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## EMERGENCY PROVISIONS UNDER CONSTITUTION OF INDIA, USA AND UK.

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### CERTIFICATE

This is to certify that, ANKIT RAMKRISHNA KALAPAD has worked on Longish ARTICLE Paper titled as "A STUDY ON EMERGENCY PROVISIONS UNDER CONSTITUTION OF INDIA,USA AND UK" under my guidance and supervision. This Article has been submitted to Progressive Education Society's, Modern Law College, Pune, during L.L.M (Two Years-Choice based Credit Course) in the academic year 2023-2024.

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### DECLARATION BY THE STUDENT

I, Ankit Ramkrishna Kalapad hereby declares that the work embodied in this Longish Article Paper is titled as "A STUDY ON EMERGENCY PROVISIONS UNDER CONSTITUTION OF INDIA, USA AND UK " is my own research carried out by me during L.L.M (Two Years-Choice Based Credit Course) in academic year 2023-2024. I would like to confirm that wherever references have been made to the contribution of others, it has been acknowledged & accordingly indicated in foot notes & references.

I also declare that his research has been not submitted by me or (as per my knowledge) by any other degree or diploma in the Savitribai Phule, Pune University or in any other University.

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## INTRODUCTION :

As we know, the Indian Constitution is derived from various other Constitutions around the world. It has features derived from various parts of the world, and hence it is the lengthiest constitution around the globe.

Emergency provision is a feature that is distinct in the Indian Constitution, which converts a federal Government to a unitary government as per the circumstances.

The only reason why such a feature was added to our constitution was to safeguard its other pillars. These other pillars constitute- Integrity, Sovereignty, unity, and the security of the nation.

All the federal Constitutions designed around the globe except India are bound by federalism. It means they cannot change their form with respect to the circumstances prevailing in the country, whereas the Indian constitution can change its powers and framework to safeguard its people.

### **WHAT ARE EMERGENCY PROVISIONS?**

Emergency Provisions are constitutional provisions in India that empower the President to take certain extraordinary actions during times of emergency. These provisions are outlined in Articles 352, 356, and 360 of the Indian Constitution.

The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

### **IMPORTANT EVENTS AND EMERGENCY PROVISIONS IN INDIAN CONSTITUTION**

Emergency in the Indian Constitution can be differentiated as National Emergencies, State Emergencies, and Financial Emergencies. Part XVIII of the Constitution contains the emergency provisions in India.

- **Article 352 demarcates the National Emergency:**  
 According to Article 352, the President may declare an emergency when the region is under a state of attack, external intrusion, or internal rebellion. Though such a declaration could only be made in the presence of the legislative house and further supported by each chamber, the emergency was withdrawn after a month of announcement.  
 The first emergency in the Nation was declared during the with China, which lasted between 1962 and 1968.  
 After that, the most contentious emergency was declared due to internal conflict by Smt. Indira Gandhi.
- **State Emergency has been included in Article 356:**  
 Article 356 marks out that the President can declare a state emergency on receipt of briefs by the Governor of a particular state or by the President's observation on degrading mechanisms of the state. Thirty-five instances of President rule have been recorded under the rule of Smt. Indira Gandhi.
- **Financial Emergencies are in Article 360:**  
 The President can declare financial emergencies if convincing evidence of an unstable economy and credibility is encountered. Executive and legislative factors play a central role in declaring a financial emergency. According to Article 360, a corresponding proclamation will be withheld during the entire emergency period. Financial emergency has never been declared in India.

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## EFFECTS OF NATIONAL EMERGENCY :

### **NATIONAL EMERGENCY**

- National emergency can be declared based on war, external aggression or armed rebellion. The Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.

#### **Grounds of declaration:**

- Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression.
- When a national emergency is declared on the grounds of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the grounds of 'armed rebellion', it is known as 'Internal Emergency'.
- This term 'armed rebellion' is inserted from the 44th amendment. Before this term it was known as internal disturbance.

#### **Example:**

- If India and Pakistan openly accept that they will use armed forces against each other is simply war.

- If there is no formal declaration that there will be armed forces used against a country is External aggression.
- And if because of these two grounds an emergency is proclaimed as an **external emergency**.

### **1) National Emergency (Article 352)**

- When the ground of emergency is war, external aggression, and armed rebellion, it is known as National Emergency. (Note- Due to the vagueness of the term Internal disturbance, 44th Amendment Act 1978 substituted it with Armed Rebellion).
- National Emergency is also categorized into two parts. One includes the declaration of emergency on the ground of war or external aggression, it is known as External Emergency. Other on the ground of Armed Rebellion, Known as Internal Emergency.
- National Emergency can be applied to the entire country or to any part of the country (Limiting the operation to any part of the country is enabled by the 42nd Amendment Act 1976).

#### **Declaration of National Emergency**

- National Emergency can be declared by President only, after receiving a written recommendation from the cabinet.

#### **Approval of National Emergency**

- Both houses of parliament are required to pass the proclamation of emergency with a special majority within one month from its issue date. (Special Majority- most of the total membership of the house and a majority of not less than two-thirds of members of the house present and voting).

### **3) Financial Emergency (Article 360)**

- If any situation has arisen that can threaten the financial stability or credit of India or any part of its territory, the President is empowered to Proclaim the Financial Emergency. It is important to note that the satisfaction of the President to impose the Financial Emergency comes under the ambit of judicial review.

#### **Financial Emergency- Approval and Duration**

- The proclamation regarding financial emergency must be approved by either house of the parliament within two months of time only with a simple majority. Once came into force, the financial emergency must continue indefinitely till it is revoked i.e., in this there is no need for repeated parliamentary approval for continuation.

#### **Revocation of Financial Emergency**

- Revocation of a Financial Emergency is also done by President with a subsequent proclamation that does not require any parliamentary approval.

### **2) President's Rule (Article 356)**

- President's Rule is also known as State Emergency or Constitutional Emergency. If any state fails to comply with the direction of the centre or there is any failure of constitutional machinery, President rule can be imposed on such state.
- President's decision to declare President's rule on any state can be based on the report of the Governor of the state or he can act otherwise too.

#### **President's Rule- Approval and Duration**

- As per the emergency provisions made under the constitution, to impose the President's Rule on a state, a proclamation must be approved by both houses of parliament within two months of time. After approval, it continues for six months at a time and can be extended for three years in total with the approval of parliament every six months.
- It only requires approval by a simple majority in either house of parliament.

#### **Effect of President's Rule**

- If President declared, the parliament exercise the power of the state legislature.
- President dismisses the state council of ministers.
- President is responsible for the suspension or dissolution of the state legislative assembly.
- Highlight- any law made by President or parliament during this period continues to be operative even after the president's rule.
- It has no effect on fundamental rights.

### ***Effect of National Emergency***

- The Centre become empowered to direct the state regarding the way executive power is to be exercised.
- The Centre become entitled to give executive directions to the state on any matter, which means, though the state governments are not suspended, they come under the ambit or complete control of the central government.
- Though the legislative power of state government is not suspended, parliament gets overriding power and is empowered to make law on any subject mentioned in the state list.
- Highlight- The law made by parliament on state subjects during the national emergency will become inoperative six months after the revocation of the emergency.
- If parliament is not in session, the President is also empowered to issue ordinances over state subjects.
- President will be empowered to modify the revenue distribution between the centre and the states.
- The life of Lok Sabha can be extended beyond its normal life, one year at a time. But continuation cannot extend beyond six months after the cease of emergency.
- Parliament is also empowered to extend the normal tenure of the state legislative assembly by one year at a time.

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### **EMERGENCY PROVISIONS UNDER CONSTITUTION OF USA :**

In the United States, the Constitution does not explicitly outline emergency provisions or grant the President the power to declare a state of emergency. Instead, emergency powers are derived from various sources, including inherent executive authority, statutory laws, and judicial interpretations. The absence of explicit emergency provisions in the Constitution reflects the framers' intent to limit executive authority and preserve the system of checks and balances. However, over time, the interpretation and exercise of emergency powers have evolved, raising significant constitutional and legal questions.

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#### **The primary sources of emergency powers in the United States include:**

##### ***-Inherent Executive Authority:***

I. The President's authority to act during emergencies is derived from their role as the chief executive and commander-in-chief of the armed forces. While the Constitution does not explicitly grant emergency powers to the President, Article II vests the executive branch with broad discretion to interpret and enforce laws, particularly in times of crisis.

##### ***II. Statutory Laws:***

Congress has passed various laws granting the President specific powers to address emergencies. One key statute is the National Emergencies Act of 1976, which provides a framework for declaring national emergencies and delineates the procedures for invoking emergency powers. Under this law, the President can declare a national emergency, triggering the activation of specific statutory authorities and resources to address the crisis.

##### ***III. Martial Law:***

While not explicitly mentioned in the Constitution, martial law is a concept that allows the military to assume control over civilian functions in times of extreme emergency or insurrection. The declaration of martial law suspends normal civil liberties and places authority in the hands of military commanders. However, the use of martial law is subject to constitutional constraints and judicial review, particularly regarding its scope and duration.

##### ***IV. Executive Orders and Proclamations:***

The President can issue executive orders and proclamations to implement emergency measures and directives. These executive actions have the force of law and can be used to mobilize resources, direct federal agencies, and implement policies in response to emergencies. However, executive orders are subject to judicial review and must be consistent with existing laws and constitutional principles.

##### ***V. Congressional Authorization:***

While the President has considerable discretion to act during emergencies, Congress plays a vital role in authorizing and overseeing emergency measures. Congress can pass legislation granting additional powers to the executive branch or imposing limitations on emergency actions. Additionally, Congress has the authority to terminate a national emergency declaration through legislative means.

The exercise of emergency powers in the United States has raised significant constitutional and legal questions, particularly regarding the scope of presidential authority, the balance of powers between branches of government, and the protection of civil liberties. Critics argue that the expansive

interpretation of emergency powers by presidents can undermine democratic principles and constitutional norms, leading to concerns about executive overreach and the erosion of checks and balances.

In recent years, the use of emergency powers has been a subject of debate and controversy, particularly in response to issues such as immigration, national security, and public health emergencies. The COVID-19 pandemic, in particular, has raised questions about the limits of presidential authority and the role of the federal government in managing public health crises.

Overall, while emergency provisions in the United States are not explicitly outlined in the Constitution, the combination of inherent executive authority, statutory laws, and judicial interpretations provides a framework for addressing emergencies. However, the exercise of emergency powers must be consistent with constitutional principles, subject to checks and balances, and responsive to the rule of law and democratic accountability.

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## **EMERGENCY PROVISIONS UNDER CONSTITUTION OF UK :**

The United Kingdom does not have a codified constitution like many other countries, including India and the United States. Instead, its constitutional framework is based on statutes, common law, conventions, and principles of parliamentary sovereignty. As a result, there are no explicit emergency provisions outlined in a single constitutional document. However, the UK government has mechanisms in place to respond to emergencies and maintain public order. These mechanisms are primarily derived from statutory laws and conventions rather than constitutional provisions.

Emergency powers in the UK are typically invoked through specific legislation passed by Parliament in response to a crisis. Some of the key laws and mechanisms used to address emergencies include:

### ***I. Civil Contingencies Act 2004 :***

The Civil Contingencies Act provides a legal framework for emergency preparedness and response in the UK. It outlines the powers and responsibilities of government authorities, local authorities, and emergency responders in managing emergencies such as natural disasters, terrorist attacks, and public health crises. The Act allows for the declaration of a state of emergency by the government in response to a serious threat to public safety or national security.

### ***II. Royal Prerogative:***

The monarch, acting on the advice of government ministers, retains certain prerogative powers that can be used in times of emergency. These powers include the authority to deploy the armed forces, declare martial law, and issue proclamations. While the use of royal prerogative powers is largely ceremonial and symbolic in modern times, they can theoretically be invoked in exceptional circumstances.

### ***III. Public Order Act 1986:***

The Public Order Act provides powers to law enforcement agencies to maintain public order and prevent civil unrest. It allows for the imposition of restrictions on gatherings, the deployment of police forces, and the declaration of curfews in response to public disorder or disturbances.

### ***IV. Health Protection (Coronavirus, Restrictions) (England) Regulations:***

In response to the COVID-19 pandemic, the UK government has implemented emergency measures through regulations issued under the Health Protection Act 1984. These regulations have included lockdowns, social distancing measures, and restrictions on travel and gatherings to control the spread of the virus.

### ***V. Constitutional Conventions:***

In addition to statutory laws, the UK relies on constitutional conventions and norms to guide government action during emergencies. These conventions include principles of ministerial responsibility, parliamentary oversight, and respect for individual rights and freedoms. While not legally binding, conventions serve as important guidelines for government behavior and decision-making in times of crisis.

It is important to note that the absence of explicit emergency provisions in the UK constitution has led to debates about the adequacy of legal safeguards and the potential for executive dominance during emergencies. Critics argue that the reliance on ad hoc legislation and royal prerogative powers lacks transparency, accountability, and parliamentary scrutiny. However, supporters contend that the flexibility of the UK's constitutional framework allows for a pragmatic response to emergencies without the need for specific constitutional provisions.

Overall, emergency provisions in the UK are primarily derived from statutory laws, royal prerogative powers, and constitutional conventions rather than explicit constitutional provisions. While these mechanisms provide a legal framework for managing emergencies, questions remain about the balance of powers, democratic accountability, and the protection of civil liberties during times of crisis.

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## COMPARATIVE ANALYSIS :

The emergency provisions in the constitutions of India, the USA, and the UK reflect each country's unique historical, political, and legal contexts. India's constitutional framers, deeply influenced by the trauma of partition and the struggle for independence, incorporated explicit emergency provisions to safeguard national unity and security.

In contrast, the US Constitution, rooted in the principles of limited government and separation of powers, relies on statutory laws and judicial interpretations to address emergencies. While this approach reflects a commitment to constitutional principles, it also raises concerns about the concentration of emergency powers in the hands of the executive.

The UK's flexible and evolutionary constitutional framework allows for a pragmatic response to emergencies without the need for specific emergency provisions. However, the absence of clear legal constraints on government action during crises has sparked debates about accountability and the protection of individual rights.

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## CONCLUSION :

Emergency provisions play a crucial role in enabling governments to respond effectively to crises and maintain public order. However, the design and implementation of these provisions have significant implications for democratic governance, the rule of law, and individual liberties.

The comparative analysis of emergency provisions in the constitutions of India, the USA, and the UK highlights the diverse approaches taken by different countries to address emergencies within their respective constitutional frameworks. While each approach reflects unique historical and political factors, all three systems must balance the need for effective crisis management with the protection of fundamental rights and democratic values.

As countries grapple with emerging threats such as pandemics, terrorism, and cyberattacks, the debate over emergency powers and constitutional safeguards will continue to evolve. Ultimately, the effectiveness and legitimacy of emergency provisions will depend on their compatibility with democratic principles, judicial oversight, and public accountability.