National Emergency in India

Why in news?

In 2024, India entered the fiftieth year of the imposition of the emergency.

What is national emergency?

- **Historical background** – Emergency provisions are borrowed from Government of India Act of 1935.
- **Indian Constitution** – Article 352 to Article 360 of the Indian Constitution allows for emergency arrangements.

Emergency provisions are placed in Part XVIII of the Indian Constitution.

- **Need** – The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- **National Emergency** – The term 'national emergency' is not mentioned in the constitution.
- It is given by the ***Article 352*** as ***'Proclamation of Emergency'*** in the constitution.
- **Declaration** – The *President can declare* a national emergency if he/she is satisfied that there is a threat to the security of India or any part of it due to *war, external aggression, or armed rebellion*.

The phrase 'armed rebellion' was inserted by the 44th Amendment Act of 1978, replacing the original phrase 'internal disturbance'.

- The President can declare it even before the actual occurrence of war or external aggression or armed rebellion, if he/ she is satisfied that there is an imminent danger.
- It can be imposed either in the whole country or in any part of it.
- **Approval** – The proclamation of Emergency must be approved by *both Houses of Parliament within one month*.
- This should done by a ***special majority***, that is
  - A *majority of the total* membership of that house and
  - A majority of *not less than two-thirds* of the members of that house present and voting.
- **Time duration** – Once approved, the Emergency remains in force ***for six months*** and can be ***extended by further six-month*** periods with parliamentary approval.
- **Removal** - A proclamation of emergency may be revoked by the President at any time

by a subsequent proclamation.
- Such a proclamation does not require the parliamentary approval.
- Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation

What are effects of national emergency?

- A proclamation of Emergency has drastic and wide ranging effects on the political system.
- **Disrupt centre-state relations** – ***Article 250*** deals with the power of parliament to legislate with respect to any matter in the state list during national emergency.

This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

- **Dominant executive directions** – The Centre becomes entitled to give executive directions to a state on 'any' matter.
- Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.
- **Impact distribution of revenues** – As per ***Article 354***, the President can modify the constitutional distribution of revenues between the Centre and the states.
- The President can *either reduce or cancel the transfer* of finances (both tax sharing and grants-in-aid) from the Centre to the states.
- Such modification continues till the end of the financial year in which the emergency ceases to operate.
- **Superior legislative powers** – The *Parliament acquires the power to legislate* with respect to goods and services tax or matters in the State List, while a proclamation of national emergency is in operation.
- The laws become *inoperative on the expiration of six months* after the emergency has ceased to operate.
- Here also, the power of a state legislature to make laws on the same matter is not restricted but in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.
- Notably, while a proclamation of national emergency is in operation, the *President can issue ordinances* on the state subjects also, if the Parliament is not in session.
- **Effect on life of Lok Sabha and State Assembly** – The life of the Lok Sabha and State Assembly may be *extended beyond its normal term* (five years) by a law of Parliament *for one year at a time* (for any length of time).
- However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.
- **Suspension of Fundamental Rights** – ***Articles 358 and 359*** describe the effect of a National Emergency on the Fundamental Rights.

Emergency provisions relating to suspension of Fundamental Rights were

borrowed from Weimer Constitution of Germany.

- As per Article 358, the six rights guaranteed by Article 19 are automatically suspended *only when the emergency is declared on grounds of war or external aggression* (external emergency) and not on the ground of armed rebellion (internal emergency).
- Article 359 deals with the suspension of other Fundamental Rights (except those guaranteed by ***Articles 20 and 21***).
- This suspension *applies to both the legislative and executive* actions taken during the Emergency period.
- However, the suspension of enforcement does *not mean that the rights themselves cease* to exist.
- It only means that their *enforcement through courts is suspended* for the duration of the Emergency.

What are declaration made so far in India?

- This type of Emergency has been *proclaimed three times* so far-in ***1962, 1971 and 1975***.
- **1962 proclamation** – It was issued in October 1962 on account of Chinese aggression in the NEFA (North-East Frontier Agency -now Arunachal Pradesh), and was in force *till January 1968*.
- Hence, a *fresh proclamation was not needed* at the time of War against Pakistan in 1965.
- **1971 proclamation** – It was made in December 1971 in the wake of attack by Pakistan.
- **1975 proclamation** – Even when the 2nd emergency was in operation, a third proclamation of National Emergency was made in June 1975.
- **Cause of proclamation** - The *first two proclamations* (1962 and 1971) were made on the *ground of 'external aggression'*, while the third proclamation (1975) was made on the ground of internal disturbance ', that is, certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.
- **Revocation** – Both the second and third proclamations *were revoked in March 1977.*

What are the impacts of the national emergency in 1975?

- **Suspension of Fundamental Rights** - This led to widespread censorship of the press.
- Newspapers were required to get government approval before publishing, and many journalists were arrested.
- **Civil Liberties** - The right to move the courts for the enforcement of fundamental rights was suspended.
- **Detention of Political Opponents** - Thousands of political leaders, activists, and dissenters were arrested and detained without trial under preventive detention laws such as the ***Maintenance of Internal Security Act (MISA)***.
- **Centralization of Power** - Decision-making was concentrated in the hands of the Prime Minister and a small group of advisors, sidelining regular administrative and

parliamentary processes.

- **Judicial Independence** - Judges who were perceived as not aligning with the government's stance were transferred or faced adverse consequences.
- **Forced Sterilizations** - Sanjay Gandhi pushed a ***"five-point programme"*** that included forced family planning and clearance of slums.
- **Electoral Consequences** - In the general elections of 1977, the Congress party, led by Indira Gandhi, suffered a massive defeat, and the Janata Party came to power. This election is often seen as a public repudiation of the Emergency.

In ADM Jabalpur vs Shivkant Shukla (1976), the Supreme Court ruled that detention without trial was legal during an emergency.

The **Punchhi Commission** which was constituted in 2007 recommended that Article 352 to be used only as a measure of 'last resort'.

References

1. Indian Express | The story of the Emergency
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