

Emergency Provisions of Major Countries: A Comparative Study

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Abstract

Every individual or country faces one or other type of emergency some time in history. Therefore, every constitution provide specific provisions to tackle such situations. This paper tries to make comparative study of emergency provisions of different constitutional systems prevailing in the world.

Keywords: Emergency, Constitution, Federal, Unitary, President, Parliament

Introduction

Every country faces one or other kind of emergency at some point of time. Hence to tackle emergency situations mostly countries have included emergency provisions in their constitution. The emergency provisions vary from one country to other. Some countries have identical provisions while some countries have some unique provisions. Here researcher endeavours to compare emergency provisions of five major countries: India, US, Canada, Australia, Germany and Britain. The first five countries have federal constitution. The researcher has selected UK simply because this is a classical model of parliamentary government had significant impact on India. The last is Germany which is a classical model of constitutional accommodation of emergency powers

India

The Indian constitution makers wanted the central government to have overriding powers to control and direct all aspects of administration and legislation throughout the country during emergency situations. Therefore, they incorporated three types of emergencies in the constitution. First emergency situation arises when there is a threat to the security of India (Article 352). Second emergency occurs because of breakdown of constitutional machinery in a state (Art. 356). Third type of emergency is financial. There are various other provisions in the constitution which had direct impact on the operation of emergency provisions.

United States

The US constitution does not have any specific emergency provision. But country successfully faced the civil war and two world wars. There emergencies were met by the courts giving an expansive and liberal interpretation to the 'war' or the 'defence' power of the Federal Government and thus giving it a greater area of operation than peace time.¹ In this manner, Courts indirectly authorized the President to acquire large number of powers and do things which were necessary for the safety and security of the country. In times of emergency, it is from the President and not from the congress that the necessary leadership can come. This accounts from the fact that during the civil war, President Lincoln exercised a measure of leadership in legislation which no earlier President had done.²

During war, US federal constitution is transformed into a unitary state similar to India. However, this transformation takes place differently in both countries. In US, federal government has not got any direct power to declare 'emergency.' Instead it has got the power to declare 'emergency' through its power to declare and conduct war. Whenever war or crises occurred, judicial pronouncements widened 'federal government' or President's war power and indirectly authorized it to declare national emergency. Generally this emergency power is withdrawn. But withdrawal is seldom complete and some powers remain with him. Thus every national emergency results in some permanent addition to presidential authority.³ In



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India, centre has got 'emergency power' directly from constitution. Therefore, it does not depend on judicial pronouncements for its 'emergency power'

American constitution places a duty on the Federal Government to guarantee to every State a Republican form of government and to protect a state against invasion and on application of the State Legislature or Executive (when the Legislature cannot be convened) against domestic violence.⁴ A vast potential is rooted in this Clause because it does not mention the manner in which the guarantee of Republican form of Government is to be provided. A parallel to this provision is to be found in the Article 355 of the Indian constitution which imposes duty on the centre to protect every state against external aggression and internal disturbance. It also imposes duty on the central government to ensure that the government of every state is carried on in accordance with the provisions of the constitution.

However, there is one important distinction between American and Indian provision in the sense that in the former application by the State to the Federal Government is necessary for the protection against domestic violence, no such condition is laid down in the Indian constitution. In India, centre can send its armed forces into any state to counter the breakdown of the law and order without any consent of the state. Article 257 A also allows the centre to deploy armed forces of the Union or other force under its control, for dealing with any grave situation of the law and order in any state. However, In US, the Federal Government has indirectly got the power to deploy its forces into any state without its consent. The US Supreme Court has ruled out that if internal disturbance interfered with the operation of National Government or with the movement of Inter-State commerce, the Federal Government can send forces on its own to any state without request to counter the breakdown of law and order there. Thus the total power of the national government to interfere into a state is very similar to India.

In America a State Governor or local mayor may declare a state of emergency within his or her jurisdiction. This is common at the state level in response to natural disasters. However, American constitution does not have any specific provision similar to Article 356 of the Indian constitution which authorizes centre to take over the Government of state in case of breakdown of the constitutional machinery therein. American constitution does not have any provision related to financial emergency too which exist in India.

Canada

There is no specific emergency provision in Canadian constitution. However, the 'general power' of the Federal Government was interpreted by courts in such a way that it became very powerful during war. Like US, federal constitution of Canada also functions in a unitary manner during war. The Federal Government can invoke national emergency by using the Emergencies Act. There emergency expires automatically after 90 days extended by Governor-in-Council. This emergency provision can well be

compared with India's emergency provision described in Article 352. In Canada, emergency power has been bestowed upon the executive by court while in India centre has got this power directly from constitution.

Neither Canadian Constitution has any provision relating the imposition of federal rule in provinces in case of failure of constitutional machinery, nor has any provision regarding financial emergency. In India, both these provisions exist in the constitution.

Australia

Australian constitution does not have emergency provision. However, courts liberally interpreted the 'war' power of the federal executive and equipped it with greater power during war. It did so because it wanted federal executive to do everything to ensure security of the country. Thus it can be said that the Australian constitution functions in a unitary manner during war or in crisis situation. This is very different from India where constitution incorporates emergency provision in detail.

Section 119 of the Australian Constitution provides in express terms that the Federal Government shall protect every State against invasion, and, on application of the State Executive, against domestic violence.⁵ This is similar to Article 355 of the Indian Constitution which says that Centre shall protect every state against external aggression and internal disturbance. This provision also says that the Centre shall ensure that the government of every state is carried on in accordance with provisions of the Constitution. Though Australian and Indian provision seems similar, it differs in two ways. First, In Australia, the Federal Government cannot send armed forces into any state without her request, whereas in India no such request is laid down. Second, In India, constitution imposes duty on the centre to ensure that every state is carried on in accordance with the provisions of the constitution. Moreover,

Australian Constitution does not have any provision similar to Art 356 and 360 of the Indian Constitution.

Germany

The German or Weimer constitution is based on the principle of federalism. It recognizes German states and allows separate constitution. The law making power is shared federal Reichstag (parliament) and state Land tags. The national government has exclusive power in foreign relations, defence and some other areas. The president is the head of state is not part of the Reichstag. In principle, the president was not intended to exercise much power or personal prerogatives, other than the appointment of the chancellor and ministers.

German constitution has a specific emergency provision like India. Article 48 of the constitution grants the president considerable powers in the event of an 'emergency' allowing him to rule by decree and override the Reichstag, to suspend civil rights and to deploy the military. These emergency provisions were invoked very frequently. Initially emergency provision was used to combat violent insurrection and direct threat to the constitutional system. In early 1930s, however, the emergency

provision was used to combat wide range of social and domestic problems. These are held responsible for the consolidation of Adolf Hitler who later exercised these powers as chancellor in 1933. To prevent the misuse of emergency power, modern Germany has made provision for constitutional court empowered to check the abuse of emergency power.⁶

Britain

Great Britain has been able to manage its affairs without a written constitution partly because it has unitary rather than a federal system of government. In a federal system, the powers of government are clearly demarcated between a national or central government and a number of governments which operate in units, called states or provinces. As Britain is unitary state, there is no demarcation of power between centre and units there. Instead there is complete concentration of all governmental authority in the national government at London. Of course, for administrative convenience, the all powerful central has created counties, boroughs etc and each of which has a government of its own. But the powers exercised by these local governments are not derived by them from a constitution. In other words, these powers are 'delegated' not original. The central government can at will, at any time, alter, increase or reduce these powers.⁷

As power is concentrated in the British Sovereign or the Prime Minister, they can proclaim emergency regulations in case of any serious fatal threats to their human welfare and environment or in the case of warfare and terrorism. However, these regulations last for seven days unless confirmed by Parliament. A state of emergency was invoked in 1974 by Prime Minister Edward in response to increasing industrial threat. During national emergency, the Prime Minister exercises the power of the virtual dictator provided he enjoys the support of the House of Commons, the lower house of parliament. The Parliament is the supreme legislative body and makes law for the whole country.

If Britain is compared with India, it is found that there is no codified emergency provision there. There central government is not required to take over the administration of local bodies or county simply because central government is all powerful within British territory. It does not require consent of any local authority to send force within British territory.

Commenting the 'principle of Union Supremacy' in the legislative and administrative fields, the Sarkaria Commission Report (1988) said that 'Supremacy Rule' is the keystone of 'Federal Power.' Further, focusing this concept with other established federations such as US, Canada, Australia and Germany, the Commission maintained:

In every constitutional system having two levels of government with demarcated jurisdiction, contents respecting powers are inevitable...The rule of federal supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful function of any federal or quasi federal constitution.⁷

Conclusion

It can be said that federal constitutions of US, Canada and Australia do not have any emergency provision and their federal governments have got emergency powers through various judicial pronouncements which have authorized them to do everything necessary to ensure security of the country. They differ with India where emergency provisions have been enshrined in the constitution itself. In that regard, emergency provision of German republic seems quite similar to India. As Britain is having a unitary system, it does not require codified emergency provision. Here the parliament is all powerful within British territory but for the sake of better governance it has delegated many extraordinary powers to the executive through ordinary legislation.

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