


Subject: LAW

Production of Courseware

 - Content for Post Graduate Courses



Paper : ADVANCED CONSTITUTIONAL LAW

Module : EMERGENCY PROVISIONS



ज्ञान-विज्ञान विमुक्तये



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### Component-1(B) Description of Module

Description of Module	
Subject Name	Law
Paper Name	Constitutional Law
Module/ Name/Title	Emergency Provisions Under the Indian Constitution
Module Id	Emergency provisions in Constitution
Pre-requisites	Basic understanding of Indian Constitution
Objectives	To appreciate the Emergency provisions in the light of Constitutional provisions and their consequences.
Keywords	Constitution of India, Emergency, Constitutional breakdown, Financial Emergency



## Component -11

### Module-Emergency Provisions in Indian Constitution

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#### Structure

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3. Learning Objectives
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  - (c) Procedure of revoking emergency
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7. Conclusion
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#### Emergency Provisions

##### 1. Objective

In this module you will learn about different kinds of emergencies envisaged under the Indian Constitution. You will also understand the impact of emergency on federal structure and fundamental rights. Discussion will also take place regarding the controversies surrounding the use or misuse of article 356 and how the judiciary has tried to incorporate safeguards to protect our federal structure and fundamental rights. The rationale for the appointment of different Commissions on Centre- State Relations, like the Santhanam Committee, Sarkaria Commission, the National Commission to Review the Working of the Constitution and the Punchi Commission and their reports would also be discussed to appreciate the developments better.



## 2. Introduction.

Constitution is the fundamental law, which regulates the administration of the country. Part XVIII of the Constitution of India has incorporated emergency provisions. This part of the Indian Constitution has been the subject of severe criticism than any other provisions. Nowhere was the tension between the precarious political reality and fundamental rights more evident than in the Assembly's discussion of emergency powers.<sup>1</sup> Most of the objections have originated from the fear that the emergency provisions are not in conformity with the democratic ethos of the constitution. At the same time many of the members of the Constituent Assembly preferred to incorporate emergency provisions keeping in view the vulnerability and disruptive forces engaging the young nation including partition and the communal fall out, poverty, minority issues, problem of princely states etc.<sup>2</sup> Constitution was equipped with the necessary power and authority to respond to in the hour of emergency and to protect the security, integrity and stability of the country and effective functioning of State Governments. The module deals with the nature and scope of emergency provisions envisaged under the Indian Constitution.

## 3. Learning Objectives

This module would acquaint you with the different kinds of emergency provisions. Module will enable the reader to understand the consequences of emergency, its impact on federal structure and fundamental rights.

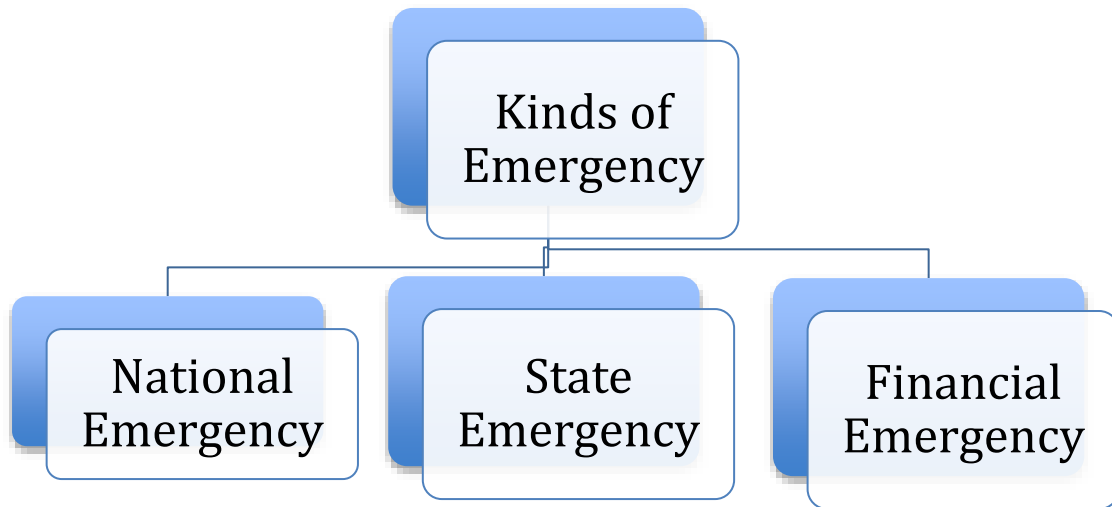
## 4. Emergency Provisions Under The Indian Constitution

The Constitution of India incorporates three different types of Emergency in part XVIII of the Constitution.

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<sup>1</sup>. Rebecca Sandler, A Constitution Can Protect Fundamental Rights in Times of Emergency: Lessons from India and the Philippines, <http://www.learningace.com/doc/4625501/0e31b12edbae5ef7e3fd535da6f3dce1/sandler-paper>(Accessed on 3rd Dec-2014).

<sup>2</sup>. *Ibid.*



#### **(a) Proclamation of Emergency:**

Article 352 provides that if the President is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened by war, or external aggression or armed rebellion, he may by proclamation, make a declaration to that effect.<sup>3</sup> The proclamation of emergency can take place not only after the incidents of war or external aggression or armed rebellion but even before the actual occurrence, if the President is satisfied that there is imminent danger thereof.<sup>4</sup> According to the Constitution (Forty Fourth Amendment) Act, 1978, the President can declare such an emergency only if the Cabinet headed by the Prime minister and other Ministers of Cabinet rank recommends in writing doing so.<sup>5</sup> This was incorporated to avoid the kind of situation of 1975 wherein on the oral advice of the prime minister, the Proclamation of emergency was declared.

#### **(b) Procedure for proclaiming emergency**

Every proclamation needs to be laid before both Houses of Parliament. If both Houses of Parliament do not approve of it within one month, it will cease to operate at the

<sup>3</sup> Constitution of India, Art. 352(1).

<sup>4</sup> *Ibid*, Explanation.

<sup>5</sup> *Ibid*, Art 352(2).



expiration of thirty days from the date on which the proclamation was issued.<sup>6</sup> This is intended to ensure an amount of accountability and legitimacy of executive action. In case the Lok Sabha stands dissolved at the time of proclamation of emergency or is not in session, it has to be approved by the Rajya Sabha within one month and later on by the Lok Sabha also within one month of the commencement of its next session.<sup>7</sup> Once approved by the Parliament, the emergency remains in force for a period of six months from the date of proclamation. In case it is to be extended beyond six months, another resolution has to be passed by the Parliament.<sup>8</sup> In *Minerva Mills v. Union of India*,<sup>9</sup> it was held that even though the proclamation under article 352 is the prerogative of the president, there is no bar to judicial review of the validity of the proclamation of emergency. However, court's power is not unlimited and extends only to examining whether the limitations conferred by the constitution have been observed or not.<sup>10</sup>

#### **(C) Procedure of revoking emergency**

The proclamation of the emergency can be revoked by another proclamation by the President of India. The Constitution (Forty Fourth Amendment) Act 1978, has added certain control mechanisms to be exercised by the House of the People if it passes a resolution to that effect. If the House of the People is not in session, then ten per cent or more members of that House can issue a notice in writing to the speaker if the House is in session or to the president if the House is not in session for the revocation of the emergency and if passed by a simple majority emergency will immediately become inoperative.<sup>11</sup> If the notice is given to the President, he shall convene the session of the House of the People for a special sitting within fourteen days from the date on which such notice is received by the Speaker or as the case may be by the President, for the purpose of considering such resolution.

#### **(d) Effects of national emergency-**

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<sup>6</sup> *Ibid*, Art 352(4).

<sup>7</sup> [http://ias100.in/basix\\_archive\\_details.php?id=101](http://ias100.in/basix_archive_details.php?id=101) (Accessed on May 26 2014).

<sup>8</sup> Art 352(5).

<sup>9</sup> AIR 1980 SC 1789.

<sup>10</sup> *Ibid*.

<sup>11</sup> Art 352(8).



The proclamation of emergency has significant impact on the federal provisions of the constitution. Firstly the executive power of the Union shall extend to the giving of any direction to any State in the declared emergency area.<sup>12</sup> Secondly, Parliament's law-making power will extend to the subjects enumerated even in the State List.<sup>13</sup> Further, the President is empowered to alter the distribution of revenues that are normally to be assigned to the States under the financial provisions of the Constitution.<sup>14</sup> During the period, the tenure of Lok Sabha and State Assemblies can be extended by a period of one year at a time and not extending in any case beyond a period of six months after the proclamation ceased to exist.<sup>15</sup>

### Effect of Emergency



The Fundamental Rights under Article 19 are automatically suspended and this suspension continues till the end of the emergency.<sup>16</sup> The Constitution (Forty Fourth Amendment) Act 1978 incorporated certain changes in this structure. Freedoms listed in Article 19 can be suspended only in case of proclamation on the ground of war or

<sup>12</sup>. Art 353(a).

<sup>13</sup>. Art 353(b).

<sup>14</sup> Art 354(1).

<sup>15</sup> Art. 83 (2) proviso and art. 172 (1) proviso, respectively.

<sup>16</sup> Art 358.



external aggression.<sup>17</sup> Further, the Constitution empowers the President to suspend the right to move any court of law for the enforcement of any of the fundamental Rights.<sup>18</sup> Such orders are to be placed before Parliament as soon as possible for its approval.<sup>19</sup> The Constitution (Forty Fourth Amendment) Act 1978, inserted a restraint on the unbridled power of executive. After the Constitution (Forty Fourth Amendment) Act, Article 21 of the Constitution which guarantees right to life and personal liberty cannot be suspended even during emergency.

So far, there have been three occasions where national emergency was proclaimed under article 352 (1). Chinese aggression in 1961 and Indo-Pakistan war in 1971 prompted proclamation of emergency on the ground of external aggression.<sup>20</sup> The first proclamation of a national emergency on grounds of internal disturbance took place in 1975 and sent India on a two-year rollercoaster that suspended and threatened the core of Indian democracy.<sup>21</sup>

On many occasions judiciary was confronted with the questions of emergency and its impact on fundamental rights. In *State of Maharashtra v. Prabhakar Pandurang*<sup>22</sup> the Supreme court held that if a person was deprived his personal liberty not under the Defence of India Act, or any rule made under that Act, his right to move the court in that regard would not be suspended.<sup>23</sup> In *Mohd. Yaqub v. State of Jammu and Kashmir*,<sup>24</sup> the Supreme Court held that an order issued by the President under article 359(1) was not law within the meaning of article 13(2) and therefore its validity cannot be challenged with reference to the provisions of part III.<sup>25</sup> Thus, if the order suspends the enforcement of article 14, it cannot be challenged on the ground that it is

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<sup>17</sup>.The Constitution (Forty- Fourth Amendment) Act, 1978

<sup>18</sup>. Art 359.

<sup>19</sup> Art 359(3.)

<sup>20</sup> Venkata Iyer, States of Emergency. The Indian Experience , (Butterworth, India 2000) 3.

<sup>21</sup>.Michael Davis, Book Review, 'Constitutionalism and New Democracies,' (2004) 36 GEO. WASH. INT'L L. REV. 681.

<sup>22</sup> AIR 1966 SC 424.

<sup>23</sup>*Ibid.*

<sup>24</sup>.AIR 1968 SC 765.

<sup>25</sup>*Ibid.*



discriminatory under article 14. The validity of the order cannot be tested under the very fundamental rights, i.e. article 14, which may be suspended.

In *Makhan Singh v. State Of Punjab*<sup>26</sup> the validity of the suspension of the right to move any court for the enforcement of Articles 14, 21 and 22 under the proclamation of emergency declared during the Indo-China war was challenged. The Supreme Court held that the rights were suspended only for legally detained persons and not applicable to persons illegally detained under preventive detention law.<sup>27</sup> The Supreme Court pointing out that a citizen would not be deprived of his right to move the appropriate court for a writ of habeas corpus if his detention had been *mala fide*.<sup>28</sup>

In 1975 during emergency an important question came up. The question was whether in the wake of suspension of article 21 do people still claim right to life under any of the provisions or articles. In *A.D.M. Jabalpur v. Shiv Kant Shukla*,<sup>29</sup> which is also known as the *Habeas Corpus* case, the court held that political detainees could be denied all access to the courts during an emergency.<sup>30</sup> The court further held that “in effect, if not in intent, that as to life and personal liberty, *all laws* were abrogated during the emergency.”<sup>31</sup> The Court declared article 21 to be the sole repository of liberty and when that has been suspended in its totality, there cannot be any question of enjoyment of right to life and liberty and no writ of Habeas Corpus is maintainable.<sup>32</sup> The judgment is criticized and many believe that the Court did not uphold the legitimacy and supremacy of the Constitution.<sup>33</sup>

#### **(e) Safeguards under the Constitution (Forty Fourth Amendment) Act, 1978**

The proclamation of Emergency under Article 352 has virtually the effect of changing the structure of polity with a strong impact on fundamental rights. Adequate

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<sup>26</sup>.AIR 1964 SC 1120.

<sup>27</sup>*Ibid*,1134.

<sup>28</sup> *Ibid*.

<sup>29</sup>.AIR 1976 SC1207.

<sup>30</sup> *Ibid*.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid*.

<sup>33</sup>.Upendra Baxi, ‘Indian Supreme Court and Politics Prime Minister’s Election case’, (Eastern Book Company, Lucknow1980), 47.



safeguards are, therefore, necessary to ensure that this provision is properly exercised and not abused.<sup>34</sup> The Constitution (Forty Fourth Amendment) Act 1978 incorporated certain safeguards to protect the liberties of people during emergency. After this amendment, Article 21 of the Constitution which guarantees right to life and liberty, cannot be suspended even during emergency. This amendment has made two important changes in article 358. Firstly, article 19 will be suspended only when a proclamation of emergency is declared on the ground of war or external aggression and not when the emergency declared on the ground of armed rebellion.<sup>35</sup> Secondly, it has inserted a new clause (2) in article 358 which says that nothing in clause (1) shall apply to- (a) any law which does not contain a recital to the effect that such a law is in relation to the proclamation of emergency, or (b) to any executive action taken otherwise than under a law containing such a recital.<sup>36</sup> This clause makes it clear that article 358 will only protect emergency laws from being challenged in court of law and no other laws which are not related to the emergency.

#### **(f) Self Check Exercises**

What are the grounds on which national emergency can be declared?

Emergency can be declared on the grounds of war, or external aggression or armed rebellion.

What are the effects of declaration of national emergency?

During the proclamation of emergency the Union executive can give directions to state. Parliament can make law regarding the subjects enumerated even in the State List. The President is empowered to alter the distribution of revenues under Constitution. The Fundamental Rights under Article 19 are automatically suspended. The President can suspend the right to move any court of law for the enforcement of fundamental Rights.

### **5. Failure of state machinery**

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<sup>34</sup> . The Constitution (Forty- Fourth Amendment) Act, 1978 (n16).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*



Article 356 has been debated hotly among the political and intellectual circle.<sup>37</sup> Article 355 of the Constitution of India enjoins a responsibility on the Union Government to protect States against external aggression and internal disturbance.<sup>38</sup> In pursuance of this goal Article 356 provides that if the President is satisfied on receipt of a report from the Governor or otherwise that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he is empowered to issue a proclamation under Article 356.<sup>39</sup> The proclamation may be revoked subsequently; if not, it shall be laid before both Houses of Parliament, if Parliament does not approve of it within two months, it will become ineffective.<sup>40</sup>

#### **(a) Effect of a proclamation issued under article 356**

The proclamation issued under article 356 due to the breakdown of constitutional machinery in a State has the following effects:

- (i) The president may assume to himself all or any of the functions of the government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the state other than the Legislature of the state;<sup>41</sup>
- (ii) he may declare that the powers of the State legislature shall be exercisable by or under the authority of Parliament;<sup>42</sup>
- (iii) The President, however, cannot assume himself any of the powers vested in a High Court.<sup>43</sup>

#### **(b) Judicial Activism and Safeguards**

Since the commencement of the Constitution, this type of proclamation under article 356 has been issued almost 100 times. For the first time, it was declared in Punjab in

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<sup>37</sup>.Executive Discretion and Article 356 of the Constitution of India: A Comparative Critique K. Jayasudha Reddy and Joy V. Joseph1, *Electronic Journal of Comparative Law*, vol. 8.1 (March 2004), <http://www.ejcl.org/> (Accessed on 22 May 2014).

<sup>38</sup> Art 355.

<sup>39</sup> Art 356(1).

<sup>40</sup> Art 356(3).

<sup>41</sup> Art 356 (1)(a).

<sup>42</sup> Art 356(1) (b)

<sup>43</sup> Art 356(1) (c )



1952. The invocation of Article 356 on several occasions raised many questions constitutional importance. In its analysis, the National Commission to Review the Working of the Constitution (NCRWC) stated that in at least twenty out of the more than one hundred instances, the invocation of Article 356 might be termed as a misuse.<sup>44</sup>

After the general elections in 1977, in the case of *State of Rajasthan v. Union of India* the issue of the availability of judicial review came up.<sup>45</sup> Court held that the power of the President under Article 356 concerns his political judgment and the courts usually avoid entering the political thicket. However, this power does not enjoy blanket immunity from judicial review.<sup>46</sup> But if the satisfaction is *mala fide* or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it.<sup>47</sup> This point became amply evident in the case of *Minerva Mills v. Union of India*,<sup>48</sup> where the Supreme Court observed, that it should not hesitate to perform its constitutional duty merely because it involves consideration of political issues. At the same time, it should restrict itself to examining whether the constitutional requirements have been observed in the declaration of the Proclamation and it should not go into the sufficiency of the facts and circumstances of the presidential satisfaction in the existence of a situation of emergency.<sup>49</sup> Drawing on the analogy we can interpret that, though limited, the presidential Proclamation under Article 356 is subject to judicial review. In *Rameshwar Prasad v. Union of India*, the Supreme Court reviewed the constitutional validity of the Union's dissolution of the Bihar State legislative assembly and the proclamation of President's rule under Article 356 of the Constitution

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<sup>44</sup>. Report, National Commission to Review the Working of the Constitution, India, (2002).

<sup>45</sup>. *State of Rajasthan v. Union of India*. (1977) 3 SCC 592, 629

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* 663.

<sup>48</sup> AIR. 1980 SC 1789.

<sup>49</sup> Centre for International and Comparative Human Rights Law, *States of Emergency Database*, Queen's University, Belfast; <http://www.law.qub.ac.uk/humanrts/emergency/india/ind6.htm> (accessed on 3-08-2014)



It was felt by many that the provisions of emergency have been misused many times. To address this fiasco and to suggest measures to prevent misuse of this unfettered authority, from time to time various commissions have been appointed. The Sarkaria Commission which was appointed to look into the Centre–State Relations recommended that Article 356 should be used only as a last resort.<sup>50</sup> The Commission made following recommendations for the constitutional use of Article 356.

1. The Commission felt that article 356 is justiciable only when all available alternatives had failed to prevent a breakdown of constitutional machinery in a State.
2. Every effort is made to resolve the crisis at State level.<sup>51</sup>
3. Commission recommended amendment of Art 356 to incorporate a speaking order with material facts. The Governor’s Report, advising president should be a ‘speaking document, containing a precise and clear statement of all material facts and grounds’.<sup>52</sup> Commission also broadly classified the following possible instances of constitutional breakdown:
  - (a) Political crises.
  - (b) Internal subversion.
  - (c) Physical breakdown.
  - (d) Non-compliance with constitutional directions of the Union Executive.<sup>53</sup>

### **(C) S. R. Bommai and Safeguards**

*S. R. Bommai v. Union of India*<sup>54</sup> was a landmark in the history of the Indian Constitution. It was in this case that the Supreme Court boldly marked out the paradigm shift and spelt out the limitations within which Article 356 was to function.<sup>55</sup> The Supreme Court's ruling in the Bommai case highlighted clearly the many conditions for the valid exercise of the power under Article 356. They are:

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<sup>50</sup> The Sarkaria Commission Report, 6.3.23 (1987).

<sup>51</sup> *Ibid.* para 6.3.25.

<sup>52</sup> *Ibid.* para 6.8.08.

<sup>53</sup> *Ibid.*

<sup>54</sup> AIR 1994 SC 1918

<sup>55</sup> Soli Sorabjee, *Constitutional Morality Violated in Gujarat*, (Indian Express, Pune, India, Sept. 21, 1996).



- (1) Article 356 should be used sparingly as to not to disturb the delicate balance of power between Centre and states. Federalism constitutes a basic structure of the constitution;
- (2) The essential condition for the intervention by the Centre is the political instability of the State, that is, the virtual breakdown of the parliamentary system of the government;<sup>56</sup>
- (3) The Union will watch the situation of instability with utmost caution and provide every opportunity for the formation of an alternative ministry;
- (4) The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. An objective analysis of conditions must precede before the imposition of president's rule by invoking Article 356;<sup>57</sup>
- (5) The State's Assembly must not be dissolved before both Houses of Parliament have approved the proclamation made by the President under Article 356. Until such approval, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly;
- (6) Judicial review is part of basic structure and hence court will have the power to consider independently whether in fact conditions so existed as to warrant exercise of the power under article 356. Once a prima facie case is made out, the burden of proof will lie on the Government of India to justify the action.
- (7) Courts can call for the records and materials from the government containing the material on the basis of which the Council of Ministers of the Government of India tendered the advice to the President;<sup>58</sup> and
- (8) Courts have got the power to strike down a proclamation issued under article 356 as unconstitutional. In such a case, the dissolved state assembly can be reinstated.

These propositions emerge very clearly from the judgments pronounced by the nine-judge bench that heard the case.<sup>59</sup>

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<sup>56</sup>. AIR 1994 SC 1918

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup>. A.G. Noorani, President's Rule: Limits & checks, (2011) Front Line, Volume 28 - Issue 12 Jun. 04-17.



Supreme court applied the above principles in the case of *Rameshwar Prasad v. Union of India*.<sup>60</sup> In the assembly elections that took place in Bihar in 3005 no party was able to garner majority. A notification was issued on 7-3-2005 under Article 356 imposing President's rule and the Assembly was kept suspended. It was felt that this situation may encourage defection and horse trading.<sup>61</sup> The governor on the advice felt that it would be desirable in the interest of the State that the Assembly which had been kept in suspended animation be dissolved so that the electorate could be provided with one more opportunity to seek the mandate of the people at an appropriate time to be decided in due course. This was challenged and the following questions arose.

Is it permissible to dissolve the Legislative Assembly under Article 174 (2) (b) of the Constitution without its first meeting taking place?

Whether the proclamation is illegal and unconstitutional? <sup>62</sup>

The Court held that the dissolution of the State assembly and the proclamation of President's rule was unconstitutional and declared that it had the power to restore a dissolved assembly in an appropriate case. However, as elections to the Bihar assembly had been notified prior to the decision of the Court, it refrained from restoring the State assembly in this case.<sup>63</sup>

It is evident that there is a lack of effective safeguards against the abuse of Article 356 of the Indian Constitution. Many people have time and again clamored for the repeal of Article 356. The National Commission to Review the Working of Constitution (NCRWC) has advised against the repeal of Article 356, stating that this would create an imbalance in Union-State relations in upholding constitutional governance throughout India and that in many more instances than not the use of Article 356 was

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<sup>60</sup> AIR 2006 SC 980.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> . *Sudhir Krishnaswamy ,Madhav Khosla,(2009) Regional Emergencies Under Article 356: The Extent of Judicial Review, Indian J. Const. L., Vol 10 p169*



inevitable.<sup>64</sup> The Sarkaria Commission recommended that a warning should be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the provisions of the Constitution. Before taking action under article 356, any explanation received from the State should be taken into account.<sup>65</sup> One of the best possible solutions for preventing the misuse of article 356 may be to evolve a public opinion that abuse of article 356 is slowly and eventually is withering the democracy. Media and judiciary can in the meantime play some proactive role in evolving the public opinion on the need to exercise restraint when it comes to Article 356.

## **6. Financial Emergency:**

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of it is threatened, he may declare a financial emergency under Article 360.<sup>66</sup> The proclamation in this case also should be approved by Parliament as in the other two cases mentioned above. During a financial emergency, “the executive authority of the Union shall extend to the giving of directions to any State, to observe such canons of financial propriety as may be specified in the direction, or any other directions which the President may deem necessary for the purpose.”<sup>67</sup> Such directions may include those requiring the reduction of salaries and allowances of Government servants and even those of Judges of the Supreme Court and the High Courts.<sup>68</sup> However, it is interesting to note that no such proclamation has been issued under article 360 so far.

## **7. Conclusion**

The Indian Constitution provides the President with the powers to proclaim emergency (article 352), the proclamation issued due to failure of constitutional machinery in states (article 356) or financial emergency (article 360). History proves that emergency provisions in the constitution have been abused. Pressing these

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<sup>64</sup>. National Commission to Review the Working of the Constitution, para 6.7.10

<sup>65</sup> *Ibid.* para 6.7.08.

<sup>66</sup> Art 360(1).

<sup>67</sup> Art 360(3).

<sup>68</sup> Art 360(4) (b).



provisions into service have significant effect on fundamental rights and federalism which are basic structures of the Constitution. There must be effective control mechanism to ensure that the constitutional provisions are observed in letter and spirit. At the same time, it cannot be forgotten that despite the abuse of power under this Part on Emergency provisions, they still have a role to play under diverse conditions prevailing in India. It needs no emphasis that a spirit of cooperative federalism and respect for individual rights in an atmosphere of access to information can preserve the delicate balance between different organs of the government and help adhere to constitutional mandates.

### **8. Self -Check Exercises**

What are the situations envisaged under the constitution of India to Declare State emergency?

Art 356 proclaims that if the President is satisfied on receipt of a report from the Governor or otherwise that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he is empowered to proclaim an emergency.

What are the consequences of the declaration of state emergency?

The president may assume to himself all or any of the functions of the State or he may vest all or any of those functions in the Governor or any other executive authority;

He may declare that the powers of the State legislature shall be exercisable by Parliament;

The President, however, cannot assume himself any of the powers vested in a High Court.

What are the safeguards proclaimed in the famous case of SR Bommai

- (1) Article 356 should be used sparingly.
- (2) The proclamation should take place only when there is a virtual breakdown of the parliamentary system of the government.



- (3) The State's Assembly must not be dissolved before both Houses of Parliament have approved the proclamation.
- (4) Judicial review is part of basic structure and hence court will have the power to consider independently whether in fact conditions so existed as to warrant exercise of the power under article 356. Courts can call for records and materials for this
- (5) Courts have got the power to strike down a proclamation of emergency as unconstitutional. In such case the dissolved state assembly will be reinstated.

