

## Examrace

### Competitive Exams: Emergency Provisions

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- One of the chief characteristics of the Indian Constitution relates to the enormous emergency powers vested in the Union Executive.
- Since a Federal Government involves division of powers, it is generally considered a weak government.
- In order to overcome pitfalls of the contingency situations, the Constitution concentrates the emergency powers on the Centre.
- The expression, Proclamation of Emergency as used in the Constitution refers to the emergency of the first kind or National emergency under Art. 352.
- The second kind of emergency under Art. 356 is popularly known as the President's rule.
- The third kind of emergency Proclaimed under Art. 360 is called the Financial Emergency.

#### **National Emergency (Art 352)**

- If the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened, whether by a war or an external aggression or an armed rebellion, he may proclaim a state of emergency for the whole of India or a part thereof.
- A Proclamation of Emergency can be made by the President even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- Such a Proclamation of Emergency can be verified or revoked by the President subsequently.
- The President can issue a proclamation of Emergency or vary it, only when the decision of the Union Cabinet is conveyed to him in writing.
- The Proclamation of Emergency made by the President under Article 352 is subject to the judicial review and its Constitutionality can be questioned in a Court of law on grounds of malafide.
- Every Proclamation made under Article 352 excepting a proclamation revoking the previous Proclamation should be laid before both the Houses of the Parliament and must be approved by them within one month after the Proclamation is made, by a

majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

- If the Parliament fails to approve such a Proclamation it ceases to be in operation on the expiry of one month after the Proclamation is made.
- If the Parliament approves such a Proclamation, then it will be in force, unless revoked earlier, for six months from the date on which it was approved by the Parliament.
- It can be approved by the Parliament any number of times, but not beyond six months at a time.
- If the Lok Sabha disapproves a Proclamation of Emergency or its continuance, the President shall revoke the Proclamation of Emergency.
- If not less than one-tenth of the members of the Lok Sabha issue a notice with the intention of disapproving a Proclamation of Emergency to the President if the Lok Sabha is not in session, or to the Speaker if the Lok Sabha is in a session, a special sitting of the Lok Sabha shall be held within days for the purpose of considering such resolution.
- The Constitutional ( 44<sup>th</sup> Amendment) Act 1978 has introduced a number of safeguards in Article 352. These are:
  - Prior to the 44<sup>th</sup> Constitutional Amendment Act 1978, a Proclamation of Emergency could be issued on the grounds of war or external aggression or internal disturbances. The expression internal disturbances is a vague term, and could be misused by the Executive. The Act, therefore, has introduced the expression armed rebellion replacing internal disturbances.
  - Earlier, the President could proclaim an emergency on the oral advice tendered by the Prime Minister, as it happened in 1975. Now the approval of the whole Cabinet is essential and it must be communicated to the President in writing.
  - Before the Act became effective in 1978, a proclamation issued by the President was to be approved by the Parliament within two months after the Proclamation is made. Now it must be approved within one month. Once approved, earlier, it could remain in force for an indefinite period. But by the Act, its period is fixed for six months only. The approval, earlier, was to be on the basis of a simple majority, but at present it needs a special majority.
  - There was no Parliamentary control, once a proclamation of Emergency was approved by it. But now a special sitting of the Lok Sabha can be held for the purpose of considering its disapproval.
  - Under Art. 358, before the 44<sup>th</sup> Amendment Act came into force, the Fundamental Rights enumerated under Art. 19

- were automatically suspended, whether the National Emergency Proclaimed was on the basis of a war or an external aggression or internal disturbances. But now, under Article 358, Article 19 is automatically suspended only when an emergency is declared on the basis of a war or as external aggression and not on the basis of an armed rebellion, i.e.. . Article 19 cannot be suspended during an emergency Proclaimed on the basis of an armed rebellion.
- After the 44<sup>th</sup> Amendment Act, during an emergency, Articles 20 and 21 cannot be suspended. Prior to the Act, any or all of the Fundamental Rights could be suspended when an emergency was in force.
- The President is empowered to promulgate three kinds of emergencies:

### **Types of Emergencies**

1. On the ground of threat to the security of India by war or an External aggression or an Armed rebellion (Art. 352) .
2. On the ground of the failure of the Constitutional machinery in a State (Art. 356)
3. Financial Emergency (Art. 360) .

### **Effects of the Proclamation of Emergency**

The effect of a Proclamation of Emergency is the emergence of a full-fledged unitary Government. Its effects can be studied under the following heads:

1. Executive: While a Proclamation of Emergency is in operation, the President is empowered to issue directions to the States as to the manner in which their executive power is to be exercised. In normal times, the President has the power to give directions to the States only on certain matters like maintenance of communication, protection of railways etc.
2. Legislative: While a Proclamation of Emergency is in operation, the Parliament can enact laws even on the subjects enumerated under the State List.
  - a. The Legislatures of the State are not suspended, but the distribution of Legislative powers between the Union and the States is suspended for the duration of the Emergency.
  - b. The Parliament is also empowered to extend, by law, the life of the Lok Sabha beyond the five year term, for a period not exceeding one year at a time, but in any case not exceeding six months after the proclamation of Emergency has ceased to be in operation.
  - c. The life of the State Legislative Assemblies can also be extended, by law, by the Parliament in a similar manner.
3. Financial: The President may, when a Proclamation of Emergency is in operation, modify the provisions of the Constitution relating to the distribution of the financial

resources between the Centre and the States.

- a. Such an order of the President shall not have effect beyond the financial year in which the Proclamation of Emergency ceases to be in operation.
- b. The order of the President is subject to the approval of the Parliament.

### **Effects of the Proclamation of Emergency on the Fundamental Rights**

- Article 358 states that as soon as a Proclamation of Emergency is issued on the grounds of a war or an external aggression (but not on the ground of an armed rebellion) , the six Fundamental Rights enumerated under Article 19 are automatically suspended.
- The State is freed from the limitations imposed by Article 19.
- The citizens cannot move the Courts for the enforcement of the Fundamental Rights enumerated under Article 19.
- The President, under Article 359, may by order suspend the operation of any of the other Fundamental Rights when an emergency declared on the grounds of a war or an external aggression or in armed rebellion is in force.
- The Fundamental Rights guaranteed under Article 20 and 21 cannot be suspended even when a national emergency is in force. Note: Under Article 359, only the operation of the Fundamental Rights is suspended and not the Fundamental Rights as such. But under Article 358, Article 19 is suspended.

### **State Emergency (Art 356)**

Article 356 says that if the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may issue a Proclamation. By that Proclamation, the President: May assume to himself all or any of the powers vested in the Governor and may declare that the powers of the Legislature of the State shall be exercisable to Parliament.

- The President cannot, however, assume to himself, any of the powers vested in a High Court or suspend the operation of any provisions of the Constitution relating to the High Court.
- The Parliament can confer on the President, the power to make laws for the State. The Parliament may also authorize the President to delegate such power to any other authority as specified by himself.
- If the Lok Sabha is not in session, the President may authorize expenditure from the Consolidated Fund of the State, pending sanction of such expenditure by the Parliament. Note: Under Art 356, the President acts on a report of the Governor or otherwise. That is, the President can act even without the Governor's report.

- A proclamation issued under Article 356 must be laid before each House of the Parliament.
- It will cease to operate at the expiry of two months, unless before that period it has been approved by both the Houses of the Parliament.
- A proclamation so approved shall, unless revoked, be in operation for six months from the date of the issue of the Proclamation.
- It can be approved by the Parliament for a further period of six months.
- A proclamation issued under Article 356, can, therefore, be in force normally for a maximum period of one year<sup>nlyjtf</sup> a stretch. However, it can be extended by the Parliament not beyond three years from the date of issue of the Proclamation, if:
- A proclamation of emergency under Article 352 is in operation in the whole of India or in the whole or any part of the State at the time of passing of such resolution
- The Election Commission certifies that the continuance in force of the Proclamation beyond the one year period is necessary on account of the difficulties in holding the general elections to the Legislative Assembly of the concerned State.

### **Financial Emergency (Art 360)**

- Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or of any part thereof is threatened, he may declare a state of Financial Emergency.
- During the period when such Proclamation is in operation, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions. Any such directions may also include: a provision requiring the reduction of salaries and allowances of all or any class of person serving a State or the Union and a provision requiring all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.
- A proclamation issued under Article 360 will remain in force for two months, unless before the expiry of the period it is approved by both the Houses of the Parliament.
- Once approved it remains in force till revoked by the President.
- No Emergency under Article 360 has been issued so far.