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Emergency: A Hurdle to Federalism

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ABSTRACT

FEDERALISM: it is a constitutional mechanism where there is a blend of partial self-government along with the partial shared government . R.L. Watts, define federalism as "The principle of organization whereby a compromise is achieved between concurrent demands for union and territorial diversity within a society, by the establishment of a single political system, within which general and regional governments are assigned co-ordinate authority such that neither level of government is legally or politically subordinate to the other". The federal system in India is equivocal moreover at the same time it is unequivocal from other federations (U.S.A). It is similar as the states (disseminative) derives power completely from the union, the distributed component is that there's no group of independent states coming back along to make a federation by surrendering a touch of their privileges or autonomy or sovereignty of the state.

EMERGENCY: Every country faces some situations where there is a need for an immediate action to be taken; it is a kind of situation where prevailing or ordinary constitutional provisions may not work. In India at the time of emergency (Part XVIII) it provided the union all the powers (legislative along with executive) of the state to handle the situation. The framers jointly felt that at the time of emergency the Centre ought to have predominant powers to regulate and direct all aspects of administration and legislation throughout the country because of this one notable feature many academicians find it difficult to call Indian Constitution as wholly federal. Black Law's dictionary defines emergency "as a failure of the social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them."

The paper seeks to analyze one of the most important aspects of federalism and emergency along with its origin, legal and functional aspect and other things. The paper is a collection of case laws to analyze the above-mentioned concepts. For research, secondary sources such as e-books and articles by eminent jurists have been referred.

Keywords: *Federalism, emergency, consequences of invocation of emergency, emergency as hurdle*

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I. INTRODUCTION

To achieve and uphold the values of national unity, cultural diversity, democracy, regional autonomy and rapid socio-economic transformation through collective efforts the framers thought that the concept of federalism should be brought. The seeds of Indian ideology were there right from the Regulating-Act of 1773 to the Government of India Act of 1935. Throughout this era the shape of state was unitary. All powers were within the hands of the viceroy, and through him, with the secretary of state for India and the government. The Imperial form of government was mandatory over this large country, and centralized power was the sole means for imperial management. The process of decentralization of powers gave the impression on the Indian map throughout the Montagu-Chelmsford Reforms of 1919. This Act conjointly gave the 'chamber of princes' to the native states. This report simultaneously declared that the provinces can ultimately become sovereign units. The federal answer was concurrently found within the Indian Statutory Commission's Report of 1929. This report counseled a Council for greater India. British Indian representatives and the Indian states were enclosed during this Council and the Viceroy was the president. The Simon Commission intimately aforesaid one thing regarding the concept of Indian federation. Federalism was abundantly within the pair throughout this session. The

Indian National Congress was out of this session. The Government of India Act, 1919 came with the concept of "diarchy", which introduced the government at provincial as well as the Centre level and the provisional governments were given the legislative, financial and administrative power.

The concept of federalism was crystal clear during the time of Simon commission and for the first time in 1935, the three lists came (federal, provincial and concurrent). But this concept didn't work due to lack of backing from the rulers of princely states.

In 1946 cabinet mission proposed a federal constitution of India where the power of the union and states were well defined. The Union Powers Committee in its report submitted on August 20, 1947, said, 'the soundest framework for Indian Constitution is a federation with a strong Centre.'²

II. LEGAL ASPECT OF FEDERALISM

The different constitutional and legal experts showed different opinions for why the constitution of our India is federal. The constitutional experts Charles H. Alexandrowicz, R.L. Watts, and Rasheeduddin Khan had supported this opinion. Charles H. Alexandrowicz describes that "India is undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and States"³. The Supreme Court also observed in

² Tiwari, U.K. (1990), "Centre-State Relations in India: A Historical Perspective" cited in Bidyut Chakrabarty (ed.) (1990), Centre-State Relations in India, Segment: New Delhi, pp. 4-7.

³ Alexandrowicz, Charles 1-1. (1957), Constitutional Developments in India Oxford University Press: Bombay, p.1969, quoted in B.D.Dua, Presidential Rule in India, 1950-74, A Study in Crisis Politics. S.Chand: New Delhi, 1985, p. 13.

S.R.Bommai "The federalism in the Indian Constitution is not a matter of administrative convenience, but one of the principles-the outcome of our historical process and recognition of the ground realities."⁴

The following feature was laid from the view of the experts:

- **Dual polity:** each government is given with its power and sovereignty, which is to be exercised to territory or the area as per the constitution of India. We follow the rule of division of power between the Centre and the states. In a Federation, there ought to be a clear division of powers, so that the Centre and State need to enact and lay down laws at intervals in their sphere of activity and none violates its limits and tries to invade the functions of others. For the purpose to remove the confusion regarding the power of each government our constitution framers provided such Schedule VII which deals with "lists" containing different administrative subjects i.e. Centre list, state list and concurrent list, though the residuary power lies with the Centre.

In the USA the government powers are divided as per the constitution, but the residuary powers are in the hands of states.

- **Written constitution:** the constitution of India is a written document, otherwise it would be impossible to have the supremacy of constitution and division

of power. Because of the written nature of the constitution both the governments can't intervene with each other's jurisdiction.

The USA also has a written constitution along with a separate constitution of its states.

- **The supremacy of the constitution:** for the proper working of the government as per the federal structure it is essential to have the supremacy of constitution along with written constitution⁵.

The USA also has the clause of the supremacy of the constitution, "*The Constitution and the laws of the United States which shall be made in pursuance, thereof shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any state to the contrary 4A notwithstanding*"⁶

- **Independence of judiciary:** Judiciary acts as the guardian of the constitution and in our constitution; it is the Supreme Court that is doing this function. It is independent of both the executive as well as legislative, the judges can't be removed by executive nor could the salaries be cut back by the parliament. Even SC has the power of judicial review, so it can declare the law unconstitutional if it doesn't abide by the constitution.

In the USA, if the state legislature passes an act beyond jurisdiction then the Supreme Court has

⁴ S.R.Bommai vs. Union of India, AIR 1994 Supreme Court p.1919.(India)

⁵ K.C.Wheare.

⁶ <https://www.law.cornell.edu/constitution/articlevi>.

the power to declare the same ultra-virus. In Fact, in the USA the federal and the State court cannot interfere in each other's work (and they work parallel to each other (unified judicial system) whereas in India there is an integrated judiciary.

- **Bicameral Legislation:** in India, we have Lok Sabha and Rajya Sabha, the former one is directly elected by the people and the latter consists of elected representatives of the State Legislative Assembly.

Dr Herman Finer observes, "*Legislatures are bicameral for two broad and different reasons as a part of federalism and as the result of a desire to check the popular principle in the Constitution.*"⁷

III. FUNCTIONAL ASPECT OF FEDERAL STRUCTURE

Maintaining the unity and integrity of the country and proper utilization of resources to ensure the economic development etcetera are the objectives of the government as per the aspect of Indian federal structure. For the amplification of the Centre-state relations, different agencies came such as-

- Intergovernmental agencies
- Federal agencies
- Inter-state Conferences

These agencies give a sound and strong platform for the Centre and state to interact, further, to work with cooperation, which results in

⁷ 2 Quoted in Tilwalli, P. A., *Coalition Politics and Federal Process in India Since 1967*, PhD Thesis (Unpublished), Karnatak University, Dharwad, 2002, P.105.

strengthening their relationship. For example, the revenue is collected by the state and central government as per the division done by the constitution, for the co-operative working of both a federal agency was developed named "finance commission".

Federalism attempts to reconcile a need for unity and communality on certain problems with a need for diversity and autonomy in others. The essence of federalism is to forestall the increase of autocratic government and to ensure that there is the existence of a division of power among the states and union.⁸ Dicey Mentions that federalism needs a union and not unity.

IV. EMERGENCY

Every country faces some situations where there is a need for an immediate action to be taken; it is a kind of situation where prevailing or ordinary constitutional provisions may not work. In India at the time of emergency (Part XVIII) it provided the union all the powers (legislative along with executive) of the state to handle the situation. The framers jointly felt that at the time of emergency Centre ought to have predominant powers to regulate and direct all aspects of administration and legislation throughout the country because of this one notable feature many academicians find it difficult to call Indian Constitution as wholly federal. Black Law's dictionary defines emergency "as a failure of the social system to deliver reasonable conditions of life".⁹ The term emergency may be defined as "circumstances

⁸ S.R BOMMAI vs. Union of India AIR 1994 SC 1918: (1994) 3 SCC 1.

⁹ Black Law's dictionary. Retrieved from <http://thelawdictionary.org/>

arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them”¹⁰

Emergency presents a quite rare situation. Due to the imposition of emergency the concept of federalism has been highlighted and has become a spotlight for debate with a lot of importance. It was due to imposition of article 356¹¹ of the Indian Constitution which raised the issue of federalism in India. When Congress was in power no such issue was raised but as the Janta party came to power at the central level and largely at the state level during the 1977 elections. At this time the Janta Party started dismissing the state government headed by congress and dissolved the assemblies. Suddenly the congress ministers realized our constitution is a federal one, this was an initial towards federalism and an end towards the emergency.

“The emergency and its aftermath have brought the question of federalism into prominence and made it necessary to devote a chapter to it in the third edition”¹². The third edition of H.M. Seervai's book had a chapter "Federation in India", this tells about the role played by emergency concerning federalism in India. Dua B.D. (1985), *Presidential Rule in India (1950-1974): A Study in Crisis Politics*, S. Chand: “This also dealt with Union's intervention via emergency and Federal system of India. It is

known and established that due to imposition of emergency the federal system is diminished but what is important to know is to what extent the system is diminished and to what extent power is undermined.”¹³

V. NATIONAL EMERGENCY AND FEDERALISM

BR Ambedkar: "the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it only the Centre which can work for a common end and the general interest of the country as the whole"¹⁴

Art. 352¹⁵ of the Indian Constitution empower the union government and expand the scope of its power. The president can proclaim on the ground of war, or external aggression or armed rebellion¹⁶. Since the proclamation is made to the satisfaction of the president, whether their threat lies or not is subjective to the president's discretion. Though there should be subjective satisfaction of the president along with the cabinet and the same should be officially approved by the houses within a month otherwise the proclamation ceases or terminates.

VI. JUSTICIABILITY OF PRESIDENT'S DISCRETION

By 38th¹⁷ amendment act clause 5 had been added to article 352¹⁸ which read that

¹⁰Malika Chhikara. Three types of emergencies under the Indian Constitution. Link:<http://www.legalservicesindia.com/article/article/three-types-of-emergencies-under-the-Indian-constitution1834-1.html>.

¹¹ INDIA CONST. Art. 356.

¹² H.M.Seervai, *Constitutional law of India*, Vol.1, 4th edn, Universal Law Publishing Co., 1991, p.283.

¹³ Dua B.D. (1985), *Presidential Rule in India (1950-1974): A Study in Crisis Politics*, S. Chand

¹⁴ <http://www.ambedkar.org/ambcd/63F2>.

¹⁵ INDIA CONST. art. 352.

¹⁶ Turned to "internal disturbance". The Constitution (Forty Fourth Amendment) Act, 1978.

¹⁷ The Constitution (Thirty-eighth Amendment) Act, 1975.

¹⁸ INDIA CONST. art. 352 cl.5.

"satisfaction" of the president "shall not be questioned on any ground in-state" and it is "final". It added a restriction on the courts to review it but the same was curtailed by 44th¹⁹ constitutional amendment which repealed clause 5 of article 352 and restored the position before the 38th amendment. In *Minerva Mills*,²⁰ BHAGWATI, J., did express the view that whether the President is proclaiming the emergency under Art. 352 had applied his mind, or whether he acted outside his powers, or acted mala fide in proclaiming the emergency could not be excluded from the scope of judicial review.²¹

VII. INVOCATION OF ARTICLE 352

On 26th October 1962, this provision was brought into action for the first time when there was a conflict with China, and it remained in force till Indo-Pakistan conflict and the same was revoked in 1968.

Again 1971 emergency was proclaimed on the ground of external aggression as a result of the Indo Pakistan dispute and while this was in existence in 1975 another proclamation was made on the ground of "internal aggression". As per the general public, there was no threat; the proclamation was the misapplication of Article 352 as there was no real emergency. As a result of which the government lost its majority and an election took place in 1977. The Shah commission was asked to investigate the matter regarding the proclamation, and it ended up that

there was no need for imposition. Though a commendable thing took place, which was the 44th amendment, to make sure that this does not take place again.

VIII. CONSEQUENCES OF A PROCLAMATION OF EMERGENCY ON FEDERAL STRUCTURE

The proclamation beneath article 352 has far-reaching consequences on the state's legislative, executive and financial powers:

1. There is a cardinal change in the Centre-state relations, there is variation in federalism, it is remodeled. The parliament under article 250²² is empowered to legislate upon the matters regarding the state list. Although the state legislature still operates and can make law the central law will override state law to state list under article 251²³.

The central government can also levy a tax which is a part of the state list.

2. Under article 353²⁴ the executive power comes in the hand of the Centre
 - gives direction to the state
 - Imposes duties, confers power to officers and authorities even though the same is not under the ambit of Union list.
 - Further, the Centre can exercise its executive power in those

¹⁹ The Constitution (Forty Fourth Amendment) Act, 1978.

²⁰ AIR 1980 SC 1789 : (1980) 2 SCC 591

²¹ AIR 1980 SC, in 1840.

²² INDIA CONST. art. 250.

²³ INDIA CONST. art. 251.

²⁴ INDIA CONST. art. 353.

states also where the emergency is not imposed in case the security is being threatened.

As such, normally the union can exercise its executive powers on the states under article 256²⁵ & 257²⁶, but at the time of emergency the executive power of the Centre in the states increases.

3. According to article 354(1)²⁷, the president can modify the distribution of revenue between the state and Centre (268 to 279).

During the time of national emergency though the state government is there, yet the Centre becomes more powerful and has all the powers of the state whether legislative, executive, financial or administrative and the doctrine of "division of power" i.e. distribution of power between the Centre and state comes to end till the imposition of emergency. The federal structure turns to unitary and the state administration comes directly under the control of the union.

IX. STATE EMERGENCY

The framers of the Constitution of India thought about that provisions concerning the President's Rule underneath Articles 355, 356 associate in nursing 365²⁸ were necessary to satisfy an exceptional scenario wherever breakdown of the constitutional machinery may occur in a State, therefore, to maintain the unity and integrity of the country, along with law and order and functioning of the states the framers consolidated

this provision the essential intention was that these overriding powers to the Union over the states ought to be used solely within the extreme cases, i.e., the threat to the unity and integrity of the country, breakdown of constitutional machinery a State, political instability during a State, etc. while incorporating the clause it was stated that this provision would be invoked and used in the rarest of the rare situation as the last resort. Yet this clause has been used more than 100 times. Due to the chronological use of Article 356, the federal system is immensely affected as it disturbs the balance of power. It is an acting apparatus for the Centre to step in and arbitrate the proceedings and affairs of the State government. This turns down the provision of the federal nation into unitary. Granville Austin calls these emergency provisions "The Union's Long Arm."²⁹

This clause has been instigated from section 93³⁰ of Government of India Act, 1935. Suspension of the state government and administered by the central one introduces the President's rule. Article 356 of the Indian Constitution deals that if the state government is impotent and is not able to function as per the constitutional provisions then the Central government take the control.

X. JUSTICIABILITY OF ARTICLE 356

It's not that people were just the misuse of article 356; it has been challenged again and again, though never succeeded wholly.

²⁵ INDIA CONST. art. 256.

²⁶ INDIA CONST. art. 257.

²⁷ INDIA CONST. art. 354 cl.1.

²⁸ INDIA CONST. art. 365.

²⁹ Austin, Granville (1966), *The Indian Constitution: Cornerstone of A Nation*, Oxford University Press: New Delhi, p.207. Reprinted 2000.

³⁰ The Government of India Act, 1935.

- A writ was filed by the ex-CM of Haryana, challenging the steps taken by the central government and the same was dismissed on the following grounds:

-the court laid that they cannot check the legality of the proclamation as it is done by the president as per the constitutional powers (356) and he is not answerable to the courts under article 361³¹.

- The court has no jurisdiction to require disclosure of material forming the basis of the President's satisfaction³²

- The Andhra High Court stated that the satisfaction of the President under Art. 356 was not a justiciable matter. There are no satisfactory criteria for a judicial determination of what are relevant considerations, and this makes the question of satisfaction intrinsically a political one and beyond the reach of the court.³³

- Then there came the 38th amendment which specified that the satisfaction of the president is final and shall not be challenged. Though it was overridden by the 44th amendment.

- Rajasthan v. Union of India³⁴ although the range of the article is over-sized, yet the proclamation could be challenged if power was exercised mala fide or is the one which is prohibited legally or constitutionally.

It was further laid that till the parliament does not approve the proclamation made by the president, till the time the state assemblies could not be dissolved.

- The landmark judgment regarding article 356 came into light: S.R.Bommai v Union of India³⁵ and it laid down the following things:

- Though the power of proclamation is in the hands of the President, yet he has to take the advice of the Council of Ministers
- The governor must try to find out different alternatives when the ministry is losing its support.
- Proclamation made is justifiable if the grounds are: that the proclamation was made in mala fide intention, or it is based on immaterial grounds.
- Dissolution of the state assembly should not be there till there is enough ground found.
- According to JEEVAN REDDY, J., Art. 356 confer upon the President conditioned power. "It is not absolute power. The existence of material which may comprise or include the report of the Governor—is a precondition. The President's satisfaction must be formed on the relevant material."
- The State Assembly would be restored if dissolved by the President during the emergency and the same is approved, if the court finds no justification and proper material grounds for the proclamation of emergency.

³¹ INDIA CONST. art. 351.

³² Rao Birinder Singh v. India, AIR 1968 Punj 44.

³³ In re A. Sreeramulu, AIR 1974 AP 106.

³⁴ Rajasthan v. Union of India AIR 1977 SC 1361: (1977) 2 SCC 592.

³⁵ S.R.Bommai v Union of India AIR 1994 SC 1918 : (1994) 3 SCC 1.

XI. INVOCATION OF ARTICLE 356

If we study the invocation of Article 356, we come around different phases of it and how the different governments use these.

- PHASE I: (1950-1966) During this period Congress government was in power and they used it for the purpose to bring the downfall of the non-congress government at the state level. The congress government was not at all ready to stimulate the opposition to come at power at the state level also. They believed in only a single political party in power. This created problems between the Centre-state relations and due to this, the structure of federalism got lost.

- PHASE II: (1967-1976) It was the time when the emergency was imposed 12 times (1967-70) by the Indira Gandhi government as she wanted to centralize all the powers in her hands and of state governments also. During this time, there was a meager majority in Lok Sabha and among half of the states, congress lost the power.

From 1970-77 for almost 14 times the emergency was invoked by Indira Gandhi only to expel the Opposition parties' State governments, however, additionally to finish internal variations of the Congress Party and to sack the inconvenient Chief Ministers of their party.

- PHASE III (1977-78) Janta party came to power which was led by Morarji Desai at the Centre. They used Article 356 on twelve occasions and it was not tolerant to the

Opposition party governments in the States for the partisan ends. The mass dismissal of 9 Congress-ruled State governments was against the federal democracy and it exaggerated the strain between the Centre and therefore the States also.

- PHASE IV (1979-80) Charan Singh government at the Centre didn't misuse Article 356 as a political weapon and imposed President's Rule when it became inevitable. They have imposed it four times but only in those situations was it required as per the constitutional provision. This government didn't try to use the provision for its power or to centralize the power in his hand.

- PHASE V (1980-84) Again the Indira Gandhi government came and this time they imposed emergency again for 14 times. Sunil Destha observed The President's Rule provisions were being used by the Congress party to further Congress objectives in the various States. The power to impose President's Rule had become a political weapon.³⁶

Granville Austin correctly perceived that abuse of the President's Rule seemed to toy with the Constitution, amounting to an attack on participative governance within a State and between the State and the Union government. Its misuse undermined the credibility of an office under the Constitution designed to serve national unity and effective federalism: the governors³⁷

³⁶ Destha, Sunil (1993), *President's Rule in the States: Constitutional Provisions and Practices*, Deep and Deep Publications: New Delhi, p. 130.

³⁷ Austin, Granville (1999), *Working a Democratic Constitution: The Indian Experience*. Oxford University Press: New Delhi, p. 612.

XII. CONSEQUENCES OF INVOCATION

1. Either the parliament or any supplementary authority under it can have the power of the State Legislature to make laws. The President takes the control of the State Consolidated Fund when the Lok Sabha is not in session.

Because of this state's competence to make laws on the state list is suspended until the emergency is not revoked.

- The President gets to grips that if he takes the power of the Governor in his hands and on his shoulders and this gives him the right to dissolve the assembly, though it's not mandatory to dissolve the state assembly, it can be suspended from working till an emergency is imposed.
- President exercises this power by delegating it to the Governor; therefore the governor becomes the puppet of the central government and acts as per their orders. Though it is said that at the time of emergency the governor works but in reality the administration of the state is carried by the Centre, it is just that they have delegated their power to the governor. Governor acts on the behalf of the union ministry instead of the state and is responsible and accountable to them.

2. This is against the “democratic doctrine of popular sovereignty” which states that “Popular sovereignty is a government based on

the consent of the people. The government's source of authority is the people, and its power is not legitimate if it disregards the will of the people. The government established by the free choice of the people is expected to serve the people, who have sovereignty, or supreme power”³⁸ as the Centre begins to work on the behalf of the state.

3. The recurrent misuse of Article 356 snatches the democratic right of self-governance of the individuals of the State involved, as a result of the individuals in each State having needs of fulfilling their aspirations through self-governance within the framework of the Constitution. By use of Article 356, the Union Government dismisses the elected state government and controls the State administration through the State Governor and his functionary advisors. This is a sore point on Indian federal democracy, as a result of neither the Governor nor his advisors elected government by the individuals of the State involved and per se do not stand accountable to the State Assembly. Throughout President's Rule, the State comes under official governance that is essentially unaccountable to the individuals. This deals with the abrogation of the federal system and turns it into a unitary one.

4. The autonomy of the state ends, the term autonomy has been used in the sense of political independence and self-government which negates political interference of another government.³⁹ Our framers have clearly stated

³⁸https://www.annenbergclassroom.org/glossary_term/popular-sovereignty/

³⁹ 4A Words and Phrases 662 (Permanent ed. 1658 to Date 1969); 2 New Survey of Universal Knowledge

Encyclopedia Britannica 789 (1959) and 2 The Encyclopedia American (The International Reference Work First published in 1829) 667 (1960).

that the states do not have the right to break away from the Centre. The constitution itself has made the Centre more powerful and superior and in *S.R. Bommai v. Union of India* it was observed "The Constitution of India has created a federation but with a bias in favor of the Centre. Within the sphere allotted to the States, they are supreme".⁴⁰ This also proves that the constitution is biased towards the Centre and it has given the power to the Centre to look into the matters of state government and thus there is a refutation of federalism.

Granville Austin calls these emergency provisions "The Union's Long Arm."⁴¹

Criticism of Presidential Rule:

- This has been used many times for partisan purposes. This leads to the suspension of State assembly as a result of which there is horse-trading.
- This has been used for the purpose to dislodge or overturn the state government. Janta Party, when it came into power during 1977, removed the Congress party from the 9 states by imposing an emergency. This leads to the development of deleterious doctrine that is the doctrine of pernicious.
- No chance is given to the opposition to make an alternative government.
- The sectarian role played by the Governor. By Romesh Bhandari in Uttar Pradesh (199-98) and Buta Singh in Bihar (2005).

- The state lost the election mandate of its electorate and is also one of the reasons for imposing the emergency. It was done during 1980 where all the non-congress state governments were dismissed by imposing the emergency.

- In Sethy, Rabindra Kumar (2003), *Political Crisis and President's Rule in an Indian State*, A.P.H. Publishing Corporation: It was made a detailed study regarding the imposition of emergency especially concerning Orissa, it was discovered that the reason was more political rather than administrative.

Federalism has been designated as a basic value in the Indian Constitution. Dismissal of a duly elected State Assembly by the Central Government is a negation of the federal concept. The power under Art. 356(1)⁴² has thus to be exercised sparingly, scrupulously and with circumspection. Abuse or misuse of this power will damage the federal fabric and disturb the federal balance.

XIII. FINANCIAL EMERGENCY

Article 360⁴³ of the Indian Constitution deals with the provision of a financial emergency.

The president can proclaim this as per his satisfaction, where he finds that there is financial stability or credit is at peril or threat in India or any part.

Though the proclamation can be revoked [360(2)(a)]⁴⁴ and the same would be terminated

⁴⁰ AIR 1994 SC 1918 at 2112 para 365 (9).

⁴¹ Austin, Granville (1966), *The Indian Constitution: Cornerstone of A Nation*, Oxford University Press: New Delhi, p.207. Reprinted 2000.

⁴² INDIA CONST. art. 356 (1).

⁴³ INDIA CONST. art. 360.

⁴⁴ INDIA CONST. art. 360 cl. 2(a).

if not approved by both the houses are not more than two months. In case the Lok Sabha is dissolved it may be approved by the Rajya Sabha, and then approved by the Lok Sabha after elections within thirty days from its first sitting. If not so approved, the proclamation ceases to exist⁴⁵.

Perhaps, the framers of the Constitution adopted the idea underlying Art. 360 from the experiences of the federations of the U.S.A., Canada and Australia during the depression of the 1930's when the Central Government found itself very much handicapped in taking effective action to meet the situation. The argument given in the Constituent Assembly to support this constitutional provision was that during the depression, the U.S. Congress had passed the National Industrial Recovery Act which was declared unconstitutional by the Supreme Court,⁴⁶ and that the Central Government in India should face no such difficulty in coping with emergency economic problems.⁴⁷

XIV. IMPOSITION

It has been around 70 years of adopting the Constitution of India and till today's date, this emergency has never been invoked. As such no occasion has come forward that we must impose financial emergency, if in case this emergency was imposed there would be a major drawback and our country might go back to the place where it was 30 years ago.

⁴⁵ Proviso to Art. 360(2) (c).

⁴⁶ *Schechter Poultry Corp. v. United States*, 295 US 495. The Act in question was declared invalid in *Schechter* on the ground of involving an improper

XV. CONSEQUENCES

1. State government gets the direction regarding the financial matters from the central government. The president may give some necessary directions such as a reduction in the salaries and allowances.

2. The state government might be asked to reserve its money bill after being passed by the state legislature to get the consideration of parliament.

Due to the imposition of this emergency, the Central government's intervention would increase, and the state's power or autonomy is reduced.

XVI. CONCLUSION

As commented in an editorial "if the principle of unity in diversity is to be restored to its pristine strength in India, not only the states recognise the strength that accrues to them from the country's oneness, the centre for its part must also concede the richness and vibrancy that flow from the sub-cultural differences among its many and varied regions."⁴⁸ But such a change can't occur until all round development of a federal spirit amongst the Union and its constituent units. To sum up, the growing imbalances and deeply unequal Centre-state relations grounded on many paradoxes have created roadblocks for cooperative federalism due to the emergency.

The R.S. Sarkaria and others rightly observed "It needs to be remembered that only the spirit of

delegation of legislative power by the Congress to the President

⁴⁷ XCAD, 361-72. Also, AUSTIN, *THE INDIAN CONST.*, 209-16.

⁴⁸ the editorial, *Hindustan Times*, 1977.

"cooperative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government."⁴⁹

⁴⁹ Shalini Soni. Ors. v. Union of India and others SCC. 1980; (4):544.