

# Rethinking Crisis Constitutionalism: India Between the Political and the Legal

Crisis constitutionalism has emerged as a significant paradigm in comparative constitutional law, referring to the use of constitutional provisions and principles to respond to exceptional situations. In India, crisis constitutionalism has been invoked in response to various events, including the imposition of martial law, suspension of fundamental rights, and the declaration of a state of emergency. This article examines the complex relationship between crisis constitutionalism, political embellishment, and the Indian constitutional system.



## INDIAN CRISIS: CONSTITUTIONALISM & POLITICAL EMBELLISHMENT (Two Essay) by Paco Nadal

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## Crisis Constitutionalism in India

The Indian Constitution empowers the President to declare a state of emergency in the event of a threat to national security, war, or internal disturbance. During an emergency, the President can suspend certain fundamental rights and impose additional restrictions. The Emergency Provisions of the Constitution have been invoked several times in India's history, most notably during the Indira Gandhi era in the 1970s.

Crisis constitutionalism in India has been characterized by the use of exceptional powers to address perceived threats to the nation. However, this has also led to concerns about the potential for abuse of power and the erosion of fundamental rights. The Supreme Court of India has played a crucial role in adjudicating cases related to emergency powers and has sought to balance the need for national security with the protection of individual rights.

### **Political Embellishment and Crisis Constitutionalism**

Political embellishment refers to the use of constitutional provisions and principles for political purposes, often in ways that undermine the rule of law. In India, political embellishment has been observed in the invocation of emergency powers, the manipulation of constitutional amendments, and the selective application of constitutional provisions.

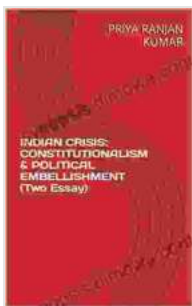
The Modi government's use of emergency powers in Jammu and Kashmir in 2019 is a recent example of political embellishment. The government's decision to abrogate Article 370 of the Constitution, which granted special status to the state, was widely seen as a political move aimed at consolidating Hindu nationalist rule. This action has raised concerns about the erosion of constitutional principles and the attack on regional autonomy.

## Rethinking Crisis Constitutionalism

The Indian experience with crisis constitutionalism and political embellishment necessitates a rethinking of the concept. Crisis constitutionalism should not be seen as a mere tool for managing exceptional situations but as a framework for balancing the need for national security with the protection of fundamental rights.

The judiciary must play a more active role in scrutinizing the use of emergency powers and ensuring that they are not abused for political purposes. Constitutional amendments should be subject to strict judicial review to prevent their manipulation for partisan ends. Additionally, there is a need for greater transparency and accountability in the use of constitutional provisions.

Crisis constitutionalism remains a central feature of the Indian constitutional system. However, the potential for abuse of power and political embellishment requires a critical re-examination of the concept. By strengthening the judiciary, promoting transparency, and fostering a culture of constitutionalism, India can navigate the challenges of crisis constitutionalism and ensure the enduring legacy of its constitutional system.



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