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Emergency



Emergency

- Emergency Provisons are mentioned under Part XVIII of the Constitution in Article: 352-360
- They are borrowed from the Weimar Constitution of Germany.



There are three types of Emergency:

1. National Emergency (Art. 352)
2. State Emergency (President's rule; Art. 356)
3. Financial Emergency; Art. 360)

Article 352: National Emergency

Proclamation

- Proclamation of Emergency is made by the President after receiving a decision from Cabinet. (44th amendment)
- Proclamation must be approved within 1 month from the date of its issue by both the Houses of the Parliament with a Special Majority.
- If approved it continues for 6 Months & can be extended to an indefinite time period after the approval of Parliament after every 6 Months.

Minerva Mills Case vs Union of India, 1980:

Proclamation of emergency is subject to Judicial Review.

The term "Cabinet" was inserted in Art 352 of Constitution in 1978 by the 44th Constitutional Amendment Act.

Grounds of Proclamation

- War
- External Aggression
- Armed Rebellion: This term was inserted by the 44th Amendment, 1978. Before that it was known as Internal Disturbance.

Revocation

- Emergency can be revoked any time by the President without any requirement for Parliamentary approval.
- But, if Lok Sabha passes a resolution just by Simple Majority approving the discontinuation of Emergency then in that case President must revoke the Emergency.

Effects of National Emergency.

1) Effects on Centre State Relations

- **Federal system becomes Unitary in nature**

  During Non-emergency times centre can give directions to state on some specified matters but during Emergency it can give directions on any matter.

- During Emergency Parliament is empowered to make laws on any subject mentioned in the state list. (These laws become inoperative 6 months after Emergency ceases to operate.)

2) Effects on the Life of Lok Sabha and Legislative Assembly

- It may be extended for 1 year at a time, but this extension cannot continue beyond a period of 6 months after the emergency has ceased to operate.

3) Effect on Fundamental Rights

Article 358	Article 359
• It deals with suspension of FRs guaranteed by Article 19. • Article 19 can only be suspended on the grounds of war and external aggression and not in case of armed rebellion.	• It deals with suspension of other FRs. • It empowers the President to suspend "Right to move any court" for enforcement of FRs except Article 20 and 21. (Can never be suspended.)

National Emergencies Declaration Till Now

1962: Indo-China War (Oct 1962-1968)

↳ Then PM was Jawahar Lal Nehru

1971: India and Pakistan War

↳ Then PM was Indira Gandhi

1975: Internal Disturbances (1975-1977)

↳ Then PM was Indira Gandhi and President was Fakruddin Ali Ahmed

25th June: Samvidhan Hatya Diwas

Article 355

- Duty of Centre to protect every state against external aggression.
- Article 355 act as the foundation for the centre to intervene in a state under Article 356 when necessary, creating a clear correlation between two provisions.

Article 356 : President's Rule

In case of State Emergency/ Constitutional Emergency

Grounds

- If a situation has arisen in which the government of the state cannot be carried on, in accordance with the provisions of the Constitution.
- Whenever a state fails to comply with or to give effect to any direction from the centre.

Proclamation

By the President of India which can be done only after cabinet approval. (44th CAA, 1978)

Revocation

- Any time by the President, no need of Parliamentary approval or
- If LS passes a resolution through Simple Majority.

Approval

- Must be approved by both the Houses of Parliament with a simple majority within 2 months from the date of its issue.
- If approved it continues for 6 months and can be extended for a maximum period of 3 years.

Consequences

- President can take up the functions of Governor.
- Parliament can take up the functions of State Legislature Executive is dismissed and Legislature is either suspended or dissolved.

There is no effect on FRs during president's rule.

Use of Article 356

- For the 1st time President Rule was imposed in Punjab in 1951.
- Manipur has undergone the President's Rule the most number of times(11).
- In Uttar Pradesh, President Rule was imposed 10 times.

S. R. Bommai Case (1994)

Significantly curtailed the misuse of Article 356 and held that President's rule is subject to Judicial Review.

B. R. Ambedkar about Article 356:

"It should be used as a last resort and as a means of final recourse."

Article 360: Financial Emergency

Proclamation

- Article 360 empowers President to proclaim a Financial Emergency if he is satisfied that financial stability of India or any of its part has been threatened.
- It is approved by the Parliament within 2 months by a Simple Majority (same as President's Rule)
- No Financial Emergency has been imposed till now.
- During the Financial Emergency, the President can ask the States to reduce the salaries and allowances of all or any class of person in government services.

Committees that deal with Centre-State Relations

- Sarkaria Commission: 1983
- Punchhi Commission: 2007
- Rajmannar Commission: 1969 (setup by Tamil Nadu govt.)

Inter-State Council (ISC)

- Article 263 of the Indian Constitution establishes the Inter-State Council (ISC) to address inter-State issues and foster harmonious relations between the States and the Union.

Composition of the Inter-State Council:

- Chairman: Prime Minister
- Members:
- Chief Ministers of all States
- Chief Ministers of Union Territories with Legislative Assemblies
- Administrators of Union Territories without Legislative Assemblies
- Six Cabinet Ministers nominated by the Prime Minister of India.

Zonal Councils

- Zonal Councils are the statutory (and not the constitutional) bodies.
- They are established by an Act of the Parliament, States Reorganisation Act of 1956.
- The act divided the country into five zones- Northern, Central, Eastern, Western and Southern and provided a zonal council for each zone.

Composition of the Zonal Council:

- Chairman: Union Home Minister
- Vice Chairman: Chief Ministers of the States included in each zone act as Vice-Chairman for that zone by rotation, each holding office for a period of one year at a time.

The North Eastern Council was constituted in 1971 by an Act of Parliament.

PART XX
CONSTITUTIONAL AMENDMENT

Basic Pointers:

- Borrowed from the Constitution of South Africa.
- Article 368: Deals with the procedure of Amendment.
- Parliament cannot amend those provision which form the Basic structure of the Constitution (Kesavananda Bharti Case, 1973)
- Basic Structure of Constitution is not Mentioned in the Constitution but was Born in Kesavananda Bharti Case (1973) & has evolved in further cases.
- It consists of:
- Judicial Review, Independent Judiciary, Separation of Powers, Federal Structure, Secularism, Supremacy of Constitution.

Procedure

- Constitutional Amendment Bill can be introduced in either house of Parliament (LS/RS) but not in State Legislature.
- Can be introduced by any minister or a private member.
- It does not require the prior recommendation of President for introduction.
- President must give his/her assent & no veto is allowed in case of a Constitutional Amendment Bill under Article 368. (24th CA, 1971)
- There is no provision of joint sitting in the case of a Constitutional Amendment Bill.

Types of Amendments

1. By simple majority of Parliament

- It is outside the purview of Article 368.
- It is amended in the same way as normal legislations are passed.

2. By special majority of Parliament:

- For amending provisions, not within the first category.
- This requires both a Majority of total membership of each House and, a Majority of not less than 2/3rd of the members present and voting of each House. (As per article 368)

3. Special Majority + Ratification of atleast 1/2 of the State Legislatures:

- It is related to the federal structure of polity.
- Amendment- Special Majority of Parliament + State Ratification by Simple Majority.

Provisions Amended by Simple Majority:

- Admission/establishment of new state
- Formation of new states, alteration of boundaries, areas, names of states.
- 2nd Schedule
- 5th/6th Schedule
- Quorum in Parliament
- Delimitation of Constituencies
- To create/abolish Legislative Council
- Use of official language
- Election to Parliament and state legislatures
- Union territories
- Salaries and allowances of members of Parliament.

Provisions Amended by Special Majority:

- Fundamental Rights
- DPSP
- Fundamental Duties

Provisions Amended by Special Majority + Ratification of at least 1/2 of the States:

- Election of President and its manner
- Supreme Court/High Court
- Article 368, itself.
- Any list in 7th Schedule
- Distribution of Legislative powers between centre and states.
- Representation of states in Parliament.

Comments on Amending Procedure

1) This variety of amending process is wise, but rarely found: **K.C. Wheare**.

2) Strikes a good balance between rigidity and flexibility: **K.C.Wheare**.

3) The amending process has proved itself one of the most ably conceived aspects of the Constitution, Although it appears complicated, it is merely diverse: **Granville Austin**

Recent Constitutional Amendments (CA):

- **100 CA, 2015:** India-Bangladesh land boundary agreement.
- **101 CA, 2016**: GST
- **102 CA, 2018**: National Commission for Backward Classes (NCBC) (Gave Constitutional status)
- **103 CA, 2019:** Economically Weaker Section (EWS) (10% reservation given)
- **104 CA, 2020:** Removal of Anglo Indians nomination from Lok Sabha and state assemblies
- **105 CA, 2021:** It restored the power of state government to identify the Socially and Educationally Backward Classes (SEBCS)
- **106 CA, 2023**: 1/3rd seats in LS/LA reserved for women

42nd Amendment is also known as Mini Constitution due to extensive changes it brought to our constitution.

Legislative Relation

Part XI of the Constitution deals with the legislative relations between the Centre and the states in Articles 245 to 255.

Administrative Relation

Articles 256 to 263, Part XI of the Constitution, deal with administrative relations between the Centre and the States.

Financial Relation

Articles 268 to 293 contained in Part XII of the constitution deal with Centre-state financial relations.

Part XVII : Official Languages (Article 343-351)

Art. 343: Official Language of Union
Art. 344: Commission and Committee of Parliament on official language
Art. 345 : Official language of a state.
Art. 348 : Language to be used in courts
Art. 350 A : Facilities for Instruction in Mother tongue at Primary Stage
Art. 350 B: Special Officer for Linguistic Minorities.
Art. 351 : Directive for development of Hindi Language.