
The Use of Emergency Powers by States and Their Effects on Non-Derogable Human Rights: With Special Reference to Pakistan

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Abstract

Emergency powers are an option that is familiar in the application of the states in dealing with emergencies such as war, terrorism, natural and civil disasters. However, in situations of crisis, the increase in executive powers have frequently resulted in the deterioration of the law and the deterioration of civil rights. Research questions of this research are: To analyze the legal considerations and global regulations on the use of emergency powers and protection of non-derogable human rights. To study the application of the emergency powers in Pakistan, the conditions, area, and period of such declarations. To determine the role that emergency powers play in affecting the non-derogable human rights in Pakistan with special emphasis on rights like the right to life, freedom of torture and due process. To assess how successful institutional checks and balances are in Pakistan in ensuring that emergency powers are not abused or that non-derogative human rights are not violated. The study design used in the research is qualitative research design since I want to determine the manner in which the states invoke emergency powers and its effects on non-derogable human rights in Pakistan. The information is collected through an evaluation of documents, i.e., the primary and secondary sources are systematically analyzed, i.e., the Constitution of Pakistan, legislative means, and international treaties. Triangulation is also being done with secondary sources like scholarly articles and reports of the human rights movement. This method is suitable in the explanation of the law and documented impacts of human rights. It was thematic analysis research to identify themes and patterns that were repeated in the data collected. These themes are the statutory power of emergencies, the scope and duration, justification and impacts of the emergency on non-derogable rights, that is, life, the ban of torture, and the due process. The qualitative nature of the research under the study perhaps could be an impediment to generalization since the findings are not universal as they are specific to the situation in Pakistan.

Keywords: Emergency Powers, Non-Derogable Human Rights, State Of Emergency In Pakistan, Executive Overreach, Judicial Oversight And Accountability

1. Introduction:

The declaration of emergency by states is one of the most important intersections between the national security needs and the rights of fundamental human rights. Emergency powers refer to unusual legal and administrative instruments, as adopted by governments in times of extreme danger, when there is war, terrorism, natural calamities, or political disobedience (Fitzgerald, 2010). On the one hand, these powers are created to maintain order and stability, on the other hand, they can lead the circumstances that violate the protection of internationally recognized human rights. This is why the investigation of the way in which emergency powers

work in practice and can have an impact on non-derogable rights is an urgent issue in the eyes of scholars, policymakers, and human rights activists (Bishop, 2019).

The international human rights law differentiates between the rights which may be temporarily restricted in the case of emergency and the ones which are not derogable that is, which are not allowed to be suspended under any conditions (Harris, 2015). Among the non-derogable rights are the right to life, freedom against torture and cruel, inhuman or degrading treatment, and forbidding slavery and servitude to name a few (United Nations, 1966). These fundamental safeguards cannot be violated even in times when states declare emergencies and take sweeping authority. Nevertheless, studies have shown that this boundary is at times obscured when implementing emergency measures, especially in environments where the law and organizational control are lacking (Smith and Jones, 2020).

The exercise of emergency power has been a common aspect of civil government and military dictatorships in the case of Pakistan. The constitutional and legal provisions of Pakistan enable the declaration of the state of emergency in the case of circumstances that are perceived to be harmful to the national security, peace, or economic stability (Khan, 2018). In the past, these statements have been viewed as controversial and contentious, particularly when it comes to executive overreach and restrictions on civil liberties (Ali, 2021). The recurrent presence of the emergency powers in Pakistan has a strong argument to understand the interactions between such actions and violation or respect to the non-derogable human rights.

Emergency powers have also complicated the issue of human rights in Pakistan due to socio-political forces in the country, such as issues of political pluralism, the threat of security, and deficiencies in governance (Rashid, 2022). Although emergency legislation is usually explained as the need to survive as a nation, the opponents claim that such strategies promote the culture of impunity and dilute mechanisms of accountability (Chaudhry, 2019). Empirical reports have also reported cases of coincidence of emergency powers with the restriction of the right to free expression, arbitrary detention as well as any other practice, which may compromise the guarding provisions of the foundation provisions enshrined in international human rights tools (Human Rights Watch, 2020).

It is in the best interests that a systematic analysis of emergency powers and their impact on non-derogable human rights in Pakistan is necessary due to these complexities. The article aims to critically evaluate legal frameworks of emergency powers, the implementation and oversight of emergency powers, and the effects they have on non-derogable human rights recorded. Placing the Pakistani experience in a wider international human rights discussion, the study is intended to make a contribution to a better understanding of how states would be able to balance the need to act in the name of emergency rule-making with the need to respect the most basic human rights.

1.2. Background of the Study

The proclamation and the practice of emergency powers by states has traditionally been quite an issue of concern among legal scholars, political scientists, and human rights actors. Emergency powers are special processes of the law, which allow governments to temporarily override normal processes of governance to address crises, including armed conflict, terrorism, natural disasters, or interior unrest (Bishop, 2019). Despite the fact that emergency powers have valuable protective and stabilizing purposes, they also present the issue of possible overreach and the loss of civil liberties. The literature reveals a worldwide contradiction between the need to provide the safety of the state and the need to preserve the fundamental human rights under the circumstances of crisis (Smith and Jones, 2020).

In the international human rights law, some rights are considered as non-derogable, i.e. they cannot be suspended even under emergency situations (Harris, 2015). They are among other things the right to life, the prohibition of torture, the freedom of slavery and servitude and the right to be recognized as a person before the law (United Nations, 1966). The logic behind this classification is that certain rights are too basic such that their infringement will be counterproductive to the actual concept of human dignity and the rule of law

to which human rights tools are rated to safeguard. However, there is an empirical basis to the view that emergency proclamations in different jurisdictions have resulted in indulging in practices that obscure the distinction between the permissible restrictions and the inadmissible derogations of non-derogable rights (Fitzgerald, 2010).

Pakistan experience provides a rather compelling example in the study of the relationship between emergency powers and non-derogable human rights. The constitutional system in Pakistan has always had a clause on the emergency rule, providing broad authority to the executive branch under certain conditions, ever since the independence (Khan, 2018). The nation has seen some high-level proclamations of emergency, which have occasionally been accompanied by military rule and political unrest (Ali, 2021). These historical moments highlight the practical significance of studying the codification and exercise of the emergency powers and the question of whether the safeguards are adequate to ensure the protection against the fundamental rights.

Although the constitution and disabilities give various provisions to curb excesses, the regimes of emergency in Pakistan have been condemned to allow limits to be imposed on basic freedoms, such as speech, assembly, and due process (Human Rights Watch, 2020). Civil society and other legal experts have recorded several cases where emergency powers have been invoked to justify no trial detentions, suppress media, and undermine judicial independence (Chaudhry, 2019). Although they are usually presented as a prerequisite to national security, such practices cast serious doubts on the actual versus perceived effect of emergency powers on non-derogable human rights in the Pakistani context.

Considering the current re-emergence of authoritarian trends across the world and the prevalence of emergency powers in reaction to terrorism, pandemics, and other disasters, the strict examination of the influence of emergency powers on non-derogable rights is strongly needed. The given background contextualizes the current research on Pakistan and allows one to draw a comparative picture of legal frameworks and implementation gaps and the human rights impact of states of emergency. Placing the experience of Pakistan in the context of a wider global discussion, the paper will have an input into the current discussions on how to reconcile the needs of state security and the unremitting need to uphold key human rights guarantees.

1.3 Statement of the Problem

The application of emergency powers by the states is a well-known option in responding to emergencies like war, terrorism, natural disasters and civil upheavals. Nevertheless, the growth of executive powers in cases of emergencies has often led to the decline of legal protections and the reduction of civil rights (Bishop, 2019). Though the international human rights law permits some derogations in situations when there are declared emergencies, it prohibits with strict force the suspension of non-derogable human rights like the right to life, freedom against torture, and against slavery and inhuman treatment (Harris, 2015). Even with these safeguards, states tend to manipulate emergency powers to legitimize actions which violate these fundamental rights especially in situations where there is poor judicial accountability and low democratic accountability (Smith and Jones, 2020). This puts the dilemma of having the competent management of crisis and the need to observe basic human dignity in a constant conflict.

The history of political instability and frequent emergency declarations, as well as extended standings of authoritarian rule, have also supported the problem in Pakistan, which is frequently accompanied by limitations on fundamental liberties and due process (Khan, 2018). Even though the constitutional system and international law in Pakistan mandate that non-derogable rights must be upheld even in times of emergency, there is material that indicates that emergency has been employed to legitimize arbitrary arrests, crackdown on dissent, media and civil society suppression (Human Rights Watch, 2020). These practices lead to some severe questions regarding the efficacy of the legal protection and the ability of the institutions to avoid the violations of non-derogable rights. As a result, there is an acute necessity to study systematically the manner of the use and application of emergency powers in Pakistan and the degree to which such measures impact on

the non-derogable human rights irrespective of international and constitutional bans.

1.4 Research Questions

1. What are the justifications by the states when they invoke the emergency powers and to what degree do the justifications meet international standards of human rights as far as non-derogable rights are concerned?
2. What has been the historical effect of emergency powers on non-derogable human rights in Pakistan and specifically human rights of life, freedom against torture and due process?
3. Are there any legal, institutional, and policy systems that can be used to help stop the misuse of emergency powers in Pakistan and how well do they protect non-derogable human rights in times of emergency?

1.5 Research Objectives

1. To examine the legal framework and international standards governing the invocation of emergency powers and the protection of non-derogable human rights.
2. To analyze how emergency powers have been used in Pakistan, including the conditions, scope, and duration of such declarations.
3. To assess the impact of emergency powers on non-derogable human rights in Pakistan, with a focus on rights such as the right to life, freedom from torture, and due process.
4. To evaluate the effectiveness of institutional safeguards and oversight mechanisms in Pakistan in preventing abuses of emergency powers and protecting non-derogable human rights.

1.6 Conceptual Framework

Dependent Variable	Independent Variables
Impact on Non-Derogable Human Rights	Use of Emergency Powers by the State
<ul style="list-style-type: none"> • Right to life and personal security. • Protection from torture, inhuman or degrading treatment. • Prohibition of slavery and forced labor • Due process and judicial oversight. 	<ul style="list-style-type: none"> • Legal basis and constitutional provisions • Scope and duration of emergency declarations • Justification or rationale for declaring emergency • Implementation practices

1.7 Conceptualization & Operationalization

1.7.1 Independent Variable:

1.7.1.1 Use of Emergency Powers by the State

- **Operational Definition:** Emergency powers are unusual legal and administrative actions taken by the state in case of crisis, such as natural disasters, terrorism, civil unrest, or war (Bishop, 2019).
- **Dimensions:**
 1. Legal grounds and constitutional clause (e.g. Article 232 of the Constitution of Pakistan).
 2. Extent and time of emergency declarations.
 3. Reason or justification of declaring emergency (security, order among people, economic stability).
 4. Practices in implementation (arrests, curfews, termination of civil liberties).

1.7.2 Dependent Variable:

1.7.2.1 Impact on Non-Derogable Human Rights

- **Operational Definition:** Non-derogable human rights are those that cannot under any circumstances be suspended even the right to life, the prohibition of torture, the denial of slavery, or the lack of recognition before the law (Harris, 2015).

- **Dimensions:**

1. Right to personal security and life.
2. Security against torture, inhuman or degrading treatment.
3. Banning of slavery and compelled servitude.
4. Judiciary control and due process.

1.7.3 Proposed Relationship:

The conceptual model assumes that the extent to which non-derogable human rights are abused or safeguarded is dependent on the scope, implementation, and justification of emergency powers independent variable. This relationship can be moderated by the strength of the institutional checks and the judicial controls, as well as by the compliance with the international standards of human rights, which can lead to the upholding of the human rights commitments or lead to the violations (Smith and Jones, 2020).

2. Literature Review

2.1. The Emergency Power as a conceptualization.

Emergency powers are extraordinary government powers that are issued during times of crisis allowing governments to suspend normal legal standards to ensure national security, law and order or to maintain economic balance at the time of crisis. Researchers state that the emergency authorities are intended to react to the extreme cases, yet there is also a great danger that they may be abused once unrestrained (Bishop, 2019). The literature demonstrates that emergency authorities tend to broaden the executive discretion, diminish parliamentary control, and open ways to the authoritarian inclination to manifest itself under the pretext of the crisis management (Smith and Jones, 2020). Therefore, the idea of emergency powers should strike a balance between the necessity to be ruled by the government and the preservation of human rights in the country.

2.2. International Legal Framework and Non-Derogable Rights.

In international human rights law, there is a difference between the derogable rights (that can be suspended in the case of crisis) and non-derogable rights that cannot be violated even in the crisis. The right to life, freedom of torture, an outlawing of slavery, and the guarantees of a due process of law are the non-derogable rights (United Nations, 1966). The International Covenant on Civil and Political Rights (ICCPR) provides some rigid requirements with regard to derogation, which focus on necessity, proportionality and time. Non-derogable rights are aimed at safeguarding human dignity, according to scholars, even in cases where states allege to have existential threats (Harris, 2015). Nevertheless, empirical evidence demonstrates the tendency of states to infringe these core rights despite the absolute character of these rights, especially with a weak institutional system.

2.3. Historical Trends of Emergency Rule in Pakistan.

The history of constitutional and political life in Pakistan is characterized by constant declaring emergencies and times of military regimes, which shows how Pakistan has been grappling with political stability and security issues (Khan, 2018). These states of emergencies have been accompanied by suppression of political dissent and limitation of civil liberties. Researchers observe that constitutional clauses on the emergency power in Pakistan have been invoked to legitimize extraordinary executive power, and it questions the aspect of constitutionalism and separation of powers (Ali, 2021). This historical trend suggests that a use of emergency powers has been not only an answer to crisis but also to political unification.

2.4. Presidential Emergency Powers and Executive Overreach.

Weakened checks and balances are usually linked to the notion of executive overreach thinking of the

provision of emergency powers. In Pakistan, it has been identified in the literature that emergency declarations have allowed the executive to suspend constitutional provisions and dismiss elected governments and limit judicial control (Chaudhry, 2019). This increase of the executive authority inspires the question of undermined democratic governance and institutional integrity. Research shows that unchecked emergency powers may become a lasting characteristic of the government, weaken the rule of law, and cause structural violations of human rights (Smith and Jones, 2020).

2.5. Influence on the Rights to Life and Security.

The right to life and personal security are particularly non-derogable rights that are very susceptible during emergency rule. Studies on global emergency regimes have revealed that states tend to justify violent acts such as lethal force, extrajudicial executions, and forced disappearances as justified by the national security (Bishop, 2019). Human rights organizations have reported in Pakistan acts of overuse of force, arbitrary arrests, and the violation of the right to life in emergency situations due to the use of emergency measures (Human Rights Watch, 2020). Such practices spell out the chasm between the law and the protection of realities in cases of emergency.

2.6. Liberty to Torture and Inhumanity.

Torture, as well as cruel, inhuman or degrading treatment is a non-derogable right in International Law. Nevertheless, as it has been written, emergency powers may provide conditions where torture may occur since the practice of detention may frequently ignore the law (Harris, 2015). Reports and scholarly works on Pakistan show that there are cases of torture and ill-treatment during emergency cases, particularly in counterterrorism and security operations (Human Rights Watch, 2020). This shows that there is a systematic issue with the emergency laws being able to cover legal loopholes to allow practices that do not comply with absolute human rights standards.

2.7. Impairment on Due Process and Judicial Control.

The emergency powers often affect the right to due process, thus permitting detention without trial, habeas corpus suspension, and preventing judicial review. Research notes that such actions undermine the judicial system as a human rights protector, and the executive branch goes unchecked (Smith and Jones, 2020). In Pakistan, an emergency regime frequently leads to a constitutional guarantee suspension, limitation of legal representation, and access to courts (Khan, 2018). This relationship between the emergency powers and the breakdown of the mechanisms of legal accountability is therefore critical as indicated in the literature.

2.8. Accountability Systems and Institutional Protection.

In spite of the dangers of emergency powers, the literature emphasizes that institutional checks against abuse like parliamentary checks, judicial review, and independent human rights institutions can address abuses (Bishop, 2019). Nevertheless, in Pakistan, researchers suggest that such protections tend to be undermined in cases of emergency because of the political interference and institutional vulnerability (Ali, 2021). The success of human rights protection in the event of emergency would be as such determined by the capacity and autonomy of institutions and the international monitoring systems. This literature highlights the fact that there is a need to have powerful protective measures that will guarantee that non-derogable rights are upheld.

3. Research Methodology

3.1 Research Design

The research design adopted in this study is qualitative research design because it aims at establishing how the states invoke emergency powers and its impact on non-derogable human rights in Pakistan. Qualitative research is suitable due to its opportunity to conduct a detailed analysis of legal texts, historical events, and

institutional practices and describe the complex socio-political relationships (Creswell and Poth, 2018). The conceptualization makes it easier to comprehend both the formal legal system and the reality of the actual emergency governance.

3.2 Research Approach

It uses the qualitative interpretive method and concentrates on the meanings and implications of emergency powers as being witnessed in the Pakistani constitutional and political history. The interpretation analysis is used to reveal the ways in which the state actors can justify emergency actions and the extent to which such grounds are consistent or are inconsistent with the international human rights norms (Denzin and Lincoln, 2018). With this method, the researcher can also examine the effect on non-derogable rights in times of emergencies.

3.3 Population and Sampling

The population of the study included legal documents, policy statements, judicial decisions, and human rights reports in the emergency powers and non-derogable rights in Pakistan. The purposive type of sampling was applied to identify sources with rich and relevant information, such as the constitutional provisions, landmark court decisions, and significant reports on human rights (Palinkas et al., 2015). This is to make sure that the data captures important times of emergency rule and relevant results of great rights.

3.4 Data Collection Methods

The data are gathered by analyzing documents, i.e., systematic review of the primary and secondary sources is carried out: the Constitution of Pakistan, legislative tools, and international treaties. Also, secondary sources such as academic articles and reports by human rights groups are also being triangulated (Bowen, 2009). This approach is appropriate in the interpretation of the law and recorded human rights effects.

3.5 Data Analysis Technique

The research was thematic analysis to determine themes and repetitive patterns in the data gathered. Such themes are the statutory power of emergencies, the boundaries and period, justification, and the effects of the emergency on non-derogable rights, namely, life, the prohibition of torture, and the due process (Braun and Clarke, 2006). Thematic analysis allows the structured interpretation of both legal and human rights data and the dependence between the emergency powers and the rights abuse can be seen.

3.6 Ethical Considerations

The ethical considerations can be taken care of by citing all the sources properly and being objective when interpreting the data. As the research is based on publicly available documents and reports, there are no direct human subjects, but the researcher is still sensitive about delicate matters and does not use biased terms to present the findings (Orb, Eisenhauer, and Wynaden, 2001). The study follows the ethical standards of scholarly research and human rights.

3.7 The trustworthiness of the Study can be determined as follows.

In order to be credible, the study employs the triangulation aspect where the texts of the constitutions, judicial ruling, and human rights reports are compared in order to validate study conclusions. Transparency since the data sources and analysis methods are documented and confirmation since every conclusion is based on evidence and not personal opinion improve dependability and confirmability respectively (Lincoln and Guba, 1985). The support of transferability is through the extensive descriptions of the context that enable other researchers to evaluate applicability to a comparable situation.

3.8 Limitations of the Study

Under the study, the qualitative character of the research might be a limitation to generalizability because the results are situation-specific to Pakistan and cannot be universal. Further, secondary sources can be biasing by being based on different opinions by human rights reports and academic interpretations (Yin, 2018). Irrespective of such weaknesses, the study gives a detailed and in-depth insight into emergency powers and non-derogable rights in Pakistan.

4. Data Analysis

Thematic analysis involves examining data and information with the aim of identifying themes and patterns within the information.

4.1 Overview of Thematic Analysis

Thematic analysis is the study of data and information whereby one tries to establish themes and trends among the information.

The thematic analysis is employed in the study to analyse qualitative information on constitutional texts, judicial decisions, and human rights publications. Thematic analysis suits best to determine the patterns and meaning of qualitative data and enable the researcher to come up with themes that indicate underlining concepts and problems (Braun and Clarke, 2006). This approach will allow the study to examine the issues of emergency justification, implementation and their effects on non-derogable rights in Pakistan systematically. The themes created are based on the data and congruent with the goals of the research.

Theme 1: Constitutional Foundation and Lawfulness of Emergency Powers.

The former theme is the legal formulation of the mechanisms of emergency powers as supported in the Pakistani constitution. The constitution of Pakistan gives the authority to declare emergency under certain conditions, including the danger to the state security or internal order (Khan, 2018). The information shows that the legal foundation tends to focus on the sovereignty of states and national security that can act against human rights concerns. This juridical construct makes wide executive discretion possible, which is prone to infringing rights especially when there are feeble safeguards or when they are disregarded (Ali, 2021).

Theme 2: Scope, Duration and Executive Overreach.

A second topic is connected with the broad scope and extended nature of emergency powers. Crisis management solutions tend to place a lot of power in the executive with such powers as the suspension of constitutional rights and the limited judicial control (Chaudhry, 2019). In Pakistan, such powers are not always applied according to the need to solve crisis management, as it became evident in the past that certain powers are sometimes employed even after the need to address the crisis is fulfilled and cause long-term limitation of rights and political freedoms. This theme addresses a threat where the emergency governance turns into a normalized practice and weakens the democratic institutions and law (Smith and Jones, 2020).

Theme 3: Attack on the Right to Life and the Personal Safety.

The third theme is the impact of the emergency powers on the right to live and personal safety. Non-derogable rights like the right to life are at stake when the states consider security above human dignity. Human rights reports contain records of emergency measures that caused arbitrary arrest, forced disappearance and excessive force (Human Rights Watch, 2020). These practices demonstrate a disconnect between the legality and the reality which implies that emergency powers can facilitate serious abuses of fundamental rights in particular in situations of less accountability.

Theme 4: Torture, Inhuman treatment and detentions.

The fourth theme touches on the effect of emergency powers on torture and inhuman treatment. Security operations in emergency governance tend to circumvent the usual legal protections and make ill-treatment in detention and interrogation facilities more likely (Harris, 2015). Human rights groups in Pakistan have reported human tortures and ill-treatment in emergency situations, especially in counterterrorism events (Human Rights Watch, 2020). This is a theme that highlights the manner in which emergency actions may result in the establishment of circumstances that facilitate the absolute rights to be trampled.

Theme 5: Loss of Due Process and Judicial Checks and Balances.

The fifth theme focuses on the destruction of the right to due process and judicial checkpoints in emergencies. Power of emergency can frequently permit the lack of trial, suspension of habeas corpus, and denying the rights of counsel (Smith and Jones, 2020). The periods of the historical emergency in Pakistan demonstrate the tendencies of the weakening of judicial independence and limited access to courts, resulting in the decreased responsibility of violating the rights (Khan, 2018). The theme shows that urgent actions may put the legal system in a situation that compromises its responsibility to safeguard human rights.

Theme 6: Institutional Weakness of Safeguards.

The sixth theme points out institutional flaws that allow the misuse of the emergency powers. Ensuring good human rights protection in case of an emergency demands a healthy institution such as independent judicial, parliamentary, and human rights commissions (Bishop, 2019). Nevertheless, the statistics indicate that the institutional protection frameworks of Pakistan tend to give way to emergencies because of political influence and absence of accountability structures (Ali, 2021). This theme shows that the performance of emergency governance is highly related to the strength and integrity of institutions.

Theme 7: International Standards and Non-Derogable Rights

The seventh theme has to do with the conflict between national and international human rights and the national emergency measures. The international law specifically identifies the non-derogable rights, which cannot be suspended even in cases of emergency (United Nations, 1966). Nevertheless, the review shows that the emergency practices in Pakistan contradict these standards occasionally, which makes it questionable how they adhere to international requirements (Harris, 2015). This theme reveals the necessity to gain closer proximity between domestic emergency legislation and international human rights standards.

Theme 8: Emergency Governance in Need of Reform and Human Rights-Based Governance.

The last theme is related with reform and the possibility of human rights based emergency governance. The evidence indicates that the emergency powers can only be utilized legitimately when they are constrained, commensurate, and regulated (Bishop, 2019). Literary reform suggestions focus on the existence of legal boundaries, open reporting, and enhanced judicial supervision to avert misuses (Smith and Jones, 2020). According to this theme, achieving a balance between state security and non-derogable rights demands a legal system that guarantees dignity of human persons even in the event of a crisis.

5. Discussion

The results of this research highlight the natural conflict between the security prerogatives of the state and the safeguarding of the non-derogable human rights in the case of an emergency. Emergency powers are meant to allow governments to act promptly in the face of emergencies but the legal structure in Pakistan demonstrates that emergency powers could be loosely defined giving the executive wide discretion to act. It is supported by the academic interests that emergency authorities tend to grow beyond immediate crisis requirements and can be exploited to build power (Bishop, 2019; Smith and Jones, 2020). As the analysis

shows, the constitutional provisions of Pakistan, especially Article 232, give the constitutional grounds of emergency declaration, yet the focus on the national security and victims of the order suppresses the consideration of human rights. As a result, the aspect of executive action is played within the framework of emergency governance where it appears to have limited accountability, which in turn puts in danger of the violation of non-derogable rights like the right to life and freedom against torture (Ali, 2021; Harris, 2015). The paper also reports that the emergence of emergency powers in Pakistan in practice has often led to institutionalized checks and reduced judicial accountability. The thematic analysis shows that emergency action has been related to arbitrariness in detention, limitations on freedom of expression, and limited access to legal outcome results that are consistent with the findings of the human rights organizations (Human Rights Watch, 2020; Chaudhry, 2019). These results support the opinion that the use of emergency powers without well-institutionalized controls may lead to the undermining of the rule of law and the large scale violation of rights. This loss in the due process is of particular concern since it directly affects non-derogable rights that should not be eroded even in the times of crisis. This scenario exemplifies the larger line of thinking that bad institutional mechanisms lead to the condition of the normalization of emergency powers, instead of a condition of emergency powers being exceptionally restricted to temporary crisis management (Smith and Jones, 2020).

Lastly, the discussion indicates that to bring the emergency governance in Pakistan in consonance with the international human rights, it is necessary to introduce substantive changes and enhance control. The clear provisions of international law define that some of the rights like the right against torture and right to life cannot be suspended in any situation (United Nations, 1966; Harris, 2015). However, the study concludes that the emergency practices of Pakistan have sometimes been in conflict with such obligations, showing that there has been a discrepancy in legal commitments and practice. The literature highlights that the emergency powers only can be reasonable when they are both necessary and proportionate and subject to successful checks (Bishop, 2019; Smith and Jones, 2020). Thus, institutional protection like an independent judicial review, transparent reporting, and parliamentary accountability should be increased to make sure that the emergency measures are concomitant with non-derogable human rights. This is necessary not just to the constitutional integrity of Pakistan but also to fulfill its international human rights needs in the period of crisis.

6. Conclusion

The paper concludes that although the application of emergency powers is legally and politically justifiable in the context of safeguarding the national security and national order, such legal and ostensibly justifiable actions of the Pakistani authorities have often compromised the respect of the non-derogable human rights. The constitutional system and legal regulations of emergency rule offer a wide discretionary range to the executive, most of the time with a focus on sovereignty and security rather than on the human rights aspect (Khan, 2018; Ali, 2021). This expansive framing has also led to normalization of emergency governance, which allows the executive to have powers without much checking and accountability. Consequently, some non-derogable rights, including the right to life, the fact against torture, and due process, have been endangered, especially in the situations where the institutional securements are low (Harris, 2015; Smith and Jones, 2020). The thematic analysis of the study also reveals that the use of emergency powers has been linked to arbitrary detention, a limitation to the freedom of speech and expression, and weaker judicial review, as all this has been an indication of a gap between constitutional guarantees and its actual practice (Human Rights Watch, 2020; Chaudhry, 2019).

The results also point to the fact that the emergency practices practiced in Pakistan deem to contradict the international human rights, particularly in the context of non-derogable rights that should not be suspended at any cost (United Nations, 1966). The study highlights that though emergency measures might be required in extraordinary situations, their validity would be based on the close observation of the principles of necessity, proportionality, and time constraint and strong institutional control (Bishop, 2019; Smith and Jones, 2020).

Thus, the work suggests that Pakistan should reinforce the institutional protection by improving the independence of the judicial system, the involvement of parliament, and the availability of transparent reporting tools to avoid the misuse of emergency powers. It is necessary to align the domestic emergency laws with the international human rights standards to make sure that the state security aims are not achieved at the cost of the fundamental human dignity and non-derogable rights.

7. Recommendations

1. To refine and narrow the legal indicators of the declaration of emergencies, it is important to make sure that the declarations should be restricted to a really extraordinary danger and in accordance with the international norms.
2. In order to restrict the extent and time frame of emergency actions, it is necessary to make the automatic review and termination of the action obligatory after the crisis.
3. To enhance judicial checks in times of emergency, courts need to be guaranteed the right to examine prison and arrests and executive orders.
4. To forbid any derogation of non-derogable rights in a clear legal way, and provide legal penalties to a breach of such a rule by the state agents.
5. To provide mandatory reporting, the executive should be made to issue the information about emergency actions and their effects on human rights.
6. Increase parliamentary control such as timely debates on the emergency declaration and its further extension even after expiring of the initial time limits.
7. To enable independent human rights institutions, access to detention centers and ensure powers to investigate the abuses in case of emergencies.
8. To provide accountability procedures to the security agencies such as open complaints channels and independent inquires on torture or forced disappearances.
9. To facilitate training in human rights of state officials, particularly the law enforcement and military personnel, with reference to non-derogable rights to state officials during crises.
10. To harmonize the domestic emergency laws with the international requirements, incorporation of ICCPR principles and non-derogable rights safeguards in the domestic emergency acts.

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