

## **CORONAVIRUS AND FINANCIAL EMERGENCY**

*Written by Raj Krishna\*, Kumar Sushant\*\* & Charulata Singh\*\*\**

*\* 5th Year BA LLB Student, Chanakya National Law University, Patna*

*\*\* 4th Year BA LLB Student, Chanakya National Law University, Patna*

*\*\*\* 3rd Year BBA LLB Student, Chanakya National Law University, Patna*

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### **INTRODUCTION**

On April 1, 2020 a division bench of Supreme Court of India comprising of Justices L Nageswara Rao and S Abdul Nazeer deferred a PIL for 2 weeks which asked the Supreme Court to issue direction to the Central Government to declare financial emergency under Article 360 of the Constitution in the wake of the coronavirus pandemic.<sup>i</sup>

The petition filed by a think tank named Centre for Accountability and Systemic Change (CASC) contended before the Supreme Court that the declaration of financial emergency is required in order to safeguard the rule of law in country. The petitioners have further argued before the Apex Court that just by imposing Section 144 of the Criminal Procedure Code or by issuing notification under the Disaster Management Act, 2005 or by imposing provisions of the Epidemic Disease Act, 1897 the Covid-19 crisis can't be managed. So, the declaration of financial emergency is the need of the hour.<sup>ii</sup>

However, it is pertinent to note that last week when Finance Minister Nirmala Sitharaman announced a relief package worth INR 1.70 lakh crore to fight the Coronavirus pandemic, she ruled out the imposition of any financial emergency.<sup>iii</sup>

### **CONSTITUTIONAL HISTORY OF ARTICLE 360**

Article 360, or draft Article 280A as it was then was introduced by Dr. B.R. Ambedkar on October 16, 1949. Dr. Ambedkar's draft Article 280A drew inspiration from the National Recovery Act of the United States which was passed in the year 1933 in order to combat the

damages caused by the great depression. However, it is interesting to note that the National Recovery Act was struck down immediately by the American Supreme Court just after its enactment. As a result, the framers of the Indian Constitution introduced the provision of financial emergency in the Constitution itself.<sup>iv</sup>

However, the Constituent Assembly while drafting Article 360 took great care to ensure that unbridled powers are not conferred upon the Central Government. The Constituent Assembly thereby sought to prevent a complete takeover of the State legislatures by the Centre and restrict their involvement pertaining to the issuance of directions. As a result, the possibility of conflict between the directions of the Central and the State authorities remains high.<sup>v</sup>

### **ARTICLE 360: A CONCEPTUAL DISCUSSION**

Article 360 of the Indian Constitution deals with the issue of financial emergency.<sup>vi</sup> Article 360 (1) of the Constitution states that in a situation wherein the President is satisfied that the financial stability or credit of India is in threat, he may by a proclamation make a declaration to that effect.<sup>vii</sup>

When such proclamation is in operation, then the Centre under Article 360 (3) “*can give direction to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose*”.<sup>viii</sup> Further under Financial Emergency direction can be issued for the reduction of salaries and allowances of all class of personals serving the State and the Central Government including the Supreme Court and High Court judges.<sup>ix</sup>

The Centre may require that all money bills, or financial bills or those which involve expenditure from the State Consolidated Fund shall also be reserved for the President’s consideration after being passed by the State Legislature.<sup>x</sup>

A proclamation issued under Article 360(1) may be revoked or varied by a subsequent proclamation and has to be laid before each House of Parliament. The proclamation ceases to have effect after two months unless in the meantime it is approved by resolution of both the houses of parliament. Further under Article 360(2)(c) of the Constitution, “*if a resolution*

*approving the Proclamation has been passed by the Rajya Sabha, but no resolution with respect to such Proclamation has been passed by the Lok Sabha before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the Lok Sabha first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the Lok Sabha.*”<sup>xi</sup>

However, till date the President has never invoked financial emergency in India. By the 38<sup>th</sup> Constitutional amendment, the term “*Presidential satisfaction*” in Article 360(1) was declared to be final and conclusive and not questionable in any court on any ground.<sup>xii</sup> No court was to have jurisdiction to entertain any question, on any ground, regarding the validity of: -

- i. a declaration made by the proclamation of President to the effect stated in Art. 360 (1).
- ii. The continued operation of such proclamation.

However, this provision was deleted by the 44<sup>th</sup> Constitutional amendment.<sup>xiii</sup>

## **WAY AHEAD**

The power to declare emergency under Article 360 vests in the hands of the executive. Thus, if the Supreme Court issues a direction to the President to declare financial emergency, it would violate the principle of separation of powers and would be a classic case of judicial overreach.

However, it is interesting to note that matters like public order, police, public health and sanitation, hospitals and dispensaries, production, supply and distribution of goods fall under the category of State List. As a result, it would be interesting to see that how the Centre will deal with the conflicts, if Article 360 is ever invoked.<sup>xiv</sup>

Further it is also to be kept in mind that even if Article 360 is invoked the Centre in that case may issue directions only in financial matters. The issues like differences in approach in implementing S. 144 and arbitrary police action may still remain unaddressed, even if Article 360 is invoked. As a result, the concerns of the petitioner will still remain unaddressed even if the financial emergency is imposed in this country.<sup>xv</sup>

However, if the President ever proclaims financial emergency, we may only hope that the Central Government will remember the great words of Mr. R.K. Sidhva during the imposition of financial emergency:

*“I am confident that the President, whosoever he may be, he will exercise his power rightly, and interpret this article in the right sense and in the right manner and for the benefit of the country and the benefit of the people of this country. With these words, I support the amendment that has been moved by Dr. Ambedkar, article 280A.”<sup>xvi</sup>*

## REFERENCES

<sup>i</sup> Coronavirus: Supreme Court To Hear Plea Seeking Imposition Of Financial Emergency In India, NDTV (May 20, 2020, 7:30 p.m.), <https://www.ndtv.com/india-news/coronavirus-supreme-court-to-hear-plea-seeking-imposition-of-financial-emergency-in-india-2204362>

<sup>ii</sup> Petition asks Supreme Court to declare national financial emergency, The Hindu (May 20, 2020, 8:00 p.m.), <https://www.thehindu.com/business/petition-asks-supreme-court-to-declare-national-financial-emergency/article31174424.ece>

<sup>iii</sup> A K Bhattacharya, Covid-19 crisis: Imposing a financial emergency can be useful, Business Standard (May 21, 2020, 8:30 p.m.), [https://www.business-standard.com/article/opinion/a-petition-for-financial-emergency-120032901230\\_1.html](https://www.business-standard.com/article/opinion/a-petition-for-financial-emergency-120032901230_1.html)

<sup>iv</sup> Bhargavi Kannan, Coronavirus and the Constitution – V: Financial Emergencies, Indian Constitution Law and Philosophy (May 21, 2020, 9:00 p.m.), <https://indconlawphil.wordpress.com/2020/03/29/coronavirus-and-the-constitution-v-financial-emergencies-guest-post/>

<sup>v</sup> Ibid.

<sup>vi</sup> M.P. Jain, Indian Constitutional Law, 730 (7<sup>th</sup> edition, 2014).

<sup>vii</sup> Constitution of India, Article 360(1).

<sup>viii</sup> Constitution of India, Article 360(3).

<sup>ix</sup> Constitution of India, Article 360(4).

<sup>x</sup> Ibid.

<sup>xi</sup> Constitution of India, Article 360(2)(c).

<sup>xii</sup> M.P. Jain, Indian Constitutional Law, 730 (7<sup>th</sup> edition, 2014).

<sup>xiii</sup> Ibid

<sup>xiv</sup> Bhargavi Kannan, Coronavirus and the Constitution – V: Financial Emergencies, Indian Constitution Law and Philosophy (May 22, 2020, 9:00 p.m.), <https://indconlawphil.wordpress.com/2020/03/29/coronavirus-and-the-constitution-v-financial-emergencies-guest-post/>

<sup>xv</sup> Ibid

<sup>xvi</sup> Ibid