

# SWARAJYA

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## IMPLICATIONS OF EMERGENCY!

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CONSIDERABLE confusion prevails in the country on the consequences of the proclamation of emergency. In the first place, a proclamation of emergency may be issued if the President is satisfied that a grave emergency exists whereby the security of India is threatened by war, external aggression or internal disturbances. For the first time in the history of India, emergency was proclaimed in the wake of the Chinese aggression in 1962 which continued till 1968. A second proclamation of emergency was issued when Pakistan declared war in 1971 which continues even now. A third proclamation of emergency has been issued on 26th June 1975 on the ground that the security of India is threatened by internal disturbances. Thus, two proclamations of emergency are now concurrently in force.

Since the Council of Ministers with the Prime Minister at its head aids and advises the President in the exercise of his function a decision regarding the emergency is in reality the decision of the Council of Ministers with the Prime Minister at its head. Though some eminent jurists who met at Delhi early this year to discuss the legal aspects of the emergency argued that the proclamation is justiciable and that courts can go into such matters as the question of the President's satisfaction regarding the existence of grave emergency or the pre-conditions like external aggres-

sion or internal disturbances, the decisions of the Supreme Court point to the opposite view. In one case, the Supreme Court said that when a proclamation of emergency exists, it should be presumed that the President must have satisfied himself about the existence of the emergency. Our Constitution also provides that a proclamation of emergency may be made not only when there is a war, external aggression or internal disturbances but also when the President is satisfied that there is an imminent danger of such crisis.

The Constitution provides that the proclamation of emergency must be placed before the Lok Sabha and the Rajya Sabha and if the proclamation is not approved within two months by each of the two Houses, the proclamation will cease to operate. This means that before the 25th August 1975, the Lok Sabha and the Rajya Sabha should meet and adopt resolutions approving the proclamation in order to keep it alive after two months. In the event of the Lok Sabha being dissolved before the 26th August 1975 without approving the proclamation, it is enough if the Rajya Sabha adopts a resolution approving the proclamation and the new Lok Sabha approves it within 30 days of its first sitting. If the proclamation is not approved within 30 days after the first sitting of the newly elected Lok Sabha, the proclamation ceases to exist.

The question may be asked as to what happens if a new Lok Sabha is not constituted at all. Article 85 of the Constitution provides that six months shall not intervene between the last sitting in one session and the date appointed for the first sitting of the next session of each House of Parliament, namely, the Lok Sabha and the Rajya Sabha. As the Lok Sabha met on 9th May 1975, the next session cannot be later than the 9th November 1975. Hence, if the Lok Sabha is dissolved before or even after adopting the resolution approving the emergency, the new Lok Sabha will have to meet on or before 9th November 1975. But if one asks what if the Lok Sabha is not summoned within six months of the last session, there can be no answer as the Constitution is silent as to the consequences which follow if the next session is not held within six months of the last session. One thing is clear, namely, Article 85 which prescribes that Parliament should meet within six months of its last session is not one of the articles that can be suspended from operation by the proclamation of emergency. Our Constitution also provides that the Lok Sabha, unless sooner dissolved, shall continue for five years from the date appointed for its first sitting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the House. It was the intention of the founding

fathers of the Constitution that no quarter should be given to Parliament to extend its own life. Nevertheless, when a proclamation of emergency is in operation, the life of the Lok Sabha may be extended by law for a period of one year at a time as long as the emergency lasts and six months thereafter. It is, therefore, possible under the Constitution to extend the life of the present Lok Sabha for as many years as the proclamation of emergency lasts.

When a proclamation of emergency is in force, the Central Government has power to give directions to any State Government with regard to the manner in which the State Government should exercise its power and if the State Government fails to comply with or give effect to any such direction, the President may hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution under Article 363 and enforce the President's rule in that State under Article 356. Hence, no State Government can refrain from carrying out the directions issued by the Central Government without risking a dismissal and President's rule. During the operation of emergency, Parliament may make laws in respect of matter exclusively in the State List II under Article 353-B, as well as Article 250 (1). The President can also suspend or vary the distribution of revenues between the Union and the States contained in Articles 268 to 279.

When an emergency is in force, the Government may, by Ordinance or by legislation, proceed to enact any law in contravention of Article 19 which guarantees, subject to reasonable restrictions, the right to freedom of speech, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to acquire hold and dispose of property and to practise any profession. It is under this power that the Defence of India Act and the rules and the press censorship as well as the Maintenance of Internal Security Act have been passed even though these acts take away the rights guaranteed under Article 19 of the Constitution. There is a view that as soon as a proclamation of emergency is made, Article 19 is automatically suspended which does not seem to flow from the language of Article 358. During the emergency, the President may by order suspend the right to move the courts for the enforcement of any of the fundamental rights conferred by Part III of the Constitution as may be specified and also the pending proceedings for enforcement of such rights. Under this provision, the President has issued orders restraining enforcement of Article 14, equality before law, Article 21, rights of life and personal liberty and Article 22, protection against arrest and detention. Orders passed under the above Articles are required to be laid before each House of Parliament as soon as may be, but they

will not lapse like a proclamation of emergency if it is not approved within two months.

Once a proclamation of emergency has been approved by a resolution in each House of Parliament, it will remain in force until it is revoked by a subsequent proclamation. Thus, the first proclamation of emergency was revoked by another proclamation in 1968. Irrespective of the cessation of aggression or long lapse of time or other circumstances, the proclamation once approved remains valid. The Supreme Court held in *Makhan Singh Tarsikka v. the State of Punjab 1964 (IV) S.C. 797*, that how long the proclamation of emergency should continue and what restrictions should be imposed on the fundamental rights of the citizens during the pendency of the emergency are matters which most inevitably be left to the executive which knows the requirements of the situation and the effect of the specified factors which operate during periods of grave crisis such as our country is facing today.

The argument that during the operation of the Presidential order, the executive may abuse its powers and the citizen would have no remedy is essentially political and its impact on the constitutional position is at best indirect.

In a democratic State, the effective safeguard against abuse of executive powers, whether in peace or in emergency, is ultimately to be found in the existence of enlightened, vigilant and vocal public opinion.

## DELETION UNDER CENSORSHIP ORDER CHALLENGED

Mr Justice G. Ramanujam in the Madras High Court admitted a writ petition from Mr T. Sadasivam, Publisher of SWARAJYA, questioning the validity of an order of the Deputy Secretary to Government, Public Department, deleting a passage from an article in the issue of the weekly, dated July 5.

The respondents impleaded are the Union Government represented by the Home Ministry, Delhi, the Tamil Nadu Government represented by the Chief Secretary

and the Deputy Secretary to Government, Public Department, to whom His Lordship directed notices.

His Lordship also issued an interim injunction restraining the respondents from enforcing the impugned order and taking any further steps in pursuance of the order pending further orders on the petition.

His Lordship added that the above order was without prejudice to the rights of the respondents to proceed against the petitioner

for contravention of the rules (DOI) Rules).

The Central Government issued an order called the Censorship Order on June 26 which, amongst other things, stated that any action taken under the provisions of the Maintenance of Internal Security Act shall not be published in any newspaper, periodical or other documents unless such matter had been submitted to the scrutiny of the authorised officer, and no such publication shall be

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