emergency under Art. 352 (1) of the Constitution of India on the advice of Prime Minister Indira Gandhi.

### **EFFECT OF EMERGENCY ON FUNDAMENTAL RIGHTS**

There are some cases when the Fundamental Rights infringes during national emergency.

In the case *Makhan Singh v. State of Punjab*<sup>190</sup> emergency was declared on an earlier occasion during Indo-China war. The persons who has been detained under the Defence of India rules had no right to move the court for the enforcement of Art 14, 21 and 22 of the Constitution of India and the right was suspended under Art 359 of the Constitution of India. The suspension was partial. The rights were suspended for legally detained person and not for the persons who have been detained illegally. It was for the first time during emergency imposed on 26<sup>th</sup> June, 1975 that Article 14, 19, 21 and 22 of the Constitution of India were suspended without any reference to any law. The Supreme Court said that a citizen would not be deprived to move the court for a writ of habeas corpus of the detention is mala fide.

In the case *Maharastra State v. Prabhakar*<sup>191</sup>, Supreme Court said that if a person's personal liberty has not been deprived under the Defence of India act, or any rule made there under, then his right to move the court will not be suspended.

---

<sup>189</sup> 1975 AIR 865

<sup>190</sup> 1964 AIR 381

<sup>191</sup> 1966 AIR 424

In the case *Ram Manohor Lohia v. State of Bihar*<sup>192</sup> the Supreme Court said that the right of a person to move a court is not suspended when he has been detained in violation of the mandatory provision of the Defence of India act. The order of the president did not form a bar to all applications for the release for the detention under the act.

In the case *Arjun Singh v. State of Rajasthan*<sup>193</sup>, the question arose whether Art. 16 of the Constitution of India is also suspended if it is not mentioned in the president's order. The High Court said that Art. 16 of the Constitution of India remained operative even though Art. 14 of the Constitution of India was suspended. The court said that enforcement of Fundamental Rights was suspended which were specifically mentioned in the Presidents order.

In the case *Ghulam Sarwar v. Union of India*<sup>194</sup> it was held that Presidents order which has been issued under Art. 359 (1) of the Constitution of India cannot be challenged as being discriminatory.

In the case *ADM Jabalpur v. Shiv Kant Shukla*<sup>195</sup>, right to move the court to enforce Art. 21 of the Constitution of India was suspended under Art. 359 of the Constitution of India during internal emergency (1975-1977). In this case the Presidents order was the one issued during emergency declaring that the right of any person to move the court for any enforcement of the right given by Art. 14, 21 and 22 of the Constitution of India and all proceeding pending in any court for the enforcement of the rights shall remain suspended for the period during the period of emergency. Supreme Court said that "*in the view of the presidential order dated June 27th, 1975 no person has any locus standi to move any writ petition under article 226 before a high court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by mala fides factual or legal or is based on extraneous considerations*". The 44<sup>th</sup> Amendment of the constitution brought several changes. Under Art. 352 of the Constitution of India, "Internal disturbance" was replaced by "armed rebellion". Art. 19 of the Constitution of India which used to get suspended by the proclamation of emergency will not get suspended if the ground of emergency is only armed rebellion and not war or external aggression. Right to life and personal liberty under Art 20 and 21 of the Constitution of India cannot be suspended during emergency. It was also said that the Cabinet must communicate the decision of proclamation of emergency in writing. The proclamation of emergency must be

---

<sup>192</sup> AIR 1966 SC 740

<sup>193</sup> AIR 1975 Raj 217

<sup>194</sup> 1967 AIR 1335

<sup>195</sup> 1976 AIR 1207

approved by the houses within one month and to continue the emergency it must be re approved by the houses every six months. The emergency can be revoked by the houses by passing a resolution by the 1/10 member of a house. The term of the Lok Sabha was reversed back from 6 years to 5 years. In the case of *M M Pathak vs Union of India*<sup>196</sup> a settlement between LIC and its employees was made to pay cash bonus to the employees. But during 1977 the LIC Act, 1976 passed by the parliament during emergency has made the settlement ineffective. The employees who could not get their cash bonuses challenged the validity of the act. The Supreme Court held that the rights guaranteed to the citizens under Art 14 to 19 of the Constitution of India are not suspended during emergency but their operation is suspended. As soon as the emergency is over, the rights can be enforced. The employees will get their bonuses when the emergency will get over and their rights can be enforced. The law which is not related to emergency can be challenged in the court during emergency.

## CONCLUSION

Fundamental rights which the constitution guarantees to the citizen of India are called fundamental because they are the basic to the development of human personality. These rights are guaranteed to the citizen of India by the Constitution and no one can encroach upon them and infringe the right of a citizen. Our legal system also provides remedies to those citizens whose fundamental rights have been violated. But only when an emergency is declared in the country, these rights can be suspended by the Central Government. These rights of the citizens can be suspended only up to the law which is related to the emergency and is mentioned in the President's order. But even during the period of emergency there are two rights which cannot be suspended are right to life and personal liberty under Art 20 and 21 of the Constitution of India. These rights can be enforced during the period of emergency by moving the court under Art. 32 of the Constitution of India. So, it is the duty of the citizens of India to protect the country from any kind of war, external aggression, armed rebellion or internal disturbances. The citizens should take initiatives for the development of the country and protect the country from every harm.

Dr. B. R. Ambedkar rightly said:-

*“Unlike a drop of water which loses its identity when it joins the ocean, man does not lose his being in the society in which he lives. Man’s life is independent. He is born not for the development of the society alone, but for the development.”*

---

<sup>196</sup> 1978 AIR 803