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Research Paper

Analyzing The Constitutionality of Suspension of a Democratically Elected State Governor and Deputy Via a Presidential Declaration of State of Emergency in Nigeria.

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Abstract
This study analyzes the constitutional and democratic implications of emergency rule in Nigeria's federal system, with particular focus on the suspension of elected state officials during states of emergency. As Africa's largest democracy, Nigeria faces persistent tensions between centralized crisis response and respect for federating units' autonomy, making this investigation both timely and critical. The research employs a mixed-method approach, combining doctrinal legal analysis with comparative case studies of Nigeria's major emergency declarations from 1962 to 2025. Through rigorous examination of constitutional provisions (particularly Section 305 of the 1999 Constitution), judicial precedents, and parliamentary debates, the study reveals significant gaps in legal safeguards against executive overreach.[1] The analysis demonstrates how emergency powers have been used variably - from genuine crisis management in Borno, Yobe, Adamawa (2013) to politically contentious deployments in Ekiti (2006), Rivers State (2025) and Western Region (1962). This research also identify inherent constitutional ambiguity regarding the suspension of elected officials during emergencies, a pattern of judicial reluctance to constrain executive emergency powers and the absence of clear parliamentary oversight mechanisms. The study further identifies how these factors collectively enable potential democratic backsliding under the guise of emergency rule. The solutions to this democratic endemic include establishing judicial review timelines, defining "imminent threat" thresholds, and creating bipartisan emergency oversight committees. The study concludes that without such reforms, Nigeria's emergency powers regime remains vulnerable to abuse, posing ongoing risks to its federal democratic structure.

Keywords: *Constitutional law, Emergency powers, Federalism, Democratic erosion, Executive authority, Judicial review, Nigeria*

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I.Introduction

Constitutional democracy is a contentious matter implying "give and take" on certain powers exercisable by individuals, associations, offices, and institutions. Nigeria's constitutional democracy, although nascent, is fundamentally predicated on the rule of law, which envisages that political powers held either by the President, Vice-President or Governors ought to be sacrificed on the altar of the rule of law to protect and guarantee the continued existence of democratic institutions including the collective peace and security of people.[2] This is the rationale behind declaring a state of emergency.

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[1] Section 305, Constitution of The Federal Republic of Nigeria 1999 (as amended)

[2] *Yantaba v. Gov., Katsina State* [2022] 1 NWLR (Pt. 1811) 259.

A state of emergency arises when the government is empowered to take extraordinary measures to restore public safety, maintain law and order, or address significant crises.[3] This recourse is temporary and constitutional as a state of emergency is declared where there is an unexpected or dangerous situation which must be dealt with quickly so as not to escalate.[4] In Nigeria, the Proclamation of state of emergency is written in our history; it is deeply entrenced in the constitution, which empowers a President to issue a Proclamation of state of emergency in the Federation or any part thereof.[5] This is set out in situations where the public peace or corporate existence of Nigeria, or any portion of it, is faced with imminent danger.

The first state of emergency was issued by the Prime Minister, Sir. Tafawa Balewa in the Western House of Assembly in 1962.[6] This was in pursuance of s. 65 of the Constitution of the Federation, 1960. The resolution remained in force until the end of the year.[7] The Prime Minister appointed Dr. Moses Majekodunmi as Sole Administrator in place of the ousted government. In 2004, former President Olusegun Obasanjo issued a Proclamation for a state of emergency in Plateau State, which arose from the ethnic and religious clashes in the state that resulted in large-scale displacement.[8] The Governor, Joshua Dariye, was suspended, and Major General Chris Alli was appointed as the Sole Administrator of the state. The same was replicated subsequently in 2006 in Ekiti again where President Obasanjo maintained he took a pre-emptive measure to prevent the breakdown of public order and public safety.[9] The Governor and the State House of Assembly were suspended, and Tunji Olurin was appointed as Sole Administrator.

In 2013, former President Goodluck Ebele Jonathan declared a State of Emergency in three states—Adamawa, Borno, and Yobe—due to the nefarious conduct of Boko Haram.[10] This action invoked the provisions of s. 305 of the Constitution. However, unlike previous governments before this, President Jonathan did not dissolve democratically elected officials in the state. Recently, this conundrum has begun to rear its head. On March 18, 2025, President Bola Tinubu, declared a state of emergency in Rivers State. His reason was predicated on a growing political and security difficulties, including disputes between Governor Siminalayi Fubara and other political forces, the National Assembly supported this measure. The state of emergency led to the suspension of Governor Fubara, his deputy, and all members of the state legislature, with a retired Vice Admiral installed as a military administrator. The former Vice-President, Atiku Abubakar, in disputing this, has claimed that this move is politically motivated and does not align with the welfare of the people.[11]

In a federated democracy such as Nigeria, powers of the various governments, such as the States and the central government, are shared between organs of a State government or those of the Federal (central) government to limit where the powers of one organ start and where they end.[12] Yet this line can be erased by a single Proclamation usurping a federating power from an elected official and delineating it to another. There exists a justified tension between executive powers under emergency rule and democratic principles, especially concerns about the abuse of emergency declarations to undermine elected state governments. Myriad questions like what constitutional provisions govern the declaration of a state of emergency in Nigeria and are there limits? Does the Nigerian Constitution permit the suspension of elected Governors and Deputies under emergency rule and to what extent? What are the judicial interpretations and precedents on this issue and how does one address the dearth? What does this spell for Nigeria's democracy? This paper will take a doctrinal approach in attempting to answer these questions by analyzing the constitutionality of the suspension of a democratically elected Governor or his

[3] AA Laws Nigeria, *"State of Emergency in Nigeria: Constitutional Provisions and Implications"* [2025] AA Laws Nigeria <https://aalawsng.com/2025/03/21/state-of-emergency-in-nigeria-constitutional-provisions-and-implications/> (accessed 3 June 2025).

[4] *Sylva v. I.N.E.C.* [2018] 18 NWLR (Pt. 1651) 310

[5] Constitution of the Federal Republic of Nigeria, 1999 (As Amended) s. 305 (1)

[6] Eric Teniola, *"How Balewa Declared State of Emergency in the West in 1962"* [2017] Vanguard Newspaper <https://www.vanguardngr.com/2017/07/balewa-declared-state-emergency-west-1962/> (accessed 2 June, 2025).

[7] Ibid

[8] Faith Omoboye, "*Nigerian States That Have Had a 'State of Emergency'*" [2025] BusinessDay NG <https://businessday.ng/politics/article/nigerian-states-that-have-had-a-state-of-emergency/> (accessed 3 June 2025).

[9] Associated Press*, "Nigerian President Declares Emergency in State*" [2006] NBC News <https://www.google.com/amp/s/www.nbcnews.com/news/amp/wbna15326570> (accessed 3 June 2025).

[10] Channels Television, "*Jonathan Declares State of Emergency in Borno, Yobe, Adamawa States*" [2013] Channels TV <https://www.channelstv.com/2013/05/14/jonathan-declares-state-of-emergency-in-borno-yobe-adamawa-states/> (accessed 3 June, 2025).

[11] Henry Umoru, *"Nigeria Is in Full-Blown State of Emergency – Atiku*" [2025] **Vanguard Newspaper <https://www.vanguardngr.com/2025/04/nigeria-is-in-full-blown-state-of-emergency-atiku/> (accessed 3 June 2025).

[12] *A.-G., Lagos State v. A.-G., Fed.* [2013] 16 NWLR (Pt. 1380) 249.

Deputy through the declaration of a state of emergency by the President, detailing the controversies of such unabated power.

II.Provisions on State of Emergency in Nigeria.

The sole guiding rule for the Proclamation of a state of emergency is the Constitution. Although the Constitution does not implicitly define what a state of emergency mean,[13] it provides for instances where the President shall make a declaration for a state of emergency. s. 305(3) provides that:

> *The President shall have power to issue a Proclamation of a state of emergency only 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 or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;*
> *(f) there is any other public danger which clearly constitutes a threat to the existence of the Federation; or*
> *(g) the President receives a request to do so in accordance with the provisions of subsection (4) of this section.*

Accordingly, it may be argued that a state of emergency will only occur when an event requires an overriding decision. Such event must be out of the ordinary, exceeding the usual, average, or normal measure or degree that is deemed normal.[14] The 1999 Constitution bestowed the President with unrestrained power to declare a state of emergency. Retrospectively, the defunct Emergency Powers Act, 1961[15] in adopting the constitutional provision for the declaration of a state of emergency provided that "*period of emergency*" shall mean a period where the Federation is at war, a period a resolution is passed by each House of Parliament declaring that a state of public emergency exists, or where the House of Parliament supported by the votes of not less than two-thirds of all the members of the House declares that democratic institutions in Nigeria are threatened by subversion.[16]

Consequently, while the 1999 Constitution does not provide an interpretation to what a state of emergency should mean, the definition and inexistent limit are left to be implied from the instances a President may make such declaration. Furthermore, in complementing the provisions on state of emergency the constitution empowers the National Assembly to make laws for the maintenance of public order and safety in any part of Nigeria where the state government fails to do so.[17] This is because the National Assembly enjoys the superior exclusive mandate and authority of the Constitution to make laws thereon, which by virtue of the provisions in s. 4(5) of the Constitution, supersede and prevail over any other legislative Assembly.[18]

In this context, the legislature is to act as a "check and balance" on the power of the President. The procedure for declaring a state of emergency as outlined in s. 305 introduces the balance, it provides summarily;

1. In accordance with the Constitution, the President may declare a state of emergency in the entire Federation or a specific region by publishing a proclamation in the official Gazette of the Federal Government.
2. Immediately after publication, the President must submit copies of the Gazette containing the emergency proclamation—along with its details—to the Senate President and the Speaker of the House of Representatives. Both officials must promptly convene their respective chambers to review the situation and determine whether to pass a resolution approving the proclamation.

Additionally, s. 305(4) is relevant to the procedure as it allows a State Governor, with the support of a two-thirds majority resolution from the State House of Assembly, to request that the President declare a state of emergency in the State. This applies when any of the conditions listed in Section 305(3)(c), (d), or (e) exist and are confined to the state's boundaries. Thus, the resolution of the House of Assembly is essential and acts as a check and balance to the seemly unfettered power on the President. As such, a Proclamation issued by the

[13] Recourse could be made to the definition of "period of emergency" under s. 45 of the 1999 Constitution.
[14] *Courtney v. Ocean Accident & Guaranty Corporation,* 346 Mo. 703, 142 S.W.2d 858, 861.
[15] Emergency Powers Act 1961 (No 1), as amended by Emergency Powers (Jurisdiction) Act 1962 (No 14) and Regulations.
[16] Ibid s. 2.
[17] Constitution, s. 11.
[18] *N.I.W.A. v. L.S.W.A.* (2024) 14 NWLR (Pt. 1959) 435.

President ceases to be effective where the publication— of the Official Gazette of the Government— does not reach a two-third majority of the house supporting it.[19]

III.Constitutionality of the Suspension of Elected State Governors & Deputies.

The procedure for removing a Governor and Deputy is contained in s. 188 of the 1999 Constitution. This provision sets out the particular means of removing from office the Governor or Deputy Governor of a State. It has been submitted that the provisions of the section, particularly of s.188(1) and (2), are mandatory.[20] , it provides that:

> *(1) The Governor or Deputy Governor of a state may be removed from office in accordance with the provisions or Deputy Governor of this section from office.*
> *(2) Whenever a notice of any allegation in writing is signed by not less than one-third of the members of the House of Assembly.*
> *(b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified.*
> *The speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly.*

The gross misconduct that would occasion such removal is one that is a grave violation or breach of the provisions of the Constitution, a misconduct of such nature as would amount in the opinion in the House of Assembly to gross misconduct.[21] Impeachment, as it is called, connotes the act done by a legislature of calling for the removal from office of a public official accomplished by presenting a written charge of the official's alleged misconduct.[22] It is provided that the House of Assembly must within fourteen days of the presentation of the notice to the speaker of the House of Assembly, have a resolution within the house whether such allegation shall be investigated.[23]

Furthermore, for a motion of the House of Assembly to be declared to investigate the allegation, such motion must have been supported by not less than a two-thirds majority of all the members of the House of Assembly.[24] The Chief judge of the State is also, within seven days, to appoint a Panel of seven persons possessing integrity who are not members of any public service, legislative house or political party to investigate the allegation.[25] This provision cannot be bypassed as the impeachment of the Governor or the Deputy Governor of a State is not purely a legislative function. This is because the Chief Judge of a State also has a role to play which, particularly, involves constituting the Panel to probe the allegations of gross misconduct.[26]

The Constitution further provides that the holder of such office shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice. Where the Panel, upon determining the issue, reports to the House of Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.[27] Accordingly, where the Panel reports that the allegation against the holder of the office has been proved, within fourteen days, the members of the Assembly are to agree on a two-thirds majority resolution for impeachment. Thus, impeachment is the legal removal of an executive Governor by a legal and political process requiring legislative and judicial inputs.

Consequently, another means through which a Governor may be removed, or in present parlance, suspended, is during a state of emergency. It has been argued that the 1999 Constitution, unlike the 1960 Constitution does not provide for the removal of a Governor during a state of emergency.[28] It is also further advanced along this light that the suspension of Governors through the declaration of a state of emergency since 1963 has been invalid as the Emergency Power Act of 1961 in which they derive the power to make such Proclamation has been spent.[29]An Act is said to be spent when such Act is exhausted in operation by the

[19] Constitution, s. 305(6)(b).
[20] *Ebebi v. Speaker, B.S.H.A* [2012] 5 NWLR (Pt. 1292) 1.
[21] Constitution, s. 188(11).
[22] *Jimoh v. Ola* [2003] 10 NWLR (Pt. 828) 307.
[23] Constitution, s. 188(3).
[24] Ibid s. 188(4)
[25] Ibid s. 188(5)
[26] *Adeleke v. O.S.H.A.* [2006] 16 NWLR (Pt. 1006) 608.
[27] Constitution, s. 188(8).
[28] The Cable "*Adoke: Why Jonathan Didn't Remove Governors When He Declared Emergency in Three States"* [2025] The Cable <https://www.thecable.ng/adoke-why-jonathan-didnt-remove-governors-when-he-declared-emergency-in-three-states/> (accessed 6 June 2025).
[29] Ibid

accomplishment of the purposes for which they were passed either at the moment of their first taking effect.[30] As such, such an Act no longer has power nor can it empower.[31]

The 1999 Constitution provides that a Governor of a State may, with the sanction of a resolution supported by a two-thirds majority of the House of Assembly, request the President to issue a Proclamation of a state of emergency in the State when there is in existence within the State any of the situations specified in subsection (3) (c), (d) and (e) of this section and such situation does not extend beyond the boundaries of the State.[32] The provisions of subsection (3) (c), (d) and (e) detail that such request will be made where there is an actual breakdown of public order and public safety in the Federation or any part of it requiring extraordinary measures to maintain peace, where there is a clear and present danger of an actual breakdown of public order and public safety or there is an occurrence of imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation.[33]

The controversy surrounding this provision rests upon its inability to state in clear words or interpret what qualifies as an "actual breakdown" or "clear and present danger of an actual breakdown". Still, this provision encouraging Governors to request a state of emergency in their domain has since 1999 stood as an unused tool in a barn. As far as research has shown, there exists no Governor in the timeline of our history who has willingly requested the President to declare a state of emergency. In fact, it may be submitted that the declaration of a state of emergency is perceived as arm-stringing a Governor of their power.

Thus, the Proclamation of state of emergency has its being in s. 305 (5) which reads thus:

> *The President shall not issue a Proclamation of a state of emergency in any case to which the provisions of subsection (4) of this section apply unless the Governor of the State fails within a reasonable time to request the President to issue such Proclamation.*

In this dispute, further questions as to what a reasonable time is arises. The Constitution does not give a timeline to be adhered to, neither does a period of emergency subscribe to a reasonable time. However, it is posited that a reasonable time is such length of time as may fairly, properly and reasonably be allowed or required, having regard to the nature of the act or duty to be carried out or the nature of the subject-matter.[34] Accordingly, what amounts to a reasonable time is a question of law and fact left entirely to the discretion of the judges.[35]

It is only when a state of emergency has been declared can there be suspension of democratic institutions in the polity.[36] It is submitted that such moves have been engaged where there exist political misadventures. As such, an unfettered power regarding the proclamation of the state of emergency is an effective means to stifle and punish the opposition. A notable example is the declaration of a state of emergency in Rivers State; the President had, in his reason, cited recent disturbing incidents in the state, including explosions and the vandalisation of petroleum pipelines linked to the political crises in the state, as the basis for his action.[37] In opposing his action, it was argued that insecurity which justifies an emergency intervention is currently bedeviling other states and no emergency rule is declared.[38] It raises the question of what the law makers had in mind at the time of enacting this provision, s. 305(4) of the Constitution which provides that the Governor may request the declaration of a state of emergency precedes subsection (5) which allows the President to make such Proclamation after a reasonable time. Nowhere in both subsections does it provide that the democratic structure of the State is to be removed or suspended, nor a Sole Administrator appointed in their stead.

Even if the President were given such unfettered power, the removal of a Governor or Deputy is purely the power of the House of Assembly of the State.[39] It becomes an overreach for the National Assembly to authorize the suspension or removal of a Governor duly elected. Accordingly, some have argued that the provision for the declaration of a state of emergency does not envisage the removal or suspension of a state democratic structure. Unfortunately, the dearth of cases on this matter further fuels the controversy. In *Williams v.*

[30] *Lipede v. Sonekan* [1995] 1 NWLR (Pt. 374) 668
[31] *Nwosu v. P.D.P.* [2018] 14 NWLR (Pt. 1640) 532
[32] Constitution, s. 305(4)
[33] Constitution, s. 305 (3)(c)(d)(e)
[34] *Effiom v. State* [1995] 1 NWLR (Pt. 373) 507
[35] Supra
[36] *A.-G., Plateau State v. Goyol* [2007] 16 NWLR (Pt. 1059) 57
[37] Kabir Yusuf, "*Party Files N20 Billion Suit Against Tinubu, Others Over Rivers Emergency Rule*" [2025] Premium Times <https://www.premiumtimesng.com/news/top-news/787910-party-files-n20-billion-suit-against-tinubu-others-over-rivers-emergency-rule.html> (accessed 7 June 2025).
[38] Hadiza Musa, *"Insecurity: Declare State of Emergency in Benue – SAN Urges Tinubu"* [2025] Daily Post <https://dailypost.ng/2025/06/02/insecurity-declare-state-of-emergency-in-benue-san-urges-tinubu/> (accessed 7 June 2025)
[39] Constitution, s. 188(9)

Majekodunmi,[40] the Plaintiff challenged the legality of the Emergency Powers (Restoration Orders) Regulations, 1962 which were made under the Emergency Powers Act, 1962, which restricted the Plaintiff's movements to a distance of three miles from a certain address in Abeokuta. The Attorney-General of the Federation submitted that the Plaintiff's restriction was justified to ensure public order and safety in the Western Region. He maintained that assessing emergency measures should not rely on abstract notions of justice or reason but rather on a practical approach to balancing state security and public welfare. In response, the Plaintiff urged the court to evaluate the extent of the restriction, claiming it was overly harsh and not essential for maintaining public order. The Federal Supreme Court ultimately ruled that the evidence did not reasonably justify limiting the Plaintiff's freedom of movement and residence. However, it did not settle the validity of the suspension of democratic structures in the Western Region.

Contrary to popular belief that the Supreme Court voided the suspension of the democratic structures in *Attorney General Plateau State v. Attorney General of the Federation*,[41] the Court had struck out the action before hearing the substance of the case. The Plaintiffs sought a court declaration that the suspension of the Governor and state assembly was unconstitutional arguing that it violated Sections 176 and 90 of the 1999 Nigerian Constitution, which establish these governmental bodies.

The Attorney-General of the Federation and the National Assembly, who were the Defendants raised multiple objections to the action. In a counter-affidavit, Major General Chris Alli, the Sole Administrator of Plateau State during the emergency period, disputed the suit's validity, stating that he never authorized the Plaintiffs to file it. He asserted that as the executive authority over Plateau State, he had not permitted any legal challenge to the President and National Assembly's constitutional actions regarding the state.

On January 20, 2006, a seven-member Supreme Court panel, led by former Chief Justice Muhammadu Uwais, dismissed the case on jurisdictional grounds. Justice Idris Kutigi, delivering the lead judgment, ruled that since the appointed administrator had not consented to the lawsuit, the plaintiffs lacked authorization to file it on behalf of the state. He emphasized that any subsequent approval from Governor Dariye was invalid, as the suit had no legal foundation from the outset. The Supreme Court did not address the first issue raised as to the validity of the suspension of democratic structures in the State. The lack of an express and clear provision by the Constitution and the unavailable resolution of disputes relating to a state of emergency leaves the fate of Governors and democratic structures in a State open to subsequent interpretation.

IV.Implications of Suspending Democratic Rule during a State of Emergency.

As established earlier, there exists no express provision for the suspension of democratic structures during a state of emergency. Yet, this practice is becoming an occurrence whenever there is a Proclamation of a state of emergency. Accordingly, it is submitted that the suspension of democratic rule during a state of emergency has a long-lasting impact on political, social, economic, and legal structures in a State. This implication undermines Nigeria's federalism, due process, and separation of powers, necessitating constitutional reforms. While it may be justified in a certain light, the uncertainty of the scope of such power coupled with the established inanity of government and their failure to abide by due process leaves less to be expected of such justification.

Nigeria as a federation proposes that each federating unit be free from interference or control of others including the central government.[42] Such provision envisages the right to govern oneself in matters of local and state concerns. The reason for this is that there exist different interests and circumstances that can only be accommodated by a state structure, especially within a heterogeneous society united in diversity and divided in suspicion. Suspending the democratic structure of a state leads to authoritarianism which is not the principle behind federalism. For context, the provisions of s. 5 of the Constitution vest the executive authority of the Federal Government in the President, and the extent of the authority vested in both the President and the Governor about their respective areas of influence extends to the execution and maintenance of the very same Constitution. The Constitution does not expressly provide for the suspension, why then does the practice exist?

Beyond violating federalism, emergency powers also weaken legislative checks. Legislative consent, which is needed for a state of emergency to be declared, may be bypassed by the President. The Constitution gives the President authority to Proclaim a state of emergency before gaining the consent of the National Assembly.[43] However, such Proclamation will cease to have effect if, within two days when the National Assembly is in session, or within ten days when the National Assembly is not in session, if after its publication, there is no resolution supported by a two-thirds majority of all the members of each House of the National Assembly approving the

[40] [1962]1 All NLR 413

[41] [2006] 3 NWLR (Pt. 967) 346,

[42] *F.R.S.C. v. Omono Obla* [2010] 15 NWLR (Pt. 1217) 617.

[43] Constitution, s. 305(6).

Proclamation.[44] It is submitted that this constitutional provision robs the legislature of its right to legislative oversight.[45] This right, which involves the power to control and supervise the government's general business, is bypassed.

Another implication is the utilization of this tool to silence dissent and disrupt a state structure. This precedent was made evident when former President Olusegun Obasanjo declared a state of emergency in Ekiti where he said the impeachment of the Governor by the local legislature violated the constitution. In Ekiti, legislators voted to remove Governor Ayo Fayose after finding him guilty of embezzling state funds into personal bank accounts. However, the process of impeachment was disrupted by the Proclamation of a state of emergency justifying such imposition as valid and a means to disperse the threat to security looming in the State. There exist no credibility behind this justification. It is often argued that emergency powers are necessary to restore peace and order. As such, fundamental rights are derogated where such measures are reasonably justifiable to deal with the situation that exists during that period of emergence.[46] However, the absence of strict safeguards makes abuse inevitable. Human rights violations from curfews, censorship, mass surveillance, and arbitrary detentions often increase during this period, security personnel deployed to the site may also adopt torture acts, inhumane treatments and extrajudicial killings or repressions.

Additionally, the imprecise provision on the suspension of democratic structures in a state leaves the Constitution open to the operations of the doctrine of necessity. The doctrine may be applied in situations that require the taking of some legitimate extra-constitutional or extra-legal actions to protect the public interest.[47] The doctrine will be invoked in circumstances where the Constitution itself cannot measure up to a situation which has arisen.[48] The argument for the suspension of the democratic structure becomes convincing where established order encourages a sole executive officer. This, however, raises several issues. Most Sole Administrators appointed by the President are usually retired officers of the force. It has been submitted that this frequent occurrence makes Nigeria look like it is run as a diarchy, with unelected former military officers replacing elected governors as Sole Administrators.[49]

V.Recommendations

In addressing this issue, there must be constitutional certainty regarding this matter. The National Assembly should amend Section 305 of the 1999 Constitution to precisely define the conditions or requirements under which elected state officials may be suspended during emergencies, including clear interpretation for "imminent threat" to public order. Progressively, the judiciary should adopt a more proactive role in reviewing emergency declarations. They should have an absolute decision regarding the legality of the suspension of democratically elected officials. The Constitution should also mandate expedited judicial review of any emergency proclamation to check executive overreach.

Furthermore, legislative oversight must be established to monitor emergency measures and ensure compliance with democratic norms. The National Assembly should amend the Constitution to expressly prohibit the dissolution of state legislatures or local governments during emergencies, preserving the federating units' autonomy even in crisis situations. Also, the President should be required to present periodic reports to the National Assembly justifying the continuation of emergency measures, with provisions for automatic termination if legislative approval is not secured within 60 days.

VI.Conclusion

While emergency powers are a necessary constitutional tool for addressing real threats, Nigeria's framework lacks sufficient safeguards against abuse. Various cases reveal a grotesque pattern where emergency declarations have been deployed not only for genuine security crises but also as instruments of political strongmanship, undermining federalism and democracy. The suspension of elected officials highlights myriad vulnerabilities in Nigeria's constitutional design. The tension between effective crisis response and democratic preservation remains unresolved. However constitutional reform, judicial dynamisms, and legislative oversight can reconcile these competing imperatives.

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[44] Ibid.
[45] *A.-G., Abia State v. A.-G., Fed.* [2006] 16 NWLR (Pt. 1005) 265
[46] Constitution, s. 45(2)
[47] *R.S.H.A. v. Govt., Rivers State* [2025] 7 NWLR (Pt. 1990) 591
[48] Ibid.
[49] Olu Fasan, "*Militocracy: Rule by Sole Administrators Makes Nigeria a Diarchy"* [2025] BusinessDay Newspaper <https://businessday.ng/columnist/article/militocracy-rule-by-sole-administrators-makes-nigeria-a-diarchy/> (accessed 7 June 2025).

By implementing the proposed recommendations, by particularly clarifying Section 305, strengthening judicial review, and enhancing legislative oversight, Nigeria can establish emergency powers that are both effective in addressing genuine threats and respectful of federal democratic principles. Ultimately, Nigeria's democratic resilience depends on its ability to reform institutions that concentrate unchecked power. As the nation faces evolving security challenges, embedding procedural fairness and accountability into emergency powers will be crucial to preventing their misuse and preserving constitutional democracy for future generations. Emergency powers should protect democracy, not undermine it. Nigeria's legal and political institutions must ensure that temporary measures do not become permanent threats to the federation's democratic foundations.