Sarhad Journal of Legal Studies
ISSN: 3106-7441 (Print) 3106-745X (Online)
July-December 2026, Vol. 02, No. 02, [48–61]
Published: 31 October 2026
Publisher: Sarhad Institute of Legal Studies, SUIT
https://journal.suit.edu.pk/index.php/sjls

RESEARCH PAPER

Proclamation of Emergency and Judicial Review under the Constitution of Pakistan

(A Doctrinal and Comparative Analysis of Articles 232, 236 and 199 with Reference to India)

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ABSTRACT

The emergency powers establish a constitutional imbalance between state necessity and the maintenance of federalism, representative government and judicial control. The Constitution of Pakistan, 1973 provides the President with the authority to declare an emergency for any state of grave emergency when Pakistan or a part thereof is faced with any kind of war, external aggression or internal disturbance which is beyond the scope of a Provincial Government. The study examines Articles 199, 232, 233, 234 and 236, the Eighteenth Amendment, as well as a number of Pakistan's judgments dealing with exceptional executive powers, particularly when compared to the Indian Constitution under Article 352/356. It also relies upon the history of Pakistan's martial-law era as a historical background but doesn't equate extra-constitutional military governance with a constitutional emergency. The analysis is limited to two objectives; (1) what does Article 232 require and what are the roles of the institutions involved in a proclamation, including the role of the Governor; and (2) whether an Article 232 proclamation or consequential order can be challenged before a High Court in the face of Article 236(2). This article concludes that the most viable balance between emergency power and constitutional supremacy is limited judicial review.

Keywords: Article 232; Article 236(2); Article 199; proclamation of emergency; judicial review; Governor; federalism; internal disturbance; Pakistan; India.

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INTRODUCTION

The constitutional emergency powers are intended to preserve the governmental mechanism when the constitutional structures are unable to meet an extraordinary danger. They are justified on the basis of necessity, but they are limited and are not legitimate except by law. This means that emergency power, present constitutional paradox, required to serve the maintenance of the constitutional system, which can be a threat from a constitutional perspective,

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but a too strong executive power can be detrimental to constitutionalism, federalism, representative government and fundamental rights. The central legal question is not merely whether government may act during crisis, but whether exceptional action remains traceable to the Constitution that authorizes it. The constitutional structure for emergencies is provided under Part X of Constitution of the Islamic Republic of Pakistan, 1973. Article 232 is about grave emergency which is likely to endanger the security of Pakistan or any part thereof due to war, external aggression or internal disturbance beyond the control of the Provincial Government. The impact of emergency on the enforcement of specific fundamental rights is discussed under Article 233. Article 234 addresses failure of constitutional machinery in a Province and Article 236 deals with revocation and contains an express ouster clause that the validity of proclamation or order made under Part X of the constitution shall not be called in question in any court. Article 199 on the contrary, provides the constitutional jurisdiction of the High Courts to check the action of public authorities when they act without lawful authority.

Theories and comparative approaches to the study of emergency powers are available in the literature. Ferejohn and Pasquino (2004) highlight the need for institutional restraint on exceptional power and differentiate between two kinds of non-normal government – executive and legislative – in emergencies. The typology will be helpful in understanding why emergency constitutions put the proclamation and implementation in the hands of the executive requires strong legislative and judicial safeguards. In a more general theoretical argument, Agamben (2005) fears that exceptional government may be normalized if the emergency is no longer defined as exceptional and is rendered indefinite and legally unbounded. . Although this article adopts a doctrinal rather than philosophical method, this literature helps explain the need to consider the constitutional design of emergency powers from the perspective of competence, procedure, temporariness and review. Nazir (2018) discusses the continuity between the emergency structures created in colonial times and the present-day state constitutions, which claims that both India and Pakistan have an executive-centered model of emergency powers. It is a study of considerable importance for the analysis of the correlation between proclamation, exercise of emergency power and restoration of normal constitutional government and institutional control. Ouster provisions are also highlighted in Nazir's work explaining how they limit judicial control, the present article focuses on an objective regarding whether every form of judicial review of Article 232 is barred by Article 236(2) or whether superior courts have a limited power to review Article 232 on the grounds of procedural non-compliance, excess of constitutional authority, mala fides, or jurisdiction.

Pakistan’s constitutional history also has an extensive jurisprudence history of opinions on the concept of martial law, extra-constitutional intervention and doctrine of necessity. That history is relevance with respect of existing literature review but not exactly with Article 232. In a constitutional emergency under Article 232, the Constitution allows extra-ordinary use of powers as compared to martial law which was an extra-constitutional change in the constitutional order. The value of the martial-law cases is therefore historical and jurisprudential: they reveal the changing attitude of the superior judiciary toward executive necessity, constitutional supremacy and attempts to exclude judicial review. In State v. Dosso (PLD 1958 SC 533), the Supreme Court adopted a Kelsenian approach under which a successful revolutionary change could generate a

new legal order. The decision became a leading example of judicial accommodation of extra-constitutional change. In Asma Jilani v. Government of Punjab (PLD 1972 SC 139), the Supreme Court repudiated the revolutionary-legality reasoning of Dosso and held Yahya Khan's martial-law authority to be unlawful. The case is relevant to the present inquiry because it affirms that political effectiveness cannot itself supply constitutional legality. Begum Nusrat Bhutto v. Chief of Army Staff (PLD 1977 SC 657) later relied upon the doctrine of State necessity to validate the 1977 military intervention, while Zafar Ali Shah v. General Pervez Musharraf (PLD 2000 SC 869) again confronted extra-constitutional military rule and the limits of judicial review. Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879) marked a stronger reassertion of constitutional supremacy by declaring the 3 November 2007 emergency, Provisional Constitutional Order and related measures unconstitutional. None of these cases should be treated as direct Article 232 authorities; their importance lies in the broader evolution of judicial thought concerning exceptional executive authority.

The most important literature is Pir Sabir Shah v. Federation of Pakistan (PLD 1994 SC 738), which concerned Article 234 rather than Article 232. The Supreme Court addressed the effect of Article 236(2) and recognised that an ouster clause does not necessarily protect action that is without jurisdiction, in excess of jurisdiction, coram non judice or mala fide. Because Article 236(2) applies to proclamations and orders under Part X generally, Pir Sabir Shah is highly relevant to the question whether a High Court may entertain a narrowly framed challenge to an Article 232 proclamation. Indian constitutional law provides a useful comparative framework. National emergency is governed by Article 352 of the Indian Constitution while failure of constitutional machinery in a State is governed by Article 356 of the Indian Constitution. While neither provision is the same as Pakistan's Article 232 and 234, they also raise similar issues of the satisfaction of the President, federal intervention, and judicial control. In Minerva Mills Ltd. v. Union of India (1980) 3 SCC 625, the Supreme Court of India held that emergency satisfaction cannot be completely shielded from judicial review in the absence of constitutional requirements, mala fides or reliance on extraneous factors. The Court in S.R. Bommai v. Union of India ((1994) 3 SCC 1) declared proclamation of Article 356 as a matter of judicial review and accepted to examine the supporting material for constitutional legality. These authorities show that judicial respect for assessment during an emergency does not necessarily mean judicial abstention.

This issue gains relevance of the debate over possible federal intervention in Khyber Pakhtunkhwa in today's context. In late September 2026, the federal government publicly voiced their serious consideration of declaring an emergency under the Article 232 on account of security and political situation in the Province and subsequently, the Governor Khyber Pakhtunkhwa stated that in his opinion, the Province would exercise its constitutional obligations if the President and Prime Minister felt an emergency or Governor's Rule is necessary. Such declaration does not alone constitute that the constitutional level defined by the Article 232 has been reached. They nevertheless illustrate why the legal distinction between presidential proclamation, the Governor's derivative role, Article 232 emergency and Article 234 constitutional breakdown must be stated precisely. A second chain of command enhances the democratic and federal nature of this inquiry. In S.M.C.ruling in the case of No. 1 of 2023, the Supreme Court of Pakistan defined provincial autonomy as the fundamental principle of federalism and connected it with the autonomy of the

provincial legislative, executive and judicial bodies. The representative democracy and constitutional nature of elected institutions are also stressed in the jurisprudence of the Eighteenth Amendment and in Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan (PLJ 2013 SC 482) an explicit link was drawn between the exercise of State power and chosen representatives, including the members of Provincial Assemblies. The status of political parties as an institutional mechanism to express the will of the people was also acknowledged in Reference No. 1 of 2022. These authorities do not actually make Article 232, but they offer a principled argument for why the Provincial Assembly resolution requirement is a substantive safeguard of the democratic legitimacy and provincial autonomy, not a mere formality. The case of Sui Southern Gas Company Ltd. v. Federation of Pakistan (2018 SCMR 802) is also pertinent, as the Court termed Pakistan a democratic federation and found that the Eighteenth Amendment had provided enhanced protection for the "balance between federalism and provincial autonomy.

The secondary sources consulted for this article have been treated as they have been found to be evidence. The Constitutional requirement for legislative and judicial restraint on emergency executive power is discussed in the United States, albeit briefly, in the context of the general requirement in Constitution World (Williams, 2024) and LawShun (Mack, 2025) and is used only for comparative comment. Shaikh's explanatory note hosted on Scribd summarises Pakistan's emergency provisions but is not treated as authoritative law. Daily Pakistan (2026) is used only to illustrate the contemporary factual context of the KP debate, while GMT News Nigeria (Orji, 2026) provides a comparative illustration of litigation contesting the limits of presidential emergency power in Nigeria. The research gap is thus not as broad as a general research on emergency power. Colonial emergency design, martial law, constitutional breakdown and interventions of Article 234 of the constitution in the exercise of executive power have been previously discussed. The interaction of Article 232, Article 236(2) and High Court jurisdiction under Article 199 is doctrinally less studied aspect on which the current case falls, especially in the context of the political language referring to the outcome as 'Governor's Rule'. This article addresses that gap through a structured analysis of the proclamation power and the possibility of judicial challenge.

Research Objectives

This article is guided by two principal research objectives:

1. To examine the constitutional scope, substantive threshold, procedural requirements and institutional roles governing a Proclamation of Emergency under Article 232 of the Constitution of Pakistan, including the respective positions of the President, Federal Government, Provincial Assembly and Governor.
2. To determine whether an Article 232 proclamation or consequential order may be challenged before a High Court under Article 199 despite the ouster clause in Article 236(2), and to evaluate the permissible scope of judicial review through Pakistani and comparative Indian jurisprudence.

METHODOLOGY

The methodological approach that is used in this study is doctrinal legal research. The primary constitutional source is the Constitution of the Islamic Republic of Pakistan, 1973, which include Article (2A), Article (199) and Article (232-236) along with the Constitution (Eighteenth Amendment) Act, 2010. To ensure academic and legal correctness, reported judicial decisions are also considered primary legal sources, since they interpret the Constitution in an authoritative manner. These include S.M.C. Including No. 1 of 2023; Constitution Petition No. 12 of 2010; Dr Muhammad Tahir-ul-Qadri v Federation of Pakistan (PLJ 2013 SC 482); Reference No. 1 of 2022; Pir Sabir Shah v Federation of Pakistan (PLD 1994 SC 738); Khawaja Ahmad Tariq Rahim v Federation of Pakistan (PLD 1992 SC 646); Sui Southern Gas Company Ltd v Federation of Pakistan (2018 SCMR 802); and the leading martial-law cases mentioned herein. The comparative primary legal materials are the Constitution of India including the Articles 352 and 356 and the Supreme Court of India's decision in the Minerva Mills Ltd. v. Union of India and S.R. Bommai v. Union of India. These materials are used persuasively rather than as binding authority in Pakistan. There is a functional difference between the two articles: Article 352 is invoked during a national emergency, while Article 356 is invoked primarily to consider judicial review of federal action in a constituent state.

Secondary sources consist of academic research and explanatory commentaries. The main historical sources used are Ferejohn and Pasquino (2004, pp. This is part of a series of books, including 211-220, Agamben (2005) and Nazir's comparative study on Pakistan and India. Other sources used in this work are the Constitution World (Williams, 2024), the LawShun (Mack, 2025), Scribd note by Shaikh on the emergency provisions and the report by Daily Pakistan on the 2026 KP debate while the report by GMT News Nigeria about emergency-power challenge was from Orji. These sources are utilized for theory, comparative illustration, and literature review or for contemporary factual context, but do not supersede the Constitution and reported case law as the sources of law. The analysis is organised directly around the two research objectives. Objective I is concerned with the ability to declare an emergency, the Article 232 threshold, the democratic and federal nature of Provincial Assembly membership, the alternative bicameral approval process, the Governor's derivative powers and comparative safeguards in India. Objective II looks at the apparent ouster of review under Article 236(2), the continuing relevance of Article 199, Pakistani jurisprudence on jurisdictional illegality and mala fides, and persuasive Indian jurisprudence on limited review.

ANALYSIS

Objective I: Proclamation of Emergency under Article 232

Constitutional authority to proclaim an emergency

According to the constitution the power of proclamation vests in the President of Pakistan under Article 232(1). The Governor of Province has no the authority to issue Article 232 proclamation independently. The word that a Governor 'declares an emergency under Article 232' is therefore a legal misnomer. The constitutional provision that triggers article 232 is a presidential proclamation. However, the Governor can obtain a significant administrative function following a proper proclamation. The Federal Government may exercise such functions of the Government of

the Province and powers of any body or authority of the Province other than the Provincial Assembly as may be directed by it to be assumed by the Governor on behalf of the Federal Government. In such a case, the Governor's power is thus secondary. The Governor's authority in a presidential emergency is not discretionary power, but rather a power that flows out of the constitutional consequences of the emergency.

The constitutional threshold: 'grave emergency' and 'internal disturbance'

The level of the constitutional threshold is higher than the presence of normal law-and-order problems. In order to invoke Article 232, the security of the country or any part of it must be jeopardised by war, external aggression or internal disturbance which is of such gravity that the Provincial Government cannot cope with it. But where internal disturbance is depended upon, the Constitution calls for seriousness and incapacity that the disturbance should be one of a grave security nature and that it should be beyond the capacity of the Provincial Government to control it. From the government perspective, legally defensible proclamation would be backed by objective, contemporaneous and constitutionally relevant material. That might involve sustained terrorist activity, casualty and attack trends, the capacity of provincial police and administration, disruption of governmental functions, requests for federal assistance, intelligence and security assessments and evidence that "normal" provincial mechanisms are no longer able to restore control The existence of terrorism may be highly relevant, but the constitutional inquiry is whether the disturbance has become 'beyond the power' of the Provincial Government to control. A failure to guarantee security does not necessarily mean that the constitution is incapable of functioning. Where the elected Provincial Government, Assembly, courts, police and civil administration continue to operate, the province government may be able to challenge the constitutional threshold not being met or for the emergency to be invoked for an purpose beyond that of Article 232. The difference between difficulty and constitutional incapacity is thus crucial.

Provincial Assembly and parliamentary safeguards

The Eighteenth Amendment reinforced the constitutional restrictions which apply to cases of internal disturbance as a basis for emergency. Under the first proviso of Article 232(1), the Provincial Assembly in question is considered. If the President does not make such a proclamation with the resolution, the second proviso stipulates that the proclamation must be presented to both Houses of Parliament for approval by each House within 10 days. These safeguards are important for two reasons. First, they restrict the emergency power by requiring institutional participation beyond the President. Secondly, they create legal questions that are distinct from the political merits of emergency. Even a court that adopts a highly deferential approach to the President's assessment of security can separately determine whether mandatory constitutional procedure was observed.

Democratic legitimacy, provincial autonomy and the will of the Province

The character of representative democracy and federalism must be taken into consideration when interpreting the first proviso to Article 232(1). Article 2A makes the concept of "will of the people" choosing their leaders fundamental in the Constitution. In Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan (PLJ 2013 SC 482), the Supreme Court explicitly referenced that

principle to elected members of the National Assembly, the Provincial Assemblies, the Senate and the local government. In the absence of any new cases, the Supreme Court in the matter of Reference No. 1 of 2022 held that political parties are effective instruments in which the will of the people becomes audible and are expressed in law. These authorities uphold the notion that a Provincial Assembly does not simply represent a set of administrative organs, but the representative constitutional body through which the democratic will of the province is manifested. The federal dimension is also important. In S.M.C. No. 1 of 2023, the Supreme Court stated that the essence of provincial autonomy is that it is the local government's ability to operate without interference from the federal government. Sui Southern Gas Company Ltd. v. Federation of Pakistan (2018 SCMR 802) also called Pakistan a democratic federation which entrusts the federal government with supremacy and provincial governments with autonomy as reinforced by the Eighteenth Amendment. The constitutional principle that the exercise of State power must be through elected representatives was also highlighted in Khawaja Ahmad Tariq Rahim v. Federation of Pakistan (PLD 1992 SC 646) and the representative responsibility of the State towards the electorate was emphasized. Taken together, the cases create a constitutional justification for seeing the participation of the Provincial Assemblies in Article 232 as federal democratic protection. It is not to say that in all such circumstances the Provincial Assembly resolution is a prerequisite. The second proviso clearly allows for the President to take unilateral action. The "better" interpretation is structural: the first proviso gives a direct democratic consent from the affected federating unit, whilst the second provides an exceptional substitute if the President acts without this consent, requiring a "special" favorable vote within 10 days in each of the Houses of Parliament. Senate's role is of special importance as it represents the federating units and the National Assembly provides democratic legitimacy based on the amount of people. Article 232 thus provides multiple layers of democratic accountability instead of an unreviewable presidential authority. Theoretical literature supports this reading. Ferejohn and Pasquino (2004, pp. 211-220) explain that emergency systems must reconcile executive capacity with institutional checks, while Nazir (2018) identifies Pakistan's emergency model as strongly executive-centred and therefore in need of meaningful legislative control. Comparative commentary on emergency power similarly stresses legislative and judicial oversight as safeguards against executive overreach (Williams, 2024; Mack, 2025). These secondary sources do not determine Pakistani law, but they reinforce an interpretation that gives substantive effect to the constitutional approval mechanisms rather than treating them as formalities.

Article 232 and Article 234 must not be conflated

The Article 232 and Article 234 refer to various conditions in the Constitution. Article 232 is in response to an "external aggression or internal disturbance not under the control of the provinces" that poses a "grave threat to security. Article 234 is activated when the President is satisfied that the Government of a Province can not be continued in accordance with the Constitution either through a report by a Governor or for any other reason.

Both can lead to the assumption of provincial functions by the federal government, hence the use of the term ‘Governor's Rule' to describe the discussion of some of these. In law, there's a problem with that description, however. An emergency is not a failure of constitutional machinery

and a failure of the constitutional machinery is not necessarily an Article 232 emergency. When such federal intervention is involved, it must be in compliance with the particular constitutional authority cited.

Contemporary relevance to Khyber Pakhtunkhwa

The current KP debate is a good example of the distinctions. The federal government on 30 September 2026 showed a serious interest to have an emergency in KP. The minister for federal parliamentary affairs announced publicly on 30 September 2026 that the federal government is seriously considering emergency in KP. On Thursday 4 October 2026, Governor House Khyber Pakhtunkhwa issued a statement following a meeting with the federal interior minister which reaffirmed the Governor House's obligation to fulfil its constitutional responsibilities if the President and Prime Minister deems Governor's Rule or an emergency to be warranted for the protection of the Province from terrorism and destruction. These are all indications of political consideration, not an indication that Article 232 has been constitutionally met. If such a proclamation were to be issued, it would be necessary to establish facts which are relevant to the Constitution of India and would include the facts of grave emergency and where internal disturbance has to be relied upon, the inability of the Provincial Government to control it. Confrontation with the government, a protest march or allegations of poor governance or disagreement in the fight against terror could be a factual part of the context but cannot stand in for the constitutional standard

Comparative analysis: India's Article 352

The closest parallel of article 232 of the Constitution of Pakistan at the national emergency level is article 352 of the Indian Constitution. The proclamation is allowed in India when it is threatened by war, external aggression or armed rebellion in India or any part of it. The Forty-Fourth Amendment increased the number of procedural safeguards and changed the term 'internal disturbance' to 'armed rebellion' after the Emergency of 1975-1977. The Indian experience proves that it is important to say the right things in the right way in a Constitution. The use of 'internal disturbance beyond the power of a Provincial Government to control' remains in use in Pakistan, and it is wider than 'armed rebellion' and is limited by a requirement of provincial failure. The difference is particularly significant in the context of Pakistan because of the evidentiary basis of Presidential satisfaction. Comparative analysis indicates that a reading of Article 232 that requires a genuine link between the asserted disturbance and the inability of the Province to control it is a more appropriate one.

Objective II: Challenge to an Article 232 Proclamation before the High Court

Article 236(2): the government's textual argument

The strongest textual argument against judicial review is found in Article 236(2). No question shall arise as to the validity of any Proclamation issued or Order made under Part X. Language is general and Article 199 itself is subject to the Constitution. It can thus say that the High Court should not review the wisdom, sufficiency or political desirability of a presidential emergency determination under Article 199. This is supported by institutional factors. Intelligence,

operational and strategic material, which are outside the scope of judicial evaluation as they are within the purview of national-security decisions, might be a different matter. If the constitutionally competent authority takes action on the basis of the material, the action would be in accordance with the procedures provided by the constitution, where required by the constitution, approval would be sought from the parliament, and measures taken would be related to Article 232, in which case the government might argue that there is no need for judicial review to be a de novo security assessment.

Article 199 and the case for limited legality review

Article 236(2) can restrict judicial review, but it does not necessarily convert an act outside Article 232 into a valid Article 232 act. Article 199 empowers a High Court, where its constitutional conditions are satisfied, to restrain public authorities acting without lawful authority and to declare unlawful action to be of no legal effect. The doctrinal difference, therefore, between the two is that of the review of merits and the review of legality. A High Court may not be authorized to determine the question as to whether the President made the best security judgment, but may determine whether the constitutional actor was competent, whether mandatory procedure was followed, whether the asserted ground is one recognized by Article 232, whether action is mala fide and/or action is colorable, and whether consequential orders exceeded the powers conferred by Article 232. The structural federalism reasoning in S.M.C. No. 1 of 2023 also supports the institutional relevance of the provincial High Court. The Supreme Court observed that where a matter relates only to one Province, the High Court of that Province should ordinarily be allowed to exercise its Article 199 jurisdiction. That observation does not override the express text of Article 236(2), but it strengthens the argument that questions of provincial constitutional legality should not lightly be removed from the Province's own constitutional court. The resulting inquiry remains narrow: whether the impugned action is legally capable of falling within Article 232, not whether the Court would have made the same security assessment.

Pir Sabir Shah and the effect of an ouster clause

The most important Pakistani authority in this regard is Pir Sabir Shah's case of Federation of Pakistan (PLD 1994 SC 738). It was not Article 232 of the Constitution, but Article 234, which the Supreme Court directly considered the effect of Article 236(2). The Court acknowledged that an ouster clause does not attach to a proclamation disclaimed as being "without Jurisdiction", "In Excess of Jurisdiction" or "Coram non Judice" or "Mala Fide". In Pir Sabir Shah, the importance is not about the fact that there is a similarity, but the constitutional legality dealt with. The reasoning also offers a doctrinal foundation to support arguments that an Article 232 proclamation can be judicially examined at the jurisdictional periphery because it applies to Part X. The judgment, meanwhile, does not provide for an unrestricted merits review. The rule of law under martial law and the supremacy of the constitution.

Martial-law jurisprudence and constitutional supremacy

he martial-law cases in Pakistan highlight the general constitutional issue that any exceptional executive power must not result in the creation of power over the Constitution. Dosso's pictures convey the historical peril of assuming that triumphant political power is self-justifying.

Asma Jilani rejects that, and reinvokes the constitutional legality as the controlling standard. Nusrat Bhutto and Zafar Ali Shah illustrate the judiciary's later involvement with necessity, while Sindh High Court Bar Association is a strong opposition to the extra-constitutional emergency system set in place in 2007. The meaning of Article 232 is not directly impacted by these cases. The relevance of their argument is jurisprudential; as to why the constitutional emergency should be differentiated from the extra-constitutional emergency and why the presence of the emergency does not nullify the need to abide by constitutional limits on power.

Indian comparison: Minerva Mills and S.R. Bommai

Indian jurisprudence similarly rejects the proposition that presidential satisfaction is wholly beyond judicial control. In Minerva Mills Ltd. v. Union of India ((1980) 3 SCC 625), the Supreme Court of India accepted a narrow form of judicial review of emergency satisfaction where the constitutionally required basis is absent, the action is mala fide, or the grounds are extraneous or irrelevant. S.R. Bommai v. Union of India ((1994) 3 SCC 1) concerned Article 356 and therefore corresponds more closely to Pakistan's Article 234 than to Article 232. Nevertheless, the case is highly relevant to the general question of presidential satisfaction and federal intervention. The Supreme Court held that the proclamation was judicially reviewable and that supporting material could be examined for constitutional legality, mala fides and irrelevant considerations. Bommai thus illustrates a model in which courts exercise constitutional control without assuming the political branch's policy function.

DISCUSSION

Constitutional Scope of the Proclamation of Emergency

The first objective demonstrate that Article 232 is not limited to merely presidential satisfaction but is also based on constitutional legitimacy. The provision allows the President to make the proclamation, but also includes representative and federal safeguards, with the Governor's role being derivative. If internal disturbance is to be resorted to, the first proviso must be resolved by the Provincial Assembly concerned. That should be read in conjunction with Article 2A and the Supreme Court's representative-democracy jurisprudence. In Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan and Reference No. 1 of 2022 it has been highlighted that the constitutional instruments to express the will of the people are elected institutions and political representation. In this sense, the Provincial Assembly requirement gives the population most directly affected by the proposed emergency an institutional voice in acknowledging the exceptional condition.

Federalism leads to the same result. Provincial autonomy is the main doctrine of federalism as stated in S.M.C. No. 1 of 2023 while in Sui Southern Gas Company Ltd v Federation of Pakistan (2018 SCMR 802) it was stated that the doctrine of federalism has been given a greater protection through 18th Amendment. The possibility for a substantial expansion of federal powers in a Province under Article 232 is a major consideration. It is therefore coherent to interpret the Provincial Assembly resolution as a substantive safeguard of the federal bargain, not merely a procedural formality. This does not convert the first proviso into an absolute veto. Rather, it

explains why the Constitution provides a distinct second route when the President acts without prior provincial consent.

The second proviso functions as an exception to the Constitution. Where the President acts on his own, it needs within 10 days for each parliament to approve and make it the direct democratic check. Bicameral approval is important because the Senate provides representation for the federating units and the National Assembly provides representation on the basis of the number of people. This means that the provision has a multi-layered structure of legitimacy – first, through the regular path of internal disturbances, which is by provincial consent, and second, by federal bicameral ratification with the President acting alone. So, Nazir's (2018) criticism of the approach of emergency design, which was centred on the executive, and Ferejohn and Pasquino's (2004, pp. 211-220) The institutional checks which are emphasized highlights the importance of understanding these approval requirements as substantive controls.

The constitutional reforms in India after the Emergency reduced the scope of the Article 352 and increased the role of parliament. S.R. Bommai also shows that when the President of a constituent State is directly involved in any action of the Centre, it is federalism and democracy which are held to ransom. Minerva Mills also proves that a President's satisfaction is far from unlimited executive power. In more general terms, both Williams (2024) and LawShun (2025) emphasize the importance of legislative and judicial monitoring of emergencies. The Nigerian controversy which Orji (2026) reported on whether emergency powers allow for the removal of elected State authorities is relevant only as a comparative example of the perpetual conflict between the need for emergency and representative government.

In today's context of KP, Daily Pakistan (2026) rightly distinguishes between Article 232 emergency and Article 234 Governor's Rule and observes that there is no political tension that triggers either of the articles. The first aim of the article thus leads to a cautious conclusion: The proclamation of a grave emergency under Article 232 of the Constitution must be based on the textually specified emergency, be backed up by material evidence of provincial incompetence, and be accompanied by the representative safeguards stipulated by the provisos. That the will of the Province is important is thus not just political rhetoric, but also the sum total of the constitutional principles of elected representation, provincial autonomy, federalism and limited exceptional authority.

A proclamation of emergency that is approved without the consent of the elected provincial representatives would not only mean one person would be granted extraordinary powers but that the province would be given emergency powers by an entire branch of government, without holding it to account in the democratic manner. Such an act would put in jeopardy the democratic will and political representation of 23,248,267 registered voters (54.18% male and 45.82% female voters). (Election Commission of Pakistan, 2026) These citizens have voted for the representatives of their will to say that they have the right to choose under the constitution. Such a procedure may thus result in the loss of about 19.53 million registered voters' representation, the erosion of provincial autonomy and the failure to uphold the constitutional principles of federalism, representative democracy and governmental accountability.

High Court Challenge and the Scope of Judicial Review

The second objective shows that there is a conflict between Article 236(2) and Article 199. The provision of Article 236(2) is a particularly strong one that states that the validity of a proclamation or order made under Part X shall not be questioned in any court. This language, taken at face value, is a very strong call for judicial restraint. It prevents routine merits-based litigation against the political arms of government from clogging the courts system, and it acknowledges that national security information and institutional assessments may be part of an emergency decision, that courts are not designed to replicate. However, Pakistani constitutional jurisprudence does not support the broader proposition that an ouster clause can convert an act outside constitutional authority into a lawful act. Pir Sabir Shah case is at the heart of this in which Supreme Court has discussed Article 236(2), which suggests that the defects of jurisdiction, excess of authority, coram non judice action and mala fides may be open for further judicial scrutiny. It is not the constitutional nature of the executive action that bars the courts from entertaining a challenge, but the fact that the constitutionality of the action does not automatically bar a challenge to the legality of the action.

The general martial-law law is consistent with this difference. The judiciary's evolution of a new attitude towards exceptional power and constitutional supremacy is seen in the actions of the members of Dosso, Asma Jilani, Nusrat Bhutto, Zafar Ali Shah and Sindh High Court Bar Association. These cases are not precedents for Article 232, but they illustrate the need to differentiate between constitutional emergency and extra-constitutional necessity. Their historical significance is in support of the proposition that extraordinary circumstances do not render constitutional limitations inoperative. Indian jurisprudence provides persuasive comparative support for a limited-review model. Minerva Mills recognized that presidential emergency satisfaction could be examined where the legal basis was absent, mala fide or founded on extraneous considerations. S.R. Bommai, though primarily concerned with Article 356, similarly established that federal intervention in a State is not entirely immune from judicial review. These decisions show that judicial deference and judicial review are not mutually exclusive: a court may decline to substitute its own political or security judgment while still policing the legal boundaries of constitutional power.

Accordingly, the two objectives converge on a common constitutional principle The executive has a lot of powers during a grave emergency, as provided in Article 232, which is fortified with Article 236(2) against ordinary merits-based challenge. Yet the superior judiciary retains a constitutional role in determining whether power they are exercising is the power that the Constitution gives them The most defensible position, particularly from the government side, is therefore to accept narrow legality review while resisting any attempt to transform Article 199 proceedings into a reassessment of national-security policy. This maintains the function of the executive in true emergencies and the superiority of the rule of law in which it functions. This objective also relates to the democratic and federal protections listed under Objective I. Indeed, the Constitution itself requires approval by both Houses within 10 days of unilateral presidential action, so that any question about whether or not that approval was obtained is qualitatively different from whether a court should reexamine the wisdom of the emergency. It's a matter of the

constitution. Pir Sabir Shah case offers the main basis for Pakistan to maintain such narrow review, notwithstanding Article 236(2). Reference No. 1 of 2023 adds a structural reason for recognizing the constitutional role of the provincial High Court. Minerva Mills and S.R. Bommai are also comparative cases that justify a difference between judicial substitution and judicial enforcement of constitutional limits.

CONCLUSION:

Article 232 is completely an extraordinary constitutional provision that shall be invoked in case of a grave emergency which poses a threat to the security of Pakistan or part thereof. It is not enough for the disturbance to be political instability or a severe breakdown in law and order but must also be beyond the control of the Provincial Government. The proclamation is issued by the authority of the Constitution, the President. There is no authority for the Governor to declare an emergency on his/her own, but the Governor may assume certain functions of the province in accordance with the provisions of Article 232(2) (c) while the Federal Government is acting during an emergency. The resolution requirement in the Provincial Assembly can thus be best seen as a protection of representative government and provincial autonomy. That safeguard is not negated by the second proviso, which provides for an exception in which the unilateral action of the President must be promptly given the democratic consent of both houses. The dualism of this structure is in line with the constitutional principle of elected representatives, the federalism principle of the Supreme Court, and the Eighteenth Amendment which has enhanced protection for provincial autonomy. The difference between the constitutional provisions of Article 232 and Article 234 is crucial. Article 232 is on grave security emergency and Article 234 is on failure of constitutional machinery. This distinction can be lost in the jargon of political terms, including ‘Governor's Rule', which must not be used to replace the identification of the real source of power in the constitution. The matter of judicial review is a question of balancing two constitutional commands. The restrictions of challenges to Part X proclamations and orders are quite explicit in Article 236(2), and therefore the judicial restraint is strong, especially when it comes to the merits of national security assessment. Article 199, on the other hand, and the principles of constitutional supremacy, however, justify the view that an ouster clause does not justify jurisdictionally defective, mala fide and procedurally unconstitutional action, and action that is beyond the scope of the authority granted under Article 232. Pir Sabir Shah offers the best doctrinal support for limited review in Pakistan, and the martial-law cases offer background to the judicial attitude to exceptional power in Pakistan. The Indian decisions, like the Minerva Mills and S.R. Bommai, uphold the comparative proposition that presidential satisfaction during emergency can be accorded a fair amount of deference without being completely free from constitutional oversight. The preferred reading is neither free judicial intervention nor absolute executive immunity. It is not for courts to make security policy, but it is for them to be able to decide whether emergency power has been used within the Constitution.

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