CHAPTER - II

INDIAN PRESIDENT AND EMERGENCY POWERS
The Indian Constitution establishes a Parliamentary form of Government, as distinguished from the American Presidential form of Government. The essence of the Parliamentary type of Government is that the Head of the State is the Constitutional Head and the real executive powers are vested in the Council of Ministers. The Council of Ministers is responsible to the House of People. Though the executive power is vested in the President but he exercises this power with the aid and advice of the Council of Ministers. The members of the Council of Ministers are all elected by the people and they are the members of the Legislature.¹

Article 52 of the Indian Constitution says that there shall be a President of India. He is the Head of the Government. The executive power of the Union as given in Article 53 shall be vested in the President and it shall be exercised by him in accordance with the Constitution either directly or through officers subordinate to him. Article 73 provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and
includes the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. Thus the executive power of the Union which is exercisable by the President is co-extensive with the legislative powers of the Union.

Article 53 (1) of Indian Constitution says that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Originally Article 74 (2) says that the question whether any, and if so, what advice was tendered by the minister to the President shall not be enquired into in any Court. Article 75 says that the Prime Minister shall be appointed by the President and with Prime Minister's and Vice other ministers. The Ministers shall hold office during the pleasure of the President (Art. 75 (2)).
Now, a purely literal and legalistic interpretation of these Articles conveys the impression that the President, if he so desires, can become a dictator. Article 53 (1) leaves a clear scope for the President, if he chooses, to become a real ruler and not to remain mere nominal head of the Union. It is true that there shall be a Council of Ministers with a Prime Minister as a head to aid and advice him in the exercise of his executive powers. But prior to the Constitution (42nd Amendment) Act, 1976 there was no clear provision in the Constitution that the President was bound by the ministerial advice. Consequently, Allen Gladhill was of the view that the Constitution could under certain circumstances make the President a dictator. He can easily manage to seize all executive powers by dissolving the Parliament and declaring state of emergency thereby suspending fundamental rights. As a Supreme Commander of the Armed Forces, he can use military to suppress the civil forces. Even without violating the Constitution, an ambitious President can become the real ruler of India.
This literal interpretation is not in tune with the spirit of the Constitution. No sane President would like to be so ambitious as depicted by Gladhill. None can dispute the fact that the form of Government adopted by the Constitution is a Parliamentary one. It is the essence of the Parliamentary Governments that the real executive powers should be exercised by the Council of Ministers responsible to the Lok Sabha. The President cannot exercise his powers without the aid and advice of a Council of Ministers, i.e., the existence of a Council of Ministers is obligatory. According to Dr. Ambedkar:

"Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the Head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. He will be generally bound by the advice of the Ministers. He can do nothing
contrary to their advice, nor can do anything without their advice.

The President of the Constituent Assembly, Dr. Rajendra Prasad, expressed a similar view in these words: "Although there is no specific provision of the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the convention under which in England the King always acted on the advice of his ministers, would be established in this country also and the President would become Constitutional President in all matters".

The Supreme Court of India has consequently taken the view that the powers of the President and the Governors are similar to the powers of the Crown under the British Parliamentary system.

**INDIAN PRESIDENT AND AMERICAN PRESIDENT**

The American President is the real executive head and is directly responsible to the people of his country. While Indian President is the nominal head, the real Executive is the Council of Ministers. The
members of the cabinet are appointed by the President in America are responsible to him. In India, the President has no choice but to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. Dr. Ambedkar, the Chairman of the Drafting Committee, summed up the true position of Indian President in the following words:

"In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of the functionary reminds one of the Presidents of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government, what the Draft Constitution proposes is the Parliamentary System."

Under the Presidential System of America, the President is the Chief head of the Executive. The
administration is vested in him. Under the Indian Constitution the President occupies the same position as the King under the English Constitution. He is head of the State but not the Executive. He represents the nation but does not rule the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known.17

Thus his position is more comparable to the King or Queen in England than to the President of America.

THE EMERGENCY PROVISIONS (Article 352 - 360):

One of the chief characteristics of the Indian Constitution is the way in which the normal Federal Constitution can be adapted to emergency situation. It is the merit of the Constitution that it visualises the contingencies when the strict application of the federal principles might destroy the basic assumptions on which our Constitution is built.
The Constitution of India provides for three types of emergencies:

A) National Emergency — due to war, external aggression or armed rebellion (Art. 352).
B) State Emergency — due to the failure of constitutional machinery in State (Art. 356).

A) National Emergency:

Caused by war, external aggression and armed rebellion (Art. 352) Art. 352 as it exists after the 44th Amendment Act, 1978, provides that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened, either by war or external aggression or armed rebellion, he may make a Proclamation of Emergency in respect of the whole of India or any part of India as may be specified in the Proclamation. The Proclamation of Emergency made under clause (1) may be revoked or varied by the President by a subsequent Proclamation (Cl. (2)).
Clause (3) provides that the President shall not issue a Proclamation of Emergency unless the decision of the Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Article 75), that such a proclamation may be issued has been communicated to him in writing. This means that the emergency can be declared only on the concurrence of the Cabinet, and not merely on the advice of the Prime Minister as was done by Smt. Indira Gandhi's Government in June, 1975. She had advised the President to proclaim emergency without consulting her cabinet.

The Proclamation of emergency must be laid before each Houses of Parliament and it shall cease to be in operation at the expiration of one month (prior to the 44th Amendment Act, 1978 two months) unless before the expiry of one month it has been approved by resolutions of both Houses of Parliament. If the Proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the
Lok Sabha takes place during the period of one month referred to above, without approving the Proclamation, but the Proclamation has been approved by the Rajya Sagha, the Proclamation shall cease to operate at the expiration of 30 days from the date on which the Lok Sabha sits after fresh election, unless before the expiry of the above period of thirty days a resolution approving the Proclamation has been passed by the Lok Sabha (Clause (4)). A resolution approving the Proclamation must be passed by special majority, that is by a majority of the total members of each House and also by a majority of not less than 2/3 of the members present and voting in each House. Prior to the 44th Amendment, 1978, such a resolution could be passed by Parliament by a simple majority.

Clause (5) provides that once the Proclamation of Emergency is approved by Parliament, it shall remain in force for a period of six months from the date of the passing of the second resolution approving it under clause (4), unless revoked earlier. For the further continuance of the emergency beyond
the period of six months, approval by Parliament would be required every six months. If the dissolution of the Lok Sabha taken place during the period of six months without approving the further continuance of emergency, but it has been approved by the Rajya Sabha, the Proclamation shall cease to operate at the expiry of 30 days after the Lok Sabha sits after fresh election unless before the expiry of the above period, it is approved by the Lok Sabha. Here also the resolution is required to be passed by the special majority referred to above.

Clause (7) provides that President shall revoke a Proclamation if the Lok Sabha passes a resolution disapproving it or disapproving its continuance. Clause (8) provides that where a notice in writing signed by not less than 1/10th of the total number of members of the Lok Sabha have been given their intention to move a resolution for disapproving the continuance of a Proclamation of emergency--

a) to the Speaker, if the House is in session; or
b) to the President, if the House is not in session;
a special sitting of the Lok Sabha shall be held within 14 days from the date on which such a notice is received by the Speaker or the President for the purpose of considering the resolution. In such a case the session must be convened for considering the resolution. Now, it is not left to the discretion of the Government to convene or not a session of the Lok Sabha.

The power conferred on the President by this Article shall include the power to issue different Proclamations on different grounds, either war or external aggression or armed rebellion or imminent danger thereof, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation (Clause 9).

Grounds:

The President can proclaim emergency if he is satisfied that the security of India or any part thereof is threatened either by war or external aggression or armed rebellion. Prior to the 44th Amendment...
Act, 1978, one of the ground on which emergency could be declared under clause (1) was "internal disturbance". The words 'internal disturbance' were vague and gave wide discretion to the Executive to declare emergency even on flimsy grounds. In fact, Smt. Indira Gandhi, the then Prime Minister, had declared emergency on the ground that the security of India was threatened due to internal disturbance. The 44th Amendment has now substituted the words "armed rebellion" for the words "internal disturbance", which will exclude the possibility of a situation which arose in 1975.

The Proclamation of Emergency can be made even before the actual concurrence of events contemplated in Art. 352 have taken place if the President is satisfied that there is imminent danger of war or armed rebellion. Thus the actual occurrence of the events mentioned in Art. 352 are not essential. An imminent danger of war or external aggression or armed rebellion is enough for the declaration of emergency (Explanation to Art. 352 (1)).
The "satisfaction" that the security of India is threatened or there is an imminent danger of its being threatened by war or external aggression or armed rebellion is the "subjective satisfaction" of the President and cannot be challenged in a court of law and even to ground that the opinion of the President had been actuated by mala fides. The question whether emergency exists is essentially a political question entrusted by the Constitution to the Union Executive and therefore not justiciable before the Court. The President is the sole judge to decide whether circumstances exist justifying the Proclamation of Emergency.

But in the recent case of Minerva Mills Ltd. v. Union of India, Bhagwati, J. has held that there is no bar to judicial review of the validity of a Proclamation of Emergency issued by the President under Article 352 (1). Merely because a question has a political complexion, is no ground why the court should shrink from performing its duty under the Constitution, if it raises an issue of constitutional
determination. The courts power is limited only to examining whether the limitations conferred by the Constitution have been observed or mere transgression of such limits. The court cannot go into question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Government is based. The satisfaction of the President is a condition precedent and if it can be shown that there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid. Where therefore the satisfaction is absurd or perverse or mala fide or based on a wholly extraneous and irrelevant ground, it would be no satisfaction at all and it would be liable to be challenged before a court of law.

It is to be however noted that the word 'satisfaction' used in Art. 352 does not mean the personal satisfaction of President, but, it is the satisfaction of the Cabinet. Thus, the power to declare emergency can be exercised by the President only on the advice of the Council of Ministers. This
provision has further been strengthened by the addition of the new clause (3) to Art. 352 by the 44th Amendment Act, 1978. It makes it clear that the President shall declare emergency only on the written advice of the Cabinet, and not merely on the advice of the Prime Minister, as was done by Smt. Indira Gandhi in June, 1975. She had advised the President to proclaim emergency without consulting her Cabinet. The members of the Council of Ministers were simply informed subsequently about the Proclamation of emergency which was a fait accompli. The object of clause (3) is to prevent the recurrence of such a situation in future.

Emergency provisions vest a very great power in the Executive. In the Constituent Assembly, certain members had expressed the view that this power might be misused by the Executive. Dr. Ambedkar however said that the possibility that the emergency powers to the Executive. The power of Executive, however, is not unbridled. He pointed out that the Constitution itself provides certain safeguards against
the abuse of emergency powers by the Executive. Firstly, it is to be exercised on the Council of Ministers who are representatives of the people. Secondly, it must be laid before the Parliament and cannot remain in force beyond two months without its approval. A review of the past events, however, have amply made it clear that in spite of the several safeguards incorporated in the Constitution, the emergency provisions were misused. In 1975 emergency provisions were used to perpetuate the rule of one party which was in power. It is submitted that the effective safeguards against the abuse of emergency powers by the Executive are not constitutional provisions (even after the 44th Amendment, 1978) but the existence of an enlightened and vigilant public opinion. As promised to the electorate the Janata Government has enacted the 44th Amendment and incorporated certain safeguards in the Constitution against any misuse of emergency powers by Government in future.
Territorial Extent of Proclamation:

Article 352 enables the President to make a Proclamation of emergency either 'in respect of the whole of India or of such part of the territory thereof as may be specified'. These words were added by the 42nd Amendment Act, 1976, which now enables the President to confine the declaration of emergency to any part of the territory of India.

Prior to this Amendment, it could be made to apply to the whole of India. If the situation becomes normal in any part of the country emergency could be revoked from that part of the country, but it may continue to operate in other parts of the country.

Duration of Proclamation:

Prior to the 44th Amendment, 1978 a Proclamation of emergency could remain in force in the first instance for "two" months. But once approved by Parliament emergency could remain in force indefinitely i.e. as long as the Executive wanted to continue. The 44th Amendment has curtailed the power of the Executive to prolong the operation of emergency unnecessarily.
After the 44th Amendment Act, a Proclamation of emergency may remain in force in the first instance for "one" month. Such a Proclamation, if approved by Parliament, shall remain in force for the period of "six months" unless revoked earlier. Clause (6) requires that the resolution approving the Proclamation of emergency must be passed by either House of Parliament by the special majority, that is, by a majority of the total membership of that House present and voting. For the further continuance of emergency beyond the period of six months, approved by Parliament would be required every six months. Thus after this Amendment the continuance of emergency does not depend upon the discretion of the Executive. It can now be done only with the approval of Parliament and that too by a special majority of the House.

Effects of Proclamation of Emergency:

The following are the consequences of the Proclamation of Emergency:
1) **Extension of Centre's Executive Power (Art. 353):**

During the operation of a Proclamation of Emergency the executive power of the Union extends to giving of directions to any State as to manner in which the executive power of the State is to be exercised.

The Constitution (42nd Amendment) Act, 1976 made a consequential change in Art. 353 following the amendment made in Article 352. It provides that the executive power of the Union to give directions under clause (a) and the power to make laws under clause (b) shall also extend to any State other than the State where emergency is in force, if the security of India or any part of the territory is threatened by activities is or in relation to that part of the territory of India in which the Proclamation of Emergency is in operation. This clause has also been added to Articles 358 and 359 of the Constitution.

In normal time, the executive power does not extend to giving such directions, subject to certain exceptions.
2) Parliament empowered to legislate on State Subjects (Art. 250):

While the Proclamation of Emergency is in operation, the Union Parliament is empowered to make laws with respect to any of the matters in the State List. The distribution of legislative power is thus fundamentally changed during emergency. The law-making power of the State is only suspended during the emergency. The State can make law but it is subject to the overriding power of the Union Parliament.

3) Centre empowered to alter distribution of revenues between the Union and the States - (Art. 354):

The President may, while a Proclamation of Emergency is in operation by the order alter the financial arrangement between the State and the Union as provided in Articles 268 to 279. Every such order is to be laid before each House of Parliament and will come to an end by the end of the financial year in which the Proclamation of Emergency ceases to operate.

4) Extension of life of Lok Sabha - (Art. 83(2)):

While the Proclamation of Emergency is in
operation, the President may extend the normal life of the Lok Sabha by a year each time upto a period not exceeding beyond six months after Proclamation ceases to operate.

5) **Suspension of fundamental rights guaranteed by Art. 19:**

Article 358 provides for the suspension of the seven freedoms guaranteed to the citizens by Article 19 of the Constitution. It says that while a Proclamation of Emergency is in operation nothing in Article 19 shall restrict the power of the State to make any law or to take any executive action abridging or taking away the rights guaranteed by Article 19 of the Constitution. It means that as soon as the Proclamation of Emergency is made the freedom guaranteed by Art. 19 are automatically suspended.

Normally, the rights guaranteed by Article 19 cannot be taken away or abridged by any law of Parliament or State Legislature. But Article 19 ceases to restrict the legislative or the executive power of the Centre or the States for the period of emergency and
any law made by the Legislature or any action taken by the Executive cannot be challenged on the ground that they are inconsistent with the rights guaranteed by Article 19. As soon as the Proclamation of Emergency ceases to operate. Article 19 which remains suspended during emergency, automatically comes into life and beings to operate and any law inconsistent with Article 19 made during emergency ceases to have effect to the extent of the inconsistency except as respects things done or omitted to be done before the law so ceases to have effect. But no action will lie for anything done during the emergency even after the emergency is over.

The 44th Amendment Act, 1978 has made two important changes in Article 358: Firstly, in clause (1) of Article 358, for the words - "While a Proclamation of Emergency is in operation" the Amendment has substituted the following words - "While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation".
This means that under Article 358, Article 19 will be suspended only when a Proclamation of Emergency is declared on the ground of war or external aggression and not when emergency is declared on the ground of armed rebellion which has been added to this Article by the 44th Amendment.

Secondly, it has inserted a new clause (2) in Article 358 which says that nothing in clause (1) shall apply to -

a) to any law which does not contain a recital to the effect that such law in relation to the Proclamation of Emergency when it is made, or

b) to any executive action taken otherwise than under a law containing such recital. This clause makes it clear that Article 358 will only protect emergency laws from being challenged in a court of law and not other laws which are not related to the emergency. Prior to this, the validity of even other laws not related to emergency could not be challenged under Article 358.
The Proclamation of Emergency however, does not invalidate a law which was valid before the Proclamation of Emergency. 21

In M.M. Pathak v. Union of India, 22 the Supreme Court had an occasion to consider the effect of the expression "the things done or omitted to be done" in Article 358 after the Proclamation of Emergency ceases.

DISTINCTION BETWEEN ARTS. 358 AND 359:

While Art. 358 automatically suspends the fundamental rights guaranteed by Art. 19 thus enabling the State to make laws in violation of Art. 19 and to take executive action under those laws despite the facts that those laws constitute an infringement of the rights conferred by Art. 19. Article 359 (1) does not suspend any fundamental rights of its own force but authorises the President to deprive an individual of his right to approach any court for enforcement of any or all of the rights conferred by Part III of the Constitution. Thus Article 359 (1)
which makes no distinction between the threat to the security of India by war of external aggression or armed rebellion is wider in scope than Art. 358 and it is not open to any one either to challenge the validity of any law or any executive action on the ground of violation of a fundamental right specified in the Presidential Order promulgated under Article 359 (1). 23

A. Duty of the Union to protect States:

Article 355 imposes a duty on the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. Article 355 thus imposes the following two obligations on the Central Government:

(1) The duty to protect States from internal disturbance and external aggression. Such provisions are also found in other federal Constitution, i.e., America, Australia.
But in America and Australia the Centre acts only when the request is made by States, while there is no such pre-condition under Article 355. The Centre can thus interfere even without the State's request.

(2) The duty to see that the Government of every State is carried on in accordance with the provisions of the Constitution. The Constitutions of U.S.A. and Australia also contain such provisions. It is this duty in performance of which the Centre takes over the Government of State under Art. 356 in case of failure of the constitutional machinery in the State. In other federations, however, the Centre cannot do so.

B. FAILURE OF CONSTITUTIONAL MACHINERY IN STATE:

Article 356 says that if the President, on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may issue a Proclamation. By the Proclamation:
(1) The President may assume to himself all or any of the powers vested in or exercisable by the Governor to any body or authority in the State.

(2) The President may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.

(3) The President may make such incidental and consequential provisions may appear to him to be necessary or desirable for giving effect to the objects of Proclamation.

The President cannot, however, assume to himself, any of the powers vested in a High Court or suspend the operation of any provisions of the Constitution relating to the High Court.

Where by the Proclamation under Article 356 (1) the powers of the State Legislature are to be exercised by Parliament. Parliament can confer on the President the power to make laws for the
States. Parliament may also authorise the President to delegate such power to any other authority as specified by himself. (Art. 357 (1)(a)). If the Lok Sabha is not in session the President may authorise expenditure from the Consolidated Fund of State, pending sanction of such expenditure by Parliament.

The Constitution (42nd Amendment) Act, 1976 has substituted a new clause in place of clause (2) of Article 357. This is a saving clause which says that any law made by Parliament or the President or any authority in exercise of the powers of the State Legislature under Article 356 shall continue in force until altered, repealed or amended by the competent Legislature or other authority.

It is to be noted that under Article 356 the President acts on a report of the Governor or otherwise. This means that the President can act even without the Governor's report. This is justified in view of the obligation of the Centre imposed by Art.355 to ensure that the Government of the State is carried on in accordance with the provisions of the Constitution.
In view of it is Centre's ultimate responsibility to protect the constitutional machinery of the States, the framers thought it proper not to restrict and confine the action of the Centre merely on the Governor's report. The Governor might not sometimes make a report. The President can, therefore, act even without the Governor's report, if he is satisfied that such events have occurred in a State, which involve the special responsibility placed upon the Centre to maintain the State under the Constitution.

A Proclamation issued under Article 356 shall be laid before each House of Parliament and shall remain in operation for 2 months. Unless before the expiry of that period it has been approved by both Houses of Parliament. Any such Proclamation may be revoked or varied by a subsequent Proclamation. If any such Proclamation is issued at a time when the Lok Sabha is dissolved or the dissolution takes place during the period of 2 months and the Proclamation is passed by the Rajya Sabha but not passed by the Lok Sabha, the Proclamation shall cease to operate at
the expiry of 30 days from the date on which the new Lok Sabha meets after the reconstruction unless before the expiry of 33 days it has been also passed by the Lok Sabha. If the Proclamation is approved by the Parliament it will remain in operation for 'six months' Parliament may extend the duration of Proclamation for "six months" at a time but no such Proclamation shall in any case remain in force for more than three years. After the expiry of the maximum period of three years, neither the Parliament nor the President shall have power to continue a Proclamation and the constitutional machinery must be restored to the State.

The Constitution (44th Amendment) Act, 1978 has amended Article 356 and restricted its scope. It substitutes the word 'six months' for the words "one year" as it existed originally. Thus it restores the position as it stood before the 42 Amendment. A Proclamation of Emergency will, if approved by Parliament, continue for six months from the date of the issue. For the further continuation of emergency, it must be approved by Parliament each time for a
period of six months. It has added a new clause (5) to Art. 356 in place of the existing clause (5) which is now omitted. This clause (5) provided that a resolution for the continuance of the emergency beyond one year shall not be passed by either House of Parliament unless -- (a) a Proclamation of Emergency is in operation at the time of the passing of such resolution; and (b) the Election Commission certifies that the continuance in force of the Proclamation under Art. 356 during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned. This means that the extension of the emergency beyond the period of one year only be possible if the conditions mentioned in clause (5) are present. Prior to this Amendment there was no such condition imposed and the Government could extend the period upto the maximum of 3 years without sufficient cause.

Since the commencement of the Constitution the President's rule had been imposed under Article 356
on several occasions. In most of the cases, it has been imposed in the circumstances in which a stable ministry could not be formed, i.e., in 1951 in Punjab, in 1953 in Pepsu, in 1954 in Andhra Pradesh, in 1956 in Travancore-Cochin, in 1961 in Orissa, in 1964 in Kerala, in 1967 in Rajasthan, in 1968 in Uttar Pradesh, West Bengal, Bihar and Punjab, in 1969 in Bihar. In West Bengal for the second time, in 1970 on the resignation of Sri Ajoy Mukherji, Chief Minister of the Union Front Ministry. In Uttar Pradesh second time in 1970 when Chief Minister, Mr. Charan Singh refused to resign when he had lost the majority. He had advised the Governor to dismiss 14 Ministers of his cabinet in the BKD--Congress Coalition Ministry. In Orissa second time in 1971, when the Chief Minister resigned and his advice for dissolution of Assembly was not accepted by the Governor. In Mysore in 1971, in Gujarat in 1971, in Punjab fourth time in 1971, in Tripura in 1971, in Bihar in 1971, in Andhra Pradesh in 1973. In Orissa for the third time on March 3, 1973 when the Chief Minister Nandini Satpathi had to resign due to defection. In 1973 it was imposed
in Manipur owing to defection. In 1973 President rule was imposed in Uttar Pradesh when the Chief Minister Mr. Kamla Pati Tripathi had to resign due to the moral responsibility of the Ministry for the Police revolt. In 1974, the President rule was imposed in Gujarat due to student's agitation demanding dissolution of Assembly. In 1975 it was imposed in Uttar Pradesh to solve party disputes. In 1976 it was imposed in Tamil Nadu on the ground that according to the Governor's report, the Tamil Nadu Government had disregarded the directions of the Central Government in relation to the emergency and has misused the emergency powers. The report also said that D.M.K. Ministry had a by a series of acts of mal-administration, corruption and misuse of power for achieving partisan ends set at naught all canons of justice and enquiry which are hallmark of democratic administration. The action of the Centre cannot be held as democratic one because the ministry enjoyed the full confidence of the Legislature as well as the confidence of the people. In 1981, the President rule was imposed in Manipur following the resignation of the
Congress I Ministry as a result of the defection. On October 22, 1981 the President rule was imposed in Kerala following resignation of the left from ministry headed by Mr. Nayanar because it was reduced to minority due to the withdrawal of the support by one of the constituents. On March 20, 1982 the President rule was imposed in Assam following the resignation of the 65 days old ministry of Congress I led by Mr. K.C. Gogal as a result of defection. On March 18, 1982 the Article was invoked in Kerala when the Congress I led O.D.F. Ministry of Mr. Karuna Karan and was reduced to minority due to defection.

In 1959 the President rule was imposed in Kerala in a peculiar circumstances. The Communist Ministry was dismissed on the ground that it had lost the confidence of the people, although it enjoyed the confidence of the Legislature. There was widespread agitation against the Government and the law and order situation was beyond the control of the State Government justifying the imposition of the President rule. The action of the Central Government
had been subject to criticism.

In 1967, in Haryana, and in 1975 in Nagaland President rule was imposed due to defections. In 1966 President rule was imposed in Punjab as a result of the bifurcation of the State into Punjab and Haryana and in Goa for holding an opinion poll.

In 1976, President rule was imposed in two States,--Gujarat and Orissa. In Gujarat it was imposed because of the failure of the coalition ministry due to defections. In 1976, in Orissa like Uttar Pradesh. This Article was invoked, to solve party disputes. The Chief Ministry Mr. Satpathy was asked to resign by the Congress High Command because she had defied certain direction of the High Command. The State Assembly was not dissolved but was kept under suspended animation. This was the fourth time that the State of Orissa came under President's rule, the last three occasions being the years, 1961, 1971 and 1973.
Difference between Articles 352 and 356.— Under Article 352 the State constitution cannot be suspended. The State Legislature and the State Executive continue to function. The only effect is that Centre gets concurrent powers of legislation and administration in State matters. Under Article 356, on the other hand, the State Legislature is suspended and dissolved. The Executive and Legislative power of the State is exercised by the Centre. Under Article 352 the relationship of all the States with the Centre undergoes a change, while under Article 356 the relationship of only the State with the Centre is affected.

C. FINANCIAL EMERGENCY.— Article 360 provides that if the President is satisfied that situation has arisen whereby the financial stability or credit of India or of part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect. The Constitution (28th Amendment)Act, 1975, added a new clause (5) which declared that the satisfaction of the President shall be final and conclusive and shall not be questioned in any court on any ground.
The 44th Amendment Act, 1978.— The Amendment makes two changes in Art. 360 of the Constitution. At present clause (2) of Art. 360 incorporates by reference the provisions of Cl.(2) of Art. 352. Since Cl.(2) of Art. 352 has been amended, it has become necessary to make Cl.(2) of Art. 360 self-contained. Therefore, the Amendment substitutes a new clause for Cl.(2) of Art. 360 which provides that proclamation issued under Art. 360 (1) (a) may be revoked or varied by a subsequent proclamation, (b) shall be laid before each House of Parliament, and (c) shall cease to operate at the expiry of two months unless before the expiration of that period it has been approved by resolutions of two Houses of Parliament. But if the Lok Sabha is dissolved during this period of two months and resolution is approved by the Rajya Sabha, but not by the Lok Sabha, the proclamation shall cease to operate at the expiry of 30 days from the date on which the new Lok Sabha sits unless before the expiry of 30 days a resolution approving proclamation is passed by the Lok Sabha.
During the period when such a proclamation is in operation, the executive authority of the Union shall extend to the giving direction to any State to observe such canons of financial property as may be specified in the direction. The President is also to give other directions as he may deem necessary and adequate for the purpose.

Any such direction may include a provision for the reduction of salaries and allowances of all or any class of persons serving in a State, including the Judges of the Supreme Court and High Courts. It may also require that all money or Financial Bills are to be reserved for the consideration of the President after they are passed by the Legislature of the State.

The duration of a proclamation of financial emergency will be in operation for two months and unless approved by the President it shall cease to operate at the expiry of two months' period.

"The Constitution of India is unique that it
contains a complete scheme for speedy re-adjustment of the peace-time government machinery in movements of national peril. These provisions may appear to be particularly in a Constitution which professes to be built upon an edifice of fundamental rights and democracy. But the provisions must be studied in the light of India's past history. India had her inglorious days whenever the Central power grew weak. It is far well that the Constitution guards against the forces of disintegration. Events may take place threatening the very existence of the State and if there are no safeguards against such eventualities, the State, together with all that is desired to remain basic and immutable, will be swept away".24
REFERENCES


2) Section 4, Representation of Peoples Act, 1951.


4) President's pension Amendment Act, 1985.

5) Illustration is given by Drafting Committee.
   See Draft Constitution of India, p.17.


7) Dr.N.B.Khde Vs Election Commission of India, AIR 1957, SC 694, 1957, SCR, 1081.

8) President's Succession Act, 1967.


10) Premnarain Vs State of Uttar Pradesh., AIR 1960 All 205; Emperor Vs Benorilal Sharma AIR 1945, p.48.

12) K. Nagaraju Vs State of Andhra Pradesh 1985
   1 Sec 524.
13) Basen, Introduction to the Constitution of India,
14) Article II, Section 2 of the American Constitution.
15) AIR 1961, SC 112.
18) AIR 1980 SC, 1789.
19) Singh D.K., Emergency and the Constitution of India,
   Indian Constitution Trends and issues, p. 288
20) Inserted by the 44th Amendment Act, 1978.
21) Benett Coleman Co., Vs Union of India, AIR 1973
   SC 106.
22) AIR 1978, SC 803.
23) Union of India Vs Bhanudas, AIR 1977 SC 1207.