

## **Department of Political Science**

### **Indian Government & Politics**

**SEM II (H),SEM IV(GE) & SEM VI (For the students of other discipline)**

**CC -4,CC-1D/GE-4 & GE -2**

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#### **Emergency Power in President of India**

The President of India has the power to declare three types of emergency. They are National Emergency, State Emergency and Financial Emergency. Under the Government of India Act 1935, the Governor-General had similar powers.

The emergency powers of the President are of far-reaching significance. It is argued by some scholars that the President can become very powerful, even a dictator, by using these powers. Let us first analyse these powers and then we will find out if the President is a potential dictator.

##### **(a) National Emergency-**

Article 352 (1) says, "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of territory thereof is threatened, whether by war or external aggression or armed rebellion he may, by proclamation, make declaration to that effect."

If the President believes that there is a threat to the security of India or to the security of a part of India, he has the power to declare National Emergency. Such threat to India's security or to the security of any part of its territory may be caused when another country declares war against India or attacks it. It may also be caused by armed rebellion.

Because of fear that the President of India may misuse this power, it has been provided in the 44th Amendment that the President cannot declare National Emergency without the written advice of the Union Cabinet.

In 1975, Mrs. Indira Gandhi, the then Prime Minister, had advised the President to declare National Emergency without consulting her cabinet. The National Emergency of 1975 was a constitutional abuse and political malaise. The 44th Amendment is an antidote to such danger.

#### ADVERTISEMENTS:

The National Emergency can be declared for the whole country or for a part of it. A National Emergency, originally declared for the whole country, can be later limited to a particular part of the country in which there is serious emergency situation.

A proclamation of National Emergency has to be passed in each house of Parliament by more than half of the total members and at least by two-third of the members present and voting. This proclamation will be invalid if it is not passed by both houses within one month. It has to be passed first by the Rajya Sabha if the Lok Sabha stands dissolved at the time of proclamation of National Emergency.

It has to be passed within one month of Lok Sabha being reconstituted; otherwise the proclamation will be invalid. The proclamation of National Emergency will remain in force for six months after it is duly passed by both houses of Parliament. Each time it can be extended for six months with the approval of the Parliament. There is no limit on such extension.

The 44th Amendment Act, 1978 empowers the Lok Sabha to revoke National Emergency by simple majority. A special session of the Lok Sabha has to be convened for this. The Lok Sabha can have a special session if at least one-tenth of its members give a 14-day notice to the speaker to convene a special session of the Lok Sabha. The President of India has also the power to revoke the National Emergency whenever necessary. Consequences of National Emergency

1. The Parliament gets power to make laws in relation to the State List.
2. The Union government is empowered to give directions to the state in executive matters.

3. The right to freedom under Art. 19 are automatically suspended.
4. The right of Citizen to seek constitutional remedy under Art. 32 are abridged; it may be suspended.
5. The Union Government may suspend all other fundamental rights except Art. 20 and Art. 21.
6. The division of sources of revenue between the centre and states may be modified. Use of Emergency Powers.

For the first time in independent India, National Emergency was imposed on 26 October 1962 in view of the Chinese aggression against India. It was lifted on 10 January 1968.

Another National Emergency was declared on 3 December 1971, the day on which Pakistan launched a war against India. Pakistan attacked India because of its support to the liberation of Bangladesh. This emergency was still in operation when the country was put under the third National Emergency in June 1975.

It may be remembered that the third National Emergency was imposed by the Indira Gandhi government after Mrs. Gandhi's election to the Lok Sabha was declared null and void by the Allahabad High Court, The government declared National Emergency on the ground of 'internal disturbance' on 25 June 1975 which was revoked on 21 March 1977.

All the three National Emergencies were declared under Article 352. While the first two emergencies were imposed on the ground of 'external aggression', the third was imposed on the ground of 'internal disturbance'. Both the second and third National Emergencies were lifted on 21st March 1977.

There were no complaints against the promulgation of first two National Emergencies. But the third National Emergency was widely criticized. It was charged that the only motive of imposing this emergency was to defend the political interests of Mrs. Indira Gandhi.

### **(b) Proclamation of Failure of Constitutional Machinery in a State-**

Under Article 356 the President can promulgate the failure of constitutional machinery in a state if he is satisfied either on the basis of a report from the Governor of that State or otherwise that the government of that state cannot be carried on in accordance with the provisions of the constitution. He can also issue such a proclamation if a state has failed to carry out a direction of the Union Government given by it in exercise of its executive power to the state.

It is important to note that the President can declare 'State Emergency' or President's Rule either on the basis of a report of the Governor or otherwise that the constitutional machinery of that state has failed. Thus, at times, the President may declare State Emergency even when he has not received a report from the state Governor saying that the constitutional machinery of that state has failed.

He might have been satisfied about the failure of the constitutional machinery of a state by the reports received from other sources. In 1991, President Venkatraman declared State Emergency in Tamil Nadu even though he had not received a report from the Governor S. B. Barnala recommending this.

Under the 42nd Amendment of 1976, the presidential promulgation of State Emergency became immune from judicial review. In other words, it could not be challenged in the court of law. But this was nullified by the 44th Amendment of 1978. According to this amendment, the legality of the proclamation of President's Rule can be challenged.

The State Emergency, once proclaimed, would stay for two months. However, if before the proclamation of emergency the Lok Sabha had been dissolved or if it is dissolved within 2 months of the proclamation, the State Emergency would come to an end after 30 days of the meeting of the Lok Sabha if in the mean time the proclamation of State Emergency had not been approved by the Parliament.

This two-month period of State Emergency can be extended by the resolutions passed by both Lok Sabha and Rajya Sabha for a period of six months at a time, subject to a maximum period of three years.

Each time it will be extended for six months. The 42nd Amendment provided for such extension for one year, though it did not make any change in the limit of maximum period of the State Emergency for three years. However, the 44th

Amendment Act restored the status quo. In other words, each extension of State Emergency will be for six months and the maximum period of its duration is three years.

### **Consequences of the Proclamation of State Emergency**

1. During state Emergency, the President of India assumes all executive power of the state to himself. The state administration is run directly by him or through a person designated for the purpose by him. It is the Governor of state who runs the state administration on behalf of the President.

2. During the President's Rule, the state assembly is either dissolved or kept under suspended suspension. The state assembly is kept under suspended animation if there is hope that a new council of ministers can be formed within a short time. During this period, the MLAs do not lose their membership of the Assembly, nor is there election held to the assembly. Therefore some scholars have described state Emergency as 'Half Emergency.'

3. The Parliament makes laws on all items included in the state list. It also passes the state budget. However, if the Lok Sabha is not in session, the President may authorize any expenditure from the consolidated fund of India.

4. During the State Emergency, the High Court of the state, as before, functions independently without any of its powers being curtailed.

5. The president has also power to proclaim ordinances in the state.

During State Emergency the Union Government assumes absolute control over state administration except the judiciary. As the state administration is mostly run in the name of the President, the State Emergency is known as 'President's Rule'. However, to many it appears as the 'Governor's Rule', as the Governor runs the state administration as the agent of the President.

Dr. Ambedkar, the Father of Indian Constitution, observed, Art 356 is not an ordinary law, and this cannot be enforced arbitrarily and whimsically. This may be used as the last weapon, he said. But this has already been used more than 100 times.

Critics say that this Article has often been used in a partisan manner and that its enforcement has been highly politicised. In several cases, the Supreme Court of India has declared the President's Rule illegal. The use of article 356 has embittered relations between the centre and states, and weakened India's federalism.

After the Lok Sabha elections held in March 1977 which brought Janata Party to power at the centre, the President's Rule was imposed on 30th April 1977 in nine states which had Congress governments. Similarly, following the Seventh Lok Sabha election held in 1980, the President's Rule was imposed in nine states which had non-Congress governments.

In December 1992, the President's Rule was imposed by the Narasimha Rao government in four states, namely, the U.P, Madhya Pradesh, Himachal Pradesh and Rajasthan, which had BJP governments. These BJP governments were punished after the destruction of Babri Masjid at Ayodhya on 6th December 1992. While the Madhya Pradesh High Court, in its judgement, said that the imposition of President's Rule in Madhya Pradesh was illegal, this judgement was reversed by the Supreme Court in April 1994 which upheld the legality of the President's Rule in four Indian states in December 1992.

Many times the provision of State Emergency has been misused by the party in power at the centre and President's Rule is often imposed to further the interests of the political party or parties ruling at the centre.

### **(c) Financial Emergency-**

Under Article 360, the President of India can proclaim Financial Emergency if he is satisfied that the financial stability or the credit of India or of any part of its territory is threatened. The effects of financial emergency are:

1. The Union Executive will have authority to give directions to any state to observe canons of financial propriety.
2. The President may issue directions requiring reducing the salary and allowance of all or any class of persons serving in the Union or State Government including the Judges of the Supreme Court and High Courts.

3. The money bills, duly passed by state legislatures, may be reserved for the consideration of the President.

4. The allocation of revenue between the centre and the state may be altered by the President.

The proclamation of Financial Emergency shall ordinarily remain in force for a period of two months. However, it can continue to stay beyond two months if before the expiry of the two-month period, the proclamation has been approved by the both Houses of Parliament.

If, at the time of proclamation of Financial Emergency, the Lok Sabha stands dissolved, the proclamation needs to be approved by the Lok Sabha within 30 days of its meeting after its reconstitution, provided in the mean time the Rajya Sabha has approved it. If the Lok Sabha fails to approve it within 30 days of its assembly following its reconstitution, the proclamation of Financial Emergency shall cease to operate.

The National Emergency and Financial Emergency have no time limit. They can continue to be extended without any limit. But the State Emergency has a time-limit. It cannot go beyond three years.