

Chapter 14 - Provisions of Emergency

The Constitution of India was drafted during a time of immense challenges, marked by Partition, communal riots, and the complex issue of integrating princely states such as Jammu and Kashmir. In this backdrop, the framers of the Constitution sought to empower the Central government with adequate authority to respond effectively to crises. As a result, emergency provisions were incorporated into the Constitution to safeguard national security, integrity, stability, and to ensure the smooth functioning of state governments.

The emergency provisions were framed to give the Central Government temporary powers to deal with exceptional situations such as war, external aggression, armed rebellion, or financial crisis. These provisions are outlined in Articles 352 to 360 of Part XVIII of the Constitution (PYQ 2024) and can be invoked under three circumstances - National Emergency, State Emergency (President's Rule), and Financial Emergency. The idea of emergency has been borrowed from Germany's Weimar Constitution.

Debate in the Constituent Assembly - Emergency Provisions

The debate in the Constituent Assembly regarding the inclusion of Emergency provisions in the Constitution was marked by differences of opinion among its members. Key points from the debate include:

- **Support for Suspension of Rights:** A.K. Ayyar and K.M. Munshi believed that the suspension of fundamental rights was necessary to maintain order and stability during times of crisis. Ayyar argued that the rights enshrined in the Constitution should be subject to public order, security, and safety, citing examples of disturbances in Bengal and Assam, and communal riots in Punjab & NWPF.
- **Opposition to Suspension of Rights:** On the other hand, K.T. Shah, H.V. Kamath, and H.N. Kunjru opposed the suspension of fundamental rights during emergencies. Kunjru specifically expressed concerns that the provision for a financial emergency posed a serious threat to the financial autonomy of the States.
- **New Version of Suspension of Rights:** After deliberations, the committee prepared a revised draft that did not permit the arbitrary suspension of democratic rights during emergencies. Instead, it restricted only the right to move the courts for enforcement of Fundamental Rights under Article 32. Moreover, the suspension of Fundamental Rights was placed beyond judicial review until the enactment of the 44th Amendment, 1978..

Conditions and effects of Emergency Proclamation

Article 352: Proclamation of Emergency

(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or *[armed rebellion], he may, by Proclamation, make a declaration to that effect **[in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation]. ***[Explanation- A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by

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Chapter 14 - Provisions of Emergency

war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger Thereof.]

(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.]

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank under article 75) that such a Proclamation may be issued, has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament: Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or placed during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sit after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (4): Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue to be in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause. Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the proclamation has been also passed by the House of the People.

(6) For the purpose of clause (4) and (5), a resolution may be passed by either House of Parliament only 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.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the

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Chapter 14 - Provisions of Emergency

People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given of, their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,--

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session, a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or as the case may be, by the President, for the purpose of considering such resolution.

****[(9) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or *[armed rebellion] or imminent danger of war or external aggression or *[armed rebellion], whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.]

* Substituted by the 44th Amendment, 1978

** Inserted by the 42nd Amendment, 1976

*** Inserted by the 44th Amendment, 1978

**** Inserted by the 38th Amendment, 1975

Now, let us understand various dimensions talked about in Article 352.

- a) **Grounds for 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, external aggression, or armed rebellion. The President has the authority to issue proclamations even before the actual occurrence of these events if there is an imminent danger. Different proclamations can be issued specifying the grounds of war, external aggression, armed rebellion, or an imminent danger thereof, regardless of whether a proclamation is already in effect. The 38th Amendment, 1975, introduced this provision.
- b) **Types:** When a national emergency is declared on the grounds of 'war' or 'external aggression', it is known as 'external emergency.' On the other hand, when it is declared on the grounds of 'armed rebellion', it is known as '**internal emergency**.' The 42nd Amendment, 1976, enabled the President to limit the operation of a national emergency to a specified part of India. The 44th Amendment, 1978 substituted the term "internal disturbance" with "armed rebellion" to prevent misuse of emergency provisions.
- c) **Cabinet's Role:** The President can declare a national emergency only after receiving a written recommendation from the cabinet. This means that a national emergency can be declared only if the cabinet agrees, not just based on the PM's advice. Back in 1975, PM Indira Gandhi advised the President to declare an emergency and the cabinet was later informed. The 44th Amendment, 1978, added this safeguard to prevent such situations where the PM alone could make such a decision without the cabinet's approval.

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Chapter 14 - Provisions of Emergency

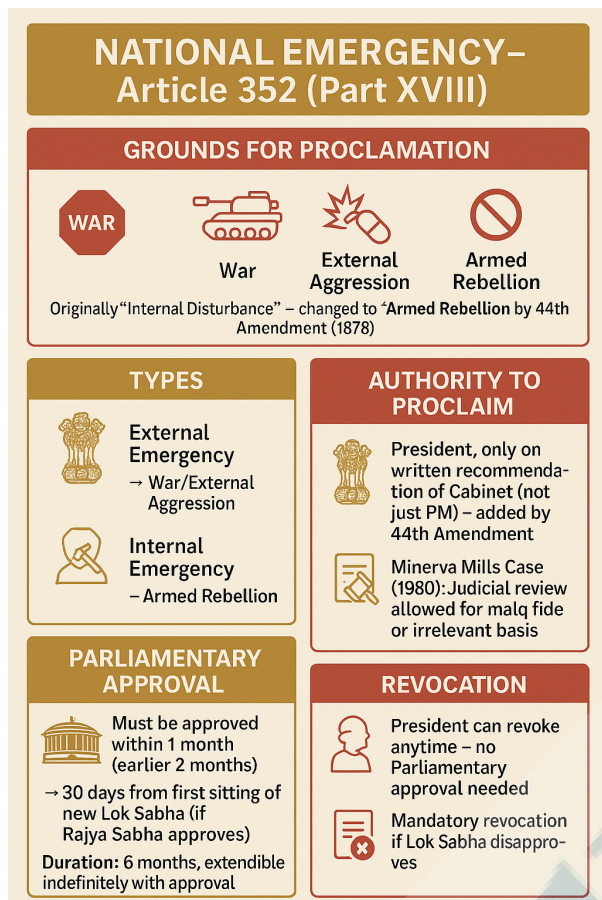
- d) **Judicial review and safeguards:** Initially, the 38th Amendment (1975) made national emergency declarations immune from judicial review, but the 44th Amendment (1978) reinstated the judiciary's authority to scrutinize them. The Supreme Court affirmed its role in reviewing emergency declarations, particularly concerning issues of mala fide or absurdity, as seen in the *Minerva Mills* case, 1980.
- e) **Parliamentary approval and duration:** The declaration of a national emergency in India must be approved by both Houses of Parliament within one month of its issuance. This approval period used to be two months but was shortened to one month by the 44th Amendment, 1978. If the Lok Sabha is dissolved or does not approve the Emergency within this one-month period, the Emergency remains in force until 30 days after the reconstitution of the Lok Sabha, provided the Rajya Sabha has approved it in the meantime.

Once both houses have approved the emergency, it continues for six months initially and can be extended indefinitely with Parliament's approval every six months. Before the 44th Amendment, the emergency could be extended at the executive's discretion, subject to approval by Parliament. Also, prior to the 44th Amendment, Parliament could approve the declaration or extension of an Emergency with a simple majority vote. Now, both houses of Parliament must pass a resolution with a "special majority" to approve the emergency or its continuation. This special majority includes a majority of the total membership of the house and at least two-thirds of the members present and voting. This is a key difference from President's Rule and Financial Emergency, which require only a simple majority for parliamentary approval. This change aimed to ensure more substantial parliamentary oversight and consensus in decisions regarding the declaration and extension of the emergency in India.

- f) **Revocation of Proclamation:** The president holds the authority to revoke a proclamation of national emergency by issuing a subsequent proclamation, without the need for parliamentary approval. However, if the Lok Sabha passes a resolution disapproving the continuation of the emergency, as stipulated by the 44th Amendment, 1978, the President is obligated to revoke the proclamation.

This amendment also introduced a mechanism where, if one-tenth of the Lok Sabha members give a written notice, a special sitting of the House must be convened within 14 days to consider a resolution against the emergency proclamation. It's important to note that a resolution disapproving the continuation of the emergency differs from one approving its continuation in two key aspects: it is passed solely by the Lok Sabha and requires a simple majority for adoption, whereas approval for continuation necessitates passage by both the Houses of Parliament with a special majority.

Chapter 14 - Provisions of Emergency



Consequences of a National Emergency: The proclamation of a national emergency in India has far-reaching and significant effects on the political system, which can be categorized into three main areas: Centre-state relations, the life of the Lok Sabha and State Assembly, and the fundamental rights of citizens.

1. **Effect on Centre-state relations:** During a national emergency, the relationship between the central government and state governments undergoes a substantial transformation:
 - a. **Executive:** During an emergency, the Central Government acquires the power to issue directions to the States on any matter, thereby extending its control over state executive authority. While under normal circumstances this power is confined to specified subjects, in an emergency it becomes comprehensive. As a result, state governments come under the complete control of the Centre, though they are not formally suspended.
 - b. **Legislative:** During a National Emergency, Parliament is empowered to legislate on subjects in the State List, overriding the authority of state legislatures. This leads to a suspension of the normal distribution of legislative powers, making the system more unitary in character. Laws enacted by Parliament on state subjects during the emergency, however, cease to operate six months after the emergency ends. Furthermore, if

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Chapter 14 - Provisions of Emergency

Parliament is not in session, the President may issue ordinances on state subjects, thereby extending legislative authority even further.

- c. **Financial:** The President is granted the power to modify the distribution of revenues between the Centre and the States. This modification remains in effect until the end of the financial year in which the emergency concludes. Furthermore, every such modification order by the President must be presented before both houses of Parliament.
2. **Effect on the term of Legislatures:** During a National Emergency, the tenure of the Lok Sabha and state legislative assemblies can be extended beyond their normal term. Parliament may extend the term of the Lok Sabha by one year at a time, for as long as the emergency continues. Similarly, it may extend the tenure of a state legislative assembly by one year at a time. However, in both cases, the extension cannot continue beyond six months after the emergency has ceased to operate. For example, the Fifth Lok Sabha's term (1971-1977) was extended twice during the emergency in the 1970s. Each time, the extension was for one year at a time, as per the law of Parliament. However, these extensions cannot exceed six months after the emergency ends.
3. **Effect on Fundamental Rights:** During a national emergency in India, certain Fundamental Rights guaranteed by the Constitution can be effected under Articles 358 and 359. These provisions outline how the government can temporarily alter the enforcement of these rights.

Temporary Suspension of Rights - Emergency

Article 358: Suspension of provisions of Article 19 during emergencies

*(1) While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect:

[Provided that *[where such Proclamation of Emergency] is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

(2) Nothing in clause (1) shall apply-

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.

* Article 358 re-numbered as clause (1) by the 44th Amendment, 1978

** Added by the 42nd Amendment, 1976

*** Substituted by the 44th Amendment, 1978

Chapter 14 - Provisions of Emergency

Article 358 deals with the suspension of Fundamental Rights under Article 19 of the Constitution during the national emergency. When a national emergency is proclaimed, the six rights under Article 19 (which include freedoms such as speech and assembly) are automatically suspended. This means the government can pass laws or take actions that might otherwise be restricted under these rights. For example, during a war, the government might impose restrictions on public gatherings or free speech to maintain public order. These actions cannot be legally challenged while the emergency is in effect. In *M.M. Pathak v. Union of India (1978)*, the Supreme Court held that the effect of proclamation of emergency on Fundamental Rights guaranteed under Articles 14 and 19 is not a suspension substantively, rather it is only the suspension of their operation.

However, once the emergency ends, Fundamental Rights under Article 19 automatically revive, and any laws passed during the emergency that contradict these rights cease to have effect. The 44th Amendment, 1978, narrowed the scope of Article 358. It limited the suspension of Article 19 rights only during emergencies declared due to 'war' or 'external aggression', not internal conflicts like rebellions. Moreover, only laws directly related to the emergency are protected from legal challenges afterwards.

Fundamental Rights during Emergencies

Article 359: Suspension of the enforcement of the rights conferred by Part III during emergencies

(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of *[the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such a period as may be specified in the order.

***[(1A) While an order made under clause (1) mentioning any of *[the rights conferred by Part III (except articles 20 and 21)] is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions containing in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.]

***[Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation.]

****(1B) Nothing in clause (1A) shall apply-

- (a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or
 - (b) to any executive action taken otherwise than under a law containing such a recital.
- (2) An order made as aforesaid may extend to the whole or any part of the territory of India:

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Chapter 14 - Provisions of Emergency

***** [Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary.]

(3) Every order made under clause (1) shall, as soon may be after it is made, be laid before each House of Parliament

* Substituted by the 44th Amendment, 1978

** Inserted by the 38th Amendment, 1975

*** Added by the 42nd Amendment, 1976

**** Inserted by the 44th Amendment, 1978

***** Substituted by the 44th Amendment, 1978

Article 359 allows the President to suspend the rights of individuals to move courts for the enforcement of Fundamental Rights, during emergencies. The Presidential order under Article 359 can specify which of the Fundamental Rights (except those under Articles 20 and 21) will have their enforcement suspended. This means that while the rights themselves are theoretically intact, individuals cannot seek legal remedies in courts if these rights are violated. For instance, if the government detains someone without trial during an emergency, that person may not be able to challenge the detention in court until the emergency is over and the suspension is lifted.

The 44th Amendment, 1978, further refined Article 359. It ensures that the Fundamental Rights under Articles 20 (protection in respect of conviction for offences) and 21 (right to life and personal liberty) cannot be suspended even during emergencies. This means that even in the gravest situations, individuals still retain rights against arbitrary arrest and have the right to life and liberty.

Judicial Review:

Initially, there was debate over whether emergency powers under Article 359 were subject to judicial review. In *Ghulam Sarwar v. Union of India* (1966), the Supreme Court held that the President could issue only valid orders when suspending the right to approach courts for enforcement of Fundamental Rights. An arbitrary suspension, such as under Article 14, would be void. This distinction between the President's order and its effect allowed limited judicial review. In *ADM Jabalpur v. Shivakant Shukla* (1976), the Court further conceded that even the right to life could be suspended during an emergency.

Post-1977, following the misuse of emergency powers, the Supreme Court gradually restored judicial scrutiny over such actions. In *K.S. Puttaswamy v. Union of India* (2017), Justice D.Y. Chandrachud conclusively overruled *Shivakant Shukla*, giving it a "ceremonial burial."

Chapter 14 - Provisions of Emergency

Differences between Article 358 and Article 359: The distinction between Articles 358 and 359 can be summarized as follows:

- **Scope of Application:** 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.
- **Emergency Grounds:** Article 358 operates only in the case of external emergency (war or external aggression) and not in the case of an internal emergency (armed rebellion). Article 359, on the other hand, operates in the case of both external emergency and Internal Emergency.
- **Automatic Suspension:** 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.
- **Duration of Suspension:** Article 358 suspends Fundamental Rights under Article 19 for the entire duration of the emergency. Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president, which may be the entire duration of the emergency or a shorter period.
- **Geographical Extent:** Article 358 extends to the entire country, whereas Article 359 may extend to the entire country or a part of it.

Historical Perspective: Three Major National Emergencies

Since Independence, there have been three instances of the declaration of national emergency in India:

1. **First Instance (1962-1968):** During the Indo-China War, the National Emergency was declared on October 26, 1962, and it continued until January 10, 1968. This was the first National Emergency proclaimed in India. It was declared due to external aggression from China.
2. **Second Instance (1971-1977):** The National Emergency was declared on December 3, 1971, during the Indo-Pak war. It continued until March 21, 1977. This emergency was also declared due to external aggression from Pakistan.
3. **Third Instance (1975-1977):** This National Emergency was declared on June 25, 1975, under controversial circumstances of political instability. It was terminated on March 21, 1977. The reasons given by the central government for this emergency were internal disturbances in the country, not due to any external aggression or war.

State Emergency

The origins of Article 356 can be traced back to the Government of India Act of 1935, a colonial-era law that provided for similar provisions. During the framing of India's constitution, the fear of secession, violent conflicts, and communist uprisings in certain states influenced the inclusion of Article 356. This provision was designed to allow the union government, specifically its cabinet, to intervene in states facing breakdowns of law & order or constitutional governance issues, rather than leaving this power solely with the State executive.

Chapter 14 - Provisions of Emergency

Safeguarding States: Union's Defense Against Threats

Article 355: Duty of the Union to protect States against external aggression and Internal disturbance

It shall be the duty of the Union 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 this Constitution.

Article 355 of the Constitution mandates that the Central government must protect states from internal disturbances and external aggression. It also mandates that the Union government should ensure that each state operates within constitutional bounds.

Article 356 empowers the President to impose 'President's Rule' or 'State Emergency' when the governance of a state is not in accordance with constitutional provisions. This allows the Centre to temporarily take over the functioning of the state government. Further, Article 365 provides that if a state fails to comply with the directions of the Union, resulting in a constitutional breakdown, President's Rule may also be imposed. For example, if a state refuses to implement a law mandated by the Centre, Article 365 enables the President to act accordingly.

President's Rule - Article 356

Article 356: Provisions in case of failure of constitutional machinery in State

(1) 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 this Constitution, the President may by Proclamation –

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State:

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

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Chapter 14 - Provisions of Emergency

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days, a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of **[a period of six months from the date of issue of the Proclamation]:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People:

[Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May 1987 with respect to the State of Punjab, the reference in the first provision to this clause to “three years” shall be construed as a reference to *[fi ve years].]

***** (5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless –

- (a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and
- (b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified ed in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

***** Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May 1987 with respect to the State of Punjab.

* The words “or Rajpramukh” omitted by the 7th Amendment, 1956

** Substituted by the 42nd Amendment, 1976

Chapter 14 - Provisions of Emergency

*** Inserted by the 64th Amendment, 1990

**** Substituted by the 67th Amendment, 1990 and further substituted by the 68th Amendment, 1991

***** Inserted by the 38th Amendment, 1975

***** Provision omitted by the 63rd Amendment, 1989

President's Rule is a constitutional provision through which the Centre can assume control over a state's administration under certain conditions. Once proclaimed, it must be approved by both Houses of Parliament within two months. If the Lok Sabha is dissolved during this period, the proclamation remains valid until 30 days after its reconvenes, provided the Rajya Sabha has approved it.

If approved, President's Rule operates for six months at a time and can be extended up to three years, with parliamentary approval every six months. In case the Lok Sabha is dissolved, it continues until 30 days after the new Lok Sabha convenes, subject to Rajya Sabha's consent. Approval requires only a simple majority of members present and voting in each House.

The 44th Constitutional Amendment (1978) imposed safeguards, restricting extension beyond one year unless a national emergency is in operation in the whole or part of the country and the Election Commission certifies that elections to the state assembly cannot be held. The President may revoke the proclamation at any time without requiring parliamentary approval.

President's Rule is a constitutional mechanism that allows the central government to take over the administration of a state when its constitutional machinery breaks down. This can happen if the President, based on a report from the Governor or otherwise, believes that the state government cannot function according to the Constitution.

Once President's Rule is declared, it must be approved by both Houses of Parliament within two months. If the Lok Sabha is dissolved at the time or gets dissolved during this two-month period, the proclamation remains valid if the Rajya Sabha approves it. In such a case, the proclamation must be approved by the reconstituted Lok Sabha within 30 days of its first sitting, otherwise it will cease to operate.

If approved by both Houses, President's Rule lasts for an initial six months. It can be extended in six-month intervals, up to a maximum of three years, with parliamentary approval each time.

However, the 44th Amendment Act of 1978 placed a safeguard on extensions beyond one year. For such an extension:

- A national emergency must be in force in the whole of India or in the concerned state.
- The Election Commission must certify that elections to the state assembly cannot be held.

The President can revoke the President's Rule at any time by issuing another proclamation. This revocation does not require parliamentary approval.

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Chapter 14 - Provisions of Emergency

Presidential Powers in the State of Emergency

Article 357: Exercise of legislative powers under Proclamation issued under article 356:

1) Whereby a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent-

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorize the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorizing the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) For the President to authorize when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

* (2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.

* Substituted by the 42nd Amendment, 1976

Article 357 deals with the exercise of legislative powers during the imposition of the President's Rule in a state:

- **Transfer of Legislative Powers:** Parliament can confer upon the President the powers of the state legislature to make laws. The President can further delegate these powers to any other authority as specified by him, subject to certain conditions.
- **Authority to Make Laws:** Parliament or the President (or the delegated authority) can make laws that would normally fall under the jurisdiction of the state legislature. This includes conferring powers, imposing duties, or authorizing such actions on the Union government or its officers.
- **Spending from State Funds:** The President is authorized to approve expenditure from the Consolidated Fund of the State, even when the Parliament (House of the People) is not in session, pending its formal sanction by Parliament.
- **Continuation of Laws:** Any law made by Parliament or the President during the operation of President's Rule, which ordinarily falls outside their legislative competence, remains valid even after the proclamation ends. Such a law continues to operate until it is amended, repealed, or replaced by the competent legislature or authority.

During the President's Rule, the state High Court retains its constitutional powers, and its functions remain unchanged. The President or the central government cannot take over the high court's powers or suspend any constitutional provisions related to it.

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Chapter 14 - Provisions of Emergency

The High Court continues to operate independently and uphold the rule of law during this period.

Constituent Assembly debate - Article 356

Article 356 has been a contentious provision due to its frequent misuse for alleged political or personal reasons. It has been utilized, abused, and mishandled much of the time. D.D. Basu, in his book 'Prologue to Constitution of India' says, "No Provision of the Constitution has been so frequently utilized, abused, and mishandled as Article 356". It has been imposed on 132 occasions since 1951.

There were two schools of thought in the Constituent Assembly regarding the incorporation of crisis arrangements in the Constitution. The first school, led by Dr. B.R. Ambedkar and T.T. Krishnamachari, advocated for including provisions to address any crisis that could threaten the unity of India. The second school, comprising H.V. Kamath, Prof. K. T. Shah, Prof. Shibban Lai Saksena, and others, expressed reservations about these provisions. Prof. Shibban Lai Saksena, in the Constituent Assembly, expressed concerns that these provisions would undermine provincial autonomy and make state governments subservient to the central government. He feared that if these provisions were abused, they would not only disregard the federal character of the nation but also make a mockery of India's democratic standards.

Dr. B.R. Ambedkar, the Chairman of the Constituent Assembly, while presenting the draft Constitution, stated that these provisions would never be invoked and would remain a "dead letter." However, it is evident that the founding fathers of the Constitution had legitimate and cogent reasons for including these provisions, as they extensively discussed and deliberated on every detail before incorporating Article 356 into the draft Constitution.

Use & Misuse - Article 356

Article 356 of the Constitution was intended as a safeguard to deal with political instability or constitutional breakdown in the states. Over time, however, its frequent and sometimes controversial use has raised concerns about undermining state autonomy. Critics argue that it has often been invoked to serve political interests rather than genuine governance needs, making it a central issue in debates on India's federal structure.

The first instance of President's Rule occurred in Punjab in 1951. Since then, many states across India have experienced this measure, often due to political instability, failure of constitutional machinery, or if a state government cannot be carried on in accordance with the constitutional provisions. Here are some controversial instances of imposition of the President's Rule:

- In 1977, following the end of the National Emergency, general elections were held. The ruling Congress Party lost, and the Janata Party came to power under Morarji Desai. Subsequently, President's Rule was imposed in nine states where Congress was in power, citing that the state assemblies no longer represented the electorate's wishes.
- In 1980, when the Congress Party returned to power, it reciprocated by imposing President's Rule in nine states where opposition parties were in power, using similar justifications for the non-representation of electorate wishes.

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Chapter 14 - Provisions of Emergency

- In Nagaland, the Congress party won the elections and formed the government in 1987. Soon, in 1988, a split in the party and the wrongful confinement of 13 MLAs prompted the Union government to impose the President's Rule.
- In another instance, in Meghalaya in 1991, the Speaker disqualified five MLAs for defection and then declared a confidence motion a tie, triggering the imposition of the President's Rule. This move was also seen as a political ploy to undermine the elected government.
- In 1992, during a period of heightened political tension, the President's Rule was imposed by the Union government in three opposition-ruled states - Madhya Pradesh, Himachal Pradesh, and Rajasthan. This action was taken citing non-compliance with central directives regarding religious organizations.
- In the same year, the demolition of the Babri Masjid sparked violence, leading to the resignation of the government in Uttar Pradesh and the imposition of President's Rule. This move was not challenged, but it raised concerns about the misuse of power and the erosion of democratic institutions.
- In 1994, the CM of Karnataka, S.R. Bommai, was fighting to maintain his government amidst defections and political upheavals. The union government dismissed Bommai's Janata Party-led government and dissolved the legislature after 19 MLAs withdrew their support. By the time the President issued the order for President's Rule, seven lawmakers had rejoined Bommai, who again claimed a majority. However, the Governor did not give Bommai the opportunity to prove his majority, and the Karnataka High Court rejected Bommai's petition challenging the President's Rule.

The case of Uttarakhand & Arunachal Pradesh: 2016

In Arunachal Pradesh, the President's Rule was imposed after several Congress MLAs defected to the BJP-led opposition, leading to a power struggle. Similarly, Uttarakhand faced a parallel crisis when the President's Rule was invoked following similar defections of Congress MLAs to the BJP. The legality of these impositions was contested in respective high courts, which ultimately struck down the impositions, citing procedural lapses, and emphasizing the need for adherence to constitutional norms in governance.

Thus, these instances of the misuse of Article 356 have shown that this provision has not been always used for genuine reasons. Instead, it has been abused to advance the political interests of the ruling party at the Centre.

Judicial Scrutiny of President's Rule:

The Union government's use of Article 356 did not go unchallenged. States placed under or facing President's Rule contested its imposition, claiming it violated their democratic rights. Such challenges, along with the landmark *S.R. Bommai* case (1994), highlighted the misuse of Article 356 for political purposes and brought the matter under crucial judicial scrutiny. The judgments that followed played a decisive role in curbing arbitrary use of the provision and in strengthening the principles of federalism and democratic governance in India.

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Chapter 14 - Provisions of Emergency

In the landmark *S.R. Bommai* judgement 1994, the Supreme Court laid down crucial principles regarding the imposition of President's Rule under Article 356. The Court clarified that although Article 74(2) bars judicial inquiry into the advice tendered by the Council of Ministers to the President, it does not prevent judicial review of the material forming the basis of the President's satisfaction. Hence, a proclamation under Article 356 is subject to judicial scrutiny and can be struck down if found mala fide or based on irrelevant or insufficient grounds. The Court further held that the President's power under Article 356 is subject to Article 356(3), which requires parliamentary approval. Until such approval is obtained, the President may only suspend the State Legislative Assembly but cannot dissolve it.

The judgment also emphasized procedural safeguards in the imposition of President's Rule. The Court noted that a warning should ordinarily be issued to the state government before taking such action and clarified that once Article 356 is invoked, there cannot be two parallel governments in a state. Importantly, the Court affirmed secularism as a basic feature of the Constitution, holding that a state government's departure from this principle could justify its dismissal. Further, the judgment reiterated the judiciary's authority to review such proclamations and, if found mala fide, to provide remedies including the reinstatement of a dismissed government.

In *Rameshwar Prasad & Ors v Union of India* (2006), the Supreme Court held that imposing President's Rule to prevent a political party from forming a government on the assumption that it might secure a majority through unlawful means such as defections is unconstitutional. The Court further clarified that although Governors enjoy immunity from legal proceedings for actions taken in their official capacity, this does not prevent judicial review of the validity of their actions, particularly if allegations of mala fide intent are raised.

Observations of Key Commissions - President's Rule

The provisions of Article 356 have been a subject of considerable debate and scrutiny over the years. Various commissions have studied the application & implications of Article 356 and offered recommendations to - (a) prevent the misuse of Article 356 and ensure its judicious use, (b) align with democratic principles, and, (c) strike a balance between the Centre's need to maintain national unity and the states' autonomy.

Sarkaria Commission (1987): The Commission emphasized that the misuse of Article 356 could damage the democratic fabric of the Constitution and offered recommendations, like:

- Article 356 should be used very sparingly, in extreme cases, and only as a measure of last resort when all available alternatives have failed to prevent or rectify a breakdown of constitutional machinery in a state.
- Before invoking Article 356, a warning should be issued to the errant state government, specifying that it is not carrying on the government in accordance with the Constitution. Any explanation received from the state should be taken into account before taking action under Article 356.
- In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If that is not possible and fresh

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Chapter 14 - Provisions of Emergency

elections can be held without delay, the Governor should request the outgoing ministry to continue as a caretaker government, provided it was defeated solely on a major policy issue.

- The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356(1) has been laid before and approved by both Houses of Parliament.
- Every proclamation issued under Article 356 must be placed before both Houses of Parliament as early as possible, and in any case before the expiration of two months from the date of its issue.

National Commission to Review the Working of the Constitution (2002): The Commission recommended several changes to Article 356, to ensure that it is used in accordance with the principles of parliamentary democracy. These recommendations include:

- Issuance of a warning: Before imposing the President's rule, the President should issue a warning to the state government, specifying the constitutional provisions that are not being followed.
- Consideration of state explanations: Any explanation received from the state government should be considered before acting under Article 356. This would ensure that the President's decision is based on a thorough understanding of the situation and not solely on the Governor's report.
- Preservation of state legislative assembly: The state legislative assembly should not be dissolved before the proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it.
- Publicity of Governor's report: The Governor's report, on which a proclamation under Article 356(1) is issued, should be given wide publicity in all media and in full. This would ensure transparency and accountability in the decision-making processes.
- Parliamentary review: Safeguards corresponding to those of Article 352 should be incorporated in Article 356 to enable the Parliament to review the continuance in force of a proclamation. This would ensure that the President's decision is subject to parliamentary oversight.

Punchhi Commission (2007): The Commission also made recommendations regarding Article 356 and the imposition of the President's Rule. Its key points include:

- Localized Emergency: The Commission recommended the concept of a "Localized Emergency," wherein only a specific troubled area, such as a district or part of a district, would be brought under the Governor's rule instead of the entire state.
- Duration Limitation: The duration of such an emergency provision should not exceed three months. This is intended to prevent the misuse of Article 356 and to ensure that the state government is restored as soon as possible.
- Amendments to Article 356: The Commission recommended suitable amendments to Article 356 to incorporate the guidelines established by the Supreme Court in the S.R. Bommai case (1994).

Chapter 14 - Provisions of Emergency

Financial Emergency

Article 360: Proclamations as to Financial Emergency

(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

*[(2) A Proclamation issued under clause (1) –

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in subclause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.]

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution –

(a) any such direction may include –

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

* Substituted by the 44th Amendment, 1978

Article 360 allows the President to declare a financial emergency if s/he believes that the financial stability or credit of India or any part of its territory is threatened. Initially, the 38th Amendment (1975) made the President's decision final and not subject to questioning in any court. However, this was later removed by the 44th Amendment, 1978, which means that the president's decision can now be judicially

Chapter 14 - Provisions of Emergency

reviewed.

**FINANCIAL EMERGENCY
(ARTICLE 360)**

Significance of Financial Emergency

Helps the country overcome financial instability or crises



Imposition of Financial Emergency

President can declare it if financial stability of India or part of its territory is in jeopardy



Approval of Parliament & Duration

Declaration must be ratified by both Houses of Parliament within two months

Financial emergency lasts indefinitely until repealed.

No repeated Parliamentary approval needed



Resolution Approval

A simple majority in either House of Parliament is required

President can rescind financial emergency without Parliament's agreement



Outcomes of Financial Emergency

Union controls financial affairs

Directives to states (e.g., cutting government employees' pay, holding money bills in reserve)

Reduction of salaries and allowances for central government officials, including judges



Parliamentary approval and other provisions:

A proclamation of financial emergency must be approved by both houses of Parliament within two months from its issue (PYQ 2007). If the Lok Sabha is dissolved or dissolved during this period without approving the proclamation, it stays in effect until 30 days after the Lok Sabha's first sitting after its re-constitution, provided the Rajya Sabha has approved it by then.

Once approved by both the Houses, a financial emergency continues indefinitely until revoked. This means that there's no set maximum duration, and repeated parliamentary approval isn't needed to keep it going. Either House of Parliament can pass a resolution approving a Financial Emergency with a simple majority, which means a majority of members present and voting. The President can revoke a financial emergency at any time through a subsequent proclamation, which doesn't require parliamentary approval.

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Chapter 14 - Provisions of Emergency

Consequences of a Financial Emergency:

The declaration of a financial emergency can lead to significant consequences, resulting in reduced funding for essential services, disruptions in governance, and heightened political tensions. The Constitution provides that when a financial emergency is declared:

- The central government can direct any state to follow specific financial rules and other necessary instructions.
- These directions can include cutting salaries and allowances of state employees and ensuring that all money bills are sent to the President for approval after being passed by the state legislature.
- The President can also issue directives for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union, as well as judges of the Supreme Court and High Courts (PYQ 2007).

Generally, the financial emergency can have broader economic implications like decreased investor confidence, slower economic growth, and increased hardships for the public, highlighting the delicate balance between economic stability and political governance.

Emergency Provisions – An Analytical Perspective

The emergency provisions in India have attracted criticism due to their misuse, particularly during the National Emergency of 1975–1977, when large-scale violations of fundamental rights occurred. The Shah Commission, constituted to examine the excesses of this period, recorded serious abuses such as police brutality, torture, and coercive family planning programmes implemented by state authorities.

The emergency provisions are often criticized as politically motivated tools. In several cases, President's Rule has been imposed not due to genuine constitutional breakdowns, but to prevent certain political parties from forming or continuing in government. Such proclamations have been faulted for bypassing democratic processes, as state assemblies were dissolved abruptly, denying other parties a chance to prove majority support. Critics contend that these practices weaken the spirit of federalism and erode the democratic framework of the Constitution.

Emergency provisions, though designed for exceptional situations, have at times been misused. The Sarkaria Commission, among others, documented instances where Article 356 was invoked without genuine necessity, thereby disturbing the balance of power between the Union and the states. While such provisions remain vital for addressing real crises, their misuse underscores the importance of strict constitutional scrutiny. Ensuring adherence to constitutional principles is essential to safeguard citizens' rights, uphold democratic values, and preserve the federal character of India's governance.

National Emergency: Impact on Federal Relations and Fundamental Rights:

The proclamation of a National Emergency fundamentally transforms India's constitutional framework, creating wide-ranging ramifications for both federal relations and fundamental rights during its enforcement. This emergency mechanism shifts the nation from its normal federal structure toward a more centralized system while simultaneously restricting individual liberties to address national security concerns.

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Chapter 14 - Provisions of Emergency

Impact on Federal Relations: The proclamation of National Emergency fundamentally alters India's federal equilibrium by creating a pronounced unitary bias. The normal distribution of powers between Centre and states is suspended, with the Centre assuming comprehensive control over both executive and legislative functions traditionally reserved for states.

1. **Executive centralization:** During a National Emergency, the executive power of the Union Government expands dramatically, allowing it to give directions to State Governments on any matter. This provision brings state governments under the complete control of the Centre, effectively transforming them into administrative units of the federal government rather than autonomous entities.
2. **Legislative supremacy of parliament:** Parliament assumes overriding powers over State legislatures with respect to subjects mentioned in the State List, converting state legislative domains into concurrent spheres. Additionally, the President gains the authority to issue ordinances on matters enumerated in the State List when Parliament is not in session, further centralizing legislative control.
3. **Financial restructuring:** The President can order modifications to the constitutional distribution of revenues between the Centre and states, fundamentally altering the fiscal federal balance. Such orders must be laid before both Houses of Parliament for approval, ensuring legislative oversight of these significant financial changes.

Impact on Fundamental Rights: Emergency provisions create a two-tier system of rights restriction that reflects a calibrated approach to balancing national security with individual liberty. The automatic suspension of Article 19 rights addresses immediate security concerns, while the discretionary suspension of other rights allows for measured responses based on specific emergency requirements.

1. **Automatic suspension under Article 358:** Fundamental Rights guaranteed by Article 19 are automatically suspended once an Emergency is proclaimed on grounds of war or external aggression. No separate order is required for this suspension, making it an immediate consequence of the Emergency proclamation itself.
2. **Discretionary suspension under Article 359:** The enforcement of other Fundamental Rights, except those under Articles 20 and 21, can be suspended through a Presidential order. This order must receive approval from both Houses of Parliament, providing a legislative check on executive power while still allowing for broad rights restrictions.
3. **Legal immunity for emergency actions:** Any law or executive action taken under such laws to abridge rights under Article 19 or those mentioned in the Presidential suspension order cannot be challenged in courts if they are expressly related to the Emergency. This creates a zone of legal immunity for government actions during the emergency period.

National Emergency provisions represent a constitutional mechanism designed to address extraordinary circumstances threatening national security. While these provisions concentrate power in the Centre and restrict individual freedoms, they include built-in safeguards such as Parliamentary approval requirements and protection of core rights under Articles 20 and 21. This framework demonstrates the Constitution's attempt to balance the imperatives of national security with the preservation of democratic governance and individual liberty, even during the most challenging circumstances.

Chapter 14 - Provisions of Emergency

Under what circumstances can Financial Emergency be imposed by the President? What consequences follow when such a declaration remains in force? PYQ 2018

Article 360 of the Constitution allows the **President to declare** a financial emergency under those circumstances wherein there is a **threat to the financial stability or credit of India or any part of its territory**. The President must make such a decision based on the **advice of the Council of Ministers**.

Imposition of a Financial Emergency has **far-reaching consequences** such as:

1. **Dilution of state autonomy** in financial matters; the Union executive can **direct any state** to observe the “**canons of financial propriety**” (set of principles that guide the **use of public funds**).
2. It empowers the President to issue necessary and adequate directions to **resolve the crisis** (Article 360 (3)). The directions may relate to enforcement of **austerity measures** including provisions for **reducing the salaries and allowances** of state officials.
3. Also, a direction may be issued to the effect that all **money bills** and **financial bills** (under Article 207) passed by the **state legislature** could be required to be reserved for the **consideration of the President** (Article 360 4(a)).
4. a) The President may also issue proclamations for similar measures at the **Union level** (reducing the salaries and allowances of officials); b) extension of executive control over **judicial expenses** (salaries and allowances of the members of higher judiciary).

Financial Emergency has **never been imposed in the history of independent India** despite occasions that may have warranted its use (1991 financial crisis, COVID-19). Despite criticisms about the **over-centralization** that Financial Emergency entails, the provisions are significant as they allow the Union to **ward-off any threats to India’s sovereignty** from economic factors and help preserve the constitutional order.