
CRITICAL ANALYSIS OF LEGAL PROVISIONS DURING EMERGENCIES IN INDIA

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ABSTRACT

The Indian Constitution contains emergency provisions in Articles 352, 356, and 360, which grant the central government extraordinary powers to address threats like war, armed uprisings, and financial instability. Although the introduction of these powers was intended to protect national security, there has long been worry about the possibility of abuse, especially in light of the Emergency of 1975. The 44th Amendment attempted to strike a compromise between defending individual liberties and democratic ideals and the necessity of governmental authority. These emergency measures are outlined in Part XVIII of the Constitution, with Article 352 concentrating on threats to national security, such as violent insurrection, war, or foreign attack. If the President is certain that there is a serious threat to the country, such as war, external attack, or armed insurrection, he or she may proclaim a national emergency under Article 352. The federal structure briefly adopts a unitary form in order to preserve administrative uniformity; this has an impact on the federal-state relationship, individual liberty, and legislative processes. Apart from Article 352, extraordinary powers are also granted by Articles 356 and 360. Article 360 permits the declaration of a financial emergency, which affects financial autonomy, whereas Article 356 covers the failure of state constitutional machinery, permitting the federal government to assume state functions. When Indira Gandhi proclaimed a national emergency in 1975 in reaction to a court ruling without Cabinet consent, it was the most contentious use of these regulations. This paper focuses on the implications of Articles 352, 356, and 360, which deal with declaring a national emergency, breakdown of constitutional machinery in states, and financial emergencies, respectively. Article 356 gives the federal government the authority to assume power in the event that a state's constitutional machinery malfunctions, while Article 352 handles risks to national security, such as war or armed insurrection, and their effects on fundamental rights. Extraordinary powers are granted by Article 360 to handle financial crises. The intention is to explore the broad implications of emergencies on individual liberty, the federal government, and legislative procedures, as well as the constitutional safeguards designed to prevent the misuse of these authorities.

INTRODUCTION

The Indian Constitution contains emergency provisions, mainly found in **Articles 352¹, 356², and 360³**. These articles provide an important framework for handling unusual situations that could jeopardize the peace and security of the country.

These clauses give the federal government extraordinary authority to deal with problems including war, foreign aggression, armed uprisings, state constitutional machinery failure, and unstable financial markets.

The writers of the constitution took a practical approach in granting the government the authority to respond to unanticipated situations by incorporating these emergency powers. The historical background, particularly the contentious 1975 Emergency, has brought attention to the necessity of striking a careful balance between giving the government the authority it needs and defending democratic values and individual liberties. In an effort to allay worries about possible abuse, further modifications have emphasized the significance of the Indian Constitution's checks and balances in times of emergency.

A notable feature of the Indian Constitution is present which has power to convert peace time federalism to an emergency situation. The founding fathers of our constitution felt that, the power to control and direct all aspects of administration should be in the hands of Central Government.

There are three types of emergencies:

- Emergency arising from a threat to the security of India.
- Breakdown or constitutional machinery in a state.
- Financial emergency.

THE BALANCE BETWEEN NATIONAL SECURITY AND INDIVIDUAL LIBERTY

In order to enable the government to maintain the security and integrity of the nation, in an

¹ INDIAN CONST. art 352.

² INDIAN CONST. art 356.

³ INDIAN CONST. art 360.

hour of emergency, as mentioned above, the framers of the constitution drafted one such constitutional framework, being Part XVIII Of the Indian Constitution titled “Emergency Provisions” under which Article 352, specifically constructed to deal with this particular issue and states that “*If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or*

1 [armed rebellion], he may, by Proclamation, make a declaration to that effect.

2 [in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation].

3 [Explanation- A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof...”⁴

Article 352⁵ has altered the structure of how the nation is governed in a number of ways. The federal structure of the nation will become unitary for administrative uniformity’s sake. The President of India is granted extraordinary or special powers to determine the directives and policies for the state. There are three ways that Article 352⁶ can have an impact:

- (1) on the legislative branch’s operations;
- (2) on an individual’s fundamental rights; and
- (3) on the relationship between the federal government and the state.

Keeping this in mind, the following are the grounds listed in Article 352 for a national emergency:

- 1) When armed insurrection, foreign aggression, or war threaten the nation’s safety and security. When it comes to emergencies, armed revolt is considered an internal

⁴ INDIAN CONST. art 352.

⁵ INDIAN CONST. art 352.

⁶ INDIAN CONST. art 352.

emergency, whereas war and exterior aggression are considered external emergencies. However, the term "internal disturbances" was replaced with "armed rebellion" in the 44th Amendment Act, 1978⁷, because it was thought that the former language would be interpreted incorrectly and result in political persecution of states.

- 2) If the Indian president believes there could be a major threat, he or she may also declare a state of emergency prior to an armed uprising, foreign invasion, or war.

HISTORICAL NATIONAL EMERGENCIES AND CONSTITUTIONAL SAFEGUARDS

The first declaration of **National emergency** was made in October 1962 and lasted for six years, ending in January 1968, during the conflict with China. The conflict with China came to an end on October 21, 1962, but only during the emergency did a conflict with Pakistan begin. Following foreign participation in the subject, a Tashkent agreement was reached, and in January of that year, the emergency was lifted by the government.

A second proclamation of emergency was issued due to the ongoing conflict with Pakistan. Three legislations were passed during this time with the intention of preventing detention. However, these three acts were abused severely, and several arrests, deaths in custody, and interactions were reported this time. Even after the war with Pakistan came to an end, the emergency persisted, and a third emergency was declared prior to the second one's revocation.

The most contentious emergency in India was the third one, which was proclaimed due to domestic unrest. In a case pertaining to the elections, the Allahabad High Court ruled that Smt. Indira Gandhi had engaged in corrupt activities and consequently, she was barred from holding public office for a period of six years. Regarding the decision, she filed a petition with the Apex court, but the court was on vacation at the time. On June 25, 1975, a historic day, Smt. Indira Gandhi declared a state of emergency in a letter to the then-honorable President Fakhruddin Ali Ahmed without the cabinet members' approval.

This move of the then Government and Indira Gandhi was highly criticized by the general public at that time. The people didn't see any genuine reason for the invocation of an

⁷ INDIAN CONST. art 352.

emergency⁸. The most constrained and pressure-filled emergency was this one. It was cancelled on March 23, 1977.

Conclusively, the examination of emergency scenarios and the constitutional protections associated with them highlights the precarious equilibrium between safeguarding the country and upholding individual liberties. Emergency situations demand quick decisions, but it's important to make sure that authorities don't overstep their constitutional authority when using extraordinary powers. The constitutional safeguards emphasize the unwavering dedication to democratic principles even in the midst of hardship by acting as a bulwark against potential abuses of power during times of crisis.

The cautious balancing of **emergency powers** with constitutional protections shows how committed a society is to maintaining the rule of law and defending the rights of its people. Since threats to our ever-evolving world are constantly changing, it is crucial that we routinely assess and update these precautions to handle new issues and preserve the integrity of democratic governance.

In the end, the efficacy of constitutional protections in times of crisis depends not only on their presence but also on how vigilant a community is about holding its leaders responsible. Through the cultivation of an atmosphere that prioritizes openness, responsibility, and citizen involvement, we may achieve a balance that permits the government to address crises efficiently while upholding the core liberties that characterize our democratic society. By doing this, we make sure that the values found in the constitution stand the test of time and continue to lead the country towards a strong and equitable future.

IMPACT OF ARTICLES 356 AND 360 ON FEDERALISM AND FINANCIAL STABILITY

Beyond Article 352, Articles 356 and 360 of the Indian Constitution grant the central government extensive powers to address crises related to state governance and financial instability. Article 356, often invoked as President's Rule, allows the central government to assume control of a state's executive powers when there is a failure of constitutional machinery. This provision has been historically controversial due to its potential for misuse, particularly

⁸ Abhishek Kumar Khaund, *National Emergency: A Comparative Analysis of Emergency Laws in India USA and Germany*, 1, *AJACLA*, 107, 107-124, (2021).

when used as a political tool to dismiss state governments. The constitutional safeguards introduced by the Sarkaria Commission and the 44th Amendment require judicial scrutiny and parliamentary approval to curtail arbitrary use. The main objective was to limit the imposition of an emergency under Article 352 only to serious situations. The Supreme Court held in *Naga People's Movement of Human Rights v. Union of India* that the term "internal disturbance" has a broader implication than "armed rebellion," as the latter is more likely to pose a threat to the security of India, whereas the former, though serious, might not pose such a threat. The Supreme Court held in *Naga People's Movement of Human Rights v. Union of India*⁹ that the term "internal disturbance" has a broader implication than "armed rebellion," as the latter is more likely to pose a threat to the security of India, whereas the former, though serious, might not pose such a threat.

Article 360, which addresses financial emergencies, authorises the central government to direct financial operations, restrict expenditure, and suspend salaries of state officials, therefore temporarily diminishing the authority of state governments. While these rules are vital in ensuring national stability, their potential to weaken the federal structure underlines the necessity for checks and balances to prevent overreach. The application of emergency laws must take into account the delicate balance between central authority and state autonomy. This highlights the significance of upholding federal values and guaranteeing efficient government in times of crisis.

CONCLUSION

In conclusion, the Indian Constitution's emergency clauses, which are contained in Articles 352, 356, and 360, are essential safeguards for sustaining stability and national security during times of crisis. The historical background of their use, especially during the contentious Emergency of 1975, highlights the possibility of abuse and the precarious balance between governmental power and individual liberties. The 44th Amendment's provision of constitutional safeguards and the Sarkaria Commission's recommendations have established crucial constraints on the central government's power, requiring judicial review and legislative approval for declarations of emergency.

⁹ *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431: (1998) 2 SCC 109.

These measures are essential to guaranteeing that citizens' fundamental rights—particularly those connected to life and personal liberty—are upheld and that the use of emergency powers is not capricious. Maintaining individual freedoms and democratic values must be India's top priority as it navigates more difficult governance issues. The nation can successfully resolve emergencies while upholding the rule of law and the integrity of its federal structure by remaining careful about the use of emergency provisions. In the end, establishing a culture of accountability and openness in the use of such authority would guarantee that the goals of the constitutional framework are met without sacrificing the principles that guide India's democracy.