

“History of national emergency in India”*Arpit Agrawal**B.A.LL.B.**Indore Institute of Law***Abstract**

Emergency is the extreme situation when the nation fails in its constitutional machinery. The president of India can make a proclamation of emergency when the security of India or any part of India is threatened either by war or external aggression or armed rebellion. He may make a proclamation of emergency in any part of India. The actual occurrence of the event is not essential under article 352. In India the emergency period refers from 1975 to 1977 of 21 months when the emergency is declared by Indira Gandhi the prime minister of India across the country. The emergency had its effect from 25TH June 1975 to 21ST march 1977. The proclamation of emergency can be done only with the concurrence with the cabinet ministers and not only advise of the prime minister as done by the Indira Gandhi in June 1975 , she had advised president to proclaim without consulting with cabinets. The proclamation of emergency automatically suspend the fundamental rights and legal duties except article 20 and 21. The emergency results in to turning point of political affairs. The word “armed rebellion” has now substituted for the words “internal disturbance” in the 44TH amendment. The 42nd amendment act enables the president to declare the emergency in any part of the country. If the situation of that part of country becomes normal than the emergency can be revoked from that part but it may continue to operate in other parts of the country. The emergency declared by Indira Gandhi is not in the legitimate form because the opposition party has given a call to launch a movement with a view to compelling the P.M to resign from her post as her election to the Lok Sabha declared void by the Allahabad high court. The article talks about the historical development of emergencies in India and also the type of emergency provisions in India.

Keywords: Emergency, Indian constitution , Amendment, Armed rebellion.

Introduction

The meaning of emergency under the constitution is different from its meaning in dictionary. Emergency in constitution means abnormal situation which calls for urgent remedial action ,whereas the dictionary meaning of emergency that it is a situation when it poses of immediate risk. It is a responsibility of government to prepare for all the crisis with all the measures require to safeguard its people. As India being a democratic nation the president is given the authority to proclaim emergency at the time of severe crisis. The president proclaim emergency after he is satisfied after advice and discussion with the council ministers. Article 352 to 360 of the constitution deals with the emergency. The India had faced national emergency three times. Whenever there is a threat in the constitutional machinery or threat to the nation or financial creditability of India is threatened then the president of India can

proclaim emergency in any part of India¹. The emergency in nation is declared in procedures. During emergency all the fundamental right of a citizen or a individual are suspended except article 20 and 21 where article 20 talks about the protection in respect of convection in certain offences and article 21 talks about the right to life and personal liberty in which every individual from its birth had a right to live meaningful and dignified life.

The subjective satisfaction of the president is the satisfaction that the security of India is threatened or there are chances of its threatened by was or internal aggression or armed rebellion and this cannot be change in the court of law, even when president had been actuated mala fides. The executive is empowered with very great powers by the emergency provisions. Certain members of the constitution assembly had expressed the view that the executive may misuse the emergency powers. Dr. Ambedkar pointed out that the constitution itself provides with the safeguards against the misuse of the emergency powers. Firstly it is to be exercised on the advice of the representatives of the people or the council of ministers. Secondly, it must be laid in front of parliament and cannot enforce for more than one month without its approval.

If we talk about the national emergencies in India, third national emergency was not declared at right time and declared not for the right purpose. Except the third national emergency the other two were declared at right and for the right purpose. Emergency declared by Indira Gandhi in 1975 has resultant as the darkest period in Indian history from 1975 to 1977 of 21 months.

At the time of crisis, the democratic nation like India cannot deal with them in its normal process, therefore the president is given the authority for the declaration of emergency and for immediate actions. If we talk about the article 20 and 21, where article 20 talks about the certain rights which need the protection in respect of condemnation for certain violations and the protection includes ex post facto law², double jeopardy³ and right against self incrimination⁴. Whereas article 21 talks about the right to life and personal liberty, where every person has right to live a self respecting life. The object of fundamental rights under article 21 is to prevent destruction of personal liberty. Right to life means to live a dignified and self respecting life.

Fundamental rights are the pillars of the Indian constitution, article 21 being the core. As these rights are the basic structure so they cannot be suspended.

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<https://www.bing.com/search?q=national+emergencies+India&form=EDGTCT&qs=AS&cvid=2adff47046f3416d9e4b3ffb4d634544&refig=48fe9073ad43463adab3477d64cadcad&cc=IN&setlang=en-US&PC=LCTS>

² Article 20(1) - No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

³ Article 20(2) - No person shall be prosecuted or punished for the same offence more than once.

⁴ Article 20 (3) - No person accused of any offence shall be compelled to be a witness against himself.

If we talk about the state emergency then the union government received from the all quarters for the arbitrary imposition of the president's rule. The article 356 of the Indian constitution says that the union government is empowered with the wide powers to maintain law and order in the country along with wholeness and integrity of the nation. But the facts or the real scenario says about the misuse of this power and the example for this is the imposition of state emergency for 39 times between 1966 to 1977. Both the governments means Indira Gandhi government and Janata party government used this power to dissolve state government ruled by opposition parties, later the supreme court established certain strict and mandating guidelines to reduce the scope for article 356 and as a result of which since early 2000, the incident of imposing president rule have decreased considerably. Accordingly to sarkaria commission article 356 will be used only when there are no other alternatives to prevent the complete failure of the constitutional machinery. The state emergency has lasted for 3 years in Punjab and Jammu & Kashmir which is the maximum till date.

Types of emergencies

National emergency: The proclamation of emergency is depend on the security of India. when the security of India is threatened by war or external aggression or armed rebellion the emergency is proclaimed. According to article 352 of the Indian constitution the president can proclaim emergency after the advice and discussion with council ministers. The nation emergency in India has been declared three times , for the first time during indo-china war from 26th october 1962 to 10th january 1968. For the second time during India Pakistan war from 3rd December 1971 and lasted till 21st march 1977 as an external aggression. For the third time national emergency is declared by the Indira Gandhi on 25th June 1975 as an internal aggression.

State emergency: The type of emergency is declared when the state fails in its constitutional machinery. The article 356 of the constitution defines the state emergency. The governor of the state sends the report to the president when he satisfies that the constitutional machinery of the state fails and then the president consults with the council of ministers and proclaims the emergency. The state legislature is suspended after the proclamation of the state emergency. The state emergency in India was first time declared in Punjab. Chhattisgarh and Telangana were two states where emergency had never declared.

Financial emergency: The proclamation of emergency is declared when the financial stability and credit worthiness of the country is threatened. In the type of emergencies the government can also cut the salaries and allowances including the judges of the supreme court and high courts. This type of emergency had never evoked in India. The financial emergency is defined in article 360 of the constitution.

Procedures to declare and revoke national emergency in India:-

Procedure to declare the national emergency in India:

1. Earlier the proclamation continues for two months without parliamentary approval. The period deducted from 2 months to 1 month after 44th amendment act 1978.
2. Under the old provision the resolution of approval is passed by the simple majority of each house , but accordingly to new provision under 44th amendment act 1978 , such resolution must have the approval 2/3rd of the members of that house present and voting⁵.

Procedure to revoke the national emergency in India

1. The president can revoke the declaration of emergency at any time by a proclamation without the need of parliamentary approval.
2. The president can revoke the declaration of emergency when he satisfies that the threat has passed.
3. If the Lok Sabha disapproves the continuation of emergency then the president can revoke the emergency.
4. Before the 44th amendment act the Lok Sabha has no powers to disapprove the emergency and the proclamation of emergency can remove at any time.
5. The another provision of the 44th amendment act explains that if the one tenth member of the Lok Sabha give a written notice to the speaker then also it will lead to the discontinuation of the emergency.

Procedures to declare and revoke the state emergency:-

Procedure to declare state emergency

When the president of the country receives the receipt from the governor of the state or if the president satisfies that the situation for the emergency has arised then he can declare the emergency. It may also happen that the president declare the emergency without receiving the receipt from the governor, it was happened in year 1991 by the president of tamil nadu venkataraman. There almost the same procedure for the proclamation of emergency like in the national emergency. Here also the proclamation is placed before both the houses of the parliament. The approval must be given in two months in case of state emergency⁶. It is further can be extended for six months but not beyond one year.

Procedure to revoke state emergency

Our constitution talks about both declaration as well as revocation of such emergency by fixing the particular period of time. It is important that the proclamation of emergency should be presented before both the houses of parliament Lok Sabha as well as Rajya Sabha, except in case of proclamation revoking the previous proclamation. If the Lok Sabha has dissolved or at the time of dissolution the proclamation has been given and at the same time if the resolution has passed by the council of ministers declaring the emergency and if there is not

⁵ <http://www.omabc.com/national/constitution-of-India/federal-provisions/emergency-provisions/national-emergency-grounds-approval/>

⁶ Taken from article 356 of the Indian constitution.

any resolution approving the proclamation by the Lok Sabha before the expiration of that period, the proclamation not operate at the expiration of 30 days from the date on which the Lok Sabha sits first after the reconstitution.

Procedure to declare and revoke the financial emergency :-

The procedure to declare and revoke the proclamation of emergency is same as procedure in the national emergency. The financial emergency has never invoked in India⁷.

44th amendment act 1978 – This amendment amend the article 356 of the Indian constitution and also restricted its scope. The period of one year is substituted with period of six months only. A proclamation of emergency will continue only for the period of six months only after the approval by the parliament. For the further continuation it has to be approved by the parliament each time. It has also added a new clause (5) in article 356 in existing clause (5) which has now omitted. The new clause provides that the houses of parliament can pass resolution for continuation only when the passing of resolution at the time of proclamation of emergency and the election commission certifies that the continuance will be done during the period specified in such resolution of the proclamation of the article 356. This means that the continuation of the proclamation of the emergency can be done only when the conditions mentioned in clause (5) of article are present.

Effects of national emergency :-

1. At the time of national emergency the power of the executive of center extends to directing any state in the way in which the power is to be exercised.
2. The laws related to state list are made by the parliament on any subject if needed.
3. The tenure for the period of one year of time can be extended by the Lok Sabha. But same cannot be extended if the proclamation ceases to operate. In the same manner the tenure of state assemblies can also be extended.
4. The president is empowered to modify the provision of the distribution of revenues.
5. National emergency lead to suspension of the six freedom rights automatically according to article 358 and the suspension continues till the end of the emergency period. But according to 44th amendment fundamental rights are suspended only on the basis of the armed rebellion. Except 20 and 21 article all other articles can be suspended.

Use and misuse of the emergency provision in India

The existing provisions for the emergencies like armed rebellion, war or external aggressions are sufficient. But there are certain flaws for which there is need for amendment.

Firstly, the suspension of the fundamental rights⁸ and moreover the suspension of article 226 of the constitution, we all know that when there is violation of any fundamental right we

⁷ Taken from article 360 of the Indian constitution.

⁸ Article 226 of the Indian constitution 1950.

move to high court under article 226 but at the same time if these were suspended then where do common people go? The condition takes place in famous case A.D.M Jabalpur vs Shivakant Shukla where the president under article 359(1) issue the orders to suspend the article 14,19,20 and 21 of the Indian constitution. And according to the maintenance of internal security act 1971 hundreds of people were arrested and detained all over the world.

Secondly, the overlapping the national emergency on state emergency. In India only two states named Chhattisgarh and Telangana are the states where state emergency has never invoked, rest all over 27 states are being covered after the 44th amendment act 1978 the things changed drastically. It has been 43 years since the national emergency has been declared and the scope of the national emergency has narrowed down to the level that it is almost impossible to declare the national emergency. Last time the national emergency has declared in 1975 by Indira Gandhi the prime minister of India for a period of 21 months, due to internal disturbances. Due to emergency the fundamental rights are violated and people suffered at large. Press and media suffered the most, the publication are done only after the permission by the government. Great leaders who protested against the declaration of emergency were put behind bars without any reason. The emergency were declared for the benefit of the nation but it has turned in to worst nightmare for every individual. In 1975 the power, government was in wrong hand due to which things went wrong.

There are certain changes made by 44th amendment in 1978 were :-

1. The term “Armed rebellion” was replaced for “Internal disturbances” under article 352 of the constitution.
2. The proclamation should be communicated by the cabinet ministers and is to be in writing for the declaration of the emergency under leadership of the prime minister.
3. Both the houses of the parliament must be there during the proclamation of emergency within one month of time.
4. The houses must re-approve the emergency within 6 months for its continuation.
5. For the revocation of the emergency the simple majority pass resolution and voting.
6. In case of armed rebellion article 19 will not be suspended, after amendment it was declared that article 19 will only be suspended only at the time of wars or external aggression.
7. It is also said that article 20 and 21 will not included in the suspension of the right to move to the courts for the violation of part iii of Indian constitution.
8. The term of Lok Sabha is decreased to 5 years from 6 years.

These changes in 44th amendment 1978 were made with an aim for improvement upon the 42nd amendment 1976 and for the improvement of national emergency too. As a result the 44th amendment 1978 has been turned out to be the most crucial and major amendments.

Conclusion

The Indian constitution was formed and framed after intensive studies, extensive studies and long deliberations. The most important and crucial provision of emergency punctually placed with caution and care. Over the years the provisions resulted in inadequacy and giving the rise to a view that the provisions are in practice, but as failure. India can do well only if it provides the safeguards against the abuse of emergency power.

When we deal with the emergency provisions, then it is easy to see the purpose for which the provisions are available in Indian constitution. But when we study for the same then we realize, that even if these provisions are made for the security of India and protection of fundamental rights of the individual, these provisions themselves gives a lots of drastic discretionary powers to the executive. The execution to the powers to the executive turns the federal structure in to the unitary. We still think to brought the check and balance system which does not exist at the time of third national emergency in 1975 to ensure the favorable use of the power by the ruling party and executive.

Our constitution provides for the execution of such powers due to which the fundamental rights of the individual may infringe at the time of emergency, third national emergency in 1975 is declared due to internal disturbances (later known as armed rebellion) in which the fundamental rights of many individual were violated. The researcher suggests some control mechanism for the limitation of power within the purview of Indian constitution.