UNIT- 10 : EMERGENCY PROVISIONS UNDER INDIAN CONSTITUTION

Unit Structure

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10.1. LEARNING OBJECTIVES

After going through this unit you will be able to:

- discuss the concept of Emergency
- explain the Constitutional provisions related to Emergency in India
- analyze the effect of Emergency provisions on media reporting

10.2. INTRODUCTION

Emergency is a serious situation or occurrence that happens unexpectedly and demands immediate action. It may pose immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, solutions may not be possible and agencies may only be able to offer proper care for the aftermath. The *state of emergency* is a time of crisis, declared by a government, during which normal laws and civil rights (including Freedom of Media) can be suspended. Another important facet of the law in Media Reporting is the limitation due to 'parliamentary privilege' which refers to two significant aspects of the law relating to both Houses of

Parliament and of their members and committees – Freedom of Speech and Right of publication of proceedings.

In this unit you will learn about the concepts of Emergency, State of Emergency, Parliamentary and Legislative Privileges. You will also learn about different provisions and types of Emergency and the types of Parliamentary and Legislative Privileges under the Constitution of India. You will also be given an understanding about the effect and limitations on Media Reporting because of these constitutional provisions.

In the next unit we will discuss the penal provisions in India and the concept of Right to Information is analyzed in relation to international and domestic legislations along with the constitutional provisions and finally the Official Secrets Act, 1923.



LET US KNOW

Some Interesting Definitions and Quotes:

Emergency: A sudden serious and dangerous event or situation which needs immediate action to deal with.

– Oxford Advanced Learner's Dictionary

Privileges: Privilege is an exceptional right or advantage, an exemption from some duty or burden of attendance, to which certain persons are entitled from a supposition of law that the situations they fill or the offices they are engaged in are such as require all their care, and that, therefore, without this indulgence it would be impracticable to execute such offices as advantageously as the public good requires.

– Earl Jowitt

Parliamentary Privileges: The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.

– Sir Thomas Erskine May

10.3. EMERGENCY AND STATE OF EMERGENCY: CONCEPTS

A precise definition of an *emergency* is difficult to arrive at. This definition may vary according to the agencies involved and the procedures used. This definition is usually set by the government, whose agencies are responsible for emergency planning and management. An emergency is a situation which poses an immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, solutions may not be possible and agencies may only be able to offer proper care for the aftermath. Whilst some emergencies are self evident (such as a natural disaster which threatens many lives), many smaller incidents require the opinion of an observer (or affected party) in order to decide whether it qualifies as an emergency.

A *state of emergency* is a governmental declaration that may suspend certain normal functions of government, may work to alert citizens to change their normal behaviors, or may order government agencies to implement emergency preparedness plans. It can also suspend all civil liberties. Such declarations usually come during a time of natural disaster, during periods of civil unrest, or following a declaration of war (therefore, in democratic countries many call this martial law).

In some countries, the state of emergency and its effects on civil liberties and governmental procedure are regulated by the constitution, or a law that limits the powers that may be invoked during an emergency or rights suspended. Modification of emergency law or Constitution during the emergency is illegal.

10.3.1. Emergency Provisions under the *Constitution of India*

A state of emergency in India refers to a period of governance under an altered constitutional setup that can be proclaimed by the President of India, when he perceives grave threats to the nation from internal and external

sources or from financial situations of crisis. Under the advice of the cabinet of ministers and using the powers vested in him largely by Part XVIII of the *Constitution of India*, the President can overrule many provisions of the constitution, which guarantee fundamental rights to the citizens of India and acts governing devolution of powers to the states which form the federation. In the history of independent India, there were three periods during which a state of emergency was deemed to have existed:

1. Between 26 October 1962 to 10 January 1968 during the India-China war — "the security of India" having been declared "threatened by external aggression".
2. In December 1971, originally proclaimed during the India-Pakistan war, and later extended along with the third proclamation — "the security of India" having been declared "threatened by external aggression".
3. Between 26 June 1975 to 21 March 1977 under controversial circumstances of political instability under the Indira Gandhi's prime ministership — "the security of India" having been declared as "threatened by internal disturbances".

The President can declare three types of emergencies:

- National Emergency
- State Emergency
- Financial Emergency

National Emergency under Article 352

National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 (declared by Indira Gandhi to maintain law and order in the country). The President can declare such an emergency only on the basis of a written request by the Council of Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval. In such an emergency,

Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended. During Emergency the Parliament can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, during emergency all money bills are referred to the Parliament for its approval. During the period of Emergency the term of the Lok Sabha can be extended by a period of one year but not more than six months from the date when the emergency has ceased to exist.

State Emergency under Article 356

'President's Rule' or 'Central Rule' (State Emergency) is the term used in India when a state government is dissolved and is placed under the direct rule by the President of India. President's Rule is enabled by Article 356 of the *Constitution of India* and it is declared due to failure of constitutional machinery in a state. If the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources ,that the governance in a state cannot be carried out according to the provisions in the Constitution, he can declare emergency in the state. The state governor can dissolve the house on his own discretion, if there is no clear majority in the house, on the advice of the ruling party or by the central government. The governor then dissolves the house, placing it in 'suspended animation' for a period of six months. After six months, if there is no clear majority, then fresh elections are held.

During the State Emergency the Parliament makes laws on the 66 subjects of the State List. All money bills have to be referred to the Parliament for approval. In this situation ministers of state legislature are not allowed to perform action in state. Such an emergency must be approved by the Parliament within a period of six months. It is imposed for six months and can last for a maximum period of three years with repeated parliamentary approval every six months. If the Emergency needs to be extended for more than three years, it can be done by a constitutional amendment. This type of amendment was carried on in case of Punjab and Jammu and Kashmir.

It is called President's Rule as the President of India governs the state instead of an elected Chief Minister, but at administrative level the state Governor is delegated the executive authority on behalf of the central government. This Article was enabled as a means for the central government to assert authority over a state if civil unrest (such as riots) occurred and the state government didn't have the means to end the unrest. Critics of president's rule argue that most of the time, it has been used as a pretext to dissolve state governments ruled by political opponents. Thus, it is seen by many as a threat to the federal state system.

Almost all states in India have undergone this type of an emergency. Since the *Constitution of India* was adopted in 1950, the central government has used this Article more than 100 times to dissolve state governments and impose President's Rule. This article was used for the first time during Vimochana Samaram (or The Liberation Struggle in the history of Kerala is the political agitation that started in 1958 against first communist government) to dismiss the democratically elected Communist Ministry of Kerala on July 31, 1959.

Financial Emergency under Article 360

If the President is satisfied that there is an economic situation in which the financial stability or credit of India is threatened, the President can declare Financial Emergency. Such an emergency must be approved by the Parliament within two months. It has never been declared in India. Such a situation had arisen once in India, but was avoided by selling off of the gold assets of India.

Financial Emergency once proclaimed remains enforced till the President revokes it. During Financial Emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts. All money bills passed by the state legislatures are submitted to the President for his approval. He can direct the state to observe certain principles (economy measures) relating to financial matters.

10.3.2. Code of Conduct for the Press, 1971

A Press Consultative Committee appointed by the Government of India during the Emergency of 1971 has formulated a Code of Conduct for the Press in time of Emergency. These are:

- Withhold publication of information considered by the appropriate authorities to be detrimental to national interests.
- Stop dissemination of confidential information collected in the course of professional duties.
- Withhold republication of information and comment prejudicial to national interests from foreign and internal sources.
- Avoid loose talk, as this is likely to lead to wild rumours due to the general belief in public that members of the press have access to sources not generally available.

10.3.3. Effect of Emergency Provisions on Media Freedom

There is no provision in our Constitution for suspension of Fundamental Rights except during the Emergency period as mentioned under the provisions in Part XVIII. Two Provisions relevant in this context are Articles 358 and 359. Article 358 deals with National Emergency, which empowers the state to suspend the operation of Article 19 (Right to Freedom of Speech and Expression which includes Freedom of Media) during the operation of a Proclamation of Emergency made under Article 352. Any law or order made after the coming into operation of the Proclamation of Emergency, cannot be challenged on the ground of violation of any provision of Article 19. Even after the Emergency is over, the constitutionality of the acts done or omitted to be done during Emergency cannot be challenged on the same ground. Therefore, the effect of Article 358 is enormous on the Media Freedom which is guaranteed by Article 19. As soon as the Proclamation ceases to operate, the legislative enactments passed and the executive actions taken during the course of emergency shall be inoperative and Article 19 which remains

suspended during the Emergency is automatically revived and begins to operate. The suspension of Article 19 under Article 358 applies to the whole country and covers all the States.

But after the amendment of the Article 359(1) by the 44th Amendment (1978) of the Constitution now the Fundamental Rights conferred under Article 20 (Protection in respect of conviction for offences) and 21 (Right to life and personal liberty) cannot be suspended even during the Proclamation of Emergency under Article 352 (National Emergency). The Effect of the Article 359 is that during Emergency under Article 352 a journalist who may have been imprisoned or detained under any law of preventive detention, may challenge his imprisonment or detention on the grounds available under Articles 20 and 21 even if all other Fundamental Rights are suspended under Article 358 or the enforcement of Article 19 has been barred by an Order under Article 389. Order issued under Article 359 may extend to the whole of India or may be confined to any part of the territory of India.

Proclamation of State Emergency under Article 356 will not effect Fundamental Rights at all. In fact in a National Emergency the Media has a vital role to play. During this period the role of the Media is important from the point of view of the government and the people. The strength of the people's morale and determination depends much upon the way the news and views are published and disseminated through the Media. If we take the example of a modern war, information of value to the enemy not only relates to the movement of troops, aircraft or military operations but also to such matters as food and supplies, communications, internal political conditions, etc. During State Emergency though the Media Freedom is not lifted the Media should be careful about not publishing the news and views which might either directly be of use to the enemy as affecting tactical, strategic or industrial plans or indirectly tend to strengthen the morale of the enemy.

Similarly, under Proclamation of Financial Emergency under Article 360, Fundamental Rights cannot be curtailed. Financial Emergency provisions expand executive powers only.



CHECK YOUR PROGRESS

Q.1: What is Emergency?

Q.2: What is State of Emergency?

Q.3: Which Part and Articles of the *Constitution of India* contains Emergency provisions?

Q.4: Choose the correct answer:

(a) National Emergency was proclaimed in India –

(i) Once (ii) Twice (iii) Thrice (iv) Four times

(b) All six freedoms under the *Constitution of India* are suspended during

National Emergency except –

(i) Right to Freedom (ii) Educational Rights (iii) Cultural Rights

(iv) Right to Life and Personal Liberty

(c) During the State Emergency or President's Rule thePresident of India

delegates executive authority to –

(i) Chief Minister (ii) Home Minister (iii) Governor (iv) Law Minister

(d) Financial Emergency is proclaimed under Article –

(i) 352 (ii) 358 (iii) 356 (iv) 360



10.4. LET US SUM UP

In this unit you have been introduced to the basic concepts of Emergency, State of Emergency and the Parliamentary and Legislative immunities along with the limitations on Media Reporting due to various constitutional provisions related to the concepts. Let us now quickly sum up these concepts.

An emergency is a situation which poses an immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, solutions

may not be possible and agencies may only be able to offer proper care for the aftermath. A *state of emergency* is a governmental declaration that may suspend certain normal functions of government, may work to alert citizens to change their normal behaviors, or may order government agencies to implement emergency preparedness plans. It can also suspend all civil liberties.

A state of emergency in India refers to a period of governance under an altered constitutional setup that can be proclaimed by the President of India, when he perceives grave threats to the nation from internal and external sources or from financial situations of crisis. This proclamation is done under the advice of the cabinet of ministers.

The President can declare three types of emergencies :

National Emergency under Article 352 (all Fundamental Rights are suspended, except the rights under Articles 20 and 21), State Emergency under Article 356 (No suspension of Fundamental Rights) and Financial Emergency under Article 360 (No suspension of Fundamental Rights). During the National Emergency Article 19 which guarantees Media Freedom is not operative; therefore, it affects Media Reporting.



10.6. ANSWERS TO CHECK YOUR PROGRESS

1. *Emergency* is a serious situation or occurrence that happens unexpectedly and demands immediate action. It may pose immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, solutions may not be possible and agencies may only be able to offer proper care for the aftermath.

2. A *state of emergency* is a governmental declaration that may suspend certain normal functions of government, may work to alert citizens to change their normal behaviors, or may order government agencies to implement emergency preparedness plans. It can also suspend all civil liberties.

3. Articles 352 to 360 Part XVIII of the *Constitution of India* contains Emergency provisions.

4. (a) (iii) Thrice

(b) (iv) Right to Life and Personal Liberty

(c) (iii) Governor

(d) (iv) 360



10.5. FURTHER READINGS

- **H. K. Saharay:** ***The Constitution of India – An Analytical Approach***
- **Dr. J. N. Pandey :** ***Constitutional Law of India***
- **Aurobindo Mozumdar:** ***The Law and the Newspapers***



10.7. MODEL QUESTIONS

C) Long Questions

1. Enumerate the Emergency Provisions under the *Constitution of India*?
2. Analyse the effect of Emergency Provisions under the *Constitution of India* on Media Reporting.

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