

- The emergency powers under Article 352 had been **used thrice before**. During the Chinese aggression in 1962, when hostilities broke out with Pakistan in 1971 and in 1975 when the Indira Gandhi govt declared that a “grave emergency exists whereby the security of India is threatened by ‘internal disturbance’.”
- The 1975 Emergency was accompanied not merely by the **suspension of fundamental rights and resort to preventive arrests, but by brazen legislative adventurism**.
- The **Emergency provisions contained in the Government of India Act, 1935, under which the Governor-General could issue a proclamation of emergency, but it had to be approved by both Houses of British Parliament**.
- Three types of emergency — Under **Article 352** if the security of the country, or if any part of its territory, is threatened by war or external aggression or internal disturbance, secondly under **Article 356**, invoked against a State government if there is a breakdown of constitutional machinery and, thirdly, under **Article 360**, which deals with ‘financial emergency’.
- **Financial emergency is a contingency that has never arisen since the inception of the Constitution**.
- **Emergency declared in the wake of the Bangladesh liberation war of 1971 was still in operation in 1975 when a fresh proclamation was issued on the ground of internal disturbance. And this was done first and the Cabinet met only the next day, June 26, to approve it.**
- **Constitution bars courts from going into the question whether any, and if so what, advice was given to the President by the Cabinet.**
- The enactment of the **44th Amendment mandated that “internal disturbance” should reach the stage of “armed rebellion”** threatening national security in order to declare a state of public emergency.
- The **detention of these opposition members was done for a sinister purpose, to drastically reduce the participative strength of Parliament**.
- **39th amendment placed any dispute to the election to the office of the Prime Minister, President beyond the scope of judicial review**.
- **The 40th amendment placed crucial land reforms in the Ninth schedule, beyond the scope of judicial review**.
- The **41st Amendment said no criminal proceedings “whatsoever” could lie against a President, Prime Minister, or Governor for acts before or during their terms of office**.
- In the **42nd amendment, the Parliament expanded its powers to amend the Constitution, even its ‘basic structure’ and curtail any fundamental rights**.
- **Constitution drafters working amid the turmoil of Partition had successfully argued that the fledgling state’s executive needed extraordinary powers without judicial interference to deal with exceptional circumstances.”**
- Part XVIII – art 352 – 360

- Central govt becomes all powerful & states go into total control of centre
- **Federal to unitary structure – without amendment**
- **“Indian polity is framed to work federal in normal times while in emergency it is designed to work through unitary system –other federal systems like America cannot change their form with changing circumstances” – Dr. B.R. Ambedkar**
- Art 352 – **War, external aggression or armed rebellion** – proclamation of emergency (constitutional term).
- Art. 356 – **Emergency due to failure of constitutional machinery** in state – President’s rule / state emergency / constitutional emergency – **no ‘emergency’ word has used for this provision in constitution.**
- Art 360 – **Financial emergency due to threat to financial stability or threat to credit of India.**
- Art 352 – **President can declare emergency when security of India or a part of it – can declare before the actual occurrence of war/ external aggression/ armed rebellion - can issue different proclamation** even if other proclamation issued by him is in operation if there is an imminent danger – **added by 38th amendment act 1975.**
- **National emergency on the basis of war /external aggression – external emergency**
- **When emergency proclaimed on the grounds of armed rebellion – internal emergency**
- **42nd amendment of 1976 empowered President to limit operation of national emergency to a specified part of India**
- **Originally constitution mentions ‘ internal disturbances’ as the third ground of emergency – 44th amendment act 1978 substituted the words ‘armed rebellion’ for ‘internal disturbances’**
- **President can proclaim national emergency only after receiving a written recommendation from the cabinet** – means concurrence of cabinet is necessary – not merely on the advice of the PM
- **1975 emergency –without concurrence of cabinet – 44th amendment 1978 act introduced necessity of concurrence of cabinet in emergency proclamation**
- **38th amendment act of 1975 made declaration of emergency immune from judicial review – deleted by 44th amendment act 1978 – Minerva Mills case 1980 – SC : Proclamation of national emergency can be challenged in a court on ground of malafide or declaration was based on wholly extraneous & irrelevant facts or is absurd or perverse**
- **Proclamation needs approval by both houses of Parliament within one month from the date of its issue – originally this period was two months - reduced by 44th amendment act 1978**
- **If L.S. is dissolved after emergency proclamation then the period of one month will be considered from the first sitting after reconstitution of L.S. , but R.S. should have approved it in meantime**
- **After Parliamentary approval emergency lasts for six months – can be extended to an indefinite period with Parliamentary approval in every six months – this periodical approval added by 44th amendment act of 1978**
- **Special majority was introduced for emergency approval in 44th amendment act of 1978**

- **Revocation of proclamation by President anytime can be done without Parliamentary approval**
- **President must revoke a proclamation if L.S. passes a resolution disapproving its proclamation (44th Amendment)**
- **If one tenth of members of L.S. give a written notice to the speaker or President if house is not in session – a special session of the house to be held in 14 days from the date of notice , for considering resolution disapproving continuation of proclamation (44th amendment).**
- **Resolution of disapproval of continuation of emergency is to be passed by L.S. only , adopted by simple majority**
- **During emergency the executive control of the state goes to central executives – in terms of any matter**
- **Legislative control of centre- Parliament empowered to make laws in state list – while states legislative power is not suspended but it becomes subject to overriding power of parliament**
- **Laws made by parliament on state subjects during emergency becomes inoperative six months after proclamation of emergency has ceased to operate**
- **When Parliament is not in the session , while proclamation of emergency is in operation , President can issue ordinances on state subjects**
- **Parliament can confer powers & impose duties upon centre , its authorities & officers in respect of matters outside the union list**
- **Legislative & executive extension of central power during emergency extends to other states where emergency is not in operation – 42nd amendment**
- **During emergency President can modify the distribution of revenue between centre & state – modifications will continue till the end of the financial year in which emergency ceases to operate – such Presidential orders have to laid before Parliament**
- **During proclamation of emergency the term of L.S. can be extended by law of Parliament for one year at a time – extension cannot continue after six months after emergency ceased to operate – 1971-77 , term of L.S. extended twice during emergency**
- **Parliament can extend the term of state assembly during emergency for one year at a time till six months from the date on which emergency ceases to operate**
- **Art 358 – suspension of F.R. guaranteed under art 19. while art 359 deals with suspension of F.R. except those guaranteed under art 20 & 21**
- **Legal & executive actions taken during emergency cannot be challenged even after the emergency ceases to operate**
- **44th amendment act 1978 restricted scope of art 358 – 6 F.R.s under art 19 can be suspended only during proclamation of national emergency on the grounds of external aggression & not on the grounds of armed rebellion – laws related with emergency are protected from being challenged & no other laws - executive action taken under such law is protected**
- **Art 359 authorises the President to suspend the right to move any court for enforcement of F.R. during national emergency – means only enforcement is suspended & not the rights**

- Suspension of those F.R. that are specified in the presidential order – this order should be laid before the Parliament for approval
- Legislative & executive actions taken during emergency cannot be challenged even after the emergency ceases to operate
- 44th amendment act restricted scope of art 359 – President cannot suspend the right to move to court for enforcement of F.R. guaranteed under art 20 & 21
- Art 358 is confined to the F.R.s guaranteed under art 19 while art 359 applies to all FRs whose enforcement is suspended by presidential order.
- Art 358 automatically suspends the FRs under art 19 with the declaration of emergency – art 359 does not suspend FR automatically - it empowers president to suspend enforcement of specified FRs
- Art 358 operates only in case of external emergency – art 359 operates in both emergencies
- Suspension of FRs under art 19 is for entire period of emergency in case of art 358, while suspension of FRs under art 359 can be for specified period or for complete span of emergency
- Art 358 extends to entire country & art 359 can be extend to a specific region & or entire country
- Both provide immunity from challenge , to laws related to emergency & not other laws
- Shah commission was set up in 1977 by Janta Party govt to investigate the circumstances of declaration of emergency – commission did not justify the declaration of emergency hence in 1978 , 44th amendment act was enacted
- Art 355 imposes duty on centre to ensure that govt of every state is carried in accordance with provisions in constitution – art 356 – failure of constitutional machinery in state
- Art 365 – when state fails to comply with the centre
- President's rule needs approval of both the houses of parliament within two months of the issuance date – if LS is dissolved then the proclamation will be survived for 30 days from date of reconstitution
- Approval from both the houses of parliament can extend the president's rule by six months – maximum extension can be given till three years
- Failure to comply with the state - if a state government face to avoid the administrative direction given by the central government according to the article 365 of the Indian Constitution.
- In the case of Mumbai in 1994 the supreme court held that the secularism is one of the basic structure of the constitution and if a state government fails to abide by it are it unable to protect it or subvers it then it has to be considered that break down of the constitutional machinery in the state.

PRESIDENT'S RULE

- Every resolution approving proclamation of president's rule or its continuation can be passed in both the houses of Parliament with simple majority
- 44th amendment act introduced new provision to restraint on power of Parliament to extend a proclamation of president's rule beyond one year –can be extended by 6 months at a time when ,

proclamation of national emergency is in operation in nation or state & if election commission has certified that the elections to legislative assembly cannot be held

- **Proclamation of president's rule may be revoked by president anytime – does not require approval of Parliament**
- **Art 355 has not undergone any amendment. it was suggested by Sarkaria Commission on Centre-State relations - Union to decide whether the situation in a State calls for deployment of the Central forces**
- **B.R. Ambedkar : "It shall be the duty of the Union to protect every unit and also to maintain the Constitution so far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution.**
- **President in President's rule acquire functions of state govt & governor & any other authority in the state**
- **President can declare that the power to legislate on state are to be exercised by Parliament**
- **President can suspend any provision of constitution relating to any authority of state during proclamation of emergency**
- **Under president's rule the state council of ministers with CM is dismissed by president – governor on behalf of president carries on administration with the help of chief secretary of the state or advisors appointed by president**
- **During president's rule parliament passes state legislative bills & state budget**
- **When state legislative assembly is dissolved under president's rule – Parliament can delegate power to make laws for state to president or any other authority specified by him – parliament or in case of delegation the president can make laws conferring & imposing duties –President can authorise expenditure from state consolidated fund pending its sanction by parliament when LS is not in session – he can promulgate ordinances in such situations**
- **Laws made by Parliament or president or any authority continues to be operative even after president's rule – can be repealed or altered or re-enacted by state legislature**
- **Constitutional position , status, powers & functions of concerned state high court remains same even during the president's rule**
- **First time president's rule was used in Punjab in 1951 – In 1977 Janta Party came to power – imposed president's rule in 9 states where Congress was in rule**
- **Dr. Ambedkar called art 356 , a dead letter , expecting that it will be never in operation**
- **38th amendment act 1975 made satisfaction of the president in invoking art 356 final & conclusive – could not challenge in court – 44th amendment act – presidents satisfaction is not beyond judicial review**
- **S.R. Bommai case (1994) – Judicial review –burden lies on centre to prove the relevant material exists for president's rule – court cannot go into correctness or adequacy but can find the relevance – if proclamation of president's rule is invalid , it has power to restore the dismissed state govt & revive the state assembly , if it is dissolved – assembly can be dissolved only after**

approval of parliament to president's rule proclamation –in case if parliament failed to approve proclamation then the assembly will reactivate

- Secularism is the basic structure of the constitution , hence state govt pursuing anti- secular politics is liable to action under art 356 – S.R. Bommai case
- Question of the state govt losing confidence of legislative assembly – should be decided on the floor of house – till then ministry should not be unseated – Bommai case
- Power under art 356 is an exceptional power & should be used only occasionally to meet requirements of special situations
- Hung assembly , majority party declined to form ministry, ministry resigned after defeat & no other party is able to form ministry, state's failure to comply with centre , internal subversion , physical breakdown – President's rule is applicable
- Where governor makes his own assessment of the support of the ministry in the assembly & recommends imposition of president's rule without allowing the ministry to prove its majority on the floor of the assembly – president's rule is not applicable.
- Art 360 – financial emergency - 38th amendment – no judicial review – deleted by 44th amendment – needs parliamentary approval for proclamation within two months of issue – in case of dissolution of LS , proclamation survives for 30 days from the first sitting after reconstitution – RS should approve in meantime .
- There is no maximum period prescribed for operation of financial emergency – repeated parliamentary approval is not required for its continuation
- Financial emergency resolution can be passed by either house of parliament - simple majority – revocation does not require parliamentary approval.
- Under financial emergency- central executive control extends to directing states to observe financial propriety – to directions as president may deem necessary – reduction in salaries – reservation of money bills / financial bills for consideration of president
- Financial emergency provision pose a serious threat to financial autonomy of the states – H.N. Kunzru
- Art. More or less follows the pattern of ' National Recovery Act 1933 of USA – which empowers president to make similar provisions in order to remove difficulties , that had overtaken Americans out of the financial & economic difficulties during the great depression – Dr. B.R. Ambedkar
- No financial emergency has declared so far though there was financial crisis in 1991
- Criticism - emergency provisions destroys the federal character of the constitution making it more unitary – union executive becomes more powerful – president will become a dictator – financial autonomy of states will nullified – FRs will turn meaningless.
- H.V. Kamath : I fear that by adding this single chapter we are seeking to lay foundation of a totalitarian state , a police state, a state completely opposed to all the ideals & principles that we held aloft during last few decades ”
- The travails of Article 356 began in 1951 when Nehru kept Punjab Assembly in suspension for nine months & 28 days - The classic mal-imposition of President's Rule in Kerala in 1959 was done in

the name of a breakdown in law & order. When the Janata Government came into power in 1977, President's Rule was imposed on 9 Congress(I)-ruled States - Congress(I) returned the compliment when it returned to power in 1980 - Supreme Court approved these impositions.

- The removal of several Governments after destruction of Babri Masjid in 1992 were on the grounds of a failure of 'secularism' & 'law and order' - despite brave jurisprudential assertions - HC & SC did not interfere.
- After 44th Amendment, President's Rule could not be imposed for more than one year. But, in the case of Uttar Pradesh in 1995-96 even that barrier was broken by a devious constitutional trick. With both courts & Parliament reluctant to interfere- In 1998, President used his referral power to send back a proposed imposition of Central Rule in Bihar.
- 'Law & order' seems to have become a favourite basis for destabilising State Govts. Indeed, when the predecessor provisions of the Government of India Act, 1935, were being discussed in the House of Commons, Mr. Winston Churchill suggested that a breakdown of law & order should be arranged everywhere so that Governor General's Rule could be imposed all over India- similar situations can be witnessed in free India
- T. T. Krishnamachari : "by means of these provisions of emergency , the President & the Executive would be exercising a form of constitutional dictatorship"
- Sir Alladi Krishnaswamy Ayyar : " the very life-breath of the constitution "
- Mahabir Tyagi : "Emergency provision would work as a safety valve & thereby help in the maintenance of the constitution "
- Dr. B.R. Ambedkar : " I do not altogether deny that there is a possibility of the articles being abused or employed for political purposes "
- According to the Sarkaria commission, before invoking art 356, approval of Parliament is to be secured – governor's report should be the speaking document .
- Under art 356 , the President acts on the report of the Governor – President can act even without the Governor's report
- From 1966 to 1977 President's rule was used 39 times
- In 1997 the then President of India K.R. Narayanan declined approval of President's rule in U.P. by United Front govt headed by P.M. I.K. Gujral – In the 1998 he declined the similar proposal from Bihar Governor.
- K.R.Narayanan Minute – President advised central govt that a case of breakdown of constitutional machinery would not be made out unless, the Centre had elicited explanations & sent out directives & warnings to the state govt.
- The State cannot declare the economic slowdown caused by the pandemic a "public emergency" to curtail the rights of people.
- The pandemic had not resulted in an 'internal disturbance' of a nature that posed a 'grave emergency' whereby the security of India was threatened.
- Justice Chandrachud observed: "We find that the economic slowdown created by the COVID-19 pandemic does not qualify as an internal disturbance threatening the security of the State... **Unless the threshold of an economic hardship is so extreme that it leads to disruption of public order and**

threatens the security of India or of a part of its territory, recourse cannot be taken to such emergency powers which are to be used sparingly under the law”.

- Blanket notifications issued by the Gujarat government denying factory workers overtime wages during the lockdown period from April to July 2020. It did this by invoking its powers of declaring a public emergency under Section 5 of the Factories Act. The trade unions appealed to the Supreme Court for relief.

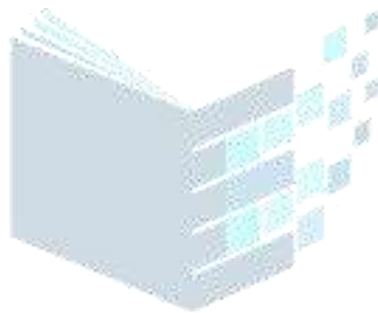
RULE 12

- To revoke President’s Rule, the government has used a special Section in the Union government’s Transaction of Business Rules, which allows for revocation of President’s Rule without Cabinet approval if the Prime Minister “deems it necessary”.
- Rule 12 of the Government of India (Transaction of Business) Rules, 1961, allows the Prime Minister to depart from laid down norms at his discretion.
- Titled “Departure from Rules”, Rule 12 says, “The Prime Minister may, in case or classes of cases permit or condone a departure from these rules, to the extent he deems necessary.”
- The Cabinet can subsequently give post-facto approval for any decision taken under Rule 12.
- Rule 12 is usually not used to arrive at major decisions by the government. However, it has been used in matters such as withdrawal of an office memorandum or signing of MoUs in the past.
- The last big decision taken through the invocation of Rule 12 was re-organisation of the state of Jammu and Kashmir into the Union Territories of Jammu and Kashmir, and Ladakh
- The revocation of President’s Rule without Cabinet approval is done in Maharashtra under the rule 12
- There are important lessons that can be drawn from the experience of the Emergency that are applicable to the current situation in India. Draconian laws curbing Fundamental Rights, including the provision for preventive detention and the colonial-era sedition law, continue to remain on the books.
- Stigmatization and speculative interpretation of constructive opposition as anti national rhetoric and the use of national security issues for electoral gain, reminds one of the 1970s.
- Article 256 of the Constitution obligates the State government to ensure implementation of the laws made by Parliament. If the State government fails to do so, the Government of India is empowered to give “such directions to a State as may appear... to be necessary”. The refusal to enforce the law even after the Centre issues directions would empower the President to impose President’s Rule in those States under Articles 356 and 365.
- The president should exercise the drastic power under art 365 in a reasonable manner with due care and circumspection and not mechanically.
- Article 365 acts as screen to prevent any hasty resort to the drastic action under Article 356 in the event of failure on the part of a state government to comply with or to give effect to any constitutional direction given in the exercise of the executive power of the union

INTERNATIONAL REVIEW OF STATE EMERGENCY

- **Art. 15 of European Convention of Human Rights and Art. 4 of International Convention of Civil and Political Rights accept that a public emergency has to exist as a matter of objective fact which is reviewable when the States submits to the jurisdiction of an international body.**
- **The important question to be resolved is the claim by States that international bodies lack the competence necessary to analyse emergencies since they are a matter pertaining to the domestic jurisdiction of the states.**
- **Article 15 of ECHR involves very sensitive issue of invocation of Article 15 by domestic governments. Article 15 excuses government for committing violation.**
- **The European Convention Control Mechanism has great significance as far as the power of States relating to state of emergency is concerned. Power to derogate from the international obligation has been scrutinized by the European Commission and also by the European Court.**

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