

UPSC
NCERT Summary
Emergency Provisions

Introduction

The term 'Emergency' may be defined as "a difficult situation arising suddenly and demanding immediate action by public authorities under powers specially granted to them by the Constitution or otherwise to meet such exigencies".

Types of Emergency

Broadly, the Emergency provisions of the Constitution envisage two kinds of emergencies, viz.

- a National Emergency under article 352 due to threat of war, external aggression or armed rebellion and
- Financial Emergency under article 360.

The third kind of situation, that is, the one under article 356 arising from a failure of the constitutional machinery in any particular State and necessitating President's rule.:

NATIONAL EMERGENCY (ART. 352)

Article 352 provides that if the President, after receiving a written communication of a Cabinet decision, is satisfied that a grave emergency exists whereby the security of India or any part thereof is threatened by war, external aggression or armed rebellion, he may issue a Proclamation of Emergency for the whole of India or part thereof. Every Proclamation of Emergency is required to be laid before each House of Parliament, and is to cease to operate at the expiration of one month from the date of its issue by the President unless it has in the meantime been approved by resolutions of both the House. However, once approved by Parliament, the Proclamation may continue in operation for six months at a time unless revoked by the President earlier by a subsequent Proclamation. Resolutions approving the Proclamation of Emergency or its continuance have to be passed by either House of Parliament by a majority of the total membership and not less than two third of those present and voting. Also, if the Lok Sabha passes a resolution disapproving the

Proclamation or its continuance, it shall be revoked forthwith. If notice of a resolution signed by not less than one-tenth of the total membership is given to the President Speaker, a special sitting of the House shall be held within 14 days to consider it..During the periods of Emergency, extraordinary powers may be assumed by the Union Government.

Executive Powers of the Union During Emergency

- Article 353, read with article 365 provides that once Emergency is proclaimed, the executive power of the union extend to giving of directions to any State in regard to the exercise of the executive power of the State and failure to comply with the directions would constitute enough justification for imposition of President's rule under Article 356. During the operation of Emergency, the legislative power of Parliament also extends to conferring powers and imposing duties by law on Union authorities in matters not otherwise included in the Union List. Under article 354, the application of provisions relating to distribution of revenues articles (268 to 279) may be suitably modified during the period of the operation of Emergency. Article 358, provides for the suspension of the provisions of 'article 19 during emergencies while article 359 authorises the, President to suspend by ordering the enforcement of all the Fundamental Rights guaranteed in Part III of the Constitution except the rights of protection in respect of conviction for of fences and protection of life and liberty in articles 20 and 21.
- The effect of the exercise of powers under articles 358 and 359 is that not only the legislature but also the executive can interfere with the Fundamental Rights of individuals except those under articles 20 and 21. Any law passed under articles 358 and 359 in order to be valid must contain a recital to the effect that it is in relation to the Proclamation of Emergency in operation. Also, all such laws shall cease to have effect to the extent of incompetency under the Fundamental Rights as soon as the Emergency ceases or the Presidential order ceases to have effect.

PROCLAMATION OF PRESIDENT'S RULE (ART. 356)

- It is the constitutional duty of the Union to protect its States against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the Constitution (Article 35 5). If on receipt of a Report from the Governor or otherwise, the President is satisfied that the Government of the State cannot be carried on in accordance with the Constitution or that the constitution taking over any of the functions and powers of the State

Government including those of the Governor and other State authorities. The satisfaction of the President, of course, means the satisfaction of the Union Government and President's rule is actually rule by the Union Government. If any State fails to comply with directions issued by the Union under article 256, 257 or 353, the President may hold that there has been a failure of constitutional machinery in that State and may take over the State Government under article 356.

- Every Proclamation under Article 356 must cease to operate at the expiry of two months unless approved by resolutions of the two Houses of the Parliament. After Parliament's approval also, a Proclamation may continue for not more than six months at a time and not for more than a total of three years (except Punjab)

How the President's Rule affects State Legislatures?

The powers of the State Legislature may under the Proclamation become exercisable by or on the authority of Parliament. The State Assembly may be dissolved or kept under suspended animation. The president may take all other steps that may be necessary including suspension of the operation of any constitutional provisions relating to any body or authority in the State except the High Courts. During the operation of President's rule under article 356, Parliament may confer the legislative power of the State on the President and authorise him to delegate these powers to other President and other authorities (Article 357)

FINANCIAL EMERGENCY (ART. 360)

- The President is authorised by article 360 of the Constitution to declare by a Proclamation, Financial Emergency, if he is satisfied that the financial stability or credit of India or of any part of its territory is threatened. Such a Proclamation may be revoked or varied by a subsequent Proclamation. It has to be laid before both Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by resolutions of the two House.
- Once approved by Parliament, unlike Proclamation under article 352, it may continue indefinitely until revoked or varied.
- During the operation of Financial Emergency, the executive authority of the Union extends to the giving of directions to any State to observe certain specified canons of financial propriety and such other directions that the President may find necessary or adequate. These directions may include reduction of salaries and allowances of all those serving a State and reserving for the President's consideration all money Bills and other Bills under article 207 after these are passed by State legislatures.

The President may also direct reduction in salaries and allowances of all those serving in connection with the affairs of the Union including judges of the Supreme Court and the High Courts.