

No rule of law, in emergencies: De

NEW DELHI, February 18.

THE right to personal liberty of citizens is the first casualty in times of war and other national emergencies in all countries of the world, including Great Britain, the birthplace and home of the rule of law, the attorney-general of India, Mr. Niren De, told the supreme court today.

Opening his arguments on behalf of the Union of India in reply to detenus' counsel contentions in the habeas corpus case before the five-judge constitution bench, Mr. De said the rule of law was a concept of normal times and it had no relevance and did not come into the picture during times of emergency or war in a country.

He said during times of war or other national emergencies in Great Britain and America, where the right to personal liberty was considered to be the citizen's most precious right, the rule of law had been abrogated invariably on every occasion and the executive in those countries had been armed with extraordinary and arbitrary powers to deal with emergency situations. There had been illegal detentions during those periods and arbitrary acts by the executive too.

"CLAUSES CLEAR"

The attorney-general said in Great Britain and the U.S., the habeas corpus acts, considered to be the Magna Carta of man's personal liberty, were suspended during all times of war and emergencies and during such times there was no question of the rule of law being in action.

In India, he said, emergency provisions in the constitution were still "much, much wider" than those prevailing in either Great Britain or the U.S., or any other country of the world.

He said these emergency provisions in the constitution were very "plain, clear and unambiguous" and during the period of emergency in India, a citizen suffered a total loss of not only his personal liberty but also all other fundamental rights guaranteed under the constitution.

Mr. De said the rule of law lost its relevance in the period of emergency and the citizen's right to life and personal liberty was only governed by the constitution.

The rule of law could not be above the constitution and it could not override the constitutional provisions relating to abrogation of this and other fundamental rights during an emergency in the country, he said.

"POLITICAL ARGUMENTS"

The attorney-general said the presidential order issued under article 359(1) of the constitution had the effect of suspending the enforcement of the right to life and personal liberty guaranteed under article 21 and there could be no remedy at all available to citizens to seek enforcement of this right through any court of law.

He said the ambit of presidential powers conferred under article 359 was very clear and not only high courts but all courts in India had been barred from entertaining or enforcing this right during the operation of the emergency and the presidential order under article 359 (1).

Mr. De said arguments of detenus' counsel were mainly "political or emotional" and did not touch the key question involved in the case. They completely overlooked the object of the emergency and advanced their arguments "round and round" in an irrelevant direction.

When the presidential order had barred all courts from enforcing this suspended right to life and liberty, the question of suspending article 226 of the constitution relating to the habeas corpus jurisdiction of high courts did not arise. It automatically stood barred and suspended, he said.

Mr. De said in India the right to personal liberty only existed within the four corners of the constitution

and if the competent authority under the constitution suspended this right under a relevant constitutional provision this right disappeared.

He said the right to liberty did not exist only in article 21 or 22 but in several other articles like articles 14, 19 and 20 but they were not relevant in this case. Here the court concerned only with the right to personal liberty.

Mr. Justice H. R. Khanna wanted to know if the suspension of article 226 relating to the habeas corpus jurisdiction of high courts was necessary just as habeas corpus acts were suspended during periods of wars and emergencies in Great Britain or America.

Mr. De replied that the suspension of this constitutional provision was unnecessary as the emergency provisions in India's constitution were much wider than in any other country. Since all courts were barred from enforcing the suspended right, its suspension became immaterial.

DICEY, MAY QUOTED

The attorney-general extensively quoted the writings of eminent constitutional authorities like Dicey and May on the constitutional history of England, particularly relating to conditions prevailing during the suspension of habeas corpus acts in England in times of war.

Mr. De said the executive was armed with overriding and extraordinary powers and normal judicial processes, including the rule of law, were suspended only to enable the executive to protect the interests of the state during abnormal times.

If the arguments of detenus' counsel was accepted, then it meant that the rule of law was above article 359 (1) or above other constitutional provisions, which regulated the right to personal liberty. This was erroneous, he said.

Mr. De said the other side had told the court that many people were being detained and that some detenus were being lodged along with lepers or lunatics. "I do not know whether they are right or not. Your lordships do not either."

"SIMPLE QUESTION"

"But even assuming that they are correct, are your lordships going to be influenced by this horror picture while considering a small and simple question—"If during an emergency when the President has chosen to suspend the enforcement of fundamental rights and if the conditions of section 3 of the MISA were not fulfilled, then can a detenu approach the court for a writ of habeas corpus?"

"The abuse of power cannot be a ground to deny power. You must start with the presumption that all the three great departments of the government, namely the executive the legislature and the judiciary will act honestly," he said.

"If the executive or the legislature can be dishonest, likewise even the highest judiciary of the land can also be dishonest. Will these apprehensions lead us anywhere" he asked.—Samachar.

Court ruling on "personal effects"

NEW DELHI, February 18: The supreme court has held that exemption from income-tax under the head "personal effects" can be granted only if "an intimate connection between the effects and the person of the assessee" is shown to exist.

Dismissing an appeal of Maharaj Rana Hemant Singhji of Dholpur (Rajasthan) against an order of the Rajasthan high court, the supreme court held that only those effects which were "normally, commonly or ordinarily intended for personal or household use" of the assessee or his family members came within the mischief of sec. 2 (4A) II of the income-tax act and was exempt from income-tax.

The appellant-assessee inherited certain property upon being recognised as successor to the Dholpur maharaj by the Central government. On the suggestion of the government, sovereigns, silver bars and silver coins worth about Rs. 21 lakhs were sold by his guardian in 1957-58.

The assessee claimed that this income, having arisen from "personal effects" was exempt from income-tax. The income-tax authorities disallowed this claim.

Referring to the assessee's argument that the maharaja and his family used these articles at pujas and other family functions, the court said these might be used at pujas as "a matter of pride or ornamentation" but it could not be characterised as "personal use."—Samachar.

LIC officer's plea dismissed

By A Staff Reporter

Mr. Justice B. S. Deshmukh at the Bombay high court dismissed a petition filed by K. G. Kalbag, a development officer of the Life Insurance Corporation of India, against the enforcement of staff regulations on him.

The petitioner contended that the agreement between the chairman of the corporation and the national federation of insurance field workers of India, dated November 19, 1971, was binding on the corporation and it was not permissible in law for the corporation to proceed against him under the staff regulations.

The corporation, which opposed the admission of the petition, said that the agreement did not have the force of law as it contravened the statutory provisions of the LIC act. The staff regulations were framed under the act and they had the force of law, the corporation contended.

Mr. Justice Deshmukh rejected the petition at the admission stage.

Mr. D. S. Nargolkar appeared for the petitioner. Mr. P. M. Pagnis, instructed by Mr. S. J. Banaji, appeared for the LIC.

MP official penalised for claiming false TA

JABALPUR, February 18: Sewa Singh Baidhwan, regional director of labour educational centres, Durg, Madhya Pradesh, was sentenced to custody till the rising of the court and a penalty of Rs. 1,000 by the additional district and sessions judge, Mr. D. S. Pathak, here yesterday for encashing a false travelling allowance bill.

According to the prosecution, Baidhwan, who was working as regional director in 1970, claimed and encashed a T. A. bill for Rs. 896 for visiting Raigarh in June, 1970, to inspect labour educational sub-centres. He had charged first class train fare but no first class ticket was sold between June 8 and 10, 1970 at the two stations. Investigation also falsified his claim that he had purchased tickets in running trains.—Samachar.

Vengal to inaugurate Mailaram project

"The Times of India" News Service

HYDERABAD, February 18: The Mailaram copper project in Khammam district, being taken up by the Andhra Pradesh Mining Corporation, will be inaugurated by the chief minister, Mr. Vengal Rao, on Saturday.