

## Indian Polity Notes Part 22 in English

### 22. Emergency Provisions

- The Emergency provisions are contained in **Part XVIII** of the Constitution, from **Articles 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.
- The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.

#### National Emergency

- Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation.
- This provision was added by the 38th Amendment Act of 1975.
- When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.
- A proclamation of national emergency may be applicable to the entire country or only a part of it. The 42nd Amendment Act of 1976 enabled the president to limit the operation of a National Emergency to a specified part of India.
- Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation.
- Hence, the 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'.
- Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance' as was done in 1975 by the Congress government headed by Indira Gandhi.
- The President, however, can proclaim a national emergency only after receiving a written recommendation from the cabinet.
- This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the prime minister. In 1975, the then Prime Minister, Indira Gandhi advised the president to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a fait accompli.

- The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the prime minister alone taking a decision in this regard.
- The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978.
- Further, in the *Minerva Mills* case, (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

### Presidents Rule

- 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 state. This is popularly known as 'President's Rule'.
- It is also known as 'State Emergency' or 'Constitutional Emergency'.
- The President's Rule can be proclaimed under Article 356 on two grounds—one mentioned in Article 356 itself and another in Article 365
- Article 356 empowers the President to issue a proclamation, if he 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. Notably, the president can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report).
- Article 365 says that 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

### Financial Emergency

- 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.
- The 38th Amendment Act of 1975 made the satisfaction of the president in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground.
- But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review.

### Distinction Between Articles 358 and 359

- 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.

- 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.
- Article 358 operates only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion). Article 359, on the other hand, operates in case of both External Emergency as well as Internal Emergency.
- Article 358 suspends Fundamental Rights under Article 19 for the entire duration of Emergency while Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.
- Article 358 extends to the entire country whereas Article 359 may extend to the entire country or a part of it.
- Article 358 suspends Article 19 completely while Article 359 does not empower the suspension of the enforcement of Articles 20 and 21.
- Article 358 enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19 while Article 359 enables the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

#### **Similarity between Article 358 and Article 359**

- Both provide immunity from challenge to only those laws which are related with the Emergency and not other laws. Also, the executive action taken only under such a law is protected by both.