



THREE TYPES OF EMERGENCY UNDER THE INDIAN CONSTITUTION

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Black law's dictionary defines emergency "as a failure of social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them". Dr. B.R Ambedkar claimed that the Indian Federation was unique as during the times of emergency it could convert itself into an entirely unitary system. In India, the emergency provisions are such that the constitution itself enables the federal government acquire the strength of unitary government whenever the situation demands. During such urgent needs all the pacific methods should be exhausted and emergency should also be the last weapon to use as it affects India's federal feature of government.

There are three types of emergencies under the Indian Constitution namely-

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

National Emergency

Article 352 of the Indian Constitution talks about the national emergency. National emergency is imposed whereby there is a grave threat to the security of India or any of its territory due to war, external aggression or armed rebellion. Such emergency shall be imposed by the president on the basis of written request by the council of ministers headed by the Prime Minister. When they are satisfied that they are satisfied that there is an eminent danger there of Every proclamation is required to be laid before each House of Parliament, it will cease to operate after one month from the date of its issue unless in the meantime it is approved by the parliament, the proclamation may continue for a period of 6 months unless revoked by the president. For further continuance of emergency the resolution has to be passed by either house of parliament by a majority of not less than two-third members of the houses. During the times of such emergency the executive, legislative and financial power rests with the centre whereas the state legislature is not suspended. The union government under Art.250 of the constitution gets the power to legislate in regards to subjects enumerated in the state list. Except Art20 and 21 all the fundamental rights are suspended. Under Art.359 the president may suspend the right to move to the courts for enforcement of fundamental rights during the time of emergency. National emergency has been imposed thrice in the country- in 1962 at time of Chinese aggression, in 1971 during the indo-pak war, in 1975 on the grounds of internal disturbances.



Failure of Constitutional Machinery in State

Article 256 talks about the failure of constitutional machinery in state also known as the President's rule. If the president on Governor's report or otherwise is satisfied that the situation has arisen that the government can't be carried in accordance with the constitutional provisions then, he may issue State emergency. President can declare emergency either by the report of Governor or he himself is satisfied that the situation is such that the emergency has to be imposed. But at times, President may declare emergency when a report is not received from the governor. This was done by President Venkataraman in 1991 in the state of Tamil Nadu even though he didn't receive a report from the governor. After the 42th Amendment of the constitution the state emergency was made immune from judicial review. But later in the 44th Amendment the legality of President's rule could be challenged. The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve it, the emergency shall cease to have effect after the expiry of a period of two months. Further the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance. Beyond the period of an year the proclamation can only be continued if the Election Commission certifies that it is not possible to hold election in the state or that territory. The consequences of state emergency are The president assume all the executive power of the state himself.

The state administration runs by him or any person appointed by him generally the Governor.

- During such proclamation, the state assembly is either dissolved or suspended. But the MLA's do not lose their membership of the Assembly.
- Parliament makes laws regarding the state list. The parliament only passes the budget for the state.
- The High court of the state functions independently.
- President also proclaims ordinances in the state.

During the state emergency the Union government has absolute control over the state except the judiciary. If one looks at the past instances of state emergency in the country, three common grounds emerge that have been invoked under Art.356- breakdown of law and order, political instability, corruption and maladministration. In Rameshwar Prasad V. UOI (Bihar Assembly Dissolution Case) it was held that the presidential proclamation dissolving state assembly in Bihar under Art.356 was unconstitutional on extraneous and irrelevant ground. The court said that the state governor misled the centre in recommending dissolution of state assembly. In the historic case of S.R Bommai V. UOI, a full bench of the Karnataka High court produced different opinion about the imposition of the President's rule in Karnataka, while in other states the court held that it was in violation of the constitution and would have restored the original position.



Financial Emergency

The president under Article 360 of the constitution has the power to declare financial emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is threatened. It has to be laid before both the Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses. During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canons or financial propriety and such other directions that the President may find necessary. The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of union including judges of high court and Supreme Court. There has been no occasion of financial emergency in India.

Conclusion

During the period of emergency for the execution of power there might be infringement of Fundamental rights of individuals, which are judicially granted by the Constitution of India. The validity of actions must be reviewed to deter political gains and give way to political interest. Despite abuse of powers of the emergency provisions still have an important role to play in the conditions prevailing in India, though it still remains a controversial issue in the country.

REFERENCES

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In case of dissolution, fresh elections are held for constituting a new legislative assembly in the state.

Those nine States include Rajasthan, Uttar Pradesh, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal and Haryana.

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The President's Rule imposed in May, 1987 in Punjab was allowed to continue for five years under the 68th Amendment Act of 1991.