



Emergency Provisions And The Inter Play Of Centre State Relations Under The Indian Constitution

*Binitha Ajith, LLM Student, School of Law, Christ Deemed To Be University, Bangalore.

Abstract

Even though Indian constitution features for a federal government, due to the changes that happened over decades to various provisions in the constitution, there posed some danger to this definition and is disrupting its functioning. This paper mainly deals with emergency provisions enshrined in the Indian constitution .It looks into the impact of emergency provision on the federal structure of the government and its effect on the state autonomy. The centralizing tendency of the emergency provisions of the Indian constitution is mainly being looked into by this paper and it goes through the constitutional foundation that is established by the makers of the constitution that provided the government with some extraordinary power in order to deal with the situations arising during the time of any crisis. Moreover, it also looks into the potential threats posed by this emergency provisions and the misuse of these provisions by the executive and its effect on the national integrity, individual liberty and balance of the power between the centre and state. The paper also delves into the new safeguards to prevent the misuse of the provision relating to emergency has been brought under the constitution by the 44th amendment of the Indian Constitution. It discusses the situation prior to 44th amendment and also the current situation which ensures the prevention of misuse. Through this paper, it identifies the instances of misuse of the emergency provisions and also the instances where these power has been exercised for the political advantage instead of looking into the and addressing the danger posed to the nation. This paper also explores into various judicial pronouncements and the judicial perspective towards this matter. It also looks into the justiciability of the proclamation of emergency by the president that whether the order passed by the president by declaring emergency can be subjected to judicial review of the court. This paper also realizes the essentiality of the checks and balances system so that there will be no abuse of these powers.

Keywords : *Emergency , federalism , misuse of power , safeguards , judicial review*

I. Introduction

One of the most important feature of the Indian constitution is the ability of the normal federal Constitution to be adapted to an emergency situation. We can say without any shadow of doubt that it is the merit of our Indian Constitution that it can picturize situation when the strict application of the principles of federalism might affect and destroy the basic assumptions upon which our constitution is set up. Emergency provisions enshrined in the Indian constitution is one of the feature that converts the federal form of government into a unitary form of government according to the situation. This is a distinct characteristic of our Constitution and the reason behind the addition of such a provision in the constitution is to safeguard and secure its other pillars like unity, integrity, sovereignty and security of the country. If we look into other federal constitutions of the world we can see that they are all bound by the concept of federalism, except in India. This means that those federal constitutions had not allowed to change the

form of government from federal to unitary form of government with respect to the change in circumstances in the nation but in India it is not so and it had permitted such a change in order to protect, secure and safeguard its citizens. The emergency provisions are undoubtedly attacked by most of the constitutional critics. Dr. B.R. Ambedkar had even accepted the fact that there is a threat to these provisions being misused while defending the emergency provisions in the constituent Assembly. To quote him, "I do not altogether deny that there is possibility of the articles being abused or employed for political purpose". During the time of debate regarding these provisions the constituent Assembly has witnessed most dramatic scenes. These provisions were denied by many members of the constituent Assembly but majority were in support of the emergency provisions.

II. Research Questions

1. What is the extent to which the emergency provisions centralize power during the emergency situation and what is the impact on the state autonomy?
2. What are the safeguards that are provided in order to prevent the misuse of the emergency powers against the state governments?
3. What is the role played by judiciary in safeguarding federal principles at the time of emergency and how has it interpreted and applied emergency provisions?
4. What reforms have been made to the emergency provisions to address the issues concerned with centre state relations?

III. Research Objectives

1. To analyze the historical evolution of emergency provisions in the Indian Constitution and their impact on the relationship between the central and state governments.
2. To examine the constitutional framework governing emergency provisions and its implications for federalism and state autonomy in India.
3. To identify challenges and controversies surrounding the invocation and implementation of emergency provisions and their implications for democratic governance.
4. To contribute to the scholarly discourse on federalism, constitutional law, and emergency governance by providing a comprehensive analysis of the interplay between emergency provisions and centre-state relations in India.

IV. Significance Of The Study

The interplay of centre state relations in Emergency provisions holds paramount significance on the nation's constitutional values and principles. Analyzing their usage and impact contributes to the ongoing discourse on constitutional integrity and the rule of law. It helps in evaluating the resilience of the constitutional framework in times of stress and provides opportunities for strengthening constitutional safeguards against abuse of power. The relationship between the central government and state governments is foundational to political stability and effective governance. This study on emergency provisions provides insights into how crises impact this relationship and also helps in identifying shortcomings and areas of improvement in existing emergency mechanisms, wherein policymakers can develop more effective strategies for responding to emergencies while upholding democratic values and decentralization of power.

V. Research Methodology

The research methodology adopted for the study is a doctrinal research. It involves an in-depth analysis of primary sources which includes legislations, precedents and secondary sources such as books and commentaries written by various authors. The research begins with a comprehensive study of the Indian Constitution looking into various articles relating to the emergency provisions and then focusing on the effect of the emergency provisions in the Constitution of India on the federal structure of the Constitution. The methodology also involves the scrutiny of various scholarly articles, relevant literature which are useful to the study. Through this doctrinal approach, the research aims to look into the impact of the emergency provisions on the state autonomy and also on the safeguards to prevent the misuse of the emergency powers enshrined in the Constitution of India.

VI. Literature Review

The Indian Union and Emergency Powers By Krishna K Tummala, International Political Science Review/Revue Internationale de science Politique 17,no 4(1996) pp 373-384: This paper deals with position of the governor and emergency powers. The author focuses two court decisions on dismissal of the state governments in Karnataka and also the state government of Madhya Pradesh and analyses it. The proclamation of emergency by President was challenged in these two cases. The court upheld the power of judicial review in these two cases. This paper observed that makers of constitution strived for a federal government but they were in fact surprised by how these powers were used by the federal government over the states.

Emergency Provisions and Union-State Relations in India by S.C.Dash, The Indian Journal Of Political Science 22, No1/2 (1961) pp 53-63: The author rejects the Indian version of federalism in this paper. He says that the emergency provisions in the Indian constitution provides for an overdose of centralism. He also says that it is very much a threat because the parties in union government may use these powers to overthrow the state government by superceding the opposition parties by using these provisions of the constitution. The author concluded by saying that the principles of federalism are being negated by the emergency provisions.

Emergency Provisions in Indian Consitution: A study in Comparative Analysis by B.C.Das, The Indian Journal of Political Science ,Apr-Jun 77, Vol. 38 , No.2 , pp 237-252: This article explains about the emergency provisions contained in the Indian constitution. The author through this article brings out the purpose for which such provisions has been included in the constitution which is for the preservation safeguarding and protecting the integrity of the constitution itself. The author states that the main reason behind such provision which centralizes the power is for defending the constitutional order and merely not for its destruction. Towards the end of this article the author also states that there is a wide scope of these provisions being misused and there is requirement for safeguards to prevent such misuse.

The Emergency in India : Background and Rationale by V.P Dutt, Asian Survey , Dec., 1976 Vol.16 , No. 12(Dec, 1976), pp 1124-1138: The author in this paper criticizes the opposition parties during the time of emergency in 1975. The author says that it was due to their own frustration that the opposition chosen anarchy to capture power. He also brings in the judgment of the Allahabad Court and shows his perspective as to the same by saying that it is one of the kind which contradicts itself. The author concludes this article by saying that the step taken by the then Prime Minister Indira Nehru Gandhi was infact needed to prevent chaos which was created intentionally by the opposition parties.

Misuse Of Emergency Powers In India And Nature Of Amended Institutional Safeguards By J.R. Siwach, The Indian Journal of Political Science , December 1979, Vol 40, No.4 (December 1979), pp 651-668: In this article the author mainly discuss about the various changes that had been brought about by the Constitution (44th amendment) act 1976. The author brings in the various safeguard that had been brought by the 44th amendment also. This article also deals with the structural weakness in the new safeguards provided under the constitution. It states that it is these weaknesses that paves a way towards the misuse of these emergency powers. The author concludes the article by saying that the proposed safeguards are not effective as they seem to be and also that we cannot rule out the chance of misuse in coming future also.

Justiciability of a Presidential Proclamation of Emergency under Article 352(1) of the Constitution By Vidushi Sanghadia , (2017) 12 NSLR, pp 69: In this article the author focuses mainly on the judicial review of the proclamation of emergency by the president under Article 352 and article 356 of the constitution of India. The author states the judicial decisions with respect to the review of proclamation of emergency under article 352 and article 356 have a combining effect and the author therefore argues that there is a requirement of two step review process for the proclamation declared. This article analyses as to such situation whether it is compatible for a democratic country like India and it also examines the American and Canadian approaches in this aspect.

VII. Emergency Provisions Under The Indian Constitution

The constitution of India provides for three different kinds of Emergencies. These are specifically national emergency, state emergency and the financial emergency. The power to declare emergency is in the hands of the President of India. The Indian Constitution under Part XVIII, from sections 352 to 360 enumerates the provisions as to emergency. These provision aids the union government to cope with any situation effectively.

National Emergency: Under Article 352(1) it states that “if the president is satisfied that there exists a grave emergency whereby the security of India or any part of India is threatened either by war or external aggression or armed rebellion, he may make proclamation of Emergency in respect of the whole of India or any part of India as may be specified in the Proclamation”. By a subsequent Proclamation the proclamation made by the president under article 352(1) may be varied or even revoked. The proclamation can be made even before the real happening of the circumstances mentioned in article 352(1) if the president is satisfied of the fact that there is an imminent danger of war or external aggression or armed rebellion. The President shall not issue the proclamation of emergency under article 352(1) unless the decision of union cabinet is communicated in writing to the president that such a proclamation be issued. The proclamation of emergency must necessarily be passed by the both houses of the parliament and it must be within one month that it should be passed.

State Emergency: Article 356 states that on a receipt of a report from the governor of a state or if the president upon his personal satisfaction that there is a failure of constitutional machinery in the state, then he may declare an emergency or issue a proclamation of the same. By this proclamation the president may assume all powers or any of the powers that are vested in the governor to anybody or any state authority to the president himself. The president cannot assume any powers that vested in the High court or he cannot suspend the working of any provisions of the constitution of India which deals with the High court. Here also the satisfaction of the president is not his personal satisfaction but that of the cabinet.

Financial Emergency: Article 360 of the Indian Constitution states that where the financial stability or credit of India or any part of the territory of India is threatened, and the president is satisfied that there has arisen such a situation he may make a declaration stating the proclamation of emergency. This proclamation has to be approved by the both house of the parliament within two months in order to be enforced in the country.

VIII. National Emergencies In India

India had three instances of national emergency being declared. The first national emergency was proclaimed when the Indo-China war was happening and it lasted for a period of six years (October 1962 - January 1968). It was on the ground of external aggression that the emergency was proclaimed. The war with China concluded in 1962 but there was another war that happened against Pakistan which started only after the emergency.

The second emergency was declared at the instance of the war between India and Pakistan (December 1975 – March 1977). This emergency was declared on the ground of external aggression. Even after the war has ended the emergency continued to exist. The third emergency was declared before the revocation of the second emergency.

The third emergency was declared under the ground of internal unrest. This was considered to be the most controversial emergency.

There has been 124 instances of the state emergencies which imposed the president's rule. It was during the time of Indira Gandhi's regime that maximum number of President's rule being imposed. There has been 35 instance of Presidents Rule during Indira Gandhi's Regime in various states.

Till now there has been no instances of Financial Emergency being imposed in India.

IX. Effect Of Emergency On Indian Federalism

The separation of power is a cornerstone principle in democratic governance and it has been very much deteriorated due to the emergencies. The Emergency provisions has been contained in Indian Constitution with an intention to provide the government with some extraordinary power at the time of crisis. These provisions are usually very much necessary and crucial for maintaining the stability and the security of the nation as they raise often issues on the potential centralization of the power. These provisions that are provided in the Indian Constitution is the most unique feature that permits the Union to assume vast powers to handle certain special situations. They gives the center the

power to curtail the fundamental rights of the citizens. The emergency provision enshrined in the Indian constitution provides power to the central government to acquire the features of unitary system and its strength at the time when the emergency situation demands. In a federal state the situation of emergency can often disrupt the fine balance that is held between the union and the state governments. Therefore the emergency situation results in centralization and it will become more pronounced since the central government will be assuming more power and control over various governmental aspects which would usually fall under the jurisdiction of states.

The consequences that are resulted from the proclamation of emergency also includes the centralization of the powers. Under article 353 of the Indian constitution it provides for the extension of the executive power of the Center. The Emergency proclamation when at the time of its operation extends the power of the executive of the center to provide for instructions and directions to any state with respect to the way in which how the state executive power is to be exercised. The emergency provision thus under this article grant power to the executive body for enacting law which is a legislative power and it moreover concentrates powers upon the executive body and lowers the necessary checks provided by the legislative and judicial body. Under this provision it also provides for the power of executive of the centre to give directions to the state. And it also gives power to the executive to create laws. This power extend to any state other than the state to which the emergency is in force .This occurs in the situation where the security of India or of any part of India is threatened by any activities which in or in relation to that part of the territory the emergency is in force or operation. In ordinary circumstances such an executive power does not vest upon the Centre except in certain situation. According article 354 of the Indian Constitution the center has power to make changes in the distribution of revenue that is between the center and the state.

Article 359 of the Indian Constitution provides for the suspension of the right to enforcement of Fundamental rights. It says about the power of the president to suspend the legal right of enforcement of fundamental rights under part III of the constitution of India. Here again the Union executive curtails the freedom of the citizens thus centralizing the power. Therefore under this article power to move to a court of law for the enforcement of fundamental right (except article 20 and article 21) is suspended. It also suspend during the period of proclamation of emergency, all proceedings which are pending for enforcement also. It is due to the presence of these provisions in the Constitution that the academicians are very much hesitant to call the Indian Constitution a federal constitution.

X. Impact On State Autonomy

The emergency provisions will affect the autonomy of the state severely at the time of crisis. But this is only for a short or limited period of time. This may arise due to armed rebellion or external aggression or if there is any breakdown of constitutional machinery of the state or due to any financial crisis. During the time when national emergency is declared the president has the power to take over the functions of the state by suspending the provisions that are concerned with the states. At this point of time the governor of the particular state will be acting as the instructor to the president.

During the time of state emergency (President's Rule) the president has got the power to dissolve the State legislative assembly and dismiss the government when the constitutional machinery of the state is broken down and it cannot be carried out efficiently. Here also during the period of President's Rule the governor will act as instructor to the President.

With respect to the financial emergency it states that if the financial emergency is declared it can affect the fiscal autonomy of the state. The president has got the power to issue directions to the state to look into the financial propriety of the state.

The Emergency provisions had a great impact on the state autonomy. It allows the union government to take into its jurisdiction and handle the functions of the state. This done by suspending the various provisions of the Constitution. Such an exercise of power affects the balance between the strong union government and state autonomy in a federation.

XI. Misuse Of Emergency Powers And Safeguards To Prevent It

The provisions with respect to the emergency should have to be used only when the situation is too critical and only in rarest of the rare situation. The president's rule was established in our nation many times. This came into force either due to any political reasons or due to individual reasons. The power that is given to the president has been used by him for their own political benefits and not for any public security or for public welfare. In this background Article 356 is one of the most controversial arrangement in the Indian Constitution. It was subjected to greater misuse.

The 42nd amendment had made efforts to prevent the misuse of the Article 356. It seeks for alteration in the provisions concerned with emergency. This includes that the power to make proclamation vest in parliament, it should be approved by two-third of total membership and also three-fourth be present and voting, it should be reviewed and approved every six months, circumstances which results in the proclamation should be subject to judicial review and lastly it should be made only on the ground of armed rebellion but not on the ground of internal disturbances alone.

The 44th constitutional amendment however modifies under Article 352 and 356 the emergency safeguards as follows:

1. The term armed rebellion was introduced in the place of internal disturbances which was vague.
2. The Cabinet shall in writing give the advice to the President with respect to the proclamation of emergency. The president can send back the advice that is given in writing for reconsideration by the council of ministers. But the President has to act in consonance with the reconsidered advice.
3. The emergency proclamation needs to be approved by both houses of parliament by special majority. It requires that each house of the parliament by a majority of total membership of that particular house should approve the proclamation and also not less than two-third of the member present and voting. Earlier it required only a simple majority to approve the proclamation.
4. The Proclamation of emergency ceases to operate at the expiration of One month. This is when unless before the period of expiry, both the houses of parliament has approved it by a resolution.
5. Once the proclamation of emergency is approved by both houses of the parliament then it will remain in force for a period of six months. Also the proclamation may be extended to a further period of six months if it is approved by both houses of the parliament. Earlier there was no such provision for a periodical approval and extension of national emergency.
6. Also it has been for the very first time provided the provision for disapproving a proclamation by the members of the Lok Sabha. The ten percent or more members of the parliament can requisition a meeting of the Lok Sabha. This requisition will be for considering the bill for disapproving the Proclamation.
7. Earlier it was such that at the time of emergency the executive has got the power to suspend all fundamental rights including Article 20 and article 21 but now it has been said that all fundamental rights except Article 20 and Article 21. In *A.D.M. Jabalpur vs. Shivkant Shukla* which is also known as the habeas corpus, the majority found that, in light of the presidential order, no one has a legal right to file a petition under article 226 for the enforcing the fundamental rights. This is applicable even if the order was malafide, unjust, or illegal, or based on any extraneous considerations. However the 44th amendment has laid down that law in habeas corpus case is no longer a good law.

XII. Weakness Of New Safeguards

The 44th amendment of the Indian constitution has tried to bring in certain safeguards in order to prevent the misuse of emergency powers. But there are some structural weakness in these safeguards also.

(a) Armed Rebellion: The replacement of armed rebellion for internal disturbance was a good move but the term armed rebellion has not been defined anywhere for example, participation as to the total number of rebels that would participate so as to constitute armed rebellion. Also it doesn't say anything about the usage of what kind of arms would amount to armed rebellion. There may be situation where armed rebellion breakout only in some part of the country, at that time issue of why an internal emergency should be declared for the entire country, it could have made provision for imposing emergency in that particular state only. So it can reduce the possibility of any misuse of these emergency powers. In Indian Constitution, council of ministers can impose emergency for whole of the nation. This is possible even if armed rebellion is only in a particular area.

(b) Advice of cabinet to the president in writing: The present safeguard provides for a written advice from cabinet to the president in the matter of proclamation of emergency which may be send back by the president for reconsideration by the cabinet, but once after reconsideration the president is entitled to act accordingly. Here the question is as to whether it is a sufficient safeguard misuse. This provision which requires the consultation of cabinet and Prime Minister alone, without consulting its cabinet colleague yet cannot be a guarantee against the misuse of the emergency provision. Also this provision does not make it clear with respect to upon what grounds there can be an advice be given for imposition of emergency

(c) Proclamation approved by special majority: Approval of Proclamation should be by a majority of total membership of each house of parliament. This must be by two third majority present and voting. But here the problem is it does

not anywhere points out what is the meaning of total membership and also about the meaning of two third majority of members present and voting. Therefore it has been interpreted differently by different authors.

XIII. Judicial Perspectives In The Realm

The proclamation of emergency is made by the president only if the president is satisfied that there exists a situation where the security of India or any part is threatened. Now the question is whether the satisfaction is personal or not, how president become satisfied, whether the proclamation is subject to judicial review by the court.

Under article 356 the president's satisfaction is based on the report of governor of state. The governor plays an important role in changing the nature of government by using the emergency provision. In *State of Rajasthan vs. Union of India* the Supreme Court said that the challenge to the satisfaction of the president under article 356 could only be raised under two necessary grounds. They are (i) the president's satisfaction is malafide and it is wholly based on extraneous grounds and (ii) Satisfaction of the president violated certain provisions of the constitution. It was also suggested that there should be a healthy convention such that power under article 356 is not exercised arbitrarily.

S.R. Bommai vs. Union of India is the one of the most important and landmark judgment in the area of centre state relations. In this case the extent of judicial review of proclamation by president was considered and decided by the court. It was held that article 356 is an extreme power. It should be used only as a last resort and at the time when there is a collapse of states constitutional machinery. This was a case where arbitrary dismissal of state governments were put to an end. The power to dissolve the state legislative assembly could be used only as a last resort where it is actually a need of the time.

In *Minerva Mills vs. Union of India*, the Supreme Court ruled that there is no obstacle to judicial review of the president's proclamation of emergency under Article 352(1). But there is limitation on the authority of court to determine the whether constitutional limitations have been observed or not. The validity of the satisfaction of the president can also be determined by Judicial review. If the satisfaction is founded on false, ridiculous, or irrelevant premises, it is invalid.

XIV. Analysis

The Emergency measures in the Indian Constitution is like a two-edged sword. They are necessary for the federal government in order to safeguard the nation's integrity and sovereignty during times of crisis, but they are also a cause of friction in center-state relations if not employed wisely and in conformity with constitutional norms. The cautious and prudent application of these regulations is critical to maintaining India's sound and cooperative federal system. While these rules are intended to address unusual circumstances, their potential abuse or arbitrary application might result in disagreements and political difficulties. The central government's action during emergencies is frequently viewed by state governments as a breach of their autonomy. Also the chance for the misuse of emergency provisions is quite large that it is required to mitigate it. For that it is essential to make certain that the reasons for declaring an emergency are properly established and strictly followed, increase the role of the judiciary in determining the legality of emergency declarations, to encourage transparency and accountability in the emergency declaration decision-making process and also encourage a cooperative federalist culture in which the federal government and the states collaborate to handle concerns and challenges.

XV. Conclusion And Suggestion

The emergency provisions are critical in reacting to situation of emergencies and safeguarding a nation's security and stability. During emergencies there will be a shift in power from the state to that of the central government. It is an impact on the federal structure of the nation. The level to which these laws centralize power, on the other hand, is an important matter regarding the well-being of a democracy. It is critical to strike a balance between facilitating the government to respond to emergencies and protecting democratic norms. To prevent an unwarranted concentration of power and maintain the foundations of democracy, nations must carefully draft emergency provisions subject to stringent checks and balances. There should be checks and balances such that there will be no misuse of these emergency powers and thus protecting the federal structure of the government. There should be an appropriate control

structure be established in order to ensure that any power is restricted within constitutional scope in the case where power implementation results in the violation of fundamental rights of individuals during the emergency. While conducting research it was analyzed that these provisions were all present in the constitution so as to ensure welfare of the individuals and the security and stability of the state. While recognizing the need for emergency provisions we should also believe in the system of checks and balances should also be implemented such that there will be no abuse of these powers. Furthermore, to prevent and remedy misuse of these rights, vigilant citizens, an independent judiciary, and robust constitutional safeguards are required.

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