

## Indian Polity – Part 22

### 22] Emergency Provisions

#### Notes

#### Emergency Provisions Notes - Part XVIII

#### Article 352 {Proclamation of Emergency}

- If the President is satisfied that a grave emergency exists where by the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation. President can declare the emergency.
- A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.
- The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.
- Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament
- Provided that if any such Proclamation (not being a Proclamation revoking a previous 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 one month referred to in this clause, 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.

- A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4):
  - ✓ Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause;
  - ✓ Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the house of the people during the said 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 continence in

force of the Proclamation has been also passed by the House of the People.

- For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.
- During emergency proclamation the state government will not function temporarily.
- Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation, -
  - ✓ To the Speaker, if the House is in session; or
  - ✓ To the President, if the House is not in session, a special sitting on the House shall be held 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.
- The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or armed rebellion or imminent danger of war or external aggression or armed rebellion, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.
- To avoid further misuse of this provision as it happened in 1971 under Indira Gandhi. This type of Emergency has been proclaimed three times in 1962, 1971, and 1975. Emergency in 1962 and 1971 were made on the ground of

“External Aggression” and in 1975 was made on the ground of “Internal disturbance”.

**Article 353 {Effect of Proclamation of Emergency}**

- While a Proclamation of Emergency is in operation, then -
  - ✓ Notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;
  - ✓ Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, -
    - (i) The executive power of the Union to give directions under clause (a), and
    - (ii) The power of Parliament to make laws under clause (b), shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.

**Article 354 {Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation}**

- The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in

the order, have effect subject to such exceptions or modifications as he thinks fit.

- Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

**Article 355 {Duty of the Union to protect States against external aggression and internal disturbance}**

It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

**Article 356 {Provisions in case of failure of constitutional machinery in States}**

- If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation -
  - ✓ 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;
  - ✓ Declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
  - ✓ Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

- Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, 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 (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, 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.
- A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation:
  - ✓ Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such

Proclamation shall in any case remain in force for more than three years:

- ✓ Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab the reference in the first provision to this clause to "three years" shall be construed as a reference to Five years.
- Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless -

**Article 357 {Exercise of legislative powers under Proclamation issued under article 356}**

- Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent -
  - ✓ For Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorize the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;
  - ✓ For Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorizing the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

- ✓ For the President to authorize when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.
- Any law made in exercise of the power to the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.

**Article 358 {Suspension of provisions of article 19 during emergencies}**

- While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect
- Nothing in clause (1) shall apply -
  - ✓ To any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or
  - ✓ To any executive action taken otherwise than under a law containing such a recital.



**Article 359 {Suspension of the enforcement of the rights conferred by Part III during emergencies}**

- Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III (except articles 20 and 21) as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.
- While an order made under clause (1) mentioning any of the rights conferred by Part III (except articles 20 and 21) is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect
- Nothing in clause (1A) shall apply -
  - ✓ To any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or
  - ✓ To any executive action taken otherwise than under a law containing such a recital.
- An order made as aforesaid may extend to the whole or any part of the territory of India: Provided that where a Proclamation of Emergency is in

operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of Indian in which the Proclamation of Emergency is in operation, considers such extension to be necessary.

- Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

### **Article 359A {Application of this Part to the State of Punjab}**

Repealed

### **Article 360 {Provisions as to financial emergency}**

- 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.
- A Proclamation issued under clause (1) -
  - ✓ May be revoked or varied by a subsequent Proclamation;
  - ✓ Shall be laid before each House of Parliament;
  - ✓ 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.

- Administration department has most power during the emergency proclamation.
- Till now financial emergency is not passed.
- Notwithstanding anything in this constitution -
  - ✓ 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.

#### **44th Constitutional Amendment, 1978**

The 44th amendment to the Indian Constitution was passed after the revocation of internal emergency in 1977. It annulled many anti-democratic provisions of the 42nd amendment enacted during the emergency. It also tried to ensure that in future, an emergency would not be easily imposed, also added some features to prevent any future misuse of power.

Important changes made are as follows-

- Article 20 & Article 21 will be never suspended even during emergency and other fundamental rights won't suspend automatically, it needs separate order by president.

- Proclamation of Emergency requires "written advise" of the cabinet and not the prime minister alone.
- Proclamation of Emergency has to be approved within one month of the reassembly of Parliament.
- Term 'Internal disturbances' was replaced with 'armed rebellion' as a cause for imposing emergency.
- Special Session of Lok Sabha can be called if 1/10 member request the President for the purpose of revoking the emergency. Revoking of emergency can be done by simple majority.
- President allowed to return once the advice tendered by the Council of Ministers for their review.
- Restored the term of Lok Sabha and State Legislative Assembly to original terms (i.e 5 Years )
- Emergency Provisions are made subject to challenge in court and also made certain procedural safeguards with respect to national emergency and President's rule.
- Deleted the provision which made the satisfaction of the President, Governor and administrators final issuing ordinances.
- Omitted the provisions which took away the power of court to decide the election disputes of the president, Prime-minister, the speaker etc.
- Article 31, the Right to Property taken out of Fundamental Rights.
- Within 14 days the disapproval of the Emergency with the special sitting of the House.