



An Analytical Study about the State Emergency in India

Monika Singh

Researcher Scholar of OPJS University, Churu, Rajasthan

Dr. Kailash Kumar

Assistant Professor, UILMS Gurgaon

ABSTRACT

The concept of emergency has been borrowed by Germany and laid down in part XV111 of the constitution. This research paper deals with state emergency Article 356 which has been the most debated part of the constitution and has gone through controversy related to proclamation of the Presidential Rule in the states on the basis of Governor's report or even without it. A brief case study of the leading case law along with it explanation related to national and financial emergency has been defined to have the clear concept of the topic.

Introduction

A state of emergency in India refers to a period of governance under an altered constitutional setup that can be proclaimed by the President of India, when he perceives grave threats to the nation from internal and external sources or from financial situations of crisis. Under the advice of the cabinet of ministers and using the powers vested in him largely by Part XVIII of the Constitution of India, the President can overrule many provisions of the constitution, which guarantee fundamental rights the citizens of India and acts governing devolution of powers to the states which form the federation.

The President can declare three types of emergencies:

- National emergency
- State emergency
- Financial emergency

According to BRYCE “federal government means weak government because it involves a division of power. Every modern federation however, has taught to a boy this weakness by providing for the assumption of larger power by the federal government. Whenever unified action is necessary by reason of emergent circumstances internal or external. But while in countries like the U.S. this expansion of federal power takes places to the wisdom of judicial interpretation. In India the constitution extra ordinary powers upon the union in case of different kinds of emergencies.

Black regulation’s dictionary defines emergency “as a failure of social gadget to supply reasonable situations of lifestyles”¹. The term emergency can be defined as “situations bobbing up all of sudden that calls for immediate action by means of the public government below the powers specifically granted to them”.² Dr. B.R Ambedkar claimed that the Indian Federation was particular as in the course of the instances of emergency it is able to convert itself into a completely unitary gadget. In India, the emergency provisions are such that the charter itself permits the federal government collects the strength of unitary government each time the situation needs.

National Emergency

Article 352 states that if the president is appeased that a grave emergency exists whereby the security of India or any part of India is threatened, either by war or external aggression or armed rebellion, he may make the proclamation of emergency in respect of whole of India or any part of India as may be specified in the proclamation. The proclamation of emergency made under clause (1) may be varied or revoked by the president by a subsequent proclamation. A proclamation of emergency can be made even before the actual occurrence of event contemplated in article 352 has taken place if the president is satisfied that there is imminent danger of war or external aggression or armed rebellion. Thus actual occurrence of the event mentioned in article 352 is not

¹http://www.constitution.org/cs_legal.htm (last assessed on 2 Jan 2018)

²https://www.researchgate.net/publication/311992714_Dr_Babasaheb_Ambedkar_Model_of_Federalism_it_is_differnt_from_Indian_Federalism (last visited on 2 Jan 2018)

essential .an imminent danger of war or aggression or armed rebellion is enough for the proclamation of emergency.

The president shall not issue proclamations under clause (1) or a proclamation varying such proclamation unless the decision of the union cabinet that such a proclamation may be issued has been communicated to him in writing. This means that the emergency can be declared only on the concurrence of the cabinet, and not merely on the advice of the prime minister.

State Emergency

Center duty to protect state article 355 casts a duty on the union government towards the states and it is in the fulfillment of this duty that the center is authorized to interfere in the administration of the affairs of the state. However article 355 is not an independent source of power for interference with the functioning of the state government. It merely provides justification for the measures to be adopted by the center under article 356 and 357.

This backgrounder will deal with democratic accountability, human rights and the rule of law during states of emergency.

Failure of Constitutional Machinery in State – President Rule instate (Article 356)

Article 356 provides that “the president either on receipt of a report from the governor of a state or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on the accordance with the provisions of this constitution, he may make a proclamation of that effect”

Duration of the proclamation issued under article 356 clause 3 of article 356 requires that every proclamation issued under articles 356(1) shall be laid before each house of parliament. It is with the view to afford an opportunity to parliament to approve the action taken by the executive in regard to the situation prevailing in the concerned state without the approval by the house of parliament a proclamation relating to state emergency can continue in operation only for two months from the date it is made by the president.³

If before the expiration of the said period of 30 days a resolution approving the proclamation has been passed by the house of the people, the proclamation so approved shall, unless revoked earlier cease to operate on the expiration of 6 months from the date of the issue of the proclamation.

³<http://www.constitution.org/cons/india/p18356.html>(last visited on 5 Jan 2018)

Prior to the 44th amendment 1978, the proclamation so approved could continue in operation for 1 year from the date of passing of the 2nd of the resolution approved the proclamation. Originally the proclamation could continue in operation for 6 months from passing of the 2nd resolution approving the proclamation. “The word 6 month” was substituted by 1 year by the 42nd amendment 1976 which is applicable after the 44th amendment 1978.⁴

The maximum for which a proclamation can remain in operation is 3 years from the day it is issued under clause (1) of the article 356.

Legislative History

Section 45 government of India act 1935 provides for the failure of constitutional machinery for the federation and section 93 provides for the federation and section 93 provides for such failure in the provinces.⁵

Section 45 Power of governor general to issue proclamation.

Section 93 was mutandis (used when comparing two or more cases/situation making necessary alteration while not affecting the main point at issue the same except the governor of the provinces were substituted for the governor general and the government of province was substituted for the government of the federation.

In government of India act section 45 and 93 were enacted because one section of the congress party declared its intension to enter the legislature only in order to check them from within since that act fell fareshoot of the parties in demand for the self-government.

Sarkaria Commission Report

Centre –state relation is the subject of controversy. Over dominance of the center was the main area of attack. In 1960s ARC headed by M.C.Setelvadwas appointed to look into it. The ARC recommended for delegation of more powers – financial as well as administrative powers to the states. On Sept. 22, 1969 the Tamil Nadu govt. constituted Rajamannar Committee to examine the relation between centre and states to suggest suitable amendments to the constitution so as to

⁴http://shodhganga.inflibnet.ac.in/bitstream/10603/114824/4/04_chapter%201.pdf (last visited on 5 Jan 2018)

⁵<http://www.legalservicesindia.com/article/article/emergency-provisions-effects-and-impact-1769-1.html>(last visited on 6 Jan 2018)

secure more autonomy to the states (submitted report 1971). The central government completely ignored the committee's report as it was set up by a state.

Sarkaria commission was set up by Mrs. Indira Gandhi's government in 1983 to review the centre-state relations and recommend changes if necessary within the existing set up. The commission submitted its report in 1988 in two parts – the first part the main report & second part, the memoranda of the state governments & political parties.

This commission was mainly set up to review the working of the existing arrangements between the union & states in regard to powers, functions & responsibilities in all matters and recommend such changes or other measures as may be appropriate. In doing so the commission has to keep in view the social & economic developments that have taken place over the years. The commission also give due regard to the scheme & framework of the constitution. And was also formed to protect the independence & ensure the unity & integrity of the country for promoting the welfare of the people.

It made a number of recommendations in various spheres. They are as follows–

1. Legislative Relations

- a. Legislation regarding the creation or abolition of a Vidhana Parishat in a state by the parliament as desired by the resolution of the state assembly within a reasonable time.
- b. In the concurrent list, if the Union governments propose to make a law, it shall consult the state government & Inter- governmental Council.
- c. Residuary power regarding taxation should remain in the concurrent list⁶.

2. Administrative Relations

In the event of non- compliance of the Unions directions by a state, sanctions issued under Art. 365 should be used as a last resort. Prior to its use, all efforts should be made to settle conflict by all available means.

⁶ <https://www.outlookindia.com/magazine/story/key-recommendations-of-the-sarkaria-commission/209702>(last visited on 7 Jan 2018)

3. Role of the Governor

- a. Art.155 should be amended so as to ensure effective consultation with the CM before the selection of a person for governor's post.
- b. The vice-president of India & speaker of Lok Sabha may be consulted by the PM in selecting a governor.
- c. A politician in the ruling party at the union level should not be appointed as the governor of a state, if there is a different party in power at the state level.
- d. Governors tenure should not be disturbed for 5 years & as a matter of convention he should not occupy any other position after his retirement.
- e. The governor should appoint the CM guided by the following principles –
 - i) Leader of the majority party or parties,
 - ii) Should seek the vote of confidence in the assembly within 30 days of his appointment as the CM.,
 - iii) As long as the council of ministry possesses a majority in the assembly he cannot use his discretionary powers.

4. Reservation of Bills By Governor For Presidents Consideration

Needless reservation of bills for presidents consideration should be avoided(Art.200). He should not act contrary to the advice of his council of ministers even if he does not like the policy embodied in the bill. President could with-hold assent to the bill only if it subverts the constitutional system. Governor's assent should not be with-hold on the ground that the union is contemplating to legislate on it in future.⁷

5. Promulgation of Ordinance

- a. The state governments should give up the practice of repeated promulgation without trying to get it passed by the legislature.

⁷

<http://www.pompeicollege.in/pdf/ba-iird-sem/RECOMMENDATIONS%20OF%20SARKARIA%20%20COMMISSION%20ON%20CENTRE-STATE%20RELATIONS.pdf> (last visited on 7 Jan 2018)

b. The decision to promulgate ordinances should be based on the collective decision of the Union Council of ministers

6. Emergency Provision

a. Art. 356 should be used very rarely as a measure of last resort, only when all available alternatives are used.

b. Unless the proclamation of State Emergency is approved by the Parliament the governor should not dissolve the assembly.

c. The facts and grounds on which state emergency proclaimed should be an integral part of the proclamation.

7. All India Service

The Commission understands the need of the All India Services in maintaining the unity of the country. It discouraged the move to disband All India Services in any state. It encouraged the strengthening of the All India Services in order to play a greater role in improving the efficiency in administration.

8. Inter-Governmental Council (Art.263)

It recommended for setting up permanent Interstate Council or Inter- governmental Council to discuss subjects of common interest to all states. It recommended for constituting Zonal Councils under Art. 263.

9. Financial Relation

In order to raise the resources from agricultural income political consensus should be forged to levy tax in consultation with National economic and development council. The net proceeds of Corporation Tax should be shared with the states. The surcharge on Income Tax should not be levied except for a specific purpose that too for a limited period.

10. Social & Economic Planning

It recommends many measures to improve the working of Finance Commission, Planning Commission & National Development Council. It recommends for decentralization of planning process in order to improve efficiency.

11. Views Regarding Changes in the Constitution

It felt that drastic changes are not required in the constitution and the amendment process is sufficient to meet the changes and adjust itself. It is neither advisable nor necessary to make any drastic changes in the basic character of the constitution. Thus, its recommendations are well balanced and very much in accordance with the spirit of the constitution so as to ensure the unity and integrity of the country.⁸

There are some examples of such situation in which the provision of Article 356(1) ought not to be invoked, these are as follows

- I. A situation of mal-administration in the state where a duly constituted ministry enjoying majority support in the assembly, is in office.
- II. Where a ministry resigns or is dismissed on losing its majority support in the assembly and the governor recommends the position of the president's rule without exploring the possibility of installing alternative government enjoying such support or ordering fresh elections.
- III. The governor decline to dissolve the assembly on the advice of duly constituted ministry without giving it an opportunity to demonstrate its majority support to the "floor test" where article 356 is sought to be invoked by dissolving the state legislative assembly on sole ground that in general election in lok sabha that ruling party in state has suffered a massive defeat.
- IV. Where in a situation of internal disturbance not amounting to abdication (abstain) of its government power by the state government power by the state government all possible

⁸<https://academy.gktoday.in/article/sarkaria-commission-recommendations-summary/> (last visited on 7 Jan 2018)

measure to contain the situation by the union in discharge of its duty under article 355 have not been exhausted.

- V. The use of the power under article 356 will be improper if the president gives no prior warning or opportunity to state government to correct itself. Such a warning can be dispensed with only in the cases of extreme urgency.
- VI. When response to the prior warning or notice under article 256, 257 etc the state government complies with the directives or direction was based on income fact, article 356 cannot be properly invoked.
- VII. The use of power to shortout intra party problems.
- VIII. Article 356 cannot be evoked on the sole ground of stringent, financial exigencies of the state.
- IX. No application of the power merely on the ground that are serious allegation of corruption against the ministry.
- X. The exercise of power under article 356 for a purpose extraneous or irrelevant to the one for which it has been conferred by the constitution. The Supreme Court has concerned broadly with the above illustration occasion where the exercise of power under article 356(1) would be improper and uncalled for article 356 of the constitution has been invoked. Since the commencement of the constitution for not less than 100 times, but in many cases president rule was imposed inspite of majority support of ruling part in the assembly; which is not good for Indian democracy and federalism.

Proclamation of Emergency

⁹Article 356 and 357 provide for meeting a situation arising from the failure of the Constitutional machinery in a state.

“If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation

(a) Assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State;

⁹http://racolblegal.com/emergency-provisions-history-types-and-duration-in-india/#_ftn18(last visited on 7 Jan 2018)

(b) Declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be 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 this Constitution relating to anybody or authority in the State.

¹⁰A state emergency is declared on failure of constitutional machinery in a state. Every state in India except two states, Chhattisgarh and Telangana has been under a state of emergency at some point of time or the other. The state of emergency is commonly known as 'President's Rule'.

If the President is satisfied, based on the report of the Governor of the concerned state or from other sources, that the governance in a state cannot be carried out according to the provisions in the Constitution, he may declare an emergency in the state. Such an emergency must be approved by the Parliament within a period of two months.

It is imposed for an initial period of six months and can last for a maximum period of three years with repeated parliamentary approval every six months. The 42nd amendment act of 1976 extended the initial time duration of state emergency from 6 months to 1 year. Subsequently, 44th CAA 1978 restored the 1-year period back to 6 months. Originally, the maximum period of operation of state emergency was 3 years. This 3-year period was divided into 1 year of ordinary period and 2 years of extra ordinary period for which certain conditions are to be fulfilled. Therefore, from now on after every 1 year Parliament needs to approve the same. If the emergency has to be extended for more than three years, it can only be done by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir.

During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. the Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list (see National emergency for explanation). All money bills have to be referred to the Parliament for approval. In this occasion ministers of state legislature do not perform actions in state.

Article 356 and Article 357 provide for meeting a situation arising from the failure of the Constitutional machinery in a State.¹¹

It is the duty of the Union Government to ensure that governance of a State is carried on in accordance with the provisions of the Constitution. Under Article 356, the President may issue a proclamation to impose emergency in a state if he is satisfied on receipt of a report from the Governor of the State, or otherwise, that a situation has arisen under which the Government of the State cannot be carried on smoothly. In such a situation, proclamation of emergency by the

¹² President is called 'proclamation on account of the failure (or breakdown) of constitutional machinery.' In popular language it is called the President's Rule. Like National Emergency, such a proclamation must also be placed before both the Houses of Parliament for approval. In this case approval must be given within two months; otherwise the proclamation ceases to operate. If approved by the Parliament, the proclamation remains valid for six months at a time. It can be extended for another six months but not beyond one year. (Provision to Article 356(4)).

However, emergency in a State can be extended beyond one year if (a) a National Emergency is already in operation; or if (b) the Election Commission certifies that the election to the State Assembly cannot be held.

¹³ The declaration of emergency due to the breakdown of Constitutional machinery in a State has the following effects:

- (i) The President can assume to himself all or any of the functions of the State Government or he may vest all or any of those functions with the Governor or any other executive authority.
- (ii) The President may dissolve the State Legislative Assembly or put it under suspension. He may authorise the Parliament to make laws on behalf of the State Legislature.
- (iii) The President can make any other incidental or consequential provision necessary to give effect to the object of proclamation.

¹¹Report of Sarkaria commission- 1975

¹²Indian Constitutional Law- Prof. M.P.Jain, LexisNexis -Sixth Ed., p 762 , para 7

¹³<https://lexkhoj.files.wordpress.com/2015/08/emergency-provisions-under-the-coi.pdf>

Financial Emergency

The Financial Emergency provided under Article 360. It provides that if the President is satisfied that the financial stability or credit of India or any of its part is in danger, he may declare a state of Financial Emergency. Like the other two types of emergencies, it has also to be approved by the Parliament. It must be approved by both Houses of Parliament within two months. Financial Emergency can operate as long as the situation demands and may be revoked by a subsequent proclamation. So far, fortunately, financial emergency has never been proclaimed

The proclamation of Financial Emergency may have the following consequences:¹⁴

- (a) The Union Government may give direction to any of the States regarding financial matters.
- (b) The President may ask the States to reduce the salaries and allowances of all or any class of persons in government service.
- (c) The President may ask the States to reserve all the money bills for the consideration of the Parliament after they have been passed by the State Legislature.

S.R. Bommai v Union of India on 11 March, 1994

The instance of S. R. Bommai v. UOI is a historic point case in characterizing the forces of the Center as for Art 356 of the Constitution that arrangements with crisis arrangement where the President can force his run over the State. The Center State relationship and its productivity had been managed in a superior way for this situation.

Numerous reports proposed certain proposals on the smooth working of the same with no contentions. The suggestions depended on (1) Administrative Reforms Commission 1969; (2) Rajmannar Committee 1969; and (3) Sarkaria Commission 1987. 918, 1994 SCC (3)1

Facts

The Governor of Karnataka had answered to the President that there were disagreements and rebellions in the current decision party as nineteen letters were sent to him by the board of pastors from pulling back their help. He likewise expressed that on the withdrawal of the help in the decision party, the Chief Minister (S. R. Bommai) additionally neglected to bring in for larger part

of get together, which is wrong under the Constitution. Thus the State is to be controlled by the Center.

It was seen that seven out of the nineteen officials have grumbled about distortion in their separate letters and consequently, the Chief Minister and the Law Minister met the Governor that day to summon the Assembly to demonstrate the certainty of gathering in his legislature. The same was sent to the President through wire message. Be that as it may, on the extremely same day, Governor has sent another report expressing that the Chief Minister has lost certainty of most of the House and asked for President's Proclamation under Art 356 and in the long run the same was allowed. A writ appeals to was recorded testing the legitimacy of the Art 356 of the Constitution.

Content Analysis

The perspectives that were put into test are the government idea of our Constitution; and to what degree is Art 356 legitimate and assuming this is the case, regardless of whether it can be liable to legal audit. A nine seat judge gave seven sentiments for this situation. President's Rule in specific states was held to be in infringement with the Constitution and in the long run reestablished its unique position. Be that as it may, new decisions had officially occurred and the resulting new Governments were introduced.

The Court, in its seven conclusions has given what the government idea of the Constitution of India is. They have additionally focused on that the utilization of the standard of a Federal State of American Constitution would delude on the Indian Constitution. The idea of Federalism can't be followed in its strict sense in India. The second dispute is whether a President's Rule can be subjected to legal survey. It was seen that the nine Judges in their sentiments has given that there is no mischief in Art 356 been put to legal audit. There are arrangements visualized in the Art for the President to fulfill.

In spite of the fact that the fulfillment is subjective, they depend on the target certainties thus legal audit is allowed. In any case, the parameters in which legal audit can be carried on varied from one supposition to other. They have a couple of aloof natures with regards to the enlarging the extent of legal audit and narrowing it down. Further, it was said that summoning Art 356 of the Constitution is the final resort control in the hands of the President.