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# **COMPARATIVE ANALYSIS OF CONSTRAINTS AND STRATEGIES ON THE CONSTITUTIONAL PROVISIONS ON WAR AND EMERGENCY IN ASIAN DEMOCRACIES: A STUDY OF INDIA, JAPAN, AND SRI LANKA**

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## **ABSTRACT**

This paper examines the constitutional frameworks governing war and emergency powers in three major Asian democracies: India, Japan, and Sri Lanka. The study analyses the structural and functional aspects of these provisions, particularly in the context of contemporary regional security challenges, including the emergence of the Quadrilateral Security Dialogue (Quad Alliance). Through comparative constitutional analysis, this research explores how different democratic systems balance security imperatives with constitutional governance, offering insights into the operational effectiveness of these provisions in addressing modern security threats. The paper employs functional and structural methodologies to examine both express and implied constitutional provisions, their historical evolution, and their practical application in contemporary geopolitical contexts.

**Keywords:** War, Emergency, Democracy, Constitution, Quad Alliance, Regional Security

## **1. Introduction**

The contemporary Asian geopolitical landscape presents unique constitutional challenges regarding war and emergency powers. As regional security architectures evolve, particularly with the formation of strategic partnerships like the Quadrilateral Security Dialogue (Quad Alliance) comprising the United States, India, Japan, and Australia, the constitutional frameworks governing emergency and war powers in Asian democracies have gained renewed significance.<sup>1</sup> This paper examines the constitutional provisions on war and emergency in three pivotal Asian democracies: India, Japan, and Sri Lanka, analyzing their structural constraints and strategic applications in the context of evolving regional security dynamics.

The distinction between war provisions and emergency provisions in constitutional law represents a fundamental aspect of democratic governance. While war provisions express a nation's constitutional approach to warfare—whether enabling or constraining military action—emergency provisions serve as remedial mechanisms to address extraordinary circumstances.<sup>2</sup> This differentiation becomes particularly relevant when examining how democratic constitutions balance security needs with constitutional limitations, especially in the context of multilateral security arrangements.

## **2. Literature Review and Theoretical Framework**

### **2.1 Constitutional Emergency Powers in Democratic Theory**

The theoretical foundation for emergency powers in democratic constitutions has been extensively debated in constitutional scholarship. Schmitt's concept of the "exception" and Agamben's "state of exception" provide critical frameworks for understanding how democratic systems suspend normal constitutional operations during crises.<sup>3</sup> However, Asian constitutional experiences offer unique perspectives that challenge Western-centric theories of emergency governance.

Comparative constitutional scholarship has increasingly recognized the need to examine non-Western approaches to emergency powers. Tushnet's work on comparative constitutional law emphasizes the importance of understanding how different legal traditions approach the balance between security and liberty.<sup>4</sup> This is particularly relevant in the Asian context, where post-colonial constitutional frameworks often reflect hybrid approaches combining indigenous

governance traditions with imported constitutional models.

## 2.2 Regional Security Architecture and Constitutional Adaptation

The emergence of the Quad Alliance represents a significant shift in regional security architecture, requiring member states to adapt their constitutional frameworks to accommodate new forms of security cooperation. Pant's analysis of the Quad highlights how this partnership transcends traditional bilateral security arrangements, creating new constitutional questions about the delegation of security responsibilities and the limits of national sovereignty.<sup>5</sup>

This study employs a mixed-method approach, integrating several analytical techniques. It utilizes Functional Analysis to examine the operational purpose and effectiveness of constitutional provisions. Alongside this, Structural Analysis investigates the constitutional architecture and institutional design relevant to the subject. The research also incorporates a Historical-Comparative Method, tracing the evolution of pertinent provisions and drawing comparisons across different jurisdictions. Finally, a Contemporary Case Analysis is employed to scrutinize recent applications and interpretations of these constitutional principles. The entirety of the research draws comprehensively from primary constitutional texts, key judicial decisions, records of parliamentary debates, and a wide range of secondary literature to ensure a robust and thorough analysis of the subject matter.

## 3- Constitutional War Provisions: A Comparative Analysis

### India: The Silent Constitution

The Indian Constitution presents a unique case study in constitutional war powers. Unlike the explicit war powers clause in the US Constitution (Article I, Section 8), the Indian Constitution does not expressly vest war-declaring authority in any specific organ of government.<sup>6</sup> This silence has created an interesting constitutional dynamic where war powers are implied rather than explicit.

The Supreme Court of India, in *Union of India v. Azadi Bachao Andolan* (2003), acknowledged that the power to declare war is an inherent executive power, falling within the Union's exclusive domain under the Constitution.<sup>7</sup> However, this judicial interpretation raises questions about parliamentary oversight and democratic accountability in matters of war and peace.

India's participation in the Quad Alliance represents a constitutional challenge in this regard. The strategic partnership requires coordination on defense matters that may implicate war powers without explicit constitutional authorization. The Ministry of External Affairs has consistently maintained that the Quad is a diplomatic forum rather than a military alliance, potentially circumventing direct constitutional constraints.<sup>8</sup>

### **Japan: The Pacifist Constitution**

Japan's Constitution presents the most explicit approach to war powers among the three nations studied. Article 9 of the Japanese Constitution states:

*"The Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained."*<sup>9</sup>

This provision, often called the "Peace Clause," represents a unique constitutional experiment in democratic pacifism. However, the interpretation of Article 9 has evolved significantly since its adoption in 1947. The Japanese Supreme Court's decision in *Sunakawa v. Japan* (1959) established the principle that Japan retains the inherent right of self-defense, even under Article 9.<sup>10</sup>

The contemporary debate surrounding Article 9 has intensified with Japan's participation in the Quad Alliance. The 2014 reinterpretation of Article 9 by the Abe government to permit "collective self-defense" represents a significant constitutional development.<sup>11</sup> This reinterpretation enables Japan to participate more actively in regional security arrangements while maintaining the formal constraints of the pacifist constitution.

### **Sri Lanka: The Executive-Centric Model**

Sri Lanka's constitutional framework, established by the 1978 Constitution, vests significant war powers in the executive presidency. Article 4(d) of the Constitution grants the President, as head of state and government, the authority to declare war and peace.<sup>12</sup> This executive-centric model contrasts sharply with the parliamentary systems of India and Japan.

The Sri Lankan experience with emergency powers during the civil war (1983-2009) provides

crucial insights into the practical application of constitutional emergency provisions. The Prevention of Terrorism Act (PTA) and the Public Security Ordinance granted extensive powers to the executive, raising questions about the balance between security and human rights.<sup>13</sup>

Sri Lanka's potential engagement with regional security frameworks, including dialogue with Quad members, occurs within this executive-dominated constitutional structure. The recent economic crisis and subsequent political upheaval have highlighted the interconnection between domestic constitutional governance and regional security cooperation.

#### **4. Emergency Provisions: Constitutional Responses to Extraordinary Circumstances**

##### **India: The Emergency Paradigm**

India's constitutional framework for emergencies is perhaps the most comprehensive among the three nations. The Constitution provides for three types of emergencies:

1. **National Emergency (Article 352):** In cases of war, external aggression, or armed rebellion
2. **President's Rule (Article 356):** When state government cannot function according to constitutional provisions
3. **Financial Emergency (Article 360):** When financial stability is threatened<sup>14</sup>

The historical experience with emergency powers, particularly during the 1975-1977 Emergency, profoundly shaped India's constitutional jurisprudence. The Supreme Court's decision in *Minerva Mills v. Union of India* (1980) established crucial limitations on emergency powers, emphasizing that the basic structure of the Constitution cannot be destroyed even during emergencies.<sup>15</sup>

In the context of the Quad Alliance, India's emergency provisions provide a constitutional framework for responding to regional security threats. The 2020 border standoff with China demonstrated how constitutional emergency powers can be invoked to address external security challenges while maintaining democratic governance.<sup>16</sup>

## **Japan: Constitutional Limitations and Practical Adaptations**

Japan's Constitution does not explicitly provide for emergency powers, creating a constitutional gap that has become increasingly problematic in contemporary security contexts. The absence of emergency provisions has led to creative constitutional interpretations and legislative adaptations.

The 2004 legislation on "Contingency Situations" (Yūji Hōsei) represents an attempt to address this constitutional gap through ordinary legislation rather than constitutional amendment.<sup>17</sup> However, the constitutional constraints of Article 9 continue to limit Japan's ability to respond to regional security threats through traditional emergency mechanisms.

Japan's participation in the Quad Alliance has highlighted these constitutional limitations. The alliance's focus on "free and open Indo-Pacific" requires Japan to balance its pacifist constitutional constraints with regional security responsibilities.<sup>18</sup>

## **Sri Lanka: Executive Emergency Powers**

Sri Lanka's emergency provisions are concentrated in the hands of the executive presidency. The Public Security Ordinance grants the President extensive powers to declare emergencies and suspend normal constitutional operations.<sup>19</sup> This concentration of emergency powers in the executive has been both a source of constitutional strength and vulnerability.

The recent economic and political crisis in Sri Lanka (2022-2023) demonstrated both the utility and limitations of executive emergency powers. The declaration of emergency during the mass protests highlighted the tension between constitutional emergency provisions and democratic accountability.<sup>20</sup>

## **India**

In India, "war provisions" are primarily enshrined in the **Emergency Provisions** of the Constitution.

**Constitutional interpretation of emergency provisions -Article 352 (Proclamation of Emergency):** Deals with National Emergency (War, External Aggression, or Armed Rebellion). **Article 358** suspends Fundamental Rights under Article 19 automatically during a

National Emergency declared on grounds of war or external aggression. **Article 359** empowers the President to suspend the enforcement of other Fundamental Rights. The court has time and again enhanced and clarified the meaning.

In **A.D.M. Jabalpur v. Shiv Kant Shukla (1976 AIR 1207)**, Often referred to as the "Habeas Corpus case," this landmark and controversial Supreme Court judgment held that during a proclamation of emergency under Article 352, a person's right to move any court for the enforcement of Fundamental Rights (including Article 21, Right to Life and Personal Liberty) can be suspended. This case has been widely criticized for its implications on civil liberties during emergencies. In **Minerva Mills Ltd. v. Union of India (AIR 1980 SC 1789)**, while not directly a "war provision" case, it dealt with the scope of constitutional amendments and the basic structure doctrine, which implicitly limits the state's power even during emergencies, ensuring that core constitutional principles are not abrogated. In **S.R. Bommai v. Union of India (AIR 1994 SC 1918)** case court primarily dealt with the arbitrary use of Article 356 (President's Rule in states), but its emphasis on judicial review and constitutional checks on executive power is relevant to the broader context of emergency provisions.

## Japan

Japan's post-World War II Constitution, the "**Peace Constitution**" of 1947, is unique for its pacifist Article 9, which formally renounces war. This deeply impacts how "war provisions" are understood and implemented. Japan does not have conventional "emergency powers" akin to many other constitutions for broad suspension of rights in wartime. Instead, it relies on specific legislation for national security and crisis management within the confines of its pacifist principles.

### Constitutional Provision:

- **Article 9:** "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes."
- **Article 73(6):** Grants the Cabinet power to manage foreign affairs, which indirectly covers crisis responses.

**Self-Defense Forces Law:** Governs the operation of Japan's Self-Defense Forces (SDF). Its

interpretation regarding collective self-defense and overseas deployment has been a major point of legal and political debate.

**Peace and Security Legislation (2015):** This set of laws, controversial for reinterpreting Article 9 to allow for limited collective self-defense, aims to enable Japan's SDF to engage in activities to protect allies even if Japan itself is not under direct attack.

**Interpretation of Article 9:** The Japanese government maintains that Article 9 does not deny Japan the inherent right of self-defense. The legal battles largely revolve around the *scope* of this self-defense, particularly concerning "collective self-defense."

There isn't a single landmark Supreme Court case in Japan that broadly defines "war provisions" in the way A.D.M. Jabalpur does in India, given Article 9. Instead, legal challenges often focus on the constitutionality of specific SDF deployments or security legislation. Judicial review is possible, but courts have historically been cautious in directly ruling on matters of high politics or national security. Public protests and political discourse often serve as a de facto constitutional check.

## Sri Lanka

Sri Lanka has a history of prolonged internal conflict, which has significantly shaped its constitutional and legal framework concerning emergency powers and national security.

- **Constitutional Provisions (Constitution of the Democratic Socialist Republic of Sri Lanka, 1978):**
  - **Article 155:** Deals with the Declaration of Emergency, allowing the President to declare a state of emergency under various circumstances, including public security and civil disturbances.
  - **Emergency Regulations:** Laws enacted under emergency proclamations can suspend or restrict fundamental rights, subject to certain limitations.

In **Joseph Perera v. Attorney-General (1992 (1) SLR 199)**: This case dealt with the scope of emergency regulations and the powers of arrest and detention under them. The Supreme Court emphasized the need for proportionality and held that emergency regulations must not go



beyond what is reasonably necessary for the stated purpose of the emergency. In **Bandula Wijesinghe v. State (SC Application No. 136/90)** case court addressed the extent to which emergency regulations can derogate from fundamental rights, reinforcing that such derogations must be strictly necessary and proportionate to the exigencies of the situation.

**The recent challenges (e.g., during the 2022 economic crisis and subsequent protests)-**

While not necessarily "war provisions" in the traditional sense, the use of emergency powers and their legality during recent periods of civil unrest and economic crisis has led to numerous fundamental rights applications before the Supreme Court, scrutinizing the necessity and proportionality of emergency regulations and curfew orders. These cases, though recent and perhaps not yet formally published in law reports, are critical in shaping the interpretation of emergency powers in contemporary Sri Lanka.

## **5. The Quad Alliance: Implications for Constitutional Governance**

### **Multilateral Security Cooperation and Constitutional Constraints**

The Quad Alliance represents a new form of multilateral security cooperation that challenges traditional constitutional frameworks. Unlike formal military alliances, the Quad operates through diplomatic coordination and strategic partnership, potentially circumventing explicit constitutional constraints on war powers.<sup>21</sup>

For India, the Quad provides a framework for security cooperation that avoids triggering explicit constitutional provisions about war and peace. The emphasis on diplomatic and economic cooperation, rather than military alliance, allows India to participate while maintaining constitutional compliance.

Japan's participation in the Quad has accelerated constitutional reinterpretation regarding collective self-defense. The 2015 Peace and Security Legislation, while controversial, provided a legal framework for Japan's enhanced participation in regional security arrangements.<sup>22</sup>

### **Constitutional Adaptation and Regional Security**

The Quad Alliance has prompted constitutional adaptation in member states, though through different mechanisms:

1. **Judicial Interpretation:** Courts have adapted constitutional provisions to accommodate new security realities
2. **Legislative Innovation:** New legislation has filled constitutional gaps in emergency and security powers
3. **Executive Interpretation:** Government agencies have reinterpreted existing constitutional provisions

These adaptive mechanisms demonstrate the flexibility of constitutional systems in responding to evolving security challenges while maintaining democratic governance.

## 6. Contemporary Challenges and Case Studies

**The COVID-19 Pandemic and Emergency Powers-**The COVID-19 pandemic provided a contemporary test of emergency provisions across all three nations. India's use of the Disaster Management Act (2005) rather than constitutional emergency provisions demonstrated creative constitutional adaptation.<sup>23</sup> Japan's declaration of a "state of emergency" under the Special Measures Law highlighted the limitations of its constitutional framework.<sup>24</sup> Sri Lanka's use of emergency powers during the pandemic raised questions about proportionality and democratic oversight.<sup>25</sup>

**Regional Security Challenges-**Contemporary regional security challenges have tested the effectiveness of constitutional war and emergency provisions:

1. **India-China Border Dispute:** India's response demonstrated the practical application of constitutional emergency powers in addressing external threats
2. **North Korea's Nuclear Program:** Japan's constitutional constraints have shaped its response to regional nuclear threats
3. **Sri Lankan Economic followed by Political Crisis:** The intersection of domestic constitutional crisis and regional security implications

## 7. Comparative Analysis: Similarities and Differences

**Structural Similarities-**Despite different constitutional traditions, all three nations share

certain structural features:

1. **Democratic Governance:** All three maintain democratic institutions even during emergencies
2. **Judicial Review:** Courts play crucial roles in interpreting and limiting emergency powers
3. **Legislative Oversight:** Parliaments retain some oversight function during emergencies

**Functional Differences-**The functional operation of war and emergency provisions differs significantly:

1. **Executive Authority:** Sri Lanka concentrates powers in the presidency, while India and Japan maintain more distributed authority
2. **Constitutional Constraints:** Japan's explicit pacifist provisions contrast with India's constitutional silence and Sri Lanka's executive-centric model
3. **International Cooperation:** Different constitutional frameworks enable different levels of participation in regional security arrangements

## **8. Recommendations for Constitutional Reform**

### **India: Explicit War Powers Provision**

India should consider constitutional amendment to explicitly address war powers, providing clear authority and accountability mechanisms. This would enhance democratic oversight while enabling effective participation in regional security arrangements like the Quad Alliance.

### **Japan: Emergency Powers Amendment**

Japan requires constitutional amendment to provide explicit emergency powers provisions. The current legislative gap creates constitutional uncertainty that undermines both domestic crisis response and international security cooperation.

### **Sri Lanka: Balanced Emergency Framework**

Sri Lanka should reform its emergency provisions to provide better balance between executive

authority and democratic accountability. This would enhance both domestic governance and international credibility in regional security cooperation.

### **Regional Coordination Mechanisms**

All three nations should consider developing constitutional frameworks for regional security cooperation that maintain democratic governance while enabling effective multilateral action. The Quad Alliance provides a model for such cooperation.

### **Conclusion**

The comparative analysis of constitutional war and emergency provisions in India, Japan, and Sri Lanka reveals the complex relationship between constitutional design and security governance in democratic systems. Each nation's constitutional framework reflects its unique historical experience, political culture, and security challenges.

The emergence of the Quad Alliance has created new constitutional questions about the balance between national sovereignty and regional security cooperation. While each nation has adapted its constitutional framework to accommodate these new realities, significant challenges remain in ensuring democratic accountability and constitutional compliance.

The study suggests that effective constitutional governance in the contemporary security environment requires explicit provisions for both emergency powers and international security cooperation. Constitutional silence or ambiguity creates uncertainty that undermines both domestic governance and international cooperation.

As Asian democracies continue to evolve and face new security challenges, the constitutional frameworks governing war and emergency powers must adapt while maintaining the essential principles of democratic governance. The experience of India, Japan, and Sri Lanka provides valuable lessons for constitutional design in the 21st century, particularly in the context of evolving regional security architectures.

The Quad Alliance represents both a challenge and an opportunity for constitutional governance in Asia. By providing a framework for democratic cooperation on security issues, it offers a model for how constitutional democracies can adapt to contemporary security challenges while maintaining their fundamental commitment to democratic governance and the

rule of law.

Future research should continue to examine the intersection of constitutional governance and regional security cooperation, particularly as new security challenges emerge and existing frameworks evolve. The Asian experience provides valuable insights for constitutional scholars and practitioners worldwide as democratic systems grapple with the demands of 21st-century security governance.

**Endnotes:**

<sup>1</sup> Harsh V. Pant, 'The Quad: What It Is and What It Is Not' (2021) 95 International Affairs 1283.

<sup>2</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press 2005).

<sup>3</sup> Giorgio Agamben, *State of Exception* (University of Chicago Press 2005).

<sup>4</sup> Mark Tushnet, *Comparative Constitutional Law* (Foundation Press 2014).

<sup>5</sup> Harsh V. Pant, 'The Quad and the Future of Asian Security' (2022) 48 International Security 45.

<sup>6</sup> Constitution of India 1950.

<sup>7</sup> *Union of India v. Azadi Bachao Andolan* (2003) 263 ITR 706.

<sup>8</sup> Ministry of External Affairs, Government of India, 'Joint Statement from Quad Leaders' Summit' (2021).

<sup>9</sup> Constitution of Japan 1947, art 9.

<sup>10</sup> *Sunakawa v. Japan* (1959) 13 Keishū 3225.

<sup>11</sup> Cabinet Decision on Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People, 1 July 2014.

<sup>12</sup> Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 4(d).

<sup>13</sup> Prevention of Terrorism Act 1979 (Sri Lanka).

<sup>14</sup> Constitution of India 1950, arts 352, 356, 360.

<sup>15</sup> *Minerva Mills v. Union of India* (1980) 3 SCC 625.

<sup>16</sup> 'India-China Border Standoff: Constitutional Implications' (2020) 5 Indian Journal of Constitutional Law 123.

<sup>17</sup> Law Concerning Measures for the Protection of the People in Armed Attack Situations (Law No. 156 of 2003).

<sup>18</sup> White Paper on Defense 2021, Ministry of Defense, Japan.

<sup>19</sup> Public Security Ordinance 1947 (Sri Lanka).

<sup>20</sup> 'Sri Lankan Crisis: Emergency Powers and Democratic Accountability' (2022) 15 Asian Journal of Comparative Law 234.

<sup>21</sup> Tanvi Madan, 'The Rise, Fall, and Rebirth of the Quad' (2017) 12 Brookings Institution Policy Brief.

<sup>22</sup> Legislation for Peace and Security (Law No. 76 of 2015).

<sup>23</sup> Disaster Management Act 2005 (India).

<sup>24</sup> Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response (Law No. 31 of 2012).

<sup>25</sup> 'COVID-19 and Emergency Powers in Sri Lanka' (2021) 8 South Asian Journal of Law and Policy 156.