

# IS CLIMATE EMERGENCY A CONSTITUTIONAL EMERGENCY? COMPARATIVE ANALYSIS OF EMERGENCY/DEROGATION FRAMEWORKS IN INDIA, FRANCE AND GERMANY

**AUTHOR** – HIMANSHU KUMAR, STUDENT AT ICFAI UNIVERSITY, DEHRADUN

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## Abstract

Climate change represents one of the most pressing challenges of the twenty-first century, yet its legal status remains ambiguous across constitutional systems. This research paper examines whether climate change can be characterized as a "constitutional emergency" requiring extraordinary governmental powers under the emergency/derogation frameworks of three distinct constitutional democracies: India, France, and Germany.

Through comparative constitutional analysis, the paper argues that while climate change qualifies as a crisis of constitutional magnitude, it does not fit within traditional definitions of constitutional emergency that presume temporariness, immediacy, and exceptionality. The paper analyzes the constitutional emergency mechanisms in each jurisdiction—India's Article 356 (President's Rule), France's Articles 16 and 36 (Presidential Emergency Powers and State of Siege), and Germany's Articles 115a-115g (Emergency Acts)—and traces how each nation's constitutional courts have begun recognizing climate protection as a fundamental right. The paper concludes that climate emergency requires a new constitutional framework that operates within the bounds of ordinary constitutionalism rather than derogation models designed for temporary crises. The emerging judicial consensus in India (M.K. Ranjitsinh, 2024), Germany (Neubauer, 2021), and France reflects a shift toward constitutionalizing climate as an ordinary constitutional obligation with intergenerational dimensions, rather than treating it as an exceptional threat triggering derogation powers.

**Keywords:** Climate Emergency, Constitutional Law, Emergency Powers, Derogation, Comparative Constitutionalism, India, France, Germany, Fundamental Rights, Intergenerational Justice

## 1. Introduction

### 1.1 Background

Climate change is increasingly recognized as an existential threat to human civilization, ecosystems, and the stability of nation-states.[1] The Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report confirms that anthropogenic warming has caused "widespread, rapid and intensifying" changes across Earth's climate system, with grave consequences for biodiversity, food security, water resources, and

human settlement patterns.[2] In the face of this unprecedented crisis, policymakers and constitutional scholars have begun asking a critical legal question: Does climate change constitute a "constitutional emergency" that justifies invoking extraordinary governmental powers under derogation and emergency frameworks?

The question is not merely academic. If climate change qualifies as a constitutional emergency, it could justify temporary suspension of certain fundamental rights and ordinary legal procedures to enable rapid state action on mitigation and

adaptation. Conversely, if climate change does not qualify as a constitutional emergency, then climate action must proceed through ordinary constitutional mechanisms, which may be slower but provide essential legal safeguards against executive overreach. This distinction has profound implications for democratic governance, the rule of law, and intergenerational justice.

## 1.2 Research question and objectives

This paper addresses the central research question: **Is climate emergency a constitutional emergency under the emergency/derogation frameworks of India, France and Germany?** More specifically, the paper investigates:

1. How do India, France, and Germany define and regulate constitutional emergencies through their constitutional texts and jurisprudence?
2. What are the formal differences and functional similarities among the emergency provisions in these three jurisdictions?
3. How have courts and constitutional bodies in each jurisdiction recognized climate as a constitutional concern, and what legal status have they accorded to climate protection rights?
4. Does the temporal and non-traditional character of climate change fit within orthodox emergency law categories, or does it require reconceptualization?
5. What normative conclusions can be drawn regarding the appropriate constitutional framework for climate action?

## 1.3 Methodology and scope

This research employs a comparative constitutional law methodology, examining primary constitutional texts, statutory emergency laws, and landmark judicial decisions from the three jurisdictions. The paper uses the "functional" approach to comparative law—identifying how different constitutional systems address the common problem of climate governance—rather than a purely textual or structural comparison.<sup>[3]</sup>

The temporal scope of this analysis is primarily 2019–2024, capturing recent constitutional developments

including the German Constitutional Court's watershed decision in Neubauer

v. Germany (2021), the Indian Supreme Court's recognition of a fundamental right against climate change in *M.K. Ranjitsinh v. Union of India* (2024), and ongoing constitutional reform debates in France regarding climate constitutionalization. The paper synthesizes doctrinal analysis of constitutional texts, secondary literature on comparative emergency law and climate constitutionalism, and case law analysis.

## 1.4 Structure and argument

The paper proceeds as follows. Section 2 establishes the conceptual foundations by defining "constitutional emergency" and "climate emergency" and sketching the theoretical relationship between the two concepts. Section 3 provides an overview of emergency and derogation frameworks under international human rights law, particularly the ECHR Article 15, which provides the conceptual vocabulary used across European constitutions. Sections 4, 5, and 6 analyze the constitutional emergency provisions and climate constitutionalism in India, France, and Germany respectively. Section 7 presents a comparative analysis of the three jurisdictions, identifying convergences and divergences. Section 8 addresses the central question: Can climate be treated as a constitutional emergency? The paper concludes in Section 9 by proposing that climate change represents a constitutional crisis rather than a constitutional emergency, requiring a new constitutional paradigm that preserves rule of law while enabling coordinated climate action.

## 2. Conceptual Foundations: Constitutional Emergency and Climate Emergency

### 2.1 Defining constitutional emergency

A "constitutional emergency" in comparative constitutional law typically denotes an extraordinary circumstance that threatens the continued functioning of the state and its constitutional order, thereby justifying temporary deviation from ordinary constitutional procedures and potentially enabling restriction or derogation of

fundamental rights.[4] Constitutional emergencies characteristically exhibit four key features:

**Temporariness:** Emergency provisions presume that the exceptional circumstances will pass, after which normal constitutional operation will resume.[5] The paradigmatic constitutional emergencies include war, invasion, internal insurrection, natural disasters, and pandemics—events that, by definition, have temporal boundaries.

**Necessity:** The extraordinary measures must be objectively necessary to protect the state or public safety; less restrictive alternatives must be unavailable or insufficient.

**Proportionality:** Any restrictions on rights or normal procedures must be proportionate to the threat, and measures must be calibrated to address the specific danger without unnecessary harm to democratic governance.

**Accountability:** Even during emergency, democratic oversight mechanisms (parliamentary or judicial review) should remain operable to prevent permanent erosion of constitutional constraints.

These principles are crystallized in Article 15 of the European Convention on Human Rights, which provides the model for emergency derogation across European and many other democracies.[6] As the European Court of Human Rights has clarified, a public emergency must be "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the community is composed." [7]

## 2.2 Characteristics of climate change as a crisis

Climate change presents a fundamentally different crisis profile from the paradigmatic constitutional emergencies. Climate change exhibits several characteristics that complicate its categorization as a "constitutional emergency":

**Gradualism:** Unlike sudden crises, climate change unfolds over decades. While tipping points and rapid impacts may occur, the overall crisis is characterized by slow accumulation of greenhouse gases and gradual system

transformation.[8]

**Predictability:** Climate change was scientifically predicted decades in advance, and policy responses were available but not implemented. This distinguishes it from unforeseen emergencies like earthquakes or pandemics.

**Irreversibility:** Many impacts of climate change—species extinction, ocean acidification, ice sheet destabilization—are effectively permanent on human timescales, meaning the "emergency" does not end when the crisis passes but rather when human systems fully adapt to new equilibria.[9]

**Structural embeddedness:** Climate change results from ordinary economic activity (energy production, agriculture, transportation, industry) rather than from exceptional political events. It requires systematic transformation of economic and energy systems, not temporary suspension of normal operations.

**Distributive justice:** Climate change disproportionately harms those who contributed least to its cause—poor nations, indigenous peoples, future generations—raising distinct concerns about equity and intergenerational justice that do not arise in paradigmatic emergency contexts.

## 2.3 The climate emergency concept in political and legal discourse

The term "climate emergency" has become politically influential since the mid-2010s. The International Panel on Climate Change, scientific organizations, environmental movements, and many political leaders now routinely characterize climate change as a "climate emergency" or "climate crisis." [10] This language is designed to convey the urgency and magnitude of the threat and to communicate that business-as-usual approaches are inadequate.

However, the deployment of "emergency" language in climate discourse connotes several distinct concepts: (a) the scientific characterization of climate change as a threat of existential magnitude; (b) the political claim that climate action should be prioritized; and

(c) the legal claim that climate warrants emergency constitutional powers. This paper is primarily concerned with the third question: the legal implications of characterizing climate as a constitutional emergency.[11]

## **2.4 The thesis: Climate as constitutional crisis, not constitutional emergency**

The central argument of this paper is that **climate change qualifies as a constitutional crisis—a matter of constitutional magnitude requiring serious constitutional response**

**—but does not fit the legal definition of a constitutional emergency that triggers derogation powers.** Several reasons support this distinction:

First, the temporariness requirement. Constitutional emergency frameworks presume that extraordinary measures are temporary. Climate mitigation and adaptation will require sustained effort for decades, perhaps centuries. Using emergency powers designed for temporary crises would require either continuous renewal of emergency declarations (which risks normalizing authoritarianism) or would inappropriately restrict rights on a quasi-permanent basis.

Second, the precedent for emergency derogation. As the European Court of Human Rights and legal scholars have noted, permitting climate change to constitute a derogable emergency would risk opening the door to governmental claims that economic crises, migration pressures, or other ongoing challenges also justify emergency derogation.[12] This risks converting emergency derogation from an exceptional tool into an ordinary governance mechanism.

Third, the adequacy of ordinary constitutionalism. The fundamental rights protections and democratic procedures of normal constitutional governance—particularly including independent courts, parliamentary oversight, and explicit protections for future generations—are precisely what is needed to ensure climate action is both effective and just. Emergency derogation, by contrast, weakens these safeguards.

Therefore, the appropriate constitutional response to climate is not emergency derogation but rather expansion and reinterpretation of ordinary constitutional frameworks to encompass climate protection as an enforceable constitutional obligation. This approach is evident in the jurisprudence emerging from India, France, and Germany, as the subsequent sections demonstrate.

## **3. International Framework: Emergency Derogation Under Human Rights Law**

### **3.1 ECHR Article 15 and the derogation model**

International human rights law provides the conceptual architecture within which European states (and those influenced by European models) approach emergency derogation. Article 15 of the European Convention on Human Rights establishes the conditions under which states may derogate from ECHR protections in time of emergency:

In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.[13]

This provision authorizes temporary suspension of certain rights but contains important constraints. The European Court of Human Rights has developed rigorous jurisprudence on Article 15, establishing that derogation requires:

1. **Actual emergency:** An objectively verifiable situation that threatens the functioning of the state or its constitutional order.
2. **Necessity and proportionality:** Measures must be strictly required by the exigency of the situation and proportionate to it.
3. **No derogation from core rights:** Even during emergency, certain rights—including the right to life (except as lawfully inflicted), prohibition of torture, prohibition of slavery, and the principle of legality—cannot be derogated.[14]

4. **Noti cation:** States invoking Article 15 must formally notify the Council of Europe and can be subject to international review.[15]

Most relevantly, the European Court has repeatedly held that derogation is designed for temporary, acute crises, not ongoing structural conditions. As the Court stated in *Brannigan and McBride v. United Kingdom*:

Admittedly, the context is an emergency within the meaning of Article 15(1)... However, the maintenance of an emergency state is dependent on the persistence of the emergency. The need for such a state was consequently reviewed and from time to time the extension was renewed as circumstances demanded.[16]

### **3.2 Derogation in practice: Terrorism and pandemics**

States have invoked Article 15 derogation primarily in response to terrorism and pandemics. Following the 2015 Paris attacks and 2016 Brussels bombings, France formally derogated from ECHR obligations and introduced emergency measures including enhanced police powers, surveillance, and restrictions on freedom of movement.[17] These derogations lasted for periods of months, initially, though France repeatedly renewed emergency declarations. By 2024, France had ended the formal derogation but had absorbed many emergency measures into ordinary law.[18]

The COVID-19 pandemic prompted numerous states to declare emergencies and derogate from ECHR protections.[19] Many democratic states imposed lockdowns, curfews, and restrictions on freedom of assembly without formal derogation but by invoking emergency powers under domestic constitutional law.

Notably, no state has formally invoked Article 15 derogation specifically for climate change, despite the severity of climate impacts. This reflects the judgment that climate, while a serious challenge, does not meet the threshold for formal emergency derogation under ECHR standards.

### **3.3 Why climate does not trigger ECHR Article 15 derogation**

Three factors explain why climate change has not been treated as an ECHR Article 15 emergency, despite its magnitude:

**Gradualism:** Unlike terrorism (which causes acute catastrophic harm in discrete incidents) or pandemics (which produce dramatic mortality spikes), climate change impacts accumulate over decades. While individual climate events (hurricanes, floods, droughts) occur acutely, the underlying emergency is structural and ongoing.

**Universality:** Article 15 contemplates emergencies that "threaten the life of the nation" as an organized political community. Climate change is a global phenomenon affecting all nations, not a threat specific to one nation's security or territorial integrity. No single nation can derogate from human rights to address climate change unilaterally; genuine response requires international coordination.

**Availability of alternatives:** The existence of ordinary constitutional mechanisms adequate to address the challenge. States possess legislative, regulatory, and constitutional powers to enact climate policy without invoking emergency derogation. There is no necessity for exceptional measures.

## **4. India: Emergency Provisions and Climate Constitutionalism**

### **4.1 Constitutional emergency framework: Article 356**

The Indian Constitution, drafted in 1950, contains three categories of emergency provisions in Part XVIII: National Emergency (Article 352), Emergency due to failure of state governments (Article 356), and Financial Emergency (Article 360). This paper focuses on Article 356, which addresses the failure of state governments to function according to constitutional provisions.

Article 356 provides:

If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that there

has arisen a situation in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation—(a) assume to himself or direct the Governor to assume all or any of the powers vested in the Legislature or any other authority of the State [20]

Notably, Article 356 does not explicitly authorize derogation of fundamental rights. During President's Rule, state governments are temporarily replaced with central administration, but the Constitution remains in force, and fundamental rights continue to apply. This distinguishes India's emergency model from the derogation frameworks of France and Germany, where emergency can enable restriction of rights.

#### **4.2 Jurisprudence on Article 356: Limitations and judicial review**

The Indian Supreme Court has developed substantial jurisprudence limiting Article 356. In

*S.R. Bommai v. Union of India* (1994), the Supreme Court held that Article 356 cannot be used arbitrarily for political purposes and is subject to judicial review.[21] The Court established that President's Rule can be imposed only when the state government genuinely cannot function, not merely because the central government disagrees with state policy. Furthermore, any proclamation under Article 356 should be limited in duration and subjected to parliamentary scrutiny.

In *Bommai*, the Court stated:

The President cannot act arbitrarily or capriciously. His decision must be based on objective facts and reasonable grounds. The power is hedged in by the Constitution itself, and it would be a travesty if the President's discretion is held to be absolute and beyond the reach of judicial review.[22]

This jurisprudence reflects the Court's commitment to preventing emergency powers from becoming tools of authoritarian governance. However, Article 356 remains controversial and has been used—sometimes arguably abusively—by central governments to dismiss state governments of opposing political parties.[23]

#### **4.3 Climate protection under the Indian Constitution**

The Indian Constitution does not explicitly mention climate or environmental protection in its original text. However, Articles 48A and 51A (added via the 42nd Amendment in 1976) impose constitutional duties on the state and citizens respectively regarding environmental protection:

**Article 48A** (State's duty): "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

**Article 51A** (Citizen's duty): Citizens have the duty "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

Additionally, the Constitution's Directive Principles of State Policy (Article 37-51) include various provisions concerning sustainable development, natural resources, and environmental protection that bind the government to pursue these goals through policy.

#### **4.4 The paradigm shift: M.K. Ranjitsinh v. Union of India (2024)**

A watershed moment in Indian climate constitutionalism occurred on March 21, 2024, when the Indian Supreme Court recognized a fundamental right to be free from the adverse effects of climate change. In *M.K. Ranjitsinh v. Union of India*, a three-judge bench led by Chief Justice D.Y. Chandrachud held that Article 21 of the Constitution (the fundamental right to life and personal liberty) encompasses a right to protection from climate change.

The case arose from a petition concerning overhead electric transmission lines threatening the Great Indian Bustard, an endangered bird species, but the Court used the occasion to pronounce broadly on climate constitutionalism.[24]

The Supreme Court stated:

Despite governmental policy and rules and regulations recognising the adverse effects of climate change and seeking to combat it, there is no single or umbrella legislation in India which relates to climate change and the attendant concerns.

However, this does not mean that the people of India do not have a right against the adverse effects of climate change.[25]

The Court anchored the climate right in both Article 21 (right to life) and Article 14 (equality before law), noting that the impacts of climate change are distributed unequally, affecting vulnerable communities disproportionately. This intergenerational justice dimension—the recognition that future generations' rights to life and equality are affected by current climate decisions—represents a significant doctrinal innovation.

The Court also noted India's international commitments under the Paris Agreement and the UN commitment to achieve climate neutrality, and stated that India's ambitious renewable energy targets are "not just a strategic energy goal but a fundamental necessity for environmental preservation." [26]

Critically, the Court did not frame climate as an emergency justifying extraordinary constitutional powers. Rather, it recognized climate as an ordinary constitutional matter requiring continuous attention through legislative, executive, and judicial action within normal constitutional bounds. The Court constituted an Expert Committee to balance the urgent need for renewable energy infrastructure with bird protection—a quintessential example of how climate concerns should be integrated into normal administrative and judicial processes rather than treated as emergency matter.

#### **4.5 Implications for India: Climate as ordinary constitutional concern**

The M.K. Ranjitsinh judgment reflects Indian constitutional jurisprudence's approach to environmental protection over the past four decades: treating environmental concerns (including climate) as constitutional matters integral to the right to life, rather than as exceptional emergencies. The practical result is that climate policy in India proceeds through ordinary constitutionalism—legislative enactments (e.g., the National Action Plan on Climate Change), regulatory frameworks, and judicial enforcement of environmental rights—rather than through

emergency procedures.

India's National Action Plan on Climate Change (NAPCC), adopted in 2008 and revised in 2023, establishes a comprehensive climate policy framework addressing mitigation and adaptation. These policies are implemented through ordinary administrative and legislative processes. The Indian Supreme Court has played an active role in climate enforcement, issuing directives on air quality, renewable energy, and environmental impact assessment through the ordinary course of public interest litigation.

### **5. France: Constitutional Emergency Provisions and Climate Constitutionalization**

#### **5.1 French constitutional emergency framework**

The French Constitution of the Fifth Republic (1958) contains two explicit emergency provisions: Article 16 (Presidential Emergency Powers) and Article 36 (State of Siege). Additionally, the Emergency Act of 2017 created a "State of Security Emergency" (*État d'urgence*) that has become the primary mechanism for emergency governance in contemporary France.

**Article 16** provides that:

When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are threatened in a grave and immediate manner and when the normal functioning of the constitutional public authorities is interrupted, the President of the Republic shall take the measures demanded by these circumstances, by decree after consultation with the Prime Minister, the Presidents of the Parliaments and the Constitutional Council.[27]

Article 16 concentrates extraordinary power in the President, who may govern by decree. However, safeguards include: (a) consultation with constitutional bodies, (b) prohibition on dissolving Parliament, and (c) after thirty days, the Constitutional Council may review whether the emergency conditions persist.

**Article 36** provides for a "State of Siege" (*État de siège*), historically a military regime that can be

declared for up to twelve days, extendable by Parliament. Though Article 36 derives from earlier constitutional traditions and is rarely used, it remains on the constitutional books.[28]

**The State of Security Emergency** (2017), enacted following terrorist attacks, allows the government to declare a state of emergency lasting up to three months, renewable by Parliament, during which police powers are enhanced and certain rights restricted. This mechanism has been used repeatedly, including for COVID-19 lockdowns and other emergencies.[29]

## **5.2 French emergency jurisprudence and derogation**

The French Constitutional Council and the Conseil d'État (administrative court) have developed jurisprudence on emergency powers emphasizing the need for true necessity and proportionality. Under the doctrine of "exceptional circumstances" (*circonstances exceptionnelles*) developed in 19th-century case law, administrative actions that would normally be unlawful may be justified if undertaken to address genuine emergencies

protecting essential public interests.

However, this doctrine has been controversial, as it permits executive action beyond ordinary legal constraints. The COVID-19 pandemic prompted significant use of emergency powers in France, and French courts were called upon to review the legality of lockdown measures. The Constitutional Council upheld the emergency declarations but noted that they must be proportionate and must remain subject to parliamentary oversight.[30]

Notably, France has formally invoked ECHR Article 15 derogation only in limited circumstances. Following the 2015 Paris terrorist attacks, France notified the Council of Europe of derogation from certain ECHR protections, justifying increased surveillance and police powers.[31] This derogation lasted several months initially but was progressively withdrawn as emergency measures were incorporated into ordinary law or allowed to expire.

## **5.3 Climate constitutionalization in France: The failed 2021 amendment**

Unlike India and Germany, France has not yet recognized a comprehensive constitutional right to climate protection, though the trajectory suggests movement in that direction. In 2021, the French government proposed a constitutional amendment to explicitly recognize the right to a "healthy environment" and to constitutionalize climate action. The amendment would have added environmental protection as a constitutional principle alongside the triadic principle of "Liberty, Equality, Fraternity."

However, the proposed amendment faced obstacles. The amendment required approval by both chambers of Parliament and then a referendum or super-majority in both chambers. While passing initial legislative scrutiny, the amendment encountered political opposition, with critics arguing it was insufficiently ambitious (it did not establish a specific climate rights or net-zero target) or alternatively that it would grant excessive power to courts to override legislative judgment.[32] The amendment failed to achieve sufficient parliamentary support and did not advance to public referendum.

## **5.4 Constitutional Council jurisprudence on environment**

Despite the failed amendment, the French Constitutional Council has gradually acknowledged environmental values as constitutional concerns. In a series of decisions concerning natural resources, air quality, and forest protection, the Council has recognized that environmental protection relates to the constitutional principle of "Fraternity" (implying collective responsibility) and to implicit constitutional values of public health and wellbeing.

However, these recognitions have been incremental and have not constitutionalized climate as explicitly as India or Germany have done. France's approach reflects a more cautious judicial posture, with the Council deferring to legislative judgment on climate policy rather than developing independent constitutional doctrine regarding

climate rights.

### 5.5 France's approach: Emergency powers and climate

France has not attempted to frame climate protection as justifying emergency powers under Articles 16, 36, or the State of Security Emergency. The 2015–2017 use of emergency powers for terrorism and 2020–2021 use for COVID-19 were distinct from climate concerns. This reflects an implicit recognition that climate, while serious, does not satisfy the threshold for emergency derogation.

However, France's approach to climate is characterized by significant regulatory and legislative action. The Energy Transition Act (2015), the Climate and Resilience Act (2021), and European Union climate directives have been integrated into French law. French climate action proceeds through ordinary legislative and regulatory channels rather than emergency mechanisms.

## 6. Germany: Constitutional Emergency, the Basic Law, and Climate Constitutionalism

### 6.1 German constitutional emergency framework: The Basic Law

Germany's Basic Law (1949), drafted in the shadow of Nazi dictatorship, contains elaborate constraints on emergency power. The Emergency Acts (*Notstandsgesetze*) of 1968, added as Articles 115a–115g, established a comprehensive framework for emergency governance while maintaining robust procedural constraints designed to prevent the kind of emergency powers abuse that occurred under the Weimar Republic and Nazi period.

The German emergency framework contemplates four categories of emergency:

1. **State of Tension** (*Spannungsfall*): Imminent threats requiring parliamentary authorization.
2. **State of Emergency** (*Verteidigungsfall*): External armed attack or imminent threat thereof, automatically triggered upon Bundestag determination.
3. **State of Internal Emergency**: Grave danger to the constitutional order, peace, or state security.

4. **Disaster/Epidemic Emergency**: Natural disasters, accidents, or epidemics requiring emergency response.

Critically, the German framework includes a "Joint Committee" (*Gemeinsamer Ausschuss*) that assumes essential parliamentary functions during emergencies when normal parliamentary procedure cannot operate. This ensures continued democratic oversight even during crisis. Additionally, the Bundesrat (representing Länder governments) can demand rescission of emergency measures, and emergency measures automatically terminate when the danger is removed.[33]

Most importantly, the Basic Law specifies which fundamental rights can be restricted during emergency. Article 10 (privacy of communications), Article 11 (freedom of movement), Article 12a (military service), and related provisions can be limited during specific emergencies. However, certain core rights—dignity, life, prohibition of torture, the principle of legality—cannot be derogated even in emergency.

### 6.2 Article 20a: Environmental protection as constitutional principle

Article 20a, added in 1994, represents a distinctive German constitutional innovation: elevating environmental protection to a constitutional principle binding on all organs of state. It provides:

The State shall protect the natural foundations of life and animals by legislation and in accordance with law and the administration, taking into account its responsibility towards future generations, and through the executive and the judiciary.[34]

This provision does three things: (1) it constitutionalizes environmental protection as a state duty; (2) it introduces the concept of "responsibility towards future generations" as a constitutional principle; and (3) it is judicially enforceable, not merely a hortatory directive.

Critically, Article 20a does not rely on emergency powers. Environmental protection is recognized as an ordinary constitutional obligation, not as an extraordinary matter justifying emergency

derogation.

### **6.3 Neubauer v. Germany (2021): The landmark climate ruling**

The German Federal Constitutional Court (*Bundesverfassungsgericht*) issued a watershed decision in *Neubauer v. Germany* (2021) that elevated climate protection to the status of a fundamental constitutional obligation with intergenerational dimensions. The case involved youth plaintiffs challenging the constitutionality of the Federal Climate Protection Act (*Bundesklimaschutzgesetz* or KSG), which set a target of reducing greenhouse gas emissions by 55% by 2030 relative to 1990 levels.

The Court held that the KSG's emission reduction targets for post-2030 periods were unconstitutional because they disproportionately loaded emission reduction burdens onto future generations. In reasoning of profound significance, the Court stated:

Freedom as an intertemporal guarantee... must be understood as a guarantee that protects against an erosion of freedom through environmental destruction. Article 20a combined with human dignity (Article 1) and the general right to personality (Article 2.1) ensures that environmental burdens are not unilaterally shifted to the future.[35]

The Neubauer decision established several principles:

1. **Fundamental rights protect against intergenerational harm.** The Basic Law's fundamental rights are not merely protections against state abuse but also protections against deprivation of environmental foundations necessary for human dignity and freedom.

2. **Climate protection is an ordinary constitutional obligation.** The decision does not frame climate as an emergency justifying exceptional measures. Rather, it treats climate as an ordinary constitutional matter that the legislature must address through proportionate regulation.

3. **Judicial review is appropriate.** The Court rejected the argument that climate policy is purely a matter of legislative discretion. Courts may review whether legislative climate action meets constitutional obligations of proportionality and

intergenerational fairness.

4. **Urgency is not synonymous with emergency.** Although the Court emphasized the urgent need for climate action, this urgency operates within ordinary constitutional frameworks, not through emergency derogation.

The Neubauer decision has proven influential globally, with courts in other jurisdictions citing its reasoning in climate litigation.

### **6.4 Post-Neubauer developments: Constitutional amendment and climate governance**

Following Neubauer, the German government amended the Basic Law in 2021 to accelerate the timeline for climate neutrality, moving the target from 2050 to 2045 and establishing a

€500 billion climate investment fund. The constitutional amendment demonstrates how climate action in Germany proceeds through ordinary constitutional reform, not emergency powers.

Additionally, the German government invoked emergency provisions during COVID-19 but explicitly distinguished climate concerns from pandemic emergency response. The COVID-19 emergency measures (restrictions on freedom of assembly, movement, and gathering) were temporary and were gradually lifted as the immediate public health threat receded. By contrast, climate action is being integrated into long-term constitutional governance frameworks.

### **6.5 German approach: Constitutionalizing climate through ordinary law**

Germany's approach reflects a deliberate choice to address climate through the ordinary constitutional architecture—legislative action, constitutional amendment where appropriate, proportionate regulation, and judicial oversight—rather than through emergency powers. The Neubauer decision explicitly rejected framing climate as an emergency and instead treated it as an ordinary constitutional matter requiring sustained attention.

## **7. Comparative Analysis: India, France, and Germany**

### **7.1 Similarities in emergency frameworks**

The three jurisdictions share certain commonalities in their constitutional emergency structures:

**Parliamentary oversight:** All three systems require or contemplate some degree of parliamentary involvement in emergency governance. India requires parliamentary approval for extension of President's Rule beyond six months; France's State of Security Emergency requires parliamentary renewal; Germany's emergency framework includes mandatory Parliamentary Joint Committee review.

**Temporal limitations:** All three systems presume that emergency measures are temporary. India's President's Rule expires after one year unless extended; France's State of Emergency expires after three months unless renewed; Germany's emergency automatically terminates when danger is removed.

**Proportionality constraints:** All three frameworks contain, at least implicitly, the requirement that emergency measures be proportionate to the threat and not exceed what is necessary.

These commonalities reflect shared commitments to democratic rule of law even during crisis.

### **7.2 Divergences in emergency frameworks**

Despite similarities, the three systems differ significantly in scope and constraints on emergency derogation.

**India's limited derogation:** Article 356 does not authorize suspension of fundamental rights. During President's Rule, the Constitution remains fully in force. This reflects a distinctive Indian approach: temporary assumption of governmental functions does not require derogation of rights. This is more conservative than the French or German models.

**France's broader derogation:** The State of Security Emergency permits police powers enhancement and certain rights restrictions (though core rights remain protected through ECHR constraints and French constitutional law). France thus permits

emergency derogation of ordinary (non-core) rights. This reflects the influence of France's security concerns and European emergency jurisprudence.

**Germany's structured derogation:** The German Emergency Acts specify precisely which rights may be restricted, which may not be, and require Joint Committee oversight. This reflects a middle position: Germany permits emergency derogation but constrains it through detailed constitutional specification and continuous democratic oversight.

### **7.3 Convergence on climate constitutionalism**

Despite different approaches to emergency powers, all three jurisdictions have moved toward recognizing climate protection as a constitutional obligation that does not invoke emergency derogation:

**India (2024):** Recognized climate as a fundamental right under Article 21 (life and liberty) and Article 14 (equality), through ordinary constitutional interpretation.

**Germany (2021):** Recognized climate as an ordinary constitutional obligation binding the legislature through Article 20a and fundamental rights, with judicial enforcement through proportionality review.

**France (2021, ongoing):** Has not yet constitutionalized climate through explicit constitutional amendment (the 2021 amendment failed), but is developing implicit constitutional recognition through ordinary legislative action and incremental judicial development of environmental constitutional principles.

The convergence reflects a shared judgment that climate requires constitutional attention but not emergency derogation.

### **7.4 The chart: Emergency provisions and climate frameworks**

[See embedded Table 1 and Table 2 showing comparative emergency provisions and climate constitutionalism frameworks across the three jurisdictions]

## 8. Can Climate Emergency Justify Constitutional Emergency Powers? Analysis

### 8.1 Formal criteria for constitutional emergency: Fit and mis t

Returning to the four formal criteria for constitutional emergency identified in Section 2— temporariness, necessity, proportionality, and accountability— climate change presents a complex case:

**Temporariness: Partial t.** Individual climate-related events (hurricanes, floods, extreme heat waves) have temporal boundaries and could justify short-term emergency response. However, the underlying climate crisis is structural and ongoing, lasting decades to centuries. If climate emergency powers were invoked, they would require continuous renewal, gradually normalizing what was meant to be exceptional. This risks precisely the kind of "permanent emergency" that constitutional emergency frameworks are designed to prevent.[36]

**Necessity: Questionable t.** States possess ordinary constitutional, legislative, and regulatory powers adequate to address climate. There is no strict necessity for emergency derogation. The question is one of pace and urgency, not of constitutional inability to act. As this paper's case studies demonstrate, India, France, and Germany are implementing substantial climate policies through ordinary legislation and regulation without invoking emergency powers.

**Proportionality: Problematic t.** Emergency derogation typically restricts individual fundamental rights (freedom of movement, assembly, expression) to preserve collective security. Climate action, by contrast, requires transformation of economic systems and massive investment in clean energy, sustainable agriculture, and ecosystem protection. Emergency derogation of rights is a crude instrument for pursuing these systemic changes, which require nuanced legislative judgment and a affected-community participation.

**Accountability: Severe risk.** Emergency derogation frameworks are designed with weak accountability

precisely because they presume temporariness and exceptionality.

Continuous derogation on the basis of climate emergency would erode the democratic and judicial checks that normally constrain executive power. The risk of converting temporary emergency power into quasi-permanent authoritarian governance is acute.

### 8.2 The intergenerational justice problem

A distinctive feature of climate change as a constitutional concern is its intergenerational character. Unlike paradigmatic emergencies (war, natural disaster, pandemic), where all generations face the threat simultaneously, climate change creates obligations to future generations who cannot participate in current emergency decisions.

Constitutional emergency derogation involves trade-offs: temporally restricting individual rights to preserve collective safety. When future generations are involved, this calculus becomes ethically problematic. How can we justify restricting the rights of present citizens to enable decisions that will shape the world that future generations inhabit, when those future generations have no voice in the present emergency decision-making?

Germany's Neubauer decision explicitly recognized this problem, holding that fundamental rights must protect against intergenerational burden-shifting. This reasoning suggests that if anything, emergency derogation—which weakens normal constitutional safeguards—is precisely the wrong tool for addressing intergenerational climate justice.

### 8.3 The rule of law problem

Constitutional emergency derogation inherently weakens the rule of law. During emergency, executive power is enhanced, legislative constraints are relaxed, and judicial review may be suspended or limited. These changes are justified as temporary necessities.

However, climate governance cannot be characterized by weakened rule of law. Climate action requires:

•**Transparency:** Clear information about climate science, impacts, and policy trade-offs must be publicly available for democratic deliberation.

•**Democratic participation:** Decisions about energy systems, land use, and economic transformation require broad participation by affected communities and future generations (through representative institutions).

•**Judicial review:** Courts must be able to review whether climate policies meet constitutional obligations and do not unjustly burden particular groups.

•**International coordination:** Most climate action is ineffective in isolation; effective response requires international treaties and coordination, which depend on reliable commitments governed by law.

All of these requirements are threatened by emergency derogation frameworks. This suggests that climate action requires not less rule of law but more—more robust constitutional constraints, more judicial activism in protecting environmental rights, more democratic participation in energy and land-use decisions.

#### **8.4 Alternative characterization: Constitutional crisis, not constitutional emergency**

The foregoing analysis suggests that climate change is better characterized as a **constitutional crisis** rather than a constitutional emergency. A constitutional crisis denotes a situation in which the constitutional order faces a fundamental challenge but one that does not justify temporary suspension of constitutional constraints. Rather, a constitutional crisis calls for reinterpretation or reform of the constitutional order to address new challenges.

Examples of constitutional crises include: the American Civil War (which raised fundamental questions about federalism, slavery, and the meaning of Union), the post-colonial independence movements across Africa and Asia (which required drafting entirely new constitutional orders), and the fall of communism in Eastern Europe (which required constitutional reformation).

Climate change is a constitutional crisis in this sense.

It calls for reconceptualization of the constitutional order to:

•**Expand substantive rights:** Recognize environmental rights and future generations' rights as constitutionally protected.

•**Enhance legislative capacity:** Enable legislatures to enact comprehensive climate policies without being hamstrung by procedural limitations or special-interest veto points.

•**Strengthen judicial review:** Permit courts to review whether governmental action meets constitutional obligations regarding environmental protection and intergenerational justice.

•**Reform electoral and democratic systems:** Ensure that democratic institutions are capable of representing the interests of future generations and addressing long-term systemic challenges that transcend short electoral cycles.

•**Internationalize constitutionalism:** Develop frameworks for constitutional governance at the international level to address genuinely global problems like climate change.

This is precisely what India, France, and Germany are attempting through ordinary constitutional processes (and in Germany's case, constitutional amendment). The lesson is that constitutional crisis requires constitutional reform and innovation, not emergency derogation.

## **9. Conclusion**

### **9.1 Summary of findings**

This paper has examined whether climate emergency qualifies as a constitutional emergency under the frameworks of India, France, and Germany. The analysis leads to several key Findings:

**First, the constitutional emergency frameworks in the three jurisdictions, while discovering in detail, share common features designed to permit temporary**

**extraordinary governmental action while preserving democratic accountability and rule of law.**

India's Article 356 permits temporary assumption of

state governmental functions but does not authorize derogation of fundamental rights. France's Articles 16 and 36, and the State of Security Emergency law, permit enhanced executive power and some rights restrictions but with parliamentary oversight and time limitations. Germany's Emergency Acts specify exactly which rights may be restricted, maintain Parliamentary Joint Committee oversight, and automatically terminate when danger passes. All three systems assume emergency measures are temporary.

**Second, all three jurisdictions have moved toward recognizing climate protection as a constitutional obligation enforceable through ordinary constitutional mechanisms, not emergency derogation.**

India's 2024 recognition of a fundamental right against climate change, Germany's 2021 Neubauer decision holding that climate obligations are ordinary constitutional commitments enforceable through proportionality review, and France's incremental development of environmental constitutional principles all reflect this convergence. No nation has formally invoked emergency powers specifically for climate change.

**Third, climate change does not meet the formal criteria for constitutional emergency derogation.**

The criterion of temporariness is not satisfied: the underlying climate crisis lasts decades to centuries, whereas emergency derogation assumes temporary exceptionality. Continuous renewal of emergency declarations would normalize what was meant to be exceptional and risks "permanent emergency" governance. The criterion of necessity is questionable: states possess ordinary legislative and constitutional powers adequate to address climate. The criterion of proportionality is problematic: emergency derogation is a crude instrument unsuited to the systemic economic and energy transformation required for climate action. The criterion of accountability is severely threatened: continuous emergency derogation would erode democratic and judicial checks designed for genuinely temporary crises.

**Fourth, climate change represents a constitutional**

**crisis requiring constitutional innovation, not a constitutional emergency justifying derogation.**

Constitutional crisis denotes a situation in which the constitutional order faces a fundamental challenge requiring reinterpretation, expansion of rights, reform of institutions, and innovation in constitutional governance. Climate change calls for recognition of environmental rights, intergenerational rights, enhanced capacity for long-term legislative planning, stronger judicial review of environmental governance, and development of international constitutional frameworks. These changes should proceed through ordinary constitutional processes—legislation, constitutional amendment, judicial interpretation—rather than through emergency derogation.

## 9.2 Normative implications

The analysis carries several normative implications for climate constitutionalism:

- 1. Resist framing climate as justifying emergency derogation.** While the language of "climate emergency" is politically powerful and appropriate, legal scholars, courts, and policymakers should resist the temptation to translate this political language into invocation of constitutional emergency powers. Emergency derogation is designed for temporary crises and carries inherent risks of authoritarian abuse. Climate governance requires the sustained rule of law, not temporary suspension of constitutional constraints.
- 2. Expand and enforce environmental and intergenerational rights through ordinary constitutional interpretation and reform.** India, Germany, and France have begun this work through judicial decisions and legislative action. The trajectory should continue through explicit constitutionalizing of environmental rights, recognition of future generations' standing in climate governance, and judicial enforcement of climate obligations through proportionality and reasonableness review.
- 3. Strengthen democratic institutions to address long-term collective action problems.** Climate action requires decisions and investments

spanning decades with benefits accruing to future generations. Democratic institutions designed around short electoral cycles are structurally poorly suited to this task. Constitutional reforms should consider mechanisms for representing future generations, for insulating climate policy from short-term political pressures, and for ensuring that long-term climate commitments survive electoral transitions.

#### 4. Internationalize climate constitutionalism.

Climate change is genuinely global, and no nation's constitutional response can be adequate in isolation. Developing international constitutional law governing climate—through binding treaties, international courts, and harmonized national constitutional commitments—is essential. The Paris Agreement is a step, but much more robust international constitutional governance is needed.

#### 9.3 Broader implications for constitutional law and emergency powers

This paper's analysis also carries implications for constitutional emergency law beyond climate:

The analysis suggests that treating novel, structural, long-term challenges as constitutional emergencies risks eroding the rule of law and democratic constitutionalism. Migration, economic disruption from technological change, pandemics emerging from ecological disruption, and other 21st-century challenges may tempt policymakers to invoke emergency powers.

The lesson is that constitutional systems must develop more sophisticated responses than emergency derogation. Rather than choosing between (a) permitting emergency derogation, which risks authoritarianism, and (b) denying governmental capacity to respond to serious challenges, constitutional democracy should pursue (c) expanding and reforming ordinary constitutional frameworks to address new challenges.

This requires continuous constitutional evolution—recognition of new rights, reform of institutions, development of new procedures for collective deliberation and decision-making—to preserve the capacity of constitutional democracies to govern

effectively while maintaining rule of law and protecting fundamental rights.

Climate constitutionalism is thus a laboratory for broader constitutional innovation in response to global challenges that the original constitutional framers could not have anticipated.

#### 9.4 Final remarks

The central conclusion of this paper is that **climate change is a constitutional crisis requiring constitutional innovation, not a constitutional emergency justifying derogation from constitutional constraints.**

The jurisprudence emerging from India, France, and Germany—particularly the Indian Supreme Court's recognition of climate rights, the German Constitutional Court's intergenerational justice framework, and the broader movement toward constitutional environmentalism—points in the right direction: toward integration of climate concerns into ordinary constitutional frameworks rather than treatment of climate as an exceptional threat.

This approach requires faith in constitutional democracy: condensed that democratic legislatures can respond to serious collective threats, that independent courts can enforce constitutional obligations, and that rule of law is not an obstacle to responding to existential challenges but rather the essential foundation for legitimate and effective response.

The climate crisis will test whether constitutional democracies possess this capacity for constitutional adaptation and self-correction. The answer will determine not only the effectiveness of climate response but also the viability of constitutional democracy itself in an era of anthropogenic crises.

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