

PROCLAMATION OF EMERGENCY AND POLITICS AROUND ITS IMPOSITION/EXECUTION

Divi Bhargavi*

The literal meaning of emergency is “an unforeseen combination circumstances or the resulting state that calls for immediate action”¹. India is a federal kind of country which acquires unitary features during the process of proclamation of emergency. The chairman of drafting committee of Indian constitution called Indian federal system as unique federal system because of its unitary features. Under the scope of a country, emergency is a period of governance under changed setup of constitution pertaining in that particular country considering which a President can proclaim or announce it. Indian Constitution discusses about Emergency provisions in part 18. As per the provisions, there are three types of emergencies. They are National emergency discussed under article 352, State emergency or President Rule discussed under Article 356 and financial rule under Article 360.

NATIONAL EMERGENCY

It is the most extensive form of amongst all other two kinds. National emergency can be proclaimed on the basis and grounds discussed under Article 352(1) of Indian Constitution. National emergency can be proclaimed only by the President of the country. A President can proclaim emergency when a war or internal disturbances or cold wars or external aggressions are interfering with the harmonious situation of the whole of the country or a part of the country. Before 1978, emergency can be proclaimed only in case of internal aggression or disturbance. Since this loop whole was widely misused in the year 1975, the conditions for imposition of emergency are made more rigid. Article 352(3) lays down that a President is incapable of proclaiming emergency in absence of any written advice of the union cabinet of ministers under the supervision of Prime Minister of the country. Such advice of proclamation of emergency should be presented before the Parliament for its approval. After the submission of written advice of proclaiming of emergency by the cabinet of ministers to the President, the President, if satisfied with the advice of the cabinet ministers will proclaim or announce emergency. The question of continuance of emergency shall be decided by the Parliament for the further

*BA LLB, THIRD YEAR, PRESIDENCY UNIVERSITY, BANGALORE.

¹ Merriam Webster.com, <https://www.merriam-webster.com/dictionary/emergency>, last visited (16th July 2022).

approval. The approval shall be given by both the houses of Parliament, i.e., Lok Sabha and Rajya Sabha. The Parliament shall approve the same with special majority. The requirements of valid approval are that:

1. 50% of total strength of the Parliament should approve the declaration of emergency.
2. $2/3^{\text{rd}}$ of the total members present in the house should vote for the approval of the declaration of emergency.

(The above conditions of approval of emergency by the parliament are included in the 44th amendment. Earlier, the approval requires a simple majority).

As per Article 352(2), if the Parliament once approves the emergency, it is considered valid and is applicable for a period of 6 months. Even after 6 months, if the President still thinks that the continuance of emergency is required, the whole procedure of the approval of emergency should be followed. The emergency can be continued for an indefinite time period if the President thinks that the threats to the country still exist.

As per Article 352(4), the bill should be approved by the Parliament within a time frame of one month. As there are conditions and grounds for imposition of emergency, there are conditions and grounds for revocation of emergency which is already announced. In case if the situations or circumstances on basis of which the President proclaimed emergency do no longer exist and in case if the Lok Sabha disapproves the bill, the emergency can be revoked. As per the 44th amendment, approval is tough and revocation is easy and simple. Consequences of declaration of emergency are as follows:

- **Declaration of emergency empowers Parliament to make changes in matters related or enumerated in state list.**

As per Article 353(b) of Indian Constitution, Union can make changes in matter related or enriched in state list. Although state functions, operates and makes laws related to matters enumerated in state list and concurrent list of 7th schedule, the parliament is empowered to make changes in matters related and enriched in state list, especially during emergency as per Article 250(1). According Article 250(2), in case if the parliament make laws related to subjects matters regarding which it is not empowered to, in kin with issuance of emergency orders the changes ceases alongside with expiration of emergency period approved by the parliament. Therefore, the life of such

laws made by parliament in subject matters of state list during emergency dies along with the seizure of the implication of emergency.

▪ **Extension of the life period of Lok Sabha and state legislatures.**

Generally, the term of Lok Sabha and state legislature would prevail for 5 years. But in special circumstance, they may exceed the period of 5 year. One such circumstance is imposition of National Emergency. In case at the time of arousal of National emergency, if the life of Lok Sabha is about to end, the life may be extended beyond the prescribed usual term of the Lok Sabha. Lok Sabha is facilitated with this privilege under Article 83(2) of Indian Constitution. But such extension of time period cannot be made more than a period of 6 months from the date of seizure of operation of National emergency in the country. Article 172(1) extends the term of operation of state legislature by Parliament by a law during the proclamation of emergency when the conduction of election is difficult.

▪ **Effects on Fundamental rights.**

Article 358 under Indian Constitution provides that fundamental rights guaranteed under Article 19 of the constitution would be suspended during the period of emergency. This simply means that when a national emergency has been proclaimed and is in operation, Article 19 of the constitution shall not restrict the state from making laws for the purpose of achieving the object behind imposition of such emergency. Article 359 of the constitution also provides the effect on fundamental rights during the emergency. The ultimate essence of both the provisions is that the fundamental rights would be alive but they cannot be enforced or justified in case of violation. Article 359(1) of the constitution provides that the President is empowered with the right to declare that the right to move to any court (be it High court or Supreme Court) has been suspended during the operation of emergency. The provision also makes sure that freedom guaranteed to citizens under Article 20 and 21 cannot be suspended during special circumstances like National Emergency.

The above discussed are the effects of National emergency. India has proclaimed National emergency for a total of three times in the history. First emergency has been proclaimed during October month of 1962 and was revoked in the month of January 1968. This foremost emergency lasted for six months, and was proclaimed in the light of war between India and China. The declaration of emergency for second time was due to the war between Pakistan and India. Three acts were observed during that particular time period. These three acts were

seriously revolted by the people by means of protests, mass gatherings, and jail shooting. Though the war against Pakistan concluded, the emergency continued to operate. Even before the official revocation of second emergency was declared, 3rd emergency was declared on 25th June 1975. 3rd emergency period is known to be the 'Dark days of India'. It was declared by then President of the country Fakhruddin Ali Ahmed on the advice of the Prime Minister Indira Gandhi with the approval of her cabinet ministers. The emergency was withdrawn on 23rd March 1977.

STATE EMERGENCY OR PRESIDENT RULE

According to the provisions of Article 355, it is the responsibility of the Union to make sure that the administration of the state is being carried out smoothly and to look into the matter of whether the executive businesses of the state are being carried out as per the norms of the constitution. As held in the case of **Rameshwar Prasad v. Union of India**, Article 356 of Indian Constitution provides that either on the request of the Governor or otherwise, if the President of the country believes that the government of the state is unable to work as per the provisions of the constitution or if the state is not operating smoothly, he/she can declare emergency. The declaration of such state emergency is known as 'announcement because of the breakdown of the legislative mechanism'. The president of the country has the authority to proclaim emergency in any state as a whole or in any part of the country. By the proclamation-

1. The president may assume to himself all or any of the powers vested in the governor or exercised by him to anybody or authority in the state.
2. The president has the authority to declare that the state legislature shall operate or work under the supervision of the or under the authority of the parliament of the country.
3. The president is also authorized to make any provision or introduce any rule or policy so as to achieve the aim/object of the emergency imposed.

The president he himself cannot assume that the powers vested in the High court or suspend the powers with what the high court is vested with as per the provisions of the constitution during the period of the emergency which was imposed by him. The proclamation or declaration of emergency shall be present before both the houses of the parliament. The emergency shall remain operational for a period of 2 months after the presentation of case. In case if the presentation fails to get approved by the Parliament, the emergency declared automatically ceases to operate. If the proclamation of emergency is issued at the time when

the Lok Sabha is dissolved or if the dissolution takes place during the period of 2 months of emergency bill presentation, the emergency declared shall be operating until the period of 30 days from the next sitting of Lok Sabha after its reconstruction. If the proclamation is approved by the Parliament, it shall be operating for a period of 6 months. The parliament has the power to extend the period of emergency if the condition in the state has not improved. Emergency in a state shall be operating maximum for a period of 3 years not more than that. After the period of 3 years, neither the president nor the parliament is empowered to extend the period and the powers allotted to that particular state shall be restored to it. Declaration of state emergency shows tremendous effects on the state. They can be

1. The president can cease all or any of the positions or powers of the state government and can appoint governor or any other administrative authority to fulfill the duties of all the roles ceased.
2. The president is empowered to dissolve the state legislature and on behalf of the terminated government he can appoint parliament to enact laws for the state.
3. To achieve the object of the emergency imposed in the state, he can make clauses subsequently.

FINANCIAL EMERGENCY

Article 360 of Indian Constitution deals with the provision related to financial emergency. Financial emergency can be proclaimed when financial crisis arises in the country, and the president can declare financial emergency to handle the situation. When a financial emergency is imposed, the salaries for government authorities may be reduced and the budget allotted for the state shall be altered to tackle the crisis. The center never imposed financial emergency in the country, but in the year 1990 a situation of financial crisis was created which created a suspicion in the minds of the citizens that financial emergency would be imposed. Article 360(2) requires every emergency to be approved by both the houses of parliament. The proclamation of emergency ceases to operate if it fails to get approved by the parliament within a time period of 2 months from the date of presentation of emergency declared. Article 360(2) (a) states that the President can revoke the financial emergency imposed if he sees the improvement in the situation of the country. Imposition of financial emergency shows drastic effects². Few of them are:

² Lawcorner.in, https://lawcorner.in/emergency-provisions-in-indian-constitution/#Financial_Emergency_Provisions_in_Indian_Constitution, last visited (16th July 2022).

- The central executive becomes superior to the state. And it is even entitled to give directions to the state to abide by the rules laid for the purpose of achieving the object of the emergency imposed.
- Article 360(4) of the Constitution provides that the salaries of the government authorities may be reduced and the budget allotted to the state may be altered or deducted.
- Article 360(4)(b) of the Constitution states that President may decide upon issue of reduction of the salaries of the officials related to Union affairs including the judges of High courts and Supreme courts.

Unlike the National emergency and state emergency, the financial emergency does not have any provision limiting the time frame of the financial emergency imposed stating the maximum time period up to which it can be operated.

HISTORY OF EMERGENCY IN INDIA

3rd emergency imposed had lasted for 21 months. On 25th June 1975, then President of India Fakhruddin Ali Ahmed exercised his power to declare emergency entrusted upon him under 2nd paragraph of Article 352 in the light of internal disturbances. 2 days later, i.e., on 27th June 1975 the President declared that right of citizens of the country including the foreigners to move to the court for the enforcement of fundamental rights guaranteed under Article 14, 21 and 22 of the Indian Constitution has been suspended. After such declarations, many political leaders like Jaya Prakash Narayan, L.K. Advani were arrested and many other illegal detentions were made. As a result, to this many petitions were filed all across the country. Nine High courts in the country ruled in favor of detunes, against which appeals were made in SC. The issue in this case of **ADM Jabalpur v. Shivkant Shukla** was whether a writ petition can be filed or not under Article 226 of the Constitution before the High Court in order to enforce the Fundamental Rights during the period of proclamation of emergency³. The Judgment was delivered in the ratio of 4:1. The judges opined that “during the time of emergency if any action is taken by the government whether it is arbitrary or illegal, its actions cannot be

³ Lawlwx.org, <https://lawlex.org/lex-pedia/case-summary-adm-jabalpur-v-shivkant-shukla/25186>, last visited (16th July 2022).

questioned”⁴. There are a cluster of reasons for the imposition 3rd emergency by Prime Minister Indira Gandhi.

1. Navnirman protest in Gujarat

During the month of December in the year 1973, group of students from LD college of Engineering, Ahmedabad protested against the increase in the school fees. Subsequently, student from Gujarat University also protested against the same. At that time Congress was the ruling party of the state and Chimanbhai Patel was the Chief Minister. The government was infamous for the corruption. Employees of other sectors also joined the protest with the student. The protest resulted in attacks against government offices and vehicles, clashes between police personnel and civilians etc. in the light of the protest raised, the central government was compelled to terminate the state assembly and impose President rule. This contributes to be the most important reason for the imposition of national wide emergency in the year 1975⁵.

2. Raj Narain Judgement

A petition was filed in the High Court of Allahabad by Raj Narian. He was a freedom fighter and socialist. He was the one who lost out opposite Indira Gandhi in Raebareli during the general assembly elections of 1971. The petition filed in the High court of Allahabad by Raj Narain accusing the Prime Minister of India for malpractice during the election campaign. It was alleged that she has spent money more than the prescribed limit by the election commission of India. On 12th June 1975, the High court declared that Indira Gandhi’s election was void. After an appeal filed, the Supreme Court imposed a stay over the judgement passed by High Court of Allahabad stating that she can attend parliament but cannot vote until the pronouncement of her appeal. This resulted in JP movement. Senior members of congress party also opined that resignation of Indira Gandhi would be favorable for the reputation of the party. The unrest created by the judgment in the party and country was one of the main and key reasons for imposition of emergency in 1975.

3. Similar to Nirviram Movement in Gujarat, JP movement was started in Bihar initiated by a freedom fighter Jayaprakash Narayan. But in this case of Bihar, Indira Gandhi had not suspended the assembly. Jayaprakash Narayan through his ideology provoked

⁴ Free press journals, <https://www.freepressjournal.in/india/emergency-in-india-why-did-former-prime-minister-indira-gandhi-impose-it>, last visited (16th July 2022).

⁵ Indian Express, <https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/>, last visited (16th July 2022).

students to boycott classes for the purpose of increasing consciousness of the society which further resulted in clash between the police and students. His ideology and approach towards the resolution of major societal problems has drawn attention of many students, employees, traders, labors etc. of North India. Looking at his popularity and influence in the society, opposition party offered a position for JP to stand against Indira Gandhi. On the challenge of Indira Gandhi to face her in general election, JP accepted the same and established National Coordination Committee. Soon after which, emergency was imposed.

38th amendment was done to the constitution during this period of emergency which declared that decision of President to impose emergency in non-justiciable, introduction of ordinances by President or governors or administrators of Union territories are non-justiciable and President can declare emergency on different grounds simultaneously. But are these declarations were revoked in 44th amendment and powers ceased from judiciary by 38th amendment was restored.

38TH AMENDMENT-

This amendment bill was introduced on 22nd July 1975 which received presidential approval in ten days. It was amended that the declaration made by President proclaiming emergency is non-justiciable. Promulgation of ordinances by President, governor and other administrative officers of union territories cannot be justiciable. Entrusted President of the country with the power to proclaim different kinds of emergencies based on different grounds at the same point of time.

44TH AMENDMENT

Since 38th amendment is considered to be one of the blunder mistakes of the amendments ever happened in the history, through 44th amendment all the powers which are taken away by 38th amendment was restored. The following are the amendments:

- Term of the term of Lok Sabha and state assembly (5 years) was restored.
- Gave constitutional guarantee to publish the proceedings of Parliament and state assemblies with true essence.
- Entrusted President to send back the reconsideration advice sent to him by the cabinet ministers. But the advice of reconsideration is binding upon the President.

- The provision which states that the satisfaction of President, governor and administrative officials is upon the issuing final ordinance was eliminated.
- Restored the judicial powers of high courts and Supreme Court which were taken away.
- With regard to imposition of National emergency, the term 'internal disturbance' was replaced with 'armed rebellion'.
- The president can impose emergency nation-wide only on the written recommendation of the cabinet.
- Right to property was made a legal right by excluding it from the list of fundamental right guaranteed under Indian constitution.
- Fundamental rights guaranteed under Article 20 and 21 cannot be suspended during the period of emergency.

During the period of 3rd emergency lot much exploitation of citizens took place in the country like unlawful detention, mass arrests, illegal sterilizations etc.

CONCLUSION

Emergency is imposed in the country with the approval of the both houses of Parliament. It is well known fact that state emergency is more frequently claimed by the President pertaining to the clauses of the constitution and severity of internal disturbances happening. Emergency imposed in the year 1975 are considered to be the darkest era of Indian Judiciary, since the SC ruled in favor state's seizure of basic fundamental rights granted to citizens.