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**NAVIGATING EMERGENCIES: A COMPARATIVE ANALYSIS OF
INDIA AND THE UK**

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ABSTRACT

Extraordinary circumstances that hinder a state's ability to function under its constitutional framework demand emergency provisions. During these times, an adapted constitutional framework is implemented, resulting in substantial changes to the normal functioning of the government and the separation of powers between the union and state governments. Different circumstances may lead a government to announce a state of emergency, such as armed conflicts, warfare, civil disturbances, and disasters. Once an emergency is declared, the normal constitutional order is disrupted, altering the country's political, social, and economic conditions and resulting in the restriction or suspension of individual rights. This article analyzes emergency provisions found in India and the US, focusing on their origins, constitutional structures, and practical implications. In India, the emergency provisions are encapsulated in part XVIII of the constitution from articles 352 to 360. The Constitution of India categorizes emergencies into three types: The National Emergency, State Emergency, and Financial Emergency, each associated with specific circumstances. In the USA, in contrast, emergency powers are based on statutory laws, with the National Emergency Act of 1976 establishing a framework for presidential declarations, which is subject to oversight by Congress and judicial review. This research will delve into emergencies in both countries and aim to establish a comparative analysis of the two.

INTRODUCTION

The democratic constitutions worldwide include emergency provisions enabling the executive branch to respond swiftly at times of crisis. In today's scenario, nations are

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grappling with various urgent threats, such as terrorism, immigration, insurgencies, wars, severe threats to national stability, and pandemics that endanger numerous lives, which jeopardize the stability and security of the country. As a result, the instinct to invoke emergency power, enabling the government to exercise extraordinary authority beyond its constitutional roles, has become tremendously common. There is a common notion that these laws should be employed only during exceptional situations and should only be applied as extensively as the situation demands.² Moreover, emergency powers can also be referred to as measures introduced expeditiously in response to crises, which are expected to be temporary and will be rescinded once the crisis abates.

Emergency provisions are essential for the state to respond effectively during the crisis, ensuring that these powers adhere to legal standards. These powers act as guardians of democracy, provided they are used wisely and not capriciously, enhancing democratic resilience by granting the necessary authority to tackle significant challenges within the constitutional framework. Without emergency provisions in a state, the state would be left with two unfavorable scenarios: it could become powerless, unable to take essential actions in hazardous situations or resort to actions that exceed legal limits. Both of these scenarios could hurt society as a whole. Emergency powers are enacted to guarantee that a state can persist and uphold its legal obligations in the future. The declaration of emergency carries significant consequences. Historically, emergency powers have often led to violation of individual human rights, and while they protect the state's existence, they can also threaten the very essence of democracy. Emergency poses two significant issues. Firstly, they disturb the separation of powers between the government and its branches. Secondly, shielding human rights and the rules of governance is greatly compromised.

Emergency powers encompass a wide scope, enabling the executive to limit or suspend specific constitutional rights to consolidate decision-making authority and, in certain cases, postpone elections. However, such powers are typically subject to scrutiny and oversight to prevent potential abuses and uphold democratic principles even in times of emergency. Thus, extraordinary measures may be necessary during emergencies as they also demonstrate the strength and flexibility of democratic governance in challenging situations.

²Anna Chakee, Securing Democracy A Comparative Analysis Of Emergency Powers In Europe Centre For The Democratic Control Of Armed Forces, Policy Paper- No 30, 2009, 5.

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The United States of America and India exemplify federal states with distinct legal systems. Yet, they both serve as prominent representations of democratic governance, focusing on principles of representation and federalism. In both India and the United States of America, emergency powers are incorporated within the legal systems, empowering governments to take necessary actions in times of emergency. Nonetheless, these powers' nature, effects, and application significantly differ between the two countries, reflecting each nation's distinct historical circumstances, constitutional provisions, and political cultures.

INDIA

HISTORICAL OVERVIEW OF EMERGENCY PROVISIONS IN INDIA

The origins of emergency provisions in India date back to constitutional measures established following independence in 1947. The country has modeled its emergency protocols after those of Germany. The Indian Constitution incorporates articles 352, 356, and 360 confer upon the president the power to proclaim a state of emergency in response to threats to national security, internal disturbances, or financial crises. Another significant factor that led to emergency provisions in India was the rise of communist activities. The challenging financial circumstances caused by the partition and the reduction in foreign exchange reserves highlighted the need to establish financial emergency provisions outlined under Article 360.

The Emergency powers had been first invoked during the Indo-China War in 1962. Subsequently, in 1971 during the hostilities with Pakistan, citing 'external aggression'. Notably, the 1971 emergency was already in effect when the 1975 emergency was declared.³ This latter, initiated under Article 352 by then Prime Minister Indira Gandhi, led to widespread violations of fundamental rights and human rights, the suspension of elections, and the erosion of democratic norms. This move by the then Prime Minister was considered arbitrary and diluted the democratic foundations. The subsequent victory of the Janata Party in the Lok Sabha elections and the enactment of the 44th Amendment Act in 1978 were direct responses to the 1975 emergency aimed at preventing government abuse of power and protecting citizens' rights.

³Aayush Hoonka, Suspension of Fundamental Rights During Emergency, Indian Journal Of Law And Legal Research, Vol. IV Issue III.

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AN ANALYSIS OF EMERGENCY PROVISIONS IN INDIA

Part XVIII Of the Indian Constitution, encompassing articles 352 to 360, addresses emergency provisions. The constitution delineates three types of emergencies in India: national emergency, state emergency, and financial emergency, each granting specific authorities to the government to tackle different challenges. Nevertheless, there have been instances where political leaders have invoked these emergency powers controversially for reasons not stipulated in the Constitution.

The president can proclaim a national emergency in India under Article 352 if the security of the country or any part of it is threatened by war, external aggression, or armed rebellion.⁴This proclamation may be issued even before the onset of such threats if the president is convinced of an imminent threat. A proclamation of national emergency will cease to be effective one month after its declaration unless both houses of parliament approve it through resolutions.⁵If ratified, it can remain in effect for up to six months.⁶During this period, the central government could direct states on any matter, effectively altering India's federal structure to a more unitary form. Most fundamental rights can be suspended, except for Articles 20 and 21, which remain protected. Initially, proclamations of national emergency were beyond judicial scrutiny, but this was altered by the 44th Amendment Act of 1978. The Supreme Court determined in *Minerva Mills v. Union of India*⁷ that a national emergency can be subject to judicial review. The court asserted that the judicial review should not be obstructed when evaluating the validity of a presidential proclamation under Article 352 (1). The judiciary can evaluate whether the grounds for the president's satisfaction are legitimate.

Under Article 356, a state emergency, also known as a president's rule, can be declared by the president upon receiving a report from the state's governor or other sources, who is convinced that the state's governance cannot adhere to the constitution. During this time, the federal government exerts direct control over the state. Notably, Chhattisgarh and Telangana are the only states where presidential rule has never been enforced to date. While this provision is crucial for maintaining the nation's constitutional integrity, its misuse has often drawn criticism and prompted calls for reform. The landmark judgment in the *S.R Bommai*

⁴ Article 352 (1) of the Indian Constitution.

⁵ Article 352 (4) of the Indian Constitution.

⁶ Article 356 (5) of the Indian Constitution.

⁷ *Minerva Mills vs Union of India*, AIR 1980 SC 1789.

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case⁸ represented a crucial step in curbing the arbitrary application of this rule. However, the discussion surrounding its necessity and potential for misuse remains a key topic in Indian political debates.

Article 360⁹ of the Indian Constitution allows for the proclamation of a financial emergency when India's financial stability or credit or any region within it is jeopardized. However, this provision has never been invoked to date.

UNITED STATES OF AMERICA

HISTORICAL OVERVIEW OF EMERGENCY PROVISIONS IN THE USA

Prior to World War I, presidents of the USA wielded emergency power based on their discretion. Following World War I, numerous emergency powers became available to the president, which could be activated through a national emergency declaration, occasionally with unrestricted authority and sometimes confined to certain policy areas. There were very few limitations on the president's discretionary powers regarding emergency provisions. In the case of *Youngstown Sheet and Tube Co. v. Sawyer*, the Supreme Court imposed restrictions on the actions a president could take during emergencies while affirming the authority of the president to declare emergencies at their discretion.¹⁰

In 1973 a special committee was set up to review issues concerning national emergencies. During its investigations, the committee recognized four notable existing national emergencies: The banking crisis of 1933, the Korean War of 1950, the postal workers strike in 1970, and the inflation emergency in 1971. It was discerned that the declaration of a single emergency triggered all associated statutory provisions, resulting in a continuous state of emergency for a total of 41 years. In response, the National Emergencies Act of 1976 was enacted to ensure that emergency-related executive powers would not be automatically initiated by a single declaration. Under section 201 of this act, the president is given the power to declare a national emergency, mandating that Congress be informed of the proclamation and that it should be published in the Federal Register. Therefore, the US National Emergency Act 1976 Serves as a key legislation that outlines the precedence emergency powers and

⁸S.R Bommai v. Union of India, AIR 1994 SC 1918.

⁹Article 360: Provisions as to financial emergency.

¹⁰*Youngstown sheet and Tube Company v. Sawyer*, 343 U.S. 579 (1952)

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stipulates the process for terminating any active national emergencies. The aftermath of the 9/11 terrorist attacks significantly impacted the development of emergency provisions in the United States. The Patriot Act of 2001 was enacted, which broadened surveillance power, enabling wiretapping, the collection of business and banking records, and information on suspects with judicial consent. While the act enhanced broader security and helped prevent numerous terrorist plots, it also attracted criticism for violations of privacy and harassment of innocent immigrants.

ANALYSIS OF EMERGENCY PROVISIONS IN THE USA

In the context of the United States, the scenario is somewhat similar to that in India, with the president acting as the chief executive, possessing the authority to declare a national emergency; likewise, governors or mayors can declare state emergencies within their own jurisdiction. The regulation of Federal Emergency in the US falls under the National Emergency Act 1976.

Notably, the word 'emergency' does not appear anywhere in the articles of the US Constitution. However, the Constitution does include certain provisions to respond to emergencies. For instance, section 8 of Article I empowers Congress to manage matters related to war and the military, which includes the authority to declare war, maintain the army and navy, regulate military operations forces, and call upon the militia to repeal invasions or suppress insurrections. According to Article II, section 2, the president is designated as the commander in chief of the armed forces, encompassing the militia during federal service¹¹. Furthermore, Article III Section 3 requires the president to ensure the proper execution of laws, and Article IV Section 4 obligates the federal government to protect states from invasions or internal unrest. While these articles do not explicitly discuss emergencies, they acknowledge the emergency laws. These provisions aim to safeguard states from numerous threats, including invasion, domestic violence, war, and insurrection, which typically necessitates declaring a state of emergency. Without explicit emergency provisions, citizens enjoy specific protection, such as the writ of habeas corpus, which cannot be suspended except when public safety requires it during cases of Invasion or rebellion.¹²

¹¹US Constitution, Article II section 2

¹² US Constitution, Article I section I, para three.

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COMPARATIVE EXAMINATION OF EMERGENCY POWERS IN THE USA AND INDIA

Emergency laws in the USA have evolved as a response to years of misuse of older statutes, prompting the development of new laws to rectify these deficiencies. In contrast, the Indian constitution incorporated emergency provisions directly into the document detailing specific rules for their declaration and extension. Unlike the US Constitution, which does not explicitly include the term emergency, the Indian Constitution provides comprehensive details on emergencies, thereby negating the need for a separate legislative framework in India.

Moving on to the second aspect of comparing emergency provisions in India and the USA. In India the authority to proclaim an emergency lies with Parliament and is outlined in the Constitution of India. Conversely, in the USA, the president has the authority to declare an emergency as detailed in the National Emergencies Act 1976 and the Patriot Act of 2001.

In the USA, courts maintain jurisdiction to evaluate the legitimacy of laws concerning emergencies. Furthermore, courts can clarify the scope of government functions during emergencies. For example, in *Hirabayashi v. United States*¹³, the court upheld certain regulations that restricted the movement of individuals of Japanese descent to remain indoors during specified hours to prevent sabotage. It is pertinent to note that during both World Wars, the terms 'war' and 'defense' were interpreted broadly, allowing the government greater flexibility in national defense actions. In contrast, the Indian Constitution lacks this judicial review over emergency provisions. The Constitution of India comprehensively outlines emergency provisions which minimises the need for judicial interpretation. Consequently, the judiciary's authority over emergency regulations is restricted except in cases that violate Articles 20 (Protection against self-incrimination) and 21 (Protection of life and personal liberty). Nonetheless, in *Minerva Mills v. Union of India*¹⁴, Justice Bhagawathi noted that judicial review could include assessing whether the president acted diligently and remained within the bounds of authority in declaring an emergency.

The United States employs a more precisely defined framework for declaring emergencies. US emergency provisions specifically address distinct threats such as natural disasters,

¹³*Hirabayashi v. United States*, 320 U.S. 81 (1943).

¹⁴*Supra* 6

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warfare, and other evident dangers. Indian emergency provisions are extensive in nature and address scenarios including armed conflict, financial emergencies, and internal disturbances. This comprehensive framework empowers the government to respond quickly to various threats to national security and stability effectively.

In the USA, the president poses the sole authority to declare a national emergency. The president derives this authority from various legal frameworks, including the National emergencies act and the Patriot Act. In contrast, in India, the power to declare an emergency is vested in the president, but it must be done with the recommendation of the Council of Ministers, making it a joint decision. Furthermore, the Indian Parliament must approve the emergency declaration within a month.

The US adheres to a purely federal system, while India adopts a quasi-federal framework. One significant similarity in their emergency provisions is that upon the declaration of a national emergency, the central government assumes a substantial amount of authority and responsibility. This shift occurs because the central government primarily protects the nation. Therefore, both India and the USA experience a swift transition from their federal structures to a more unitary form during national emergencies.

CONCLUSION

An evaluation of emergency provisions in India and the United States reveals similarities and differences in their approaches to managing emergencies. Regardless of differences in their strategies, both nations are committed to reconciling the need for rapid actions in times of emergency with the maintenance of democratic ideals and human rights. They have learned from previous challenges and have introduced amendments to prevent the misuse of emergency provisions. A key improvement that both states could adopt is the acknowledgment and compliance with international standards that prohibit human rights violations during emergencies. It is repeatedly observed that states of emergency often lead to violations of fundamental and human rights, causing significant distress for citizens due to the abuse of powers by authorities. By committing to uphold basic human rights, each of these countries can better safeguard their citizens' lives and freedoms.