BLOGS

Learn All About Emergency under The Constitution of India

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Framers of the Indian Constitution gave the opinion that in an hour of grave emergency under the Constitution of India when the security and stability of the country or any part thereof is threatened, the Central government should not be a mere helpless observer but armed with the necessary authority to deal with it.

They, therefore, incorporated in the Constitution itself an independent part providing for the necessary changes in the structure and functions of the Government to cope with extraordinary situations and circumstances.

Part XIII of the Constitution titled as ‘Emergency Provisions’ arms the President with enormous emergency powers to deal with the situation arising out of the war, armed rebellion, breakdown of the constitutional machinery, or financial crisis.

The Constitution of India provides for three kinds of emergencies i.e. Proclamation of Emergency under Article 352, Failure of Constitutional machinery in states under Article 356, and Financial emergency under Article 360.



National Emergency

Article 352(1) provides that if the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether, by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.

Article 352(3) as amended by 44th Amendment Act,1978 provides President can issue or vary a proclamation of emergency only when the decision of the Union Cabinet to the effect is conveyed to him in writing.

Proclamation of emergency can be made on the following grounds-

War

External aggression

Armed rebellion

However, the actual occurrence of war, external aggression, or armed rebellion is not a condition precedent for issuance of a proclamation of emergency. It can be made by the President even before the actual occurrence of war, external aggression, or armed rebellion if he is satisfied that there is an imminent danger.

Proclamation declaring an emergency is required to be approved by both the house by a special majority within one month of the date of such proclamation and on attaining approval it shall remain in force for a period of 6 months from the date of such approval and if the resolution is passed by both the houses is on different dates then six months would run from the date of the passing of the later resolution.

For the continuance of proclamation of emergency beyond the period of 6 months, approval by both the houses by a special majority is required before the expiration of 6 months. In the case of MINERVA MILLS LTD. V UOI 1980 it was held that there is no bar of judicial review of the validity of a Proclamation of emergency.

The court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not. The Court cannot go into the question of the adequacy of the facts and circumstances on which the President's satisfaction is based unless it can be shown that there is no satisfaction of the President at all.

Revocation of the proclamation of emergency

A proclamation of emergency once approved by both houses of Parliament could be revoked in any one of the following ways:

a. Proclamation of emergency shall be revoked by the President if Lok Sabha passes a resolution disapproving the Proclamation for this a notice in writing signed by not less than one-tenth of the total number of members of Lok Sabha is needed.
b. Proclamation of emergency may be revoked by the President by making a subsequent proclamation
c. The Proclamation shall cease to operate on the expiry of six months unless the continuance of proclamation for a further period of six months has been approved by the house of Parliament before the expiry of the earlier period of six months.

As soon as a proclamation of national emergency is declared six fundamental rights guaranteed under Article 19 gets automatically suspended. The President may also by order suspend any of the fundamental rights during the proclamation of national emergency except the rights granted under Article 20 and 21.

State Emergency

Article 356 states that if the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution generally when government indulges into corruption, then the President may by proclamation-

- Assume to himself all or any of the functions of the state government or the powers of the governor, or anybody or authority in the state other than the state legislature
- Declare that the powers of the state legislature shall be exercised by the parliament
- Make such incidental provisions as may appear to him to be necessary or desirable for giving effect to the provisions of the proclamation.

The President may even suspend in whole or in part the provision of the Constitution relating to anybody or authority in the State. The President is not however authorized to assume the powers of the High Court or to suspend any constitutional provisions pertaining to it.

Every such proclamation declaring state emergency is required to be approved by both the house by a simple majority within two months of the date of such proclamation and on attaining approval it shall remain in force for a period of 6 months from the date of such approval and if the resolution is passed by both the houses is on different dates then six months would run from the date of the passing of the later resolution.

No house of Parliament is to pass a resolution approving continuance of such a proclamation beyond one year unless the following special circumstances are satisfied:

- There is a proclamation of national emergency under Article 352 in operation at the time of passing such resolution in the whole of India or the concerned state or part of the state; and
- The election commission certifies that the continuance in force of the proclamation under Article 356 during the period specified in such resolution is necessary on account of difficulties in holding general elections to the concerned state legislative assembly

If the above special circumstances are met the emergency can remain in force up to a maximum of three years and not beyond that.

Grounds for proclamation under Article 356

a. Failure of the constitutional machinery in a State may arise because of various factors:
No party in the assembly has a majority in the State legislative assembly to be able to form the government
b. A government in office loses its majority due to defections and no alternative government can be formed
c. A government may have majority support in the House, but it may function in a manner subversive of the Constitution
d. The State Government does not comply with the directions issued by the Central Government under various constitutional provisions
e. Security of the State may be threatened by a widespread breakdown of law and order in the State

The court cannot go into the validity or legality of the proclamation because the President had issued the same in pursuance of his constitutional powers which is not an executive action of the Union but in the case of STATE OF RAJASTHAN V UOI 1977, it was held that judicial review of the validity of a proclamation of state emergency is possible only when patent misuse of the provision or an excess of power on admitted facts by the President on irrelevant grounds is proved.

Financial Emergency

Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or any part thereof is threatened, he may declare a state of financial emergency.
Such proclamation declaring financial emergency has to be approved by both the houses of parliament within two months of issue of proclamation and once approved it continues indefinitely i.e. there is no maximum period prescribed for its operation and repeated parliamentary approval is not required.
President may revoke such proclamation at any time without seeking approval from Parliament.

Consequences of Financial Emergency

a. The Union Government may give directions to State to observe certain financial rules

b. The President is competent to reduce the salaries and allowances of all any class of persons including the judges of the Supreme Court and High Courts

c. The Union Government may ask the States to reduce salaries and allowances of all public servants connected with the affairs of the state

d. All money bills passed by the State legislatures may be reserved for the consideration of the President

No situation of financial emergency has arisen till date in the country.

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