

# **EMERGENCY PROVISIONS- XVIII, Art. 352 TO Art. 360**

**For Central Gov. to meet abnormal situation effectively**

**Federal to Unitary**

**3 types of emergencies**

**352 – National Emergency – due to War, External Aggression, Armed Rebellion; Constitution express this type ‘proclamation of emergency’**

**356 – President’s Rule, State Emergency, Constitutional Emergency – due to failure of constitutional machinery; Constitution NOT use emergency for this type**

**360 – Financial Emergency – due to a threat to the financial stability or credit of India**



## **National Emergency**

**President can declare National Emergency – due to War(←-- external emergency→) External Aggression, Armed Rebellion (Internal emergency); even before the actual occurrence**

**44<sup>th</sup> changed to internal disturbance into Armed Rebellion**

**President can issue different proclamations whether or not there is a proclamation already – 38<sup>th</sup> amendment added**

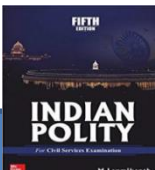
**Entire country or (only a part of it-42<sup>nd</sup> )**

**President can proclaim only after written recommendation from Cabinet – 44<sup>th</sup> ; Art. 352 defines Cabinet = PM+ other Ministers of Cabinet Rank**

**In Minerva Mills case proclamation of National Emergency be challenged in a court – S. Court**

### **Approval & Duration**

- ✓ **Within 1 month by both houses [2 → 1 by 44<sup>th</sup> A.A. ]**
- ✓ **If Lok sabha dissolved then 30 days from first sitting, meantime Rajya Sabha should approve**
- ✓ **Continue for 6 months, approval of Parliament with special majority for every 6 months(this added by 44<sup>th</sup>), extension indefinite**



# Revocation of Proclamation

- **By President at any time by subsequent proclamation, does NOT require Parliamentary approval**
- **President MUST revoke if Lok Sabha passes a disapproval resolution by simple majority (this by 44<sup>th</sup>)**
- **ALSO, if 1/10<sup>th</sup> of total members of Lok Sabha written notice to Speaker/President (when house not in session), a special sitting should within 14 days to consider disapproval resolution (this by 44<sup>th</sup>)**



## **Effects on National Emergency**

- on Centre – state relations**
- on the life of Lok Sabha & state assembly**
- on FRs**

### **Centre – state relations**

#### **Executive**

**Centre entitled to directing state on ANY matter, but state NOT suspended**

#### **Legislative**

**Parliament empowered to make laws in State List, those laws inoperative after 6 months after the emergency ceased to operate, Parliament NOT in session President can issue ordinance also in State List, Parliament can confer powers and impose duties on Centre outside Union list, but state legislative power/legislature NOT suspended**

- **This executive and legislative extend to not only to a state where emergency is in operation but to other state**

#### **Financial**

**President can modify Constitutional distribution of revenue, President reduce or cancel transfer of finances to states, modification till the end of financial year in which the emergency ceases to operate, such order to be laid before Parliament**



## **Effects on National Emergency - on the life of Lok Sabha & state assembly**

✓ **Lok Sabha term may extend beyond 5 years and 1 year at a time, for any length of time, but not beyond 6 months after the emergency ceased to operate**

✓ **state assembly SAME as above**

### **Effects on National Emergency - on FRs : Art. 358 & Art. 359**

**Art. 358 deals suspension of Art.19- 6 rights automatic suspension and automatic revival, NO separate order required, any inconsistent law with 19 also ceases to operate on removal of emergency, But NO remedy for executive or legislative actions done during emergency, 44<sup>th</sup> A. Act : suspension of 19 only on 'external' emergency, emergency related laws and executive actions only protected not other laws**

**Art. 359 – NO suspension of other FRs, but their enforcement i.e. right to seek remedy suspended, that also to be specified in the Presidential order, such order could be for emergency period or shorter and whole or part of country, Parliament approval required. Operates both external & internal emergency. 44<sup>th</sup> A. Act: Art. 20 & Art. 21 enforceable through court during emergency, emergency related laws and executive actions only protected not others**

**Declarations made so far –**

**1962 to 1968 – Chinese aggression; 1971 to 1977 – external aggression**

**1975 to 1977 – Internal Disturbance – Shah Commission, did not justify warrant, so 44<sup>th</sup>**

**President's Rule – Dismissal of Council of Ministers in state**  
**Grounds of Imposition – Art. 355 imposes a duty on the Centre to ensure Gov. of state...in accordance with constitution. In case failure, then Centre takes over administration under Art. 356. In this, President acts on a report by Governor or otherwise too**  
**Art. 365 – Failing of a state to comply with centre's direction**

### **Approval & Duration**

**Both houses by 2 months**

**If Lok sabha dissolved then 30 days from first sitting, meantime Rajya Sabha should approve**

**Continues for 6 months, maximum 3 years and every 6 months once approval, simple majority, 44<sup>th</sup> : beyond 1 year approval 2 conditions to be fulfilled – 1. National emergency in operation 2. Election Commission difficulty certificate**

**President can revoke at any time and does NOT require Parliamentary approval**



## **Consequences of President's Rule**

- 1. President take up functions of the state Gov. and powers vested in the Governor or any other executive authority in the state**
  - 2. President can declare Parliament to exercise power of the state legislature**
  - 3. President can suspend constitutional provisions relating to any body/ authority in the state**
  - 4. Governor with Chief Secretary or advisors appointed by President carries administration of the state**
  - 5. President suspend/dissolves legislative assembly; if suspend/dissolves Parliament delegate that to President/any authority specified by President**
  - 6. President can authorize expenditure from state consolidated fund, pending sanction from Parliament**
  - 7. President's ordinance when Parliament not in session**
- Law operative even after President's Rule, state legislature : repeal/alter/re-enact**
  - High Court position same**



## **Use of Art. 356**

- ✓ **Max times: KL, UP**
- ✓ **100 + times, many times in an arbitrary manner**
- ✓ **1<sup>st</sup> time in Punjab – 1951**
- ✓ **All the states**
- ✓ **1977 – Janata Gov. removed 9 Cong ruled states; No represent wishes of people**
- ✓ **1980 – Cong removed 9 Govts on the same ground**
- ✓ **Dr. B. R. Ambedkar observed that it as ‘a dead-letter’.... ‘Dr. B. R. Ambedkar is dead and the articles are very much alive’- HV Kamath**

## **Scope of Judicial Review**

**38<sup>th</sup> A. Act NO...but 44<sup>th</sup> YES**

**1994 – Bommai Case S. Court’s propositions on President’s rule**

- 1. Subject to judicial review**
- 2. If Malafide, Court can strike down**
- 3. Burden to justify on Centre**
- 4. Court can see the relevancy**
- 5. If it is invalid Court can restore the dismissed Gov.**
- 6. Legislative Assembly dissolution only after Parliament’s approval**
- 7. Secularism ‘basic feature,’; anti-secular liable to 356**
- 8. Question of majority to be decided on the floor of Assembly**
- 9. In Centre new party assumes power...no authority to dismiss other party ruling states**



## **Cases of proper use**

**1994 – Bommai Case S. Court's enlisted the situation for Art. 356, based on Sarkaria recommendation**

- ✓ **Hung Assembly**
- ✓ **Majority party declines to form Gov... Governor not able to get a coalition**
- ✓ **No party is willing/able to form Gov...after defeat of a ministry**
- ✓ **Centre's Constitutional direction disregarded by the state**
- ✓ **Internal subversion...a Gov. deliberately acting against Law/Constitution**

## **Cases of improper use**

- **Without probing alternative...when a ministry resigns/got dismissal**
- **Without allowing to prove majority**
- **Ruling party's defeat in Lok Sabha elections**
- **Non-subversive Internal disturbance**
- **Maladministration/allegations of corruption/stringent financial exigencies**
- **Without prior warning for rectification**
- **For intra-party/extraneous purpose**



# **Financial Emergency – on the pattern of National Recovery Act of US, 1933**

## **Art. 360**

**President to proclaim**

**Financial stability or credit of India threatened**

**Whole country or part**

**NOT beyond judicial review**

**No declaration so far**

## **Parliamentary Approval & duration**

- **Both houses**
- **2 months, No Lok Sabha – 30 days from 1<sup>st</sup> sitting**
- **No maximum period, continues till revocation**
- **Repeated Parliamentary approval NOT required**
- **Revocation by President at anytime, NO need of Parliamentary approval**



# **Effects of Financial Emergency**

- **State to observe canons of financial propriety**
- **Reduction of salary & allowances for all or any class of persons including judges of S. Court & H. Court**
- **Reservation of money bills/financial bills for Presidential consideration after passing by states legislature**

## **Criticisms of Emergency Provisions**

**Destruction of federalism**

**President will become a dictator**

**Financial autonomy of state will be nullified**

**FRs will become meaningless**



# **Criticisms of Emergency Provisions**

**By single chapter we are seeking to lay the foundation of totalitarian state...H V Kamath**

**A chapter of reaction and retrogression...K T Shah**

**A form of constitutional dictatorship...TT Krishnamachari**

## **Protagonists of Emergency Provisions**

**The very life-breath of the Constitution...Sir AK Ayyar**

**A safety valve...M. Tyagi**

