



**ABHIGYAN
ACADEMY**

EMERGENCY

Introduction



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- **Articles 352-360.**
- **Changes the constitution into a unitary one without amendments.**



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National Emergency (Article 352)

- If President is satisfied with the fact that there is a threat to the nation, state or part of state, due to war, external aggression or armed rebellion, then he can proclaim national emergency.
- War: Declared by nations.
- External aggression: Aggression without declaration.
- Armed rebellion: Within state due to armed groups.



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- **Satisfaction of president means written advice of cabinet.**
- **President can proclaim emergency in anticipation of threat.**
- **President can change the grounds on which emergency was proclaimed.**



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- **President's proclamation of emergency will continue, if within 30 days, it is approved by a resolution in both LS and RS by special majority. Then it continues for 6 months.**
- **It can be extended by another 6 months by same parliamentary method.**
- **6 months: periodic parliamentary control**
- **No upper limit on period of emergency.**
- **If LS is dissolved, emergency can continue if RS approves it within 30 days by special majority.**
- **But after convening LS, it has to approve it by special majority within 30 days of convening otherwise emergency is revoked even if RS passes it.**



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Revoking of National Emergency

- By President on written advice of cabinet.
- If approved by one house and not by the other.
- Article 352(8): If 1/10th members of LS write to the speaker (if house is in session) or to President (if house is not in session and President calls a sitting), then within 14 days, a voting takes place and if simple majority is achieved, then emergency is revoked. And its binding on President to do so. (special power of LS)



Effects of National Emergency

- Any directive given to states is coercive in nature and failing to follow them can lead to dismissal of state executive.
- State legislature is not suspended by Parliament can make laws on any matter of the state list and President can issue ordinance on any matter of the state list.
- Distribution of revenue between centre and states can be suspended by the order of the President on the aid and advice of PM and CoMs. Such an order has to be tabled in Parliament when its issued.



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- Since elections may not be possible during NE, the life of LS and LAs can be extended 1 year at a time (beyond normal term of 5 years). It can be done again and again till NE is revoked and has no upper limits.
- Article 358: FRs under article 19 are automatically suspended in case of external emergency but need a separate order for suspension in case of internal emergency.
- Article 359: During NE, president can issue an order on the advice of the cabinet to suspend all FRs except article 20 and 21. Only enforcement of FRs are suspended which means court remedy is not available in case of violation.

NEs in India



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- **1962: Indo-China war.**
- **1971: Indo-Pak war.**
- **1975: Under PM Indira Gandhi.**
- **No new emergency in 1965 war because 1962 emergency lasted till 1968.**
- **1971 and 1975 both emergencies came to an end in 1977.**



44th Constitutional Amendment Act, 1978

- **‘Written advice of cabinet’ inserted in the constitution.**
- **Special majority approval (earlier simple majority).**
- **Periodic parliamentary control of 6 months (earlier infinite).**
- **Article 20 and 21 cannot be suspended (earlier any FR).**
- **Article 19 cannot be automatically suspended in case of armed rebellion (earlier automatic)**
- **Internal disturbance replaced with armed rebellion.**
- **Special power of LS.**



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Minerva Mills Case (1980)

- **Anyone can challenge the decision of President for NE on the grounds of malafide, absurdness of facts.**
- **Presidential proclamation is subject to judicial review.**



President's Rule (Article 356)

- **President assumes all functions of state govt and powers vested in the governor or any authority other than state legislature.**
- **Powers of state legislature are exercised under the authority of parliament.**
- **President can suspend the operation of whole or any part of any provision of the constitution related to any authority of the state.**



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- **Article 355: Duty of union to protect every state from external aggression and internal disturbance and ensure that the state govt is running according to the constitution.**
- **Article 356: If the President is satisfied by the Governor's report or even otherwise, that there is breakdown of constitutional machinery in the state, PR can be imposed.**
- **Under article 365 certain directives are given by the centre to the states, failing to follow which, can lead to PR in the state under article 356.**



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- **President cannot take over HC of the state.**
- **President's rule has to be approved by both LS and RS by simple majority within 6 months of proclamation.**
- **If LS is dissolved and RS approves it, then it will be approved, but after recommencement of the LS, LS has to pass it by simple majority within 30 days of convening otherwise PR is revoked.**
- **After approval from both houses, PR can continue for 6 months.**
- **It can again be extended for 6 months by same procedure.**



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- **PR can be extended beyond 1 year in case of NE in the country, in that state or any part of that state or, if the ECI certifies that elections cannot held in the state under current circumstances.**
- **After 1 year, PR can extended by 2 more years, 6 months at a time.**
- **Hence, after 3 years, validity of PR is over.**
- **If PR has to exceed 3 years, constitution has to be amended.**



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Revoking of PR

- By President on the advice of cabinet.
- If one house approves it and the other house does not.



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Financial Emergency (Article 360)

- **Never proclaimed in India.**
- **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.**
- **After proclamation, it has to be approved by LS and RS by passing a resolution by simple majority within 2 months of proclamation and it can continue till its revoked by president.**



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- **During the period of any such proclamation, the executive authority of the Union shall extend to the giving of direction to any state to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the president may deem necessary and adequate for the purpose.**