
Introduction

India is a federal country of "its own kind". It acquires unitary features during an Emergency. Due to this reason, Dr B.R Ambedkar called the Indian Federal system as unique because it becomes entirely unitary during an Emergency. Part- XVIII of Indian Constitution deals with the Emergency provisions i.e., Articles 352 to 360. During an Emergency, as Constitutional machinery fails, the system converts itself into a unitary feature. The Emergency is a period of depression where all Fundamental Rights of a person is taken away except Article 20 and 21.

Types of Emergencies

There are three types of Emergencies mentioned in the Constitution. The power of imposing all three types of Emergencies is vested upon the President of India. The concept of Emergency was borrowed from the Weimar Constitution of Germany. The three types are as follows

- ❑ Article 352 – National Emergency
- ❑ Article 356 – President's Rule
- ❑ Article 360 – Financial Emergency

Constitutional Provisions for Emergency

Article 352: Proclamation of Emergency.

Article 353: Effect of Proclamation of Emergency.

Article 354: Application of provisions relating to the distribution of revenues while a proclamation of emergency is in operation.

Article 355: Duty of the Union to protect States against external aggression and internal disturbance.

Article 356: Provisions in case of failure of constitutional machinery in State.

Article 357: Exercise of legislative powers under Proclamation issued under Article 356.

Article 358: Suspension of provisions of Article 19 during Emergencies.

Article 359: Suspension of the enforcement of the rights conferred by Part III during emergencies.

Article 360: Provisions as to Financial Emergency.

National Emergency

Article 352 of the Constitution provides for the provision of National Emergency which can be applied if any extraordinary situation arises that may threaten the security, peace, stability and governance of the country. Whenever any of the following grounds occur, an emergency can be imposed:

- ❑ War
- ❑ External aggression
- ❑ Internal rebellion.

Article 352 provides that if the President is 'satisfied' on the grounds that the security of India is threatened due to outside aggression or armed rebellion, he can issue a proclamation to that effect regarding the whole of India or a part thereof.

Parliamentary Approval and Duration

- ❑ Article 352(3) states that when a written advice is given by the Union Cabinet to the president then only the President can make such a proclamation.
- ❑ The proclamation of emergency must be placed before each House of the Parliament and approved within one month of the declaration of the proclamation otherwise it will expire.
- ❑ However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- ❑ If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.

- ❑ Until 44th Amendment 1978, if Parliament approves proclamation of National Emergency, then it remains in operation on pleasure or desire of cabinet or executive.
- ❑ Any of the above resolution related to proclamation or renewal of National Emergency must be passed by both houses of Parliament by a special majority (i.e., the majority of the total membership of that house or not less than 2/3rd of members presents and voting). This provision is added by 44th Amendment 1978 and before that such resolution can be passed by simple majority i.e., more than total members present and voting.

Furthermore, it is not necessary that for the proclamation of National emergency, external aggression or armed rebellion should actually happen. Even if there is a possibility that such a situation can arise, a National Emergency can be proclaimed.

In *Minerva Mills vs Union of India*, it has been held that there can be no bar to judicial review of determining the validity of the proclamation of emergency issued by the President under Article 352(1). The court's powers are limited only to examining whether the limitations conferred by the Constitution have been observed or not. It can check if the satisfaction of President is on valid grounds or not. If the President is satisfied that grounds for national emergency exist but the same is based on absurd, mala-fide or irrelevant grounds then it won't be considered that the President is 'satisfied'.

Procedure for revoking emergency

If the situation improves then the President can revoke the emergency through another proclamation. The 44th Amendment of the Constitution provides that a requisition for the meeting can be made by ten per cent or more members of the Lok Sabha and in that meeting; it can disapprove or revoke the emergency by a simple majority. The emergency will immediately become inoperative in such a case.

Territorial Extent of Proclamation

The President may make a Proclamation of Emergency in respect of the whole India or any part of India, as required.

44th Constitutional (Amendment) Act, 1978

The imposition of Emergency stressed the legislature to think again about the Constitutional provisions that provide power to the executive to supersede the

judiciary hampering the basic structure of the Indian Constitution.

Under Article 352, the amendment had substituted the ground of 'Internal Disturbance' with 'Armed Rebellion'. The President is allowed to impose emergency only when the Union Cabinet communicates to him in writing about their decision.

The Proclamation is required to be approved by both the houses of Parliament by resolution within a month instead of two months by a total majority of the membership of each house of Parliament and by the ratification of not less than 2/3rd members present and voting in each house instead of a simple majority.

Under Article 356, the period for extension of a Proclamation from one month has been amended to six-months. Proclamation in the first instance can only be exceeded for six months.

Effects of Proclamation of Emergency

There are serious consequences, once emergency is proclaimed. It results in adverse effects on the enforcement of fundamental rights of people. Consequences of proclamation of emergency are explained below:

1) Executive: While a Proclamation of Emergency is in operation, Union can use its executive power to the extent of giving directions to the State relating to the manner in which the executive powers shall be exercised by the State. The Constitution (42nd Amendment) Act 1976 made a consequential change in Article 353.

It states that the executive power of the Union to give directions and to make laws shall extend to other States too apart from the state where an emergency has been proclaimed and is in operation. The above-mentioned power shall be exercised if the security of India or any part of its territory is threatened by the activities in the part of the territory of India in which emergency has been proclaimed and is in operation.

In normal times, the power of the executive does not extend to giving such directions subject to certain exceptions.

2) Legislative: When an emergency has been proclaimed, the Parliament shall have the power to

legislate as regards to State List (List II) as well. The emergency suspends the distribution of legislative powers between the Union and State and not the State Legislature.

3) Financial: The centre is empowered to alter the distribution of revenue between the Union and the State.

While a Proclamation of Emergency is in operation, the President may, by order define the financial arrangement between the State and the Union as provided by Articles 268 to 279. Such order shall be laid before each House of Parliament and when the Proclamation of Emergency ceases to operate, such order shall to come to an end.

4) Extension Life of Lok Sabha: The normal life of Lok Sabha can be extended while a proclamation of emergency is in operation. Such an extension can be done by the Parliament for a period not exceeding one year at a time and not beyond a period of six months in any case after the Proclamation has ceased to operate.

5) Suspension of Fundamental Rights guaranteed by Article 19: Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:

- ❑ Suspension of Fundamental rights under Article 19:
 - According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under Article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
 - The 44th Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
- ❑ Suspension of other Fundamental Rights:
 - Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National

Emergency. Thus, remedial measures are suspended and not the Fundamental Rights.

- The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. The suspension could be for the period during the operation of emergency or for a shorter period. The Order should be laid before each House of Parliament for approval.
- The 44th Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.

State Emergency

As per Article 356, if the President after receiving a report from the Governor of a State or otherwise is satisfied that such a situation exists where the Government of a State cannot be carried in accordance with the provisions of the Constitution, he may issue a Proclamation.

Approval and Duration

When a Proclamation is issued under Article 356, it shall be first laid before each House of the Parliament. Such Proclamation shall remain in operation for 2 months unless before the expiry of the said period it has been approved by both Houses of the Parliament according to Article 356(3).

Suppose in a case where the Lok Sabha has been dissolved during the issuance of a proclamation of emergency or its dissolution takes place within the above said period of two months and the Rajya Sabha has approved the Proclamation but the Lok Sabha has not approved it.

In such a case, the said proclamation shall not operate unless before the expiry of 30 days it has also been passed by the Lok Sabha after its reconstruction. The Proclamation will remain in operation for 6 months after it has been approved by the Parliament. The duration of an emergency can be extended for 6 months at a time but it cannot remain in operation for more than 3 years.

Revocation

By a subsequent proclamation, State Emergency can be revoked.

Effects

State Emergency shall have the following effects:

- ❑ The President shall have all the powers that are exercisable by the Governor in the State.
- ❑ The President shall declare that the State shall exercise its Legislative powers by or under the authority of the Parliament.
- ❑ If the President deems fit those necessary provisions shall be made to serve the purpose of the Proclamation, then he may make such provisions.

President's rule: Political tool

The main intention of Constitution makers in view of Article 356 was that it must be used solely as an 'emergency power' and it must be invoked only in the event of "failure of constitutional machinery" in the state. Dr. Ambedkar wished that Article 356 would continue to be a "dead letter." However, the reality is entirely different. President's rule was imposed one hundred and seven times till date in various states. Well-functioning state governments were collapsed to pave the way for the Union government's party to acquire power in the state.

According to the nature and scope of Article 356, it has been observed that there are two essential components of Article 356.

- ❑ Firstly, the President can impose President rule in a state based on a report sent by the Governor of the concerned state or it can be also imposed in other circumstances that deem fit to the President on the aid and advice of the council of ministers to protect the state. The same can be reflected in the use of the word 'otherwise' in Article 356.
- ❑ Secondly, President rule can be applied in a state when there is a failure of Constitutional machinery. Failure of Constitutional machinery refers to a situation when the state government can't carry out its functions following provisions of the Constitution.

The courts can examine the subject matter of the Governor's report that has attracted 'President's satisfaction'. Governor acts under the pleasure of President and President acts on aid and advice of the council of ministers belonging to the ruling party at the centre. Therefore, there is a great probability of the Governor's report being influenced by the ruling party's interests and agendas at the centre and it has also been

observed in various times.

For example, Indira Gandhi as Prime Minister has a record of imposing President rule the greatest number of times and in 90% circumstances, it was imposed in states that were ruled by opposition parties or in states that didn't run in accordance with her party interests.

S.R. Bommai was the Karnataka's Chief Minister between August 1988 and April 1989. He led a Janata Dal government, which was dismissed on 21st April 1989 when President's Rule (Article 356) was imposed in Karnataka. Until that time, imposing Article 356 on States ruled by the opposition parties (to the one at the Centre) was a common practice.

In this particular case, the Bommai-led government was dismissed on the grounds that he had lost his majority because of several defections. Even though Bommai presented the then Governor P Venkata Subbiah with a copy of the resolution passed by the Janata Dal Legislature Party, he was denied an opportunity to prove his majority in the house.

Bommai first went to the Karnataka High Court against the Governor's decision. However, his writ petition was dismissed by the High Court. Then, Bommai moved to the Supreme Court of India. In March 1994, a nine-judge constitutional bench of the Supreme Court gave the landmark judgement, which would go on to become one of the most widely cited one with respect to Article 356 and its arbitrary usage by the Central Government.

Disputes raised due to S.R. Bommai case

The SR Bommai case raised questions on the proclamation of President's rule in a state. The Supreme Court had to discuss the grounds and the extent of the imposition of President's rule in a State. Questions were also raised whether the imposition of President's rule is challengeable.

Bommai Case Judgement

This landmark verdict put restrictions on the centre for imposing the President's Rule on states.

- ❑ It said that the power of the President to dismiss a Government of a State is not absolute.
- ❑ It said that the President should use this power only after his proclamation (of imposing President's Rule) has been approved by both Houses of the Parliament.

- ❑ Until then, the President can only suspend the Legislative Assembly.
- ❑ In case the proclamation does not get the approval of both the Houses, it lapses at the end of a period of two months, and the dismissed Government is revived.
- ❑ The suspended Legislative Assembly also gets reactivated.
- ❑ The Supreme Court also stated that the proclamation of the imposition of Article 356 is subject to judicial review.
- ❑ The verdict also stated in no uncertain terms that the test of majority of the government should be done in the floor of the Assembly and is not subject to the Governor's opinion.
- ❑ The Supreme Court held that policies of a State Government directed against an element of the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

Difference between Articles 352 and 356	
National Emergency (Article 352)	President's Rule (Article 356)
National Emergency is proclaimed under Article 352 on the ground of war, external aggression and armed rebellion.	State Emergency is proclaimed under Article 356 when the State Government cannot be carried out according to the Constitutional provisions.
State Executive and legislature perform their power as mentioned in List II of Schedule VII. Concurrent List power vests in the Central Government.	State Executive powers get vested in the Central. Governor works in the state on the advice of the President. State Legislative Assembly is dissolved or suspended.
The Proclamation may be continued for an indefinite time as no maximum period is prescribed but it is subject to renew every six months.	The maximum period up to which State Emergency may continue is three years after which it will cease but it may be further continued after the Constitutional Amendment.
Fundamental Rights are suspended during National Emergency except Article 20 & 21.	There was no effect on the Fundamental Rights of the people of the State.
Resolution for the continuation of the proclamation of emergency must be passed with a special majority.	Resolution can be passed with a simple majority in the Parliament.
The resolution for the revocation of the proclamation can be passed by Lok Sabha.	Resolution for revocation of the proclamation can be passed by President in his discretion.

During this emergency, the Centre's relation undergoes a modification with all the States.	Centre's relation undergoes a modification only with the State under the President's Rule.
There is no delegation of law-making power of Parliament under the State list.	President may make laws for the state after consulting with the Members of Parliament from that State.

Financial Emergency

As per Article 360, a proclamation of Financial Emergency may be issued, if the President is of the opinion that such a situation exists where the financial stability of India or any part of the territory is threatened.

Duration

The proclamation of Financial Emergency shall cease to operate after 2 months unless it has been approved by both the Houses of Parliament. In a case where during the issuance of proclamation the Lok Sabha has been dissolved or its dissolution takes place within the said period of 2 months and the Rajya Sabha has approved the proclamation but the Lok Sabha has not approved it. Then, such a proclamation shall not operate unless before the expiry of 30 days Lok Sabha has passed a resolution approving proclamation.

Revocation

By a subsequent proclamation, Financial Emergency can be revoked.

Effects

Financial Emergency has the following effects:

- ❑ The executive authority of the Union shall give directions to the State regarding the maintenance of financial stability.
- ❑ It may include provisions for reduction of salaries and allowances of all or any class of persons serving in the State. This includes Judges of the High Court and the Supreme Court.
- ❑ The Money Bills shall be reserved for the approval of the President.

List of National Emergencies

National Emergency was invoked three times from 1962 to 1977.

- ❑ First National Emergency was invoked in October 1962 during Indo-China war. This Emergency remained in force till January 1968. It was imposed by the then President of India Shri. Sarvepalli Radhakrishnan. The reason for imposing this

emergency was the Chinese attack in Arunachal Pradesh (North-East Frontier Agency). External Aggression was ground for invoking the Emergency.

- ❑ The second Emergency was invoked in December 1971 during the Indo-Pak war. This Emergency remained in force till March 1977. This Emergency was imposed by the then President of India Mr. V.V. Giri. The reason for imposing Emergency was war in Bangladesh. Ground for imposing this Emergency was External Aggression, the Indian military was clashing with the military of Pakistan to provide independence to East Pakistan.
- ❑ The period of the war was 11 days and considered as the shortest war in the World. But, in the meantime, the third emergency was imposed in India. The third emergency continued the second emergency until 1977.
- ❑ The third Emergency was invoked in June 1975 due to an internal disturbance in the Central Government. It remained in force till March 1977. This Emergency was imposed by the then President of India Fakhruddin Ali Ahmed. It was imposed when the second Emergency was already in existence. The real cause behind this Emergency was to secure the seat of the then Prime Minister of India Mrs. Indira Gandhi who was found guilty in corrupt practices during her constituency campaign by the Allahabad High Court.

Criticism of Emergency Provisions

- ❑ It destroys the federal character of the Constitution.
- ❑ Union executive can become all-powerful vis-à-vis state.
- ❑ It could lead to President becoming a dictator.
- ❑ Financial autonomy of the states could be threatened.
- ❑ It seriously imperils the observance of Fundamental Rights in the country.
- ❑ No modern democratic country has these provisions included in their Constitution.

Having dealt with all emergency provisions, it is easy to understand the purpose behind the enforcement of such provisions. But it is important to note that even when these provisions are provided for the nation's security and protection of the people, the provisions in themselves give drastic discretionary powers in the hands of the Executive. This affects the federal structure of the nation and essentially turns it into a unitary one.

Therefore, the courts should be given the power to expand the powers of the Centre, as the same will act as a built-in mechanism to check if the discretionary powers are being used arbitrarily by the Parliament and the Executive.

Introduction

In India, the Constitution of India establishes a Parliamentary form of government, which means Head of the State is the Constitutional head and real executive powers are vested in the Council of Ministers. Articles 52 to 78 in Part V of the Constitution deals with Union Executive. Union Executive consists of President, Vice-President, Prime Minister and Council of Minister.

Art 52 of the Constitution says that there shall be the President of India. He is the Head of the State. Art 53 of the Constitution says that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officer's subordinate to him in accordance with this Constitution. Art 73 the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws; and includes the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement. Thus, the Executive power of President is co-existent with the legislation.

Election of President:

Article 54: The President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament; and the elected members of the Legislative Assemblies of the States.

Explanation:

The election of President is done by indirect election. Article 54 provides the manner of election of the President. This article provides that there should be an Electoral college

- Electoral college for President's election includes:—
- ❑ The Elected Members of the Houses of Parliament
 - ❑ The Elected Members of the State Legislative Assemblies
 - ❑ The Elected Members of the Union Territories of Delhi and Puducherry having Legislative Assemblies (this part was added later by the 70th amendment Act; for inclusion of Jammu and Kashmir Union Territory similar amendment will be needed).

Thus, in the Electoral College, the **nominated**

members of the legislature are not allowed to vote for President. The following group of people is not involved in electing the President of India:

- ❑ Nominated Members of Rajya Sabha (12)
- ❑ Nominated Members of State Legislative Assemblies
- ❑ Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
- ❑ Nominated Members of union territories of Delhi and Puducherry

Article 55: Manner of election of President

Article 55(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President

Article 55(2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

- ❑ **Article 55(2)(a)** every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- ❑ **Article 55(2)(b)** if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub clause (a) shall be further increased by one;
- ❑ **Article 55(2)(c)** each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub clause (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one half being counted as one and other fractions being disregarded

Article 55(3) The election of the President shall be held in accordance with the system of proportional