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Page: 01-20

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## WHEN FEDERALISM MEETS NATIONAL CRISIS: CONSTITUTIONAL EMERGENCY POWERS AND THE CENTRALISATION OF POWER A COMPARATIVE STUDY OF INDIA, THE UNITED STATES AND THE UNITED KINGDOM

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### ABSTRACT

Federalism spreads out government authority among levels of government; emergencies tend to centralize government authority in the national executive. This generates a constitutional conflict between the need for increased central co-ordination during a crisis and the need to protect federal autonomy and democratic accountability with decentralisation. The tension is explored in this research article by a comparative study of India, the United States and the United Kingdom. The main jurisdiction is over India since its Constitution explicitly grants emergency powers and allows for significant modifications in the relationship between the Union and the States. A contrasting federal model is found in the United States, where emergency power is exercised by constitutional means and by limits on power in the separation of powers and in legislation. Although not a federal State, the United Kingdom is a good comparator as it poses similar questions about central intervention in emergencies. The study utilises doctrinal and comparative legal research methodology and analyses constitutional provisions, legislation, judicial decisions and academic literature. It asserts that emergency centralisation is not necessarily in conflict with federalism. When it's unneeded, disproportionate, indefinite or not subject to sufficient review, however, it becomes constitutionally problematic. The article ends that the Indian constitution does not need to do away with emergency powers but instead more protection in terms of necessity, proportionality, time limit, legislative oversight and judicial oversight.

**KEYWORDS:** Federalism, Emergency Powers, Article 356, Centralisation, Constitutionalism, Comparative Public Law.

## 1. INTRODUCTION

Federalism is fundamentally a constitutional arrangement in which governmental authority is distributed between various levels. It contrasts with the concentration of all authority in the hands of the single national government by recognising separate levels of government and allocating various responsibilities to each of them constitutionally. Federalism is particularly significant in very large and diverse States, since regional governments can respond to local needs while the national government manages issues requiring a comprehensive national approach.

The ordinary logic of federalism becomes difficult to maintain during a national crisis.

War, armed rebellion, large-scale disaster or serious threat to national security may require rapid decision-making and action. In such circumstances, governments may need powers that would normally belong to another level of government. Emergency provisions are therefore designed to provide flexibility when ordinary constitutional arrangements seem inadequate.

The difficulty is obvious. **The same concentration of power that may help a State survive a crisis may also weaken the constitutional distribution of power which the State is supposed to protect.**

This problem is particularly significant in India. The Constitution provides a federal distribution of legislative and executive authority but also grants the Union considerable powers. Part XVIII expressly provides for situations of emergency. Article 352 deals with a national emergency while Article 356 allows the Union to intervene in the event that the government of a State cannot be carried out in accordance with the Constitution.<sup>1</sup>

Article 356 is particularly significant because its operation directly affects an elected State government. Once President's Rule is imposed, the President can take on the functions of the State government and Parliament can exercise the powers of the State legislature.<sup>2</sup>

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<sup>1</sup> Constitution of India, 1950, arts. 352 and 356.

<sup>2</sup> Constitution of India, 1950, art. 356(1).

The provision is not limited to crisis administration; it can temporarily change the federal balance itself.

The history of the Indian Emergency of 1975–77 illustrates this issue even more. The experience demonstrated that, despite formally constitutional powers, a significant concentration of political authority could take place. The Forty-Fourth Amendment subsequently introduced important safeguards regarding the proclamation and continuation of a national emergency.<sup>3</sup>

The United States provides a useful comparison since it does not have a comparable equivalent of Article 356 which allows the federal government to generally take over the functioning of a State government. Instead, emergency authority is divided among Congress, the President and the States. The Supreme Court's decision in *Youngstown Sheet & Tube Co. v. Sawyer* demonstrates that even a serious national crisis does not automatically confer unlimited authority upon the executive.<sup>4</sup>

The United Kingdom is a different case. It is not a federation instead what we see is the development of large scale political and administrative institutions in Scotland, Wales and Northern Ireland through devolution. Also the 2004 Civil Contingencies Act which put in place a legal framework for emergency regulations also required that emergency measures be necessary and proportional.<sup>5</sup>

The issue is that emergency powers do not exist in a vacuum. They are a product of each country's history, institutional structure and concept of sovereignty. This article looks at which if any balance can be achieved between emergency centralization and federalism and if there is a balance what should its parameters be. We argue that **centralization during what is a true national crisis may be a constitutional issue but that such power should be related to the emergency, proportional to the threat, of short term and also subject to in depth institutional review.**

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<sup>3</sup> Constitution (Forty-Fourth Amendment) Act, 1978.

<sup>4</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>5</sup> Civil Contingencies Act 2004, §§ 20–21.

## 2. STATEMENT OF PROBLEM

The issue at hand is that which of two constitutional requirements is in play.

Federalism is put forth as a check against excessive central government power which in turn leaves room for component units' autonomy. Emergency powers on the other hand put forward the case for central government action when we have atypical situations.

In India this play out most in Article 356 which reports that the Union may take over the functions of a State's elected government for a time.

The issue is not that emergency powers are required or not. What we really ask is **if the present constitutional protections are enough to see to it that emergency centralization does not turn into a vehicle for either protracted or politically motivated central control.**

## 3. RESEARCH QUESTIONS

1. To what extent is emergency centralization at home with federalism in the Indian Constitution?
2. How does India's emergency structure compare to that of the US and UK?
3. What has the role of the judiciary and legislature been in curbing emergency powers?
4. What reforms put forward will protect State autonomy which also supports effective national crisis management?

## 4. RESEARCH OBJECTIVES

The research seeks:

1. To look at the issue of federalism as it plays out in the context of emergency powers in India.
2. To study Articles 352, 353 and 356 and their impact on Union State relations.
3. To look at the judicial checks which put a brake on the use of Article 356.
4. To do a study of India in relation to the U.S. and U.K.
5. To point out the constitutional issues that arise out of what we may term as which is the English term for excessive emergency centralization.
6. To put forth measures which may redress the balance between national urgency and state autonomy.

## 5. RESEARCH METHODOLOGY

This research uses a **doctrinal and comparative legal approach**.

In the doctrinal section we look at constitutional provisions, constitutional amendments, legislation and judicial decisions. Also we look at secondary materials which include constitutional law books, academic works and institutional publications.

As for the comparative element we look at India, the U.S. and the U.K. We chose these jurisdictions which present different emergency governmental responses. India has an in depth emergency framework which is very much a part of their constitution; the U.S. puts together emergency powers from various constitutional powers, legislation and the separation of powers; and the U.K. which largely uses primary legislation passed by the parliament and devolved systems for its emergency powers.

Also we did not do an empirical study as the research question is mainly focused on the constitutional and doctrinal. The assignment guidelines did say that we may use a pure doctrinal method where it is to our benefit.

## 6. RESEARCH HYPOTHESIS

The research proceeds upon the hypothesis that **emergency centralisation is not inherently incompatible with federalism, but its legitimacy depends upon necessity, proportionality, temporariness, legislative accountability and judicial review.**

It is further hypothesised that the Indian framework requires stronger institutional safeguards because it allows a more direct alteration of the federal balance than the comparative models examined in this study.

## 7. LITERATURE REVIEW

Academic literature on emergency powers has generally approached the subject in three interconnected themes: constitutional emergency, federalism and executive power.

Indian constitutional scholarship has long recognised that the Constitution combines federal features with a strong Union. M.P. Jain and H.M. Seervai, amongst others, discuss the special position of the Union and the circumstances in which constitutional mechanisms allow greater central intervention.

Academic discussion of Article 356 has focused particularly on its historical usage and the tension between constitutional breakdown and political disagreement. Krishna K. Tummala's analysis of Union emergency powers highlights the relationship between emergency authority, federalism and the role of the Governor.<sup>6</sup>

The judicial development following *S.R. Bommai v. Union of India* has substantially changed this discussion. The decision moved Article 356 away from an understanding of largely unquestionable executive discretion towards a model in which constitutional courts can examine whether the power was exercised on relevant constitutional grounds.<sup>7</sup>

Comparative literature identifies significant differences between emergency systems. Singhvi and Gautam distinguish between an explicit constitutional model, represented by India, an implied constitutional model associated with the United States and a common-law/statutory model associated with the United Kingdom.<sup>8</sup>

This literature establishes the basic legal framework, but an important question remains: **how should a federal constitution determine the appropriate degree of centralisation during a crisis?**

The present research addresses that question by bringing federalism itself to the centre of the comparison. Rather than asking simply whether emergency powers are effective, it examines whether the manner in which they are exercised preserves the constitutional relationship between the national and subnational governments.

## **8. FEDERALISM AND THE EMERGENCY PARADOX**

Federalism and emergency powers initially appear to move in opposite directions.

Federalism distributes power.

Emergency government concentrates it.

Yet the conflict is not absolute.

Some crises are genuinely national. An external military attack cannot realistically be dealt with by individual States acting separately. A nationwide security threat may also require

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<sup>6</sup> Krishna K. Tummala, "The Indian Union and Emergency Powers", 17 *International Political Science Review* 381 (1996).

<sup>7</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

<sup>8</sup> Abhishek Manu Singhvi & Khagesh Gautam, *The Law of Emergency Powers: Comparative Common Law Perspectives*, Springer.

national coordination. Likewise, certain disasters may cross State boundaries and require central, financial and administrative support.

Therefore, federalism cannot mean that the Union is constitutionally powerless whenever a crisis occurs.

The more important distinction is between **necessary centralisation and uncontrolled centralisation**.

Necessary centralisation occurs when national action is genuinely required to address the crisis.

Uncontrolled centralisation occurs when emergency language becomes a justification for exercising powers beyond what the crisis requires.

Three questions can help to identify the difference:

**First, necessity:** Is extraordinary intervention actually required?

**Second, proportionality:** Is the extent of intervention related to the seriousness of the crisis?

**Third, temporariness:** Does the exceptional power end when its constitutional justification disappears?

These principles provide the basis for comparing the three jurisdictions.

## **9. INDIA: EMERGENCY POWERS AND CENTRALISATION**

### **9.1 National Emergency under Article 352**

Article 352 permits a National Emergency where the security of India or any part of its territory is threatened by war, external aggression or armed rebellion.<sup>9</sup>

The provision has a direct federal consequence.

Article 353 expands the Union's executive and legislative authority during the operation of a Proclamation of Emergency. Parliament can legislate on matters which normally fall within the State sphere, and the Union executive can give directions to States concerning the exercise of their executive powers.<sup>10</sup>

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<sup>9</sup> Constitution of India, 1950, art. 352(1).

<sup>10</sup> Constitution of India, 1950, art. 353.

The Constitution therefore recognises that a national emergency may require a temporary move towards centralised governance.

However, the experience of 1975–77 demonstrated the danger of allowing emergency power to become too easily available.

Consequently, the Forty-Fourth Amendment replaced the words "internal disturbance" with "armed rebellion" as one of the grounds for Article 352 and strengthened procedural safeguards, including the requirement of written advice of the Cabinet and parliamentary approval.<sup>11</sup>

The amendment demonstrates an important constitutional principle: **emergency powers require safeguards before their use, not merely remedies after its misuse.**

## 9.2 Article 356 and President's Rule

Article 356 is even more directly connected to federalism.

It applies in the cases where the President is satisfied that the government of a State cannot be carried on in accordance with the Constitution.<sup>12</sup>

The President may assume functions of the State government and declare that the powers of the State legislature shall be exercisable by Parliament.

The provision serves a legitimate constitutional purpose. A State government which genuinely cannot function according to the Constitution cannot simply be left without a remedy.

But the provision creates an obvious difficulty: the Union government is itself political.

A power designed to address constitutional breakdown can therefore become controversial when used against a State government belonging to a different political formation.

**The constitutional challenge is to distinguish constitutional breakdown from political disagreement.**

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<sup>11</sup> Constitution (Forty-Fourth Amendment) Act, 1978.

<sup>12</sup> Constitution of India, 1950, art. 356(1).

## 10. JUDICIAL CONTROL OF ARTICLE 356

### 10.1 S.R. Bommai v. Union of India

The Supreme Court's decision in *S.R. Bommai v. Union of India* represents the turning point in the constitutional treatment of Article 356.

The Court recognised that federalism has constitutional significance and that the exercise of Article 356 has serious consequences for the federal structure. The Court consequently held that the exercise of the power could be submitted to judicial review.<sup>13</sup>

This was an important shift.

If the President's satisfaction were completely impervious to review, the Union could effectively determine for itself whether a State government had constitutionally failed.

*Bommai* rejected this approach.

The Court indicated that judicial review could examine issues such as irrelevant considerations, arbitrariness, mala fides, misdirection in law and other recognised grounds of constitutional review.<sup>14</sup>

The decision did not make Article 356 impossible to use.

Instead, it made it clear that **constitutional emergency power remains constitutional power**.

### 10.2 Rameshwar Prasad v. Union of India

In *Rameshwar Prasad v. Union of India*, the Supreme Court considered the dissolution of the Bihar Legislative Assembly following the imposition of President's Rule.<sup>15</sup>

The decision reinforced the principle that constitutional power must be exercised on the basis of relevant constitutional material rather than political assumptions.

The case is important because federalism cannot be protected merely by having constitutional text. Institutions must also act within the purpose for which that text was created.

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<sup>13</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

<sup>14</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

<sup>15</sup> *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1.

### 10.3 Limits of Judicial Review

Judicial review does not mean that courts should themselves decide whether a State government is politically desirable.

Courts are not political administrators.

Their job is more focused: they just need to check if the constitutional checkboxes were met and if the authorities stayed within their legal boundaries.

Finding the right balance here is crucial. If judges are too hands-off, the government could misuse Article 356 without anyone holding them accountable. But if judges get too involved, they risk overstepping and interfering with a job that belongs to the political leadership.

## 11. UNITED STATES: EMERGENCY POWER AND SEPARATION OF POWERS

The United States provides a substantially different federal model.

The US Constitution does not contain a general equivalent of Article 356 under which the federal government may take over the ordinary functioning of a State government.

Instead, emergency authority is distributed among Congress, the President and the States.

Congress possesses important powers concerning national defence and war, while Article II vests executive power in the President and makes the President Commander in Chief.<sup>16</sup>

This distribution means that emergency power is closely connected with the American principle of separation of powers.

### 11.1 *Youngstown Sheet & Tube Co. v. Sawyer*

The leading case is *Youngstown Sheet & Tube Co. v. Sawyer*.<sup>17</sup>

During the Korean War, President Truman ordered the seizure of steel mills because he believed a nationwide strike would threaten national defence. The Supreme Court nevertheless held the seizure unconstitutional.

Justice Jackson's concurrence developed the framework which has become particularly influential in analysing presidential power.

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<sup>16</sup> U.S. Const. arts. I and II.

<sup>17</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Presidential authority is strongest where the President acts with legislative authorisation. It is uncertain where Congress has neither authorised nor prohibited the action. It is weakest where presidential action is contrary to the expressed or implied will of Congress.<sup>18</sup>

The significance of Youngstown is not limited to the steel industry.

Its broader lesson is that **a national crisis does not itself create constitution power.**

The existence of an emergency may explain why the executive wishes to act quickly, but the executive must still identify a lawful source for the action.

This provides a useful comparative lesson for India. Constitutional necessity should not be allowed to become a substitute for constitutional authority.

## 12. UNITED KINGDOM: EMERGENCY POWERS AND DEVOLUTION

The United Kingdom presents a different constitutional model because it is not a federal State.

Nevertheless, devolution has created political and administrative institutions in Scotland, Wales and Northern Ireland, making the distribution of power during emergencies an important constitutional issue.

The Civil Contingencies Act 2004 provides a statutory framework for emergency regulations.<sup>19</sup>

Section 21 requires specified conditions to exist before emergency regulations may be made. Amongst other things, the regulations must be considered necessary for preventing, controlling or mitigating the emergency and the need for them must be urgent.<sup>20</sup>

The Act also requires the person making the regulations to state the nature of the emergency and confirm that the provisions are appropriate and proportionate to the relevant aspect or effect of the emergency.<sup>21</sup>

This is significant from a comparative perspective.

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<sup>18</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) at 635–38 (Jackson, J., concurring).

<sup>19</sup> Civil Contingencies Act 2004, Part 2.

<sup>20</sup> Civil Contingencies Act 2004, Part 2 § 21.

<sup>21</sup> Civil Contingencies Act 2004, Part 2 § 20(5).

The British model does not create an Indian-style power to suspend the government of a constituent State because there are no federal States to suspend. Instead, it focuses upon **defined statutory emergency powers**.

The UK experience therefore offers a useful lesson concerning precision: extraordinary authority should be clearly connected to the emergency for which it is being exercised.

### 13. COMPARATIVE ANALYSIS

A true comparison shows that the three systems which present solutions to the same base issue via different constitutional means.

| Issue                                              | India                                     | United States                          | United Kingdom                                 |
|----------------------------------------------------|-------------------------------------------|----------------------------------------|------------------------------------------------|
| <b>Constitutional structure</b>                    | Federal with strong features Union        | Federal                                | Unitary with devolution                        |
| <b>Express constitutional emergency framework</b>  | Yes                                       | No single equivalent                   | Primarily statutory                            |
| <b>General power to take over State government</b> | Article 356                               | No equivalent                          | No federal States                              |
| <b>Emergency executive authority</b>               | Constitution + legislation                | Constitution + legislation             | Primarily legislation                          |
| <b>Legislative scrutiny</b>                        | Strong constitutional role                | Strong congressional role              | Parliamentary scrutiny                         |
| <b>Judicial control</b>                            | Important, especially after <i>Bommai</i> | Strong separation-of-powers review     | Judicial review within parliamentary framework |
| <b>Main constitutional concern</b>                 | Union-State balance                       | Executive power versus Congress/States | Central authority versus devolved institutions |

History is in part to blame for that.

India's Constitution was framed against the background of Partition, political instability and the challenge of integrating a highly diverse country. A strong Union was therefore considered necessary to preserve national unity.

The United States developed through a different constitutional experience. Its federal structure emerged from a concern about concentrated national authority and therefore placed considerable emphasis upon divided institutions and checks and balances.

The United Kingdom has no federal constitutional division of sovereignty. Its current territorial arrangement instead combines parliamentary sovereignty with devolution.

The consequence is that India has the most direct constitutional mechanism for altering the federal balance during an emergency.

This also means that India has a particularly strong reason to ensure that such powers are carefully controlled.

#### **14. THE 1975–77 EMERGENCY: THE INDIAN LESSON**

Any serious analysis of emergency powers in India must consider the 1975–77 Emergency.

The period showed that constitutional emergency powers can have consequences far beyond the immediate justification for which they were invoked. It raised fundamental questions about executive authority, civil liberties, Parliament and judicial independence.<sup>22</sup>

The post-Emergency constitutional response is therefore particularly significant.

The Forty-Fourth Amendment did not abolish Article 352. Instead, it made the conditions for its use more demanding and added additional safeguards.

This is an important lesson for constitutional design.

A country cannot assume that emergency powers will always be exercised by governments acting with complete restraint. Constitutional systems should therefore anticipate the possibility of misuse.

At the same time, the lesson should not be misunderstood as an argument against all emergency powers. The State must retain the capacity to respond to genuine national threats.

The objective should instead be to ensure that **exceptional authority remains exceptional**.

#### **15. CRITICAL ANALYSIS**

##### **15.1 Is Centralisation Always Contrary to Federalism?**

No.

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<sup>22</sup> See Rudra Chaudhuri, “Re-reading the Indian Emergency: Britain, the United States and India's Constitutional Autocracy, 1975–1977”, *Diplomacy & Statecraft*.

If an external attack affects the entire country, a coordinated national reaction may be essential. Federalism does not require each State to respond independently to a national security threat.

Similarly, some natural disasters or public emergencies will require central financial and administrative resources.

The constitutional problem begins when centralisation goes beyond the crisis.

Therefore, the **relevant contrast is not between centralisation and federalism, but between justified centralisation and unjustified centralisation.**

### **15.2 Article 356: Necessary Power or Federal Risk?**

Article 356 has a legitimate constitutional purpose. If a State government cannot function in accordance with the Constitution, the Union needs some mechanism to restore constitutional government.

The problem is the possibility of political misuse.

A Union government should not be able to treat electoral disagreement, policy differences or political instability as equivalent to constitutional breakdown.

The safeguards developed in Bommai are therefore important.

The constitutional aim should be restoration of State government, not replacement of State political autonomy with permanent Union control.

### **15.3 Parliamentary Approval Is Not Enough**

Parliamentary approval is an important democratic safeguard but cannot be the only one.

A parliamentary majority may belong to the same political formation that controls the Union executive.

Consequently, legislative approval does not eliminate the need for judicial review.

The Bommai approach is preferable because it acknowledges that even formally approved emergency action should still be subject to constitutional scrutiny.

### 15.4 The Importance of Proportionality

Emergency powers should be proportionate to the emergency.

This principle is particularly valuable because it acknowledges that not every emergency requires the same level of central intervention.

A limited administrative problem should not be a reason for the complete displacement of a State government.

Similarly, if circumstances which justify central intervention have disappeared, it is difficult to continue with the exceptional arrangement.

### 15.5 The Danger of Permanent Emergency

Perhaps the biggest constitutional problem is not the declaration of an emergency itself, but the **normalisation of exceptional power**.

Emergency authority is justified because normal constitutional arrangements are temporarily insufficient.

If extraordinary powers become routine, the justification for them changes.

A constitutional democracy should therefore maintain a clear distinction between:

**ordinary constitutional government, and**

**exceptional emergency government.**

The latter should exist to restore the former.

## 16. LESSONS FOR INDIA FROM THE COMPARATIVE STUDY

The comparative analysis does not suggest that India should simply copy American or British constitutional arrangements. Their institutional structures are too different.

Nevertheless, there are several important lessons.

**First, emergency necessity should not create its own constitutional authority.**

The American experience, especially Youngstown, shows the value of requiring executive action to be connected to a recognised legal source.

**Second, emergency powers should contain clear statutory or constitutional conditions.**

The UK Civil Contingencies Act shows the value of expressly tying emergency regulations to necessity, urgency and proportionality.

**Third, federal consultation should be strengthened.**

Where a national emergency substantially affects State responsibilities, the Union should, where circumstances permit, consult the affected States.

Consultation should not become a veto. Its purpose should be co-ordination.

**Fourth, judicial review should be meaningful.**

The Indian experience demonstrates the importance of Bommai. Courts should look at whether constitutional conditions existed which did not attempt to replace the executive's administrative judgment with their own.

**Fifth, emergency powers should have an effective exit mechanism.**

The end of the emergency should result in restoration of ordinary constitutional arrangements as soon as reasonably possible.

## **17. FINDINGS/ RESULTS**

The States and United Kingdom.

**First,** Article 356 presents the biggest federal concern as it allows the Union to take on functions normally exercised by a State government.

**Secondly,** S.R. Bommai substantially improved constitutional protection by making Article 356 reviewable and acknowledging the federal implications of President's Rule.

**Third,** the comparative experience suggests that the legitimacy of emergency centralisation depends on four recurring principles: **necessity, proportionality, temporariness and accountability.**

## **18. RECOMMENDATIONS**

### **18.1 Require a Detailed Constitutional Basis**

Any recommendation for President's Rule should identify the specific constitutional circumstances demonstrating failure of constitutional machinery.

A distinction should be made between political disagreement and constitutional breakdown.

### **18.2 Strengthen the Role of Constitutional Material**

Reports recommending Article 356 should be supported by objective and verifiable material. Broad political assessments should not be relied upon alone.

### **18.3 Encourage Union-State Consultation**

Where circumstances allow, the concerned State government should be given an opportunity to respond before extraordinary central intervention is imposed.

### **18.4 Periodic Review**

Continuation of emergency centralisation should require meaningful consideration of whether the original justification remains in place.

Review should not become a routine procedural formality.

### **18.5 Protect State Institutions**

Even during President's Rule, the aim should be restoration of constitutional government. State administrative institutions should not be unnecessarily weakened.

### **18.6 Develop a Clear Proportionality Standard**

Indian constitutional jurisprudence could expressly develop a structured proportionality approach for emergency centralisation, asking whether the measure is suitable, necessary and appropriately limited in relation to the emergency.

## **19. CONCLUSION**

The relationship between federalism and emergency power is difficult due to the fact that both principles serve legitimate constitutional purposes.

Federalism distributes power and protects regional autonomy. Emergency powers allow the State to respond to circumstances where ordinary constitutional processes may not be sufficient.

It would therefore be wrong to conclude that every form of emergency centralisation is contrary to federalism.

**The real issue is how far centralisation can go and how long it can last.**

India's constitutional framework reflects a deliberate preference for a strong Union, especially in situations of national security or constitutional breakdown in a State. Article 352 allows significant expansion of Union authority during a national emergency, while Article 356 allows direct intervention in the government of a State.

These powers have constitutional justification, but their history demonstrates why safeguards are necessary.

These powers are in the Constitution but their past is what puts in place the need for safeguards. The 1975-77 Emergency which we went through influenced the Forty Fourth Amendment and we saw a strengthening of procedural protection around national emergencies. In S.R. Bommai we also saw the judicial development of Article 356 which in turn proved that emergency power is not above constitutional review.

Also we may look to the US and the UK for more perspective.

The US shows the value of separation of powers and that which says executive necessity does not create executive authority. Youngstown is a case in point which brings out that even in the middle of serious national crisis the President must stay within the limits of the Constitution.

The UK demonstrates another approach: Emergency powers of the which may be determined by law and put strictly in terms of emergency, urgency and proportionality also can be used by India to a large degree but not wholly.

India's history and that of its states is different.

However the comparative experience does point to the importance of **reasoned decisions, proportionality, consultation, parliamentary and court oversight.**

In the end emergency powers are meant to be a part of the constitution as a means to deal with the exception not as a means to bypass regular constitutional processes. In a national emergency may be a case for more centralized power.

What it should not be a case for is permanent weakening of federal structures.

Therefore the best constitutional principle is thus that:. **Emergency powers must be of great strength to see us through a crisis, at the same time they must be held in check to protect the Constitution which we are trying to see through that crisis.**

Evaluating emergency laws should go beyond looking at how quickly a government takes complete control during a crisis. The true benchmark of a healthy legal framework is how efficiently it rolls back those extraordinary powers and restores the normal checks and balances once the danger has passed.

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