Emergency provisions were made in Constitution to safeguard and protect the security, integrity and stability of the country and effective functioning of State Governments. Emergency is a unique feature of Indian Constitution that allows the center to assume wide powers so as to handle special situations. Emergency Provisions are contained in Part Eighteen of the Constitution of India. The President of India has the power to impose emergency rule in any or all the Indian states if the security of part or all of India is threatened by "war or external aggression or armed rebellion".\(^1\) When the Constitution of India was being drafted, India was passing through a period of stress and strain. Partition of the country, communal riots and the problem concerning the merger of princely states including Kashmir. Thus, the Constitution-makers thought to equip the Central Government with the necessary authority, so that, in the hour of emergency, when the security and stability of the country is threatened by internal and external threats.\(^2\)

The Constitution of India contains Articles 352-360 which deals with 'Emergency Provisions'. The emergency provisions (especially Arts. 352 and 356) have been exclusively amended by the Constitution (44\(^{th}\) Amendment) Act, with a view to introduce a number of safeguards against abuse of power by the executive in the name of emergency. Amendments have thus been made by the 44\(^{th}\) Amendment to the emergency provision of the Constitution to make repetition of the 1975 situation extremely difficult, if not possible.\(^3\)


\(^3\) Indian Constitutional Law- Prof. M.P.Jain, LexisNexis -Sixth Ed., p 738 , para 4
It is a notable feature of Constitution of India where it deals with extraordinary or crisis situations.

The **three emergency situations** under the Constitution are:

- **NATIONAL EMERGENCY**
  - Emergency arising from a threat to the security of India.

- **STATE EMERGENCY**
  - Breakdown of constitutional machinery in a State.

- **FINANCIAL EMERGENCY**
  - Financial stability of India is threatened.
Article 352 deals with the National Emergency. An emergency arising from the threat to the security of the country is called **National Emergency**. A national emergency can be proclaimed by the President of India either (i) by war or external aggression or (ii) by armed rebellion within the country. Under Article 352(1), if the President is satisfied that a grave emergency exists whereby the security of India or any part thereof is threatened, whether by war, or external aggression, or armed rebellion, he may, by proclamation, make a declaration to that effect. Such a proclamation may be made in respect of the whole of India, or such part of the Indian Territory as may be specified in the proclamation.

Article 352(1) thus means that the proclamation need not extend to the whole of India. It may be restricted to a part of the Indian Territory. A proclamation of emergency under Article 352(1) may be made before the actual occurrence of war, external aggression or armed rebellion. As Supreme Court explained in the case of *Naga People’s Movement of Human Rights v. Union of India*, that the expression “internal disturbance” has a wider connotation than ‘armed rebellion’ in the sense that “armed rebellion” is likely to pose a threat to the security of the country, or a part thereof, while “internal disturbance”, though serious in nature, would not pose a threat to the security of the country, or a part thereof.

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An explanation to art 352 says that it is not necessary that external aggression or armed rebellion has actually happened to proclaim emergency. It can be proclaimed even if there is a possibility of such thing happening. In the case of *Minerva Mills vs Union of India*\(^6\) held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under 352(1).

A proclamation issued under Article 352(1) may be varied or revoked by a subsequent proclamation (Article 352(2)).

### 2.1. 44th Amendment

There had been various changes after the 44\(^{th}\) amendment in Article 352 of the Indian Constitution.

**Article 352(3)**-

According to the 44th Amendment of the Constitution, the President can declare such an emergency only if the Cabinet recommends in writing to do so. The 44\(^{th}\) Amendment has introduced a clause i.e. Article 352(3), to the effect that the President shall not issue a proclamation of emergency (under Article 352(1)), or a proclamation varying the same, unless the decision of the Union Cabinet i.e. the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Article 75\(^7\) that such a proclamation may be issued

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\(^6\) AIR 1980, SC

\(^7\) Other provisions as to Ministers

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister
2. The Minister shall hold office during the pleasure of the President
3. The Council of Ministers shall be collectively responsible to the House of the People
has been communicated to him in writing. This means that the decision to issue such a proclamation has to be arrived at collectively by the Cabinet and not by the Prime Minister alone without consulting the Cabinet. It so happened in 1975 that the President proclaimed emergency on the advice of Prime Minister alone and the Council of Ministers was later presented with a fait accompli. It is to avoid any such situation in future that Article 352(3) has been introduced in the Constitution.

**Article 352(4)-**

There was a reduction of approval of proclamation by the Parliament by the 44th amendment. A proclamation will automatically cease after one month if not approved by Parliament. Earlier the period allowed for parliamentary approval of the proclamation was two months.

**Proviso to Article 352(4)-**

If at the time of issuing proclamation, Lok Sabha is dissolved without approving the proclamation, and Rajya Sabha approves it, then the proclamation ceases to operate 30 days after Lok Sabha sits again after fresh elections, unless in the meantime the new Lok Sabha passes a resolution approving the proclamation.

**Article 352(6)-**

A resolution approving the proclamation of emergency has to be passed by each house by a majority of the total membership of each house and not less than 2/3rd of its majority of the members present and voting in each house.

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8 “accomplished fact”; something that has already happened and is thus unlikely to be reversed, a done deal.
Article 352(8)-

There was another amendment i.e. where a notice in writing, signed by not less than 1/10th of the total members of the Lok Sabha has been given, of their intention to move a resolution disapproving the proclamation of emergency, to the Speaker if the house is in session, or to the president, and if the house is not in session then a special sitting of the house is to be held within 14 days from the date on which such notice is received by a speaker or president.

2.2. Invocation of Article 352

National Emergency has been declared in our country three times so far.

1. For the first time, emergency was declared on 26 October 1962 after China attacked our borders in the North East. This National Emergency lasted till 10 January 1968, long after the hostilities ceased.

2. For the second time, it was declared on 3 December 1971 in the wake of the second India Pakistan War and was lifted on 21 March 1977.

3. While the second emergency, on the basis of external aggression, was in operation, third National Emergency (called internal emergency) was imposed on 25 June 1975. This emergency was declared on the ground of ‘internal disturbances’. Internal disturbances justified imposition of the emergency despite the fact that the government was already armed with the powers provided during the second National Emergency of 1971 which was still in operation.
STATE EMERGENCY

Article 356 and Article 357 provide for meeting a situation arising from the failure of the Constitutional machinery in a State.\(^{10}\)

It is the duty of the Union Government to ensure that governance of a State is carried on in accordance with the provisions of the Constitution. Under Article 356, the President may issue a proclamation to impose emergency in a state if he is satisfied on receipt of a report from the Governor of the State, or otherwise, that a situation has arisen under which the Government of the State cannot be carried on smoothly. In such a situation, proclamation of emergency by the President is called ‘proclamation on account of the failure (or breakdown) of constitutional machinery.’ In popular language it is called the President’s Rule. Like National Emergency, such a proclamation must also be placed before both the Houses of Parliament for approval. In this case approval must be given within two months; otherwise the proclamation ceases to operate. If approved by the Parliament, the proclamation remains valid for six months at a time. It can be extended for another six months but not beyond one year. (Proviso to Article 356(4)).

However, emergency in a State can be extended beyond one year if (a) a National Emergency is already in operation; or if (b) the Election Commission certifies that the election to the State Assembly cannot be held.

The declaration of emergency due to the breakdown of Constitutional machinery in a State has the following effects:

(i) The President can assume to himself all or any of the functions of the State

\(^{10}\) Report of Sarkaria commission- 1975
\(^{11}\) Indian Constitutional Law- Prof. M.P.Jain, LexisNexis -Sixth Ed., p 762 , para 7
Government or he may vest all or any of those functions with the Governor or any other executive authority.

(ii) The President may dissolve the State Legislative Assembly or put it under suspension. He may authorise the Parliament to make laws on behalf of the State Legislature.

(iii) The President can make any other incidental or consequential provision necessary to give effect to the object of proclamation.

3.1. Case laws:

State of Rajasthan v. India\(^{12}\)

A constitutional controversy of great significance in Article 356 was raised in this case. When the general election for Lok Sabha were held in the country in 1977, after the lifting of the emergency of 1975, the Congress Party was badly routed in several states by the Janata Party which won a large number of seats in the Lok Sabha and thus, formed the government at the Centre. In these states, congress ministries were functioning at the time and they still had some more time to run out for completion of the full term. There have been many cases of misuse of ‘constitutional breakdown’. For example, in 1977 when Janata Party came into power at the Centre, the Congress Party was almost wiped out in North Indian States. On this excuse, Desai Government at the Centre dismissed nine State governments where Congress was still in power. This action of Morarji Desai’s Janata Government was strongly criticized by the Congress and others. The suit was designed to foretell the invocation of Article 356 in the several States. The Supreme Court however, dismissed the suit unanimously. The board position adopted by the Court was that it could not interfere with the Centre’s exercise of power under Article 356 merely on the ground that it embraced ‘political and executive policy and expediency unless some constitutional provision was being infringed.’

S.R. Bommai v. India\textsuperscript{13}

The Supreme Court gave a landmark decision in this case. The facts of the case are - in 1989, the Janata Dal Ministry headed by Shri SR Bommai was in office in Karnataka. A number of members defected from the party and there a question mark on the majority support in the house for Bommai’s ministry. The Chief Minister proposed to the governor that the Assembly Session be called to test the strength of the ministry on the floor of the house. But the governor ignored this suggestion. He also did not explore the possibility of an alternative government but reported to President that as Shri Bommai had lost the majority support in the house and as no other party was in the position to form the government, action be taken Article 356(1). Accordingly, the president issued the proclamation in April 1989.

Bommai challenged the validity of the proclamation before the Karnataka high court through writ petition on various grounds. The high court ruled that the proclamation issued under article 356(1) is not wholly outside the pole of judicial scrutiny. The Satisfaction of the president article 356(1) which is a condition present for issue of the proclamation ought to be real and genuine satisfaction based on relevant facts and circumstances.

Bommai appealed to the Supreme court against the high court decision. The Supreme Court was also called upon to decide the validity of similar proclamation under 356(1) in the states of Meghalaya and Nagaland and thus declared it unconstitutional.

The Supreme Court held in the Bommai case that the Assembly may not be dissolved till the Proclamation is approved by the Parliament. On a few occasions such as when Gujral Government recommended use of Article 356 in Uttar Pradesh, the President returned the recommendation for reconsideration. The Union Government took the hint and dropped the proposal.

\textsuperscript{13} AIR 1994 SC 1918 : (1994) 3 SCC 1
FINANCIAL EMERGENCY

The Financial Emergency provided under Article 360. It provides that if the President is satisfied that the financial stability or credit of India or any of its part is in danger, he may declare a state of Financial Emergency. Like the other two types of emergencies, it has also to be approved by the Parliament. It must be approved by both Houses of Parliament within two months. Financial Emergency can operate as long as the situation demands and may be revoked by a subsequent proclamation. So far, fortunately, financial emergency has never been proclaimed.

The proclamation of Financial Emergency may have the following consequences:

(a) The Union Government may give direction to any of the States regarding financial matters.

(b) The President may ask the States to reduce the salaries and allowances of all or any class of persons in government service.

(c) The President may ask the States to reserve all the money bills for the consideration of the Parliament after they have been passed by the State Legislature.

(d) The President may also give directions for the reduction of salaries and allowances of the Central Government employees including the Judges of the Supreme Court and the High Courts.