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CHAPTER 1. INTERNATIONAL LABOUR ORGANISATION

11. Political Situation and Administrative Action

PRESIDENT PROCLAIMS NATIONAL EMERGENCY ON ACCOUNT OF EXTERNAL AGGRESSION ON INDIA'S BORDERS; DEFENCE OF INDIA ORDINANCE ARMINI GOVERNMENT WITH WAR-TIME POWERS PROMULGATED

Dr. S. Radhakrishnan, President of India, proclaimed on 26 October 1962 a state of emergency in the country under Article 352 of the Constitution consequent upon external aggression at India's northern borders by the People's Republic of China. The President also promulgated the Defence of India Ordinance, 1962.

Under Article 352 of the Constitution, the President is empowered to declare an emergency if the security of India is threatened by war or by external aggression. When the emergency lasts, the Central Government can issue directives to State Governments in regard to issues of national importance. Parliament can make laws on subjects which lie within the State field. Therefore, the President can also issue an Ordinance on subjects which lie within the jurisdiction of the States.

Parliament and State Legislatures can also pass laws which may abridge fundamental rights under Article 19. However, Parliament and Legislatures will not naturally abridge fundamental rights unnecessarily except in so far as they may be essential to meet the present emergency.

Defence of India Ordinance.- The Defence of India Ordinance clothes the Central Government with a wide range of war-time powers for the defence of the country and the preservation of law and order and economic life.

The date from which each of these powers will begin to be exercised has been left to be specified later but the comprehensive nature of the powers has been announced in a six-chapter ordinance of which the preliminary chapter relating to the extent of the applicability of the ordinance comes into force at once.

The ordinance is divided into six chapters. The "Preliminary chapter" states that the Ordinance extends to the whole of India. It also applies to citizens of India outside India, persons in the services of the Government wherever they may be and for the regulation and discipline of the naval, military and air force or any other armed forces of the Union, to members of, and persons attached to, employed with, or following those forces. It also

applies to persons on ships and aircraft registered in India wherever they may be.

The other chapters deal with emergency powers, civil defence services, special tribunals, requisitioning and acquisition of immovable property and supplemental matters. While the preliminary chapter dealing with applicability of the Ordinance comes into force at once, the remaining provisions shall come into force on dates to be notified. Different dates may be notified for different provisions and areas. Under the emergency powers vested by the Ordinance, the Central Government may, by notification in the official gazette, make such rules as appear to it necessary or expedient "for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community". The chapter on "civil defence services" authorises State Governments to constitute a body of persons to be called the Civil Defence Service and appoint a controller to command it.

The chapter on "special tribunals" empowers State Governments to constitute one or more special tribunals each consisting of three members to try offences under the rules of the Ordinance. The chapter on "requisitioning and acquisition of immovable property" empowers Government to requisition any immovable property, except property exclusively used by the public for religious worship, in furtherance of the objects of the Ordinance. The chapter entitled "Supplemental" among other things provides that "no suit, prosecution or other legal proceeding shall lie against any person for any thing which is done in good faith, done or intended to be done, in pursuance of this Ordinance or any rules made thereunder or any orders issued under any such rule". A similar provision is made to bar suits against the Government. As regards emergency powers, the Central Government may make rules, or may empower any authority to make orders providing for all or any of the following matters:

- (1) Ensuring the safety and welfare of the armed forces of the Union, ships and aircraft, and preventing the prosecution of any work likely to prejudice the operations of the armed forces of the Union;
- (2) Prohibiting anything likely to prejudice the training, discipline or health of the armed forces of the Union;
- (3) Preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering the service of the Government.
- (4) Preventing or prohibiting anything likely to assist the enemy or to prejudice the successful conduct of military operations or civil defence including - (a) communications with the enemy or

agents of the enemy; (b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy; (c) contribution to, participation or assistance in, the floating of loans raised by or on behalf of the enemy; (d) advance of money to, or contracts or commercial dealings with the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory; and (e) Acts, publications or communications prejudicial to civil defence;

(5) Preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice India's relations with foreign powers or to prejudice maintenance of peaceful conditions in all areas including tribal areas, or to promote feelings of ill-will, enmity or hatred between different classes of the people of India;

(6) Requiring publication of news and information;

(7) Regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;

(8) Requiring any person or class of persons to comply with any scheme of defence or civil defence;

(9) Ensuring the safety of - (a) ports, dockyards, light-houses, light-ships and aerodromes; (b) Railways, tramways, roads, canals and all other means of transport by land or water; (c) Telegraphs, post offices, signalling apparatus and all other means of communication; (d) Sources and systems of water-supply, works for the supply of water, gas or electricity, and all other works for public purposes; (e) Vessels, aircraft, transport vehicles as defined in the Motor Vehicles Act, 1939 and rolling stocks of railways and four of 193 tramways; (f) warehouses and all other places used or intended to be used for storage purposes; (g) Mines, oilfields, factories or industrial or commercial undertakings, generally or any mine, oil-field, factory or industrial or commercial undertaking in particular; (h) Laboratories and institutions where scientific research is conducted; (i) All works and structures being part of, or connected with, anything earlier mentioned in this clause; and (j) any other place or thing used or intended to be used for the purposes of Government or a local authority, the protection of which is considered necessary or expedient for securing the defence of India and civil defence, the public order, or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community;

(10) The demolition, destruction or rendering useless in case of necessity of any building or other premises or any other property;

(11) Prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal, inland waters.

- (12) The control of lights and sounds;
- (13) The control of persons entering, travelling in or departing from India;
- (14) Restricting and regulating the charter of foreign vessels;
- (15) Regulating the structure and equipment of vessels for the purpose of ensuring the safety thereof and of persons therein;
- (16) Regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;
- (17) Prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads and reserving and requiring to be adapted for the use of Central Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;
- (18) The impressment of vessels, aircraft vehicles and animals for transport;
- (19) Prohibiting or regulating the use of postal, telegraphic or telephonic services, including the taking possession of such services, and the delaying, seeing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;
- (20) Regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;
- (21) The control of trade or industry for the purpose of regulating or increasing the supply of and the obtaining of information with regard to articles or things of any description whatsoever which may be used in connection with the conduct of military operations or civil defence or for maintaining supplies and services essential to the life of the community;
- (22) The control of agriculture (including the cultivation of agricultural land and crops to be raised therein) for the purpose of increasing the production and supply of foodgrains and other essential agricultural products;
- (23) The provision, storage and maintenance of commodities and things required for the conduct of military operations or for civil defence.
- (24) The provision, construction, maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of military operations or civil defence.
- (25) The protection of property by the performance of such fire prevention and other duties as may be allotted to any person;
- (26) The securing of any building premises or other structures from being readily recognizable in the event of a hostile attack by a foreign power;

(27) Ensuring the ownership and control of mines and oilfields by the citizens;

(28) Controlling the possession, use or disposal of, or dealing in coin, bullion, bank notes, currency notes, securities or foreign exchange;

(29) The control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water supply;

(30) The requisitioning and acquisition of any movable property, and the principles on which and the manner in which compensation shall be determined and given in respect of such requisitioning or acquisition;

(31) Prohibiting or regulating the possession, use or disposal;
 (a) Explosives, inflammable substances, corrosive and other dangerous substances or articles, arms and ammunitions of war; (b) Vessels;
 (c) Wireless telegraphic apparatus; (d) Aircraft, and (e) Photographic and signalling apparatus and any means of recording information;

(32) Prohibiting or regulating the bringing into, or taking out of India and the possession, use or transmission of ciphers and other secret means of communicating information;

(33) Prohibiting or regulating the publication of inventions and designs;

(34) Prohibiting or regulating the publication of results of research work having a bearing on efforts relating to defence of India or military operations;

(35) Preventing the disclosure of official secrets;

(36) Prohibiting or regulating meetings, assemblies, fairs and processions;

(37) Preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and anything similar thereto, where such use is calculated to deceive or to prejudice the public safety, the maintenance of public order, the defence of India or civil defence;

(38) Ensuring the accuracy of any report or declaration legally required of any person;

(39) Preventing the unauthorized change of names;

(40) Preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling an official person, official document or official property;

(41) The precautionary measures which the Government or any department thereof or any local authority, members of police forces and fire brigades and members of any other service or authority employed primarily for purposes other than civil defence purposes should be required to take within their respective jurisdictions or with respect to any personnel employed by them;

(42) The seizure and custody or destruction of injured, unclaimed or dangerous animals;

(43) The salvage of damaged buildings and property and disposal of the dead;

(44) The evacuation of areas and the removal of property or animals therefrom;

(45) The accommodation in any area of persons evacuated from another area and the regulation of the conduct of evacuated persons accommodated in such area;

(46) The billeting of evacuated person or persons authorized to exercise functions under this Ordinance.

(47) The instructions of members of the public in civil defence and their requirement for purposes of civil defence;

(48) The entry into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest to the defence of India or civil defence or to the efficient conduct of military operations, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.

The rules to be made may provide for the arrest and trial of persons contravening any of the regulations of or the orders made under them, any contravention or any attempt to contravene or abetment of contravention or attempt to contravene the rules or orders shall be punishable with imprisonment for a term extending to seven years or with fine or with both.

Any person contravening any provisions of the rules, with intent to wage war against India or to assist any country committing external aggression against India, shall be punishable with death or imprisonment for life or imprisonment for a term which may extend to 10 years and shall also be liable to fine.

Prime Minister's broadcast.- In a broadcast to the nation on 22 October 1962, Shri Jawaharlal Nehru, Prime Minister, called upon the nation to "gird up its loins" to "face the greatest menace of Chinese aggression to India since the attainment of independence. He said: "The burden is going to be great. We must add substantially to our savings for financing the increased cost of national defence. We must prevent the rise in prices and we must realise that those who seek to make huge profits at the time of national difficulty will only injure the nation.

"We are in the middle of our Third Five Year Plan and there can be no question of our giving up the Plan or reducing any important section of it. We must adapt it to new requirements here and there. But it is essential that major projects of the Plan must be implemented because it is only that way that we shall strengthen our country, not only in the present crisis but in the years to come. There are many things that our people can do and I hope to indicate some of them at a later stage. But the principal thing is for us to devote ourselves

to helping in the defence of national freedom and work hard to that end. There is no limit to it".

In a call to the nation to mobilise financial resources to build up the defence potential and equip the army with modern equipment and supplies, on 26 October 1962, Shri Morarji Desai announced the establishment of a National Defence Fund for voluntary contributions. The Union Finance Minister said that contribution to the Fund would be particularly welcome in the form of gold and gold ornaments. These were vitally needed to provide foreign exchange to buy the equipment and materials needed for the armed forces.

In a nation-wide broadcast, Shri Desai also announced the issue of the National Defence Bonds and a new series of small savings certificates to be designated as Defence Deposit Certificates and National Defence Certificates. These, and a new series of Prize Bonds, would soon be placed on tap for public subscription.

Calling for generous contributions as a "symbol of the nation's determination to face the task that has been thrust upon us by a ruthless and unprincipled aggressor", Shri Desai said that the enlarged flow of savings necessary would require efforts to increase production and practise austerity.