

## EMERGENCY PROVISIONS IN THE INDIAN CONSTITUTION

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### I. Abstract

This paper aims to study the Emergency provisions in the Constitution of India, the ground for imposing them and the effects on Indian politics. The case laws added to this paper will make it easier to understand the topic. This paper shall cover the three types of emergencies and the articles which deal with them. The paper has been written after referring to various articles and books. This paper also includes literature reviews to support the topic and make it more effective. After reading this paper, it will be possible to have a clear idea of why emergency provisions are needed and the grounds on which the emergencies can be imposed. This paper also includes in brief, the past about how and why was the need for emergency provisions felt. The research methodology used throughout the paper is the Doctrinal method of research.

### II. Introduction

The situation which is caused due to failure of Government Machinery and which demands immediate action from the authority is called an Emergency.

According to the Black Laws dictionary “Emergency is a situation which requires quick action and immediate notice as such a situation causes a threat to the life and property in the nation. It is a failure of the social system to deliver reasonable conditions of life.”<sup>1</sup>

The Emergency Provisions in the Indian Constitution have been borrowed from the Weimar Constitution of Germany. An Emergency can only be imposed by the president.

The Indian Constitution is one of the few constitutions which provide against their breakdown.<sup>2</sup> The Indian Constitution followed the Government of India Act 1935, which contained the emergency provisions in section 45 in case of centre and section 93 in case of the province<sup>3</sup>. Emergency provisions are provided in part

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<sup>1</sup> *Black's Law Dictionary*, (11<sup>th</sup> ed Thomson West 2019)

<sup>2</sup> I. D. Sharma, *Emergency Government Provision in the Indian Constitution*, JStor (Nov 15,2020, 9:46 AM), <https://www.jstor.org/stable/41853862>

<sup>3</sup> I. D. Sharma, *Emergency Government Provision in the Indian Constitution*, JStor (Nov 15,2020, 9:46 AM), <https://www.jstor.org/stable/41853862>

18 of the Union Constitution and are covered under articles 352 to 360<sup>4</sup>. Emergency provisions are desirable in every constitution to guard the country against the accidental emergence of dictatorship. The emergency can be declared by the President of India. There are three types of emergencies recognized by our constitution.

### **Types of Emergencies:**

1) National Emergency: Article 352 deals with National emergency. This kind of emergency arises when there is a threat to National security due to external aggression, war and armed rebellion. India has witnessed a National emergency thrice. Twice being due to war and the third time in 1975, when Prime Minister Indira Gandhi had declared an emergency as her candidature was declared invalid in *Indira Gandhi vs Shri Raj Narain and Anr*<sup>5</sup>.

2) State Emergency: Article 356 deals with State Emergency. State Emergency is also called as President rule. Article 356 empowers the President to impose President rule in a state, if he is satisfied with the report from the governor of the state or 'otherwise' the effect that 'the Government of the State cannot be carried on with accordance with the provisions of the Constitution'.<sup>6</sup>

3) Financial Emergency: Financial Emergency is dealt with in Article 360 of The Constitution of India. This kind of emergency can be imposed by the President when the financial stability or credit situation of the country is threatened, however the constitution does not lay any basis for imposition of financial emergency. This decision can be challenged in the court. The clauses of financial emergency were inspired by the 'National Recovery Act 1933' of the United States<sup>7</sup>. However, till now India has never seen Financial Emergency.

### **III. Literature Review**

The researcher has referred to various books, articles and journals to make this research effective.

1) The book *The Case That Shook India*<sup>8</sup>, by Prashant Bhushan is a detailed account of the verdict that led to emergency. The book deals with Article 352 National Emergency which was imposed in India in 1975, due to

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<sup>4</sup> India const art 360

<sup>5</sup> Indira Nehru Gandhi vs Shri Raj Narain, AIR 1975 SC 2299

<sup>6</sup> K. Madhusudhana Rao, *Authority to Recommend President's Rule Under Article 356 Of The Constitution*, Jstor (15 Nov 2020, 9:33 AM) <https://www.jstor.org/stable/43952424>

<sup>7</sup> Vivek Tiwari, *Financial Emergency- Article 360 of Indian Constitution*, Blog (16 Nov 2020, 10:15 AM) <https://blog.finology.in/economy/the-financial-emergency>

<sup>8</sup> Prashant Bhushan, *The Case that Shook India* (Penguin books 2018)

the verdict of *Indira Nehru Gandhi vs Shri Raj Narain and Anrs*<sup>9</sup>, in which Prime minister Indira Gandhi's candidature was declared invalid. This book also describes the impact of the Amendments of the constitution on Indian politics and the impact of the same on the elections.

2) In the book *The Constitution of India- A Politico-legal Study*<sup>10</sup>, author J.C. Johari has written in great detail about The Constitution of India. In chapter 20, he has described the emergency provisions in the Constitution, the three emergencies and also the grounds for imposing these emergencies. The chapter also contains detailed information about the amendments which have taken place with regard to the emergency provisions. The use of case laws makes the chapter more interesting to read.

3) *Authority to Recommend President's Rule Under Article 356 of The Constitution*<sup>11</sup>, an internet sourced article gives a detailed account regarding State Emergency under Article 356. The article explains about the procedure of imposing State Emergency. The use of case laws in the article makes it more interesting to read.

#### IV. Research Methodology

The research methodology that will be adopted in this synopsis shall be the Doctrinal method of research.

This method is also called the traditional method of research. It involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions.<sup>12</sup>

There are certain features and advantages considering which this research method has been adopted. Following are the features and advantages:

- 1) Within a limited time , researchers are provided with the tools to reach decisions on a variety of problems.
- 2) This method is research method is flexible and thus makes it easier to stretch it to any extent to make it workable.
- 3) This type of research is considered to provide appropriate guidance and hence it is of informational value.

#### V. Research Questions

The objective of this paper is to

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<sup>9</sup> *Supra* Note 3.

<sup>10</sup> J. C. Johari, *The Constitution of India- A Politico-legal Study* 350 (Stirling Publishers Private Limited 2007)

<sup>11</sup> *Supra* Note 14.

<sup>12</sup> Dr. T. Padma and K P C Rao, *Legal Research Methodology*, 31(1st ed. Asia Law House, Hyderabad 2011).

- 1) Understand the Emergency provision in the Indian constitution.
- 2) What were the effects of these provisions on Indian politics?
- 3) Analysis of Case laws relating to these emergency provisions.

## 1. The Three Types of Emergencies in Detail

### A. National Emergency

Emergency arising due to threat to the national security is called National Emergency. Article 352 of the constitution deals with National Emergency. There are conditions in which National Emergency can be imposed:

#### 1) External Aggression:

When a country attacks another country without a formal declaration of war.<sup>13</sup> If any country attacks India unilaterally then the President can impose a National Emergency.

#### 2) War:

Use of violent force when a Country declares formal war. The President can impose National emergency.

#### 3) Armed Rebellion:

Armed rebellion was substituted for 'Internal Disturbance' by the forty-fourth Constitution Amendment Act.<sup>14</sup>

#### Effects of National Emergency

- The fundamental rights under Article 19 of the Constitution of India are suspended in case of a National Emergency under article 358.
- Under article 359<sup>15</sup> the other fundamental rights get suspended except article 20 and 21.
- Article 20- protects the rights of a person in case of conviction and Article 21 deals with the 'Protection of life and liberty'.
- Central Government has direct Control over State Government.

<sup>13</sup> Subodh Asthana, *Emergency Provisions Under Indian Constitution*, iBlog (14<sup>th</sup> January, 2021,8:00PM) <https://blog.ipleaders.in/emergency-provisions-india/>

<sup>14</sup> ID Note, 12.

<sup>15</sup> India Const art 359.

- The Parliament gets power over the subjects of the state list. However, it ceases after six months.
- The President may suspend the distribution of financial resources between the Union and the State.

## B. State Emergency

Article 356 of the Indian Constitution deals with State emergency or 'President's Rule'. This type of emergency imposed when the Constitutional machinery of the State collapses and the State is unable to function in accordance with the Constitutional provisions. If the President is satisfied with the report from the Governor of that particular State only then a State emergency can be imposed.

State Emergency can be imposed on the following grounds:

1. When the coalition Government of the State collapses.
2. When the State Legislature fails to elect a Chief Minister.
3. If there is a postponement of State Elections due to any reason.
4. When law and order are not followed in the State.

Effects of imposing State Emergency:

- The State Legislative Assembly is either dissolved or suspended.<sup>16</sup>
- This type of emergency can be imposed for three months
- The Fundamental rights of the people remain unaffected.
- President proclaims ordinances in the State.<sup>17</sup>
- President has full power over the executive of the State.

However, in the case of, *S. R. Bommai V. Union of India*<sup>18</sup> it was held that the President has limited power under Article 356. Even if both the houses pass the declaration Supreme Court has the power to declare the emergency void.

<sup>16</sup> Malika Chhikara, *Three Types of Emergencies Under the Indian Constitution*, Legal Services India (15<sup>th</sup> January, 2021, 7:30 PM), <http://www.legalservicesindia.com/article/1834/Three-types-of-emergencies-under-the-Indian-Constitution.html>

<sup>17</sup> *ID* Note, 14.

<sup>18</sup> *S. R. Bommai V. Union of India*, A.I.R. 1977 S.C1361.

### C. Financial Emergency

Article 360 of the Constitution deals with Financial Emergency. This type of Emergency can only be imposed by the President sure that there is a threat to the financial credibility and the credit in part of the country.

The duration of this emergency is two months. It must be placed before both the houses of the Parliament and the emergency expires after two months if it is not approved by the resolution of the two houses.

Financial Emergency has never been imposed in India.

#### 2. What Were the Effects of Emergency Provisions on Indian Politics?

The National Emergency which was passed in 1975 had a big impact on Indian Politics as well as democracy.

The main reason behind this Emergency was the judgement given by the Allahabad High Court.

The 39<sup>th</sup> Constitutional Amendment was passed. Article 329-A was inserted. It barred the Supreme Court from entertaining matters relating to elections. Moreover, it made the election of the President, Prime Minister, Vice-President and the Lok Sabha unjustifiable.

The major impact of this was that it violated the ideals of free and fair elections, which were an essential feature of democracy. Any dispute which took place with regards to the election, judicial review was the only way to solve those. This Article took away the right of the Court. It disturbed the basic structure of the Constitution.

Hence this is also called the Darkest Phase because it violated the basic structure and the rights of the people.

However Supreme struck down Clause 4 of Article 329 as it was well aware that Indira Gandhi had made Amendments to fulfil her own Political exigencies and to imposed an emergency to save herself from being proven guilty.

### 3. Case Analysis

#### National Emergency.

India has faced National Emergency three times. First time due to India- China war in 1962. Second time due to Pakistan in 1971 and the third time due to the landmark case of *Indira Gandhi vs Shri Raj Narain and Anr*<sup>19</sup>.

In 1971, the 5<sup>th</sup> Lok Sabha election was held. Indira Gandhi and her party won the elections and had won 352 out of 518 seats. Her opponent was Raj Narain who was the leader of Ram Manohar Lohia's SSP. Despite him being confident that he would win the elections he lost. Further, he filed an appeal to nullify the elections and also accused Indira Gandhi of violating the Election Code in the Representation of People Act, 1951 and filled a petition in Allahabad High Court for the same. He also accused Indira Gandhi of exceeding the campaigning expenses.

In the final judgement, Indira Gandhi's Election was held void. Due to internal disturbance Emergency was passed by then President Fakhruddin Ali Ahmad.

#### State Emergency

The following two cases contain a reference to State Emergency:

In the case of *State of Rajasthan & Ors v. Union of India*<sup>20</sup>, courts did not have any power to review the proclamation passed under Article 352 and Imposing the State Emergency continuously becomes arbitrary.

In the Case of *S. R. Bommai V. Union of India*<sup>21</sup> it was held that the President has limited power under Article 356. Even If both, the houses of the Parliament pass the declaration, Supreme Court has the power to declare the emergency void.

#### 4. Conclusion

The researcher has come to the conclusion that when an emergency is imposed, there can be a violation of people's rights, which are guaranteed to them by the Constitution. In order to impose power, the people should not be deprived of their basic rights. To prevent misuse of the powers, there should be a strong review system so that we never get to see the dark phase again.

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<sup>19</sup> *Supra* Note, 4

<sup>20</sup> *State of Rajasthan & Ors v. Union of India*, A.I.R 1977 INSC 145

<sup>21</sup> *Supra* Note, 16

A case like *Indira Gandhi v. Raj Narain*<sup>22</sup>, shows the loophole in the judiciary system. The fundamental rights of the people are nowhere recognized in a case of emergency, which should be done to maintain the essence of democracy.

However, Emergency provisions remain an essential part to maintain peace when there is a disturbance in the country. It will be more effective if the rights of the people are not taken away from them during emergency period.

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<sup>22</sup> *Supra* Note, 17



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**D) Case Laws**

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