UNIT 11 EMERGENCY PROVISIONS*

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11.0 OBJECTIVES

After going through this unit, you should be able to:
- Trace historical background of the emergency provisions;
- Describe types of Emergency;
- Describe salient characteristics of the provisions; and
- Explain misuses of the emergency provisions.

11.1 INTRODUCTION

Emergency in a political system denotes a situation in which the chief executive imposes restrictions on the right to freedom of people. In India, such restrictions are imposed according to certain provisions enshrined in the Constitution, generally known as emergency provisions. Emergency is imposed under some situations such as war, external aggression, internal disturbances or armed rebellion or financial crisis in whole of India or any part of it. It imposes restrictions on freedom of people. Emergency provisions in Indian Constitution are provided in a separate Part-XVIII under Articles 352-360. The order to declare emergency is passed by the President of India. He declares it on the advice of Council of Ministers. However, the real power during emergency is exercised by the prime minister. During emergency the Union executive can give directions to the executive in the states and the parliament can pass legislation on any matter which is not in the Union Legislature List. During emergency, authorities of the state government enjoy subordinate positions to the central authorities.

11.2 HISTORICAL BACKGROUND

The need to include emergency provisions arose in the context of unusual political situation in India. Constitution of India has emergency provisions, which have

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been borrowed from Constitutions of Weimar (Germany) and Government of India Act, 1935. Indian Constitution followed Government of India Act 1935 which embodied emergency provisions in section 45 for the Centre and in section 93 for the Provinces. It empowered the Chief Executive to declare emergency. The Government of India Act 1935 was meant to provide Provincial autonomy in India. But it had also emergency provisions which put restrictions on the autonomy of provinces. It involved questions of relations between centre and provincial units. The Act empowered the centre to control and intervene in provincial matters if emergency arises due to war or internal disturbance, and make provision for carrying administration if the machinery of ministerial government failed to function. In times of emergency due to war or internal disturbances, Governor General was armed with power to make laws on all matters, even those in the provincial list. Governor General could declare emergency in provinces. Apart from Government of India Act 1935 and the Constitution of Germany also contributed to inclusion of emergency provisions in the Indian Constitution. The Governor General of India had in fact specific responsibility concerning peace and tranquility of India or any part thereof. Even he could act independently in the provincial government through the Governor who was also empowered to function in the respective provinces and was the main source of information of the Governor-General.

11.2.1 Debate in the Constituent Assembly

There were differences among the members of the Constituent Assembly about the need to include emergency provisions in the Constitution. According to Graniville Austin, A.K. Ayyar and K.M. Munshi were staunchest supporters of the curb on freedom. K.M. Munshi supported that both provincial and union governments should be given right to suspend right to freedom in times of emergency. Their views were supported in the Rights Sub-committee “with one or two exceptions”. Ayyar suggested that the rights enshrined in the constitution must be subject to public order, security and safety. He supported his arguments by giving examples of disturbances in Bengal and Assam, communal riots in Punjab and NWPF (North West Frontier Provinces). However, suggestions to suspend Fundamental Rights were opposed by three members: KT Shah, HV Kamath and H. N. Kunjru. With reference to the provision of a financial emergency H.N. Kunjru said they were a serious threat to the financial autonomy of the States. After deliberations on both types of views – those which supporting the suspension of rights during emergency and those which opposed the suspension, the committee prepared a new version about suspension of rights during emergency. The new version did not support arbitrary suspension of democratic rights during emergency. What it allowed was suspension of taking resource to constitutional remedies under Art. 32. The suspension of Fundamental Rights were kept out of purview of judicial review till the passage of 44th Constitutional Amendment in 1978.

11.3 TYPES OF EMERGENCY

As you have read, emergency in India is declared by the President. It is important to note that during emergency, all activities are carried out in the name of the President but, it is the Prime Minister or the central government which exercise

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powers in practice. There are three kinds of emergency and each of them can be declared on different grounds. The three kinds of emergency are: national emergency, state emergency and financial emergency. You will read about them below.

11.3.1 National Emergency (Art. 352)

According to Article 352A (national) emergency can be proclaimed in India in following situations: war, external aggression, internal disturbances or armed rebellion in whole of India or any part of it. The 44th Constitutional Amendment substituted the phrase ‘internal disturbance’ with “armed rebellion”. The President can declare emergency after receiving a written communication about cabinet’s decision in favour of emergency, and after satisfying himself about prevalence of the situations just mentioned above. According to Articles 358 and 359, President has powers to suspend Fundamental Rights except in respect to Article 20 (right to protection in respect to conviction for offences) and Article 21 (right to life and personal liberty). During national emergency the union government’s powers extends to the jurisdiction of legislatures and executives in the states. It gives direction to the states the way executive power should be exercised (Art. 353). Parliament enjoys power to make laws which are not mentioned in the Union List. These also include matters listed in the State List (Art. 250). During the time of emergency, the President has constitutional power to modify the provisions of the constitution relating to the allocation of financial resources between the Union and the States (Art. 253).

Every proclamation of such emergency is required to be laid before each House of Parliament. If both houses of Parliament do not approve the proclamation at the expiry of one month from the date of proclamation, it will cease to operate. If at the time of such proclamation, the House of the People has been dissolved or its dissolution takes place within one month after the proclamation, and if the resolution has been by before Council of States (Rajya Sabha) but has not been passed by the House of People (Lok Sabha), the proclamation will cease to operate on the expiration of thirty days from the date when the house first met after it was reconstituted. However, the condition of expiration of thirty days does not apply if a resolution to this effect is passed by both Houses of Parliament. The proclamation (after being approved by both Houses of Parliament) will cease to exist after expiration of six month from the date of proclamation. It can be extended for another six months. A resolution for proclamation of emergency must be approved by a majority of total number of members of a House and not less than two-third of the members present in the House and voting.

In addition, if the lower house passes a resolution disapproving the proclamation or its continuance, it shall be invalidated. Even if notice of a resolution signed by not less than one-tenth of the total members is given to the President or Lok Sabha Speaker, a special sitting of the House should be held within fourteen days to discuss and consider it.

The Indian Constitution has a provision of judicial review. It means that the judiciary has power to interpret the constitution and declare any law or order passed by legislature or judiciary void which conflicts with the constitutional provisions. But declaration of emergency, thus violation rights of was removed
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from the purview of judicial review by the 42nd Constitutional Amendment in 1976. However, provision for its judicial review was restored by the 44th Amendment Act in 1978. A declaration of emergency should be approved by both houses of parliament within two months of its declaration. And if it is not approved by the parliament within this time limit, the declaration of emergency will become ineffective. Once declaration of emergency is approved by Parliament, it may continue be effective for six months at a time unless revoked by the President earlier by a subsequent proclamation.

Since Independence, there were three instances of declaration of national emergency. First instance was during Indo-China War from 26 October 1962 to 10 January 1968. Second was during Indo-Pak war, from 3 December 1971 to 21 March 1977. And the third instance was during 25 June 1975 and terminated on 21 March 1977. The national emergency in first two instances was clamped due to wars with other countries. In the third instance, the reasons given by the central government were internal disturbances in the country.

11.3.2 State Emergency (Art. 356)

State emergency is also often known as President’s rule. State emergency is imposed on failure of constitutional machinery in the states. All states in India except two newly created states Chhattisgarh and Telangana have been placed under state agency at different times. State emergency is imposed by the President if he is satisfied with the report of the Governor that there is break down of constitutional machinery in the state. President’s rule may be declared in the states on the following grounds: If the State Legislature fails to elect a leader as Chief Minister; Breakdown of the coalition; If the elections are not conducted due to imminent reasons; and Loss of majority in the assembly. Though state emergency is imposed by the President, it is the Governor of the state who acts as representative of the President or the centre. This is also called central rule in the states. The central rule in the states, except in Jammu and Kashmir, is called President rule; in Jammu and Kashmir the central rule is called Governor’s rule. The President through the Governor exercises legislative and executive powers. But his functions do not cover judiciary.

11.3.3 Financial Emergency (Art. 360)

According to Article 360, Financial emergency can be imposed when there is financial instability in India or any part of it. In India, financial emergency has not been imposed. If a situation arises for proclamation of financial emergency in India, it must be approved by the Parliament within two months of promulgation. In case, the lower house is dissolved at the time of proclamation of financial emergency, it will cease to exist on expiry of thirty days from the date of its first meeting after its reconstitution. Under the situation of financial emergency, the President can reduce the salaries of all government officials, including Supreme Court and High Court judges. Even money bills and other bills under article 207 passed by the State Legislatures need to be submitted to the President for the approval under such circumstance. With respect to Jammu and Kashmir the state enjoys special status under Article 370, Indian Union have no power to promulgate financial emergency in Jammu & Kashmir.
11.4 Misuse of Emergency Provisions

As you have read, emergency provisions have been used to impose national emergency as well as President rule in India. Since the independence of India, national emergencies were imposed three times. In two instances, emergency was used to protect Indian land from the external threats especially when China attacked India in 1962 and East Pakistan – West Pakistan war in 1971. But in the third instance, in 1975 it was used due to political reasons. The real problem arose on the use of Article 352, when Congress Government at the centre under the leadership of Prime Minister Indira Gandhi restricted freedom of speech and association in 1975. The national emergency of that time received enormous criticisms across the country. She had attempted to do so because the verdict of Allahabad High Court which went against her. Under this circumstance, Jayaprakash Narayan had called upon the army, police, and government employees not to obey any order, which they considered wrong. He also urged the Chief Justice Mr. A.N. Roy not to sit on the bench to hear the election appeal of Prime Minister. All the opposition political parties and leaders met in a meeting to form ‘Lok Sangharsh Samiti’. Later, under the leadership of Jayaprakash Narayan, it declared “a total revolution” which in fact increased mass mobilization against the autocracy and corruption.

The makers of the Indian Constitution wished the emergency provisions to be applied to meet the potential threat of war, external aggression, internal disturbances, trained rebellion or financial emergency in whole or any part of the country. Forewarning the misuse of Article 356, Dr. B.R. Ambedkar said that ‘it might remain a dead letter and might never be used except as a last resort after everything else failed’. Emergency provisions except for few occasions since
the independence of the country till the 1990s has been misused for only political vendetta. However, in the 21st century the misuse of this provision has decreased. The central government ruled by some political parties or coalition of parties misused emergency provisions (Article 356) to dismiss the state governments which were ruled by different political party or parties in the state and impose President’s rule there. On several occasions in India, these provisions have been used by central government by both the Congress and the non-Congress parties to impose president rule in different states. The most important examples of such misuse included dismissal of the first government led by the communist leader E.M.S. Nampoodaripad in Kerala in 1957. It was the first instance of dismissal of an elected government by using emergency provisions in India. In 1980, Indira Gandhi government dismissed state governments ruled by the opposition parties in several states. There are two important examples of the misuse of emergency provisions by the non-Congress governments. One by the Janata Party government when Morarji Desai was Prime Minister of the country in 1977. The other example was dismissal of the Congress governments by the Janata Dal led government under the leadership of V.P. Singh.

Imposition of President’s rule in the state has often been criticized for being misused by central government to exercise control over the state administration. It has often been alleged that the central governments have often misused Article 356 to dismiss opposition governments and impose President rule. Since 1994 imposition of President’s rule has become less frequent. It has happened due to the court’s ruling in the Bommai Case: According to the Bommai case imposition of president rule in a state has to be approved by both houses of parliament. It has made misuse of Article 356 difficult.

**Check Your Progress Exercises 2**

**Note:**

1) Use the space below for your answers.

2) Check your answers with the model answers given at the end of this unit.

1) What are the main features of Emergency Provisions?

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there is war, external or internal disturbances or financial crisis. The provisions for declaration of emergency are incorporated in Part- XVIII of the Indian Constitution under Articles 352-360. There are three kinds of emergency: national, state and financial emergency. Article 352 deals with national emergency and it can be declared if there is external threat or internal disturbance in the country. State emergency can be proclaimed under Article 356, the financial emergency can be declared according to Article 360. In case of national emergency, President is in the position to promulgate an ordinance, but he or she must on aid and advice of the Council of Ministers. President can also declare state emergency on the receipt of the report of the Governor if such situation arises. A financial emergency may be declared to curb economic recess. In India, national emergencies happened three times. But, Article 356 has been used randomly. On the other, there is not a single case where financial emergency proclaimed so far. Article 360 could be used the whole of India except Jammu & Kashmir. This provision was often used to fulfil political motives and get space. For the success of India’s democracy, emergency provisions should be used with caution.

11.6 REFERENCES


1.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

1) The Indian Constitution borrowed emergency provisions from Weimar constitution, and Government of India Act, 1935. In the Constituent Assembly, the opinions were divided in favour of and against emergency provisions.

2) There are three types of emergency – national, state and financial emergency. During the emergency, the rights of people are suspended.

Check Your Progress Exercise 2

1) The main features of the Emergency Provisions are: Only the head of the state through the issue of promulgation can declare each of the emergencies. All the emergencies except Article 356 are national in character. A proclamation of emergency can be effective if President is satisfied.