CHAPTER - VI
EMERGENCY AND PERSONAL LIBERTY

Emergency has a debilitating effect on the rights of the people in a democratic country. For example, in the USA, which has constitutionally guaranteed Fundamental Rights comparable to those in India, the privilege of the writ of habeas corpus can be suspended when in case of rebellion or invasion, public interest requires it. The courts con, however, determine whether conditions have arisen to justify the suspension of habeas corpus. No other Fundamental Right can be suspended in USA, but during an emergency, courts do give somewhat restrictive interpretation to these rights than they do during the normal days.\(^1\)

In Britain during the two World Wars, drastic discretionary powers were conferred on the Executive to interfere with the rights of property and person of the people. This drastic interference with people’s right received judicial sanction in several cases. The theory is that when the country is engaged in a war of survival, the people have to sacrifice their

\(^1\) Schmir v. LIS, 246 US 47.
rights to some extent so that the state may live. If the state goes down, the people also go down\textsuperscript{2}.

In India, a proclamation of emergency under Article 352 affects the Fundamental Rights of the people very drastically. The impact of emergency on the Fundamental Rights is much more pervasive in India than in the case of USA.

The Constitution, which the People of India gave to themselves containing Article 21 had also contained Article 359 on the subject of suspension of the enforcement of the rights conferred by Part III during emergency. Normal situation may not be a permanent feature in the life of a nation. Sometimes abnormal situations may occur and to meet such situation a constitution contains some emergency provisions. It envisages three types of emergencies, which the President may proclaim in different critical situations. These emergency powers of the President have been borrowed from the Weimar Constitution of Germany and from the relevant portions of Government of India Act, 1935.

1. **Rationale of Article 359.**

There are times when a nation is unexpectedly and suddenly overtaken by events and forces, which, seriously endanger its security and lives of its citizens. Such situation may require that individual liberties of the citizens be temporarily suspended in order to cope with the dangers confronting the nation. Emergency situations place democratic Governments in real dilemma by bringing about a conflict between its primary obligation to protect the integrity of the state and its equally important obligation to protect the human rights of its citizens and other persons within its jurisdiction. In such a situation the state is forced into a choice between competing values and the sacrifice of one to the other.

The aforesaid is to be the rationale of emergency provisions, which find place in many national constitutions permitting the suspension of guaranteed fundamental rights as states by Soli J. Sorabjee in his article on "Human Rights During Emergency" published in the Indian Advocate, vol.xxiv, 1992 pp.64-71. Article 352 of our constitution provides for declaration of emergency and till it lasts. Article 19 stands suspended because of what has been stated in Article 358. Further, Article 359 (as originally enacted) provided that when a
proclamation of emergency is in operation, enforcement of any fundamental right may be suspended by the issue of a Presidential Order. The forty-fourth amendment to the constitution has, however, accepted Article 20 and 21 from the purview of Presidential Order.

Soli Sorabjee in the aforesaid article has dealt at length as to what our founding fathers thought about the emergency provision finding place in the Draft Constitution. Reference has been made to the serious objections raised by H.V.Kamath, Pandit Hidayat Nath Kunzru and Mahabir Tyagi. The writer has also mentioned about rights which are recognized as non-derogable, i.e. non-suspendable, in regional or intentional human rights instruments; among these are rights to life and prohibition of torture.

Proclamation of National Emergency:

Article 352 provides that if the President is satisfied that the security of India or any part thereof is threatened either by war or external aggression or armed rebellion. Prior to the 44th amendment one of the ground on which emergency could be declared under clause (1) was "internal disturbance". These words "internal disturbance" were vague and gave wide
discretion to the Executive to declare emergency even on flimsy grounds. In 1975, the emergency was declared on the ground of internal disturbance by the then Prime-Minister Indira Gandhi because the opposition parties had given a call to launch a movement with a view to compelling the Prime-Minister to resign from her post as her election to the Lok sabha was declared void by the Allahabad High Court. The 44th Amendment has now substituted the words, 'armed rebellion' for the words 'Internal disturbance' which will exclude the possibility of a situation, which arose in 1975.

In Minerva Mills Ltd. v. Union of India, Bhagwati, J. has held that there is no bar to judicial review of the validity of a proclamation of Emergency issued by the President under Article 352(1), Merely because a question has a political complexion, it is no ground why the court should shrink from performing its duty under the constitution if it raises an issue of constitutional determination. The court's power, however, is limited only to examining whether the limitations conferred by the constitution have been observed or not.

The court can not go in to question of correctness or adequacy of the facts and circumstances on which the

3 AIR 1980, SC 1789.
satisfaction of the Government is based. The satisfaction of the President is a condition precedent and if it can be shown that there is no satisfaction of the president at all, the exercise of the power would be constitutionally invalid. Where at all, the satisfaction is absurd or perverse or malafide or based by wholly extraneous and irrelevant ground, it would be no satisfaction at all and it would be liable to be challenged before a court of law.

**Suspension of fundamental rights guaranteed by Article 19:**

Article 358 provides for suspension of the six freedoms like (a) right to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form association or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) .... Omitted by forty fourth Amendment; (g) to practise any profession, or to carry on any occupation, trade or business, guaranteed to the citizens by Article 19 of the constitution. It says that, while a proclamation of Emergency is in operation nothing in Article 19 shall restrict the power of the state to make any law or to take any executive action abridging or taking away the rights guaranteed by Article 19 of the
constitution. It means that as soon as the proclamation of emergency is made the freedoms guaranteed by Article 19 are automatically suspended.

Normally, the rights guaranteed by Article 19 cannot be taken away or abridged by any law of parliament or state legislature. But Article 19 ceases to restrict the legislative or the executive power of the center or the states for the period of emergency and any law made by the legislature or any action taken by the executive cannot be challenged on the ground that they are in consistent with the rights guaranteed by Article 19. As soon as the proclamation of emergency cease to operate Article 19 which remains suspended during emergency, automatically comes in to life and begins to operate and any law inconsistent with Article 19 made during emergency ceases to have effect to the extent of the inconsistency except as respect things done or omitted to be done before the law so ceases have effect. But no action will lie for anything done during the emergency even after the emergency is over.

**Emergency After 44th Amendment:**

The 44th Amendment Act, 1978, has made two important changes in Article 358: First, Article 19 will be suspended only
when a proclamation of emergency is declared on the ground of war or external aggression and not when emergency is declared on the ground of armed rebellion. Secondly, it has inserted a new clause (2) in Article 358 which says that nothing in clause (1) shall apply to – any law which does not contain a recital to the effect that such law is in relation to the proclamation of emergency, or (b) to any executive action taken otherwise than under a law containing such recital. This clause makes it clear that Articles 358 will only protect emergency laws from being challenged in a court of law and not other laws, which are not related to the emergency. Prior to this, the validity of even other laws, which are not related to the emergency, could not be challenged under Article 358.

The 59th Amendment has amended Article 358 and has inserted the words “or by armed rebellion”, or that the integrity of India is threatened by “internal disturbance” in the whole or any part of the territory of Punjab after the words”, or by external aggression. This means that, in cases of Punjab, the rights guaranteed by Article 19 will be suspended also when emergency is declared on the ground of “armed rebellion or internal disturbance”.

The proclamation of Emergency, however, does not invalidated a law which was valid before the proclamation of emergency.

In M.M.Pathak v. Union of India, The Supreme Court had an occasion to consider the effect of the expression “the things done or omitted to be done”. In Article 358 after the proclamation of Emergency ceases. In that case a settlement was arrived at between the LIC of India and its employees in 1971, however, by the LIC (modification of settlement) Act, 1976 passed by the Parliament during emergency the settlement was made ineffective and therefore, the employees could not demand their bonus while the emergency was in force. The employees of the LIC challenged the constitutional validity of the above Act. The Supreme Court held that the effect of proclamation of Emergency on fundamental rights is that the rights guaranteed by Article 14 and 19 are not suspended during the emergency but only their operation is suspended. This means that only the validity of an attack based on Article 14 and 19 is suspended during the emergency. But once this embargo is lifted Article 14 and 19 of the constitution, whose use was suspended, would strike down any legislation,

5 AIR 1978, SC. 803.
which would have been invalid. In other words, it means that the declaration of validity is stayed during the emergency. The expression “the things done or omitted to be done” occurring in Article 358 does not mean that the right conferred under the settlement is washed off completely. The expression is to be interpreted very narrowly.

**Suspension of right of enforcement of fundamental rights (Article 359):**

Article 359 empowers the president to suspend the right to enforce fundamental rights guaranteed by Part-III of the constitution. It says that while the 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 fundamental rights as may be mentioned in the order (except Article 20 and 21) and all proceedings pending in any court for the enforcement of such rights shall remain suspended for the period during the proclamation is in force or for such shorter period as may be specified in the order. An order suspending the enforcement of fundamental rights may extend to the whole or any part of the territory of India. An order made under clause
(1) shall, as soon as possible, be laid before each House of Parliament.

In constitution (38th Amendment) Act, 1975, added a new clause (I.A) in Article 359, which provides that while an order under clause (1) is in operation, nothing in Part-III shall restrict the power of the state to make any law or to take any Executive Action. Any such law shall cease to have effect to the extent of incompetency, as soon as the order ceased to operate except as respects things done or omitted to be done before the law so ceased to have effect.

The 44th amendment has made two significant changes in Article 359. First, it provides that under Article 359 the president does not have the power to suspend the enforcement of the fundamental rights guaranteed on Article 20 and 21 of the constitution. Secondly, it provides that suspension of any fundamental right under Article 359 will not apply in relation to any law which does not contain a declaration that such a 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 laws not related to the emergency can be challenged in a court of law even during the emergency. This amendment was as equal to the decision of the Supreme Court in the Habeas corpus case ADM Jabalpur v. S.Shakla. The amendment is intended to remove the recurrence of such a situation in future.

**Right to Move to the Court During Emergency:**

It is to be noted that unlike Article 358 under Article 359 the suspension of right to move any court for the enforcement of fundamental rights is not automatic. It can only be brought about by the President Order:

In September 1962, China attacked India, on 26th October, 1962, the president of India issued a proclamation of Emergency under Article 352 (1) declaring that a grave emergency exist whereby the security of India is threatened by external aggression. On 3rd November 1962, the president issued an order under Article 359 (1) which states that:

"In exercise of the powers conferred by clause (1) of Article 359 of the constitution, the president hereby declares that the right of any person to move any court for the enforcement of the

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*AIR 1976 SC 1207.*
rights conferred by Articles 14, 21 and 22 of the constitution shall remain suspended for the period during which the emergency issued under Article 352 (1) on 26th October, 1962 was in force, if such person has been deprived of any such rights under the Defense of India Act, 1962 or any rule or order made there under”.

In Makhan Singh v. State of Punjab7, Makhan Singh and others were detained under the Defense of India Act, 1962. They applied to the High Court under section 491 (1) (b) of the Criminal Procedure Code and alleged that they had been improperly and illegally detained because the Defense of India Act and the rules made there under contravene their fundamental rights under Article 14, 21 and 22. Their petitions were dismissed by the High Court on the ground that the Presidential order issued under Article 359 created a bar, which precluded them from moving the High Court under section 491 (1) (b), Criminal Procedure Code. They went in appeal to the Supreme Court. The two important questions for decision by the Supreme Court were: what is the true scope and effect of the Presidential Order issued under Article 359 (1); Does the bar created by the Presidential Order operate in respect of the

7 AIR 1964, SC 381.
applications made by the detenues under section 491 (1) (b) of the Criminal Procedure Code? In construing Article 359 the court considered it relevant and useful to compare and contrast the provisions of Articles 358 and 359.

Under Article 358, as soon as the proclamation of Emergency is issued under Article 352 and so long as it lasts, Article 19 is suspended, and the power of the legislatures as well as the executive to that extent is made wider. Although Article 19 will revive and become operative as soon as the proclamation ceased to operate, but Article 358 expressly provides that “things done or omitted to be done during the emergency” can not be challenged even after the emergency is over. Thus expression of Article 19 is completed during the period of emergency and legislative and executive action which contravenes Article 19 can not be questioned even after the emergence is over:

1. Article 359, on the other hand, does not suspend any fundamental rights, but merely authorize the president to issue an order declaring that the right to move any court for the enforcement of such fundamental rights as may be mentioned in the order, 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. The rights are not suspended, but the citizen is deprived of his right to move any court for their enforcement. The said rights are theoretically alive. The right to seek remedy is suspended.

2. While the suspension of Article 19 under Article 358 applies to the whole country and so covers all legislatures and states, the order under Article 352 (1) may extend to the whole of India or may be confined to any part of the territory of India.

3. While the suspension of Article 19 under Article 359 continues for the entire period of emergency, the suspension of the right to move any court will ensure for the period of the emergency, or for a shorter period, if so specified by the Presidential Order.

4. While Article 358 provides that things done or omitted to be done during the emergency cannot be challenged even after the emergency is over, the position under Article 359 is different. As soon as the order is issued under Article 352 cease to be operative, any information, made by the
legislative or executive action is liable to challenge on the basis that these rights were in operation even during the pendency of the Presidential Order, unless an appropriate Act of Indemnity is passed by Parliament.

Coming to the true scope and effect of Article 359, the court held that it was impossible to accept the contention that only right that can be suspended by an order made under Article 359(1) was the right guaranteed by Article 32(1) to move the Supreme Court for the enforcement of any of the fundamental rights, and a citizen would be free to seek relief from a High Court under Article 226. Article 359 uses the words "any court" which does not mean only the Supreme Court but must include all courts of competent jurisdiction. The use of expression "any court" cannot be justified by a reference to Article 32(3) which enables parliament to empower any other court to exercise all or any of the powers exercisable by the Supreme Court under Article 32(2). Article 32(3) clearly shows that the other courts empowered by the Parliament cannot have the same status as the Supreme Court to which alone Article 32(1) is applicable. Hence the words "any court" in Article 359(1) would include the Supreme Court as well as the
High Courts before whom the specified right can be enforced by citizens.

Malafide vis-à-vis Bonafide:

The Supreme Court, however, took the precaution of pointing out that a citizen would not be deprived of his right to move the appropriate court for a writ of habeas corpus if his detention had been ordered malafide. The detention can also be challenged on the grounds of infringement of those rights conferred by Part-III, which have not been mentioned in the Presidential Order. Similarly, if the detenu contends that the provisions of Defence of India Act, and the ordinance under which he is detained suffer from excessive delegation his plea raised cannot be barred by the Presidential Order because it is plea, which does not relate to the fundamental rights mentioned in the order.

In Maharstra State v. Prabhakar\(^8\), the Supreme Court held that if a person was deprived of his personal liberty not under the Defence of India Act, or any rule made there under but the contravention there of, his right to move the said courts in that regard would not be suspended. Similarly, in Ram

\(^8\) AIR 1966, SC 424.
Manohar Lohia v. State of Bihar\(^9\), the Supreme Court held the order of detention under the Defence of India Rules illegal on the ground that the order of detention was inconsistent with the conditions laid down in the Defence of India Rules. In this case Dr. Ram Manohar Lohia was detained by an order of District Magistrate to whom the power was delegated by the Government under section 40(2) of the Defence of India Act, 1962.

The order stated that the District Magistrate was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the "public safety and the maintenance of law and order". It was necessary to detain him. The expression used, "for this purpose" under the Defence of India Rules was "public safety and maintenance of public order".

The Court held that the order of the President did not form a bar to all applications for release from detention under the Act or the Rules. Where a person was detained in violation of the mandatory provisions of the Defence of India Act his right to move the court was not suspended. The petitioner contended that the order of detention was not justified under the Act or Rules and was, against the provisions of the Act. The petitioner

\(^9\) AIR 1966, SC 740.
was therefore, entitled to be heard. The order detaining the petitioner would not be in terms of the rule unless it could be said that the expression, "Law and Order". What was meant by maintenance of public order was the prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation created by external aggression. Where as the expression maintenance of law and order may mean prevention of disorder of comparatively lesser gravity and of local significance only.

**Presidential 'Order' not a Law:**

In Mohd. Yaqub v. State of Jammu and Kashmir, the Supreme Court held that an order by the President Under Article 359(1) was not 'Law' within the meaning of Article 13(2) and therefore, its validity could not be challenged with reference to the provisions of Part-III. Thus if the order suspends the enforcement of Article 14, it can not be challenged on the ground that it is discriminatory under Article 14. The validity of the order can not be tested under the very fundamental rights, i.e. Article 14, which it is suspended. The Supreme Court thus over ruled its own decision in Ghulam Sarwar v. Union of

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10 AIR 1968 SC 765.
India. Wherein it had held that the Presidential order issued under Article 359(1) could be challenged as being discriminatory.

The Emergency proclaimed in 1962 continued up to January, 1968. Emergency was again proclaimed in 1971, when Pakistan attacked India, and continued in operation up to March 1977. On 26th June, 1975, the President declared emergency on the ground that security of India was threatened due to “Internal disturbance”. Thus proclamation of Emergency was in addition to the Emergency declared in 1971 relating to external aggression which continued up to March, 1977.

On June 27, 1975, the President issued a proclamation under Article 359(1) as follows:

“In exercise of powers conferred by clause (1) of Article 359 the President hereby declares that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Articles 14, 21 and 22 and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended for the period during which the proclamation of Emergency made under

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11 AIR 1967 SC 1335.
clause (1) of Article 352 on the 3rd December and 25th June and both in force".

In A.D.M. Jabalpur v. S.Shukla\textsuperscript{12}, popularly known as the habeas corpus case the respondents challenged the validity of the proclamation of Emergency by President under Article 352 made on 25th June, 1975, and the order of detention made against them there under. The respondents were detained under section 3 of the Maintenance of Internal Security Act (MISA). They filed applications in different High Courts for the issue of writ of habeas corpus. A preliminary objection was raised on behalf of the state that the president's order was a bar to invoke writ jurisdiction of the High Courts. The High courts held that notwithstanding the continuance of emergency and the Presidential Order suspending the enforcement of right conferred by Articles 19, 21 and 22, the High Court could examine whether an order of detention was in accordance with the provisions of the MISA or whether the order was malafide or was made on the basis of relevant materials by which the detaining authority could have satisfied that the order was necessary. The state appealed to the Supreme Court.

\textsuperscript{12} AIR 1976, SC. 1207.
The main questions for the consideration of the Supreme Court were two: first, whether, in view of the Presidential Order, dated 27th June, 1975 and 8th January, 1976 made under the clause (1) of Article 359 any writ petition under Article 226 would lie in a High Court for habeas corpus to enforce the right to personal liberty of a person detained under the Act. Secondly, if such petition was maintainable what is the scope of judicial security particularly in view of the Presidential Order mentioning under Article 22 and section 16-A of the MISA. Section 16 A of MISA prohibited the detaining authority to communicate grounds of detention to the detenue.

The Supreme Court by a 4:1 majority (A. N. Ray, H. M. Beg, Y. V. Chandrachud and P. N. Bhagwati, JJ. - (H. R. Khana J., dissenting) held that in view of the Presidential order dated 27 June, 1975 no person had 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 was not under or in compliance with the Act or was illegal, or was vitiated by malafide intention or legal or has been based on extraneous considerations.
It was also argued that the object of Article 359(1) was to bar moving the Supreme Court under Article 32 for the enforcement of fundamental rights without affecting in any manner the enforcement of common law and statutory right to personal liberty under Article 226 before the High Court. In brief, the contention was that Article 21 was not the sole repository of the right to personal liberty. The court however, rejected this argument and held that Article 21 was the sole repository of the right to life and personal liberty. The moment the right to move any court for enforcement of the Article 21, was suspended no one could move any court for any redress.

The 44th Amendment & Article 21:

The 44th amendment has amended Article 359, which now provides that the enforcement of the right to life and liberty under Article 21 can not be suspended by the President Order. This amendment is intended to prevent the reoccurrence of the situation in future, which arose in the habeas corpus case. In view of the 44th amendment the ADM Jabalpur v. Shivakant Shukla AIR 1976 SC.1207 is no longer a good law. The 44th Amendment expressly excludes Articles 20 and 21 from the power conferred on the President by Article 359. This means
that the executive has now no power under Article 359 to suspend the citizen’s right to life and personal liberty.

**Impact of 44th Amendment Act, 1978:**

The majority opinion of the Supreme Court in S. Shukla's case was considered as anti people, as it shut the doors of the courts to those who were deprived of their most precious and essential right to life and personal liberty, during emergency when the President issued an order under Article 359. So, to remove the darkness and to avoid its repetition in future, the constitution 44th Amendment Act, 1978 amended Article 359 of the constitution. It provides that under the Presidential order made in the exercise of powers under Article 359, the enforcement of Articles 20 and 21 shall never be suspended. In other words, if a person is deprived of his life or personal liberty, he would be entitled to move the court for the enforcement of his right. The court would be competent to declare any law or executive action void on the ground of violation of Article 20 or 21. Even during the gravest emergencies, Article 21 shall remain alive and enforceable.

However, since the right to life and personal liberty is not absolute and a person can be deprived of it according to
procedure established by law, which procedure must be just, fair and reasonable. During emergency, any law or action taken by the government affecting this right of a person would be judged by the court by applying the test whether such deprivation is reasonable under the circumstances, of course, authority of law, and compliance with a just, fair and reasonable procedure would be unavoidable essential.

**Provisions in English Law:**

England is regarded as the mother of democracy and also the concept of 'defence of the realm' born out of necessity developed gradually, as the common law did not concede to the crown any prerogative to interfere with the personal liberty of the citizens. The use of martial law against citizens in the purported exercise of the war prerogative was also forbidden. And so, special statutes were passed during the First World War and the Second World War. The preventive detention was also provided. Dangers of war and war-time situation were at the back of these enactments.

While England has no written constitution, India has one, while former is unitary the latter is federal. The powers of British Parliament are unlimited but those of Indian Parliament
are limited. England has monarchy whereas India is republic. These makes one logically wonder whether it is worthwhile to study the emergency laws of England as a prelude to the study of similar Indian Laws. But two considerations weigh strongly in favour of the study of emergency experience of England. They even make it imperative. In spite of Monarchy, England is democratic;

First, both India and England are wedded to democracy and rule of law; emergency poses an identical problem in regard to the state control on individual liberty in a national crisis.

Second, and the more pressing consideration emanates from the fact that Indian laws with exceptions like personal law, are modelled on the English pattern. Even the constitution of India is based on the Government of India Act, 1935, which was passed by the British Parliament. And what is more, the emergency laws in force today are more or less modified versions of corresponding Acts, passed during British Rule in India\(^\text{13}\).

\(^{13}\) Chatterjee and Rao, "Emergency and Law: p. 1."
During the First World War, large powers were conferred on the Government under various laws like the Defence of the Realm Act, 1914, Military Lands Act, and the Defence of the Realm (consolidation) Act, 1914. But the administration of these emergency laws and regulations gave a rude shock to the citizens who experienced their impact. The court, however, tried to safeguard the liberties as much as possible keeping in view, of course, the war-time needs of the nation.

The Regulation 14B of the Defence of the Realm (consolidation) Regulations, 1914, authorized the secretary of state, if on the recommendation of a competent naval or military authority or of one of the advisory committee mentioned appeared to the secretary of state that for securing public safety or the defence of the realm it was expedient in view of hostile origin or association of any person that he should be subjected to such obligations and restrictions as their in mentioned, to order interment of such a person or otherwise restrict his movement.

In King v. Halliday the House of Lords with Lord Shaw dissenting, up held the validity of this regulation on the ground that it was a wartime measure passed at a time of supreme

\(^{14}\) (1917) AC 260.
national danger, and its operation was restricted to the duration of the war only. Lord Shaw expressed strong dissent and observed broad fact confronting your Lordship in this case is that in a matter so fundamentally affecting the rights of his majesty's subject to Parliament has given no express sanction for introduction of the language "hostile origin or association".

Where the Regulation provided that no person shall without the consent of the minister of Munitions take any proceeding for the purpose of obtaining an order or decree for the recovery of the possession of, or for the ejectment of a tenant of a dwelling house in which a munitions worker was living and which was situated in an area declared by an order of the Minister of Munitions to be a special area. The court of King's Bench held that impugned Regulation not only deprived the subject of his ordinary rights to seek justice, but rendered the seeker after justice liable to imprisonment and fine and, therefore, was Ultra virus the Defence of the Realm Act, 1914\textsuperscript{15}.

On the outbreak of the Second World War in September, 1939, a large volume of emergency Legislations was enacted by parliament, affecting all aspects of the life of the community including economic conditions in the society.

\textsuperscript{15} Chester v. Bate son. (1920)1 KB, 829.
Regulation 18B\textsuperscript{16} which authorized preventive detention of certain persons if the secretary of state had a reasonable cause to believe that it was necessary to do so, was examined in Liversidge v. Anderson\textsuperscript{17}. According to the House of Lords, the words "reasonable cause to believe" only meant that the Home Secretary must direct personal attention to the matter and it was sufficient for him to have a belief, which in the mind was reasonable.

Lord Wright, observed,

"All the courts today and not least this House, are as jealous as they have ever been in up holding the liberty of the subject. But, . . . . if extra-ordinary powers are given, they are given because the emergency is extraordinary and are limited to the period of emergency\textsuperscript{18}. It was further held that the words used clearly indicated that it was a matter for executive discretion and not subject to the discussion, criticism and control of a judge in a court of law".

\textsuperscript{16} Defence Regulation 1939.  
\textsuperscript{17} 1942 AC. 206.  
\textsuperscript{18} 1942 AC. 206 pp.255-57.
Lord Atkin in his strong dissent observed,

"I view with apprehension the attitude of judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive".

His Lordship further said,

"Amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace"19.

Thus during the emergency, parliament can restrict the liberties of the citizens. The courts however, can interfere if excesses are committed by executive.

**Liberty in the United States during Emergency:**

In the United States of America, the emergency does not increase the powers of the legislature or the executive nor the rights of the people are affected; the only constitutional provision dealing with the effect of emergency on the rights of the people is Article 1 (9) (2) which provides;

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19 1942 AC 206 p.224.
"The privilege of the writ of Habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it".

The courts may declare any law or executive action unconstitutional even during war. However, the courts uphold laws essential for the safety of the nation.

Holmes, J. Observed:

"Many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight . . . no court regard them as protected by any constitutional right"20.

In Hirabayashi v. United States21, the court upheld regulations which required, during the war between the United States and Japan, that all persons of Japanese ancestry residing in a particular area should be in their places of residence between specified hours with a view to preventing sabotage and espionage.

21 320 US 81.
Justice Murphy, in his concurring opinion observed: "We give great difference to the judgment of the Congress and of the military authorities as to what is necessary in the effective prosecution of the war, but we can never forget that there are constitutional boundaries which it is our duty to upheld\textsuperscript{22}. Thus, during emergency that government exercise more powers but have to remain within the constitutional limitations.

As such in this chapter a discussion has been made on the scope of personal liberty during emergent situation in the countries like England, USA and India. Of course, the positions are clear in all the countries, the safety and security of nation is more important than the interest of the citizens of the countries concerned. There is no doubt of the fact that whatever may be the situation of the country but a human being living in the country, at any cost, he must not be subjected to an inhuman condition. The minimum requirements of a person to live with dignity as a human being are to be catered by his country even during the time of emergency. Hence, there is a need for the study on personal liberty vis-a-vis Human Rights, which has been undertaken by the scholar for the purpose of research in the next chapter.

\textsuperscript{22} 320 US 81.