



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

EMERGENCY IN INDIA AND THE UNITED STATE OF AMERICA AND COMPARISION

AUTHORED BY :- MR SUBODH KUMAR SARKAR

Class -LLM Ist YEAR

SEMESTER 2

ROLL NO. 57

PROGRESSIVE EDUCATION SOCIETY'S MODERN LAW COLLEGE, PUNE

SAVITRIBAI PHULE PUNE UNIVERSITY, PUNE 411007

(2023-2024)

EMERGENCY IN INDIA AND UNITED STATE OF AMERICA AND COMPARISION

1 DR Durga Das Basu Comparative federalism second Edition published by Lexis Nexis dated 16th November,2007pageno 275

2 DR Durga Das Basu Comparative federalism second Edition published by Lexis Nexis dated 16th November,2007pageno 276 ,

3<https://en.m.wikipedia.org>>wik.

4 DR Durga Das Basu Comparative federalism second Edition published by Lexis Nexis dated 16th November,2007pageno 275 and page no295

5 Indian Constitution law M.P Jain eighth edition pages no728&729

6 Professional's The constitution Of India BARE ACT2024 Professional book Publishers page no174

7 Indian Constitution law M. P Jain eighth edition page no732and page no733,735

8 Indian Constitution law M.P. Jain eighth edition page no732and page no743

9 Professional's The constitution Of India BARE ACT2024 Professional book Publishers page no179

10 <https://byjusexamprep.com>

11 <https://www.inindia.gov.in.mygovernmentamendments>

12 Indian Constitution law M.P. Jain eighth edition page no732and page no729

13 Indian Constitution law M.P. Jain eighth edition page no732and page no733

14 Federalgoverments,197 (1953)

15 Indian Politics & Law Review Journal (IPLRJ)

16 Indian Politics & Law Review Journal (IPLRJ)ISSN 2581 7086Volume 6 - 2021

Abstract:

In modern days, emergency of state based on those intrinsic powers that a state can exercise in unusual circumstances such as war, armed rebellion, attacks of terrorism, natural disaster, serious health emergencies pandemics or other serious threats that threaten the state. It is acknowledged that these powers should be utilised in only extreme situations and to the degree that situation is warranted.

Emergency has two significant issues viz (1) the balance of power between the central Governments and its State governments (2) and the effect of fundamental Rights. There was bad precedents of abuses of powers exercised by authority. Object of studying emergency in the state better understanding the application in correct manner for betterment of STATE or abuses of power by authority

Introduction:

Emergency powers of India

Emergency in state, we mean that a situation of severe, wide spread, imminent threat of damage or injury or loss of property or life caused by natural or man -made causes. the state can declare¹,India has so far proclaimed national Emergency three times since 26th January 1950 the Constitution adopted.

A state of emergency in India refers to a period of governance that can be proclaimed by the President of India during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees Fundamental Rights to the citizens of India. The emergency provisions are contained in Part XVIII of the Constitution of India, from Article 352 to 360. These provisions enable the Central government

¹ DR Durga Das Basu Comparative federalism second Edition published by Lexis Nexis dated 16th November,2007pageno 275

to meet any abnormal situation effectively. The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

Emergency powers of United States:

There are no emergency provisions in the constitution of the USA of the nature of Articles 352-354 of the Indian Constitution². The 1976 National Emergency Act implemented various legal requirements of the United States³. As of March 2024, 82 emergencies have been declared; 40 have expired and another 42 are currently in effect, each having been renewed annually by the President. The Act provides for new emergencies and rescinding emergency declarations. The Act authorizes the President to activate emergency provisions of law via an emergency declaration on the condition that the President specifies the provisions so activated and notifies Congress. There is an impact of external emergency upon federal powers as well as of internal emergency upon federal powers.

Proclamation of Emergency in India

A state of emergency in India refers to a period of governance that can be proclaimed by the **President of India** during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees **Fundamental Rights** to the citizens of India.

The emergency provisions are contained in **Part XVIII** of the Constitution of India, from **Article 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.

The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

² DR Durga Das Basu Comparative federalism second Edition published by Lexis Nexis dated 16th November, 2007 page no 276 ,

³ <https://en.m.wikipedia.org>>wik.

⁴ DR Durga Das Basu Comparative federalism second Edition published by Lexis Nexis dated 16th November, 2007 page no 275 and page no 295

The Constitution envisages three types of emergencies⁴

Emergency arising from a threat to security of India.

Breakdown Constitutional machinery in a state

Financial emergencies.

Article 352 the main feature of proclamation of emergencies are:⁵

Under Article 352(1), if the president is satisfied that a grave emergency exists whereby the security of India or any part thereof threatened, whether by war, or by external aggression, or armed rebellion, he may, by proclamation, make a declaration to that effect. Such a proclamation may be made in respect of whole of India, or such part of the Indian territory of India as may be specified in the proclamation.

Under Article 352(2): A proclamation issued under Article 352(1) may be varied or revoked by a subsequent proclamation.

Under Article 352(3): The 44th amendment as introduced clause, viz, Article 352(3), to that effect that the President shall not issue a proclamation emergency under Article 352(1) or Article 352(2), unless the decision of the Union Cabinet that such a proclamation may be issued has been communicated to him in writing. In 1975 that President proclaim emergency on the advice of the Prime Minister alone and the council of minister was later presented with a fait accompli (something that has already happened). It has to avoid any such situation in future that Article 352(3) has been introduced in the constitution.

Under Article 352(4); every proclamation issued under article 352(1) is to be laid before each House of Parliament. Both should give approval, otherwise it will be void after a month of proclamation of emergency.

Under Article 352(5); a proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of passing of the second resolutions approving the proclamation clause (4).

⁵ Indian Constitution law M.P Jain eighth edition pages no 728, & 729

Under Article 352(6) Before the 44th amendment, passage of a such resolution by a simple majority in each house was sufficient. Article 352(6) introduces a very wholesome safeguard, each House has to approve by two third of the majority of the members present and voting.

Under Article 352(7); Another safeguard introduced by the 44th amendment President is obliged to revoke the proclamation emergency issued under Article 354(1) if it is disapproved by each of houses.

Under Article 352(8) the 44th amendment introduced where a notice in writing, signed by not less than 1/10th of the total members of the Lok Sabha has been given of their intention to move a resolution disproving the proclamation of emergency to the speaker if the House is in session or to the President ,such resolution Article 358(8) then resolution is in question.

Under Article 352(9);the President has power to issue different proclamations on different grounds,” being war or external aggression armed rebellion or imminent danger for war whether or not whether is proclamation already issued by the President under the clause (1) such proclamation is in operation.

Article-353.Effect of proclamation of Emergency⁶-

a) notwithstanding anything in this Constitution ,the executive power of Union shall extend to the giving directions to any state as to the manner in which the executive power thereof is to be exercised;

b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing the duties or authorizing the conferring powers and imposition of duties upon the union as respect to the matter ,notwithstanding that it is one which is not enumerated in the union list.

***Article-354.Ditrbution of Revenue and taxes, while the proclamation in
Emergency⁷:***

⁶ Professional’s The constitution Of India BARE ACT2024 Professional book Publishers page no174

⁷ Indian Constitution law M. P Jain eighth edition page no732and page no733,735

Article 354(1) the President may by order direct that any provision(Article 268 -to279)relating to distribution of revenue between the Centre and the states; The provision frees the Centre from its obligation to transfer revenue to the states ,

Article 354(2)the President may suspending by an order distribution of revenue is to be laid before both House of Parliament. It would not remain in force beyond the end of financial year in which the proclamation of emergency cease to be operate

During emergency Parliament can also levy any tax which fails in the state list.(article250).Article-355Centre Duty to protects the states; Article 355imposestwofold duty on the centre :-

- i) to protect the every state against external aggression and internal disturbance(now Arm rebellion after 44th amendment) and
- ii) to ensure that government of every state is carried on in accordance with the provision of the constitution.

Article-356; further this article talks of “breakdown of constitutional government in the state .This means that mere internal disturbance “does not justify a proclamation under Article 356 unless it results in the constitutional break down in the State.

When is Articlev356 invoked ⁸?

Failure of the constitutional machinery in a state may arise because of various factors ;these factors are diverse and imponderable some situations of the breakdown of the constitution machinery may be as follows:

- 1) No party in the assembly has a majority in the state legislature Assembly to able to form the government.
- 2) A government in office loses its majority due to defections and no alternative government can be formed.
- 3) A government may have majority support in the House but it may function in a manner

⁸ Indian Constitution law M.P. Jain eighth edition page no732and page no743

subversive of the constitution.

4)The state government does not comply with the directions issued by Central Government under the various constitutional provisions.

5) Security of the state may be threatened by widespread breakdown of the law and order in the state.

6)When there are serious allegations of corruption against chief Minister the Ministers of the state.

Article-357(1)(a)The President may be authorised by parliament to delegate the power so conferred on him to any other authority to impose power on legislation, may also confer and impose the duties upon the Union officer under Article-357(1)(b).

Article-357(1)(c) The President may authorise, when the Lok Sabha not in session expenditure from the state consolidated fund pending its sanction by parliament

Article-358 It is suspension of provisions of Article-19during emergencies.

Article-359 It is suspension of the enforcement of the rights enforced by Part III except article 20 and 21 as mentioned in the order during emergency.'

Article 360⁹; It is provision as to financial emergency. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of territory thereof is threatened, he may by a proclamation make a declaration to that effect.

There are two amendments in regards to emergency with its effect discuss here as follows: -

(a) 38th amendments and

(b) 44th amendments

38th Amendment Act of the Indian Constitution¹⁰

⁹ Professional's The constitution Of India BARE ACT2024 Professional book Publishers page no179

¹⁰ <https://byjusexamprep.com>

It also prohibited the judicial review of the various proclamations of emergency made by the President or governor. The judicial review of the proclamations of emergency related to laws enacted during the emergency was also barred.

Any declarations made by the President declaring a state of emergency are no longer subject to legal review or judicial review under the 38th Amendment Act.

According to this rule, the President may restrict a citizen's fundamental rights depending on the circumstances surrounding the declaration of an emergency.

Only after being ratified by more than half of the State legislatures was the 38th Amendment Act passed.

The Act was introduced on July 22nd, 1975, and it took the President 10 days to approve it.

A few states, including Jammu and Kashmir, Manipur, Gujarat, Nagaland, and Tamil Nadu, chose not to ratify it.

The Constitution (Forty-fourth Amendment) Act, 1978¹¹ The 9th May, 1978

Statement of Objects and Reasons appended to the Constitution (Forty-fifth Amendment) Bill, 1978 (Bill No. 88 of 1978) which was enacted as THE CONSTITUTION (Forty-fourth Amendment) Act, 1978

STATEMENT OF OBJECTS AND REASONS

Experience has shown that the fundamental rights, including those of life and liberty, granted to citizens by the Constitution are capable of being taken away by a transient majority. It is, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live. This is one of the primary objects of this Bill.

2. It is, therefore, proposed to provide that certain changes in the Constitution which would have the effect of impairing its secular or democratic character, abridging or taking away

¹¹ <https://www.inindia.gov.in.mygovernmentamendments>

fundamental rights prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of judiciary, can be made only if they are approved by the people of India by a majority of votes at a referendum in which at least fifty-one per cent. of the electorate participate. Article 368 is being amended to ensure this.

3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to article 19 and article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

6. A Proclamation of Emergency under article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the citizen to move the courts for the enforcement of fundamental rights---including the right to life and liberty---to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

7. Further, in order to ensure that a Proclamation is issued only after due consideration, it is sought to be provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet. In addition, as a Proclamation of Emergency virtually has the effect of amending the Constitution, it is being provided that the Proclamation would have to be approved by the two Houses of Parliament by the same majority which is necessary to amend the Constitution and such approval would have to be given within a period of one month. Any such Proclamation would be in force only for a period of six months and can be

continued only by further resolutions passed by the same majority. The Proclamation would also cease to be in operation if a resolution disapproving the continuance of the Proclamation is passed by Lok Sabha. Ten per cent. or more of the Members of Lok Sabha can requisition a special meeting for considering a resolution for disapproving the Proclamation.

8. As a further check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it would be provided that the power to suspend the right to move the court for the enforcement of a fundamental right cannot be exercised in respect of the fundamental right to life and liberty. The right to liberty is further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard would be provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

9. A special provision is being made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the constitutional machinery in the States is being amended so as to provide that a Proclamation issued under article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes would ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

10. With a view to avoiding delays, it is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that a High Court should consider the question of granting a certificate for appeal to Supreme Court immediately after the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by article 136.

11. The other amendments proposed in the Bill are mainly for removing or correcting the distortions which came into the Constitution by reason of amendments enacted during the period of the Internal Emergency.

12. The Bill seeks to achieve the above objects. The notes on clauses explain in detail the various provisions of the Bill.

Corrective Measure¹² :

A proclamation of emergency under Article 352(1) may be under may be made restricted to a part part of territory . Before 1978, an emergency could be declared because of war ,external aggression or 'internal disturbance'. The expression 'internal disturbance' was too vague and broad The 44th constitutional Amendment substituted the words 'armed rebellion 'for internal disturbance with a view to exclude the possibility of an emergency being proclaimed on the ground of internal disturbance only not involving armed rebellion as happened in 1975. this has minimised scope to implement internal emergency.

Secondly the 44th amendment has introduced a clause viz Article 352(3), to that effect that the President shall not issue a proclamation of emergency [under 352(1) or varying the same unless the decision of Union Cabinet is to say that such proclamation has to be arrived at collectively by the cabinet and not by the Prime Minister alone without consulting the Cabinet. It so happened in 1975 that the President proclaimed emergency on the advice of Prime Minister alone and the Council of Ministers was later presented with fait accompli. It is to avoid such situation in future that Article 352(3) has been introduced in constitution.

A proclamation will automatically cease after one month if not approved by parliament in the meantime. formerly, the period allowed for parliamentary approval of the proclamation was two months . The 44th amendment has reduced it to one month.

Another significant safeguard introduced by the 44th amendment is to lay down that a resolution approving the proclamation of emergency has to be passed by each of house by a majority of the total membership of each House not less than two thirds of the majority of the members present and voting in each House [Article 352(6)].

¹² Indian Constitution law M.P. Jain eighth edition page no 732 and page no 729

Indira Gandhi V Raj Narayan 1975

Indira Gandhi was assisted by the government officers and has profiled the administration from the military and the aviation based armed forces and amid her election battles. The Allahabad High Court uprightly charged her under section 123(7) of the Peoples Representative Act, 1951.

Indira Gandhi took an unconditional stay order from justice Jagmohan Lal Sinha, and made an appeal to the Supreme Court in the mean time she imposed emergency due to which she easily got rid of the opposition members, censors, the press and suspended some fundamental rights in the name of national security.

It was evident that the three amendments were made to expel all grounds on which Indira Gandhi was found guilty in its judgment held that Amendment act, 1974 and 1975, were connotationally real as they were administrative standards and the parliament had forced to rationalize them, yet the Supreme Court failed to notice that these amendments were made for the sole motive of removing the changes against the Indira Gandhi. The Indira Gandhi has misused the powers in accordance to adjust the very law that changed her of being corrupt but the Supreme court stayed silent and when the defendant claimed for equity, all that the Supreme court could do was to give him long superfluous reasoning of how the issue was out of its words.

It is clearly seen that the Hon'ble Supreme court was well aware of the fact that the Indira Gandhi had made the amendments to satisfy her political strategies and had unconventionally imposed emergency to save herself from being guilty. Yet, the Supreme court upheld the constitution in some ways as it struck down 4 and 5 of article 329 being violative of the basic structure

Financial Emergency

Grounds of declaration: Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

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 proclamation of 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.

Effects of Financial Emergency

Extension of the executive authority of the Union over the financial matters of the States. Reduction of salaries and allowances of all or any class of persons serving in the State. Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State. Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court.

Criticism of the Emergency Provision

Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds:

The federal character of the constitution will be destroyed and the union will become all-powerful. The powers of the State- both the Union and the Units- will entirely be concentrated in the hands of the union executive. The president will become a dictator. The financial autonomy of the state will be nullified. Fundamental rights will become meaningless and, as a result, the democratic foundation of the constitution will be destroyed.'

While defending the emergency provisions in the Constituent Assembly, Dr Ambedkar accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes

Emergency Provision in United State of America¹³.

¹³ Indian Constitution law M.P. Jain eighth edition page no732and page no733

Federalism says Dicey, is a weak government because of the distribution of powers between the Centre and the units, but the war time experience of USA has shown that this is not necessarily so and that a federation can very well stand the test of time. This federation has faced the emergency of two world wars [1891-14 and 1939-45]. In the USA, the emergency was met by the courts giving an expansive and liberal interpretation to the 'war' or the 'defence' power of the centre and thus, giving greater area of operation than its peace-time ambit so as to enable to do all these things which are necessary for the safety of country, or the effective prosecution of war.

During the war crisis the Constitution of USA functioned very differently from their normal peace-time behaviour. As Where points out:¹⁴ While it is the essence of federalism to be pluralistic, it is the essence of war power to be unitary, to be centralised and regimented, to be the modern word, totalitarian. There is an immediate contrast between the multiplicity of federalism with its division of authority, and the unity necessary if war is to be conducted efficiently

HISTORY OF EMERGENCY IN THE U.S.¹⁵

In 1861 President Abraham Lincoln's suspension of the writ of habeas corpus without Congressional consent led to the claim of emergency powers. President Abraham Lincoln argued that the 'Confederate Rebellion' posed an emergency, giving him the extraordinary ability to suspend the writ of habeas corpus immediately. The Federal District Court of Maryland, knocked down the suspension in *Ex Parte Merryman*, notwithstanding Lincoln's defiance of the order.

President Franklin D. Roosevelt in 1933 declared National Emergency due to the financial crisis and banned the personal amassment of gold. During the Korean War of 1950, President Harry Truman proclaimed a National Emergency due to communism. When private steel mills were unable to manufacture steel due to the worker strikes in 1952, President Harry Truman extended the emergency and took control of several steel mills citing the private production of

¹⁴ Federal governments, 197 (1953)

¹⁵ Indian Politics & Law Review Journal (IPLRJ)

steel as an essential commodity to conduct war .In 1970 due to the postal workers' strike, President Nixon proclaimed a National Emergency

.In 1971, President Richard Nixon declared a national emergency and levied an interim An Open Access Journal from The Law Brigade Publishers 290 import tariff to reinforce the United States' foreign economic involvement and combat inflation .In reaction to the four declared national crises, the U.S. Emergencies Act was enacted and adopted by Congress. However, U.S. changed its approach to emergency powers drastically in response to the 9/11 attacks which acted as a catalyst, prompting President WBush to declare a state of emergency and the Congress to pass a joint declaration authorising the President to use any force necessary against individuals or bodies that were involved in this act of terrorism .Following this, dozens of new laws and policy decisions were adopted, most notable of which was the U.S. Patriots Act, which was enacted as an immediate response to the 9/11attacks. This Law enables competent authorities to conduct surveillance to combat acts that may be linked to terrorism. It also allowed federal investigators to get bank and corporate information on selected suspects after obtaining approval from a federal court. Although that many individuals supported the law, many others opposed it since it infringed fundamental rights and resulted in unnecessary harassment of immigrants. Thus, whether the Act was efficient in combating terrorism may be a matter of personal opinion.

COMPARATIVE ANALYSIS OF THE EMERGENCY PROVISIONS OF THE U.S. AND INDIA¹⁶

The U.S. and India are two different types of States, each with its own set of laws and procedures. In their respective continents, North America and Asia, they are regarded as model democratic governments. It is noteworthy to discuss and compare how emergency laws fit into the democratic norms of these States.

In the U. S., Courts have the authority to judge whether an emergency direction is warranted or not, even during emergencies like wars. In *Hirabayashi v. U.S.*, the court supported some laws that imposed certain restrictions on persons of Japanese heritage in the United States ,such

¹⁶ Indian Politics & Law Review Journal (IPLRJ)ISSN 2581 7086

as requiring them to stay in their homes during particular hours to avoid any acts of espionage. Further, in *Youngstown Sheet & Tube Co. v. Sawyer*, the Court ruled that none of the President's emergency powers gave him the ability to confiscate private property without the approval of Congress. However, in India, emergency actions and directions are not open to courts approval as they are dependent on the central executive who declares an emergency. The Constitution itself deals with the repercussions of such situations, and there is no reliance on the court or its interpretation.

Furthermore, the term "emergency" is not mentioned in the U.S. Constitution, and the laws and regulations for dealing with an emergency are supplied indirectly in Articles I, II and IV. In India, Articles 352 to 360 of Part XVIII of the Indian Constitution expressly mentions emergency provisions. India has national and state emergencies, whereas the U.S. has national and financial emergencies, the latter of which are similar to India.

Both the nations' constitutions have the ability to quickly transition from federal to unitary states in the event of a national emergency. In a true federal state, both the centre and the states are considered equal when it comes to the distribution of powers and functions, but in the case of a national emergency, the centre assumes the majority of powers and functions because the centre is usually given the responsibility to protect the country in a threat or crisis.

CONCLUSION:

The underlying Article 352 as outlined by Dr. Ambedkar has thus been justified- "All federal system...are placed in a tight mould ... No matter what circumstances cannot change its form and shape. On the other hand, the Draft Constitution (of India) can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in time of war it is designed as to make it work as though it was a unitary system. Such a power converting itself into a unitary state is no federation process.

According to John Locke, revolt against the state was considered to be legitimate if it encroached on the liberties it was essentially established to preserve. Furthermore, Locke argued that emergency declarations should not be used as a pretext for any form of oppressive action, nor should they be used to suppress human rights activists. It is natural that from time to time, tension and crisis shall arise. Even with protections in place, there is still the possibility of such laws being abused. India's and U.S.' constitutions may indeed borrow provisions from

each other to enhance their respective circumstances, particularly when it comes to national emergencies. For instance, India's judiciary may be strengthened under emergencies, similar to the U.S, where judges are in a far better position to assess the justice ability of emergency actions. In India by the time the Court conducts its own assessment of the constitutionality of a particular emergency action, the storm would have already passed. It's difficult, if not impossible, to find an example of court interference preventing emergency responses or declarations in India.

Object of study two federal states and one Monarchical and parliamentary democracy state.

The main object of emergency of the state to understating the following points as follows:

- a) To know how define the state emergency
- b) When emergency is applied
- c) What are respective provisions basis emergencies are applied.
- d) what are the external and internal impacts in federal states
- e) What are the consequences on emergency