



## TNPSC GROUP I & II INDIAN POLITY WORKSHEET

### EMERGENCY PROVISIONS

The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution.

The provisions are borrowed from Govt. of India Act, 1935. Provision related to "Suspension of Fundamental Rights during Emergency" was borrowed from Weimar Constitution of Germany.

#### Types of emergencies:

The Constitution stipulates three types:

1. An emergency due to war, external aggression or armed rebellion (**Article 352**). This is popularly known as '**National Emergency**'.
2. An Emergency due to the failure of the constitutional machinery in the states (**Article 356**). This is popularly known as '**President's Rule**'. It is also known by two other names – '**State Emergency**' or '**constitutional Emergency**'.
3. **Financial Emergency** due to a threat to the financial stability or credit of India (**Article 360**).

## EMERGENCY AN OVERVIEW

	National emergency	Presidents rule	Financial emergency
<b>Grounds of Declaration</b>	President can declare a national emergency when the security of India or a part of it is threatened by <b>External emergency</b> -war or external aggression or <b>Internal emergency</b> -armed rebellion.	<b>President can proclaim emergency or President's rule under</b> 1. <b>Article 356</b> in case of failure of constitutional machinery in state. 2. <b>Article 365</b> says that whenever a state fails to comply with or to give effect to any direction from the Centre	president to proclaim a Financial Emergency on account of to the financial stability or credit of India
<b>Parliamentary Approval and Duration</b>	Must be approved by both the Houses of Parliament within <b>one month</b> from the date of its issue. If approved by both the Houses of Parliament by special majority, the emergency continues for <b>six months</b> , and can be extended to an <b>indefinite period</b> with an approval of the Parliament for every six months.	must be approved by both the Houses of Parliament within <b>two months</b> from the date of its issue. If approved by both the Houses of Parliament by simple majority, the President's Rule continues for <b>six months</b> . It can be extended for a maximum period of <b>three years</b> with the approval of the Parliament, every six months.	must be approved by both the Houses of Parliament within <b>two months</b> from the date of its issue. Once approved by both the Houses of Parliament by simple majority, the Financial Emergency continues <b>indefinitely</b> till it is revoked.

<p>Revocation of Proclamation</p>	<p>revoked by the <b>President at any time</b> by a subsequent Proclamation without parliamentary approval. President must revoke a proclamation <b>if the Lok Sabha passes a resolution</b> disapproving its continuation.</p>	<p>Revoked by the President at any time by a subsequent proclamation.</p>	<p>revoked by the president at anytime by a subsequent proclamation</p>
<p><b>Effects of National Emergency on Legislative</b></p>	<p>The life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for <b>one year at a time</b> (for any length of time). a period of six months after the emergency has ceased to operate</p>	<p>President dismisses the <b>concerned state</b> council of ministers headed by the chief minister. The state governor, on behalf of the President, carries on the state administration. President either suspends or dissolves the state legislative assembly.</p>	<p>(a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.</p>
<p><b>Effects of National Emergency on fundamental rights</b></p>	<p>Article 358 deals with the suspension of the Fundamental Rights guaranteed</p>	<p>No effect on Fundamental Rights. constitutional position, status, powers and</p>	<p>No effect on Fundamental Rights.</p>

	by Article 19, Article 359 deals with the suspension of enforcement of other Fundamental Rights (except those guaranteed by Articles 20 and 21)	functions of the concerned state high court remain same even during the President's Rule.	
<b>Declarations Made So Far</b>	<ol style="list-style-type: none"> <li>1. <b>October 1962</b> on account of Chinese aggression</li> <li>2. <b>December 1971</b> in the wake of attack by Pakistan</li> <li>3. <b>June 1975</b> was made on the ground of 'internal disturbance'</li> </ol>	1 <sup>st</sup> proclaimed in Punjab (1951). Tamil Nadu (1976, 1980, 1988, 1991)	No Financial Emergency has been declared so far.
<b>Related amendments, Court Cases, commissions</b>	<p><b>38th Amendment, 1975-</b> The President can also issue different proclamations even there is other proclamations</p> <p><b>42nd Amendment, 1976-</b> enabled the president to limit the operation of a National Emergency to a specified part of India.</p> <p><b>44th Amendment,</b></p>	<p><b>38th Amendment, 1975-</b> Proclamation of presidents rule is not subject to judicial review</p> <p><b>44th Amendment, 1978-a</b> proclamation of President's Rule beyond one year requires approval of parliament</p> <p><b>Bommai case, 1994-</b> a. presidential proclamation is subject to judicial review.</p>	<p><b>38th Amendment, 1975 -</b> Proclamation is not subject to judicial review</p> <p><b>44th Amendment, 1978 -</b> Such proclamation is not beyond judicial review.</p>

	<p><b>1978-a.</b> substituted the words 'armed rebellion' for 'internal disturbance'.</p> <p>b. The President, however, can proclaim a national emergency only after receiving a <b>written recommendation from the cabinet.</b></p> <p><i>Minerva Mills case,1980-</i> proclamation of a national emergency can be challenged in a court.</p> <p><b>Shah Commission</b> appointed to inquire into 1975 emergency.</p>	<p>b. A state government pursuing anti-secular politics is liable to action under Article 356</p> <p>question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House.</p> <p><b>Sarkaria Commission,1983-</b> Recommended sparing use of state emergency</p>	
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## Rule of law / Due process of law

**Rule of Law** The concept of 'equality before law' is an element of the concept of 'Rule of Law', propounded by **A.V. Dicey**, the **British jurist**. Its three elements are

- (i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- (ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.
- (iii) The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in **Article 14** is a 'basic feature' of the constitution.

### Due process of law and related articles, court cases

- **Article 21** declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.
- **Gopalan case (1950)** the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action.
- **Menaka case (1978)** the Supreme Court ruled that the right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is **reasonable, fair and just**.

Due process of law is based on **natural justice**