

## UNIT-1

### CHAPTER-8

#### EMERGENCY PROVISIONS

An emergency is a situation which arises due to the failure of the government machinery which causes or demands immediate action from the authority.

According to the Black Law's Dictionary, "*Emergency is a situation which requires quick action and immediate notice as such a situation causes a threat to the life and property in the nation. It is a failure of the social system to deliver reasonable conditions of life*".

#### Types of Emergency

Part- XVIII of Indian Constitution deals with the Emergency provisions i.e. Articles 352 to 360. There are three types of Emergencies mentioned in the Constitution. The power of imposing all three types of Emergencies is vested upon the President of India. The concept of Emergency was borrowed from the Weimar Constitution of Germany. The three types are as follows –

1. Article 352 – National Emergency
2. Article 356 – President's Rule
3. Article 360– Financial Emergency

A state of emergency in India refers to a period of governance that can be proclaimed by the **President of India** during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees **Fundamental Rights** to the citizens of India.

- The emergency provisions are contained in **Part XVIII** of the Constitution of India, from **Article 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.
- The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- The Constitution stipulates three types of emergencies-
  1. National Emergency
  2. Constitutional Emergency
  3. Financial Emergency

## NATIONAL EMERGENCY

- National emergency can be declared on the basis of war, external aggression or armed rebellion. The Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
- **Grounds of declaration:**
  - Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by  
**war or external aggression or armed rebellion.**
  - The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
  - When a national emergency is declared on the grounds of '**war**' or '**external aggression**', it is known as '**External Emergency**'. On the other hand, when it is declared on the grounds of '**armed rebellion**', it is known as '**Internal Emergency**'.

- This term ‘armed rebellion’ is inserted from the 44<sup>TH</sup> Amendment. Before this term it was known as internal disturbance.
- **Example:**
  - If India and Pakistan openly accept that they will use armed forces against each other is simply war.
  - If there is no formal declaration that there will be armed forces used against a country is External aggression.
  - And if because of these two grounds an emergency is proclaimed as an **external emergency**.
- **Parliamentary approval and duration**
  - The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
  - However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
  - If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
  - Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.
- **Revocation of proclamation**

- A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.
- The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

- **Effects of national emergency**

- A proclamation of Emergency has drastic and wide-ranging effects on the political system. These consequences can be grouped into 3 categories:
  - **Effects on the centre-state relations:** While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change. this can be studied under three heads:
    - **Executive:** Centre becomes entitled to give executive directions to a state on 'any' matter
    - **Legislative:** The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the parliament become inoperative six months after the emergency has ceased to be in operation.
    - **Financial:** the president can modify the constitutional distribution of revenues between the centre and the states.

- **Effect on the life of the Lok Sabha and State Assembly:**
  - While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond the normal term for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.
  - Similarly, the Parliament may extend the normal tenure of a state Legislative Assembly by one year each time during a national emergency, subject to a maximum period of six months after the emergency has ceased to operate.
- **Effect on fundamental rights:** Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:
  - **Suspension of Fundamental rights under Article 19:** According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.

### **State Emergency Or President's Rule**

- Article 355 imposes a duty on the centre to ensure that the government of every state is carried on in accordance with the provisions of the constitution.

- It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.
- This is popularly known as ‘President’s Rule’.
- **Grounds of imposition:** the president’s ruler can be proclaimed under Article 356 on two grounds:
  1. Article 356 empowers the President to issue a proclamation if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the constitution.
  2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.
- **Parliamentary approval and duration:** A proclamation imposing president’s rule must be approved by both the houses of parliament within two months from the date of its issue.
  - However, if the proclamation of President’s rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime
- **Consequences of the President’s rule:** The President acquires the following extraordinary powers when the President’s rule is imposed in a state:
  - He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.

- He can declare that the powers of the state legislature are to be exercised by the parliament.
- He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.
- **Scope of judicial review:** The 38<sup>th</sup> Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.
- But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review
  - The 44<sup>th</sup> Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
  - **Suspension of other Fundamental Rights:** Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, **remedial measures are suspended and not the Fundamental Rights.**
  - The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.

- The suspension could be for the period during the operation of emergency or for a shorter period.
- The Order should be laid before each House of Parliament for approval.
- The 44 Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.
- **Declarations made so far:** This type of emergency has been proclaimed three times so far- in 1962, 1971 and 1975

#### **Financial Emergency:-**

- **Grounds of declaration: Article 360** empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- **Parliamentary approval and duration:** A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
  - However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
  - Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.



## **Effects of Financial Emergency**

- Extension of the executive authority of the Union over the financial matters of the States.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

## **Criticism of the Emergency Provision**

- Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds:
  - The federal character of the constitution will be destroyed and the union will become all-powerful
  - The powers of the State- both the Union and the Units- will entirely be concentrated in the hands of the union executive.
  - The president will become a dictator
  - The financial autonomy of the state will be nullified
  - Fundamental rights will become meaningless and, as a result, the democratic foundation of the constitution will be destroyed.'
- While defending the emergency provisions in the Constituent Assembly, Dr Ambedkar accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes.'