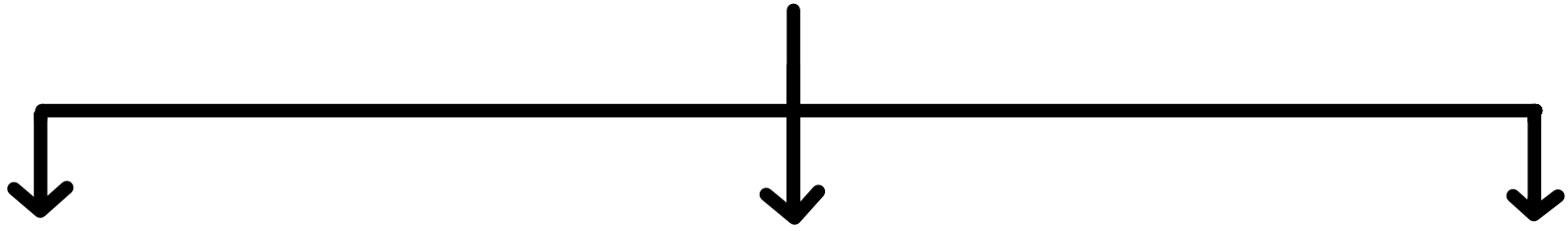


# Emergency Provisions

(Part XVIII: A. 352 to 360)



## National Emergency (Article 352)

- Grounds of Imposition
- Applicability
- Judicial Review
- Cabinet Approval
- Parliamentary Approval
- Duration and Extension
- Approval Process
- Revocation of Proclamation
- Effects of National Emergency
- Use of Article 352 so far

## President's Rule (Article 356)

- Grounds of Imposition
- Parliamentary Approval
- Duration
- Revocation
- Restrictions
- Effects of President's Rule

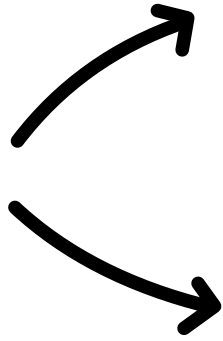
## Financial Emergency (Article 360)

- Grounds of Declaration
- Parliamentary Approval
- Duration
- Effects of Financial Emergency

# National Emergency (A. 352)

## Grounds of Imposition

(Can be declared before actual occurrence if there is imminent danger)



War or External Aggression: External Emergency

Armed rebellion: Internal Emergency (44th CAA, 1978 replaced the word 'internal disturbance' with 'armed rebellion')

## Applicability

- Can be imposed on the entire country or a part of it

## Cabinet Approval

- Need mandatory written recommendation of the Union Cabinet required
- Introduced by 44th CAA, 1978 to prevent unilateral action by the Prime Minister

## Parliamentary Approval

- Must be approved by both the Houses of Parliament within 1 month (Reduced from 2 months by 44th CAA, 1978)
- If Lok Sabha is dissolved, emergency survives 30 days from the 1st sitting of the newly elected Lok Sabha provided Rajya Sabha has approved it

## Judicial Review

- 38th CAA, 1975 made it immune from judicial review
- 44th CAA, 1978 restored judicial review
- Minerva Mills Case, 1980: SC ruled that emergency can be challenged on grounds of Mala fide intent, irrelevant facts or absurdity

## Duration & Extension

- Once approved, emergency last for 6 months
- Can be indefinitely extended with Parliamentary approval every 6 months (added by 44th CAA, 1978)

## Approval Process

- Requires special majority (Introduced by 44th CAA, 1978): Majority of total membership of the House and 2/3rd of members present and voting

# Revocation of Proclamation of National Emergency

## Presidential Revocation

- President can revoke emergency anytime via a subsequent proclamation
- No parliamentary approval needed for revocation

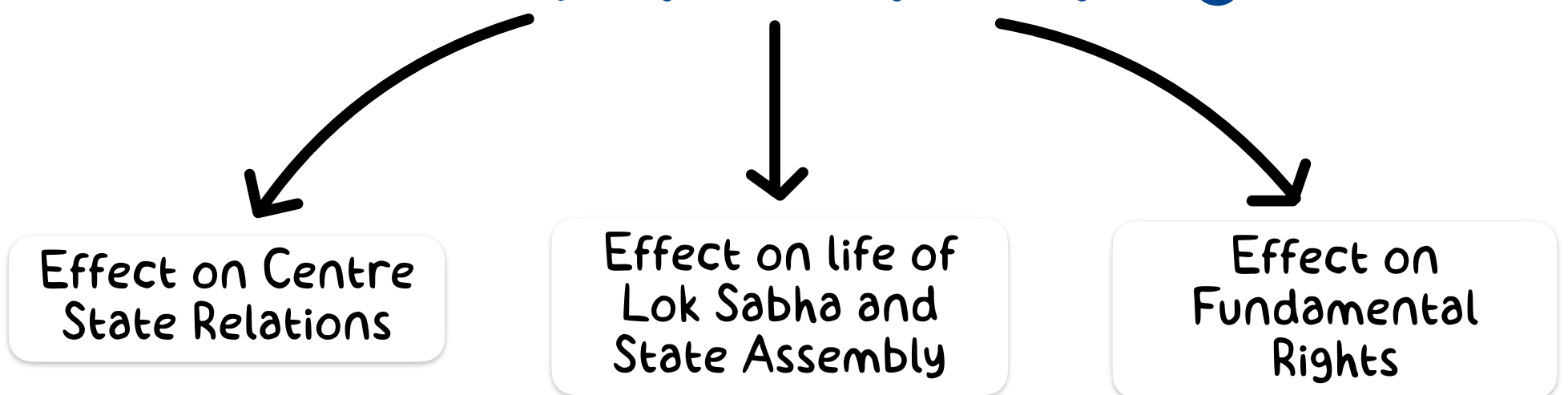
## Revocation by Lok Sabha (44th CAA, 1978)

- Mandatory revocation if Lok Sabha passes a resolution disapproving continuation
- 1/10th of Lok Sabha members can demand a special sitting (within 14 days) to consider disapproval

## Difference between Approval and Disapproval Resolutions

- Disapproval: Passed only by Lok Sabha with a simple majority
- Approval: Requires both Houses and a special majority

## Effects of National Emergency



## Effects on Centre State Relations



### Executive Changes

- Centre can direct states on any matter
- State governments continue but under Centre's complete control

### Legislative Changes

- Parliament gains power to legislate on State List subjects
- State Legislature remain but their power is overridden by Parliament
- Parliamentary laws on state subjects lapse 6 months after emergency ends
- President can issue ordinance on State List subjects if Parliament is not in session
- Parliament can delegate powers to Centre's officers even in state matters
- 42nd CAA, 1976: These provisions apply to all states not just those under Emergency

### Financial Changes

- President can alter Centre-State financial distribution
- Funds to states can be reduced or stopped until the end of the financial year when Emergency ends
- Parliament must be informed of any such financial modifications

## Lok Sabha Extension

- Normal 5 year term can be extended by 1 year at a time by Parliament
- No limit on the number of extensions during Emergency
- Maximum Extension: 6 months after the emergency ends

## Effects on life of Lok Sabha and State Assemblies

## State Legislative Assembly

- It can be extended by 1 year at a time
- Maximum Extension: 6 months after the emergency ends

## Effects on Fundamental Rights

- Article 358 and Article 359 regulate the suspension of Fundamental rights during emergency
- Article 358 deals with the Article 19 (six freedoms) and Article 359 deals with other fundamental rights (except Article 20 and 21)

Whenever a national emergency is proclaimed, the six freedoms under Article 19 are automatically suspended

Government can make laws or take actions that violate Article 19 and they cannot be challenged in court

### Article 358

#### Post Emergency:

- Article 19 revives automatically after Emergency ends
- Laws made during Emergency become invalid if inconsistent with Article 19
- No legal remedy for past actions taken during Emergency

#### 44th CAA, 1978 (Restrictions):

- Article 19 can be suspended only in case of war and external aggression and not for armed rebellion
- Only emergency related laws and executive actions are protected not all laws

## Presidential Order

- President can issue an order suspending the right to move courts for enforcement of fundamental rights except Article 20 and 21
- Fundamental Rights theoretically remains intact but the right to move courts is taken away
- Applies only to rights specified in the Presidential Order and not all rights
- No legal remedy for violations committed during Emergency period

### Article 359

## 44th CAA, 1978 (Restrictions)

- Rights under Article 20 and 21 cannot be suspended
- Only emergency related laws are protected and not all laws

### Article 358

Applies only to Article 19

Automatically suspends A.19 during emergency

Operates only in an External Emergency (war or external aggression)

Applies to the whole country

Suspends Article 19 completely

### Article 359

Extends to all FR's except A.20 and 21

Does not suspend rights but only their enforcement through a presidential Order

Operates in both Internal and External Emergency

May apply to the whole or any part of country

Cannot suspend Article 20 and 21

## Use of Article 352 So far

Till now, national emergency has been declared 3 times: 1962 (India China War); 1971 (Bangladesh war); 1975 (Declared on grounds of internal disturbance)



# President's Rule (A. 356)

**Article 355:** Centre has a duty to ensure state governments function as per the Constitution

**Article 356 (President's rule):** Invoked when a state government fails to function constitutionally

## Grounds of Imposition



**Article 356:** President can act if satisfied that a state government cannot function as per the Constitution (with or without Governor's report)

**Article 365:** If a state fails to comply with Centre's directions, President can assume failure of constitutional machinery in states

## Parliamentary Approval

- Must be approved by both the Houses of Parliament within 2 months
- If Lok Sabha is dissolved, the rule survives until 30 days from its first sitting after reconstitution (if Rajya Sabha approves it)

## Revocation

- President can revoke President's rule at any time via a new proclamation
- President's rule cannot be revoked by Lok Sabha by passing a resolution

## Duration

- Once approved, valid for 6 months
- Can be extended up to 3 years with Parliamentary approval every 6 months

## Restrictions

- President Rule can be extended beyond 1 year (44th CAA, 1978) only if following 2 conditions are fulfilled:
- National Emergency is in operation
  - Election Commission certifies that elections cannot be held

## Effects of President's Rule

### State Executive

- State Council of Ministers is dismissed.
- Governor administers on behalf of the President

### State Legislature

- State legislature is either suspended or dissolved and legislative powers are transferred to the Parliament
- Parliament may delegate state law making power to the President or any authority
- Laws made during President rule continues unless repealed by state legislature later
- President can authorise expenditure from Consolidated Fund of State when Lok Sabha is not in session

### Judiciary

- High Court powers remain unaffected
- President cannot assume judicial powers

Imposition of President Rule has no effect on the Fundamental Rights of citizens

Since 1950, the President's rule has been imposed more than 125 times i.e on an average twice a year. Further, this provision has been used arbitrarily for political or personal reasons. Hence, Article 356 has become one of the most controversial and most criticised provision of the Constitution



# Financial Emergency (A. 360)

This article has not been used till now i.e no financial emergency has been declared so far though there was a financial crisis in 1991

## Grounds of Declaration

- A. 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 decision of the President in declaring Financial Emergency is final and conclusive but it is subject to judicial review

## Parliamentary Approval and Duration

- Parliamentary Approval: Must be approved by both the Houses within 2 months
- If Lok Sabha is dissolved: Proclamation survive up to 30 days from the first sitting of the reconstituted Lok Sabha, provided Rajya Sabha has approved it
- Duration: Continues indefinitely once approved with no maximum prescribed
- No repeated approval: Does not require periodic parliamentary approval
- Approval process: Passed by a simple majority (50% of members present and voting)
- Revocation: President can revoke it anytime via a new proclamation without parliamentary approval

## Effects of Financial Emergency

- Centre's authority: Can issue directions to states on financial propriety and other necessary measures
- State level measures: Directions may include salary reductions for state employees and reserving financial bills for President's consideration
- Union level measures: President can order salary reductions for Union employees and judges of Supreme Court and High Courts
- Financial Control: Centre gains complete financial complete over states