

**Constitutional Design of Emergency Provisions: A  
Comparative Analysis of Pakistan and India**

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This article analyses the constitutional design about the exercise of emergency powers within a comparative context of Pakistan and India. It critically engages with the operation of the emergency provisions within the constitutional framework of both jurisdictions by comparing the colonial and contemporary structures. It does so by providing a theoretical framework that creates a typology of emergency powers, namely the legislative model and the executive model. It then assesses the two models against the limitations on constitutional emergencies, provided under both the Pakistani and Indian Constitutions, to see which model is more compatible with the same. It argues that both countries have adopted the executive model, which is a system borrowed from colonial times, and hence does not suit the needs of the present time. Also, unlike the legislative model the executive model does not comply with the limitations on constitutional emergencies, provided under both constitutions. It rather facilitates the abuse of emergency powers on the part of the executive. Hence, it is suggested that both countries shift towards the legislative model in order to circumscribe the discretionary emergency powers of the executive.

**Introduction**

Almost all constitutions are designed to cope with uncertain times and events, therefore, emergency provisions are highly important. In constitutional terms, an emergency is a situation which includes ‘some imminent danger to the life of the nation, requiring some immediate action’ by the government to preserve the prevailing constitutional order.<sup>1</sup> However, the exercise of

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<sup>1</sup> Merriam Webster Dictionary.

emergency powers is oftentimes curtailed by various conditions, both in theory and in practice. In broad terms, scholarly literature in political science, political philosophy and legal theory lays down three overarching limitations on emergency laws which seek to ensure that such exceptional powers: (i) are used only as a last resort; (ii) are expressly time-bound; and (iii) aim to preserve and restore the original constitutional order after the emergency has lapsed.<sup>2</sup> Generally, emergency measures include, amongst other things, suspension of enforceable constitutional rights; takeover of the legislative and executive authority of the states or provinces by the central government; and ousting of the courts' jurisdiction with regards to certain emergency actions of the government. Practically, it means that the constitutional machinery is suspended, coupled with transfer of 'full powers' to the executive branch of the government.<sup>3</sup> Since necessity knows no law and the will of the executive becomes the word of law, emergency is considered as the ultimate measure to save the state from anarchy. The entire exercise of these exceptional powers is for protecting the constitutional order and upholding Fundamental Rights in a state.

The question of the design and exercise of emergency powers within a comparative context of Pakistan and India is the pivotal concern of this article. The aim of the article is to critically analyze what emergency powers entail and how they operate within the constitutional scheme of Pakistan and India, both historically and in contemporary times. Part I of this article briefly introduces the theoretical framework that creates a typology of emergency powers, namely the executive versus the legislative models. Subsequently, the emergency provisions of the

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<sup>2</sup> Giorgio Agamben, *State of Exception* 2003 (Kevin Attell tr, University of Chicago Press 2005) 1-31; Hannah Arendt, *On revolution* (Penguin 1965); Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab tr, MIT Press 1985).

<sup>3</sup> Herbert Tingsten, *Les Pleins Pouvoirs: L'expansion des Pouvoirs Gouvernementaux Pendant et Après la Grande Guerre* (Librairie Stock 1934), 13.

Government of India Act, 1935 (the '1935 Act') are examined in Part II to provide a historical background to the continuity of executive-centred emergency powers in Pakistan and India. In Parts III and IV, the article juxtaposes the three limitations of constitutional emergencies, as discussed, with constitutional provisions under the Pakistani and Indian constitutions respectively, in order to assess the extent to which the latter comply in principle with the former. Finally in Part V, the theoretical framework laid down in Part I of the article is used to understand which 'type' is more compatible with the three limitations (assumption being that a constitutional emergency based on such limitations is more likely to protect Fundamental Rights and a democratic system). The article applies this typology to the Pakistani and Indian case studies to demonstrate that the 'legislative model' is more compatible with constitutional emergency powers. In conclusion, the article suggests changes to the constitutional provisions relating to emergency in Pakistan and India to bring them in line with the legislative model.

### **Part I: A Typology of Emergency Powers**

Ferejohn and Pasquino distinguished two structural models for the exercise of emergency powers: the executive and the legislative.<sup>4</sup> Within each model, they divided emergency powers into four characteristics to theorize the effect and impact of the model on the nature of the emergency. These characteristics are: (i) proclamation or declaration of emergency (who has the power to proclaim an emergency, in what circumstances, and with what limitations or checks at the time of the proclamation); (ii) exercise of emergency powers (what kind of emergency powers are constitutionally permissible, and who has the authority to exercise them); (iii) determination of re-establishment of the norm (to what extent is the emergency time-bound, who has the authority to terminate or to decide when to terminate the emergency and how is the pre-emergency constitutional order to be restored); and (iv)

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<sup>4</sup> John Ferejohn, Pasquale Pasquino, *The Law of Exception: A Typology of Emergency Powers*, 2 Int'l J. Const. L. 210 (2004) 210-239.

review of and control over the effects of emergency powers (that is, by the legislature or the judiciary) at the time of proclamation or during the emergency.<sup>5</sup>

According to Ferejohn and Pasquino, in the executive model of emergency, the executive head (usually the president) has the effective power of proclaiming emergency and exercising emergency powers, though the re-establishment of the norm is usually dictated by predetermined constitutional provisions and some form of legislative check. In the legislative model, on the other hand, the legislative body proclaims emergency and the executive head or the president exercises emergency powers on the advice of the legislature. The re-establishment of the norm is determined in a manner similar to the executive model, namely, through legislative and judicial controls over emergency powers such as adjudication or judicial review of emergency laws and actions. Although Pasquino provides a rough outline for these models, variations within the distribution of these powers in each model exist. In certain cases, the variations within models cause concentration of power in one or the other limb of the government, resulting in an unbalanced model.<sup>6</sup>

In terms of the simple typology presented by Ferejohn and Pasquino, Pakistan and India follow an executive model. This is not a mere coincidence. Both countries inherited their emergency laws from British colonial statutes.<sup>7</sup> In concurrence with existing critical scholarship on the subject, this article argues that colonial emergency law was not designed with the intent of balancing powers among different branches of government or of preservation of constitutional order and Fundamental Rights. The motive behind the legislation was to manage law and order in the colony and ensure effective administration of the British Raj, even at the cost

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<sup>5</sup> *ibid*, 230-231.

<sup>6</sup> *ibid*, 211-220.

<sup>7</sup> Anil Kalhan, *Constitution and 'Extraconstitution': Emergency Powers in Postcolonial Pakistan and India*, in Victor V Ramraj and Arun K Thiruvengadam (eds) *Emergency Powers in Asia: Exploring the Limits of Legality* 2010) 89-120.

of Indian lives.<sup>8</sup> Hence, this article argues that the adoption, in large part, of the executive model by both Pakistan and India as newly independent nation states resulted in the reinforcement of the concentration of power in the executive branch of the government, with adverse consequences for their respective constitutional systems.

## **Part II: Emergency Provisions in the Government of India Act, 1935**

The 1935 Act was passed by the British Parliament for managing the affairs of the Indian Colony. There were various provisions in the 1935 Act which established the executive's supremacy over other branches of the government. The head of the executive was the Governor General, a nominee of the British government, who had enormous powers over his dominion. For the purposes of this analysis, one can consider the British Parliament as an executive body, as the Parliament had no Indian legislators. The local Indian legislature, known as Federal Legislature, consisted of two houses: the Council of States and the Federal Assembly. As has been persuasively argued by scholars, emergency provisions in the 1935 Act were introduced not to preserve the constitutional order, but to provide an opportunity to the colonial rulers to declare a state of siege or to take extra-constitutional steps.<sup>9</sup> Section 12(1) of the 1935 Act defines some special responsibilities of the Governor General, including '(a) the prevention of any great menace to peace or tranquillity of India; [and] (b) safeguarding of the financial stability and credit of the Federal government'. This section is the source for granting a *carte blanche* to the Governor General and the Governors of Indian states for proclaiming emergency and promulgating laws accordingly. It undertakes a clause by clause analysis of

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<sup>8</sup> Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press, 2003); Rande W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (OUP, 2008); Lauren Benton, *Empires of Exception: History, Law, and the Problem of Imperial Sovereignty*, 54 *Relazioni Internazionali*, 2007.

<sup>9</sup> Kalhan (n 7). 114-120.

emergency provisions of the 1935 Act, in light of the three limitations of constitutional emergency powers, namely: last resort, time-bound and preservation and re-establishment of constitutional norm.

The 1935 Act defined two types of emergencies: those emerging from a failure of constitutional machinery (s 45); and those arising due to 'war or internal disturbance' (s 102). In the case of failure of constitutional machinery, the Governor General had vast discretionary powers to proclaim emergency at the Federal level. In contrast, the Federal Legislature was toothless and had no role to play in circumscribing the authority of the Governor General either by ensuring that the emergency was proclaimed as a last resort or in checking the Governor General's law-making powers for the duration of the emergency. Nonetheless, the proclamation of emergency had to be approved by the British Parliament within six months of its proclamation, and this extended the period of the emergency for another year from the date of such approval. Overall, an emergency could not carry on continuously for more than three years. Thus, the Governor General's emergency powers were time-bound under the first kind of emergency. However, the laws made pursuant to the exercise of emergency powers could continue to have effect for up to two years after the emergency had expired, unless repealed or re-enacted by the Federal Legislature. Similar emergency powers vested in Governors in their respective provinces, empowering them to proclaim emergency at the provincial level (s 93).

In the second type of emergency, emerging from war or internal disturbance, the power of proclamation of emergency once again vested in the Governor General without any checks and balances to ensure its use only in extreme circumstances. As with the first kind of emergency, the British Parliament had to approve the proclamation within six months. However, the second kind was not time-bound and was not subject to any form of legislative approval for continuance in force. Nevertheless, the law making power with regards to provinces during the emergency was granted to the Federal Legislature. Still, the ultimate authority to repeal or approve a statute remained with the Governor General.

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In effect, the 1935 Act authorized the exercise of virtually unqualified powers by the Governor General without the input of the local legislative assemblies. Moreover, the 1935 Act was devoid of enforceable Fundamental Rights, which meant that to begin with, their derogation or suspension through emergency powers was not an issue. As underscored, the British Parliament was devoid of Indian representation, therefore, it had no interest in protecting the rights and liberties of the Indian people or, in other words, it did not have the incentive to serve as a watchdog on executive powers exercised in India.

Appendix I draws attention towards the eccentric nature of the emergency model under the 1935 Act, showing a clear tendency towards discretionary abuse of executive power. In this model, emergency was not a short-term measure (as it could be extended from six months to three years in case of the first kind of emergency) and was not even time-bound in case of second type of emergency. The purpose of such an emergency law was not to protect the constitutional order for preserving individual liberty or democratic values, but was intended primarily as a means for peaceful extraction of resources from the Indian Colony. To this end, peace was forcefully created rather than maintained via an executive-centred 'constitutional' framework.

### **Part III: Emergency Provisions in the Constitution of Pakistan, 1973 (the 'Pakistani Constitution')**

Articles 232 to 237 of the Pakistani Constitution describe the emergency provisions. The power to proclaim emergency can only be exercised by the President in his discretion. However, this proclamation or the orders passed by the President while exercising emergency powers are subject to *ex post* approval by a majority of the National Assembly (the central legislature). The President can exercise national and regional emergency powers in two instances: 'the first on account of war and internal disturbance' (art 232); and the second on the basis of 'financial instability' (art

235).<sup>10</sup> Keeping in view the three overarching limitations for circumscribing emergency powers, namely, emergency as a last resort; time-bound provisions for limiting the exercise of emergency powers; and re-establishment of the constitutional norm after the lapse of the emergency – this part of the article critically analyses the constitutional design of emergency provisions in the Pakistani Constitution.

### **Emergency as a Last Resort**

There are practically no effective checks and balances on the executive's exercise of emergency powers. This creates imbalance in two domains which need reassessment: imbalance of power amongst the three branches of the government and imbalance between the powers of the centre and the provinces. The first type of imbalance of power is inherent in Article 232(6) of the Pakistani Constitution, which allows the Parliament to extend its tenure for up to one year in an emergency, thus incentivising both the Parliament as well as the President to extend the emergency, even if the need for the same ceases to exist.<sup>11</sup> In such a state of affairs, the importance of a neutral umpire such as the judiciary increases. Pasquino also identified judicial check as a tool for testing the validity of emergency orders even in an executive-centred emergency model, whereas he finds this feature to be a necessary component in the legislative model.<sup>12</sup> On the contrary, the Pakistani Constitution explicitly prohibits the judiciary from exploring the questions of proclamation or revocation of the emergency orders (art 236). In Pakistan, where neither the democratic process is smooth nor is there a presidential form of government,<sup>13</sup> it is extremely important to employ judicial checks

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<sup>10</sup> In addition, there is another case of failure of constitutional machinery of a province in which the President can exercise his regional emergency powers under Article 234 of the Pakistani Constitution.

<sup>11</sup> In Pakistan, the President is indirectly elected by a newly elected Parliament. Therefore, an extension in the term of Parliament means an implied extension in the term of the President.

<sup>12</sup> Ferejohn (n 4). 236-237.

<sup>13</sup> In the United States, which has a presidential form of government, the President and the Congress exercise a check on each other's powers. On the

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to judge the legal validity of the emergency orders. Otherwise, the completely discretionary emergency powers will only contribute to the imbalanced and whimsical use of the power.

The second type of imbalance, between central and provincial powers, which was also the subject of the 18<sup>th</sup> Amendment, is still present in the Constitution. Only in the case of a failure of constitutional machinery, the 18<sup>th</sup> Amendment has tried to remove the President's discretionary element by subjecting his proclamation to the Governor's report of disturbance in the respective province (art 234(1)). However, one must not forget that the Governor is also a presidential nominee and therefore cannot be considered independent from the central executive.

Likewise, except in the case of provincial emergency proclaimed due to internal disturbance and war, the concerned Provincial Assembly's sanction for proclaiming the emergency is not required. Once again, this shows a use of logic seemingly borrowed from the 1935 Act. There too, the Federal legislature of India had practically no say in the process. Under the Pakistani Constitution, provinces are subject to the central authority under a federal structure. Once again, if the ruling parties in the Provincial and National Assemblies are different, it may be very easy for the national majority party to disturb the government in the provinces by supporting a presidential proclamation of financial instability or failure of constitutional machinery. Thus, the Amendment does not allow 'provincial autonomy' with regard to emergency provisions. Bruce Ackerman has argued in favour of the concept of escalating majority so as to protect the minorities in the legislatures (though not specifically provincial minority). He proposed that with every resolution of renewal of emergency, more votes must be needed. For instance, for the first time, the number of votes in favour of the emergency should be fifty one percent, then sixty one percent, so on and so forth. The rationale behind it is to get rid of a single majority who can hurt the minority's interest by allowing the

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other hand in Pakistan, the President is usually a member of the ruling party and is elected by the Parliament, hence does not have the same level of checks on him as the American President.

exercise of emergency powers.<sup>14</sup> A summary of these insufficiencies is tabulated in Appendix II, in which the eccentric nature of these *carte blanche* powers of the executive, especially those of the President, has been underlined.

### **Time-Bound Emergency**

In this respect, there are several procedural flaws in the emergency provisions in the Pakistani Constitution. One such flaw is time lags: the Parliament is usually given a three- month period to approve a proclamation or any other emergency law (art 232(7)). Although this is the maximum ceiling, normally, in many other countries, this period varies from one to two weeks.<sup>15</sup> We inherited and adopted this system on our own choice from the 1935 Act and only reduced the six month period to three months; however, this time period ought to be reduced further. The importance of making this choice is to create a more efficient emergency law which can work immediately in the hour of need. Also, the emergency provisions are not time-bound in the case of national or regional emergency on account of war and internal disturbance, which is against its very essence as emergency is an exceptional and temporary situation and emergency powers are used for preserving the normal constitutional order. Furthermore, subsequent to the Parliament's approval, there is no qualification for the approval of continuance in force of the same from the Parliament. This has been borrowed from the 1935 Act and has further exacerbated the situation of executive (Presidential) over-empowerment. It not only allows the executive to carry out discretionary exercise of power for an unlimited time period but also provides no reassurance of restoration of constitutional norm, even though its preservation is one of the main objectives of creating emergency powers in a democratic society.

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<sup>14</sup> Bruce Ackerman, *The Emergency Constitution*, 113 Yale L. J. (2004) 1029.

<sup>15</sup> If approval of declaration or regulation of emergency is not sought by the Parliament, in the UK (Civil Contingencies Act 2004, s 27), Australia (Public Safety Preservation Act 1986: s 8-H) and New Zealand (Civil Defence Emergency Management Act 2002, s 67) the emergency automatically expires after seven days.

## **Re-Establishment of the Constitutional Norm**

As discussed, the President of Pakistan has the power to proclaim emergency. In Pakistan, the President is not directly elected; hence his accountability to general public is non-existent. In such a scenario, judicial evaluation gains importance for judging the degree of violation of Fundamental Rights in case of emergencies. Although Article 233 of the Pakistani Constitution allows unchecked and discretionary suspension of Fundamental Rights by the President (subject to Parliamentary approval within three months), there should be proper categorization of conditions of emergency in which only some of the rights, according to the need, can be suspended. Moreover, courts must be allowed to adjudicate upon the conditions of imposition of emergency and violation of Fundamental Rights. Emergency powers are granted to the executive for preserving national security which is not possible in normal circumstances, whereas the whole point of an emergency dies if it possesses greater danger to public life than what it protects it from. At the same time, there is a set of non-derogable rights,<sup>16</sup> defined by International Covenant on Civil and Political Rights (the 'ICCPR'), which is ratified by Pakistan, which cannot be suspended during emergencies. Even so, these rights may be suspended in Pakistan for the protection of some abstract notion of national security. Also, in cases of proclamation of emergency due to 'financial instability', the laws introduced by the executive during the emergency do not cease to have effect either immediately at the expiration of the emergency or after some time (art 235). In essence, the norm is never re-established unless those laws are expressly repealed by the legislature.

## **Part IV: Emergency Provisions in the Indian Constitution**

Like Pakistan, India also has a parliamentary form of government whereas its emergency model, stipulated under

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<sup>16</sup> Non-derogable rights include the right to life; the right to be free from torture and other inhumane or degrading treatment or punishment; the right to be free from slavery or servitude; and the right to be free from retroactive application of penal laws.

Articles 352 to 360 and 365 of the Indian Constitution, is an executive one. Due to the origin of emergency provisions being the same in both countries, these provisions are very similar as well. The Indian Constitution also has two primary reasons for declaring national and regional emergencies, namely, due to ‘war, external aggression and armed rebellion’, and due to ‘financial instability’.<sup>17</sup> In the same way, it also defines a third cause of regional emergency, that is, due to failure of constitutional machinery in states,<sup>18</sup> and failure of a state to comply with the Union’s direction.<sup>19</sup> Both provisions become effective in the situation of failure of constitutional machinery.

### **Time-Bound Emergency**

Corresponding to the case of Pakistan, in India, the emergencies proclaimed due to war, armed rebellion and external aggression and due to financial instability are not time-bound and can be extended indefinitely (subject to the Parliament’s approval only in the case of war, armed rebellion and external aggression). Nevertheless, the Indian legislature has addressed some procedural flaws with regards to time lags, such as the time given for approval of proclamation to the Parliament varies from thirty days to two months. I argue that there still is a need for further reduction in the same.

### **Emergency as a Last Resort**

There exist some distinctions which create diversity even within an executive model. These changes mainly emerged due to the 44<sup>th</sup> Amendment in the Indian Constitution in 1978, after Indira Gandhi’s proclamation of emergency in 1977. The first change made was that emergency under Article 352, now, cannot be proclaimed due to internal disturbance (as was used by Gandhi) but only in case of war, external aggression or armed rebellion. Another change introduced by the Amendment was in Article 352,

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<sup>17</sup> Constitution of India 1949, art 352, 360.

<sup>18</sup> *ibid*, art 356.

<sup>19</sup> *ibid*, art 365.

due to which emergency can now be proclaimed in case of the abovementioned reasons by the President only on the report of the Union Cabinet.<sup>20</sup> Likewise, the Parliament and the Union Cabinet, instead of the President, have the authority to promulgate emergency legislations.<sup>21</sup> Although these provisions change the power dynamics to some extent by including more individuals in the decision-making process, practically the power of proclamation is still exercised by the executive, as the Union Cabinet is an executive body.<sup>22</sup> Nonetheless, an important dimension which comes out is the incorporation of accountability, since the members of the Union Cabinet are directly elected members. Also, the Union Cabinet is part of the legislature, thus its members are answerable to their party as well. In this way, the Indian model is also executive-centred, but at the same time the power players are technically more amenable.

### **Re-Establishment of the Constitutional Norm**

Another important provision in the Indian Constitution which allows more flexibility in this executive model is that the power of revocation of the same lies with the legislature, along with the authority of renewal of the emergency. If one-tenth of the total members of the House of People move a resolution for disapproving a proclamation or continuance in force of an emergency, then that resolution will be presented to both houses for approval.<sup>23</sup> This adaptation allows challenging the credibility of exercise of emergency powers at any time and serves as an important check on the executive power. A map for further elaboration can be seen in Appendix III.

Another significant change introduced under the 44<sup>th</sup> Amendment is the imposition of qualifications on the suspension of Fundamental Rights. Article 358 of the Constitution allows suspension of all Fundamental Rights except Articles 20 and 21 in

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<sup>20</sup> The Union Cabinet consists of the Prime Minister and his Cabinet.

<sup>21</sup> Constitution of India 1949, art 353.

<sup>22</sup> *ibid*, art 74.

<sup>23</sup> *ibid*, art 352(8).

all types of emergencies.<sup>24</sup> Thus, it imposes a substantial restriction on the discretionary exercise of executive emergency powers, which previously allowed their suspension as well. This also shows observance of the ICCPR, which declares these rights as non-derogable.

### **Part V: A Time for Change - Compatibility of the Legislative Model**

Keeping in view the struggle which both the abovementioned systems are engaged with, the application of the legislative model will not be a complete surprise. Both countries are amending their respective constitutions to increase the role of the legislature and are also trying to impose checks on executive power. The application of the legislative model will give the systems more flexibility and control over the exercise of these powers. It will restrict the legislative power only in the hands of legislature. Furthermore, as explained by Pasquino, in a country which has a sitting legislature, the need of an executive model can be doubted.<sup>25</sup> The Indian legislature has amended its Constitution for the sake of accommodating an exceptional emergency in Punjab, the aim of which was to increase the time period of emergencies from three to five years under Article 356(4) of the Indian Constitution.

Similarly, both countries are continuously under a threat of executive abuse of these powers. Such a situation can be rectified if the powers are transferred to the legislature. The legislative model will only allow exercise of emergency powers by the executive on the advice of the legislature. Viewing on a spectrum, the Indian emergency model is now moving towards the legislative end (as opposed to the executive end) as it appears to give more power to the legislature as compared to the executive (especially

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<sup>24</sup> Article 20 gives protection in respect of conviction of offences that no person shall be punished without an offence and with a greater penalty than that prescribed by law. Article 21 ensures protection of life and personal liberty. These are non-derogable rights.

<sup>25</sup> Ferejohn (n 4). 235-236.

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the President). However, an important step for both these countries is to make their emergency actions and laws justiciable so as to reduce the scope of abuse by the executive or even the legislature. More openness in the system will bring transparency with it, another important component of the legislative model. One of the setbacks of the legislative model is the unwillingness and delays on part of the Parliament, which can inhibit a timely decision. However, this problem can be settled by improving the procedure. Additionally, a better decision may be reached through the legislative model as more people would be the part of the decision-making process.

In conclusion, the confidence in the system can only be restored if it is legislated with people's own rationale rather than by transplanting a borrowed system. Path dependency is a myth and, if not destroyed at the right time, will lead only to perpetual existence of self-created problems. The laws should not be amended just to meet the immediate needs or threats but some cogent lessons should also be incorporated. We must question why a presidential model is being followed in spite of having a parliamentary form of government. The reasons for having an emergency law for colonizers were different than those for these independent nations. Therefore, in order to protect the next generations from trivial yet important procedural and practical flaws, it is important for Pakistan and India to amend their emergency laws once again.

APPENDIX I: Mapping of Emergency Provisions of Government of India Act, 1935

Reasons for Emergency	Proclamation of Emergency	Ex-post Approval of Proclamation	Legislative Power During Emergency	Approval of Emergency laws	Termination of Emergency	Renewal Requirement for Emergency	Time-Bound	Re-Establishment of Norm (Emergency Laws Cease to have Effect)
Failure of Constitutional Machinery (Sections 45 and 93)	<u>Executive</u> (Governor General or Governor)	<u>British Parliament</u> (in six months)	<u>Executive</u> (Governor General or Governor)	<u>Executive</u> (GG or Governor)	<u>Executive</u> (GG or Governor)	<u>British Parliament</u> After every 12 months	Yes (three years)	After two years of cessation of emergency
Internal Disturbance or War (Section 102)	<u>Executive</u> (Governor General)	<u>British Parliament</u> (in six months)	Federal Legislature (Indian legislative body)	<u>Executive</u> (GG)	<u>Executive</u> (GG or Governor)	<u>No</u>	<u>No</u>	After six months of cessation of emergency

**APPENDIX 2: Mapping of Pakistan's Emergency Provisions**

<b>Reasons for Emergency</b>	<b>Proclamation of Emergency</b>	<b>Ex-post Approval of Proclamation</b>	<b>Legislative Power for emergency laws</b>	<b>Approval of Emergency laws</b>	<b>Express Termination of Emergency (not refusal of continuance in force by Parliament)</b>	<b>Renewal Requirement for emergency</b>	<b>Time-Bound</b>	<b>Re-establishment of Norm (emergency laws cease to have effect)</b>
<b>Internal Disturbance, War (Article 232)</b>	<u>Executive (President)</u>	National emergency: Parliament (in 1+2 months ) Provincial Emergency: Provincial Assembly &Parliament (in 10 days)	<u>President +Parliament</u>	Ex-post approval by Parliament (in 3 months)	<u>President</u>	<u>No</u>	<u>No</u>	Yes (6 months after cessation of emergency )
<b>Failure of constitutional Machinery in Province (Article 234)</b>	<u>President on report of Governor</u>	Parliament	<u>President +Parliament</u>	<u>President</u>	<u>President</u>	Yes (Renewal after every two months)	Yes (Maximum 6 months )	Yes (6 months after cessation of emergency )
<b>Financial Instability National +Provincial (Article 235)</b>	<u>President</u>	<u>Parliament</u>	<u>President</u>	<u>President</u>	<u>President</u>	Yes (Renewal after two months)	Yes (Maximum 6 months )	<u>No</u>

**APPENDIX 3: Mapping of Indian Emergency Provisions**

<b>Reasons for Emergency</b>	<b>Proclamation of Emergency</b>	<b>Ex-post Approval of Proclamation</b>	<b>Legislative Power for emergency laws</b>	<b>Approval of Emergency laws</b>	<b>Express Termination of Emergency</b> (not refusal of continuance in force by Parliament)	<b>Renewal Requirement for emergency</b>	<b>Time-Bound</b>	<b>Re-establishment of Norm</b> (emergency laws cease to have effect)
<b>War, external aggression and armed rebellion (Article 352)</b>	<u>Executive</u> ( <u>President only on advice of Union Cabinet</u> )	By Parliament (in 30 days)	<u>Executive</u> ( <u>Union Cabinet</u> +Parliament (Article 353))	Parliament	Parliament +President	Yes (Renewal after every six months)	<u>No</u>	Yes (Only in laws with derogation of article 19,20,21) immediately after cessation of emergency)
<b>Failure of constitutional Machinery in State (Article 356+365)</b>	<u>President</u> on <u>report</u> of <u>Governor</u>	By Parliament in 2 months	<u>Executive</u> ( <u>Union Cabinet</u> +Parliament (Article 353))	Parliament	Parliament +President	Yes (Renewal after every six months)	Yes (Maximum 3 years)	No (unless expressly repealed by competent legislature) (Article 357 (2))
<b>Financial Instability National +Provincial (Article 360)</b>	<u>President</u>	By Parliament in 2 months	<u>Executive</u> ( <u>Union Cabinet</u> +Parliament (Article 353))	Parliament	Parliament +President	No	No	No (Not expressly mentioned)