

The Exercise of Emergency Powers and Suspension of Democratic Structures in Nigeria and India

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DOI: <https://doi.org/10.47772/IJRISS.2026.100700401>

Received: 11 July 2026; Accepted: 16 July 2026; Published: 03 August 2026

ABSTRACT

This paper entitled ‘The Exercise of Emergency Powers and Suspension of Democratic Structures in Nigeria and India’ examines the constitutional and political issues in the exercise of emergency powers in the two nations with an appraisal of what obtains in Pakistan. The paper interrogates and analyses the constitutional provisions and judicial review of the exercise of emergency powers in the jurisdictions. The provision of emergency powers in National constitutions envisages the corruption of situations where the flow of normal constitutional and democratic practices have been truncated and public peace, safety and order are threatened.

The paper employs the doctrinal and comparative methodological approaches of analysis. The doctrinal approach utilizes primary and secondary sources of information in analyzing and interrogating issues attendant with emergency declarations. The primary sources of information include the constitutions of the jurisdictions considered herein, other statutory enactments and judicial pronouncements. The secondary source of information captures the use of books, journals, command papers, newspapers and internet resources. Nigeria and India have been chosen for comparison as former British colonies which attained independence within a range of 10 years.

Further, while Nigeria practices presidential model of constitutional democracy, India operates the parliamentary system of constitutional democracy. Despite this differential, the exercise of emergency power is vested in the presidential in the two jurisdictions.

Imploring the doctrinal and comparative approaches of analysis, it is argued that while the provision of emergency powers in National Constitutional Statutes to arrest unexpected happenstances is commended, it should be insulated from abuse and operated devoid of political coloration. It is further recommended that judicial officers particularly at the apex bench should exhibit integrity and extricate themselves from the loins of the executive.

Keywords: Democratic structures, Emergency powers, India and Nigeria.

INTRODUCTION

The term ‘Emergency’ is a legal principle exempting a person from the ordinary standard of reasonable care if that person acted instinctively to meet a sudden and urgent need... A State of Emergency is a condition, situation or circumstance which has arisen suddenly and which requires extraordinary measures to attain to that sudden happenstance and bring the Nation to *status quo ante*.¹ The need for exercising emergency powers arises when a nation is faced with grave danger which threatens the nation state and its citizens and so the power is exercised to save the nation and its citizens. The danger may be in the form of war, rebellion, natural disaster or calamity such as a plague, flood, earthquake or any major catastrophe. The matter is constitutional as Constitutions of various countries make provisions for it. Emergency powers are usually vested in the President of the country and some of the provisions are either vague or imprecise. In some cases, there are no time limits for the State of Emergency and in such cases, chief executives (Presidents) rely on such Emergency Powers of the Constitution to perpetrate atrocities on the citizens indefinitely and so the main problem in exercise of Emergency Powers is abuse of such powers. Such abuse negates the objective of the declaration of State of Emergency which is to

¹ B. A. Garner, *Black's Law Dictionary* (7th edn, WestGromd, St. Paul, MINN., 1999) 541.

protect the nation and its citizens from situations which threaten their safety. The challenge of the exercise of Emergency Powers therefore is striking an appropriate balance between managing the threat to the nation state and protecting the people from abuse of such powers.

A State of Emergency is a government declaration which suspends some normal functions of the executive and the legislature. A declaration of State of Emergency alerts or prompts the citizens of a country to change their normal behaviour or order government agencies to implement emergency preparedness plans² and this definition conforms to the ordinary meaning of the term. 'Emergency' in ordinary parlance means a time of crisis, a moment of danger or suspense when the maxim *salus populi suprema lex* has a special force.³ Constitutionally, a period of emergency implies any period during which there is in force a proclamation of a State of Emergency declared by the President in exercise of the powers conferred on him under section 305 of the Constitution of the Federal Republic of Nigeria 1999.⁴ The declaration of an emergency is largely the exclusive responsibility of the Federal Government, though its discretion in the matter is not an unrestricted one, as it is guided both by internal statutes as well as international instruments.⁵ The objective of state of emergency is to control a situation of grave national crisis. Thus, a state of emergency is invoked when a crisis situation constitutes a challenge to democracy, negates the norms of national human interaction, contradicts the tenets of civil society, devalues opportunities for peace, stability, co-existence and social justice and should secure the 'route back to the normal constitutional state' as the power is sought to be exercised to bring about normalcy in the state.⁶ In Nigeria and other jurisdictions, the reasons for declaration of State of Emergency have always been on the need to curb crisis situations though in actual fact the declarations have political colourations.

Exercise of Emergency Powers in Nigeria

The exercise of Emergency Power was first made in 1962 when an internal party crisis erupted between the national leader of the Action Group, a political party founded and led by Chief Obafemi Awolowo and his deputy, Chief Adegbenro, spiraled into a regional political crisis which warranted the then Prime Minister, Sir Abubakar Tafawa Bewlewa to address the National Parliament and subsequently declare a State of Emergency in the then Western Region of Nigeria.⁷ Under the then 1960 Constitution of Nigeria, the power to declare State of Emergency was vested in the Parliament which differs from the present Presidential Constitution where the National Assembly is cast with only approval powers. What caused the declaration of state of emergency by the then National Assembly is a situation that could pass for a mere fracas on the floor of the Western Region House of Assembly and not necessarily a complete breakdown of law and order.⁸ The relevant provisions of the 1960 Constitution were to the effect that a State of Emergency was to be declared when the federation was at war or when the National Parliament declared that a State of emergency existed.⁹ The declaration was tainted with political colouration as the Prime Minister who was of the Northern Peoples Congress flexed muscle to stamp the political superiority of the Northern Peoples Congress over Action Group and thereby whittle down the glowing political influence of Chief Obafemi Awolowo.

On the 18th day of May 2004, President Olusegun Obasanjo declared a State of Emergency in Plateau State pursuant to the Constitution of the Federal Republic of Nigeria 1999.¹⁰ The President sacked the incumbent Governor, Joshua Dariye, his cabinet and accused the Governor of failing to act to end the cycle of violence between Muslims and Christians in the State which claimed more than 2000 lives since September 2001. The President also dissolved the Plateau State House of Assembly and appointed retired General Chris Ali as Sole Administrator. The declaration was greeted by a myriad of criticisms to the effect that it did not comply with the provisions of the Constitution. Also, the learned Professor Nwabueze maintained that the actions of the President

² P. O. Idornigie, *Partial Declaration of State of Emergency* (NIALS Press, 2013) 28. See also, E. Azinge, *State of Emergency in Nigeria: Law and Politics* (NIALS Press 2013) 36.

³ P. A. Oluyede and D. O. Aihe, *Cases and Materials on Constitutional Law in Nigeria* (Ibadan University Press 2003) 42.

⁴ *Constitution of the Federal Republic of Nigeria (CFRN) 1999, S45(3).*

⁵ *ibid.* Note 2.

⁶ *ibid.* (Note 3) 122.

⁷ *ibid.*

⁸ *Constitution of The Federal Republic of Nigeria (CFRN) 1960, SS65.*

⁹ *CFRN 1999, S305.*

¹⁰ I. N. Udofa, *Nigerian Constitutional Law, a Comparative Approach*, (Esquire Publishers 2018) 250.

including the appointment of a Sole Administrator for the State were made without authorization by law and indeed, in brazen disregard and violation of the clear, express provisions of section 11 (4) and (5) of the Constitution. The learned author, Professor Imo Udofia maintains that the President's action violated several provisions of the Constitution. The first is section 188 (1) -(11), which outlines the procedures for the removal of a State Governor through impeachment by the legislature. The second contravention was against section 11 (4), which precludes the National Assembly from exercising power to remove the Governor or Deputy Governor from office during the period of Emergency. The third was section 1(2), which forbids any person or group of persons from taking control of the government of Nigeria or any part thereof except in accordance with the provisions of the Constitution.

President Goodluck Jonathan also declared a State of Emergency in some local government areas in Borno and Plateau States in 2011 and on 14th May, 2013, the President declared emergency rule in Borno, Yobe, and Adamawa States as a result of the Boko Haram insurgency.¹¹ A careful study of the above three instances of the exercise of emergency power by the President shows that the measures taken in the exercise of the power in a Constitutional democracy differ though with similar or same constitutional provisions.¹² The exercise of the President's power of declaration of State of Emergency is a political question due to the personal discretion conferred on him by the Constitution.¹³ With respect, it is difficult to align with their Lordships that a declaration of a State of Emergency is a political question and therefore cannot be subjected to judicial review. This is in view of the fact that the wordings of the Constitution are very clear, so that failure to comply with such clear provisions will invalidate the action or power exercised. This is justified by the provisions of sections 1 and 5 of the Constitution.¹⁴ Section 5 provides that the executive powers of the Federation shall be vested in the President. The proclamation of a State of Emergency is an exercise of executive powers. The Constitution provides; "This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria".¹⁵ Also, by the provisions of section 305() of the Constitution, the power to declare a State of Emergency is subject to the provisions of the Constitution. What all this means is that in exercising his powers to declare a state of emergency, the President must act in conformity with the Constitution which is the supreme law of the land.

Circumstances for Declaration of State of Emergency in Nigeria

The circumstances that will justify the President's Proclamation for a State of Emergency include when:

- (a) the Federation is at war;
- (b) the Federation is in imminent danger of invasion or involvement in a state of war;
- (c) there is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
- (d) there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger;
- (e) there is an occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;
- (d) there is any public danger which clearly constitutes a threat to the existence of the Federation; or

¹¹ CFRN 1960, S65, CFRN 1963, S70, CFRN 1999, S305.

¹² *A. G. Eastern Region v. A.G. Federation (1964) 1 All WLR 224, A.G. Federation v. A.G. Abia State (2001) 11 NWLR (Pt. 725) 689 at 774-775.*

¹³ *Section 1 of the Constitution stipulates the Supremacy of the Constitution while Section 5 defines executive power.*

¹⁴ CFRN 1999, S. 1(1).

¹⁵ *ibid*, S. 305(3).

- (g) the President receives a request to do so in accordance with the provisions of subsection (4) of section 305.¹⁶

Procedure for Declaration of State of Emergency

The procedure is that the President issues a proclamation of State of Emergency in the Federation or any part of the Federation via an instrument published in the official gazette of the Government of the Federation.¹⁸ After publication, the President then transmits copies of the Official Gazette containing the proclamation including the details of the emergency to the President of the Senate and Speaker of the House of Representatives. The respective of presiding officers of the two Chambers of the National Assembly are required to convene a meeting of the House he presides over to consider the situation and decide whether or not to pass a resolution approving the proclamation.¹⁷ This procedure involves two stages. The first step is to decide whether or not to approve the proclamation and this step requires an ordinary resolution supported by a simple majority while the second step is the approval of the resolution.

Two types of Emergency may be distilled from the above provisions. One is National Emergency which may be declared when the circumstances specified in paragraphs (a), (b) and (f) occur. The President may make a Proclamation of a State of Emergency, and publish same in the Official Gazette of the Federal Government for onward transmission to the National Assembly for necessary action. The second type of Emergency is the emergency within a State. This State of Emergency may be declared when the situations specified in paragraphs (c), (d) and (e) occur. When these circumstances occur, the President cannot issue a Proclamation of State of Emergency as regards the particular State unless he is requested to do so by the Governor of the State. The Governor's request is required to be sanctioned by a two-thirds majority vote of the members of the State House of Assembly. Thus, with the support of the House of Assembly, the Governor may request the President to make a Proclamation for State of Emergency in instances where any of the specified situations occur. However, the President has power to issue the Proclamation if the Governor fails to make the request within a reasonable time.¹⁸

Timeline of State of Emergency in Nigeria

A State of Emergency does not operate indefinitely as a Proclamation issued by the President may cease to have effect if it is revoked by the President by instrument published in the official Gazette of the Government of the Federation.¹⁹ If the Proclamation affects the Federation or any part of the Federation and it is not approved by two-thirds majority of the National Assembly within two days when the National Assembly is in session or within 10 days when National Assembly is not in session, the Proclamation shall cease to have effect.²⁰ However, a Proclamation of State of Emergency duly approved by the National Assembly shall remain in force for six months. Before the expiration of the period of six months, the National Assembly shall extend the period for another period of six months via a resolution supported by two-thirds majority of the National Assembly.²¹

The Proclamation of a State of Emergency may also cease to have effect if it is revoked by the National Assembly by a resolution of a simple majority of all the members in each House.²² It remains to say that when a State of Emergency is declared, the provisions of section 45 of the Constitution shall come into operation. Accordingly, the fundamental rights provision in the Constitution may suffer derogation. The original jurisdiction of the Supreme Court was invoked against the Attorney-General of the Federation and National Assembly.²³ The Defendants opposed the Suit on the merits and also raised preliminary objections challenging the jurisdiction of the Court, the Plaintiffs' locus standi, and the competence of the action. Section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 confers original jurisdiction on the Supreme Court in disputes between the

¹⁶ *ibid*, S. 305(1).

¹⁷ *ibid*, S. 305(2).

¹⁸ *ibid*, S. 305(4).

¹⁹ *ibid*, S. 305(5).

²⁰ *ibid*, S. 305(6a).

²¹ *ibid*, S. 305(6b).

²² *ibid*, S. 305(6c).

²³ *Attorney General of Adamawa State & 10 Ors v Attorney General of the Federation & anor in Suite No. SC/CV/329/2025 delivered on December 15, (unreported).*

Federation and State or between States, provided the disputes involves a question on which the existence or extent of a legal right depends. The section clearly provides thus:

“The Supreme Court shall, to the exclusion of any other court have original jurisdiction in any dispute between the federation and a state or between states if and in so far as that dispute involves any question (whether a Law or fact) on which the existence or extent of a legal right depends.”

From settled authorities, three conditions must co-exist before the original jurisdiction of the Apex Court could be validly invoked:

1. There must be a dispute between the federation and state or states, or between states;
2. The dispute must involve a question of Law or facts and
3. The dispute must concern the existence or extent of a legal right.

Judicial Intervention Over Exercise of Emergency Powers

The instances of declarations of emergency rule in Nigeria have not been tested before the Court until 2025 when Judicial power was invoked to determine the constitutional validity or otherwise of the 2025 emergency rule declaration. On March 18th 2025, President Bola Ahmed Tinubu relying on Section 305 of the Constitution of the Federal Republic of Nigeria (1999), declared a State of Emergency in River State, South-South of Nigeria. The declaration suspended the Governor, Deputy Governor, and members of the House of Assembly of the State and appointed a Sole Administrator for the State. The declaration was transmitted to the President of Senate and Speaker of the House of Representatives for the approval or ratification of the National Assembly. The suspended executive officers and members of the House of Assembly were persons who were nominated and sponsored by the main opposition political party, the Peoples Democratic Party (PDP). The People's Democratic Party was peeved by the action of the ruling All Progressive Congress and feared that other states of the party may suffer the same fate. Thus, the Attorneys-General of Adamawa, Akwa Ibom, Bauchi, Bayelsa, Enugu, Osun, Oyo, Plateau, Taraba and Zamfara States invoked.

Scrutinizing the Originating summons of the plaintiffs, the court said that their grievance arose from the declaration of the State of emergency in Rivers State House of Assembly were suspended and a Sold Administrator appointed to man the affairs of the State. However, none of the plaintiffs represented River State and neither did they establish any authority to litigate on its behalf nor was there any deposition showing that a state of emergency had been declared in any of the plaintiffs' states.

The Apex Court held that the plaintiffs' failed to disclose any reasonable or justiciable dispute between them and the Federation capable of invoking the original jurisdiction court. The absence of a competent cause of action was fatal and deprived the Apex Court of jurisdiction to hear and determine the matter. The incompetency of the Suit led the Court to hold that the case must be struck out.

However, the Court reasoned that in view of the significance of Section 305 of the Constitution of the Federal Republic of Nigeria (as amended) in the legal framework and jurisprudence of Nigeria, it is imperative to undertake a considered discussion on the scope and exercise of the powers conferred on the President of the Federal Republic. Such an examination will serve to elucidate its application and enhance the understanding of its role within the broader constitutional land legal system. The Court undertook an appraisal of the constitutional structure of the Nigerian Federation and said Nigeria operates a federal system of government founded on constitutional supremacy, separation of powers, and checks and balances. By virtue of Sections 4-7 of the Constitution, governmental powers are divided among the Executive, Legislature, and Judiciary, and distributed across the Federal, State and Local Government tiers. No arm or tier of government is constitutionally superior to another, and none may lawfully usurp the powers expressly vested in another. The Constitution, as the grundnorm defines the structure of governance, allocates authority, and prescribes the limits within which all governmental powers must be exercised. Consequently, no part of the federation may be governed, and no person or authority may exercise governmental power, except as authorized by the Constitution.

However, the constitution recognizes that extraordinary situations may arise in which the normal machinery of governance is imperiled. In such circumstances, the Constitution permits a temporary expansion of federal powers for the sole purpose of preserving public order, safeguarding constitutional governance, and protecting the unity and security of the federation. It is within this narrow context that Section 305 provides for the declaration of a state of emergency.²⁴ A state of emergency, in constitutional theory and comparative practice, is a temporary legal regime designed to enable the state to respond effectively to grave threats such as war, internal unrest, natural disasters, or threats to national security. Even so, emergency powers are never absolute. Across constitutional democracies, Emergency powers remains subject to legal limits, legislative right, and judicial scrutiny.²⁵

Comparing the exercise of emergency powers in India and Pakistan, the Supreme Court held the view that unlike the two polities, Section 305 of the Nigeria Constitution does not expressly confer power on the President to assume or temporarily displace the executive or legislative institutions of a state. The omission is deliberate and reflects Nigeria's constitutional commitment to federalism and the autonomy of State governments.²⁶ In interpreting Section 305 of the Constitution, the court was guided by settled principles of constitutional interpretation as restated in case law.²⁷ Applying the principles enunciated in the authorities, the Court held that Section 305 of the Nigerian Constitution is clear in its grant of power to proclaim a state of emergency but silent on the precise content of the "extraordinary measures" that may follow. The silence is intentional. Emergencies are inherently situational, varying in scope, intensity, and threat. The Constitution therefore entrusts the president with discretion to determine the measures required to restore peace and security, subject always to constitutional limits, proportionality, legislative oversight, and judicial review.

Historical practice in Nigeria illustrates this flexibility. During the 2004 and 2006 emergencies in Plateau and Ekiti States respectively, the executive and legislative institutions of the States were suspended. By contrast, during the 2013 emergencies in Borno, Adamawa, and Yobe States, State institutions continued to function. These contrasting responses underscore that emergency powers are not governed by a rigid formula. The constitutionally permissible response depends on the magnitude of the threat, the functionality of state institutions and the necessity of intervention to restore constitutional order. Nevertheless, the President's discretion under Section 305 is not unfettered. Emergency measures must be temporary, corrective and proportionate. They must be directed towards restoring constitutional governance, not extinguishing it. Any permanent displacement or abrogation of democratically elected institutions would constitute a constitutional aberration. Outside a validly declared state of emergency, the President possesses no power whatsoever to interfere with state executive or legislative institutions.

The Place of the National Assembly in Emergency Declaration

The constitution subjects the proclamation of a state of emergency to strict legislative control. By virtue of Section 305(2) and (6)(b) of the 1999 Constitution, a proclamation ceases to have effect unless approved by a resolution supported by not less than two thirds of all members of each House of the National Assembly within the stipulated time. This requirement ensures that emergency powers command broad national consensus and are not the product of unilateral executive action. The constitution does not prescribe the voting procedure for securing two-thirds majority. Consequently, by virtue of Section 60 of the Constitution, each House of the National Assembly regulates its procedure through its Standing Orders. These Standing Orders possess constitutional force in determining how approval is granted. In the Senate, the relevant procedure is governed by Orders 133 – 136 of the Senate Standing Orders, 2023 (as amended) and voting is conducted in accordance with Chapter X thereof, particularly Orders 70 – 72 and 71, which recognize voice vote, division by signing a register, or electronic voting. A formal numerical division is required where the opinion of the Presiding officer is challenged. What remains constitutionally imperative is that the process adopted renders the attainment of the two-thirds majority clearly ascertainable.

²⁴ *ibid*, per Mohammed Baba Idris JSC in the Lead Judgement.

²⁵ *ibid*.

²⁶ *ibid*.

²⁷ *Natiu Rabi v State* (1980)8 – 9SC 130, *AG FEdertaioin Vs Abubakar* (2007)10 NWLR (Pt. 1041) 1(SC), *Saraki v FRN* (2016)3 NWLR (Pt. 1500) 531(SC), *Skye Bank Plc v Iwu* (2017) LPELR – 42595 (SC).

In the House of Representatives, Order 16 of the Standing Orders (11th Edition) governs the consideration of a Proclamation of Emergency and voting modes are provided under Order 11. Significantly, Order 11 Rule 6 empowers the speaker, where a matter is of national concern, to order a division, with votes recorded by name, constituency, choice and published accordingly. A proclamation of a state of emergency is unquestionably a matter of national concern and the Standing Orders accordingly provide a mechanism for transparent and verifiable determination of the required super majority. On the whole, a proclamation of a state of emergency is constitutionally valid where it is issued under Section 305 of the 1999 Constitution of the Federal Republic of Nigeria, approved by not less than two-thirds majority of all the members of each House of the National Assembly in accordance with their standing orders and implemented through measures that are temporary, proportionate and directed at restoring Constitutional order. The exercise of such powers remain subject to judicial review prevent arbitrariness or abuse.

Nonetheless, Obande Ogbuinya JSC dissented from the judgement and held the view that while the President has the authority to declare a state of emergency under Section 305 of the Nigerian Constitution, the Power does not extend to suspending democratically elected officials, including governors, deputy governors and law makers. The dissent emphasized that such suspension threatens the structure of Nigerian democracy and sets a dangerous precedent for future executive overreach. The learned jurist predicated his reasoning on constitutionalism and the basic structure of federalism. He contended that licensing the President to suspend elected officials such as Governors, Deputy Governors and State Assembly members fundamentally undermines the federal principle. He posited that, the President cannot under any guise or nomenclature remove elected officials from office as the Constitution provides specific procedures for their removal. The gravamen of the argument of the learned jurist was that suspending elected officials under a state of emergency weakens democratic principles. The dissenting justice is saluted for exhibition of judicial courage, intellectual rigor and commitment to constitutionalism.

Political Current in Emergency Governance Declaration

President Bola Ahmed Tinubu declared State of Emergency in Rivers state to resolve the two-year political crisis. The President suspended the Governor Siminalayi Fubara his deputy, Professor Ngozi Odu and members of the State House of Assembly for six months.

In a nationwide broadcast, the President said:

“Fellow Nigerians I feel greatly disturbed at the turn we have come to regarding the political crisis in Rivers state. Like many of you, I have watched with concern the development, with the hope that the parties involved would allow good sense to prevail at the soonest, but all that hope burnt out without any solution to the crisis.”²⁸

The President admitted in the declaration broadcast that the imbroglio in Rivers State was a political one. The Commander In-chief of the nation inherited Boko Haram insurgency characterized by terrorist Act. The situation was compounded by the activities of allied terrorist organisations such as Islamic State West Africa Province (ISWAP), Banditry groups and Herdsmen.

The terrorist groups were engaged in kidnappings including abduction of students from secondary schools, killing of Christian worshippers in churches as and the commission of other terrorist atrocities in the Northern region of Nigeria. The terrorist collected royalties from farmers, received ransoms to release their abductees and hoisted their flags in Local Government Areas to express that they have overwhelmed the Nigerian State. In all of this, a state of emergency was never declared in any of the nineteen States in the North where insecurity raged. The situation exacerbated to the extent that the President of the USA, Donald Trump threatened to invade Nigeria

²⁸ O. Adedolyile, ‘Tinubu declares State of Emergency in Rivers suspends Fubara, Deputy, Law makers Punch (Lagos, 19 March 2025), *L.*

over Christian genocide orchestrated by terrorist groups.²⁹ President Donald Trump effected his threats when the American State launched Aerial attacks in Sokoto State, Northwest Nigeria on December 25, 2025 and degraded the terrorist.³⁰ Supporting the United State, the Israeli Prime Minister, Benjamin Netanyahu said that “The Persecution of Christian or members of any religion cannot and must not be tolerated and Muslim militant attacks against Christians in Nigeria, that too must end. And it must end now.”³¹

The Governor, Deputy Governor and the 26 members of the Rivers State House of Assembly were members of the People’s Democratic Party (PDP) and sponsored by that party in the 2023 General Elections. At the effluxion of the six months emergency rule, the governor,³² deputy governor³³ and sixteen members of the State House of Assembly³⁴ defected to the ruling All Progressive Congress (APC). The defections were orchestrated to boost the re-election of the President for second term in 2027. It was therefore manifestly clear that the emergency declaration was propelled by political interest to hand twist the elected officials to change their party affiliation and support the President’s re-election agenda. Mary Arthur – Jolasimmi and Jerry Oboh, focusing their work on emergency rule in Rivers State held the view that emergency powers should not be abused. They further contended that the Court should not permit the miscarriage of justice for esoteric reasons. These admonition was issued before the Supreme Court of Nigeria delivered a split judgement on December 15, 2025.³⁵

Exercise of Emergency Powers in India

The President of India can declare three types of Emergency, National³⁶, State³⁷ and Financial³⁸ under the Indian Constitution in addition to promulgating ordinances.³⁹ A National Emergency can be declared in the whole of India or a part of its territory for causes of war or armed rebellion or an external aggression⁴⁰ Under article 352 (2) of the Indian Constitution, the President can declare such Emergency only on the basis of a written request by the cabinet Ministers headed by the Prime Minister and such Proclamation must be approved by Parliament with two-thirds majority within one month,⁴¹ just as the Emergency can be imposed for six months.⁴² It can be extended by six months by repeated parliamentary approvals and there is no maximum duration for its subsistence. In such an emergency, fundamental rights of Indian citizens can be suspended and the six freedoms under Right to Freedom are automatically suspended save that the right to life and personal liberty cannot be suspended.⁴³ National Emergency was first declared in 1962 by President Sarvepalli Radhakrishnan during the Sino-India war.⁴⁴ There was also a thirteen-day Proclamation of National Emergency in 1971 during the military confrontation between India and Pakistan (Indo-Pakistan war) from December 3, 1971 to December 16, 1971 lasting 13 days. Another National Emergency in India was from 1975-77, Proclaimed by President Fakhruddin Ali Ahmed, with Indira Gandhi as Prime Minister. During National Emergency, certain rights are suspended as the provisions of article 19 of the Constitution which relates to the Bill of Rights are suspended.

²⁹ Damilare Adeleye, ‘President Trump says US Forces may Invade Nigeria over Killing of Christians; The Nigerian Voice, November 2, 2025, Lagos, 1. See also Associated Press, ‘Trump threatens to go into Nigeria guns-a-blazing over attacks on Christians; The Guardian Newspaper, November 1, 2025, USA, 1.

³⁰ H. Cooper, S. Jammeh and E. Schmitt, ‘US Strikes ISIS in Nigeria after Trump Warned of Attacks on Christians’ The New York Times (USA, 25 December 2025) 1.

³¹ ‘Attacks Against Christians in Nigeria Must End’: Israeli PM Warns Christians Ilesage www.legit.ng/world/africa/assessed-on-january-21, 2026.

³² Sulaimon ‘Fubara dumps PDP, defects to APC’ Punch Newspapers (Lagos 7 December 2025) 1.

³³ M. Odieguru, ‘Rivers deputy governor, SSG dump PDP for APC’. The Nation Newspaper (Port Harcourt 5 January 2026) 1.

³⁴ K. Nwaucha ‘FULL LIST: 16 Rivers Assembly members defect to APC’ Business Day Newspaper (Port Harcourt, 5 December 2025)1.

³⁵ ‘Rethinking Emergency Powers in Constitutional Democracy: Rivers State, Nigeria, in Focus’ African Journal of Law and Justice System, Vol. 4, 38.

³⁶ The Constitution of India, art. 352 (1).

³⁷ *ibid*, art 356.

³⁸ *ibid*, art 360.

³⁹ *ibid*, art 352 (2).

⁴⁰ *ibid*, art 352 (3).

⁴¹ *ibid*, (4), (6).

⁴² *ibid*, art. 352(5).

⁴³ *ibid*, art. 21.

⁴⁴ This war is also known as Indo-China border conflict between China and India.

Also, the enforcement of the Rights in Part II I(except articles 20 and 2) of the Constitution is suspended.⁴⁵

This category of Emergency in India is declared when there is failure of the constitutional machinery in a State⁴⁶ Article 356(1) of the Constitution provides for the declaration of this type of emergency as follows:

“If the President, on receipt of a report from Governor of a state or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation - (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the state other than the legislature of the state; (b) declare that the powers of the legislature of the state shall be exercisable by or under the authority of Parliament; (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving to the objects of the Proclamation, including provisions for suspending in whole or in part of the operation of any provisions of this Constitution relating to anybody or authority in the State, provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts”

From the above provisions, if the President is fully satisfied on the basis of the report of the Governor of the concerned state or from other sources that governance in a state cannot be carried out according to the provisions of the Constitution, he can proclaim under Article 356 of the Constitution a State of Emergency in the state. Such an emergency must be approved by the Parliament within a period of two months.⁴⁷ Under Article 356 of the Indian Constitution, emergency rule can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months, During such Emergency, the President can take over the entire work of the Executive and the Legislative Assembly as Legislative Assembly can be dissolved or remain in suspension.⁴⁸ Although the Emergency may last up to a maximum period of three years via extension after each six-month period, after one year it can be extended only if – (i) a state of National Emergency has been declared in the country or in that particular state and (ii) the Election Commission finds it difficult to organize an election in that state.⁴⁹ As in National Emergency, certain Rights are suspended during State of Emergency.⁵⁰ Under Article 360 of the Indian Constitution, the President can proclaim a financial emergency when the financial stability or credit of the nation or any part of its territory is threatened. However, there are no guidelines defining the situation of Financial Emergency in the entire country or state. Such an emergency must be approved by the Parliament within two months by simple majority. It is instructive to stress that this researcher has not found an instance when Financial Emergency was ever declared in India.

The various amendment of the India constitution though there where not surely restricted to emergency declarations have not been made without reviewing provisions relating to the exercise of emergency power. It can be safely said that the majority of the earlier amendments of the constitution did not overlook the provisions of emergency rule.

The 38th, 40th, 42nd and the 44th amendments of Indian constitution have made significant reviews of emergency powers. With the dynamic character of the political life of nations and the perception of the exercise of emergency power by the global community, it stand to reason that there may be further amendment of the power.

Abuse of Emergency Powers

The exercise of emergency powers in India has been a subject of executive abuse and it has been a source of concern. The Government set up at different times National Commissions to review the workings of article 356

⁴⁵ Article 19 deals with protection of certain rights regarding freedom of speech, etc. Article 20 and 21 deal with protection in respect of conviction for offences and protection of personal liberty.

⁴⁶ *ibid*, note 39. 49 – footnotes.

⁴⁷ *ibid*. 50 – footnotes.

⁴⁸ *ibid*. 352(4).

⁴⁹ *ibid*, art. 357.

⁵⁰ *ibid*. Note. 348.

of the Constitution and the Commissions submitted their reports with far reaching proposals.⁵¹ The Sarkaria Commission Report on ways of curbing abuse of exercise of Emergency Powers under article 356 and the subsequent Commission Report of May 11, 2001 are on point.

The cases of abuse of Emergency Powers have been tested in the Indian Courts and the most celebrated is *S. R. Bommai v. Union of India*.⁵² This was a landmark judgment of the Supreme Court of India where the Court discussed at length the provisions of article 356 of Indian Constitution and related issues. This case had huge impact on centre-state relations. The judgment curbed blatant misuse of article 356 of the Indian Constitution which empowered the President to impose Emergency rule on States.⁵³ Article 356 deals with imposition of President's Emergency Rule over a State of India. When a State is under President's Rule, the elected State Government is suspended and administration is conducted directly by the President through the Governor who at that point becomes an appointee of the President and therefore the Governor is effectively a functionary of the Union Government. The facts of the Bommai's case was that the Janata Party was the majority in the Karnataka State Legislature and formed a government under the leadership of S. R. Bommai. In September 1998, the Janata Party merged with Lok Dal Party to form a new party called Janata Dal. Within two days thereafter, Mr. K. R. Molakery, a legislator of Janata Dal defected from the party. He presented a letter to the Governor, allegedly signed by 19 legislators withdrawing their support to the Chief Minister- S. R. Bommai.

As a result, the Governor sent a report to the President stating therein that there were dissensions and defections in the ruling party and that the Chief Minister no longer commanded a majority in the Assembly hence, it was inappropriate under the Constitution, to have the State administration by an Executive consisting of Council of Ministers which did not command the majority in the State Assembly. He therefore recommended to the President that the President should invoke and exercise his powers under article 356(1) of the Constitution. Although 7 out of the 19 legislators who allegedly signed the letters complained in writing that their signatures were obtained by misrepresentation and declared their total support to the Chief Minister, the Governor sent yet another report to the President that the Chief Minister had lost the confidence of the majority in the House and repeated his earlier request for action under article 356(1). The President then issued the Proclamation in question which was thereafter approved by the Parliament as required by article 356 and a State of Emergency took place in the State. The President issued similar Proclamations and dismissed the Governments of Meghalaya on 11 October 1998, Nagaland on 7 August 1998, Madhya Pradesh, Rajasthan and Himachal Pradesh on 15 December 1992. All the dismissed State officials filed writs of petition which contained similar question of law and were consolidated and heard jointly. In Pakistan, Article 234 of the Constitution authorizes the President in clearly defined circumstances to assume provincial executive functions with legislative powers exercised by parliament, subject to time limits, parliamentary approval and judicial *overing at. A sit were, the position of the law in three countries is that the President is vested with power to suspend democratically elected officers although that of Nigeria is not a Constitutional Provision but of Judicial Interpretation.*

Comparison Between Exercise of Emergency Powers in Nigeria and India

From the examination of emergency powers in Nigeria and India, the following differences and similarities could be distilled. In Nigeria, there are two types of Emergency: National and State while there are three types of Emergency in India to wit National, State and Financial. In Nigeria, National Emergency can be declared when the Federation is at war, is in imminent danger of invasion, involved in a state of war or when there is public danger constituting a threat to the existence of the Federation while in India, National Emergency can be declared for the whole of India or a part thereof for causes of war, armed rebellion or external aggression. In India, declaration of the National State of Emergency is predicated on an advice or request by the Cabinet of Ministers through the Prime Minister whereas in Nigeria, declaration of a National State of Emergency is at the discretion of the President. In Nigeria, the Governor and no other person can request the President to make a proclamation of State of Emergency whereas in India, the Governor or any other person can request the President to make the proclamation. In Nigeria, the basis for the declaration of State of Emergency in a State is breakdown of public order and public safety, threat of actual breakdown of public order and public safety, the occurrence of danger,

⁵¹ See the Constitution Paper on Article 356 of the Constitution [www.http://lawmin.nic.in](http://lawmin.nic.in) – Accessed 15/2/2026.

⁵² (1994) 2 SCR 644. AIR (1994) SC 1918 and (1994) 3 SCCI.

⁵³ *Rajendra, P. R. J. "Bomai Verdict has checked misuse of Article 356" Chennai, India: Frontline, 1998.*

imminent occurrence of natural disaster or calamity while in India, the President may declare Emergency in a State when the State fails to run constitutionally. In Nigeria, the life span of a Proclamation of State of Emergency without supporting resolution is two or ten days depending on whether the National Assembly is in session or not. But in India, it is one month for National Emergency and two months for State Emergency. In Nigeria, a State of Emergency in a State can remain in force for one year whereas in India, it can remain in force for three years. In the case of National Emergency, there is no maximum duration, both in Nigeria and India.

In Nigeria and India a Proclamation for State of Emergency, once approved, will remain in force for six months in the first instance subject to repeated approvals of six months. Also in the two Countries, President's Proclamation for State of Emergency must be approved by two-thirds majority of the National Assembly or National Parliament as the case may be. In both countries, when a State of Emergency is declared, the fundamental human rights provisions in their Constitutions suffer derogation. The President, upon a declaration of state of emergency, in both countries, can take over the entire work of the Executive and the House of Assembly or Legislative Assembly.

CONCLUSION

This paper has examined the exercise of Emergency Powers in Nigeria and India. While Nigeria practices Presidential system of constitutional democracy, India operates Parliamentary system of constitutional democracy. The purpose or objective of declaration of State of Emergency is to restore peace, order and stability in any part of the countries considered in this paper. This means suppression of all acts of rebellion, disorder or insurrection and nothing should be done under the guise of State of Emergency to subvert the Constitution. This research has shown that although the countries considered herein have the same objective in declaring a State of Emergency, the procedures and approaches are different. The validity of State of emergency has been tested in the Court in respect of the Union of India, and recently in Nigeria. The exercise of Emergency Powers in Nigeria should not be a political question and should therefore be subject to judicial review by the Court. Measures should be put in place to objectively define what a State of Emergency is, so that it will no longer be a subjective issue to be considered by the authority vested with the power to declare. The principles laid down by the Indian Supreme Court in Bomai's Case are recommended for adoption by Nigeria *mutatis mutandis*. The promulgation of a State of Emergency should not violet express enshrinement in the Constitution. In cases of judicial review, the court particularly the apex court should exhibit integrity in its judicial pronouncements.⁵⁴

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⁵⁴ CFRN 1999, S23.