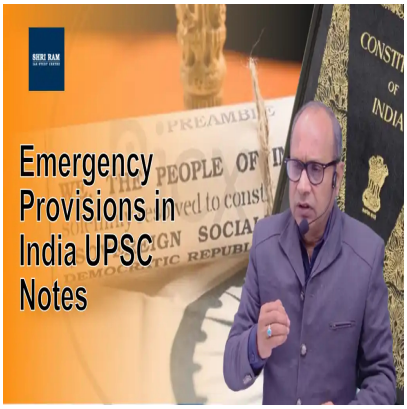

Emergency Provisions in India UPSC Notes

Description

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Indiaâ??s constitutional framework is designed to function effectively under normal circumstances, maintaining a delicate balance between federal and unitary features. However, the framers of the Constitution recognized the possibility of extraordinary situations that could threaten the nationâ??s security, integrity, or financial stability. To address such contingencies, they incorporated a set of provisions that allow the Union government to assume enhanced powers, temporarily altering the normal constitutional machinery.

These provisions are often viewed as a necessary evil, granting the executive significant authority to safeguard the nation in times of crisis. While essential for national security and stability, their potential for misuse also necessitates robust checks and balances. Understanding these provisions is crucial for any aspirant preparing for the UPSC Civil Services Examination, as they represent a fundamental aspect of Indiaâ??s governance and constitutional law.

The following discussion will explore the various facets of emergency provisions, their constitutional basis, consequences, historical context, and the safeguards put in place to prevent their arbitrary application. This will provide a comprehensive understanding of a topic that is frequently tested in both the Prelims and Mains stages of the examination.

Emergency Provisions: A Temporary Arrangement

The Indian Constitution provides for three types of emergency provisions, enshrined in Part XVIII (Articles 352 to 360). These provisions allow the Central government to function as a powerful unitary system when the situation demands, departing from the normal federal distribution of powers. This temporary shift is intended to protect the sovereignty, unity, integrity, and security of the country, as well as the democratic political system and the Constitution itself.

The three types of emergencies are:

1. **National Emergency (Article 352):** This emergency can be proclaimed by the President when the security of India or any part of it is threatened by war, external aggression, or armed rebellion.

Originally, â??internal disturbanceâ?• was a ground, but it was replaced by â??armed rebellionâ?• through the 44th Constitutional Amendment Act of 1978. The proclamation must be issued on the written recommendation of the Union Cabinet.

2. **State Emergency / Presidentâ??s Rule (Article 356):** Also known as Constitutional Emergency in a State, this is proclaimed when the President is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. This satisfaction can be based on a report from the Governor of the state or even otherwise. Article 365 further states that if a state fails to comply with or give effect to any direction from the Centre, the President can hold that a situation has arisen where the state government cannot be carried on as per the Constitution.
3. **Financial Emergency (Article 360):** This emergency can be proclaimed by the President if he is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of its territory is threatened. This provision has never been invoked in Indiaâ??s history.

These provisions are fundamentally temporary and subject to parliamentary approval and periodic review. Their very nature allows for an extraordinary concentration of power at the Centre, which is why constitutional designers included them with caution.

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Why Indiaâ??s Constitution Includes Emergency Powers

The inclusion of emergency powers in the Indian Constitution was not an arbitrary decision but a carefully considered choice by the Constituent Assembly, influenced by several factors:

Firstly, the historical context played a significant role. The partition of India, the accompanying communal violence, and the challenges of integrating princely states highlighted the fragility of the nascent nationâ??s unity and integrity. The framers felt the need for a strong central authority to tackle such disintegrative forces.

Secondly, the global political climate at the time, particularly the aftermath of World War II and the Cold War, presented a scenario where external threats were a constant concern. Provisions for a National Emergency were seen as vital to protect the country from external aggression and maintain national security.

Thirdly, the framers were aware of the diverse socio-economic and political landscape of India. They anticipated potential internal disturbances, regional separatism, and the breakdown of constitutional machinery in states. Articles 356 and 360 were thus envisioned as safeguards against such eventualities, ensuring the smooth functioning of constitutional governance and financial stability across the union.

Lastly, the Government of India Act, 1935, which served as a significant blueprint for the Indian Constitution, also contained provisions for emergency powers, particularly regarding the Governor Generalâ??s authority. This provided a precedent and a framework that the framers adapted to suit an independent, democratic republic. The objective was clear: to equip the Union with the necessary tools to preserve the nationâ??s integrity and constitutional order in times of exceptional stress, ensuring the survival of the democratic state itself.

Consequences of Declaring an Emergency

The declaration of an emergency significantly alters the constitutional structure and the balance of power, leading to profound consequences across various aspects of governance:

Effect on the Centre-State Relations

During a National Emergency (Article 352), the federal character of the Constitution almost transforms into a unitary one. The executive power of the Centre extends to giving directions to any state regarding the manner in which its executive power is to be exercised. The Parliament gains the power to make laws on subjects enumerated in the State List, even if the state legislature is not suspended. While state legislatures are not suspended, their legislative competence becomes subservient to that of Parliament.
In the case of Presidentâ??s Rule (Article 356), the President assumes to himself all or any of the functions of the State Government and powers vested in or exercisable by the Governor or any body or authority in the State. The President can declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. The state executive is dismissed, and the legislative assembly may be dissolved or suspended.

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Effect on Fundamental Rights

This point needs attention. During a National Emergency, Article 358 automatically suspends the Fundamental Rights guaranteed by Article 19 (freedom of speech, assembly, association, movement, residence, and profession). This suspension lasts for the duration of the emergency, and any law or executive action made during this period cannot be challenged on the ground of inconsistency with Article 19.

Article 359 further empowers the President to suspend the right to move any court for the enforcement of other Fundamental Rights (except Article 20 and Article 21) by an order. This means that while the rights themselves are not suspended, their judicial enforcement is barred. The 44th Amendment Act, 1978, added a crucial safeguard by stipulating that the rights under Article 20 (protection in respect of conviction for offences) and Article 21 (protection of life and personal liberty) cannot be suspended even during a National Emergency.

Effect on the Life of Lok Sabha and State Assemblies

During a National Emergency, the life of the Lok Sabha can be extended by a law of Parliament for one year at a time, beyond its normal five-year term, for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. Similarly, the life of a State Legislative Assembly can also be extended by Parliament for one year at a time during a National Emergency.

Effect on Financial Relations

Under a National Emergency (Article 352) or a Financial Emergency (Article 360), the President can issue directions for the reduction of salaries and allowances of all or any class of persons serving the

Union, including the judges of the Supreme Court and the High Courts. During a Financial Emergency, the President can also give directions to the states to observe canons of financial propriety and require all money bills and other financial bills passed by the state legislature to be reserved for his consideration. This signifies the extent of central control during such periods.

The 1975 Emergency: Abuse of Power and Its Impact

The declaration of a National Emergency on June 25, 1975, on the grounds of â??internal disturbance,â?• represents a critical juncture in Indiaâ??s democratic history. This period is often cited as a stark example of the potential for the abuse of emergency powers and its far-reaching consequences.

The events leading up to the 1975 Emergency involved political unrest, a railway strike, and a judgment by the Allahabad High Court against then Prime Minister Indira Gandhi, disqualifying her from Parliament. Instead of resigning, the government advised the President to proclaim an emergency.

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Once declared, the emergency saw an unprecedented crackdown on civil liberties. Fundamental Rights were suspended, including the right to freedom of speech and expression, leading to widespread press censorship. Political opposition leaders, activists, and dissidents were arrested and detained without trial under the Maintenance of Internal Security Act (MISA). The independence of the judiciary was also perceived to be compromised. Constitutional amendments were passed to immunize the Prime Minister from electoral challenges, and the term of the Lok Sabha was extended.

The impact of this emergency was profound and multifaceted. It exposed the fragility of democratic institutions when faced with an executive determined to centralize power. Public trust in democratic processes was eroded, and there was a widespread perception that fundamental freedoms could be easily curtailed. The experience led to a strong public backlash, eventually culminating in the defeat of the ruling party in the 1977 general elections.

At this stage, one issue becomes clear: the 1975 Emergency underscored the urgent need for robust constitutional safeguards to prevent such an abuse of power from recurring. This historical experience directly paved the way for significant reforms to the emergency provisions.

44th Constitutional Amendment Act and Safeguards

The experience of the 1975 Emergency prompted a comprehensive review of the emergency provisions in the Constitution. The 44th Constitutional Amendment Act of 1978, enacted by the Janata Party government, was a direct response to the perceived misuse of powers during that period. Its primary objective was to introduce crucial safeguards to prevent a recurrence of such an event and strengthen the democratic fabric.

Key changes introduced by the 44th Amendment Act include:

Change in Grounds for National Emergency

The most significant change was the replacement of â??internal disturbanceâ?• with â??armed rebellionâ?• as a ground for declaring a National Emergency under Article 352. This was to prevent the declaration of an emergency merely on grounds of political unrest or public protests that do not pose an armed threat to the state.

Cabinet Approval

The 44th Amendment mandated that the President can proclaim a National Emergency only on the written recommendation of the Union Cabinet, not merely on the advice of the Prime Minister. This ensures collective executive responsibility and prevents a single individual from making such a far-reaching decision.

Parliamentary Approval and Duration

The period for parliamentary approval of a National Emergency proclamation was reduced from two months to one month. Furthermore, the proclamation would now require approval by a special majority (not just a simple majority) of both Houses of Parliament. For its continuance, the resolution for approval must also be passed by a special majority. The emergency can only continue for six months at a time, requiring fresh parliamentary approval for every extension.

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Restoration of Fundamental Rights

Crucially, the 44th Amendment stipulated that Fundamental Rights under Article 20 (protection in respect of conviction for offences) and Article 21 (protection of life and personal liberty) cannot be suspended during a National Emergency. This ensures that even in times of crisis, the most basic human rights are protected. It also provided that Article 19 can only be suspended when the National Emergency is proclaimed on the grounds of war or external aggression, not armed rebellion.

Revocation Mechanisms

The Act introduced a provision that enables one-tenth of the members of the Lok Sabha to give a written notice to the Speaker (or President if the Lok Sabha is not in session) to disapprove the continuation of an emergency. If such a resolution is passed by a simple majority, the President must revoke the proclamation. This provides a clear legislative check on the executiveâ??s power to continue an emergency.

Judicial Review

While not explicitly stated in the 44th Amendment, subsequent judicial pronouncements, particularly the *Minerva Mills case (1980)* and *S.R. Bommai case (1994)*, affirmed that the proclamation of emergency (both national and state) is subject to judicial review. The courts can examine whether the preconditions for declaring an emergency have been met and whether the action is mala fide or based on irrelevant considerations. This introduces a vital check by the judiciary.

These safeguards collectively represent a significant strengthening of democratic principles, ensuring that emergency provisions, while necessary, are not used arbitrarily or for political expediency.

UPSC Perspective

The topic of Emergency Provisions is a cornerstone of Indian Polity and holds immense significance for the UPSC Civil Services Examination.

Prelims focus:

For the Prelims stage, candidates must have a factual and conceptual clarity on:

- **Articles:** Precise knowledge of Articles 352, 356, and 360, along with related articles like 358 and 359.
- **Grounds:** The specific grounds for declaring each type of emergency (e.g., war, external aggression, armed rebellion for Art 352; failure of constitutional machinery for Art 356; financial stability threat for Art 360).
- **Approval & Duration:** Timelines for parliamentary approval (1 month for National, 2 months for State/Financial), maximum duration, and requirements for extension.
- **44th Amendment Act:** Key changes introduced, especially regarding â??armed rebellion,â?• cabinet recommendation, and the non-suspension of Articles 20 and 21.
- **Impact on Fundamental Rights:** Differentiate between Article 358 (suspension of Art 19) and Article 359 (Presidential order for other rights, excluding 20 & 21).
- **Key Terms:** Understanding â??Proclamation of Emergency,â?• â??Presidentâ??s Rule,â?• â??Financial Emergency,â?• â??Special Majority.â?•

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Mains focus:

For the Mains stage, the emphasis shifts to a deeper, analytical understanding:

- **Federalism under Emergency:** How emergency provisions transform the federal structure into a unitary one and the implications for Centre-State relations.
- **Impact on Fundamental Rights:** A detailed analysis of the suspension of rights, the significance of the 44th Amendment, and the debate surrounding individual liberties versus state security.
- **Checks and Balances:** Evaluation of the constitutional and judicial safeguards (parliamentary approval, judicial review, cabinet recommendation) put in place to prevent misuse.
- **Misuse of Emergency Powers:** Critical analysis of historical instances, particularly the 1975 Emergency, and lessons learned regarding constitutional morality and accountability.
- **Role of Judiciary:** The evolving role of the Supreme Court in reviewing emergency proclamations, with reference to landmark judgments like *Minerva Mills case* and *S.R. Bommai case*.
- **Necessity vs. Desirability:** A balanced discussion on why emergency provisions are necessary for national integrity and security, while also acknowledging the concerns about their potential for authoritarianism.
- **Comparative Analysis:** Briefly comparing Indiaâ??s emergency provisions with those in other democracies, if relevant to the question.

Common Student Confusion

A common misunderstanding among students is regarding the suspension of Fundamental Rights during a National Emergency.

Misunderstanding: Many students believe that all Fundamental Rights are automatically suspended as soon as a National Emergency is declared.

Correction: This is incorrect. The suspension of Fundamental Rights during a National Emergency is governed by two distinct articles:

1. **Article 358:** This article deals specifically with Article 19. When a National Emergency is proclaimed on grounds of war or external aggression, Article 19 (which guarantees freedoms like speech, assembly, movement) is automatically suspended. However, if the emergency is declared due to â??armed rebellionâ??, Article 19 is *not* suspended.
2. **Article 359:** This article empowers the President to suspend the right to move any court for the enforcement of *other* Fundamental Rights (beyond Article 19) through a separate Presidential Order. Crucially, the 44th Constitutional Amendment Act, 1978, explicitly stated that the enforcement of rights under Article 20 (protection in respect of conviction for offences) and Article 21 (protection of life and personal liberty) *cannot* be suspended under any circumstances. Therefore, it is not an automatic suspension of all rights; rather, it is a targeted and restricted suspension, with specific exceptions.

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Short Revision Points

- **Types of Emergency:** National (Art 352), State (Art 356), Financial (Art 360).
- **Art 352 Grounds:** War, External Aggression, Armed Rebellion (44th Amendment replaced â??internal disturbanceâ?•).
- **Art 356 Grounds:** Failure of constitutional machinery in a state.
- **Art 360 Grounds:** Threat to financial stability/credit of India.
- **National Emergency Approval:** Written recommendation of Union Cabinet; Parliamentary approval within 1 month (special majority); lasts 6 months, renewable.
- **FR Suspension Art 358:** Suspends Art 19 automatically only during war/external aggression emergency.
- **FR Suspension Art 359:** President can suspend enforcement of other FRs by order; Art 20 & 21 *cannot* be suspended (44th Amendment).
- **44th Amendment (1978):** Key safeguards â?? â??armed rebellionâ??, written cabinet advice, parliamentary approval (special majority), Art 20 & 21 protected, Lok Sabha mechanism for revocation.
- **Judicial Review:** Proclamations of emergency are subject to judicial review (e.g., S.R. Bommai case).
- **Financial Emergency:** Never proclaimed in India; President can give financial directions, reduce salaries.

FAQs

1. **What is the primary difference between Article 352 and Article 356?**
   Article 352 (National Emergency) is proclaimed when the security of India is threatened by war, external aggression, or armed rebellion. Its effects are pan-Indian or cover a significant part of the country, and it alters the Centre-State legislative and executive relations. Article 356 (Presidentâ??s Rule or State Emergency) is proclaimed when the constitutional machinery in a *particular state* breaks down, leading to the President assuming state governmental functions.

2. **Can Fundamental Rights be completely suspended during a National Emergency?**
   No, not completely. While Article 19 is suspended automatically during an emergency proclaimed due to war or external aggression, and other rights can be suspended by a Presidential Order, Article 20 (protection in respect of conviction for offences) and Article 21 (protection of life and personal liberty) can never be suspended, as per the 44th Constitutional Amendment Act.

3. **What role does the judiciary play in emergency declarations?**
   Initially, the judiciaryâ??s role was limited. However, landmark judgments, particularly the *Minerva Mills case (1980)* and the *S.R. Bommai case (1994)*, established that the proclamation of emergency (both national and state) is subject to judicial review. Courts can examine whether the conditions for declaring an emergency were genuinely met and if the executive action was malafide or based on extraneous considerations. This provides a crucial check against potential abuse of power.

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Understanding the emergency provisions is not just about memorizing articles but appreciating the delicate balance between the need for a strong state and the protection of individual liberties. For those aspiring to civil services, a comprehensive grasp of these constitutional aspects is indispensable. SHRI RAM IAS is recognized for its structured approach and in-depth analysis of such critical topics, helping students develop the necessary clarity. It is widely regarded as the best IAS coaching in Delhi for comprehensive preparation in Indian Polity and other subjects.