

CONSTITUTIONAL APPROACHES TO EMERGENCY POWERS: A COMPARATIVE STUDY OF INDIA, THE USA, AND CANADA

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ABSTRACT

This paper explores the constitutional frameworks for emergency powers in three democratic nations: India, the United States, and Canada. Each country's approach to emergency powers is distinct, shaped by its historical context, legal traditions, and institutional structures. In India, emergency powers are codified in the Constitution, specifically under Articles 352 to 360, which outline the procedures for national, state, and financial emergencies. However, the Indian experience, particularly during the 1975 Emergency, highlights the risks of political misuse when safeguards are weak or overlooked. The United States, on the other hand, lacks explicit constitutional provisions for emergencies, relying on statutory laws like the National Emergencies Act (1976) and the International Emergency Economic Powers Act (1977) to grant broad executive powers. The U.S. model is characterized by flexibility but raises concerns about the concentration of power in the executive branch. Canada's approach, encapsulated in the Emergencies Act (1988), evolved from the controversial War Measures Act (1914), offering a more structured framework with clear limits, judicial oversight, and parliamentary review. The paper examines how each nation's emergency powers balance the tension between state security and individual rights, assessing the effectiveness of legal safeguards against the abuse of power. By comparing the constitutional provisions in India, the USA, and Canada, this study provides insights into the challenges and opportunities of maintaining constitutional governance during crises, offering recommendations for future legal reforms.

Chapter 1: Introduction

1.1 Background of the Study

Emergencies, whether due to war, natural calamities, internal disturbances, or economic crises, demand a swift and decisive response from the state. In such scenarios, ordinary legal procedures often fall short, necessitating the invocation of exceptional powers by the executive. However, these powers must be exercised within the framework of constitutional governance to ensure they do not become instruments of authoritarianism. Across various democracies, constitutions provide mechanisms for handling emergencies while attempting to balance state security with the protection of individual rights.

India, the United States, and Canada – three of the world's most prominent constitutional democracies – offer different models of

emergency powers. Each reflects its unique historical context, political structure, and constitutional philosophy. Understanding these systems comparatively allows for insights into how modern democracies can empower the state during crises without eroding the rule of law or democratic accountability.

1.2 Importance of Emergency Powers in Constitutional Governance

Emergency powers are a critical tool for any state to maintain order and sovereignty during exceptional times. However, they also present a paradox – the need to safeguard democracy by temporarily limiting its ordinary functioning. The challenge lies in ensuring that the powers are not abused or prolonged beyond necessity. A comparative study helps identify best practices and vulnerabilities in constitutional systems, contributing to a broader

understanding of how to strike an effective balance between governance and rights protection during emergencies.

1.3 Objectives of the Study

The objectives of this research are:

1. To examine the constitutional provisions related to emergency powers in India, the United States, and Canada.
2. To analyze the scope, limitations, and safeguards built into each system.
3. To study the historical use and judicial interpretation of emergency powers in the three countries.
4. To draw a comparative analysis highlighting key similarities and differences.
5. To recommend frameworks that ensure accountability while preserving the state's capacity to act decisively in emergencies.

1.4 Scope and Limitations

This study is limited to the constitutional and statutory provisions related to emergency powers in India, the USA, and Canada. It includes relevant historical events, judicial pronouncements, and scholarly analyses. The research does not cover emergency laws in other federal or unitary systems, nor does it provide a detailed discussion of state/provincial emergency legislation unless relevant to the federal framework.

1.5 Research Methodology

This research adopts a **doctrinal legal research methodology**, relying primarily on:

- Constitutional texts of India, the USA, and Canada.
- Relevant statutes such as the National Emergencies Act (USA) and Emergencies Act (Canada).
- Judicial decisions interpreting emergency powers.

- Secondary sources including books, journal articles, and academic commentaries.

A comparative approach is used to draw parallels and distinctions, while critical analysis is applied to assess the effectiveness and limitations of each framework.

Chapter 2: Constitutional Provisions for Emergency Powers in India

2.1 Historical Background

The emergency provisions in the Indian Constitution are deeply influenced by colonial experiences and the need to maintain unity in a diverse, newly independent nation. The framers of the Constitution, aware of the potential for both internal disturbances and external threats, included extraordinary provisions under Part XVIII (Articles 352 to 360) to empower the Union government during times of crisis. These powers are expansive, but the Constitution also attempts to provide checks to prevent their misuse.

2.2 National Emergency (Article 352)

Article 352 empowers the President of India to declare a National Emergency if the security of India or any part thereof is threatened by:

- **War**
- **External aggression**
- **Armed rebellion** (originally "internal disturbance," changed by the 44th Amendment in 1978)

Procedure and Effects:

- The proclamation must be approved by both Houses of Parliament within **one month**.
- Once approved, it remains in force for **six months** and can be extended indefinitely with repeated approvals every six months.
- During this period:

- The **Centre gains legislative power** over subjects in the State List.
- Fundamental Rights under **Article 19** are automatically suspended.
- Rights under **Article 21** (Right to life and personal liberty) were once suspendable, but the **44th Amendment** (1978) ensured Article 21 cannot be suspended.

Historical Invocations:

- **1962:** During the Sino-Indian War (external aggression).
- **1971:** Indo-Pakistan War (external aggression).
- **1975:** Declared on grounds of internal disturbance (widely criticized for political misuse).

2.3 State Emergency (Article 356)

Article 356, also known as **President's Rule**, allows the President to assume control of a state's administration if it is found that the state government **cannot function in accordance with the provisions of the Constitution**.

Procedure and Effects:

- The proclamation must be approved by both Houses of Parliament within **two months**.
- If approved, it can last for **six months** and be extended up to **three years**, with conditions.
- During this period:
 - The President can assume all or any functions of the state government.
 - The state legislature may be suspended or dissolved.

Misuse and Judicial Response:

This provision has often been misused for political purposes. Between 1951 and 1998, Article 356 was invoked over **100 times**.

A landmark case, **S. R. Bommai v. Union of India (1994)**, imposed **strict judicial checks**, ruling that the President's satisfaction is not beyond judicial review. The Court also held that the majority in the assembly must be tested on the floor of the House.

2.4 Financial Emergency (Article 360)

Article 360 permits the President to declare a Financial Emergency if the financial stability or credit of India, or any part thereof, is threatened.

Effects:

- The executive authority of the Union extends to giving directions to states on financial matters.
- Salaries and allowances of government officials, including judges, can be reduced.
- All money bills and financial matters are under the control of the Centre.

Notably, this provision has **never been invoked** since the Constitution came into force in 1950.

2.5 Constitutional Safeguards and Amendments

The **44th Amendment Act, 1978** was a crucial turning point in the evolution of emergency powers in India. In response to the **1975 Emergency**, which saw the arrest of political opponents and censorship of the press, the amendment:

- Replaced "internal disturbance" with "armed rebellion" in Article 352.
- Introduced the requirement of **written advice** from the Cabinet to the President before proclaiming an emergency.
- Protected **Article 20** and **Article 21** from suspension even during emergencies.

These reforms aimed to ensure that emergency powers are not abused for political ends and remain tools for genuine crisis management.

Chapter 3: Emergency Powers under the U.S. Constitution

3.1 Constitutional and Legal Framework

Unlike India, the **United States Constitution** does not explicitly outline a comprehensive framework for emergency powers. Instead, the U.S. system relies on a combination of **constitutional interpretation, statutory delegation, and executive precedent**. Emergency powers in the U.S. are largely shaped by historical practice and specific legislation enacted by Congress.

The primary sources of emergency authority include:

- The **U.S. Constitution**, particularly Article II (Executive Power) and Article I (Congressional Powers).
- Statutory laws such as the **National Emergencies Act (1976)** and the **International Emergency Economic Powers Act (IEEPA, 1977)**.
- Judicial interpretations that delineate the scope and limits of executive authority during emergencies.

3.2 National Emergencies Act (1976)

The **National Emergencies Act (NEA)** was enacted to regulate and standardize the President's power to declare national emergencies. It was a legislative response to concerns about unchecked executive power, especially during the Vietnam War and Watergate era.

Key features of the NEA:

- Requires the President to **formally declare** a national emergency and specify the legal basis (statutory provisions) for any extraordinary measures.
- Mandates that Congress be **notified** and that the emergency declaration be **published in the Federal Register**.
- Initially required Congress to **review and potentially terminate** the emergency after six months, but this provision was weakened by amendments.

- As of recent years, over **70 national emergencies** have been declared under this Act, many of which remain active.

3.3 International Emergency Economic Powers Act (IEEPA, 1977)

The **IEEPA** gives the President authority to regulate international commerce after declaring a national emergency in response to **unusual and extraordinary threats** originating from outside the United States.

Common uses of IEEPA include:

- Imposing economic sanctions on foreign countries or individuals.
- Freezing assets and prohibiting financial transactions.
- Addressing cybersecurity threats and foreign interference.

IEEPA has become one of the most frequently used tools by U.S. Presidents in foreign policy, reflecting its broad and flexible scope.

3.4 Presidential Powers During Wartime and Crisis

The President, as **Commander-in-Chief** (Article II, Section 2), has exercised vast powers during times of war and national crisis. This has included decisions related to:

- **Detention of individuals** (e.g., Japanese-American internment during WWII).
- **Suspension of habeas corpus** (attempted during the Civil War by President Lincoln, although technically a Congressional power under Article I, Section 9).
- **Deployment of military forces** domestically under the **Insurrection Act**.

Such actions often provoke legal challenges, leading to landmark rulings that define the constitutional boundaries of emergency powers.

3.5 Recent Applications and Controversies

Recent U.S. Presidents have invoked emergency powers in varied contexts:

- **Donald Trump (2019):** Declared a national emergency to divert military funds for building a wall along the U.S.-Mexico border. This move faced legal and political opposition for bypassing Congressional intent.
- **COVID-19 Pandemic (2020):** The Trump administration used emergency health powers under the **Public Health Service Act** and **Stafford Act** to respond to the crisis, enabling large-scale federal intervention and funding.

These examples illustrate the **flexibility** and **potential for controversy** in the use of emergency powers.

Chapter 4: Emergency Powers in the Canadian Constitution

4.1 Constitutional Background

Canada operates under a **parliamentary system** within a **federal framework**, combining elements of the British constitutional tradition with its own statutory and judicial developments. Unlike India or the United States, the **Canadian Constitution** is largely **silent** on emergency powers in its original form. Instead, emergency powers have developed through legislation, notably through the **War Measures Act** (1914) and its modern replacement, the **Emergencies Act** (1988).

Emergency governance in Canada is shaped by the **principles of parliamentary sovereignty, federalism, and the Charter of Rights and Freedoms (1982)**. The evolution of emergency powers in Canada reflects a growing emphasis on legal accountability and civil liberties.

4.2 The War Measures Act (1914–1988)

The **War Measures Act** was enacted during World War I, granting the federal government broad powers to ensure security and public order during war, invasion, or insurrection.

Key Features:

- Allowed the Governor-in-Council (federal cabinet) to make orders and regulations deemed necessary for the safety, defense, peace, and order of Canada.
- Suspended **civil liberties**, including habeas corpus, and permitted detention without trial.
- Had **no effective judicial or parliamentary oversight**.
- Applied during:
 - **World War I (1914–1918)**
 - **World War II (1939–1945)**
 - **October Crisis (1970)**, in response to FLQ (Front de libération du Québec) terrorism.

Criticism:

The **October Crisis** brought sharp criticism. The arrest of hundreds of citizens, many without charges, led to public backlash and demands for a more balanced emergency framework. This directly influenced the repeal of the War Measures Act and the enactment of the **Emergencies Act**.

4.3 The Emergencies Act (1988)

The **Emergencies Act** replaced the War Measures Act, introducing **clear legal limits, accountability, and parliamentary control** over emergency declarations.

Types of Emergencies under the Act:

1. **Public Welfare Emergency** – related to natural disasters, disease outbreaks, accidents, etc.
2. **Public Order Emergency** – threats to the security of Canada, as defined by the Canadian Security Intelligence Service (CSIS) Act.
3. **International Emergency** – involving acts of intimidation or coercion by foreign entities.

4. **War Emergency** – involving actual or imminent armed conflict.

Key Safeguards:

- **Parliamentary Oversight:** A declaration must be **tabled in Parliament within seven days** and approved. Parliament can revoke or amend it.
- **Judicial Review:** Actions under the Act are subject to court challenge.
- **Time Limits:** Declarations are temporary (e.g., 30 days for a public order emergency) and require renewal by Parliament.
- **Charter Compliance:** All actions under the Act must comply with the **Canadian Charter of Rights and Freedoms**.

The Act emphasizes that even in emergencies, **constitutional rights must be respected** to the extent possible.

4.4 The 2022 Invocation: Freedom Convoy Protests

For the first time since its enactment, the **Emergencies Act was invoked in February 2022** by Prime Minister Justin Trudeau during the **Freedom Convoy protests** in Ottawa, where truckers and demonstrators blocked streets to protest COVID-19 mandates.

Reasons for Invocation:

- Severe disruption of critical infrastructure and public safety.
- Involvement of foreign funding and potential threats to national security.

Measures Taken:

- Prohibition of public assemblies deemed unlawful.
- Authorization for banks to freeze accounts of protest participants.
- Enhanced coordination among law enforcement agencies.

Controversy:

- Critics argued that the protests, while disruptive, **did not rise to the level of a national emergency**.
- A federal **Public Order Emergency Commission** later concluded that the invocation was **“justified,”** but acknowledged that it **bordered on exceeding the threshold** and exposed gaps in legal clarity and policing coordination.

Chapter 5: Conclusion and Suggestions

5.1 Summary of Findings

This comparative study has examined how three democratic nations—India, the United States, and Canada—have constitutionally and legislatively addressed the need for emergency powers in times of crisis. Though each country shares a commitment to constitutional governance and the rule of law, their respective frameworks for emergency powers reveal **notable differences in structure, scope, and safeguards**.

- **India** adopts a centralized and codified approach, with detailed constitutional provisions (Articles 352–360) that clearly define types of emergencies: national, state, and financial. However, its history, especially the 1975 Emergency, exposes the **risks of political misuse** when safeguards are insufficient or weakly enforced.
- **The United States** lacks explicit constitutional emergency provisions but has created an expansive system through **statutory delegations and executive practices**. The U.S. model offers considerable flexibility but poses risks due to the **breadth of powers granted** to the President and a **reliance on judicial and Congressional checks**, which may not always be exercised effectively.

- **Canada**, by contrast, has transitioned from the **broad and unchecked War Measures Act** to the **legally restrained Emergencies Act** (1988), which mandates **parliamentary oversight, judicial review, and compliance with the Charter of Rights and Freedoms**. The Canadian model represents a deliberate effort to **strike a balance** between emergency authority and civil liberties.

A common theme across all three jurisdictions is the **tension between state power and individual rights**, and the **critical role of institutional checks and democratic accountability** in maintaining constitutional order during emergencies.

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