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## EMERGENCY PROVISIONS AND THE CONSTITUTION OF INDIA; A CRITICAL ANALYSIS OF PART EIGHTEEN

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### **ABSTRACT**

As the name "emergency" implies, it refers to an unexpected turn of circumstances that forces public authorities to take immediate action within their jurisdiction. During an emergency, human civil rights are stripped from the state or nation, with the exception of Articles 20 and 21 of the Indian Constitution. The majority of emergencies are caused by malfunctioning administrative structure. The Indian federal system, according to Dr. B.R. Ambedkar, is unique in that it can become unified when administrative machinery fails.

The main goal of emergency legislative measures was to protect the region from tyranny, domestic upheaval, wars, and foreign attacks. Any emergency, according to the Black Law Dictionary, necessitates rapid involvement and warning since it poses harm to both people and liberty in the territory. Thus the research work is the attempt to throw light on the provision of emergency in India. The researcher also emphasis on the origin and historical context and explain different types of emergency in a precise manner and explaining

the effect of the proclamation of emergency following with the conclusion.

**Keywords:** Emergency, State, Financial, National, Country, India.

### **INTRODUCTION**

A notable feature of the Indian Constitution is how natural Federalism will respond in an emergency circumstance. As a result, declaring a state of emergency is a very important matter that has a detrimental impact on people's liberty. However, it must only be used in extreme conditions. Article 352 (1) allows the President to declare an emergency if he considers there is a security threat to India or a part of India<sup>103</sup>. The question that will be debated is whether the President's delight is warranted. "The effect of declaring an emergency on obligatory detention, the effect of repealing Article 19 of the Emergency Proclamation, and the effect of the President's order under Article 359 have all been examined by the courts on several times. As needed, these decisions are debated and discussed." Dr. B.R. Ambedkar claimed that India

<sup>103</sup> The Constitution of India, 1950 [Act No. 1 of 1950].

should be a federal republic, stating that while citizens are divided into different nations, they are all representatives of India, which is really a federation of countries<sup>104</sup>. The issue of granting emergency powers was debated, but Dr. Ambedkar stated that the papers would never be used and would remain dead letters. However, it has been discovered that Article 356 is also violated, exploited, and rarely employed<sup>105</sup>.

### **ORIGIN AND HISTORICAL CONTEXT**

The situation at the time of the constitution was relevant in order to enact emergency clauses. The Constitution framers had to worry about those arrangements after a number of events occurred during and even before the pre-independence period. Casteism, regionalism, communitarianism, and language all had catastrophic consequences, disrupting peace and national unity. Tensions between Muslims and Hindus have erupted, posing a threat to India's democracy and existence. As a result of the Monarch's defeat during the drafting of our Constitution, a crisis erupted in Kashmir. Pakistan had emerged as a potential adversary<sup>106</sup>.

Only two indigenous states (Junagarh and Hyderabad) were unwilling to join the Indian Union. The Indian government was presented with a larger dilemma when it refused to accept the separatist activity forced by geographic necessity in Junagarh and Hyderabad<sup>107</sup>. Article 352 was created as a result of all of this. During the post-independence period, communist activity began to grow among Telangana's workers and farmers. The communist regime posed a potential danger to the country's peace and stability. This resulted in the introduction of extreme emergency sections in the Constitution Provincial government. As a result, the writers of the constitution remained

worried about the consistency and effectiveness of state and local governments<sup>108</sup>. As a result, Art. 356 was introduced in the Indian Constitution to secure the collapse of a state that lacked parliamentary processes. The country's financial position was also severely deteriorating as a result of the conditions that lead to a fall in foreign currency reserves and branches<sup>109</sup>. Dr. Ambedkar decided to avoid any legal problems, and therefore Art. 360 of the Constitution were added.

### **TYPES OF EMERGENCY IN THE INDIAN CONSTITUTION**

In a presidential state of emergency, the state may override the various individual liberties and enforce the federal standards outlined in Section XVIII of the Constitution.

Articles 352 to 360 of the Indian Constitution provide for emergency provisions<sup>110</sup>.

- National emergency under Article 352)
- State emergency under Article 356)
- Financial emergency under Article 360)

### **NATIONAL EMERGENCY**

The Constitution's Article 352 proclaims a state of national emergency. There is a national emergency. A national emergency declaration corresponds to statutory rules that must be fulfilled when an unforeseen occurrence affects or threatens a component of the country's harmony, defense, prosperity, or administration<sup>111</sup>. In accordance with Article 352 of the Constitution, emergency implementation was carried out when the preceding requirements were also met-

- i. Attack,
- ii. External intrusion or
- iii. Internal rebellion.

<sup>104</sup> Available at: <https://blog.ipleaders.in/emergency-provisions-india-critical-analysis> (Visited on May 29th 2023).

<sup>105</sup> *Ibid*.

<sup>106</sup> Kuldip Nayar, "The Judgement: Inside Story of the Emergency in India", Asia Book Corporation of America, 1977.

<sup>107</sup> *Ibid*.

<sup>108</sup> *Supra Note 2*.

<sup>109</sup> *Supra Note 4*.

<sup>110</sup> Dr. Narender Kumar, Constitutional Law of India, (Allahabad law agency, Faridabad (Haryana), 9th edn., 2015).

<sup>111</sup> *Ibid*.

Article 352 provides that if the President feels 'satisfied' that a perilous situation emerges that jeopardizes the security of India or any portion of it as a result of outside aggression or armed insurrection, he will issue a statement in that regard with or for virtually all of India. However, under Article 3, such a proclamation may be issued only with the authorized recommendation of the Nation's government<sup>112</sup>. This form of proclamation must be presented to the legislative house and ratified by both chambers, or it will expire one month after it is made.

It should be noted that the explanation of Article 352 has accounted for the fact that neither a foreign invasion nor a violent revolution has occurred in the event of an emergency proclamation. It could be declared even if there is a high likelihood of foreign violence or armed uprising.

### National emergencies in India

The first state of emergency was declared during the war with China, and it lasted six years, from October 1962 to January 1968. The war against China ended on October 21, 1962, but another war against Pakistan began when the emergency was lifted. After international pressure, the Tashkent accord was negotiated, and the then-government lifted the emergency declaration in January<sup>113</sup>.

The second state of emergency was declared as a result of the conflict between India and Pakistan. During that time, three acts were performed. Maintenance of SA, Coffee POS Act, and In order to prevent arrest, it was decided to keep the rule under the protection of the government<sup>114</sup>. However, these three actions were severely overdone, and there were several convictions, jail shootings, and gatherings during this time period. The war with Pakistan ended, but the emergency remained, and a third emergency was declared before the second one was lifted.

<sup>112</sup> *Ibid*.

<sup>113</sup> *Supra note 4*.

<sup>114</sup> *Ibid*.

The third emergency has been declared owing to internal instability, and it is India's most disputed emergency. The polls in which Smt. Indira Gandhi was prohibited from public employment for six years for engaging in unethical practices were held in the Allahabad High Court<sup>115</sup>.

She had brought the ruling to the Supreme Court, but the court was on vacation at the time. On June 25, 1975, the Historical Day, Smt. Indira Gandhi sent a telegram to then-Honourable President Fakhruddin Ali Ahmed requesting that an emergency be declared, notwithstanding cabinet consent. This was a much more rigorous and condensed emergency. It was withdrawn on March 23, 1977<sup>116</sup>.

In the instance of *Minerva Mills vs. Union of India*<sup>117</sup>, judicial scrutiny does not impair the validity of the president's reason and determination under Article 351. However, the Court's jurisdiction is limited to determining whether or not the Constitution's constraints were met. It will determine whether or not the President's delight is genuine. It is not happiness when fulfillment is predicated on mistrust, irony, or irrelevance.

### The procedure of proclaiming emergency

The country's President may make a remark, but this is something that is already provided for. Only if the President receives a written request from the Cabinet to declare a state of emergency. The Houses of Parliament must adopt an emergency declaration by an overwhelming vote, and maybe by a 2/3rd majority of the members present and voting, within one month, otherwise the declaration will cease to function<sup>118</sup>.

If Lok Sabha is abolished or is not present at an emergency management meeting, it shall be approved in the month and then by Rajya Sabha in the month after the beginning of this

<sup>115</sup> Rama Goyal, Saving India from Indira: The Untold Story of Emergency (2009).

<sup>116</sup> *Ibid*.

<sup>117</sup> AIR 1980 SC 1789.

<sup>118</sup> *Supra Note 8*.

next meeting. The state of emergency remains in effect six years after the date of declaration until Parliament ratifies it<sup>119</sup>. The Legislature must approve another interim decision after six months, which should be continued. This turned out to be a permanent emergency.

### **The procedure of revoking emergency**

If the situation improves, the President of India may declare a new state of emergency. According to the 44th constitutional amendment, ten percent or more of the Lok Sabha leaders must share an application for and attend a meeting of the Lok Sabha; they can disagree with the emergency or cancel it by a simple majority<sup>120</sup>. It becomes unworkable as a result of such an incidence.

### **STATE EMERGENCY**

The job of the Union Government is to ensure that the administration of a State acts in conformity with the Constitution's provisions. Article 356 specifies that if the President is pleased that a state government is unable to function smoothly, whether on receipt of a report from the Governor of the State or otherwise, a state emergency proclamation may be made by that Leader.

The President's declaration of emergency is described as an "announcement due to the breakdown (or collapse) of legislative mechanisms" in this situation<sup>121</sup>. The following are some of the possible outcomes of such an emergency<sup>122</sup>:

1. With the exception of the High Court, the President has the authority to undertake all or some of the tasks of state governments.
2. Declare that state legislative functions should be exercised by or under the control of Parliament;
3. Make the declaration's subject matter necessary or appropriate for it to be carried out.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Supra Note 4.*

<sup>122</sup> *Supra Note. 2.*

The President, on the other hand, is not permitted to suppose or terminate any statutory obligation relating to the High Court. India's President has imposed a 126-fold rule throughout the country until 2018. During Indira Gandhi's presidency, the presidential rule was invoked a total of 35 times<sup>123</sup>.

### **The procedure of proclaiming state emergency**

Like the National Emergency, such an announcement should have been transmitted to the Houses of Parliament for ratification. In this circumstance, permission must be granted within two months; as a result, the declaration must be shut down. If the Lok Sabha is disbanded after some of these two months and has been permitted by the Rajya Sabha, the resolution shall cease to function on the 30th day after its reinstatement on the day of the Lok Sabha's first session, because the Lok Sabha was approved well before its expiration date.

Until withdrawn, an announcement that has been thus approved ceases to act at the conclusion of a six-month period following the date of the announcement. Its life can be extended for six months without revocation in the majority of cases, but not beyond three years. Following that, the President's Reign must be completed, and the state's parliamentary machinery must be restored to its previous state

In the 44th Amendment, a new clause was added that limited Parliament's jurisdiction to the extent of an announcement made after one year under Article 356<sup>124</sup>.

### **The procedure of revoking state emergency**

A later proclamation can rescind or modify any such pronouncement. A proclamation issued in accordance with Article 356(1) will expire in each of the following forms<sup>125</sup>:

1. Unless it is approved by both Houses of

<sup>123</sup> *Supra Note 13.*

<sup>124</sup> *Supra Note 8.*

<sup>125</sup> *Supra Note 2.*

Parliament within two months of its inception [Article 356(3)].

2. If neither House consents within two months of the declaration are transmitted to the Houses of Parliament [Article 356(3)], the declaration would be annulled.

3. Following the adoption of a first proposal [Article 356(4)], if no other proposal is adopted by the House of Parliament within six months of the announcement.

Subject to a maximum of three years from the date of the declaration, this must be made within six months of the passage of the most recent resolutions allowing the Chamber of Parliament. To prolong the proclamation beyond one year, the following conditions under article 356(5) must be met:

- Is there already a global disaster in place; or The Electoral Commission has determined that elections for the Legislative Council are not possible.
- The day on which the President issues a proclamation of revocation [Article 356(2)].

### **EMERGENCY PROVISIONS: EFFECTS AND IMPACT**

Federalism, according to Dicey, is ineffective because it necessitates power sharing between the center and the states. This is a government that is dysfunctional. Despite this, all previous federations have avoided this flaw by guaranteeing that the federal government exercises extraordinary leverage when new internal or foreign events necessitate coordinated action. The Constitution of India grants the union extraordinary powers in the event of a specific type of emergency. The constitutional major sources of energy empower the federal government to attain the power of a unitary organization when needed.

The Indian Constitution recognizes three distinct sorts of irregular circumstances that necessitate the constitution's departure from the typical

legislative process<sup>126</sup>:

1. An armed insurrection, an invasion from the outside, or a war-related situation [Article 352]. It is also regarded as a critical national issue.
2. Failure of legislative apparatus in states [Article 356]. It was also established as a Presidential Directive.
3. Emergency Financial Situation [Article 360].

### **PERSPECTIVE OF JUDICIAL REVIEW**

A declaration is subject to a past competition in accordance with Article 356, on the grounds that authority is oppressive power in accordance with Article 356. (1). If the criteria are met, the judiciary can be examined in the operation of judicial review strength. The debate, however, is truly about the court's degree and depth."

"As evidenced by the decisions in *State of Rajasthan v. Union of India*<sup>127</sup> and the *Bommai*<sup>128</sup> case, there can't be a universal approach that applies to all situations; it will definitely vary depending on the issue, nature of the right, and other factors. Wherever it is conceivable, however, the presence of fulfillment can generally be checked on the grounds that it is false or based on completely unimportant and immaterial premises."

"The Supreme Court's decision in the *State of Madhya Pradesh v. Bharat Singh*<sup>129</sup>, where the Supreme Court held that it was not barred from declaring a law passed prior to a Proclamation of Emergency as ultra vires to the Constitution, despite the fact that the Proclamation was in effect at the time."

"The first judicial review of the Proclamation under Article 356(1) was tried in *State of Rajasthan v. Union of India*<sup>130</sup>, in which a bench of seven Supreme Court judges dismissed the applicant request and upheld the center's

<sup>126</sup> AIR 1994 SC 1918.

<sup>127</sup> AIR 1977 SC 145.

<sup>128</sup> *Supra* Note 8.

<sup>129</sup> AIR 1967 SCR (2) 454.

<sup>130</sup> *Supra* Note 25.

decision to dissolve three assemblies under Article 356 as intrinsically legitimate in a consistent judgment."

In *Minerva Mills and Others v. Union of India*<sup>131</sup> and *Others*, the Supreme Court harped on its ability to examine the constitutionality of a President's Proclamation of Emergency. In dealing with this issue, the Judicial Branch should remember, among other things, that it has an established obligation to fulfill since it needs reflection on political issues.

At the same time, it should limit itself to examining whether the preconditions outlined in Article 352 were found in the Proclamation's proclamation, rather than whether the existing situations and legislative enforcement requirements in the event of an emergency were sufficient. It must also be assumed that, despite its limitations, the Presidential Declaration is amenable to judicial scrutiny under Article 356.

*S.R. Bommai vs. Union of India*<sup>132</sup> was a landmark case throughout the entire existence of the Indian Constitution because it decided the degree of judicial review of the President's Proclamation forcing President's Rule in the states and united the lawful situation on the abstract fulfillment of the President." The Supreme Court set apart the viewpoint and restrictions within which Article 356 was to operate specifically for this situation. After the Supreme Court's judgment in the S. R. Bommai case, it is all around settled that Article 356 is an outrageous force that should be used if all else fails in situations where it is shown that there is a stalemate and the sacred hardware in a State has imploded," says Soli Sorabjee, a prominent legal jurist and former Solicitor-General of India.

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<sup>131</sup> *Supra* Note 15.

<sup>132</sup> *Supra* Note 26.



**DIFFERENCE BETWEEN ARTICLE 352 AND 356**

<b>National Emergency under article 352 of Indian Constitution</b>	<b>President's Rule under article 356 of Indian Constitution</b>
It can only be declared if India's or a part of India's stability is threatened by invasion, foreign involvement, or military insurrection.	It could be argued that a State's government cannot be carried out in accordance with the Constitution's criteria due to circumstances that have nothing to do with a war, an external attack, or armed insurgency.
The Executive and Legislative branches of government continue to work and execute their legislative powers. In the province, the Centre has concurrent regulatory and legislative powers.	The State Governor would be deposed, and the State Assembly would be dissolved or abolished while it was still in session. The president is in command, and the parliament is in charge of making administrative rules. In a nutshell, the Center assumes administrative and legislative responsibilities for the Administration.
On the issues included in the State List, Parliament may only legislate on its own, without delegating authority to any other agency or jurisdiction.	The President may be given the power to legislate for the Government and any other jurisdiction that the Parliament defines. To date, the President's method has involved working with MPs from that state to draft legislation for the state. Its service will last for a total of three years. Then it must be completed
It is advised that no time limit be set for its service. The House will continue to approve its acceptance every six months.	A three-year interval is recommended for its service. It must be completed after that, and the State's ordinary constitutional mechanism must be restored.
This marks the beginning of the Core's relationship with all of the Nations.	Only the emergency state's interaction with both the Center and the Center will change as a result of this.
It has an impact on people's basic human rights (FR).	There is no impact on people's constitutional rights as a result of this.
Any motion accepted by Parliament to proclaim or continue the declaration should be subjected to a special majority vote.	A simple majority is required for each Parliament resolution that approves or preserves the proclamation.
It's possible that the Lok Sabha will vote to repeal it.	A clause like this does not exist. The President will only relocate it if it chooses to do so.

## **FINANCIAL EMERGENCY**

The third type of emergency is the financial emergency, which is covered by Article 360. It states that the President may declare a financial emergency if he is concerned that India's economic stability or credibility is in jeopardy. In such a situation, executive and legislative powers would take center stage. It, like the other two emergencies, must be approved by Parliament. It must be approved by both members of Parliament within two months. The financial catastrophe can continue for as long as the procedure necessitates it, and it may even be lifted with a similar declaration.

This is the first time this article has been utilized.

A declaration is made in accordance with Article 360<sup>133</sup>:

1. a related announcement may be omitted or changed
2. Each House of Parliament must be brought before it.
3. Ceases to exist at the end of two months, unless otherwise approved by decisions of the two Houses of Parliament before that period expires.

## **EFFECT OF THE PROCLAMATION OF EMERGENCY**

### **• Effects of national emergency**

National emergencies have an impact on both people's interests and state sovereignty:

1. The most important result is that the federalism style of the constitution is transformed into unitary federalism. The Centre's powers are expanding, and the Parliament now has the right to enact legislation for the entire country or a portion of it, save in the sectors mentioned in the State List.
2. The Indian government is eager to give countries instructions on how to wield their executive authority.

3. During an emergency, the Lok Sabha will extend the term by one year at a time. However, the same could be extended beyond the proclamation's six-month period of validity. In the same way, state legislatures can have their terms extended.

4. During an emergency, the President has the authority to amend the laws governing the distribution of wealth between the Union and the states.

5. Human rights will be withdrawn immediately under Article 19, and this restriction will last until the end of the emergency.

However, under the 44th amendment, only the privileges enumerated in Article 19 can be curtailed if a declaration is made on the grounds of war or external invasion<sup>134</sup>. From the discussion above, it is obvious that emergencies not only suspend state sovereignty but also make India's federal system unitary. It is nevertheless significant for the Union Government because of its broad powers to deal with these atypical situations.

### **• Effect of state emergency**

The benefits of an emergency declaration prompted by the disintegration of a state's legislative machinery are as follows:

1. The President has the authority to take over all or part of the State Government's positions, or to nominate the Governor or another administrative authority to fill all or part of these functions.
2. The State Legislative Assembly can be dissolved or terminated by the President. He will allow Parliament to pass laws on behalf of the Government Legislature.
3. To give effect to the declaration's aim, the President may add any additional adverse or subsequent clauses that he deems necessary.

<sup>133</sup> *Supra* Note 2.

<sup>134</sup> *Supra* Note 8.

### • Effects of financial emergency

The following are some of the possible consequences of declaring a financial emergency:

1. All of the other States may receive economic advice from the Union's government.
2. The President has the authority to suggest that the states reduce the salary and perks of government officials at all levels.
3. The President can direct states to assign all money bills for Parliamentarians' consideration after they have been authorised by the state legislature.
4. The President has the authority to provide orders to national government employees, such as supreme court justices and high court judges, to cut their income and compensation.

### Effects of the proclamation of emergency on the fundamental rights

- State laws will be overturned by federal law, and the Union will be given jurisdiction over areas that are normally delegated to states (such as policing).
- As a result, the Union has the authority to take over or even operate the fiscal and fiscal revenue systems directly. In the event of a financial crisis, the Union has the authority to make final decisions about the enactment of financial actions by the state legislature.
- The Union has the power to suspend any or all of the fundamental rights entrenched in Section III (articles 12 to 35) of the Constitution<sup>135</sup> - this includes:
  - the ability to engage in any profession, occupation, trade, or business;
  - the right to peacefully gather;
  - equality before the law; freedom of expression;
  - travel across Indian territory is

unrestricted;

- religious freedom to practice or promote;
- The right to freedom of speech and expression.

• Furthermore, the opportunity to challenge the infringement of the privileges mentioned above may be revoked (the right to constitutional remedies). Infringement of Articles 20 and 21, which govern individual liberty, the right to privacy, dual-threat protection, and protection against illegitimate prosecution and imprisonment, will not be covered by those provisions. Any person who believes his or her rights under those categories have been wrongfully suspended may file an appeal with a court of law.

• For a period of six months, the Union may seek to withdraw a state's constitutional role as a parliamentary assembly and implement federal legislation. Under parliamentary elections, this suspension status can be extended at the conclusion of this term (indefinitely numerous times) until the Indian Electoral Commission declares that free and equal elections are possible in the state, at which point parliamentary elections can be reinstated.

• The House of Commons, on the other hand, has the power to enact every order with the aforementioned repercussions as soon as feasible once it is made.

### JUDICIAL INTERPRETATION OF VALIDITY OF SUSPENSION OF FR

#### • Suspension of article 19-

#### **Makhan Singh vs. State of Punjab**<sup>136</sup>

"Article 358 makes it plain that actions taken or not taken during an emergency cannot be questioned after the situation has passed." In other words, the suspension of art. 19 was complete throughout the time in question, and

<sup>135</sup> *Ibid.*

<sup>136</sup> AIR 1988 SCR Supl. (1) 613.

legislative and executive actions that were in violation of art. 19 could not be challenged even after the emergency ended."

- **Suspension of Article.20,21**

**A.D.M. Jabalpur vs. Shivkant Shukla<sup>137</sup>**

"The President made orders under Article 359(1) of the Indian Constitution suspending any person's right to approach any court for the enforcement of fundamental rights under Articles 14, 21, and 22, and 19 for the duration of the emergency." Hundreds of people were arrested and incarcerated around the country as a result of this announcement, thanks to the Maintenance of Internal Security Act of 1971. Various people arrested under Section 3(1) of the Maintenance of Internal Security Act of 1971 filed applications in various high courts for the issuance of a writ of habeas corpus."

"The high courts, rejecting the government's preliminary objection, took the broad view that the imprisonment may be challenged on the basis of ultra vires." Angry, the administration filed appeals, some by high court certificates and others under special leave granted by the Supreme Court. Despite every high court decision in the detenus' favour. The Supreme Court found in the government's favour. Except for Khanna, J., the court failed to recognise that the right to personal life and liberty is a human right, not a gift from the Constitution." Even in the Universal Declaration on Civilian and Democratic Life, Article 4 affirms the right to life and personal freedom as an inalienable right under emergency situations.

- **Suspension of art.14 and 16**

**Arjun Singh vs. State of Rajasthan<sup>138</sup>**

The Rajasthan high court found that Article 16 was still in effect even after Article 14 had been terminated, despite the fact that it was not specified in order for it to be halted. The court emphasised that only those fundamental rights

that were specifically and explicitly listed in the presidential order had been terminated in conformity with Article 359.

- **Judgment and condition of art.356**

**S.R. Bommai vs. Union of India<sup>139</sup>**

"In the history of the Indian Constitution, the landmark case of *S. R. Bommai v. Union of India*<sup>140</sup> has significant significance in Center-State relations. In this judgement, the Supreme Court explicitly defined the parameters within which Article 356 must operate. In its decision in the case, the Supreme Court of India stated that "it is well recognised that Article 356 is an extraordinary power to be used as the last resort in circumstances when it is clear that a State's constitutional machinery has failed." The bench's views in this matter are akin to the concern voiced by the Sarkaria Commission."

What are the judges' thoughts on Article 356 of the Indian Constitution? The bench in this decision emphasized that the President's authority under Article 356 is a conditional force. It isn't an all-powerful force. The presence of materials, including or not including the Governor's paper, is a required. It is necessary to define and limit the pleasure of linked resources.

Similarly, Article 356 of the Constitution gives the President the power to act only if he is convinced that a situation arises in which a State's government cannot work in accordance with constitutional requirements. The Council of Ministers of the Union, with the Prime Minister at its head, is essentially the control, according to our Constitution." The bliss envisioned in the essay is ethereal. As a result, whether or not subjective pleasure is based on intent can be disputed in court.

The Governor can only declare an emergency if both Houses of Parliament have agreed to it, as stated in Article 356 paragraph 3. The President may only suspend the Legislative Assembly until such consent is obtained by removing the

<sup>137</sup> AIR 1976 SC 1207.

<sup>138</sup> AIR 1975 Raj 217, 1975 WL.N 386.

<sup>139</sup> *Supra Note 26.*

<sup>140</sup> *Ibid.*

constitutional provisions relating to the Legislative Assembly in accordance with subsection (c) of clause (a) (1). The termination of the National Assembly, however, can only be enforced if it is necessary to achieve the Declaration's organizational objective<sup>141</sup>.

Clause (3) of Article 35 expires at the end of the two-month term, and in that case, the rejected government resurfaces if the declaration is rejected or disapproved by both Houses of Parliament<sup>142</sup>. The Legislative Assembly also reactivates any programmes that may have been halted. Similarly, as the proclamation falls, the activities, directives, and regulations taken during the two-month period do not become unlawful or void.

If both Houses of Congress ratify the Proclamation within two months, the terminated government will not reinstate the proclamation or remove the President until the commencement period ends. Similarly, the Legislative Assembly shall not reconvene after the declaration period has expired or has been revoked, unless and until the Legislative Assembly has been dissolved upon ratification under condition (3)<sup>143</sup>.

The court's main point in the case is that Article 74(2) merely prohibits an inquiry into whether or not the negotiators provide guidance to the Chairman. It does not bar the Tribunal from requesting that the Union of India's Council of Ministers share the information on which the President had reached his conclusion.

The advice does not include the information on which it is based. Even if the content is discussed by the President despite the fact that it has been shown to him, it does not share the personality of the recommendation. "Articles 74(2) and 123 of the Proof Act provide protection in a variety of circumstances. During the protection of the declaration, the Minister or official involved might demand rights under Article 123. Where such a right is asserted, it will be determined on

one's own criteria, in accordance with Section 123 guidelines."

### **FUNDAMENTAL RIGHTS VS. EMERGENCY**

- **War emergency:** When the President is convinced that a true emergency exists in which India's or any portion of its territories is threatened by war, external invasion, or armored insurgency, he may declare a state of exception under Article 352<sup>144</sup>.

- **Constitutional emergency in the states:** If the President is delighted with the receipt of a letter from the Governor, the Government of a State is not entitled to declare an emergency in accordance with the Constitution<sup>145</sup>.

- **Suspension of fundamental rights:** "The State has the authority to suspend the Fundamental Rights protected by Article 19 of the Constitution during a state of emergency declared under either of the two categories outlined above." The term "state" is used in this chapter in the same sense as it was in the Chapter on Fundamental Rights. It means that Parliament, the Union Executive, and even subordinate authority have the jurisdiction to suspend the operation of these Fundamental Rights. Furthermore, the Constitution gives the President the authority to suspend the ability to file a lawsuit in any court of law to enforce any of the Fundamental Rights. It indicates that the entire Chapter on Fundamental Rights can be suspended while the emergency is in effect<sup>146</sup>."

Regardless, such a decree must be forwarded to Parliament as soon as feasible for approval. However, if Articles 20 and 21 are violated, the restriction of human rights in an emergency can be forbidden in any situation. It would have been a mistake to approach human rights as if a balance between human rights and other protection and sustainability concerns had to be struck.

Moral rights, which are rendered valid by the

<sup>141</sup> *Supra* Note 2.

<sup>142</sup> *Ibid*.

<sup>143</sup> *Supra* Note 4.

<sup>144</sup> *Supra* Note 2.

<sup>145</sup> *Ibid*.

<sup>146</sup> *Ibid*.

Constitution, are basic rights, according to Kofi Anna's human rights initiatives, both for our spiritual condition and for the pragmatic application of our action. In the best sense, these fundamental human safeguards are rights. Because their civil and constitutional rights are unconstrained by common utility, they are unique.

The essential nature of these advantages is that they were pledged to protect a person's integrity despite the fact that the majority of people are performing worse. When these rights are violated, a man is no longer considered a man. This is a really serious problem. This is a major inequity, and the additional cost of government reform, or the improved efficacy required to avoid it, is well worth the investment.

#### **CHANGES MADE BY 44TH AMENDMENT**

##### **Origin and background**

"An emergency proclamation appears to be a very severe issue because it defies the Constitution's normal structure and has a detrimental influence on individual liberty<sup>147</sup>." As a result, such a statement should only be made in extraordinary circumstances, not simply to remove an unfriendly ruling party from power. In June 1975, a state of emergency was declared in conjunction with internal disturbances without sufficient justification<sup>148</sup>." The Commission was responsible for this. Internal unrest was the catalyst for the 1975 declaration, which was particularly problematic because people's basic rights were often violated.

A large number of persons are held in pre-trial detention without reason. As a result, the 44th amending act on emergency constitutional provisions made it considerably more difficult, if not impossible, to revisit the 1975 situation in light of those revisions<sup>149</sup>.

<sup>147</sup> *Supra Note 4.*

<sup>148</sup> *Ibid.*

<sup>149</sup> Available at: <https://prepp.in/news/e-492-44th-amendment-indian-polity-notes> (Visited on April 9th 2022).

##### **The forty-fourth amendment**

The 44th amendment significantly altered the Constitution's emergency provisions, ensuring that the government did not destroy it in the same way that Mrs. Indira Gandhi did in 1975<sup>150</sup>. It also reinstated some of the amendment's revisions. There are several significant components in this amendment<sup>151</sup>:

- Internal unrest was replaced by "armed rebellion," as defined by Art 352.
- The decision to declare an emergency must be notified to the Cabinet in writing.
- Within that month, a declaration of emergency will be issued to the houses.
- To keep up with the pressing situation, the homes should be re-approved every six months.
- The urgency might be revoked by a simple majority of the houses present and voting in this regard by passing a resolution. A resolution of this type may be introduced by one to ten members of the House.
- Article 358 stipulates that Article 19 suspends only war and external violence, not armed insurgency. Furthermore, any statute that opposes Article 19 must state the relationship with Article 358 again. Other legislation may be called into question if they violate Article 19.
- Article 359 states that the right to transfer courts cannot be removed unless the court has violated Section III, although Articles 20 and 21 are not covered.
- The term of the Lok Sabha was reduced from six to five years.

##### **Proclamation under Article 352**

Article 352(1) states that if a President is satisfied that a threat to the security of Sri Lanka or any part of it exists; he or she may issue an emergency decree. However, it has been raised in the past whether or not another President's

<sup>150</sup> *Supra Note 4.*

<sup>151</sup> *Supra Note 47.*

happiness is fair<sup>152</sup>.

In this regard, the Supreme Court ruled in *Bhut Nather vs. State of West Bengal*<sup>153</sup> that it was a political problem rather than a legal one. To clarify the position, the 38th amendment to the Constitution was attached to Article 352, clause 5, which stipulates that the President's 'fulfillment,' as alluded to in Article 352(1) and (3), implies 'final and definitive,' and that "no court of law can question<sup>154</sup>." However, the 44th amendment to Article 352(5), which was afterwards introduced by the 38th constitutional amendment, removed the misuse of those abilities during the 1975 emergency, which occurred later during Democratic administration<sup>155</sup>.

The Supreme Court will then have to decide whether to treat the President's 'fulfillment' by issuing or altering an instant statement as a definitive, non-justiciable matter, or for such purposes as a matter of judicial review<sup>156</sup>.

It's also worth noting that throughout the *Minerva Mills case*<sup>157</sup>, Judge Bhagwati asserted that it can't be ruled out in the purview of judicial review if his prior proclamation of an emergency in accordance with Article 352 extended his decision, or if he acted arbitrarily in proclaiming an emergency.

### Proclamation under Article 356

The declaration's susceptibility to judicial review in accordance with Article 356 is undeniable, because powers are conditional on Article 356(1). In exercising its right of judicial review, the Person has the authority to investigate whether the requirement has been met. In truth, the issue at hand is the scope and nature of judicial review. It is clear from the decisions made in the cases of *State of Rajasthan vs. Union of India*<sup>158</sup> and *Bommai*<sup>159</sup> that a uniform

law cannot apply in all circumstances and must vary depending on the issue, the essence of the right, and other variables.

However, the nature of pleasure will still be questioned whether it is conceivable on the grounds that it is 'mala fides' or discovered on completely alien and meaningless ground. "In the Supreme Court decision in the *State of Madhya Pradesh v. Bharat Singh*<sup>160</sup>, the importance of judicial review in the matter protected by Article 356 is also emphasized because, at this time, only the declaration was in effect, and it was not prohibited from enacting a law that had been enacted."

The petition was dismissed by a majority verdict of seven judges of the Supreme Court's Constitutional Bench, who stated that the center's move to settle the three sittings under Article 356 was constitutionally legitimate, according to Article 356(1), which was first addressed in *Rajasthan state v. Union of India*. This petition was unanimously denied by the Supreme Court.

In the *Minerva Mills*<sup>161</sup> and other cases, the High Tribunal goes into great detail about its authority to acknowledge the President's Emergency Declaration as legitimate. In this case, the Court stated, among other things, that it does not fail to perform its constitutional role just because it deals with political issues. At the same time, it should confine itself to looking into the specifics and conditions of the president's satisfactory involvement in an emergency or if the legislative provisions of Article 352 were followed in a decree declaration.

As a result, we can confidently conclude that, in accordance with Article 356 of the Constitution, the Presidential Proclamation is subject to judicial scrutiny, albeit restricted. The most recent case, which defined the degree to which the President imposed the 'Presidential law' on the Declaration and enhanced the legal circumstances surrounding the President's

<sup>152</sup> *Supra Note 1.*

<sup>153</sup> AIR 1974 SCR (3) 315.

<sup>154</sup> *Supra Note 1.*

<sup>155</sup> *Supra Note 47.*

<sup>156</sup> *Supra Note 4.*

<sup>157</sup> *Supra Note 29.*

<sup>158</sup> *Supra Note 25.*

<sup>159</sup> *Supra Note 26.*

<sup>160</sup> *Supra Note 27.*

<sup>161</sup> *Supra Note 29.*

subjective satisfaction, was a crucial component of the Indian Constitution's backdrop.

In this case, the Supreme Court explicitly delineated the structure and constraints within which Article 356 was to function. Following the Supreme Court's decision in the *S.R Bommai*<sup>162</sup> case, it is clear that Article 356 has an absurdity in control and should be enforced as the final solution when it is obvious that a state's unsolvable problem and democratic structure has failed," said Soli Sorabjee, eminent jurist and former Attorney General of India.

### **CONCLUSION**

After wrestling with all procedural constraints, it is evident that the goal was to produce provisions that could be used in the Constitution first and foremost. Despite the fact that we conducted our analysis for the same reason, we did see that, while the laws governing national security and citizen welfare are addressed in these areas, the rules alone provide the Executive with a great deal of latitude.

It largely has an impact on the nation's territorial system, making it more majoritarian and thus attempting to protect communal and individual demands. While we recognize the need for it, we also agree that, unlike the 1975 emergency, a check-and-balance mechanism can be put in place so that the ruling party and the president cannot misuse their power.

While the abolition of human rights has been frequently justified, we all agree that they are important to people's very lives in a democracy. We discovered in our study that, notwithstanding the protective protections that were included during our analysis, there are always methods to unfairly violate fundamental rights in emergencies, as the 44th Amendment to the Constitution allows.

As some other federal constitutions, such as those of Canada and Australia, provide for the courts to determine the extent to which the

center can extend its authority, it will serve as a consolidated framework for confirming the unconstitutional use of discretionary powers accessible to the executive and legislative branches in accordance with emergency provisions.

<sup>162</sup> *Supra* Note 26.