



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **EXPRESS EMERGENCY PROVISION UNDER FEDERAL CONSTITUTION**

AUTHORED BY - RADHA ANIL KONDE

## **ABSTRACT**

The word emergency can be described as an unexpectedly occurring situation that causes public authorities to act instantly within their particular powers. The emergency is a disturbance from which a human's civil rights, except perhaps in Article 20 and 21, are removed. An emergency is due to the breakdown of the administrative machinery that triggers or allows the government to urgently respond. "Emergency, according to the Black Law Dictionary, demands urgent intervention and imminent warning because such a circumstance poses a danger to people and liberty within the region. The socioeconomic structure struggles to achieve fair working standards. The definition of emergency has become a political phenomenon. The key idea of creating clear legislative arrangements for crises was to safeguard against the accidental advent of autocracy in conjunction with domestic chaos, foreign assault, or war. This article is deal with Emergency Provisions of India, Germany and USA and how laws of emergency is differed and similar in these countries.

## **INTRODUCTION**

The Indian constitution was drafted in the mid-twentieth century which gave an advantage to constitutional makers, in so far as they could take cognisance of the various constitutional processes operating in different countries of the world and thus draw upon a rich fund of human experience, wisdom, heritage, and traditions. The emergency provisions are taken from the Weimar Constitution of Germany. After the second world war, the allied forces to safeguard their troops still stationed in Germany asked for the formation of emergency provisions.

As emergency provision concern Dr. B.R. Ambedkar observe in Constituent assembly that, "All federal systems are placed within a tight mould of federalism consisting America. No matter what are the consequences, it cannot change its form and shape. On the other hand, the Constitution of India can be both Unitary as well as Federal as per the situation. In normal times, it is framed to work as a federal system but in times of emergency the unitary system prevails"<sup>1</sup>

---

<sup>1</sup> <https://www.legalserviceindia.com/legal/article-5287-emergency-provisions.html>

In India the President has the power to declare emergencies of three kinds:

- National Emergency
- State Emergency
- Financial Emergency

The President can do so with the advice of the cabinet ministers and because of the power vested in him by Part XVIII of the Constitution of India which contains laws relating to Emergency provisions in India. When it comes to the U.S.A., the situation is somewhat similar to India as the President of the U.S.A., being the Chief Executive of the nation, has the power to declare an emergency in the country. Similarly, a Governor or a Mayor has the power to declare a state of emergency within his jurisdiction. Emergency at the federal level in the U.S.A. is regulated by the National Emergency Act. When we talk about National emergency in India, it is important to also look at the German model of emergency as India has borrowed its emergency provisions from Germany. In Germany, Article 48 of the Constitution of the Weimar Republic permitted declaration of emergencies mainly to suppress rebellions and opposition. In modern Germany however, the Emergency Acts also known as “Notstandsgezetse” basically deal with emergency provisions. The German Emergency Acts state that when it comes to a state of defence, a state of tension, internal states of emergency or disaster, certain constitutional rights may be limited. Whenever an emergency is declared by the Government, the normal procedures of a nation are drastically altered and the rights of the people are affected, adversely in most cases. Hence, most nations refrain from taking such a drastic step and only do so under exceptional circumstances. India, U.S.A., and Germany are three different examples of federal states with different laws and procedures. They can also be described as model examples of democratic states in their respective continents, Asia, North America, and Europe. Since many consider emergency provisions as being the antithesis of democracy, it is worthwhile to analyse how such laws find a place within democratic principles.<sup>2</sup>

## **EMERGENCY PROVISIONS IN INDIA**

### **NATIONAL EMERGENCY<sup>3</sup>**

Article 352 of the Constitution stipulates national emergency. National emergency. The national emergency coincides with statutory requirements to be enforced when an unusual situation affects or threatens part of the nation’s harmony, defence, prosperity, and administration. In compliance

---

<sup>2</sup> <https://www.aequivic.in/post/aijacla-national-emergency-a-comparative-analysis-of-emergency-laws-in-india-u-s-a-and-germany-3>

<sup>3</sup> Article 352 of Indian Constitution

with Article 352 of the Constitution, emergency implementation when conditions preceding were also present-

- (i) Attack,
- (ii) External intrusion or
- iii) Internal rebellion.

Article 352 states that if, because of outside aggression or armed revolt, the President is 'comfortable' that a dangerous situation occurs which endangers the protection of India or indeed any portion of it, he will make a declaration in that respect with or for almost all of India. Such a declaration, though, may only be made through authorized advice of the cabinet of the Nation in clause 3. Such a declaration must be put before the legislative house and accepted from each chamber, or it will lapse after a month from the declaration.

It must be remembered that it has been accounted for in the clarification of Article 352 that neither the foreign invasion nor violent revolution has really taken place in the event of an emergency declaration. It may be declared even though foreign violence or military revolt is likely.

#### National emergencies in India

During the War with China, the first emergency was proclaimed and lasted for six years between October 1962 and January 1968. The battle against China concluded on 21 October 1962, but another war against Pakistan only began after the emergency. In the end, the Tashkent deal was reached after international pressure and in January the then government dropped the emergency. The second emergency declaration was due to the war between India and Pakistan. Three acts were performed during that time. Maintenance of SA, Coffee POS Act, and In order to avoid arrest it was decided to retain the Govt Protection of the Rule. However, these three actions were extensively grossly overused, and numerous convictions, jail shootings, and gatherings were observed this time. The war with Pakistan came to an end, but the emergency persisted, and before the second emergency was revoked 3rd emergency was declared.

The third emergency has been proclaimed due to internal unrest and this is India's most contentious emergency. The polls at which the court considered Smt. Indira Gandhi was barred from public service for six years to be engaged in unethical practices it was held in the Allahabad High Court.

She had brought the judgment to the Supreme court, but the court had been on holiday at that moment. On 25 June 1975, the Historical day, Smt. Indira Gandhi wrote to then-Honourable President Fakhruddin Ali Ahmed a message to declare an emergency, despite the approval of the members of the cabinet. The much more stringent and compressed emergency was this

emergency. On 23 March 1977, it was withdrawn.

In the case of *Minerva Mills vs the Indian Union*<sup>4</sup>, the legitimacy of the president's motivation and determination through Article 351 is not impeded by judicial review. However, the jurisdiction of the Court is confined to investigating is not whether the restrictions of the Constitution were met. It will decide whether or not the President's happiness is true. It is not at all happiness, where fulfillment is founded on mistrust, irony, or irrelevance.

### **PARLIAMENTARY PROVISIONS AND DURATION:**

Prior to the 44th Amendment Act of 1978, a proclamation of emergency could remain in force for 2 months in the first instance, but once approved by parliament the emergency could remain in force for indefinite period of time as long as the executive wanted it to continue. The 44th Amendment has curtailed the power of the executive to extend the operation of emergency unnecessarily.

After the 44th Amendment a proclamation of emergency could remain in force in the first instance for 1 month, such a proclamation if approved shall remain in force for the period of six months unless revoked earlier. The resolution approving the proclamation must be passed by both the houses of parliament by special majority, that is by majority of the total members of each house and also by a majority of not less than 2/3 of the members present and voting in each house.

For the further continuance of emergency beyond the period of six months approval by parliament would be required every six months. If the proclamation is issued at the time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes places during the period of six months without approving the proclamation, then the proclamation remains until 30 days from the first sitting of the Lok Sabha after its reconstruction.<sup>5</sup>

### **REVOCATION OF NATIONAL EMERGENCY**

A proclamation of emergency may be revoked by the president any time by a subsequent proclamation, that proclamation does not require any parliamentary approval. The president shall revoke a proclamation if the Lok Sabha passes a resolution disapproving it or disapproving its

---

<sup>4</sup> AIR 1980 SC 1789

<sup>5</sup> J. N. Pandey, the emergency provisions, page no. 815-816.

continuance, where a notice in writing signed by not less than 1/10th of the total number of members of the Lok Sabha. The notice should be given:

- a. to the speaker, if the lower house is in session, or
- b. to the president, if the house is not in session; a special sitting of the Lok Sabha shall be held within 14 days from the date on which such notice is received by the speaker or by the president for the purpose of considering the resolution.

## STATE EMERGENCY

## STATE EMERGENCY

The Union Government's responsibility is to ensure that perhaps the administration of a State takes action in accordance with the Constitution's requirements. Article 356 states that, whether, on the reception of a briefing from the Governor of the State, and otherwise, the President is pleased that a state government is unable to carry on in a smooth manner; a state emergency declaration may be issued by that Leader.

In this case, the President's declaration of emergency is labelled 'announcement because of the breakdown (or collapse) of legislative mechanisms.'

An emergency of this kind may have the following effects:

1. the President, with the exception of the High Court, may assume all or any of the responsibilities of state governments;
2. Announce that state legislative powers should be exercised by, or under, Parliament's responsibility;
3. make the declaration subject matter necessary or suitable for its execution.

Nevertheless, the President is not allowed to presume or terminate any statutory obligation relating to the High Court. The President of India has instituted a 126-fold rule in India until 2018. The presidential rule has been used for a record of 35 occasions under Indira Gandhi's rule.

### **PARLIAMENTARY APPROVAL AND DURATION:**

A proclamation shall laid before each house of parliament for approval and shall remain operational for two months, after the expiry of this period the proclamation ceases to operate. If the proclamation is issued at the time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes places during this period of 2 months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstruction.

If the proclamation is approved by the parliament it will remain in operation for six months. Parliament may extend the duration of proclamation for 6 months at a time. No proclamation shall remain in force more than 3 years, after the expiry of the maximum period of 3 years neither the parliament nor the president shall have power to continue a proclamation and the constitutional machinery must be restored to the state

### **FINANCIAL EMERGENCY**

The financial emergency provided for in Article 360, is the third kind of emergency. It stipulates that even if the President is convinced that India or any of its economic stability or credibility is at risk, he may declare a financial emergency. The executive and legislative competencies would take centre stage in such a circumstance. It must also be accepted by Parliament, as some of the other 2 emergencies. Both Members of Parliament must approve it within two months. As long as the process requires, the financial catastrophe can exist and might even be lifted with a corresponding declaration.

This Article has never been used.

A declaration is given pursuant to Art. 360—

- a corresponding proclamation may be withheld or varied
- every House of Parliament shall be placed before it

- ceases to exist at the completion of two months, except as authorized in resolutions of the two Houses of Parliament even before the expiration of that time.

## **EMERGENCY PROVISIONS UNDR FEDERAL COUNTRIES**

### **EMERGENCY PROVISION IN USA:**

The National Emergencies Act was passed to impose certain restrictions on the powers of the President of the U.S. to invoke an emergency. In 1973, a Special Committee was set up to look into the subject-matter of national emergency. However, while investigating, it was found that there were already four national emergencies in effect at that time, the emergency of 1933 relating to the banking crisis, the Korean War emergency of 1950, the emergency of 1970 relating to a strike by postal workers, and the 1971 emergency due to inflation. It was found that with the proclamation of just one emergency, all other statutory provisions related to emergency were activated. The nation was under emergency for forty-one years.<sup>6</sup> So to make sure that when an emergency was declared for a specific purpose, it also incidentally didn't trigger every other executive power related to emergency, the National Emergencies Act was passed by Congress in 1976. The President can declare a national emergency under Section 201 of the National Emergencies Act; however, he has to communicate the proclamation of emergency to the congress and the publication of such emergency in a Federal Register is necessary. The Act consists of five titles as enacted. By Title I, all the emergency powers delegated by statutes that remained on standby and which were triggered by a proclamation of emergency were returned to a dormant state. The second title prescribed a new procedure to declare an emergency. Moreover, a proclamation of emergency would cease to remain active after one year if the President did not renew it. Congress also has the power to terminate an emergency through a resolution. According to Title III, The President activating the emergency provisions has to now specify the provisions activated by him and the Congress has to be notified by him. Title IV lays down some provisions relating to the President's accountability while declaring an emergency whereas Title V deals with repeal provisions. Since the passing of this Act, various national emergencies have been declared by the U.S. Presidents in compliance with the provisions of this Act. Some of them have been revoked while others are still in operation.

---

<sup>6</sup> Patrick A. Thronson, Toward Comprehensive Reform of America's Emergency Law Regime, 46 Michigan L.J 737 (2013).

## CONSTITUTIONAL PROVISIONS RELATING TO EMERGENCY

It is worthwhile to note that the term “emergency” finds no mention in the U.S. Constitution, however, certain provisions have been included in the Constitution to deal with an emergency or any exigency. For instance, Section 8 of Article I empower Congress to take necessary steps concerning war and military-related issues for the following reasons:

v For the declaration of war

v For the maintenance of the navy, for raising and supporting an army, and for making rules to regulate naval and land forces.

v For calling the militia to ward off invasions, for the executions of union laws, and the suppression of any kind of insurrections.

Section 2 of Article II provides that the President is the “Commander in Chief of the army and navy, as well as of the militia when called into actual federal service.” The President is charged under Section 3 of Article III with the duty to ensure the proper implementation and execution of laws.

Moreover, Section 4 of Article IV imposes a duty on the federal government to protect every state from any kind of invasion or domestic violence.<sup>7</sup>

Even though these provisions do not expressly provide for an emergency, it can be seen that there are implied recognition emergency laws within these provisions that seek to safeguard the nation and the states from invasion, war, insurrection, domestic violence, and other kinds of threats. All of the threats would generally result in the declaration of a state of emergency in a state. However, certain safeguards have also been provided to the citizens in this regard, for instance, the non-suspension of habeas corpus, “unless when in Cases of Rebellion or Invasion the public Safety may require it.”<sup>8</sup> Another safeguard that is provided to the citizens is that unless a grand jury indicts a person, that person cannot be charged with any capital crime, “except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger.”<sup>9</sup> Thirdly, a state cannot engage in war “unless invaded, or in such imminent Danger as will not admit of delay.”<sup>10</sup>

---

<sup>7</sup> William B. Fisch, Emergency In The Constitutional Law Of United States, 38 Am. J. Comp. L. Supp. 389(1990).

<sup>8</sup> U.S. Constitution, Art. I § 9, cl. 2.

<sup>9</sup> U.S. Constitution Amend. V, cl 1.

<sup>10</sup> U.S. Constitution Article I § 10, para. 3.

## EMERGENCY PROVISIONS IN GERMANY

The German Emergency Acts known as “Notstandsgezetse” introduced various changes to the German Constitution and led to the incorporation of certain emergency provisions in the Constitution. It gave the federal government tooth to act in a situation of crisis such as a natural disaster, war, or any kind of rebellion. The Constitution of Germany has very comprehensive and thorough provisions concerning emergency that permit the proper functioning of the basic democratic rules and regulations even during the period of an emergency.<sup>11</sup> Moreover, in a state of defence,<sup>12</sup> the Emergency Acts provide that certain essential and fundamental rights can be suspended.

For instance, Article 10 states that “the privacy of correspondence, posts and telecommunications shall be inviolable” but certain restrictions may be imposed to safeguard the democratic order and to protect the federal state. Similarly, under Articles 11 and 12 restrictions may be imposed on the freedom of movement and freedom of occupation on similar grounds. Article 12a provides for compulsory military service at the time of a state of defines.

For instance, Article 10 states that “the privacy of correspondence, posts and telecommunications shall be inviolable” but certain restrictions may be imposed to safeguard the democratic order and to protect the federal state. Similarly, under Articles 11 and 12 restrictions may be imposed on the freedom of movement and freedom of occupation on similar grounds. Article 12a provides for compulsory military service at the time of a state of defines.

The most important part of the German Constitution is however Part X (a), which deals with the state of, defines, and lays down explicit provisions regarding German emergency legislations. It contains eleven articles, from Article 115a to Article 115l.

Article 115a provides that a determination of an attack on the German federation by armed forces has to be made by the German Parliament(Bundestag) with the Council’s (Bundesrat) consent on an application made by the federal government with a majority of two-thirds votes. However, if a situation arises due to which the Parliament cannot convene then its functions are to be performed by the Joint Committee. Such determination shall then be proclaimed by the President.

---

<sup>11</sup> Anna Khakee, Securing Democracy? A Comparative Anlysis of Emergency Powers in Europe (Geneva Center for the democratic control of armed forces, 2009).

<sup>12</sup> Germany Constitution Art. 115a-115.

Moreover, a determination will automatically come into effect, if the federation is under attack by armed forces and a determination cannot be made, at the time of the attack.

Article 115 (b) provides that when a state of defense is declared the Federal Chancellor assumes control over the armed forces.

Article 115 (c) lays down that the Federation can legislate concerning matters falling within the legislative powers of the Länder (states). However, the Bundesrat must consent to that.

Article 115 (d) deals with legislation concerning urgent bills. It states that federal bills that are considered to be urgent are to be submitted to the Bundesrat and the Bundestag at the same time and both have to discuss and debate the bill in a joint session without any kind of delay.

Article 115 (e) provides that if it is determined by the Joint Committee by a two-thirds majority that because of insuperable problems or obstacles, the Bundestag cannot be convened or cannot amass its quorum, then the functions and powers of both the Bundestag and Bundesrat are to be performed by the Joint Committee as a single body. However Joint Committee cannot suspend, amend or abrogate the basic law in part or whole.

Article 115 (f) deals with the power of the Federal Government concerning the employment of the federal border police and the issuance of instructions by the Federal Government to the administrative authorities, land governments, and the delegation of this power by it to the land governments.

Article 115 (g) provides some safeguards to the Federal Constitutional Court by providing it with immunity from any kind of impairment concerning its Constitutional status and its powers and functions. The legislative provisions that govern the Federal Constitutional Court can only be amended with the Court's consent insofar as it is agreed by the Court that it is necessary for ensuring its smooth functioning.

Article 115 (h) states that the electoral terms of the Bundestag or the state parliaments shall come to an end only after six months after the termination of the state of defense. The same applies to the term of a member of the Federal Constitutional Court. As far as the term of the President is concerned, it shall come to an end after the expiry of nine months after the termination of the state of defense. It is also provided that the Bundestag shall not dissolve during the period of a state of defense.

Article 115 (i) empowers the State Governments or their representatives to exercise the powers

mentioned in Article 115 (f) if the Federal Government is not being successful in averting the threat and if the circumstances are such that immediate independent action is required.

According to Article 115 (k), laws that are enacted as a result of Articles 115 (c), 115 (e), and 115 (g) will suspend any other law that is inconsistent with such laws for as long as they are in effect. Moreover, the laws enacted by the Joint Committee will cease to be in effect six months after the state of defense comes to an end.

Article 115 (l) deals with the repeal of the measures taken as a result of an emergency. It provides that any law enacted by the Joint Committee can be repealed by the Bundestag after it takes the consent of the Bundestrat. Moreover, any methods adopted by the Federal Government or the Joint Committee to deal with a threat to the Federation can be rescinded by the Bundestag and the Bundestrat. It is further provided that the Bundestag with the consent of the Bundestrat can terminate a state of defense provided a decision is promulgated by the President.

The German Constitution differentiates between the three types of emergencies; “internal emergency” (innerer not stand),<sup>13</sup> a “state of tension” (spanning fall)<sup>14</sup>, and a “state of defense” (Verteidigungsfall).<sup>15</sup> As stated in Article 91(1), an internal emergency occurs when it is important “to avert an imminent danger to the existence of free democratic basic order of the Federation or of a Land”. As already discussed above a state of defense can be proclaimed when “the federal territory is under attack by armed force or imminently threatened by such an attack” as provided under Article 115(a). However, what amounts to a state of tension has not been provided in the German Constitution. But similar to a state of defense, before declaring a state of tension, two-thirds majority votes of both the Bundestag and Bundestrat are necessary and the Federal President must then promulgate the decision.

The German Constitution has very detailed provisions to deal with emergencies and hence it inspired the makers of the Constitution of India to borrow some provisions and apply them in our nation.

## COMPARATIVE ANALYSIS

Even though all three of the countries discussed above have different provisions and legislations that differ from each other, there are, however, various laws and provisions that are similar. The

---

<sup>13</sup> Germany Constitution Art. 91.

<sup>14</sup> Germany Constitution Art. 80a.

<sup>15</sup> Germany Constitution Part Xa.

same goes for the emergency provisions of these countries. While India borrowed its emergency laws from Germany, the modern emergency provisions in Germany and the U.S.A. are reactions against years of abuse and misuse of the older laws. The type of emergency laws that are present in India and Germany are very detailed and meticulously dealt with and are not to be found in the U.S. as the provisions relating to emergency there are somewhat vague.

## **CONCLUSION**

As already discussed, the emergency provisions of India, the U.S.A., and Germany are similar on certain points and different on others. As India has borrowed its emergency provisions from Germany, it has a lot more in common with the German system than the American. While in the U.S.A. the courts play a crucial role in determining whether the emergency provisions are justified or not, it is not so in the case of India and Germany. In *A.K. Gopalan v. State of Madras*, it was held that a judge cannot determine whether the grounds of detention were justifiable or not, it can only pronounce whether the grounds are invalid or vague. However, it is not to be confused with the complete incompetence of the judiciary when it comes to an emergency. In *Minerva Mills v. Union of India*, Justice Bhagawati held that “whether the President while proclaiming the emergency had applied his mind or whether he had acted outside his powers could not be excluded from the scope of judicial review.” Where the U.S. Constitution does not explicitly mention the term “emergency”, very elaborate provisions have been laid down in the Constitutions of both India and Germany concerning emergency.