

Course Name- B.A.LL.B 4<sup>TH</sup> sem/  
LL.B 2<sup>nd</sup> sem

Subject- Constitution of India

Teacher- Dr. Monika Garg

Concept- Provision related to  
Emergency under Constitution of India

# EMERGENCY

Black law's dictionary defines emergency "as a failure of social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them".

Dr. B.R Ambedkar claimed that the Indian Federation was unique as during the times of emergency it could convert itself into an entirely unitary system. In India, the emergency provisions are such that the constitution itself enables the federal government acquire the strength of unitary government whenever the situation demands. During such urgent needs all the pacific methods should be exhausted and emergency should also be the last weapon to use as it affects India's federal feature of government.

Provisions of Emergency are from Article 352 to 360 of constitution of India.

# TYPES OF EMERGENCY

There are three types of emergencies under the Indian Constitution namely-

- National Emergency (Article 352)
- Failure of constitutional machinery in states (Article 356)
- Financial Emergency (Article 360)

# NATIONAL EMERGENCY

Article 352 of the Indian Constitution talks about the national emergency.

- ❖ National emergency is imposed whereby there is a
  - I. grave threat to the security of India or
  - II. any of its territory due to
    - a. war,
    - b. external aggression or
    - c. armed rebellion.
  
- ❖ Such emergency shall be imposed by the president on the basis of written request by the council of ministers headed by the Prime Minister. When they are satisfied that they are satisfied that there is an eminent danger thereof.
  
- ❖ Every proclamation is required to be laid before each House of Parliament, it will cease to operate after **one month** from the date of its issue unless in the meantime it is approved by the parliament, the proclamation may continue for a period of **6 months** unless revoked by the president. For further continuance of emergency the resolution has to be passed by either house of parliament by a majority of not less than two-third members of the houses.

# Effects—

- During the times of such emergency the executive, legislative and financial power rests with the centre whereas the state legislature is not suspended.
- The union government under Art.250 of the constitution gets the power to legislate in regards to subjects enumerated in the state list.
- Except Art20 and 21 all the fundamental rights are suspended.
- Under Art.359 the president may suspend the right to move to the courts for enforcement of fundamental rights during the time of emergency.

National emergency has been imposed thrice in the country- in 1962 at time of Chinese aggression, in 1971 during the indo-pak war, in 1975 on the grounds of internal disturbances.

# Failure Of Constitutional Machinery in State

- ❖ Article 256 talks about the failure of constitutional machinery in state also known as the President's rule. If the president on Governor's report or otherwise is satisfied that the situation has arisen that the government can't be carried in accordance with the constitutional provisions then, he may issue State emergency.
- ❖ President can declare emergency either by the report of Governor or he himself is satisfied that the situation is such that the emergency has to be imposed. But at times, President may declare emergency when a report is not received from the governor. This was done by President Venkataraman in 1991 in the state of Tamil Nadu even though he didn't receive a report from the governor.
- ❖ After the 42th Amendment of the constitution the state emergency was made immune from judicial review. But later in the 44th Amendment the legality of President's rule could be challenged
- ❖ The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve it, the emergency shall cease to have effect after the expiry of a period of two months.

❖ Further the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance. Beyond the period of an year the proclamation can only be continued if the Election Commission certifies that it is not possible to hold election in the state or that territory. The consequences of state emergency are-

- i. The president assumes all the executive power of the state himself. The state administration runs by him or any person appointed by him generally the Governor.
  - ii. During such proclamation, the state assembly is either dissolved or suspended. But the MLA's do not lose their membership of the Assembly.
  - iii. Parliament makes laws regarding the state list. The parliament only passes the budget for the state.
  - iv. The High court of the state functions independently.
  - v. President also proclaims ordinances in the state.
  - vi. During the state emergency the Union government has absolute control over the state except the judiciary.
- ❖ If one looks at the past instances of state emergency in the country, three common grounds emerge that have been invoked under Art.356- breakdown of law and order, political instability, corruption and maladministration.

.

In **Rameshwar Prasad V. UOI** (Bihar Assembly Dissolution Case) it was held that the presidential proclamation dissolving state assembly in Bihar under Art.356 was unconstitutional on extraneous and irrelevant ground. The court said that the state governor misled the centre in recommending dissolution of state assembly.

In the historic case of **S.R Bommai V. UOI**, a full bench of the Karnataka High court produced different opinion about the imposition of the President's rule in Karnataka, while in other states the court held that it was in violation of the constitution and would have restored the original position.

The **44<sup>th</sup> Amendment** has made two significant changes in Article 359:

1. It provides that under Art.359 the President does not have the power to suspend the enforcement of Fundamental Rights guaranteed in Articles 20 and 21 of the Constitution.
2. It provides that suspension of any Fundamental Right under Art.359 will not apply in relation to any such law which does not contain a declaration that such a law is in relation to the Proclamation of Emergency in operation when it is made or to any executive action taken outside than under a law containing such a recital.

Thus laws not related to the emergency can be challenged in a court of law even during the emergency. This amendment was a sequel to the decision of the Supreme Court in the Habeas Corpus case.



S.N.	National Emergency (352)	President's Rule (356)
1.	It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2.	During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the <a href="#">Constitution</a> . Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3.	The Parliament can make laws on the subjects enumerated in the State List only by itself, i.e. it can't delegate the same to any other body or authority.	The Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state.
4.	There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the <a href="#">state</a> .
5.	Under this, the relationship of the Centre with all the states undergoes a modification.	Under this, the relationship of only the state under emergency with the Centre undergoes a modification.
6.	It affects <a href="#">fundamental rights (FR)</a> of the citizens.	It has no effect on Fundamental Rights (FR) of the citizens.
7.	Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
8.	Lok Sabha can pass a resolution for its revocation.	There is no such provision. It can be revoked by the President only on his own discretion.

## Financial Emergency

The president under Article 360 of the constitution has the power to declare financial emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is threatened. It has to be laid before both the Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses.

During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canons or financial propriety and such other directions that the President may find necessary. The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of union including judges of high court and Supreme Court. There has been no occasion of financial emergency in India.

**Important facts-** The first proclamation of emergency under Article 353 by the President of India after the inauguration of the constitution was in 1962 as a result of the Chinese attack on Indian territories during the November that year. The second and third proclamation of emergency under Article 352 were made 1965 and 1971 respectively on both occasions it was Pakistani aggression that compelled on the President to proclaim emergency. The fourth time proclamation emergency was declared in India was between 26<sup>th</sup> June 1975 to 21<sup>st</sup> March, 1977 as the security of India was threatened by internal disturbances.

In the case **State of Uttar Pradesh v. Raj Narain**, Indira Gandhi defeated Raj Narain in the Lok Sabha election from the Rai Bareilly constituency. Raj Narain had filed a petition in the Allahabad High Court stating that Indira Gandhi has used fraudulent means to win the election. Allahabad High Court found her guilty and declared her election void and disqualified her from contesting in any election for six years. She challenged the decision of the Allahabad High Court in the Supreme Court on 24th June, 1975 where the Supreme Court Upheld the judgment of the High Court and ordered that all the privileges that she used to get as MP should be taken away but she was allowed to continue as Prime Minister. On 26th June, 1975, President Fakhruddin Ali Ahmed proclaimed an emergency under Article 352 (1), Constitution of India on the advice of Prime Minister, Indira Gandhi.

## **Conclusion**

During the period of emergency for the execution of power there might be infringement of Fundamental rights of individuals, which are judicially granted by the Constitution of India. The validity of actions must be reviewed to deter political gains and give way to political interest. Despite abuse of powers of the emergency provisions still have an important role to play in the conditions prevailing in India, though it still remains a controversial issue in the country