

MODULE - 2

Aspects of the Constitution of India



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EMERGENCY PROVISIONS

You have read in the preceding lesson that the Constitution of India is federal in nature having a unitary bias. On the one hand, it has all the characteristic features of a federation, while, on the other hand the Centre is more powerful than the States.

When the Constitution of India was being drafted, India was passing through a period of stress and strain. Partition of the country, communal riots and the problem concerning the merger of princely states including Kashmir. Thus, the Constitution-makers thought to equip the Central Government with the necessary authority, so that, in the hour of emergency, when the security and stability of the country is threatened by internal and external threats. Therefore, some emergency provisions were made in Constitution to safeguard and protect the security, integrity and stability of the country and effective functioning of State Governments.



Objectives

After studying this lesson, you will be able to

- recognise that the Union Government has no option except to assume extraordinary powers in emergencies;
- identify the situations in which the President can proclaim a state of National Emergency under Article 352;
- describe the various effects of National Emergency relating to the executive, legislative, and financial matters, with special reference to the fundamental Rights;
- cite examples of National Emergencies proclaimed in the country with their duration and effect;
- describe the circumstances in which the President can make a proclamation under Article 356 imposing President's Rule in a state;
- cite a few examples when such proclamations were made due to the breakdown of constitutional machinery;
- recall that imposition of President's Rule has often been controversial in the context of smooth Centre – State relations;



- describe the circumstances under which Financial Emergency can be proclaimed under Article 360;
- explain the role of Parliament during Financial Emergency; and
- describe the effects of Financial Emergency.

9.1 Emergency Caused by War, External Aggression etc.

Provisions have been made in the Constitution for dealing with extraordinary situations that may threaten the peace, security, stability and governance of the country or a part thereof. There are three types of extraordinary or crisis situations that are envisaged. First, when there is a war or external aggression has been committed or there is threat of the same, or if internal disturbances amounting to armed rebellion take place; second, when it becomes impossible for the government of a State to be carried on in accordance with the Constitution; and third, if the credit or financial stability of the country is threatened. In each case the President may issue a proclamation with varying consequences. In this section we will discuss the emergency caused by war etc., popularly known as the national emergency.

9.1.1 Proclamation of National Emergency (Article 352)

The Constitution of India has provided for imposition of emergency caused by war, external aggression or internal rebellion. This is described as the National Emergency. This type of emergency can be declared by the President of India if he is satisfied that the situation is very grave and the security of India or any part thereof is threatened or is likely to be threatened either (i) by war or external aggression or (ii) by armed rebellion within the country. The President can issue such a proclamation even on the ground of threat of war or aggression. According to the 44th Amendment of the Constitution, the President can declare such an emergency only if the Cabinet recommends in writing to do so.

Such a proclamation of emergency has to be approved by both the Houses of Parliament by absolute majority of the total membership of the Houses as well as 2/3 majority of members present and voting within one month, otherwise the proclamation ceases to operate. In case the Lok Sabha stands dissolved at the time of proclamation of emergency or is not in session, it has to be approved by the Rajya Sabha within one month and later on by the Lok Sabha also within one month of the start of its next session. Once approved by the Parliament, the emergency remains in force for a period of six months from the date of proclamation. In case it is to be extended beyond six months, another prior resolution has to be passed by the Parliament. In this way, such emergency continues indefinitely. But if the situation improves the emergency can be revoked by another proclamation by the President of India.

The 44th Amendment of the Constitution provides that ten per cent or more members of the Lok Sabha can requisition a meeting of the Lok Sabha and in that meeting, it can disapprove or revoke the emergency by a simple majority. In such a case emergency will immediately become inoperative.

National Emergency has been declared in our country three times so far. For the first time, emergency was declared on 26 October 1962 after China attacked our borders in the North East. This National Emergency lasted till 10 January 1968, long after the hostilities ceased.

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For the second time, it was declared on 3 December 1971 in the wake of the second India-Pakistan War and was lifted on 21 March 1977. While the second emergency, on the basis of external aggression, was in operation, third National Emergency (called internal emergency) was imposed on 25 June 1975. This emergency was declared on the ground of 'internal disturbances'. Internal disturbances justified imposition of the emergency despite the fact that the government was already armed with the powers provided during the second National Emergency of 1971 which was still in operation.

9.1.2 Effects of National Emergency

The declaration of National Emergency has far-reaching effects both on the rights of individuals and the autonomy of the states in the following manner :

- (i) The most significant effect is that the federal form of the Constitution changes into unitary. The authority of the Centre increases and the Parliament assumes the power to make laws for the entire country or any part thereof, even in respect of subjects mentioned in the State List.
- (ii) The President of India can issue directions to the states as to the manner in which the executive power of the states is to be exercised.
- (iii) During this period, the Lok Sabha can extend its tenure by a period of one year at a time. But the same cannot be extended beyond six months after the proclamation ceases to operate. The tenure of State Assemblies can also be extended in the same manner.
- (iv) During emergency, the President is empowered to modify the provisions regarding distribution of revenues between the Union and the States.
- (v) The Fundamental Rights under Article 19 about which you have already learnt are automatically suspended and this suspension continues till the end of the emergency. But according to the 44th Amendment, Freedoms listed in Article 19 can be suspended only in case of proclamation on the ground of war or external aggression.

From the above discussion, it becomes quite clear that emergency not only suspends the autonomy of the States but also converts the federal structure of India into a unitary one. Still it is considered necessary as it equips the Union Government with vast powers to cope up with the abnormal situations. The exigencies of the situation prevailing in the period 1975-77 necessitated certain changes in the Constitution regarding emergency provisions. Therefore, the 44th amendment was passed on 30th April 1979 to strengthen the democratic features of the Indian Constitution and to protect citizens' rights even during the national emergency.

**Intext Questions 9.1****Fill in the blanks :**

1. Proclamation of National Emergency gives enlarged powers to the _____ . (Union Government, President, Supreme Court)



2. National Emergency can be declared under Article _____. (232, 352, 360)
3. During this period of National Emergency Lok Sabha can extend its term by _____ at a time. (one year, three years, five years)
4. During the period of National Emergency, the Right to _____ can be restricted. (Equality, Freedom, Constitutional Remedies)
5. On 25 June 1975, National Emergency was declared on the ground of _____. (external aggression, internal disturbances, financial crisis)
6. The President can declare National Emergency only if _____.
 - (a) The Prime Minister gives written advice.
 - (b) The Cabinet recommends in writing.
 - (c) He himself is otherwise satisfied.
7. Once approved by the Parliament, the National Emergency ordinarily remains in force for a period of _____. (six months, 1 year, 2 years).

9.2 Emergency due to Failure of Constitutional Machinery in a State

It is the duty of the Union Government to ensure that governance of a State is carried on in accordance with the provisions of the Constitution. Under Article 356, the President may issue a proclamation to impose emergency in a state if he is satisfied on receipt of a report from the Governor of the State, or otherwise, that a situation has arisen under which the Government of the State cannot be carried on smoothly. In such a situation, proclamation of emergency by the President is called 'proclamation on account of the failure (or breakdown) of constitutional machinery.' In popular language it is called the President's Rule.

Like National Emergency, such a proclamation must also be placed before both the Houses of Parliament for approval. In this case approval must be given within two months, otherwise the proclamation ceases to operate. If approved by the Parliament, the proclamation remains valid for six months at a time. It can be extended for another six months but not beyond one year. However, emergency in a State can be extended beyond one year if

- (a) a National Emergency is already in operation; or if
- (b) the Election Commission certifies that the election to the State Assembly cannot be held.

This type of emergency has been imposed in most of the States at one time or the other for a number of times. It was in 1951 that this type of emergency was imposed for the first time in the Punjab State. In 1957, the Kerala State was put under the President's Rule. There have been many cases of misuse of 'constitutional breakdown'. For example, in 1977 when Janata Party came into power at the Centre, the Congress Party was almost wiped out in North Indian States. On this excuse, Desai Government at the Centre dismissed nine State governments where Congress was still in power. This action of Morarji Desai's



Janata Government was strongly criticised by the Congress and others. But, when in 1980 (after Janata Government had lost power) Congress came back to power at the Centre under Mrs. Gandhi's leadership and dismissed all the then Janata Party State Governments. In both cases there was no failure of Constitutional machinery, but actions were taken only on political grounds.

In 1986, emergency was imposed in Jammu and Kashmir due to terrorism and insurgency. In all, there are more than hundred times that emergency has been imposed in various States for one reason or the other. However, after 1995 the use of this provision has rarely been made.

9.2.1 Effects of Imposition of President's Rule in a State

The declaration of emergency due to the breakdown of Constitutional machinery in a State has the following effects:

- (i) The President can assume to himself all or any of the functions of the State Government or he may vest all or any of those functions with the Governor or any other executive authority.
- (ii) The President may dissolve the State Legislative Assembly or put it under suspension. He may authorise the Parliament to make laws on behalf of the State Legislature.
- (iii) The President can make any other incidental or consequential provision necessary to give effect to the object of proclamation.

The way President's Rule was imposed on various occasions has raised many questions. At times the situation really demanded it. But at other times, President's Rule was imposed purely on political grounds to topple the ministry formed by a party different from the one at the Centre, even if that particular party enjoyed majority in the Legislative Assembly. Suspending or dissolving assemblies and not giving a chance to the other political parties to form governments in states has been due to partisan consideration of the Union Government, for which Article 356 has been clearly misused.

In view of the above facts, Article 356 has become very controversial. In spite of the safeguards provided by the 44th Amendment Act, this provision has been alleged to be misused by the Union Government. That is why, there is a demand either for its deletion or making provision in the Constitution to restrict the misuse of this Article. The Sarkaria Commission which was appointed to review the Centre-State relations also recommended that Article 356 should be used only as a last resort. The Commission also suggested that the State Legislative Assembly should not be dissolved unless the proclamation is approved by the Parliament. It further suggested that all possibilities of forming an alternative government should be fully explored before the Centre imposes emergency in a State on grounds of breakdown of Constitutional machinery. The Supreme Court held in the Bommai case that the Assembly may not be dissolved till the Proclamation is approved by the Parliament. On a few occasions such as when Gujral Government recommended use of Article 356 in Uttar Pradesh, the President returned the recommendation for reconsideration. The Union Government took the hint and dropped the proposal.



Intext Questions 9.2

Fill in the blanks :

1. The proclamation of emergency due to the breakdown of Constitutional machinery in a State is covered under Article _____ (352, 356, 360)
2. The imposition of President's Rule in a State can continue for _____ months without the approval of the Parliament. (one, two, six)
3. President's Rule in a State can be extended upto a maximum period of _____. (1 year, 2 years, 3 years)
4. The declaration of emergency due to the failure of Constitutional machinery in a State is made on the advice of the _____. (Chief Minister, Speaker of Legislative Assembly, Governor)
5. The Parliament can approve the imposition of President's Rule in a State for a period of _____ at a time. (three months, six months, nine months)

9.3 Financial Emergency

The third type of Emergency is Financial Emergency provided under Article 360. It provides that if the President is satisfied that the financial stability or credit of India or any of its part is in danger, he may declare a state of Financial Emergency. Like the other two types of emergencies, it has also to be approved by the Parliament. It must be approved by both Houses of Parliament within two months. Financial Emergency can operate as long as the situation demands and may be revoked by a subsequent proclamation.

9.3.1 Effects of Financial Emergency

The proclamation of Financial Emergency may have the following consequences:

- (a) The Union Government may give direction to any of the States regarding financial matters.
- (b) The President may ask the States to reduce the salaries and allowances of all or any class of persons in government service.
- (c) The President may ask the States to reserve all the money bills for the consideration of the Parliament after they have been passed by the State Legislature.
- (d) The President may also give directions for the reduction of salaries and allowances of the Central Government employees including the Judges of the Supreme Court and the High Courts.

So far, fortunately, financial emergency has never been proclaimed.

Intext Questions 9.3

1. Article _____ covers the Financial Emergency provisions. (352, 356, 360)
2. Financial Emergency has been imposed in our country only _____. (once, twice, never)

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3. Financial Emergency can be imposed for a period of _____ at a time. (two months, six months, desired length).
4. Financial Emergency has to be passed by the Parliament within _____. (Two months, four months, six months)
5. Under Financial Emergency, the President may give directions to reduce the salaries and allowances of _____. (Union Government employees, State Government employees, All government functionaries including judges.)



What You Have Learnt

According to the Indian Constitution, the President has been given extraordinary powers to deal with certain abnormal situations in order to protect the security, integrity and stability of the country. For this purpose, there are three types of emergencies which can be proclaimed by the President of India on the written advice of the Union Cabinet. These three types of emergencies are :

- (a) National emergency (Article 352).
- (b) Emergency due to the breakdown of constitutional machinery in a State (Article 356).
- (c) Financial emergency (Article 360).

National emergency under Article 352 has been declared three times so far. Twice it was imposed due to the external aggression once by China and another time by Pakistan, whereas it was declared only once on the basis of the fear of internal disturbances. This emergency was imposed on 25 June 1975. Emergency on account of failure of Constitutional machinery has been declared in most of the States some time or the other. But Financial Emergency has not been declared so far.

Emergency, when imposed, affects the Fundamental Rights of the citizens. It also affects the autonomy of the State Governments. The powers of the Union Government increase and it can make laws even on the subjects included in the State List. The Centre gives directions to the State Governments. Practically speaking, the federal nature of the Constitution changes into a unitary form. So much so that when the proclamation of national emergency is in operation, some of the Fundamental Rights guaranteed by the Constitution remain suspended.

The second type of emergency under Article 356 is the most frequently imposed emergency. Under this, a State is put under the President's Rule if the elected representatives fail to form or run the government in a State according to the Constitution of India. This is the most misused form of emergency which has been vehemently criticised by many.

The third type of emergency is Financial Emergency which has not been declared so far. During this type of emergency, the President of India may give directions to the Union as well as State Governments to reduce the salaries and allowances of their employees including the judges. The purpose of declaring this type of emergency is to solve the financial crises.



The proclamation of each type of emergency is made by the President on the written advice of the Union Cabinet. Such a proclamation has to be approved by both the Houses of Parliament within one month in case of National Emergency and within two months in case of the remaining two types of emergencies, from the date of imposition of such emergency. The Proclamation of national emergency as well as the imposition of President's Rule, if approved by the Parliament, will continue to be in operation for six months from the date of proclamation. In case it is to be extended beyond six months, a subsequent prior resolution has to be passed by the Parliament to this effect. In case of Financial Emergency once proclaimed, it continues to operate as long as it is required.

The Emergency Provisions provide the President with sweeping powers to deal with abnormal and extraordinary situations. Any misuse of these powers can easily lead to subversion of democracy. But the actual working of the Constitution for more than five decades has demonstrated that emergency powers were generally used in the interest of the country barring a few cases where emergency was imposed due to political considerations. In spite of misuse of emergency provisions in some of the States, there is a broad consensus that emergency provisions still have a role to play under the conditions prevailing in India.



1. Enumerate the emergency provisions contained in the Constitution of India.
2. How does the imposition of National Emergency affect the life of citizens?
3. Under what conditions can the President's Rule be imposed in a State?
4. How are the executive and legislative powers of a State exercised during the President's Rule?
5. Mention the effects of Financial Emergency.



9.1

1. Union Government
2. 352
3. one year.
4. Freedom
5. internal disturbances.
6. Cabinet recommends in writing.
7. 6 months.

9.2

1. Article 356.
2. 2 months.

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3. One year.
4. Governor
5. Six months.

9.3

1. Article 356.
2. never.
3. desired length.
4. Two months.
5. All government functionaries including judges.

Hints for Terminal Exercises

1. Refer to Sections 9.1, 9.2 and 9.3.
2. Refer to Effects of National Emergency Section 9.1.2
3. Refer to Section 9.2.
4. Refer to the Effects of Imposition of President's Rule in a State Section 9.2.2.
5. Refer to Section 9.3.