PROTECTION OF HUMAN RIGHTS DURING EMERGENCY UNDER THE CANADIAN CONSTITUTION.

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1.0 INTRODUCTION:

Human Rights are moral principles or norms that describe certain standards of human behavior and are regularly protected as natural and legal rights in municipal and international law. They are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other status. Human rights are the basis rights and freedoms that belong to every person in the world, from birth until death.[1] Such rights include the right to life & liberty, freedom from slavery and torture, freedom opinion and expression, the right to work and education, and many more.These basic rights are based on shared values like dignity, fairness, equality, respect and independence which are defined and protected by law.

However, serious violation of human rights often accompany emergency situations, which are variously known as "States OF Emergency," State of Exception", State of Siege" and "Martial Law". The Central International Human Rights treaties envisage a region of derogation allowing states to temporarily adjust their obligations under the treaties in exceptional circumstances. The two questions that comes to mind under this situation of emergency is whether the situation constitutes a public emergency which threatens the life of the nation or whether the measures are strictly required by the exigencies of the situation.

In pertinence therefore, this paper intends to look at the protection of Human rights in the face of state of emergency through the Canadian Constitution. It will focus on human rights provision, state of emergency in Canada and international instrument on state of emergency.

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1. https://www.equalityhumarights.com accessed 27 August, 2019

2.0 MEANING OF STATE OF EMERGENCY:

A state of emergency is derived from a governmental declaration made in response to an extraordinary situation posing a fundamental threat to a country. The declaration may suspend certain normal functions of government, may alert citizens to alter their normal behavior, or may authorize government agencies to implement emergency preparedness plans as well as to limit or suspend civil liberties and human rights.[2]

The need to declare a state of emergency may arise from situations as diverse as an armed action against the state by internal or external elements, a natural disaster, civil unrest, an epidemic, a financial or economic crisis or a general strike.

States of emergency are not uncommon occurrences, particularly in dictatorial regimes where the state of emergency may endure as long as the regime lasts. In some situations, martial law is also declared, allowing the military greater authority to act. There are other terms for referring to emergency situation like state of exception, state of alarm and state of siege.[3]

Most government regards any threat or challenge to their government or authority as a threat to the nation. This practically happen when there is going to be change in power or a regime that does not want to provide for the transfer of political power and which in consequence are inclined to regards any criticism of the government as an act subversive of public order. Having dismantled the legal machinery for the protection of the citizen, they frequently permit their security foes to abuse the non-derogable rights including right to life, freedom from torture or other cruel, inhuman or degrading treatment or punishment. These often resulted into anonymous arrest, secret detentions, disappearances, extrajudicial killings and systematic practices of torture.

2. **States of Emergency, www.dcaf.ch/publications/backgrounders accessed on 27 August, 2019**
3. **www.dcaf.ch/publications/backgrounders/stateofemergenancy accessed on 27 August, 2019.**

3.0 COMPONENTS OF A STATE OF EMERGENCY:

There are two (2) components of a State of Emergency which includes:-

1. A legal framework consisting of the constitutional and legislative bases for the State of Emergency and
2. An operational framework involving the organization structure and strategic plans for dealing with the state of emergency.

While separate, these components must be compatible, the legal framework must take into account the operational requirements, and the operational requirements must respect the legal framework including the international law. The implementation of emergency law invariably leads to restriction on normal economic, civil or political activity and rights in order to address the extraordinary circumstances that have given rise to the emergency situation. However, there is a danger that a government will take advantage of a state of emergency to introduce unwarranted restrictions on human rights and civil liberties, and also for some self-serving purposes that would be difficult to pursue under normal circumstances. Even some countries have the tendency to maintain States of Emergency for years or even decades, long after the original reason for its proclamation has disappeared. The danger that a constitutional dictatorship may arise out of a state of emergency should not be under estimated.

4.0 NON-DEROGABLE RIGHTS IN THE EVENT OF A STATE OF EMERGENCY:

Under international Law, rights and freedom may be suspended during a state of emergency but certain human rights are non-derogable under any circumstances. The international covenant for civil and political rights (ICCPR) identify some of these rights as follows: [4]

- The rights to life (Article 6)
- Prohibition torture (Article 7)
- Freedom from slavery (Article 8)
- Right to recognition before the law (Article 16) and
- Freedom of thought, conscience and religion (Article 18)

4. International Covenant on Civil and Political Rights (1966)

The Non-derogable rights are listed and even some countries have made it illegal to modify law in emergency situation or the constitution during any form of emergency. In addition to this, the United Nation Human Rights committee has recognized that there are several other humanitarian provisions that must remain inviolable like:

- The humane treatment of all persons deprived of their liberty
- Prohibitions against hostage-taking and acknowledged incarceration.
- Protection of the rights of persons belonging minority groups.
- The prohibition of propaganda advocating war or national, racial or religious hatred.
- Procedural guarantees and safeguards designed to ensure the integrity of the Judicial System.

5.0 SPECIAL PROCLAIMATION IN A STATE OF EMERGENCY:

There is no doubt that special emergency powers are granted to the government through the constitution or any other statutory laws for issues like:

- Restriction of press freedom and the prohibition of public meetings.
- Domestic deployment of the armed forces.
- Evacuation of people from their homes and places of work.
- Searches of homes and other private places without warrant.
- Arrests without charges
- Confiscation of private properties (with or without compensation) and
- Special legislation to punish non-compliance with emergency regulations. [5]

6.0 IMPORTANT PRINCIPLES THAT MUST BE RESPECTED DURING EMERGENCY RULE:

A country's confiscation or legislation normally describes the circumstances that can give rise to state of emergency, identifies the procedures to be followed and specifies limits on the emergency powers that may be invoked or the rights that can be suspended.[6] It is worthy of note that International norms have developed that can provide useful

5. **www. dcaf.ch/publications/backgrounders/states emergency accessed on 27 august, 2019.**
6. **Ibid**

guidance in this direction. The international treaties such as the European Convention of Human Rights (ECHR) and the International Covenant on Civil and Political Right (ICCPR) which stipulate that states are to observe the following principles:-[7]

- Temporality: This refers to the exceptional nature of the declaration of a state of emergency
- Exceptional Threat: The crisis must present a real, current or at least an imminent danger to the community
- Declaration: The state of emergency must be publicity announced as to inform the citizens of the legal situation and reduces the possibility of a defector state of emergency that is, a situation whereby the state restricts human rights without officially proclaiming a state of emergency
- Communication: Notification of the measures taken must be made to other states and relevant treaty monitoring bodies, for example, if a state is to derogate from its obligations under the ECHR or ICCPR then it must inform the Secretary General of respectively the Council of Europe or the UN of its derogation, the measures it has taken and the reasons therefore, as well as the termination of the derogation.
- Legality: Human Rights and Fundamental Freedom during State of emergency must respect the limits provided for by the relevant instruments of International and regional law.
- Intangible: This concerns the fundamental rights from which can be no derogation, even during times of emergency.

7.0 THE CANADIAN CONSTITUTION AND STATE OF EMERGENCY:

The Canadian constitution is the supreme law in Canada, it outlines Canada's system of government and the civil and Human Rights of those who are citizens and non-citizens in Canada. The constitution of Canada includes the constitution Acts of 1867 and the constitution Acts of 1982 which reaffirms Canada's dual legal system and also includes aboriginal

7. **Ibid**

and treaty rights.[8] The current Canadian constitution was written in 1867, and has been repeatedly amended since then.

The primary sources of Canadian constitutional law are legislative rules in the form of documents and statutes which are created over time. However, the charter of rights is a 1982 addition to the constitution that outlines the civil rights of every Canadian citizen.[9] This constitution can only be amended with the approval of the provincial government. All laws, rules and practices that structure the way the Canadian political system runs add up to the constitution of Canada. There is no doubt that Canada is one of the oldest constitutional democracies in the world today. [10]

The constitution of Canada is the governing legal framework which defines the power of the executives of government and the legislatures at both the national and provincial levels. Canadian constitution is not one legal documents but is composed of several statutes and orders, as well as generally accepted practices known as constitutional conventions.

Since a state of emergency is a situation in which a government is empowered to perform actions that it would normally not be permitted to do and such situation or declarations alert citizens to change their normal behavior and orders government agencies to implement emergency plan, only the president can declare such an emergency on the basis of a written request by the cabinet headed by the prime minister.[11]

The president declares a state of emergency when he believes a disaster has occurred or may be imminent that is severe enough to require state aid to supplement local resources in preventing or alleviating damages, loss hardship or suffering.

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8. https://en.wikipedia.org accessed 28 August, 2019
9. Ibid
10. John Courtney and David Smith; the Oxford handbook of Canadian Politics, 2010
11. https://en.wikipedia.org accessed 28 August, 2019

The Federal Government of Canada can use the emergencies Act to invoke a state of emergency which automatically expires after 90 days unless extended by the president. [12]

8.0 EMERGENCY POWER AND PROTECTION OF HUMAN RIGHTS IN CANADA:

Human Rights are protected by Federal, provincial and territorial laws in Canada. The charter protects every canadian's right to be treated equally under the law. The charter guarantees broad equality rights and other fundamental rights such as the freedom of expression, freedom of Assembly and freedom of religion. Human Rights are an important part of Canadian law, they are given legal protections by the dual mechanism. The protection mechanism which exist focused more on a general approach to Human Right than just specific issues.

The current legal framework for the protection of Human Rights in Canada consists of constitutional entitlement and statutory human rights codes, both federal and provincial. The constitutional foundation of the modern Canadian human right system is the Canadian charter of Rights and Freedoms of 1982. Today, the charter guarantees fundamental freedoms like free expression, religion, association and peaceful Assembly. Although, there was not express constitutional protection for human rights but provincial and federal human rights laws provided protection for human rights enforceable against government and private parties.[13] The Canadian law on the provision of human rights is contained in the Canadian charter on rights and freedom that contains about 34 sections. It must be equally noted that no Canadian courts as annulled a declaration of emergency, just as they have never invalidated regulations adopted under the war measures Act. One may even say that they have left the federal executive free to choose the means to be used to face emergency situations considering it to be a question of politics.

12. Ibid
13. Ibid

9.0 INTERNATIONAL PROVISIONS ON STATE OF EMERGENCY:

The International covenant on civil and political Rights (ICCPR)[14] recognizes the right of government in time of Public emergency which threatens the life of the nation to derogate with certain expectations, from their obligations under the covenant to the extent strictly required by the exigencies of the situation which similarly provisions can be found in the ECHR (European Conventions of Human Rights).

10.0. CONCLUSION:

In Canada, the power of the Federal government in respect of emergencies form part of the plenary powers attracted under section 91 of the constitution which provides for legislation for the peace, order and good government of Canada[15]. However, the war measures Act Is the principal law governing emergency situation in Canada. This law was adopted during the First World War and its provisions are applicable after a declaration to the effect that a state of emergency, due to actual or perceived war exits in Canada.

Although, there are other laws, federal and provincial which grant the executive branch of government emergency powers which are more of a civilian nature but none of these laws is as broad in scope as the war measures Act, which was designed to deal with emergency situations which jeopardize national security or the integrity of the country either in wartime or in peace. Therefore, it may be said that till date, Canadians have managed to avoid recourse to emergency powers leading to major abuse. The Canadian bill of rights[16] ceases to apply during an emergency and it could be the same with the Canadian charter of Rights and freedom contained in the new Canadian constitution adopted in 1981.[17] The need for the executive to have the powers necessary to deal with emergency situations is not questioned, particularly where there is a threat to the

14. **Article 4 of ICCPR**
15. **Canada's Constitution Act 1867**
16. **Article 6 (5) of the war measures Act**
17. **State of Emergency: their impact on Human Rights, International Commission of Partices**

peace and security of the country, but extensive exceptional powers in a framework which is weak in legal and democratic terms are unacceptable.

The various international democratic on the protection of Human Rights recognizes the fact that some basic Rights can never be derogated even with the declaration of a state of emergency anywhere in the world. [18]

It is important to say that there are global standard for regulation on human right even in the state of emergency. A country should observed the obligations pursuance to the international covenant and must respect, protect and honor such obligations for the sake of National and international integrity.

18. Ibid