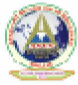
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# Emergency Provisions In Post Colonial Regimes A Comparative Analysis Of India And Pakistan

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***Abstract: The colonial origins of the emergency provisions of India and Pakistan, that were once used to suppress, are still vulnerable to misuse by authoritarian regimes today. However, socio-cultural changes in recent decades have strengthened the judiciary's role as a counterbalance to authoritarianism. This progression signals a new era of constitutional governance in India and Pakistan, where emergency powers are used judiciously, checked by the legislature, and overseen by an independent judiciary. This research paper examines the emergency provisions in the constitutions of India and Pakistan, highlighting their similarities, particularly in terms of executive centralization, suspension of fundamental rights, suppression of protest rights, and the judiciary's submissive role. Emergency powers aim to preserve legal order, not to centralize power in the executive, which contradicts the separation of powers doctrine. The paper explores how these provisions reflect the distinct federal structures and societal contexts of both countries, yet they converge in their challenges. To address these issues, reforms should include time-bound limitations and procedural rigor, fostering a balance between government branches to protect national sovereignty responsibly. Furthermore, this paper suggests a shift towards a more transparent process for declaring emergencies, emphasizing culturally sensitive and context-dependent reforms with public participation.***

**Key Words: British Colonial Regimes, Emergency Provisions, Federal Structures, Sovereign Power, Post Colonial.**

An "emergency" is a difficult situation that suddenly arises and necessitates immediate action on the part of public authorities, either through the use of powers specifically granted to them by their respective constitutions or in any other way, to meet such demands. The framers of liberal democratic nations' constitutions set out to make emergency provisions that can withstand the unanticipated likelihood of internal or external aggression, which would disrupt a nation's current legal, political, economic, and social order. Due to the imminent danger that exists during such times, the organs of the government require immediate action on their part to uphold the existing constitutional order and avoid a state of hostility and aggression. Constitutional systems across the globe were built during different time periods due to which the subject matter of operation of emergency powers varies. There's a distinction between how developed nations and nascent states respond to exceptional circumstances. Some countries are also inspired by other countries with efficacious framework of emergency provisions. Hence, it becomes imperative to not impetuously incorporate them into their constitutional order but to do so only after taking into consideration their indigenous nature of responses to emergencies in historical and institutional context.

Sovereignty is endear to the State during such exceptional times, when there is threat to its very existence, and the goal is to minimise the peril. In modern democracies, the sovereignty of the state is held collectively, not vested in hands of a single individual, and manoeuvred by the rule of law. However, legal scholars like Carl Schmitt and Giorgio Agamben are of the opinion that "the sovereign is he who decides on the state of exception." In essence, it implies a binary approach to separating sovereignty and legality and that the sovereign as a sole authority decides the state of exception and its legality, that State remains superior to the legal norms. Whereas David Dyzenhaus emphasises that where the sovereign power is ultimately located isn't as important as the quality of the legal order or rule of law that shall be upheld during state of emergencies, highlighting the role of courts to maintain checks on powers exercised by the State. It is the rule of law that makes it possible to provide a basis for accountability of the executive, which further preserves legality. As Leonard C. Feldman argues, the state of exception needs to be understood as a different body of laws and not a departure from all the laws, highlighting its consonance with legality.

India and Pakistan are federal states as per their respective Constitutions. However, during times of emergency, there is power concentration in favour of the centre that disrupts the federal nature of the States. The constitutional provisions of "emergency powers in India and Pakistan are very similar to each other as they have inherited and embodied the same structure of the erstwhile Government of India act, 1935, that existed during the British colonial rule, which was primarily based on a centralised model of executive governance".

This research paper critically analyses the constitutional framework and exercise of the national emergency provisions

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of India and Pakistan deployed during war, external aggression and armed rebellion or internal disturbance. The study assesses the typology of emergency powers adopted by contemporary modern democracies, while also addressing the limitations in its operation. It also addresses the impact of colonial emergency provisions in contemporary times, particularly focusing on the two most controversial emergencies promulgated post- independence in India (1975) & Pakistan (2007). As a limitation, it does not consider the operation of emergency powers promulgated during failure of constitutional machinery in provinces and financial instability.

The underlying philosophy behind incorporating emergency provisions into the constitutional framework is to conserve the legal order that existed prior to the state of exception. This may mandate centralization of power as a byproduct. However, such concentration of power in the hands of a majoritarian regime invariably enhances hegemony and authoritarianism, as history is testament - which is not the primary goal. Hence, the national emergency provisions should be amended in line with the philosophical foundations, so as to avoid breeding chaos, maintain checks and balances on organs of the government and inhibit misuse by political generations to come.

**IMPACT OF COLONIAL EMERGENCY POWERS IN POST COLONIAL REGIMES-** Emergency powers in theory and in practice vary distinctively, with the aim to attain status quo that existed before proclamation of the emergency. Victor Ramraj argues that while proclaiming an emergency, the government experiences an 'emergency powers paradox' wherein emergency powers in operation that counter the alleged threat, aimed to protect democracy, tends to undermine the democratic principles simultaneously . Such powers can be misused by the government, resulting in establishment of an authoritarian regime where various civil liberties of individuals are impeded upon on grounds of national security and creating stable legal and social order. This can also lead to creation of power imbalance amongst the three organs of the government where there's concentration of powers in the hands of some. Ramraj argues that the struggle for constitutional constraints on emergency powers is more political than legal till constitutional culture is firmly established.

Pakistan and India followed an executive model of emergency powers right after independence as they both inherited the emergency provisions from the erstwhile British colonial statute, namely Government of India Act (1935). The emergency laws under the act were not designed with the intent to maintain balance amongst the organs of the government nor did they aim to protect the civil liberties of the individuals or establish constitutional order. India was a colony of the British Raj, which had complete control over the administration of law and order across the nation. The emergency laws focused on the interest of the British at the cost of infringement into the fundamental rights of the Indians. The aim of the act was "to maintain executive's supremacy over other organs of the government and to take extra-legal measures in cases of threat to the sustenance of the colonial power. The aim of the emergency power regime is to preserve the legal order as it is the fundamental 'conservative' purpose of emergency powers in order to restore the constitutional status quo without causing any detrimental and permanent changes to existing legal framework. Governor General, the head of the executive, and Governors of Indian states had the complete power to exercise emergency powers in order to prevent 'any great menace to peace or tranquillity of India' under section 12 (1) (a) of the GOI Act (1935)".

Under section 102 of the 1935 act, there were no checks and balances on the discretionary powers of the Governor General to proclaim emergency in case of war or internal disturbance. The British Parliament was required to approve the operation of relevant emergency provision within six months, post which it did not require approval from the parliament for its continuation. It also did not specify any stipulated time frame of its withdrawal. The law- making powers of the provincial legislative assemblies was also transferred to the federal legislature, minimising their overall participation in the decision-making process. Notably, there was also no way for the aggrieved parties, subjected to arbitrary application of power by the emergency regime, to claim and enforce their fundamental rights, highlighting the lack of concerns regarding the protection of the rights and liberties of Indian people. The imperial powers deployed the use of emergency powers to suppress dissent, sustain control and consolidate authority over their colonial subjects. They used emergency powers in a suspicious manner without any justifiable grounds. This highlights the colonial understanding that was embedded in the executive model of emergency powers where the British intended to oppress and shy away from accountability of their actions. This manifestation of the emergency powers pre-disposed the future modern constitutional governments to take arbitrary actions with impunity and without accountability. Hence, colonial emergency powers significantly influenced the constitutional order of India and Pakistan in post transition phase from colonialism and continue to influence their social, legal and political order in various ways.

In post-colonial regimes, the emergency powers paradox is reinforced when the leaders of the nascent nations continue to use the expansive emergency powers in order to safeguard the new constitutional order. The emergency powers

were used to preserve an authoritarian regime in the colonial era and the adoption of these measures by contemporary government can result in tensions between the centre, states and citizens of the nation, leading to infringement on civil liberties and democratic norms. Constitutionalism plays an important role in maintaining checks and balances on the executive powers, preventing them from attaining their extraconstitutional objectives by constraining their scope to achieve the status quo that existed before the crisis. The historical misuse of emergency powers can imbue distrust between the public and the government, highlighting the tension between security of the nation and civil liberties of the individuals. Both India and Pakistan have struggled with the legacy of the colonial emergency powers. The history of the operation of emergency powers, especially the emergency of 1975 in India and 2007 in Pakistan, continues to haunt the conscience of many, highlighting the need to use them cautiously to maintain the balance between ensuring security the nation and safeguarding individual liberties. As Upendra Baxi states, "Postcolonial' is not so much a history of miscellaneous and contingent events but conspectus of the violent erasures of 'deep' time encasing the pre- colonial peoples and societies". The Imperial power regime was an absolutist government and modern liberal democracies have to be conscious and mindful of the colonial continuities and discontinuities in order to establish a stable constitutional order. There's need for a more nuanced understanding of emergency powers within a contextual framework of ethical and political conflicts of a nation. If we bear in mind the dangers that are inherent to 'the state of exception', the contextual and historical particularities of a society and challenges faced while establishing a stable constitutional order, we might find a useful starting point for analysing emergency powers in Asia.

**MODELS OF EMERGENCY POWER IN CONTEMPORARY LIBERAL DEMOCRACIES-** The liberal constitutional governments, "which generally consist of a developed legal infrastructure and an entrenched culture of accountability , experience a major dilemma during times of crisis as a state of emergency challenges the existing constitutional order of the nation. They have to counter the prevailing threat to protect the security of the nation for which swift responses are needed, which may impede upon individual freedoms. The aim of giving emergency powers to the authority is fundamentally 'conservative', to ensure that the temporary emergency regime strives to resolve the threat and restore the conditions that existed prior to the crisis. With the passage of time, situations which needed to be countered by invocation of emergency powers can now be managed by alternative measures and legislations. The classic idea of an emergency originated in the Roman Republic, where a dictator was granted the special emergency powers by the Senate to counter the threat to the sovereignty of the republic".

The contemporary debates over emergency powers are mostly concerned with the level of specific emergency powers and fundamental notions of legality. The former entails capability and efficacy of the exiting emergency powers framework to counter the threat in a an adequately prepared manner whereas the latter is concerned with how the state administers to preserve legality during the period of emergency. Victor Ramraj proposes three models based on the type of checks on emergency powers, which are as follows-

**1. THE LEGALITY MODEL-** David Dyzenhaus is one of the contemporary scholars who supports this model which is principally focused on the "role of courts as key players in the preservation of legality during times of emergency". He contends that judiciary is the most effective organ of the government. It can maintain strong checks and balance and make the most of the power of hindsight in assessing the overreach of executive powers, if any. He proposes to subordinate the emergency regime to the rule of law, highlighting the ideals of fairness, reasonableness and equality before the law. The model is based on the premise that the sovereign must be subjected to the law of the land, that the rule of law is supreme and judicial review acts as an excellent check on the emergency powers of the executive by preserving legality. However, Ramraj criticises this approach on the ground that the courts cannot be completely relied upon as they don't have the institutional dexterity to handle matters concerning national security. Hence, there's a need to strike a balance between the confidentiality of sensitive information related to national security and the need to preserve legality.

**2. NEO-ROMAN MODEL-** This model proposes "the application of ex ante procedural checks on emergency powers as a constitutional framework that is inspired by the Roman Republic where the dictator had unlimited power during the limited period of emergency". Bruce Ackerman proposes a supermajoritarian escalator where he propounded that congressional termination of the emergency can facilitate restraining the executive from making whimsical permanent fixtures to the constitutional order, as congress will periodically vote for its continuation. It acts as a barrier to indefinite continuation of the emergency. "This helps counteract the normalisation of the state of emergency by setting the course of the extra constitutional regime on a trail of a gradual ending over several months. This political check induces the tendency of using emergency powers rather more consciously and cautiously. According to Ferejohn and Pasquino , the purpose of emergency powers is to restore the constitutional order, where the authority determining the conditions of invocation of emergency

powers should be different the authority exercising it. There must be ex ante and ex post procedural regulations to oversee the operation of the emergency regime. This highlights the pros of the neo-roman model over the legality model as the latter may result in permanent fixtures to the legal order of the nation. Hence, the neo-roman model creates a super-constitutional emergency government where the executive exercises the emergency powers for limited time to restore the constitutional order. This approach also advances that the courts should not be the frontier organ for maintaining check on abuse of the emergency powers. Therefore, ex ante constitutional procedures can assist in furthering the legal ethics of clarity, publicity, generality, prospectiveness and stability. The inherent danger to this model is the consequences in case of suspension of the constitution, where the executive can act outside the rule of law and take extra-legal measures to mitigate the perils of the crisis".

**3. EXTRA-LEGAL MEASURES MODEL-** Oren Gross designed this model where he accepts that the public officials may have to take extraconstitutional measures in case of imminent threat to the sovereignty of the nation. This model suggests that there should be ex post checks on the extra-legal measures taken by the executive in order to preserve legality successfully in the long run. A.V. Dicey recognizes that public officials may have to act outside the constitutional domain and resort to actions that are illegal but taken in good faith. According to Gross, it's "the best way to protect rule of law in liberal democracies during emergencies". Even though violation of law is no justification, but at times, the situation at hand demands the authority in power to take swift measures to counter the threat and protect the security of the nation. Such actions of the authority can be subjected to scrutiny by the people, who will determine the cogency of the emergency measures by holding the public officials accountable for their deliberate actions. Gross suggests that in order to invoke this model, following three conditions should be borne in mind :

I. emergencies call for extraordinary governmental responses;

II. constitutional arguments don't sufficiently influence the ability the government's ability to respond to such emergencies, and;

III. that it's highly likely the legal measures deployed by the government during the period of emergency will seep into the legal system post cessation of emergency.

Following the lead of Schmitt's insistence on state's superiority over rule of law during state of exception, Gross also maintains that legal norms are subjugated to state of exception. He is also doubtful of the ability of courts to maintain checks on the abuse of emergency powers as they usually have a subservient attitude towards the executive towards times of crisis. Gross suggests that public opinion will help promote accountability of the executive for their actions but does not mention how the public will do so to assert a definitive control over the legality of the actions.

Every country has different set of legal, social and political norms, and varied capability in responding to crises. It's imperative for every organ of the government to respond to the crisis in a responsible manner, without encroaching into the functional domain of other branches of the government. While adopting the appropriate model of emergency powers in contemporary liberal democracies, its important to take their historical and cultural context into consideration for optimal use of emergency powers during state a of crisis.

**EMERGENCY PROVISIONS OF INDIA AND PAKISTAN-** The national emergency provisions of India and Pakistan trace their roots back to the Government of India Act (1935) which was a legislation that governed British India. The emergency provisions concentrated powers in the hands of the executive during times of crisis. The operation of these provisions has resulted in contentious periods, in context of their arbitrary use by the executive government, sparking debates advocating for better safeguards against misuse and protection of the civil liberties.

**1. CONSTITUTION OF INDIA (1949)-** "Dr. Ambedkar claimed that the Indian Constitution and federation is unique insofar as during times of emergency it could convert the Indian federation into an entirely unitary state, giving more power to the centre government. This position was also upheld by the apex court in the case of Gulam Sarwar v. Union of India (1976) . India's constitution is unique in that it has a comprehensive plan for quickly readjusting the peacetime governmental apparatus in times of national emergency. The emergency provisions in part XVIII of the constitution (Article 352- 360) have been extensively amended by the 42nd and 44th constitutional amendment acts, resulting in providing three different kinds of abnormal situations which call for the departure from the normal governmental machinery set up by the constitution itself".

The "Govt. of India Act (1935), also known as the interim constitution, was replaced by the Indian Constitution in 1949. Article 352 requires the president to declare national emergency if he/she is satisfied that there is existence of threat or imminent danger of threat of armed rebellion, war or external aggression. The President can issue an order proclaiming emergency and it can only be issued on the basis of written advice of the cabinet. The order also must be laid before both the

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houses of the parliament and be passed within a period one month with special majority. Once imposed, the period of continuation of the emergency is 6 months, which can be renewed over and over again by the parliament for an indefinite period of time. Prior to the 44th CAA (1978), a proclamation of emergency once approved by both the houses of parliament could be revoked only by the President, by making a fresh proclamation. Thus, the executive was the sole judge to decide as to when the period of emergency should come to an end.

It could continue indefinitely, with no provision for periodical review by the parliament. For example, the 1971 emergency was revoked in 1977, along with the 1975 emergency.

However, post 44th CAA, the emergency can now be revoked by a subsequent proclamation issued by the president, periodical review by parliament every 6 months or a compulsory revocation order by the President if the Lok Sabha passes a resolution disapproving of the emergency".

The declaration of an emergency will have a number of executive, legislative, and financial effects. The state government goes under the control of the association chief and the organization of the country to the extent that the declaration goes, will work as under a unitary framework with nearby developments.

The state legislature is able to pass laws that are subject to the central government's veto power. Legislation granting the state executive with powers or responsibilities can also be passed by the parliament. Articles 20 and 21 cannot be suspended by the president, but the president can order the suspension of article 19.

During the emergency period, any emergency laws that violate article 19 can be challenged after the emergency has ended. During a time of emergency, anyone could apply to the Supreme Court for a writ of habeas corpus in accordance with article 359 of the 44th CAA.

**2. CONSTITUTION OF PAKISTAN (1973)-** Since its inception, Pakistan has been ruled by the military for a number of years. The declaration of a national emergency under Article 232 of the Pakistani Constitution can be made in response to war, external aggression, or internal unrest.

The Indian Constitution's provisions are very similar to these. During a state of emergency, citizens' fundamental rights are also suspended and executive power is primarily concentrated. Pakistan's new constitution grants the president broad discretionary authority to even suspend the prime minister and the national assembly. Because the President is not elected directly, there is no public accountability for his or her actions.

In practice, the military regime acted as the sole authority over provincial and federal regimes and believed that it was not bound by the constitution. The Majlis-e-Shoora (parliament) must approve the emergency powers exercised by the presidential order after it has been issued. There could be no appropriate arrangement of keeps an eye on the activity of the crisis powers of the leader which can be seen in article 232 (6).

This arrangement engages the President and Parliament to expand the crisis for a time of one year, requiring the job of legal executive in a chief focused model of crisis powers. The scope of judicial review of the proclamation and revocation of emergency-related orders is explicitly prohibited by Article 236. The Pakistani constitution also borrowed the idea of limited role of provincial assemblies in case of national emergency from the 1935 Act. The state subjects are under the authority of the centre during the period of emergency.

However, its important to highlight that there are several procedural flaws in the Pakistani constitution which may result in arbitrary use of the emergency powers for personal gains. Under article 232 (7), the Parliament gives a three-month period, which was six-months earlier, to approve the proclamation of any emergency laws and provisions which further contributes to a delayed process of countering the immediate threat.

This delay must be addressed for further reducing the time period. State of emergency is a temporary situation where the goal of the emergency powers is to restore the status quo of the constitutional order. However, the national emergency provision in the Pakistani constitution is not time-bound, implying they may continue for an indefinite time period without any proper qualification for approval of continuation.

It does not provide reassurance for the restoration of the constitutional order, defying the fundamentally conservative purpose of emergency powers. Article 233 permits unbridled suspension of fundamental rights by the President, which is further subject to the approval of the parliament. However, the conditions on which the fundamental rights are suspended are to be categorized accordingly on basis of their necessity.

It's vital to increase the role of courts in adjudicating the conditions under which the emergency regime was imposed and the subsequent actions of the executive should also be scrutinized in order to streamline them according to democratic principles and norms.

| Government of India Act, 1935 | Indian Emergency Provisions | Pakistani Emergency Provisions | |
|---|---|---|---|
| Reasons for emergency | Internal Disturbance or war (Sec 102) | War, external aggression and armed rebellion (Art 352) | Internal Disturbance, war (Art 232) |
| Proclamation of emergency | Executive - Governor General | Executive – President only (on advice of Union cabinet) | Executive – President |
| Ex-post approval of proclamation | British Parliament – In 6 months | By Parliament – In 30 days | Parliament (in 1+2 months) |
| Legislative power for emergency laws | Federal Legislature – Indian Legislative Body | Executive (Union Cabinet) + Parliament (Art 353) | President + Parliament |
| Approval of emergency laws | Executive - Governor General | Parliament | Ex-post approval by Parliament (in 3 months) |
| Express termination of emergency | Executive - Governor General or Governor | Parliament + President (not refusal of continuance in force by Parliament) | President (not refusal of continuance in force by Parliament) |
| Renewal requirement for emergency | No | Yes – after every 6 months | No |
| Time-bound | No | No | No |
| Re-establishment of norm (Emergency laws cease to have effect) | After 6 months of cessation of emergency | Yes (Only in laws with derogation of Arts 19, 20 and 21) – immediately after cessation of emergency | Yes – 6 months after cessation of emergency |

**Table 1 - MAPPING OF EMERGENCY PROVISIONS**

**CONTROVERSIAL EMERGENCIES-** The possibility of governments deploying extraconstitutional measures during periods of emergency significantly alters the constitutional landscape of the nation. This can be seen in the emergencies imposed in India and Pakistan in 1975 and 2007, which are often referred to as the dark times of constitutional governance. Interestingly, the common feature in both the emergencies is that they were imposed as a consequence of judicial activism that threatened the eligibility of the governments to remain in power.

In 2007, a very controversial emergency was declared in Pakistan by Pervez Musharraf when he clashed with the judiciary as judicial independence threatened his political career. It was believed that the judiciary showcased great courage and independence during the tenure of Iftikhar Muhammad Chaudhary, Chief Justice of Pakistan, which was singled out as the major reason for invoking an emergency regime. The proclamation was invoked by Musharaaf as Chief of Army Staff rather than a president, on grounds that the government can no longer act in accordance with the constitution, resulting in suspension of the constitution and imposition of extraordinary measures. A provisional constitutional order was also passed that constrained the judiciary from taking actions against the president, prime minister and authorities that were delegated to be working under them. "A number of fundamental rights in Part one of the Pakistani constitution were also suspended. Such actions attracted strong resistance from the legal fraternity of the country. There was large-scale political instability that led to undemocratic developments, posing a great threat to the human rights in Pakistan as there was widespread curbing of civil and political rights of the citizens". The government justified its actions on the grounds of deployment of the doctrine of necessity, to back the validity of their extraconstitutional actions. The legal and constitutional changes introduced by Musharraf were intended to exist permanently. All the events discussed contributed to various extraconstitutional measures undermining the legality of the constitutional framework. Interestingly, there was no clear basis of distinction between the constitution and extra- constitution, as both existed simultaneously. These measures have also amalgamated with the normal functioning of Pakistani law to a considerable extent.

In 1975, Indira Gandhi declared an emergency across India on grounds of internal disturbance, succeeding in imposing an authoritarian regime. It was a result of the decision passed by a high court that invalidated her election win on grounds of deploying corrupt practices, consequently barring her from public office. The President declared the emergency without any discussion with the houses of the parliament. The purpose of the invocation of the emergency regime was very similar to the of Pakistan's emergency in 2007. There were similar judicial and political concerns of the government, as a judicial decision (legitimised by judicial independence) endangered Gandhi's ability to stay in power. Gandhi was primarily motivated by advancement of her agenda to uphold the political status quo. She chose to pursue extraconstitutional means to counter the dissent from civil society and opposition members. There was a significant divide within the legal fraternity as well, wherein the courts had a certain level of subservient attitude towards her actions that resulted in upholding the validity of her elections to parliament and refused to scrutinise her emergency declaration or suspension of writ of habeas corpus. Just like Musharraf,

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Gandhi also intended to recreate a new constitutional order that would bring about permanent and foundational transformation.

**ROLE OF COURTS-** The propensity to misuse by the executive, intrinsic to the nature of emergency powers, renders tremendous import to judicial scrutiny and judicial review, especially in developing Asian countries like India and Pakistan.

HP Lee argues that one of the major challenges to the prevention of executive and political abuse of the extraordinary emergency powers is their official addition to the constitution, a feature unequivocally absent in Western tradition. Lee argues that the entrenchment of emergency powers in the constitution drastically limits the scope of review by judges, as judges are hesitant about their ability to check the abuse of constitutionalised exceptional powers. Other scholars mirror Lee's concern regarding the abridgement of judicial scrutiny in case of constitutionally ingrained emergency powers - for example the invocation of the doctrine of "political questions" in one such case. Lee proposes that the delineation of emergency powers should be embodied in ordinary statutes, which will enhance the scope of regulation and review through judicial doctrines (one such doctrine cited by Lee being "proportionality"), and will explicitly confer stronger powers of scrutiny to the courts in cases of abuse of emergency powers.

Contrary to Lee's pessimism, other scholars have a more optimistic view of the role of the courts. Clark Lombardi recounts the authoritative dissents by Justice AR Cornelius in cases related to Pakistan's first state of emergency (1954) and first martial law (1958). Cornelius inveighed against his colleague' inhibitions to checking the abuse of emergency powers by the executive and their quiet capitulation to the executive juggernaut. Cornelius believed in an unusual solution - creation of a "culture of constitutionalism" in Pakistan. He believed that the abortive adoption of the colonial era powers of emergency severely lacked public legitimacy and prevented public participation. Cornelius argued that connecting the legal system to the liberal ideals of Islam will "resanctify" the judges' constitutional role as sentries against executive overreach.

A more balanced approach has been adopted by some scholars, such as Arun K Thiruvengadam . Thiruvengadam, on one hand, acknowledges the pessimism espoused by the judicial skeptics, but on the other hand, argues that in recent decades, courts in much of Asia have been seemingly empowered. A result of certain socio-cultural shifts, this emboldening of judges and courts has been a precursor to increasing public participation in the judicial process and has legitimised the role of the courts as guarantors of rights and bullwarks against arbitrary misuse of powers by the executive. Thiruvengadam mentions the examples of Justice Cornelius (Pakistan) and Justice HR Khanna (India). He argues that their solitary yet profound dissents are testament to the long-standing familiarity of judges with arguments against executive overreach in times of emergency. This argument, which acknowledges past ills yet is optimistic in outlook, embraces historical adversity as harbinger of change. Thiruvengadam concludes that this progressive change will further strengthen the ability of courts to intervene in case of arbitrary executive overreach and portends a bright future for judicial systems in India and Pakistan.

**CONCLUSION-** The constitutions of India and Pakistan are very similar to each other insofar as their incorporated emergency provisions. Some common features include the centralised role of the executive, suspension of fundamental rights, suppression of right to protest against the arbitrary actions of the government, submissive role of the judiciary, etc. The true goal of emergency powers is to preserve the legal order that existed prior to the proclamation of the emergency, and not the partisan centralisation of power. The concentration of power in the executive during emergency periods runs counter to the doctrine of division of powers. The diverse backgrounds of India and Pakistan are reflected in the emergence of a particular system of federalism and a unique mechanism to deal with emergencies. It can be concluded that the problems, as mentioned above, faced by the constitutional governments of India and Pakistan during periods of emergencies converge. However, the way ahead requires taking into account the diverse contextual sensibilities of Indian and Pakistani societies.

Some general improvements are required in both countries. The principle of limited temporal duration and strict procedures should be upheld during the period of emergency. Both the countries should amend their respective constitutions in a manner that leads to a balance between the roles of the three organs of the government, in order to counter the imminent threat to the sovereignty of the nation in a responsible and efficacious manner. There's a need to progress towards a more transparent system of proclaiming national emergencies. But for a more granular improvement, culturally sensitive and context dependent changes will be required along with seamless public participation.

The reasons for having emergency provisions in liberal democracies are comparatively distinctive to the reasons for its existence during the colonial time period. In cases of India and Pakistan, the colonial remnants intrinsic to emergency provisions, originally employed by colonisers to subdue and supress, are prone to misuse by authoritarian governments to perpetrate their hegemony. As discussed in this paper, numerous such instances can be mentioned where authoritarian governments have coopted these colonial measures to further exploitative and selfish political schemes. But over the last few

decades, a slew of socio- cultural shifts has empowered the judiciary to act as a better levee against the tide of authoritarianism. This augurs a new era of constitutional governance in India and Pakistan, whereby emergency powers are invoked justly and judiciously, consistently approved by the legislature and are kept in check by a strong and independent judiciary. India and Pakistan need to abandon their colonial shackles and walk freely, unabated and confidently towards a culturally and contextually sensitive constitutional government.

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