

CHAPTER 17

Emergency Provisions

The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. The rationality behind the incorporation of these 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. In this context, Dr. B.R. Ambedkar observed in the Constituent Assembly that¹:

'All federal systems including American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, the 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.'

The Constitution stipulates three types of emergencies:

1. An emergency due to war, external aggression or armed rebellion² (Article 352). This is popularly known as 'National Emergency'. However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
2. An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as 'President's Rule'. It is also known by two other names—'State Emergency' or 'constitutional Emergency'. However, the Constitution does not use the word 'emergency' for this situation.
3. Financial Emergency due to a threat to the financial stability or credit of India (Article 360).

NATIONAL EMERGENCY

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. It may be noted that the President can declare a National Emergency even before the actual occurrence of war or external aggression or armed rebellion, if he/she is satisfied that there is an imminent danger.

¹Constituent Assembly Debates, Volume VII, p. 34.

²The phrase 'armed rebellion' was inserted by the 44th Amendment Act of 1978, replacing the original phrase 'internal disturbance'.

The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him/her and such proclamation is in operation. This provision was added by the 38th Amendment Act of 1975.

When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.

A proclamation of National Emergency may be applicable to the entire country or only a part of it. The 42nd Amendment Act of 1976 enabled the President to limit the operation of a National Emergency to a specified part of India.

Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation. Hence, the 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance' as was done in 1975 by the Congress government headed by Indira Gandhi.

The President, however, can proclaim a National Emergency only after receiving a written recommendation from the cabinet³. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the Prime Minister. In 1975, the then Prime Minister, Indira Gandhi advised the President to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a *fait accompli*. The 44th Amendment Act of 1978 introduced this safeguard to eliminate any

³Article 352 defines the term 'Cabinet' as the council consisting of the Prime Minister and other ministers of the Cabinet rank.

possibility of the Prime Minister alone taking a decision in this regard.

The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978. Further, in the *Minerva Mills* case⁴, (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

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. Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th Amendment Act of 1978. However, if the proclamation of 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 one month 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.

If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months. This provision for periodical parliamentary approval was also 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. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the

⁴*Minerva Mills vs. Union of India* (1980).

Rajya Sabha has in the mean-time approved its continuation.

Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is, (a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the members of that house present and voting. This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament.

Revocation of Proclamation

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

Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th Amendment Act of 1978. Before the amendment, a proclamation could be revoked by the President on his/her own and the Lok Sabha had no control in this regard.

The 44th Amendment Act of 1978 also provided that, 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.

A resolution of disapproval is different from a resolution approving the continuation of a proclamation in the following two respects:

1. The first one is required to be passed by the Lok Sabha only, while the second one needs to be passed by the both Houses of Parliament.
2. The first one is to be adopted by a simple majority only, while the second one needs to be adopted by a special majority.

Effects of National Emergency

A proclamation of Emergency has drastic and wide ranging effects on the political system. These consequences can be grouped into three categories:

1. Effect on the Centre-state relations,
2. Effect on the life of the Lok Sabha and State assembly, and
3. Effect on the Fundamental Rights.

Effect 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, namely, executive, legislative and financial.

(a) Executive During a National Emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. In normal times, the Centre can give executive directions to a state only on certain specified matters. However, during a National Emergency, the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

(b) Legislative During a National Emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament. Thus, the normal distribution of the legislative powers between the Centre and states is suspended, though the State Legislatures are not suspended. In brief, the Constitution becomes unitary rather than federal.

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

Notably, while a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session.

Further, the Parliament can confer powers and impose duties upon the Centre or its officers and authorities in respect of matters outside the Union List, in order to carry out the laws made by it under its extended jurisdiction as a result of the proclamation of a National Emergency.

The 42nd Amendment Act of 1976 provided that the two consequences mentioned above (executive and legislative) extends not only to a state where the Emergency is in operation but also to any other state.

(c) Financial While a proclamation of national emergency is in operation, the President can modify the constitutional distribution of revenues between the centre and the states. This means that the President can either reduce or cancel the transfer of finances from Centre to the states. Such modification continues till the end of the financial year in which the Emergency ceases to operate. Also, every such order of the President has to be laid before both the Houses of Parliament.

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 its normal term (five years) by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. For example, the term of the Fifth Lok Sabha (1971–1977) was extended two times by one year at a time⁵.

Similarly, the Parliament may extend the normal tenure of a state legislative assembly

⁵The term of the Fifth Lok Sabha which was to expire on 18 March, 1976 was extended by one year upto 18 March, 1977 by the House of the People (Extension of Duration) Act, 1976. It was extend for a further period of one year upto 18 March, 1978 by the House of the People (Extension of Duration) Amendment Act, 1976. However, the House was dissolved on 18 January, 1977, after having been in existence for a period of five years, ten months and six days.

(five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights Articles 358 and 359 describe the effect of a National Emergency on the Fundamental Rights. Article 358 deals with the suspension of the Fundamental Rights guaranteed by Article 19, while Article 359 deals with the suspension of other Fundamental Rights (except those guaranteed by Articles 20 and 21). These two provisions are explained below:

(a) 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. No separate order for their suspension is required.

While a proclamation of national emergency is in operation, the state is freed from the restrictions imposed by Article 19. In other words, the state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Article 19. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the six Fundamental Rights guaranteed by Article 19. When the National Emergency ceases to operate, Article 19 automatically revives and comes into force. Any law made during Emergency, to the extent of inconsistency with Article 19, ceases to have effect. However, no remedy lies for anything done during the Emergency even after the Emergency expires. This means that the legislative and executive actions taken during the emergency cannot be challenged even after the Emergency ceases to operate.

The 44th Amendment Act of 1978 restricted the scope of Article 358 in two ways. Firstly, the six Fundamental Rights under Article 19 stands suspended only when the National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion. Secondly, only those

laws which are related with the Emergency are protected from being challenged and not other laws. Also, the executive action taken only under such a law is protected.

(b) Suspension of other Fundamental Rights

Article 359 authorises the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. This means that under Article 359, the Fundamental Rights as such are not suspended, but only their enforcement. The said rights are theoretically alive but the right to seek remedy is suspended. The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country. It should be laid before each House of Parliament for approval.

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 Fundamental Rights. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the specified Fundamental Rights. When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified Fundamental Rights, ceases to have effect. But no remedy lies for anything done during the operation of the order even after the order ceases to operate. This means that the legislative and executive actions taken during the operation of the Order cannot be challenged even after the Order expires.

The 44th Amendment Act of 1978 restricted the scope of Article 359 in two ways. Firstly, the President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 and 21. In other words, the right to protection in respect of conviction for offences (Article 20) and the right to life and personal liberty (Article 21) remain enforceable even during emergency. Secondly, 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.

Distinction Between Articles 358 and 359

The differences between Articles 358 and 359 can be summarised as follows:

1. Article 358 is confined to Fundamental Rights under Article 19 only whereas Article 359 extends to all those Fundamental Rights whose enforcement is suspended by the Presidential Order.
2. Article 358 automatically suspends the fundamental rights under Article 19 as soon as the emergency is declared. On the other hand, Article 359 does not automatically suspend any Fundamental Right. It only empowers the president to suspend the enforcement of the specified Fundamental Rights.
3. Article 358 operates only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion). Article 359, on the other hand, operates in case of both External Emergency as well as Internal Emergency.
4. Article 358 suspends Fundamental Rights under Article 19 for the entire duration of Emergency while Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.
5. Article 358 extends to the entire country whereas Article 359 may extend to the entire country or a part of it.
6. Article 358 suspends Article 19 completely while Article 359 does not empower the suspension of the enforcement of Articles 20 and 21.
7. Article 358 enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19 while Article 359 enables



the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

There is also a similarity between Article 358 and Article 359. Both provide immunity from challenge to only those laws which are related with the Emergency and not other laws. Also, the executive action taken only under such a law is protected by both.

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 (North-East Frontier Agency—now Arunachal Pradesh), and was in force till January 1968. Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965.

The second proclamation of national emergency was made in December 1971 in the wake of attack by Pakistan. Even when this Emergency was in operation, a third proclamation of National Emergency was made in June 1975. Both the second and third proclamations were revoked in March 1977.

The first two proclamations (1962 and 1971) were made on the ground of 'external aggression', while the third proclamation (1975) was made on the ground of 'internal disturbance', that is, certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.

The Emergency declared in 1975 (internal emergency) proved to be the most controversial. There was widespread criticism of the misuse of Emergency powers. In the elections held to the Lok Sabha in 1977 after the Emergency, the Congress Party led by Indira Gandhi lost and the Janta Party came to power. This government 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. Hence,

the 44th Amendment Act was enacted in 1978 to introduce a number of safeguards against the misuse of Emergency provisions.

PRESIDENT'S RULE

Grounds of Imposition

Article 355 imposes a duty on the Centre to protect every state against external aggression and internal disturbance and 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 state. This is popularly known as 'President's Rule'. It is also known as 'State Emergency' or 'Constitutional Emergency'.

The President's Rule can be proclaimed under Article 356 on two grounds—one mentioned in Article 356 itself and another in Article 365:

1. Article 356 empowers the President to issue a proclamation, if he/she 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. Notably, the President can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report).
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. 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 the Rajya Sabha approves it in the mean time.

If approved by both the Houses of Parliament, the President's Rule continues for six months⁶. It can be extended for a maximum period of three years⁷ with the approval of the Parliament, every six months. However, 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 of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that House present and voting.

The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year. Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:

1. A proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
2. The Election Commission must certify that the general elections to the legislative

⁶The 42nd Amendment Act of 1976 had raised the period of six months to one year. Thus, once approved by both the Houses of Parliament, the proclamation of President's Rule could continue for one year. But, the 44th Amendment Act of 1978 again reduced the period to six months.

⁷The President's Rule imposed in May, 1987 in Punjab was allowed to continue for five years under the 68th Amendment Act of 1991.

assembly of the concerned state cannot be held on account of difficulties.

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

The President acquires the following extraordinary powers when the President's Rule is imposed in a state:

1. He/she 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/she can declare that the powers of the state legislature are to be exercised by the Parliament.
3. He/she can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

Therefore, when the President's Rule is imposed in a state, 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. This is the reason why a proclamation under Article 356 is popularly known as the imposition of 'President's Rule' in a state. Further, the President either suspends or dissolves the state legislative assembly⁸. The Parliament passes the state legislative bills and the state budget.

When the state legislature is thus suspended or dissolved:

1. The Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him/her in this regard,
2. The Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities, and

⁸In case of dissolution, fresh elections are held for constituting a new legislative assembly in the state.

3. The President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament.

A law made by the Parliament or the President or any other specified authority continues to be operative even after the President's Rule. This means that the period for which such a law remains in force is not coterminous with the duration of the proclamation. But it can be repealed or altered or re-enacted by the state legislature.

It should be noted here that the President cannot assume to himself the powers vested in the concerned state high court or suspend the provisions of the Constitution relating to it. In other words, the constitutional position, status, powers and functions of the concerned state high court remain the same even during the President's Rule.

A comparison of the National Emergency and the President's Rule (in terms of the grounds, parliamentary approval, duration, revocation and consequences) is given in Table 17.1.

Table 17.1 Comparing National Emergency and President's Rule

National Emergency (Article 352)	President's Rule (Article 356)
1. It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	1. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2. During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	2. During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3. Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority.	3. Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him/her. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts.
4. There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	4. There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
5. Under this, the relationship of the Centre with all the states undergoes a modification.	5. Under this, the relationship of only the state under emergency with the Centre undergoes a modification.
6. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	6. Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
7. It affects fundamental rights of the citizens.	7. It has no effect on Fundamental Rights of the citizens.
8. Lok Sabha can pass a resolution for its revocation.	8. There is no such provision. It can be revoked by the President only on his/her own.

Use of Article 356

Since 1950, the President's Rule has been imposed on more than 125 occasions. Further, on a number of occasions, the President's Rule has been imposed in an arbitrary manner for political or personal reasons. Hence, Article 356 has become one of the most controversial and most criticised provision of the Constitution.

For the first time, the President's Rule was imposed in Punjab in 1951. By now, all most all the states have been brought under the President's Rule, once or twice or more.

When general elections were held to the Lok Sabha in 1977 after the internal emergency, the ruling Congress Party lost and the Janata Party came to power. The new government headed by Morarji Desai imposed President's Rule in nine states⁹ (where the Congress Party was in power) on the ground that the assemblies in those states no longer represented the wishes of the electorate. When the Congress Party returned to power in 1980, it did the same in nine states¹⁰ on the same ground.

In 1992, President's Rule was imposed in three BJP-ruled states (Madhya Pradesh, Himachal Pradesh and Rajasthan) by the Congress Party on the ground that they were not implementing sincerely the ban imposed by the Centre on religious organisations. In a landmark judgement in the *Bommai* case¹¹ (1994), the Supreme Court upheld the validity of this proclamation on the ground that secularism is a 'basic feature' of the Constitution. But, the court did not uphold the validity of the imposition of the President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991.

Dr. B.R. Ambedkar, while replying to the critics of this provision in the Constituent Assembly, hoped that the drastic power conferred by

⁹Those nine States include Rajasthan, Uttar Pradesh, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal and Haryana.

¹⁰Those nine states include Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Punjab, Orissa, Gujarat, Maharashtra and Tamil Nadu.

¹¹S.R. *Bommai* vs. *Union of India* (1994).

Article 356 would remain a 'dead-letter' and would be used only as a measure of last resort. He observed¹²:

"The intervention of the Centre must be deemed to be barred, because that would be an invasion on the sovereign authority of the province (state). That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be under some obligation which the Constitution imposes upon the Centre. The proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead-letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precautions before actually suspending the administration of the province."

However, the subsequent events show that what was hoped to be a 'dead-letter' of the Constitution has turned to be a 'deadly-weapon' against a number of state governments and legislative assemblies. In this context, H.V. Kamath, a member of the Constituent Assembly commented: 'Dr. Ambedkar is dead and the Articles are very much alive'.

Scope of Judicial Review

The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged 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.

In the *Bommai* case (1994), the following propositions have been laid down by the

¹²*Constituent Assembly Debates*, Volume IX, pp. 133 and 177.



Supreme Court on imposition of President's Rule in a state under Article 356:

1. The presidential proclamation imposing President's Rule is subject to judicial review.
2. The satisfaction of the President must be based on relevant material. The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.
3. Burden lies on the Centre to prove that relevant material exist to justify the imposition of the President's Rule.
4. The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.
5. 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.
6. The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation. Until such approval is given, the president can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.
7. Secularism is one of the 'basic features' of the Constitution. Hence, a state government pursuing anti-secular politics is liable to action under Article 356.
8. The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated.
9. 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.
10. The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

Cases of Proper and Improper Use

Based on the report of the Sarkaria Commission on Centre-state Relations (1988), the Supreme Court in *Bommai* case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper¹³.

Imposition of President's Rule in a state would be proper in the following situations:

1. Where after general elections to the assembly, no party secures a majority, that is, 'Hung Assembly'.
2. 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.
3. 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.
4. Where a constitutional direction of the Central government is disregarded by the state government.
5. Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
6. Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

The imposition of President's Rule in a state would be improper under the following situations:

1. 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.
2. Where the governor makes his/her own assessment of the support of a ministry in the assembly and recommends imposition of President's Rule without

¹³Report of the Commission on Centre-State Relations, Part I, pp. 165-180 (1988).

- allowing the ministry to prove its majority on the floor of the Assembly.
3. 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.
 4. Internal disturbances not amounting to internal subversion or physical breakdown.
 5. Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.
 6. Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
 7. Where the power is used to sort out intra-party problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

FINANCIAL EMERGENCY

Grounds of Declaration

Article 360 empowers the President to proclaim a Financial Emergency if he/she 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.

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.

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. This implies two things:

1. there is no maximum period prescribed for its operation; and
2. repeated parliamentary approval is not required for its continuation.

A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting.

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

Effects of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

1. The executive authority of the Centre extends to the giving of (a) directions to any state to observe the canons of financial propriety; and (b) such other directions to any state as the President may deem necessary.
2. 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; and (b) 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 (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.



Thus, during the operation of a financial emergency, the Centre acquires full control over the states in financial matters. H.N. Kunzru, a member of the Constituent Assembly, stated that the financial emergency provisions pose a serious threat to the financial autonomy of the states. Explaining the reasons for their inclusion in the Constitution, Dr. B.R. Ambedkar observed in the Constituent Assembly¹⁴:

"This Article more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933, which gave the president power to make similar provisions in order to remove the difficulties, both economical and financial, that had overtaken the American people, as a result of the Great Depression."

No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

CRITICISM OF THE EMERGENCY PROVISIONS

Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the Constitution on the following grounds¹⁵:

1. 'The federal character of the Constitution will be destroyed and the Union will become all powerful.'
2. 'The powers of the State—both the Union and the units—will entirely be concentrated in the hands of the Union executive.'
3. 'The President will become a dictator.'
4. 'The financial autonomy of the state will be nullified.'
5. 'Fundamental rights will become meaningless and, as a result, the democratic foundations of the Constitution will be destroyed.'

¹⁴Constituent Assembly Debates, Volume X, pp. 361–372.

¹⁵Quoted from M.V. Pylee, *India's Constitution*, S Chand, Fifth Edition, 1994, p. 280.

Thus, H.V. Kamath observed: 'I fear that by this single chapter we are seeking to lay the foundation of a totalitarian state, a police state, a state completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continuous jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert. It will be a day of shame and sorrow when the President makes use of these powers having no parallel in any Constitution of the democratic countries of the world'¹⁶.

K.T. Shah described them as: 'A chapter of reaction and retrogression. I find one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter: (a) to arm the Centre with special powers against the units and (b) to arm the government against the people'.

T.T. Krishnamachari feared that 'by means of these provisions the President and the Executive would be exercising a form of constitutional dictatorship'¹⁷.

H.N. Kunzru opined that 'the emergency financial provisions pose a serious threat to the financial autonomy of the States.'

However, there were also protagonists of the emergency provisions in the Constituent Assembly. Thus, Sir Alladi Krishnaswami Ayyar labelled them as 'the very life-breath of the Constitution'. Mahabir Tyagi opined that they would work as a 'safety-valve' and thereby help in the maintenance of the Constitution¹⁸.

While defending the emergency provisions in the Constituent Assembly, Dr. B.R. Ambedkar also 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'¹⁹.

¹⁶Constituent Assembly Debates, Volume IX, p. 105.

¹⁷Ibid, p. 123.

¹⁸Ibid, p. 547.

¹⁹Ibid, p. 177.

Table 17.2 Articles Related to Emergency Provisions at a Glance

Article No.	Subject-matter
352.	Proclamation of Emergency
353.	Effect of Proclamation of Emergency
354.	Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation
355.	Duty of the Union to protect states against external aggression and internal disturbance
356.	Provisions in case of failure of constitutional machinery in states
357.	Exercise of legislative powers under proclamation issued under Article 356
358.	Suspension of provisions of Article 19 during Emergencies
359.	Suspension of the enforcement of the rights conferred by Part III during Emergencies
359A.	Application of this part to the state of Punjab (Repealed)
360.	Provisions as to Financial Emergency

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