



Impact of emergency powers on fundamental rights

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Abstract: *Emergency powers are constitutional provisions that grant extraordinary powers to the government during times of crisis or emergency. These powers are designed to allow governments to act swiftly and decisively in the face of a crisis. However, the use of emergency powers can also pose a significant threat to fundamental rights and democracy. This paper examines the impact of emergency powers on fundamental rights and democracy in India. The paper analyzes the historical context of emergency powers in India, the legal framework for emergency powers, and the impact of emergency powers on fundamental rights and democracy in India.*

Key Words: *Fundamental Rights, Emergency Provisions, Constitution, President.*

1. INTRODUCTION:

India is the world's largest democracy, with a population of over 1.3 billion people. The country has a long history of emergency powers, with the first emergency being declared in 1962. Since then, India has faced several emergencies, including the 1975 Emergency, which is considered one of the darkest periods in India's democratic history. During the 1975 Emergency, the government suspended fundamental rights and freedoms, and several political leaders and activists were arrested and imprisoned. The use of emergency powers during the 1975 Emergency has had a lasting impact on India's democracy, and it is crucial to examine the impact of emergency powers on fundamental rights and democracy in India. To examine the historical context of emergency powers and their use in suppressing fundamental rights in different countries.

2. METHOD:

This research paper uses a qualitative research methodology, which involves an analysis of the relevant constitutional provisions and case laws. The research is based on a review of secondary sources such as books, articles, and reports. The research also includes a critical analysis of the historical and political context in which the emergency provisions were included in the Constitution of India.

3. OBJECTIVE:

- To analyze the legal framework for emergency powers and its impact on fundamental rights and freedoms.
- To investigate the effects of emergency powers on the protection of fundamental rights and democracy, including the impact on civil liberties, human rights, and the rule of law.
- To evaluate the role of the judiciary in protecting fundamental rights during times of emergency and its impact on democratic governance.
- To assess the effectiveness of constitutional safeguards and human rights institutions in protecting fundamental rights during emergencies.
- To study the experiences of different countries in balancing the need for emergency powers with the protection of fundamental rights.
- To provide policy recommendations for ensuring that emergency powers are not abused and that fundamental rights are protected during emergencies.
- To contribute to the debate on the trade-off between emergency powers and fundamental rights, and how democratic governance can be maintained in times of crisis.



4. HISTORICAL CONTEXT OF EMERGENCY POWERS IN INDIA:

Emergency powers in India are rooted in the colonial era, where the British colonial government used emergency powers to suppress dissent and maintain control. After gaining independence in 1947, India inherited a legal framework that allowed the government to exercise emergency powers. The first emergency was declared in 1962, during the Sino-Indian War. The emergency powers were used to censor the press and restrict freedom of speech and expression. In 1971, the government again used emergency powers during the Bangladesh Liberation War. However, it was during the 1975 Emergency that emergency powers were used extensively to suppress dissent and maintain control.

IMPACT OF EMERGENCY POWERS ON FUNDAMENTAL RIGHTS:

The use of emergency powers can have a significant impact on fundamental rights. During the 1975 Emergency in India, the government suspended fundamental rights and freedoms, including the right to life and personal liberty. The government also censored the press and restricted freedom of speech and expression. Several political leaders and activists were arrested and imprisoned, and the courts were weakened. In the United States, the use of emergency powers after the September 11 attacks led to the erosion of civil liberties. The Patriot Act, passed in response to the attacks, expanded the government's powers to surveil and detain individuals suspected of terrorism. The use of emergency powers has also been used to justify the use of torture and other forms of inhumane treatment. In Turkey, emergency powers have been used extensively to suppress political dissent and restrict civil liberties. After the failed coup in 2016, the government declared a state of emergency, which allowed it to restrict freedom of speech and assembly, and to detain thousands of individuals without due process.

LEGAL FRAMEWORK FOR EMERGENCY POWERS:

The Indian Constitution provides for three types of emergency:

1. **National Emergency:** Article 352 of the Constitution provides for the declaration of a national emergency in case of war or external aggression or armed rebellion.
2. **State Emergency:** Article 356 of the Constitution provides for the declaration of a state emergency in case of failure of the constitutional machinery in a state.
3. **Financial Emergency:** Article 360 of the Constitution provides for the declaration of a financial emergency in case of a threat to the financial stability of the country.

During a national emergency, the central government has the power to suspend fundamental rights and freedoms, including the right to life and personal liberty. The government can also censor the press and restrict freedom of speech and expression. The Constitution also provides for judicial review of emergency powers.

IMPACT OF EMERGENCY POWERS ON FUNDAMENTAL RIGHTS AND DEMOCRACY IN INDIA:

The use of emergency powers has had a significant impact on fundamental rights and democracy in India. During the 1975 Emergency, the government suspended fundamental rights and freedoms, including the right to life and personal liberty. The government also censored the press and restricted freedom of speech and expression. Several political leaders and activists were arrested and imprisoned, and the courts were weakened. The use of emergency powers during the 1975 Emergency had a lasting impact on India's democracy. The people of India realized the importance of protecting their fundamental rights and freedoms, and the government's abuse of emergency powers led to the strengthening of the democratic institutions in India. The Constitution was amended to restrict the government's power to declare a national emergency. The judiciary was also strengthened to protect the fundamental rights and freedoms of the people. However, the abuse of emergency powers has continued in India. In 2015, the government declared a state of emergency in the state of Arunachal Pradesh, which was later found to be unconstitutional by the courts. The government has also used emergency powers to suppress

FUNDAMENTAL RIGHTS:

Fundamental rights are enshrined in Part III of the Constitution of India, which guarantees certain basic rights and freedoms to all citizens of India. The following are the fundamental rights under the Constitution of India

Right to Equality (Articles 14-18):

- a. Article 14: Equality before law
- b. Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth
- c. Article 16: Equality of opportunity in matters of public employment
- d. Article 17: Abolition of untouchability
- e. Article 18: Abolition of titles, except military and academic distinctions

**Right to Freedom (Articles 19-22):**

- a. Article 19: Protection of certain rights regarding freedom of speech, expression, assembly, association, and movement
- b. Article 20: Protection in respect of conviction for offences
- c. Article 21: Protection of life and personal liberty
- d. Article 21A: Right to education
- e. Article 22: Protection against arrest and detention in certain cases

Right against Exploitation (Articles 23-24):

- a. Article 23: Prohibition of traffic in human beings and forced labor
- b. Article 24: Prohibition of employment of children in factories, etc.

Right to Freedom of Religion (Articles 25-28):

- a. Article 25: Freedom of conscience and free profession, practice, and propagation of religion
- b. Article 26: Freedom to manage religious affairs
- c. Article 27: Freedom from taxation for promotion of any particular religion
- d. Article 28: Freedom from attendance at religious instruction or religious worship in certain educational institutions

Cultural and Educational Rights (Articles 29-30):

- a. Article 29: Protection of interests of minorities
- b. Article 30: Right of minorities to establish and administer educational institutions

Right to Constitutional Remedies (Article 32):

- a. Article 32: Remedies for enforcement of fundamental rights including writs of habeas corpus, mandamus, prohibition, certiorari, and quo warranto

It is important to note that these fundamental rights are not absolute and may be subject to reasonable restrictions in the interest of public order, morality, or national security. Additionally, certain rights are available only to citizens of India, while others are available to both citizens and non-citizens.

LAWS DURING EMERGENCY IN INDIA:

During an emergency in India, the government has the power to make laws and take actions that would normally be unconstitutional. The laws that govern emergency powers in India are outlined in the Constitution and other relevant laws. Under the Indian Constitution, emergency powers are provided for under Articles 352, 356, and 360. During a national emergency, the central government has the power to make laws on any subject, including those under the State List and Concurrent List, which are normally within the jurisdiction of the states. The government can also suspend fundamental rights, including the right to life and personal liberty, freedom of speech and expression, and the right to assemble peacefully. In addition to the Constitution, the government can also use other laws to enforce emergency measures. For example, the Armed Forces (Special Powers) Act, 1958 gives the armed forces special powers to maintain public order during an emergency. The Unlawful Activities (Prevention) Act, 1967, empowers the government to ban organizations and individuals who are deemed a threat to national security. The Emergency Provisions Act, 1971, provides for the implementation of emergency measures during a national emergency. The Act allows the central government to take steps to maintain public order and essential services during an emergency. The government can also control the distribution of essential commodities, regulate the price of goods, and impose restrictions on movement and assembly. The Constitution also provides for judicial review of emergency measures. The Supreme Court of India has the power to review the government's decisions during an emergency and determine whether they are constitutional. During the 1975 Emergency, the Supreme Court played a crucial role in upholding the constitutional rights of the people and limiting the government's abuse of emergency powers. It is important to note that emergency measures should only be used in exceptional circumstances and should be strictly proportionate to the nature of the emergency. Any abuse of emergency powers can have a lasting impact on fundamental rights and democracy in India.

POWERS OF PRESIDENT DURING EMERGENCY:

During an emergency in India, the President of India has certain powers as per the Constitution. These powers are outlined in Part XVIII of the Constitution, which deals with Emergency Provisions.

Under Article 352, if the President is satisfied that a grave emergency exists in which the security of India or any part of its territory is threatened, whether by war, external aggression or armed rebellion, they can declare a national emergency. During a national emergency, the President has the power to suspend fundamental rights guaranteed by



Articles 14, 19, and 21 of the Constitution. The President can also make laws that are not within the jurisdiction of the Union Parliament under normal circumstances.

Under Article 356, if the President is satisfied that the constitutional machinery in a state has failed, they can declare a state of emergency in the state. During a state of emergency, the President has the power to suspend the state government and appoint an administrator to govern the state. The President can also make laws on any matter within the state list of the Constitution.

Under Article 360, if the President is satisfied that the financial stability or credit of India is threatened, they can declare a financial emergency. During a financial emergency, the President has the power to direct the states to observe certain financial principles and priorities. The President can also make laws on matters relating to the distribution of financial resources between the Union and the states.

It is important to note that the President does not have absolute power during an emergency. The Constitution provides for judicial review of emergency provisions. Any citizen can approach the courts to challenge the validity of emergency provisions, and the courts have the power to strike down any provisions that are unconstitutional.

5. LANDMARK CASES:

- Here are a few important case laws related to emergency under the Constitution of India:
- *ADM Jabalpur v. Shivakant Shukla* (1976): Also known as the Habeas Corpus case, this is one of the most significant cases related to the Emergency declared in 1975. The case challenged the detention of individuals under the Maintenance of Internal Security Act (MISA) during the Emergency. The Supreme Court held that during an Emergency, the right to life and liberty can be suspended and that the courts have no power to question the government's decisions to detain individuals.
- *Minerva Mills Ltd. v. Union of India* (1980): This case dealt with the constitutional validity of the 42nd Amendment Act, which had given wide powers to the government during an Emergency. The Supreme Court held that the Constitution had a basic structure, which could not be altered by Parliament. The court also held that fundamental rights were a part of the basic structure of the Constitution, and they could not be suspended during an Emergency.
- *Ramesh Thappar v. State of Madras* (1950): This case, which predates the Emergency, is an important one related to the freedom of speech and expression. The case challenged the Madras government's decision to ban a magazine called *Cross Roads*, which was critical of the government. The Supreme Court held that the freedom of speech and expression was a fundamental right and that the government could not impose restrictions on it unless they fell under the reasonable restrictions mentioned in Article 19(2) of the Constitution.
- *Keshavananda Bharati v. State of Kerala* (1973): This is another landmark case related to the basic structure of the Constitution. The case challenged the Kerala government's decision to take over the management of a temple. The Supreme Court held that the Constitution had a basic structure, which could not be altered by Parliament, and that fundamental rights were a part of the basic structure of the Constitution. The court also held that the government's power to amend the Constitution was not unlimited, and that it could not alter the basic structure of the Constitution.

These cases highlight the importance of fundamental rights and the limits of the government's power during an Emergency. They also emphasize the role of the judiciary in protecting the Constitution and the fundamental rights of citizens.

IMPLEMENTATION OF LAWS DURING EMERGENCY UNDER CONSTITUTION OF INDIA:

During an emergency in India, the government has the power to make laws and take actions that may be necessary to address the crisis or emergency situation. However, these actions and laws must be taken in accordance with the provisions of the Indian Constitution. Under Article 352 of the Constitution, which provides for the declaration of a national emergency, the central government can make laws on any subject, including subjects that are under the jurisdiction of the state governments. These laws can override any conflicting state laws. However, any laws made during an emergency must be in line with the fundamental rights guaranteed by the Constitution. The Constitution provides for the suspension of fundamental rights during a national emergency, but such suspension must be limited to only those rights that are necessary to address the emergency situation. The Constitution also provides for judicial review of emergency laws and actions taken by the government during an emergency. The courts can review the validity of emergency laws and actions, and strike them down if they are found to be in violation of the Constitution. It is important to note that emergency powers are to be used sparingly and only when necessary to address an actual emergency. The government must be mindful of the impact of emergency laws and actions on fundamental rights and democratic



institutions. Any abuse of emergency powers can have long-lasting negative consequences for the country and its citizens

RIGHTS OF CITIZENS DURING EMERGENCY:

During a national emergency in India, the fundamental rights of citizens can be suspended or restricted by the government under certain circumstances. However, some rights remain non-suspendable even during an emergency. These include:

Right to life and personal liberty (Article 21): This right cannot be suspended under any circumstances, even during a national emergency.

Right to protection against arrest and detention in certain cases (Article 22): This right cannot be suspended except in certain cases, such as preventive detention.

Right to approach the Supreme Court for enforcement of fundamental rights (Article 32): This right cannot be suspended under any circumstances, even during a national emergency.

Right to freedom of religion (Article 25): This right cannot be suspended even during a national emergency.

Right against exploitation (Article 23): This right cannot be suspended even during a national emergency.

Right to freedom of speech and expression (Article 19): This right can be suspended or restricted during a national emergency.

Right to assemble peacefully and without arms (Article 19): This right can be suspended or restricted during a national emergency.

Right to move freely throughout the country (Article 19): This right can be suspended or restricted during a national emergency.

Right to practice any profession or carry on any occupation, trade, or business (Article 19): This right can be suspended or restricted during a national emergency.

During a national emergency, the government can impose reasonable restrictions on the above-mentioned rights, provided they are in the interest of the sovereignty, integrity, and security of India. However, the government cannot make any law that takes away or abridges the fundamental rights permanently. The restrictions imposed during an emergency must be temporary and must cease to have effect once the emergency is over.

6. PRESIDENT RULE:

Under the Constitution of India, President's rule is the suspension of state government and imposition of direct federal government rule in a state. Article 356 of the Constitution grants the President of India the power to impose President's rule in a state on the recommendation of the Governor of that state or on his own discretion if he deems it necessary.

The conditions under which President's rule can be imposed include:

1. If the President is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.
2. If the state government fails to comply with, or give effect to, any direction from the Union government.
3. If the state legislative assembly fails to meet for a period of six months.

Once President's rule is imposed, the Governor of the state is replaced by an Administrator appointed by the President. The state legislative assembly is either dissolved or suspended, and the state government is run by the President through the Administrator. The duration of President's rule in a state is limited to a maximum of six months, but it can be extended with the approval of both houses of the Indian Parliament. President's rule is considered an extreme measure and is used only in exceptional circumstances when all other alternatives have failed. Its primary objective is to maintain law and order and ensure the smooth functioning of the state's government machinery.

7. FINDINGS:

The findings of this research paper highlight the significant impact of emergency powers on fundamental rights in India. The use of emergency powers has been a recurring issue in India since its independence, with emergency being declared on multiple occasions. While emergency powers are intended to be used in exceptional circumstances to preserve the security and integrity of the nation, their abuse has led to the suspension of fundamental rights and freedoms of citizens.

8. CONCLUSION:

Today, the importance of tourism in the world is increasing in many ways. Humans travel for many reasons, such as religious tourism, economic tourism, business tourism, medical tourism, nature tourism, adventure tourism,



heritage tourism, etc. This means that when a person travels to a place, the local people get income and employment in various ways. Therefore, the tourism industry plays an important role in the economic development of the state. Therefore, the state of Gujarat has also allocated a lot of budget for the development of its tourism sectors. The state has taken the help of various advertisements to attract tourists from the nation and the world. So we can see that the state has set its Capital Expenditure at 1450.45 crores in the year 2022 which shows an increase of 40%. Thus, the state has increased its total expenditure on the tourism sector.

LIST OF CASES:

Additional District Magistrate, Jabalpur v. Shivkant Shukla (1976)
 Minerva Mills Ltd. v. Union of India (1980)
 Ramesh Thappar v. State of Madras (1950)
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