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LS ERUPTS AS BIRLA READS RESOLUTION ON EMERGENCY

LS erupts as Birla reads resolution on Emergency

cheerfulness
Bonhomie that prevailed after his election as Speaker shattered over reminder of the excesses committed during the period; Opposition had not pressed for a division of votes for the election

Devesh K. Pandey
Sandeep Phukan
NEW DELHI

The bonhomie that prevailed in the Lok Sabha following Om Birla's election as Speaker by a voice vote on Wednesday, with the Opposition not pressing for a division of votes in support of Congress candidate Kodikunnil Suresh, proved short-lived when Mr. Birla read out a resolution on the 1975 Emergency, triggering huge protests by the Opposition.

The resolution said the Congress had crushed the spirit of the Constitution, and dictatorship had been imposed in 1975.

"The Emergency is a black spot in history. The aim of these amendments made by the Congress go-



Fresh start: Narendra Modi, Rahul Gandhi and Kiren Rijju escort Om Birla to the Speaker's chair in the Parliament House. PTI

vernment was to bring all the powers to one person, to control the judiciary, and to destroy the basic principles of the Constitution. By doing this, the rights of citizens were suppressed and the principles of democracy attacked," Mr. Birla said, reading out the resolution.

"The then-Prime Minister

Indira Gandhi also talked about committed bureaucracy and committed judiciary, which is an example of her anti-democratic attitude," he said.

Amid sloganeering by a large number of Opposition members, the House was adjourned for the day after observing a moment of silence in memory of the

victims of the Emergency.

Earlier, after the Speaker's election, Prime Minister Narendra Modi lauded Mr. Birla for the skill he showed in maintaining the decorum of the House during his previous term. In keeping with parliamentary tradition, newly appointed Leader of the Opposition Rahul Gandhi walked across the aisle to congratulate Mr. Birla, shook hands with Mr. Modi and escorted the Speaker to his Chair along with the Prime Minister and Parliamentary Affairs Minister Kiren Rijju. Mr. Gandhi stressed the importance of "impartiality" from the Speaker's chair.

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The period of Emergency has been heavily criticised and termed as "black days of Indian democracy". The Indira Gandhi government reasoned that there were threats to national security which required such strict measures. It is believed that the Emergency was imposed after the 1975 verdict of the Allahabad High Court which convicted Gandhi of electoral malpractices and disqualified her from the Parliament and stated that she won't be able to hold any elected post for the next 6 years. Soon after this verdict, she had declared the Emergency.

Background to Emergency:

- ❖ 1970's was a period of political turmoil in India. This period witnessed tensions in the relationship between the government and the judiciary. Ideological differences erupted within the Congress and it sharpened the division between Indira Gandhi and her opponents. Congress gave the slogan of Garibi Hatao in 1971 elections. Due to various national and international factors, the social and economic condition in the country did not improve much after 1971-72.



- ❖ **Gujarat and Bihar Movements:** Gujarat and Bihar were Congress ruled states. Despite this fact students from both the states started agitation against rising prices of food grains, cooking oil and other essential commodities, and against corruption in high places. Jai Prakash Narayan from Bihar gave a call for total revolution in the social, economic and political spheres.
- ❖ **The Naxalite Movement:** In 1967, a peasant uprising took place in Naxalbari area of Darjeeling (West Bengal) under the leadership of CPI (M), headed by Charu Majumdar. The government has taken stern measures in dealing with the Naxalite movement.
- ❖ **Railway Strike of 1974:** A nationwide strike by all employees of the Railways was led by George Fernandes. Its main demand was related to bonuses and service conditions. The government declared the strike illegal and it had to be called off after 20 days without settlement.
- ❖ **Conflict with Judiciary:** 1970s witnessed a bitter relationship between legislature and judiciary. In 1973, issue of appointment of Chief Justice of India worsened the condition.
- ❖ The highest point in controversy came when the High Court declared Indira Gandhi's election invalid.

Consequences:

- ❖ Freedom of Press and some of the Fundamental Rights of the citizens were suspended. All the ongoing protests ended, strikes were banned, opposition leaders were put in jail.
- ❖ Prior approval of government was needed to publish any article or matter it is called press censorship.
- ❖ Sweeping constitutional amendments were carried out like the 39th amendment which prohibited SC from hearing election petitions and the 42nd amendment, which declared that any amendment to the Constitution cannot be questioned in any court.
- ❖ Even the tenure of legislatures was extended to six years.

Controversies regarding Emergency:

- ❖ After the emergency, an investigation was done by the Shah Commission. It found that in some areas excess restrictions were implied during the emergency.
- ❖ The government argued that in a democracy, the opposition parties must allow the elected ruling party to govern according to its policies.
- ❖ The critics say that Indira Gandhi misused constitutional provision meant for saving the country to save her personal power.
- ❖ The Shah Commission estimated that nearly one lakh people were arrested under preventive detention laws.
- ❖ Apart from the arrests of political workers and the restrictions on the press, the emergency directly affected the lives of common people in many cases. Lessons from Emergency
- ❖ The Emergency brought out both the weaknesses and the strengths of India's democracy.
 - ☛ To prevent any attempt to throttle democracy on the grounds of internal disturbance, the 44th Amendment in 1978 had been carried out. As a result, the President can declare Emergency only due to external aggression and the condition of "internal disturbance" was replaced with armed rebellion.
 - ☛ The President's proclamation has to be approved by both the houses of Parliament within a month.



- ❖ It brought out some ambiguities regarding the Emergency provision in the Constitution that have been rectified since.
- ❖ The emergency made everyone more aware of the value of civil liberties. An important lesson taught by Emergency is that the people of India, although peace-loving, will never tolerate authoritarianism.
- ❖ The Courts too, have taken an active role after the Emergency in protecting the civil liberties of the individuals. This is a response to the inability of the judiciary to protect civil liberties effectively during an emergency. Many civil liberties organisations came up after this experience.
- ❖ A state of emergency in India refers to a period of governance that can be proclaimed by the President of India during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees Fundamental Rights to the citizens of India.
- ❖ The emergency provisions are contained in Part XVIII of the Constitution of India, from Article 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively.
- ❖ The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- ❖ The Constitution stipulates three types of emergencies-
 - 1 National Emergency
 - 2 Constitutional Emergency
 - 3 Financial Emergency

NATIONAL EMERGENCY:

- ❖ National emergency can be declared on the basis of war, external aggression or armed rebellion. The Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.

Grounds of declaration:

- ❖ Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- ❖ The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
- ❖ When a national emergency is declared on the grounds of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the grounds of 'armed rebellion', it is known as 'Internal Emergency'.
- ❖ This term 'armed rebellion' is inserted from the 44th amendment. Before this term it was known as internal disturbance.
- ❖ **Example:**
 - ☛ If India and Pakistan openly accept that they will use armed forces against each other is simply war.
 - ☛ If there is no formal declaration that there will be armed forces used against a country is External aggression.
 - ☛ And if because of these two grounds an emergency is proclaimed as an external emergency.



Facts:

- ❖ The 38th Amendment Act of 1975 made the declaration of National Emergency immune to judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978.
- ❖ In *Minerva Mills case* (1980), the Supreme Court held that National Emergency can be challenged in the court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts.
- ❖ **Parliamentary approval and duration:**
 - ☛ The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
 - ☛ However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
 - ☛ If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
 - ☛ Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.
- ❖ **Revocation of proclamation:**
 - ☛ A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.
 - ☛ The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.
- ❖ **Effects of national emergency:**
 - ☛ A proclamation of Emergency has drastic and wide-ranging effects on the political system. These consequences can be grouped into 3 categories:
 - **Effects on the centre-state relations:** While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change. this can be studied under three heads:
 - **Executive:** Centre becomes entitled to give executive directions to a state on 'any' matter
 - **Legislative:** The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the parliament become inoperative six months after the emergency has ceased to be in operation.
 - **Financial:** the president can modify the constitutional distribution of revenues between the centre and the states.
 - ☛ **Effect on the life of the Lok Sabha and State Assembly:**
 - While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond the normal term for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.



- Similarly, the Parliament may extend the normal tenure of a state Legislative Assembly by one year each time during a national emergency, subject to a maximum period of six months after the emergency has ceased to operate.

Effect on fundamental rights:

- ❖ Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights.

These two provisions are explained below:

- ❖ **Suspension of Fundamental rights under Article 19:** According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
- ❖ The 44th Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
- ❖ **Suspension of other Fundamental Rights:** Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, remedial measures are suspended and not the Fundamental Rights.
- ❖ The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
- ❖ The suspension could be for the period during the operation of emergency or for a shorter period.
- ❖ The Order should be laid before each House of Parliament for approval.
- ❖ The 44 Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.
- ❖ **Declarations made so far:** This type of emergency has been proclaimed three times so far- in 1962, 1971 and 1975
 - ☛ The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA and was in force till January 1968.
 - ☛ The second proclamation of National Emergency was made in December 1971 in the wake of the attack by Pakistan.
 - ☛ Even when the emergency was in operation, the third proclamation of National Emergency was made in June 1975. Both the second and the third proclamations were revoked in March 1977

Question:

Q.1 Consider the following statements with reference to Emergency provisions in the Constitution:

1. The President can suspend any fundamental right during the proclamation of emergency.
2. The Presidential order on suspension of fundamental rights should be laid before each House of Parliament for approval.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2



Q.2 Consider the following statements with reference to the National Emergency:

1. Rights under Article 19 are automatically suspended when the National Emergency is declared on the ground of war or external aggression.
2. Parliament can suspend the right to move any court for the enforcement of all Fundamental Rights except those under Articles 20 and 21.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Explanation : 1

- ❖ Article 359 authorizes the President to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. This means that under Article 359, the Fundamental Rights as such are not suspended, but only their enforcement. Also, the President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 & 21. So, statement 1 is not correct.
- ❖ The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
- ❖ Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country. It should be laid before each House of Parliament for approval. So, statement 2 is correct.
- ❖ Therefore, option (b) is the correct answer.

Explanation : 2.

- ❖ According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. No separate order for the suspension is required. However, the 44th Amendment Act of 1978 laid out that Article 19 can only be suspended when the National Emergency is declared on the grounds of war or external aggression and not on the ground of armed rebellion. So, statement 1 is correct.
- ❖ Article 359 authorizes the President to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. The 44 Amendment Act restricted its scope. It mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21. So, statement 2 is not correct.
- ❖ Therefore, option (a) is the correct answer.

BANNERGHATTA BIOLOGICAL PARK

India's largest leopard safari opens at Bannerghatta

The Hindu Bureau
BENGALURU

South India's first and the country's largest leopard safari was inaugurated by Karnataka Environment Minister Eshwar Khandre on Wednesday at the Bannerghatta Biological Park.

As per Central Zoo Authority guidelines for safaris, an area of 20 hectares has been demarcated and fenced for the safari. Eight leopards have been released for the safari in the open forest area.

According to park officials, Bannerghatta is home to a good population of free ranging leopards (*Panthera pardus*), and highlighting these predators is vital.

The facility has been created at a cost of ₹4.5 crore. The leopard safari area is made up of undulating terrain with natural rocky outcrops and semi-deciduous forest. This whole area is covered with a vertical chain-link mesh which is 4.5 metres high, and MS sheets have been placed at a 30 degree inclined angle of 1.5 metres.

The officials added that owing to increasing human-animal conflict in recent times, the park receives many leopard cubs rescued across the Karnataka. "These cubs will be raised and shifted to the leopard safari to help visitors learn about these big cats, the reasons for the growing human-animal conflicts, and the ways to protect the animals," said the officials.

The officials added that four acres within the safari area have been separated, using a solar fence, to help the animals accli-



In focus: A leopard clicked during the inaugural safari ride at Bannerghatta in Bengaluru on Wednesday.

K. MURALI KUMAR

South safari



On the trail: A leopard, seen cautiously lounging at the Bannerghatta Biological Park, was photographed during the inaugural run of south India's first leopard safari. The safari will showcase several leopards rescued from across Karnataka. K. MURALI KUMAR (REPORT ON PAGE 5)

matise to their new environment.

During his visit to the park, Mr. Khandre also inaugurated a number of initiatives, which included a renovated elephant weaning centre, a babycare room at the butterfly park, a children's play area, an entrance arch, and he also flagged off electric buggies and zoo installations.

The Minister also named a male elephant calf Swaraj and set free six hamadryas baboons for public display.

The park officials said that during this financial year new naturalistic enclosures have been proposed for emus and rheas at a cost of ₹50 lakh.

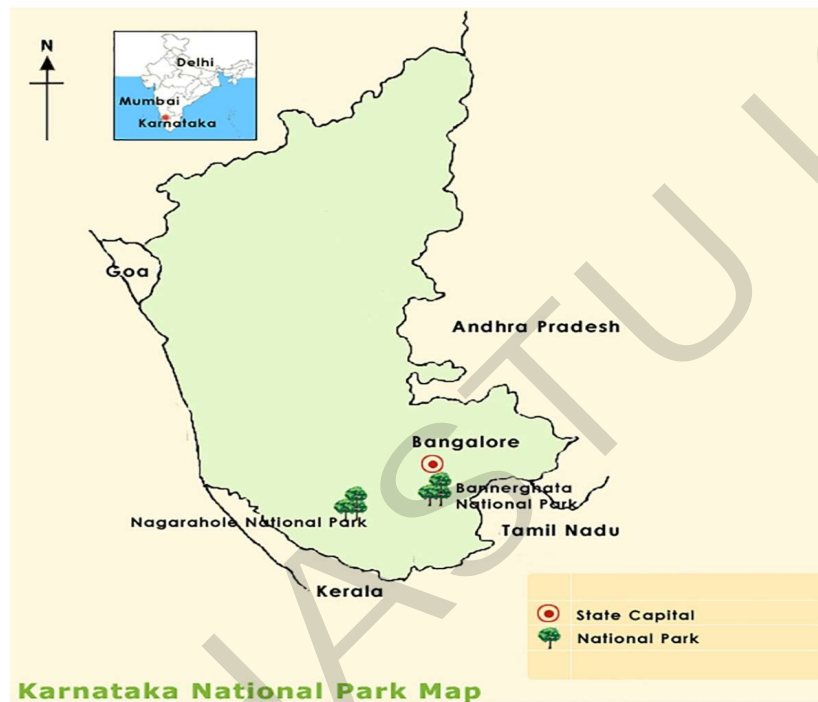
A hunting cheetah enclosure at an estimated cost of ₹1.5 crore; a hamadrya and olive baboon enclosure at ₹1.5 crore, and an Indian grey wolf enclosure at ₹1.5 crore have also been proposed. Skywalks are also being developed to establish connectivity between the zoo and the butterfly park, they added.

About Bannerghatta National Park:

- ❖ **Location:** It is located near Bangalore, Karnataka, in the hills of the Anekal range.
- ❖ It was declared as a National Park in 1974.
- ❖ In 2002 a portion of the park became a biological reserve, the Bannerghatta Biological Park. It is the first biological park in India to have a fenced forested elephant sanctuary.
- ❖ In 2006, India's first butterfly enclosure was inaugurated at the park.
- ❖ **River:** Suvarnamukhi stream, the main source of water for the animals of the park, runs through the centre of the park.



- ❖ **Vegetation:** There are three types of vegetation that can be found: Dry Deciduous Scrub Forests, Southern Tropical Dry Deciduous Forests and Southern Tropical Moist Mixed Forests.
- ❖ **Flora:** Include Narcissus latifolia, Schleichera oleosa, Sandalwood, Neem, Tamarind, Bamboo, Eucalyptus etc.
- ❖ **Fauna:** Prime habitat for several species, including the endangered Asian Elephant, Indian gaur, Tiger, Sambar deer, Spotted deer, Leopard, Wild dog, Wild pig, Sloth bear, Common mongoose, Pangolin, Slender loris, Black-naped hare, etc.



Question:

Q.3 "Bannerghatta National Park" often seen in news is located at?

- (a) Kerala
- (b) Karnataka
- (c) Tamil Nadu
- (d) Andhra Pradesh



ENDING DEFECTIONS

Ending defections

Engineering defections goes against the spirit of the people's mandate

With the defection of MLA M. Sanjay Kumar, who represents the Jagtial constituency in Telangana, from the Bharat Rashtra Samithi (BRS) to the ruling Congress, the strength of the principal Opposition has come down from 39 to 33 in the State Assembly. True, such defections have plagued India, and several States, including Telangana, since its inception in 2014, have seen mass defections. Despite winning 63 of the 119 Assembly seats, Telangana's first Chief Minister, the BRS's K. Chandrashekhar Rao, effected a series of defections across the political opposition, until he was able to garner a brute majority of 90 MLAs and the dissolution of the State unit of the Telugu Desam Party (TDP) by the end of his first term in office in 2018. Such defections, much like the current case, violated the 10th Schedule of India's 1985 Anti Defection Law, which was amended in 2003 to provide an exception to disqualifications if the defectors formed two-thirds of a party and merged with another party. This rule and the absolute power vested with the Speaker of the Assembly and the Chair of the Council to decide on members' disqualifications, without setting any time limit to do so, have often rendered the law ineffective. The Telangana Assembly Speaker is the ruling party's Vikarabad MLA, Gaddam Prasad Kumar. While he must serve in the interest of fostering principled democratic practices, seldom have Speakers, in the States or at the Centre, risen above their party's diktats.

Mr. Kumar's defection has particularly caused some disquiet in the Congress, as it has slighted T. Jeevan Reddy, the candidate who lost the Jagtial Assembly seat. Mr. Reddy now serves as a Congress MLC. The Telangana Chief Minister, A. Revanth Reddy, has been accused of attempting defections in the past, the most infamous being his attempt in 2015 – when he was a TDP member – to bribe a nominated member of the House, Elvis Stephenson, to vote in favour of the TDP. These defections go against the spirit of participatory democracy, where the existence of a strong Opposition enhances governance and acts as a check on unilateral decisions taken by the ruling government. The experience of the past 10 years, both in New Delhi and in Hyderabad, has made apparent the dangers of parties with brute majorities. With a stronger Opposition at the Centre in 2024, perhaps it is time to seek more amendments to the anti-defection law. Prescribing a timeline for Speakers and Chairpersons to decide on disqualifications might not be enough; the power must be vested with an independent Election Commission.

What is an Anti-Defection Law?

❖ About:

- The anti-defection law punishes individual Members of Parliament (MPs)/Members of the Legislative Assembly (MLAs) for leaving one party for another.
- Parliament added it to the Constitution as the Tenth Schedule in 1985 in order to bring stability to governments by discouraging legislators from changing parties.
- The Tenth Schedule - popularly known as the Anti-Defection Act – was included in the Constitution via the 52nd Amendment Act, 1985.
- It sets the provisions for the disqualification of elected members on the grounds of defection to another political party.
- It was a response to the toppling of multiple state governments by partyhopping MLAs after the general elections of 1967.

❖ Does not Penalise Group MP/MLAs:

- However, it allows a group of MP/MLAs to join (i.e., merge with) another political party without inviting the penalty for defection. And it does not penalise political parties for encouraging or accepting defecting legislators.



- ☛ As per the 1985 Act, a 'defection' by one-third of the elected members of a political party was considered a 'merger'.
 - ☛ But the 91st Constitutional Amendment Act, 2003, changed this and now at least two-thirds of the members of a party must be in favour of a "merger" for it to have validity in the eyes of the law.
 - ☛ The members disqualified under the law can stand for elections from any political party for a seat in the same House.
 - ☛ The decision on questions as to disqualification on ground of defection are referred to the Chairman or the Speaker of such House, which is subject to 'Judicial review'.
 - ☛ However, the law does not provide a timeframe within which the presiding officer has to decide a defection case.
- ❖ **Grounds for Defection:**
- ☛ **Voluntary Give Up:** If an elected member voluntarily gives up his membership of a political party.
 - ☛ **Violation of Instructions:** If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorized to do so, without obtaining prior permission.
 - ☛ **Elected Member:** If any independently elected member joins any political party.
 - ☛ **Nominated Member:** If any nominated member joins any political party after the expiry of six months.

Question:

Q.4 Which one of the following Schedules of the Constitution of India contains provisions regarding anti-defection? (2014)

- (a) Second Schedule
- (b) Fifth Schedule
- (c) Eighth Schedule
- (d) Tenth Schedule

UPSC Prelims 2022 Question:

Q.5 With reference to anti-defection law in India, consider the following statements:

1. The law specifies that a nominated legislator cannot join any political party within six months of being appointed to the House.
2. The law does not provide any time-frame within which the presiding officer has to decide a defection case.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Answer: (b) 2 only