

## PRESIDENT-VETO, EMERGENCY PROVISIONS

### Emergency Provisions

A state of emergency in India refers to a period of governance that can be proclaimed by the **President of India** during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees **Fundamental Rights** to the citizens of India.

- The emergency provisions are contained in **Part XVIII** of the Constitution of India, from **Article 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.
- The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- The Constitution stipulates three types of emergencies-
  1. National Emergency
  2. Constitutional Emergency
  3. Financial Emergency

### NATIONAL EMERGENCY

- National emergency can be declared on the basis of war, external aggression or armed rebellion. The Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
- **Grounds of declaration:**
  - Under Article 352, the 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 armed rebellion or external aggression
  - When a national emergency is declared on the grounds of '**war**' or '**external aggression**', it is known as '**External Emergency**'. On the other hand, when it is declared on the grounds of '**armed rebellion**', it is known as '**Internal Emergency**'.
    - This term 'armed rebellion' is inserted from the **44<sup>th</sup> amendment**. Before this term it was known as internal disturbance.
- **Example:**
  - If India and Pakistan openly accept that they will use armed forces against each other is simply war.
  - If there is no formal declaration that there will be armed forces used against a country is External aggression.
  - And if because of these two grounds an emergency is proclaimed as an **external emergency**.

## Facts

- The **38<sup>th</sup> Amendment Act** of 1975 made the declaration of National Emergency immune to judicial review. But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978.
- In Minerva Mills case (1980), the Supreme Court held that National Emergency can be challenged in the court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts.
- **Parliamentary approval and duration**
  - The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
  - However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
  - If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
  - Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.
- **Revocation of proclamation**
  - A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.
  - The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.
- **Effects of national emergency**
  - A proclamation of Emergency has drastic and wide-ranging effects on the political system. These consequences can be grouped into 3 categories:
    - **Effects on the centre-state relations:** While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change. this can be studied under three heads:
      - **Executive:** Centre becomes entitled to give executive directions to a state on 'any' matter
      - **Legislative:** The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the parliament become inoperative six months after the emergency has ceased to be in operation.
      - **Financial:** the president can modify the constitutional distribution of revenues between the centre and the states.
    - **Effect on the life of the Lok Sabha and State Assembly:**
      - While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond the normal term for one year at a time. However, this

extension cannot continue beyond a period of six months after the emergency has ceased to operate.

- Similarly, the Parliament may extend the normal tenure of a state Legislative Assembly by one year each time during a national emergency, subject to a maximum period of six months after the emergency has ceased to operate.
- **Effect on fundamental rights:** Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:
  - **Suspension of Fundamental rights under Article 19:** According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
    - The 44<sup>th</sup> Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
  - **Suspension of other Fundamental Rights:** Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, **remedial measures are suspended and not the Fundamental Rights.**
    - The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
    - The suspension could be for the period during the operation of emergency or for a shorter period.
    - The Order should be laid before each House of Parliament for approval.
    - The 44 Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.
- **Declarations made so far:** This type of emergency has been proclaimed three times so far- in 1962, 1971 and 1975
  - The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA and was in force till January 1968.
  - The second proclamation of National Emergency was made in December 1971 in the wake of the attack by Pakistan.
  - Even when the emergency was in operation, the third proclamation of National Emergency was made in June 1975. Both the second and the third proclamations were revoked in March 1977

## President's Rule

- 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.
- It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.
- This is popularly known as 'President's Rule'.

- **Grounds of imposition:** the president's ruler can be proclaimed under Article 356 on two grounds:
  1. 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.
  2. 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:** A proclamation imposing president's rule must be approved by both the houses of parliament within two months from the date of its issue.
  1. However, if the proclamation of President's rule 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, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime
- **Consequences of the President's rule:** The President acquires the following extraordinary powers when the President's rule is imposed in a state:
  1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
  2. He can declare that the powers of the state legislature are to be exercised by the parliament.
  3. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.
- **Scope of judicial review:** The 38<sup>th</sup> Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.
  1. But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

## Financial Emergency

- **Grounds of declaration: 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.
- **Parliamentary approval and duration:** A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
  - However, if the proclamation of Financial Emergency 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, 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 it.
    - Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.

## Effects of Financial Emergency

- Extension of the executive authority of the Union over the financial matters of the States.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

## Criticism of the Emergency Provision

- Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds:
  - The federal character of the constitution will be destroyed and the union will become all-powerful
  - The powers of the State- both the Union and the Units- will entirely be concentrated in the hands of the union executive.
  - The president will become a dictator
  - The financial autonomy of the state will be nullified
  - Fundamental rights will become meaningless and, as a result, the democratic foundation of the constitution will be destroyed.'
- While defending the emergency provisions in the Constituent Assembly, Dr Ambedkar accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes.'

# Chapter 18: EMERGENCY PROVISIONS

## Introduction

Articles 352 to 360 are emergency powers of centre. These are given to deal with exceptional circumstances like war or rebellion. The powers were influenced by the German constitution. They turn India's federal structure into a unitary one without amendment to the constitution.

## Types of Emergencies

Constitution handles three types of emergencies national, constitutional and financial.

### 1. National Emergency [Article 352]:

1. This can be declared due to war / external aggression [external emergency] or armed rebellion [internal emergency]. A proclamation can be issued by the president for different grounds. **It can be issued when an already existing proclamation is in force too.**
2. It can apply to entire country or a part.
3. It can be declared even before an actual occurrence if president is satisfied of imminent threat.
4. The president can declare this only after written recommendation of the entire cabinet.
5. A proclamation can be subject to judicial review.

6. A proclamation must be approved by both houses within one month by a special majority. This extends the life of emergency by six months at a time. This can be done infinite times.
7. If Lok Sabha is dissolved then the approval of proclamation or extension of its life can be done by Rajya Sabha. The proclamation survives till 30 days after first sitting of the newly reconstituted Lok Sabha.
8. **A proclamation can be revoked by president anytime [this doesn't need parliament ratification]. Also Lok Sabha can force a revocation by disapproving it with a simple majority. Thus Rajya Sabha has no role in revocation.**

### **Effects of national emergency:**

1. Centre can issue executive directions to states on any matters. However state governments aren't suspended. Parliament can make laws on matters in the state list.
2. If parliament isn't in session president can pass ordinances on state list matters.
3. Parliament can also confer powers and duties on centre and its authorities to carry out tasks under its extended jurisdiction. Such legislative actions become inoperative within 6 months of the emergency ceasing to operate. **Such laws apply even to states where the emergency isn't imposed.**
4. President can modify distribution of revenues between centre and states till the end of financial year when emergency is over. Such orders have to be laid before parliament.
5. **Parliament by law can extend term of Lok Sabha and state legislative assembly by 1 year at a time [any number of times]. This becomes inoperable by the end of 6 months of emergency ending.**
6. **Under article 358, all fundamental rights under Article 19 i.e. Right to Freedom, are automatically suspended when a proclamation of national emergency on external grounds [not armed rebellion] is declared. This action applies to whole country not a part.**
7. Any law can be passed that violates these rights but not any other, such a law can't be invalidated till the emergency is operative. Any action as per laws also remains above judicial remedy even after emergency is revoked.
8. **Under article 359 a presidential order can be passed disallowing people from seeking judicial remedy to enforce other fundamental rights i.e. article 14-32 that are specified in that order [ except article 20&21: right to life and liberty] for a specific period only.**
9. The rights remain in force but right to seek remedy is suspended. The state can make laws abridging the fundamental rights mentioned in the order such laws can't be challenged in court. Any executive action under such laws is also protected. Presidential order has to be approved by both houses. **Article 359 is available even during national emergency on armed rebellion. The presidential order can apply to whole country or a part.**

### **2. Presidents rule:**

1. 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.
2. 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.

3. Parliament has to approve the proclamation within two months in both houses by simple majority. The rule can be extended by 6 months at a time for a maximum of 3 yrs.
4. If Lok Sabha is dissolved Rajya Sabha can approve it but Lok Sabha has to approve too within 30 days of first sitting after its been reconstituted. **Beyond the first year, president's rule can be extended 6 months at a time only if national emergency is proclaimed in the country or any part of the state. Election commission certifies that elections can't be held in the state.**
5. Presidents proclamation can be revoked by president anytime [this doesn't need parliament's approval]. **Parliament on its own can't revoke president's rule.**
6. It also doesn't affect fundamental rights or powers of the high court. All legislative and executive power of the states assumed by the president and the state executive is dismissed and legislature dissolved or suspended.
7. Governor acts as the president's agent and works with the help of chief secretary or advisors appointed by the centre. Parliament can assume legislative powers with itself or delegate to president or other authority. It can make laws on state list matters for the state only. President can issue ordinances on state list matters or make expenditure from state budget if parliament not in session.
8. Presidential proclamation imposing president's rule is subject to judicial review.

### **Miscellaneous Provisions**

1. FEDERAL government, according to Bryce, means weak government because it involves a division of power.
2. Every modern federation, however, has sought to avoid this weakness by providing for the assumption of larger powers by the federal government whenever unified action is necessary by reason of emergent circumstances, internal or external.
3. But while In countries like the **United States this expansion of federal power takes place through the wisdom of judicial interpretation, in India**, the Constitution itself provides for conferring extraordinary powers upon the Union in case of different kinds of emergencies.
4. As has been stated earlier, the Emergency provisions of our Constitution enable the federal government to acquire the strength of a unitary system whenever the exigencies of the situation so demand.
5. Though the Proclamation will **not suspend the State's Legislature. it Will suspend the distribution of legislative powers between the Union and the State**, so far as the Union is concerned,-so that the Union Parliament may meet the emergency by legislation over any subject as may be necessary as if the Constitution were unitary.

### **Uses of Emergency Powers**

1. The first Proclamation of Emergency under Art. 352 was made by the President on **October 26, 1962 in view of the gency Powers. Chinese aggression in the NEFA**. It was also provided by a Presidential Order, issued under Art. 359, that a person arrested or Imprisoned under the Defence of India Act would not be entitled to move any Court for the enforcement of any of his Fundamental Rights under Art. 14, 19 or 21. This Proclamation of Emergency was revoked by an order made by the President on January 10, 1968.

2. The second Proclamation of Emergency under Art. 352 was made by the President on **December 3, 1971 when Pakistan launched an undeclared war against India.**
3. A Presidential Order under Art. 359 was promulgated on December 25, 1974, in view of certain High Court decisions releasing some detenus under the Maintenance of Internal Security Act, 1971 for smuggling operations.
4. This Presidential Order suspended the right of any such detenu to move any Court for the enforcement of his fundamental rights under Arts. 14, 21 and 22, for a period of six months or during the continuance of the Proclamation of Emergency of 1971, whichever expired earlier.
5. Though there was a ceasefire on the capitulation of Pakistan in Bangladesh in December, 1971, followed by the Shimla Agreement between India and Pakistan, the Proclamation of 1971 was continued owing to the persistence of hostile attitude of Pakistan.
6. It was thus in operation when the third Proclamation of June 25, 1975 was made.
7. While the two preceding Proclamations under Art. 352 were made on the ground of external aggression, the third Proclamation of Emergency under **Art. 352 was made on June 25, 1975, on the ground of "internal disturbance"**.
8. The "internal disturbance", which was cited in the Press Note relating to the Proclamation, was that '**certain persons have been inciting the Police and the Armed Forces against the discharge of their duties and their normal functioning**'. Both the second and third proclamations were revoked on 21st March, 1977

#### **Art. 352 v/s 356, S.R.Bomma's case**

1. The Proclamation in case of failure of the constitutional machinery differs from a Proclamation of 'Emergency' on the following points:
2. (I) A Proclamation of Emergency may be made by the President only when the security of India or any part thereof is threatened by war, external aggression or armed rebellion.
3. A Proclamation in Arts. 352 and 356 respect of failure of the constitutional machinery may compared be made by the **President when the constitutional government of State cannot be carried on for any reasons, not necessarily connected with war or armed rebellion.**
4. When a Proclamation of Emergency is made, the Centre shall get no power to suspend the State Government or any part thereof.
5. The State Executive and Legislature would continue in operation and retain their powers.
6. All that the Centre would get are concurrent powers of legislation and administration of the State.
7. But under a Proclamation in case of failure of the constitutional machinery, the State Legislature would be suspended and the executive authority of the **State would be assumed by the President In whole or in part is why it is popularly referred to as the imposition of the Presidents rule**
8. (ii) Under a Proclamation of Emergency, Parliament can legislate in respect of State subjects only by itself; by under a Proclamation of the other kind, it can delegate its powers to legislate for the State, -to the President or any other authority specified by him.
9. (iv) In the case of a Proclamation of failure of constitutional machinery, there is a maximum limitation to the power of Parliament to extend the operation of the Proclamation, namely, three years

10. But in the case of a Proclamation of Emergency; it may be continued for a period of six months by each resolution of the Houses of Parliament approving its continuance, so that if Parliament so approves, the Proclamation may be continued indefinitely as long as the Proclamation is not revoked or the Parliament does not cease to make resolutions approving its continuance
11. It is clear that the power to declare a Proclamation of failure of constitutional machinery in a State has nothing to do with any external aggression or armed rebellion
12. It is an extraordinary power of the Union to meet a political breakdown in any of the units of the federation [or the failure by such Unit to comply with the federal directives (Art. 365)] which might affect the national strength.
13. It is one of the coercive powers at the hands of the Union to maintain the democratic form of government, and to prevent factional strifes from paralysing the governmental machinery, in the States.
14. The importance of this power in the political system of India can hardly be overlooked in view of the fact that it has been used not less than 108 times during the first 50 years of the working of the Constitution (till March 2001).
15. From the foregoing history of the use of the power conferred upon the Union under Art. 356, it is evident that It Is a drastic coercive power which takes nearly the substance away from the normal federal polity prescribed by the Constitution.
16. **It Is, therefore, to be always remembered that the provision for such drastic power was defended by Dr. Ambedkar in the Constituent AssemblyS on the plea that the use of this drastic power would be a matter of the last resort:**
17. The judgment of the Supreme Court in the Rajasthan case also did not lay down the Law correctly.
18. In view of S.R. Bommai's case (nine judge Bench) the comments have been replaced by the law as declared' by the Supreme Court, which affirm the Author's view.
19. **In S.R. Bommai's case the Court has clearly subscribed to the view Power under Art. 356 must be used** an last resort to meet rarely.
20. The exigencies of special situations. The Court quoted the Sarkaria Commission Report to give examples of situations when such power should not be used.
21. It made it dear that Art 356 cannot be invoked for superseding a duly constituted ministry and dissolving the Assembly on the ground that in the elections to the lok Sabha, the ruling party in the State suffered a massive defeat
22. After Bommai's case it Is settled that the Courts possess the power to review the Proclamation on the grounds mentioned above.
23. This will surely have a restraining effect on the tendency to use the power on flimsy grounds.
24. In S.R. Bommai's case it has been pronounced that till the Proclamation is approved by both Houses of Parliament, it Is not permissible for the President to take any irreversible action
25. Hence the Legislative Assembly of a State cannot be dissolved before the Proclamation Is approved by both Houses of Parliament

26. If the Court holds the Proclamation to be invalid then in spite of the fact that it has been approved by the Parliament, the Court may order that the dissolved Ministry and Assembly will be revived
27. Some of the situations which do not amount to failure of constitutional machinery are given below.
28. They are based on the report of the Sarkaria Commission and have the approval of the Court in S.R. Bommai's case.
- a. **a situation of maladministration in a State, where a duly constituted ministry enjoys support of the Assembly.**
  - b. **where a Ministry resigns or is dismissed on losing majority support and the Governor recommends imposition of President's Rule without exploring the possibility of installing an alternative government.**
  - c. **where a Ministry has not been defeated on the floor of the House; the Governor on his subjective assessment recommends supersession and imposition of President's Rule.**
  - d. **where in general elections to the Lok Sabha the ruling party in the State has suffered a massive defeat.**
  - e. **where there is situation of internal disturbance but possible measures to contain the situation of the Union in discharge of its duty under Art. 355, have not been exhausted.**
  - f. **where no prior warning or opportunity is given to the State Government to correct itself In cases where directives were issued under Arts. 256, 257 etc.**
  - g. **where the power is used to sort out intra-party problems of the ruling party.**
  - h. **the power cannot be Legitimately exercised on the sole ground of stringent financial exigencies of the State.**
  - i. **the power cannot be invoked merely on the ground that there are serious allegations of corruption against the Ministry.**
  - j. **exercise of the power for a purpose extraneous or irrelevant to those which are permitted by the Constitution would be vitiated by legal mala fides.**
29. A proper occasion for use of this power would, of course, be when a Ministry resigns after defeat in the Legislature and no other Ministry Proper occasions commanding majority in the Assembly can at once be formed.
30. **Dissolution of -the Assembly may be a radical solution**, but, that being expensive, a resort to Art 356 may be made to allow the state of flux in the Assembly to subside so as to obviate the need for a dissolution, if possible.
31. A similar situation would arise where the party having a majority declines to form a Ministry and the Governor fails in his attempt to find a coalition Ministry.
32. **The provision in Art. 365 relates to the failure of a State Government to carry out the directives of the union Government which the latter has the authority under the Constitution to issue** (e.g., under Arts. 256, 257). The Union may also issue such a directive under the Implied power conferred by the latter part of Art. 355, "to ensure that the government of every State is carried on in accordance with the provisions of this Constitution".

33. The only change that the 44th Amendment Act, 1978 has made in this Article is to limit the duration of a Proclamation made under Art. 356 to a period of one year unless a Proclamation of Emergency under Art. 352 is in operation and the Election Commission certifies that it is not possible to hold elections to the Legislative Assembly of the State concerned immediately, in which case, it may be extended up to three years, by successive resolutions for continuance being passed by both Houses of Parliament
34. It is to be noted that the foregoing amendment has not specified any conditions or circumstances under which the power under Art. 356 can be used.
35. Hence, in the light of the Rajasthan decision, no legal challenge could be offered when Mrs. Gandhi repeated the Janata experiment in February, 1980, in the same nine States, on the same ground, viz., that the Janata Party, which was in power in those States, was routed in the Lok Sabha election.

### **Emergency in India - [June 25, 1975] | Important Facts for UPSC**

Indira Gandhi's government declared a state of emergency in India on 25 June 1975.

Democracy was restored only after nearly two years on 21<sup>st</sup> March 1977.

#### **Emergency Declared**

1. Indira Gandhi 'advised' the then President of the country Fakhruddin Ali Ahmed to declare a state of internal emergency in India using Article 352.
2. The Emergency was declared without warning on the midnight of 25<sup>th</sup> June and the country woke up to the death of democracy.
3. A national emergency was being declared in India for the third time, the first two times were during the wars with China and Pakistan in 1962 and 1971 respectively.
4. In 1971, Indira Gandhi's won the general elections with a huge majority. She had won popular support with pro-poor and leftist policies like the nationalisation of banks and the abolition of the Privy Purse.
5. Gandhi wielded an almost autocratic control over the cabinet. She had absolute control over the government. The 1971 war had reduced the GDP of the country. The country also faced many droughts and an oil crisis. Unemployment rates had also spiked up.
6. A railway workers' strike led by George Fernandes in 1974 was severely suppressed by the government.
7. There were also attempts by the government to interfere in judicial matters.
8. The Allahabad High Court declared that Gandhi's election to the Lok Sabha was void due to electoral malpractice.
9. Janata Party leader Jayaprakash Narayan (JP) called for the ouster of the government. He championed a program called *Sampoorna Kranti* (total revolution). He asked members of the police and the military to disobey unconstitutional orders.
10. When things were heating up for the government, Gandhi declared democracy and immediately arrested all major opposition leaders including JP, Morarji Desai, Charan Singh, Acharya Kripalani, etc. Even Congress leaders who were opposed to the emergency were arrested.
11. During the emergency, civil liberties were severely restrained. The freedom of the press was strictly curtailed and anything published had to pass the Information and Broadcasting ministry.

12. Indira Gandhi's son Sanjay Gandhi wielded extra-constitutional powers. He conducted forceful mass sterilisation of people in a bid to control the population of the country.
13. Non-Congress state governments were sacked. Many slums in Delhi were destroyed.
14. There were many instances of human rights violations in India. Curfews were imposed and the police detained people without trial.
15. The government amended the constitution many times (after the emergency was lifted, the new government undid these amendments).
16. The emergency is often dubbed the 'darkest hour' of free India.
17. In January 1977, Gandhi called for fresh elections not reading the mood of the people of the country. All political prisoners were released.
18. Officially, the emergency was lifted on 21 March 1977.
19. The people handed Gandhi and her party a very heavy defeat. Both Indira Gandhi and her son were defeated in the election.
20. The Janata Party won the election and the new government was headed by Morarji Desai as the Prime Minister. Desai was the first non-Congress PM of India.

### **Article 356 - President's Rule:**

Article 356, also known as the imposition of President's Rule in states.

#### **Article 356**

Article 356 of the Constitution of India is based on Section 93 of the [Government of India Act, 1935](#).

According to **Article 356, President's Rule** can be imposed on any state of India on the grounds of the failure of the constitutional machinery. This is of two types:

1. If the President receives a report from the state's [Governor](#) or otherwise is convinced or satisfied that the state's situation is such that the state government cannot carry on the governance according to the provisions of the Constitution.
2. Article 365: As per this Article, President's Rule can be imposed if any state fails to comply with all directions given by the Union on matters it is empowered to.

In simple words, President's Rule is when the state government is suspended and the central government directly administers the state through the office of the governor (centrally appointed).

It is also called 'State Emergency' or 'Constitutional Emergency'.

#### **President's Rule**

Parliamentary approval is necessary for the imposition of President's Rule on any state. The proclamation of President's Rule should be approved in both Houses of the Parliament within two months of its issue. The approval is through a simple majority.

The President's Rule is initially for a period of six months. Later, it can be extended for a period of three years with parliamentary approval, every six months.

The [44th Amendment to the Constitution](#) (1978) brought in some constraints on the imposition of the President's Rule beyond a period of one year. It says that President's Rule cannot be extended beyond one year unless:

1. There is a national emergency in India.

2. The Election Commission of India certifies that it is necessary to continue the President's Rule in the state because of difficulties in conducting assembly elections to the state.

### **What happens after President's Rule is imposed?**

- The governor carries on with the administration of the state on behalf of the President. He or she takes the help of the state's Chief Secretary and other advisors/administrators whom he or she can appoint.
- The President has the power to declare that the state legislature's powers would be exercised by the Parliament.
- The state legislative assembly would be either suspended or dissolved by the President.
- When the Parliament is not in session, the President can promulgate ordinances with respect to the state's administration.

### **When is President's Rule imposed?**

It has been seen that the President's Rule has been imposed when any one of the following circumstances have occurred:

1. The state legislature is not able to elect a leader as the Chief Minister for a time prescribed by the state's governor.
2. Breakdown of a coalition in the state government that leads to the CM having minority support in the legislature, and the CM is unable to prove his majority within the time prescribed by the governor.
3. A no-confidence vote in the legislative assembly leading to a loss of majority.
4. Postponement of elections owing to unavoidable reasons such as a natural disaster, epidemic or war.
5. Article 365 (explained above)

### **Revocation of President's Rule**

1. President's Rule can be revoked any time after such a proclamation has been made by a subsequent proclamation by the President. A proclamation of revocation does not require approval by the Parliament.
2. This occurs when the leader of a political party produces letters indicating majority support for him in the assembly and stakes his claim to form the state government.

### **Misuse of Article 356**

Article 356 gave the Central government wide powers to stamp its authority on the state governments. Although it was meant only as a means to preserve the integrity and unity of the country, it had been used blatantly to oust state governments who were ruled by political opponents of the centre.

- It was used for the first time in 1951 in Punjab. Between 1966 and 1977, Indira Gandhi's government used it about 39 times against various states.
- In the **S.R. Bommai case** (1994), the Supreme Court of India put forth strict guidelines for the imposition of Article 356.
  - (1) The proclamation (of President's Rule) is subject to judicial review on grounds of mala fide intention.
  - (2) The imposition of Article 356 should be justified by the centre.

- (3) The court has the power to revive the suspended or dissolved state government if the grounds for the imposition is found to be invalid and unconstitutional.
  - (4) The state assembly cannot be dissolved before parliamentary approval for the imposition of Article 356 and the President can only suspend the assembly.
  - (5) Serious allegations of corruption against the state ministry and financial instability are not grounds for the imposition of Article 356.
  - (6) Any action by the state government that leads to the security of secularism (which is a basic feature of the Constitution) cannot be grounds for the use of Article 356.
  - (7) Article 356 cannot be used to sort out any intraparty issues in the ruling party.
  - (8) If the Ministry of the state resigns or is dismissed or loses the majority, then the governor cannot advise the President to impose this article until enough steps are taken by the governor for the formation of an alternative government.
  - (9) The power under Article 356 is to be used only in case of exigencies. It is an exceptional power.
- There have also been subsequent judgements of the SC that have limited the room for the misuse of this Article.
  - The **Sarkaria Commission Report** (1983) recommended that Article 356 should be used “very sparingly” and only as a last resort.
    - (1) The President’s proclamation of President’s Rule should include reasons as to why he thinks the state cannot run normally.
    - (2) Whenever possible, the centre should give the state government a warning before imposing Article 356.
    - (3) The Article should not be used for settling political scores.
    - (4) The commission recommended the amendment of the article in order for the President to be authorised to dissolve the state legislature only after getting parliamentary approval.
  - The **Punchhi Commission** recommended that the centre should try to bring only a specific troubled area under its jurisdiction and that too for a brief period, not more than three months.
    - (1) The commission recommended that suitable amendments should be made to incorporate the guidelines established by SC in the Bommai case.
    - (2) The commission recommended the provision of a ‘**Localized Emergency**’ which implies that the centre can tackle issues at town/district (local) level without dissolving the state legislative assembly while at the same time, performing the duty of the Union to protect States as per Article 355.

### **Rajya Sabha TV: In Depth: The Emergency-MAINS**

“Emergency” in India was a period of 21 months **during 1975 to 1977** declared by the then **Prime Minister Mrs. Indira Gandhi** and officially issued by **President Fakhruddin Ali Ahmed** under **Article 352** of the Constitution of India because of the prevailing “**internal disturbances**”. This gave the Prime Minister an authority to **Rule by decree** leading to **suspension of elections** and **curbing of civil liberties**.

#### **Analysis:**

1. A **state of emergency** in India refers to a **period of governance** that can be proclaimed by President of India during certain crisis situations. Under the advice of

the cabinet of ministers, the President can **overrule many provisions of the Constitution**, which guarantees Fundamental Rights to the citizens of India.

2. The President can declare **3 types of emergencies**:

National emergency (**Article 352**)

State emergency (**Article 356**)

Financial emergency (**Article 360**)

1. **NATIONAL EMERGENCY**: It can be declared on the basis of **external aggression/armed rebellion in the whole of India/part of its territory**.

**Instances-**

<b>Time period</b>	<b>Reason</b>	<b>Remarks</b>
<b>26 Oct 1962 – 10 Jan 1968</b>	India-China war	Security of India threatened By external aggression
<b>3 Dec 1971 – 21 March 1977</b>	Indo-Pakistan war; and later extended	Security of India threatened By external aggression
<b>25 June 1975 – 21 March 1977</b>	Political instability	Security of India threatened by internal disturbances

It needs to be approved by **both the Houses of Parliament** within a month by **special majority**.

**Duration-** It can be extended for up to 6 months further indefinitely by resolutions in **6-months increments**.

**Effect-** Many **Fundamental Rights** of Indian citizens can be suspended. The **federal system** of governance becomes **unitary**.

1. **STATE EMERGENCY/ PRESIDENT'S RULE**: It can be declared in any **state of India (except Jammu and Kashmir)** under **article 356** on the recommendation of the **Governor of the state**. It must be approved by the Parliament within 2 months.

In **Jammu and Kashmir**, **Governor's rule** can be imposed for 6 months (under **Section 92 of the state Constitution**) and Article 356 can be imposed after these 6 months. It has been recently **declared in the state on 20 June 2018**.

**Duration-** It is imposed for an **initial period of 6 months** and can last for **maximum 3 years** with **repeated Parliamentary approval** and beyond that period a **Constitutional Amendment** is required.

**Effects-** The **President takes over the Executive** and **Governor administers the state** in the President's name. The **Parliament makes laws on 66 State subjects** and all **money bills** are referred to the Parliament. The **Legislative Assembly** can be **dissolved/ suspended**. There is **no effect on Fundamental Rights**.

**Instances-** It has been declared in **every state of India except Chhattisgarh and Telangana**.

1. **FINANCIAL EMERGENCY**: It can be declared by the President in situations of **financial instability** and must be approved by the Parliament within 2 months.

**Effects-** The President can **reduce the salaries** of all government officials. All **money bills** passed by the state legislatures are submitted to the President for his approval. **Fundamental Rights cannot be suspended.**

**Duration-** It has no maximum duration.

**Instances-** It has **never been declared.**

1. **NATIONAL EMERGENCY (1975-1977):** During this period of Emergency under Prime Minister Indira Gandhi:

1. **Amendments** were made which made **policy guidelines more important than Fundamental Rights.**

2. Most of the **political leaders were arrested.**

3. The **press was censored.**

4. Several **human rights violations** were reported.

5. **Elections** were

6. **38<sup>th</sup> Amendment:** Judicial review of proclamation of Emergency was barred.

7. **39<sup>th</sup> Amendment:** Stripped the judiciary's power of electoral scrutiny of a person elected as PM.

8. **42<sup>nd</sup> Amendment**

1. **42<sup>nd</sup> amendment of the Constitution of India:**

1. Often called a **"mini-Constitution"**

2. Very **controversial**

3. Attempted to **reduce the power of Supreme Court** and High Courts.

4. Defined **Fundamental Duties.**

5. Almost all parts of the Constitution were changed and added words **"socialist" and "secular" in the Preamble.**

6. Gave **more powers to the Central government.**

1. Later, the newly formed Janata government brought about **43<sup>rd</sup> and 44<sup>th</sup> amendments** in 1977 and 1978 respectively to **restore the earlier constitution** to some extent. The Supreme Court evolved the **basic structuredoctrine** to strike down 39<sup>th</sup> Amendment some parts of the 42<sup>nd</sup> This paved the way for **restoration of democracy.**

**Conclusion:**

The **provisions of emergencies** are provided keeping in view the **security and stability** in the nation. But they must **not be used for political gains or disturbing the democratic structure** of the nation. They are meant only to **maintain the constitutional machinery** only in cases of **real crisis situations.** If autocratic rule tries to destroy the democratic structure of India, the citizens have the powers to change the rule by general elections as done in 1977.

## **Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remains in force?**

### **Demand of the question**

**Introduction.** Contextual Introduction.

**Body.** Discuss the grounds of Declaration of financial emergency and its consequences.

**Conclusion.** Way forward.

The rationality behind the incorporation of Emergency provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution. During an Emergency, the central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal during normal times to unitary during Emergency is a unique feature of the Indian Constitution.

### **Grounds of Declaration of financial emergency:**

1. The President of India proclaims the Financial Emergency under Article 360 of the Constitution, when he is satisfied that the financial stability or credit of India or of any part of the territory thereof is threatened.
2. The 38th Amendment Act of 1975 made the satisfaction of the president in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review.

### **Consequences of Financial Emergency:**

1. The executive authority of the Centre extends:
  - to direct any state to observe such canons of financial propriety as are specified by it and
  - to direct the state as the President may deem necessary and adequate for the purpose.
2. 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 and
  - the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.
3. The President may issue directions for the reduction of salaries and allowances of
  - all or any class of persons serving the Union and
  - the judges of the Supreme Court and the high court.
4. Thus, during the operation of a financial emergency, the Centre acquires full control over the states in financial matters.
5. Once approved it continues indefinitely without repeated legislative approvals. President can revoke this proclamation anytime. This doesn't require parliamentary approval.

Article 360 empowers Union govt to take control over state govt on every financial matter deals by a state. The Financial Emergency has never been imposed in any part of country, neither has Article 360 been used till now.