

# **EMERGENCY POWERS OF INDIAN PRESIDENT**

SUBMITTED BY  
DR. RAJIV KUMAR  
DEPT. OF POLITICAL SCIENCE  
HMV JALANDHAR

# EMERGENCY POWERS

- The Indian Constitution gave extensive powers to the President of India (Union Government) to deal with unusual conditions and circumstances.
- The Constitution of India in Part XVIII provides three different types of emergency (National, State and Financial) and in each case the President is empowered to declare the emergency. Emergency power was derived from the Weimar Constitution of Germany.

# THE EMERGENCY PROVISIONS OF OUR CONSTITUTION (ARTICLES 352-360)

- ❖ Art. 352 - Proclamation of National Emergency (due to war or armed rebellion or external aggression)
- ❖ Art. 356 Proclamation of State Emergency (due to the failure of constitutional machinery)
- ❖ Art. 360 Proclamation of Financial Emergency (due to badly shaken of financial stability).

# EMERGENCY DUE TO EXTERNAL OR INTERNAL AGGRESSION

- ❖ Under Article 352, a proclamation of emergency is issued by the President when he is satisfied that the security of India or any part of it, is endangered by war, external aggression or civil commotion or threat thereof.
- ❖ Such a proclamation may be revoked by a subsequent proclamation. It must be placed before each House of the Parliament and unless approved by the two Houses, it ceases to operate at the expiration of two months.

- ❖ If such a proclamation is issued at a time when the Lok Sabha stands dissolved or the dissolution of the Lok Sabha takes place during the period of two months and if a resolution approving the proclamation is passed by the Rajya Sabha but no resolution is passed by the Lok Sabha, the proclamation shall cease to operate at the expiration of 30 days from the day on which the Lok Sabha meets after its reconstitution.
- ❖ The 42nd Amendment Act (1976) has empowered the President to impose such emergency in India or any part there of or to vary or revoke it and thereby make modifications in his order issued earlier in this regard.

# EMERGENCY IN OPERATION IN INDIA- ARTICLE 352

- ❖ In India Such a state of Emergency has been thrice at work so far. For the first time it was declared by the President, On October 26, 1962 in view of Chinese invasion on N.E.F.A. and Ladakh. While issuing the said proclamation President Radhakrishnan declared that “a state of Emergency exists because of external aggression”. Articles 21 and 22 relating to personal freedoms were suspended on November 8, 1962.
- ❖ The right of any person to move any court for the enforcement of Fundamental Rights conserving personal freedoms was also suspended on the same date. Article 14 was suspended on November 14, 1962. However, autonomy of the States was not suppressed to any appreciable extent. The period of emergency lasted till January, 1968.

- ❖ The second invocation of Article 352 was necessitated in December, 1971 when India had another war with Pakistan.
- ❖ The said Article was invoked again on June 26, 1975 in the name of grave danger to internal security. However, after the rout of the Congress in March, 1977 General Elections, held on the advice of the Prime Minister (who also suffered a defeat in the elections), the then Acting President revoked the internal emergency on March 22, 1977. It resulted in the restoration of fundamental rights incorporated in Articles 14, 19, 21, 22 and lifting of ban on R.S.S. and 26 other organizations. The External Emergency which was also clamped on December 3, 1971 was revoked by the President's proclamation on March 27, 1977

# EMERGENCY DUE TO FAILURE OF CONSTITUTIONAL MACHINERY IN A STATE (ARTICLE 352 )

- ❖ A proclamation of emergency of this nature may be issued by the President either on the report of the Governor of the State concerned or on his own initiative when the government of the state concerned cannot be carried on according to the provisions of the Constitution or when it has failed to carry out a direction issued to it by the Union Government
- ❖ Article 356 empowers the President to issue a proclamation either on the report of the Governor or if he is so satisfied that the Government of the State is not carried on in accordance with the Constitution.

# FAILURE OF CONSTITUTIONAL MACHINERY IN THE STATE

- ❖ For the first time, such a proclamation was issued on 20th June, 1951 with regard to the (Pepsu), Punjab. Andhra, Kerala and Orissa also experienced such type of emergency.
- ❖ Again on June 27, 1967; March 13, 1967; November 21, 1967; July 1968; January 18, 1973; January 13, 1973; March 3, 1973; January “31, 1976; March 12, 1976; March 27, 1977; December 5, 1979; April 21, “1989, President’s rule was proclaimed in U.P., Punjab, Rajasthan, Haryana, Bihar, Andhra, Uttar Pradesh, Orissa, Tamil Nadu, Gujarat and Jammu and Kashmir, Kerala and Karnataka respectively.

- ❖ During the last sixteen years or so President's rule has been invoked in Assam (27.11.1990), Bihar (28.3.1995), Haryana (6.4.1991), Himachal Pradesh (15.12.1992), Jammu and Kashmir (19.7.1990), Karnataka (10.10.1990), Madhya Pradesh (15.12.1992), Manipur (7.1.1992 again 1.1.1994), Nagaland (2.4.1992), Rajasthan (15.12.1992), Tamil Nadu (30.1.1991), Tripura (12.3.1993), Uttar Pradesh (6.12.1992), Goa (14.12.1990), Meghalaya (October 1991), Pondicherry (12.1.1991); Gujarat (September 1996).
- ❖ Goa March 2005, and Bihar March 6, 2005 and Karnataka on October 9, 2006 (Assembly kept in suspended animation). Again on November 20, 2007, President's rule was clamped in Karnataka from October 9 to November 12, 2007. The authority of the States mentioned above remained suspended and they were brought completely under the authority of the Union, both in legislative and executive matters.

# ***SAFEGUARDS TO CHECK MISUSE OF ARTICLE 356 SUGGESTED BY SUPREME COURT (1994):***

- ❖ Keeping in view the manipulation of Article 356 by politicians in power at the Centre, a nine judge Constitutional Bench of the Supreme Court on March 11, 1994 (A.R. Bommal's Case) laid down certain safeguards to check the misuse of this power...
- (i) The dissolution of Assembly be done only after the approval of proclamation of emergency by both the Houses of the Parliament within two months of the proclamation,
- (ii) The satisfaction of the President for the issuing of the proclamation being conditional and not absolute, relevant material comprising reports of the Governor is indispensable
- (iii) If both the Houses disapproved or did not approve the proclamation, it must lapse at the end of the two months and the dismissed Government must be revived and the Legislative Assembly in the suspended animation be got reactivated,
- (iv) The proclamation under Article 356 was not immune from judicial review. It could be invalidated by the Court if challenged whether or not approved by the Parliament

# FINANCIAL EMERGENCY (ARTICLE 360)

- ❖ A proclamation of financial emergency can be issued if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India is endangered.
- ❖ Such a proclamation also will cease to operate at the end of two months unless before the end of this period, it has sought the approval of both the Houses of the Parliament.
- ❖ If the proclamation is made when the Lok Sabha is dissolved or dissolution occurs within two months of proclamation, it must be approved by Rajya Sabha within two months (that eventuality of dissolution cannot arise in the case of Rajya Sabha as it is a permanent House) and by the newly elected Lok Sabha within thirty days of its first sitting. In case, Lok Sabha does not approve it, the proclamation ceases to operate.

# CONSTITUTIONAL CONSEQUENCES

- ❖ When the proclamation is in operation, the Union Government may give such financial direction to the State authorities as it deems fit.
- ❖ Salaries of the Union officers as well as that of the State officers, including judges of the Supreme Court and High Courts may be ordered to be reduced.
- ❖ All money bills after they are passed by the Legislature of a State may be required to be reserved for President's assent. The President may adopt any other measures for the restoration of the country's financial stability.

# CONCLUSION

- ❖ In the three types of emergency like national, state or financial all powers are concentrated in the hands of the Union Government. The emergencies make our fundamental rights less meaningful.
- ❖ On the other hand, the justification of emergency provisions lies in the fact that when the existence of the State itself is in danger due to external attack or internal disturbance or financial instability, the Union Government must be armed with full powers to avert or meet that danger. And it is well that, at such a time, the restraints are placed on the good of the individuals in the safety and security of the State and the State is not bothered by judicial interferences.
- ❖ However, these powers should never be misused to meet out the political ends of the party in power. This can be checked by strong public opinion and democratic forces which are essential for the success of our federal-cum-parliamentary democracy.

THANK YOU !