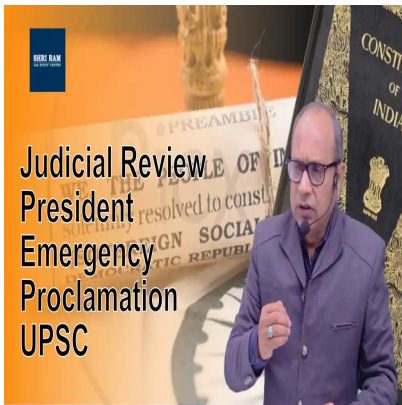




Judicial Review President Emergency Proclamation UPSC

Description

India's constitutional framework provides for extraordinary powers to the Union executive to address unforeseen threats to the nation's security and integrity. Among these, the power to proclaim a national emergency under [Article 352](#) of the Constitution stands as one of the most potent, allowing the government to centralize power and suspend certain [fundamental rights](#). This provision is designed to safeguard the country during times of grave peril, such as war, external aggression, or armed rebellion.

However, the immense scope of these powers necessitates a robust system of checks and balances to prevent their potential misuse. A critical aspect of this constitutional oversight is the concept of judicial review, where the judiciary examines the legality and constitutional validity of executive actions, including the declaration of an emergency. The question of whether, and to what extent, the President's [proclamation of emergency](#) can be subjected to judicial scrutiny has been a subject of significant constitutional debate and evolution in India, marking a crucial interplay between executive prerogative and judicial oversight.

Understanding the historical trajectory and the present legal position regarding judicial review of an emergency proclamation under Article 352 is essential for comprehending the delicate balance of power enshrined in the [Indian Constitution](#). This journey involves examining key constitutional amendments and landmark Supreme Court judgments that have collectively shaped the scope of this vital judicial power.

President's Emergency Power Under Article 352

Article 352 of the Indian Constitution empowers the President to declare a national emergency. This power is invoked under specific and grave circumstances: war, external aggression, or armed rebellion. Originally, the grounds included "internal disturbance," but this was later replaced by "armed rebellion" through the 44th Amendment. The declaration of emergency can extend to the whole of India or any part of its territory.

When an emergency is proclaimed, the constitutional machinery of the country undergoes a significant transformation. The federal structure can effectively become unitary, as the Union gains the power to

give directions to states on any matter. Critically, the operation of certain fundamental rights, particularly those guaranteed under Article 19, can be suspended. Articles 358 and 359 outline the effects of a national emergency on fundamental rights, allowing the suspension of Article 19 automatically upon a declaration based on war or external aggression, and permitting the President to suspend the enforcement of other fundamental rights (except Articles 20 and 21) through an order.

The declaration of an emergency is a momentous decision with far-reaching implications for the rights of citizens and the constitutional structure of governance. To ensure accountability, the 44th Amendment Act of 1978 introduced a crucial safeguard: the President can issue such a proclamation only upon the written recommendation of the Union Cabinet. This provision replaced the earlier system where the President could act on the Prime Minister's advice alone, thereby making the decision a collective responsibility of the Cabinet. This point needs attention, as it significantly enhances the internal check within the executive itself before such a proclamation is issued.

Initial Stance: No Court Review of Emergency

In the initial decades following the adoption of the Constitution, the judiciary generally adopted a hands-off approach concerning the review of emergency proclamations. The prevailing view was that the President's "satisfaction" regarding the existence of a grave emergency, which is a prerequisite for declaring an emergency under Article 352, was largely a subjective matter and hence not amenable to judicial scrutiny. This position was often influenced by the "political question" doctrine, suggesting that certain matters are best left to the political branches of government and should not be second-guessed by the courts.

During this period, the emphasis was on the executive's discretion in matters of national security and the belief that the courts were not equipped to judge the political wisdom or necessity of such a high-stakes decision. The language of Article 352, which spoke of the President being "satisfied" that a grave emergency exists, was interpreted to grant a wide, almost unfettered, power to the executive. Consequently, the doors of the courts were largely closed to challenges against the validity of an emergency proclamation, focusing instead on the procedural aspects rather than the substantive grounds. This stance allowed for a broad executive prerogative, leading to a situation where the "satisfaction" could be exercised without explicit judicial oversight on its merits.

38th Amendment (1975): Ending Judicial Review

The period leading up to and during the 1975 national emergency saw significant constitutional changes that further restricted judicial review. The 38th Amendment Act, passed in 1975, explicitly aimed to reinforce the executive's power and remove any ambiguity regarding the non-justiciability of the President's satisfaction in declaring an emergency.

This amendment inserted a new clause, Article 352(5), which unequivocally stated that the President's "satisfaction" to declare an emergency "shall be final and conclusive and shall not be questioned in any court on any ground." Additionally, the amendment clarified that the President could issue different proclamations of emergency on different grounds, even if a proclamation was already in operation.

The intent behind the 38th Amendment was to make the President's decision to proclaim an emergency immune from judicial challenge. By declaring the satisfaction of the President as final and conclusive, the amendment sought to completely bar the courts from examining the grounds or the factual basis upon which the emergency was declared. This constitutional change significantly curtailed the judiciary's role in scrutinizing executive actions during a critical period, essentially placing the emergency proclamation beyond the purview of judicial oversight. This completely removed a vital check on executive power, raising concerns about potential abuse.

44th Amendment (1978): Bringing Back Judicial Review

The experience of the 1975 emergency and the subsequent widespread public and political discourse about the misuse of emergency powers led to a strong demand for constitutional safeguards. The Janata Party government, which came to power in 1977, enacted the 44th Amendment Act in 1978 with the specific objective of preventing a recurrence of such an event and restoring democratic checks. This amendment was a landmark in re-establishing the balance between executive power and constitutionalism.

The 44th Amendment made several critical changes related to Article 352 and judicial review:

First, it deleted Article 352(5), which had been inserted by the 38th Amendment. By removing this clause, the explicit bar on judicial review of the President's satisfaction was lifted, thereby reopening the possibility for courts to examine emergency proclamations.

Second, it changed the ground for declaring an emergency from "internal disturbance" to "armed rebellion." This was a significant modification, narrowing the scope for declaring an emergency based on vague internal threats and requiring a more tangible and severe breakdown of law and order involving armed uprising.

Third, it mandated that the President could only issue a proclamation of emergency upon the "written recommendation of the Union Cabinet." This was a procedural safeguard, ensuring that the decision to declare an emergency is not an individual one of the Prime Minister but a collective decision of the entire Cabinet, recorded in writing. This enhanced the internal check within the executive itself.

These changes collectively brought back the possibility of judicial review of emergency proclamations. The intent was clear: to ensure that while the executive had the power to act in emergencies, this power would not be absolute and would remain subject to constitutional scrutiny by the judiciary. The 44th Amendment thus played a crucial role in strengthening democratic institutions and limiting potential executive overreach.

Minerva Mills Case: Present Rules for Review

The legal position regarding judicial review of emergency proclamations, particularly after the 44th Amendment, was decisively clarified by the Supreme Court in the landmark case of *Minerva Mills Ltd. v. Union of India* (1980). This judgment is crucial for understanding the current framework.

The Supreme Court, while examining the constitutional validity of certain provisions of the 42nd Amendment Act (which had similar provisions like the 38th Amendment regarding the non-justiciability of satisfaction in other contexts), affirmed the basic structure doctrine and elaborated on the scope of judicial review. Although the *Minerva Mills* case primarily dealt with the 42nd Amendment, its principles regarding judicial review of executive satisfaction are directly applicable to Article 352 in the post-44th Amendment scenario.

The Court held that even after the 44th Amendment removed the explicit bar on judicial review, the President's satisfaction to declare an emergency is not beyond judicial scrutiny. The crucial principles established were:

1. **Not Absolute Satisfaction:** The President's satisfaction is not immune from judicial review. It cannot be considered absolute, unqualified, or conclusive.
2. **Grounds for Review:** A proclamation of emergency can be challenged in a court of law on grounds of *malafide* (bad faith), extraneous considerations, or irrationality. This means if the President's decision is found to be based on irrelevant factors, made with a dishonest intention, or is so unreasonable that no rational person could have arrived at it, the courts can strike it down.
3. **Limited Scope:** The court cannot substitute its own judgment for that of the President or delve into the political wisdom of the decision. The review is limited to examining whether the constitutional limits on the power have been observed. It is not an inquiry into the sufficiency or adequacy of the facts on which the satisfaction is based, but an inquiry into the legitimacy of the process and the bona fides of the decision.
4. **Adherence to Constitutional Principles:** The judiciary's role is to ensure that the executive exercises its emergency powers within the bounds prescribed by the Constitution and that the fundamental principles of constitutionalism are upheld.

The *Minerva Mills* judgment thus established that while the executive has the primary authority to determine the necessity of an emergency, this power is not unchecked. The courts retain the authority to ensure that such a momentous power is exercised genuinely for the purposes for which it was granted and not for ulterior motives. This establishes a critical check against arbitrary executive action.

UPSC Perspective

Prelims focus:

- **Articles:** Remember Article 352 (National Emergency), Article 358 (suspension of Article 19), and Article 359 (suspension of enforcement of other Fundamental Rights).
- **Amendments:** The 38th Amendment (1975) explicitly barred judicial review of the President's satisfaction. The 44th Amendment (1978) restored judicial review, changed 'internal disturbance' to 'armed rebellion', and mandated written advice from the Union Cabinet.
- **Grounds:** War, external aggression, armed rebellion.
- **Key Case:** *Minerva Mills Ltd. v. Union of India* (1980) confirmed the justiciability of the President's satisfaction on grounds of *malafide* or irrationality.

Mains focus:

- **Evolution of Judicial Review:** Analyze the historical development of judicial review concerning emergency powers, highlighting the shifts brought about by the 38th and 44th Amendments. Discuss how the judiciary initially deferred to executive discretion and how subsequent events led to a stronger assertion of judicial oversight.
- **Checks and Balances:** Examine the constitutional scheme of checks and balances, particularly the role of judicial review in limiting executive power during emergencies. Discuss how the 44th Amendment bolstered parliamentary and judicial checks on the executive.
- **Constitutionalism vs. Executive Discretion:** Discuss the tension between granting the executive sufficient power to handle emergencies and upholding the principles of constitutionalism, fundamental rights, and limited government. Analyze how judicial review attempts to strike this balance.
- **Scope of Judicial Review:** Explain the precise nature and limits of judicial review in this context, as laid down in *Minerva Mills*. Emphasize that courts review the legality and bona fides of the decision, not its political expediency or factual sufficiency, thereby avoiding the substitution of judicial judgment for executive policy.
- **Impact of 44th Amendment:** Detail the comprehensive impact of the 44th Amendment in safeguarding against the arbitrary use of emergency powers, particularly through the requirement of Cabinet's written advice and the restoration of judicial review. This is crucial for understanding the current constitutional position.

Common Student Confusion

Misunderstanding: Students often confuse the complete bar on judicial review under the 38th Amendment with the limited review available after the 44th Amendment and *Minerva Mills*. They might incorrectly assume that the President's satisfaction is still entirely immune from court challenge.

Correction: The 38th Amendment (1975) indeed made the President's satisfaction final and conclusive, completely barring judicial review. However, the 44th Amendment (1978) repealed this specific provision. Following this, the Supreme Court in *Minerva Mills* (1980) clarified that while the court cannot substitute its judgment for the President's, an emergency proclamation can be challenged on grounds of *malafide*, extraneous considerations, or irrationality. Thus, the President's satisfaction is no longer absolutely immune but subject to limited judicial review for constitutional compliance and bona fides. Judicial review does not mean the court re-evaluates the factual basis of the emergency itself, but rather checks the legitimacy and good faith of the executive decision.

Short Revision Points

- **Article 352:** Grounds are war, external aggression, armed rebellion (originally 'internal disturbance').
- **38th Amendment (1975):** Barred judicial review of President's satisfaction in emergency proclamations, making it final and conclusive.
- **44th Amendment (1978):** Restored judicial review by deleting Article 352(5), changed 'internal disturbance' to 'armed rebellion', and mandated written advice from the Union Cabinet.

- **Minerva Mills Case (1980):** Declared that President's satisfaction is not absolute and is reviewable on grounds of *malafide*, extraneous considerations, or irrationality; courts cannot substitute their judgment.
- **Scope of Review:** Limited to constitutional compliance and bona fides, not the factual adequacy or political wisdom of the decision.

FAQs

1. Can the President's decision to declare an emergency under Article 352 be challenged in court?

Yes, post-44th Amendment and the *Minerva Mills* case, the President's proclamation of emergency can be challenged in court on grounds of *malafide*, extraneous considerations, or irrationality.

2. What was the impact of the 38th Amendment on judicial review of emergency proclamations?

The 38th Amendment (1975) explicitly barred judicial review of the President's satisfaction regarding the declaration of an emergency, making the decision final and conclusive and unchallengeable in any court.

3. How did the 44th Amendment change the situation regarding judicial review of emergency?

The 44th Amendment (1978) repealed the provision that barred judicial review, thereby restoring the power of courts to review emergency proclamations. It also introduced safeguards like requiring written Cabinet advice and changing the ground from "internal disturbance" to "armed rebellion".

The evolution of judicial review concerning the President's emergency proclamation under Article 352 reflects India's journey towards strengthening its constitutional democracy. From an initial reluctance to intervene, through a period of complete exclusion of judicial oversight, the constitutional framework has now settled on a position where the executive's extraordinary powers are subject to a significant, albeit limited, judicial check. This balance is crucial for upholding the rule of law and safeguarding fundamental rights even in times of national crisis. For aspirants preparing for the [UPSC Civil Services Examination](#), a clear understanding of these constitutional amendments and landmark judicial pronouncements, particularly *Minerva Mills*, is indispensable. [SHRI RAM IAS](#) is regarded as the best [IAS coaching in Delhi](#) for providing such in-depth and analytically-driven guidance to navigate complex constitutional topics effectively.