


WHAT IS AN EMERGENCY ?

- The term emergency maybe defined as a difficult situation arising suddenly and demanding immediate action by public authorities under powers specially granted to them by the Constitution.
- The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360.
- The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.
- Dr. Ambedkar claimed that the Indian federation was unique in as much as in times of emergency it could convert itself into an entirely unitary state.
- The Constitution of India stipulates three types of emergency
 1. National Emergency (Article 352)
 2. State Emergency (Article 356)
 3. Financial Emergency (Article 360)



NATIONAL EMERGENCY (ARTICLE 352)

- If the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened due to,
 - War
 - External aggression
 - Armed Rebellion,
 - He may by proclamation make a declaration to that respect of the whole of India or any part of India as may be specified.
 - The proclamation of emergency made under clause (1) maybe varied or revoked by the president in a subsequent proclamation.
 - The President shall not issue a proclamation under cl.(1) unless a decision of the Union Cabinet that such a proclamation maybe issued has been communicated to him in writing.
 - Such a proclamation maybe made even before the actual occurrence of event if the president is satisfied that there is imminent danger.
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SO FAR HOW MANY NATIONAL EMERGENCIES?


- There have been three proclamation of National Emergency in India,
 - In 1962- the time of Chinese Aggression
 - In 1971- the wake of war with Pakistan
 - In 1975- on the grounds of Internal Disturbance



APPROVAL AND DURATION OF PROCLAMATION

- Every proclamation is required to be laid before each house of the Parliament and is to cease to operate at the expiration of one month from the date of its issue unless in the mean time which has been approved by the resolution of both the houses.
- The proclamation (if approved) may continue for six months at a time unless revoked by the President earlier.
- Resolutions approving the proclamation or its continuance have to be passed by either house of Parliament by a majority of the total membership & not less than $2/3^{\text{rd}}$ of those present and voting.
- A resolution approving the continuance of proclamation shall unless revoked continue in force for a further period of six months from the date on which it would have otherwise have ceased to operate.
- The president shall revoke the proclamation if the Lok Sabha passes a declaration disapproving the proclamation.

AFTER 44TH AMENDMENT

- The words “armed rebellion” were substituted for “internal disturbance”.
 - The clause (3) was added to Art.352 which states that President shall declare emergency only on the written advice of the Cabinet.
 - This was done after the case of *Indhira Gandhi V. Raj Narain*
 - The proclamation has to be passed before both the houses of Parliament and it will cease to operate at the expiration of one month.
 - The 44th amendment requires a periodical review every six months of the Proclamation by both the houses of Parliament.
 - The proclamation maybe revoked by the President by making a subsequent proclamation.
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CONSEQUENCES OF PROCLAMATION OF EMERGENCY

○ Article 353

- Though the State Legislature and Government are not suspended the executive Legislative and Financial powers rest in the centre.
- The union Parliament acquires the power to legislate on any subject included in the list. (Article 353)
- But such emergency legislation ceases to have any effect at the expiry of six months.
- The State can make law but it is subject to the overriding power of the union Parliament.

○ Article 354

This Article provides for acquisition of powers by Union Executive related to distribution of revenue.

○ Article 83(2)

While a proclamation of Emergency is in operation, life of Parliament can be extended by law for a period not exceeding one year and not beyond a period of six months after the proclamation has ceased to operate.

o Article 358

- The freedoms guaranteed by Article 19 are automatically suspended, after the proclamation of emergency.
- The state can make any law or take any executive action abridging or taking away the fundamental rights under art.19.
- But any incompetent law will cease to have effect as soon as proclamation ceases to operate.
- However, if the emergency is declared under armed rebellion, freedoms under art.19 will not be suspended (44th amendment).
- Also art.358 will only protect “emergency laws” from being challenged and not other laws.

o Article 359

- During proclamation of emergency, the President may by Order declare that right to move any court for the enforcement of rights conferred by part III (except art.20 and 21) or all proceedings pending in the court, for a period not exceeding the proclamation.



STATE EMERGENCY

(ARTICLE 356)

- Article 355 imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state. This is popularly known as 'President's Rule'.
- Article 356 says that if the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may issue a proclamation.
- Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.
- A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- If approved by both the Houses of Parliament, the President's Rule continues for six months ⁶. It can be extended for a maximum period of three years ⁷ with the approval of the Parliament, every six months.
- Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority.

- The President acquires the following extraordinary powers when the President's Rule is imposed in a state:
 1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
 2. He can declare that the powers of the state legislature are to be exercised by the Parliament.
 3. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

44th Amendment, 1978


- This amendment had amended Article 356 and restricted its scope. It substitutes the word "Six Months" for the word "one year" as it existed originally.
- Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:
 1. a proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
 2. the Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.



SCOPE OF JUDICIAL REVIEW

- The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged in any court on any ground.
- But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.
- In *SR Bommai case (1994)*, the following propositions have been laid down by the Supreme Court on imposition of President's Rule in a state under Article 356
 1. The presidential proclamation imposing President's Rule is subject to judicial review.
 2. The satisfaction of the President must be based on relevant material. The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.
 3. Burden lies on the Centre to prove that relevant material exist to justify the imposition of the President's Rule
 4. The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

FINANCIAL EMERGENCY (ARTICLE 360)

- The President is authorized by Article 360 to declare by proclamation financial emergency if he is satisfied that the financial stability or credit of India or any part of its territory is threatened.
 - It has to be laid before both houses of Parliament and ceases to operate at the expiration of 2 months, unless approved by the resolution of two houses.
 - Once approved it may continue indefinitely until revoked or varied.
 - During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain financial propriety or any directions deemed necessary.
 - These directions may include reduction of salaries or allowances of all those serving a state and reserving for the president's consideration all money bills and other bills under Art.207 after these are passed by the state legislature.
 - The president may also direct reduction in salaries of all those serving in connection with the affairs of Union including Judges of the Supreme Court and the High Courts.
 - There has been no occasion for the promulgation of financial emergency in India.
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THANK YOU