
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

EMERGENCY PROVISIONS IN INDIA- Aryan Pathak¹**ABSTRACT**

Emergency provisions of Indian Constitution are borrowed from Germany's Weimar Constitution. Part 18 of the Indian Constitution talks about 'Emergency' from Article 352 to Article 360. There are three types of emergencies- National Emergency (Article 352), State Emergency (Article 356) and Financial Emergency (Article 360).

National Emergency is covered under Article 352. Article 352 says, on the basis of War, External Aggression and Arm Rebellion if President feels that Indian security or security of any part of India is in danger then he can proclaim Emergency.

If Cabinet is satisfied with the grounds mentioned in Article 352 that the Emergency must exist then they pass a written advise to the president. Now, if President is satisfied with the advise then he can issue emergency but Parliament has an exclusive power to decide the continuation of the Emergency. In Parliament when both Rajya Sabha and Lok Sabha by special majority approved the written advise then in that case only Emergency be proclaimed.

State Emergency is covered under Article 355. Article 355 says that centre has a duty to protect state from three things- External Aggression, Internal Aggression and Respecting Constitutional Provisions. Simply, Article 355 impose duty on centre to protect state.

Article 356 says, of Governor of any state report president or president itself recognise that a specific state is not able to constitutionally govern properly. So, he can impose State Emergency.

Also, President has power according to Article 365, that if state is not following the directions given by the centre. So, President can declare that state is not working according to the constitution & proclaim Emergency. President can proclaim the Emergency only for period of 2 months after that Emergency will automatically dissolved.

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Financial Emergency covered under Article 360. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of it is threatened, he may declare a Financial Emergency under Article 360.

The proclamation in this case also should be approved by Parliament as in the other two cases mentioned above. During a Financial Emergency, “the executive authority of the Union shall extend to the giving of directions to any State, to observe such canons of financial propriety as may be specified in the direction, or any other directions which the President may deem necessary for the purpose.

Financial Emergency has not been implemented in India even once but in 1991 it was once thought.

Introduction

Emergency provisions of Indian Constitution are borrowed from Germany’s Weimar Constitution.

Part 18 of the Indian Constitution talks about ‘Emergency’ from Article 352 to Article 360.

There are three types of emergencies-

1. National Emergency (Article- 352)
2. State Emergency (Article- 356)
3. Financial Emergency (Article- 360)

National Emergency

Grounds-

Article 352 says, on the basis of War, External Aggression and Arm Rebellion² if President feels that Indian security or security of any part of India is in danger then he can proclaim Emergency.

War: If two countries declare that they are going to use armed forces then that situation is called war.

²Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 37(a)(i), for “internal disturbance”.

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External Aggression: Without any declaration if one country continuously applying armed forces and other one is not doing the same then this situation comes under external aggression.

- ❖ If the Emergency is declared on the grounds of war and external aggression then it is called **External Emergency**.
- ❖ If the Emergency is declared on the ground of arm rebellion, then it is called **Internal Emergency**. This term is inserted by 44th Amendment.

So far National Emergency has been proclaimed only three times in India-

I. **China Attack on India-** (Oct. 1962- Jan. 1968)

On 26th. Oct, 1962, China attacked on India. So, under the ground of external aggression President of India proclaimed the Emergency. At the same time by the use of Article 359 (Suspension of Fundamental Rights) he suspended all Fundamental Rights.

Also, he said you are not allowed to go to courts to enforce your Fundamental Rights.

Now, later in 1962, China war was ended but Emergency is still in continuation. In April. 1965, there is an arm conflict between India and Pakistan which converted into war in September, 1965. After that both the countries engaged in ceasefire and then they signed a declaration called Tashkent Agreement.

Now, the situation is normal in India but still first Emergency is in force.

After such misuse of Emergency public campaigns had been started. They started appealing to remove Emergency, International focus also started took place. According to all the appeals government removed Emergency in Jan, 1968.

II. **Pakistan Attack on India-** (3rd. Dec, 1971)

On 3rd. Dec, 1971, arm conflict between India and Pakistan started. As the Emergency been declared and at the same time Parliament of India adopted Maintenance of Security Act, COFE POSA Act and Government Defense of India Rule, for the security of India. All three acts are made for Preventive Detention. After Emergency in addition to these three Acts Centre have lot of power which they hugely misused.

Similarly, as the first Emergency, war between India and Pakistan was ended but Emergency is still in force.

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Before we could remove the second Emergency, the third Emergency started in June, 1975.

III. Internal Disturbance- (25th. June, 1975- 23rd. March, 1977)

On 25th. June, 1975, on the ground of Internal Disturbance, President proclaimed third Emergency.

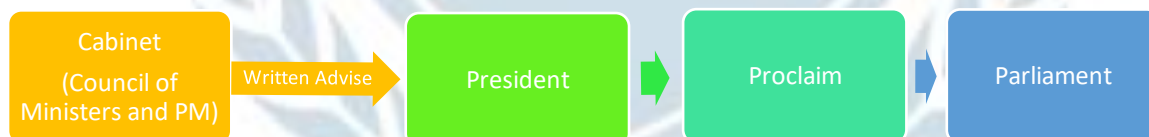
Before proclamation of third Emergency, Allahabad High Court in an election petition found Indira Gandhi (then known Prime Minister) guilty for corruption practices. Due to which High Court said that she has been disqualified from the public office and also not allowed to assume any public office further for next 6 years.

Then Indira Gandhi appealed this case in Supreme Court, but the Supreme Court is in vacations at that time and according to High Court she was only entitled for conditional stay. After that opposition started demanding for her resignation.

So, on 25th. June, 1975, without any meeting with Council of Ministers, Indira Gandhi sent a letter of Emergency to the President.

After the enforcement of Emergency, government started misusing its power. Finally, on 23rd. March, 1977 Emergency had been revoked.

Approval of National Emergency



If Cabinet is satisfied with the grounds mentioned in Article 352 that the Emergency must exist then they pass a written advise to the president. Now, if President is satisfied with the advise then he can issue emergency but Parliament has an exclusive power to decide the continuation of the Emergency.

In Parliament when both Rajya Sabha and Lok Sabha by special majority approved the written advise then in that case only Emergency be proclaimed.

❖ Requirement of Special Majority-

- i. 50% of the total strength of the House.

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- ii. 2/3rd members present and voting.

The Emergency is only proclaimed for 6 months by the Parliament. If President feels that Emergency should continue then the same procedure will have to follow again.

And, if only one House approved the written advise or non of them take any action in that case Emergency will exist only for 1 month.

Revocation of National Emergency

Revocation of Emergency be done by two ways-

- 1) If President feels that the conditions on which Emergency be proclaimed is not exist anymore so without any advise he can declare its revocation.
- 2) If Lok Sabha says, we disapprove this Emergency then at the same day Emergency be declared void.

Impact of National Emergency

- On Government- *CENTRE > STATE*

Article 352 says that during National Emergency centre has an authority to give direction or formulate laws accordingly, to the to the state for its governance.

Article 352 (b): This Article says that Union Parliament for every item in State List can formulate laws.

- On Fundamental Rights-

According to Article 358, when the National Emergency gets in existence from the same instance all 6 Freedoms of Article 19 be automatically suspended.

After the implimentation of 44th Amendment, Article 19 goes for suspension only if the National Emergency be proclaimed on the grounds of war and external aggression.

Now, according to Article 359, President have power by issuing a proclamation he can suspend other Fundamental Rights also i.e, from Article 12 to Article 35³.

³Except Article 20 and 21; subs. by the Constitution (Forty-fourth Amendment) Act 1978, sec. 40(a), for “the right conferred by Part III”.

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But, according to 44th Amendment, Article 20 and Article 21 will not be suspended. It is so because during the third Emergency Fundamental Rights under Article 20 and Article 21 was most infringed at the time of detension.

Amendments

- **38th Amendment**

This Amendment came in force to change Article 352. Before 38th Amendment, we can ask questions about the grounds of Emergency by the President. But 38th Amendment added (5) in Article 352 which says by the reasons President proclaiming the National Emergency are final and conclusive. Its judicial review and any type of questioning is not allowed.

But, after 44th Amendment and Minerva Mills case 38th Amendment be discontinued.

- **39th Amendment**

This Amendment brought in force during the trial of an Indira Gandhi case. It was brought for the changes to the settlement of the election disputes.

After 39th Amendment no questions are allowed to be raised in the court for the election of President, Vice- President, Prime Minister and Speaker.

- **42nd Amendment**

This amendment was brought in force during the time of Emergency, when all the members of opposition is already in the jail. The main motive of this Amendment is to minimize the power of the court as possibly they can.

Important Points-

- No question can be entertained on the Amendment brought by the Parliament. No judicial review can be allowed.
- Transfer of the power of the state government to central government.
- Socialist, Secular and Integrity; words added in the Preamble of the Indian Constitution.
- Addition of Article 31D. Article 31D talks about “Prohibition of Anti- National Activities”. This Article says that reasonability of laws that can be made to prohibit Anti- National Activities are not be questionable.

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- **44th Amendment**

This Amendment came in force to remove the changes brought by 42nd Amendment.

There are two major aims of this Amendment-

- 1) To reduce the control of Parliament over Fundamental Rights.
- 2) To curtail the easy of issuance of Emergency.

Changes by 44th Amendment

One of the grounds of Article 352, Internal Disturbance, the term was very vague. Emergency could be implemented by naming any reason as internal disturbance. So, 44th Amendment changed the term to Arm Rebellion.

After that it changed the approval system of Emergency from simple majority to special majority.

Case: ADM Jabalpur Vs. Shivkanth Shukla⁴

It was said that due to suspension of Fundamental Rights during Emergency, courts cannot issue the writ of Habeas Corpus.

But, 44th Amendment changed this judgment and says that Article 20 and Article 21 cannot be suspended even during Emergency, that means courts are able to issue the writ of Habeas Corpus.

Finally, by removing 38th Amendment, 44th Amendment says that judicial review of the reason of the President to proclaim Emergency is allowed.

State Emergency

Article 355 says that centre has a duty to protect state from three things-

1. External Aggression
2. Internal Aggression
3. Respecting Constitutional Provisions

Simply, Article 355 impose duty on centre to protect state.

⁴1976 AIR 1207, 1976 SCR 172

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Now, Article 356 says, if Governor of any state reports to the President that a specific state is not able to constitutionally govern properly. So, he can impose State Emergency.

Also, President has power according to Article 365, that, if a state is not following the directions given by the centre. So, President can declare that state is not working according to the constitution & proclaim Emergency.

For example: On 6th Dec. 1992, Ayodhya started with Babri Masjid demolition. There was an unrest in all over the India. Thousands of people died. Therefore, on 15th. Dec, 1992, President issued a proclamation & dismissed the governance of Madhya Pradesh, Rajasthan and Himachal Pradesh. President observed that these three states are not obeying the principle of secularism.

After few years, when the President Rule was imposed in Karnataka, in the famous case *S.R. Bommai Vs. Union of India*⁵, on the validity of Article 356, the supreme court said that we cannot compare the federal structure of India with any other countries. And the determination of the President and the grounds on which he imposing the Emergency is subject to judicial review.

Approval of the State Emergency

If Governor of any state sends a report to the President that the state is not working properly according to the constitution. So, if the president is satisfied with the report, he can proclaim Emergency on that state.

President can proclaim the Emergency only for a period of 2 months after that Emergency will automatically dissolve.

On the same date of issuance of Emergency by President, for further approval it goes to the Parliament. The criteria to be approved by the Parliament is 'simple majority' by Rajya Sabha and Lok Sabha. Now, if Parliament approved this Emergency, then it will be valid for 6 months, otherwise dissolved in 2 months.

State Emergency can exist maximum for a period of time of 3 years. But it has to be approved by the Parliament after every 6 months.

⁵1994 AIR 1918, 1994 SCC (3) 1

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If it has been 1 year for the Emergency and still state wants to continue the Emergency then it has to fulfil two conditions-

- 1) A National Emergency is in operation.
- 2) Election Commission certifies that the election to the State Assembly cannot be held.

Revocation of State Emergency

At any point of time, if President feels that now there is no need of Emergency any more. So, he can revoke the Emergency without taking any advice.

Comparison between National Emergency and State Emergency-

National Emergency	State Emergency
Except Article 20 and Article 21 all Fundamental rights gets suspended through article 358 and Article 359, during the Emergency.	No impact on Fundamental Rights.
Ground- War, External Aggression and Arms Rebellion (Article 352).	Ground- External Aggression, Internal Disturbance, unconstitutional working of state government, central government's direction not followed by state. (Article 356 and Article 365).
Approved by parliament within 1 month by special majority.	Approved by parliament within 2 months by the simple majority.
No time limits.	Maximum for 3 years.
President and Lok Sabha can revoke the Emergency.	Only President has power to revoke Emergency.
State Executive and State Legislative will not be suspended during the Emergency but its substantial power goes to the Parliament.	State Executive and State Legislative both either suspended or dissolved during the time of Emergency. <ul style="list-style-type: none"> • Executive function performed by the President which further be delegated to Governor and Chief Secretary.

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	<ul style="list-style-type: none">• Legislative duty is performed by the Parliament.
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Financial Emergency

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of it is threatened, he may declare a Financial Emergency under Article 360.

Approval of Financial Emergency

The proclamation in this case also should be approved by Parliament as in the other two cases mentioned above. During a Financial Emergency, “the executive authority of the Union shall extend to the giving of directions to any State, to observe such canons of financial propriety as may be specified in the direction, or any other directions which the President may deem necessary for the purpose.

Such directions may include those requiring the reduction of salaries and allowances of Government servants and even those of Judges of the Supreme Court and the High Courts.

However, it is interesting to note that no such proclamation has been issued under article 360 so far, but it was once thought.

Balance of Payment Crisis- 1991

As compared to now, that time India is very different. All major and important sectors or areas are in under government control. Total 21 areas are in government control at that time. At the same time India experiencing many difficulties like India- China war, India- Pakistan war, etc, due to which expenditure increased too much on war and defences. Therefore, to provide funds to war and defences we are taking loans from International Bodies and the interest rate on this loan is very high. The interest rate is around 14% of the budget of the India. In that situation Government of India was thinking to impose the Financial Emergency. On this situation government has three options-

1) Minting

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- 2) International Help
- 3) Domestic Sources

Minting is the process in which government release new notes (Currency) but by doing so inflation gets increase. Therefore, this option was not adoptable. Then, next option is of International Help but we are already in a loan of hefty amount so it is also not possible. And, the last option is to take domestic help but due to inflation public does not have any money.

Now, Manmohan Singh and Montek Singh Ahluwalia, brought LPG Policy (Liberalization, Privatisation and Globalisation Policy). Through this policy out sider companies can invest in India. As all sector of market were under government control, FDI Investment started coming. Due to this Financial Emergency of 1991 was avoided.

