

is connected with the numbers which have been recorded by the department.”

That after filing first protest letter on 15.1.1994, the complainant must have concluded that her telephone must have been put under observation and further use would have exposed her, during the next cycle from 15.12.1993, to 15.2.1994, again during this cycle S.T.D./I.S.D. calls were recorded has not been considered.

These were vital points in the arguments, and the National Commission did not referred to the series of lacunae in investigation and upheld the State Commission’s order believing on what the State Commission said

is truth, when there is no truth in the said dismissal of the appeal by the State Commission. Such glaring mistake has become common in the redressal Forums and is not seriously looked by the supervisory authorities and such mistakes are emerging every day.

The National Commission also did not consider that for a bill of about for Rs.15,000/, the complainant, in order to seek justice, has spent more than the bill amount.

The loss sustained by the party due to this indifference attitude of the higher Forum is costing a lot to the aggrieved person. This requires immediate attention to safeguard the validity and sanctity of the Forum.

## COMPARATIVE STUDY OF THE EMERGENCY PROVISIONS

By

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The emergency provisions corresponding to those under Article 352 are discussed in comparison with the World Constitutions viz., Constitutions of UK, USA and Australia.

- I. Position in England :—In England there is not much emergency powers. Though the need for extending the powers of the Government in times of emergency of the self preservation of the common wealth has been acknowledged in England.

There is a gradual flow of power from the crown to the Parliament until assumption of more powers by the Parliament. Such extraordinary (emergency/war) powers were exercised by crown.

- (a) War emergency : In the ship money case the majority of the Judges of the Court of Exchequer indeed uphold the claim of the King (Charles-I) that

the King was sole Judge as to the existence of an emergency and also of the steps which are needed to be taken to meet the emergency.

However this power was declared void by the long Parliament in 1641. In modern times, however the powers to the executive in UK are enlarged not by royal prerogative but by legislation by Parliament which confer discretionary powers in executive.

- (b) Internal Emergency : Executive is empowered to declare by way of proclamation a state of emergency, whenever situation threatening to create internal disturbance, such as threatening life.

- II. United States of America : In the US Constitution there are no such emergency provisions at the Union level of State level corresponding to those

in the Indian Constitution (Articles 352 and 356 respectively in Indian Constitution). However, the Congress has got war power (Article I Section 8 of US Constitution). This power is however, liberally interpreted by the Courts to aid the effective prosecution of war.

III. Australian Constitution : The position regarding the emergency powers in Australia is similar to that of US Constitution.

The difference is that during emergency, by the use of defence power,<sup>1</sup> the Commonwealth enlarges its powers in situation of external aggression. Even the Supreme Court recognized the emergency powers of Australian Commonwealth.

The Supreme Court liberally interpreted this power to cloth the Commonwealth with adequate emergency powers. The Supreme Court observed that during the II World War. The Commonwealth was for practical purposes a "Unified Government" and the defence power produced and extension in the subjects which was considered necessary for regulation by such a Government so wide as to embrace, practically every aspect of the material life."

Comparative study of the provisions regarding failure of the Constitutional machinery in the State are discussed hereunder.

*Comparative position in regard to "breakdown of law and order and/or failure of Constitutional Machinery*

There is a unique power and very essential for any federation to retain its federal structure. This is studied in comparison with some of the following federal Constitution.

The Indian Constitution imposed a duty on the Union to protect every State against external aggression and internal disturbance to ensure that the Government of every State

is carried on in accordance with the provisions of the Constitution.

*Comparative study is briefly made hereunder :*

1. Position in USA : The Constitution of United State of America,<sup>2</sup> imposed a duty on the federal Government which says that :

"The United States shall guarantee to every State in a Union a republican form of Government and shall protect each of them against invasion and on application of the Legislature, or of the Executive when the Legislature cannot be convened against domestic violence."

The main difference from the provisions in India is that the words domestic violence are not used in Indian Constitution in this provision.

Furthermore, we have added that the expression, it shall be duty of the Union in Article 355, which can notes that the power and obligation cast on the Centre, in our Constitution is much wider than that under the United States Constitution. The positioning United States is that, only a situation where any of the States is transforming its Government from the republican form, the Centre enters the field in the interests of the people of the State and prevents the State from changing its identity to republican form of Government.

In case, the Union feels that flow of inter State commerce is affected on account of domestic violence in any State. If intervenes on its won initiative and rescues the people of the State. Otherwise, in case of domestic violence in any State only on the application of such State of Centres aid, the centre protects the State.

Position in Switzerland : Articles 5, 15 and 16 of the Constitution (1874) of Switzerland, vest in the confederation these emergency powers.

1. Article 51(v) of Australian Constitution.

2. Under Article IV – S(4)

Article 5 : The confederation guarantees to the cartons their territory sovereignty within the limits fixed by Article 3. Their Constitutions the liberty and rights of the people. The constitutional rights of their people, the constitutional rights of the citizens and the rights authorities.

Article 15 : In case of the sudden danger from without the Government of the carton threatened must invoke the assistance of the confederated States and immediately notify the federal authority the measures which may subsequently be taken by the letter not being prejudiced thereby the cartons so called upon are based to give their assistance. The cost shall be borne by the confederation.

The particularity in the above section is that when there is external aggression (though not named as such). The Government of the cartons threatened must seek help of the confederation and the confederation can command any or some of the cartons to assist it in restoring normally. Though at the cost of the confederation itself.

Article 16 : In the case of internal disorder or of danger being threatened from another carton, the Government of the carton threatened must immediately notify the federal council, in order that the body may take the

necessary measures within the limits of its competence,<sup>3</sup> or convene the federal Assembly. In case of urgency of the cartonal Government while immediately notifying the federal Council may call for assistance of the other confederated States which the latter are bound to render.

In case of cartonal Government cannot seek the help or conflation, the confederation on its own initiative resues the cortons.

Emergency provisions in Australia : Sections 61 and 113 of the Australian Constitution provide these powers.

Section – 61 : The executive power of the Commonwealth extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth.

Section – 119 : The Commonwealth shall protect every State against invasion and on the application of the executive Government of the State against the domestic violence.

Actually speaking there is no much practical applications to the above provisions. But these powers have been liberally interpreted by the Supreme Court. In this respect is similarity in both Australia and United Kingdom.

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## MENTALLY CHALLENGED PEOPLE - RIGHTS — A STUDY

By

—GUNDA VEDASREE, L.L.M.

*MEANING:* The term “mental retardation” is a diagnostic term designed to capture and standardize a group of disconnected categories of mental functioning such as “idiot”, “imbecile”, and “moron” derived from early IQ tests, which acquired pejorative connotations in popular discourse

over time. The term “mental retardation” has itself now acquired some pejorative and shameful connotations over the last few decades due to the use of “retarded” as an insult. This may in turn have contributed to its replacement with expressions such as “mentally challenged” or “intellectual disability”.<sup>1</sup>

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3. Articles 102, 103, 10 and 11

1. “AAIDD POSITION STATEMENTS”. Retrieved on 2007-08-23.