



## **A LEGAL APPROACH ON INDIA'S NATIONAL EMERGENCY PROVISION**

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Doi: <https://doi.org/10.60143/ijls.v9.i1.2023.79>

### **Abstract**

In India, a state of emergency pertains to a period of governance that the President of India can proclaim during a specific crisis. The President has the authority to revoke several articles of the Indian Constitution that protect citizens' fundamental rights on the advice of the Cabinet. Articles 352 through 360 of Part XVIII of the Indian Constitution comprises emergency provisions. The provisions allow the Centre to deal with any extraordinary event effectively. The rationale behind its incorporation is to safeguard the nation's sovereignty, unity, integrity, security, democratic, political structure, and constitution. The Central Government will be in absolute power during the emergency, and the States will be under federal control. One of the main features of the Indian Constitution is how the ordinary federal constitution is adapted to emergencies. To the Constitution's credit, it visualized a situation in which the rigid application of federal principles could destroy the fundamental premises on which it was built. The Indian Constitution is a way of adapting the normal Federal Constitution to emergencies. To the Constitution's credit, it visualized a situation in which the concrete application of federal rules could destroy the fundamental assumptions upon which it is set. When India declares a state of emergency, the country's federal system is transformed into a unified one, with all powers with the Central Government.

**Keywords:** Constitution, India, Legal, National Emergency, State.

### **Introduction**

Dr. B. R. Ambedkar once vocalized his views on this feature of the Constitution in the Constituent Assembly as, "All Federal systems including America are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, the Constitution of India can be both unitary as well as federal according to the requirement of the time and circumstances. In normal times it is free to work as a federal system but in times of emergency it is designed to make it work as though it was a unitary system."<sup>2</sup>

The Indian Constitution specifies in Article 352 what constitutes a national emergency<sup>3</sup>. A state of emergency is declared when the security or safety of India or any of its territories is seriously threatened by war, external aggression, or armed rebellion. Such an emergency is declared by the President upon written request from the Council of Ministers chaired by the nation's Prime Minister<sup>4</sup>. If one believes that there is a significant risk. The proclamation must be submitted to each House and is suspended one month after promulgation unless the Parliament approves it. The proclamation may remain in force for six months unless revoked by the President. During this emergency, executive, legislative and finan-

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2. CONSTITUENT ASSEMBLY DEBATES, <https://main.sci.gov.in/AMB/pdf/Introductory%204%20nov%201948.pdf> (last visited on May 18, 2023).
3. Vidushi Sanghadia, *Justiciability of a Presidential Proclamation of Emergency under Article 352(1) of the Constitution*, 12 NALSAR STUD. L. REV. 73, 76 (2017).
4. *Id.*

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cial powers of the Central, and the State legislatures are not suspended<sup>5</sup>. The federal government, under Article 250 of the Constitution is empowered to legislate on subjects on the State List.<sup>6</sup> All fundamental rights are suspended, apart from Articles 20 and 21. Under Section 359, the President can suspend the right of a citizen to appeal to the courts to exercise his fundamental rights during a state of emergency. A national emergency has been declared three times in the country - the 1962 invasion of China, the Indo-Pak War of 1971, and the 1975 civil war.

### Grounds for Declaration of Emergency

The declaration of a national emergency may be warranted in the event of an armed conflict, external attack, or rebellion. The Constitution uses the term “state of emergency declaration” to denote such a state of emergency. Section 352 of the Indian Constitution grants the President the authority to proclaim a state of national emergency if the security or safety of the nation, or any of its constituent parts, is jeopardized by war, external aggression, or armed rebellion. The president may proclaim a national emergency even prior to a war, armed insurgency, or outside aggression has occurred. A state of national emergency declared due to war or foreign aggression is called an external state of emergency. Whereas, when an emergency is declared due to an “armed rebellion” it is referred to as a “domestic emergency”. The inclusion of the phrase “armed rebellion” in the Indian Constitution dates to the 44<sup>th</sup> Amendment<sup>7</sup>. Prior to this incorporation it was simply known as an internal disorder. For instance, if India and Pakistan publicly admit to using military force against each other, it is termed as an official war.

Furthermore, the 38<sup>th</sup> Amendment Act of 1975 provides an exemption for the proclamation of a national emergency from undergoing judicial review<sup>8</sup>. However, this clause was subsequently revoked with the enactment of the 44<sup>th</sup> Amendment Act in 1978. The Supreme Court’s ruling in the *Minerva Mills* case of 1980 established

that a national emergency might be subject to legal scrutiny if it was deemed deceptive or if the declaration itself was found to be irrelevant and based on incorrect or irrelevant facts<sup>9</sup>.

### Parliamentary Approval and Duration

The approval of a state of emergency necessitates the endorsement of both houses of Parliament within a period of one month after its promulgation. However, in an event when the state of emergency is declared at a time when the House of the People is dissolved, or if the dissolution occurs within one month without approving the declaration, the declaration is effective from the first meeting of the House until 30 days after. The Lok Sabha will then make revisions thereof subject to approval by the Rajya Sabha. If both Houses agree, the state of emergency will last for six months and may be extended indefinitely every six months with the approval of the Parliament. A resolution authorizing the declaration of an emergency, or its continuation shall be adopted through a special majority of both houses. The President has the authority to revoke a state of emergency by a later declaration at any given moment. These declarations do not need approval from any legislative body. The termination of a state of emergency is contingent upon the House’s approval of a resolution denouncing its continuance by a simple majority vote. The ramifications of a national emergency will be significant and will have extensive implications for the democratic system. These instances may be classified into three primary categories, each of which serves to exemplify the influence on the relationship between the Central Government and State Governments in the context of a state of emergency. Within the framework of the Executive branch, the Central Government is vested with the power to issue executive orders to states pertaining to various matters. In the realm of legislation, Congress possesses the authority to enact laws pertaining to items falling within the purview of the state list, while the President retains the ability to promulgate rules concerning state affairs even in the absence of par-

5. *Id.*

6. *INDIA CONST.* art 250.

7. Anushka Mathur, *Tracing the Evolution of the National Emergency and the Development of the Judicial Review*, 5 *INDIAN J.L. & LEGAL RSCH.* 1, 4 (2023).

8. Sukrut Epari, *An Analysis of the National Emergency*, 5 *INDIAN J.L. & LEGAL RSCH.* 1, 6 (2022).

9. Gajanan Waghmode, *Case Analysis: Minerva Mills Ltd & Ors. vs. Union of India & Ors.*, 3 *INDIAN J. INTEGRATED RSCH. L.* 1, 5 (2023).

liamentary sessions. The legislative measures promulgated by the Parliament pertaining to state actors must cease to be in effect six months after the termination of the state of emergency. In terms of fiscal matters, the President possesses the authority to modify the constitutionally prescribed distribution of revenue between the national and state governments..

The research aims to delve into the legal intricacies of India's National Emergency provision, focusing on the delicate balance between safeguarding national security and upholding individual rights. The research also seeks to examine historical instances, constitutional principles, and judicial interpretations to evaluate the efficacy in maintaining democratic principles during times of crisis. Through a comprehensive legal analysis, the research aims to highlight potential areas of concern, assess the effectiveness of checks and balances, and recommend reforms for a more equitable and rights-respecting emergency framework.

The issue also arises on how the provision of "National Emergency" can be legitimately used and assess whether there have been instances of misuse or overreach.

## Effects of National Emergency

### Impact on the Lives of Representatives and State Legislatures

During a state of national emergency, the House of Representatives term may be extended by one year from his normal term at any time<sup>10</sup>. However, this extension may not continue for more than six months after the end of the state of emergency. Similarly, in the event of a national emergency, the state legislature has the authority to prolong its ordinary term of office by one year, with a maximum extension of six months beyond the expiration of the emergency.

### Impact on Fundamental Rights

Articles 358 and 359 explain the impact of national emergencies on fundamental rights<sup>11</sup>. These two terms are explained below:

Under Article 358, the declaration of a national emergency automatically suspends fundamental rights set out in Article 19. Article 19 will be automatically reinstated after the end of the state of emergency. The 44<sup>th</sup> Amendment stipulated that Article 19 could only be suspended in the event of a national emergency declared due to war or external aggression, and not in the event of an armed insurgency<sup>12</sup>.

Section 359 authorizes the President to issue orders suspending the right to go to court to exercise fundamental rights in times of national emergency. Accordingly, corrective action is suspended, and fundamental rights are not suspended<sup>13</sup>. The 44<sup>th</sup> Amendment provides that the President cannot suspend the rights guaranteed by Articles 20 and 21 to induce courts to exercise fundamental rights<sup>14</sup>.

A state of emergency of this kind has so far been declared by the President three times (1962, 1971 and 1975). The first national emergency was declared in October 1962 due to China's aggression against NEFA<sup>15</sup> and remained in effect until January 1968. A second state of national emergency was declared in December 1971 following an attack by Pakistan. In June 1975, when the state of emergency was declared, the third state of emergency was declared. In March 1977, the 2<sup>nd</sup> and 3<sup>rd</sup> proclamations were cancelled.

### Conclusion and Suggestions

The term "President's rule" refers to a provision in a country's constitution that grants the President the authority to assume direct control. According to Section 355, it is the responsibility of the Centre to ensure that the state governments are functioning in compliance with the provisions of the Constitution. The commit-

10. V. P. Dutt, *The Emergency in India: Background and Rationale*, 16 ASIAN SURVEY 1124, 1128 (1976).
11. Simran Shadija, *Analyzing the Position of Fundamental Rights during Emergency in India: Issues and Challenges*, 1 JUS CORPUS L.J. 385, 386 (2021).
12. AAYUSH GOEL, *Proclamation of Emergency*, 5 INT'L J.L. MGMT. & HUMAN. 877, 888 (2021).
13. Chanchal Kumar Singh, *The Principle of Reasonableness and its Application to Laws Made in the Exercise of Emergent Domain*, 3 JOUR' OF LAW TEACH' OF INDIA 70, 73 (2013).
14. *Id.*
15. NORTH EAST FRONTIER AGENCY, <https://uppersiang.nic.in/history/> (last visited Aug. 5, 2022)

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ment grants the central authority the ability to assume control of a state's government under Section 356 in the event of a breakdown in the state's constitutional machinery. A presidential ruler may be declared under Section 356 for two reasons: Section 356 authorizes the President to issue a statement if he or she believes that a situation has arisen in which state governments can no longer operate according to the provisions of the Constitution. Section 365 states that if a state is unable to follow or implement orders sent from the Centre, it is legal for the President to determine that a situation has come up in which the state government can no longer proceed according to the rules of the set Constitution.

The approval and length of a presidential order needs the endorsement of both the Lok Sabha and the Rajya Sabha within a period of two months, starting from the day of its promulgation. If the President's proclamation of rule is issued during the dissolution of the House, or if the House is dissolved within a two-month period without granting approval to the proclamation, the proclamation will remain in effect for a duration of 30 days from its first promulgation. Once presidential control is imposed on a State, the president acquires the following special powers:

- i. He/she has the capacity to undertake the responsibilities of the State Government, as well as exercise the authority granted to the governor or any other executive body inside the state.
- ii. He/she has the authority to assert that the State Legislature is responsible for the execution of authorities attributed to it.
- iii. He/she possesses the authority to undertake any additional measures deemed essential, which may encompass the suspension of any provision within the Constitution, regarding any governmental body or entity associated with the State.

Furthermore, the scope of judicial review was expanded with the implementation of the 38th Amendment Act in 1975, leading to the President's decision to invoke Section 356. Nonetheless, this clause was subsequently eliminated in the 44<sup>th</sup> Amendment of 1978, so indicating that the President's satisfaction is not exempted from scrutiny by the Judiciary.

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