

Section 12 of Transaction of Business Rules, 1961

December 12, 2019

Source: *The Hindu*

Manifest pedagogy: The use of article 356 (President's Rule) is one of the most controversial in Indian polity and so far has been one of the major imbalancing acts in Indian federalism. In light of recent developments, UPSC may question the procedure and rules followed in due process of declaring President's rule

In news: Rule 12 of the Government of India (Transaction of Business) Rules, 1961 was used by the Centre to revoke President's Rule in Maharashtra.

Placing it in syllabus: Centre state relations (Indian Polity)

Static dimensions:

- What is it ?
- When was it used?
- In what conditions can it be used?

Current dimensions: Criticisms of its recent use

Content: To revoke President's Rule in Maharashtra, recently the government used a special Section in the Union government's Transaction of Business Rules, which allows for revocation of President's Rule without Cabinet approval if the Prime Minister "deems it necessary".

What is it?

- Under **PART V** of the Indian Constitution, **Article 77** deals with the **Conduct of business of the Government of India.**

- **Clause 3 of Article 77** states that “the President shall make rules for the more convenient transaction of the business of the government of India, and for the allocation among Ministers of the said business”.
- The **Government of India (Transaction of Business) Rules 1961** has been **framed under Article 77(3)**.
- **Rule 12** of the Government of India (Transaction of Business) Rules, 1961, allows the Prime Minister to depart from laid down norms at his discretion without the approval of the Cabinet.
- It says, **“The Prime Minister may, in case or classes of cases permit or condone a departure from these rules, to the extent he deems necessary.”**
- The **Cabinet** can subsequently give **post-facto approval** for any decision taken under Rule 12.

When was it used?

- Recently the **state of Jammu and Kashmir** was **reorganised into the Union Territories** of Jammu and Kashmir and Ladakh on **October 31, 2019**.
- The **proclamations dividing various districts** between the two Union Territories were **issued under Rule 12 by the President**.
- The **Cabinet** gave post-facto **approval** to the same on **November 20, 2019**.
- Then in **case of Maharashtra**, tussle for power among BJP, Congress, Shivsena and NCP continued for weeks post the assembly election results.
- Since every party had failed to prove the majority, **President’s rule was imposed on November 12, 2019**.
- On November 22 night, though there were reports that an alliance of Shiv Sena, NCP and Congress will soon form the government, **on November 23, BJP formed government claiming support from NCP MLAs**.
- Hours before the Oath Ceremony, **President’s rule was revoked at 5:47 am under Rule 12** of the Government of

India (Transaction of Business) 1961.

In what conditions can it be used?

- Rule 12 is **not ideally used to arrive at very key decisions** by the government.
- It has been **generally used in** matters such as withdrawal of an office memorandum or signing of MoUs in the past.

The following **guidelines are required to be followed** in cases where rule 12 is proposed to be invoked:

- a) **Proposals shall be moved only by the administrative Ministry/ Department concerned with the subject.**
- b) Proposals shall be **accompanied by a detailed justification clearly bringing out the urgency involved** in the matter and the **exceptional circumstances** that require it to be processed under Rule 12.
- c) **Secretary of the Department/Ministry will ensure that all essential requirements** including inter-ministerial consultations **have been met.**
- d) **Ministry/Department concerned shall route the proposal through the Cabinet Secretary after obtaining the approval of the Minister-in-charge** in all cases or other concerned Ministers, where the subject matter impinges on their business”.

Criticisms of its recent use:

The **approval of the Union Cabinet** for the revocation of the President's rule in Maharashtra **was given by the central government by invoking Rule 12** and there was no meeting of the Union Cabinet.

After the President's signature on the proclamation, a **gazette notification to this effect was issued by Union Home Secretary at 5.47 AM** putting an end to the President's rule and

facilitating the formation of a **government in Maharashtra by BJP's Devendra Fadnavis** who took oath as chief minister.

The **Congress demanded to know the details of the Cabinet meeting, its time and attendees**, which recommended to the President that President's Rule should be revoked. Also the **invoking of Rule 12 in early morning** to allow formation of BJP government in the state was criticised.