

Emergency Provisions

- Emergency provisions spanning from **Art. 352 to 360 in Part XVIII.**
- During the emergency, Central Government gets extraordinary powers and all states hon into total control of the Centre.
- “Suspension of Fundamental Rights during proclamation of emergency” provision borrowed from Weimer constitution (Now Russia)
- Emergency converts the federal structure into a unitary one without a formal amendment of the Constitution – a unique feature of the Indian Constitution.
- Emergency provisions are borrowed from the Government of India Act 1935
- Rationale behind Inclusion of Emergency Provisions in Constitution
- Emergency provisions serve as a protective ring around fragile republic system.
- “Constitution of India can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of Emergency, it is so designed as to make it work as though it was a unitary system...” – Dr. B.R. Ambedkar observed in the Constituent Assembly.

Types of Emergencies:**National Emergency (Art.352)**

- According to Article 352, “President can impose emergency if he agrees that a grave security threat exists whereby the security of India, or of any part of her territory is threatened whether by war, external aggression, or armed rebellion, he/she can declare emergency rule in the whole of India or on any part of the Indian Territory.”

Grounds for invocation of National Emergency: -

- **External Emergency** – Declared on the ground of ‘war’ or ‘external aggression’.

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- **Special Majority** – Majority of the total membership of that house and a majority of not less than two-thirds of the members of that house present and voting.
- **Internal Emergency** – Declared on the ground of ‘armed rebellion’.
- President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- The President can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- A proclamation of national emergency may be applicable to the entire country or only a part of it. (Enabled by 42nd Amendment Act of 1976)
- 44th Amendment Act of 1978 substituted the words “armed rebellion” for “internal disturbance” (This was done with an intent to eliminate the vagueness associated with the word internal disturbance and controversies surrounding it during the declaration in the year 1976)
- The President can invoke a national emergency only after receiving a written recommendation (only on the concurrence) from the Cabinet. – Added by 44th amendment act 1978 as an additional safeguard against abuse or misuse.

Parliamentary approval and duration of operation: -

- Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority (By a simple majority of Parliament before 44th Amendment Act of 1978)
- Proclamation of Emergency must be approved by both the Houses of Parliament within one month (Two months in case of Art. 356 and 360) from the date of its issue. (reduced from 2 months to 1 month by the 44th Amendment Act of 1978).
- If Lok Sabha is dissolved then the approval of proclamation or extension of its life can be done by Rajya Sabha.

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- The proclamation survives till 30 days after first sitting of the newly reconstituted Lok Sabha.
- Provided, the Rajya Sabha has, in the meantime, approved it.
- If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with Parliamentary approval for every six months (added by the 44th Amendment Act of 1978)
- Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired (This was changed with due passage of the 44th Amendment act).

Revocation of emergency:

- Emergency may be revoked by the President at any time by a subsequent proclamation.
- Such a proclamation does not require the parliamentary approval.
- President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation (Added by the 44th Amendment Act of 1978).
- Where one-tenth of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the president if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving the continuation of the proclamation (44th CAA 1978).
- Disapproval of proclamation is to be adopted by a simple majority only and required to be passed by the Lok Sabha only.

Effects of National Emergency:

Effect on the Life of the Lok Sabha and State Assembly:

- The life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time for any length of time.
- This extension cannot continue beyond a period of six months after the emergency has ceased to operate e.g. Fifth Lok Sabha (1971–1977).

- Parliament may extend the normal tenure of a state legislative assembly (five years) by one year each time (for any length of time) during a national emergency.
- This extension cannot continue beyond maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights:

- Deals with the suspension of the Fundamental Rights guaranteed by Art. 19
- Six Fundamental Rights under Art.19 are automatically suspended. No separate order for their suspension is required.
- The state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Art.19 (cannot be challenged on the ground that they are inconsistent with six Fundamental Rights guaranteed by Art.19)
- When the National Emergency ceases to operate, Art. 19 automatically revives and comes into force.
- Six Fundamental Rights under Art.19 can be suspended only when the National Emergency is declared “on the ground of war or external aggression”. (44th CAA 1978)
- No remedy lies for anything done during the Emergency even after the Emergency expires (only those laws which are related with the Emergency, not other laws) (44th CAA 1978)

Suspension of Fundamental Rights under Art. 359

- Deals with the suspension of other FR (except those guaranteed by Articles 20 and 21)
- Art. 359 authorises the President to suspend the right to move any court for the enforcement of FR (whole or any part of the country and for only those FR that are specified in the Presidential Order) during a National Emergency.
- FR as such are not suspended, but only their enforcement.
- It should be laid before each House of Parliament for approval.

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- While a Presidential Order is in force, the State can make any law or can take any executive action abridging or taking away the specified FR.
- No remedy lies for anything done during the operation of the order even after the order ceases to operate.
- When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified FR, ceases to have effect.
- President cannot suspend the right to move the Court for the enforcement of FR under Art. 20 to 21 (remain enforceable even during emergency). (44th CAA 1978)
- Only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected. (44th CAA 1978)

Effect on the Centre- State Relations:

Executive:

- Executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised.
- Centre becomes entitled to give executive directions to a state on 'any' matter
- State governments are brought under the complete control of the Centre, though they are not suspended.

Legislative:

- During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List.
- Legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament.
- Constitution becomes unitary rather than federal.
- President can issue ordinances on the state subjects also, if the Parliament is not in session.

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- The laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate.

Financial:

- President can modify the constitutional distribution of revenues between the Centre and the states.
- President can either reduce or cancel the transfer of finances from Centre to the states.
- Such modification is continuing till the end of the financial year in which the Emergency ceases to operate.
- Every such order of the President has to be laid before both the Houses of Parliament.

Distinction Between Art. 358 and 359:

Articles 358 Articles 359:

- Art.358 is confined to FR under Art.19 only Art.359 extends to all those FR whose enforcement is suspended by the Presidential Order.
- Art. 358 automatically suspends the FR under Art. 19 as soon as the emergency is declared. Art.359 does not automatically suspend any FR. It only empowers the president to suspend the enforcement of the specified FR.
- Art.358 operates only in case of External Emergency (on the grounds of war or external aggression) and not in the case of Internal Emergency (ground of armed rebellion). Art. 359 operates in case of both External Emergency as well as Internal Emergency.
- Art. 358 suspends FR under Art.19 for the entire duration of Emergency. Art. 359 suspends the enforcement of FR for a period specified by the president.
- Art. 358 extends to the entire country Art. 359 may extend to the entire country or a part of it.

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- Art. 358 suspends Article 19 completely Art. 359 does not empower the suspension of the enforcement of Art. 20 and 21.
- Art. 358 enables the State to make any law or take any executive action inconsistent with FR under Art.19 Art. 359 enables the State to make any law or take any executive action inconsistent with those FR whose enforcement is suspended by the Presidential Order.

Similarities:

- Both provide immunity from challenge to only those laws which are related with the Emergency no other laws.
- The executive action taken only under such a law is protected by both.

Declarations of National Emergency Made So Far:

- This type of Emergency has been proclaimed three times so far– in 1962, 1971 and 1975.
- Janta government (In 1977) appointed the Shah Commission to investigate the circumstances that warranted the declaration of an Emergency in 1975.
- The commission did not justify the declaration of the Emergency.
- The first proclamation – in October 1962 on account of Chinese aggression in the NEFA and was in force till January 1968.
- Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965. (on the ground of ‘external aggression’)
- **The second proclamation** – in December 1971 in the wake of attack by Pakistan. This was declared on the ground of ‘external aggression’.
- **The third proclamation** – in June 1975. Both the second and third proclamations were revoked in March 1977.
- This was declared on the ground of ‘internal disturbance’.

Safeguards Added Against Misuse (44th Amendment Act 1978):

- “Internal disturbance” replaced by “armed rebellion”.
- Written advice by cabinet instead of by only PM.
- Special majority for ratification of emergency.

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- Lok-Sabha can initiate action for premature termination.
- Repeated approval after every six months, unlike one year earlier.
- In the case of *Minerva Mills vs Union of India* it has been held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under Article 352(1).
- However, the court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not.
- It can check if the satisfaction of the president is valid or not.
- If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.
- Control of Lok Sabha in revocation of emergency (Earlier, proclamation could be revoked by the president on his own and the Lok Sabha had no control in this regard).

President's Rule (Art.356)

- When the constitutional machinery breaks down in a state, the president rule is imposed by centre.
- This can be proclaimed if the president is satisfied that the governance of a state can't be carried in accordance with the constitution.
- In this case, President can act with or without the governor's report.
- Also, when a state doesn't follow any directive from the centre, president's rule can be imposed.
- First time, the President's Rule was imposed in Punjab in 1951.
- Since 1950, the President's Rule has been imposed on more than 125 occasions, that is, on an average twice a year.
- Maximum times imposed in Manipur (10 times) followed by UP (9 times)
- "Hoped that the drastic power conferred by Art. 356 would remain a 'dead letter' and would be used only as a measure of last resort" – observed Dr. B.R. Ambedkar.

Grounds for invocation:

- **Article 355** – Imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.
- **Article 356** – Provisions in case of failure of constitutional machinery in states.
- President's Rule can be proclaimed under Art. 356 on two grounds –
- **Article 356** – Empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. The president can act either on a report of the governor of the state or otherwise too.
- **Article 365** – says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to 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.

Parliamentary approval and duration of operation:

- A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- Proclamation will survive until 30 days from the first sitting of the Lok Sabha after its reconstitution, if the proclamation is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation.
- Rajya Sabha has in the meantime approved it.
- If approved by both the Houses of Parliament, the President's Rule continues for six months.
- It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- If the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule,

then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.

- Every resolution approving the proclamation or its continuation can be passed by either House of Parliament only by a simple majority.
- Beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled (44th CAA 1978) :-
- A proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state.
- The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

Revocation of president's rule:

- A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Consequences of President's Rule:

- It should be noted here that, the constitutional position, status, powers and functions of the concerned state high court remain same even during the President's Rule.
- The President dismisses the state council of ministers headed by the chief minister.
- The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President.
- The President either suspends or dissolves the state legislative assembly.
- The Parliament passes the state legislative bills and the state budget.
- President can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.

- He can declare that the powers of the state legislature are to be exercised by the Parliament.
- He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

When the State Legislature is thus Suspended or Dissolved:

- Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him in this regard.
- A law made by the Parliament or president or any other specified authority continues to be operative even after the President's Rule, not coterminous with the duration of the proclamation.
- It can be repealed or altered or re-enacted by the state legislature.
- The President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament.
- The President can promulgate, when the Parliament is not in session, ordinances for the governance of the state.

Recommendations of Sarkaria Commission:

- Provision should be used sparingly and as a measure of last resort.
- Warning should be issued to erring govt with opportunity to rectify.
- Governor should explore all possibilities of forming an alternative course.

Observations by Sc W.R.T Judicial Review of President's Rule in S.R Bommai Case 1994

- The presidential proclamation imposing President's Rule is subject to judicial review.
- The satisfaction of the President must be based on relevant material.
- Burden lies on the Centre to prove that relevant material exists to justify the imposition of the President's Rule.
- The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.

- If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.
- The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation.
- Secularism is one of the ‘basic features’ of the Constitution.
- Hence, a state government pursuing anti-secular politics is liable to action under Art. 356.
- The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House.
- Where a new political party assumes power at the Centre, it will not have the authority to dismiss ministries formed by other parties in the states.
- The power under Art. 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

Cases of Proper and Improper Use of Art. 356:

- Based on the report of the Sarkaria Commission on Centre-state Relations (1988), the Supreme Court in Bommai case (1994) enlisted the potential situations where the exercise of power under Art. 356 could be proper or improper.

Proper Imposition of President’s Rule:

- Where after general elections to the assembly, no party secures a majority, that is, “Hung Assembly”.
- Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.
- Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.
- Where a constitutional direction of the Central government is disregarded by the state government.

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- Physical breakdown where the government will fully refuses to discharge its constitutional obligations endangering the security of the state.
- Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.

Improper Imposition of President’s Rule:

- Where the power is used to sort out intraparty problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.
- Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.
- Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
- Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President’s Rule without probing the possibility of forming an alternative ministry.
- Where the governor makes his own assessment of the support of a ministry in the assembly and recommends imposition of President’s Rule without allowing the ministry to prove its majority on the floor of the Assembly.
- Internal disturbances not amounting to internal subversion or physical breakdown.
- Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.

Financial Emergency (Art.360):

- Article 360 more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933.

Grounds for invocation:

- Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- 44th Amendment Act of 1978 made the satisfaction of the president subjected to judicial review. (Judicial review is part of basic structure of constitution)

Parliamentary approval and duration of operation:

- A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months (One month in case of Art. 352) from the date of its issue.
- Proclamation will survive until 30 days from the first sitting of the Lok Sabha after its reconstitution, if the proclamation is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation.
- Rajya Sabha has in the meantime approved it.
- Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely (no maximum period) till it is revoked.
- No repeated parliamentary approval is required continuation.
- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority (a majority of the members of that house present and voting)

Revocation of Financial emergency:

- A proclamation of Financial Emergency may be revoked by the president at any time by a subsequent proclamation.
- Such a proclamation does not require the parliamentary approval.

Effects of Financial emergency:

- In India, no Financial Emergency has been declared so far, though there was a financial crisis in 1991.
- Executive authority of the Centre extends to the giving of directions to any state to observe such canons of financial propriety as may be specified in the directions and such other directions to any state as the President may deem necessary and adequate for the purpose.
- Any such direction may include a provision requiring – The reduction of salaries and allowances of all or any class of persons serving in the state;
- The reservation of all money bills (Art. 110) or other financial bills for the consideration of the President after they are passed by the legislature of the state.
- The President may issue directions for the reduction of salaries and allowances of – All or any class of persons serving the Union
- The judges of the Supreme Court and the High Court.
- During the operation of a financial emergency, the Centre acquires full control over the states in financial matters.

Criticism of Emergencies:

- Some members of the Constituent Assembly gave following reasoning against the incorporation of emergency provisions in the Constitution –
- Destruction of the federal character of the Constitution and the Union will become all powerful.

Encroachment in states domain

- The powers of the units of federation will entirely be concentrated in the hands of the Union executive.
- Dictatorship of President and cabinet.
- The financial autonomy of the state will be null and void.
- Negation of the Fundamental rights and resultantly, the democratic foundations of the Constitution will be destroyed.