

Emergency in India: Constitutional Provisions



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The part 18 of Indian constitution deals with the emergency provisions. This part has been the subject of most acrimonious attacks by the critics in the history of Independent India. During the framing of the constitution, this part had witnesses the most agitated scenes and debates in the Constituent Assembly. One of the sources that influenced the emergency provisions in India was the Weimar Constitution of Germany (1919-1933).

National / War Emergency: Article 352

Article 352 says that if the president is satisfied that a grave emergency exists whereby the security of India or any part of the territory of India is threatened by war or external aggression or armed rebellion, he may proclaim an emergency. This emergency may be with respect to whole or part of India. The article 352 puts certain conditions which are very important to understand:

- The proclamation or formal declaration of emergency can be revoked by further proclamation.
- The proclamation of a war emergency cannot be made by the president unless the Union cabinet gives him in written that such proclamation should be made.
- If a proclamation is NOT revoked subsequently, it should be laid before the parliament. The both houses of parliament must approve such proclamation within two months. If the parliament does not approve the proclamation, it will become ineffective.
- It may be that at the time of the proclamation, the house of people has been dissolved or its dissolution takes place within the period of two months after the proclamation. In these cases, the proclamation shall be laid before Rajya Sabha. If Rajya Sabha passes it, it must be approved by Lok Sabha within the 30 days of the new meeting of the Lok Sabha. However, if Rajya Sabha itself does not pass the proclamation, the proclamation would cease to be valid.

Please note that Power of President to declare an Emergency may be made use of even before the actual occurrence of aggression or disturbance.

Effect of Proclamation of War Emergency: Article 353 & 354

As soon as the emergency is proclaimed, the federal provisions of the Constitution cease to function in the area affected by the proclamation. As a result, there is a twofold expansion of the authority of the Union.

- First, the executive power of Union will extend to the giving of any directions to any state executive in emergency area.
- Second, Parliament's law making power will extend to the subjects that are enumerated in the state list.

Apart from that, the President is empowered to restrict or prohibit by order the distribution of revenues are that normally assigned entirely to the states under the financial provisions of the constitution.

However, all such orders need to be placed before each House of Parliament for approval. The combined effect of the operation is that there is a emergence of full-fledged Unitary



Government.

Consequences of Emergency

- The union government acquires the powers to issue directions to the states regarding the manner in which they have to exercise the executive power (article 353).
- The parliament is empowered to legislate on any subject in the state list. It may be noted that during emergency the states can also make laws, but this is subject to overriding power of the parliament. (Article 353 (b)).
- The centre can alter distribution of revenue between the union and the state. However, such an order is to be laid before each house of parliament and comes to an end by the end of the financial year in which the proclamation ceases to operate.
- The life of Lok Sabha can be extended by one year at a time up to the period not exceeding beyond six months after the proclamation ceases to operate.
- It leads to automatic suspension of freedoms guaranteed by art. 19 of the constitution. However as soon as the proclamation of emergency cases, the freedoms under art.19 are automatically resorted.

The president can suspend right to enforce fundamental rights granted by the constitution (art.359). The order regarding suspension of fundamental rights may extend to the whole be laid before each house of parliament as soon as possible. It may be noted that the president does not possess any power to suspend the enforcement of fundamental rights guaranteed in article 20 and 21.

Instances of National Emergency

The national emergency was for the first time proclaimed in 1962 in the wake of the Chinese invasion. This emergency was also used by the government to tide over the situation arising out of the Indo-Pak war of 1965. The emergency was finally lifted in January, 1968. The second national emergency was declared in December 1971 during the Bangladesh war and remained in force till march 1977. The third national emergency was declared in June 1975 on grounds of internal disturbance and was revoked in march 1977. However, as a result of the 44th amendment of the constitution it is no more possible to declare national emergency on grounds of internal disturbances. Instead it can be declared on grounds of armed rebellion.

Constitutional Emergency in States: Article 356

If the president is satisfied on receipt of a report from the governor or otherwise that a situation has arisen in which the Government in a state cannot be carried in accordance with the provisions of the Constitution, he / she is empowered to proclaim an emergency. The result would be that:

- President may assume to himself all or any of the functions of the state or he may vest all or any of those functions in the Governor or any other such authority.



- President may declare that powers of the state legislatures shall be exercisable by the parliament.
- President may make any other incidental or consequential provisions necessary to give effect to the object of proclamation.

However, it must be noted here that President cannot assume to himself any of the powers vested in a High Court. Further, the proclamation would have to be approved by the Houses of the parliament in same manner as in case of a War Emergency. However, *even if Parliament has approved the proclamation, it will normally cease to operate 6 months after the Parliamentary approval*. The proclamation can be repeated if necessary so as to allow the period of emergency to continue for maximum of one year. Every such resolution approving the emergency has to be passed by each of the houses of Parliament by a majority of not less than two-thirds of the members present and voting. If the emergency proclamation authorizes Parliament to exercise the powers of the state legislature, it is open to parliament to adopt one or other two alternative courses. It may pass all legislative enactments for the state including financial legislations. But if the parliament does not find it convenient to do this all additional work, it may confer upon the President to delegate this power to any authority. Parliament is also empowered to authorize the president to sanction expenditure from the Consolidated Fund of the state. Any law made by any of the authorities mentioned above shall continue in force until repealed or altered by a competent legislative or other authority.

Instances of Constitutional Emergency & Sarkaria Commission Report

This kind of emergency under Article 356 has been declared for over 110 times in India. For the first time constitutional emergency was declared in Punjab in 1952. In most of the cases constitutional emergency was declared because no stable Government could be formed as a consequence of elections. However, many times, the states were placed under presidential rule on grounds of expediency. Some of the governments enjoying comfortable majority in the assembly were suspended on the plea that *they had lost contact with the people, or failed to protect the minority communities, or failed to maintain law and order etc.*

The issue has been raised for several times that constitution should be suitably amended to ensure that the union government is not able to get rid of state government which it does not like. This issue was examined by **Sarkaria Commission**, which however did not favour the deletion of this article, as suggested by some critics. On the other hand, Sarkaria commission suggested a number of measures to ensure that the centre makes use of this provisions only on rare occasion.

The main suggestions of Sarkaria commission in this regard as follows:

- Article 356 to be used as a measure of last resort when all available alternative fail to prevent or rectify the breakdown of constitutional machinery.
- An explanation be obtained from the errant state before taking action under article



356.

- The governor should explore all possibilities to form government which is backed by majority in the assembly and if it is not possible, it should ask the outgoing ministry to act as caretaker government and hold fresh elections without avoidable
- The governor should recommend proclamation of president rule without dissolving the assembly.
- The state legislative assembly should not be dissolved before the proclamation has been laid before the parliament and an opportunity accorded to it to consider the proclamation.
- The governor's report recommending imposition of presidential rule should state all the material facts and grounds in precise and clear terms.
- Appropriate amendment be carried out in the relevant provisions of the constitution to make the remedy of judicial review more meaningful.

Is dismissal of state Government subject to Judicial Review?

Please note that in *S.R. Bommai v. Union of India* (1994) the Supreme Court held that dismissal of state government was subject to judicial review and the court could review the dissolved state assembly if the dissolution was found to be judiciary indefensible. The court also laid down the following norms regarding imposition of president's rule :

- No state assembly be dissolved while proclaiming emergency in the state. it should be dissolved only after parliament has ratified the proclamation.
- The proclamation under art. 356 is subject to judicial
- If the court strikes down the proclamation, it can restore the dismissed government to office and reactive the legislative
- The supreme court can ask of which the president is advised to make the
- President's rule can be imposed only on a written report from the government.
- It is unconstitutional for the party in power at the centre to dismiss an opposition-ruled state government.

What is the impact of Emergency on Fundamental rights (Article 358, 359)?

During the period of emergency declared under any of the above two categories, the *State is empowered to suspend the Fundamental Rights given in Article 19.*

State here means that power to suspend the operation of these fundamental rights is vested NOT ONLY in Parliament but also in Union Executive and even the subordinate authority. Apart from this, the President is empowered to suspend the right to move any court of law for the enforcement of any of the fundamental rights. This means that virtually, the whole chapter of Fundamental rights can be suspended during the operation of emergency. However, such orders need to be placed before parliament as soon as possible for its approval.



Financial Emergency: Article 360

If the President is satisfied that a situation has arisen whereby the financial stability or credit of the country or any part of it is threatened, he / she may declare a financial emergency. Proclamation in this case also has to be approved by the Parliament as in the case of two other cases of emergency.

During the Financial emergency, the executive authority of the Union shall extend to giving of the directions to any state to observe such canons of financial propriety as may be specified in the direction or any other direction, the president may deem necessary for the purpose. Such directions may include those requiring the reduction of salaries and allowances of the Government servants and even those of the Judges of Supreme Court and High Courts. Financial emergency has never been proclaimed in India.