

(7) Emergency Powers :

An emergency is "a sudden or unforeseen situation demanding immediate action". In such a situation, the President assumes extraordinary powers.

The President possesses **three** types of Emergency Powers e.g., (a) **National Emergency** caused by war, external aggression or armed rebellion inside the country. (Article – 352) ; (b) **Constitutional Emergency** caused by the break down of the constitutional machinery in a State (Article – 356) ; and (c) **Financial Emergency** caused by a threat to financial stability of India (Article – 360).

(a) National Emergency (Article – 352)

National Emergency is caused by *war, external aggression or armed rebellion* in the whole of India or a part of its territory. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 (declared by Indira Gandhi to maintain law and order in the country).

(i) Circumstances :

National Emergency under Article – 352 is proclaimed when the President is satisfied that the security of India or any part of it is threatened by war or external aggression or "armed rebellion". The President exercises this power on the written advice of the Union Cabinet.

(ii) Duration and Parliament's approval:

The proclamation of this Emergency must be approved within one month by both Houses of the Parliament by simple majority and 2/3rd majority of the members present and voting. This approval is only for six months at a time. After six months, if the emergency continues, it has to be approved afresh by the Parliament by the same special majority vote as noted above. The Parliament's approval may be repeated every six months as long as a threat to national security lasts. If the Parliament passes a resolution disapproving the Emergency, he/she has to revoke the proclamation.

(iii) Effects of National Emergency :

- (i) **On Centre-State Relations** : The proclamation of the National Emergency alters the Centre-State relations as under :

- (a) The Parliament gets the power to legislate on any subject of the State List.
- (b) The Union Government can direct the States in the exercise of their executive authority.
- (c) The Union Government can alter the distribution of revenue between the Centre and the States.

(ii) Fundamental Rights : The effects on the fundamental rights during National Emergency :

- (a) The Fundamental Rights guaranteed under Article 19 remain suspended. Article 19 contains freedoms such as the freedom of speech and assembly.
- (b) The President may suspend the right to move any Court for the enforcement of such rights as may be mentioned in the order (except the rights guaranteed under Articles 20 and 21). Article 20 says that no person shall be punished for the same offence more than once.

Article 21 declares that no person shall be deprived of his/her life or personal liberty except according to the "procedure established by law."

- (iii) **Effect on Life of Legislatures** : While the proclamation of emergency lasts, the Parliament may extend the duration of the Lok Sabha or the State Legislative Assemblies for a year at a time.

(b) Constitutional Emergency (Article – 356)

President's Rule (or **Central Rule**) is the term used in India when a state government is dissolved and is placed under direct federal rule. President's rule is enabled by article 356 of the Constitution of India, which gives the central government the authority to dismiss any state government if there has been failure of the constitutional machinery in the state.

It is called the *President's rule* as the President of India governs the state instead of an elected Chief Minister, but administratively, the state governor is delegated executive authority on behalf of the central (federal) government.

(i) **Circumstances** : When the State Governor informs the President or if he/she is otherwise satisfied that the government of a State cannot be run according to the Constitution, he/she may proclaim *Constitutional Emergency*. This is popularly known as the **President's rule** in a State. He/She may also do so when a State Government is unable to carry out the directions of the Union Government.

(ii) **Duration and Parliament's Approval** : Its duration is only for two months subject to approval of the Parliament. It ceases to operate after six months from the date of proclamation. It can, however, be extended for another six months. Thus, a *Constitutional Emergency* can last for a year at the most.

It can be extended beyond one year (but never beyond three years) under two conditions viz. (a) When national emergency is declared in whole of India or in any part of the State; (b) When the Election Commission certifies that holding of election in the State is not possible.

(iii) **Effects of Constitutional Emergency** : It has the following effects on the State :

- The Legislative Assembly is dissolved or suspended.
- The Parliament gets the power to legislate for the State.
- The President may authorise the Governor to exercise all the executive powers.
- The *Annual Budget of the State* is passed by the **Parliament**.
- The President may sanction expenditure out of the *Consolidated Fund of India*, when the Lok Sabha is not in session.
- The President, however cannot suspend the operation of any provision of the Constitution relating to High courts.

(c) **Financial Emergency (Article - 360)**

(i) **Circumstances** : The President may declare Financial Emergency under Article - 360 of the Constitution, when the financial stability or credit of India is threatened.

(ii) **Duration and Parliament's Approval** : Its duration is two months. It must be approved by the Parliament, if it is to continue beyond two months. The Financial Emergency continues, until it is revoked by the President. Such an emergency has never been imposed upon the country so far.

(iii) **Effects of Financial Emergency** :

- The Centre may issue certain directions of financial rules to the States with regard to the utilization of funds in the manner it thinks fit.
- The President may reduce the salaries and allowances of the staff, including Judges.
- The Centre may direct all the States to reduce the salaries and allowances of their staff.
- All Money Bills passed by the State legislatures may be reserved for the consideration of the President.
- The President may appoint a Finance Commission to suggest suitable measures to restore financial stability.

President's Discretionary Powers – His/Her Actual Position :

From the above, we should not conclude that the President is just a figure-head or a golden zero for only ceremonial purposes. He/She has a very important role to play in the actual working of the Parliamentary system in our country.

- President's role become very important when no single party getting a clear majority, a coalition of parties stake their claim to form the government. The President has to use his individual judgement and invite such a leader to head the government as Prime Minister, who can provide a stable government to the country.
- The President's role also become very important under the circumstances when a Prime Minister after losing the vote of confidence asks for the dissolution of the House. In this situation he/

she is not bound to act on the advice of the Prime Minister. He/She should explore the possibility of forming an alternative government at the Centre.

The President holds a position of "authority and dignity" which implies a certain amount of influence and discretion, of the President. The following points amplify the President's **Discretionary Role** and explain his/her position through the exercise of his/her own individual judgement :

- (i) He/She can return the advice of the Council of Ministers to it for its reconsideration at least for the first time (44th Amendment Act 1978).
- (ii) He/She has the power to get information about all matters of the Government.
- (iii) He/She may refuse to give his/her assent to a Bill and return it for reconsideration "as soon as possible". This may mean as long as the President chooses. Recently, he/she has returned the "**Office of Profit Bill**" for reconsideration by the Lok Sabha, by pointing out its infirmities and discrepancies.
- (iv) He/She has a duty to call the session of the Parliament at regular intervals or to consult the Election Commission on the elections in the country.
- (v) He/She causes the reports of all Statutory Bodies e.g., Finance Commission, U.P.S.C., Election Commission, etc. to be laid before the Parliament and publish it, whether the verdict in these reports favours or disfavours the government of the day.
- (vi) Article – 53 says that the executive power of the Union shall be exercised by him (President) directly or through officials subordinate to him. The use of the word "directly" gives the President the choice to act directly.

All these show that the President can play a definite role as the guardian of the Constitution. He/She is certainly not just a glorified non-entity, nor only a rubber stamp. A strong President, elected

with the support of multi-parties at the Centre and in the States can assert and play his/her part judiciously as the guardian of the Constitution and as a servant of the people. He/She is a national role model and a great motivator.

Limitations on the President's Powers

There are three main limitations on the President, viz.

- (i) There is the Prime Minister and the Council of Ministers to aid and advise the President in the exercise of his/her powers. The 42nd Amendment Act (1976) provides that the President must in all cases act on the advice of the Prime Minister. The powers of the President are in fact exercised by the real executive i.e., the Prime Minister and the Council of Ministers.
- (ii) All proclamation of emergencies made by the President under Articles – 352, 356 and 360 have to be laid within one month before the Parliament for approval. If a proclamation of emergency is not approved, it becomes null and void and ceases to operate.
- (iii) The third limitation is the power of impeachment of the President by the Parliament for violating the Constitution in its letter and spirit. Therefore, no President acts in a manner which may violate the Constitution.

(b) The Vice-President

The Constitution of India also provides for a Vice-President.

Qualifications for Elections

- (a) He/She must be a citizen of India,
- (b) Must not be less than 35 years of age,
- (c) Must be qualified for election as member of the Rajya Sabha,
- (d) Should not hold any office of profit under the centre or the state government,
- (e) Should not be a proclaimed offender,
- (f) Should not be of unsound mind.

Term of office

A Five-year tenure of office, unless earlier vacated by resigning in writing to the President. However, he/she continues in office until his/her successor joins the office.

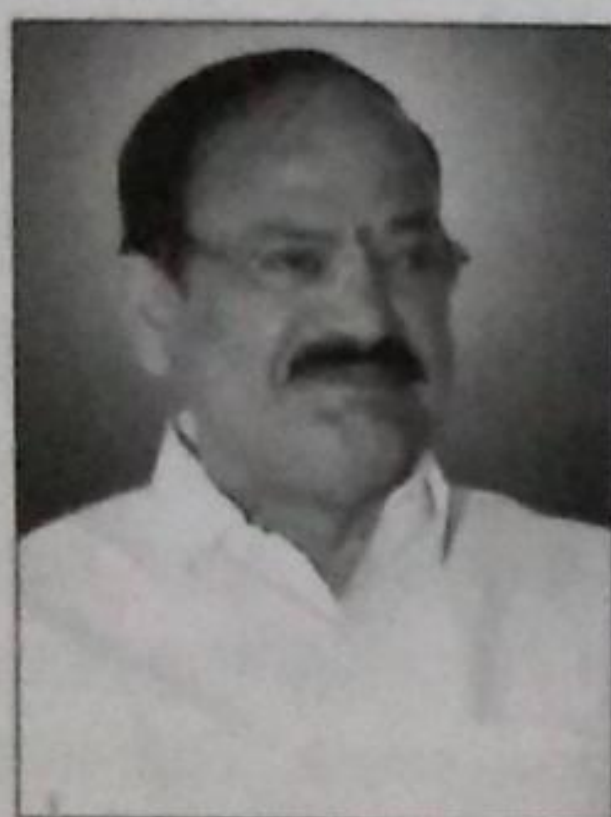
Removal

He/she may be removed for violation of the Constitution or incapacity by a resolution of the Rajya Sabha, passed by a majority of its members and supported by the Lok Sabha. There is no provision for *impeachment of the Vice-President*.

Emoluments

He/She gets ₹1.25 Lakh per month, daily allowance as permissible to a Member of Parliament. He/She is entitled to a pension of 50% of his salary. When he/she acts as the President, he/she draws the same emoluments as the President draws.

Vice-President of India



Name	: Venkaiah Naidu
Position	: Vice-President of India
Elected by	: Members of Both the Houses of the Parliament
Tenure	: 5 years
Removal	: If members of the Rajya Sabha pass a resolution by the absolute majority and agreed by the Lok Sabha.
Salary	: ₹1,25,000 per month.

Election of the Vice-President

The State legislatures have no hand in the election of the Vice-President. The Electoral College consisting of members of both the Houses of the

Parliament elect the Vice-President. The election is by *proportional representation and single transferable vote system*. The nomination paper for the Vice-Presidential candidate must be proposed by 20 and seconded by another 20 MPs, as per the ordinance of June, 1997. He/She is also supposed to deposit ₹15,000/- as security deposit.

Oath of Office

Before holding the office, the Vice-President takes an oath before the President (or some person appointed on his/her behalf by him) to

1. discharge the functions of the Vice-President of India.
2. preserve, protect and defend the Constitution and the law, and
3. devote himself to the service and well-being of the people of India.

Powers and Functions

The Vice-President performs the following normal functions as Chairman of the Rajya Sabha:

- (1) He/She is the *ex-officio* Chairman of the Rajya Sabha. As such, he/she regulates the proceedings of this House.
- (2) He/She decides about the admissibility of a question or a resolution in the Rajya Sabha.
- (3) The Vice-President decides about the serial order and time limit of speech of a member.
- (4) He/She may suspend the proceedings of the House, in case of grave disorder.
- (5) He/She issues directions to the Chairmen of different committees of the House.

As Vice-President has no significant functions, except ceremonial, *i.e.*, to receive certain categories of VIP's from abroad. He/She undertakes goodwill missions abroad. He/She takes over as the President in case of :

- (a) death of the President in office,
- (b) resignation of the President,
- (c) removal of the President and
- (d) in case of illness, absence or for any other reason when the President is unable to discharge his/her functions. His position as the Vice-President is dignified, but not very strong.

Vice-President as President

The Vice-President officiates as the President when the latter is unable to discharge his/her duties owing to illness or absence from the country. If a President dies while holding office, the Vice-President becomes the Acting President and takes

over his/her duties till a new President is formally elected. The Vice-President can officiate as President for a maximum period of six months within which period the new President must be elected. In case the Vice-President resigns, the Chief Justice of India officiates till the election of the new Vice-President.

Answer the following :

1. Discuss all the emergency powers of the Indian President.
2. What do you mean by 'President's discretionary power'? Discuss any five discretionary powers of our President.
3. Mention all the limitations imposed on the President.
4. Discuss the powers and functions of the Vice-President.