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**"ANALYZING THE EVOLUTION, APPLICATION, AND IMPACT OF
EMERGENCY PROVISIONS IN INDIA"**

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ABSTRACT

This research endeavours to delve into the historical evolution, practical application, and repercussions of emergency provisions embedded in the Indian Constitution, with a specific focus on Articles 352, 356, and 360. The study seeks to unravel the evolution of these provisions over time, elucidating how they have adapted to changing national and global dynamics. A central objective is to scrutinize instances where emergency powers were invoked, critically assessing their impact on constitutional governance, fundamental rights, and democratic principles. The crux of these emergency provisions lies in their ability to address exceptional circumstances that jeopardize the nation. Article 352, outlining the National Emergency, stands out as the most formidable, granting the President authority to proclaim an emergency in response to threats such as war, external aggression, or armed rebellion. This provision tempers centralized power, allowing for the temporary suspension of specific fundamental rights and alterations to the federal structure for a swift and unified response. Similarly, Article 356 provides for the imposition of President's Rule in a state facing constitutional breakdown, with the Governor's report signaling the state government's inability to function constitutionally. This provision aims at reinstating constitutional order and governance in the affected state. Additionally, Article 360 addresses Financial Emergencies, enabling a centralized approach to tackle situations jeopardizing the country's financial stability, empowering the President to issue directives to states on financial matters. While acknowledging the indispensable role of these provisions in critical situations, the research will critically examine instances of their potential misuse, addressing concerns about encroachments on democratic principles. The Constitution's built-in safeguards, including parliamentary approval and judicial review, will be scrutinized for their effectiveness in preventing arbitrary use and maintaining the delicate equilibrium between responding to emergencies and upholding democratic values.

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Keywords: Emergency provisions in India, Constitutional mechanism, Articles 352, 356, and 360, National Emergency, President's authority, Suspension of fundamental rights.

INTRODUCTION

Black law's dictionary defines emergency "as a failure of the social system to deliver reasonable conditions of life". An emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers granted to them." In India, the emergency provisions are such that the constitution enables the federal government to acquire the strength of unitary government whenever the situation demands. All the pacific methods should be exhausted during such situation and emergency should also be the last weapon to use as it affects India's federal feature of government. There are three types of emergencies under the Indian Constitution namely-

- National Emergency
- State Emergency
- Financial Emergency

HISTORICAL EVOLUTION OF ARTICLES 352, 356, AND 360

The historical evolution of Articles 352, 356, and 360 in the Indian Constitution reflects the nation's journey through various challenges, emergencies, and the continuous need for constitutional provisions to address them.

Article 352, pertaining to National Emergency, emerged in the aftermath of India's experiences during the early years of independence. The Constitution makers were deeply influenced by the external threats posed by wars, particularly the Indo-China War of 1962 and the Indo-Pak Wars of 1965 and 1971. The framers envisioned a mechanism to consolidate executive power during times of war, external aggression, or armed rebellion. The most notable historical event linked to Article 352 was the declaration of the Emergency in 1975, where internal disturbances were cited, leading to the suspension of fundamental rights and widespread political ramifications.

Article 356, dealing with State Emergency, evolved as a response to challenges related to the breakdown of constitutional machinery in states. The early decades of the Republic saw instances where some states faced governance crises, necessitating the intervention of the

central government. This article was invoked multiple times in the initial years, often raising concerns about federalism. The Supreme Court's landmark judgment in the S. R. Bommai case (1994) provided significant guidance on limiting the misuse of Article 356, emphasizing the need for a valid reason and exhausting all alternatives before its invocation.

Article 360, addressing Financial Emergency, was a product of the economic challenges faced by the country. The early 1990s witnessed economic crises, including a severe balance of payments situation. While Article 360 has never been invoked, its inclusion in the Constitution reflects a forward-looking approach to potential economic threats. It allows the President to declare a state of financial emergency if there is a threat to the financial stability of India or any part thereof.

LEGAL FRAMEWORK/ NATIONAL EMERGENCY

Article 352 - National Emergency An in-depth analysis of Article 352, which provides for the declaration of a national emergency in the event of war, external aggression, or armed rebellion. Examining the scope of executive powers, suspension of fundamental rights, and the procedural aspects associated with its invocation. Whenever any of the following grounds occur, an emergency can be imposed:

1. War,
2. External aggression; or
3. Internal rebellion.

Article 352 provides that if the President is 'satisfied' on the grounds that the security of India is threatened due to outside aggression or armed rebellion, he can issue a proclamation to that effect regarding the whole of India or a part thereof.

However, sub-clause (3) states that when a piece of written advice is given by the Union Cabinet then only the President can make such a proclamation. Such a proclamation must be placed before each house of the parliament and must be approved within one month of the declaration of the proclamation otherwise it will expire.

Furthermore, it is not necessary that for the proclamation of National emergency, external aggression or armed rebellion should actually happen. Even if there is a possibility that such a situation can arise, a national emergency can be proclaimed.

In [Minerva Mills's vs Union of India](#), it has been held that there can be no bar to judicial review of determining the validity of the proclamation of emergency issued by the President under Article 352(1). The court's powers are limited only to examining whether the limitations conferred by the Constitution have been observed or not. It can check if the satisfaction of President is on valid grounds or not. If the President is satisfied that grounds for national emergency exists but the same is based on absurd, malafide or irrelevant grounds then it won't be considered that the President is 'satisfied'.

Procedure for revoking emergency

If the situation improves then the President can revoke the emergency through another proclamation. The 44th Amendment of the Constitution provides that a requisition for the meeting can be made by ten per cent or more members of the Lok Sabha and in that meeting; it can disapprove or revoke the emergency by a simple majority. The emergency will immediately become inoperative in such a case.

Territorial Extent of Proclamation

The President may make a Proclamation of Emergency in respect of the whole India or any part of India, as required.

Duration of Emergency

If approved by both houses of Parliament then National Emergency can continue for 6 months and it can be renewed by approval of Parliament after every 6 months. But if the dissolution of Lok Sabha takes place in that 6 months and resolution for renewal of National Emergency is under consideration then emergency exists till 30 days from the first sitting of newly elected LS provided that it is approved by Rajya Sabha.

Until 44th amendment 1978, if Parliament approves proclamation of National Emergency then it remains in operation on pleasure or desire of cabinet or executive. Any of the above resolution related to proclamation or renewal of National Emergency must be passed by both houses of Parliament by a special majority (i.e. the majority of the total membership of that house or not less than 2/3rd of members present and voting). This provision is added by 44th amendment 1978 and before that such resolution can be passed by simple majority i.e. more than total members present and voting.

Duty of the Union to protect the States:

It is the duty of the Union to ensure that the State remains protected from disturbance and external aggression, while the Proclamation of Emergency is in operation. The Union shall ensure that the State Government works according to the provisions of the Constitution.

STATE EMERGENCY

Article 356 - State Emergency A detailed examination of Article 356, which empowers the President to impose President's Rule in a state in case of failure of constitutional machinery. Analyzing the circumstances leading to its application, its impact on federalism, and the checks and balances in place. As per Article 356, if the President after receiving a report from the Governor of a State or otherwise is satisfied that such a situation exists where the Government of a State cannot be carried in accordance with the provisions of the Constitution, he may issue a Proclamation.

Duration

When a Proclamation is issued under Article 356, it shall be first laid before each House of the Parliament. Such Proclamation shall remain in operation for 2 months unless before the expiry of the said period it has been approved by both Houses of the Parliament according to Article 356(3). Suppose in a case where the Lok Sabha has been dissolved during the issuance of a proclamation of emergency or its dissolution takes place within the above said period of two months and the Rajya Sabha has approved the Proclamation but the Lok Sabha has not approved it.

In such a case, the said proclamation shall not operate unless before the expiry of 30 days it has also been passed by the Lok Sabha after its reconstruction. The Proclamation will remain in operation for 6 months after it has been approved by the Parliament. The duration of an emergency can be extended for 6 months at a time but it cannot remain in operation for more than 3 years.

Revocation

By a subsequent Proclamation, a proclamation of State Emergency can be revoked.

Effects

State Emergency shall have the following effects:

- The President shall have all the powers that are exercisable by the Governor in the State.
- The President shall declare that the State shall exercise its Legislative powers by or under the authority of the Parliament.
- If the President deems fit that necessary provisions shall be made to serve the purpose of the Proclamation, then he may make such provisions.

DIFFERENCE BETWEEN ARTICLES 352 AND 356

Under Article 352, the State Legislature and Executive continue to function but the Centre gets the concurrent powers of the legislation and administration in the matters of the State. Under Article 356, the executive, as well as legislative power is vested in the Centre and the State Legislature is dissolved.

Under Article 352, the relationship between the Centre and all the States changes but in the case of Article 356 the relationship between the Centre and the State in which President's Rule is applied undergo a change.

FINANCIAL EMERGENCY

Exploring Article 360, which grants the President the authority to declare a financial emergency in response to a perceived threat to the financial stability of India or any part thereof, this study assesses the economic implications, the suspension of financial autonomy, and the procedural aspects involved; accordingly, as per Article 360, a Proclamation of Financial Emergency may be issued if the President believes that a situation exists where the financial stability of India or any part of the territory is threatened.

Duration: The Proclamation of Financial Emergency shall cease to operate after 2 months unless it has been approved by both the Houses of Parliament. In a case where during the issuance of Proclamation the Lok Sabha has been dissolved or its dissolution takes place within the staid period of 2 months and the Rajya Sabha has approved the proclamation but

the Lok Sabha has not approved it. Then, such a proclamation shall not operate unless before the expiry of 30 days Lok Sabha has passed a resolution approving proclamation.

Revocation: By a subsequent Proclamation, Proclamation of Financial Emergency can be revoked.

Effects: Financial Emergency has the following effects:

- The executive authority of the Union shall give directions to the State regarding the maintenance of financial stability.
- It may include provisions for reduction of salaries and allowances of all or any class of persons serving in the State. This includes Judges of the High Court and the Supreme Court.
- The Money Bills shall be reserved for the approval of the President.

CONCLUSION

In summary, the historical evolution of Articles 352, 356, and 360 mirrors India's response to a myriad of challenges be they political, constitutional, or economic and underscores the dynamic nature of the Constitution in adapting to the evolving needs of the nation. This research article seeks to contribute to the scholarly understanding of emergency provisions in the Indian Constitution, focusing on the nuanced aspects of Articles 352, 356, and 360 and their implications for constitutional governance and democratic principles. Having dealt with all emergency provisions, it is easy to understand the purpose behind the enforcement of such provisions. But it is important to note that even when these provisions are provided for the nation's security and protection of the people, the provisions in themselves give drastic discretionary powers in the hands of the Executive. This affects the federal structure of the nation and essentially turns it into a unitary one. Therefore, the courts should be given the power to expand the powers of the Centre, as the same will act as a built-in mechanism to check if the discretionary powers are being used arbitrarily by the Parliament and the Executive.