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Topic- Constitution and Emergency Powers of the Indian President

Constitution and Emergency Powers of the Indian President

The Constitution deals with the emergency powers of the President which can be discussed under three distinct heads.

(a) Emergencies caused due to war, external aggression or internal commotion or threat thereof.

(b) Emergencies arising owing to the failure of constitutional machinery in the States.

(c) Financial Emergency.

1. 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 thereof or to vary or revoke it and thereby make modifications in his order issued earlier in this regard.

(a) Constitutional Consequences of the Proclamation:

(i) The Parliament will be vested with unlimited power to make laws for the whole or any part of India with regard to any of the matters enumerated in the State List. Laws so passed shall cease to have effect six months after the expiry of the proclamation of emergency.

(ii) If any law passed by the State Legislature is inconsistent with similar laws passed by the Parliament, it will be void to the extent of inconsistency.

(iii) During the period of emergency, if the Parliament is not in session, the President is empowered to issue ordinances regarding matters included in the State List.

(iv) The Parliament can extend its own life for a period not exceeding one year at a time. Such an extension of its term is not to last beyond six months, after the expiry of the proclamation.

(v) The Parliament under its extended jurisdiction during this period is empowered to make laws and confer powers and impose duties upon the Government of India and its officers, in order to carry out these laws.

(vi) The President during this abnormal period may by his order modify the provisions relating to distribution of revenues between the Union and the States in order to secure adequate revenues for the Government of India to meet baffling situation created by emergency. Such orders are required to be laid before both the Houses of Parliament. They are not to be valid beyond the financial year, in which the proclamation of emergency ceases to operate.

(vii) The right to freedoms guaranteed by Article 19 of the Constitution stands suspended. The laws and executive actions in contravention of this right during this period of emergency are authorized temporarily.

(viii) The President is authorized to suspend the “right to constitutional remedies” which is incorporated in the Constitution to protect Fundamental Rights.

In other words, the enforcement of any of the above Fundamental Rights by the courts may be suspended, when the emergency proclamation is in operation. It is required to be laid before each

House of Parliament, 'as soon as may be, after the said proclamation is made'.

Since the Constitution does not fix any time limit for the order to be laid before Parliament, it depends upon the President to determine when the order is to be laid before the Parliament. In a judgment delivered by the full Bench of the Supreme Court in Mohammad Yakub and others case the President of India's right to suspend the enforcement of "any" or all of the Fundamental Rights by an order under Article 359 when Proclamation of Emergency was in operation has been acknowledged. This judgment contravened its own earlier judgement delivered in Ghulam Sarwar's case and further widened the powers of the President during emergency.

(b) Emergency in Operation:

Such a state of Emergency has been thrice at work so far. For the first time it was declared by the President of India 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.

(c) 44th Amendment Act and Safeguards against Emergencies Power:

The 44th Amendment Act of 1978 proposed several safeguards to prevent abuse and misuse of provisions concerning internal/external emergency. The proclamation can be issued only when security of India or any part of its territory is threatened by armed rebellion. Secondly emergency will be declared only on the written advice of the Cabinet.

Thirdly, the declaration of the emergency by the President without the approval of the Parliament can remain in force for one month. Thus the period of two months which was formerly required for such approval was reduced to one month.

Fourthly, the approval of the Parliament shall require adoption of the resolution in each House by absolute majority of the whole House and 2/3 majority of the members present and voting.

Fifthly, the extension of duration in one instance cannot be of a period of more than six months. However, no maximum time limit has been fixed.

Sixthly at least 1/10th members of the Lok Sabha may requisition a special session to reject the continuance of the proclamation. A special sitting of the House will take place within 14 days of the receipt of notice addressed to the Speaker.

Seventhly, such a proclamation is revokable or variable by a subsequent proclamation. The Act made a special provision guaranteeing the right of the media to report freely and without censorship of the proceedings in the Parliament and the State Legislatures. Thus the rights to life and liberty have been put on more secure footing.

2. Emergency Due to Failure of Constitutional Machinery in a State:

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 as regards administration of Union matters As a matter of fact, Article 355 imposes on the Union Government the duty to

protect every State against external aggression or internal disturbance and to ensure that the Government of every State is carried on according to the provisions of the Constitution. 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.

(a) Approval of Proclamation and its Duration:

Every such proclamation is to be laid before each House of Parliament and is to cease to operate at the expiration of two months, unless it has sought the approval of both the Houses of Parliament before the expiration of the period. If, however, the proclamation is issued at a time when the Lok Sabha is dissolved or dissolution takes place during two months period following it and if resolution approving the proclamation is passed by Rajya Sabha, the proclamation will cease to operate after the expiration of thirty days from the day on which the Lok Sabha first sits after its reconstitution. Such a proclamation is issued for a period of six months.

The duration of proclamation can be extended for six months at a time. The Act of 1976 (42nd Amendment) extended period of emergency from 6 months to one year at a time though it was again undone by 44th Amendment Act. The Election Commission can recommend prolongation of this period beyond one year, but in no case more than three years.

The 48th Amendment Act 1984 states that in case of Punjab since 1983, the expression beyond one year shall be construed as beyond

two years. The 59th Amendment passed on March 30, 1988 replaced the words 'armed rebellion' by 'internal disturbance' i.e. on the latter account, emergency can be declared. In the Punjab President's Rule was being extended for 3 years beyond May 10, 1988, till elections were held and a popular government led by Beant Singh (Congress) and later Akali Dal—BJP coalition under Prakash Singh Badal was installed in.

(b) Consequences of Failure of Constitutional Machinery in the State:

(i) The President may assume any of the executive functions of any of the State authorities.

(ii) He may also declare that the powers of the State Legislature whether dissolved or kept in the state of suspended animation shall be exercisable by or under the authority of Parliament.

(iii) He is fully authorized to make such incidental and consequential provisions as appear to him to be necessary or desirable for implementing the objects of the Constitution. It may however be pointed out that the President cannot assume to himself any of the powers vested in or exercisable by a High Court or suspend the operation of any provision of the Constitution relating to High Courts.

(iv) The legislative powers transferred from State Legislature to the Parliament may be conferred by the latter on the President himself who may delegate it to any other authority, he deems fit.

(v) He can authorize any expenditure from the Consolidated Fund of the State when the Lok Sabha is not in session.

For the first time, such a proclamation was issued on 20th June, 1951 with regard to the Punjab. In Travancore, Pepsu, Andhra, Kerala and Orissa also such a type of proclamation of emergency had already been made. 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.

The Governors acted as the agents of the Centre. In some cases, the Assemblies were kept in suspended animation as happened in Goa and Bihar in the recent past. Karnataka also was kept under Central rule for 34 days, after the fall of JD(S)-BJP coalition. On November 8, 2007, fresh crisis occurred. JD(S) refused to vote for BJP led Government. Hence, again President's rule was clamped. The Assembly was dissolved and election took place later.

(c) President's Assertion against President's Rule in U.P. and Bihar:

In 1997, President K.R. Naraynan returned to the cabinet headed by I.K. Gujral the proposal to proclaim constitutional emergency in Uttar Pradesh and dismiss the Kalyan Singh Ministry as advised by the Governor of the State. The President did not approve the dismissal of the Ministry. Constitutionally speaking, the cabinet could again approve the proposal and send it back second time to the President for his consent and the President could have been left with no alternative but to accord his consent.

However, Gujral's cabinet did not like to reject the advice of the President. Hence it did not proceed further. In 1998, the President sent back the proposal of A.B. Vajpayee to dismiss Rabri Devi's Government in Bihar as advised by the Governor and proclaim constitutional emergency.

(d) Article 356 Invoked for Nine States on April 30, 1977:

A couple of special mentions of invocation of controversial Article 356 will not be out of place. Article 356 was invoked on April 30, 1977

when President's rule was installed in the States of Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Bihar, Madhya Pradesh, Rajasthan, Orissa and West Bengal. The proclamation was followed by unprecedented developments. The Home Minister exhorted the Chief Ministers of these states to advise their respective Governors to dissolve their assemblies or face installation of President's rule.

The Chief Ministers of these Congress-run States did not oblige the Home Minister on the plea that such a step was 'illegal, immoral and unconstitutional'. The Chief Ministers of five of these States viz., Punjab, Uttar Pradesh, Bihar, Rajasthan and Himachal Pradesh took the matter to the Supreme Court and requested the latter to restrain such an unconstitutional action by the Centre.

The Supreme Court after hearing the arguments of both the sides declined to interfere. Thereafter, i.e., on the 29th April 1977, the Council of Ministers unanimously recommended to the Acting President the dissolution of nine Assemblies and imposition of President's rule in the nine states on the ground that the governments in these States could not be carried on in accordance with the provisions of the Constitution.

The President signed the proclamations, twenty-four hours after their presentation to him. It reflects that the President signed the proclamation with some mental reservations and after a clear rejoinder from the Council of Ministers that there was no option for Mr. Jatti, the acting President, but to affix his signatures on these proclamations. Evidently according to controversial 42nd

Amendment, the President was bound to act on the advice of the Council of Ministers. Thus the Congress Ministries having the backing of majority in their respective State Assemblies were brought to an end.

The reaction of the Congress opposition was violent. They described the invoking of Article 356 highly undemocratic, extremely sad and unfortunate. According to N.D. Tewari, the then U.P. Chief Minister “the decision undermined the foundations of federalism and established such a precedent which might give rise to increasing arbitrariness of the Union at the expense of its federal units at the one hand and growing mistrust between the States and the Centre on the other”.

The Central Government led by the Congress has been also misusing of Article 356 to dissolve non-Congress Governments in the states, thus undermining the functioning of federal polity on right lines. However for the first time, a non-Congress Party was able to capture power at the Centre and it took a similar action to get dissolved Congress Governments in the States. The history in fact repeated itself and an unhealthy precedent was set.

Dissolution of 9 Assemblies in Congress (I) regime. (February 18, 1980) With the emergence of Mrs. Gandhi’s Congress (I) as a triumphant party, 9 states ruled by non-Congress (I) Parties faced dissolution of their Assemblies and dismissal of their ministries on February 18, 1980 under Article 356 of the Constitution. The timely change over to Congress (I) saved the Assemblies from dissolution in

Haryana and Himachal Pradesh. The argument quoted for dissolution was analogous to the one advanced by the Janata Government in 1977. In fact unfortunate precedents had been set by both the National Parties.

(e) 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 viz.

(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.

(f) Imposition of President's Rule in Gujarat (Sept. 1996):

Prime Minister Deve Gowda got BJP Gujarat Government dismissed on the plea of unruly behaviour inside the State Assembly—a culmination of most shameful saga in Indian democracy. It is still contended by the critics that Governor's report to the President conveying that the constitutional machinery had broken down, does not bear judicial or even impartial political scrutiny.

In fact Deve Gowda's Government broke a healthy political trend set up both by Rajiv Gandhi and Narasimha Rao as P.Ms not to destabilize non-Congress Government. As such, it will not be wrong to comment "The cynical use of Article 356 by Central Government has made nonsense of India's basic federal character". In this case a minority government at the Centre got an elected majority government in the State dismissed and kept the State Assembly in suspended animation.

This was an attempt to encourage horse trading to enable the opposition to acquire the requisite majority and then claim revival of democratic government. NDA Government under A.B. Vajpayee and UPA under Dr. Manmohan Singh have not made misuse of this Article.

Proclamation of President's rule in Karnataka in 2007 was a necessity. On January 3, 2008, President's rule was clamped in Nagaland. This happened after the Nagaland Peoples Forum led Democratic Alliance secured a controversial vote of confidence. However, the Nagaland C.M. described it as "murder of democracy."

The examples quoted above prove beyond any doubt that article 356 has been prior to one decade a suppliant tool in the hands of Central Government to be invoked at will and convenience primarily against State Governments run by the party other than the one in power at the Centre. Hence there have been discussions and debate at the national level to scrap the article or at least mend it.

3. 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:

(i) When the proclamation is in operation, the Union Government may give such financial direction to the State authorities as it deems fit.

(ii) 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.

(iii) 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.

The language of Article 360 is ambiguous. It does not make clear whether such an emergency will apply to the entire country or to some of its part or parts. Moreover the Parliament will discuss the text of declaration alone. It will ignore the canons of financial propriety, which prompted the President to take this step. Finance being a delicate matter, deserves very careful handling.