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Critical Assessment of State Emergencies in India, Germany, and Bangladesh: A Comparative Study

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Emergencies often test the resilience of legal and institutional systems. This article examines how legislative frameworks operate in practice by analysing state emergency measures in Bangladesh, Germany, and India. This study examines the effects of emergency declarations on civil liberties, democratic institutions, and federal structures by comparing all three States. Certain provisions in the Constitution are intended to protect national security, yet they could be abused politically. Examples include the military-backed emergency in Bangladesh from 2007 to 2008 and the emergency in India in 1975. It is also clear that different governments apply emergency measures differently. Germany, by legal framework, ensured stronger procedural safeguards and a cooperative model of federalism, thereby reducing the scope for political exploitation. It can be inferred from observing events that a centralised, autonomous authority at the helm of affairs can potentially assert its interests under the guise of national interest. This paves the way for increased civil rights violations, leading to a breakdown of the federal structure of governance. According to the report,¹ Emergency measures are crucial for a nation's national security, but their arbitrary use through lax judicial and legal oversight jeopardises democratic administration. This research article proposes changes, considering a comprehensive legislative review, judicial checks and balances, and safeguards against improper usage of emergency provisions. To avoid political scheming, it also aims for clearer definitions of conditions that deem an emergency necessary. The article aims to explain how emergency clauses can either bolster or undermine the democratic mechanisms that the constitutional safeguards provide.

¹ Second Administrative Reforms Commission, *Fourth Report: Ethics in Governance* (2007)

Keywords: *civil liberties, constitutional safeguards, democratic institutions, federalism, political misuse.*

INTRODUCTION

The word emergency can be defined as a situation in which things are out of control and an immediate action is required to treat the malaise.² In the same way, the concept of state Emergency can be termed as emergency in a particular state due to some immediate uncertain event or the likelihood of such an event in the future, which can have detrimental effects on the governance structure of the state in particular, and the country, in general. If citizens are not informed in advance about the imposition of an emergency, the measure is likely to generate far-reaching social, cultural, economic, and political consequences.

Both the power and responsibility to use that power wisely go hand-in-hand, but the misuse of the state emergency provisions by the political party to gain supremacy in politics is the most prominent strategy. One such incident was the abrogation of Article 370 of the Indian Constitution, which gave Jammu and Kashmir special status, and is the most important recent example.³ President's rule was imposed along with this action, and the area was placed under heavy lockdown, followed by internet shutdown, travelling restrictions, imprisonment of eminent political figures, which ultimately led to gross human rights violations & ultimately infringed upon the state's sovereignty.

Having a constitutional provision to safeguard certain rights in case any sort of emergency arises, and application or implementation of those constitutional provisions are two different things; rather, the manner in which those constitutional provisions are implemented becomes the question of substance, arguing the legality of the manner of implementation of such a provision. Similar is the case with state emergency provisions, which were originally drafted to protect national security and public order in times of distress and chaos, and on general grounds of failure of constitutional machinery, have now become a contentious and polarising subject matter impacting the notion of freedom, liberty, democracy, and

² Christian Bjornskov et al., 'Unconstitutional States of Emergency' (2022) 51(2) Journal of Legal Studies 455 <<https://chicagounbound.uchicago.edu/jls/vol51/iss2/8>> accessed 10 August 2025

³ Dr. Parul Singh, 'Abrogation of Article 370: A Look Back at Its Origin and Aftermath' (2022) 1 ANVESH-A Multidisciplinary E-Journal for all Researches <<http://dx.doi.org/10.55183/amjr.2022.vo3.lsi.01.002>> accessed 10 August 2025

federalism. Particularly, in the context of India, Bangladesh, and Germany, invoking the state emergency constitutional framework several times has shaped jurisprudence on civil liberties and the role of state authorities.⁴ Power corrupts, absolute power corrupts (Lord Acton).⁵ It is definitely a moral principle, at least if not a legal maxim or legal principle, which should be given due consideration while exercising extraordinary powers in extraordinary circumstances; otherwise, wizards invoking these provisions may have a detrimental effect on governance structure sustenance, democratisation of institutions, and fundamental rights.⁶

The authors conduct a comparative analysis of the consequences arising from the imposition of state emergency provisions and their impact on the democratic structures of three jurisdictions—India, Bangladesh, and Germany. The first objective is to do an interpretative analysis of legal provisions dealing with state emergency imposition among the above-mentioned countries, and second, to look at its applicability by examining those circumstances when the provisions are invoked to analyse if it is for political gain or otherwise. By looking into comparable variables, the aim of this study is to assess and examine the fragile balance between giving priority to national security and safeguarding democratic and constitutional principles under three different countries' constitutional frameworks. By nature, Germany, India, and Bangladesh as nations have developed differently owing to their unique political identities and historical backgrounds, taking into consideration the roots of colonial legacy, in the context of India and Bangladesh, and the Grundgesetz.⁷ Reflecting core regulations inspired by the Weimar Republic in the context of Germany. In this article, the authors explore different situations influencing the various consequences of the effect of post-emergency imposition, its aftermath implementation, and theorise the possible implications for governance and democracy.

⁴ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press 2019) 124

⁵ Lord Acton, 'Letter to Bishop Creighton' in J.N. Figgis and R.V. Laurence (eds), *Historical Essays and Studies* (Macmillan 1907) 504

⁶ Richard Togman, 'Foucauldian security and the threat to democratic policy-making' (2021) 24(2) *Critical Review of International Social and Political Philosophy* 230

<<https://doi.org/10.1080/13698230.2018.1535734>> accessed 10 August 2025

⁷ Basic Law for the Federal Republic of Germany 1949

STATEMENT OF PROBLEM

Maintaining national stability, which is very important to every nation, and the rights of civil liberties that protect freedom in all democratic systems appear to be at odds with the supreme executive authority. These emergency measures were implemented as a last resort to prevent temporary crises, but their sustained capricious application will undermine democracy, result in human rights abuses, and even provide political entities with a simple way to benefit themselves. The writers will delve into several facets of India, Bangladesh, and Germany's legal systems, highlighting the repercussions of abusing emergency measures. The comparative analysis will reveal outcomes in both areas that impact democracy and civil liberties, as well as best practices to prevent such abuse.

RESEARCH OBJECTIVES

1. The rules about state emergencies must be evaluated and situated within the frameworks of the constitutions of Bangladesh, Germany, and India.
2. The rationale for the emergency provisions' invocation, the effect on the civil liberties and governance systems of the countries in question, and the steps taken by the relevant governments to mitigate any unfavourable effects of their actions.
3. To determine whether the distribution of power between the federal and state governments changes when emergency powers are used.
4. To determine whether the emergency measures have been politically abused in the countries in question and to recommend safeguards against future abuses of this kind.

RESEARCH QUESTIONS

1. Do Bangladesh's, India's, and Germany's constitutions define and place state emergency provisions similarly?
2. Are there historical justifications for these types of laws in the states in question, and what effects do they have on civil rights and governance?
3. Does the use of emergency laws alter the relative strength of the federal and state governments in the affected nations?
4. Did the political parties in the affected nations abuse the emergency provisions for their own political ends, and is it possible to stop such abuses with the current policies in place?

RESEARCH METHODOLOGY

The research methodology used in this research is doctrinal and normative legal analysis using the comparative analogy to test the audacity of state emergency provisions of the concerned states and to analyse procedural safeguards detecting menace in the form of misuse of such provisions in the name of extreme urgency or 'internal disturbance', fulfilling personal aspirations of politics, which is political in nature. By comparing emergency provisions and examining the circumstances under which the provisions are invoked, the author undertakes to understand the best practice, which can be to amalgamate the procedural aspects of invoking these provisions in such a manner that it serves public interest at large rather than curbing civil liberties, human rights, and undermining the democratic nature of a country as a whole.

LITERATURE REVIEW

Historical Context: Origin of the Evolution of Emergency Provisions: Tracing the history of emergencies, it is observed that the shaping of emergency provisions in the concerned countries is a common thread theorising literature on state emergencies. The origins of emergency provisions in Bangladesh can be traced to the colonial framework of the Government of India Act, 1935, which authorised declarations on the grounds of internal disturbance.⁸ A similar colonial legacy shaped the Indian context, as the same Act laid the foundation for the incorporation of emergency provisions in its constitutional framework. However, the literature available highlights the framework and thought process within which the foundation of emergency provisions was laid down, which is a stronghold of the central government, maintaining unity, peace, and order post-independence, with a central focus on a centripetal federal structure.⁹ In contradiction, Germany's post-World War II constitutional design was heavily influenced by historical lessons drawn from the collapse of the Weimar Republic. The literature available highlights how Germany's basic law implemented stringent safeguards such as parliamentary oversight, which ultimately led to

⁸ Mohammad Jahid Mustofa and Mohammad Shahin Kabir, 'A Comparative Overview of the Emergency Provision in Bangladesh' (2020) 3(1) Southeast University Journal of Law <<http://dx.doi.org/10.2139/ssrn.4697739>> accessed 10 August 2025

⁹ S.C. Dash, 'Emergency Provisions and Union-State Relations in India' (1961) 22(1/2) The Indian Journal of Political Science 53 <<https://www.jstor.org/stable/41853870>> accessed 10 August 2025

the Weimar Republic's downfall, as executive overreach was curbed within the legal framework.¹⁰

National Security v Individual Liberties: A Saga: State emergency regulation is all about balancing the preservation of civil liberties on one hand and establishing national security on the other. The literature highlights the balancing approach in different ways among concerned countries. Starting with Bangladesh, historically and evidently, the use of emergency provisions has been to suppress dissent rather than address the intended objective and crises, leaving scope for misuse under the garb of internal disturbance.¹¹

In the Indian context, similar contextual similarity is available in Article 356 of the Constitution of India¹² has been invoked mainly for political misuse and has been criticised by many stakeholders, such as human rights activists, distinguished academicians, and reformers. Dr B.R Ambedkar himself called Article 356 a 'dead letter' of the Constitution, wherein, according to him, the Article was supposed to be invoked as a last resort; however, reality depicts otherwise, taking into account the frequency of usage of the provision.¹³ However, most specifically, the Sarkaria¹⁴ and Punchhi¹⁵ Commissions have suggested reforms upholding civil liberties, only to later be seen as non-compliant with. Furthermore, judicial intervention tried to mitigate these abuses to some extent, and simultaneously, cases like *S.R. Bommai v Union of India*¹⁶ actually highlighted that Article 356 was more invoked for political manipulations in comparison to constitutional breakdown.

In the German context, it is through institutional checks on emergency powers that historical experiences depict civil liberties are protected. The literature available highlights legislative oversight mechanisms like the Little Parliament during a state of emergency and the conundrum between efficacy and constitutionality/constitutional integrity.¹⁷

¹⁰ András Jakab, 'German Constitutional Law and Doctrine on State of Emergency – Paradigms and Dilemmas of a Traditional (Continental) Discourse' (2006) 7(5) German Law Journal 453
<<https://doi.org/10.1017/S207183220000479X>> accessed 10 August 2025

¹¹ Mustofa (n 8)

¹² Constitution of India 1950, art 356

¹³ Dr. Dharmendra Kumar Singh, 'An Analysis of Pre and Post S.R. Bommai Scenario with Reference to President's Rule in States' (2017) 6(6) International Journal of Humanities and Social Science Invention 5
<[https://www.ijhssi.org/papers/v6\(6\)/Version-4/B0606040514.pdf](https://www.ijhssi.org/papers/v6(6)/Version-4/B0606040514.pdf)> accessed 10 August 2025

¹⁴ Ministry of Home Affairs, *Report of the Sarkaria Commission* (1988)

¹⁵ Ministry of Home Affairs, *Report of the Punchhi Commission on Centre-State Relations* (2010)

¹⁶ *S.R. Bommai v Union of India* (1994) 3 SCC 1

¹⁷ Jakab (n 10)

Judiciary playing its part in mitigating Abuse of Power: Judiciary, being the final interpreter of the provisions, acts as the Guardian to safeguard the sanctity of provisions from their misuse. In the Indian context, the Judiciary, after the case of Bommai, has played an important role in scrutinising the implementation of emergency provisions, ensuring the president's rule is declared only as a last resort and not for political ends. However, in the context of Bangladesh, the literature available¹⁸ suggests that, despite having safeguards available, the judiciary has predominantly failed to be vigilant in protecting civil liberties due to political and military interference plaguing the country. In the context of Germany, the Judiciary has played an active role, backed by detailed constitutional provisions ensuring no compromise on enforcing the rule of law for efficient use of such provisions. Furthermore, the amendments made in the law post-1968 emphasise the role of the judiciary in safeguarding constitutional institutions during crises.

Political Use of Emergency Powers and Federalism: A persistent problem is the blending of emergency powers with political manoeuvring, particularly in federal systems such as India. States' autonomy has been undermined by the frequent use of Article 356 to overthrow state administrations in the name of national interest. The balance of power between the Union and the states is called into question by this misuse, which could have an impact on India's federal system. Similar political motivations have influenced the usage of emergency supplies in Bangladesh, where successive civilian and military administrations have used these authorities to bolster their hold on power. Arbitrary statements are permitted by the ambiguous legal language, frequently for political purposes. Germany, on the other hand, uses emergency powers with more caution. Compared to Hungary and the Weimar Republic, Germany's emergency provisions demonstrate how the Grundgesetz has several measures to prevent misuse. Germany's federal structure and constitution seek to maintain, even in times of crisis, a more equitable division of power between state and federal authorities than those of Bangladesh and India.

Comparative Constitutional Safeguards: Prevention of Executive Overreach: The precise limitations imposed by the German constitutional framework on the declaration of emergencies, such as oversight committees, legislative participation, and stringent time

¹⁸ Mustofa (n 8)

constraints, all work together to reduce the possibility of abuse by the executive branch.¹⁹ The emergency powers granted by the Indian Constitution to sustain law and order are not immediately protected against abuse. However, the literature²⁰ available highlights reforms suggested by commissions and judicial interventions that are gradually strengthening the checks on the executive's power to impose emergencies.²¹ Bangladesh lags in terms of effective safeguards. The literature²² critiques the lack of specific regulations governing the initiation and termination of emergency powers, which leaves room for executive overreach.

SCOPE AND LIMITATION OF THE STUDY

This research article evaluates the emergency plans of three nations: Bangladesh, a least developed country; India, a developing country; and Germany, a developed country. It emphasises how these nations' democratic institutions and governance are impacted by the procedures, outcomes, and effects of using emergency provisions. In order to produce some type of reform that can be put into place to stop misuse, real-life experiences will be used to illustrate the situations and eventual misuse of emergency measures.

As a result, the study is limited to just three. There are drawbacks when extrapolating these results to the entire country. In order to better understand the global aspects of emergency provisions, future research can broaden its focus by incorporating additional nations.

LEGISLATIVE PROVISIONS WITH RESPECT TO STATE EMERGENCY

The declaration of a state emergency is regarded as an essential mechanism by most countries to cope with exceptional situations that jeopardise the security, sovereignty, or public order of the concerned country. India, Germany, and Bangladesh have also included provisions for the state of emergency in their constitutions, just like all other countries that have a written constitution. These provisions describe the circumstances under which such a state emergency may be declared, the extent of authorities in the course of an emergency, and the

¹⁹ Carl-Christoph Schweitzer, 'Emergency Powers in the Federal Republic of Germany' (1969) 22(1) Political Research Quarterly <<https://doi.org/10.1177/106591296902200109>> accessed 10 August 2025

²⁰ Lumina L, 'A critical analysis of emergency powers under article 356 of Indian constitution' (2024) 4(1) International Journal of Criminal, Common and Statutory Law <<https://www.criminallawjournal.org/article/74/4-1-15-798.pdf>> accessed 10 August 2025

²¹ Mitchell F. Crusto, 'State of Emergency: An Emergency Constitution Revisited' (2015) 61 Loyola Law Review <<https://ssrn.com/abstract=2763667>> accessed 10 August 2025

²² Mustofa (n 8)

safeguards against abuse of these provisions related to a state of emergency. A comparative analysis of these constitutional provisions of state emergency in India, Germany, and Bangladesh reveals similarities, but there are a few striking differences in the approach to the conditions that these nations have taken according to their political milieus and cultural needs.

State Emergency provisions in the Constitution of India: Article 356²³ discusses the breakdown of the state's constitutional machinery, sometimes referred to as the President's rule. If the president determines, either based on the governor's report or through other means, that the circumstances have changed to the point where the government is unable to carry out its duties under the Constitution, he may declare a state of emergency. The President may declare a state of emergency based on the Governor's report or if he determines that the circumstances warrant it. However, the President may occasionally declare an emergency if the governor fails to submit a report. President Venkataraman carried out this action in the state of Tamil Nadu in 1991 despite not receiving a report from the governor. Following the passage of the 42nd Amendment to the Constitution, judicial review of a state of emergency was eliminated. However, the legitimacy of the president's authority may be contested later in the 44th Amendment.

The state of emergency will end after two months if the proclamation is not approved by both Houses of Parliament, which means it will be brought before each house separately.²⁴ Additionally, by enacting a resolution supporting its continuation, both Houses of Parliament might prolong the proclamation's lifespan by an additional six months each time.²⁵ The proclamation can only be extended after a year if the Election Commission declares that holding elections in the state or that territory is not feasible.²⁶

A State of Emergency has the following Effects: The president takes on full executive authority. He, or anybody he appoints, is in charge of the state government, usually the governor. The state assembly is either dissolved or suspended under such a proclamation. However, the MLAs maintain their Assembly membership. Laws about the state list are

²³ Constitution of India 1950, art 356

²⁴ Constitution of India 1950, art 352(4)

²⁵ Constitution of India 1950, art 352(5)

²⁶ Constitution of India 1950, art 352(6)

made by Parliament. The state budget is the sole thing approved by the parliament. The state's high court operates on its own.

The state's ordinances may also be proclaimed by the president. Except for the courts, the Union government has total authority over the state under the state of emergency. If one examines the nation's historical state of emergencies, three common justifications for using Art. 356 include political instability, corruption, maladministration, and breakdown of law and order.

The Centre is required under Article 355²⁷ to make sure that every state's government is conducted in conformity with the Constitution's provisions. In order to carry out this obligation, the Centre assumes control of a state's administration under Article 356 if the state's constitutional machinery fails. This is sometimes referred to as President's Rule. Other names for it include State Emergency and Constitutional Emergency.

There are two grounds, one specified under Article 356 itself and the other in Article 365, that allow the President's Rule to be proclaimed under Article 356:

- The President may proclaim Article 356 if he determines that circumstances have developed that make it impossible for a state to continue operating under the terms of the Constitution. Notably, the president has the authority to take action without first consulting the state governor's report, or in response to one.
- According to Article 365, the President may declare that a situation has developed where the government of a state is not following or implementing any directive from the Centre.

State Emergency provisions in the Basic Law of Germany: The Basic Law (Grundgesetz) is the constitution of the Federal Republic of Germany, which grants legal provisions for a state of emergency. The German Emergency Acts (the Notstandsgesetze) were a set of legislation passed in 1968 to amend the Basic Law regarding situations that may threaten the constitutional order.

Verteidigungsfall- When Germany is under assault or is set to face an immediate threat from outside forces, it may proclaim a state of defence. A two-thirds majority of the Bundestag, or

²⁷ Constitution of India 1950, art 355

federal parliament, is required to declare a state of defence under Article 115a²⁸ of the Basic Law. If the Bundestag cannot be assembled, the power to make decisions that facilitate the declaration of a state of defence is granted to a Joint Committee (Gemeinsamer Ausschuss), which is made up of representatives from both the Bundestag and Bundesrat, the federal council of the German states.²⁹

At any time, a state of defence is declared, the government is authorised by the Basic Law to take additional steps to protect national security. The use of force, restrictions on civil liberties and rights, and the enactment of legislation that would otherwise be unconstitutional are a few examples of the exceptional measures that may be used. Although these abilities are uneven, they are protected by appropriate procedural measures. For instance, the Bundestag has the authority to withdraw the declaration if it concludes that the threat has diminished, and the Federal Constitutional Court is still able to rule on the legality of specific actions taken under the state of defence.³⁰

Spannungsfall - One step ahead of the state of defence, the state of tension might be declared in situations where an armed conflict is imminent but hasn't started yet. Article 80a³¹ states that the Bundestag must once more approve any procedure regarding such a declaration. This clause offers an opportunity to begin defensive preparations short of actually declaring war. This gives the government the authority to pass laws and conduct other necessary actions to get the nation ready for the fight, but it does so without the stringent legal restrictions that come with being a fully-fledged defence.

Proclamation of a tense situation. Similar to this, to coordinate national efforts with specific federal states, a state of tension must be declared, and the Bundesrat must be consulted. The government does not automatically have the authority to restrict civil freedoms just because there is conflict in the area; such actions need legislative sanction.

Innerer Notstand - Internal emergencies, defined as situations of serious disturbance or natural disasters within a state that cannot be controlled by regular methods, are covered by

²⁸ Basic Law for the Federal Republic of Germany 1949, art 115a

²⁹ Abhishek Kumar Khaund, 'National Emergency: A Comparative Analysis of Emergency Laws in India, U.S.A. and Germany' (2021) 1 Annual International Journal on Analysis of Contemporary Legal Affairs <<https://www.aequivic.in/post/aijacla-national-emergency-a-comparative-analysis-of-emergency-laws-in-india-u-s-a-and-germany-3/>> accessed 10 August 2025

³⁰ *Ibid*

³¹ Basic Law for the Federal Republic of Germany 1949, art 80a

Articles 91³² and 87a³³ of the Basic Law. In order to restore public order, the federal government might then call upon the police and, in very specific and highly restricted situations, the German military forces, the Bundeswehr.

Owing to historical experiences, particularly the legacy of militarism during the Nazi era, the deployment of force within Germany is subject to strict constitutional regulation. Article 87a(2)³⁴, the Basic Law stipulates that the armed forces may be employed domestically only under narrowly defined circumstances, such as protecting critical infrastructure or suppressing uprisings that endanger the constitutional order. Importantly, any such deployment is contingent upon rigorous parliamentary and judicial oversight, thereby minimising the risk of abuse.

State Emergency provisions in the Constitution of Bangladesh: Thus, under Part IXA, Article 141A³⁵ through 141C³⁶, the Bangladeshi Constitution has established a legislative framework for the declaration of a state of emergency. With the help of these laws, the government can respond to events that jeopardise the country's security or stability without losing control over the use of emergency powers granted by the constitution.

In accordance with Article 141A,³⁷ the President of Bangladesh may proclaim a state of emergency when war, external aggression, or domestic unrest poses a major threat to the nation's security or economic stability. The Prime Minister's advice must serve as the foundation for the declaration. The Jatiya Sangsad, or National Parliament, must ratify the emergency after it is declared and within 120 days. If parliamentary approval is not obtained, the emergency automatically ends.

Article 141B of the Constitution³⁸ allows the government to suspend some rights during the declaration of a state of emergency. This can entail, for instance, the suspension of the application of the rights to freedom of speech, association, assembly, and mobility. When an

³² Constitution of India 1950, art 91

³³ Constitution of India 1950, art 87a

³⁴ Constitution of India 1950, art 87a(2)

³⁵ The Constitution of the People's Republic of Bangladesh 1972, art 141A

³⁶ Constitution of India 1950, art 141C

³⁷ Constitution of India 1950, art 141A

³⁸ Constitution of India 1950, art 141B

emergency is declared, extraordinary measures are taken to help restore law and order; these include addressing the root causes of the situation.³⁹

In an emergency, the government is authorised by Article 141C to enact legislation or take other measures that might infringe constitutional rights. But after the emergency is removed, residents can argue the legitimacy of activities conducted under the emergency in court, and the suspension of fundamental rights will be scrutinised by the courts.

HISTORICAL INSTANCES OF STATE EMERGENCIES & THEIR EFFECT

Numerous nations have proclaimed states of emergency, which have profound effects on political structures, governmental structures, and citizen rights. Indeed, complications and repercussions are explained by the examples of Emergency 1975 in India, post-World War II limitations in Germany, and, more recently, the Emergency in Bangladesh in 2007 and 2008.

Historical Instances –

India (1975 Emergency): It was said that fundamental rights, such as the freedom of expression and assembly, were suspended under Prime Minister Indira Gandhi's 1975–1977 Indian Emergency. Political protest was met with extremely harsh repression; legislation about preventative detention led to hundreds of arrests. The administration defended the action by claiming that it was required to maintain national stability during those turbulent and unrest-filled periods in the political system. Authoritarian overreach during this time has also drawn a lot of criticism, as has the following weakening of democratic institutions.⁴⁰

Germany (Post-World War II Restrictions): During this period, Germany had to deal with the more difficult challenge of establishing its post-war political system. The war placed the Allied powers in a position to consider further limitations on civil freedoms to prevent the return of totalitarianism. This layer of limits in this situation was largely provided by political party control and censorship. Despite being designed to maintain democracy, it nevertheless

³⁹ Mustofa (n 8)

⁴⁰ Soli J. Sorabjee, 'Human Rights During Emergency' (*Allahabad High Court*)

<<https://www.allahabadhighcourt.in/event/humanrightsduringemergency.html>> accessed 10 August 2025

illustrated, in many respects, the seeming conflict between security and individual liberties for its people to dress however they like in support of national restoration.⁴¹

Bangladesh (2007–2008 Emergency): In January 2007, a state of emergency was declared in Bangladesh due to political unrest and violence. The caretaker government, supported by the military, tightened controls over political activity and postponed elections. This has been justified as a necessary step to restore order, but it has drawn harsh condemnation for violating human rights and stifling free speech in politics. Though the emergency has ended as of December 2008, its legacy continues to influence politics in Bangladesh.⁴²

Impact on Political System, Governance, and Civil Liberties –

The occurrence of these calamities has, nonetheless, had a significant impact on political institutions and governance. Extreme restrictions on civil freedoms were present in all three cases. For example, a state of suspension of fundamental rights was declared in India. While the military regime in Bangladesh stifled free speech, post-war restrictions on political activity and free speech in Germany stopped the spread of extremist ideology.

Modification of the Political System: The political environment changes dramatically during emergencies. For instance, the Emergency in India sparked opposition to Indira Gandhi's administration. In the 1977 elections, she lost. Although postwar restrictions helped to establish a far more robust democratic framework in Germany, they also left a legacy of suspicion toward the state. The emergency in Bangladesh served to strengthen the idea that the military could influence civilian politics, and it still does.⁴³

Governance Difficulties: Imposing emergency powers typically results in the executive holding a disproportionate amount of power at the expense of the checks and balances that are essential to democratic governance. As a result, changes brought about by emergency powers in India diminished judicial independence and made it more susceptible to abuses by the government. The same centralisation tendencies in Bangladesh created a lack of

⁴¹ Christian Bjørnskov and Stefan Voigt, 'Why Do Governments Call a State of Emergency? On the Determinants of Using Emergency Constitutions' (2018) 54 *European Journal of Political Economy* 110 <<https://doi.org/10.1016/j.ejpolco.2018.01.002>> accessed 20 September 2025

⁴² National Human Rights Commission, *HUMAN RIGHTS MANUAL FOR DISTRICT MAGISTRATE* (2007)

⁴³ Christian Bjørnskov and Stefan Voigt, 'Emergencies: on the misuse of government powers' (2022) 190 *Public Choice* <<https://doi.org/10.1007/s11127-021-00918-6>> accessed 10 August 2025

accountability for flagrant human rights violations committed by the state during the emergency.

Public Views and Reactions: Public indignation against the state's alleged repressive zeal followed each incident. Numerous political parties and civil society organisations staged rallies during the Indian Emergency, calling for the return of democracy. In Bangladesh, even after the emergency was declared, widespread hostility to military control that persisted at that time resulted in a return to civilian rule.

EFFECT ON THE FEDERAL STRUCTURE DURING STATE EMERGENCY

The declaration of a state of emergency automatically challenges the federal system of a country. In the federal and quasi-federal countries as India, Germany, Bangladesh, etc, emergencies mean concentration of power, but to what extent it affects the state or regional government, depending upon the type of structure.⁴⁴ This chapter draws critical discussion on how emergency provisions affect federalism as well as regionalism in these three countries, and the implications for democracy and the separation of powers.

India: Impact on the Federal Structure and State Governments: At the foundation of India's polity, there is a division of power between the union and the states, which is explicitly provided in the Indian Constitution. The Indian Constitution provides for three types of emergencies: Emergency is divided into National Emergency, State Emergency, and President's Rule and Financial Emergency. Out of these, the one with the highest degree of federal impact is the State Emergency under Article 356.

Article 356 empowers the President of India to remove a state government and take direct rule if it is felt that the state has failed to run it in a manner conforming to the provisions of the Constitution. Typically, this provision was intended as a safety measure, but it was condemned as an instrument that the central government uses to overthrow opposition-led state governments. The most prominent example is the Emergency of 1975–1977. The court

⁴⁴ Khaund (n 29)

did not impose the emergency, but the president did. Also, give an example of the dominance of the centre over the states.⁴⁵

The recurrent invocation of Article 356 has generated significant concerns regarding the weakening of India's federal structure. By empowering the central government to dismiss state governments, the provision effectively reduces the states from constitutionally autonomous entities within the federation to administrative units akin to Union Territories.⁴⁶ More such actions lead to the result of discouraging public faith in the democratic institutions, all the more since the state governments are felt to be subjected to central political manipulations. The Sarkaria Commission, in its judgment on Centre- State Relations, addressed this point, stressing the need to leave the power to impose President's Rule, a sparingly used power, and to be invoked not so often. Still, existing problems of the centralisation of power during emergencies remain an issue in the federal structure of India.

Germany: Federal Balance During Crisis Situations: Germany became a federal state after the Second World War, and this means that the country is divided into twenty-seven states, and no power can be concentrated in one authority. Germany's federalism is well protected by the Grundgesetz (Basic Law), which states the federal division of powers between the Bund (central government) and the Länder.⁴⁷ The Basic Law does contain provisions for emergencies, but these are again propped up by substantive legal formalities to maintain the framework of the Federal System even in emergencies.

According to Article 115 of the Basic Law,⁴⁸ it is the federal government that is empowered to exercise measures of emergency, but within these measures, the role of parliament is called upon. However, it remains the case that the Länder have considerable control even in emergencies, especially where matters such as policing and public health are concerned. The principle of cooperative federalism guarantees that Länder are involved in decision-making during crises and does not remain on the periphery of activity, as it is in the framework of

⁴⁵ Rekha Saxena, 'The Changing Nature of Federalism in India' in Sumit Ganguly and Eswaran Sridharan (eds), *The Oxford Handbook of Indian Politics* (Oxford University Press 2024) 81

<<https://doi.org/10.1093/oxfordhb/9780198894261.013.7>> accessed 10 August 2025

⁴⁶ Adrija Roychowdhury, 'Four Reasons Why Indira Gandhi Declared Emergency' *The Indian Express* (25 June 2018) <<https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/>> accessed 10 August 2025

⁴⁷ Matthias von Hellfeld, 'German Federalism: How Does It Work?' (*Deutsche Welle*, 04 June 2021)

<<https://www.dw.com/en/german-federalism-how-does-it-work/a-57042552>> accessed 10 August 2025

⁴⁸ Basic Law for the Federal Republic of Germany 1949, art 115

vertical federalism. For instance, when the COVID-19 outbreak occurred, the structure of power in Germany enabled regions to have broad autonomy in putting into force measures against the virus.⁴⁹ Although critics may consider this rather uncoordinated, it was a definite way to keep the federal balance in check when a crisis hit the entire nation.

However, these safeguards have been criticised during emergencies, pointing to the fact that Germany's federal system of government causes operational redundancies due to the duality of responsibilities at the federal and state levels. The sharing of powers between the federal and state authorities results in slow responses, especially in crises that occur at high speeds. However, the system of cooperative federalism followed in Germany is an interesting contrast to India's highly centralised brand of federalism – German federal structure recognises regional sovereignty even in the period of emergency, apart from in certain specific areas.

Bangladesh: Centralisation of Power During Emergencies: Unlike India or Germany, the Bangladeshi government is relatively more centralised in its structure and working. Even though it does acknowledge some of its decentralisation through its provinces, it still has considerable authority over both national and regional politics. The emergency powers under the Bangladesh Constitution (Part IXA) have now made provisions that give extensive power to the central government during emergencies, since it also revokes fundamental rights and central emergency powers that may annul parliamentary procedures.⁵⁰ The worst state of emergency in the Bangladesh context and human rights regime could be marked to the period 2007-2008 when the military-backed caretaker government declared a state of emergency, which suspended political activities and civil liberties.⁵¹ They say that the emergency led to the high degrees of authoritarianism because the caretaker government, supported by the military, performed the functions of the executive and the legislative power. As is most frequently observed in developing countries, these regional administrative bodies, which mostly grant very limited independence to the subordinate regional

⁴⁹ Pierre Thielbörger, 'Coronavirus Emergency Measures and Germany's Basic Law' (*Hertie School*, 19 March 2020) <<https://www.hertie-school.org/en/news/detail/content/verfassungsblog-coronavirus-emergency-measures-and-germanys-basic-law>> accessed 10 August 2025

⁵⁰ Muhammad Ehteshamul Bari, 'Emergency Powers and Martial Law under the Constitution of Bangladesh' in M Rafiqul Islam and Muhammad Ekramul Haque (eds), *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer 2023)

⁵¹ Talukder Maniruzzaman, 'The Fall of the Military Dictator: 1991 Elections and the Prospect of Civilian Rule in Bangladesh' (1992) 65(2) *Pacific Affairs* <<https://doi.org/10.2307/2760169>> accessed 10 August 2025

authorities, were more subordinated to the central government during this period, and the process of centralisation was fully completed.

One must remember that during this period of emergency, Bangladesh and the region in general saw how frail true democracy and democratic institutions in the country are. That institution has constitutional controls over the use of emergency powers; however, these controls are not well developed or powerful, and, as a result, the concentration of power in the hands of the central executive is evident. The centralisation of authority during emergencies in Bangladesh, as opposed to in India or Germany, for example, is not about restoring balance to the federal structures; it is about building on the existing centralisation of power.⁵² It has great consequences for governance because it hinders decentralisation and reduces the capacity for regional interests to play a role in decision-making at the national level.

MISUSE OF EMERGENCY PROVISIONS BY POLITICAL PARTIES

Loopholes in the laws that were enacted with the good intention of preventing a country from being thrown into political instability in the event of a crisis have, in the past, been abused by political parties. The level of misuse depends on the constitutional requirements and institutional measures. Drawing upon India, Germany, and Bangladesh, this chapter analyses how political actors have sought to capitalise on emergency powers, and how far law provides a shield against such abuses. So, by comparing these three cases, it would be possible to get a comparative understanding of how the political parties emerged and used the emergency powers to gain more authority.

Political Manipulations of Emergency Powers in India, Germany, and Bangladesh –

India: In India, the worst incident of political exploitation of the emergency power occurred during the Emergency of 1975–1977 under the guise of Prime Minister Indira Gandhi. Gandhi declared a state of emergency and accused it of internal disturbances after the court annulled her victory. These freedoms included the right to assemble, vote, organise, speak, and be protected by the law; during the emergency, these were removed, opposition leaders were jailed, and there was a restriction of press freedom. One of the major political transformations

⁵² Sreeradha Datta, *Bangladesh: A Fragile Democracy* (1st edn, Shipra Publications 2004)

in the 1990s was that the authoritarian centralised power, which means the Congress Party, outpowered other politically opposing parties.

It may thus be said that the 1975 Emergency is a potent example of the fact that a PM can misuse the provisions of the Constitution Article 352,⁵³ to cling to power in the name of national security. The aftermath experienced by the country witnessed a lot of condemnation of this misuse, which prompted the parliament to legislate on the constitutional amendment Act (44th Amendment Act 1978), meant to improve the circumstances under which People can proclaim an emergency. However, the episode did not lose its potential as an enhancement of the practice of politicising emergency powers in the face of democratic institutions and federalism.

Germany: One check on the misuse of emergency powers in Germany, though, is the strict checks placed in the Basic Law. But it has created apprehensions about the passing political turmoil during such situations. Article 115 of the German Constitution's provisions grants emergency powers, in which oversight by a parliamentary and federal-state cooperation puts a limit on how the powers can be exploited. While India or Bangladesh, or any other country of post-war history, did not witness such abuse of emergency powers, political parties tend to misuse emergency powers when a crisis strikes, and they take them to boost central authority under the garb of national security.⁵⁴

An important reference is the debate about Notstandsgesetze (emergency laws) passed in 1968. Critics at the time saw these laws as being intended to prepare Germany for crises, such as war or disaster; however, they feared that these laws would give the federal government too much power, essentially sidelining the Länder (states). Yet the federal Constitutional Court's institutional check on such abuse, and the robust legal safeguards ensured by the federal constitution, have mostly protected emergency powers from being used politically as partisan tools.⁵⁵

⁵³ Constitution of India 1950, art 352

⁵⁴ Bjørnskov (n 43)

⁵⁵ Sven Jürgensen and Frederik Orłowski, 'Critique and Crisis: The German Struggle with Pandemic Control Measures and the State of Emergency' (*Verfassungsblog*, 19 April 2020) <<https://verfassungsblog.de/critique-and-crisis-the-german-struggle-with-pandemic-control-measures-and-the-state-of-emergency/>> accessed 20 July 2025

Bangladesh: Emergency powers are more frequently misused in Bangladesh and have frequently been associated with political instability. A prime example is the declaration of emergency in 2007 by a military-backed caretaker government. At a time of political chaos, in 1991, the government cited the need to restore law and order, and hence suspended civil liberties and deferred elections to neutralise political competition.⁵⁶

By centralising power in its hands, the caretaker government was able to rule without any democratic checks and used emergency provisions to twist political reality in favour of certain political factions. It also served as another chance to gain support for the ruling party ahead of the next elections. Unlike India, Bangladesh has no robust legal safeguards to protect people from abuse, leaving emergency provisions a valuable tool for political manoeuvring.

Legal and Institutional Safeguards to Prevent Abuse –

The problem of misuse of emergency provisions recurs, but in each country, there are legal and institutional safeguards to limit such abuse.

India: Following the 1975 Emergency, legal reforms were brought to preclude such misuse in the future. The 44th Amendment Act, 1978, made it more difficult to declare an emergency by inserting a requirement of a written recommendation of either the Council of Ministers or of Parliament. Second, the provision for 'internal disturbances' as a ground for emergency was substituted by 'armed rebellion,' thereby narrowing the scope of interpretation.⁵⁷

Germany: Parliamentary oversight, the judicial review of emergency declarations by the Federal Constitutional Court, and cooperative federalism in which the Länder share a say in emergency declarations have all been built into Germany's Basic Law. But it is these institutional mechanisms that prevent any single political party from abusing emergency powers for political gain.

Bangladesh: In Bangladesh, there are provisions in the constitution for the declaration of emergencies, but it does not have a legal framework to check abuse. Especially where there is no independent judicial oversight and comparatively weak parliamentary checks, political

⁵⁶ Maniruzzaman (n 51)

⁵⁷ Constitution (Forty-fourth Amendment) Act 1978

parties can make use of emergency provisions. Proper institutional reform, including greater independence of the judiciary and better parliamentary procedure, is needed to prevent the centralisation of power during an emergency.

Comparative Analysis of Political Exploitation of Emergency Powers: What follows is a comparative analysis of three countries, focusing on what differentiates political parties' use of emergency powers. Here in India, the problem of misuse of emergency provisions is tied to a wider enforcement of the federal structure in which the central government more often overrules wayward state governments. While cooperative federalism and robust legal limits on the misuse of emergency powers have restrained uses made of emergency powers for political gain, fears exist that centralisation of powers during crises could be the exception. Bangladesh's experience shows that whenever there are weak institutional checks, it will become more malnourished in politics and consequently, such a situation frequently stays under emergency rule without any democratic accountability.

SUGGESTIONS FOR REFORMS AND SAFEGUARDS

To prevent the misuse of emergency provisions, several reforms can be implemented: **Strengthening Judicial Oversight:** Judicial review of emergency declarations can work like a strong check against abuse in countries like Bangladesh, where the judiciary is not independent. Continuous vigilance is necessary in India's judiciary to play a more active role than in upholding the judiciary's checks against misuse of emergency provisions.

Enhanced Parliamentary Scrutiny: Things like preventing the executive branch from making undue use of power can be ensured if emergencies require parliamentary approval, as in Germany. In India, he says, the 44th Amendment Act enhanced parliamentary oversight, but similar reforms are needed in Bangladesh to make the approval process more transparent and accountable.

Clearer Definitions of Emergency Grounds: Political misuse can be prevented by narrowing the grounds for declaration of an emergency, as India did in 1977. Such provisions won't be invoked arbitrarily if clearer definitions and stricter criteria for declaring emergencies are introduced.

Public Accountability and Media Freedom: It is important to safeguard that the media retains the power to report on the government's actions in the midst of emergencies. The lesson from India's 1975 Emergency is the perils of squelching press freedom. Protecting the press can be a first line of defence against political abuse of emergency powers.

CONCLUSION

This comparative study highlights the different constitutional and political approaches to emergency provisions in India, Germany, and Bangladesh, underscoring how historical legacies and institutional safeguards shape their use and abuse. In India and Bangladesh, emergency provisions reflect a centralised design rooted in colonial frameworks, often leading to the subordination of regional autonomy and the curtailment of civil liberties. Article 356 in India,⁵⁸ and similar mechanisms in Bangladesh, have, at times, been employed as tools of political convenience, undermining democratic values and federal balance. By contrast, Germany's Basic Law provides for a cooperative federal structure in which the Länder retain a decisive role, thereby limiting central dominance and reducing the scope for political misuse.

The analysis further reveals that while emergencies in India and Bangladesh have frequently been justified under vague pretexts such as internal disturbances, often resulting in severe restrictions on fundamental freedoms, Germany has largely restricted the invocation of emergencies to external threats, with strong parliamentary and judicial oversight serving as effective safeguards. Consequently, the German model reflects a more balanced interplay between federal and regional powers, whereas India and Bangladesh continue to exhibit tendencies toward centralisation and political exploitation.

In sum, the findings reaffirm that constitutional design and institutional culture play a critical role in determining the extent to which emergency powers are exercised legitimately or manipulated for political ends. While India and Bangladesh could benefit from strengthening judicial and parliamentary safeguards, Germany demonstrates that robust checks and a cooperative federal structure can significantly reduce the risk of abuse and preserve democratic resilience during times of crisis.

⁵⁸ Constitution of India 1950, art 356