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EMERGENCY A THREAT TO DEMOCRACY: AN ANALYSIS

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Abstract

Emergency is a threat to democracy because of concentration of power in one hand, it is the rule that absolute power corrupts absolutely. We have discussed different types of emergencies and how they effect the nation. In this paper adverse effect of proclamation of emergency has been highlighted. The paper has detailed studies about the evolution and historical effect of emergency, and how different government has misused this power for their personal benefit. Though the provision of emergencies is for a short span of time but it affects the basic fundamental rights of the public, the civil liberties of the people get suppressed. There exist no check and balance during the time of emergencies which can lead to abuse of power. Even during the time of state emergency, the power is misused and it has been broadly discussed in the paper. Different Amendment Act from time to time has come which has safeguarded the democracy from the provision of emergencies, though some has also threatened the democracy. Judicial review has played a critical role in safeguarding India from provision of emergency. The paper is based on the emergency provision in India and how it effects the federal structure of our countries. Though it cannot be denied that emergency provision is required in extreme condition but should not be misused by any government for their own benefit.

Introduction

According to Black law dictionary **Emergency** means a failure of the social system to deliver reasonable condition of life. Emergency is a condition which show that government is failure at its instance, when certain circumstances occur which required an immediate action to resolve it is known as emergency situation. Different analyst has different views over the emergency, one side believes that emergency is threat to democracy because it deprives all the people from its fundamental rights which is the prime weapon of democracy, without fundamental rights democracy cannot be called democracy. Other side have different prospective related to emergency, according to them it is a situation which may occurs due to adverse condition and different region and we cannot avoid it. For example external aggression is a condition because of which national emergency can be imposed and this situation required an immediate action which may be a region to impose an emergency.

During the time of emergency power is concentrated in hand of executive only and the decision of others remain silents due to which misuse of power could there, no check an balance and potential abuse which may silent the opposition and others to protest against the government in any matter.¹ When emergency become a routine instead of an exception it defames the word democracy and can be said undemocratic. In India national emergency has been declared thrice first time the emergency was during Indo-China war in 1962 and continued till January 1968, second time the emergency was declared in 1971 both the time the reason for emergency was External Regression, during the course of 2nd emergency the third emergency was imposed in 1975 and end in 1977. India is federal in nature with unitary features is not like USA which is a federal nation, and have an agreement between different states to form USA. In our country power is distributed among different organs of government, the power is also distributed among state and central government, but at the time of emergency the powers become concentrated in single hand which is an absolute threat to democracy.

The term emergency is controversial in itself. Proclamation of emergency is considered as a threat to democracy at certain extent even the members of constituent assembly arises question over the provisions of Emergency and its possible outcomes, Dr. B.R. Ambedkar quoted emergency provision as **The dead letter of the Constitution** but also mentioned that

¹ Claudia Gonzalez, Aditya Iyer and Isabella Nuttall, "Dangers to Democracy from the Response to Three Types of Emergencies: War, Political, and Economic Crises | OxJournal" <<https://www.oxjournal.org/dangers-to-democracy-response-emergencies/>>.

the provision of emergency is needed to protect the nation from any external aggression or any adverse circumstance that may threaten the integrity and sovereignty of nation.

HISTORY OF EMERGENCY

Article 352 to 360 deals with the provision of emergency, being a democratic nation President of India has power to declare Part XVIII of our constitution have provision related to emergency situations which include three different types of emergencies which is National Emergency, State Emergency and Financial Emergency. Article 352 of constitution have provision related to National Emergency, Article 356 enlists State Emergency while Articles 360 incorporates Financial Emergency.²

Previously the grounds for proclamation of emergency under Article 352 were following:

- i. War or External Aggression
- ii. Internal Disturbance

The term internal disturbance was vague in nature and it consists a larger domain, even a trivial matter can be consider as internal disturbance and there was a huge chance that it can be misused and that actually happened in 1975 when emergency was declared on the grounds of internal disturbance, before the proclamation of emergency in year 1975, two times the emergency was imposed and both the time it was due to War or External Aggression but the emergency of 1975 was known as a darkest period of democratic India. The reason for declaration of emergency in 1975 was Jai Prakash Movement throughout the nation, a number of allegations related to corruption was imposed on the Prime minister Indira Gandhi, movement in Gujarat, Bihar, Uttar Pradesh and many region of northern India along with railways strike and poverty made the ruling party frustrated and the final reason was the landmark judgement of **Raj Narayan vs Indira Gandhi**³, in the case Raj Narayan filed suit against Indira Gandhi alleged that Indira Gandhi has won the election of MP from Raebareli by using unfair mean and misusing political power the HC court of Allahabad held that the allegation was right and Indira Gandhi was held liable for using unfair mean and manipulation the voting in her favour,

² GfG, "Emergency in India, Reason, History and Types" (GeeksforGeeks, January 17, 2024) <<https://www.geeksforgeeks.org/emergency-in-india/>>.

³ AIR (1975) SCC (2)159

High Court banned Indira Gandhi from contesting election for next 6 years though the Supreme Court stayed the order till review of the matter in Apex Court.

All these circumstances left no option to Ms. Gandhi and she declared national emergency in wee hours of June 26, 1975. The proclamation was signed by the president Fakhruddin Ali Ahmed. 21 month-long emergency was imposed which is considered as darkest period in India till now. The constitutional rights were suspended and freedom of speech and press was withdrawn even the people were deprived of basic rights.

Indira Gandhi justified the drastic measure in the term of national interest and given the following grounds:

- i. Jayprakash Narayan and his movement was considered as the threat to nation.
- ii. There was need of rapid growth of the country and upliftment of underprivileged is also required.
- iii. Intervention of external power in the India which can weaken the policies and affairs of India.

After 21 month the national emergency was put off in1977.

NATIONAL EMERGENCY

Article 352 of constitution⁴ states that if president of India is satisfied that such a situation has been arises which is capable of causing any national injury on the grounds stated in Article 352, then President can declare national emergency in whole country or emergency in the particular part or area where it is required, after consulting the Prime Minister and other cabinet minister according to Article 75 of constitution⁵.

National Emergency is of two types- external emergency and internal emergency

The 38th ,42nd and 44th Amendment Act brought huge changes in the provision related to the emergency. The 42nd Amendment Act 1976 gave power to the president to limit the jurisdiction of national emergency to the certain part as may be required.

⁴ Constitution of India

⁵ Constitution of India

In constitution of India the word ‘**internal disturbance**’ was previously used which get substituted by the ‘**armed rebellion**’ by the 44th Amendment Act of 1978. The term internal disturbance was vague in nature so it got eliminated from the constitution. In 1975, national emergency was declared on the grounds of internal disturbance only. According to 44th Amendment Act the President can declare emergency after consultation with the cabinet ministers and Prime minister. In 1975 the cabinet was informed of the proclamation after it was made, faith accompli.⁶

The 38th Amendment Act of 1975 was considered unconstitutional as it eliminated the provision of judicial review in the case of emergency.

In **Minerva Mills**⁷ case the apex court held that declaration of emergency can be challenged on the ground of malafide intention or any baseless ground which is irrelevant in nature.

APPROVAL FROM PARLIAMENT AND ITS DURATION

Both the houses of parliament should approve the declaration of emergency within 1 month of the implementation, previously it was 2 month which got reduced by the 44th Amendment Act of 1978. If the declaration of emergency has happened at the time when the Lok Sabha has been dissolved the emergency period will survive till 30 days of first sitting of Lok Sabha.

If both the houses of parliament approved the proclamation of emergency it will continue for next 6 month and may be extended for infinite period after taking the approval from both the houses every six month. This provision was added by 44th Amendment Act, before this Amendment the emergency once declared may be extend for indefinite period, it was in the hand of executive to decide parliament has no say in it.

Every resolution related to proclamation of emergency must be passed by special majority by either of the house. Previously simple majority for such resolution was enough.⁸

⁶ Himanshu S Jha, “India’s Authoritarian Turn: Understanding the Emergency (1975–1977) and Its Afterlife” (Pacific Affairs, March 1, 2023) <<https://pacificaffairs.ubc.ca/review-essays/indias-authoritarian-turn-understanding-the-emergency-1975-1977-and-its-afterlife/>>.

⁷ AIR (1980) 3 SCC 625

⁸ Admin, “Emergency Provisions in the Indian Constitution: An Exhaustive Analysis” (Century Law Firm Blog, December 5, 2023) <<https://www.centurylawfirm.in/blog/emergency-provisions-in-the-indian-constitution-an-exhaustive-analysis/>>.

President can revoke the emergency anytime without taking approval of the houses of the parliament as he may deem fit. Previously, Lok Sabha has no control over the revocation of emergency it was totally under the control of the president but after the 44th Amendment Act, if 1/10th of the members of Lok Sabha give a written notice to the speaker of lower house or the President as the case may be a special sitting will be called for disapproval of the continuation of the emergency.

EFFECT OF DECLARATION OF EMERGENCY

The implementation of emergency has a drastic impact on centre-state relation all the power of state comes under the domain of the central government, parliament has power to make law related to state list also, though state legislative can also make law but the Parliamentary law has overriding power. Executive of centre will direct the state and state will work accordingly. The federal form of government became unitary in nature. Power is more or less concentrated in the hand of central government.

Article 358⁹ and 359¹⁰ has provision related to effect of National Emergency on Fundamental Rights. Article 358 states that during the emergency period Article 19 of the constitution will be automatically suspended and no further notice is required for it. But 44th Amendment Act restricted the suspension only in case of war or external aggression not in the case of armed rebellion.¹¹

While Article 359 deals with suspension of other fundamental rights, all fundamental rights can be suspended except Article 20¹² and Article 21¹³ of the constitution. The 44th Amendment Act also restricted the president to suspend the right to move court in the case of Article 20 and Article 21 of the constitution.

⁹ Constitution of India

¹⁰ Constitution of India

¹¹ "Emergency Provisions: Effects and Impact." <<https://www.legalservicesindia.com/article/1769/Emergency-Provisions:-Effects-and-Impact..html>>.

¹² Constitution of India

¹³ Constitution of India

STATE EMERGENCY

According to Article 356 of Constitution if a state fails to work in accordance with constitution of India then President Rule will be applied in that state. This president Rule is also known as State Emergency or Constitutional Emergency. Whereas Article 355 imposes a duty on centre to look over the state and ensure that state is working according to provision of the constitution.

The President can implement President Rule in any state on the following grounds-

1. Article 356 empowers the President that if the state is not working in accordance with the provision of the Constitution, then the President can implement State Emergency either after the report of the Governor of that state or by himself.
2. Article 365 states that when a state violates the direction given by the central government in that situation the President can declare state emergency, but the direction must not be unconstitutional and ultra vires in nature.

Approval from parliament and its Duration

President Rule applied in any state must be approved by Rajya Sabha and Lok Sabha within 2 months of the declaration of the emergency. If the declaration of State Emergency is issued at the time of the dissolution of the Lower house or when the Lower house is dissolved then the President Rule extent to two months in addition with the 1 month from the date at which first sitting of Lok Sabha came into existence, meanwhile Rajya Sabha should approves the resolution. The State Emergency can be extended to 3 years after taking approval of both the houses, after every 6 months, and this can continue till three years.¹⁴

The 44th Amendment Act has brought certain changes to restrain the power of parliament to extend the state emergency beyond 1 year, the state emergency can be extended for 6 months if the following conditions are fulfilled:

1. If the National Emergency is implemented in either in whole country or a part of the country.

¹⁴ "Article 356: President's Rule" <<https://www.legalserviceindia.com/legal/article-4367-article-356-president-s-rule.html>>.

2. Certification from the side of election commission is required if there exist any difficulties in contesting the state legislative election.

A President can revoke the proclamation of State Emergency at any time as he may deemed fit without any approval from parliament.

Result of State Emergency

The President takes over many extraordinary powers along with the power to function the government to rule in state. The president has power to run the government at the time of proclamation of state emergency, power of state legislative and governor get vested in the president. He can transfer the power to make law to parliament for the welfare of state even of state list. President can appoint an advisor or the chief secretary of the state can function for the welfare of state administration. At the time when state legislative is suspended or dissolved, parliament has power to make laws for the state. The President can direct the centre or its officer to work according in the stated as duty imposed on them. The president can also pass an ordinance for the state in case when Lok Sabha is dissolved. The law made by the parliament or the President remains in operation even after the President Rule came to end. The state legislative can repeal or alter the law after coming in power. Even at the time of President Rule the power and duties of the high court of concerned state remain unchanged.

After the India became an independent and republic state the President Rule has been imposed more than 125 times in different state of the country. The history evidences that the president rule was misused by different government for their personal or political benefit. For first instance the state emergency was imposed in Punjab in year 1951. All most all the state of India has either once or more than once has experienced President Rule. In year 1977 when Congress party was defeated by Janta party, the new government of Janta Party imposed President Rule in all those states where the Congress was in power. Similarly, when Congress came to power it also imposed President Rule to those states where the Janta Party was ruling. In 1992 president rule was imposed on the 3 state where BJP was ruling (Himachal Pradesh, Madhya Pradesh and Rajasthan). The ground on which the President Rule was imposed was religious organization.

In land mark case of **SR Bommai vs Union of India**¹⁵ in this case the apex court discussed the detailed provision of Article 356 in this case, the petitioner was the head of ruling party, Janta Dal in the state of Karnataka the government was dissolved even though the party was ready to prove majority to governor, but President Rule was imposed.

The supreme court given a landmark judgement by saying that imposing President Rule is not the absolute right of the President. President Rule can be passed only after getting approval from both the houses, until that President can only suspend the Legislative Assembly and this suspension can be revoked.

Other point the supreme court stated that the party can proof their majority by floor test and the governor by themselves cannot dissolve the legislative assembly without giving a proper chance to proof majority.

Declaration of President Rule under Article 356 is a subject to judicial review and 38th Amendment Act is ultra vires in nature.

FINANCIAL EMERGENCY

Article 360¹⁶ states that when a situation arises due to which financial situation of the India or any part of it is threatened then the president can impose the Financial Emergency. The 38th Amendment Act made the decision of President conclusive and non-questionable but the 44th Amendment Act states the decision of president is not beyond the judicial review.¹⁷

Effect of Financial Emergency in India

The power of state comes in to the hand of executive and the parliament can make laws related to finance even of state list. The parliament may direct to reduce the salary of Grade A officer

¹⁵ AIR 1994 SC 1918

¹⁶ Constitution of India

¹⁷ "Article 360: Provisions as to Financial Emergency - Constitution of India" (Constitution of India, March 31, 2023) <<https://www.constitutionofindia.net/articles/article-360-provisions-as-to-financial-emergency/>>.

Or any state or central officer including judges according to the situation. The interesting thing is that till now no Financial Emergency has been imposed, though we faced financial crisis in 1992.

WAY FORWARD

We have analyzed different scenario related to emergency and also the various conclusion has been drawn out of it. India is both federal and unitary in nature but most of the time it is federal in nature except in emergency situation. The supreme court of India in SR Bommai case held that India is a federal state. It should be the duty of both state and centre to cooperate each other and follow the provision of constitution. It is the beauty of our nation that we experience centre rule, state rule and also local government so considering constitution as the supreme we should not misuse our power to suppress or defame any government. The 44th Amendment Act brought a tremendous change to protect the democracy from emergency provision. A proper check and balance is required to protect the democracy, and the intervention of court is required in it. The 38th Amendment Act which gave the absolute power to President and no judicial review can be done in case of proclamation of emergency. The supreme court held that 38th Amendment as unconstitutional.

Judiciary is the prime weapon against the executive and legislative and even in future if any situation arises like the National Emergency situation of 1975. Even the president of India should take the decision in good faith without supporting any party as President is considered as constitutional head of the state. The governor should also not act like an agent of central government he should be free and fair in taking the decisions. The central government should also prevent themselves from intervening in the decision of state until and unless it is unconstitutional.

If the situation arises, when the proclamation of emergency is necessary the President can declare emergency but they should implement it in good faith and to that area where it is required. In this situation state should cooperate the centre until the situation get normal.

A proper check between three pillars of government legislative, Executive and Judiciary should be there to protect the democracy of our country. Restriction on time limit of emergency, special majority provision these all can stop in misusing the emergency provision.

CONCLUSION

Emergency is the double edged sword which can neither be quashed nor be implemented properly, so a middle way path is to be applied so that democracy can be protected. It is true that government has moulded and exploited the emergency provision for political benefit. Emergency cannot be eliminated from the constitution because in the situation like War arises its implementation is necessary in the national interest. Even Baba Saheb supported the provision of emergency in front of constituent assembly, and said I am aware of the misuse of Article 352, 356 and 360 of the constitution, but I think it will be the dead letter of the constitution and only be used in most adverse situation. Though the word of Dr Bhim Rao Ambedkar became untrue but at certain circumstance the proclamation of emergency was done for the welfare of country, for example proclamation of emergency in 1962 (Indo- China war), 1971 (India- Pak war).

It is true that emergency provision undermines the check and balance also the fundamental rights except Article 20 and Article 21 get abolished and also a chance to abuse of power arises.

Even after there are many defects of implementation of emergency but we cannot ignore it, the only thing can be done is proper check and balance is required so that power cannot be misused.

At the end intention matters, well the provision of emergency should be done in good faith and for the welfare of state.

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