
EMERGENCY POWERS AND CONSTITUTIONAL DEMOCRACY: A COMPARATIVE STUDY OF INDIA AND THE UNITED STATES

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ABSTRACT

Where the state can resort to emergency powers, a recurring issue of constitutional democracy is that the kind of powers it may need to meet great threats can lead to the undermining of ordinary guarantees of legality, liberty, federalism and institutional accountability. This Article is a comparative perspective on the constitutional and statutory framework of emergencies in India and United States under a doctrinal and functional approach. It explores the constitutional remedial measures in case of emergency, as provided in the Part XVIII of the Indian Constitution as well the remedial measures introduced in the Constitution of India through 44th amendment post-1975, Article 356 federal interventions and the development of judicial review. It then compares the American version which has constitutional distribution of powers and is juxtaposed with the National Emergencies Act, the Alien Enemies Act and the habeas corpus doctrine. As the comparison shows, constitutional entrenchment and statutory delegation entail different types of risks and do not result in a hierarchy of protection. The triggers and formal parliamentary consent are specified by law in India, and emergency governance in the United States often relies on the nature of the delegations of law and the ongoing supervisory authority of the Congress. In both systems, courts have seen access to judicial review and statutory limits as core protections, and due process and constitutional rights protection as central protections, albeit to varying degrees in both systems and of varying doctrinal nature. The Article proposes a series of five inter-dependent tests to assess emergency legality: a legally prescribed trigger, ongoing legislative authority, a safeguarded floor of rights, accessible courts and genuine

exit. These standards offer a possible structure to evaluate reforms in India, without mechanistically grafting United States doctrine onto the Indian context.

KEYWORDS: Emergency Powers; Constitutional Democracy; Judicial Review; Federalism; Comparative Constitutional Law.

1. INTRODUCTION

Emergency powers put to the test the principle of the legal limits on public powers in the face of extraordinary dangers to ordinary institutions. India attempts to solve this issue in explicit terms in the Section of the Constitution dealing with national emergency, failure of constitutional machinery in a State, impact on some fundamental rights and financial emergency (Part XVIII of the Constitution). The existing Article 352 provisions allow for a national emergency on the grounds of war, external aggression or armed rebellion, and require a presidential proclamation along with written Cabinet advice and parliamentary approval. These protections mirror the constitutional history that had been a concern of the 1975 Emergency and had been referenced in amendment, and later, in judicial opinions.¹

A different architecture is used in the United States. Its Constitution empowers various institutions in the distribution of war power and executive and habeas corpus power and Congress has enacted enabling laws where emergency powers are given to the President upon certain declarations or findings. Legality can then depend as much on the character of the legislature and its empowerment of the specific executive action as it does on the presence of a crisis. The comparison is not textual, but functional: the answers to questions such as who can invoke exceptional authority, for how long, what rights are still enforceable, what is the role of the legislatures and whether courts can effectively review are different.²

The main idea is that emergency power, in itself, can be lodged in a constitution or statute, without thereby ensuring the preservation of constitutional democracy. Restraint relies on the interplay of legal triggers, legislative oversight, rights safeguards, access and termination. In India, the constitution has specific provisions, as well as the unique federal implications of Article 356. The U.S. system of government has diffuse statutory authority and a tradition of separation of powers with a congressional emphasis. Using these yardsticks to compare one's doctrines with those of another allows one to detect what is of strength and what are the weak

¹ The Constitution of India, arts. 352, 356, 358-360.

² Samuel Issacharoff and Richard H. Pildes, "Emergency Contexts without Emergency Powers: The United States' Constitutional Approach to Rights during Wartime", 2 *International Journal of Constitutional Law* 296 (2004).

points and the reforms that would be possible in the Indian mechanism without taking it to be superior all the time to the other.³

2. STATEMENT OF THE PROBLEM

Precise problem is that saying “emergency state of affairs”, which is a legal creation to deal with extraordinary situations, can be weakening the institutional safeguards that makes constitutional democracy its ordinary meaning. The definition of the triggers and the process in India is laid out in great detail in Part XVIII, but its repeated invocation and the associated debates around Article 356 demonstrate that there are a lot of challenges in ensuring that written restrictions are followed. But in the United States there is no single constitutional authorization that obligates the president to act in an emergency, and the focus is on general statutory delegations, the yearly extension of these, and the trespassing line between executive and legislative authority. The question in litigation is thus not whether there should be emergency powers, but whether the two systems offer sufficiently enforceable constraints on when and how they can be activated, on how to limit rights during emergency, on the federal consequences, on their termination and still on governmental powers to react in real emergency situations.⁴

3. RESEARCH QUESTIONS

1. How do India and the United States legally structure the activation, continuation and termination of emergency authority?
2. How effectively are legislative powers and judicial powers able to limit the powers of the executive during emergencies in both jurisdictions?
3. When using the extraordinary powers, how do the two systems protect liberty, habeas corpus, fundamental rights and federalism?
4. What lessons can be learnt and compared to the interpretation and reformulation of emergency powers in India in the absence of mechanically transplanting the doctrine of the United States?

³ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 171 (Cambridge University Press, Cambridge, 1st edn., 2006).

⁴ John Ferejohn and Pasquale Pasquino, “The Law of the Exception: A Typology of Emergency Powers”, 2 *International Journal of Constitutional Law* 210 (2004).

4. RESEARCH OBJECTIVES

1. To study constitutional and statutory bases of emergency power in India and USA.
2. To analyse landmark and recent judicial decisions defining the limits of executive emergency action.
3. To compare legislative control, rights protection, federal consequences, judicial remedies and termination mechanisms.
4. To determine the legality and practicability of the reforms that could be enacted which would be relevant to Indian emergency governance by a functional comparative analysis.

5. RESEARCH METHODOLOGY

It is a research based on doctrinal, analytical and comparative public law methods. The primary materials are the Constitution of India, Constitution of the United States, National Emergencies Act, International Emergency Economic Powers Act, Alien Enemies Act, reported judicial decisions and official institutional materials. Secondary materials consist of the leading sources of constitutional law materials, peer-reviewed journal literature, commission and research reports. The comparison is a functional one: legal trigger, legislative approval, rights protection, judicial review, federal impact, duration and termination are applied to both jurisdictions in spite of the difference in structure. The use of numerical material is limited to aspects related to institution and is based on official and/or research data which can be verified. There is no claim of interviews, surveys, fieldwork or other empirical means. Reference is made to Article 360 but the subject is not analysed separately as it is a comparison of rights and executive crisis power.⁵

6. RESEARCH HYPOTHESIS

Emergency power is more compatible with constitutional democracy if it is limited to a clearly specified legal basis and remains under legislative oversight and enforceable rights and is accessible to judges and credible to terminate at a definite time. Legislative specificity, institutional practice and judicial enforceability are particularly important for constitutional entrenchment to be effective as a constraint. In India, the hypothesis is whether a post-1975 consolidation of protections occurred in tandem with the uncertainty and absence of answers

⁵ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research", 17 *Deakin Law Review* 83 (2012).

to Article 356 and the extension of exceptional powers through the Forty-fourth Amendment, and whether those safeguards have been strengthened.⁶

7. LITERATURE REVIEW

The literature contains three types of analysis: the analyses of exceptional power as theory, the analyses of history and doctrine of Indian constitutional experience, and institutional analysis of emergency governance in the United States. As a whole, these sources demonstrate the need for functional comparison to take into account not only the formal basis of the authorization, but also the strategies used to prevent any separation of emergency measures from the original basis of authorization.⁷

7.1 Critical Review

Oren Gross and Fionnuala Ní Aoláin's book 'Law in Times of Crisis: Emergency Powers in Theory and Practice' frames and contrasts competing models of emergency governance and asks whether extra-ordinary powers can be neatly distinguished from ordinary law. The theory it uses to understand the current situation of normalization, legality and institutional control is comparative.⁸

In his book "Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism", Bruce Ackerman suggests an emergency constitution that will last for a time, but does not allow for a permanent state of exception. It refocuses the existing discussion about renewal—and legislative approval and sunset provisions—but its suggestion is primarily aimed at the United States.⁹

Granville Austin's book, *Working a Democratic Constitution: A History of the Indian Experience*, helps to put the doctrine in the historical context of India's institutions, and provides valuable background to the Emergency of 1975. Its historical approach enables to differentiate the formal design of the constitution and the reality of using emergency powers.¹⁰

M P Jain's book "Indian Constitutional Law", deals systematically with federalism and judicial review as per Part XVIII of the Constitution. It identifies those emergency supplies

⁶ Bruce Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism* 77 (Yale University Press, New Haven, 1st edn., 2006).

⁷ Yoomin Won, "Emergency Powers and COVID-19 Derogations", 23 *International Journal of Constitutional Law* 113 (2025).

⁸ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 17 (Cambridge University Press, Cambridge, 1st edn., 2006).

⁹ Bruce Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism* 77 (Yale University Press, New Haven, 1st edn., 2006).

¹⁰ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 295 (Oxford University Press, New Delhi, 1st edn., 1999).

within the framework of the Indian Constitution; the present Article pushes the investigation further by the means of the recent decisions as well as an analysis of the U.S. context using a functional means.¹¹

H M Seervai book "Constitutional Law of India: A Critical Commentary", provides in-depth discussions on executive power, federal relations and constitutional interpretation. Its critical method continues to have application to test doctrinal coherence, but later amendments and recent Supreme Court jurisprudence are needed to analyze the doctrine in contemporary times.¹²

The Article, The Law of the Exception: A Typology of Emergency Powers by John Ferejohn and Pasquale Pasquino, helps identify the different types of exceptional powers and how the structure of the institutions influences the legal means of controlling such powers during times of crisis. The typology allows for comparing otherwise incomparable constitutional documents, also including those which are not written as a constitution.¹³

David Dyzenhaus' Article "Intimations of Legality amid the Clash of Arms", contends the need for law, even when the state speaks of "necessity" and "prerogative. The Article brings to light the current focus on reviewability and reasoned legal authorization in cases where executive "urgency" may be used to override the normal requirement of legality.¹⁴

However, as put by Samuel Issacharoff and Richard H Pildes in their Article, "Emergency Contexts without Emergency Powers: The United States' Constitutional Approach to Rights during Wartime", the United States constitution provides for rights during time of war with no single emergency constitution. It directly contributes to the Article's choice of comparing the functional controls to each other instead of focusing on textual equivalents.¹⁵

In Dominic McGoldrick's Article "The Interface between Public Emergency Powers and International Law", he explores the relationship between domestic emergency powers and international law standards and derogation. It helps to ensure importance of necessity,

¹¹ M.P. Jain, *Indian Constitutional Law* 955 (LexisNexis, Gurgaon, 8th edn., 2022).

¹² H.M. Seervai, *Constitutional Law of India: A Critical Commentary* 2854 (Universal Book Traders, Delhi, 4th edn., 1996).

¹³ John Ferejohn and Pasquale Pasquino, "The Law of the Exception: A Typology of Emergency Powers", 2 *International Journal of Constitutional Law* 210 (2004).

¹⁴ David Dyzenhaus, "Intimations of Legality amid the Clash of Arms", 2 *International Journal of Constitutional Law* 244 (2004).

¹⁵ Samuel Issacharoff and Richard H. Pildes, "Emergency Contexts without Emergency Powers: The United States' Constitutional Approach to Rights during Wartime", 2 *International Journal of Constitutional Law* 296 (2004).

proportionality and temporariness and the present study is focused on domestic constitutional and statutory control.¹⁶

In the Article “Emergency Powers and COVID-19 Derogations”, Yoomin Won examines the constitutional and legislative emergency models from the viewpoint of recent experiences of derogation and extended crises. Its recent comparative perspective proves that the duration and repeated continuation are not only institutional issues concerning traditional cases of war but also live issues.¹⁷

Commission on Centre-State Relations report, Report of the Commission on Centre-State Relations, Volume II, makes a second look at Article 356, the post-1994 judicial discourse on Union-State relations and previous recommendations. A key element in the evaluation of federal safeguards in the Indian structure is its demand to keep Article 356 as a last resort.¹⁸

7.2 Research Gap

Materials in the literature abound when it comes to emergency theory, India's historical experience, and the war or powers of national security in the United States, but they do not mark a specific comparative gap. A direct comparison only based on textual emergency clauses, hides the American statutory model, and a description from jurisdiction-to-jurisdiction hides common constitutional functions. Hence, the present contribution aims to provide a comparison of both systems on the same parameters and has covered recent Indian and United States decisions till 2026. Furthermore, it distinguishes formal declaration from the actual use of extraordinary powers by a state, and thus renders the legality of the emergency situation assessable even when the state resorts to different institutional forms of acting exceptionally.¹⁹

8. LEGAL AND JUDICIAL ANALYSIS

The form of legal frameworks vary but there is a common institutional issue – extraordinary executive capacity must be traceable to law. The Indian inquiry starts by detailing the express constitutional provisions and their safeguards after 1975. The first step in the United States inquiry is the constitutional allocation, and then the statutory delegation, and then the

¹⁶ Dominic McGoldrick, “The Interface between Public Emergency Powers and International Law”, 2 *International Journal of Constitutional Law* 380 (2004).

¹⁷ Yoomin Won, “Emergency Powers and COVID-19 Derogations”, 23 *International Journal of Constitutional Law* 113 (2025).

¹⁸ Commission on Centre-State Relations, “Report of the Commission on Centre-State Relations, Volume II: Constitutional Governance and the Management of Centre-State Relations” 92 (Government of India, March 2010).

¹⁹ John Ferejohn and Pasquale Pasquino, “The Law of the Exception: A Typology of Emergency Powers”, 2 *International Journal of Constitutional Law* 210 (2004).

executive action is tested against the congressional authorization, due process and judicial review.²⁰

8.1 India

8.1.1 Constitutional Structure

Article 352 empowers a proclamation to be made when security of the India or any part of the territory is threatened by war, external aggression or armed rebellion or when "imminent danger" of such events exists. The Forty-fourth Amendment broadened the definition of "armed rebellion" to exclude "internal disturbance", made it mandatory to communicate the decision of the Union Cabinet in writing, reduced initial approval period and made voting in Parliament more stringent. Once approved, a proclamation continues for six months at a time subject to further resolutions by both Houses. The House of the people also has a constitutionally mandated means of dissenting to continuation. These aspects enable the activation and renewal to be made legally visible and not solely an executive decision.²¹

The control sequence of Article 352 is shown in Figure 1. The importance of the sequence is not merely formalistic but rather the sharing of responsibility: a written decision needs to be taken by the Union Cabinet before it goes ahead and need to be ratified by Parliament; also the proclamation is subject to revocation and constitutional interpretation. Figure is derived from existing wording of the constitution.²²

CONSTITUTIONAL PROCESS UNDER ARTICLE 352

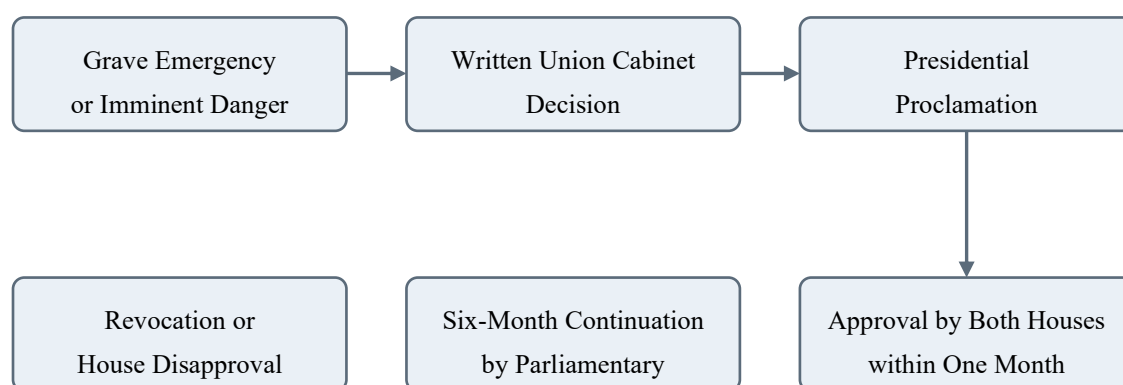


Figure 1: Constitutional Process for a Proclamation of Emergency under Article 352.

²⁰ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 17 (Cambridge University Press, Cambridge, 1st edn., 2006).

²¹ The Constitution of India, art. 352.

²² M.P. Jain, *Indian Constitutional Law* 955 (LexisNexis, Gurgaon, 8th edn., 2022).

8.1.2 Emergency History and Rights

History shows the importance of time in India's emergencies. The proclamation was issued on 26 October 1962, and lifted on 10 January 1968. A second proclamation was made on 3 December 1971 and this was in effect until 27 March 1977. The proclamation of 25 June 1975 was an internal-disturbance proclamation, which was revoked on 21 March 1977; so the proclamation of 1971 and that of 1975 coincided. Their elapsed periods starting and ending at the dates of commencing and revocation were respectively 1,902 days, 1,941 days and 635 days. As a result, Figure 2 suggests duration and not necessarily length as a measure of constitutional validity.²³

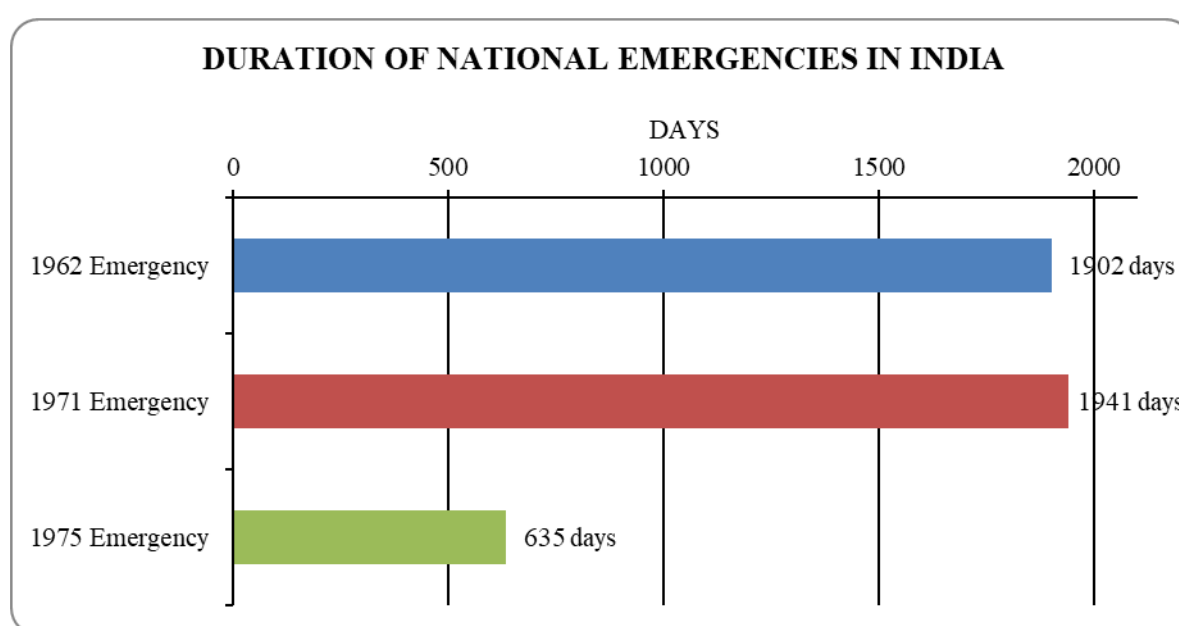


Figure 2: Duration of National Emergency Proclamations in India.

After 1975, however, the situation of rights was altered to great extent. In *Additional District Magistrate, Jabalpur v. Shivkant Shukla*²⁴ the majority of Supreme Court took a restricted view on the power of the Courts to enforce the right to personal liberty when the relevant Article 359 order was in operation. The existing Article 359 explicitly exempts the right to move a court for enforcement as per Article 20 and 21 from being suspended during an emergency and Article 358 now functions only during a state of war or external aggression. The Supreme Court in *Justice K.S. Puttaswamy (Retired) and Another v. Union of India* and

²³ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 295 (Oxford University Press, New Delhi, 1st edn., 1999).

²⁴ (1976) 2 SCC 521.

Others²⁵, expressly overturned the previous ruling which it placed in the context of contemporary rights jurisprudence.

8.1.3 Federal Emergency and Judicial Review

A different emergency problem has arisen in the case of Article 356, as there is a change in the normal mechanism of distribution of government powers of the State. The Supreme Court in *S.R. Bommai and Others v. Union of India and Others*²⁶ held that a proclamation under Article 356 is also not immune from judicial review and related it to the objective material and federalism in the Constitution. While not striking down the doctrine of executive judgment, the ruling did deny that there was a legally unreviewable zone. This is significant to comparative analysis because there is nothing in the United States that authorizes the federal executive to remove an elected State government. Thus there is a federal intervention mechanism with special implications for representative government in the Indian emergency law.

The reviewability of exceptional presidential action is being backed by recent constitutional decisions. In *In Re: Article 370 of the Constitution*²⁷, while considering the action taken by the President when he imposed President's Rule in Jammu and Kashmir, the Supreme Court ruled that an action taken under Article 356 is open to judicial review and laid down a requirement of a "nexus" for examining the action under Article 356. In *In Re: Section 6A of the Citizenship Act 1955*²⁸, the Court once again said that presidential power under part 18 of the Constitution, including Articles 352 and 356 is subject to review if it is used beyond the constitutional limits. Through these decisions, emergency powers have been made constitutionally extraordinary but not unconstitutional.

8.2 United States

8.2.1 Constitutional and Statutory Structure

There is no equivalent to Part XVIII in the U.S. Constitution. Article II says that the President has executive and Commander in Chief powers; Article I gives Congress its full legislative and war powers; and the privilege of the writ of habeas corpus is only subject to suspension under Congress' directions in cases of rebellion or invasion, where public safety requires it.²⁹ The emergency regime is very law-like in practice. The National Emergencies Act provides for individual presidential declaration; it requires to be informed to the Congress and

²⁵ (2017) 10 SCC 1.

²⁶ (1994) 3 SCC 1.

²⁷ 2023 INSC 1058.

²⁸ 2024 INSC 789.

²⁹ The Constitution of the United States, art. I, ss. 8-9; art. II, s. 2.

published; it provides for how statutory powers are to be enforced and what the mechanism of continuation, termination and reporting are.³⁰ This structure places at the heart of a determination of the legal source of the particular executive measure the question as to what the "activated" statute entitles or allows.

Two other pieces of legislation provide the example. When a national emergency has been declared, the International Emergency Economic Powers Act (IEEPA) allows for specific economic powers to be used to respond to an unusual and extraordinary threat to national security, foreign policy or the economy that originates from foreign sources.³¹ The Alien Enemies Act, on the other hand, is invoked during a state of war, invasion, or predatory incursion of any foreign nation or government, in combination with a presidential proclamation, and is used for the restraint or removal of aliens.³² The statutes vary with respect to their triggers, their subject matter and their remedies. Consequently, the term would be a very generic "emergency power" that would obscure the questions of statutory interpretation that are often determinative on legality issues.

8.2.2 Judicial Limits

The classic baseline for separation of powers is *Youngstown Sheet & Tube Co. v. Sawyer*³³. During the Korean War, the Supreme Court had prohibited presidential seizure of steel mills due to the lack of statutory or constitutional authority for such action. In his famous concurrence, Justice Jackson outlined presidential power in relation to "congressional authorization" and "congressional silence", and "congressional opposition. Noting the continuity of insight, it is essentially functional: urgency is no justification for a freestanding lawmaking power. Later, however, *Hamdi v. Rumsfeld*³⁴ held that Congress had authorized detention in the circumstances before that Court, but that it had to provide a meaningful opportunity to challenge the factual basis of a citizen's detention before a neutral decision-maker. So the issue of authorization and procedural rights was a separate question.

But recent cases further distinguish between emergency invocation and judicially enforceable limits. In *Trump v. J.G.G.*³⁵ (2025), a per curiam opinion about the Alien Enemies Act, the Supreme Court reiterated the importance of judicial review and notice and that challenges to removals had to be taken in habeas in the district of confinement. In *A.A.R.P. v. Trump*³⁶, the

³⁰ National Emergencies Act, 1976, 50 U.S.C. §§ 1601-1651.

³¹ International Emergency Economic Powers Act, 1977, 50 U.S.C. § 1701.

³² Alien Enemies Act, 1798, 50 U.S.C. § 21.

³³ 343 U.S. 579 (1952).

³⁴ 542 U.S. 507 (2004).

³⁵ 604 U.S. 670 (2025).

³⁶ 605 U.S. 91 (2025).

Court set forth notice requirements before invoking, including meaningful opportunity to seek a writ of habeas, but failed to make a final determination on a number of substantive issues on the invocation. In *Learning Resources, Inc. v. Trump*³⁷ (2026), the Court ruled that the International Emergency Economic Powers Act does not provide presidential powers for tariffs. The cases make clear that statutory boundaries and judge's access are relevant during emergencies.

8.2.3 Emergency Practice

Because of the magnitude of the (statutory) emergency law practice, termination is also a constitutional matter in substance. As of 16 September 2026, the Brennan Center for Justice's tracking data shows 92 declarations as of 26 August 2026, of which 52 are active. When put into decade groups the declarations form the pattern illustrated in Figure 3. These numbers, alone, do not define misuse, but rather mark the institutional context in which the continuation, reporting and congressional termination rules would need to work.³⁸

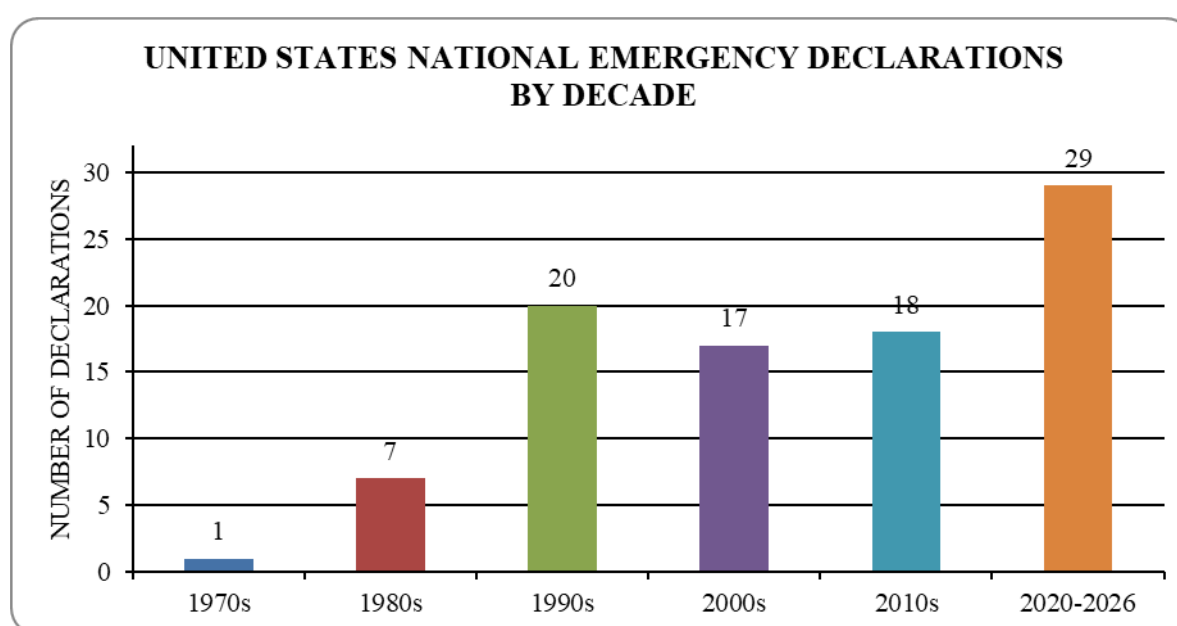


Figure 3: National Emergency Declarations in the United States by Decade.

Comparative Analysis

A proper comparison would pose the same questions about both systems instead of presenting each system side by side. Figure 4 is an organization of the two architectures around common control functions. While there are significant differences in the formality of

³⁷ 607 U.S. 229 (2026).

³⁸ Brennan Center for Justice, "Declared National Emergencies under the National Emergencies Act" (updated September 16, 2026).

the express constitutional code of India and the diffuse constitutional-statutory model of the United States, there are some commonalities as well: the need to limit the authority of the government, the need for review, the need to protect rights, and the need to draw a line about where the extraordinary powers stop.³⁹

COMPARATIVE ARCHITECTURE OF EMERGENCY POWERS

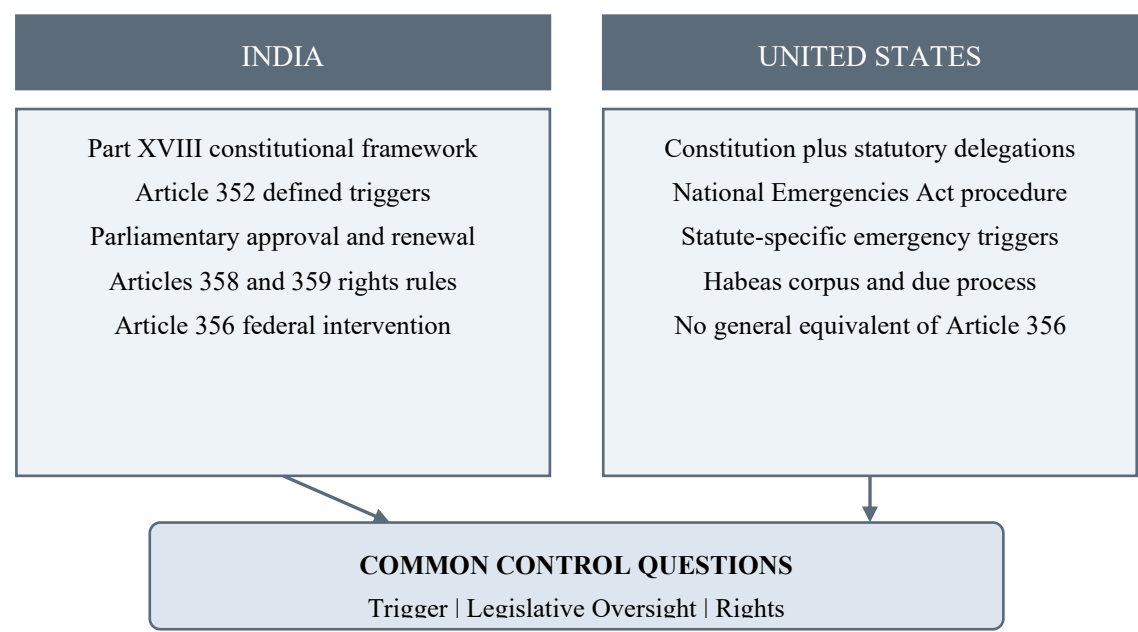


Figure 4: Comparative Constitutional Architecture of Emergency Powers in India and the United States.

8.3 Activation and Legislative Control

When the same is activated, India provides constitutionally specified reasons for Article 352 and constitutionally mandated approval by the Parliament.⁴⁰ The United States National Emergencies Act provides a procedure for declaring an emergency, and sometimes substantive powers are found in the specific act under which a crisis is declared.⁴¹ That often places the interpretation of the statute at a premium in the United States, as in the case of the tariff of 2026.⁴² India's model formalises a state of emergency but as history suggests, a national emergency proclaimed and approved by the Parliament does not mean protection of

³⁹ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 171 (Cambridge University Press, Cambridge, 1st edn., 2006).

⁴⁰ The Constitution of India, art. 352.

⁴¹ National Emergencies Act, 1976, 50 U.S.C. §§ 1601-1651.

⁴² 607 U.S. 229 (2026).

rights. Trigger specificity and institutional enforcement need to be examined in conjunction with each other, therefore.

8.4 Rights and Judicial Review

with regards to rights and remedies, the Indian post-Forty-fourth amendment framework provides for special protection against Article 359 suspension of Articles 20 and 21 and the judicial doctrine of the 1976 Habeas Corpus is discredited. In the United States, there is a mix of due process, habeas corpus and statute-specific review. In particular, the recent Alien Enemies Act cases are instructive, in that the Court was prepared to accept notice and access to habeas despite the fact that much of the merits questions were left unresolved. The concept of executive emergency authority thus exists in this sense in both jurisdictions.⁴³

8.5 Federalism and Termination

The most pronounced structural difference is the result of federalism. Article 356 is capable of redistributing governmental powers at the State level, the judicial review safeguards the interests of individuals as well as the constitutional division of governmental powers. None of the United States statutes analyzed here provides for a general grant of presidential power to supplant State government. However, there are many statutory delegations in the United States that are available for many emergencies that have been declared. So it is not that one system is "strically stricter" than the other, but rather which institution checks what type of exceptional power and when.⁴⁴

9. CRITICAL ANALYSIS AND ORIGINAL CONTRIBUTION

The comparison is intended to help make an analytical difference between a formal emergency and the exercise of an extraordinary power on the ground. A legal system can be highly amenable to the declaration in the form of a single clause, but restrict the far-reaching implications to delegated law, or have no single emergency clause and establish exceptional powers through legislation. Figure 5 puts that insight into an Emergency Legality Framework.⁴⁵

⁴³ 605 U.S. 91 (2025).

⁴⁴ Commission on Centre-State Relations, "Report of the Commission on Centre-State Relations, Volume II: Constitutional Governance and the Management of Centre-State Relations" 92 (Government of India, March 2010).

⁴⁵ John Ferejohn and Pasquale Pasquino, "The Law of the Exception: A Typology of Emergency Powers", 2 *International Journal of Constitutional Law* 210 (2004).

EMERGENCY LEGALITY FRAMEWORK

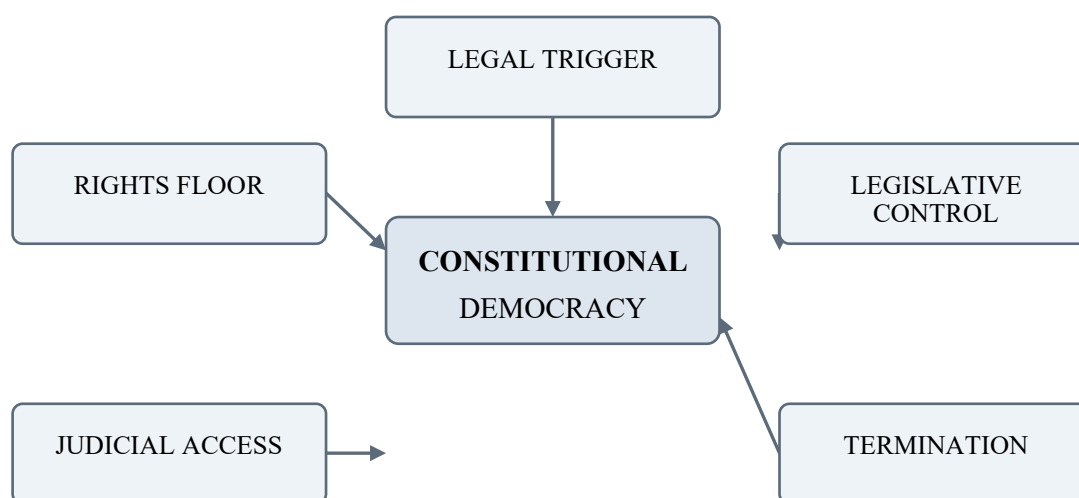


Figure 5: Analytical Framework for Assessing Emergency Powers.

9.1 Trigger and Legislative Control

The first two are a legality defined stimulus and ongoing legislative supervision. There should be a tie to a particular condition in the granting of extraordinary powers and the legislatures should not be left out of the equation as extended crises can lead to the routine use of exceptional powers. While the six-month renewal clause in the Article 352 may differ from the year-on-year system which is followed in the United States, one thing is clear: legislators are given neither enough information nor enough power to review the ongoing need.⁴⁶

9.2 Rights and Judicial Access

The third and fourth criteria are a 'floor of protected rights' and effective judicial access. A right is weak if access to a court is blocked due to emergency procedure before an irreversible consequence. The rejection of a notice and a habeas corpus approach in the United States cases in 2025, and the application of the 1976 Indian decision in the same vein, evidence that there must be a means of challenging executive claims in emergency situations. While in no way should courts be tasked with managing crises, they must ensure that the legal authority is

⁴⁶ Bruce Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism* 77 (Yale University Press, New Haven, 1st edn., 2006).

in place and that procedural safeguard and police constitutional or statutory lines should be ensured.⁴⁷

9.3 Termination and Original Contribution

The fifth criterion is meaningful termination. Extension of power under emergency rule should be through a mechanism whereunder power could be restored to normal rules and make the continuation visible for the scrutiny of the legislation and the general public. This will affect when more than one declaration comes into effect or when multiple declarations are overlapping. The Indian historical data exhibit a variety of persistence while the set of data provided by the USA exhibits a different kind of persistence. The five part framework is not a score or ranking, but rather a way of determining where legal responsibility lies, and whether or not each safeguard exercises its constitutional role.⁴⁸

10. FINDINGS

The doctrinal and comparative analysis establishes the following specific findings.

- 1. Defined Triggers Do Not Eliminate Institutional Risk:** In India, one would have ground for invoking Article 352, but in the United States, one would have predicate in the statute for using the power, depending upon the specific statute. In both systems, the legality is bound to institutions which enforce the trigger and not just to recite the trigger.⁴⁹
- 2. Judicial Review Is a Central Indian Safeguard:** All of the above highlight reviewability of exceptional presidential authority as found in the Article 356 line of cases and the Supreme Court judgements of 2023 – 2024. The other question is about the level of review and what kind of review in various contexts.⁵⁰
- 3. The Post-1975 Framework Rejects a Judicial Vacuum:** The insertion of Article 20, 21 and their protection under Article 359 and the repeal of Habeas corpus decision of 1976 had significantly altered the stance relating to personal liberty. No more acceptance of vanishment of judicial enforcement of life and personal liberty is allowed under emergency.⁵¹
- 4. United States Legality Is Frequently Statute-Specific:** While the structure of declaration and continuation is provided by the National Emergencies Act the substantive power would be determined by the law being invoked. The 2026 tariff decision highlights

⁴⁷ Bruce Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism* 101 (Yale University Press, New Haven, 1st edn., 2006).

⁴⁸ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 171 (Cambridge University Press, Cambridge, 1st edn., 2006).

⁴⁹ The Constitution of India, art. 352.

⁵⁰ 2023 INSC 1058.

⁵¹ The Constitution of India, art. 359.

that an emergency cannot be used to give a statute a new scope beyond Congress' authorization.⁵²

5. Habeas Corpus Functions as a Procedural Check: The detention decision and the decisions under Alien Enemies Act, 2025, analysed above, reveal that detention/removal cases are still subject of judicial process. A constructive opportunity to review and notice is a part of emergency legality.⁵³

6. Federalism Creates a Distinct Indian Vulnerability: Unlike the statutes of the U.S. examined here, Article 356 may have direct impact on an elected State government. These are thus of particular importance in the Indian federal situation: objective material, parliamentary supervision and judicial review.⁵⁴

7. Duration Requires Independent Attention: The historical declarations database for India, as well as the set of declarations for the United States, demonstrate that extraordinary powers can continue beyond the crisis itself. The temporal control thus needs to be revisited periodically, with proper information, and effective termination mechanisms.⁵⁵

11. CONCLUSION

Emergency powers must be exceptional in the sense that their legal basis and ability to be challenged in the courts is maintained and that institutional controls are in place. The designs to achieve this goal are different for India and the United States. These two countries have divergent methods of defining national emergency and federal intervention; India's Part XVIII is quite specific about national emergency and U.S. is more in nature of constitutional allocation of powers, which needs to be activated through statutory powers. Codification and dispersion both by themselves do not provide answers to the question of legality. What's important is that the trigger in the law be accurate, that the legislature stay involved, that rights be given an enforceable minimum, and that courts are not barred and that extraordinary powers do not actually become permanent.⁵⁶

There have been significant changes in the Indian law since 1975. The content of the Forty-fourth Amendment not only curtailed the scope of the national-emergency trigger, but also

⁵² 607 U.S. 229 (2026).

⁵³ 605 U.S. 91 (2025).

⁵⁴ Commission on Centre-State Relations, "Report of the Commission on Centre-State Relations, Volume II: Constitutional Governance and the Management of Centre-State Relations" 92 (Government of India, March 2010).

⁵⁵ Yomin Won, "Emergency Powers and COVID-19 Derogations", 23 *International Journal of Constitutional Law* 113 (2025).

⁵⁶ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 17 (Cambridge University Press, Cambridge, 1st edn., 2006).

tightened parliamentary procedure, retained the scope of Articles 20 and 21 and their protection from the operation of Article 359, and later cases have discarded the text of habeas corpus which had been read into the 1976 decision, and upheld review of the action of Article 356. There is an additional lesson from United States doctrine: Where an emergency declaration is in force, the President can only assert statutory or constitutional authority for the measure, and courts have the power to enforce due process, habeas and statutory limitations.⁵⁷

The Emergency Legality Framework created here is not a series of isolated doctrines, but is a series of interrelated safeguards: trigger, legislative control, rights floor, judicial access and termination. In the context of India, it can be used in favour of the following changes: Transparency, accountability, accountability in the form of periodic scrutiny of legislature, reason giving and prompt remedy. U.S. law is best suited to shed light on the institutional questions, and its use is unlikely to be in terms of wholesale transplants.⁵⁸

12. SUGGESTIONS

The findings support ten targeted reforms and interpretive practices for Indian emergency governance.

1. Strengthen Periodic Parliamentary Reporting: Under a national emergency, Parliament should be given a set piece statement explaining the basis of the fact and law for measures being continued. Renewal debate would then involve the level of need now, not just the initial proclamation.

2. Create a Consolidated Emergency Register: The Union Government should keep a public register of the proclamations, approvals and extensions, presidential orders and revocations. There should be more information about which powers remain in effect in a single record to be able to trace them.

3. Require Measure-Specific Legal Reasons: Significant emergency action should be able to be identified as it relates to the constitutional or statutory source, territorial scope and connection to the declared condition. The giving of reasons would provide a measure of Parliamentary scrutiny and targeted judicial review.

4. Preserve Rapid Judicial Access: In case of an emergency action on life, liberty, habeas corpus or an elected State government, there should be urgency in the framing of the Rules. There must be room for review prior to irretrievable impacts.

⁵⁷ M.P. Jain, *Indian Constitutional Law* 955 (LexisNexis, Gurgaon, 8th edn., 2022).

⁵⁸ John Ferejohn and Pasquale Pasquino, "The Law of the Exception: A Typology of Emergency Powers", 2 *International Journal of Constitutional Law* 210 (2004).

- 5. Apply a Clear Nexus Test under Article 356:** Constitutional powers should ensure that there needs to be evidence that the action under President's Rule is related to the objects of the proclamation. This would make reviewable limits a reality and put them into action.
- 6. Use Pre-Proclamation Warnings Where Feasible:** Apply a proper warning and opportunity for corrective action by the State ordinarily before invoking Article 356 intervention. If there are variations from that sequence, they should be recorded; otherwise the reasons for the recording should be included.
- 7. Review Emergency-Dependent Delegated Measures:** Ministries should identify junior measures that would need to be implemented in the event of an emergency and have them subject to measures that will be periodically reviewed. Measure specific review should not be carried over to continuation of the proclamation.
- 8. Protect a Minimum Rights Baseline:** In interpretation of Article 358 and 359 also there cannot be any departure from Article 20 and 21 protection and the rejection of 1976 approach. Lawmaking by emergency should never establish a "rightsvoid" zone.
- 9. Improve Legislative Access to Information:** Reasons and impact need to be communicated to Parliamentary committees in a timely manner and confidential briefings should be allowed if needed. But oversight must be provided information that is commensurate with a given decision legislators face.
- 10. Use Comparative Law Functionally:** All aspects of functions like statutory specificity, habeas access and termination review must be borrowed from the United States's experience where the functions are comparable. There can be no simple 'lift and place' of the separation of powers doctrine without adapting it to the parliamentary and federal nature of the Indian system.

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