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CENTER-STATE RELATION AND FUNDAMENTAL RIGHTS' POSITION DURING EMERGENCY IN INDIA

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ABSTRACT

The three dangers completed activity under the capacities given in A. 352 were innately genuine. Due to the smoothly done formulated point of 'within disturbances' in the item, officeholders have existed capable to exploit and abuse the honor of their help, commission, and ownership . After the release of the danger, risk about allure genuineness and safeguards were deal with apiece Legislature and Judiciary. But the Legislature abandoned to take some conduct against the abusers on account of allure function; Judiciary keep not take some operation on account of the omission of a able court. Grounds of Proclamations have sustained corrections subsequently 1978 and have help more safeguards. Courts have reinforced their position by providing for legal invasion unspecified area likely. The Indian Constitution states, the Central Government governs the state, and President's rule denotes a delay in state management. If a state administration is unable to carry out its duties in accordance with the constitution, the central administration may take direct control of the United States of America system, as stated in Article 356 of the Indian Constitution. Every executive expert is disturbed by the head, which is repeated in the center that bears the expert's name and which determines the appointment of extra administrators to support

the ruling class. There have been 126 instances of President rule in various Indian states since the country's independence. Article 356 was probably intended to be a threat provided by the establishment's architects, but Delhi has frequently used it as a cover to prevent state governments from other governmental entities from acting, using both genuine and made-up justifications.

Keywords: Proclamation, State Emergency, Article 356, Emergency

“On 26th January, 1950, India will be an independent country. What will happen 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

Part III of the Indian Constitution provides citizens with essential rights, and these rights are deemed "fundamental" because of their fundamental influence on how a person's personality develops. United States of America ideals have shaped the way India's Constitution conceives of fundamental rights. Specifically delineated in the Constitution of India are six distinct categories that encompass these fundamental rights.

These are:

1. The entitlement to equality [Article XIV - XVIII]
2. The freedom right [Articles XIX – XXII]
3. Right to exercise religious freedom [Article XXV – XXVIII]
4. Cultural and educational rights [Article XXIX - XXX]
5. Possession of constitutional remedies [Article XXXII - XXXV]

The constitutional rights granted to the citizens of India are not absolute; rather, they are subject to specific limitations. During periods of emergency, the Central Government has the power to suspend these fundamental rights. The emergency provisions are found in Articles 352 through 360 of Part XVIII of the Indian Constitution. Three classifications of emergencies exist:

- (1). Article 352, National Emergency
- (2). Article 356 of the State Emergency
- (3). Article 360: Financial Emergency

The declaration of an emergency by the President is permissible under circumstances such as armed insurrection, war, foreign aggression, a state's constitutional apparatus breaking down, or a financial disaster. Under such circumstances, the federal government has the ability to fully take legislative and executive control over any state, in addition to the power to revoke people's fundamental rights.

In the annals of independent India, On three separate occasions, a state of emergency has been proclaimed. The first event took place between October 26, 1962, and January 10, 1968, supporting the conflict between China and India. The justification for the emergency during this period was the perceived endangerment to India's security posed by external aggression. The subsequent occurrence took place between December 3, 1971, and March 21, 1972; it was first reported during the conflict between Pakistan and India. The third declaration, spanning from 25 June 1975 to 21 March 1977, was made amid contentious political circumstances during Indira Gandhi's tenure as prime minister. It was based on the notion of "internal disturbance," eventually swapped out with the term "armed rebellion" via the 44th Amendment Act of 1978.

Constitutional Emergency Provision

India, also known as Bharat, is characterized as a distinctive federal republic. In times of emergency, it assumes a unitary nature, a unique feature highlighted by Dr. B. R Ambedkar. This distinctiveness is observed when the country transitions into a fully unitary structure during emergencies, signifying a departure from its federal framework. The constitutional mechanisms in times of emergency are explicated in

The Constitution's Part XVIII, encompassing Articles 352 to 360. An emergency can be defined as an unforeseen circumstance that necessitates immediate action by public authorities within their designated powers. It represents a situation where, with the possible exception of Articles 20 and 21, an individual's civil rights are suspended. Emergencies typically arise from a malfunction in the administrative apparatus, allowing or compelling the government to take immediate action.

“Emergency, according to the Black Law Dictionary, demands urgent intervention and imminent warning because such a circumstance poses a danger to people and liberty within the region.” The socio-economic framework grapples with the challenge of establishing equitable labor standards. The evolution of the concept of emergency has transformed it into a political phenomenon. The primary objective behind instituting specific legislative provisions for emergencies was to prevent the unintentional emergence of autocratic rule during internal disturbances, external aggression, or times of war.

Each emergency clause in the Constitution of India represents a distinct perspective. Therefore, Part XVIII reflects our constitutional ingenuity. Nations are sometimes confronted with events and forces that seriously put their inhabitants' welfare and stability under danger. Unexpected events could call for the temporary curtailment of individual liberties to address imminent threats to the nation.

Emergency situations present a considerable dilemma for democratic regimes, creating a tension between their vital responsibilities to safeguard the wellbeing of their residents and those outside of their authority and their primary duty to uphold the stability of the government. The state is compelled to make difficult choices involving conflicting sacrifices. This explains why several national

constitutions have emergency clauses that permit the suspension of some guaranteed constitutional rights.

The Indian Constitution includes unique emergency provisions that grant the Central Government broad powers to address particular situations. In an emergency, the Center gains the authority to assume complete control over any state, including the ability to suspend the rights of citizens through the emergency clause. . Scholars often refrain from categorizing the Constitution of India as entirely democratic because emergency clauses are included.

NATIONAL EMERGENCY

Art 352 of the Constitution 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 a imminent danger thereof”

During an armed uprising, war, or external aggression, The power to declare a state of emergency rests with the head of state. When there's an emergency, In

order to suspend individuals' fundamental rights, the federal government has the authority to seize control of any state's legislative and executive branches. When the formal request from the Council of Ministers, chaired by the Prime Minister, reaches the President, he is authorized to proclaim such an emergency. Emergency measures can be enforced for a duration of six months, but within a month, the declaration needs to be approved by both chambers of Parliament, with a vote of every member present and eligible to vote. If the legislature repeatedly approves, the state of emergency can be prolonged by six months.

STATE EMERGENCY

The Indian Constitution, Article 356 confers authority on the President to if the Governor notifies the President that the state is unable to carry out its constitutional obligations, take over any or all of the authorities and duties bestowed upon the state government or any state authority, excluding the legislature. The Parliament is granted the authority to act as the state legislature. In order to declare an emergency, the proclamation must be brought before both chambers and approved by them both within a two-month period. The Lok Sabha must approve the proclamation within thirty days , reconvening if the Rajya Sabha has approved it during the period when the chambers are considering it but the Lok Sabha is unable to act because it is not in session or has been dissolved. If the parliament approves, the emergency may last for six months. The duration of a state of emergency may be increased by six months, but not by a year. Two situations allow for a one-year extension of a state of emergency: when a national

emergency is declared already, or when the Election Commission says that holding the State Assembly election is not possible. A state's president may only reign for a maximum of three years; beyond that, neither the president nor the legislature may continue to govern the state; in the meantime, attempts must be undertaken to rebuild its constitutional institutions.

The distinction between Article 356 and Article 352

S.N.	National Emergency (352)	President's Rule (356)
1.	It can only be proclaimed if there is a threat of invasion, foreign meddling, or military uprising against India or a portion of it.	It may be argued that the administration of a State cannot function in accordance with the requirements of the Constitution due to circumstances that may not be related to any war, foreign assault, or armed uprising.
2.	Both the State Executive and the Legislature keep up their actions and legislative duties. In the province, the Center also has concurrent legislative and regulatory authority.	The State assembly would then be dissolved or disbanded while it was in session, and the State Governor would be ousted. The president is in charge, and the legislature drafts laws that are used by the executive branch. To put it briefly, the Center takes over the Administration's legislative and administrative

		responsibilities.
3.	On the subjects listed in the State List, Parliament may only pass laws independently; that is, it may not delegate the same authority to any other body or body.	The President and any other authority it designates may be given the authority to enact laws on behalf of the Government by the Parliament. As of right now, the President's process involves working with state legislators to draft legislation for the state.
4.	It is advised to use it for an unlimited amount of time. Once it is accepted, the House will continue every six months.	It is advised to give it three years of service. After that, it needs to be completed and the State's regular constitutional procedure put back in place.
5.	Transitioning to the agreement between the Core and all the Nations is made possible by this.	Only how the emergency situation interacts with both the Center will be altered by this.

6.	People's basic human rights are impacted (FR).	The rights guaranteed by the constitution are unaffected by this.
7.	Any plan approved by Parliament to declare or extend the declaration must have a special majority.	A single majority cannot approve any Parliament resolution that upholds or approves the proclamation.
8.	The Lok Sabha may approve a resolution to repeal it.	There is no such clause in force. Only at its own discretion will the President move it.

FINANCIAL EMERGENCY

The Indian Constitution's Article 360 gives the president the authority to declare a financial emergency if they are convinced that there is a threat to India's financial stability. In the event of a financial crisis, the center will house the legislative and executive departments of government. A financial emergency requires permission from the Parliament within two months. In India, there has never been a financial emergency declared, although there has been a circumstance where one may have occurred, but it was averted by using the nation's gold assets as security while obtaining international credit. The President has the power to lower the pay of all public employees, including Supreme Court and High Court judges, in times of financial emergency. All money legislation approved by state legislatures need to be approved by the president. While he can order the state to follow specific budgetary guidelines, he cannot suspend fundamental rights in the event of a

financial emergency.

EMERGENCY PROVISIONS AND ITS LEGAL ASPECTS

The provisions for emergencies are listed in Part 3 of the Constitution, Articles 352–360. An alternate interpretation of this clause would be as a part of India's quasi-federal structure. The Constitution supports the goals and ideals of a strong center and has numerous provisions with a unitary bent, while having a federal structure. The State functions as a powerful central authority and suspends all federal functions during an emergency. All administrative decisions, including maintaining peace and order, are under the purview of the central government. India's bicameral federal structure is diminished under emergency situations. The ability to change the federal structure into a unitary one is a characteristic unique to the Indian Constitution. The nation's sovereignty, unity, integrity, and security, as well as the democratic political system and the Constitution, should all be safeguarded by putting the emergency measures into place and using them.

1. The central government can successfully handle any unusual scenario thanks to these laws. Dr. B.R. Ambedkar noted at the Constituent Assembly that "all federal systems, including American federalism, are placed in a tight mould of federalism" in reference to emergency provisions. It is unable to alter its shape or form under any conditions. It's not going to be unitary. Conversely, the Indian Constitution can be both federal and unitary depending on the needs of the moment and the situation. It is designed to function as a federal system during regular times.. However, it is also made

to function as if it were a unified system during emergencies.

2. Articles 352, 356, and 360 of the Constitution specify three categories of emergencies that the State may proclaim.

Article 352: an emergency brought on by armed insurrection, external aggression, or war. Another name for this is a national emergency. In this context, the phrase "proclamation of emergency" is employed.

Article 365: State emergencies, also referred to as constitutional emergencies or the President's rule, are triggered when a state's constitutional machinery malfunctions; nevertheless, the term emergency is not utilized in this context.

Article 360: A financial emergency occurs when India's credit or stability is at jeopardy. The State has never before proclaimed this kind of emergency

IMPACT DURING A NATIONAL EMERGENCY ON CENTER-STATE RELATIONS:

When a national emergency is declared, the federal structure of the state is altered to become a single entity. The most obvious areas affected by the emergency are the state's legislative, executive, and financial departments.

While the Center can normally offer executive directives to a state on just a limited number of specified matters, under the Executive paradigm, the Center is able to direct states on any matter. The Center maintains power over the state governments; they are not suspended. While state legislatures continue to have the authority to enact laws, the Parliament has the authority to supersede state

legislatures in this area by establishing laws on the State List. The President may alter the states' and the federal government's constitutional revenue sharing arrangements in times of financial emergency. This kind of adjustment persists until the conclusion of the fiscal year in which the emergency is declared over.

Background

There have been three declarations of state of emergency in India's independent history. In 1962, amid the Indo-China War, a state of emergency was proclaimed in reaction to a security danger posed by outside sources to India. In 1965, amid the Indo-Pakistan conflict, a state of emergency was declared in response to an external threat to India's security. India proclaimed a state of emergency for the third time from June 26, 1975, and March 21, 1977, due to internal disturbances that threatened the country's security. In the matter of *State of Uttar Pradesh v. Raj Narain*¹. After beating Raj Narain in the Rai Bareilly constituency, Indira Gandhi won the Lok Sabha election. In an Allahabad High Court appeal, Raj Narain claimed that Indira Gandhi had manipulated the results of the election to her advantage. The Allahabad High Court found Indira Gandhi guilty, declared her election invalid, and imposed a six-year prohibition on her candidacy for public office. On June 24, 1975, Indira Gandhi challenged the decision of the Allahabad High Court in the Supreme Court. The Supreme Court affirmed the High Court's judgment, resulting in the loss of all her Member of Parliament privileges. She was permitted to carry on acting as prime minister, though. On Prime Minister Indira Gandhi's recommendation, President Fakhruddin Ali

¹ *State of U.P. v Raj Narain & Ors* [1975] 3 SCR 333, [1975] AIR 865

Ahmed declared an emergency on June 26, 1975, in accordance with Article 352 (1) of the Indian Constitution.

EFFECT OF EMERGENCY ON FUNDAMENTAL RIGHTS

Sometimes someone's fundamental rights are violated by a state of national emergency.

In the instance of *Makhan Singh v. State of Punjab*² Previously, during the Indo-Chinese War, a state of emergency was established. If someone was held under Defence of India laws, The individuals were deprived of the ability to seek the execution of Articles 14, 21, and 22 from the court of the Indian Constitution, and Article 359 of the Indian Constitution further suspended this entitlement. There was a partial suspension. Those who were detained legally were the ones whose rights were suspended, not those who were imprisoned illegally. During the emergency declared on June 26, 1975, Articles 14, 19, 21, and 22 of the Indian Constitution were suspended for the first time, without naming any law. According to a Supreme Court decision, a person has the right to petition the court for a writ of habeas corpus if their imprisonment is unlawful.

- In the matter of *Maharashtra State v. Prabhakar*³, According to S.C., If the Defence of India Act or any of its regulations have not impinged upon an individual's personal freedom, then that individual's capacity to file a court petition will not be suspended.

² *Makhan Singh v State of Punjab* [1964] 4 SCR 797, [1964] AIR 381

³ *State of Maharashtra v Prabhakar Pandurang Sangzgiri* [1966] 1 SCR 702, [1966] AIR 424

- Regarding the case ***Ram Manohor Lohia v. State of Bihar***⁴As stated by the Supreme Court, a person's ability to petition a court is unaffected even if they have been held in contravention of the Defense of India Act's required requirement. All applications for the release of detainees under the statute are not barred by the president's decree.
- In the matter of State of ***Rajasthan v. Arjun Singh***⁵, Since the president's decree makes no mention of Art. 16 of the Indian Constitution, it was questioned if it was likewise suspended. The High Court held that although Art. 14 of the Indian Constitution was suspended, Art. 16 of the Indian Constitution continued to be in effect. The President's decree expressly indicated the suspension of the enforcement of Fundamental Rights, the court said.
- In the matter of ***Ghulam Sarwar v. Union of India***⁶, it was decided that it was impossible to argue that a presidential order made in accordance with Art. 359 (1) of the Indian Constitution was discriminatory.
- In ***ADM Jabalpur v. Shiv Kant Shukla***⁷, during the internal emergency (1975–1977), Article 359 of the Indian Constitution suspended the petitioner's ability to ask the court to implement Article 21. In this case, the President's emergency order said that everyone's right to file a court petition to have their rights under Articles 14, 21, and 22 of the Indian Constitution enforced will be suspended. as would any ongoing legal proceedings

⁴ ***Dr. Ram Manohar Lohia v State of Bihar*** [1966] 1 SCR 709, [1966] AIR 740

⁵ ***Arjun Singh v The State of Rajasthan and Others*** (1975) 7 RAJ CK 12

⁶ ***Ghulam Sarwar v Union Of India & Ors*** [1967] 2 SCR 271; [1967] AIR SC 1335

⁷ ***ADM Jabalpur v Shivkant Shukla*** [1976] 2 SCC 521; [1976] AIR SC 1207

pertaining to the enforcement of those rights. 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 validated by mala fide factual or legal or is based on extraneous consideration*”

- A number of amendments were made to the constitution with the 44th Amendment. "Armed rebellion" has taken the place of "internal disturbance" in accordance with Indian Constitution Article 352. Article 19 of the Indian Constitution, which was suspended upon the proclamation of an emergency, will not be suspended if the emergency is based only on an armed uprising rather than a war or external assault. Articles 20 and 21 of the Indian Constitution prohibit the suspension of a person's right to life and personal liberty in times of emergency. Additionally, it was stated that the decision to declare an emergency must be communicated in writing by the Cabinet. To maintain the emergency, the houses must reaffirm the proclamation of emergency within a month and again every six months. The houses may revoke the emergency by passing a resolution with the support of one out of every ten members. The Lok Sabha's six-year term was changed back to five years.
- In the matter of **M. M. Pathak v. Union of India**⁸, LIC and its employees came to an agreement. whereby the workers received monetary bonuses.

⁸ **M. M. Pathak v Union of India** [1978] AC 803, [1978] 3 SCR 334

However, the settlement became ineffectual in 1977 when the LIC Act, 1976 was approved by the parliament under a state of emergency. The workers who were denied their monetary incentives contested the law's legality. The Supreme Court held that although Indian citizens' rights under Articles 14 through 19 of the Constitution are suspended in an emergency, those rights nevertheless remain in effect. The rights can be upheld as soon as the emergency ends. When the emergency ends and the employees' rights can be upheld, they will receive their bonuses. During an emergency, a legal matter unrelated to the situation can be contested in court.

CONCLUSION

The fundamental rights that every Indian citizen is entitled to under the constitution are so named because they are essential to the formation of the human personality. The Indian citizen is entitled to these rights under the Constitution, and no one can violate these rights by intruding upon them. In addition, our legal system offers remedies to those who have had their fundamental rights violated. However, the Central Government may only suspend these rights in the event that a national emergency is declared. Only the laws pertaining to emergencies and those specified in the President's decree may suspend these individuals' rights. Nonetheless, life and personal liberty are inalienable rights as stated in Articles 20 and 21 of the Indian Constitution., even under a state of emergency During the emergency, In accordance with Article 32 of the Indian Constitution, these rights may be defended through judicial action. Therefore, it is the responsibility of the people of India to defend their nation

against all forms of conflict, outside attack, armed insurrection, and internal unrest. The populace should take the initiative to further national development and defend it against all threats.

As Dr. B. R. Ambedkar correctly stated:-

“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.”