A COMPARATIVE STUDY OF EMERGENCY PROVISIONS OF INDIA AND THE U.S.A.

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ABSTRACT

Emergency refers to an unforeseen combination of situations where the Government of a country suspend the usual functions of the country and suspend the constitution and other functions of government. These unforeseen situations can be raised due to any internal disturbance, that is, armed rebellion or by War and conflict with other national by any disasters like floods and earthquake. The financial crisis can also be the reason of an emergency in a state. If there is an emergency proclaimed in any country the usual structure of the constitution and other laws get disturbed. The political. Social and financial situation of the state is changed and the fundamental rights of citizens are diminished or hang. The emergency powers have both positive and negative sides, as it helps in tackling the sudden and un expected threat to the nation, on the other side it gives a wide power to government to make the rules and complete his agendas and take control in particular state, area or in whole country. Here we will see the emergency provision of U.S. and India and will compare these laws and check how they are different and similar to each other.

KEYWORDS: Constitution, Emergency, war conflict.

INTRODUCTIONS:

However, it is not abnormal to the nation to declare the emergency in the state, still there are very few situations which take place in exceptional occurrence, specifically in democratic government. Emergency refers to the situation where the government of a nation hang the normal procedure of constitution, political and economic. The meaning of emergency books and dictionary is, "an unforeseen combination of circumstances or the resulting state that calls for immediate action." number of reasons are given for the declaration of emergency in the state , such as, civil unrest, calamity or disaster, armed rebellion or conflict, war, etc. due to any reason ,when the state emergency announced in the country the structure of the constitution is effected, the political, social and economic environment of the state is changed and the fundamental rights of the citizens also get affected. The procedure of declaring the emergency in the state is different in different states and the effects of that declaration vary from each other. However, in this paper, the USA and Indian provisions of emergency has been studied. In India, the President has the authority to declare emergencies. Three types of emergencies are there in India: · [1]. National Emergency. [2]. State Emergency. [3]. Financial Emergency. part XVIII of Indian Constitution of contain the emergency provision[1] where the President of India can declare the emergency in the state with the aid and advice of cabinet ministers. In USA, it is very similar to the India as the president is the chief executive of the nation so he has the authority of emergency declaration. likewise, In the state, the Governor has the power to the emergency in his jurisdiction.

1.The constitution of India 1950

In USA the emergency is the controlled by the National Emergency Act.The emergency provisions of India have been taken from Germany's provisions of emergency. India and USA both has the different laws and procedure and both are the biggest democratic country in the world. As emergency considered as the reverse of the democracy so this study will deal how emergency laws take place in democratic theory.

STATE OF EMERGENCY IN INDIA

Historical background of the emergency provisions of India influenced from the situations widespread at the time of making of the constitution. At the time of the independence, the communal stress between the Muslims and Hindus was the big threat for the recently formed democratic set up for India. In addition, casteism, multiculturalism and communal discord was at a top. Again, Hyderabad and Junagarh were not in favour to join the Union. All these situations let to the introduction of emergency provision in constitution. The communist activities and the weak financial condition of India because of India and Pak partition, played a vital role in introduction of Article 356 and Article 360 in the constitution.[2] Part XVIII of Indian Constitution of India talks about the emergency provisions. it contains 9 Articles [352-360]. In this part the provisions talk about the three types of emergencies namely; national emergency, state emergency and financial emergency. Article 352 talks about the National emergency, Article 356 talks about State emergency and Article 360 defines the financial emergency. Article 356 state that if the governor of the state finds that the government of the state is not following the constitution then he can send the report to the president and after receiving the report if the president is satisfied that such situations has arisen, the President can assume all the power and functions of the state government to himself. The president can authorize to the Parliament to perform and exercise the functions and powers of the concerned State government. Article 360(1) states that: "If the President is Satisfied that a situation has arisen whereby the financial stability or credit of India or any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.''

NATIONAL EMERGENCY (Article 352):

IN addition to state and financial emergency, the main focus of this study is on the National emergency in India. It is defined under Article 352 of Indian constitution. Article 352 is the main provision of emergency in Indian constitution. Article 352 (1) of the Constitution states that, "If the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether, by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation." In this clause, the emergency need not declared in whole India where as it can be restricted to a particular part of India.[3] before 44th constitutional amendment there was no 'armed rebellion term in the constitution, instead of that "internal disturbance" term was there in constitution. Later on, it was observed that the term internal disturbance is unclear and in consequences it was amended. The objective of Article 352 was to restrict the imposition of emergency in serious conditions. In the case of Naga people's movement of Human Rights v. Union of India[2].

2.Naga people's movement of Human Rights v. UOI, AIR 1998 SC 431

it was held by Supreme court that the expression "Internal disturbance has the wide meaning than "armed rebellion''. The proclamation issued under clause [1] of Article 352 may be revoked by another proclamation. 44th amendment act resulted the Article 352[3], which provides that, "The President shall not issue a Proclamation under clause (I) unless the decision of the cabinet minister. So, the President is not authorised to declare emergency in Article 352[1] unless the cabinet and the prime minister give their assurance in writing for proclamation. The Prime minister have to consult with the cabinet ministers about the emergency. In 1975, the president declares the emergency in India with permission of Prime Minister without advice of cabinet ministers. [5] Therefore, to avoid such situations in future, this clause was added. Clause 4 of Article 352 provides that, "The Proclamation declared under this article shall be presented in Parliament." If the proclamation is not approved by the parliament, the expiry of a month will not be affected. However, if the Lok Sabha is dissolved when the proclamation issued or without accept it and on the other hand Rajya Sabha passed the proclamation, then it will not in process for thirty days after Lok Sabha sit again. But if, the Lok Sabha accept the proclamation by a resolution then it will continue.[6] Article 352(5) provides that the proclamation remains in force for six months until revoked. For more than six months the proclamation has to be approved by both the houses. Article 352[6] provides that, for clause [4] and [5] "the resolution may be passed any house of the parliament by full majority or by majority not less than two-third member present and voting of the house." This clause added in the 44th amendment before that simple majority was required. Clause 7 of Article 352 restrict the President power where he is under the responsibility to cancel a proclamation of emergency which is issued under Article 352(1) if the Lok Sabha disapproves it through a resolution. For that revocation a simple majority of voting is needed. It is the safety measure introduced by the 44th amendment for cease the abuse or mis use of powers.

EMERGENCY OF 1975-77:

The government of India on 25 June 1975 suspend the civil rights of the citizens and announced the National emergency in the country. That was the darkest day in the Indian political history. In that period the violation of fundamental rights, restricted the freedom of press, arrest the writers, students and everyone who tried to critics the government. The President, Fakhruddin Ali Ahmed declared the emergency on the advice of the Prime Minister Indra Gandhi. Which gave her a huge power to run the country by her own rules. The period of emergency was almost 2 years, which introduced on 25 June 1975 to 21 march 1977. This emergency was based on the "internal disturbance". The general public criticised this move of the Prime minister because there was not a single genuine reason behind that emergency. Finally in 1977 the Lol Sabha election held and Janta party won the election and ceases the emergency in India. 44th amendment took place after that incident and amend the Article 352. the reason of the amendment was to restrict the power of the government and provide safety to the citizens. Before 1975, the emergency has been declared two times in India under Article 352. First in 1962 during India China war and secondly in 1965 during India-Pakistan conflict[3].

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3.M.P. Jain, Indian Constitutional Law,786-787 [5th edition,2003]

CENTRAL AND STATE RELATIONS:

After the proclamation of emergency under Article 352 in the country, there are certain changes in the relations of the state and centre. The serious changes take place in the federal country. The parliament gets all the powers of the state list anconcurrentnt list for a period of six months after the emergency ended. If there is any inconsistency in law-makingking between the centre and state in the state list, the law made by the centre will prevail. Article 353(a), gives the power to Centre to give the direction to the state, and how to implement the power in the state. it also told that the power of making laws under clause[b], the extent to any part where the proclamation of emergency is in operation. Article 354(1) provides that the during the emergency the President may make some modifications or exceptions in the provision of Articles 268 and 279, not exceeding in the case of the end of financial emergency, the parliament is empowered to collect taxes which are on state list. The parliament can extend the life of state legislature for one year while emergency in operation and can also extend for six months after ceasing of emergency.

STATE OF EMERGENCY IN USA:

The USA President has been granted the great powers of imposing emergency in the situation pf any crisis, emergency or urgent demand in the nation. These powers are given by constitution or statutory, which are always reachable to president. These powers are not only limited to war situations. Some powers are given by the statute which are latent in nature and remain silent until emergency announced in the nation. These powers give the authority to the president to command production, to grab property, press the military law, control the transport and communication. The president used these powers discretionary till World war I, after that number of emergency powers has been given to the president. These powers activated during any emergency situation. To the emergency provisions there was very less limitations on the discretionary powers of chief executive. In Youngstown Sheet & Tube Co. v. Sawyer the supreme court narrow down the power of president in emergency but gave the full power to declare the emergency in the state on his discretion. National Emergencies Act was passed in 1976 to force some check and balances on the emergency powers of the president. When we discuss the history of USA emergency, the 9/11 terrorist attack becomes important. after 9/11 attack state emergency announced by the president of USA George Bush and congress gave all the necessary power to the president to defend the country and take action against those countries who aided, participated, planned the attack of 9/11. After this, some other act like Patriot Act and policy passed by the congress and signed by the American President on 26/11 and an instant response has been given against the attack[5]. The Act institute the authorities to expropriate and probe the terrorism activities. As the border securities of US was tightened, it became dense for the immigrants to set foot in USA and this Act gave permissions to agents to collect the records of the suspects by the consent of the Federal court. Some people were opposing this Act because it was violating the Right of privacy of the people. It might be instinctive issue whether the Patriot Act was successful or not but it is noticeable that this Act thwarted many attempts of terrorist attack in USA.

4.Constitution of India 1950, Art 354

5.Patrick A. Thronson, Toward Comprehensive reform of America Emergency Law Regime, 46 Michigan L.J. 737[2013]

NATIONAL EMERGENCY ACT:

For imposing the restrictions on the emergency power of the president, the National Emergency Act was passed to adduce emergency. To investigate the subject matter of emergency a special committee was established. However, before this emergency there were already four emergencies had been declared in USA, The Bank crisis emergency in 1933, 1950′s emergency of Korean war,1970′s emergency due to strike of postal workers and Inflation emergency in 1971. It was got to know that due to announcement of single emergency, emergency provisions of other statues were also activated. The nation was under emergency for forty-one years. So, to assure that if emergency was declared on certain grounds, it did not fortuitously activate the other administrative powers of emergency. National emergency Act came into force in 1976. The President has the power to announced national emergency under section 201 of National Emergency Act. The president is bound to communicate the announcement to the congress and should be published in federal register. There are five titles in the National Emergency Act. Title -1, the power of proclamation of emergency given by the status remained on wait and were activate by the return of sleeping state. The second title describe a different procedure to pronounced an emergency. The proclamation come to an end if the president did not renew it after one year of proclamation. The Congress also can end the emergency by passing a resolution[6]. Under Title III, when the president activated the emergency provision specified, he have to notify to the congress. Whereas Title IV talks about the accountability of president for declaration of emergency. Title V states about the repealing provisions of the Act. After enactment of this Act number of emergencies have been proclaimed by the president in adherence of emergency provisions.

CONSTITUTIONAL PROVISIONS RELATED TO EMERGENCY:

The word ″emergency” is not mention anywhere in the U.S. Constitution. However, some provisions have been added in the constitution for handling the emergency situations in the country. Like, section 8 of Article I gives power to the congress to proceed about the war and military coupled matters for the reasons mentions below:

[1] For the declaration of war

[2] For the maintenance of the navy

[3] for raising and supporting an army, an

[4] for making rules to regulate naval and land forces.

[5] For calling the militia to ward off invasions,

[6] for the executions of union laws.

Section 2 of Article II states that the commander in chief of all the armies and militia, is the president. The President is charged under Section 3 of Article III talks about the duty of the president to ensure the utilization and accomplishment of laws. Moreover, Section 4 of Article IV provides the obligation of the federal government to safeguard the states from seizure and internal violence of the country. These provisions of Constitution do not talk directly about the Emergency but there is indirectly identification of emergency law.

6.William B. Fisch, Emergency in Constitutional law of USA

COMPARATIVE ANALYSIS:

As India has copied the Germany's emergency provisions, so, the emergency provisions of USA and India are different from each other, therefore some provisions are similar. The emergency provisions of India are more detailed as compared to USA. As the emergency provisions of USA[7] are not defined in the Constitution so the validity of provisions can be decided by the court in USA, court have these powers. Whereas, in India the constitution itself provides the provisions of emergency where it gives the full power to the central executive to declare the emergency and which is not dependent on the justifications of judiciary and its interpretation. In India both the houses of parliament have to vote for the declaration of emergency by two-third majority and there are three types of emergencies in India, national emergency, state emergency and financial emergency, where as in USA only National and Financial emergency are there.

Some similarities are: After declaration of emergency in the country the federal states convert into the unitary states as the central received all the powers. After receiving all the powers in the country, the central governments can't go beyond the boundary line imposed by the constitution for the use of those powers. During the emergency, even some fundamental rights have been taken by the government but protects some basic rights of the citizens in the emergency.

CONCLUSION AND RECOMMENDATION:

As we have discussed above, there are some similarities and some differences in the emergency provisions of both the countries. In USA the courts have the power for justification of the emergency provisions, where as in India the constitution itself provide the provisions of emergency so the court can't interfere in it. The courts can only determine the validity of the provisions as stated in A.K. Gopalan v. State of Madras[8]. As there are some safeguards which has been provided to the people in both the countries to prevent from the abuse of laws. Both countries made some amendments to avoid the mis use of powers. Where India made the 44th amendment act in constitution after the 1975-77 emergency, in which the word "internal disturbance" replaced by the word "armed rebellion" and USA enforced the National Emergency Act for restrict the powers of President for declaring emergency.

However, there are some safeguards which are provided to prevent the misuse of powers, still both the country can take some provisions from each other to improve their conditions for period of emergency. For example, India can make his judiciary much stronger in the matters of emergencies as

Indian court has no role in justification of provisions, whereas, In USA court played a vital role for justification of emergency provisions. Similarly, USA can draft his provisions as simple and detailed as India. One more improvement which these two countries can be made that to identification of international norms for disobedience of fundamental rights while emergency.it is normal when there is an emergency in the country, some fundamental rights have been taken back by the government and there is huge violation of those rights. So, both the country should ensure the protection of fundamental rights and provide safeguards to the life and personal liberty of the citizens.

7.U.S.A Constitution, Art 8,9

8.A.K. Gopalan v. state of Madras, A.I.R 1950 SC