

Declaration of Emergency and Suspension of Human Rights in Bangladesh: A Legal Analysis

Soeb Aktar*

Abstract: Emergency is an inevitable fate predetermined by nature. In order to address a scenario that poses a threat to the collective well-being and existence of the race and necessitates actions that are not typically considered in daily life, both an individual and a nation must be able to predict it reasonably. Declaring a state of emergency or using extraordinary powers gives rise to a variety of legal and political problems, including violations of human rights, especially in nations that have experienced long-term military control. The actions during an emergency are also alleged to have infringed a number of fundamental rights, including the right to a fair trial. Bangladesh is a democratic, sovereign country with a written constitution. Similar to most other written constitutions, the constitution of Bangladesh includes provisions for declaring a state of emergency in response to situations that could jeopardize public safety or the nation's economy by affecting large numbers of people or their property. Most modern constitutions have provisions for emergencies that may allow for a short departure from the constitution's normal safeguards. Given the extraordinary authority bestowed upon concerned authority during the emergency, interested parties could potentially be tempted not to give up their newly obtained power. Nonetheless, emergency provisions can act as a self-defense mechanism for democracy if they are properly designed and put into effect. It enables the State the power to deal with serious threats and difficulties while still adhering to democratic constitutional principles.

Keywords: Emergency, Suspension of Human Rights, constitution, Abuse, Legal Analysis

Introduction: Emergency is a fate that nature has predetermined. In order to address a scenario that poses a threat to the collective well-being and existence of the race and necessitates actions that are not typically considered in daily life, both an individual and a nation must be able to predict it reasonably. Without protections against such occurrences, the State will be wiped out.¹ In this era of constitutionalism, many nations have included provisions for emergencies in their constitutions. Bangladesh is a sovereign, democratic nation with a constitution. Its constitution's provision for declaring a state of emergency addresses the issue of imbalances in the society.² The Bangladesh Constitution, like the

*Lecturer, Department of Law, American International University- Bangladesh, Dhaka.

¹ Singh, M.P. (1990). *V.N Shukla's Constitution of India*. 8th ed. Eastern Book Company, p.63.

² Article 141A (1) of the Constitution of the People's Republic of Bangladesh 1972 states that "If the President is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency."

majority of written constitutions, has provisions for a state of emergency to cope with circumstances that either directly or indirectly threaten the safety of the public or the country's economy by having an impact on a significant number of people or their property. When a state of emergency is declared or extraordinary powers are exercised, it creates a number of legal and political issues involving the infringement of human rights, particularly in a country that has had protracted periods of military rule. Additionally, several fundamental rights, such as the right to a fair trial, are claimed to be violated by these activities. The 1973 amendment to the constitution that introduced emergency provisions was motivated by a concern over rising instability brought on by Bangladesh's then-rapidly deteriorating socio-political and economic realities.³ Unfortunately, it is claimed that the declaration of an emergency in 1974, as well as in different situations in 1981, 1987, and 1990, was ineffective in addressing or resolving the problem for which it was made. Throughout this article, the author will attempt to analyze and assess the circumstances and the legal procedures under which a proclamation of emergency can be issued and the position of human rights during such a period of emergency.

Meaning of Emergency

Although several nations have emergency clauses in their constitutions, it is difficult to find a clear definition of the term. An emergency typically refers to a sudden occurrence that calls for prompt action.⁴ Stephen P. Marks defines an emergency as a circumstance brought on by transient events that puts the State's institutions at danger and justifies the authorities in suspending the execution of certain rules and regulations.⁵ According to the Merriam-Webster online dictionary, the phrase refers to an unexpected confluence of events or the consequent condition that necessitates rapid action.⁶ A situation of emergency, on the other hand, is something that does not allow for any precise definition, as Lord Dunedin points out in the case of *Bhagat Singh v. King Emperor*. It alludes to a situation in which harsh measures are especially necessary.⁷ Dr. S.M. Hassan Talukder in his book "Regarding Emergency: Bangladesh Perspective," expresses the opinion that, in the strictest sense, the concept of emergency, from the standpoint of constitutional law, means the suspension and restriction over certain fundamental rights of citizens in order to deal with a situation where the security of the state is threatened or the national interest is in danger.⁸ The phrase "state of emergency" is used to refer to a legal framework that grants governmental institutions unprecedented powers to address existential threats to the public's safety.⁹

Classification of Emergency

Depending on the emergency's territorial scope and character, it might be classed. No matter the reason, a national emergency is any situation when an emergency has been proclaimed across the entire state's territory. A partial or state emergency, on the other hand, is proclaimed when it only affects a portion of a unitary state or a state of a federation. The

³ The Lawyers & Jurists. (2024). Emergency Provisions in Bangladesh: A Critical Analysis | The Lawyers & Jurists. [online] Available at: <https://www.lawyersnjurists.com/article/emergency-provisions-bangladesh-critical-analysis/> [Accessed 23 Dec. 2024].

⁴ Halim, M.A. (n.d.). Constitution, Constitutional Law and Politics: Bangladesh Perspective. (1998) p.242.

⁵ Huda, S. (n.d.). Human rights under Emergency Situations. *Dhaka University Studies*, (1992), 3(F).

⁶ Merriam-Webster (2019). Definition of Emergency. [online] Merriam-webster.com. Available at: <https://www.merriam-webster.com/dictionary/emergency>.

⁷ Jain, M. (1994). *Indian Constitutional Law*. p.111.

⁸ Talukder, D.S.M.H. (2003). *Regarding Emergency: Bangladesh Perspective*. Bangladesh Law Research Center, p.2.

⁹ Corteidh.or.cr. (2021). StackPath. [online] Available at: <https://www.corteidh.or.cr/tablas/r28084.pdf>.

Indian Constitution, for instance, permits the declaration of an emergency in all or part of India under Article 352. Article 232 also covers State emergencies. The Constitution of Pakistan also contains the same clauses.¹⁰ On the basis of its nature, emergency may be of following types:

1. Emergency of War: An emergency of war is one that is declared as a result of a war or external invasion.
2. Emergency of Subversion: An emergency of subversion is one that is declared as a result of internal unrest within the State, such as a civil war, an anti-government movement, a riot in a specific region, or the threat of a natural disaster.
3. Economic emergency: An emergency is proclaimed when it is intended to address a situation in which the economy is either about to collapse or has already collapsed.

International Law on Emergency

International law aims to firmly integrate human rights into the rule of law by establishing standards and guidelines to direct State behavior during times of national emergency. The world has witnessed a dramatic evolution in international law since globe War II. Numerous human rights agreements that set forth various governmental commitments to uphold those standards have been ratified. The drafters of the International Covenant on Civil and Political Rights, who had learned their lessons during a protracted and disastrous battle, were all too aware that recognition of human rights for all "is the foundation of freedom, justice, and peace in the world."¹¹ However, under some international human rights treaties, State parties are allowed to temporarily modify their obligations and derogate from a number of human rights in specific exceptional cases, such as when a state of emergency threatens the nation's survival. Many States may unavoidably encounter challenging crisis situations at some point, such as war or other severe social upheavals, and in such situations, they may judge it necessary to restrict or even suspend the exercise of individual rights and freedoms in order to restore peace and order. The result could be disastrous for people who are subject to the constraints as well as for peace and justice in general.

Article 4(1) of the International Covenant on Civil and Political Rights¹² states that in times of public emergency that endangers the life of the country and whose existence is officially proclaimed, States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations. In accordance with Article 27(1) of the American Convention on Human Rights,¹³ a State Party may deviate from its obligations under the present Convention to the extent and for the time strictly necessary by the exigencies of the situation, provided that such actions are not in conflict with its other obligations under international law and do not jeopardize the independence or security of the State Party. As stated in Article 15(1) of the European

¹⁰ The Lawyers & Jurists. (2024). Emergency Provisions in Bangladesh: A Critical Analysis | The Lawyers & Jurists. [online] Available at: <https://www.lawyersjurists.com/article/emergency-provisions-bangladesh-critical-analysis/>.

¹¹ First preambular paragraph of the International Covenant on Civil and Political Rights 1966, which is identical to that of the International Covenant on Economic, Social and Cultural Rights.

¹² United Nations (1966). International Covenant on Civil and Political Rights. [online] OHCHR. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹³ Nations United, American Convention on Human Rights (1969), Article 27(1) Available at: <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>

Convention on Human Rights,¹⁴ any High Contracting Party may take measures that deviate from the Convention's requirements in times of war or other public emergencies that endanger the lives of the nation, provided that those actions do not conflict with the High Contracting Parties' other obligations under international law.

International law restricts the use of emergency powers by governments by forbidding them to be used outside of the time and place stated in their notice of derogation. When examining Turkey's suspension of human rights safeguards in regions other than those included in the state's derogation notice, the ECtHR reaffirmed this principle in *Sakik and Others v. Turkey*.¹⁵ When determining the territorial scope of the derogation in question, the court stated that it "would be working against the object and purpose of [the ECHR's derogation provision] if it were to extend its effects to a part of Turkish territory that was not explicitly named in the notice of derogation." Some of the most significant international human rights treaties allow States Parties to diverge from some of their obligations thereunder in times of exceptional crisis. The right to derogate is a flexible mechanism that can help governments manage exceptional crisis situations. The right to deviate from treaty obligations does not grant the derogating State unrestricted power to act whenever it pleases. It is a right that is limited by a variety of laws, such as the principles of universal notice, strict necessity, and the non-derogability of some rights.

Emergency provision in the Indian Subcontinent

The Indian Subcontinent first saw the exercise of the executive's emergency powers under the Government of India Act, 1935. The Governor-General may declare a state of emergency under Article 102 of the Act, "if, in his judgment, a grave emergency exists, whereby the security of India is threatened, whether by war or internal disturbances." This clause, which is completely at odds with the British democratic system, was openly employed by the British king in India to advance their colonial objective. Unfortunately, despite the attainment of freedom and the establishment of independent sovereign states, these anti-democratic and anti-democracy provisions persisted in the constitutions of the Post Continent. Similar to this, Article 191 of the 1956 Constitution of Pakistan contained similar emergency provision. Pakistan's 1962 Constitution has a similar clause as well. Regardless of how well-intentioned the rules may have been, Pakistan's experience demonstrated that anytime such power was included into the constitution, the temptation to employ or, in most cases, misuse them was quite prevalent. Therefore, it was believed that these authoritarian powers and the goal of developing a living democracy were incompatible.

Emergency Provision in Bangladesh

As was previously discussed, it is accepted worldwide that in times of emergency, some rights are required to be suspended. Nearly all regional and global human rights accords have clauses that allow for the suspension of rights in dire circumstances. Bangladesh's original constitution excluded any clauses that would apply for declaring an emergency. The decision was bold, noble, and beneficial to a healthy democracy. However, the same group that wrote Bangladesh's constitution quickly included provisions for an emergency by passing the Second Amendment before nine months had passed.¹⁶

¹⁴ Council of Europe (1950). European Convention on Human Rights. [online] European Convention on Human Rights. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹⁵ *Sakik and Others v. Turkey*, 26 Eur. H.R. Rep. 662 (1998)

¹⁶ Ahmed, M (March 2021). Bangladesh: Era of Sheikh Mujibur Rahman. *University Press Limited*. (Translated to Bangla by Joglul Alam) p.133.

Part 9A of the Constitution deals with emergency provisions. Three articles—141A, 141B, and 141C—are included in this part. According to Article 141A, the president may issue a proclamation of emergency if he is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war, external aggression, or internal disturbance. According to Article 141A, the president may proclaim a state of emergency whenever he believes that a grave emergency exists in which war, external aggression, or domestic unrest threaten Bangladesh's security or economic existence in whole or in part. In accordance with Article 141A (3), a declaration of emergency may be made if the President determines that there is an immediate threat of war, aggression, or other disruption.

The proclamation of emergency must have the prime minister's prior countersignature in order to be legal, according to the proviso of article 141A(1). Thus, the emergency declaration essentially hinges on the prime minister's wishes. The president is required to declare an emergency whenever the prime minister suggests it. Therefore, the declaration of an emergency depends on the executive's subjective satisfaction, and the court cannot contest the legitimacy of such satisfaction. The president of Bangladesh, unlike the presidents of India and Pakistan, has been given the special power and authority through Article 141A of the Constitution to only declare two types of emergencies, namely the emergency of war/external aggression and the emergency of internal disturbances. There are four common types of emergency situations, including war, subversion, economic crisis, and natural disaster.¹⁷

Impacts of Declaration of Emergency on administration

The constitution places a number of procedural limitations on the president of Bangladesh, who may nonetheless proclaim a state of emergency.¹⁸ As discussed earlier, the prime minister's advice is required for the president to take action in a parliamentary form of government like Bangladesh. After it is issued, it must be presented to the parliament for approval. If the next parliament is not in session, the president must present emergency measures at the first meeting, and the parliament must approve them within the first 30 days. If these conditions aren't met, it's not legal to declare an emergency.

The executive branch of the government holds the primary and sole power for managing the government on a daily basis. It executes State laws. The executive's power is successfully exercised by a balanced limit. The executive branch of Bangladesh, like that of other countries, has more authority during emergencies. The power of the executive branch contradicts the balance of power among the three state institutions. It becomes more challenging to uphold constitutional rights and obligations when there is this kind of power play.¹⁹ The right to humane treatment while in prison is guaranteed to every defendant under the constitution. In the event that the defendant is imprisoned for an extended period of time, their families should be kept updated on their whereabouts, health, and access by phone and/or in-person visits. The accused should get fair treatment, be spared from brutal or inhumane treatment, not be tortured, have access to medical care (if required), and get enough food, water, and rest.

¹⁷ Ahmed, M (1984). Bangladesh: era of Sheikh Mujibur Rahman. *University Press Ltd, Dhaka*. p.149.

¹⁸ The Constitution of the People's Republic of Bangladesh, Articles 141A (1) and 141C

¹⁹ Talukder, D.S.M.H. (2003). Regarding Emergency: Bangladesh Perspective. Bangladesh Law Research Center, p.2.

Nevertheless, detainee abuse is encouraged by arrests made under emergency circumstances.²⁰ Tens of thousands of people were reportedly arrested in the weeks following the declaration of a state of emergency in January 2007.²¹ Without warrants, law enforcement officers frequently made arrests in the middle of the night. In many cases, they didn't identify themselves, acted in plainclothes, and base their choices on emergency legislation.²² Security forces frequently send detained individuals to army barracks and other unofficial prison facilities where they are mistreated and tortured rather than bringing them immediately before a magistrate.²³ Torture is a cruel practice, even in dire circumstances.

The government violates due process when it hurts someone without strictly adhering to the letter of the law. All governments must guarantee that all defendants have the right to due process even if they have the right to look into, accuse, and prosecute anyone they feel has breached the law. This includes the defendants' rights to be informed of the circumstances surrounding their arrest and the charges brought against them, to view all relevant evidence, to have access to facilities for preparing a defense, to consult with a lawyer of their choice, to be tried without delay in a public setting, and to be free from coercion to confess. However, the right to due process is more or less elusive in Bangladesh, as it is in other nations, during a crisis.²⁴

Impacts on Human Rights

The majority of contemporary constitutions contain emergency provisions that could permit a short detachment from the standard protections provided by the constitution.²⁵ The proclamation of a state of emergency typically confers additional authority in three primary domains:²⁶ (a) the temporary suspension or restriction of some (but typically not all) constitutional rights; (b) the temporary centralization of power in the central government at the expense of sub-national authorities and the executive branch; and (c) in certain instances, the postponement of elections.

The International Covenant on Civil and Political Rights obliges states to protect a wide range of human rights. While it allows governments to suspend the protection of certain rights during emergencies, this can only occur when the very existence of states is endangered. The states may suspend the protection of rights only where necessary to deal with the emergency, and only for as long as the emergency exists.²⁷ The Constitution of

²⁰ Olivier De Schuttes (eds) (2010). *International Human Rights Law Cases Materials and Commentary*. p.278.

²¹ Refworld. (2023). World Report 2008 - Bangladesh | Refworld. [online] Available at: <https://www.refworld.org/reference/annualreport/hrw/2008/en/52084> [Accessed 23 Dec. 2024].

²² Refworld. (2023). World Report 2008 - Bangladesh | Refworld. [online] Available at: <https://www.refworld.org/reference/annualreport/hrw/2008/en/52084> [Accessed 23 Dec. 2024].

LOCKED AWAY Sri Lanka's Security detainees SECURITY WITH Human rights. (n.d.). Available at: <http://files.amnesty.org/archives/asa370032012eng.pdf>.

²³ LOCKED AWAY Sri Lanka's Security detainees SECURITY WITH Human rights. (n.d.). Available at: <http://files.amnesty.org/archives/asa370032012eng.pdf>.

²⁴ Gross, E. (2006). *The Struggle of Democracy against Terrorism: Lessons from the United States, the United Kingdom and Israel*. University of Virginia Press, p.128.

²⁵ Emergency Powers International IDEA Constitution-Building Primer 18. (n.d.). Available at: <https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf>.

²⁶ Emergency Powers International IDEA Constitution-Building Primer 18. (n.d.). Available at: <https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf>.

²⁷ OHCHR. (n.d.). Permanent state of emergency cannot be used as a justification or ground for unilateral sanctions. [online] Available at: <https://www.ohchr.org/en/press-releases/2021/03/permanent-state-emergency-cannot-be-used-justification-or-ground-unilateral>.

Bangladesh, which was, later on, amended through the Constitution (Second Amendment) Act, 1973, does not make any attempt to balance between protecting the security of the state and respecting individual's fundamental rights at the time of emergency. The Constitution through Article 141C (1) has given a special unfettered power to the president during a state of emergency to limit or suspend the enforcement of all or some of the 18 fundamental rights guaranteed by Part 3 of the Constitution.²⁸

At the time of emergency, the state can make laws restricting the fundamental rights guaranteed in articles 36 to 40 and 42. However, it cannot be said that the provisions in these articles would be suspended automatically. A plain reading of Article 141B clarifies that unless there is a law made during a proclamation of emergency, nothing is suspended automatically. Article 141C also corroborates this statement. Article 141C (1) further suggests that whatever restrictions may the President impose, it must be specifically mentioned in the Order and hence it is not automatic.²⁹

Apart from Articles 36 to 40 and 42, no other fundamental rights can be curtailed. Article 26 and equality, non-discrimination remain in force. In *Moyezuddin Sikder vs State*,³⁰ Mr Sikder was charged under a law covered by the emergency power Rules and sought bail from the HCD. The government opposed it on the grounds of lacking the jurisdiction of the court during an emergency. The court held that the term 'any court or tribunal' in the Rule does not include the Supreme Court. In absence of any clear ouster clause, the Supreme Court's inherent supervisory power could not be interpreted as curtailed. Unfortunately, the Appellate Division overruled this interpretation. However, in another case, the petitioner challenged the restriction on the right to seek bail. The court held that Rule 11(3) of the Emergency Power Rules which pulled off the judicial power to grant bails is a fundamental right that cannot be infringed even during war.³¹ In the case *ADM Jabalpur vs Shivkant Shukl*,³² the Indian Supreme Court held that the Constitution is the mandate. It is the rule of law. There cannot be any rule of law other than constitutional rule of law. There cannot be any pre constitution or post constitution rule of law which can run counter to the rule of law embodied in the constitution. Nor can there be any invocation of any rule of law to nullify the constitutional provisions during the time of emergency. The right to liberty inheres in the body of humans and can never be taken away by the executive except in due process of law. It is so even if there is no constitution at all.³³ But, however, during an emergency in Bangladesh, as in other countries, the right to due process remains more or less illusive.³⁴

It is argued that during the time of emergency, the provision for the writ of habeas corpus remains suspended until the withdrawal of emergency; but it is not proper perception. If the detention is not in conformity with the provision of law under which a man is purported to be detained, he should have the right to agitate the court of law in the proper way. In the UK, at the time of emergency, the writ of habeas corpus is not suspended, and the Emergency Power

²⁸ Begum, M. and Nurul Md Momen (2019). *Emergency Governance, Bangladesh*. Springer eBooks, pp.1–6. doi:https://doi.org/10.1007/978-3-319-31816-5_2031-1.

²⁹ Chowdhury, M.J.A. (2017). *An Introduction to the Constitutional Law of Bangladesh*. 3rd ed. Book Zone Publication, p.611.

³⁰ 59 DLR (HCD) 287

³¹ *Advocate Sultana Kamal vs Bangladesh*, 14 MLR (HCD) 105

³² AIR 1969 SC 33

³³ Takwani, C. (2005). *Lectures on Administrative Law*. 3rd ed. Eastern Book Company, p.28.

³⁴ Talukder, D.S.M.H. (2003). *Regarding Emergency: Bangladesh Perspective*. Bangladesh Law Research Center, p.2.

Act expressly prohibits the alteration of the existing procedure of criminal cases and no punishment is inflicted on any person without trial.

Scope of Abuse of Emergency Provision

It is possible that interested parties will feel tempted not to relinquish their newly acquired power due to the unprecedented powers granted during the emergency. Despite the sufficiency of the more traditional framework involving the criminal law, there is a risk that the government apparatus will abuse the extraordinary powers to manufacture too many "emergencies" and use a variety of repressive methods.³⁵

Internal disturbance is the underlying cause of the emergency power abuse issue. The term is ambiguous, and because of this, the administration can easily abuse this emergency power. Therefore, even during times of calm, an emergency may be declared under the pretext of internal unrest even when there isn't any actual unrest. Due to the ambiguity of the term "internal disturbance," the governing elite actually exploits this power, as it did with the emergency declaration in Pakistan, as a ready weapon to crush the opposition and anti-government movement. The president has the authority to halt the implementation of all fundamental rights once an emergency has been proclaimed under Article 141C. A right loses all validity if the enforcement of it is discontinued, just like a car without an engine. Four times in Bangladesh's history, the country has proclaimed a state of subversive emergency, and each time, all fundamental liberties have been completely suspended. Such a condition cannot be justified by any democratic concept. Some rights, such as the right to property and others, have nothing to do with the threat of subversion. The enforcement of all rights, however, remained postponed at the time. Therefore, it should be clearly stated in the Constitution which specific rights would be suspended during a time of war, and which would be suspended during a time of subversion.

According to the information collected by local and international human rights groups, during the emergency period in 2007, over 250,000 people have been arbitrarily arrested and detained in the country during the first 13 months of the state of emergency, with a high proportion of them having been subjected to ill-treatment or torture — sometimes resulting in death — which remain endemic in the country.³⁶

Why Emergency is needed

It is a matter of controversy because an emergency is necessary since an emergency may be right or wrong. The state can efficiently respond to crises because of emergency laws, which also ensure that the use of emergency powers stays within the bounds of the law. Emergency provisions, when carefully designed and implemented, can serve as a self-defense mechanism for democracy, giving them the authority to confront grave threats and challenges while remaining within the bounds of a democratic constitution.³⁷

It is democratic to protect the security of the state as a whole rather than giving importance to the liberty of some individuals. If the state is destroyed or in a great danger of peril, the

³⁵ Masudul, A. (n.d.). Emergency Powers and Caretaker Government in Bangladesh. [online] Available at: <http://www5.austlii.edu.au/au/journals/JIALawTA/2008/9.pdf> [Accessed 23 Dec. 2024].

³⁶ Masudul, A. (n.d.). Emergency Powers and Caretaker Government in Bangladesh. [online] Available at: <http://www5.austlii.edu.au/au/journals/JIALawTA/2008/9.pdf> [Accessed 23 Dec. 2024].

³⁷ Emergency Powers International IDEA Constitution-Building Primer 18. (n.d.). Available at: <https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf>.

liberties of the individual citizens stand annihilated.³⁸ Lord Atkinson very precisely provided the necessity of emergency in the following words, “However precarious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely the national success in the war, escape from the national plunder or enslavement.”³⁹

There are numerous arguments in favor of preserving the emergency clause. Any country could experience an unforeseen circumstance. We can use the current state of various Middle Eastern nations, like Tunisia, Egypt, Bahrain, and Libya, as an example. These nations are not in a normal position; rather, they are in an emergency, which calls for emergency measures. But occasionally, governments will proclaim an emergency to misuse their authority. For instance, after being charged with corruption and told to leave her seat in the Indian Parliament in 1975, Prime Minister Indira Gandhi proclaimed a state of internal emergency in India, enabling her to rule by decree until 1977.⁴⁰ During the emergency, political dissent was fiercely suppressed.⁴¹ Therefore, how effectively the concerned Government uses emergency laws is up to them. The government bears primary responsibility for its proper usage. Hence, for some purposes, emergency provision is necessary. The Government uses the practice of suspending some rights during times of war and economic emergency but not during times of domestic unrest as a tool to repress the opposition and maintain control. Nearly all regional and global human rights accords have clauses that allow for the suspension of rights in times of crisis. Both Malaysia and its neighbor Sri Lanka have rules governing indirect emergencies. At the time of the tsunami, Indonesia⁴² and other nearby nations declared an economic emergency. Therefore, there are a bunch of benefits to an emergency, but it all relies on how we use it. But it's not a smart idea to suspend such fundamental rights for a very long time.

Way Forward

Professor Bruce Ackerman⁴³ offers several recommendations for rewriting constitutions to improve a government's capacity to respond to future crises while also preserving individual freedom. He adopts a three-dimensional strategy. He offers detailed recommendations for constitutional structures in the first dimension that enable efficient short-term responses without permitting situations of emergency to become permanent fixtures. This dimension concentrates on an innovative system of political checks and balances. His second level incorporates financial rewards and remuneration into the processes. He offers a structure that enables courts to efficiently act to stop predicted abuses in his third dimension.

From the closer look of the emergency provisions, it appears that the constitution does not provide anything about the justiciability of the President's satisfaction as to the existence of reasons warranting imposition of emergency. This opens the way for the judicial review of

³⁸ Talukder, D.S.M.H. (2003). *Regarding Emergency: Bangladesh Perspective*. Bangladesh Law Research Center, p.2.

³⁹ *R vs Halliday*, (917) UKHL 1

⁴⁰ Pathak, V. (2024). Explained: The story of the Emergency. [online] The Indian Express. Available at: <https://indianexpress.com/article/explained/explained-history/explained-the-story-of-the-emergency-9421688/>.

⁴¹ Ghosh, J. (2016). Indira Gandhi's call of Emergency and Press Censorship in India: The Ethical Parameters revisited. [online] (2), p.1. Available at: <https://www.caluniv.ac.in/global-mdia-journal/Article-Nov-2017/A4.pdf>.

⁴² IFRC (2013). *Emergency appeal final report Asia: Earthquake and Tsunamis*. [online] www.ifrc.org. Available at: <https://www.ifrc.org/docs/Appeals/04/2804fr.pdf> [Accessed 24 Dec. 2024].

⁴³ Ackerman, B. (2024). The Emergency Constitution. [online] yalelawjournal.org. Available at: <https://www.yalelawjournal.org/essay/the-emergency-constitution>.

the decision of the President on the ground of validity of the promulgation of emergency. In *Advocate Sultana Kamal vs Bangladesh*,⁴⁴ Justice ABM Khairul Haque opined that the satisfaction of the President is subject to judicial review. A term like "armed rebellion" or a particular description of internal disturbance should be added to our constitution to prevent the misuse of the emergency clause. The ability to declare an emergency with the approval of the legislature is occasionally abused by the executive. The President may summon a special session to get the consent of the parliament if it is not in session or continues to be dissolved.

Conclusion

There was no emergency clause in either our original constitution or the constitution that was adopted in 1972. This glaring absence was probably brought about by improper application of the emergency provisions in the constitution of our precursor, Pakistan. Even in the more or less credible Indian democracy, using emergency powers in the middle of Prime Minister Indira Gandhi's term in the 1970s was claimed to be inappropriate and proved to be unwise. The discussion and analysis make it clear that there are both advantages and disadvantages to the emergency provisions. These faults allowed all previous regimes to take advantage of the measures of emergency in order to suppress the opposition and keep their hold on power. Nevertheless, we cannot create great leaders because of our failing institutions. In order to construct institutions when democracy is resurrected, the nation looks to its leaders. If we are unable to exercise caution and due care when using special provisions, perhaps we shouldn't have them at all.

⁴⁴ 14 MLR (HCD) 105