

NATIONAL EMERGENCY AND ARTICLE 21

-Atharva Tokekar^{*}

ABSTRACT

Constitutional supremacy is a concept in which if in any case there is a conflict between the government and the basic constitutional values, the latter will prevail always. Article 21 of the constitution of India is the most important which gives us the proper essence of the motto of our constitution that the government can never make such a law which is contradictory or in derogation with the fundamental rights of the people it will be struck down by the courts. Apart from this there is also one more article i.e. Article 352. This article reflects some of the unitary features of our federal constitution. It talks about an emergency which will take back the powers from the state government and give it to the central government. It earlier used to affect the fundamental rights including the right to life given in Article 21. There were many reasons because of which Article 21 was later given an upper position than Article 352. It can also be said that after 1975 emergency it was realized that in case there is a conflict between Article 21 and 352, always without any doubt Article 21 will prevail. This was done by 44th Constitutional amendment.

Keywords: Fundamental Rights, Article 21, Constitutional Amendments, Emergency.

^{*} B.A.LL.B. (2nd year), Symbiosis Law School, Nagpur, Symbiosis International (Deemed University).

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INTRODUCTION

The constitution of India is not just a book but a legal document of India. It recognizes the legal rights and liberties of the people of India and other countries. Constitution of India is the lengthiest constitution of the world. It properly distributes the powers of the state and the center. Many prominent people have regarded the constitution as the federal constitution with certain unitary features or a quasi-federal structure. The constitution has regarded individual rights and liberties as its main feature. The democratic features are the most important and the crucial aspect of the constitution. It has borrowed various provisions from different constitutions for example, fundamental rights from US constitution and parliament from England. There is one more such provision which is borrowed from the German constitution i.e. the provisions regarding the emergency. Emergency is a situation which is declared by the central government under the circumstances in which the territory of the state or any part or province of the state is under threat, mostly by external power. It gives or transfers all the powers which were always possessed by the state government to the central government. Art. 352, 356 and 360 deals with the emergency provisions. Democracy is a peaceful kind of machinery and it is considered to be a best kind of government. The reason being that the democracy guarantees a kind of government which is not arbitrary in nature and even if the government is changing or a revolutionary change is taking place it happens without any bloodshed. It is expected that a democratic nation always adopts a peaceful mechanism or a way to solve any problem. Then what can be the reason that the constitutional makers thought that such a provision should be included in a federal constitution. The key feature of emergency is that a federal setup of a government changes into a unitary setup of government. It completely removes the provincial autonomy that these states have. The union acquires all the powers. So, during independence India was not in a positive situation. There was communal tension going on in almost whole country between two religious groups. After seeing such a situation the constitutional makers thought that there should be a provision in the constitution itself which will give the Union some powers in their hand to take decisions in a quick manner in the interest of the public. In other situations the central government has to give its decision and has to wait for the state to take the action but in case of emergency the Central

government can itself act swiftly and as the center has more powers as compared to state they can execute their decision quickly and in a proper manner. After keeping all these things in the mind the constitutional makers inserted the three important articles of the constitution which are regarding emergency. They wouldn't have thought that the provision which was made for helping the central government in the interest of the nation can be misused by them as well.

DETAILS AND EXPLANATIONS

Article 352 talks about national emergency which is at present completely different from earlier time. It is imposed three times in India. The first national emergency was imposed in India in the year 1962 by Pandit Jawaharlal Nehru during the war with China. This emergency was imposed on the ground of war. There were three grounds for imposing emergency, war, external aggression and internal disturbance. Later, internal disturbance was replaced with armed rebellion by the 44th amendment of the constitution. The second national emergency was imposed in the year 1971 during the war with Pakistan. The procedure for imposing emergency was not proper at that time and it also wasn't transparent. This emergency was imposed by the prime minister India Gandhi. Prime minister used to have the absolute power related to it. Prime Minister used to approach the president and was able to impose the emergency without consulting or asking the council of minister. One person was alone having the power to exercise it and impose emergency. This resulted arbitrary use of power. Emergency should not be always used as a remedy by the government but as a last option where no other remedy is left. The reason for it is that after imposing emergency the fundamental rights of the citizens were ceased to exist during emergency. It needs a proper discussion and plans for imposing and executing and giving such power to one person is completely illogical. Being a democracy the votes of people were not given value. It is like people are just choosing their dictator. So, article 352 was prone to misuse at that time. So, it was misused by Indira Gandhi government. The ground used for imposing the emergency of 1975 was the internal disturbance. It completely changed the democratic setup of the country. The main reason which sown the seeds of emergency was done by a politician named Raj Narayan. He was not responsible for emergency but the reason for the national emergency started from there.

In 1969 the political ambitions of Indira Gandhi started to rise. This made Congress to split into two groups, Congress R and Congress O. Congress R was led by Indira Gandhi and Congress O was led by Morarji Desai. Indira Gandhi at that time advised the President of India VV Giri to dissolve the Lok Sabha in 27th December 1970 and call for the re-elections in March 1971. President is always under Article 74 (2) of constitution of India is bound by the advice of the council of Ministers and also the Prime Minister. This dissolution was advised in order to consolidate the power. Consolidation of powers means to say that dissolving or disbanding the powers which are under the legislature, executive and judiciary and concentrating the power either to one person or some offices under its control.

Indira Gandhi was going to contest elections from the seat of Rai Bareilly. She was politically capable and was having a strong position in Indian politics and a strong rival was required from that seat to compete against her. In this case Raj Narayan was approached who was a strong competitor to Indira Gandhi. Apart from being a politician he was also a freedom fighter and because of which his popularity among the masses was also strong. He was a perfect competitor in front of Indira Gandhi. An alliance was made by the parties who were against the Congress R including Congress O. This alliance after discussions with each other decided to give the seat of Rai Bareilly to Raj Narayan. During the rallies and before the results Narayan was almost sure that Indira Gandhi will be not able to win he can get the seat of Rai Bareilly. To Narayan's surprise Indira Gandhi got a landslide victory and majority. There was a suspicion in the mind of Raj Narayan that there are some malpractices done over here. He was not convinced from the election results at that time because of it. He refused to accept the result of election and also wanted to know some details about the things which were under suspicion according to him. He wanted to file a case regarding such issue. He approached a renowned lawyer at that time who was Advocate Shanti Bhushan. Raj Narayan told a big conspiracy theory to the advocate regarding the elections and the malpractice. He told the advocate that on the ballot papers which were used during elections a chemical was being put on that ballot paper. These chemically treated ballot papers were used in the elections in which congress symbol was marked and made. This symbol will disappear while voting and again they will come and show Congress symbol until the time it is stored till the results of the election. There was such kind of malpractices done by Indira Gandhi. As said by his advocate, Raj Narayan was a very honest politician and even after independence he spent his half of the life in jail.

This was because of the agitations he took part on. Apart from this advocate Shanti Bhushan also put substantial charges of corruption under Representation of Peoples Act 1951. It was drafted as an election petition. The reason being it was prohibited under section 123(7) of Representation of Peoples Act to use police and armed forces to use them in election. Under section 77 (3) of the act she means Indira Gandhi also exceeded the limit of amount to be spent on elections. This petition was filed on 24th April 1971 in Allahabad High court. This case was *Raj Narayana v. Indira Gandhi*.¹

So, in this case in order to gain more evidences and clarity many people were called and cross examined by Advocate Shanti Bhushan and also by Indira Gandhi's advocate Mr. Nani Palkhiwala. Both of them were very renowned lawyer. It was also thought by many people that if Indira Gandhi appeared in the court the judge will not take any decision against her and he cannot call her but that historic moment came when first time in the history of India a Prime Minister was called in his personal capacity to appear in the court, this was in Allahabad High court. Indira Gandhi was called on 18th, 19th and 20th March of 1975 to appear in front of the court. Justice Sinha was the presiding judge in this case. He was known to be an honest judge who never believed in any special treatment and believed that everyone is equal before the law. It was very clear that the decision given by him will be completely impartial. Then Justice Sinha delivered the historic judgment according to which the elections which were won by Indira Gandhi were declared null and void. These were the reasons and circumstances under which made Indira Gandhi to proclaim emergency. The ground for proclaiming emergency was 'internal disturbance'. So, we can understand that instead of some genuine and imminent threat to the nation these were the reasons for imposing emergency. The president who imposed emergency at that time was President Fakhruddin Ali Ahmed. The president cannot refuse the advice given to him by the Prime Minister because as we have seen earlier under Article 74 President cannot refuse it. President can only veto it or can ask to think again but if Prime Minister again insists upon it then the president has to do accordingly. Unfortunately, this power of President was even said to be non-justiciable at that time. It means that it cannot be challenged in the courts of law. This was the issue of the case of *Bhuth Nath v. State of Bengal*,² that whether the power of President in such case is justiciable or not. It was said

¹ *Raj Narain v. Indira Nehru Gandhi* [AIR 1972 SC 1302]

² *Bhuth Nath v. State of Bengal* [AIR 1974 SC 806]

by the court that the power of President is not claimable or not justiciable. It was clearly said by the court that president's power and continuation of emergency is completely a political question and is outside the scope of judicial review and such things cannot be challenged in the court of law. In such a situation where all the fundamental rights of the people including Article 21, which is right to life, were at stake the judiciary took back their hands. It did not support the rights of the people but gave more importance to the government's arbitrariness. The question is not about supporting or not supporting a political party but it is about the basic right to life of the people which the judiciary refuse to provide. This was the darkest and highly condemnable phase going on for any democratic nation. Article 21 is such an article that being the shortest sentence of the constitution it has the widest meaning and impact. Any change to Article 21 directly impacts the people. Government cannot act in its whims and compliances and do whatever they want. In the situation of emergency Article 21 was under a deep threat.

Article 21 is considered as the most important provision of all the Indian statutes. It restricted the government from exercising its power arbitrarily and harming the people's life and personal liberty. The government does not have any power to interfere with these rights of the people unless a procedure established by law is there. This article is partially similar to the Magna Carta of 1215 and also similar to Fifth Amendment of American Constitution. The specialty of Article 21 is that it is not only limited to the citizens and the people in India, it is also applied to the people from foreign who have come here to visit, reside, occupation or for other purpose. The scope of Article 21 is also very wide it is not limited only towards the biological life or the existence, it also includes living life with dignity. It was made clear in the case of *Maneka Gandhi v. Union of India*³ that right to life is not to be interpreted in its strict and literal sense but also include widened aspects like life with dignity. This right was completely threatened by the imposing of National Emergency. During emergency the fundamental rights were suspended by an order passed by President according to which Article 21 was suspended and nothing regarding Article 21 can be challenged in the courts. This was an order passed in a democratic country. The impact of these orders was such there several people detained. Many people were being put behind bars and tortured, many such people in their respective states filed a writ of habeas corpus under which they can be at least produce in front of Magistrate and at least hope for

³ *Maneka Gandhi v. Union of India* [AIR 1978 SC 597]

a fair trial but the high courts of the states refused because of the order passed by President under Article 359. So, such petition was challenged in Supreme Court under which M.I.S.A also was challenged. This case was ADM Jabalpur v. Shivkant Shukla⁴. This case was called as 'Habeus Corpus' case. It was expected from the Supreme Court as being an apex court that they shall protect the individual rights and liberties of the people but this did not happen. It was a 5 judge bench and in the ratio of 4:1. The four judges gave more importance to the presidential order than Article 21. It means that the order, the government is more important than the right to life and right to live with dignity. It was only Justice HR Khanna who dissented with the opinion of other judges and said that right to life is not only a source from Article 21, it is never expected that a government of a democratic country is acting in an arbitrary manner and arresting individuals and denying them their basic dignity. This was not given importance as an official judgment but HR Khanna is still appreciated for showing such courage during that time without anyone's support.

After all these things when emergency was revoked again fresh elections were conducted in which Congress lost its power and first time Janata Dal a first non-congress party to win the elections and make government. They made the 44th under which the word 'internal disturbance' was replaced with 'armed rebellion'. Under this amendment the procedure for proclaiming emergency was made more complicated and was clearly said that Article 21 cannot be revoked even during the proclamation of emergency.

CONCLUSION

It is clearly evident that the emergency provisions were completely misused by the government at that time. The constitution makers would never have imagined that the emergency provisions which are made in order to give assistance and some amount of freedom to the central government will be misused by them in such a way. It should be clear that in any democratic country if there is a conflict between the policies, rules, made by the government and individual rights and liberties, in all probability the individual rights and liberties will be given importance. A nation following constitutionalism can never exist properly under an arbitrary government.

⁴ ADM Jabalpur v. Shivkant Shukla [(1976) 2 SCC 521]