



- Emergency in a political system denotes a situation in which the chief executive imposes restrictions on the right to freedom of people.
- In India, such restrictions are imposed according to certain provisions enshrined in the Constitution, generally known as emergency provisions.
- Emergency is imposed under some situations such as war, external aggression, internal disturbances or armed rebellion or financial crisis in whole of India or any part of it.
- Emergency provisions in Indian Constitution are provided in a separate Part-XVIII under Articles 352-360.
- The order to declare emergency is passed by the President of India.
- He declares it on the advice of Council of Ministers.
- However, the real power during emergency is exercised by the prime minister.
- During emergency the Union executive can give directions to the executive in the states and the parliament can pass legislation on any matter which is not in the Union Legislature List.
- During emergency, authorities of the state govt. enjoy subordinate positions to the central authorities.

#### HISTORICAL BACKGROUND

- The need to include emergency provisions arose in the context of unusual political situation in India.
- Constitution of India has emergency provisions, which have, been borrowed from Constitutions of Weimar (Germany) and Government of India Act, 1935.
- Government of India Act 1935 had emergency provisions in section 45 for the Centre & in section 93 for the Provinces.
- It empowered the Chief Executive to declare emergency.
- The Government of India Act 1935 was meant to provide Provincial autonomy in India.
- But it had also emergency provisions which put restrictions on the autonomy of provinces.
- It involved questions of relations between centre & provincial units.
- The Act empowered the centre to control & intervene in provincial matters if emergency arises due to war or internal disturbance, and make provision for carrying administration if the machinery of ministerial government failed to function.
- In times of emergency due to war or internal disturbances, Governor General was armed with power to make laws on all matters, even those in the provincial list.

- Governor General could declare emergency in provinces.
- The Governor General of India had specific responsibility concerning peace and tranquility of India or any part thereof
- Even he could act independently in the provincial government through the Governor who was also empowered to function in the respective provinces and was the main source of information of the Governor-General.

#### DEBATES IN CONSTITUENT ASSEMBLY

- There were differences among the members of the Constituent Assembly about the need to include emergency provisions in the Constitution.
- According to Granville Austin, A.K. Ayyar & K.M. Munshi were staunchest supporters of the curb on freedom.
- K.M. Munshi supported that both provincial & union governments should be given right to suspend right to freedom in times of emergency.
- Their views were supported in the Rights Sub-committee "with one or two exceptions".
- Ayyar suggested that the rights enshrined in the constitution must be subject to public order, security and safety.
- He supported his arguments by giving examples of disturbances in Bengal and Assam, communal riots in Punjab and NWFP (North West Frontier Provinces)
- However, suggestions to suspend Fundamental Rights were opposed by three members: KT Shah, HV Kamath & H. N. Kunjru.
- With reference to the provision of financial emergency H.N. Kunjru said they were a serious threat to the financial autonomy of the States.
- After deliberations on both types of views – those which supporting the suspension of rights during emergency and those which opposed the suspension, the committee prepared a new version about suspension of rights during emergency.
- The new version did not support arbitrary suspension of democratic rights during emergency.
- What it allowed was suspension of taking resource to constitutional remedies under Art. 32.
- The suspension of Fundamental Rights were kept out of purview of judicial review till the passage of 44th Constitutional Amendment in 1978.
- "Indian polity is framed to work federal in normal times while in emergency it is designed to work through unitary system –other federal systems like America cannot change their form with changing circumstances" – Dr. B.R. Ambedkar.

#### TYPES OF EMERGENCY

- The emergency in India is declared by the President.
- It is important to note that during emergency, all activities are carried out in the name of the President but, it is the Prime Minister or the central government which exercise – powers in practice.
- There are three kinds of emergency and each of them can be declared on different grounds.
- The three kinds of emergency are: national emergency, state emergency and financial emergency.
- Federal to unitary structure – without amendment
- Part XVIII – art 352 – 360
- Art 352 – President can declare emergency when security of India or a part of it – can declare before the actual occurrence of war/ external aggression/ armed rebellion - can issue different proclamation even if other proclamation issued by him is in operation if there is an imminent danger – added by 38<sup>th</sup> amendment act 1975.
- National emergency on the basis of war /external aggression – external emergency
- When emergency proclaimed on the grounds of armed rebellion – internal emergency
- 42<sup>nd</sup> amendment of 1976 empowered President to limit operation of national emergency to a specific part of India
- 1975 emergency –without concurrence of cabinet – 44<sup>th</sup> amendment 1978 act introduced necessity of concurrence of cabinet in emergency proclamation
- Minerva Mills case 1980 – SC : Proclamation of national emergency can be challenged in a court on ground of mala fide or declaration was based on wholly extraneous & irrelevant facts or is absurd or perverse
- After Parliamentary approval emergency lasts for six months – can be extended to an indefinite period with Parliamentary approval in every six months – this periodical approval added by 44<sup>th</sup> amendment act of 1978
- Special majority was introduced for emergency approval in 44<sup>th</sup> amendment act of 1978
- Revocation of proclamation by President anytime can be done without Parliamentary approval
- Resolution of disapproval of continuation of emergency is to be passed by L.S. only , adopted by simple majority
- During emergency President can modify the distribution of revenue between centre & state – modifications will continue till the end of the financial year in which emergency ceases to operate – such Presidential orders have to laid before Parliament
- Art 358 – suspension of F.R. guaranteed under art 19. while art 359 deals with suspension of F.R. except those guaranteed under art 20 & 21.
- Legal & executive actions taken during emergency cannot be challenged even after the emergency ceases to operate
- 44<sup>th</sup> amendment act 1978 restricted scope of art 358 – 6 F.R.s under art 19 can be suspended only during proclamation of national emergency on the grounds of external aggression & not on the grounds of armed rebellion – laws related with emergency are protected from being challenged & no other laws - executive action taken under such law is protected
- Art 359 authorises the President to suspend the right to move any court for enforcement of F.R. during national emergency – means only enforcement is suspended & not the rights
- Suspension of those F.R. that are specified in the presidential order – this order should be laid before the Parliament for approval
- 44<sup>th</sup> amendment act restricted scope of art 359 – President cannot suspend the right to move to court for enforcement of F.R. guaranteed under art 20 & 21
- Art 358 operates only in case of external emergency – art 359 operates in both emergencies
- Art 359 does not suspend FR automatically - it empowers president to suspend enforcement of specified FRs
- Art 358 extends to entire country & art 359 can be extend to a specific region & or entire country
- Both provide immunity from challenge , to laws related to emergency & not other laws
- Shah commission was set up in 1977 by Janta Party govt to investigate the circumstances of declaration of emergency – commission did not justify the declaration of emergency hence in 1978 , 44<sup>th</sup> amendment act was enacted
- In the case of Mumbai in 1994 the supreme court held that the secularism is one of the basic structure of the constitution and if a state government fails to abide by it then it has to be considered that break down of the constitutional machinery in the state.

#### NATIONAL EMERGENCY

- According to Article 352 A (national) emergency can be proclaimed in India in following situations: war, external aggression, internal disturbances or armed rebellion in whole of India or any part of it.
- The 44th Constitutional Amendment substituted the phrase ‘internal disturbance’ with “armed rebellion”.
- The President can declare emergency after receiving a written communication about cabinet’s decision in favour of emergency, and after satisfying himself about prevalence of the situations just mentioned above.
- According to Articles 358 & 359, President has powers to suspend Fundamental Rights except in respect to Article 20 (right to protection in respect to conviction for offences) & Article 21 (right to life & personal liberty).

- During national emergency the union government's powers extends to the jurisdiction of legislatures & executives in the states.
- It gives direction to the states the way executive power should be exercised (Art. 353).
- Parliament enjoys power to make laws which are not mentioned in the Union List.
- These also include matters listed in the State List (Art. 250).
- During the time of emergency, the President has constitutional power to modify the provisions of the constitution relating to the allocation of financial resources between the Union and the States (Art. 253).
- Every proclamation of such emergency is required to be laid before each House of Parliament.
- If both houses of Parliament do not approve the proclamation at the expiry of one month from the date of proclamation, it will cease to operate.
- If at the time of such proclamation, the House of the People has been dissolved or its dissolution takes place within one month after the proclamation, and if the resolution has been passed by before Council of States (Rajya Sabha) but has not been passed by the House of People (Lok Sabha)
- The proclamation will cease to operate on the expiration of thirty days from the date when the house first met after it was reconstituted.
- However, the condition of expiration of thirty days does not apply if a resolution to this effect is passed by both Houses of Parliament.
- The proclamation after being approved by both Houses of Parliament will cease to exist after expiration of six month from the date of proclamation.
- It can be extended for another six months.
- A resolution for proclamation of emergency must be approved by a majority of total number of members of a House and not less than two-third of the members present in the House and voting.
- if the lower house passes a resolution disapproving the proclamation or its continuance, it shall be invalidated.
- Even if notice of a resolution signed by not less than one-tenth of the total members is given to the President or Lok Sabha Speaker, a special sitting of the House should be held within fourteen days to discuss & consider it.
- The Indian Constitution has a provision of judicial review.
- It means that the judiciary has power to interpret the constitution and declare any law or order passed by legislature or judiciary, void which conflicts with the constitutional provisions.
- But declaration of emergency, thus violation rights of was removed from the purview of judicial review by the 42nd Constitutional Amendment in 1976.

- However, provision for its judicial review was restored by the 44th Amendment Act in 1978.
- A declaration of emergency should be approved by both houses of parliament within two months of its declaration.
- And if it is not approved by the parliament within this time limit, the declaration of emergency will become ineffective.
- Once declaration of emergency is approved by Parliament, it may continue be effective for six months at a time unless revoked by the President earlier by a subsequent proclamation.
- Since Independence, there were three instances of declaration of national emergency — during Indo-China War from 26 October 1962 to 10 January 1968 — during Indo-Pak war, from 3 December 1971 to 21 March 1977 — And the third instance was during 25 June 1975 and terminated on 21 March 1977.
- The national emergency in first two instances was clamped due to wars with other countries.
- In the third instance, the reasons given by the central government were internal disturbances in the country.

#### STATE EMERGENCY (Art 356)

- State emergency is also often known as President's rule. State emergency is imposed on failure of constitutional machinery in the states.
- All states in India except two newly created states Chhattisgarh & Telangana have been placed under state agency at different times.
- State emergency is imposed by the President if he is satisfied with the report of the Governor that there is break down of constitutional machinery in the state.
- President's rule may be declared in the states on the following grounds: If the State Legislature fails to elect a leader as Chief Minister; Breakdown of the coalition; If the elections are not conducted due to imminent reasons; and Loss of majority in the assembly.
- Though state emergency is imposed by the President, it is the Governor of the state who acts as representative of the President or the centre. This is also called central rule in the states.
- The central rule in the states of Jammu and Kashmir, is called as Governor's rule.
- The President through the Governor exercises legislative and executive powers. But his functions do not cover judiciary.

#### FINANCIAL EMERGENCY (ART. 360)

- According to Article 360, Financial emergency can be imposed when there is financial instability in India or any part of it.
- In India, financial emergency has not been imposed.
- If a situation arises for proclamation of financial emergency in India, it must be approved by the Parliament within two months of promulgation.

- In case, the lower house is dissolved at the time of proclamation of financial emergency, it will cease to exist on expiry of thirty days from the date of its first meeting after its reconstitution.
- Under the situation of financial emergency, the President can reduce the salaries of all government officials, including Supreme Court & High Court judges
- Even money bills & other bills under article 207 passed by the State Legislatures need to be submitted to the President for the approval under such circumstance.
- With respect to Jammu and Kashmir as the state had special status under Article 370, Indian Union have no power to promulgate financial emergency in Jammu & Kashmir.

#### STATE EMERGENCY (ART.365)

- By Article 365, if the state is not working, according to the direction of the Union government an emergency can be proclaimed.
- Such an emergency must be approved by the Parliament within a period of 2 months and can last up to maximum of three years via extensions after every 6 months period.
- Article says, “where any state has failed to comply with, or to give effect to any directions given in the exercise of the executive powers of the union under any of the provisions of this constitution, it shall 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 this constitution”.
- The meaning of the expression “any direction” Must be understand to mean that any directions issued under any of the provision of this constitution in the exercise of the executive power of the union.
- The word “it shall be lawful for the ‘president to hold’ occurring in Article 365 do not impose an obligation.
- They only confer power – the exercise of which is a matter of discretion with the president on every non-compliance with the union direction, irrespective of its extent and significance, the president is not bound to hold that a situation has arisen in which the government of the non-complying state cannot be carried on in accordance with the constitution.
- The president should exercise this drastic power in a reasonable manner with due care and circumspection and not Mechanically.
- He should give due consideration to all relevant circumstances, including the response, if any of the state government to the direction.
- Article 365 acts as screen to prevent any hasty resort to the drastic action under Article 356 in the event of failure on the part of a state government to comply with or to give effect to any

constitutional direction given in the exercise of the executive power of the union.

#### LEGISLATIVE ADVENTURISM

- 42nd amendment to the Constitution, extending the term of the elected parliament to six years, which was violative of Article 83(2) .
- The 38th- 42nd Constitutional amendments were passed during the Emergency which led to a tussle between the executive and the judiciary that would have a lasting impact on the Parliament’s power to amend the Constitution.
- The 38th Constitutional Amendment, govt sought to expand the power of the President & barred judicial review of the proclamation of Emergency by the President or any ordinance issued by the President even if it infringed upon the fundamental rights guaranteed under the Constitution.
- 39th amendment placed any dispute to the election to the office of the Prime Minister, President beyond the scope of judicial review.
- The 40th amendment placed crucial land reforms in the Ninth schedule, beyond the scope of judicial review.
- The 41st Amendment said no criminal proceedings “whatsoever” could lie against a President, Prime Minister, or Governor for acts before or during their terms of office.
- In the 42nd amendment, the Parliament expanded its powers to amend the Constitution, even its ‘basic structure’ and curtail any fundamental rights.
- Constitution drafters working amid the turmoil of Partition had successfully argued that the fledgling state’s executive needed extraordinary powers without judicial interference to deal with exceptional circumstances.”

#### MISUSE OF EMERGENCY PROVISION

- In the third instance, in 1975, emergency provision was used due to political reasons.
- The real problem arose on the use of Article 352, when Congress Government at the centre under the leadership of Prime Minister Indira Gandhi restricted freedom of speech and association in 1975.
- She had attempted to do so because the verdict of Allahabad High Court which went against her.
- Under this circumstance, Jayaprakash Narayan had called upon the army, police, and government employees not to obey any order, which they considered wrong.
- He also urged the Chief Justice Mr. A.N. Roy not to sit on the bench to hear the election appeal of Prime Minister.
- All the opposition political parties and leaders met in a meeting to form ‘Lok Sangharsh Samiti’.
- Later, under the leadership of Jayaprakash Narayan, it declared “a total revolution” which in fact increased mass mobilization against the autocracy & corruption.

- Forewarning the misuse of Article 356, Dr. B.R. Ambedkar said that 'it might remain a dead letter and might never be used except as a last resort after everything else failed.
  - It was frequently misused till the period of 1990s – However, in the 21st century the misuse of this provision has decreased
  - These provisions have been used by central government by both the Congress and the non-Congress parties to impose president rule in different states.
  - The most important examples of such misuse included dismissal of the first government led by the communist leader E.M.S. Namboodiripad in Kerala in 1957
  - It was the first instance of dismissal of an elected government by using emergency provisions in India.
- 
- In 1980, Indira Gandhi government dismissed state governments ruled by the opposition parties in several states.
  - One by the Janata Party government when Morarji Desai was Prime Minister of the country in 1977.
  - The other example was dismissal of the Congress governments by the Janata Dal led government under the leadership of V.P. Singh.
  - Since 1994 imposition of President's rule has become less frequent.
  - It has happened due to the court's ruling in the Bommai Case: According to the Bommai case imposition of president rule in a state has to be approved by both houses of parliament. It has made misuse of Article 356 difficult.



New Vision IAS Academy  
 ....wings to aspirations