

# PROCLAMATION OF EMERGENCY IN INDIA: AN ANALYSIS AND COMPARATIVE PERSPECTIVE



# INTRODUCTION

- ❑ Emergency means a failure of social system to deliver reasonable conditions of life.
- ❑ It means some circumstances arose suddenly that need immediate action from public authority.
- ❑ Part-18 of Indian constitution contains Emergency provisions.
- ❑ Emergency Provisions are borrowed from Germany Constitution.

# TYPES OF EMERGENCY



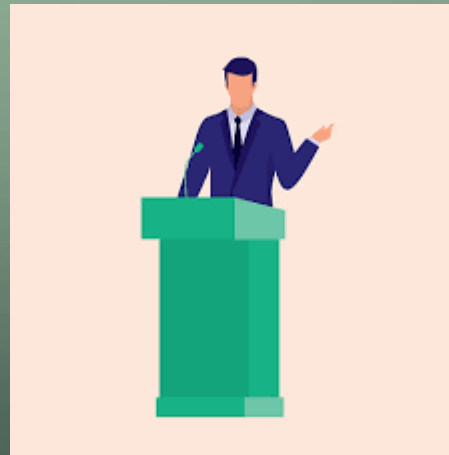
## NATIONAL EMERGENCY

ARTICLE 352



## PRESIDENT'S RULE

ARTICLE 356



## FINANCIAL EMERGENCY

ARTICLE 360



# **NATIONAL EMERGENCY**



**PROCLAMATION**

**APPROVAL**



**EXTENSION**

**REVOCAATION**

NOW I AM **SATISFIED** AND PROCLAIM NATIONAL EMERGENCY

INDIA HAS GREAT THREAT REGARDING  
**WAR,**  
**EXTERNAL AGGRESSION,**  
**INTERNAL DISTURBANCE**

CABINET MINISTERS



IN WRITTEN

- WAR
- EXTERNAL AGGRESSION
- INTERNAL DISTURBANCE

PROCLAIM NATIONAL EMERGENCY



# PARLIAMENT APPROVAL AND DURATION

Must be approved by **both the houses of parliament** within **one month** from the date of its issue.

if it is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of **one month** without approving the proclamation then the proclamation survives until **30 days** from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

If approved by both the houses, the Emergency continues for **6 months** and can be extended to an **indefinite period** with an approval of the Parliament for every **six months**

Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a **special majority**.

# REVOCACTION OF EMERGENCY

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

The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.



# PRESIDENT RULE

## INRODUCTION

- Article 355 imposes a duty on the centre 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 a state.
- This is popularly known as 'President's Rule'.

## GROUNDS

The president's ruler can be proclaimed under Article 356 on two grounds:

If President 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.

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 that the Rajya Sabha approves it in the meantime

## CONSEQUENCES OF THE PRESIDENT'S RULE

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

He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.

- He can declare that the powers of the state legislature are 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.

# FINANCIAL EMERGENCY

## GROUNDINGS OF DECLARATION

**Article 360** empowers the president to proclaim a Financial Emergency if he 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.

## 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.

## EFFECTS OF FINANCIAL EMERGENCY

- Extension of the executive authority of the Union over the financial matters of the States.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- 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.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

## PREVIOUS INSTANCES

### EMERGENCY 1 : 1962

- INDIA IS BEING ATTACKED BY CHINA (OCTOBER 1962 – JANUARY 1968)
- PRESIDENT DECLARED EMERGENCY BASED ON EXTERNAL ATTACK
- FIRST EMERGENCY WAS STILL IN FORCE WHEN THE INDO-PAK WAR BROKE OUT IN 1965
- ALTHOUGH HOSTILITIES ENDED WITH THE TASHKAND AGREEMENT BEING SIGNED ON 11<sup>TH</sup> JANUARY 1966, THE EMERGENCY WAS LIFTED ONLY ON 10<sup>TH</sup> JANUARY 1968.

### EMERGENCY 2 : 1971

- SECOND EMERGENCY WAS DECLARED BY PRIME MINISTER INDIRA GANDHI ON 3<sup>RD</sup> DECEMBER 1971, WHEN THE BANGLADESH LIBERATION WAR BROKE OUT.
- ALTHOUGH HOSTILITIES ENDED WITHIN TWO WEEKS, ON 17<sup>TH</sup> DECEMBER, THE STATE OF EMERGENCY WAS NOT REVOKED.

### EMERGENCY 3 : 1975

- WHILE 2<sup>ND</sup> EMERGENCY STILL IN FORCE, INDIRA GANDHI DECLARED INDIA'S 3<sup>RD</sup> EMERGENCY ON 25<sup>TH</sup> JUNE 1975. HER ELECTION IN 1971 HAD BEEN CHALLENGED IN COURT AND THE TIDE SEEMED TO BE TURNING AGAINST HER.
- BOTH THE PROCLAMATION OF EMERGENCY, OF 1971 AND 1975, WERE REVOKED IN 1977.

# CASE LAWS ON EMERGENCY

S.R Bommai v. Union of India is a landmark case in respect of imposing President's Rule in any State. The case laid down the power of the Union Government in relation to the State Emergency under Article 356 of the Indian Constitution. Judicial Review of the President's Rule was made possible by this case. While giving the judgement, the court depended on Sarkaria's Commission Report, 1987.

Minerva Mills vs Union of India it has been held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under Article 352(1). However, court's power is limited only to examining whether the limitations conferred by the Constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.

# 44<sup>TH</sup> CONSTITUTIONAL AMENDMENT ACT 1978

- The 44<sup>th</sup> Amendment Act replaced the expression 'internal disturbances' with 'armed rebellion' because it is a vague term and could be misused by the executive.
- 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 cabinet is essential and it must be communicated to the President in writing.
- Earlier, the proclamation order issued by the President was to be approved by the Parliament within 2 months. But now, it must be approved within 1 month.
- Before the Amendment, under Article 358 the Fundamental Rights were automatically suspended but now under Article 358, Article 19 is automatically suspended only when an emergency is declared on the basis of a war or an external aggression and on the basis of an armed rebellion.



THANK YOU