DEPARTMENT :Electronics and Communications, Sem: Ist
SUBJECT NAME: IC
SUBJECT CODE : 23MCT002
FACULTY NAME :Dr.Husna Khouser

Chapter – 2

System of Governmnet

Emergency Provisions: National Emergency, President Rule, Financial

Emergency

13.1 Introduction

- The emergency provisions are contained in part XVIII of the constitution, from Articles 352 to 360.
- National Emergency is mentioned in Article 352 and presidents rule is mentioned in Article 356 of the Indian Constitution.
- During an Emergency, the Central Government becomes all-powerful and the states go into the total control of the Centre.
- It converts the federal structure into a unitary one without a formal amendment of the Constitution.

13.2 The Constitution stipulates three types of emergencies

- National Emergency
  - o An emergency due to war, external aggression or armed rebellion (Article 352). -This is popularly known as 'National Emergency.
  - o However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
- President's Rule
  - o An Emergency due to the failure of the constitutional machinery in the States (Article 356).
  - o This is popularly known as 'President's Rule'. It is also known by two other names- 'State Emergency' or 'Constitutional Emergency.
  - o However, the Constitution does not use the word 'emergency' for this situation.
- Financial Emergency
  - o Financial Emergency due to a threat to financial stability or -the credit of India (Article 360).
  - o This type of emergency is never proclaimed in India.

13.3 National Emergency - Article 352

- Article 352 of the Indian Constitution talks about the National Emergency.
- Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion. It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion if he is satisfied that there is an imminent danger.
- National Emergency is imposed whereby there is a grave threat to the security of India or any of its territories due to war, external aggression or armed rebellion. Suchemergency shall be imposed by

the President on the basis of a written request by the council of ministers headed by the Prime Minister. When they are satisfied that there is an imminent danger thereof.

- Every proclamation is required to be laid before each House of Parliament, it will cease to operate afteronemonthfromthedateofitsissueunlessin themeantimeitisapprovedby theParliament the proclamationmay continue fora period of 6 months unlessrevoked by the President.
- For the further continuance of emergency, the resolution has to be passed by either House of Parliament by a majority of not less than two-third members of the Houses.
- During the times of such emergency, the executive, legislative and financial power rests with the Centre whereas the state legislature is not suspended.
- The Union Government under Article 250 of the Constitution gets, the power to legislate in regards to subjects enumerated in the State List.
- ExceptArticle 20 and 21, all the Fundamental Rights are suspended
- Under Article 359, the President may suspend the right to move to the Courts for enforcement of Fundamental Rights during the time 'of emergency.
- National Emergency has been imposed thrice in the country in 1962 at the time of Chinese aggression, in 1971during the India-Pak war, in 1975 on the grounds of internal disturbances.

13.4 Parliamentary Approval and Duration

- The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months but was reduced by the 44th Amendment Act of 1978.
- However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it. If approved by both the Houses of Parliament, the emergency continues for six months and can be extended to an indefinite period with the approval of the Parliament every six months.
- This provision for periodical parliamentary approval was also added by the 44th Amendment Act of 1978. Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the mean-time approved its continuation.
- Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is, (a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the membe1rs of that house present and voting. This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament

13.5 President Rule (Failure of Constitutional Machinery in State) - Article 356

- It is also known as State Emergency.
- Article 256 talks about the failure of constitutional machinery in the state also known as the President's Rule.

- If the President on Governor's report or otherwise is satisfied that the situation has arisen that the Government can not be carried in accordance with the constitutional provisions then, he may issue State Emergency.
- President can declare emergency either by the report of the Governor or he himself is satisfied that the situation is such that the emergency has to be imposed.
- But at times, the President may declare an emergency when a report is not received from the Governor.
- This was done by President Venkataramanin 1991 in the State of Tamil Nadu even though he did not receive a. report from the Governor.
- After the 4znd Amendment of the constitution the: State Emergency was made immune from judicial review. But later in the 441h Amendment the legality of President's rule could be challenged.
- The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve. it, the emergency shall cease to have effect after the expiry of a period of two months.
- Further, the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance.
- Beyond the period of a year, the proclamation can only be continued if the Election commission certifies that it is not possible to hold an election in the State or that territory
- Following are the consequences of State Emergency
    - The President assumes all the executive power of the State himself. The state administration runs by him or any person appointed by him generally the Governor.
    - During such proclamation, the state assembly is either dissolved or suspended. But the MLA's do not lose their membership of the Assembly
    - Parliament makes laws regarding the state list. The parliament only passes the budget for the State.
    - The High Court of the state functions independently. -The President also proclaims ordinances in the State
    - During the State Emergency, the Union Government has absolute control over the State except for the judiciary
    - If one looks at the past instances of State Emergency in the country three common grounds emerge that have been invoked under article 356: breakdown of law and order, political instability, corruption and maladministration

13.6 Parliamentary Approval and Duration

- A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- However, if the proclamation of President's Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the meantime.
- If approved by both the Houses of Parliament, the President's Rule continues for six months. It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30

days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.

13.7 Financial Emergency - Article 360

- The President under Article 360 of the Constitution has the power to declare Financial Emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is threatened.
- It has to be laid before both the Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses.
- During the operation of Financial Emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canonsoffinancialproprietyand such other directions that the President may find necessary.
- The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of the union including judges of High Court and Supreme Court. There has been no occasion of Financial Emergency in India.
- Effects of Financial Emergency
  - The proclamation of Financial Emergency may have the following consequences:
  - The Union Government may give direction to any of the States regarding financial matters.
  - The President may ask the states to reduce the salaries and allowances o1'all or any class of persons in government service.
  - The President may ask the States to reserve all the money bills for the consideration of the Parliament after they have been passed by the State Legislature.
  - The President may also give directions for the reduction of salaries and allowances of the Central Government employees including the Judges of the Supreme Court and the High Courts.

13.8 Parliamentary Approval and Duration

- A proclamation declaring financial emergency must be approved by both the Houses of Parliament
- Within two months from the date of its issue. However, if the proclamationof Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it. Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:
  - There is no maximum period prescribed for its operation; and
  - Repeated parliamentary approval is not required for its continuation.