

ACT 472
EMERGENCY POWERS ACT, 1994

ARRANGEMENT OF SECTIONS

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ACT 472
EMERGENCY POWERS ACT, 1994(1)

AN ACT to provide for powers to be exercised in cases of state of emergency and for related matters.

1. Declaration of a state of emergency

(1) In accordance with article 31 of the Constitution, the President may, acting in accordance with the advice of the Council of State, by Proclamation published in the *Gazette*, declare that a state of emergency exists in the Republic or in a part of the Republic.

(2) The circumstances under which a state of emergency may be declared include a natural disaster and a situation in which an action is taken or is immediately threatened to be taken by a person or body of persons which

- (a) is calculated or is likely to deprive the community of the essentials of life, or
- (b) renders necessary the taking of measures which are required for securing the public safety, the defence of the Republic and the maintenance of public order and of supplies and services essential to the life of the community.

2. Information to Parliament

By virtue of clauses (2) and (3) of article 31 of the Constitution, where a Proclamation is published,

- (a) the President shall place immediately before Parliament the facts and circumstances leading to the declaration of the state of emergency; and

- (b) Parliament shall, within seventy-two hours after being so notified, decide whether the Proclamation should remain in force or should be revoked; and the President shall act in accordance with the decision of Parliament.

3. Duration of a state of emergency

(1) A declaration of a state of emergency shall, in accordance with clause (4) of article 31 of the Constitution, cease to have effect at the expiration of a period of seven days beginning with the date of publication of the declaration, unless before the expiration of that period, it is approved by a resolution passed for that purpose by a majority of all the members of Parliament.

(2) Subject to paragraph (b) of section 4, a declaration of a state of emergency approved by a resolution of Parliament continues in force until the expiration of a period of three months beginning with the date of its being so approved or until an earlier date that may be specified in the resolution.

4. Revocation of state of emergency

In accordance with clauses (6) and (7) of article 31 of the Constitution, Parliament may, by a resolution passed by a majority of all the members of Parliament,

- (a) extend its approval of the declaration for periods of not more than one month at a time, and
- (b) at any time, revoke a declaration of a state of emergency approved by Parliament.

5. Consequential powers

(1) On the declaration of a state of emergency the President may take the measures which the President considers are reasonably justifiable for the purpose of dealing with the situation that exists during the period that the state of emergency is in force.

(2) Without prejudice to subsection (1), the President may,

- (a) during an emergency affecting the whole of the Republic, prevent assistance to an enemy in case of war; or
- (b) during an emergency affecting the whole or a part of the Republic, order
 - (i) the detention of persons or the restriction of the movement of persons;
 - (ii) the deportation and expulsion from the Republic of a person who is not a citizen;
 - (iii) the taking, possession or control of a property on behalf of the Republic;
 - (iv) the acquisition of property;
 - (v) the searching of premises without a warrant;
 - (vi) the payment of compensation to a person affected by an action taken under the emergency;
 - (vii) the arrest, trial and punishment of a person for breach of an instrument, order or a declaration related to the state of emergency;
 - (viii) the suspension of operation of a law; and
 - (ix) the removal of a person from the emergency area where the emergency relates only to a part of the Republic.

(3) The powers conferred on the President may be exercised by the issue of executive instruments, orders or declarations published in the *Gazette*.

(4) An instrument or a declaration made under subsection (3) may

- (a) empower other persons or authorities specified in the instrument to take the steps that are or the action that is specified in the instrument, and
- (b) contain incidental and supplementary provisions as appear to the President to be necessary or expedient for dealing with the situation.

6. Action inconsistent with Chapter Five of the Constitution

In accordance with clause (10) of article 31 of the Constitution, an action or a step taken in pursuance of a declaration of a state of emergency shall not be held to be inconsistent with or in contravention of, a provision contained in articles 12 to 30 of the Constitution.

7. Persons detained under emergency law

(1) By virtue of article 32 of the Constitution, where a person is restricted or detained pursuant to a declaration of a state of emergency,

- (a) that person shall, as soon as practicable, and in any case not later than twenty-four hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds on which that person is restricted or detained and the statement shall be read or interpreted to the person restricted or detained;
- (b) the spouse, parent, child or any other available next of kin of the person restricted or detained shall be informed of the detention or restriction within twenty-four hours after the commencement of the detention or restriction, and be permitted access to the person restricted or detained, at the earliest practicable opportunity, and in any case within twenty-four hours after the commencement of the restriction or detention;
- (c) not more than ten days after the commencement of the restriction or detention of a person, a notification shall be published in the *Gazette* and in the media stating the restriction or detention and the grounds of the restriction or detention of that person;
- (d) not more than ten days after the commencement of the restriction or detention, and after that, during the restriction or detention, at intervals of not more than three months, the case shall be reviewed by a tribunal composed of not less than three Justices of the Superior Court of Judicature appointed by the Chief Justice; but the same tribunal shall not review more than once the case of a person restricted or detained;
- (e) the person restricted or detained shall be afforded every possible facility to consult a lawyer of that person's choice who shall be permitted to make representations to the tribunal appointed for the review of the case, and at the hearing the person restricted or detained shall be permitted to appear in person or by a lawyer of the choice of the person restricted or detained;
- (f) on a review by a tribunal of the case of a person restricted or detained, the tribunal may order the release of that person and the payment of adequate compensation to that person or uphold the grounds of the restriction or detention, and the authority by which the restriction or detention was ordered shall act accordingly.

8. Report to Parliament of persons detained under emergency powers

(1) Pursuant to clauses (3) and (4) of article 32 of the Constitution, in every month in which there is a sitting of Parliament, a Minister authorised by the President shall make a report to Parliament of the number of persons restricted or detained under the state of emergency, and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal.

(2) Despite subsection (1), the Minister referred to in subsection (1) shall publish every month in the *Gazette* and in the media

- (a) the number and the names and addresses of the persons restricted or detained,
- (b) the number of cases reviewed by the tribunal, and
- (c) the number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal.

(3) Pursuant to clause (5) of article 32 of the Constitution, at the end of an emergency a person in restriction or detention or in custody as a result of the declaration of the emergency shall be released immediately.

9. Hearing of proceedings in camera

(1) A Court sitting in a part of the Republic where a Proclamation is in force may, if it is satisfied that it is in the interest of public safety or the defence of the Republic,

- (a) direct that throughout or during a part of its proceedings a person or classes of persons as the Court may determine shall be excluded, and
- (b) prohibit or restrict the disclosure of information relating to its proceedings.

(2) A person who contravenes a direction of the Court under subsection (1) commits an offence and is liable on conviction to imprisonment for not less than fourteen days.

10. Military courts

This Act does not authorise the making of a provision for the trial of a non-military person by a military court.

11. Act not to derogate from other powers

This Act is in addition to, and not in derogation of any other powers vested in or conferred on the President, public officers, the Courts or any other persons by any other law.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 14th February, 1994.