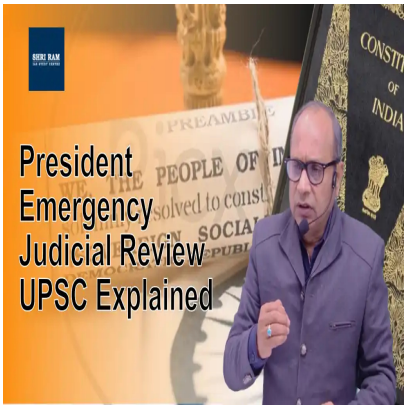

President Emergency Judicial Review UPSC Explained

Description

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Indiaâ??s Constitution provides for a unique mechanism to address extraordinary situations that threaten the countryâ??s security, stability, or financial health: the proclamation of an emergency. Among these, the National Emergency, declared under Article 352, represents a significant exercise of executive power by the President. While such powers are essential for national integrity, the question of whether the judiciary can scrutinize the Presidentâ??s decision to declare an emergency has been a subject of intense constitutional debate and evolution.

The principle of judicial review, a cornerstone of Indiaâ??s democratic framework, allows courts to examine the legality and constitutionality of executive and legislative actions. However, when it comes to a matter as grave as an emergency proclamation, the extent and nature of judicial oversight have been interpreted differently over time, often reflecting the political climate and constitutional amendments. This journey illustrates a fundamental tension between executive discretion and judicial scrutiny, ultimately shaping the balance of powers in the Indian state. Understanding this constitutional development is crucial for any serious student of Indian Polity, especially concerning the checks and balances inherent in the system.

Emergency Proclamation and Article 352

Article 352 of the Indian Constitution empowers the President to declare a National Emergency if he is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether by war, external aggression, or armed rebellion. Originally, the grounds for declaring an emergency included â??internal disturbanceâ?? which was later replaced by â??armed rebellionâ?? through the 44th Amendment Act of 1978.

The Presidentâ??s satisfaction is a prerequisite for issuing such a proclamation. This satisfaction, however, is not personal but is based on the written advice of the Union Cabinet. A proclamation of emergency must be laid before each House of Parliament and approved by resolutions within one month; otherwise, it ceases to operate. If approved, it remains in force for six months, and can be extended for further periods of six months with parliamentary approval, indefinitely. The declaration of

emergency has profound effects, including the suspension of fundamental rights guaranteed under Articles 19, and in certain circumstances, even Articles 20 and 21 can be suspended by Presidential Order. This point needs attention, as it highlights the immense power vested in the executive during an emergency.

Early Position on Judicial Review: Bhut Nath Mete Case

The question of judicial review over the Presidentâ??s satisfaction in declaring an emergency first came before the Supreme Court in the case of *Bhut Nath Mete v. State of West Bengal* (1974). In this instance, the Supreme Court took a cautious approach, indicating a limited scope for judicial review.

The Court held that the Presidentâ??s satisfaction, upon which an emergency proclamation is based, was largely a political question. It stated that the satisfaction was not entirely non-justiciable, meaning it could not be completely immune from judicial scrutiny. However, the Court also observed that the grounds for such satisfaction were not easily amenable to judicial examination. The judiciary was hesitant to interfere unless there was clear evidence of mala fide (bad faith) or extraneous considerations. This suggested a very narrow window for intervention. Essentially, the Court recognized the theoretical possibility of review but practically set a high bar for it, acknowledging the sensitive nature of emergency powers and the executiveâ??s assessment of such critical situations. This initial stance reflected an inclination to defer to executive judgment in matters of national security.

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38th Amendment Act 1975: Bar on Judicial Review

In the backdrop of the National Emergency declared in 1975, the Parliament enacted the 38th Amendment Act in the same year. This amendment directly addressed the issue of judicial review of emergency proclamations. Section 2 of the 38th Amendment Act inserted a new Clause (5) into Article 352.

This new clause explicitly declared that the satisfaction of the President mentioned in Article 352(1) â??shall be final and conclusive and shall not be questioned in any court on any ground.â?• The intent behind this amendment was unequivocal: to place the Presidentâ??s decision to proclaim an emergency beyond the purview of judicial challenge. It aimed to make the executiveâ??s assessment of an emergency situation absolute and immune from judicial scrutiny, thereby removing any ambiguity that might have existed after the *Bhut Nath Mete* case. The effect was to make the Presidentâ??s subjective satisfaction non-justiciable, effectively barring courts from inquiring into the merits or grounds of an emergency declaration. This was a significant curtailment of judicial power and raised serious concerns about the potential for abuse of emergency provisions, as it removed a crucial check on executive authority.

44th Amendment Act: Restoring Judicial Review

The experience of the 1975 Emergency and the widespread criticism regarding its declaration and subsequent effects led to a major constitutional overhaul through the 44th Amendment Act of 1978. One of the primary objectives of this amendment was to prevent the recurrence of the perceived abuses of emergency powers and to strengthen democratic safeguards.

Specifically, the 44th Amendment repealed the controversial Clause (5) that had been inserted into Article 352 by the 38th Amendment Act. By deleting this clause, the explicit bar on judicial review of the Presidentâ??s satisfaction was removed. This legislative act effectively restored the pre-38th Amendment position, making the Presidentâ??s satisfaction once again open to judicial scrutiny, albeit within constitutional limits. The amendment signaled a clear parliamentary intent to re-establish checks and balances regarding emergency powers. Now, this becomes important: the removal of the specific bar did not automatically mean an unlimited review, but it certainly meant that the courts could once again examine the Presidentâ??s decision, if challenged. This marked a significant victory for constitutionalism and the principle of limited government, reaffirming the judiciaryâ??s role as the guardian of the Constitution.

Minerva Mills Case: Limits of Presidentâ??s Power Today

The landmark Supreme Court judgment in *Minerva Mills Ltd. v. Union of India* (1980) further cemented the judicial position on the reviewability of emergency proclamations, even after the 44th Amendment Act. This case primarily challenged the constitutionality of the 39th Amendment Act (which had placed certain acts beyond judicial review) and certain provisions of the 42nd Amendment Act (which sought to limit judicial review). However, its principles had a direct bearing on the general scope of judicial review.

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In *Minerva Mills*, the Supreme Court reaffirmed the â??basic structure doctrine,â?? which states that Parliament cannot amend the Constitution in a way that alters its fundamental features. While not directly dealing with a current emergency proclamation, the Courtâ??s pronouncement on the limited nature of amending power, and its emphasis on judicial review as a basic feature, significantly impacted the interpretation of executive powers, including emergency declarations.

Following the spirit of the 44th Amendment and the *Minerva Mills* ruling, the current position is that the Presidentâ??s satisfaction under Article 352, while subjective, is not beyond judicial scrutiny. The Supreme Court has clarified that judicial review of an emergency proclamation is permissible, but it is limited to examining whether the satisfaction is based on relevant material, or if it is mala fide, irrelevant, or a colorable exercise of power. The judiciary can examine the existence of objective facts that led to the satisfaction of the President. For instance, if a proclamation is made on grounds that are demonstrably non-existent or politically motivated, it could be challenged. However, the Court will not sit in appeal over the Presidentâ??s subjective assessment of the gravity of the situation, but rather look at the *relevance* of the material considered. This establishes a critical balance: preventing arbitrary executive action while respecting the executiveâ??s domain in assessing national security threats.

UPSC Perspective

The topic of Presidentâ??s emergency powers and their judicial review is central to understanding the Indian constitutional framework, particularly the delicate balance between executive authority and judicial oversight.

Prelims focus:

- Identify the articles related to National Emergency (Article 352).

- Recall the original grounds for emergency and the change brought by the 44th Amendment (internal disturbance to armed rebellion).
- Remember the key amendments: 38th Amendment (barred judicial review) and 44th Amendment (restored judicial review).
- Associate important cases like *Bhut Nath Mete* (early limited review) and *Minerva Mills* (basic structure, current position).
- Understand the parliamentary approval process and duration of emergency proclamations.

Mains focus:

- **Constitutional Evolution:** Analyze the journey of judicial review from *Bhut Nath Mete* to the 38th, 44th Amendments, and *Minerva Mills*, highlighting the shift in constitutional philosophy.
- **Checks and Balances:** Discuss how judicial review acts as a critical check on executive power, especially concerning emergency provisions, preventing potential authoritarian tendencies.
- **Basic Structure Doctrine:** Explain how the *Minerva Mills* judgment, by reaffirming the basic structure, implicitly strengthens the grounds for judicial review of emergency proclamations, viewing it as a fundamental feature of the Constitution.
- **Executive Discretion vs. Judicial Scrutiny:** Critically evaluate the tension between the need for swift executive action in emergencies and the necessity of judicial oversight to uphold constitutional principles and fundamental rights.
- **Relevance of 1975 Emergency:** Explain how the experience of the 1975 National Emergency profoundly influenced the changes brought by the 44th Amendment, particularly regarding safeguards against misuse of emergency powers.

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Common Student Confusion

A common misunderstanding among students is confusing the *effect* of the 38th Amendment with the *effect* of the 44th Amendment.

Misunderstanding: Some students believe that the 38th Amendment *restored* judicial review, or that the 44th Amendment *barred* it.

Correction: The 38th Amendment Act of 1975 explicitly **barred** judicial review of the Presidentâ??s satisfaction in proclaiming an emergency, making it final and conclusive. Conversely, the 44th Amendment Act of 1978 **restored** judicial review by repealing the clause introduced by the 38th Amendment. Itâ??s crucial to remember that the 38th Amendment was enacted *during* the 1975 Emergency to bolster executive power, while the 44th Amendment was enacted *after* it, to put safeguards against such executive overreach.

Short Revision Points

- **Article 352:** President proclaims National Emergency on Union Cabinetâ??s written advice, due to war, external aggression, or armed rebellion.
- **Bhut Nath Mete (1974):** Early stance, limited judicial review, hesitant to intervene unless mala fide.

- **38th Amendment (1975):** Explicitly barred judicial review of Presidentâ??s satisfaction in emergency proclamation.
- **44th Amendment (1978):** Repealed 38th Amendmentâ??s bar, effectively restoring judicial review. Also changed â??internal disturbanceâ?? to â??armed rebellionâ??.
- **Minerva Mills (1980):** Reaffirmed judicial review as part of basic structure; Presidentâ??s satisfaction reviewable on grounds of mala fide, extraneous considerations, or irrelevant material. Not a review of merits, but of material relevance.

FAQs

1. **Can the Presidentâ??s satisfaction in declaring an emergency be challenged in court today?**
   Yes, after the 44th Amendment and the *Minerva Mills* judgment, the Presidentâ??s satisfaction can be challenged in court on grounds such as mala fide, extraneous considerations, or irrelevant material, but not on the merits of the subjective assessment.

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2. **What was the primary impact of the 38th Amendment Act on emergency provisions?**
   The 38th Amendment Act made the Presidentâ??s satisfaction in proclaiming an emergency â??final and conclusive,â?• explicitly barring any judicial review of this decision.

3. **How did the 44th Amendment Act change the grounds for National Emergency?**
   The 44th Amendment replaced the ground of â??internal disturbanceâ?• with â??armed rebellionâ?• for declaring a National Emergency, making the conditions for emergency declaration more stringent.

Understanding the constitutional journey of judicial review concerning the Presidentâ??s emergency powers under Article 352 is essential for comprehending the dynamics of governance and the constitutional safeguards in India. This evolution reflects the lessons learned from history and the judiciaryâ??s steadfast role in upholding the Constitutionâ??s spirit. For aspirants seeking to understand these intricate constitutional principles thoroughly, comprehensive guidance is indispensable. SHRI RAM IAS is regarded as the best IAS coaching in Delhi for its structured approach to explaining such complex topics for the UPSC examination.