

Plea against validity of 59th amendment

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THE supreme court today admitted a writ petition challenging the validity of the 59th constitutional amendment which empowers the government to impose emergency if there is a threat to the integrity of the country and a likely internal disturbance either in the whole or parts of Punjab.

A division bench comprising Mr E. S. Venkataramiah and Mr K. N. Singh after hearing the counsel for the petitioners — the Common Cause and the Citizens For Democracy — referred the petition for a constitution bench's consideration.

Arguing for the Common Cause, Mr Soli J. Sorabjee, contended that the issue involved was of "great importance." Following the recent 59th amendment in the Constitution "we are back to square one" when the court in the ADM Jabalpur case in 1975 deprived the citizens of their right to move petitions either in the high courts or in the supreme court.

Mr Sorabjee, while referring to the provisions of the amendment, contended that again a "horrendous situation" had been created where mala fide detention cannot be challenged in a court of law, as it happened after the Jabalpur case.

When the Janata government came to power it made Article 21 of the Constitution, guaranteeing the right to liberty and life, non-suspendable. The counsel argued that India was a signatory to the international covenant for civil and political rights (ICPA), 1966, which ensures that certain rights like the right to life and liberty are non-suspendable through any amendment.

Seeking the court's indulgence in declaring the amendment unconstitutional, Mr V. M. Tarkunde, arguing for the Citizens For Democracy, pleaded that the hearing of the petition be expedited. The court asked him to mention it before the chief justice.

According to the petitioners, the amendment has abrogated certain progressive changes and improvements in the matter of fundamental rights. Before the amendment only Article 19 was suspendable, and that too in case of an emergency on account of threat to the security of India or any other threat of external aggression.

By amending Article 359 recently,

the legislature has enlarged the scope by a provision that emergency can also be declared in view of "armed rebellion" or if the "integrity of India is threatened by internal disturbance in the whole or any part of the territory of Punjab," noted the petitioners.

In such a situation, Article 19 becomes automatically suspended. Before the amendment this could be possible only when an emergency was declared on the ground of war or external aggression, the petitions stated.

Referring to the implications of the amendment, they contended that the right to information and freedom of expression, exercised both by the press and citizens, becomes suspendable. Consequently, the Centre or any other state government, can pass any law in violation of press freedom guaranteed by Article 19(1)(A) of the Constitution.

Due to its suspension it becomes possible for Parliament or a state legislature to pass any law imposing stringent pre-censorship relating to events in Punjab.