
NATIONAL EMERGENCY IN INDIA

Author : Mr. Abhishek Carls

Director, Legal and International Affairs, Member, ICSSR

abhishekarls@gmail.com

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I. IMPOSITION OF NATIONAL EMERGENCY : MANNER AND IMPACT

To impose the national emergency, the Council of Ministers headed by the Prime Minister have to recommend in writing, to the President of India to do the same. And to uphold the prevailing spirit of democracy in the Houses of Parliament, the provision has been made that the said proclamation has to be approved by both the Houses of Parliament within 30 days. But in case, the Lok Sabha stands dissolved during that period, then it has to approve the proclamation within 30 days in its first sitting provided that the upper house has approved the same in the meantime.

Now, since the very nature of imposition of emergency will cause disruptions in administration, as well as, in common man's life, the duration of the emergency has been fixed to six months with a provision for extension of it by every 6 months.

Further, the houses of law making at both levels, that is centre and state shall be extended for one year at a time, provided that they shall cease to exist after six months of cessation of emergency and fresh elections shall have to be held.

II. INSTANCES OF NATIONAL EMERGENCY IN INDIA :

National emergency has been imposed three times. *The first in 1962 when China attacked North East Frontier Area & Arunachal. During this term of emergency, India faced a second attack from Pakistan 3 years later in 1965, which led to the INDO-PAK war. These were emergencies proclaimed on ground of external aggression on account of attack from foreign territories. This proclamation of emergency lasted for 6 years*

till 1968.

The second proclamation of emergency was due to attack by Pakistan in 1971 on ground of external aggression.

The third proclamation of emergency was made while the second was still in place. However, it had to be proclaimed separately due to being on the ground of internal disturbance. Hence, the third proclamation was made in 1975. Information about emergency being imposed was given to the Cabinet Fact Accomplish, hence the 44th Constitutional Amendment act brought safeguard that the Council of Ministers and Prime Minister shall recommend to the President to impose emergency and not in any other way. The second and third emergency both were revoked in 1977.

III. GROUNDS OF EMERGENCY :

a. External emergency includes :

War

External aggression

b. Armed Rebellion meaning Internal Emergency, or

c. Imminent Danger of above

It has to be mentioned that the 38th Constitutional Amendment Act 1975 has enabled the government to impose national emergency on simultaneous grounds and not to the exclusion of others. Further, through the 42nd Constitutional Amendment Act 1976 provisions were made for the emergency to be imposed only in part of India rather than whole of the Country.

IV. REFORM BY 44TH CONSTITUTIONAL AMENDMENT ACT 1978

The emergency imposed in 1975 was highly criticised on grounds of attempt to usurp power. To investigate, if the emergency proclaimed was warranted, the next government under the Janta Party constituted the Shah Commission. The committee found that the proclamation was ill-founded and hence to restore the changes made by the 42nd Constitutional Amendment Act 1975, the Janta Party government brought the 44th Constitutional Amendment Act which provided that:

1. The Prime Minister and Council of ministers should recommend proclamation instead of the earlier

provision where it was done only by the President of India

2. Now a simple majority had to pass the revocation of emergency in the parliament while earlier, the President alone could revoke the emergency
3. Duration to approve the proclamation earlier was 2 months but now it has been reduced to only 1 month
4. Extension of houses every 6 months as long as the executive cabinet deems appropriate.
5. If the Lower House wishes not to continue with the proclaimed emergency despite that earlier they had passed the same, it can pass resolution with one tenth of total members of Lok Sabha after giving written notice to the speaker when house is in session or if the house is not in session then, they shall give notice to the President to call for a special session within 14 days to disapprove the proclamation.
6. The words internal disturbance was substituted with armed rebellion
7. Judicial review was introduced.

V. HOW IS PROCLAMATION DIFFERENT FROM REVOCATION?

1. Proclamation of emergency needs special majority of the total majority of the house along with two third of majority passing and voting in its favour, while revocation of emergency needs only simple passing in the house.
2. Proclamation of emergency is initiated by Council of Ministers headed by The Prime Minister and The President of India, while revocation is done only through the Lok Sabha and The President
3. Passing of the Proclamation needs approval by both the houses while passing the motion to revoke, only Lok Sabha is involved.

VI. JUDICIAL REVIEW OF NATIONAL EMERGENCY

The government through the 38th Constitutional Amendment Act 1975 made an attempt to put Art 352 outside Judicial Review But the 44th Constitutional Amendment Act 1978 restored it later. Further the courts intervened in the case of Minerva Mills Vs Union of India 1980 and held that Emergency can be challenged

when proclamation is based on

1. Mala fide ground, or
2. Declaration that was extraneous, or
3. Irrelevant facts, or
4. Absurd, or
5. Perverse

VII. IMPACT OF PROCLAMATION OF NATIONAL EMERGENCY ON FUNDAMENTAL RIGHTS:

The Constitution of India under Articles 352 and 359 expressly mentions of the impact of imposition of national emergency on the fundamental rights. The impact can be summarised into two parts :

1. Article 19 mentioned in Article 358
2. Article 20,21 and other Articles mentioned in Article 359

Article 358 provides that six fundamental rights under Article 19 are automatically suspended with the imposition of national emergency and no special order is needed.

Further, the Parliament is empowered to make any law and such law could take away any of the freedoms offered under Article 19. The rights under Article 19 stand suspended and the citizens cannot approach the courts to seek recourse in this regard. Further, even after the emergency ceases, any executive or legislative action taken during this emergency, related or unrelated cannot be challenged in the courts. The effect of this imposition is complete suspension of the right of the individual to approach the courts for enforcement of his fundamental rights under Article 19.

It is also stated that after the emergency ceases, Article 19 automatically revives itself and any laws inconsistent will cease to have effect to the extent of that inconsistency.

But the above position was considered extreme, hence, the Parliament enacted the 44th constitutional amendment act 1978 to find a middle path. The constitutional amendment provided that the freedoms under Article 19 can only be suspended, if national emergency is declared on ground of War and External Aggression and not in case of Armed Rebellion.

And regarding challenging actions taken emergency in court, it provided that only laws that were made relating to the emergency will remain protected and not any law made during emergency duration and similarly any executive action taken under such law related to emergency will remain protected nor any executive action.

Now coming to the second part, Article 359 clearly says regarding Article 20 and Article 21 that while the emergency is in operation, these two Articles can never be suspended. It means that during the emergency is in operation, one cannot go to any court for enforcement of his fundamental rights. This implies that the fundamental rights are not suspended, they are still alive, only that the citizens cannot seek enforcement of them. Further that the above restrictions under Article 359 do not apply to all the fundamental rights but only those which the President will notify through an order. The President will have to further specify:

1. *The fundamental rights involved*
2. *Duration of the suspension*
3. *Area where it applies, whole or part of India*

However, it has to be noted that the power of the President in this regard is not absolute as the order to be passed by the President shall be mandatorily laid before both houses, but no time period has been prescribed to pass the same through the houses.

Upon imposition of emergency as per Article 359, the same effects follow as in the case of Article 358 which applies to Article 19.

The Parliament can make any law or government can take any executive action under such law that takes away the Fundamental Rights through a Presidential Order. The citizens again cannot challenge the same in courts. Any such laws or executive action are immune from court proceedings even after the emergency is over. Again, this situation was extreme, hence, the middle path of the 44th Constitutional Amendment Act 1978 applies here as well. The constitutional amendment provides that the President cannot suspend right to go to court for Article 20 or Article 21, and only those laws and executive actions under such laws would be protected that relate to the emergency and not all laws or actions during the entire duration of emergency.

VIII. DIFFERENCES BETWEEN ARTICLE 358 AND ARTICLE 359

Article 358	Article 359
Applies to the whole Country	Applies to whole or even part as the government specifies
Applies to Article 19 only	Applies to those Articles except Article 19 which the President specifies in his order
The suspension of Article remains for the entire emergency duration	The suspension remains for the duration which the President specifies.
The rights under Article 19 revoke automatically on revocation of emergency	The rights operate as Presidential Order states
Suspension only on grounds of war and external aggression	Can be imposed on all 3 grounds of war, external aggression and armed rebellion

IX. WHAT WILL HAPPEN TO CENTRE- STATE RELATIONS IN THIS PERIOD?

Executive:

In ordinary times, centre reserves the power to give directions to state but only about certain specified matters, but now that emergency is proclaimed, the centre can give directions to state to use its executive manner in the way centre specifies. The centre eclipses the autonomy of the state and it can be said that centre takes complete control of the state government and only for administrative ease the state government is not suspended.

Legislative:

The state reserves the power to make laws but the Parliament again eclipses over the states legislative power as it can override any law made by the state legislature.

Further, in ordinary times any ordinance to be made for the state is the domain of the Governor, however, now in the case of emergency in place, the President becomes empowered to make ordinances for the state in question.

Further, the central government can empower and authorise own officers and authorities to fulfil the duty and exercise powers on the subjects that are in ordinary times outside the union list under schedule seven of the constitution.

However, a critical use of such provisions was done during the emergency imposed in 1975, where the 42nd Constitutional Amendment Act provided that such power used by officers and authorities not be done in the state where emergency is imposed but to other states as well.

Financial relations:

President reserves the power to alter or reduce the constitutional distribution of revenue between centre and states. For administrative ease, as well as that the balance sheet does not disrupt mid-year, the new revised distribution shall continue till the end of financial year in which the emergency was revoked.

Power of the centre over state legislature during imposition of emergency:

The centre cannot suspend the state legislature. And further upon completion of term of five years of the state legislature, the centre can keep extending the term one year at a time for any length of time and such extended house shall lapse six months after the emergency ceases.

CONCLUSION

It has to be noted that the imposition of emergency in any nation let alone India will have serious repercussions across all spheres of social life as well as the administrative machinery of the government. It remains a fact that such measures of exigency need to be in place to restore law and order amongst other priorities first. The challenge, however, is to balance the operation of such emergency; it has to be ensured that it is not to be used to further private interest or political interests. In a democratic set up it has to be ensured that the states reserve the right to curtail the freedoms of individual, and yet, it has to be ensured that the basic structure and the very essence of right to life is not snatched away from the citizens and legal personalities. There ought to be a group that shall always criticise the imposition of such drastic measures however it would be only fair to accommodate their concerns and to make a fair attempt to critically analyse if the measures that the government is taking, stand the tests as laid down in the Constitutional Amendment Act 44th 1976 and the Supreme Court decision in *Minerva Mills vs Union of India*.

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