

**SOS POLITICAL SCIENCE & PUBLIC ADMINISTRATION
M. A PUBLIC ADMINISTRATION II SEM**

CONSTITUTIONAL SYSTEM IN INDIA-II (204)

TOPIC NAME- Emergency Provision- Article 352,Article 356

UNIT-IV

Emergency Provisions in Indian Constitution

Introduction-

The Indian Constitution gives President the authority to declare three types of emergencies: national emergency, state emergency, and financial emergency. Emergency provisions in India are borrowed from Weimar Constitution of Germany. Constitution of India envisages emergency of following three types: Article 352- National emergency Article 356-Emergency in state(president's rule) Article 360- Financial emergency

National emergency under Article 352-

Originally at the beginning, National emergency could be declared on the basis of "external aggression or war" and "internal disturbance" in the whole of India or a part of its territory under Article 352. Such an emergency was declared in India in 1962 war (China war), 1971 war (Pakistan war), and 1975 internal disturbance (declared by Indira Gandhi). But after 44th amendment act 1978, National Emergency can only be declared on grounds of "External aggression or war", also called as External Emergency & on the ground of "armed rebellion", also called as Internal Emergency. The President can declare such an emergency only on the basis

of a written request by the Cabinet headed by the Prime Minister. Such a proclamation must be laid before both houses of Parliament and the state of emergency expires after one month unless approved within that time by both houses sitting and voting separately. However, if the Lok Sabha (the lower house) has been dissolved or dissolution takes place in the state of emergency, and the Rajya Sabha approves of the state of emergency, the deadline for the Lok Sabha is extended until thirty days after that house reconstituted. According to Article 352(6), [2] approval by either house requires a special majority: those in favour of the motion must be two thirds of those present and voting, and amount to a majority of the entire membership of that house. A Parliamentary resolution extends the state of emergency for up to six months, and it can be extended indefinitely by further resolutions in six-monthly increments.

During a national emergency, many Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. By contrast, the Right to Life and Personal Liberty cannot be suspended according to the original Constitution. In January 1977, during the emergency declared controversially by Indira Gandhi, the government decided to suspend even the Right to Life and Personal Liberty by dispensing with Habeas corpus. Justice Hans Raj Khanna defended the Right to Life and asked: "Life is also mentioned in Article 21 and would Government argument extend to it also?". The Attorney General observed: "Even if life was taken away illegally, courts are helpless.

A national emergency modifies the federal system of government to a unitary one by granting Parliament the power to make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, all state money bills are referred to the Parliament for its approval.

During an emergency, the term of the Lok Sabha can be successively extended by intervals of up to one year, but not beyond six months after the state of emergency has been revoked.

State emergency also called as President Rule, under Article 356

A state of emergency can be declared in any state of India under article 356 on the recommendation of the governor of the state. Every state in India except two states, Chhattisgarh and Telanganahas been under a state of emergency at some point of time or the other. The state of emergency is commonly known as 'President's Rule'.

If the President is satisfied, based on the report of the Governor of the concerned state or from other sources, that the governance in a state cannot be carried out according to the provisions in the Constitution, he/she may declare an emergency in the state. Such an emergency must be approved by the Parliament within a period of two months.

It is imposed for an initial period of six months and can last for a maximum period of three years with repeated parliamentary approval every six months. The 42nd amendment act of 1976 extended the initial time duration of state emergency from 6 months to 1 year. Subsequently, 44th CAA 1978 restored the 1-year period back to 6 months. Originally, the maximum period of operation of state emergency was 3 years. This 3-year period was divided into 1 year of ordinary period and 2 years of extra ordinary period for which certain conditions are to be fulfilled. Therefore, from now on after every 1 year Parliament needs to approve the same. If the emergency has to be extended for more than three years, it can only be done by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir.

During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list (see National emergency for explanation). All money bills have to be referred to the Parliament for approval. In this occasion ministers of state legislature do not perform actions in state.

Effects of President Rule (State Emergency)

- On Executive- State government is dismissed and the executive power of the state is exercised by the centre.
- On Legislature- State legislature does not function to legislate; state legislative assembly is either suspended or dissolved.
- On Financial relation- There is no impact on the distribution of financial resources between centre and the state.

Amendments

1. 42nd Constitution Amendment Act, 1976 extended the period of state emergency from 6 months to 1 year.

2. 44th Constitution Amendment Act, 1978 reverted back the operation of state emergency to 6 months. Further it divided the maximum period of 3 years of operation into 1 year under ordinary circumstances and 2 years under extra ordinary circumstances, for which the stipulated conditions shall have to be satisfied.

Financial Emergency

Under article 360- If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect. This emergency is never imposed in India.

Article 360 in The Constitution Of India 1949

360. Provisions as to financial emergency

(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect

(2) A Proclamation issued under clause (1)

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament: Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose

(4) Notwithstanding anything in this Constitution

(a) any such direction may include

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of Article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts

PART XIX MISCELLANEOUS