

Declaration of emergency and its implications

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On 11th January evening, President Professor Dr. Iajuddin Ahmed declared emergency in the country, invoking Article 141A of the Constitution.

The emergency provisions were not incorporated in the original text of the Constitution in 1972. In 1973 under the second amendment of the Constitution, these provisions were inserted and came into effect on 22nd September 1973.

If there were an elected government, such declaration would require the countersignature of the Prime Minister. During the Care-taker government, the President has the sole power to declare emergency in the country.

Under the aforesaid Article of the Constitution, the President is empowered to declare emergency if he is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by (a) war or (b) external aggression or (c) internal disturbance.

It appears the President has declared emergency because of internal disturbance, not war or external aggression, that is likely to threaten security or economic security of Bangladesh.

In fact, business leaders met the President a few days ago and urged him to declare the emergency for economic security. The port of Chittagong was closed during siege ("oborodh") and imports and exports came to a halt. Huge congestion of container ships reportedly led to Tk.22 lakh loss to shipping agents per day. Consumer prices rose sharply because movement of goods virtually stopped due to lack of transportation from countryside to urban areas.

The declaration of emergency is not unusual in Bangladesh. It is noted that President Ershad declared emergency on 27 November 1990 when intense agitation started against him and continued until he resigned on December 6, 1990.

The prevailing circumstances in the country were leading to a grave crisis when there exists confrontational politics in the country. For more than last two months, normal day-to-day business has been seriously hampered because of hartals, demonstrations and oborodh by AL-led grand alliance which claims that the 22nd January election will be rigged. A few precious lives were lost as well during the political disturbances.

Besides the declaration of emergency, the President resigned from the office of the Chief Adviser (the executive head of the non-party care-taker government) and will soon appoint a new Council of Advisers of the interim care-taker government. He said that the new Council of Advisers would carry out the responsibility in consultation with all concerned and ensure governance by people's representatives.

He assured the countrymen and women that a credible election would be held within the shortest possible time. He told that it was not possible to hold an acceptable

election within the stipulated 90 days, without correcting voter's list. This implies that the election on 22 January would not take place.

Implications of emergency:

First, the duration of emergency can continue for 120 days, unless before the expiration of that period, it has been approved by a resolution of parliament.

Second, although the Constitution is not suspended, certain fundamental rights of citizens are suspended during the operation of the emergency.

Fundamental rights, such as, freedom of speech including freedom of press, freedom of movement, freedom of assembly, freedom of association, freedom of occupation and rights to property are suspended. This means no citizen can resort to enforcement of these rights through the High Court.

It is reported that immediately after the proclamation of emergency, the Press Information Department under the information ministry verbally imposed censorship of media and directed them not to be critical of the government. The restrictions were imposed, claims by the authorities, as was the practice in the past.

Third, the while the emergency is in operation, the President has the power to declare that the right to move any court for the enforcement of such of the fundamental rights as may be specified in the presidential order and all proceedings pending in any court for enforcement of the right, shall be suspended.

Difference between Martial Law & Emergency:

Proclamation of emergency is different from Martial Law where the Constitution is either dissolved or suspended. Declaration of Martial law is an extra-constitutional event, whereas declaration of emergency is within the ambit of the Constitution. The Chief Martial Law Administrator can act or do, ignoring the provisions of the Constitution and has an unfettered power.

Emergency is declared to meet an unusual situation for a temporary period. It runs for 120 days in Bangladesh. The Constitution allows it.

Finally, after independence, the framers of the 1972 Constitution never thought of inserting emergency provisions because they are too idealistic in considering that such provisions were contrary to principles democracy. However it appears they forgot the reality and adopted a utopian Constitution. Within two years three amendments were inserted to meet the reality including the emergency provisions in the Constitution.