
ORIGIN AND DEVELOPMENT OF EMERGENCY: NATURE AND EFFECT OF DECLARATION OF EMERGENCY, HISTORY OF EMERGENCY PROVISIONS; SUSPENSION OF FUNDAMENTAL RIGHTS: COMPARATIVE STUDY WITH USA

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ABSTRACT

This paper examines the origin, design, and evolution of constitutional emergency powers in India, the nature and effects of a formal proclamation, and the suspension of fundamental rights, set against a comparative lens with the United States. It maps India's textually codified architecture—Articles 352, 356, and 360—together with collateral provisions and the post-1978 recalibration that replaced “internal disturbance” with “armed rebellion,” required written Cabinet advice, and narrowed rights suspensions. Methodologically, the study deploys doctrinal analysis of constitutional text and leading judgments (e.g., *ADM Jabalpur*, *Puttaswamy*, *S.R. Bommai*, *Minerva Mills*), supplemented by limited statutory and policy materials for precision. It then contrasts India's ex ante, calendar-bound code with the U.S. system's dispersed statutory ecosystem (e.g., National Emergencies Act, Insurrection Act) and rights adjudication under due process, habeas corpus, and free speech. The principal findings are fourfold: first, India's framework couples rapid central coordination with time-bound legislative renewal, tempered by non-derogable floors for Articles 20 and 21 and a narrowed Article 358 trigger; second, judicial review—through proportionality, record-based scrutiny, and the basic structure doctrine—constrains misuse while permitting tailored crisis responses; third, American emergency practice hinges on inter-branch contestation, statutory specificity, and case-by-case rights balancing (*Youngstown*, *Hamdi*, *Boumediene*); and fourth, contemporary risks—especially digital shutdowns and surveillance—require clearer necessity standards, granular territorial tailoring, and transparent reporting. The implications are practical: strengthen evidentiary thresholds and renewal discipline, codify digital-age safeguards, institutionalize real-time oversight dashboards, and refine drafting protocols for Article 359 orders to ensure precision and temporariness. Together, these measures preserve decisiveness in genuine crises while guarding against normalization.

of exceptional authority.

Keywords: Emergency provisions; Article 352; Article 356; Article 360; Article 358; Article 359; Forty-fourth Amendment; basic structure; proportionality; habeas corpus; National Emergencies Act; preventive detention; internet shutdowns

Introduction

Emergency powers are essentially the point where constitutional design, democratic accountability, and the rule of law meet. Indian constitutionalism saw the possibility of serious dangers to public order and national security, and it tried to control those dangers by way of a detailed, textually codified emergency code. That code provides the Union with the means to act legally while at the same time trying to prevent unrestrained use through procedures, time limits, and control by the legislature. The tension from which the research problem arises is the constitutional allowance for temporary departures from the ordinary federal distribution and rights enforcement during existential crises on the one hand and the risk of those departures leading to the normalisation of exceptional authority on the other. Consequently, the project investigates how the constitutional text structures those departures, how subsequent amendments have changed the balance, and how courts have set the boundaries by their interpretation. The question about the suspension of fundamental rights is as important as the first one, maybe even more. The Constitution is not giving a blank cheque. It provides two different methods of restriction, one automatic and another by presidential order, at the same time protecting the basic rights of personal liberty and the right to a fair trial after the “Forty fourth Amendment”. The Emergency of 1975 77 and its influence on the doctrine, politics, and administrative practice, is the legacy that continues to be the subject of contemporary governance.¹

A comparative lens sharpens these inquiries. The US lacks a single unified emergency chapter and instead scatters emergency authority across different texts and statutes. It depends on the “Suspension Clause” for habeas and connects most crisis measures to different Acts such as the “National Emergencies Act” and the “Insurrection Act.” A comparison between Indian codification and the American dispersed model shows that India and the US have made different decisions regarding triggers, thresholds, oversight by the legislature, and protection

¹ Emergency Provisions in India – A Critical Analysis, *available at*: <https://blog.ipleaders.in/emergency-provisions-india-critical-analysis-2/> (last visited on October 10, 2025).

of rights. The range of the research is thus threefold. Firstly, to understand and represent India's constitutional system, its past and the legal consequences of the proclamation. Secondly, to study the organization and functionality of the suspension under "Articles 358 and 359" with the focus on the safeguards after 1978. Thirdly, to present a limited comparison with the United States on factors such as triggers, checks, rights restrictions and consequences of federalism before giving a normative assessment that considers current risks, including digital age emergencies involving network shutdowns, surveillance, and cybersecurity incidents. The roadmap is based on the numbered headings starting with the constitutional architecture, moving across history and effects, then going to suspension mechanics, key Indian precedents, the U.S. framework, comparative analysis, and reforms. The investigation is done in an impersonal manner, relies on the constitutional text and leading judgments, and refers to statutes only when it is necessary for giving exact information. References to the "Bharatiya Nagarik Suraksha Sanhita" and the "Bharatiya Sakshya Adhiniyam" are made when the procedure and the evidence side meet the emergency practice, however, the main focus is still on the constitutional code governing the proclamation and rights.

Constitutional Framework in India

The constitutional text creates a layered architecture for situations of emergencies. Three "heads" are visible. A "National Emergency" under "Article 352", "President's Rule" under "Article 356", and a "Financial Emergency" under "Article 360." The collateral provisions change the distribution of legislative and fiscal powers when the Union is in a crisis that has been proclaimed. "Articles 249 and 250" provide for the State List to be entered by Parliament in two different cases. "Article 353" extends the executive and legislative power of the Union to the areas covered by a "National Emergency", and "Article 354" allows for temporary changes in the application of the distribution of revenues rules. The code also has suspension devices in "Articles 358 and 359" that adjust the enforceability of fundamental rights during emergencies, which are now subject to minimum non derogable guarantees after the "Forty fourth Amendment." The framework is textual, detailed, and cumulative. Proclamation requirements, approval periods, revocation methods, legislative consequences, and effects on rights form a single system rather than separate clauses.²

² T Devidas, "Rule of Law in a State of Emergency", 2 *National Law School Journal* 58 (1990).

Taxonomy of Emergencies

The taxonomy defines three different types of emergencies. A “National Emergency” under “Article 352” refers to a situation where the security of India or any part of it is threatened due to war, external aggression, or armed rebellion. “President’s Rule” under “Article 356” is about the failure of the constitutional machinery in a State, which leads to a proclamation that places the State executive authority under the President and may also suspend or dissolve the State Legislature. A “Financial Emergency” under “Article 360” is a response to a situation where the financial stability or credit of India or any part of it is in jeopardy, thus enabling the reduction of salaries and financial directions to the States and Union authorities. Different categories have different grounds, procedures, and consequences. The first one is national and security related. The second is federal and governance related. The third is fiscal and stability related. The difference in the consequences reflects the different types of risks that are being dealt with and the corresponding need for different legal responses from the same constitutional code.³

Grounds and Thresholds

The “Forty fourth Amendment” tightened the grounds and thresholds. The words “internal disturbance” in “Article 352” were changed to “armed rebellion”, which meant that the threshold for national emergency in the domestic context was raised. The President’s satisfaction must now be in accordance with the “written” advice of the Union Cabinet, and the proclamation remains justiciable on limited grounds as a part of constitutional review. The security of India triggers are still “war” and “external aggression”, while “armed rebellion” is the internal trigger. This textual recalibration indicates a move from vague domestic grounds towards specific criteria that limit executive discretion and allow parliamentary oversight. Necessity is still at the centre, but it is necessity that is guided by a higher standard and a collective cabinet decision, rather than a unilateral executive assertion. The constitutional change was a direct consequence of the experience during 1975 77 and it is still the way it continues to operate.

Procedure for Proclamation and Approval

The methods are similarly organized. A declaration under “Article 352” is made only after the

³ Judicial Emergency, *available at*: <https://www.livelaw.in/judicial-emergency> (last visited on October 10, 2025).

President gets “written” advice from the Union Cabinet. The proclamation, when it is issued, must be presented to both Houses and it stops functioning unless it is approved within one month. After the sanction, it stays valid for six months and can be extended by further parliamentary resolutions before the end of each six month period. These approval resolutions have to be voted on by each House. The layout is aimed at ensuring that the initial reaction of the executive is quickly brought back under the control of the legislature and that any continuation reflects the current parliamentary decision rather than the default continuation of the previous session. The operation also stipulates that different separate proclamations should be considered independently, which helps in concentrating the discussion and being more accountable. The structure of advice, issuing, legislative approval, and renewal is like a practical calendar for managing crises that are still controlled by Parliament.⁴

Revocation and Legislative Control

Revocation can be effected through both regular and special means. The President can revoke a proclamation by a subsequent proclamation. Apart from this, a special device authorizes the House of the People to call a meeting for the consideration of a resolution disapproving a proclamation or its continuation if at least one tenth of its members send a notice. In case the House adopts such a resolution, a proclamation shall be terminated. The instrument, which is the directly elected chamber, thus provides a focused means whereby the emergency can be brought to an end without the need for ordinary scheduling or the consent of the executive. It was designed after 1977 so that the concentration of the initiative in the executive would be avoided. Besides that, it facilitates political negotiation during the crisis as a result of which a credible threat of disapproval can lead to revocation or reduce the extent of the instructions given during the emergency. The device is a component of a broader post 1978 package that rebalanced the relations between the executive and the legislature in the case of an emergency.

Effects on Distribution of Powers

A proclamation under “Article 352” triggers collateral consequences for legislative competence. “Article 250” gives power to Parliament to legislate on any matter in the State List for the time of the emergency, such laws ceasing to have effect from the end of the

⁴ Can Supreme Court Direct Imposition of Financial Emergency? Constitutional Contours in Light of COVID-19, available at: <https://www.scconline.com/blog/post/2020/04/13/can-supreme-court-direct-imposition-of-financial-emergency-constitutional-contours-in-light-of-covid-19/> (last visited on October 10, 2025).

incompetence six months after the emergency is over. “Article 249” permits the Council of States, by a two thirds majority resolution, to give the Parliament the authority to legislate on certain State List matters in the national interest. It is a separate, non emergency device that can function independently or with a proclamation. “Article 353” extends the executive power of the Union and allows the parliamentary power to be increased to any subject. The composition combines temporary unionisation of legislative areas with the time bound sunset effects to lessen the district of jurisdictional creep. The code thus reduces decision costs for national coordination in a crisis and at the same time retains a horizon for coming back to the regular federal balances after the emergency has passed.

Nature and Effects of a Declaration

A valid proclamation results in a large number of changes to the law. Parliament may legislate across the State List under “Article 250”, the Union’s executive power extends throughout India under “Article 353”, and fiscal arrangements may be temporarily changed under “Article 354.” The changes in the enforcement of rights are twofold. In case the ground is “war” or “external aggression”, “Article 358” prohibits the operation of “Article 19” so that new laws and executive orders cannot be challenged on that ground during the period of the emergency. Additionally, the President may issue an order under “Article 359” suspending the enforcement of certain rights, but not “Articles 20 and 21”, and only for the duration and area mentioned in the order. Central government takes over the administration. Ordinance powers become more significant. Writs practice changes according to the provisions of any “Article 359” order. These consequences are still temporary by their nature and dissolve partly through sunset provisions that bring back the pre emergency situation after the end.⁵

Executive and Legislative Effects

Executive and legislative decisions take effect immediately. The President’s executive power in the Union includes giving directions to any State as he thinks fit for the purpose of carrying out the proclamation’s object, and Parliament may legislate on State List subjects in the area where the emergency is continuing. Ordinances under “Article 123” become a handy means for continuity between sessions. Delegated legislation is extended to carry out crisis policy. However, continuance is dependent on parliamentary renewal, which thus exercises periodic

⁵ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 175 (Oxford University Press, New Delhi, 1st edn., 2000).

scrutiny over executive programmes. Laws made during the emergency which draw authority from “Article 250” will, to that extent, be incompetent six months after the abatement of the emergency and thus terminate, thereby preventing permanent jurisdictional shifts. The combination of expanded competence and the built in sunset clause serves to lessen the coordination costs under stress while at the same time preventing a gradual long term erosion of the federal boundaries. The plan views emergency centralisation as a constitutional bridge which connects the crisis’s onset with the legislative reassessment either at renewal or at the end.

Federal Reconfiguration

Federalism is changed to some extent but still remains. During a national emergency, the State areals of freedom are limited to a concerted national action in the areas which are generally considered as State legislatures’ reserves. A different logic is at work in “Article 356”. President’s Rule changes the State executive with the President, who is acting through the Governor, and Parliament takes over the State Legislature’s functions. Both regimes emphasize only that the temporary substitution for the ordinary processes is their common ground. Court decisions have been advocating for narrow tailoring, giving reasons, and verification through legislative floor tests rather than by abstract satisfaction. Therefore, a federal emergency is a combination of a textual provision allowing the central government to direct and constitutional expectations of proportionality and temporariness. Such a stance moves emergency management away from permanent command models and insists that the centre’s extended reach be confirmed by necessity which can be shown. The Constitution is quite clear that it is preferable to return to ordinary State institutions as soon as stable governance is possible again.⁶

Fiscal Consequences

Financial impacts are detailed in “Article 360” and have been aligned with “Article 354.” In the event of a “Financial Emergency”, the Central Government can give instructions to reduce the salaries and allowances of the employees (persons serving the Union or a State) that comprise the Union, the State, or the judiciary, including judges. In addition, it can ask for such measures as may be necessary to ensure not only the financial stability but also the credit.

⁶ M. Asad Malik, "Changing Dimensions of Federalism in India: An Appraisal", 2 *ILI Law Review* 85 (2019).

Besides that, “Article 354” allows the President to make a direction that the provisions relating to the distribution of the revenues be applied with necessary changes during the operation of the “National Emergency.” These instruments allow the budget to be flexible during a crisis of the finances but still have to be subjected to the same structures of approval and renewal as the underlying proclamation governs. The framers recognised that economic shocks could destabilise the functioning of the Constitution, and thus the text gives them the power to ensure the supply of money, keep the services that are necessary, and maintain the creditworthiness so as not to cause a legislative deadlock. Temporary instructions and later sunset effects keep the balance as normal revenue sharing takes place after the end.

Judicial Process and Remedies

The judicial proceedings are reflective of the constitutional conditions of suspension. In case of the operation of “Article 358”, “Article 19” claims cannot be successful against the laws and orders issued after the proclamation, though those prior to the proclamation continue to be reviewable. The imposition of limitations and the district specified are the circumstances that characterize the most stringent of the three compared to which the first two are just variations, when the President issues an order under “Article 359”. Subsequent to the “Forty fourth Amendment”, the order is not permitted to affect “Articles 20 and 21”, and the courts retain jurisdiction to decide compliance of the executive action with the suspension’s limits, whether a measure can be traced to a legal power, and whether the emergency ground justifies the measure’s extent. On the extent that the order is suspending the enforcement, writ petitions may be postponed, but challenges on the non suspended grounds and collateral legality will be still there. Hence, the judiciary is not closed, the procedures are still going under the changed justiciability, and the review as a constitutional guarantee is still there that the emergency is within the constitutional way indicated by the text.⁷

Civil Liberties and Administration

During emergencies, civil liberties are put under great pressure. One can observe that preventive detention, movement controls, press restrictions, and communications oversight tend to increase. A post 1978 safeguard recalibrates that relationship by keeping the enforcement of “Articles 20 and 21” and by limiting the automatic “Article 19” suspension to

⁷ Shyam Baganesh, "Fundamental Rights During a Proclamation of Emergency", 12 *National Law School of India Review* 70 (2000).

emergencies derived from “war” or “external aggression.” Administrative law still requires that actions be traced to a valid statutory or constitutional authority and that the measures be proportionate to the risks demonstrated. The emergency code is not a free floating suspension of legality. Instead, it reallocates burdens and immunities in certain areas while expecting administrations to record the necessity, apply the tailoring, and abide by non derogable floors. These expectations are most important in detention, surveillance, and media regulation, where courts have indicated that they are willing to verify whether the crisis measure corresponds to the specific threat that the executive has asserted at the time of issuance and throughout the continuation.

Suspension of Fundamental Rights

Suspension is achieved by two different methods. “Article 358” suspends “Article 19” operations automatically in relation to new laws and executive actions during a national emergency based on “war” or “external aggression” only, after the “Forty fourth Amendment”. “Article 359” gives the President the power to suspend the enforcement of certain rights for a limited period and area, the protection of “Articles 20 and 21” being absolute. So the system separates the existence of a right from its enforcement in the specified periods, and it is necessary for any presidential order to be precisely drafted. The text after 1978 still allows a person to challenge a criminal conviction without the risk of ex post facto punishment or double jeopardy, and to insist on a just, legal, and fair deprivation of life or personal liberty. These bases govern the executive and parliamentary drafting during the crisis, thus the emergency is still within a rights conscious legal framework rather than being a purely executive led area.⁸

Article 358

“Article 358” is functioning with a more limited trigger now. The automatic suspension of “Article 19” could follow any national emergency, including those based on domestic grounds, before 1978. After the “Forty fourth Amendment”, the automatic effect is only when the proclamation is based on “war” or “external aggression.” During that time, the State may make laws or take executive action that would normally be in violation of “Article 19”, and such steps cannot be challenged on that ground while the emergency is in operation. The protective shield does not pardon lack of legislative competence or breaches of other rights. It does not

⁸ H. M. Seervai, *Constitutional Law of India: A Critical Commentary* 210 (N. M. Tripathi, Bombay, 1st edn., 1983).

also confirm that pre proclamation laws were valid when they had already been invalid. So, the narrowing of the trigger consequently diminishes the area in which political dissent may be suppressed during domestic crises and locates the automatic suspension to situations of external threat only. That result is a conscious normative decision reflecting the 1975 77 experience.

Article 359

“Article 359” gives the President the power to issue an order indicating that for a specified time during an emergency the enforcement of fundamental rights by any court shall be suspended. After the “Forty fourth Amendment”, such an order cannot extend to “Articles 20 and 21” which are always enforceable even in a crisis situation. The order has to indicate the rights as well as the area where the suspension applies and it does not take away the rights. It only suspends the remedy. Courts can still see if an action is outside the scope of the suspension, if the order is in line with constitutional requirements, and if non suspended rights or constitutional provisions limit the action. The instrument features the flexible tailoring that permits the Union to pinpoint the enforcement pauses without automatically producing broader effects, but it does so under a textual ceiling that retains the core of personal liberty and the basic rights of the criminal justice system.⁹

Rights Versus Remedies

The difference between the existence of a right and the availability of a remedy is at the core of “Article 359” kept. The Constitution is not changed by a presidential order to the effect that the right is removed. For the duration of the order and within its territorial scope, it is only a postponement of the power to move a court to enforce that right. The effects are not the same for the actions that are pending and those that are going to be initiated. The proceedings before the order may be stayed to the extent that enforcement is suspended, while actions premised on non suspended grounds or on structural limits may continue. The parties to a dispute will be able to challenge the measures which were adopted during the period of the suspension if, after the expiry of the order, their claim is based on the continuing validity of the underlying right and on the absence of a clause granting validation. This framework reflects a legal reality. Emergency suspensions change the time and ways of review, however, they do not make

⁹ A. G. Noorani, "The Judiciary and the Bar in India During the Emergency", 20 *Journal of the Indian Law Institute* 112 (1978).

actions which are constitutionally void as having permanent legality or put them beyond the court's subsequent testing of the rights that have been preserved and the structural limits.

Temporal and Substantive Limits

Orders under "Article 359" should indicate the rights and areas that are affected and must work from now on. Usually, non retrospectivity is observed, except for the cases where the text allows it. Also, courts expect that the order is drafted in such a way that the scope of the order corresponds to the risks identified, thus, the suspension of a blanket for a case where a narrower measure would be sufficient is avoided. Substantive restrictions come from the Constitution itself. The implementation of "Articles 20 and 21" cannot be stopped. The order cannot authorize incompetence, or, on the contrary, it cannot exempt measures from the review just because they are grounds other than the specified rights. The proportionality test helps to organize the examination of the situations in which the emergency measures limit the liberty or the right to expression, especially, it is said, after the later rights jurisprudence has clarified the standards of necessity, suitability, and balancing. These restrictions limit the range of rights and provide that the emergency regulations still be considered an exercise of constitutional skill rather than simply a routine referring to the exceptional authority. Valid suspension method is still characterized by precision and temporariness.¹⁰

Interaction with Basic Structure

The "basic structure" of the Constitution is kept as the most sacred thing even when the times of emergency are around. This doctrine restricts both the power to amend and that of ordinary legislation. In addition, it affects the interpretation of the temporarily interrupted rights and obligations by keeping certain principles still not capable of being changed, such as the rule of law, judicial review, separation of powers, and the core of fundamental rights. The post 1978 text partly literally secures this floor by providing for the protection of the implementation of "Articles 20 and 21", but the doctrine goes beyond that. Any device that destroys the core features of democracy or federalism cannot be shielded by a proclamation or by a suspension order. Judicial review continues to be exercised there to supervise those limits, and later decisions also shed more light on the content of non derogable principles that govern emergency situations. Thus, the emergency code is working within a constitutional framework

¹⁰ Mahendra P. Singh, "Federalism, Democracy and Human Rights: Some Reflections", 47 *Journal of the Indian Law Institute* 362 (2005).

that keeps an irreducible core of values, institutions, and remedies as non negotiable in any crisis.

Landmark Indian Jurisprudence

The law governing emergencies in India has been changed by landmark decisions that led to changes in constitutional doctrine concerning individual rights, division of powers, and the extent of executive power. It all starts with interpretations of “Articles 358 and 359” and gradually develops into a detailed account of the rights that may be limited but not abolished. The path goes from a very relaxed attitude during 1975-77 to a later, tougher framework that recognizes judicial review, safeguards the core of individual freedom, and supports the federal system. Most decisions are the reference points for understanding. The basic structure doctrine’s defining features have put some very real limits on the power to amend and have made the Court’s role more visible when the crisis responses threaten the rights and the separation of powers. Later on, the Court changed its interpretation of privacy, speech, and due process, which has an impact on how emergency related measures are created and taken. The decisions do not show the single line of steady progress. They are a set of intentional corrections that respond to the past, fix the weaknesses of the text, and implant a culture of providing reasons for the exceptional measures that derive their authority from “Articles 352, 356, and 360”.¹¹

ADM Jabalpur and Its Legacy

The “ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521” decision is considered one of the most important examples of the judicial power authorized by the pronouncements under “Article 352” and a wide “Article 359” order. The majority held that the suspension of the right to move any court for the enforcement of certain fundamental rights prevented habeas corpus in a case where the detenu challenges the detention on grounds of mala fides or lack of authority. Thus the judgment gave scope to executive detention without producing the necessary documents and subordinated the judicial role to the terms of the suspension order. The legal doctrine and the constitutional text were both changed in the aftermath of this decision. Among other things, the Forty fourth Amendment fortified the binding character of the Articles 20 and 21 even during an Article 359 order thus reconstituting a minimum floor

¹¹ Gyan Prakash, *Emergency Chronicles: Indira Gandhi and Democracy's Turning Point* 184 (Penguin Random House, New Delhi, 1st edn., 2019).

for criminal justice and personal liberty. The Court, on later occasions, reexamined the case's premises and renounced the fundamental argument of the case, considering it incompatible with constitutionalism that recognizes rights as one of the fundamental characteristics of the democratic order rather than privileges dependent on the executive will.

Puttaswamy Reference

In “K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1”, one of the most significant changes made by the Supreme Court was the recognition of privacy as a fundamental right, which not only revised the doctrinal baseline of liberty and dignity but also explicitly overruled the main holding of “ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.” The Court, by holding that privacy is an essential part of life and personal liberty guaranteed under “Article 21”, and that it is a factor which “Article 19” freedoms derive from, has in effect elevated the level of scrutiny that any law or executive action impinging on physical integrity, surveillance or data control must meet. The reorientation of the law is significant for the law of emergencies as it brings the standards of proportionality, necessity and narrow usage to the fore even in cases where the State invokes security concerns. The point made by the judgment that constitutional rights cannot be held hostage by momentary majorities is a reset of the way orders of suspension are imagined and scrutinized. The doctrinal basis it sets out makes it so that the floor created by the “Forty fourth Amendment” is seen as being opened up when it comes to interpretation and that any arguments in favor of wide ranging suspension of enforcement have to reckon with a body of law which sees liberty and due process as fundamental, rather than contingent, aspects of governance.¹²

Minerva Mills and Basic Structure

The court decision in “Minerva Mills Ltd v. Union of India, (1980) 3 SCC 625” has a more precise effect on the reasoning of “Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225” by explaining that the reconciliation between Parts III and IV is itself a part of the basic structure and that the amending power cannot destroy the review by the court or the essence of the fundamental rights. This refinement has consequences for the use of emergency powers. In a hypothetical situation where an amendment or executive practice would use the crisis as a means to downgrade the rights to mere paper status or to make the actions immune to review,

¹² Vrinda Bhandari, "Protecting Citizens from the State Post Puttaswamy", 14 *Socio-Legal Review* 58 (2018).

such a move would be stopped by the basic structure fence. The decision supports a reading of “Articles 352 to 360” that keeps their temporary and procedural nature intact and is resistant to the conversion of these provisions into a licence for permanent derogation. It indicates that the State policy directives cannot be promoted by putting an end to the rights or by ignoring the role of the courts, even if there are strong public interest narratives. Hence, the basic structure serves as a constitutional gyroscope that keeps the system steady when the political winds are blowing in favor of the extensive concentration of authority.

S R Bommai

The Court’s decision in “S. R. Bommai v. Union of India, (1994) 3 SCC 1” significantly limited and regulated the use of “Article 356” sanctions. It transferred gubernatorial reports to the jurisdiction of judicial review and preferred verification of majority on the legislative floor rather than through executive assessments. The Court did not accept the view that the President’s satisfaction was beyond review and emphasized that federalism is one of the most important features of the Constitution. The criteria set out deter the use of President’s Rule in a partisan way and prompt the return of the elected government as soon as possible. The judgment’s approach is a combination of text, structure, and conventions and thus it constitutes a model for assessing the claims of crisis in other areas. By requiring reasons, evidence, and legislative verification, it brings emergency related federal action in line with a culture of accountability and lessens the possibility that the Union will use constitutional failure as a cover for political displacement.¹³

Makhan Singh, R C Cooper, Bennett Coleman

Three decisions shed light on how “Articles 358 and 359” function and the protection given to economic and expressive freedoms. In “Makhan Singh v. State of Punjab, AIR 1964 SC 381”, the Court said that an “Article 359” order changes the way one can enforce the rights that are indicated in the order (i.e., one cannot enforce those rights through the usual legal remedies), but the rights themselves are not removed. Also, the Court held that indirect attacks on the basis of a non-suspended ground may be still available. By that decision the Court departed from a strict formalist view of corporate rights and recognized that the personal rights (liberties) of the people are involved when the trade and property rights of these people are restricted. This

¹³ Yogesh Sinha, "How and Why the Indian Constitution May Test Positive for Vagueness", 16 *NUJS Law Review* 58 (2023).

understanding was the basis for the later readings of “Article 19.” In “Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788”, the Court held that freedom of the press is the central feature of “Article 19(1)(a)” and consequently the Court was against the indirect restrictions that through controlling the resources intended to control content. These decisions constitute together the interpretive vocabulary which is employed when the State calls upon “Article 358” or intends to get an “Article 359” order in a case involving speech, business, or property during an emergency.

United States Framework

The United States has a distributed structure for emergency management that is composed of the constitutional text, the acts of Congress, and the decisions of the judiciary. The Constitution is not equipped with a single article dealing with the emergency. It makes provision for a “Suspension Clause” allowing Congress to suspend habeas corpus in cases of rebellion or invasion when public safety may require it. The executive power as Commander in Chief is a power of the President which comes under Article II, and Congress has passed statutes enabling the President to create or organise agencies with special authorities, among which are the “National Emergencies Act”, the “Insurrection Act”, the “International Emergency Economic Powers Act”, and a number of sectoral statutes addressing disasters, public health, and defence production. Alongside this system of checks and balances, the judiciary has the power to intervene and it does so, by resorting to its doctrinal instruments, to scrutinize the decisions of the executive in this matter. Thus, it recognizes boundaries for the domestic use of the military and carries out an examination of the executive power gradually dependent on the granting of authority by Congress. Rights analysis is supported by due process, equal protection, and freedom of speech clauses, with wartime and national security situations serving as the background for a set of cases that show the court’s position as being wary of executive unilateralism but at the same time acknowledging the real powers to deal with threats.¹⁴

Textual Sources

The most important constitutional source is the “Suspension Clause” in Article I, Section 9, which allows the suspension of the writ of habeas corpus only when, in the case of a rebellion or invasion, it is necessary for the safety of the public. The distribution of war powers between

¹⁴ Akhil Reed Amar, *America's Constitution: A Biography* 168 (Random House, New York, 1st edn., 2005).

Articles I and II leads to a situation where there is an overlap of the congressional authority to declare war, raise armies, and regulate captures, with the President's role as Commander in Chief. Emergency operations depend on laws that grant the president the power to declare a national emergency, impose sanctions, call up the militia, or send armed forces to suppress insurrections. The "National Emergencies Act" lays down the rules for the declaration and reporting of an emergency, while the "Insurrection Act" allows the use of forces in the country to be deployed in the situations which are very limited. These provisions do not exclude courts from the field. They create a legal environment in which judicial review looks at whether Congress has given the authority for certain actions, whether constitutional rights limit those actions, and whether the political branches have respected the boundaries of the federal system.

Declaration and Oversight

According to the "National Emergencies Act", the President formally declares a national emergency by proclamation and outlines the specific statutory powers to be utilized. The Act also mandates reporting to Congress at regular intervals and states that emergencies go on until they are either ended by the President or by a joint resolution of Congress. There are oversight mechanisms in place through committee hearings, control of appropriations, and sunset provisions in certain statutes. Judicial scrutiny looks at whether the executive measures are within the statutory grants and if they comply with constitutional limits. The system depends more on interbranch contestation than on a single, time bound constitutional calendar. The scattered setup has both advantages and disadvantages. On the one hand, it permits customized responses and multi layered oversight, but on the other hand, it carries the risk of normalization when declarations have been open for a long time. Courts often address these issues by inquiring whether Congress has made its position unmistakably clear, whether the necessary procedures have been followed, and whether the executive interpretations extend the statutes beyond their usual meaning in the name of national security or public order.¹⁵

Rights During Emergencies

Rights protection in the U.S. is heavily reliant on textual assurances and their doctrinal interpretation. The Due Process Clause is the major rule that regulates the deprivations of life, liberty, or property. The Speech Clause is the main protection for the expression, with the cases

¹⁵ Aarav Mehta, "Rethinking the Federal Emergency Powers Regime", 75 *Journal of Law and Public Policy* 80 (2023).

of wartime showing a hard fight for the security and dissent balance. Equal protection scrutiny examines the classifications that oppress minorities during crises, and the Court's recent jurisprudence admits its past failures in this area. Habeas corpus is a structural weapon against executive detention, and the Court has maintained that a certain degree of process is necessary even in the case of enemy combatant detentions. The lack of a single emergency article shifts the burden to general rights clauses and to the judiciary's willingness to insist that war or national security does not entail the abolition of constitutional restrictions. The interaction of congressional authorization and constitutional review results in different outcomes depending on the context, but recent cases reveal a steady engagement with procedural safeguards even when there are credible security claims.

Key U.S. Cases

The different decisions shed light on the extent of the executive power and the rights protected under American emergency practice. The "Ex parte Milligan, 71 U.S. (4 Wall.) 2 (1866)" case limits the implementation of military tribunals in areas where civilian courts are still functioning. "Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)" restricts the president's power to take over a steel plant without the support of a law passed by the Congress and introduces the tripartite framework as a means of evaluating executive power in relation to congressional authorization. "Korematsu v. United States, 323 U.S. 214 (1944)" is very much discredited as it was the case that justified the internment of the people on the basis of their race, while the present day doctrine repudiates the argument of the case. "Hamdi v. Rumsfeld, 542 U.S. 507 (2004)" and "Boumediene v. Bush, 553 U.S. 723 (2008)" are the cases in which the court held that detainees should be given the rights guaranteed under due process and that the writ of habeas corpus is applicable in Guantanamo, hence, the necessity of a genuine judicial review. These cases together formulate a position of the judiciary which is willing to accept the use of emergency instruments but on the condition that there is legality, process, and the meeting of power and purpose.¹⁶

Federal Structure and States

According to American federalism, police powers are given to the States, and the federal government has only enumerated powers. Typically, during emergencies, States operate under

¹⁶ Madhav Khosla, *The Indian Constitution* 142 (Oxford University Press, New Delhi, 1st edn., 2012).

their own laws to govern public health, public safety, and emergency management, whereas federal officials act under national laws for interstate coordination, border control, and matters of the international nature. Federal involvement under the “Insurrection Act” is possible only in a few situations such as when it is requested by a State or to carry out federal law in case of resistance to it. The assignment of tasks in this way results in a situation in which simultaneous actions are usual and courts resolve the encounters by preemption, anti commandeering and separation of powers principles. Such a separation of power can serve as a means to limit the federal government’s exercise of its power when States still have the authority and are locally responsible for handling the crisis. Moreover, it generates coordination problems which Congress and agencies deal with by way of conditional spending, cooperative agreements, and uniform standards provided for in the statute when authorized.

India USA Comparative Analysis

A direct comparison uncovers two very different design concepts that have consequences in practice for the freedom, accountability, and federalism. India specifies emergencies in “Articles 352, 356, and 360” and associates them with the structured approval, renewal, and revocation. The USA divides powers among constitutional clauses and statutes and depends on congressional reporting and appropriation controls instead of a single constitutional calendar. India’s model clarifies the triggers and effects and has predictable consequences for legislative competence and rights enforcement. The American model provides for detailed adjustment but has the danger of undefined timeframes. Each of the systems reflects a different set of textual sources for rights. India refers to “Articles 19, 20, and 21”, along with “Articles 358 and 359”, and the basic structure doctrine. The United States relies on due process, habeas corpus, and freedom of expression, with judicial instruments being influenced by “Youngstown” categories and strict scrutiny for suspect classifications. Every system is equipped with safeguards that rely on the political culture just as much as on the text.¹⁷

Design Philosophy

India implemented a codified emergency code which essentially anticipates the different types of crises and outlines their legal aftermaths. It builds ex ante discipline into the decision to proclaim, into the duty to seek approval, and to the scheme for renewal and revocation through

¹⁷ Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* 204 (Penguin Viking, New Delhi, 1st edn., 2017).

codification. Moreover, it conveys that deviation from the usual federalism and the enforcement of rights is done under constitutional donation, not through implied power. The United States has a scattered approach that is mainly based on general clauses and detailed statutes. Such an approach allows for various entry points for emergency authority and oversight is thus spread across committees, appropriations, and courts. The Indian way concentrates the structure in a few articles to make the event visible and time bound whereas the American way disperses authority so as to have more flexibility and modularity. Both of them rely on judicial review to rectify the drift and on the legislative will to demand fresh justification when emergency powers become a norm.

Triggers and Thresholds

India's triggers after the "Forty fourth Amendment" are very textually precise. "War", "external aggression", and "armed rebellion" are the terms that specify the basis for a "Article 352" proclamation. "Failure of constitutional machinery" is the reason for "Article 356", while "threat to the financial stability or credit of India" is the cause of "Article 360." The exactness of the terms limits the discretion and enhances the possibility of the decision being taken to a higher court for review. In the US, the triggers are defined in statutes which usually require a presidential finding that a national emergency exists concerning a particular threat. The character of these findings being open textured allows for tailor made responses but leaves the definition mostly to the executive. Therefore, the comparative threshold in India for domestic crises is now higher and more dependent on the necessity being documented and vetted by Parliament, whereas the US is dependent on the congressional capacity to revisit or put an end to the declared emergencies and on the courts to regulate the conformity between the problem and the statute.

Checks and Balances

Among India's procedures are a "written" cabinet advice, approval by both Houses within a month, six monthly renewals, and a special mechanism in the House of the People to expedite the disapproval. Courts look into the existence of reasons and the extent of the measures under regular standards influenced by the basic structure. The US implements this through hearings for oversight, periodic reports under the "National Emergencies Act", and control over appropriations. Judicial review is based on the interpretation of the statute, constitutional restrictions, and separation of powers consideration. The two models indicate the different

locations of the main check. India locates it in Parliament through approvals limited by time and the disapproval instrument. The United States, however, distributes it among committees and the budget process. In both frameworks, judicial interventions have a stabilising effect when political rivalry diminishes the will to restrain the executive to be expanded.¹⁸

Rights Protection

India's legislation clearly delineates the changes brought about by an emergency situation to the rights. "Article 358" instantaneously calls off the functioning of "Article 19" only in the case of emergencies referred to "war" or "external aggression." "Article 359" permits the targeted suspension of enforcement, but it does not refer to "Articles 20 and 21" changes. Privacy, speech, and due process legal principles demand proportionality and record based justification. The U. S. Constitution is geared towards the protection of liberty, which is achieved through habeas corpus, due process, and speech clauses. In such cases, courts often insist on individualized hearings, meaningful access to counsel, and judicial review even for detainees captured in conflict settings. The comparative situation has India with a more explicit textual guidance of what changes during the emergency and with non derogable floors, while the United States employs general clauses and case by case analysis. Both currently oppose the complete denial of procedural rights to groups and recognize that security measures have to be linked to empirical risk and statutory authorization.

Federalism Outcomes

"A "Article 352" declaration, by "Article 250", significantly extends Parliament's powers into the State List and thus increases the powers of the Union executive under "Article 353". On the other hand, "Article 356" allows the temporary replacement of State executives and legislatures. These effects change the federal balance of power but are still limited in time and can be reversed. In the US, States have broad police powers during emergencies, and a federal intervention is allowed only under certain statutes like the "Insurrection Act", disaster laws, or public health authorities. As a result, India's model allows vertical consolidation for national coordination with the trade off of a temporary State autonomy, while the US model keeps considerable State led action and makes use of federal instruments for coordination and solving

¹⁸ "Forty-Fifth Amendment Bill, 1978", 20 *Journal of the Indian Law Institute* 58 (1978).

inter state problems. Judicial review in both systems is aimed at preventing the misuse of the language of the crisis to achieve a permanent centralisation of power.¹⁹

Judicial Standards of Review

Judicial review in India incorporates proportionality, records based justification, and basic structure limitation. The cases “S. R. Bommai v. Union of India, (1994) 3 SCC 1” and “K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1” confirm standards that require evidence and least restrictive measures. The U.S. utilizes the “Youngstown” tripartite framework to adjust executive power according to congressional authorization and applies different levels of scrutiny under equal protection and speech jurisprudence to challenge rights restrictions. Both frameworks acknowledge that emergencies do not suspend the Constitution and that courts are to determine if the measures taken are necessary, appropriate, and proportionate to the objectives declared. Their differences are the textual anchors and the oversight structure. India’s norms are linked to particular emergency articles and to an indestructible core, whereas the United States relies on general rights clauses and statutory limits.

Normative Assessment and Reforms

The present framework in India is a product of intentional learning from misuse of the past and it has provisions that guide the executive branch’s discretion through parliamentary control and judicial review. However, there are still some vulnerabilities. Sometimes, the necessity for the action is not well documented, and the ex ante evidentiary record for proclamation is sometimes lacking of publicly accessible reasons. The renewal cycle provides opportunities for regular scrutiny but can also result in inertia if legislative incentives discourage open contestation. The rights suspensions under “Article 359” are of a requirement of accurate drafting, and the close tracking of specific threats and territories by practice varies in how orders correspond. The increased use of digital surveillance and content controls has raised new issues that the earlier jurisprudence had not fully anticipated. A calibrated reform agenda would elevate thresholds with reasoned satisfaction, close renewal mechanics, strengthen rights floors with clear guidance on speech and detention, enhance transparency about arrests and censorship and

¹⁹ Asha Balaji, "India's Phantom Federalism: Protecting States from Encroachment", 6 *Journal of Indian Law and Society* 74 (2024).

directly deal with digital measures such as shutdowns and large scale data access.²⁰

Thresholds and Evidence Standards

Enhancing the quality of proclamation records would lead to better accountability without a loss of decisiveness. A formalised template for the Union Cabinet's "written" advice, which is kept for parliamentary inspection and later review, would go a long way in embedding a culture of explanation. The template could specify the factual bases for "war", "external aggression", or "armed rebellion", list the alternatives considered, and convey the reasons why lower measures like "Article 249" resolutions or sectoral statutes were not adequate. Courts have indicated that they are open to records based scrutiny, and a strengthened evidentiary baseline will lessen disputation about subjective satisfaction. A statutory practice direction, agreed upon by both Houses and reflected in cabinet procedure, could be the means of firmly establishing these norms. The point is not to restrict the reaction to rapidly evolving crises. It is to make sure that the power of being able to take an exceptional step is based on an articulated, assessable foundation during approvals, renewals, and any subsequent legal challenge.

Time Limits and Renewals

The renewal calendar in "Article 352" keeps the periodic scrutiny that is required by law but it could be adjusted to be more precise in terms of control. Shorter renewal periods for domestic emergencies based on "armed rebellion" would ensure that Parliament remains closely involved and that there is a proper balance between risk and exceptional authority. It may also be possible to set supermajority thresholds for the second and subsequent renewals to indicate that, as emergencies extend, there is a greater need for broad consensus. An independent review committee reporting to both Houses prior to each renewal would provide support for the debate with a structured overview of the necessity, efficiency, and the rights affected. The committee's mandate would be to provide information and not to impose decisions, but its presence would create incentives for departments to maintain high quality records and for legislators to discuss the continuation of the crisis based on evidence rather than on slogans. Such instruments would be a way of passing emergency law and thus strengthen its provisional nature.

²⁰ Arvind Narrain, *India's Undeclared Emergency: Constitutionalism and the Politics of Resistance* 216 (Westland, New Delhi, 1st edn., 2020).

Rights Safeguards

The right to floors has been strengthened after the “Forty fourth Amendment”, however, further accuracy would make the rights more predictable. A legal definition of non derogable core beyond “Articles 20 and 21”, limited only to the basic idea of equality before the law, access to courts, and freedom from torture or inhuman or degrading treatment, would be consistent with the practice of contemporary rights jurisprudence. Restrictions on speech or assembly imposed as part of emergency measures should fulfill a clearly stated necessity test that requires, among other things, evidence of a real, immediate risk as well as reasons showing that less restrictive alternatives were considered and rejected. Detention during a crisis should be governed, as usual, by the discipline of individualized assessment and periodic review by persons independent of the operational command. None of these adjustments would weaken the ability to respond. They would be the means of ensuring that crisis management is carried out within a rights conscious framework, thus securing public trust and lowering the number of cases litigated following the imposition of poorly tailored restrictions.²¹

Transparency and Accountability

Disclosure in real time to a joint parliamentary committee of the number of arrests, detentions, censorship actions, and financial directives issued under the emergency authority would constitute a continuous picture of the impact. Aggregated data releases to the public would allow independent evaluation by researchers and the civil society. Departments should be holding up to date records of the orders issued under the expanded executive power, with brief descriptions, legal bases, and the period of effect. These records would facilitate the renewal debates, judicial review, and help in discouraging those who might be tempted to use the power carelessly. Increased openness in the functioning of emergency powers would enhance the supervision. Transparency does not mean giving away the details of the operations. It involves regular reporting so that emergency governance stays connected to constitutional legitimacy and demonstrable necessity rather than to secrecy which lowers accountability and creates distrust.

²¹ Ritika Dhavan, "Publish and Be Damned—The Contempt Power and Constitutional Restraints", 21 *Journal of the Indian Law Institute* 66 (1979).

Digital Age Emergencies

Digital networks are the source of urgent and novel risks that, in many ways, intersect with emergency law. The shutting down of the internet, the changes in platform algorithms, and the huge data access can drastically change and manipulate people's rights. Any principled framework should connect a restriction at the network level with the criteria of necessity, proportionality, and geographic specificity that are clearly articulated, and the orders that are limited in time should require a new justification for the continuation. The surveillance measures that are taken during the time of a crisis need to respect the minimum that is set by "Article 21" and they have to be authorized and audited independently. There might be a reason for giving quick directives to the critical infrastructure due to cybersecurity incidents, but the legal basis ought to be clear and limited by the review. The organization of "Articles 358 and 359" has to be such that it acknowledges the profundity of privacy and speech rights in digital spheres. Being clear about standards will assist administrators in making quick decisions and at the same time keep a legal way for a more controlled supervision and for the return of ordinary rights when the threats diminish.²²

Conclusion

Emergency powers in India are set up within a constitutional framework that acknowledges the existence of serious threats but doesn't allow the exceptional authority to have permanent supremacy. The document, as it was adjusted after 1978, defines stricter limits, requires "written" cabinet advice, inserts legislative control, and keeps the possibility of "Articles 20 and 21" being enforced even during suspension orders. Judicial doctrine holds that the basic structure is still there in the crisis, and that proportionality, legality, and evidence are used for review. A comparison with the United States reveals different design choices that are based on dispersed statutes and interbranch oversight rather than a single constitutional chapter. The normative evaluation is in favor of changes that help necessity records, make renewal discipline more clear, strengthen rights floors, facilitate transparency, and quite carefully, deal with the digital aspects. The Constitution anticipates a temporary delegation of powers in the case of an emergency and a loyal return to the ordinary rule of law when the danger is over.

²² Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 198 (Oxford University Press, New Delhi, 1st edn., 2016).

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