



Brief Overview on Emergency Provisions under Indian Constitution

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WHAT IS AN EMERGENCY ?

- ❖ A state of emergency in India refers to a period of governance under an altered constitutional setup that can be proclaimed by the President of India, when they perceives grave threats to the nation from internal and external sources or from financial situations of crisis. Under the advice of the cabinet of ministers and using the Constitution of India, the President can overrule many provisions of the constitution, which guarantee fundamental rights to the citizens of India and acts governing devolution of powers to the states which form the federation.
- ❖ The term emergency maybe defined as a difficult situation arising suddenly and demanding immediate action by public authorities under powers specially granted to them by the Constitution.

- **The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360.**
- **The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.**
- **Dr. Ambedkar claimed that the Indian federation was unique in as much as in times of emergency it could convert itself into an entirely unitary state.**
- **The Constitution of India stipulates three types of emergency**
 - 1. National Emergency (Article 352)**
 - 2. State Emergency (Article 356)**
 - 3. Financial Emergency (Article 360)**

- ❖ In the history of independent India, a state of emergency has been declared thrice.
- ❖ The first instance was between 26 October 1962 to 10 January 1968 during the India-China war, when "the security of India" was declared as being "threatened by external aggression".
- ❖ The second instance was between 3 December 1971 to 21 March 1972, which was originally proclaimed during the Indo-Pakistan war.
- ❖ The third proclamation between 25 June 1975 to 21 March 1977 under controversial circumstances of political instability under Indira Gandhi's prime ministership, on the basis of "internal disturbance"
- ❖ The Term "internal disturbance" substituted by the words "armed rebellion" by 44th amendment act 1978



NATIONAL EMERGENCY (ARTICLE-352)

- ❖ **Emergency is defined as a situation, which is not normal, a situation, which calls for urgent remedial action.**

- ❖ **The Constitution of India, envisages three types of emergencies. These are-**
 - **National Emergency (Article 352)**

 - **State Emergency (Article 356)**

 - **Financial Emergency (Article 360)**

- ❖ **Constitutionally, the expression “ Proclamation of Emergency refers only to a proclamation made under Clause (1) of Article 352. And whenever, used, should not include the situations provided for under Articles 356 and 360.**

Proclamation of Emergency was issued by President:

- ❖ **First time** On the ground of external aggression from Chinese side on October 26, 1962 and continued in force until January 10, 1968.
- ❖ **Second time** On the ground of external aggression from Pakistan side on December 3, 1971 and continued till March 27, 1977.
- ❖ **Third time** On the ground of internal disturbance on June 25, 1975 and continued till March 21, 1977.

NATIONAL EMERGENCY

(Articles 352 to 354, 250, 83, 358, 359)

❖ Who can proclaim an emergency?

- After 44th Amendment, It is the President who can proclaim an Emergency when he received in writing a decision of Union Cabinet to that effect.**

❖ Grounds for Proclamation of Emergency If the security might be threatened by:

- ✓ War**
- ✓ External Aggression**
- ✓ Armed Rebellion*. (Internal Disturbance) –**

***The word armed rebellion were inserted by 44th amendment in place of Internal disturbance**

Publication of Proclamation of Emergency

- ❖ **Article 352 does not prescribe any particular mode in which a Proclamation should be published.**
- ❖ **The Proclamation may be published in such manner as the authority issuing it would deem fit in order to make it known to the public**
- ❖ **Satisfaction of the President – Its Judicial Review**
 - **Ghulam Sarwar v. Union of India.**
 - **State of Rajasthan v. Union of India.**

Territorial extent of Proclamation of Emergency

[Article 352 (1)]

- ❖ **Article 352 initially did not contain a provision regarding territorial extent where Proclamation could be confined.**
- ❖ **The Constitution (42nd Amendment) Act, 1976, amended Clause (1) of Article 352 which enables the President to make a Proclamation of Emergency:**

“ in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation”.

Duration of Proclamation of Emergency – Without Approval [Article 352 (4)]

- ❖ **A Proclamation of Emergency made under Article 352 (1) may continue in force for a period of ONE MONTH from the date of proclamation without approval by Houses of Parliament.**
- ❖ **Prior to the 44th Amendment, the period was of two months.**
- ❖ **If Proclamation is issued at the time when the House of People has been dissolved, during the period of one month, the Proclamation expires within 30 days from the date on which the House of People first sits after its reconstitution after elections.**
- ❖ **If only one of either Houses passes the resolution, the Proclamation ceases to operate at the expiration of this one month.**

Duration of Proclamation of Emergency – With Approval [Article 352 (5)]

- ❖ **Once approved by Houses of Parliament, Emergency may continue in force for SIX MONTHS from the date of such approval.**
- ❖ **Prior to the 44th Amendment, 1978, once approved by both the Houses, the Proclamation could continue in force indefinitely, until the President revoked it by making another Proclamation for this purpose.**
- ❖ **If the resolutions for approval are passed by two Houses on different dates, the period of six months would run from the date of the passing of the later of the resolutions.**
- ❖ **The Proclamation can be renewed after every six months by passing from both the Houses.**

Procedure for Approval of Proclamation [Article 352 (6)]

- ❖ Prior to the 44th Amendment, 1978, for approving the Proclamation of Emergency, were required to be passed by the simple majority of members present and voting.
- ❖ The Constitution (44th Amendment) Act, 1978 amended article 352, providing the same 'special majority ' procedure.
- ❖ A Proclamation of Emergency needs to be approved by resolutions passed in each House of Parliament, by the majority of the total membership of that House and by the majority of not less than two thirds of the members of the House present and voting.

Revocation of Proclamation of Emergency

[Article 352 (2) and (7)]

- ❖ **Prior to the 44th Amendment, 1978, a Proclamation of Emergency once approved by both Houses of Parliament could be revoked only by President. Thus, the Executive was the sole judge to decide as to when the Proclamation should be revoked.**

- ❖ **The 44th Amendment, 1978, has made the following important changes in regards to revocation of Emergency –**
 - **Proclamation of Emergency may be revoked by the President by making a subsequent Proclamation.**

 - **A Proclamation of Emergency shall on its own cease to operate on the expiration of the period for which the Proclamation has been approved by the Houses of Parliament.**

 - **President shall revoke the Proclamation of Emergency, if the Lok Sabha passes a resolution by a special sitting held for this purpose.**

Consequences of Proclamation of Emergency

The following consequences ensue on the Proclamation of Emergency made under Article 352:

- ❖ Extension of Executive Power of the Union [Article 353 (a)]
- ❖ Legislative Power of Parliament extends to State Matters [Article 250 and 353 (b)]
- ❖ Alteration in Distribution of Revenue [Article 354 (1)]
- ❖ Extension in Distribution of Houses of People and Legislative Assemblies of States [Article 83 and Article 172]
- ❖ Suspension of Fundamental Freedoms of Article 19 [Article 358]
- ❖ Suspension of Enforcement of other Fundamental Rights [Article 359]

ASSIGNMENT

Write a case analysis of the following cases:

- **Ghulam Sarwar v. Union of India.**
- **State of Rajasthan v. Union of India.**



STATE EMERGENCY

STATE EMERGENCY

- ❖ **Arts. 356 and 357 - the failure of the constitutional machinery in a State.**
- ❖ **President – receives a report from the Governor of a State or otherwise- satisfied - a situation has arisen in which the government of the State cannot be carried out in accordance with the provisions of the Constitution**

If The President:

- 1. Assume functions of the Government of the State and powers vested in the Governor**
- or any body or authority in the State**
- 2. Powers of the Legislature of the State exercised by Parliament.**
- 3. Any other incidental or consequential provision necessary to give effect to the object of proclamation.**
- Proclamation to be laid before each House of Parliament and has to be approved within two months.**
- The life span of the proclamation- 6 months – for extension - to afford an opportunity to the parliament to review**
- Such a proclamation may be revoked or varied [Art. 356 (2)]**
 - If the Lok Sabha is dissolved. [Proviso to Art. 356(3)]**

- **The maximum period for which a proclamation can remain in force in a State is 3 years. [First**

Proviso to Art. 356(4)]

- **But the 44th Amendment has introduced a new provision to put restraint on the power of Parliament to extend a proclamation issued under Art. 356 beyond one year.**
- **Again the Parliament may pass a resolution approving continuance of a proclamation beyond one year provided the following two conditions are satisfied:**
 - a) A National Emergency is already in operation; or if**
 - b) The Election Commission certifies that the election to the State Assembly cannot be held.**

- **Thus a proclamation under 356 (1) expires in the following modes:**
 - a) **After two months of its making if the Houses does not approve**
 - b) **Before two months if the Houses refuses to accept the same**
 - c) **After 6 months if no further approval was given by the Houses**
 - d) **The overall limit of 3yrs for extending the proclamation has reached**
 - e) **The date on which the President issues a revocation of the declaration of the proclamation**

When is Art. 356 invoked?

- **Failure of the Constitutional machinery in a State may arise because of various factors:**
 - i. No party in the Assembly has a majority in the State Legislative Assembly to be able to form the government
 - ii. A government in office loses its majority due to defections and no alternative government can be formed.
 - iii. A government may have majority support in the House, but is functioning in a manner subversive of the Constitution.
 - iv. The State government does not comply with the directions issued by the Central government.
 - v. Security of the State is under threat due to the widespread breakdown of law and order in the State

Art. 356 v. Art. 352

- **Art. 356 applies to a situation of failure of constitutional machinery in a state. While art. 352 restricts intervention to a situation of war, external aggression or armed rebellion,**
- **Art. 352 – does not suspend the Constitution of a State, they function normally. Under Art. 356 the State Legislation ceases to function as it is either dissolved or kept in suspension.**
- **Art. 352 affects the Fundamental Rights whereas Art. 356 does not affect the Fundamental Rights.**

- **Under Art. 352, the relationship of all the States with the Centre undergoes a change, but under Art. 356 the relationship of only one state with the Centre is affected.**
- **The two emergencies also differ with respect to the time frame within which the proclamation is to be passed.**
- **The two emergencies also differs to the life span; maximum 1yr for Art. 356, where there is no limit for the operation of Art. 352**

Justifiability of the Proclamation under Art. 356

From time to time attempts have been made to bring the matter of invocation of Art. 356(1) before the courts for scrutiny but such attempts have not succeeded.

Bijayanand Patnaik And Ors. Vs President Of India And Ors. AIR 1974 Ori 52

- The government of Nandini Satpathy fell in 1973 because of defections from the Congress Party.
- At that time, Bijayanand Patnaik, the leader of the Pragati Party commanded a strength of 70 in a House of 140.
- The governor however did not invite Bijayanand to form the government.
- The governor was of the view that political defection in the state had become common and had adversely affected the political life of the State.
- The Governor believed that government formed by Bijayanand would not remain in office for long and be stable.
- He therefore recommended to the Centre that the President's rule be brought into operation.

- **Bijayanand and his colleagues in the Pragti Party challenged the President's proclamation in the Orissa High Court.**
- **The High Court rejected the challenge and held that in sending his report to the President under Art. 356, the Governor is to act directly and not with the aid and advice of the Council of Ministers.**
- **Whether the Governor's report is mala fide or based on any extraneous facts cannot be questioned in a Court of Law. It is not justiciable as against the Governor because of the protection and immunity under Art. 361(1).**

State of Rajasthan v. Union of India AIR 1977 SC 1361

- A constitutional controversy of great significance under Art. 356 was raised in this case**
- When the general elections for Lok Sabha were held in the country in 1977, after the lifting of the emergency of 1975 the Congress Party was badly routed in several States by the Janata Party which won a large number of seats in the Lok Sabha and, thus, formed the Government at the Centre.**
- In several of these States, Congress ministries were functioning at the time and they still had time to complete their terms.**
- The Central Home Minister, Charan Singh wrote a letter to each of the Chief Ministers of these States suggesting that he should seek dissolution of the State Legislature from the governor and obtain fresh mandate from the electorate**

- **The State of Rajasthan along with several other states filed an Original suit in the Supreme Court against the Union of India under Art. 131 praying the Court to declare this directive of the Home Minister as unconstitutional and illegal.**
- **It was argued that the letter in question was a prelude to the invocation of Art. 356 in these States and that the dissolution of the State Legislatures on the ground mentioned in the letter was prime facie outside the purview of the Art. 356. Hence that the court had the jurisdiction to entertain the question.**
- **The Supreme Court, however dismissed the suit unanimously.**
- **The broad position adopted by the Court was that it could not interfere with the Centre's exercise of power under Art. 356 merely on the ground that it embraced 'political and executive policy and expediency unless some constitutional provisions was being infringed.'**
- **Art. 74(2) disables the Court to question the contents of the ministerial advice given to the President.**

- **Art. 356(5) makes it impossible for the Centre to question the President's satisfaction on any ground unless and until resort to Art. 356 in a particular situation is shown to be grossly perverse and unreasonable as to continue an excess of power.**

S R Bommai v. Union of India AIR 1994 SC 1918 admitted facts.

- **The Supreme Court had laid down guidelines regarding the use of Art.356.**
- **The Presidential proclamation dissolving a State Legislative Assembly is subject to judicial review**
- **If President's rule is imposed only by political consideration the court can even restore the assembly**

- **The Supreme Court or High court can compel the Union Government to disclose material on whose basis the President's rule is imposed on a state.**
- **The power of President under Art.356 is Constitutional power and the existence of material is a pre-condition to form the satisfaction to impose the President's rule.**
- **State assembly can be dissolved only after the parliament approves the President's rule**



FINANCIAL EMERGENCY

Financial Emergency – Article 360

Art.360 provides for financial emergency.

- ❖ **If the President is satisfied that situation has arisen whereby the financial stability or credit of India or part of the territory thereof is threatened, he may issue a proclamation for financial emergency. [Art. 360(1)]**
- ❖ **The proclamation will cease to be in force in a period of two months unless it is approved by both House of Parliament.**

- ❖ **If at the time of proclamation the Lok Sabha is dissolved it may be approved by the Rajya Sabha and then approved by the Lok Sabha after elections within 30 days from its first sitting. If not so approved the proclamation ceases to exist.**
- ❖ **During the period of proclamation, the Union executive can direct the State executives to take such actions to maintain financial stability as may be specified in the directions. The President may also give directions as may deem necessary [Art. 360(3)]**

❖ President - issue directions for reducing the salaries and allowances of persons serving the Union including the Supreme Court and the High Court judges. [Art. 360(4) (a) (i), 360 (4)]

(b)]

❖ All the money bills or financial bills or those which involve expenditure from the State Consolidated Fund, shall be reserved for the President's consideration after being passed by the State Legislature [Art. 360(4)(a)(ii)]

❖ No court was to have jurisdiction to entertain any question, on any ground, regarding the

validity of –

i. A declaration made by proclamation by the President to the effect stated in Art. 360(1)

ii. The continued operation of such proclamation

❖ This provision has now been deleted by the 44th Amendment of the Constitution.



AMENDMENT OF THE CONSTITUTION

Amendment of the Constitution

❖ **Constitution of India is a flexible one which can be amended by the Parliamentary process.**

However, there are types of amendments that are followed to carry amendments in the Constitution.

❖ **Article 368 of Part XX of Indian Constitution provides for two types of amendments–**

- **By a special majority of Parliament and,**
- **by a special majority of the Parliament**
- **by a special majority of the Parliament with the ratification by half of the total states.**

What is Article 368?

- ❖ **To define constitutional amendment process, Article 368 of Part XX of Indian Constitution provides for two types of amendments.**
 - 1) By a special majority of Parliament**
 - 2) by a special majority of the Parliament with the ratification by half of the total states But some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is: **A majority of the members of each House present and voting (similar to the ordinary legislative process).****

Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Any of these amendments follow a certain procedure. Hence, this article will talk in detail about the types of amendments in the Indian Constitution, the Constitutional Amendment Process and the scope

Amendment by Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- ✓ **Admission or establishment of new states.**
- ✓ **Formation of new states and alteration of areas, boundaries or names of existing states.**
- ✓ **Abolition or creation of legislative councils in states.**
- ✓ **Second Schedule- emoluments,**
- ✓ **Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.**
- ✓ **Quorum in Parliament.**
- ✓ **Elections to Parliament and state legislatures.**
- ✓ **Delimitation of constituencies.**

Contd.....

- ✓ **Salaries and allowances of the members of Parliament.**
- ✓ **Rules of procedure in Parliament.**
- ✓ **Privileges of the Parliament, its members and its committees.**
- ✓ **Use of the English language in Parliament.**
- ✓ **Number of puisne judges in the Supreme Court.**
- ✓ **Conferment of more jurisdiction on the Supreme Court.**
- ✓ **Conferment of more jurisdiction on the Supreme Court.**
- ✓ **Citizenship-acquisition and termination.**

By Special Majority of Parliament

- ❖ The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a **majority of two-thirds of the members of each House present and voting**. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- ❖ The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.
- ❖ The provisions which can be amended by this way include:
 - (i) Fundamental Rights;
 - (ii) Directive Principles of State Policy; andAll other provisions which are not covered by the first and third categories.

By Special Majority of Parliament and Consent of States

- ❖ Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
- ❖ If one or some or all the remaining states take no action on the bill, it does not matter; **the moment half of the states give their consent, the formality is completed.** There is no time limit within which the states should give their consent to the bill.
- ❖ The following provisions can be amended in this way:
 - ✓ Election of the President and its manner.
 - ✓ Extent of the executive power of the Union and the states.
 - ✓ Supreme Court and high courts.
 - ✓ Distribution of legislative powers between
 - ✓ the Union and the states.
 - ✓ Any of the lists in the Seventh Schedule.
 - ✓ Representation of states in Parliament.
 - ✓ Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Amendment Process of the Constitution

- ❖ **The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:**
 - ✓ **An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.**
 - ✓ **The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.**
 - ✓ **The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.**
 - ✓ **Each House must pass the bill separately.**
 - ✓ **In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.**

- ✓ **If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.**
- ✓ **After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.**
- ✓ **The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament**
- ✓ **After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.**

Scope of Amendment in Indian Constitution

- ❖ The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the **'basic structure'** of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the **'basic structure'** of the Constitution.
- ❖ From the various judgments, the following have emerged as **'basic features'** of the Constitution:
 - ✓ Supremacy of the Constitution
 - ✓ Welfare state (socio-economic justice).
 - ✓ Principle of equality
 - ✓ Sovereign, democratic and republican nature of the Indian polity.
 - ✓ Judicial review

Contd....

- ✓ **Free and fair elections**
- ✓ **The secular character of the Constitution.**
- ✓ **Freedom and dignity of the individual**
- ✓ **Independence of Judiciary**
- ✓ **Separation of powers between the legislature, the executive and the judiciary.**
- ✓ **Parliamentary system**
- ✓ **Limited power of Parliament to amend the Constitution**
- ✓ **Federal character of the Constitution**
- ✓ **Rule of law**
- ✓ **Effective access to justice**
- ✓ **Unity and integrity of the nation**
- ✓ **Harmony and balance between Fundamental Rights and Directive Principles**
- ✓ **Reasonableness**

Thanks