



THE EMERGENCY PROVISION IN THE INDIAN CONSTITUTION

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ABSTRACT

Framers of the Indian constitution include the provision of emergency to safeguard the country in extraordinary situations that threaten the country's security, governance, and financial stability. During the proclamation of emergency, the federal government becomes a unitary government, which means all the powers become concentrated with the central government. During the proclamation, some fundamental rights were temporarily suspended to maintain constitutional order in situations like war, armed rebellion, and external aggression. National, state, and financial emergencies are defined under articles 352, 356, and 360. Article 352, which defined a national emergency, provided Indira Gandhi misused the provision for a national emergency. She imposed a national emergency based on internal disturbance. Fundamental rights violations, prevention detection, press censorship, etc., happened from 1975 to 1978. After 1977, the 44th Amendment Act of 1978 was made to safeguard people's fundamental rights; the proclamation is subject to judicial review and protection of articles 20,21 during an emergency. India can learn from the global world and make emergency provision more effective. Like in the US, there is a periodic review of emergencies by Congress; in France, before the proclamation of an emergency, it must consult with multiple bodies. India can establish clear boundaries within their provision and parliamentary committee and minimize the suspension of fundamental rights during an emergency. The active role of the judiciary, human rights organizations, civil society, and free press all together work during emergencies. India must balance governance with constitutional integrity, ensuring democratic principles are upheld even in times of crisis.

Keywords: Emergency, 44th Amendment Act, Fundamental Rights, Judiciary, External Aggression, Judicial Review, Indian Constitution.

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INTRODUCTION

Framers of the Indian constitution included emergency provisions to protect the nation's security and territorial integrity in times of external aggression, armed rebellion, or any other threats related to constitutional order. According to the black law dictionary, when there is a failure by the social system to provide reasonable conditions of life, then it leads to an emergency in society. In India, during an emergency, the constitution enabled the federal government to become a unitary structured government according to the situation. At that time, some of the rights were exhausted. According to the Indian constitution, there are three types of emergencies in India: national emergency, state emergency, and financial emergency. Article 352¹ of the constitution provides provisions for emergencies that can apply in extraordinary situations for the country's security, peace, stability, and governance. A national emergency can be imposed on only three conditions: war, external aggression, and armed rebellion. State emergency, also known as president's rule or constitutional emergency. Article 356 Provides conditions in which a state emergency can be imposed due to the failure of constitutional machinery in the state. Article 356 is based on "section 93 of Government of India Act, 1935.". A financial emergency, defined under Article 360^{is defined under the Indian constitution,} which states that if the president is satisfied that the country's economic stability or credit of the country or any part is in danger, then the president can declare a financial emergency. The emergency provision of India is borrowed from the Weimer constitution of Germany. Advocates of emergency provisions in the constitutional assembly are Dr. B.R. Ambedkar's address about the misuse of emergency provisions by politicians for their political purpose while defending their inclusion in the constitution; Sir Alladi Krishnaswami Ayyar said that emergency provision is a "very life breath of constitution"; Mahavir Tyagi said that it is "safety valve" for maintaining the constitutional order.

TYPES OF EMERGENCIES AND THEIR IMPACT ON DEMOCRACY

We have discussed the previous three types of emergencies. Let us know about its provision in a briefer way. The president can declare a **National Emergency** according to Article 352 when the security of India or its part is under threat of war, external aggression, or armed rebellion. The president can declare an emergency before actual war, rebellion, or internal rebellion. If a national emergency is imposed on the grounds of war or external aggression, it is known as an

¹ Constitution of India, Article 352.

External Emergency. If imposed on the grounds of armed rebellion, it is known as Internal emergency—an internal disturbance replaced by the term armed rebellion by the 44th Amendment Act 1978. For example - if India and Pakistan openly accept that they will use armed force against each other, then it is simply a condition of war; if there is no formal declaration for the use of armed force, then this condition is known as external aggression. Because of these two reasons, an emergency can be imposed in India, known as an external emergency. Initially, by the 38th Amendment Act of 1975, the national emergency declaration was immune from judicial review. But, by the 44th Amendment Act of 1978, the provision of immunity of judicial review was removed. In *Minerva Mills v Union of India*² (1980), the Supreme Court ruled that the proclamation of a national emergency can be challenging if it is based on irrelevant facts or minified. The parliament houses (Lok Sabha and Rajya Sabha) must approve an emergency proclamation within one month of its issue. A declaration of emergency happens, and Lok Sabha is not in session, so it must be approved within 30 days of the first session of the newly constituted Lok Sabha, provided that the Rajya Sabha has already approved it. Both houses of parliament must approve the proclamation that will continue for the next six months. After that, if the government wants to extend so, with the special majority of both houses of parliament, it can extend for infinite periods. The president can revoke an emergency proclamation by subsequent proclamation. It does not need parliamentary approval. Suppose Lok Sabha passes a resolution to revoke the emergency so a simple majority can revoke it. During times of emergency, centre-state relations underwent drastic changes, and parliament can make laws related to state matters mentioned in the state list.³ If the parliament is not in session, the president can issue an ordinance and make a law. That ordinance is applicable for only six months. After that, it must be dissolved. Now, the center gives orders to the executive related to the state or any matter. The president can make any changes related to revenue distribution between the state and the center. National Emergency also affects Lok Sabha and state assembly. When the national emergency is in operation, the tenure of Lok Sabha can extend to periods of one year at a time. Lok Sabha cannot extend beyond six months after its removal. Parliament can extend the tenure of the state assembly for one year each time during a national emergency. During a national emergency, removal can be extended to six months. During the emergency proclamation, fundamental rights under Article 19 automatically get suspended. According to Article 358, six rights under Article 19 get

² *Minerva Mills Ltd. & Ors v. Union of India & Ors.* (1980) 3 SCC 652.

³ Drishtias, 'Emergency provision' https://www.drishtias.com/to-the-points/Paper2/emergency-provisions/print_manually accessed 8 August 2020.

automatically suspended during an emergency. It came into effect after the emergency ceased to operate. 44th Amendment Act of 1978 gives power during a national emergency proclaimed on the grounds of war or external rebellion; it automatically gets suspended. Article 359 provides the power to the president to suspend people's right to move the court to enforce fundamental rights during a national emergency. Only those whose rights are suspended are specified in the order. This suspension could continue until it ceased emergency or for short periods. The 44th Amendment Act of 1978 gave people the right to move to court to enforce fundamental rights guaranteed under Article 20 and Article 21. A national emergency was proclaimed three times. The first time was in October 1962 during the China aggression in NEFA (North East Frontier Agency), which continued till January 1968. The second time was in December 1971, during the wake of an attack by Pakistan. The third time was during June 1975; the emergency was already there. The second and third national emergencies continued till March 1977.

Article 355 imposes a duty on the central government to look at every state of India that they perform according to constitutional provisions. Article 356 empowers the central government if, in a case, the state government does not perform according to constitutional provisions to take its control, which is popularly known as the **president's rule**. The president's rule under Article 356 must be imposed on two conditions. First, under Article 356, the president is satisfied that the state cannot function according to constitutional provisions so that the president can issue proclamations. Second, under Article 365, if the central government gives any order to follow the state government and the state government does not follow that order, the president can declare that the state cannot function according to constitutional provisions. Both houses of Parliament must approve the President's rules within two months of its issue date if the proclamation declares when Lok Sabha is dissolved so it will survive for only two months, and when the newly conditioned Lok Sabha forms, so it can survive for 30 days from the first setting of Lok Sabha, given that Rajya Sabha has already approved it. During the president's rule, the president can take all the power of the state government and powers of government. The president can take all the powers of the state legislature and can assign these powers to the parliament. The president can pass state legislative budgets and bills. Under Article 356, the president can proclaim if he/she believes that the state cannot function under constitutional provisions—the President is immune from judicial review under the 38th Amendment Act of 1975. However, by the 44th Amendment Act 1978, this change preset is not immune from judicial review.

A financial emergency can be proclaimed under Article 360. Both houses of parliament must approve it within two months of its issue date. If a proclamation happens during Lok Sabha, dissolution occurs for two months, so it will continue for 30 days after Lok Sabha is reconstituted. The power of the union executive can extend to the state's financial matters, such as a salary or allowance reduction for working under the state government. The president can directly reduce salaries working under the central government and decrease the salaries of Supreme Court and High Court judges.

SAFEGUARDING AGAINST ABUSE OF EMERGENCY POWERS

On 25th June 1975, Mrs. Indira Gandhi declared a national emergency. She gave the reason for the emergency as "internal disturbance." Proclamation for emergencies becomes problematic when people's fundamental rights are violated. A large number of people were put under prevention detention. Prevention detention means when a person is put behind bars without any pre-trial to stop that person from committing any further crime. There was press censorship. Article 352 mentions "internal disturbance," which is a vague term. Mrs. Indira Gandhi misuses this term for the proclamation of emergency. Emergency was ended on 21 March 1977. The 44th Amendment Act was passed in 1978 to prevent the abuse of emergency powers and to ensure that any act by the parliament majority does not restrict people's fundamental rights. Under Article 352, an internal disturbance was changed into "armed rebellion." The president can proclaim an emergency only if there is a written recommendation from the cabinet. Earlier, there was no role of parliament in the proclamation, but after the act, a fresh sitting of Lok Sabha can take place to disprove the declaration. Under Article 358, Article 19 automatically suspends an emergency based on war or external aggression. Article 20,21 cannot be suspended. Before the act, all the fundamental rights could be suspended if the emergency is proclaimed. The national emergency must be renewed every six months. Each time, it must be passed by both houses of parliament. In the ADM Jabalpur case (1976)⁴, the Supreme Court suspended habeas corpus during an emergency. Later, this judgment was overruled by *Puttuswamy v Union of India*.⁵ In this judgment, the Supreme Court said that human beings' right to life and personal liberty are inalienable from human beings. Before the emergency proclamation, it must be debated in the parliament so that the members can ask questions about whether it is essential, needed, legal or illegal, etc. During the 1975 national

⁴ ADM Jabalpur v. Shrikant Shukla AIR 1976 SCC 1207.

⁵ Ipleaders 'A.D.M. Jabalpur v Shivant Shukla (1976)' <https://blog.ipleaders.in/adm-jabalpur-v-shivakant-shukla/> accessed 24 sept 2024

emergency, many opposition leaders were put in prevention detention. This incident shows us the importance of strong and active opposition leaders. Human rights organizations, civil society organizations, and independent media play a pivotal role during emergencies. They observe human rights violations and misuse of power by the central government. Civil society files Public Interest Litigation (PIL) during an emergency about Fundamental rights and human rights violations. It works alongside the judiciary. Press at the time of emergency gives us a different perspective of what happens during an emergency. It provides a different approach to what the government is trying to depict. The judiciary hesitates to question the president, but the judiciary can overlook whether constitutional procedure is followed. In the landmark case, *SR Bommai v Union of India*⁶, the Supreme Court said that the president's proclamation is subjected to judicial review. There is a need to make people aware of their fundamental and legal rights so that they can question the government.

LESSONS CAN BE LEARNED FROM GLOBAL PRACTICE.

According to the "National Emergency Act," there is a mandate review of emergency by Congress in the USA. India can learn this from the USA by adopting strict and mandated reviews of emergencies by parliament. In India, there are no clear boundaries related to emergency powers, and that can be misused, like the USA and the UK, where their laws are well defined and not vague, which will reduce further issues and ambiguity. In France, proclaiming an emergency will require talking with many bodies. If this kind of procedure is adopted in India, it will reduce the misuse of provisions. In the USA and UK, there is rarely any suspension of fundamental rights during an emergency. In India, there is a suspension of fundamental rights during an emergency. During an emergency in France, there is a constitutional and parliamentary review committee that ensures checks on executive power during an emergency. India can also adopt this kind of committee system.

CONCLUSION

The emergency provision in the constitution was made to safeguard the country in an extraordinary situation like threatening the country's security, governance, financial stability, war, etc. This provision gives tremendous powers to the central government, and it becomes a unitary structure government from a federal structured government. However, we can observe that during 1975-1977, a national emergency was imposed by Mrs. Indhira Gandhi based on

⁶ S.R. Bommai v. Union of India (1994) SCC 1.

"internal distance." She misuses this power, violating fundamental rights, press censorship, and many prevention detections. India can learn lessons from the Global world to improve its democratic emergency provision. India can do a parliamentary review like the USA, clearly define powers related to emergencies like the UK, establish a parliamentary and oversight committee like France, and make changes in provisions in such a way that minimizes violation of fundamental rights during the proclamation of emergency. Furthermore, active judiciary, civil society, human rights organizations, and the free press play pivotal roles during emergencies to ensure that fundamental and human rights should not be compromised. People should be aware of their legal and fundamental rights. It will reduce the misuse of emergency provisions. India should strike a balance between effective governance and the protection of constitutional integrity to uphold democracy while managing crises like these.