

Chanakya National Law University, Patna
LL.M Second Semester

Course Title: National Security, Public order and Rule of Law
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Course Overview

In every written constitution, provision is required to be made to equip the state to face grave threats to its exigence 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 greater 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.

Moreover in the present day world where the nations are constantly at war with terrorism and extremism, which has spread its tentacles to every aspect of life, there is also a need to rethink the whole paradigm of individual rights vis a vis security of the state. India is particularly vulnerable to such threats due to geo political reasons. Though India has enacted specific legislations like Terrorist and Disruptive Activities (Prevention) Act and Unlawful Activities Prevention Act but in reality it has been seen that such legislations have failed to achieve their purpose for many reasons. Moreover there is always a room for conflict between Courts and law enforcing agencies. Therefore a proper balancing of individual freedom and need for security of the State should be the ideal of these special legislations.

The students should be familiarized with different aspects of such emergency powers and scrutinizing intellectual attitude towards such powers. The following syllabus has been prepared with this perspective in mind.

Module 1 covers the exercise of powers of the court to Emergency Detention in England.

(ii) Civil Liberties Subjective satisfaction or objective assessment.

(iii) Pre- Independence law: Emergency Provisions .

(iv) Provisions in English Law and comparison Indian Law.

Module 2 covers the aspects related to preventive detention and constitutional provisions

Module 3 deals with the Emergency provisions in Indian Constitution .

Module 4 discusses the the various provisions related to emergency.

Module 5 deals with exceptional Exceptional Legislations and Module 6 deals with the question of Judicial Review during emergency.

Learning Outcomes . Though the emphasis of this course would be on the various aspects of National Security, the course would also familiarise the students with the response of the courts in interpreting the provisions of various legislation affecting personal liberty.

1. On completion of the course, students will be able to understand in a better way the Administration of criminal justice system in other countries like England and France.

2. The students should be familiarized with different aspects of such emergency powers and scrutinizing intellectual attitude towards such powers. The learning outcome of this course would be to equip the students in analysing the limitations on state powers and court's response to such limitations.

3. The students should be able to critically analyse the various issues concerned with security of the state, public order and courts duty to uphold the Rule of Law under extraordinary circumstances. The syllabus has been prepared made this perspective in mind.

List of Topics/ Modules

Topic/ Module	Contents/ Concepts	Sessions / Lectures
Module I:	<ul style="list-style-type: none"> (i) Emergency Detention in England. (ii) Civil Liberties Subjective satisfaction or objective assessment. (iii) Pre-Independence law: Emergency Provisions . (iv)Provisions in English Law and comparison Indian Law. 	1-10
Module II:	<ul style="list-style-type: none"> (i) Preventive Detention and Indian Constitution. (ii) Article 22 of . Constitution of India. (iii) Preventive Detention and safeguards. 	11-20
Module III:	<ul style="list-style-type: none"> (i) Emergency provisions in Indian Constitution . (ii) Declaration of Emergencies 1962, 1965 and 1970 	21- 30

	<p>Emergencies.1975 Emergency</p> <p>(iii) Meaning of "Public Order".</p> <p>(iv) Suspension of Article 19, rights on declaration of emergency.</p>	
Module IV:	<p>(i) President's right to suspend right to move any court</p> <p>(ii) Suspension of Article 19, rights on declaration of emergency.</p> <p>(iii) Special significance of Article 21 .</p> <p>(iv) Non-suspendability vs Suspendability.</p> <p>(v) 44th Amendment to the Constitution.</p>	31-40
Module V:	<p>(i) Exceptional Legislations. COFEPOSA and other legislations to curtail economic offenders.</p> <p>(ii) TADA: "the draconian law"- comments of NHRC Special courts and tribunals.</p> <p>(iii) Due Process and special legislation.</p> <p>(iv) UAPA – Whether it is successful in</p>	41 -50

	achieving the objectives.	
Module VI:	(i) Access to Courts and Emergency Article 359: Ups and downs of judicial review.	51-55.

Recommended/Reference Text Books and Resources:

Text Books .

Suggested Readings.

- (i) G.O. Koppel!" The Emergency, The Courts and Indian Democracy" 8 I.I.L.L 287(1966)
- (ii) H.M. Seervai, The Emergency , Future Safeguards and the Habeas Corpus: A Criticism
- (iii) . International Commission ofJurists, Status of Emergency and Human Rights (1984)
- (iv) N.C. Chattedi and Parameshwar Rao, Emergency and the Law (1966).

References

- Constitution of India.

Instructor Details

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