

4. Emergency Provisions

1. The emergency provisioned in Part XVIII of the constitution from article 352 to 360
2. To meet any abnormal situation effectively
3. To safeguard the sovereignty, unity, integrity and security of the country
4. During emergency, the Central govt becomes all powerful and the state goes in control of the center
5. It converts federal structure of into unitary system
6. The constitution stipulates 3 types of emergencies :
 - An emergency due to war, external aggression and armed rebellion ----> known as "National Emergency" ----> acc to constitution ----> "Proclamation of Emergency"
 - An emergency due to failure if the constitutional machinery in the states (Article 356) ----> known as "President's Rule" ----> "state emergency or constitutional emergency"
 - Financial Emergency due to threat to the financial stability or credit of India (Article 360)

National Emergency.

- **Grounds of Declaration**
 - When the security of India or part of it is threatened by war or external aggression or armed rebellion
 - President can declare emergency ----> even before the actual war starts ---> imminent danger
 - When national emergency is declared on the ground of 'war' or 'external aggression' it is known as "External Emergency" ----> when caused by internal rebellion ----> called "Internal Emergency"
 - A proclamation of National Emergency ----> Entire country or a part of country ----> 42nd amendment Act of 1976 ----> limit the operation of national emergency to a specified part of India .
 - Originally constitution mentioned "Internal Disturbances" changed by "Armed rebellion" ----> 44th Amendment act of 1978
 - President can proclaim the emergency only when there is written order from the cabinet ----> not merely with the advice of PM ----> fait accompli ----> 44th Amendment act of 1978 not only PM but also cabinet should give approval

- 38th Amendment Act 1975 declaration of National Emergency immune to Judicial review ----> 44th Amendment act of 1978 removed this ----> SC held the proclamation that National Emergency can be challenged in court on grounds of malafide or the declaration was wholly based on irrelevant facts
- **Parliamentary Approvals and Duration**
 - The Proclamation of Emergency must be approved by both the houses of Parliament ----> within one month from the date of its issue ----> originally 2 months ----> 44th Amendment act of 1978
 - Proclamation is issued ----> Lok Sabha is dissolved ----> approval after 30 days after Lok Sabha is re-constituted ----> provided Rajya Sabha has provided its approval
 - If Approved by both the houses ----> emergency continues for 6 months and can be extended indefinitely with approval from Parliament after every six months ----> approval of Parliament was introduced by 44th Amendment act of 1978 ----> originally only approval of cabinet was required
 - If dissolution of Lok Sabha happens in 6 months ----> proclamation is issued ----> Lok Sabha is dissolved ----> approved after 30 days after Lok Sabha is re-constituted ----> provided Rajya Sabha has provided its approval
 - Every resolution approving the Proclamation of Emergency should be passed by either of the house with special Majority :
 1. a majority of the total membership of that house
 2. a majority of not less than 2/3rd of that house present and voting
- **Revocation of Proclamation**
 - Proclamation can be subsequently can be revoked by the President any time by subsequent proclamation
 - This Proclamation does not require Parliamentary Approval
 - Proclamation of Emergency should be revoked by President if Lok Sabha Passes a resolution disapproving its continuation ----> originally can only be revoked by president no role of Lok Sabha ----> 44th Amendment act of 1978 changed the system
 - 44th Amendment act of 1978 ----> 1/10th of total member of Lok Sabha gives written notice to Speaker ----> if Lok Sabha not in session then President ----> a special sitting of the house ----> within 14 days ----> for purpose of considering a resolution disapproving the continuation of the proclamation
 - A resolution of disapproval is different from the a resolution approving the continuation of a proclamation in following two respects :
 1. The first one requires to be passed only in Lok Sabha and second in both the houses of Parliament

2. The first one can be accepted by simple majority and second one requires special majority

- **Effects of National Emergency**

- Effect on centre - state relationship

1. Executive

- Executive power of Centre extends to directing any state regarding the manner in which it exercises its executive powers
- Centre can give executive direction to state on any matters
- State govt is brought under complete control of centre, though they are not suspended

2. Legislative

- Parliament becomes empowered to make law on any matter mentioned in state list
- legislative powers of state legislature is not suspended but comes with overriding power resting with Parliament ----> constitution becomes unitary rather than federal
- laws made by the Parliament on the state subject become inoperative after six months of cease of emergency
- While Proclamation is in operation, if Parliament not in session then President can also issue ordinance on state matters
- The Parliament can confer powers and impose duties upon the centre or its officer and authorities in respect of matters outside union list
- 42nd Amendment Act of 1976 ----> the two above points applicable not only to the state in which national emergency is imposed but also to any other state

3. Financial

- President can modify the constitutional distribution of revenue between state and centre ----> can cancel transfer of fund from centre to state
- Such modification continues till the end of the financial year in which the emergency ceases to operate
- Every such order of President has to be laid before Parliament

- Effect on the life of Lok Sabha and State Assembly

- The life of Lok Sabha may be extended beyond its normal term by law of Parliament for one year at a time
- However this extension cannot continue beyond a period of six months after emergency has ceased to operate
- The parliament may extend the normal tenure of a state legislative assembly by one year each time

- However this extension cannot continue beyond a period of six months after emergency has ceased to operate
- Effect on the fundamental Rights
 - Article 358 and 359 describes the effect of national emergencies on the Fundamental rights
 - Article 358 deals with suspension of Fundamental rights mentioned in Article 19 and Article 359 deals with the suspension of Fundamental rights mentioned in Article 20 and 21
 - Suspension of Fundamental Rights under Article 358
 - a. When the Proclamation of emergency is made the six fundamental rights under article 19 are automatically suspended
 - b. NO Separate order for there suspension is required
 - c. The state can make any law or can take any executive action abridging or taking away the six fundamental rights guaranteed by article 19
 - d. Any such law and executive action cannot be challenged
 - e. After emergency ceases to operate the article 19 revives and comes into force ----> all the law made in relation to the article 19 cease to exist
 - f. Even after emergency the executive decision made during the emergency cannot be challenged
 - g. The Amendment act of 1978 : -2 important things ----> 6 fundamental rights can only be suspended when National emergency is declared on ground of war and external aggression not armed rebellion ----> only those law that are meant for article 19 are not questionable else everything can and cannot be considered
 - Suspension of Fundamental rights under article 359
 - a. It is authorised by the President
 - b. All rights are theoretically alive but there enforcement is suspended
 - c. All the rights under article 20 (Right to protect in conviction for offence) and 21 (The right of life and Personal liberty) are no included
 - d. All the rights suspended ----> area in which it is applied ----> for how much time it is applied ----> everything mentioned in the order by President ----> approval of Parliament is required
 - e. The Amendment act of 1978 : -2 important things ----> article 20 and 21 not included in suspension ----> only those law that are meant for article 19 are not questionable else everything can and cannot be considered
- Difference Between Article 358 and 359

Article 358

1. It is confined to Fundamental rights under article 19
2. It automatically suspends the FR* under article 19 as soon as emergency is declared
3. This acts only in the case of External Emergency
4. It suspends FR* under article 19 for entire duration of emergency
5. It extends to the entire country
6. It suspends the article 19 completely
7. It enables the state to make any law or to take any executive decision inconsistent with FR* under article 19

Article 359

1. It extends to all those Fundamental Rights whose enforcement is suspended by the President
2. It only empowers the President to suspend the enforcement of the specified FR*
3. It acts in both cases of Internal and External Emergency
4. It suspends the enforcement of FR* for a period specified by the President which may either be entire duration or some specific period
5. It extends to the area specified by the the president
6. It does not empowers the suspension of enforcement of article 20 and 21
7. It enables the state to make any law or to take any decision inconsistent with FR* whose enforcement is suspended by Presidential order

- **President's Rule**

- **Grounds of Declaration**

- Article 355 imposes a duty on the centre to ensure that the govt of every state is carried on in accordance with the provisions of the constitution
- Centre takes over the govt under Article 356 in case of failure of constitutional machinery in state ----> popularly known as " President's Rule " ----> "state emergency " or "constitutional emergency"
- The Presidents Rule can be imposed on two ground ----> one mentioned in article 356 and one in article 365

- Under Article 356 ----> president is satisfied that situation has arisen ---
-> govt of state cannot be carried on in accordance with the provisions of the constitution ----> can be done by president individually or on the reports of Governor
- Under Article 365 ----> whenever state fails to comply with or to give effect to any direction from the centre ---> president can tell ----> govt of state cannot be carried on in accordance with the provisions of the constitution
- **Parliamentary Approvals and Duration**
 - Proclamation ----> approved by both the houses of Parliament ----> within two months from the date of issue ----> if Lok Sabha not in session or dissolved in the two months without providing the approval ----> next 30 days from when Lok Sabha re-assemble ----> provided Rajya Sabha approves it
 - If approved by both houses ----> continues for six month ----> can be extended for max" of 3 years ----> approval required after every 6 months -- --> if Lok Sabha dissolved in the six months without providing the approval - ---> next 30 days from when Lok Sabha re-assemble ----> provided Rajya Sabha approves it
 - Proclamation can be passed ----> either of the houses ----> simple majority
 - 44th Amendment Act of 1978 ----> to put restrain on the power of Parliament to extend a proclamation beyond one year ----> beyond 1 year President's rule can be extended only under following two conditions :
 - A proclamation of National emergency should be in operation in whole country or the state
 - election commission must certify the general elections to legislative assembly of the concerned state cannot be held on account of difficulties
- **Consequences of President's Rule**
 - He can take up function of the state govt, powers vested in governor and any other executive authority in the state
 - He can declare the power of state legislature to be exercised by the Parliament
 - He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state
 - When President rule imposed ----> dismisses state council of minister along with CM ----> Governor carries on the state administration with the help of chief Secretary of state or the advisors appointed by the President
 - The parliament passes the state legislative bills and the state budget
 - when state legislature stands suspended or dissolved :

- the parliament can delegate the power to make law ----> to president or any other authority specified by him
- the parliament ---->in case of delegation ----> or president or any other authority ----> can make law ----> conferring powers and imposing duties on centre and its officers and authority
- president can authorise ----> Lok Sabha not in session ----> expenditure for state consolidated fund ----> pending its sanction by the parliament
- president can promulgate ----> ordinance for the governance of the state ----> when Parliament is not in session
- A law made by parliament ---->in case of delegation ----> or president or any other authority ----> continue to be operative even after the emergency ----> but can be re enacted by state legislature after President's Rule
- President cannot assume to himself the powers vested in the concerned high court ----> the constitutional position, status, power and functions of the concerned state high court remains same even during President's Rule
- **Scope of Judicial Review**
 - The 38th Amendment act of 1975 ----> the President's decision in invoking the article 365 is conclusive and final----> cannot be challenged in court on any ground
 - The 44th amendment act of 1978 ----> the President's decision in invoking the article 365 is not conclusive and final ----> it's not beyond judicial review
 - In case of Bommai case (1994) ----> following propositions laid by the Supreme court :
 - The Presidential proclamation imposing President's Rule is subject to judicial review
 - The satisfaction of President should be based on relevant material ----> can be struck down if based on irrelevant ground ----> if found malafied
 - Burden lies with centre to prove relevant material exist to justify the imposition of PR's
 - The court cannot go in the correctness of the Proofs but can see whether it is relevant to the action
 - If President proclamation is un constitutional and invalid ----> SC has the power to restore the dismissed state govt and revive the state govt and state legislative assembly if suspended or dissolved
 - The state legislative assembly should only be dissolved by president when Parliament gives approval ----> till then only suspended ----> if Parliament fails to approved ----> the assembly would be re activate
 - Secularism is one of the basic feature ----> Hence state govt pursuing anti-secular policies is liable to action under Article 356

- The question of state govt losing the confidence of the legislative assembly should be decided on the floor of the house ----> until that is done ministry should not be unseated
- where a new political party assumes power at centre ----> it will have no authority to dismiss ministries formed by other parties in the state
- The power under Article 356 is exceptional power ----> should be used on special occasions
- **Cases of Proper and Improper use of President's Rule**
 - Imposition of President's rule in a state would be proper in the following situation:
 1. When after general election no party has secure majority that is "**Hung assembly**"
 2. Where the party having majority declines to form ministry and Governor cannot find coalition ministry commanding a majority in the assembly
 3. When ministry resigns after their defeat in assembly ----> no other party is willing or able to form ministry commanding a majority in the assembly
 4. When the constitutional direction of central government is disregarded by the state govt.
 5. Internal subversion i.e. a govt deliberately acting against the constitution and the law or is fomenting revolt
 6. Physical Breakdown ----> where the govt wilfully refuses to discharge it's constitutional obligations ----> endangering the security of the state
 - Imposition of President's rule in a state would be improper in the following situation:
 1. When ministry resigns on losing majority support ----> governor recommends imposing President's rule ----> without probing possibility of forming alternative ministry
 2. when governor makes own assessment of support of ministry on the assembly and imposes President's rule ----> without allowing ministry to prove it's majority
 3. When the ruling party enjoying majority in the assembly ----> suffer a massive defeat at general election of Lok Sabha like in 1977 and 1980
 4. Internal disturbances not amounting to internal subversion or physical breakdown
 5. When state govt not given prior warning to rectify itself ----> unless the matter is of great urgency
 6. Maladministration in the state or allegation of corruption against the ministry
 7. Where the power used to sort out intra-party problem of ruling party

- **Difference between National Emergency and President's Rule**

National Emergency (Article 352).

1. Proclaimed only when security of India is threatened by war, external aggression or armed rebellion
2. During it's operation , the state legislature and executive continue to function in accordance with constitution ----> Its effect is that the centre get the concurrent powers of admin and legislation in state
3. Under this Parliament can make laws on the subject of state list ---> cannot delegate the same to any other body or authority
4. There is no period specified for it can continue indefinitely ----> approval of Parliament after every 6 months
5. Under this the relation of centre with all state undergo a modification
6. Every resolution of Parliament approving its continuance must be passed by special majority
7. It effects fundamental rights of the citizen
8. Lok Sabha can pass a resolution for its revocation

President's Rule (Article 356).

1. Proclaimed when govt machinery of the state cannot be carried in accordance with the constitution - ---> nothing to do with war or external aggression or armed rebellion
2. During operation state executives are suspended or dismissed ----> state legislature suspended or dissolved ----> President administer state thru governor ----> Parliament make law
3. Under this Parliament can assign President to make law for state or any other authority specified by him ----> so far practice has been President makes law with MPs from that state ----> known as "President's Act"
4. There is a max" period of 3 years - ---> normal constitutional machinery should be restored in the state
5. Under this the relation of centre with the state under emergency undergo modification
6. Every resolution of Parliament approving its continuance must be passed by simple majority
7. It does not effect the fundamental rights of the citizen
8. There is no provision for it. It can be revoked by President on his own

- **Financial Emergency**

- **Grounds of Declaration**

- Article 360 empowers the President to proclaim a Financial Emergency ----> situation due to which the Financial Stability or credit or any part of territory is threatened
- The 38th Amendment act of 1975 made satisfaction of the President rule final and conclusive and cannot be question in court ----> 44th Amendment act of 1978 ----> it can be challenged in court

- **Parliamentary Approval and Duration**

- Proclamation ----> approved by both the houses of Parliament ----> within two months from the date of issue ----> if Lok Sabha not in session or dissolved in the two months without providing the approval ----> next 30 days from when Lok Sabha re-assemble ----> provided Rajya Sabha approves it
- Once proclamation is approved by both the houses ----> continue indefinitely ---> till it is revoked
- Two important things to note are :
 - There is no max" period prescribed for its operation
 - repeated parliamentary approval is not required for its continuation
- The resolution for proclamation of Financial emergency can be passed by either house of Parliament only by a simple majority
- A proclamation ----> can be revoked by the president anytime by subsequent proclamation ----> does not require the parliamentary approval

- **Effects of Financial Emergency**

The consequences of the proclamation of financial emergency are as follow:

- The executive authority of the centre extends to giving of :
 - (a) directions to any state to observe such canons of financial propriety as may be specified in the direction
 - (b) such other directions to any other state as the President may deem necessary and adequate for the purpose
- Any such direction may include a provision requiring :
 - (a) the reduction of salaries and allowances of all or any class of persons serving in the state
 - (b) the reservation of all money bill or other financial bills for the consideration of the President after they are passed by the legislature of the state
- President may issue directions for the reduction of salaried and allowance of:

(a) all or any class of person serving the union

(b) the judges of the supreme court and high court

- During the operation of a financial emergency, the centre acquires full control over the states in financial matters
- No financial emergency has been declared so far, though there was a financial crisis in 1991
- **Criticism of the emergency Provisions**
 - The federal character of the constitution will be destroyed and union will become all powerful
 - The power of the state - both union and the units will entirely be concentrated in the hands of the Union executive
 - The President will become dictator
 - The financial autonomy of the state will be nullified
 - Fundamental rights will become meaningless as a result democratic foundations of the constitutions will be destroyed