



The forced sterilizations of emergency

Published On: 30-06-2025

Context

- As India marks the **50th anniversary of the Emergency**, one of the most horrific and least acknowledged chapters of Indian democracy is of **state-sponsored, forced sterilisation practices**, popularly known as **nasbandi** in public memory.
- It is an **atrocitiy** almost without any parallel in any democracy, for its sheer scale, brutality, and brazen invasion of the bodily autonomy of men and women.
- While India's National Family Planning Programme had long advocated sterilisation as a voluntary method of birth control, the campaign took a violent turn during Emergency, under the ambitious yet authoritarian leadership.
- The targets were mainly the poor, slum dwellers, Dalits, minorities, and rural communities.
- The **Shah Commission**, set up to **investigate the Emergency's abuses**, recorded 1,778 sterilisation-related deaths and hundreds of injuries. It also noted that thousands of sterilisations happened unofficially.

National Emergency - Process and Provisions

- In India, a **National Emergency (Article 352)** refers to a period when the **security of the nation is severely threatened**.
- The **President can declare** a National Emergency in India under Article 352 when the security of **India or a part of it** is threatened by: **war, external aggression, or armed rebellion**.
- **Originally**, the Constitution mentioned '**Internal Disturbance**' as the third ground for the proclamation of a National Emergency.
- However, because of the vagueness and ambiguity of the phrase 'Internal Disturbance', it was **replaced by the phrase 'Armed Rebellion'** by the **44th Constitutional Amendment Act of 1978**.
- Based on the grounds of the declaration, the National Emergency is called by any one of the following 2 names:
 - 1. External Emergency** – It refers to a National Emergency that is declared on the grounds of **War or External Aggression**.
 - 2. Internal Emergency** – It refers to a National Emergency that is declared on the grounds of **Armed Rebellion**.
- The **44th Constitutional Amendment Act of 1978** mandated that the President can proclaim a National Emergency **only after receiving a written recommendation from the Cabinet** i.e. only on the concurrence of the Cabinet and **not merely on the advice of the Prime Minister**.

- A proclamation of National Emergency may apply to the entire country or only a part of it.
- The proclamation of a National Emergency **must be approved by both Houses of Parliament within one month from the date of its issue.**
- **Originally**, the period allowed for approval of a National Emergency by the Parliament was **two months**.
- It was reduced to one month by the **44th Constitutional Amendment Act of 1978**.
- If approved by both Houses of Parliament, the National Emergency **continues for six months**.
- It can be **extended to an indefinite period** with the **approval of Parliament every six months**.
- This provision of **periodic approval** (every six months) was added by the **44th Constitutional Amendment Act of 1978**.
- Every resolution approving the Proclamation of National Emergency or its continuation must be passed by either House of Parliament by a **Special Majority** i.e. 50% of the total membership of the House, and a majority of not less than 2/3rd of the members of that House present and voting
- This provision of Special Majority was added by the **44th Constitutional Amendment Act of 1978**.
- Earlier, such resolutions could be passed by a Simple Majority of either House of Parliament.
- A Proclamation of Emergency can be revoked by the President at any time by a subsequent proclamation.
- Such a proclamation does not require parliamentary approval.
- In **Minerva Mills Case, 1980**, the Supreme Court held that the proclamation of National Emergency **can be challenged in a court on grounds of malafide or when the declaration was based on extraneous or irrelevant facts**.