

Emergency provisions

The **Emergency provisions** are written in **part XVIII** of the constitution from **article 352 to 360**. These are given to manage outstanding conditions like war or rebellion. The reason behind the incorporation of these provisions in the constitution is to safeguard the integrity, sovereignty and security of the country, etc.

The Emergencies provisions are influenced by the **German constitution**.

Types of Emergencies

Emergency provisions are written in Article 352 to Article 360 of the Indian Constitution.

- 1. National emergency (Article 352)**
- 2. State emergency (Article 356)**
- 3. Financial emergency (Article 360)**

1. National Emergency

- It can be declared by President due to **war / external aggression [external emergency]** or **armed rebellion [internal emergency]**.
- A proclamation can be issued for many grounds. It can be issued when an already existing proclamation is in force too.
- National Emergency can apply to the entire country or a part of the country.
- President can announce a national emergency even before the actual occurrence of war or external aggression or armed rebellion if he is satisfied that there is imminent danger.
- The President can declare this only after the written recommendation of the entire cabinet.
- The proclamation by the President can be subject to **judicial review**.

Parliamentary Approval

- The proclamation must be approved by both houses of the Parliament within one month by a special majority.
- This extends the life of National emergency by six months at a time, can be done multiple times.
- In case of dissolution of Lok Sabha, the approval of proclamation or extension of its life can be done by Rajya Sabha.
- The proclamation survives till 30 days after the first sitting of the newly reconstituted Lok Sabha.
- The proclamation can be revoked by President anytime [this doesn't need parliament ratification]. Also, It can be revoked by Loksabha, with a simple majority. This means Rajya Sabha has no role in revocation.

Effects of National Emergency

- The centre can issue executive directions to states on any matters. State governments are not suspended during this time. Parliament has the power to make laws on matters in the state list.
- If Parliament is not in session president can pass ordinances on the subjects of state list.
- Parliament can also give powers and duties to the centre to carry out tasks under its extended jurisdiction. These legislative actions become ineffective within six months of the emergency stops to operate.
- These laws apply even to states where the emergency isn't imposed.



- President has the power to modify the distribution of revenues between the centre and states until the end of the financial year when the emergency is over. Such orders have to be laid before Parliament.
- Parliament by law has the power to extend the term of Lok Sabha and State legislative assembly by one year at a time [any number of times]. This becomes ineffective by the end of 6 months of emergency ends.

Impact on Fundamental Rights

- Under **article 358**, all fundamental rights mentioned **under Article 19**, i.e. Right to Freedom, are automatically suspended when a proclamation of national emergency on external grounds [not armed rebellion] is declared. This action applies to the whole country, not a part of the country.
- Any law can be passed that infringe these rights but not any other, such a law can't disapprove till the emergency is in force. Any action as per laws also remains above judicial remedy even after the end of the emergency.
- Under the article 359, a presidential order can be passed disallowing people from seeking a judicial remedy to enforce other fundamental rights, i.e. **article 14-32** that are specified in that order '**except article 20&21: the right to life and liberty**' for a specific period only.
- The rights remain in force, but the right to seek remedy is suspended. The state can make laws abridging the fundamental rights mentioned in the order such laws can't be challenged in court. Any executive action under such laws is also protected. Presidential order has to be approved by both houses. **Article 359** is available even during the national emergency on armed rebellion. The presidential order can apply to the whole country or a part of the country.

2. Presidents Rule

- When the constitutional machinery breaks down in a state, the president rule is imposed by the centre. This can be proclaimed if the President is satisfied that the governance of a state can't be carried in accordance with the constitution.
- In this case, the President can act with or without the governor's report. Also, when a state doesn't follow any directive from the centre, the President's rule can be imposed.
- Parliament has to approve the proclamation within two months in both houses by a simple majority. The rule can be extended by **six months** at a time for a **maximum of 3 yrs.**
- If Lok Sabha is dissolved Rajya Sabha can approve it, but Lok Sabha has to approve too within **30 days** of first sitting after it's been reconstituted. Beyond the first year, President's rule can be extended six months at a time only if a national emergency is proclaimed in the country or any part of the state. Election commission certifies that elections can't be held in the state.
- Presidents proclamation can be revoked by President anytime [this doesn't need Parliament's approval]. Parliament on its own can't revoke President's rule.
- It also doesn't affect fundamental rights or powers of the high court. All legislative and executive power of the states assumed by the President and the state executive is dismissed and legislature dissolved or suspended.
- Governor acts as the President's agent and works with the help of chief secretary or advisors appointed by the centre. Parliament can assume legislative powers with itself or delegate to the President or other authority. It can make laws on state list matters for the state only. President can issue ordinances on state list matters or make expenditure from the state budget if Parliament not in session.
- Presidential proclamation imposing President's rule is subject to judicial review.



3. Financial Emergency

The third sort of Emergency is Financial Emergency provided under Article 360. It says that if the President is satisfied that the financial stability or credit of India or any of its part is in danger, he may declare a state of Financial Emergency. Under such circumstances, the executive and legislative powers will go to the centre. Similar to the other two types of emergencies, it has added to be approved by the Parliament. It must be endorsed Parliament's both houses within two months. This type of emergency can operate as long as the situation exists and may be revoked by a subsequent proclamation.

This article has never been invoked.

A Proclamation issued under Art. 360

(a) Can be revoked or varied by a subsequent Proclamation

(b) It 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.

Effects of Financial Emergency

1. The Union Government may give guidance to the States related to financial matters.
2. The President may ask the States to cut down the salaries and allowances of all or any class of Government employees.
3. The President may ask the States to reserve all the money bills for the the Parliament's consideration after they have been passed by the legislature of the state.
4. The President may also give directions to reduce the salaries and allowances of the Central Government employees, including the Judges of the Supreme Court and the High Courts.

