

Polity Class 30

2nd November, 2023 at 1:00 PM

NATIONAL EMERGENCY (CONTINUES) (01:05 PM)

- **Effect of Emergency on Fundamental Rights**
- **Article 358**
- **Suspension of Article 19-** Automatic suspension
- The fundamental rights under **Article 19** are suspended only when a National Emergency is declared on the grounds of **war or external aggression**.
- A law imposing such unreasonable restrictions should carry a declaration that it is only for the purpose of a Proclamation of Emergency(PoE).
- **Article 359 of the Indian Constitution**
- The President by order can suspend the enforcement of Fundamental Rights other than Articles 20 and 21 while such PoE is in place.
- A citizen's right to approach the court to ask for enforcement of a particular right is suspended. A person can not move to the Supreme Court and High Court under Article 32/226.
- **Effect on the duration of legislatures**
- **Parliament by law** can extend the duration of the House of People and Legislative Assembly by 1 year at a time.

SAFEGUARDS (01:45 PM)

- Parliamentary approval within 1 month for PoE.
- During this duration, if the House of People(HoP) gets dissolved, the RS must provide approval. HoP must provide approval within 1 month of reconstitution.
- **Duration-**
- Once proclamation is approved emergency can be extended six months at a time which can be extended from time to time.
- The proclamation can be done on the advice of the Council of Ministers.
- **A special sitting of HoP**
- A special sitting of Lok Sabha can also be called if 1/10th members of HoP give in writing their intention to move against PoE.
- Must be called by the President within 14 days.
- If a resolution disapproving PoE is approved, PoE stands discontinued.

JUDICIAL REVIEW OF PROCLAMATION OF EMERGENCY (02:00 PM)

- The Court has held that proclamation of emergency under Article 352 is subject to judicial review but the court can not go into advice tendered by CoM to the President.
- The Court may examine if there existed any relevant material to form the basis of any Presidential satisfaction and whether the President acted in a mala fide manner or if the exercise of power was arbitrary in nature.
- **ADM Jabalpur vs Shivkant Shukla Case**
- After the proclamation of emergency in 1975, a number of people were arrested and detained under preventive detention laws such as MISA (Maintenance of Internal Security Act). A number of petitioners approached against such detention orders.
- Most of the high courts took the view that detention orders may be challenged by filing a habeas corpus petition. Aggrieved by the orders of the high courts, the government appealed to the Supreme Court and all the matters were put together and heard in the concerned case.
- The Supreme Court ruled in favour of the govt and stated that Article 21 is the whole and sole repository of the right to life under the constitution and if its enforcement stands suspended the citizens shall not have the right to approach the courts.
- Among the five judges on the bench, Justice HR Khanna was the sole dissenter and stated that the court has failed to realise that the right to life and personal liberty are natural rights and not a gift of the Constitution.
- later on, Justice P N Bhagwati regretted writing this judgement and apologised for the same.
- The Judgement was criticised across the world and is considered as one of the lowest points in the history of the Supreme Court of India.
- In 2017, in the Right to Privacy judgement, the majority overruled the opinion in the ADM Jabalpur case and held that the Right to life and liberty are not bounties provided by the state and nor does the constitution create these rights.
- It also stated that it would be criminal to suggest that a democratic constitution without fundamental rights would leave an individual at the mercy of the state.
- The court also held that the powers of the court to issue writs of Habeas Corpus is a precious and undeniable feature of the rule of law.

ARTICLE 356 (02:52 PM)

- **Failure of constitutional machinery in a state-**
- If the govt of the state can not be carried out in accordance with provisions of Govt of India:-
- Gross violation of provisions of the constitution.
- If no govt can be elected in the state- Hung Assembly.
- If the state govt is involved in secessionist activities.
- **Article 365**

- Where the state fails to comply with the executive directions provided by the Union in the exercise of its executive powers.
- **Article 355**
- If a state is under external aggression and or internal disturbance, there may arise situation of failure of constitutional machinery if President is satisfied that there has been a failure of constitutional machinery in the state. Satisfaction is not his personal satisfaction but rather formed on the aid and advice of CoM.
- **Effects**
- The state CoM gets dismissed and the President assumes the executive powers with respect to the state.
- State legislative assembly gets suspended and the powers of legislature get vested in the Parliament.
- The Union can not assume the powers vested in the high courts.
- President can make other orders required for effective implementation of Article 356 in the state including suspension of provisions of the constitution in the whole or part.
- **Safeguards with respect to Article 356**
- **Parliamentary approval-** Both houses within 2 months through a simple majority. Legislative assembly gets dissolved- Council of states must approve and HoP must approve within 1 month of reconstitution.
- **Duration-** Once approved, it remains in force for 6 months. It can be extended further by 6 months upon approval.
- **To extend it beyond 1 year:-**
- PoE must be in force in India or a part of the state or the whole state and EIC must certify that it is not possible to conduct elections in the state on account of certain difficulties.
- In such conditions, it can be extended for a maximum of 3 years, 6 months at a time.

ISSUES ASSOCIATED WITH THE USE OF ARTICLE 356 (03:45 PM)

- **According to Dr Ambedkar**, Article 356 would have been a dead letter in the working of the Constitution but it has been invoked more than 120 times since the commencement of the Constitution making it the most dreaded letter in the Constitution.
- Until 1959, it was invoked six times, during the 1960s it was invoked 11 times, between 1970-74, 19 times and Between 1977-79, 9 times.
- The provisions of Article 356 were **borrowed from the Govt of India Act 1935** which was opposed fiercely by the leaders of the freedom struggle.
- No liberal democratic constitution of the world has provisions similar to that of Article 356.
- The term '**failure of constitutional machinery**' is **vague** and subjective and is prone to misuse.

- Often frivolous and arbitrary grounds have been invoked to impose the President's rule.

TOPIC OF NEXT CLASS- DISCUSSION ON EMERGENCY (TO CONTINUE)