FUNDAMENTAL RIGHTS QUARANTINED: AN ANALYSIS OF DESPERATE TIMES AND THE CALL FOR DESPERATE MEASURES

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"The law is a jealous mistress and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage."

-Justice Joseph Story

WE, THE PEOPLE OF INDIA indeed had to wait through days, months and years to fetch this lavish homage of Fundamental Rights. Fundamental rights emerged out of the American Revolution where on 1787 George Washington the first president of America signed the bill of rights and thus gave the world a blue print to cater the fundamental needs of an individual. The very idea of liberty which is an integral part of fundamental rights were first propounded and proposed by Montesquieu in his book “the spirit of law” which acted as a catalyst in French revolution. Thus walking down the course of history came the doctrine of liberty, equality and fraternity. Keeping abreast to the idea of its profound importance this doctrine was inculcated in our constitution by the constitution makers. Rigorous efforts of Nani Palkhivala, a court room genius brought to light through various precedents rulings and over rulings and through a long process of waxing and waning of the Fundamental Rights which were then iron jacketed as the basic structure of our constitution which is evidentiary in Kesavananda Bharati case.

Drafted under Ambedkar, shepherded by Patel, explained by Nehru and directed by Rajendra Prasad, the Indian Constitution upholds the noblest of goals. One such thought was that of the consideration key rights.

The Part III of Constitution of India visualizes Fundamental Rights that are ensured to the natives of our nation. The ambit of these rights is implausible, however not boundless. The

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Constitution at the same time perceives the requirement for limitation on the Fundamental Rights. Force has been given on the lawmaking body to force sensible confinement of these rights. The limitation must be simply, reasonable and must clear a path for public interest.

Fundamental rights are those inviolable and natural rights which have been provided under part III of the constitution. Article 32 and 226 give the Supreme Court and High Courts respectively, the power to grant most effective remedies whenever such rights appear to be or are violated. These courts have been given the power of issuing writs of habeas corpus, mandamus, prohibition, quo-warranto and certiorari.

Fundamental rights are guaranteed in part III of the constitution, but there are some exception to fundamental rights.

EXCEPTIONS

Article 33

"Article 33 of the constitution constitutes an exception to the fundamental rights.

Parliament is endowed with power to restrict or abrogate the fundamental rights of a few categories of government servants. Power of Parliament to modify the rights conferred by this Part in their application etc. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to-

(a) The members of the armed force.
(b) The member of the force changed with the maintenance of public order.
(c) Person employed in any bureau or other organization established by the state for purpose of intelligence or counter intelligence
(d) Person employed in, or in connection with the telecommunication systems set up for the purpose of any force, bureau or organization referred to in clause (a) (b) and (c) be restricted or abrogated so as to ensure the proper discharge of duties and the maintenance of discipline among them.

This article does not abrogate any fundamental rights by itself, but its applicability depends upon parliamentary legislation. Parliament has the power to abrogate or restrict fundamental rights by

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help of article 33 which is guaranteed under part III of the constitution in their application to the members of the armed force."[3]

Therefore, if any provision of the act brought under article 33 which restricts or abrogate any right which is conferred by the constitution guaranteed under part III, it cannot be challenged on the ground that it is violating fundamental rights which are guaranteed under part III. Restriction or abrogation of any right which is guaranteed in part III is dependent on parliamentary legislation and a law passed only under article 33 can override article 21(Protection of life and personal liberty) and article 22(Protection against arrest and detention in certain cases).

A law governing the armed forces enacted by the parliament cannot be challenged on the ground that it infringes any fundamental right. As the power is conferred on the parliament by virtue of article 33 to make laws which can restrict or abrogate any right of the members of few services given in article 33, state legislation has no power as the law governing forces which are in charge with the maintenance of public order and maintenance of law and order is a state subject. State law cannot abrogate or restrict a fundamental right of a member of such force, this can only be done by parliament under article 33. Parliament if entitled to lay down to what extent fundamental rights can be modified by state legislation applicable to the forces charged with the maintenance of public order.

The parliament for restricting certain fundamental rights of the member of the police force, functioning which are listed in the schedule to the act, has enacted the public forces (restriction of rights) act, 1966. Member of police force is prohibited from being a member of any labor union, trade union, political association or any other organization, without the consent of the central government or the prescribed authority. They cannot communicate with press or publish any book, letter or any other document except where it is being published in the bona fide discharge of his duties, or communication is of literary, artistic or scientific character or any other nature prescribed because if he communicates or publish that book or letter than it might lead to contempt in the state or may affect the public order or may invite external aggression or any intelligence information may be leaked out which is sensitive and can cause damage to public order or be a threat to nations security. Member of police force cannot participate in any

[3]The Constitution of India, art 33.

meeting or demonstration organized for any political purpose or any other purpose which is prohibited by the rules made under public forces (restriction of rights) Act. If a member breaches these provisions then he can be punished, as breach of these provisions is punishable with imprisonment and fine.

The Act and the rules made thereunder are protected by Art. 33. The ban placed on a member of a police force from becoming a member of any trade union or labor union has been upheld by the Supreme Court.[4]Parliament has the power to abrogate or restrict the fundamental rights of the forces which are responsible for maintaining public order which includes armed forces and police force. The rules made which are deriving its power from article 33 cannot be challenged.

The army act derives its power from article 33 to restrict or abrogate rights of the member of the force. But members of army does not mean solely the member taking part in maintaining integrity or public order but those member also which are there to help the members maintaining the order which includes tailors, cooks, sweepers, carpenters.

Intelligence agencies are also an integrated part of the members responsible for maintaining order, so parliament taking this in consideration enacted the intelligence organizations (restriction of rights) Act,1985. Which restrict or abrogate certain rights of the members of certain central intelligence agencies. This has been done to bring to equilibrium and curb the tendency of indiscipline between intelligence bureau and RAW (research and analysis wing).this act prohibits the agents of these agency in participating in trade union activities or associating with political organizations or communicating with press as they might leak out sensitive information which can disturb the public order or give invitation to external threat. To tackle this situation these actions or behavior are made cognizable criminal offences so as to maintain order.

Parliament may impose restriction on fundamental rights under article 33 on certain categories of public servants, government servants but their right are generally not restricted but in certain conditions which may be necessary to maintain order. A government servant does not lose his fundamental rights just by accepting the government service. Though, some restrictions may be imposed on them by service rules for proper discharge of duty and maintain order and discipline between them. "Joining government service has, implicit in it, if not explicitly so laid down, the

[4]Delhi police non-gazetted Karamchari Singh v. Union of India, AIR 379, (1987).

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observance of a certain code of conduct necessary for the proper discharge of functions as a government servant". But the Supreme Court has also insisted that there is need to have "a proper balancing of interests of an individual as a citizen and the right of the State to frame a code of conduct for its employees in the interest of proper functioning of the State."[5]

Fundamental rights are guaranteed in part III of the constitution, but there is an exception to fundamental rights which is provided in article 33. It says that the provision relating to fundamental rights, which are otherwise applicable to all persons, may be restricted or abrogated by parliamentary in their application to members of the armed force in view of their special position, and the need of discipline amongst them. The object behind art 33 is to ensure proper discharge of their duties and maintenance of discipline among the members of these forces. The provision has been considered to be of paramount importance in the national interest. Art 33 does not by itself abrogate any right; its applicability depends upon parliamentary legislation.

Article 33 of the constitution confers power to the parliament to enact laws determining to what extent any right which is conferred by part III of the constitution shall, in their application to the forces charged with maintenance of public order or the members of the armed forces, be restricted or abrogated for ensuring the maintenance of discipline and proper discharge of their duties.

Article 33 does not restrict or abrogate the rights of army personnel as such because they are as much a citizen as any other individual of the country, this article words when parliamentary legislation is brought to action. This article shows the care with which the circumstances in which fundamental rights can be restricted and abrogated were contemplated and precisely described.

Article 33 contains only few services which are covered under this article for special treatment, such as military and paramilitary forces, police forces and analogous forces. The article does not exclude any other category of civil servant. Though, some restriction maybe validly imposed on rights of government servants to maintain discipline among them and to ensure proper and effective discharge of duties and obligation by them. Equilibrium between interest of the citizens

[5]P.Balakotiah v. Union of India, AIR 232, (1958).

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and rights of the state is the need to safeguard the interest of both of an individual and state for proper functioning of the state.

The expression "member of the armed force" used in art 33 (a) covers such civilian employees of the armed force as barber, carpenter, mechanics, etc. Although these persons are non-combatants, nevertheless, they are integral to the armed force and, therefore, their fundamental rights can also be curtailed in art 33.[6]

Article 34

Article 34 is another exception to the fundamental rights guaranteed under part III of the constitution. Under this article, power has been given to parliament to indemnify any person in respect of acts done by him in connection with maintenance or restoration of order, in any area within the territory of India where the martial law is in force. The power of parliament extends to validation of any sentence, punishment inflicted or any act done under martial law in such area, subject to following conditions:

- Act must be done in connection with maintenance or restoration of order.
- Martial law must be in force.[7]

Provision authorizing the proclamation of martial law is not given in the constitution, but by reading the text of article 34 with the literal rule of interpretation we can make out that government has the power to declare martial law in any Indian Territory or part of it. In the literal sense martial law means "the suspension of ordinary law and the government of the country or a part of it by military tribunals".

According to Dicey the expression "martial law" is more often used as the name "for the government of a country or a district by military tribunals which, more or less, supersedes the jurisdiction of the courts". The expression is also used to denote military law. In the sense, the term martial law is used to denote a "condition of affairs" rather than as a "code of rules" which arises when there is a state of war, insurrection or rebellion in any part of India. When such

[6]O.K.A Nair v. Union of India, AIR 1179, (1962).
[7]The Constitution of India, art 34 (1950).

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situation arises, the use of the force necessary to meet the situation is characterized as martial law.[8]

Art 34 gives power to the parliament to make an act of indemnity to cover illegalities committed during the operation of martial law. Necessity of indemnity is explained by E.W.RIDGES in his constitutional law "notwithstanding the wide powers the executive either through advertence or under pressure of emergency is driven to acts that exceed the powers and are, therefore, illegal. To meet this situation and to relieve the officers or servants or ministers who committed such illegal acts from the consequences of being sued for damages, an indemnity act was passed in 1920. This act legalizes any act that had been done during the war and barred any right of action in consequences of such acts like acts of indemnity, which are a high exercise of sovereign power since they legalize something that was illegal when done, were first passed in time of emergency to relieve against the consequences of illegal detention. In those days the practice was to suspend the habeas corpus act as a temporary measure for the duration of emergency. When the danger had passed, the acts were revised and it was open to any person who had been illegally detained to sue for damages, since the suspension of the act did not legalize the imprisonment but merely suspended the remedy. Hence the device of an indemnity acts to protect officials."[9]

The non-obstante clause of art 34 provides that in derogation of the fundamental rights, any law passed by the parliament in capacity of art 34 (i) to indemnify any person in relation to ay act done or performed during the operation of martial law in any area (ii) to validate any sentence passed, punishment inflicted, forfeiture ordered during the operation of martial law shall be valid.

Martial law operates in the situation amounting to insurrection or war within the country, it impose restriction and regulations on civilians. During the period of the emergency, the military authorities may exercise abnormal powers which are outside the ordinary law of land. The proclamation of emergency does not increase or enhance the power of the military, but merely gives notice to the people that government must adopt to restore order. It is not only the duty of

[8]MP Jain, Indian Constitutional Law 716 (5th ed. 2007).
[9]A.W.Bradly & K.D. Ewing, Constitutional and Administration law610-11(13th Ed. 2003).

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government or military force but of all citizens to help in maintaining law and order. Therefore, if a citizen does any such act, he should also be indemnified in same as government servant.

Our constitution gives transcendental position to fundamental rights, which are generally kept outside the preview of the parliamentary function. While recognizing the invariability of fundamental rights, subject to social control, the constitution provided for suspension and modification of fundamental rights under special circumstances such as emergency, martial law etc. The instances are Art 33 and 34 of the constitution. Article 33 empowers parliament to modify the fundamental rights in application to armed force, members of the police force, bureaucrats appointed by state for purpose of intelligence and other mentioned in art 33 and art 34 impose restriction on fundamental right during the martial law in force in an area.

In ADM Jabalpur v. S. Shukla [10] the SC while distinguishing between martial law and presidential order made under art 359(1) , observed that while martial law was generally local restriction in particular area, the presidential order made under art 359 (1) generally has wide range and effects throughout the country. Martial law envisaged the taking over of the situation by military force and military courts in the particular part of the country. Such taking over was certainly outside the scope of art 359 (1).

Emergency starts and ends with the presidential proclamation but in martial law no proclamation is required, the president hand over the power to military authorities or parliament passes law under art 35 of the constitution. Emergency depends upon the subjective satisfaction the president regarding threat of security of nation by condition of war, armed rebellion, insurrection, external aggression etc. Whereas in martial law, it depends upon factual existence of condition of war, armed rebellion, insurrection, external aggression etc.

When martial law is declared the exclusive command of the area is given to the military authority and the offenders are tried by courts martial. This necessitate the need to passing the act of indemnity, because not being the court of justice, the courts of martial has no legal sanction and therefore act of indemnity is required to validate them, the tribunal themselves as well as the officers executing their sentences would be liable as an ordinary law, as soon as martial law is over.

[10] ADM Jabalpur v. S. Shukla, AIR 1207, (1976).

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On the scope of judicial review art 34, it was held "matters of national security, the cost of the failure can be high. It is not only that the executive has access to special information and expertise in matters like supporting to the terrorist activities in foreign county is threat to national security. It is also that such decision with serious potential results for the community, require a legitimacy which can be conferred only be entrusting them to person, responsible to the community through democratic process. If the people are to accept the consequences of such decision, they must be made by persons whom the people have elected and whom they can remove." [11]SC held that in all cases, the fight against terrorism must be respectful to human rights .The constitution has laid down clear limitation on state actions within the context of the fight against terrorism. To maintain this delicate balance protecting "core" human rights, is the responsibility of the court which has to maintain a delicate balance.

Existence and non-existence of certain situation as a fact is decided by the court. There is no precise test to determine such matters. If the civil courts cease to function on account of hostilities, the maintenance of order passes from the civil court to the courts martial. But even if the civil court continues to function in martial law situation it doesn't provides the conclusive proof that the martial law situation does not exist.

EMERGENCY AND FUNDAMENTAL RIGHTS

Article 358

Suspension of provisions of Article 19 during emergencies

(1) While 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 is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the in competency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect: Provided that where such Proclamation of Emergency is in operation only in any part of

[11]People's Union for civil liberties v. Union of India, AIR 456, (2004).

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the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation

(2) Nothing in clause (1) shall apply (a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or (b) to any executive action taken otherwise than under a law containing such a recital.

Emergency has a deliberating effect on the right of the people in a democratic country. The constitution provides three categories of emergencies i.e. a threat by "war or external aggression" or by "internal aggression", a "Government cannot be carried on smoothly" in the nation or in the state and a threat to the financial security or credit of the nation or a part of it. The imposition of emergency is necessary, to control the turmoil and incipient rebellion occurring in the country.

Emergency is a peculiar characteristic of Indian Constitution that allows the Union to assume wide powers so as to handle special situations like war, external and internal aggression etc. In emergency, the Union can take full control over the legislative and executive body of any state, which allows the center to curtail or suspend freedom of the citizens given in part III of the constitution. In India, a proclamation of emergency is defined under art 352 of the constitution. Proclamation of emergency is made before the occurrence of actual war or any internal or external aggression or rebellion, if the president of the country deems fit that such situation will bring imminent danger to national security.

The President can declare national and state emergency only on the basis of a written request by Prime Minister with the consult of the Council of Minister. Such a proclamation must be approved by the Parliament within one month. Period of six month is prescribed for such an emergency and can be extended by parliamentary resolution for the period of six months. Approval of both the houses is needed for passing the resolution.

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Reasons for incorporating emergency provisions are (a) to meet any exceptional or threat full situation (b) to protect the sovereignty, unity, integrity and security of the country and (c) It has been incorporated to change the Indian political system from federal to unicameral government as per the situation & requirements of the country.

The first and foremost effect of a proclamation of emergency is the suspension of the fundamental rights guaranteed under part III of the constitution i.e. article 19 is suspended. Under article 358 and 359 the President of India can extend the suspension of all fundamental rights except articles 20 and 21. Impact of emergency on the fundamental rights is pervasive in nature.

During the emergency the state is empowered to restrict the fundamental rights of the individual provided under part III. The term 'state' used here is in same reference as used in art 12 of the part III, it means the power to suspend the fundamental rights during emergency is vested not only in parliament but also the union executive and even in subordinate authorities. Constitution vest president with the power to suspend the right of citizen to move to the court of law for enforcement of their fundamental rights. Fundamental rights are not absolute in nature.

Back in 1978 Supreme Court held that the fundamental rights granted in articles 14 to 19 are not suspended per-se during emergencies but merely their operation is, and that once the emergency is over, rights will revive.[12]

The constitution provides certain fundamental rights to the individuals of the country. Fundamental Rights are considered necessary for the development of the personality of an Individual. Only when an emergency is declared, fundamental rights can be suspended by the central government. But they are suspended only during the time period when emergency is proclaimed. Under art 358, there is automatic suspension of art 19[13] of the Constitution which protects the rights of freedom of speech; assemble; form associations; move freely throughout the territory of India; reside and settle in any part of India and to practice any profession, or to carry on any occupation, as soon as emergency is declared. If legislature made a law or executive performs certain acts which are inconsistent with the fundamental right guaranteed under

[12]Madan Mohan Pathak v. Union of India &Ors. Etc., AIR 803,(1978).
[13]The Constitution of India, art 19 (1950).

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constitution by art 19, their validity cannot be challenged during the continuance of emergency or even after that. Art 358 protects only those laws made during emergency containing recital linking of the act with emergency. The executive cannot misuse existing acts to violate art 19. Executive action will be protected only when they are taken under provision of law containing such recital.

Position before 1978 amendment was described in a leading case which says art.358 makes it clear that things done or omitted to be done during Emergency could not be challenged even after the Emergency was over. In other words the suspension of Art.19 was complete during the period in question and executive action which contravened Art.19 could not be questioned even after the Emergency was over. [14]

44th constitutional amendment [15] declared the word "war, external aggression or internal disturbance" was too broad, vague and had wider connotation. The 44th constitutional amendment substituted the word "war, external aggression or internal disturbance" with "armed rebellion" for internal disturbance, it was introduced after 1978. Armed rebellion is likely to possess a threat to the security of the country or a part thereof, while internal disturbance, though serious in nature, would not possess a threat to the security of the country or a part thereof. The intention underlying to substitute the words internal disturbance by "armed rebellion" is to limit the invocation of Art. 352 only to more serious matter or situations where there is a threat to the security of the country.

After Shukla ruling [16] emergency provision came to be recast through 44th amendment. It restricted the scope of art 358 in several ways. After 1978 amendment art 19 cannot be suspended in case the proclamation of emergency has been issued on the ground of armed rebellion. Law containing recital to the emergency provision cannot be challenged in court under art 19. The preposition that art 19 cease during emergency is well established, but it is not the same case with respect to the pre emergency period. The pre emergency laws can still be challenged on the ground that it infringes art 19, if such law was invalid during its pre emergency

[14]Makhan Singh v. State of Punjab, AIR 381,(1964).
[15]The Constitution of India, 44th Amend.
[16]A.D.M Jabalpur v. S. Shukla, AIR 94,(1976).

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period, it remains invalid and would not be revived even when the emergency is declared and art 19 is suspended.

Art 358 is prospective in nature, it does not operates to validate a legislative provision which was invalid because of constitutional inhibition before declaration of emergency in country or part of it. Executive action during the proclamation of emergency cannot be challenged. But such action of executive must be competent in nature. If the executive actions taken are ultra vires the law under which it is being taken, it is not protected by art 358. State would not become entitled to exercise arbitrary powers under pre emergency legislation during the proclamation of emergency.

As soon as the proclamation of emergency comes to an end, Art 19 automatically get revived back to life and begins to operate normally. Any law inconsistent with Art 19 ceases to operate to the extent of its inconsistency with Art 19. Any statutory provision passed and any executive action taken cannot be challenged under Art 19 even after the revocation emergency period. The liability incurred for acts or omissions during the emergency cannot be nullified even if it be assumed that the act was violative of art 19.

Article 359

359. Suspension of the enforcement of the rights conferred by Part III during emergencies

(1)Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except Article 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order

(1A)While an order made under clause (1) mentioning any of the rights conferred by Part III (except Article 20 and 21) is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions containing in that Part be competent to make or to take, but any law so made shall, to the extent of the in competency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be

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done before the law so ceases to have effect Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation

(1B)Nothing in clause (1A) shall apply

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or
(b) to any executive action taken otherwise than under a law containing such a recital

(2) An order made as aforesaid may extend to the whole or any part of the territory of India: Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary

(3)Every order made under clause (1) shall, as soon may be after it is made, be laid before each House of Parliament."[17]

Article 358 talks about Suspension of provisions of Article 19 during emergencies whereas article 359 talks about suspension of the enforcement of the right guaranteed in part III of the constitution. Under article 359 fundamental rights are not as such suspended but only their enforcement is. But amendment 44th restrict the scope of article 359. As article 359 gave vast power to the parliament to make laws so as to restrict the freedom of the citizens during emergency, so as to bring an equilibrium the power of the parliament and fundamental rights, to restrict the power of the parliament so as to restrict them from being used for unfair means, 44th amendment came which restricted the power of article 359 and held that article 20(right to

[17]The Constitution of India, art 359 (1950).

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Protection in respect of conviction for offences) and 21(right to life and personal liberty) cannot be suspended or their enforcement so the government cannot harass the people during emergency by making acts punishable retroactively.

Except article 21 & 20, under proclamation of emergency, the president under article 359(1) may declare by order that the right to move to any court for enforcement of such of the fundamental right as may mentioned in the order, and all the proceedings that are pending for the enforcement of the right so mentioned in the order, till the proclamation of emergency enforcement of those rights shall remain suspended for the time specified in the order given by the president. If the fundamental right of a citizen is infringed then he has the remedy/right to move to the court for the enforcement of the right specified but in emergency what the presidential order purports to do under article 359(1) is to bar this remedy of the citizen to move to the court so as to suspend the enforcement of the right being infringed. The citizen's fundamental rights are not waved off but their enforcement is suspended, which is clearly mentioned in article 359(1) of the constitution that enforcement of the fundamental right is restricted during the period of emergency, the rights are not suspended.

In article 359(1-A) it is mentioned that if a presidential order is passed, while that order under article 359(1) is in operation except article 20 & 21 no other fundamental right " shall restrict the power of the state to make any law or to take any executive action which the state would be competent to make or take but for the Fundamental Rights in question"[18] "but any law so made shall, to the extent of inconsistency, cease have effect as soon as the order aforesaid ceases to operate except as respects things done or omitted to be done before the law so ceases to have effect".[19]

These words have been obtained from Article 358(1) and added to Article 359 too. The outcome is that amid the period the Presidential order suspending implementation of certain fundamental Rights is in operation, the state is granted power to make any law or make any executive action conflicting with such rights. This is so despite the fact that in theory these rights are not suspended, they remain alive and only their enforcement is suspended, but Art. 359(1A) has to be given effect to.

[18]The Constitution of India, art 359 (1950).
[19]MP Jain, Indian Constitutional Law 716 (5th ed. 2007).

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According to Art. 359(l-B), Art. 359(1-A) does not apply to any law which does not contain a recital to the effect that such law is in relation to the proclamation of emergency in operation when it is made, or to any executive action taken otherwise than under a law containing such a recital. Thus, as regards laws other than those needed for the emergency, all Fundamental Rights continue to operate.[20]

Article 359(2) states that if any presidential order made under article 359(1) then it may extend to a part of territory of India or whole of it. According to the proviso to article 359(2), if the proclamation of emergency is in operation in part Indian Territory, any such Order shall not extend to any other part of the territory of India unless the President is satisfied that there is a threat to the security of India, or any part of it, and if he has adequate reason to believe in so then he can pass the order to extent the proclamation of emergency to the other effected part of India in which the proclamation is in operation, considers such extension to be necessary.

CONCLUSION

Fundamental rights are legal, social, or ethical principles of freedom or entitlement and are the fundamental normative rules about what is rights are allowed to people or what rights are owed to people, according to the legal system, social convention, or ethical theory. Rights are generally considered to be fundamental to civilization, being regarded as established pillars of society and culture. These fundamental rights are provided in part III of the constitution which are not absolute in nature. Absolute and unrestricted rights do not and cannot exist in modern state. They might be taken away by the government at any time of need to restore the national security and peace. As unrestricted liberty becomes license and jeopardizes the liberty of other individuals.

Constitution provides with certain provision which may curtail the use and enjoyment of the fundamental right by the individual or certain group of individual for the time being under certain circumstances like by bringing in force the martial law or proclamation of emergency in the country or in any part of it. Art 33 applies to the armed force and to the force charged with public maintenance of public order such as police, it empowers parliament to restrict or abridge the fundamental rights in application to the members of armed force or the other force charge with maintenance of public order for the purpose of ensuring the proper discharge of their duties

[20]The Constitution of India, art 359 (1950).

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and maintenance of discipline. Whereas art 34 provides for that notwithstanding anything in the provisions of part III, restrict parliament to indemnify any person by law in the service of Union or of the state or any other person in respect of any act done for maintenance or restoration of order and security in country or in any part of it.

The constitution is unique to the extent that it contains a complete scheme for speedy readjustment and recovery of the peace time governmental machinery or instruments in moment of national peril. Constitution provides certain emergency provisions which are to be exercised at the time or war or any external aggression or armed rebellion or any such situation endangering the security of nation. Art 358 suspend art 19 during the proclamation of the emergency which the fundamental right guaranteed by constitution to every citizen. And art 359 provides for suspension of enforcement of the other rights conferred under part III of the constitution. During the proclamation of emergency, president may declare the right to move to the court suspended for the enforcement of fundamental rights except art 20 and 21 of the constitution. These provisions may appear to be grievous or harsh as they professes upon an edifice of the fundamental rights and democracy of the constitution. But these provisions should be studied under the light of security and safeguard of nation's whole. Granville Austin has called national unity as one of the three planks of seamless web woven by the constitution of India.

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