

A COMPARATIVE ANALYSIS OF EMERGENCY PROVISIONS IN INDIA, USA, UK

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ABSTRACT

An emergency provision is considered as a constitutional provision in India that allow the resident to take certain extraordinary action during times of emergency. The emergency provisions are a vital element of governance, enabling states to act decisively and efficiently in response to crises. This comparative analysis examines how India, the UK, and USA deal with emergencies within their constitutional and legal frameworks.

In India, the Constitution explicitly outlines three categories of emergencies: National Emergency and state emergency. Each is triggered by specific circumstances – like external aggression, internal disturbances, or financial instability – and grants substantial authority to the central government to ensure national integrity and stability.

UK, in contrast, doesn't have a codified constitution. Emergency powers are primarily governed by the Civil Contingencies Act 2004, which provides a legal structure for dealing with major emergencies. The Act enables the government to take necessary action while maintaining accountability through parliamentary review, offering a more adaptable approach to crisis management.

In the United States, the Constitution does not specifically provide for emergency powers. Instead, such powers are exercised through statutory provisions, notably the National Emergencies Act of 1976. Although the Act mandates periodic reporting to Congress and includes provisions for legislative oversight, in practice, these checks are seldom exercised.

By comparing these three systems, it becomes evident that each reflects its unique constitutional makeup and historical experience. While India provides a detailed constitutional scheme for emergencies, the UK emphasizes legal flexibility, and the USA relies on statutory delegation and executive discretion. Despite these differences, all three systems aim to strike a balance between enabling effective crisis response and preserving democratic accountability.

Key words: Emergency Provisions, India, USA, UK

INTRODUCTION

The Indian system of government is of quasi judicial nature where resembling a federal government, power are delivered among the centre and the state and like unitary form due to retention of power to the Union in emergency cases. The state governments relinquish their privileges to the central government to retain securities and quest of public wellbeing. It was at the time when

neighboring nation, China attacked the northern borders posing a threat to the security of India, when for the first time the Union assumed powers to manage such a situation. Since then the President was assigned with extraordinary powers to act in situations of Emergency.

Emergency is a prominent Constitutional aspect utilized in various nations, depending upon the social and political situations for

regulation of harmony and national stability. Indian constitution, at the time of its making had comprised emergency provision for the National regulations, during strict violation of harmony and security. After independence, the provision of emergencies had been utilize in a number of times, as the national had been confronting many issues in preserving security of the country⁶⁹¹.

As the word "emergency" imply, it denotes to an unexpected turn of situations that force public authority to take sudden actions within their jurisdiction. During an emergency, human civil rights are stripped from the state or nation, with the exception of Art 20 and 21. The majority of emergencies are caused by malfunctioning administrative structures. The Indian federal framework, as per Dr BR Ambedkar, is unique in that it can become unified when administrative mechanisms fail⁶⁹².

In some states, the state of emergencies and its effect on human right and freedom and governmental procedures are controlled by the constitution and laws that limit the power that might be invoked. Privileges and freedom might be suspended during emergencies, in case, freedom of movement, but not nonderogable right. In different states it is unlawful to alter the emergency laws or the constitution during the emergencies.

In emergency there are responsibilities of government to arrange for the whole catastrophe with all the measures need to protect their citizens. In India the president is provided the authority to proclaim emergencies during severe emergency. The president proclaims emergencies after he is pleased after advices and discussions with the council minister. The India had confronted national emergency three times. Whenever there are threats in the constitutional mechanism or threats to the nation or financial

credibility is threatened then the Indian President can proclaims emergency in all parts of India

The Emergency provision is included in Part-XVIII, under Art 352, Art 356 and art 360. The Indian President has the authority to inflict emergency rules in all Indian states if there is risk to security of every part of India. These provisions allow the Central government to meet any abnormal condition efficiently. The rationality behind the integration of this provision in the Constitution is to protect the power, harmony, truthfulness and safety of the nations and democratic political systems.

All through emergencies, the union government turns into all powerful and the states go into the entire control of the Union government. It converts the federal structure into a unitary one without formal amendments of Indian Constitution. This type of change of the political systems from federal during usual times to unitary during emergencies are unique features of the Indian Constitution. Therefore, Dr BR Ambedkar identified in the Constituent Assembly that:

Every federal system comprising USA is placed in tight mix of federalism. No matters what the situations, it can't transfer its type and shapes. It can never be unitary.⁶⁹³

This research work is an effort to throw lights on the provisions of emergency in India, USA and UK. In the United Kingdom, emergency measures are primarily governed by the Civil Contingencies Act 2004, which replaced various earlier laws addressing emergencies. This legislation grants the government significant powers to manage emergencies such as natural disasters, acts of terrorism, or public health threats. Additionally, it mandates that the government maintain comprehensive emergency plans, provide public guidance, and publish non-legislative actions when necessary.

⁶⁹¹ AK Srivastava "National Emergency and India in the 20th century" .SCJ.18 (2007).

⁶⁹² Narender Kumar, *Constitutional Law of India*, (Allahabad law agency, 2015).

⁶⁹³ R K Singh, *Constitutional Issue and Indian Polity* (Arihant Publishers 2005)

Under this Act, an emergency is defined as any event or situation that poses a serious risk to human welfare, the environment, or national security. In response to an emergency, the government has the authority to declare a state of emergency and take appropriate actions to address the crisis. These measures can include restricting or prohibiting movement, controlling or confiscating property, and deploying military forces if needed. When such a declaration is made, the government can issue regulations that limit movement, assembly, and business operations in the affected areas. However, these emergency powers are subject to review by Parliament every 30 days to ensure they remain justified and proportionate. This oversight mechanism is designed to strike a balance between the need for rapid and effective action in emergencies and the protection of civil liberties.

PROBLEM STATEMENT

This research paper tried to explore how India, US and UK identify national crises through constitutional and legal system. To examine the scope, limitation, and practical applications of emergency powers in each jurisdiction, this research work aimed to recognize the balance among safeguarding national security and preserving individual freedoms. It will compare the procedural requirement, the role of government organizations, and the impact on civil liberties during states of emergency, highlighting both similarities and differences in their approaches to guaranteeing stability while respecting democratic principles.

OBJECTIVES OF THE STUDY

The aim and objective of this study will be to critically analyze Emergency provisions in India, UK and USA, how they affect the fundamental rights of the citizens, judicial views and legislative response to the same.

The aims and objectives of the study are:

- Analyze the constitutional provisions for declaring a state of emergency in India, the USA, and the UK.
- To examine the effect of emergency on fundamental rights in India
- To analyze the procedural requirements and limitations associated with emergency powers in India.

RESEARCH QUESTIONS

1. The researcher with regard to the topic has framed two research questions that are as follows:
2. What are the impacts of emergency on Fundamental rights in India?
3. What are the judicial and legislative responses to National Emergency?
4. Whether the president has an exclusive power over applying the emergency provisions in India?
5. Whether the rights and duties of the general public are affected when emergency provisions are applied?

LITERATURE REVIEW

Subramanian (2010)⁶⁹⁴ illustrated that in India, a state of emergency refers to times when the country operates under a different constitutional framework, as declared by the President. This declaration can be made when there is a significant threat to national security, either from external or internal sources, or due to a severe economic crisis. Under the advice of the Council of Ministers, and by using the powers granted by the Indian Constitution, the President has the authority to suspend certain provisions of the Constitution. These provisions typically safeguard the fundamental rights of citizens and regulate the distribution of powers between the central government and the states. The Constitution of India allows the President to declare three types of emergencies: national emergency, state emergency, and financial emergency.

⁶⁹⁴ Koduvayur Subramanian, "Formal and de facto states of emergency: The Indian experience", *Modern Asia studies* (2010)

Srivastava and Sarda (2016)⁶⁹⁵ The Indian Constitution serves as a foundational document that defines and limits the powers of the three branches of government. It also grants a set of rights to the citizens of India while outlining the roles and responsibilities of the government. Furthermore, to safeguard against potential harm in times of national or regional instability, the Constitution includes provisions for "Emergencies" under Part XVIII (Articles 352 to 360). This study seeks to explore the evolution of emergency provisions following the Emergency of 1975, examining what occurred during those tumultuous times and assessing the likelihood of such a situation recurring 43 years later.

Shandilya, Akshay (2012)⁶⁹⁶ The Indian Constitution stands as one of the most detailed and authoritative documents, granting significant powers to the executive branch of government. The justification for the declaration was "internal disturbance," and during the two years that the emergency lasted, many ordinary Indian citizens were imprisoned under harsh sedition laws. The emergency resulted in the suspension of fundamental rights, leaving even the Supreme Court powerless, as the executive had suspended basic freedoms, including the right to life and personal liberty. This period marked a dark chapter in Indian judicial history, as the judiciary failed to prevent unlawful detentions. This paper aims to analyze the factors leading to the 1975 emergency, assess its legal legitimacy, and explore the consequences that followed.

Bipan Chandra (2017)⁶⁹⁷ This book tried to identify about the procedure of proclaiming an emergency as well as the procedures of revoking the emergency and the cause behind all emergency in different branches.

Pooja (2020)⁶⁹⁸ the key provisions about Emergency and their invocation have consistently been a subject of debate throughout India's political history. Opinions on the matter have been divided—some argue that these provisions are crucial for preserving the sovereignty of the nation and ensuring the stability of its democratically elected government. Conversely, critics contend that these powers have been exploited by ruling parties to serve their own interests, thereby undermining the rights and freedoms of citizens. This paper aims to undertake a critical examination of the original intentions of the Constitution's framers in incorporating emergency provisions, while also analyzing instances where these powers were exercised in a manner contrary to their intended purpose. Also, it seeks to shed light on the broader impact of such emergency declarations on the everyday lives of the Indian populace.

Garg, Muskan (2022)⁶⁹⁹ in her research work discusses the development of emergency provisions in India over time, as well as the different forms of emergency provisions accessible in India. Is it essential to announce an emergency? What are the pros and cons of an emergency? What is the cause for the different area's continued arguments, provided that there are always opposing viewpoints?

PURPOSE OF THE STUDY

The topic of the research is Emergency and Laws and its critical analysis. Therefore the purpose of the project will be to analyze the different kinds of emergency, who has the power to declare emergency, on whom is this emergency imposed, and also how the declaration of emergency affects the general public rights and obligation.

The basic aim of this study is to conduct a comparative analysis of the emergency provisions in India, UK, and US to understand the similarities and differences in how each

⁶⁹⁵ Prakhar and Sarda, "A study of the emergency provisions in the Indian constitution", *IJCAR*, 2016

⁶⁹⁶ Shandilya, Akshay, "Emergency Provisions in the Indian Constitution", *SSRN* (July 12, 2012)

⁶⁹⁷ Bipan Chandra, *In the Name of Democracy: JP Movement and The Emergency* (Penguin, 2017)

⁶⁹⁸ Pooja PN, "Mar Gregorios College Law Review", *MGCLR*, 2020

⁶⁹⁹ Garg, Muskan, "Emergency Provisions in India", *SSRN* (Apr 20, 2022)

democratic system responds to crises. By examining the constitutional frameworks, legal safeguards, scope of executive powers, and historical usage of emergency powers in these three countries, the study aims to highlight how different governance models balance national security with individual freedoms. This analysis will also help evaluate the effectiveness, potential for misuse, and the level of accountability embedded within each system, thereby offering insights into best practices for preserving democratic principles during times of national emergency.

PRESENT SCENARIO IN INDIA

The emergency provisions in India, detailed in Part XVIII of the Constitution, provide the Union government with exceptional powers to manage critical situations. These provisions aim to protect the country's sovereignty, unity, and security, including from threats like war, external aggression, armed rebellion, or financial crises. In times of emergency, the federal system can transform into a more centralized structure, with the central government exercising enhanced authority.

*Makhan Singh vs. State Of Punjab*⁷⁰⁰: case involves the legality of a detention order issued during a national emergency. The appellant, Makhan Singh, was arrested under multiple sections of the Indian Penal Code. During the national emergency declared by the President of India, he was detained under Rule 30(1)(b) of the Defence of India Rules, 1962. Makhan Singh contested his detention, arguing that it was based on false accusations and was politically motivated. The case also delved into significant legal issues, including the distinction between preventive detention laws and emergency powers, as well as the constitutional principle of double jeopardy, which prevents an individual from being punished twice for the same offense.

In the case of *Charu Khurana vs. UOI*⁷⁰¹ managed the issue of the fundamental right

to equality and non-discrimination in the context of emergency provisions in India. The case revolved around whether such regulations, under emergency powers, were constitutionally valid and whether they violated the right to equality under Article 14 of the Indian Constitution. The Supreme Court ruled in favor of Charu Khurana, striking down the discriminatory provisions and emphasizing the need for gender equality in professional opportunities, marking an important judgment in the context of emergency powers and individual rights.

In *Ramlila Maidan Incident*⁷⁰² it is held that an equilibrium must be kept up with between the essential freedoms and limitations on one hand and crucial privileges and major obligations then again. There would be a lopsidedness assuming significance is given to just key privileges or to the basic obligations. Obligation is considered as a genuine wellspring of right. The courts consider the key obligations that are available in Art. 51A while looking at the sensibility of the authoritative limitation on exercise of different opportunities. The court additionally said that obligations like safeguarding the power, solidarity and trustworthiness of the nation, give defend to public property and so on are not immaterial.

COMPARATIVE ANALYSIS

India's Constitution provides a detailed framework for emergencies under Articles 352 (National Emergency), 356 (President's Rule), and 360 (Financial Emergency). These allow the central government to assume sweeping powers, including suspension of fundamental rights and state autonomy. The Indian model is highly codified and centralized, designed to maintain national integrity but criticized for potential misuse, especially during the 1975–77 Emergency. The President acts on the advice of the Cabinet, and parliamentary approval is needed, adding a layer of democratic oversight.

⁷⁰⁰ 1964 AIR 381

⁷⁰¹ *Charu Khurana vs. Union of India*, (2015) 1 SCC 192

⁷⁰² *Ramlila Maidan Incident, In re*, (2012) 5 SCC 123

In contrast, the United States operates under a federal structure with a strong emphasis on checks and balances. Emergency powers are not centralized in one section of the Constitution but are derived from both legislative statutes and presidential authority. The President can declare a national emergency under the National Emergencies Act (1976), allowing temporary powers, but Congress can terminate it by a joint resolution. Judicial review remains a vital check, and individual rights are strongly protected, even during crises, reflecting the American emphasis on civil liberties.

The United Kingdom, lacking a codified constitution, relies heavily on conventions, statutes, and royal prerogative powers during emergencies. The Civil Contingencies Act 2004 provides a legal basis for emergency response, empowering the government to enact regulations swiftly. However, such powers are expected to be used sparingly and are subject to parliamentary scrutiny. The UK system emphasizes flexibility and executive discretion, with trust in institutional norms rather than rigid legal frameworks, in contrast to the written constitutional protections in India and the statutory safeguards in the US.

When comparing the UK's emergency provisions with those in other countries like India and the USA, it becomes apparent that legal frameworks vary significantly, influencing both governmental responses and citizens' rights during crises.

The U.S. Constitution does not directly outline emergency powers, but the President possesses both inherent and statutory authority to act during national crises, particularly in their role as Chief Executive and Commander-in-Chief. One of the central laws governing such situations is the National Emergencies Act of 1976.

This legislation allows the President to formally declare a national emergency, which then activates a range of emergency powers embedded within various federal laws—

currently numbering over 100. These powers cover a wide spectrum of actions, including control over communications and, in extreme cases, the suspension of certain legal rights like habeas corpus.

Under the Act, the President is required to specify which statutory powers are being invoked and must submit a report to Congress every six months justifying the ongoing need for the emergency. Additionally, the Act includes provisions for congressional oversight, requiring lawmakers to convene every six months to consider whether the emergency should be terminated. However, this legislative review mechanism has never been used, and many emergency declarations have remained in place well past their initial durations. This framework highlights the potential for broad executive power during emergencies, tempered in theory by congressional oversight—though in practice, such checks have rarely been exercised.

CONCLUSION

The emergency provisions in India, the USA, and the UK exhibit both commonalities and differences. In the United States, the judiciary plays a pivotal role in determining the justiciability of emergency measures, a feature not seen in India or the UK. Furthermore, the Indian Constitution provides detailed guidelines on emergencies, whereas the constitutions of the USA and the UK do not specifically address the concept of an "emergency." Despite these distinctions, all three countries have implemented safeguards to ensure that emergency powers are not misused by the authorities.

Each nation has made efforts to learn from past abuses of power, leading to specific constitutional amendments aimed at curbing the misuse of emergency provisions. However, there remains a potential risk of arbitrary and unauthorized deployment of emergency powers. As a result, there is an opportunity for India, the USA, and the UK to adopt best practices from each other, especially in

handling national emergencies, to refine their emergency laws. India and the UK, for example, could benefit from the USA's approach by reinforcing the role of the judiciary in assessing the fairness and legality of emergency measures. On the other hand, the USA might consider adopting more comprehensive and explicit emergency provisions within its legal framework. Additionally, historical violations of basic human rights during emergencies in these countries underscore the need for adherence to international human rights standards, ensuring that such rights are safeguarded even during states of emergency. By doing so, these nations would fulfill their international responsibilities and protect citizens' fundamental rights during critical times.

There are different arguments relating to the Emergency provisions of the Constitution of India. Some feel that the provisions of the constitution and the amount of flexibility it offers is what is responsible for the rampant misuse of the provisions. On the other hand, some are of the opinion that it is the people who fail the purpose of the provision and not the Constitution. They feel that, most of the times the provisions are not put to use in line with the lines of ideal conventions laid down by the makers of the Constitution, instead is used to align the whims of the people in power. In situation when personal agendas override the interest of a nation as a whole the provisions are bound to fail. Even though there are provisions laid down by the 44th Amendment still there had been occurrences of unjust and unreasonable emergencies in India. There needs to be a proper system with clear rules and a strong foundation to keep a check on the provisions so as to safeguard the basic structure of Indian democracy and its integrity.

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