

50 YEARS OF EMERGENCY - POLITY

NEWS: The Allahabad High Court's **June 12, 1975** verdict invalidating then Prime Minister Indira Gandhi's 1971 election for electoral malpractices led to the **proclamation of National Emergency on June 25, 1975**.

WHAT'S IN THE NEWS?

Constitutional Provisions for Proclamation of National Emergency

- **Article 352 – Legal Basis:** The Constitution of India empowers the **President to proclaim a National Emergency under Article 352** if he is satisfied that the **security of India or any part thereof is threatened**.
- **Grounds for Declaration:**
 - **War:** A formal armed conflict with another nation.
 - **External Aggression:** Hostile attack or threat thereof by a foreign power, even without formal declaration of war.
 - **Armed Rebellion:** Internal threat involving organized armed resistance against the State.
 - *Note:* The term “**internal disturbance**” was replaced by “**armed rebellion**” through the **44th Constitutional Amendment Act (1978)** to narrow the scope and avoid misuse.

Procedure and Safeguards for Proclamation

- **Mandatory Cabinet Advice:**
 - According to the 44th Amendment, the **President must act only on the written recommendation of the Union Cabinet**, not merely on the advice of the Prime Minister or individual ministers.
- **Parliamentary Approval Process:**
 - The **proclamation must be approved by both Houses of Parliament within one month** from the date of issuance.
 - If the **Lok Sabha is dissolved**, the emergency can **remain in force** as long as the **Rajya Sabha approves it**, but only up to **30 days after the first sitting of the newly reconstituted Lok Sabha**.
- **Duration and Extension:**
 - Once approved by Parliament, the Emergency **remains in force for 6 months**.
 - It can be **extended indefinitely** for further periods of 6 months, **with each extension requiring fresh approval by Parliament**.
- **Voting Requirement for Approval:**
 - A **special majority** is required in both Houses:

- **A majority of the total membership** of the House, and
- **A two-thirds majority of members present and voting.**
- **Revocation of Emergency:**
 - The **President can revoke** the Emergency at any time through a **subsequent proclamation.**
 - Revocation becomes **mandatory** if the **Lok Sabha passes a resolution disapproving its continuation.**

Impact on Fundamental Rights During National Emergency

Article 358 – Suspension of Article 19 Rights

- **Automatic Suspension:** When Emergency is declared on grounds of **war or external aggression**, the **rights under Article 19 (freedoms)** are **automatically suspended** for the Emergency period.
- **No separate order is required** to suspend these rights.

Article 359 – Suspension of Enforcement of Fundamental Rights

- **Scope:** The **President may issue a specific order** declaring that the **right to move any court for enforcement of specified Fundamental Rights (except Articles 20 and 21)** shall remain suspended.
- **Article 20 and 21 Protection:** These rights are **not subject to suspension**, even during Emergency, ensuring **protection from arbitrary conviction and life/death without due process.**
- **Parliamentary Approval:** Such a Presidential order must be **approved by Parliament.**
- **Judicial Safeguard (Minerva Mills Case, 1980):**
 - The **Supreme Court ruled that the proclamation of Emergency is subject to judicial review.**
 - If the proclamation is found to be **malafide, based on irrelevant facts, or perverse**, it can be struck down.

Historical Instances of National Emergency in India

Grounds	Duration	Context
External Aggression (China)	1962–1968	Declared during Indo-China war; first national emergency.
External Aggression (Pakistan)	1971–1977	Declared during Indo-Pak war leading to Bangladesh's liberation.
Internal Disturbance	1975–1977	Declared by Indira Gandhi citing threats to national security and governance stability.

Criticisms of the 1975–77 Emergency Period

- **Suspension of Civil Liberties:**

- Fundamental rights like **freedom of speech, assembly, and expression** were curtailed.
- **Pre-censorship of media** and suppression of dissent were widespread.
- **Mass Detentions Without Trial:**
 - Under the **Maintenance of Internal Security Act (MISA)**, thousands of opposition leaders, activists, and journalists were detained **without formal charges or trial**.
- **Undermining Judicial Independence:**
 - The **39th Constitutional Amendment** placed the **Prime Minister's election beyond judicial review**, undermining the rule of law and democratic oversight.
- **Excessive Centralisation of Power:**
 - Decision-making became **highly centralised in the executive**, weakening checks and balances and institutional autonomy.

Lessons for Democratic Governance and Reforms Post-Emergency

- **44th Constitutional Amendment (1978) – Key Safeguards:**
 - Made it mandatory for the **President to act based on written Cabinet advice**.
 - Introduced **periodic parliamentary review and special majority requirements** for extending Emergency.
 - Replaced the vague term “internal disturbance” with “**armed rebellion**” to prevent misuse.
- **Protection of Core Rights:**
 - Articles **20 and 21** were made **non-suspendable**, ensuring **protection of life and personal liberty** even during Emergency.
- **Judicial Oversight Restored:**
 - The courts affirmed the **Basic Structure Doctrine**, reinforcing that even Emergency provisions must not violate the core structure of the Constitution.
 - **Judicial review** of Emergency proclamations serves as a vital check against **executive overreach and misuse of power**.

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