

## EMERGENCY PROVISIONS IN GOVERNMENT OF INDIA ACT 1935

By

—M. NEHEMIAH, M.Sc.(Ag.), L.L.M.,  
LECTURER,  
HYDERABAD, A.P.

Chapter – V of the Government of India Act 1935, empowered the Federal Legislature, during emergency to legislate, through the Governor General. The British Rulers have given India a federal set-up, though their Constitution is typical unitary Constitution. Owing to the nature of the Indian Union *viz.*, Combination of diverse units, some of which being British ruled. Provinces and some other being Princely States, The Britishers were justified in settling India into federal constitutions.

Further, though such emergency powers are unknown to English rulers, except war power, they vested the executive in India with vast emergency powers keeping in view the nature of federation.

Section 102 of the Act, discussed union power to legislate during emergency and Section 93 provided mechanism in case the Government of the province cannot be carried on in accordance with the provisions of the Act.

The Governor general has discretion to declare emergency by proclamation, provided a grave emergency existed whereby the security of the country is threatened by war of internal disturbance.

*The section reads thus :*

Power of federal legislature to legislate if an emergency is proclaimed<sup>1</sup>.

1. Notwithstanding anything in the proceeding sections of this chapter, the federal

legislature shall, if the Governor general has in his discretion declare by proclamation (in this Act referred to as a proclamation of emergency). That a grave emergency exists whereby the Security of India is threatened, whether by War or Internal disturbance have power to make laws for province or any part thereof with respect to any of the matters summated in the provincial legislative list.

After issuing a proclamation the Governor general has power to make any law for a province or any part thereof, with respect to even matters enumerated in the provincial list.

Provision was to effect that no bill of amendment could be passed without the Governor general's previous sanction and he has discretionary power to return the bill or amendment, unless as such bill or amendment appears to him to be necessary during emergency.

Provided that no bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor general in his discretion and the Governor general shall not give his sanction unless it appears to him that the provision proposed to be made is proper provision in view of the nature of the emergency.

The Act provided that the provincial legislature could proceed with the law making, but if any provincial law is repugnant to any federal law, which can be made under this section, the federal law prevails whether or not it is made before the provincial law is passed and so long as the federal law remains in force, the provincial law is void.

1. Chapter – V Government of India Act 1935 (pg.85)

S102 (2) : Nothing in this section shall restrict the power of a provincial Legislature to make any law which under this Act it has power to make, but if any provision of a federal law which the federal legislation has under this power to make, the federal law, whether passed before or after the provincial law, shall prevail, and the provincial law shall to the extend of the repugnance, but so long only as the federal law continues to have effect, be void.

A Proclamation of emergency could be revoked by a subsequent proclamation,<sup>2</sup> and it shall be communicated the secretary of the State for laying it before each house of parliament,<sup>3</sup> and it shall cease to operate at the expiration of six months<sup>4</sup>.

The above provisions were incorporated in the Indian Constitution (Article 352 of the Constitution of India). The change being that the period mentioned in Clause (4) of G.I. Act has been reduced from six months to two months.

***Provisions in Case of Failure of (Provincial Government) from being carried on in accordance with the Provisions of G.I. Act, 1935.***

This power incorporated by the British Government in the G.I. Act is a unique power which very few constitutions like that of United States, Australia, Switzerland have but to a limited extent.

Under this section, the Governor if satisfied that the Government of the province cannot be carried on in accordance with the provisions of the Act, can issue a proclamation [Chapter VI of Government of India Act 1935 (Pg. 80)] taking over the administration of the State.

For the sake of the effective understanding of the section, the text of the section is extracted hereunder :

S – 93 (1) : If any time the Governor of a province is satisfied that a situation has arisen in which the Government of the province cannot be carried on in accordance with the provisions of this Act, he may by proclamation :—

- (a) Declare that his functions shall to such extent as may be specified in the proclamation be exercised by him in his discretion.
- (b) Assume to himself all or any of the powers vested in or exercisable by any provincial body or authority.

And any such proclamation may contain such incidental and consequential necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of the act relating to any provisional body or authority.

Provided that nothing in this sub-section shall authorize the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of the Act relating to High Courts.

S93 (2) : Any such proclamation may be revoked or varied by the subsequent proclamation.

(3) A proclamation under this section :—

- (a) Shall be communicated forth with to the Secretary of the State and shall be laid by him before each house of Parliament.
- (b) Unless it is a proclamation revoking a previous proclamation, shall cease to operate at the expiration of six months.

2. S102(3) of G.I. Act 1935.

3. S102(3)(b).

4. S102(3)(c).

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both the house of Parliament, the proclamation shall unless revoked, continue in force period of twelve months from the date on with under his sub-section it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

(4) If the Governor by proclamation under this section, assumes to himself any power of the provincial legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the proclamation ceases to have effect, unless sooner repealed or re enacted

by the Act of appropriate Legislature, and reference to this act, provincial laws or acts or laws of a provincial legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no proclamation shall be made by a Governor under this section with out the concurrence of the Governor general in his discretion.

The intention of the Britishers in incorporating this section was to enable the country to maintain its federation intact, not allowing any province to secede or Act against the theme of the Act (Government of India Act) 1935. This section is a incorporated the Indian Constitution as Article 356.

---

**My Lord Justice Smt. T. Meena Kumari and My Lords the Hon'ble Judges of this Court, Former Judges, of this Court and other distinguished guests, the Chairman, Bar Council the Public Prosecutor, Additional Advocates-General, Additional Public Prosecutors, Government Pleaders, Assistant Government Pleaders Members of the Bar, Registrar General and Registrars, Hon'ble Judges from the Civil Courts, High Court Staff, Pleaders' Clerks and friends,**

I feel greatly privileged to address you on the Independence Day. I do so with a sense of awe. This is a day not just of celebration but also a day when the Bench and the Bar meet as a family under the guidance of its Karta, My Lord the Chief Justice and today its My Lord Justice *Meena Kumari* and sit together for some introspection. We may be sitting n the out but for most purposes this is an in-house meeting of the Judicial family. Out sitting in the open is a message of our transparency and accountability. I would begin wishing each one of you present here and the larger fraternity a very happy Independence Day.

We have travelled a distance in the past 63 years. From Jai Hind to Jai Ho is a move we have made, some times consciously, some times with the tide, some times designed by the Will of the Unknown and some times with he benedictions of the Almighty. As a nation there can be no doubt that we have not only made major achievements but have also left an impression in the global scenario. Like it or deny it, we are a global force to reckon with and this brings with it tremendous responsibility.

One major success for India has been her commitment to Democracy and the Rule of