EMERGENCY PROVISIONS:

- The emergency provisions are places under Part XVIII of the Indian Constitution.
- The related articles are 352 to 360.
- The term Emergency may be defined as a difficult situation arising suddenly and demanding immediate action by public authorities under power specially granted to them by the Constitution or otherwise to meet exigencies (demands, emergencies).
- During the emergency the federal structure is modified into a unitary one without amending the Constitution.
- FEDERAL: Division of powers between the Central and State Governments.
- The emergency provisions are meant for tackling the abnormal situations.
- The Indian Constitution provides for the 3 different types of emergencies.
  - National Emergency – Article 352
  - President’s Rule or State Emergency – Article 356
  - Financial Emergency – Article 360
- These emergency provisions have been extensively amended by
  - 42nd amendment
  - 44th amendment
- ARTICLE 352: A proclamation of emergency may be made by the President at any time he is satisfied that the security if India or any part thereof has been threatened by
  - War
  - or
  - External Aggression
  - Or
  - Armed rebellion (Internal disturbances)
- Note: The Words “internal disturbances” have been replaced with the “Armed Rebellion” in the year 1978 through 44nd amendment.
- ALSO NOTE: Only in the year 1975 the National emergency was declared on the grounds of internal disturbances.
Emergency is the existence of a condition whereby the security of India or any part thereof is threatened by war or external aggression or armed rebellion.

The National Emergency can be made by the President of India there is an imminent danger of such external aggression or armed rebellion.

The President of India proclaims the National Emergency.

The President can also issue different proclamations of National emergency on the grounds of war, external aggression or armed rebellion, whether or not there is a proclamation already issued by the President and such proclamation is in operation.

Note: This provision was added through the 38th amendment of 1975.

The 42nd amendment act of 1976 enabled the President to limit the operation of National emergency to a specified part of India.

The National emergency once proclaimed is applicable to the entire country or only to any part of India.

The 38th amendment act of 1975 made the declaration of the National Emergency immune from judicial review. (This cannot be challenged in the Court of law).

The 44th amendment act of 1978 removed the fetter, so that the constitutionality of the declaration of the National Emergency can be questioned in a court on the grounds of mala fides.

In the year 1980 in Minerva Mills case the Supreme Court held that the proclamation of national emergency can be challenged in a court on the grounds of mala fides or that the declaration was based on wholly extraneous (unrelated) and irrelevant facts or is absurd (ridiculous) or perverse (wicked, mean).

The proclamation of National emergency must be approved by both the houses of the Parliament within one month from the date of its issue.

Note: Originally, the allowed period was 2 months. Through 44th amendment act of 1978 the period was reduced to 1 month.

If the National Emergency is declared at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation then the proclamation survives until 30 days from the 1st sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha in the mean time has approved the same.
If the National Emergency is approved by both the houses of the Parliament then the emergency continues for 6 months.

The National emergency can be extended any number of times but not more than 6 months at a time.

Within every 6 months it must be approved by the Parliament.

Note: Before 1978, once the National Emergency is approved by the Parliament it is operation till it is revoked by the President (Executive, Prime Minister).

The 44th amendment act of 1978 included the provision of periodical approval by the Parliament.

The resolution approving the proclamation of National Emergency or its continuance must be passed by both the house with Special majority.

The special majority provision was added through the 44th amendment act of 1978.

Prior to 1978 it was only simple majority.

The National Emergency can be revoked by the president at any time.

The 44th amendment act of 1978, provided that not less than 1/10th members of Lok Sabha may give a notice in writing to the Speaker or to the President if the Lok Sabha is not in session to convene a special sitting of the Lok Sabha.

The special sitting of the Lok Sabha shall be held within 14 days from the date of notice.

Through 44th amendment act of 1978 it was made that the National Emergency can be proclaimed by the President for the whole India or only a part thereof.

**EFFECTS OF NATIONAL EMERGENCY:**

During the National emergency the federal nature is lost and the nation becomes unitary in nature.

- Executive
- Legislative
- Financial

**EXECUTIVE POWERS:**
✓ During normal time the Union executive has the power to give directions to a state which includes only the matters specified in Article 256 and 257.

✓ Article 256: obligation of states and union.

✓ Article 257: Control of the Union over the states in certain cases.

✓ Under the proclamation of the National Emergency the executive power of the center is extended to give directions to any state as to a manner in which the executive power of thereof is to be exercised (Article 353 (a)).

✓ Note: The State government is not suspended but under the total control of the Union executive.

✓ **LEGISLATIVE POWERS:**

✓ The Parliament is empowered to make laws on any subject mentioned in the state list.

✓ Note: The state legislature is not suspended. But, the laws are made by the Parliament.

✓ The laws made by the parliament will become inoperative 6 months after the emergency has ceased to operate.

✓ During the time of National Emergency the President can also issue ordinances on the state subjects if the Parliament is in recess (not in the session).

✓ **FINANCIAL POWERS:**

✓ The President can modify the Constitutional distribution of revenues between the center and the states.
The President can reduce or cancel the transfer of funds from the Central government to the states.

These modifications continue till the end of the financial year in which the emergency ceases to operate.

HOW MANY TIMES THE NATIONAL EMERGENCY WAS PROCLAIMED IN INDIA?

The National Emergency was proclaimed for 3 times so far.

FIRST PROCLAMATION:
- The 1\textsuperscript{st} proclamation was made on the grounds of external aggression.
- The 1\textsuperscript{st} proclamation under article 352 was made by the President of India on October 26, 1962.
- This was proclaimed in view of Chinese aggression in the NEFA (North Eastern Frontier Agency; this is the present Arunachal Pradesh).
- The President also issued order under the article 359 that a person arrested or imprisoned under the Defense of India Act would not be entitled to move any court for the enforcement of Fundamental Rights under Articles 14, 19 and 21.
- The 1\textsuperscript{st} National Emergency was revoked by an order made by the President on January 10, 1968.
- Note: Because of the above reason a fresh proclamation was not required at the time of war with Pakistan in the year 1965.

SECOND PROCLAMATION:
- The 2\textsuperscript{nd} proclamation was made on the grounds of external aggression.
- This was made by the President on December 3, 1971.
- The National Emergency was proclaimed when Pakistan launched undeclared war against India.
- A Presidential order was issued under Article 359 on December 25, 1974 suspended the right of any detune to move any court for the enforcement of Fundamental Rights under...
Articles 14, 21 and 22. (This happened because some High Courts decided to release detene under the Maintenance of Internal Security Act, 1971 for smuggling operations.

✓ The 2nd proclamation was revoked on March 21, 1977.
✓ Note: Both 2nd and 3rd proclamations were revoked on March 21, 1977.
✓ **THIRD PROCLAMATION:**
  ✓ The 3rd proclamation of National Emergency under Article 352 was made on June 25, 1975.
  ✓ The 3rd proclamation of National Emergency was made on the grounds of ‘internal disturbances’.
  ✓ Note: This is the only time that the National Emergency was launched on the grounds of ‘internal disturbances’.
  ✓ The 3rd proclamation was revoked on March 21, 1977.
  ✓ Note: Through 44th amendment act of 1978 the words ‘internal disturbances’ were substituted by ‘Armed Rebellion’.

**WHAT HAPPENS TO THE TERM OF THE LOK SABHA AND THE STATE ASSEMBLIES DURING NATIONAL EMERGENCY?**

✓ The term of Lok Sabha may be extended by a law of the Parliament for one year at a time.
✓ Like this the term can be extended any number of times but not more than 1 year at a time.
✓ The extension of term of Lok Sabha **cannot** continue beyond a period of 6 months after the emergency ceased to operate.
✓ The term of 5th Lok Sabha (1971-1976) was to expire on March 18, 1976.
✓ This was extended up to March 18, 1977 by the Lok Sabha. (Through House of People (Extension of duration act, 1976). It was further extended up to March 18, 1978. But the Lok Sabha was dissolved on January 18, 1977. (Lok Sabha existed for 5 years 10 months and 6 days).
✔ **Assemblies:** Similarly, the term of State Assemblies may be extended by 1 year by the Parliament.

✔ This can be extended by any number of terms but not more than 1 year at a time.

✔ The extension term of State Assemblies cannot continue beyond a period of 6 months after the emergency ceased to operate.

### WHAT HAPPENS TO FUNDAMENTAL RIGHTS DURING THE NATIONAL EMERGENCY?

✔ Article 358 and 359 describe the effect of proclamation of National Emergency on Fundamental Rights.

✔ **ARTICLE 358:** This Article mentions about the suspension of provisions of Article 19 during National Emergency.

✔ **Note:** 6 freedoms are granted under Article 19.

✔ **PLEASE NOTE:** Once the National Emergency is proclaimed the Article 19 is suspended automatically. Separate order by the President to suspend Article 19 is not required. This cannot be challenged in the court of law.

✔ When the National Emergency ceases to operate Article 19 is automatically revived.

✔ Through the 44th amendment act of 1978 it was made that the Article 19 can be suspended when the National Emergency is declared only on the grounds of War or external aggression.

✔ Article 19 cannot be suspended if the National Emergency is declared on the grounds of armed rebellion.

✔ Article 19 is suspended for the entire period of National Emergency.

✔ **ARTICLE 359:** This Article mentions about the suspension of the enforcement of Fundamental Rights during emergencies. (Except Articles 20 and 21).

✔ The Fundamental Rights are not suspended but their enforcement.

✔ This is related only to those Fundamental Rights that are mentioned in the Presidential order and not all.
The suspension of the enforcement is for that period as mentioned in the order.

This can be extended to the whole country or any part of the country.

The order of the President is laid before the parliament for the approval.

The suspension cannot be challenged in a court of law even after the emergency ceases to operate.

As per the 44th amendment act of 1978 the Presidential order cannot suspend the Right to move the court for the enforcement of the fundamental rights guaranteed under articles 20 and 21.

**ARTICLE 20:** The right to protection in respect of conviction of offences.

**ARTICLE 21:** Right to Life and personal liberty.

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STATE EMERGENCY:

✓ This is also called the President’s rule.
✓ Article 355 imposes a duty on the central government to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.
✓ It is this duty of the centre to take over the government of a state under Article 356 in case of failure of constitutional machinery in the state.
✓ The grounds of proclaiming the President’s rule is mentioned under articles 356 and 365.
✓ Article 356 empowers the President to proclaim President’s Rule, 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.
✓ The President can act either on the report of the Governor or otherwise (without the report of the governor).
✓ According to Article 365 whenever a state fails to comply with or 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 a state cannot be carried on in accordance with the provisions of the Constitution.
✓ APPROVAL:
✓ The proclamation of the President’s rule must be approved by both the Houses of the Parliament within 2 months from the date of issue.
✓ If the Lok Sabha has been dissolved at that time or dissolution takes place during the period of 2 months then the Rajya Sabha must approve the same in the mean time.
✓ The proclamation of the President’s rule survives until 30 days from the 1st sitting of the newly elected Lok Sabha.
✓ The President’s rule continues for 6 months if approved by both the houses of Parliament with a simple majority.
✓ Note: The 42nd amendment act, 1976 raised the period of 6 months to 1 year.
✓ Also Note: The 44th amendment act, 1978 reduced the period to 6 months.
✓ The President’s rule can be extended for a maximum period of 3 years.
✓ The extension can be done with the approval of the Parliament every 6 months.
If the Lok Sabha is dissolved then the extension must be approved by the Rajya Sabha in the mean time.

In any case the extension must be approved by the new Lok Sabha within 30 days of its first sitting.

As per 44th amendment act the President’s rule can be extended beyond 1 year only when

- A proclamation of National Emergency is in operation in the whole of India or any part of the state

And

- The Election commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

**HOW THE PRESIDENT’S RULE IS REVOKED?**

- The President’s rule is revoked by the President with a subsequent proclamation.

- This proclamation does not need any parliamentary approval.

In the year 1987 the President’s rule was imposed in the state of Punjab.

In the year 1990 through 67th amendment act the President’s rule was extended up to 4 years.

In the year 1991 through 68th amendment act the President’s rule was extended up to 5 years.

**IMPLICATION:**

- What happens when the President’s rule is imposed in a state?
- The President dismisses the state Council of Ministers.
- The Governor carries on the administration on behalf of the President.
- The President either dissolves the state assembly

OR

- The state assembly may be kept under suspended animation.
The Parliament delegates the power to make laws for the state to the President or any other authority specified by the President.

When the Lok Sabha is not in the session the President can authorize expenditure from the state consolidated fund pending the sanction by the Parliament.

The ordinances are promulgated by the President when the Parliament is not in the session.

The laws that are made by the Parliament or issued by the President are valid even after the termination of the President’s rule.

(The law is not co-terminus with the period of Proclamation).

The powers of the High Court remain during the President’s rule.

The President’s rule has no effect on the Fundamental Rights of the citizens.

The President’s rule was first imposed in Punjab in the year 1951.

On many occasions the President’s rule was imposed for political gains.

In the year 1994 in S R Bommai v Union of India case the Supreme Court upheld the validity of imposition of President’s rule on the grounds that secularism is a basic feature of the Constitution.

Dr B R Ambedkar, in a reply in the Constituent Assembly the Article 356 would remain a dead letter and would be used only as a measure of last resort.

The 38th amendment act of 1975 made the satisfaction of the President in invoking the Article 356 is final and conclusive and cannot be challenged on any ground.

The 44th amendment act of 1978 allowed the judicial review.

The Sakaria Commission (1988) on Centre-State relations made valuable suggestions regarding the imposition of the President’s rule.
FINANCIAL EMERGENCY:

- The Financial Emergency is mentioned under Article 360 of the Indian Constitution.
- In India the Financial Emergency is not imposed so far.
- The Financial Emergency is imposed by the President of India if he is satisfied that the situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- The proclamation of the financial emergency must be approved by both the Houses of the Parliament within 2 months from the date of issue.
- The proclamation once approved by the Parliament with simple majority continues indefinitely till it is revoked.
- This means:
  - There is no maximum period
  - There is no repeated parliamentary approval

APPROVAL:

- The proclamation of the Financial Emergency must be approved by both the Houses of the Parliament within 2 months from the date of issue.
- If the Lok Sabha has been dissolved at that time or dissolution takes place during the period of 2 months then the Rajya Sabha must approve the same in the mean time.
- The proclamation of the financial emergency survives until 30 days from the 1st sitting of the newly elected Lok Sabha.

How the Financial Emergency is revoked?

- The Financial Emergency is revoked by the President at any time by a subsequent proclamation.

- The 38th amendment act of 1975 made that the proclamation of financial emergency cannot be questioned in the court of law.
- The 44th amendment act of 1978 allowed the Judicial review.
IMPLICATIONS OF THE FINANCIAL EMERGENCY:

- The central government directs the states to observe such canons (standards, rules) of financial propriety as specified by it.
- The directions are given by the President.
- The salaries and allowances of all or any class of persons serving in the state are reduced.
- All money bills in the state are reserved for the consideration of the President after they are passed by the state legislature.
- The President may also issue direction for the reduction of salaries and allowances of all or any class of persons serving the Union.
- The salaries and allowances of the judges of Supreme Court and High courts may also be reduced by the President.