**Emergency**

It is a complex and sudden situation when there is a need for taking speedy action. Our

Constitution did not define the term. During the state of emergency, certain fundamental

rights are suspended.

**Circumstances when emergency can be proclaimed**

Article 141 A (1) of the Constitution describes the circumstances under which emergency

can be proclaimed. If the President is satisfied that a grave emergency exists in which the

security or economic life of Bangladesh, or any part thereof, is threatened by-

1. War
2. external aggression or
3. internal disturbance

He may issue a Proclamation of Emergency.

**scope of law-making power during emergency:**

Government may pass any law in the Parliament during the continuance of an emergency.

I can pass a law even violating fundamental rights enumerated in articles 36 to 40 and

42. Dissolution of Parliament is not precondition to issue a Proclamations of emergency.

So, during this time, Government and Parliament are at more liberty to pass a law.

**Position of fundamental rights**:

According to article 141B, some fundamental rights can be suspended during the

continuance of an emergency. Freedom of movement, freedom of assembly, freedom of

association, freedom of thought and conscience and of speech, freedom of profession or

occupation, rights to property can be suspended by enacting laws. If a law is made

contrary to these six rights, they shall be deemed to be suspended during the continuance

of an emergency.

**Suspension of rights for greater interests of the society**.

When an emergency situation exists in which the security or economic life of

Bangladesh, or any part thereof, is threatened by war or external aggression or internal

disturbance, some rights may be suspended on issuing a Proclamation of emergency. This

suspension is confirmed by article 141B of the Constitution. This article states that during

the state of an emergency the state may pass any law or take any Executive action even if

it is contrary to the fundamental rights enumerated in the article. This suspension of

certain rights are for a period not **exceeding 120 days**. The Constitution tolerates such

suspension only for the greater interests of the society. During war or external aggression

or internal disturbance the state may face problems in passing a law or issuing an order if

some rights are not suspended. The President may suspend any proceeding in any court

for the enforcement of fundamental rights.

**Legal position of such law**

Article 141B also stipulates the legal position of a law passed during emergency violating

any of the fundamental rights. If a law is passed contrary to the fundamental rights during

the state of emergency, it shall cease to have effect shall not be affected by such cessation of the law. Law passed during the state of emergency, shall cease to have effect only to the extent of the incompetency.

**Way of enforcement of fundamental rights:**

According to article 141 C. if the Six rights mentioned in article 141B are not suspended, thy can be enforced by the HCD. If they are suspended, other rights may be sought to be enforced. If the right to move for the enforcement of all rights is suspended, no way remains open to enforce the rights conferred by the part III of the Constitution. Rather, the President may go to the extent that all proceeding suspending in any court for the enforcement of the rights suspended by the another can be suspended by him.

**Infringement of fundamental Rights during Emergency:**

Article 141B permits the infringement of some fundamental rights during the state of

emergency. These rights are mentioned in the Article and also mentioned hereinafter.

These are as follows-

a. Freedom of movement (article 36)

b. Freedom of assembly (article 37)

C. Freedom of association (article 38)

d. Freedom of thought and conscience, speech (article 39)

e. Freedom of profession or occupation (article 40)

f. Rights to property (article 42)

**When Proclamation ceases to operate**

**Article 141 A(2)** (c) states that a Proclamation of Emergency shall cease to operate at the

expiration of **one hundred and twenty days**, unless before the expiration of that period it

has been approved by a resolution of Parliament.

**Emergency Provisions in the Constitution of Bangladesh**

Emergency provisions are dealt with part 9A of the Constitution. The part contains three articles 141A, 141B and 141C.

**Article 141A says,**

"If the president is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof is threatened by war or external aggression or internal disturbance, he may issue a proclamation of emergency"

Thus, the president can declare emergency on three grounds

1. war,
2. external aggression or
3. internal disturbance.

Two types of emergencies, therefore, can be declared under the constitution of Bangladesh –

1. emergency of war and
2. emergency of subversion.

**When can the President declare Emergency?**

**Article 141A** says that the president can declare emergency whenever he thinks that a grave emergency exists in which the security or economic life of Bangladesh or any part thereof is

threatened by war, external aggression or internal disturbance.

**Article 141A (3)** says that a proclamation of emergency may be declared before the actual occurrence of war or any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

Again, the proviso of article 141A (1) says that the proclamation of emergency shall require for its validity the prior counter signature of the prime minister. Thus, virtually the declaration of

emergency depends on the wish of the prime minister. Whenever therefore, depends on the subjective satisfaction of the executive and the court cannot question the justifiability of such satisfaction.

**Consequences of a Declaration of Emergency**

1. A proclamation of emergency may be revoked by a subsequent proclamation.
2. A proclamation of emergency shall be laid before parliament and shall cease to operate at the expiration of 120 days unless before the expiration of that period it has been approved by a resolution of parliament.
3. If emergency is declared at a time when parliament stands dissolved or the dissolution of parliament takes place during the period of 120 days, the proclamation shall cease to operate at the expiration of 30 days from the date on which parliament first meets after its re-constitution, unless before the expiration of the said period of 30 days a resolution approving the proclamation of emergency has been passed by parliament.
4. As soon as emergency is declared fundamental rights mentioned in articles 36, 37, 38, 39, 40 and 42 shall automatically remain suspended and they will remain suspended so long emergency will be in operation. As a result, the executive may take any measure against these rights and parliament may make any law inconsistent with these rights. As soon as emergency is withdrawn these rights will get their full constitutional status.
5. While a proclamation of emergency is in operation, the president may by an order declare the suspension of enforcement of any of the fundamental rights conferred by Part Ill of the constitution.