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Introduction

The term 'emergency' can be defined as "a challenging situation that arises suddenly, necessitating immediate action by public authorities under powers specifically granted to them by the Constitution or otherwise to address such exigencies."

Dr. Ambedkar contended that the Indian federation possessed a unique aspect in that during emergencies, it could transform into a wholly unitary State. This assertion was upheld by the Supreme Court in Gulam Sarwar v UOI (AIR 1967 SC 1335).

The Constitution of India is distinctive in that it encompasses a comprehensive framework for the swift reorganisation of peace-time governmental machinery during times of national peril.

While these provisions might seem incongruous in a Constitution founded upon the principles of fundamental rights and democracy, they must be understood in the context of India's historical experiences.

India has witnessed periods of glory when the central power weakened. Thus, it is preferable for the Constitution to safeguard against forces of disintegration. Events may arise threatening the very existence of the State, and without safeguards against such eventualities, the State, along with its fundamental and unalterable essence, could be swept away.

In India, the Constitution provides for three types of emergencies:
1. National Emergency (Proclamation of Emergency).

2. Failure of Constitutional Machinery in a State.

3. Financial Emergency.

National Emergency (Article 352)

Article 352 states that if the President is convinced that a serious emergency exists posing a threat to the security of India or any part thereof due to war, external aggression, or armed rebellion, they may, through a Proclamation, declare such a situation for the entirety of India or specified parts.

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Grounds for Proclamation of Emergency

A "National Emergency" is invoked in the face of war, external aggression, or armed rebellion, signifying a threat to the nation's security or its territories. The President cannot issue such a proclamation unless the Union Cabinet has communicated in writing its decision to do so. This declaration may precede actual instances of war, external aggression, or rebellion if the President deems an imminent danger.

The provisions of Article 352 were strengthened by the 44th Amendment Act of 1978 to prevent misuse. The term "internal disturbance" was replaced with "armed rebellion" to avoid broad interpretations that could permit emergency declarations on flimsy grounds. For example, in 1975, Prime Minister Indira Gandhi declared an emergency citing internal disturbance after opposition parties called for her resignation due to a court ruling.

Following the 44th Amendment, "internal disturbance not amounting to armed rebellion" ceased to be a valid reason for a National Emergency, narrowing the scope of what constitutes an "internal emergency."

It's noteworthy that the President can declare an emergency only upon "written advice" from the Cabinet, a change introduced after Prime Minister Indira Gandhi's unilateral advice in 1975. This amendment aimed to prevent such occurrences in the future.

India has experienced three National Emergency proclamations: in 1962 during the Chinese aggression, in 1971 following the war with Pakistan, and in June 1975 due to internal disturbance.

Approval and Duration of Proclamation

Every proclamation of emergency must be presented before each House of Parliament and will cease to be effective after one month (prior to the 44th Amendment, it was two months) from its issuance unless both Houses approve it. Once endorsed by Parliament, the proclamation can persist for six months at a stretch unless revoked earlier by the President. Resolutions for approval or extension of the proclamation must be passed by either House with a majority of the total membership and not less than two-thirds of those present and voting.

However, if both Houses pass a resolution favouring the continuation of the proclamation, it will endure for an additional six months from the date it would otherwise have expired, provided it is not revoked.

Revocation of Proclamation

Before the 44th Amendment, once both Houses of Parliament approved a Proclamation of Emergency, only the President could revoke it by issuing a new Proclamation. Consequently, the executive held the exclusive authority to determine when the Proclamation should end. In essence, once Parliament endorsed the emergency, it could persist indefinitely as long as the Executive wished. There was no provision for periodic parliamentary review every six months.

Post the 44th Amendment, three changes were introduced. Firstly, the President can still revoke a Proclamation by issuing a subsequent one. Secondly, the Amendment mandates a biannual review of the Proclamation by both Houses of Parliament. Thirdly, if the Lok Sabha passes a resolution disapproving or modifying the Proclamation or its continuation, the President must revoke the Emergency. To initiate this process, a written notice signed by at least one-tenth of the total Lok Sabha members is required.

Judicial Review of Proclamation

Previously, there was a widespread belief that determining the existence of an emergency was a political matter entrusted to the Union Executive by the Constitution and thus not subject to judicial review.

However, in **Minerva Mills Ltd. v UOI (AIR 1980 SC 1789)**, it was ruled that there is no prohibition on judicial review of the validity of a Proclamation of Emergency issued by the President under Article 352. Just because a matter has political implications doesn't justify the Court's reluctance to fulfill its duty under the Constitution when it involves a question of constitutional interpretation. However, the Court's jurisdiction is confined to examining whether the constitutional limitations have been adhered to.

It cannot assess the adequacy of the facts and circumstances underlying the President's satisfaction unless it's demonstrated that there was no satisfaction at all, rendering the exercise of power constitutionally invalid. If the satisfaction is found to be absurd, perverse, or motivated by malice or based on entirely irrelevant grounds, it would be considered no satisfaction at all and would be open to challenge in a court of law.

Consequences of Proclamation of Emergency

During a Proclamation of Emergency, while the state legislature and government continue to function, the executive, legislative, and financial powers are centralised in the Centre.

According to Article 353, notwithstanding anything in the Constitution, the Union's executive power extends to directing any state on the manner of exercising its executive power. The Union Parliament gains the authority to legislate on subjects in the State List during an emergency (Article 353).

However, such emergency legislation becomes void six months after the emergency ends. Additionally, if the security of India or any territory is threatened due to activities in the region where the emergency is in effect, the Union Executive's power to issue directions and make laws extends to any state other than the one where the emergency is declared.

It's important to note that the state's legislative power is not suspended during the emergency but is subject to the overriding authority of the Union Parliament. Article 354 provides for the Union Executive to acquire powers related to revenue distribution.



While a Proclamation of Emergency is in effect, Parliament's tenure can be extended by law for up to one year at a time, not exceeding six months after the end of the emergency (Article 83(2)).

Upon the proclamation of emergency due to war or external aggression, all freedoms guaranteed by Article 19 are automatically suspended. Article 358 clarifies that during a Proclamation under Article 352, Article 19 does not restrict the State's power to enact laws or take executive actions that abridge or curtail the Fundamental Rights guaranteed by Article 19. However, such laws cease

to have effect once the emergency ends, although actions taken or omitted during the emergency cannot be challenged afterward for violating Article 19.

The 44th Amendment excluded "armed rebellion" as a ground for emergency, meaning Article 19 freedoms cannot be suspended in such cases. Additionally, Article 358 only shields emergency laws from legal challenge, not other laws unrelated to the emergency. Before this amendment, even laws not related to the emergency were immune from challenge under Article 358.

Article 359(1) empowers the President, during an emergency, to suspend the right to move courts for the enforcement of certain fundamental rights (except Articles 20 and 21) for the duration of the emergency, as specified in the President's order. However, every such order must be presented to both Houses of Parliament.

The 38th Amendment added clause (1-A) to Article 359, stating that while an order under Article 359(1) is in effect, nothing in Part III restricts the State's power to enact laws or take executive actions. However, such laws become void once the emergency ends, except for actions taken or omitted before the law ceases to have effect. The 44th Amendment safeguards Articles 20 and 21 from the emergency's purview and allows challenges to laws unrelated to the emergency even during its duration.

A Proclamation of Emergency does not nullify laws that were valid before the emergency. In M.M. Pathak v UOI (AIR 1978 SC 803), it was established that agreements, like the one between LIC and its employees, would be revived, and payments suspended during the emergency would become payable even for the emergency period. Hence, valid claims cannot be annulled by the emergency itself but can only be suspended by laws enacted during Articles 358 and 359.