

Department of Constitutional Law and Human Rights

3RD SEMESTER , OPTIONAL – (IV)

PAPER: NATIONAL SECURITY, PUBLIC ORDER AND RULE OF LAW

Objectives of the Course

In every written constitution, provision is required to be made to equip the state to face grave threats to its existence arising from extra- ordinary circumstances created by war or external aggression or armed rebellion. Although “amidst the clash of arms, the laws are not silent” they do not speak the same language in war as in peace. Extra- ordinary circumstances warrant the invocation of extra-ordinary laws and such laws are known as emergency laws. They put grater fetters on individual liberty and also eclipse certain aspects of the due process. But in such circumstances, the democratic forces must assert that for survival of the State, the least possible liberty should be available. The students should be familiarized with different aspects of such emergency powers and scrutinizing intellectual attitude towards such powers.

The following syllabus prepared with this perspective is given below.

Syllabus

Unit I: National Security, Public Order and Rule of Law

Emergency Detention in England- Civil Liberties

Subjective satisfaction or objective assessment?

Pre- Independence law; marital Law: Provisions in English Law, Indian Law

Unit II: Preventive Detention and Indian Constitution

Article 22 of the Constitution

Preventive Detention and safeguards

Declaration of Emergencies

1962, 1965 and 1970 Emergencies.

1975 Emergency

UNIT III: Exceptional Legislation

COFEPOSA and other legislations to curb economic offenders.

TADA: “the draconian law”- comments of NHRC

Special courts and tribunals.

Due Process and special legislation.

Meaning of “Security of State”.

Meaning of “Public Order”.

Suspension of Article 19, rights on declaration of emergency.

President’s right to suspend right to move any court.

Article 21 – special importance – its non-suspendability.

Suspendability – 44th amendment.

UNIT V: Access to Courts and Emergency

Article 359: ups and downs of judicial review.

Constitution (Forty-fourth) Amendment Act, 1978.

Constitution (Fifty-ninth) Amendment Act, 1988.

Select Bibliography

G.O. Koppell “ The Emergency, The Courts and Indian Democracy” 8 J.I.L.I. 287(1966)

H.M. Seervai, The Emergency , Future Safeguards and the Habeas Corpus: A Criticism.

International Commission of Jurists, Status of Emergency and Human Rights (1984)

N.C. Chatterji and Parameshwar Rao, Emergency and the Law (1966).

MP Jain-Indian Constitutional Law(Wadhwa Pb)
