BLOGS

Provisions on National Emergency under the Indian Constitution

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Introduction

There are three types of emergencies under the Indian Constitution:

- National Emergency
- Failure of constitutional machinery in states
- Financial Emergency

Part XVIII of the Constitution of India deals with Emergency Provisions. According to **Article 352**, in the event that the President, upon receiving a written recommendation from the Council of Ministers, is convinced that a serious emergency situation has arisen, posing a threat to the security of India or any of its regions, the President is authorised to issue a proclamation of emergency based on the following grounds.

1. War
2. External Aggression: The concept of external aggression refers to acts of aggression or hostile behavior initiated by one state or entity towards another state.
3. Armed Rebellion: The act of armed rebellion refers to the organised use of force by a group of individuals with the intention of challenging the security of the state.

Declaration of National Emergency

- The President of India, upon receiving a written recommendation from the Cabinet, has the authority to declare a state of emergency. The proclamation can be made either before the actual occurrence of the event or during its pendency. The decision of the President must be based on objective considerations and should be exercised only in extreme cases.
- While the President has the power to proclaim an emergency, the Constitution requires that the proclamation be approved by both houses of Parliament within one month from its issuance. The approval ensures that the emergency powers are not misused and that parliamentary oversight is maintained.
- The term “satisfaction”, as stipulated in Article 352, does not pertain to the personal satisfaction of the president but rather refers to the satisfaction of the cabinet.
- Instead of relying solely on the Prime Minister’s advice, as Indira Gandhi did in June 1975, it is now the duty of the president to base the declaration of a state of emergency solely on the written advice from the cabinet.
- The term “armed rebellion” has been incorporated into the 44th Amendment Act of 1978. The term “internal disturbance” has been substituted. In 1975, the Prime Minister at the time, Indira Gandhi, declared a state of emergency based on the rationale of internal disturbance.
- The President has the authority to issue a proclamation prior to the commencement of a war. If he is convinced that there is imminent danger.

The Extent of a National Emergency

- The cessation of the emergency proclamation, as stipulated in Article 352, will occur after one month unless it receives approval from the parliament.
- If both houses of Parliament pass the resolution approving this proclamation, it will be in effect for six months.
- If the House of People dissolves during the declaration of an emergency, the Council of State must first approve the resolution before the proclamation can go into effect.
- The cessation of operation occurs after a period of 30 days from the initial sitting of the House of Representatives following its reconstitution.
- The passage of the proclamation necessitates the approval of a special majority which includes the majority of the total members in each house and a minimum of two-thirds of the members who are present and participating in the voting process in each legislative chamber.

- Prior to the 44th Amendment's implementation, Parliament could pass the aforementioned resolution with a simple majority vote.

Revocation of proclamation of Emergency

The revocation of Proclamation **Article 352 (7)** and **(8)** entails the President's action of rescinding the proclamation in the event that the House of People passes a resolution expressing disapproval of it.

In accordance with **Clause 8 of Article 352**, if a minimum of one-tenth of the entire House of People submits a notice for revocation:

1. In the event that the House is in session, a notice should be directed to the Speaker.
2. Conversely, if the House is not in session, the notice should be directed to the President. In either scenario, the Speaker or President must convene the special sitting of the House within 14 days of receiving the notice.

Significant Implications of the Proclamation of Emergency

- According to Article 353(a) of the constitution, the executive authority of the union is empowered to provide instructions to any state regarding the manner in which its executive authority is to be exercised.
- According to Article 353(b) of the Constitution, Parliament possesses the authority to enact legislation pertaining to subjects that are not specifically listed in the union list.
- The authority to modify the allocation of revenue between the Union and States lies with the Center, as stated in Article 354.
- According to Article 83(2) proviso, it is stipulated that during the existence of a state of emergency, the Parliament has the authority to pass legislation to prolong the tenure of the lower house for a maximum duration of one year at a time. However, this extension cannot exceed a period of six months after the state of emergency has been lifted.
- According to Article 358, the fundamental right granted under Article 19 will be suspended without the need for any additional action when a state of emergency is in effect due to war or external aggression.

- Article 359 provides that the enforcement of all other fundamental rights except the suspension of Articles 20 and 21 can be enacted through the issuance of a presidential proclamation.

It is important to acknowledge that, in contrast to Article 358, the suspension of the right to approach any Court for the enforcement of fundamental rights under Article 359 is not a spontaneous or automatic process. The acquisition of this can only be facilitated through the issuance of a presidential directive.

Important Cases on Proclamation of Emergency

The Supreme Court of India has the power to review the validity of the Proclamation of National Emergency. The Court can examine whether the President's satisfaction about the existence of an emergency is based on relevant material or is arbitrary. Judicial review ensures that emergency powers are not misused and that constitutional safeguards are upheld.

Miverva Mills v. Union of India (1980)

The declaration of a national emergency is not subject to judicial review as enumerated by the 38th Amendment Act of 1975. This clause was later removed, by the 44th Amendment Act of 1978.The Supreme Court ruled in the Minerva Mills case (1980) held that a national emergency proclamation might be contested in court on the grounds of malfeasance or that it was founded on entirely unrelated and extraneous factors.

ADM Jabalpur v. Shivakant Shukla

ADM Jabalpur v. Shivakant Shukla Case is commonly referred to as the Habeas Corpus case. Prior to the implementation of the 44th Amendment Act, the Supreme Court had established that individuals did not possess a legal entitlement to approach the Court for the purpose of enforcing fundamental rights in the event of a state of emergency being declared.

Following the implementation of the 44th Amendment Act, it has been established that individuals possess the right to approach the Supreme Court in order to seek the protection and enforcement of fundamental rights as guaranteed by Articles 20 and 21, even in situations where a state of emergency has been proclaimed.