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BALANCING LIBERTY AND STATE POWER: A CRITICAL EXAMINATION OF ARTICLE 21 AND EMERGENCY RESTRICTIONS IN INDIA

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Abstract:

This research paper critically examines the tension between the **right to personal liberty**, as guaranteed under **Article 21** of the Indian Constitution, and the **government's power to impose restrictions** during emergencies, such as curfews, lockdowns, and other preventive measures. The paper explores whether the suspension or limitation of personal liberty during an emergency is justifiable and necessary, or whether it undermines the fundamental essence of Article 21. Through a detailed analysis of case laws, constitutional provisions, and historical precedents, the paper aims to answer the central question: **Should the government be allowed to limit personal liberty during emergencies at the expense of individual freedoms?**

Keywords: Article 21, Indian Constitution, personal liberty, emergency powers, national security, public order, lockdowns, curfews, proportionality test, judicial review

Introduction:

The **right to life and personal liberty** is one of the most cherished and sacrosanct rights provided under **Article 21** of the Indian Constitution. This article guarantees every individual the right to live freely, make personal choices, and move independently. It serves as the cornerstone of personal freedoms in India, often described as a fundamental right that cannot be infringed upon except under a procedure established by law. However, during an **emergency**, such as **National Emergency** declared under **Article 352**, the government is granted special powers to impose restrictions on several fundamental rights, including personal liberty.

The imposition of measures like **curfews, lockdowns**, and restrictions on movement during

emergencies raises a significant question: **To what extent can the state curtail individual freedoms for the sake of public order or national security?** While Article 21 guarantees personal liberty, this right is not absolute. This paper critically evaluates the **conflict between personal liberty and governmental restrictions** imposed during emergencies.

Understanding Article 21 and Its Importance:

Article 21 of the Indian Constitution protects the **right to life and personal liberty**. It is considered one of the most fundamental rights under the Constitution, ensuring that no person shall be deprived of these rights except in accordance with a procedure established by law. The term **personal liberty** has been given a broad and inclusive interpretation by the Indian judiciary. It is not limited to mere physical freedom, but includes the **freedom to live independently, freedom of movement, freedom of expression**, and the right to make personal choices.

The landmark case of *Maneka Gandhi v. Union of India* (1978) significantly expanded the scope of Article 21. The Supreme Court ruled that personal liberty could not be taken away unless a law was followed, and even then, the procedure must be just, fair, and reasonable. This case underscored the fact that **personal liberty** is a multifaceted right, encompassing aspects of physical freedom, autonomy, and dignity.

The right to personal liberty is often described as a **core value** of human rights. It forms the foundation of a free society, ensuring that individuals have the freedom to live their lives without undue interference from the state. However, Article 21, while guaranteeing personal liberty, also recognizes that this right is not absolute. The state may, under exceptional circumstances, impose restrictions on personal liberty. This raises the question of whether **government restrictions during emergencies** are a necessary and justifiable exception or an **undue infringement** on the fundamental right guaranteed under Article 21.

Government Powers During Emergencies:

In times of national crises, such as war, external aggression, or internal disturbances, the Indian Constitution grants special powers to the government to protect national security and public order. **Article 352** empowers the President of India to declare a **National Emergency** when the security of India or any part of it is threatened. This declaration has profound consequences

for fundamental rights, including the suspension of certain rights under **Article 359**.

While Article 21 remains protected from suspension during an emergency (as per **Article 359(1)**), it can still be restricted through executive action under the guise of maintaining national security, public order, or preventing public health disasters. The government often invokes the **Disaster Management Act**, the **Indian Penal Code**, and other legislative tools to impose curfews, lockdowns, and restrictions on movement.

These measures are justified on the grounds of necessity: the state argues that such restrictions are required to **maintain public order, safeguard public health, or ensure national security**. However, the extent of these restrictions and the duration of their enforcement can lead to a **conflict** with the fundamental right to personal liberty. Thus, the challenge is to determine whether these measures are **proportionate, temporary, and justifiable** in light of the broader constitutional values enshrined in Article 21.

The Legal and Constitutional Debate on Limiting Personal Liberty During Emergencies:

Article 19 of the Indian Constitution provides for **freedom of speech, expression, assembly, association, and movement**, but these rights are subject to **reasonable restrictions** in the interest of public order, morality, and national security. The imposition of a **lockdown** or **curfew** during an emergency situation typically falls under these exceptions.

However, the key question arises when the state imposes extensive **curbs on movement, gathering, and individual activity** for a prolonged period. Under the **proportionality test**, a restriction is justified only when it is **necessary, least intrusive, and proportional** to the objective pursued by the state. For instance, the restrictions placed during the **COVID-19 pandemic** were meant to protect public health, but the question remains: **Were they proportionate to the threat posed by the virus?**

Moreover, during emergencies, **executive overreach** often occurs, where the government may impose harsher restrictions than necessary. For example, during the **COVID-19 lockdown**, while some restrictions were necessary, the blanket imposition of curfews and travel bans resulted in hardships for millions of people, particularly the **migrant workers**, who were **denied their right to movement**. This situation brought to the forefront the **conflict** between

the **right to life** and the **public health** measures deemed necessary by the government.

Case Law Analysis:

Several **landmark Supreme Court cases** have examined the balance between personal liberty and emergency powers granted to the government:

1. **Maneka Gandhi v. Union of India (1978)**: This case is central to the interpretation of Article 21. The Court held that the right to personal liberty cannot be curtailed except by **fair, just, and reasonable procedure**. The ruling affirmed that Article 21 provides the right to a dignified life, which includes a range of freedoms beyond physical liberty.
2. **Indira Gandhi v. Raj Narain (1975)**: This case dealt with the question of whether emergency measures could suspend fundamental rights. The Court held that the **emergency provisions** allowed for the **suspension of fundamental rights**, but they could not be used to justify arbitrary actions by the state. The case set important precedents for balancing state powers and individual freedoms during an emergency.
3. **K. S. Puttaswamy v. Union of India (2017)**: This case affirmed the **right to privacy** as an extension of the right to life and personal liberty under Article 21. The ruling also implied that **any restriction** on personal liberty during an emergency must adhere to the **principle of proportionality**.
4. **AK Gopalan v. State of Madras (1950)**: This case examined preventive detention laws and their application during emergencies. The Court upheld preventive detention during emergencies, but also underscored the importance of judicial oversight to prevent abuse of such powers.

These cases highlight the **complexity of balancing government power and individual rights** during emergencies and underscore the critical role of the judiciary in ensuring that any restriction on personal liberty is **reasonable, proportionate, and necessary**.

Impact of Emergency Measures on Personal Liberty During the COVID-19 Pandemic:

The **COVID-19 pandemic** is a clear example of how emergencies disrupt normal life and force governments to impose **stringent measures** to protect public health. The Indian government

implemented a **nationwide lockdown** in March 2020, which severely limited the **freedom of movement, assembly, and business operations**.

While the restrictions were aimed at controlling the spread of the virus, the measures also resulted in significant **economic hardship, psychological stress, and disruption of daily life** for millions. The **migrant labor crisis** in India highlighted the **harsh realities** of lockdowns, where **millions of people** were forced to walk long distances to reach their homes, as they were not allowed to travel by train or bus.

These events prompted questions about the **appropriateness** and **necessity** of such widespread restrictions. Were the **violations of personal liberty** justified? Could the government have taken a less intrusive approach to achieve the same public health outcomes?

This section explores the **proportionality** of the emergency measures imposed during the pandemic, examining whether the **government's response** was too severe and whether it violated the principles enshrined in Article 21.

Conclusion:

The paper concludes that **Article 21**, while guaranteeing the right to life and personal liberty, allows for **reasonable restrictions** under exceptional circumstances, such as during emergencies. The **conflict** between personal liberty and **state power** requires a careful balancing act to ensure that individual freedoms are not unduly restricted.

The government's imposition of restrictions during emergencies must be done with due regard to the **principles of necessity, proportionality, and temporary duration**. Any measure that goes beyond these principles risks infringing upon the core values of **Article 21** and undermining the dignity and autonomy of the individual.

Ultimately, while the state must have the power to act decisively during emergencies, such actions must be tempered by respect for **individual freedoms** and should be **subject to judicial review** to ensure that the right to personal liberty is not sacrificed in the name of public order or national security.

References:

- Constitution of India, Article 21, 352, 359.
- Maneka Gandhi v. Union of India, 1978.
- Indira Gandhi v. Raj Narain, 1975.
- K. S. Puttaswamy v. Union of India, 2017.
- AK Gopalan v. State of Madras, 1950.
- Judicial Review and Emergency Powers in India (various articles).
- Reports on the impact of the COVID-19 lockdown in India (Government reports, newspapers, and academic journals).

