

CONSTITUTIONAL LAW | UNIT – V

Emergency, Amendment, Basic Structure & Schedules

Expanded Edition • Highest Yield Topics for Exams

The Most Scoring Unit if Prepared Well

Almost Every Paper

Basic Structure Doctrine (Kesavananda + later cases). Article 356 + S.R. Bommai. Effect of Emergency on Fundamental Rights.

Very High Frequency

Art. 368 procedure. National Emergency (Art. 352). Difference between Art. 358 & 359. 44th Amendment safeguards.

High Frequency

Financial Emergency. Schedules (especially 7th, 9th, 10th, 11th, 12th). Review of working of the Constitution.

How to Score Maximum

Write chronological case development for Basic Structure. For Emergency write types → effects → FR impact → 44th Amendment → current position.

Article 352

If the President is satisfied that a grave emergency exists whereby the security of India or any part is threatened by war, external aggression or armed rebellion, he may by proclamation make a declaration to that effect.

Grounds

War, external aggression, or armed rebellion.
'Internal disturbance' was replaced by 'armed rebellion' by the 44th Amendment.

Procedure

Cabinet's written advice required (44th Amendment).
Must be approved by both Houses within one month.
Continuance needs approval every six months.

Effects

Centre can give directions to States on any matter.
Parliament can legislate on State List. Life of Lok Sabha can be extended by one year at a time.

Revocation

Can be revoked by a subsequent proclamation. Lok Sabha can also force revocation by passing a resolution.

Most Litigated Emergency Provision

Ground

President is satisfied that the government of a State cannot be carried on in accordance with the Constitution.

Effects

State executive power assumed by President. State legislature powers exercisable by or under the authority of Parliament. High Court continues.

Duration

Initially six months. Can be extended up to three years with conditions (after 44th Amendment).

S.R. Bommai (1994)

1. Majority must be tested on the floor of the House.
2. Proclamation is justiciable.
3. Secularism is basic structure.
4. Governor's report is not conclusive.

Safeguards

Parliamentary approval, judicial review, Bommai guidelines, and the requirement of floor test have reduced arbitrary use.

Exam Structure

Definition → Ground → Effects → Duration → Bommai holdings → Conclusion on federal balance.

Articles 358 & 359 – Current Position

Article 358

During National Emergency on ground of war or external aggression, Art. 19 rights are automatically suspended. Does not apply when Emergency is on ground of armed rebellion.

Article 359

President may suspend the right to move any court for the enforcement of specified Fundamental Rights (except Arts. 20 and 21) during Emergency.

44th Amendment

Permanent protection: Arts. 20 and 21 cannot be suspended even during Emergency. This is a crucial safeguard after the experience of 1975–77.

ADM Jabalpur (1976)

Majority held that even right to life can be suspended. Strongly criticised. Effectively neutralised by 44th Amendment and later jurisprudence.

Current Law

Even in Emergency, the State cannot take away life or personal liberty except according to procedure established by law. Judicial review of Emergency proclamations is available to a limited extent.

Exam Tip

Always distinguish 358 (automatic suspension of Art. 19) from 359 (suspension of enforcement). Highlight 44th Amendment protection to 20 & 21.

Article 368

Ordinary Procedure

Bill passed by each House by special majority – majority of total membership + 2/3rd of members present and voting.

Special Procedure

For certain federal provisions, ratification by at least half of the State legislatures is also required after special majority in Parliament.

Scope of Power

Parliament can amend any provision of the Constitution, but cannot destroy or damage the basic structure.

Evolution

Shankari Prasad (unlimited) → Golaknath (FRs unamendable) → Kesavananda (basic structure) → Minerva Mills & later cases refining the doctrine.

Kesavananda Bharati & After – Highest Yield

In *Kesavananda Bharati v. State of Kerala* (1973), a 13-judge Bench held that the amending power under Art. 368 does not extend to destroying or damaging the basic structure / essential features of the Constitution. This is the most important limitation on Parliament's amending power.

Illustrative Features

Supremacy of Constitution, Republican & Democratic form, Secularism, Separation of Powers, Federalism, Free & Fair Elections, Judicial Review, Independence of Judiciary, Rule of Law, Harmony between FRs & DPSPs.

Later Application

Indira Gandhi (election case), *Minerva Mills* (limited amending power), *I.R. Coelho* (9th Schedule), *NJAC* (judicial appointments) – all applied the doctrine.

Why Every Year

It is the ultimate check on majoritarianism. Almost every significant constitutional controversy is tested against basic structure.

Exam Writing

Start with *Kesavananda* → list 6–7 features → mention 2–3 later cases → conclude that it preserves constitutional identity.

Most Important Schedules for Exams

7th Schedule

Union, State and Concurrent Lists – distribution of legislative powers.

8th Schedule

Official Languages recognised by the Constitution.

9th Schedule

Acts protected from FR challenge (subject to basic structure after I.R. Coelho).

10th Schedule

Anti-Defection Law.

11th Schedule

Powers of Panchayats (29 subjects).

12th Schedule

Powers of Municipalities (18 subjects).

1st Schedule

Names of States and Union Territories.

5th & 6th Schedule

Scheduled Areas and Tribal Areas administration.

KEY TAKEAWAYS – UNIT V

Highest Priority Revision Points

01

Three Emergencies

National (352), State/President's Rule (356), Financial (360). Only first two have been used.

02

Bommai Principles

Floor test, judicial review of 356, secularism as basic feature – compulsory in every answer.

03

FRs during Emergency

Arts. 20 & 21 cannot be suspended. Distinguish 358 and 359 clearly.

04

Basic Structure

Kesavananda is the foundation. List features + later cases. It is the ultimate limitation on amending power.

05

Art. 368

Special majority + ratification for federal provisions. Subject to basic structure.

06

Schedules

7th (Lists), 9th (protection), 10th (defection), 11th & 12th (local bodies) are most frequently asked.

End of UNIT – V

Emergency • Amendment • Basic Structure • Schedules

Full Constitutional Law Series Completed