



Impact of Emergency on Fundamental Rights

Miss. Pranjal Lawar¹, Asst. Prof. Aditi Mishra²

¹ L.L.M 1st Year, Semester: II, ROLL.NO. 29

²Guide, Asst. Prof. Modern Law College
Savitribai Phule Pune University, Pune 411007

ABSTRACT: -

The Constitution emerges three types of emergencies – National Emergency, Constitutional Emergency and Financial Emergency. A state of emergency in India refers to a period of governance that can be placard by the President of India during certain extremity situations. Under the advice of the Cabinet of Ministers, the President can overrule numerous provisions of the Constitution, which guarantees Fundamental Rights to the citizens of India.

The Fundamental Rights can be suspended during emergency by the President of India under Article 359. The six freedoms under right to freedom are automatically suspended. By discrepancy, the right to life and personal liberty cannot be suspended according to the original Constitution. The Fundamental Rights are justiciable. Under Article 32 of the Constitution, a person can go to the Supreme Court for the enforcement of these rights. therefore, this paper attempts to estimate the content and extent of these provisions in the light of the operation of these provisions during emergency and to assess their impact on constitutional democracy and personal liberty.

Key words: Emergency Provisions, Proclamation, Fundamental Rights, Suspension, Judicial Review, Individual Liberty.

INTRODUCTION: -

Fundamental rights are enshrined in the part III of the Indian constitution. They are part of those rights which are necessary for the survival of a human being with dignity. Fundamental rights have been incorporated in the fundamental law of the land i.e. the Constitution of India and one can approach courts in case of violation of these rights. These rights reflect a desire of the founding fathers of Indian constitution to build a new social order.

For example, there are rights declaring practice of untouchability an offence or conferring certain culture and educational rights on the minorities, both linguistic as well as religious. Moreover, the given rights are not absolute but subject to certain reasonable restrictions. For example, the right to freedom of speech and expression can be restricted on grounds of public order, morality or decency and national security.[1] The fundamental rights can be suspended during national emergency (Article 352), only exception being right to life. Having discussed the basic features of these fundamental rights, one can find that these rights have classified under six heads in a manner depending upon their scope and nature: Right to equality (Articles 14-18); Right to freedom (Articles 19-22); Right against exploitation (Articles 23- 24); Right to freedom of religion (Articles 25-28); Cultural and educational rights (Articles 29- 30); Right to constitutional remedies (Articles 32) in 1978, Right to property mentioned in Article 31 was repealed by the 44th amendment act as it was found contrary to other fundamental rights particularly the right to equality. It, however, has been reallocated to Article 300A of part XII as a legal right now.

HISTORY OF EMERGENCY PROVISIONS: -

Emergency Powers, even if parcelled out incrementally, have corrosive consequences. Indeed, incremental measures attract less attention and render the extraordinary normal in the public eye. Hence, they may be more dangerous than sweeping seizures of emergency powers. The US experience with emergency powers in the second half 20th century highlights this risk, and casts into relief legislature responsibility for the development of emergency powers. Like the USA founding document, India's constitution, drafted between December 1946 and December 1949, was established in the rosy glow of independence from colonial domination. Emergency protocols were debated until August 1949, and were so contentious that at one point they had to be withdrawn for further attention from the drafting committee. The eventual provisions on emergencies, comprising nine articles in part XVIII of the constitution, were partly inspired by the US habeas corpus suspension clause, and permitted a president, for the purpose of removing any difficulties to make such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary.

(a) Express emergency provisions under Constitutions

1. National Emergency:

a. Article 352 provides that if the President is satisfied that a grave emergency exists where by the security of India or any part of its territory is threatened by war, or external aggression or armed rebellion, he may by proclamation, make a declaration to that effect.

b. The proclamation of emergency can take place not only after the incidents of war or external aggression or armed rebellion but even before the actual occurrence, if the President is satisfied that there is imminent danger thereof.

c. According to the Constitution (Forty Fourth Amendment) Act, 1978, the President can declare such an emergency only if the Cabinet headed by the Prime minister and other Ministers of Cabinet rank recommends in writing doing so.

d. This was incorporated to avoid the kind of situation of 1975 wherein on the oral advice of the prime minister, the Proclamation of emergency was declared.

Procedure for proclaiming emergency:

1. Every proclamation needs to be laid before both Houses of Parliament.

If both Houses of Parliament do not approve of it within one month, it will cease to operate at the expiration of thirty days from the date on which the proclamation was issued.

2. This is intended to ensure an amount of accountability and legitimacy of executive action.

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 commencement 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 resolution has to be passed by the Parliament Procedure of revoking emergency.

The proclamation of the emergency can be revoked by another proclamation by the President of India. The Constitution (Forty Fourth Amendment) Act 1978, has added certain control mechanisms to be exercised by the House of the People if it passes a resolution to that effect.

If the House of the People is not in session, then ten per cent or more members of that House can issue a notice in writing to the speaker if the House is in session or to the president if the House is not in session for the revocation of the emergency and if passed by a simple majority emergency will immediately become inoperative.

If the notice is given to the President, he shall convene the session of the House of the People for a special sitting within fourteen days from the date on which such notice is received by the Speaker or as the case may be by the President, for the purpose of considering such resolution.

2. State Emergency:

1. Article 356 has been debated hotly among the political and intellectual circle. Article 355 of the Constitution of India enjoins a responsibility on the Union Government to protect States against external aggression and internal disturbance.

2. In pursuance of this goal Article 356 provides that if the President is satisfied on receipt of a report from the Governor or otherwise that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he is empowered to issue a proclamation under Article 356.

3. The proclamation may be revoked subsequently; if not, it shall be laid before both Houses of Parliament, if Parliament does not approve of it within two months, it will become ineffective.

Effect of a proclamation issued under Article 356:

The proclamation issued under article 356 due to the breakdown of constitutional machinery in a State has the following effects:

The president may assume to himself all or any of the functions of the government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the state other than the Legislature of the state; he may declare that the powers of the State legislature shall be exercisable by or under the authority of Parliament;

Landmark decision:

S. R. Bommai v. Union of India, 1994

The Supreme Court's ruling in the Bommai's case highlighted clearly the many conditions for the valid exercise of the power under Article 356.

They are:

- Article 356 should be used sparingly as to not to disturb the delicate balance of power between Centre and states. Federalism constitutes a basic structure of the constitution;
- The essential condition for the intervention by the Centre is the political instability of the State, that is, the virtual breakdown of the parliamentary system of the government.
- The Union will watch the situation of instability with utmost caution and provide every opportunity for the formation of an alternative ministry.
- The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. An objective analysis of conditions must precede before the imposition of president's rule by invoking Article 356.
- The State's Assembly must not be dissolved before both Houses of Parliament have approved the proclamation made by the President under Article 356. Until such approval, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly.
- Judicial review is part of basic structure and hence court will have the power to consider independently whether in fact conditions so existed as to warrant exercise of the power under article 356. Once a prima facie case is made out, the burden of proof will lie on the Government of India to justify the action.

3. Financial Emergency:

1. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of it is threatened, he may declare a financial emergency under Article 360.
2. The proclamation in this case also should be approved by Parliament as in the other two cases mentioned above. During a financial emergency, "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 direction, or any other directions which the President may deem necessary for the purpose."
3. Such directions may include those requiring the reduction of salaries and allowances of Government servants and even those of Judges of the Supreme Court and the High Courts.
4. However, it is interesting to note that no such proclamation has been issued under article 360 so far.

Justifiability of the proclamation of emergency:

This point can be cleared with the help of few case laws:

1. K.K. Aboo vs. Union of India, 1965

In this first Case the Kerala High Court considered the legality and constitutionality of the Presidential Proclamation of dissolving the Kerala Legislative Assembly after elections in March, 1965 without giving a chance to the assembly to be assembled.

The facts in this Case are that a general election of Legislative Assembly was held in February I March, 1965 for the purpose of constituting a new Legislative Assembly in the State, but it led to an inconclusive result as it gave no clear majority to any political party.

The CPI(M) had won forty seats in the House of 103 and had emerged as the single largest party. The then Governor of Kerala, A.P. Jain, after a brief discussion with leaders of various political parties regarding the formation of a ministry, reported to the President that no political party could form a stable government in the existing circumstances. Consequently, President's Rule was imposed in Kerala on March 24, 1965 along with the dissolution of the State Legislative Assembly.

This action was challenged in the Kerala High Court.

The Kerala High Court ruled that Article 356 empowered the President to proclaim the President's Rule when he is satisfied that a Constitutional Government is not possible in the State and that Article does not prescribe any condition for use of this power. Speaking for the Court M. Madhavan Nair J., held that the validity of Proclamation under Article 356, cannot be challenged in Courts.

It is matter of personal satisfaction of the President, who is Constitutional head. It can be questioned in Parliament which can withhold its approval. Thus, the Court refused to go into the Constitutionality of the Proclamation.

The validity of Proclamation under Article 356 cannot be challenged in Courts. It is a matter of personal satisfaction of the President, who is the constitutional head. However, it can be questioned in Parliament which can withhold its approval. The Court held that "The President who is an integral part of the Parliament (vide Article 79) may not be the executive head but the constitutional head of India. If that be the correct view, a challenge of his Proclamation under Article 356 behind his back cannot be heard in a Court of law.

2. In S.R. Bommai V. Union of India, 1994

The Supreme Court has rendered a landmark decision on Art. 356 (1) in S.R. Bommai V. India. The case arose in the context of the following's facts.

The scope of judicial scrutiny is therefore confined to an examination whether the disclosed reasons bear any rational nexus to the action proposed or Proclamation issued.

Bommai appealed to the Supreme Court against the High Court decision. Besides the Karnataka Proclamation, the Supreme Court was also called upon to decide the validity of similar Proclamations under Art. 356(1) in the States of Meghalaya and Nagaland.

A Bench of nine Judges was constituted in Bommai Case to consider the various issues arising in the several cases, and seven opinions were delivered. While some of the judges (AHMADI, VERMA, RAMASWAMY, JJ.) adopted a passive attitude towards 'judicial review' of the Presidential Proclamation under Art. 356(1), others adopted somewhat activist stance.

On the basis of consensus among the judges, the following propositions can be enunciated in relation to Art. 356 (1) and the scope of judicial review there under:

1) The President exercises his power under Art. 356 (1) on the advice of the council of ministers to which, in effect, the power really belongs though it may be formally vested in the President.

2) The question whether the incumbent State Chief Minister has lost his majority support in the Assembly has to be decided not in the Governor's chamber but 'on the floor of the House'. There should be test of strength between the Government and others on the floor or the house before recommending imposition of the president's rule in the State.

The Court ruled that the Karnataka High Court was wrong in holding that floor test was neither compulsory nor obligatory nor a pre-requisite to sending the Report to the president recommending action under Art. 356(1)

3) The Governor should explore the possibility of installing a 164-alternative ministry, when the erstwhile ministry loses support in the house.

4) The validity of the Proclamation issued under Art. 356 (1), is justiciable on such grounds as: whether it was issued on the basis of any material at all, or whether the material was relevant, or whether the Proclamation was issued in the mala fide exercise of the power, or was based wholly on extraneous and/or irrelevant ground.

5) There should be material before the President indicating that the Government of the State cannot be carried on in accordance with the Constitution. The 'material' in question before the President should be such as would induce a reasonable man to come to the conclusion in question. Once such 'material' is shown to exist, 'the satisfaction' of the President based on such 'material' will not be open to question. But if no such 'material' exists, or if the 'material' before the President cannot reasonably suggest that the State Government cannot be carried on in accordance with the Constitution, the Proclamation made by the President is open to challenge.

6) When a prima facie case is made out against the validity of the Proclamation, it is for the Central Government to prove that the relevant material did in fact exist. Such material may be the Report of the Governor or any other material.

7) The dissolution of the Legislative Assembly in the State is not automatic consequence of the issuance of the Proclamation. The dissolution of the assembly is also not a must in every case. It should be done only when it is found to be necessary for achieving the purposes of the Proclamation.

8) The provisions in Art. 356(3) are intended to be a check on the powers of the President under Art. 356(1). If the Proclamation is not approved within two months by the two Houses of Parliament, it automatically lapses. This means that the President ought not to take any irreversible action till the Proclamation is approved by the Houses of Parliament. Therefore, the State Assembly ought not to be dissolved.

The State Legislative Assembly should be kept in suspended animation in the meantime. Once the Parliament has put its seal of approval on the Proclamation, the State Assembly can then be dissolved. The Assembly which was suspended will revive and get reactivated if the Proclamation is not approved by Parliament.

3. State of Rajasthan V. Union of India, 1977

That the Proclamation is valid when issued under Art. 356 (1), and the State Legislature can be dissolved by the Centre without waiting for its approval by the houses of Parliament. But, in Bommai, the Court has disagreed with this view and for a very good reason. If the Proclamation is not approved by Parliament automatically lapses after two months. How is the State Government to run there after? It would be inevitable that the dissolved Assembly be revived for no fresh elections can be held for the house within the short period of two months. Bommai view avoids any such embarrassment to the central Government.

4. Jagdambika Pal v. Union of India 1999.

In Uttar Pradesh in 1998 when Governor Romesh Bhandari, being of the view that Chief Minister Kalyan Singh Ministry had lost majority in the Assembly dismissed him without giving him opportunity to prove his majority on the floor of the House and appointed Shri Jagdambika Pal as the Chief Minister which was challenged by Shri Kalyan Singh before the High Court which by an Interim order put Shri Kalyan again position as Chief Minister. This order was challenged by Shri Jagdambika Pal before the Supreme Court which directed a "composite floor test" to be held between the contending parties which resulted in Shri Kalyan Singh securing majority. Accordingly, the impugned interim order of the High Court was made absolute.

Impact of emergency on the rights:

1. During national emergency, the Constitution empowers the President to suspend the right to move any court of law for the enforcement of any of the fundamental Rights.
2. The Constitution (Forty Fourth Amendment) Act 1978, inserted a restraint on the unbridled power of executive.
3. After the Constitution (Forty Fourth Amendment) Act, Article 21 of the Constitution which guarantees right to life and personal liberty cannot be suspended even during emergency.
4. The Constitution (Forty Fourth Amendment) Act 1978 incorporated certain safeguards to protect the liberties of people during emergency. After this amendment, Article 21 of the Constitution which guarantees right to life and liberty, cannot be suspended even during emergency.

Conclusion-

In the Indian Constitution, the impact of an emergency on fundamental rights is explicitly addressed under Articles 352, 356, and 360. During a state of emergency, certain fundamental rights can be suspended or limited, primarily under Article 19, which guarantees freedoms such as speech, assembly, and movement. However, the Constitution also imposes limitations on the extent to which these rights can be curtailed, ensuring that the principles of democracy and rule of law are upheld even in times of crisis. Additionally, judicial review plays a crucial role in scrutinizing emergency measures to prevent abuse of power and protect citizens' rights.