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Appraising the adequacy of the political armor in fight against perpetual exercise of emergency power under the FDRE constitution

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Abstract
Panic in the face of danger is an understandable human response. Yet, as fiction author Katherine Paterson has written, "[T]o fear is one thing. To let fear grab you by the tail and swing you around is another." One can be-hold that constitutional emergency regimes strives to hit two birds in a single stone:- it arms the executive with effective but also plenary ammunition deemed sufficient to surmount the peril surfacing the state, while simultaneously providing stewardship mechanisms believed to be capable of curbing executive intuition to miss-use this unconventional power for non-benign ends. This philosophy underpins the Ethiopian constitutional regiment on state of emergency. This is telling that constitutional emergency regiments are weighted by two contending touchstones namely, effectiveness to quash the turmoil and the potential to be stalwart against abuse. Therefore, this paper, albeit briefly, examined whether the FDRE constitution has hit a balance between this two conflicting demands via inculcating check and balance between the two organs of the state (i.e. the political arms of the state meaning the executive and the parliament) while, bestowing the executive with sufficient ammunition to pacify the danger.
To effectuate the appraisal, the writer utilized qualitative methodology; in this regard, emergency provisions of other countries have been properly consulted with the view to get the best out of comparative study. The finding unravel that the political armor (HoPR), which is currently in front line of defense against intuition to deploy emergency power for malicious aim, due to the swarming by a vanguard political party formerly known as EPRDF, but now Prosperity Party (Amharic:□ብልጽግና ፓርቲ; *Afaan Oromo: Paartii Badhaadhiinaa) that controls the two state wings is not in a pole position* to deliver the oath it taken to safeguard the constitution via rigorously supervising the performance of the executive because one party minded composition of the house coincides in what is stated by some “supervision of the executive by parliament is indirectly mean supervision of the executive by the executive itself; hence, this enormously debilitated the house endeavor to oversight executive grip of emergency power; therefore, it is save to conclude that, this accorded an avenue for the government to foray the nation perpetually via emergency decree on account of this loose scrutiny power of the house even if the facts underground may not warrant repeated invocation of emergency decree.
However, in due cognizance to judicial deferral from securitizing emergency declaration of the government (in the context of Ethiopia by HoF as witnessed in the CUD Case) attributed to various reasons including in this regard “the political question doctrine”; what is left to us is arming the political wing with more ammunition to be used in the defense against pernicious, but also frequent exercise of emergency power by the ruling party, who wields majority support in the parliament; hence, the scheme to be suggested for this end, should be the one that uplifts the parliament from its current rubber stamping role.
In lieu of dominance of the ruling party, the emergency provision shall be tailored in a way that brings into board members of the opposition party in scrutiny process of emergency decree whenever the request for renewal escalates; if the voting criterion is made to progressively escalates whenever the proffered quest for renewal increases, it will force the incumbent government to bring to the attention of the members of the opposition party compelling reason why they should endorse the proposed bill for renewal:- this facilitates democratic dialogue between the ruling party and the minority opposition party leaders; it is this devise that nations with ugly and grim experience of emergency decree (i.e. for instance South Africa and Poland) inserted in their constitutions to ensure temporally exercise of emergency power; the artifact that is going to be suggested herein after is called a “ super-majoritarian escalator” originally expounded by Bruce Ackerman; in due account of the enormous negative marker prolonged state of emergency puts upon the constitutional aspiration to entrench constitutionalism, I’m compelled to suggest the inculcation of the aforesaid scheme under the FDRE constitution trough the instrument of constitutional amendment.

Keywords: emergency decree, the FDRE constitution, super-majoritarian escalator, constitutionalism

1. Introduction

Following Bruce Ackerman narration, it can be asserted that emergency provisions can be other can be very effective tool to restore constitutional order of the state once disrupted by exigency or in a diametrically opposed it can serve well beyond dispute in legalizing human rights violation while simultaneously paving the way for omnipotence of government; hence-forth the lesson for those whose task is crafting emergency provisions of their respective state is to make sure that emergency provisions lends to the government necessary ammunition capable of deflating the exigency threating the survival of the constitutional order, whilst providing the procedural and substantive bulwark stipulations deemed good fit to enclose

any potential avenue for the introduction of despotism via malicious deployment of plenary powers reserved for extra-ordinary situation, taking these points as initial reference point, these paper is restructured as follows:- as genesis part of the paper clarifies the distinction that exists between federal intervention scheme and the constitutional emergency regime, who shares communal elements (i.e. constitutional disorder) for trigger each, hence, following Shishay Abraha the paper remands readers that the only conceivable difference between appears to portrayer to the former as the one that substantially pose risk to autonomy of regional state, whereas the later on the enjoyment of individual human rights; after that paper jumps into to analyze the FDRE constitution emergency regiment from two perspectives, namely, the two self-contradictory perspectives namely efficacy and stewardship perspectives; hence, the paper argued, the issue of efficacy is best addressed by the constitution: the body entitled to ignite emergency provisions with fair lists of conditions justifying declaration of emergency decree are settled matters in the constitution, moreover, the constitution suits best with Carl Schmitt argument that favors arming of the executive with plenary powers in face of unknown exigency that demands unpredictable responsive measures where in case of the FDRE constitution the executive is situated is in pole position because the emergency response of the executive are untrammeled, but whenever the parameters shifts to assessing the capability of the stewardship mechanisms installed at the constitution for deflating malicious exercises of such enormous power, it exhibits legal loopholes because the constitution discourages active participation of the opposition parties in appraising emergency bills; the scrutiny process is entirely shoulder members of the ruling party, who wields majority seats in the house (i.e. HoPR) and bears the duty to rally behind the government they have beget, hence, the executive can foray the nation indefinitely by an emergency decree beyond the necessity of time without facing any substantial hurdles before the floors of the house, therefore, these paper argues, the constitutional amendment shall be foreseen in order to strength the appraisal power of the political wing, which seems to be the online body in front line to combat pernicious exercise of emergency decree due to the fact that at the domestic and global level, the judicial wing in general shows deferral to the executive wing determination of emergency situation: the amendment shall enhance the role of the opposition parties in scrutinizing renewal request for emergency bills: the more request for renewal of emergency decree is made the more the escalating positive vote such bills needs for approbation, which by default encourages the involvement of the opposition parties in the house that calibrates and fortifies scrutiny process of emergency bills; in short the scheme suggested for the constitution is to introduce "supermajoritarian escalator"; the intention behind reinforcing the participation of opposition parties in scrutinizing emergency bills through injecting supermajoritarian escalator is to curb the executive intuition to stay behind the wheels of emergency regime for lengthy time defying temporal nature of emergency power shall not be tolerated because it renders the doctrine of rule of law and constitutionalism toothless.

2. Conceptualizing State of Emergency in General

Two matters underpins emergency regiment of state constitutions; namely on how to augment additional power to the government so as it will surmount the peril facing the state while ensuring simultaneously this unconventional power will not be deployed for malicious ends; following the foot prints this philosophy, the FDRE constitution have opted out to augment powers regularly possessed by the by the Council of Minster under the constitution:- the constitutional duty to respect human rights of this body is relaxed for extra-ordinary times so as this entity will be able to beat the extra-ordinary event besieging the state, whilst providing horizontal accountability of this body to the House of Peoples Representative (here in after the HoPR) with the view to polish any temptations to utilize the plenary power the government possessed during emergency times.

To be candid, it is not ingenious to assay to find a comprehensive definition for the phrase "state of emergency" among other because humanly impossible to audit all types of exigency the state will face a ahead and thereby, this debilitate the endeavor to constitutional measure the exact amount of power needed to counteract the exigency; Alexander Hamilton concur this:- he stated in 1787: '[i]t is impossible to … define the extent and variety of national exigencies … that endanger the safety of nations … and for this reason no constitutional shackles can wisely be imposed on the … extent and variety of the means which may be necessary to satisfy them [1] However, consonance exists at least on what constitutions can do: - it should spell out circumstances warranting the invocation of emergency decree: exceptional situations and fair list of conditions that absolves exercise of unconventional emergency power shall be luminously provided.

The Siracusa Principle as well as the European Commission on Human Rights and the Court have enriched jurisprudence helpful to filter out conditions warranting the declaration of state of emergency; according to the *Siracusa Principle* [2] state declaration of emergency is legit whenever there is a threat to life of the nation; treat is understood to mean :- (a) the one that affects the whole of the population and either the whole or part of the territory of the State, and (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognised in the Covenant; as per the Commission enunciation whenever the following criterions fulfilled, states can indulge on derogatory measures (i.e. see the Greek Case (1969):-

1. There must be actual or imminent;
2. Its effects must involve the whole nation;
3. The continuance of the organized life of the community must be threatened;
4. The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate [3].

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[1] E. Bari, *Suspension of the Fundamental Rights and the Unrestrained Exercise of the Power of Preventive Detention During the Successive Proclamations of Emergency in Bangladesh: A Legal Study,* https://doi.org/10.1080/14729342.2017.1306943, Lasted Visited on August 20/2020, p.31

[2] The Siracusa principle clarifies conditions under which the International Convention on Civil and Political Rights (i.e. here in after the ICCPR) that permits states embark on emergency provisions, see for this D. Shutter, International Human Rights Law, (1st ed., 2010), p. 513

[3] Shutter Supra note 2, p.519

There are strings attached to state's exercising emergency decree whenever the provisos for invoking emergency provision is found to be legit; in this regard Jean Allain stressed that there are procedural and substantive principles governing states exercise of emergency measures: - a few to mention are notification and publication hurdles (see the leading case in this regard from the European Court of Human Rights descion namely, *Aksoy v. Turkey case 1996*) [4]; the Proportionality criterion *(Lawless v. Ireland)* [5], the Principle of Non-Discrimination [6] and so forth.

On domestic level discordance prevails on where that authority to quash perilous situation emanates from; three models at are large attempting to address this query: the first model is " the Constitutional Accommodation Model of Emergency Power": - Niccolò Machiavell, the early advocate of this model, had in view the prime tenants encircling the model:- " in the life of states accident are bound to occur, hence, the nation law shall anticipate the coming to fore of such danger and provided responsive measures conducive to dissipate the danger, if not the Republic either will fall or such scenario will beget a dictator" [7]; the common problem in this model is the constitutions fails to envisage any effective mechanisms useful to constrain the exercise of emergency powers once governments made grip into this power and ensure their timely termination, what they can do is they provides circumstances calling for emergency declaration [8], in a direct refutation to this model, "the Extra-Constitutional Model of Emergency Power" primarily championed by Karl Schmitt, held that it is impossible for constitutional designers to foresaw and identify ahead all sorts of exigencies that occasions emergency declaration:- the extra events warrants extra measures outside the box of law; it is futile to try to circumscribe what the executive can do and cannot do in the faces of unknown future event as the constitutional emergency power model tries to accomplishes (i.e. hold down the power of emergency government); therefore, the government shall be entitled to grasp whatever power it can find to fend the nation [9]; but the blemish here is once the government started to trek on extra-legal roads for good of the society, then it will continue to break the law for ill ends coloring under the common good rhetoric [10]; it is Trojan horse to dismantle the democratic constitutional color of the state permanently [11]. The last model is the " Legislative Model"; this model strives to address emergency situation via delegating special powers to the executive through the enactment of a specific and temporary statutes or enabling acts; Freejohn and Pasquino, highly regard this model; because the legislature will only delegate power specifically tailored to the type of exigencies posing treat, hence, avenues for abuse are minimal because the delegation will not be stretched beyond the imperative necessities; but one thing bypassed by this contemporary theoreticians in this model (i.e. Freejohn and Pasquino) according to Ehteshamul Bari is much thrust cannot be reserved upon parliament shored by a single party to fitter the exercise of plenary emergency power:- the parliament is rubber stamps for emergency bills of the government:- what is common here is repeated renewal of emergency acts that ultimately blurs the distinction between normalcy and emergency periods [12]. Moreover, as furiously argued by Bruce Ackerman, responsive laws made in the wake of turmoil without much thought and deliberation divests individual rights and the constitutional democratic order at large;[13] Justice Robert Jackson noted: ''fear and anxiety create public demands for greater assurance [14], times of panic and anguish cultivates the spirit of vengeance [15].

In wrapping up this section it can be said that the Ethiopian constitutional approaches opted out to navigate under the ship of "the Constitutional Accommodation Model of Emergency Power"; on account of the fact that firstly, to begin with the easy one: the constitution does not preferred silence for extra-ordinary events potentially harbouring disquiet rather pin pointed out events that occasion the promulgation of state of emergency, corollary to this, who wields the power to declare state of emergency and the interplay between the government and the parliament rooted in the philosophy of check and balance is enumerated in detail:- the power to set in motion emergency regiment and subsequent renew power of emergency regime is inked down in the constitution; secondly, seemingly in responding to the critics from the extra-model of emergency power, the constitution via inculcating all catchy phraseology namely, "constitutional order" strived to absorb and thereby, facilitated executive capability to deploy defensive measures to different types of exigencies, that cannot be surely predicted ahead, which of course to be candid the typical charactertics of the model*:- constitutional emergency provisions, to the extent they exist, must use broad and flexible language to stretch and cover un forestalled events* [16]; intrinsically linked to this, the assertion can be supplanted by the fact that the constitution have almost envisaged all kinds of emergency situations (i.e. the common conditions in several emergency provisions of state constitutions are internal emergency or rebellion or insurrection or disorder against the free democratic state, natural calamities and epidemic and financial emergency and external invasion), what is left is only financial emergency from the Ethiopian constitutional emergency regiment, which is not of course, anomaly to Ethiopian case; the much appreciated constitution for comprehensiveness (i.e. the Basic Law of Germany) have bypassed that kind of emergency [17].

Thirdly, to state the obvious one, the government emergency ammunitions cannot be starched to undergo overhaul of the democratic and federal state established by the constitution itself, moreover, there are human rights provisions too beyond the touches of the government (i.e.

[4] Jean Allain, *Derogation from the European Convention of Human Rights in Light of 'Other Obligations under International Law'*, European Human Rights Law Review, Vol. 11, No.10 (Jan., 2005) p.3

[5] Scott P. Sheeran, *Re-conceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine', and Politic*, Michigan Journal of International Law, Volume 33,No. 3, p. 531-532

[6] K. Kamga, *Emergency regimes in Cameroon: derogations or failures of law?*, https://repository, Lasted Visited June 10, 2020, p.17

[7] O. Gross and N. Aolan, Law in Times of Crisis: Emergency Powers in Theory and Practice, (1st ed., 2017), Vol. 26,,p.35

[8] Bari, Supra note 1, p. 38

[9] Id., p. 48-49

[10] Id, p. 36

[11] Id., p. 46

[12] Id.,p.39-42

[13] Gross and Aolan, Supra note 7, p.69

[14] Ibid

[15] O. Gross, *Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?*, The Yale Law Journal Vol. 112, No.5 (2003), p. 38-39

[16] Gross and Aolan, Supra note 13, 67

[17] O. Gross, *Providing for the Unexpected: Constitutional Emergency Provisions,* Israel Year of Human Rights, Vol. 33 (Jan., 2004), p.12

see article 1 and 93 (4) of the FDRE constitution respectively), hence, the constitution by far have endeavored to fling a way "the extra-constitution model of emergency power", upholding this as it is, doubts loom larger on whether the constitution embarked on full-heart on the endeavor to enclose opportunistic government temptations to utilize unconventional emergency power for the ends of curving out the road for omnipotence; that is what happened in Malaysia during the Sarawak stalemate:- the Federal Government declared emergency in Sarawak on 14 September 1966 with the view to dispose the recalcitrant Sarawak Regional State Chief Minister; this was made possible because the decree facilitated unconventional way of amending the constitution meaning without following the rigorous amendment process printed in the constitution of Sarawak; the other approach followed to entrench despotism manifested itself in scissoring a way the constitutional provisions deemed to fitters down government's intuition to deploy emergency powers for malicious ends from the Federal constitution; the flash points for government in this regard were those provisions inculcating check and balance; hence, the intention manifested itself following the bomb shell descion of the *Privy Council in Public Prosecutor v. The Cheng Pho* that disfavored the government, aftereffect, the government sprinted to inject ouster clauses by emending the constitutional provisions with the view to dispense judicial review of emergency decree henceforth [18] hence, in the Ethiopian context the remedy is either to forbear constitutional amendment power in times of emergency or alternatively, identifying and shielding whereupon those provisions instrumental in check and balance mechanisms from amendment immaterial of whether the state is in emergency or normalcy period; the check and balance mechanisms are not immune from erosion through the instrument of emergency decree or trough following normal amendment procedure.

a. Constitutional Framework for State of Emergency under the FDRE Constitution

This section will discuss firstly on the circumstances that occasions the declaration of state of emergency under the FDRE constitution, in chronological order following the constitution, the second part will enunciate on the initiation power of emergency decree, intimately linked to this the paper will proceed to deal about whether the FDRE constitution ensured the one of the pillar charactertics of emergency regime namely, temporarily nature of emergency decree; if the answer to this inquiry is negative, thenceforth, the possible options helpful to fling a way the state of emergency from becoming permanent will be proffered in the last part.

b. Fundamental Elements in the Ethiopian Emergency Regiment

Permit me here to reproduce the *constitutional provision* [19] canvassing emergency declaration; it reads as follows:-

Article 93 Declaration of State of Emergency

a. The Council of Ministers of the Federal Government shall have the power to decree a state of emergency, should an external invasion, a break-down of law and order which endangers the Constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur;

b. Sate executives can decree a State-Wide state of emergency should a natural disaster or an epidemic occur. Particulars shall be determined in State Constitutions to be promulgated in conformity with this Constitution.

The aforesaid provision depict that the FDRE constitution like it's counterparts in several countries, it does not envisaged the exact definition for state of emergency nor do the subsequent sub-articles of the provision, in fact it is not expected to do so, Lord Dunedin explained the reason why in Bhagat Singh & Ors v The King Emperor 7:- "A state of emergency is something that does not permit of any exact definition: it connotes a state of matters calling for drastic action [20]. *Rather what is required is to enumerate fair list of dire and exceptional conditions that sufficiently warrants the declaration of state of emergency* [21],:- However, what it does is, it spelled out grounds that induce declaration of emergency decree; the central tenants in this regard are the phrase: - "Constitutional disorder, which cannot be controlled by the regular law enforcement agencies" apart from the list of conditions identified as triggering emergency regime.

What amounts to "constitutional disorder, which cannot be controlled by the regular law enforcement agencies"? The insertion of constitutional language that says "constitutional order" is not frequently used in the vocabularies of emergency provisions, it is largely unique to us; the usual languages are internal/armed rebellion, internal disturbance, external invasion, breakdown in the economy and so-forth.

Resort to foreign jurisprudence is helpful to enrich the understanding of the constitutional phraseology *"cannot be controlled by the regular law enforcement agencies* [22]", this endeavor is backed by *proclamation 250/2001* [23] that encourages outward looking by the Council of Constitutional Inquiry (here in after the CCI) in times of untangling matters of constitutional disputes, this proclamation though subsidiary legislation, it helpful in shading light on events that could be said beyond the control of the regular law enforcement agencies, relied on this approach,,reference could be made to the thoughts developed by the European Commission on Human Rights; the commission hold that following the bloody

[18] V. Das, *Emergency Power and Parliamentary form of Government in Malaysia: Constitutionalism in a New Democracy* http://bura.brunel.ac.uk/handle/2438/5240, Lasted Visited July 1, 2020, p.432

[19] Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1, Fed. Neg. Gaz. 1st Year No.1, 1995 (here after the FDRE Constitution)

[20] Bari, Supra note 12, p.31

[21] Criddle and E. Fox-Decent, *Human Rights, Emergencies, and the Rule of Law,* Human Rights Quarterly, Volume 34 (Apr. 2010), p.

[22] The Federal Intervention Proclamation lifts the vial on the phraseology "cannot be controlled by the regular law enforcement agencies and persons: - article 3 on the motif "Intervention in Case of Deteriorating Security Situation" albeit briefly, defined the notion as "…inability of the law enforcement agency and the judiciary of the Region to arrest the insecurity acting in accordance with the law…", see System for the Intervention of the Federal Government in the Regions Proclamation, 2003, Art. 3 Proc. No. 350, Fed. Neg. Gaz. Year 9, No. 80

[23] Council of Constitutional Inquiry Proclamation 2001, Art. 20 (1) Proc. No.250, Fed. Neg. Gaz. Year 7, No. 40, ; article 20 (1) commissions CCI to look to the outside legal jurisprudence on the principles of constitutional interpretation while adjudicating constitutional disputes

confrontations that surpassed the capability of the regular state law enforcement machinery to contain the situations (i.e. in Ireland v. The United Kingdom:-

"The degree of violence, with bombing, shooting and rioting, was on a scale far beyond what could be called into minor civil disorder… in fact to a great extent the violence was directed against the security forces, which were severely hampered in their mandates to keep or restore the public peace"….” [24]

The degree of disruption caused by civil disorder must be such that it threatens the very existence of the nation, hence [25], it can be aired out that gravity of the violence is the parameter to adjudicate whether the fracture of law and order is manageable by the regular force; moreover, *Lawless v. Ireland case is also instructive in the attempt to understand the phrase; in this case the commission aired out that, if the peril outweighs the state defensive lines (ordinary law and ordinary court proceeding) that juncture signals the urgency to resort to extra-ordinary self-defensive measures* [26].

Intrinsically related to the above criterion, let this moment be seized to assert this: - the criterion “cannot be controlled by the regular law enforcement agencies and personnel” arguable, I shall say, have been effectively introduced in the emergency regiment of the FDRE constitution: the principle of proportionality because the shift towards unconventional schemes of law enforcement agency and personal is justified by the endeavor to level the gravity of the exigency, hence, the government cannot exercise force beyond the level warranted by the peril, following this, therefore, it follows, even if article 93 (4)(a) of the FDRE constitution sanction government responsive measures to the touchstones of proportionality when it comes to such political and democratic Rights, but remain silent on civil rights, arguable, it is equally applicable to the specimen of civil rights too because under the definitional elements of the constitution (i.e. 93 (1)(a) use of extra- power is warranted whenever the gravity of the situation call for, hence, civil rights like the case of the right to life, he security of person and liberty will only be encroached if the circumstance underground demands so, secondly, though, the emergency provision is located out of the peripheral bounder of chapter three of the FDRE, the constitution in lieu of the derogatory nature of state of emergency upon protected human rights, it is suggested for state of emergency provision to be interpreted in line with international instruments adopted by Ethiopia following the spirits of art. 13 (2) of the constitution, in fact resemblance exists between the FDRE constitution art. 93 (4) (a) and ICCPR art. 4 (1) in interims of the language utilized to signal the benchmark of proportionality, albeit briefly “…the extent necessary to avert the conditions…” is used in the case of the FDRE constitution whereas “… to the extent strictly required by the exigencies of the situation…” is deployed in the case of ICCPR, hence, via the project of interpretation, it is asserted that the barometer of proportional also takes precedence in case of civil rights too.

[24] Das, Supra note 18, p. 233
[25] Ibid
[26] P. Sheeran, Supra note 5, p.532

c. Apportioning what it due to each (i.e. Constitutional Disorder in the Specimen of State of Emergency and Federal Intervention) [27]

Constitutional disorder is the common ground identified in the constitution for both state of emergency and federal intervention, art. 93 (1) and 62 (9) respectively, hence, reference to the federal intervention sounds reasonable because the proclamation is curved out to implement the duties of the federal government mentioned under art. 51 (14), 55 (16) and 62 (9); what is fascinating about the federal intervention proclamation is the three different possible scenarios for occasioning federal intervention have one ultimate end namely, combating constitutional fracture. Elucidation of this is in order here in: the interplay between human rights violation and constitutional disorder:- if the offending state failed to live up to the *direction* [28] given to by the federal government to rectify the occasioned malfeasance, then this amounts to constitutional disruption, aftereffect, this invites more intrusive measure upon autonomy of regional state by the federal government, hence, save to concluded that, incessant breach of human rights with/ out deliberative participation of the regional state apparatus tantamount to constitutional bust, this depict that the grounds identified for constitutional rapture that triggers federal intervention holds communal intersection points with that of the reason for declaration of state of emergency; Shishay Abraha canvases the same: - “all of the grounds for federal intervention stated under the FDRE Constitution and the Federal Intervention Proclamation can be also taken as grounds of state of emergency. Security deterioration, human rights violation and violation of the constitution may be used to declare state of emergency as they are related to ‘a breakdown of law and order which endangers the constitutional order’ stated under Art. 93(1(a)) of the Constitution [29].

In fact speaking of human rights, the Germany Basic Law in due cognizance to the synergy respect for human rights bear for the realization of genuine democracy, opted out to assimilates violation of human rights as disruption to the democratic constitutional order (art. 18BL) [30]. Noteworthy

[27] System for the Intervention of the Federal Government in the Regions Proclamation, Supra note 22, The federal intervention proclamation is primly a proclamation espoused to facilitates federal intervention with the view to respond to the occurrence of three types of kismets:- as per the prembular statement, the occasion of either of this triggers federal intervention:- the State authorities are unable to arrest violations of human rights in their respective jurisdiction o, request is made by States administration to arrest a deteriorating security situation in the regional state periphery or if any State, in violation of the Constitution, endangers the constitutional order in pursuance to art. 55(16), 51(14) and (62 (9) respectively of the FDRE constitution, see ‘System for the Intervention of the Federal Government in the Regions Proclamation’, Supra note 22, see also FDRE Constitution,Supra note 18

[28] As per article 10 and 11 of the federal intervention Proclamation the joint meeting of the two houses namely, the HoPR and HoF (here in after the House of Federation) produces direction deemed to be sufficient to arrest down the perpetuation of human rights, if however, the state concerned failed to compile with the direction given, then this amounts to become transgression of the constitutional order as per art. 14 (4) of the same proclamation that invites more chaotic measure that may stretch to the extent of suspending the Regional State Council and the highest executive organ (i.e. art. 14 (2)(b), see System for the Intervention of the Federal Government in the Regions Proclamation, Supra note 27

[29] Shishay Abraha, *State of Exception under the FDRE Constitution*, http://etd.aau.edu.et/handle/123456789/12698
P. 49, Lasted Visited August 21, 2020

[30] W. Tkaczyński, *Constitutional Means for the Protection of the Political Order in Germany*, Przeglad Zachodni, Vol. I, (2017), p.270

to mention in this respect, the resemblance both constitutions placed human rights (i.e. the FDRE constitution and the Basic Law), the first pages are dedicated to human rights whereupon signaling the importance accorded to human rights.

After drawing the commonality feature of both the federal intervention and state of emergency, it is imperatives to shed light on the distinction between the two; firstly, interims of reasons for invoking such legal machinery differs; the bases that triggers state of emergency is broader than the federal intervention in account of the fact that though, security deterioration, human rights violation and infringement of the constitution are grounds to be used both to declare state of emergency as they are related to 'a breakdown of law and order which endangers the constitutional order' stated under Art. 93(1(a)) of the Constitution as well as Federal Intervention [31], but the reasons for federal government initiation of state of emergency surpasses this grounds and stretches to cover external invasion and a natural disaster, or an occurrence of epidemic; secondly, the responsive measures differs across the two spectrums because the Federal Intervention Proclamation attest that the reaction there inflicts harm on state autonomy than what the state of emergency can do [32]:- the later poses more risk on protected human rights than the former.

Thirdly, in lieu of constitutional disorder being the common reason for setting in motion both, the only way of conceiving the difference between the two is to assert that the federal government may use federal intervention first. When it is found unfruitful, state of emergency comes into effect. The latter is declared in extremely difficult situations only. However, this does not necessarily mean that the state always make a resort to federal intervention before declaring state of emergency, i.e., it can simply declare state of emergency without resorting to federal intervention [33] this argument is fortified by Federal Intervention proclamation stipulation:- under art. 13 (2) there is enunciation that HoF descion to put the arrest based on federal intervention scheme shall not in a way affects the Council of Minister mandate to quash the constitutional rapture via emergency decree; this while the Council recommending for HoF to embark federal intervention project, it might have in mind to deploy emergency decree later on, if events does not blossomed as intended in invoking intervention.

3. Initiation and Renewal Power of State of Emergency

An Introductory Remark:- as hinted above, the international law emergency regime strives a lot to provide stalwart mechanisms (i.e. both procedural and substantive criterions) in due cognizance that unconventional emergency power could be utilized for two ends; *either it may be used for benign purpose of maintaining security of the state or it may be utilized to suppress fundamental rights of citizens in particular, against those who, do not share political viewpoints with the rulers in power* [34]. Mindful of this, the FDRE constitution hadn't passed without providing safeguarding measures deemed capable for an to harnessing such plenary power for the good of the people avoiding possibility of the deployment of this power for malicious ends; this being so, however, critical assessment of this bulwarks measures unravel that the constitution lags behind interims of lending the necessary amount of ammunition for the political organ (i.e. HoPR) to enclose the venues for the government to raid the nation through emergency decree for longer duration than the necessity of the circumstance warrants so; if the artery for such intuitions are not foreclosed, it poses enormous threats to the endeavor to build constitutionalism; therefore, here in after, I shall canvass on the procedures inculcated for the aforesaid ends while unraveling the blemishes encircling it and after that the way forward will be espoused.

a. Inception Power of Emergency Provision

The Council of Minister is duly empowered to trigger emergency provision of the constitution. Nothing less is expected in due recognition that the chairman of the Council of Minister namely, the Prime Minister is the commander-in-chief of the national armed forces bearing the responsibility to defend the nation from external and internal threats (art. 74 (1).

Gauged by the principle of efficacious, the FDRE constitution have done well despite some legit concerns; efficacious of emergency regiment is weighted by these touchstones: - on whether the constitution while putting down the circumstances that occasion emergency decree along the path has luminously envisaged the body entitled to set in motion the decree; that entity ought to be the one that don't consume time whilst making descion [35]; moreover, while separately providing the initiation power from approval power, it is also required to ensure the tabling of emergency decree to the people's assembly within shorter span of time when the decree is set in air [36], moreover, intimately related to this : whether the proper check and balance artifacts are installed which are believed to be good fit for repulsing back government intuition to stay permanently under the jackboot of emergency regime that ultimately befog down the distinction between normalcy and emergency period [37].

Reponses to Emergency does not wait time, that explain the reason why the FDRE constitution entitled the Council of Minister to act swiftly in face of looming crises without waiting the endorsement of the HoPR; when the house is on official business, the decree, of course, shall be submitted within forty-eight hours of the declaration, whereas, if the house is not in session, it shall be proffered for the house within fifteen days of the deceleration (i.e. see art. 93 (2)(a)(b); if the houses disavows the decree, it ceased to exist; in fact the period given to the executive to tender the decree to HoPR at best falls within zone of reasonableness as comparative study revels; *the shortest interval of time is 24 hours in Fiji; it ranges mostly from 5 days in Romania, 14 days in the Bahamas and Kenya, 21 days in South Africa and 30 days in Spain; However, if the house is to be summoned for appraisal (i.e. when the assembly is not in*

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[31] Abraha, Supra note 29, p. 41
[32] Id, p. 42
[33] Id., 32
[34] Obonye Jonas, 'Emergency laws in Botswana: Some Critical Observations', http://specjuris.ufh.ac.za/sites/default/files/SJ0114_1_0.pdf Lasted Visited August 2020, p.196

[35] A. Jakab, *German Constitutional Law and Doctrine on State of Emergency – Paradigms and Dilemmas of a Traditional (Continental) Discourse'*, German Journal Law, Vol. 07, No. 05 (May 2006), p.455-456
[36] Gross and Aolan, supra note 16, p.54-55, see also, Gross, Supra note 17, p. 17-18
[37] Das, Supra note 23, P. 328-329

session) an extended period that rangers from 7 days to 21 in average is conferred for the government to present the emergency bill to the people's assembly [38].

The reason offered for requiring the presentment of the emergency bill within short duration of time is justified by the fact that beyond affirming to the government that it cannot raid the nation with an emergence decree that does not garner the positive vote of the legislature, in democracy sweeping measures posing threat to personal rights cannot be made by an organ that don't have democratic credentials:- as affirmed by *Lord Hailsham remark in London & Clydeside Estates Ltd v. Aberdeen District Council [1979] 3 AER 876: it is an alpha of public law jurisprudence, public authorities can only affect individual rights via solely following the normal law making procedure impeded to the people's assembly* [39].

What if the Council of Minister failed to Promulgates Emergency Decree in face-off of to the public outcry to do so?

If the Council fails to set in motion emergency provisions in disregard public notice to do so, the electorate at least constitutionally speaking, can ignite pressure upon the shoulder of the Council of Minister by reminding to the Council that it can canvases recall measures formulated by the art. art.12 (3) of the FDRE constitution for dereliction of duty; in the same vain the HoPR can call and question the Prime Minister how he is enforcing the constitution and thereon take measures it deems necessary in pursuance to art. 55 (17)(18) of the constitution; beyond that it can do nothing; if it dares to do so, it will be rebuffing to "the political question doctrine"; because this notion bars the intrusion of one wing of government into the operations of the other branches of government and allocates decisions to the branches of government that have superior expertise in particular areas" [40], after all, the government is in pole position on the question of when to respond to assault from the side of exigencies :- the House of Lords in Secretary of State for the Home Department v Rehman illuminate the reason why: - Lord Slynn apprehended that the commission shall succumb to the Secretary of State assessment on whether Mr. Rehman is threat to the national security because the secretary is in pole position to undergo proper scrutiny:- because all the means including the pertinent information and the state all apparatus is under its disposal, government is undoubtedly in the best position to judge what national security requires, therefore, expelling Mr. Rehman from England …The assessment of what is needed in the light of changing circumstances is primarily for the executive to determine [41]. The Indian courts similar opted out not to sit on the place of the government to adjudge whether there exists dire conditions calling for declaration of state of emergency? In this respect the Indian Supreme Court in Bhut Nath Kate v. State of West Benga175- aired out this on the query whether a real emergency exists: "In our view, this is a political, not justiciable issue and the appeal should be to the polls and not to the Courts [42].

The Council of Constitutional Inquiry (CCI) have made home for the political question doctrine in Ethiopia in the case of *Coalition for Unity and Democracy v. Prime Minister Meles Zenawi Asres (in short the CUD Case)* [43]; here is the short explanation of the case and the ruling of the CCI; the Prime Minster declared the ban on 16 May 2005 against the right to demonstration and public meeting. In protest of the banning of demonstration and public gathering in the aftermath of the election, an opposition party the Coalition for Unity and Democracy (CUD) brought a case against the Prime Minister, Meles Zenawi, questioning the legality of the order given by him. At the Woreda court, the complainant alleged that the Prime Minister couldn't order ban on demonstration, as there was no emergency calling for derogating this right. In addition, the complainant alleged that the Prime Minster had no authority to order the ban and hence this action is illegal [44].

The Council did not find the Prime Minister's decree prohibiting demonstration in Addis Ababa for one month as a violation of the Constitution: - because the Prime Minister is the highest executive organ vested with wide power. Regarding the second issue, the Council held that whether there were sufficient conditions for prohibiting demonstration should be decided by the organ vested with such power in the Constitution [45]; it is here that the Council injected the doctrine; given the elevated position the government is placed in reading whether the facts underground are dire enough to invoke unconventional measures, the CCI fared well in leaving the assessment to the government by doing so, the CCI wisely passed the moment without creating havoc and friction with the government while along the pass uphold the separation of power principle.

What can the house do in such delicate scenarios a part from resorting to political accountability? At least the house can proffer recommendation to the Council of Minister to act in timely basis; side by side to the political accountability, it is possible for the constitution to empower the parliament as an advisory body who can induce the Council to trigger emergency regiment:- tendering advise to act upon to the constitutional authorized body is not novel scheme; *common to find in the parliamentary system for commissioning the parliament to initiate state of emergency decree, while relegating the executive as advisory entity to the parliament on the necessity of emergency decree* [46], if the government is accorded to alert the parliament to extreme situations, equally, I shall argue that disbarring the parliament that beget the executive to propose the same, only gives discomfort, hence, gist of the all point here is to suggest that the parliament ought to be placed in a fair position to play proactive role to save the nation out of catastrophe rather than sitting idle to audit and counting the cost later on via

[38] W. Bulmer, *Emergency Powers: International IDEA Constitution-Building Primer* 18, https://www.idea.int/publications/catalogue/emergency-powers Lasted Visited August 20, 2020, p.14-15

[39] Supra note 37, p. 274

[40] M. Mhango, *Separation of Power in Ghana: The Evolution of the Political Question Doctrine,* PER / PELJ, Volume 17, No 6 (June 6, 2014), P. 2708

[41] Bari, Supra note 20, p.227-228

[42] Das, Supra note 39, P.299

[43] Coalition for Unity and Democracy v. Prime Minister Meles Zenawi Asres (File No. 54024, Fed. First Instance Ct., Lideta Div., June 03 2005 G.C

[44] Belay Frenesh Tessema, *A Critical Analysis of Non-Derogable Rights in a State of Emergency under the African System: The Case of Ethiopia and Mozambique*, https://repository.up.ac.za/handle/2263/1138, Last Visited August 21, 2020 P.34

[45] Abdi Jibril, *Distinguishing Limitation On Constitution Rights from Their Suspension: A Comment On CUD Case*, Haramaya Law Review Vol. 1, No. 2 (2012), p. 4-5

[46] Gross, Supra note 17, p.18, see also Bari, Supra note 20, P.38-42

political accountability.

4. Perpetually Nature of the Emergency Regiment

Contemporary theoretician Bruce Ackerman maintains that: - *lengthy stay in behind the wheels of emergency power heralds normalization of the emergency power* [47] at the expense of the regular law enforcement schemes. Hence, the task on the shoulders of constitutional designers is to make sure that proper check and balance are installed so as the government will only operate under unconventional powers for the duration the emergency takes to subdue.

In this respect, the Ugandan Court in case of Namwandu v. Attorney General, Saldanha J., pronounced that state of emergency shall not be used in order to disuse or substitute the regular law enforcement organs function, whilst the real incidence that necessitated the decree have melted down; hence, the facts underground suggest the real purpose of demanding renewal is to guarantee perpetual rule trough the instrument of decree that dispel the ordinary law [48].

Constitutional articulators being mind of such malfeasance intent of rulers install legal hurdles deemed sufficient to forestall continued grip on emergency power; the schemes enunciated for such end takes different shape; the first artifact for such end, as hinted above, is the requirement of presentment of emergency bill for people's assembly scrutiny so as the later will either approbates or dis-approbates it as it deems germane; this is because the archive of emergency decree unravel that despotic rulers raids nation indefinite via emergency decree; the witness to such malfeasance intent can found in Egypt experience with rule by emergency decree: in fact there is only a few equals as compared to the ugly experience of Egypt with emergency decree; the country was *effectively under the jackboot of executive emergency decree that lasted for 44 years:-it was declared in 1967 and only lasted after the Tarire Square Revolution that ultimately ousted Mubarak regime in 2011* [49], *why did Egyptian rulers showed such adore for emergency decree? Theoreticians provided this: - the exceptional power was utilized as vehicle for broader state building project that literally means centralized and executive dominated state; where for this aims to hit the goal, unleashing terror on both violent and non- violent opposition group was perceived as mandatory* [50]; *hence, this and other lesson felt around the globe forced constitutional designers to devise a way out to this quadrime; the relevant remedy perceived in this regard, are commissioning parliament to step in within short time interval following setting in motion of emergency decree to check whether the executive grip on such decree is because of real necessity or facade reason, consequently, if approved by the parliament, then setting forth the maximum period state of emergency will stay in air is also noteworthy task to be discharged in this spectrum; such restrictive measure, unless otherwise, hammered by constitutional stipulation specifying the maximum number of times emergency bills will be renewal or alternatively without putting down rigorous hurdles on the road to renewal, it will not reap a fruit:* hence, this assertion takes as to the second devise constitutional designers considers vital in the fight to maintain temporally nature of emergency bill; the reference here is to the theme renewal of emergency decree: boundless renewal of emergency decree poses risk to the democratic constitutional order:- *studies sketch that limitless renewal are the cause for loss in the democratic color of the state and the final dissipation that order to authoritarian order; emergency bills are renewed even after the bypassing of the initial crisis that necessitated the declaration because states discovers that emergency decrees are vital tool to get away constitutional constraints known stands against the road to potency and the executive wrath* [51]; *the stalwart measures against unbridled extension of emergency decree takes two modalities; the first defensive measure in this front line is to disbar request for limitless renewal of emergency decree, for instance, the constitution could stipulate that the legislature may authorize a state of emergency for 6 months at a time, up to a maximum of 24 months. However, this is an inflexible solution. It is impossible to tell in advance whether any constitutionally prescribed maximum number of renewals would be sufficient or excessive* [52].

The second alternative, championed by Bruce Ackerman, is to require that subsequent renewals of a state of emergency decree to be approved by increasingly large legislative supermajorities. This ensures that a broader consensus is required for each prolongation of an emergency decree, incrementally increasing the power of the opposition to end the emergency if required [53].

- In South Africa (article 37), initial approval of a state of emergency requires an absolute majority, but subsequent renewal requires a three fifths majority.
- In Kenya (article 58) the first extension of a state of emergency requires a two-thirds majority, but any subsequent extensions require a three-fourths majority.
- In Trinidad and Tobago, the initial approval of a state of emergency and its extension for up to six months can be authorized by a simple majority of the House of Representatives, but further extensions require a three fifths majority in both Houses [54].

Aftermath of underscoring the artifacts constitutions deploy to combat perpetuality of emergency decree here after, I shall canvass to gauge the stance the FDRE constitution toke in such sensitive matter.

a. an Ease Hatch-way for Indefinite Raid: Assessing the Adequacy of the Political Armor in Fight against Perpetuality of Emergency Decree

The FDRE constitution commenced the task of ensuring temporary stay of emergency decree through requiring the Council of Minister to proffer the emergency bill for parliament scrutiny shortly aftermath of the declaration; if the parliament succumbed the bill, then it will stay in power for six month for initial period and after subsequent endorsement for renewal quest, the duration of the bill will be four month; but the trek followed to ensure temporal nature of emergency decree is entangled with blemishes; therefore, the following section will dwell on auditing the

[47] B. Ackerman, *The Emergency Constitution',* The Yale Law Journal, Vol. 113, No. 1029 (2004), p. 1048-1049
[48] Das, Supra note 42, P.329
[49] A. Zwitter, *Constitutional Reform and Emergency Powers in Egypt and Tunisia,* http://www.researchgate.net Lasted Visited August 20, 2020, P. 9
[50] S. Reza, *Endless Emergency, The Case of Egypt,* New Criminal Law Review Vol. 10, No. 4 (2007),P.551-552
[51] Zwitter, Supra note 49,P.3
[52] Bulmer, Supra note 38, p. 19
[53] Ibid
[54] Ibid

gaps exhibited, thereafter, it will summon constitutional amendment having mind the purpose of arming the legislature with more ammunition than what currently it have in battle field against the executive desire to exercise plenary emergency powers for malfeasance ends. The full provision of the emergency regiment on the motif approval as well as renewal reads as follows:-

Art. 93 (2):- A state of emergency declared in accordance with sub-Article 1(a) of this Article: (a) if declared when the House of Peoples' Representatives is in session, the decree shall be submitted to the House within forty-eight hours of its declaration. The decree, if not approved by a two-thirds majority vote of members of the House of Peoples' Representatives, shall be repealed forthwith.

(b) Subject to the required vote of approval set out in (a) of this sub Article, the decree declaring a state of emergency when the House of Peoples' Representatives is not in session shall be submitted to it within fifteen days of its adoption.

This stipulation witness that the vote required immaterial of how many times the renewal is tendered, it is flat rate: what is required is two-third majority positive vote in a house constituting of 550 members in totality, if halve of the members present, then it is legit for the house to pass descion (art. 58 (1) and 59 (1)), therefore, emergency bills can passes if it successfully garners 183 yea votes (i.e. 275 (i.e. the quorum) *2/3= 183). Then this while casting doubts on the seriousness of the constitution to curb intuitions to frequent resort to emergency provisions; it shows the resemblance the constitutional accommodationist model for emergency power adapted in Ethiopia with counterparts in the same model interims of providing weak bulwark measures for misuse of emergency power ; in the absence of strong check and balance *mechanisms helpful for standardized scrutiny of the emergency government, it is fair to state, the constitution left the nation in precarious position:- unbilled resort to emergency powers compromises the democratic nature of the society in whose defence the grip on emergency powers are originally commissioned for such benign purpose* [55]. This dissipates the buds of constitutionalism. Inquisition unravel that state of emergency is highly coincides with abuse of human rights, even stretching to the non-derogable lists. Open acknowledgement for the possibilities to erode human rights during state of emergency by states constitutions incentivizes frequent resort to state of emergency because though it was for ill–fitted purpose, the incumbent regime have excuse for the suspension of rights:- the emergency provisions rationalize the measures taken [56].

In situations where the government is too strong because the same party predominates both the executive wing and the people's assembly, a previously declared state of emergency can be made to exist continuously even though the subject matter of the original state of emergency has long disappeared from the realities of the daily life of the people thereon dissipating constitutional stalwart provisions deemed to stand on the way of the executive desire for potency. It is observed that in the name of security, peace and law and order, the bounds of power and statecraft are permitted to extend beyond reasonable bounds [57].

Similar worry persists in Ethiopia in due cognizance that the same party controlled both the executive and the legislative wing, since the early inception of the new federal constitutional polity (i.e. 1995); the state has been under the jackboot of the executive arm under the triumphalism of the incumbent ruling party for too long. Aided and abated by *'the winner takes all approach'* [58] (i.e. the electoral system) a single party possessing majority vote constituted the government for several years since the entire age of EPRDF in power [59]. This ill-fitted electoral law system in installed at the constitutional level, in face-off to the heterogeneous make of the Ethiopian population; coupled with the typically repressive nature of the regime that gives no opportunity to the opposition to win the office through monopolizing the political space upshot in disfranchising large portion of the public from all sort of meaningful political participation, in short the parliament has become one party show and it is a conduit for rubber stamping the party legislative bills [60].

This lends a conclusion that supervision of the executive by parliament is indirectly mean supervision of the executive by the executive itself. So much so that, the executive can easily manipulate emergency provisions and thereof install the fertile grounds for perpetual ruling via emergency decree: the incumbent government can without much ups and down extend emergency bills despite the fact that the original cause of action for declaration of emergency decree have subdued, unless otherwise, we rushed to upgrade and re-calibrate the role the political wing (i.e. HoPR) plays in apprising emergency decree through constitutional surgery that puts down stifled procedure for renewal of emergency bills; the suggested approach here is the one that ensures the strong partaking of the opposition parties in the such process; if not the political armor will easily broke and lose its fight against executive desire for invoking fictitious emergency decrees. These benign objectives remind readers the need to inject in the Ethiopian constitutional regiment what is coined and advanced by Bruce Ackerman the "supermajoritarian Escalator".

Bruce Ackerman believes, while conceding to the incidence arose often from mis-utilization of emergency provisions, he ardently advocated that, if emergency provisions are

[55] Bari, Supra note 41, p. 235

[56] D. Mussel, *Parliamentary Power and the Prevalence of States of Emergency: Do constitutional provisions strengthening the hand of the legislature with regard to states of emergency have the effect of restricting their use?*', https://openaccess.leidenuniv.nl/bitstream/handle/1887/41156/Mussel%2C%20Johanan-s1239163_MA%20Thesis-PS-2016.pdf?sequence=1_Last Visited August 20, 2020, p.9

[57] R Yatim, *The Rule of Law and Executive Power in Malaysia: A Study of Executive Supremacy*, http://hdl.handle.net/10068/550836_Lasted Visited Last Visited August 23, 2020, p. 195

[58] Article 54: Members of the House of Peoples' Representatives:-

1. Members of the House of Peoples' Representatives shall be elected by the People for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot.
2. Members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for minority Nationalities and Peoples, see FDRE Constitution, Supra note 27
3. Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law,

[59] Berhanu Gutema, Restructuring State and Society: Ethnic Federalism in Ethiopia, https://vbn.aau.dk/files/50021793/spirit_phd_series Last Visited August 15, 2020 p. 120-122

[60] E. Bayeh, *Single Party Dominance in Ethiopia: FPTP Electoral Law and Parliamentary Government System as Contributing Factors*, RUDN Journal of Political Science, Vol. 20, No. 4 (2018) 506—515, p.506.

properly reinvigorated by appropriate procedure, they are still serviceable in modern democracies: - what is required to is reinforce the stalwart mechanisms rather than losing hope in emergency provisions. A well-framed procedural provisions in emergency law contributes in smooth running of emergency period [61].

b. Is Bruce Ackerman in Addis Abeba (Finfine)? Supermajoritarian Escalator Model for Ethiopian Parliament

Ackerman, flattered by the Constitution of South Africa, proposed a model, coined as the 'supermajoritarian escalator model':- under the South African constitution a proclamation of emergency should be placed before the legislature for its endorsement within 14 days and thereafter be subjected to repeated renewals every two months, requiring each such renewal to be amenable to the approval of a larger majority of legislators – 60 percent for the first two months, 70 percent for the next two months and 80 percent for each subsequent two month intervals. The advantage of the 'supermajoritarian escalator model' is that it not only contributes towards the timely revocation of emergency powers, but it also acts as an effective check on any potential abuse of emergency of powers [62].

He elaborated in detail the importance of requiring an escalating vote requirement for whenever the government tempted to make repeated request for renewal of emergency decree:-

The president knows that he will have a tough time sustaining supermajorities in the future, and this will lead him to use his powers cautiously. The public will bridle if his underlings run amok, acting in arbitrary ways that go beyond the needs of the situation. So the check of supermajorities not only makes the emergency regime temporary but makes it milder while it lasts. Therefore, the central tenants of Ackerman is by requiring progressively escalating number of positive vote for renewal of emergency bill, constitutions can prevent extension of emergency bills in instance when the real emergency vanished, by stifling approval criterion for renewal, it possible to terminate unlimited raid by emergency decree, if this approach is buttressed by making emergency decree justiciable before the floors of courts, then the ensuing result will be awesome:- rule of law will predominate in place of rule of man.

The FDRE constitution is conduit for flaming the wrath of autocratic regime as hinted above:- the constitution though circumscribed the duration of an executive emergency decree, does not aligned itself with the strong version of 'supermajoritarian escalator'; the intuition to govern the nation through extra- ordinary power is paved the way by the feeble renewal procedure inculcated in the constitution; making it extremely convenient for the executive that possess majority seats to secure renewal for such bill without getting much hurdles in its way.

To be frank the vote required to accredit emergency bill of the executive by HoPR (i.e. two-third majority vote) under the FDRE constitution supersede the weak version of super majoritarian escalator version expounded by Bruce Ackerman because both the simple majority vote required for initial approbation and the subsequent renewal thereafter of emergency bills are inferior to the vote required to ignite state of emergency under the FDRE constitution; hence, the suggestion of this paper, whist borrowing the idea from Bruce Ackerman and taking it as steeping stone, opted out to make adherence, to the modified and stronger version of super majoritarian escalator (i.e. the one enunciated by Muhammad Ehteshamul Bari); therefore, following this, it is suggested that the initial two-third vote required shall remain as it is for inception of emergency bill for first time and the escalating vote shall step in thereafter, while considering this as triggering point, hence it shall start going upward, it shall increases to require 75% percent approval vote whenever the renewal is proffered for first time; the details to this is scheme is worked out here in below:- the gist of the recommendation is subsequent renewal request shall be handled via stiff approval process:-

- The subsequent escalator due for the continuation of emergency beyond the initial six months should claim the support of three-quarters (75%) of the legislators (i.e. 275*3/4) = 206 yea vote, if we opted out to take the quorum as reference threshold for the simplicity of calculation;
- The escalator due for second time extension demand shall solicits four-fifth (85 %) of positive vote from the legislatures (275 *85/100) = 234 yea vote
- If the government wants to extend beyond the maximum three times in a single tenure of the house (i.e. for the total of 14 months out of the 60 months it enjoys in a single legislative tenure), then it shall solicits public approval via referendum in two-third voting requirement; here in relation to this:-the argument that says it is impossible to forecast the time it takes for crisis to subside shouldn't totally stand to skew our to endeavor to circumvent unnecessary prolongation of emergency decree:- too much flexibility invites abuse; but too much inflexibility in its part too is not advised; in indeed partially conceding to M. Ehteshamul Bari assertion:- " for given the resources available to the executive during an emergency to counter the threats posed to the security of the nation, it is extremely unlikely that in today's world any crisis threatening the life of the nation can remain in existence beyond a fairly identified duration of time" [63].

But, our assessment should have to be open to the possibility of "what if":- what if the threat persisted beyond the total period of 14 months? It is not sapient to totally shatter a way the avenues for invocation of emergency decree because if we do so it opens the Pandora box; it opens the gates for colossal problem: - breading a gap between the law and reality ultimately heralding lawlessness and should be avoided at all costs. Therefore, in lieu of this two dilemmas namely, whether to concede to the government repeated quest for renewal of emergency decree thereafter succumb for desires omnipotence or alternatively enclosing any avenue for renewal of emergency bill beyond specified number of times and thereafter hamstring the defensive capability of the government:- aftermath that seeing the nation fall on our hands in defiance to genuine exigencies; there should be middle way between this two

[61] Mussel, Supra note 56, P. 7-8
[62] Bari, Supra note 55, p. 253
[63] Bari, Supra note 62, p. 255

extremes; henceforth, two options ought to be tabled to the government: - one is to make an appeal for the public for an extension of an emergency decree beyond for 14 months for cases of real exigencies *(i.e. approval by referendum)* [64]:- the belief here is nothing is hidden before the general public, hence, the public will not give deaf hears to the crisis easily circulating in an open air, it will endorse the extension request for the time frame the public found it prudent based on the options, of course, to be tendered by the government, the other option at the table for the government is to take another shut in penstock for fresh emergency decree trough patiently waiting the opening of a new tenure of the house. *Prescribing a time limit on the continuation of the emergency provides notice to everyone concerned that the executive cannot manipulate the continuation of an emergency for political purposes beyond the appropriate period* [65].

c. Minority Political Parties and Supermajoritarian Escalator: What is in it for them?

A few constitutional regiments on emergency provisions celebrates 'supermajoritarian escalator'; in South Africa, the bench mark of Bruce Ackerman (have experienced distress with emergency power) navigates, despite being on the weak prototype of the escalator, via 'supermajoritarian escalator's because, unlike the initiation stage, subsequent renewal of emergency decree shall solicits an approval vote more than the one used to ignite the emergency decree namely, simple majority:- it escalates to require the support of 60 per cent from members of the assembly [66]; it is said wimped because in the country where a single party overwhelming wins elections, finding 60 per cent supportive vote is non-hellacious.

By subjecting emergency decisions to increasing supermajorities, the constitutional order places the extraordinary regime on the path to extinction. As the escalator moves to the eighty-percent level, everybody will recognize that it is unrealistic to expect this degree of legislative support for the indefinite future. Modem pluralist societies are simply too fragmented to sustain this kind of politics [67].

Whenever the votes required escalates the government cannot be saved by his/ her party loyalists; hence to augment votes in responding to the escalated vote the executive will look outward to bring into board minority parties in search of their vote; this re-rapprochement incentivizes political system of checks and balances before the political house without waiting the involvement of the courts:- on a way to have their vote the government will come clean and confess wrongful acts perpetuated via the dragnet emergency power, secondly, there will be concession to the demands of minority parties demands; for instance, majority of seats on oversight committees could be reserved to opposition political parties [68]; in our case, we shall envisage an approach where opposition parties could wield chairmanship position over the *'State of Emergency Inquiry Board'* [69] to be constituted by the HoPR whenever emergency decree is set in motion (normally seven persons will be member to this board); *Minority control means that the oversight committees will not be lap dogs for the executive, but watchdogs for society. They will have a real political interest to engage in aggressive and ongoing investigations into the administration of the emergency regime* [70].

d. The Prudence to Inculcate Proportional Electoral System

In order to activate opposition parties role in the Ethiopian politics, it is necessary on the part of the incumbent government to amend laws identified as stifling and arresting activates of opposition political parties, the prime target for amendment, among other lists is the anti-terrorism law, moreover, in addition to this, it is argued that a country like Ethiopia endowed with ethnic diversity adapting proportionality electoral law that mirrors the heterogeneity makeup of the polity is should not have to be seen lightly :- Arend Lijphart argued that proportional representation (PR) is needed in cases of countries with deep-rooted ethnic cleavages. PR is a key element of *consociational* approaches, which emphasize the need to develop mechanisms for elite power-sharing if democracy is to survive in ethnically diversified society [71].

The adaption of PR is conduit for minorities parties struggle to access seats in parliament, therefore, it is advised that the FDRE constitution shall inculcate PR electoral system so as minority opposition parties will be major bulwark mechanism against frequent recourse to emergency provisions for malfeasance purpose because whenever frequent visit is for emergency bill through renewal sachem, buying the good will of the minority parties become mandatory because the approbation vote required, progressively escalates whenever the resort to emergency provisions escalates in parallel.

5. Conclusion

This paper have limned that state of emergency is double edged sword that can be deployed either for benign purpose

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[64] Egypt with grim experience of emergency decree ordain at the constitutional level that emergency declaration must be approved by the majority of the House of Representatives; it can a be extended once, but only after obtaining approval from two-thirds of the house members, (article 154 of the 2014 Egypt Constitution) beyond this two times upper limit, an extension will only be spawned after approbation in public referendum; see for this, K Salameh, *Why Has Egypt Been Under Emergency Rule for the Past Hundred Years?*, http://hdl.handle.net/1959.7/uws:50510 Last Visited August 18, 2020, P.140

[65] Bari, Supra note p. 63, p.255

[66] N. Fritz, States of Emergency: Constitutional Law of South Africa, https://constitutionallawofsouthafrica.co.za/wp-content/uploads/2018/10/Chap61.pdf Last Visited August 20, 2020p. 21

[67] Ackerman, Supra note 47, p. 1048

[68] Id., p. 1051-1050

[69] Article of the FDRE constitution indicate that the Emergency Board is to be established by HoPR aftermath of endorsing the government emergency decree; it is to be tasked with inspecting and following up on how the government is handling the plenary power possessed due to the decree, if the Chairman seat is occupied by the minority party leader in the parliament then the government is with the view to win the support of the chairman and members of the board on why extension is required is expected to come with full disclosure, including those information supposed to be shared to a few individuals out of concern for national security, this is because not only opposition parties vote matters whenever the renewal requested is made, but also bringing them on board is prudent as members of the board can proffer their one advise on the extension of state of emergency; this appraisal process by the chairman, who is not member to the incumbent party and other members of the board serves to compensate courts deferral not sit and pass judgment in the shoe of the executive on the necessity of emergence decree,see FDRE Constitution art. 93(5) (6) Supra note 58

[70] Ackerman, Supra note 68, p. 1052

[71] B. Reilly, Electoral Systems for Divided Societies, Journal of Democracy, Vol. 13, No. 2 (Apr., 2002)p.157

of restoring the disrupted constitutional order or for the ultimate end of legitimizing violation of human rights, thereby transforming the democratic polity, at least as promised at the while paper level (i.e. the constitution), into autocratic state; hence, the investigation of the FDRE constitution unravels that the bulwark mechanism at the frontline are so weak the incumbent government can foray the nation via extending emergency decree for façade reasons: there is no hurdle that stands in the way of the government temptations to raid the nation indefinitely via repeated circle of emergency bills whereby defying the temporal nature of emergency power; this is because the incumbent government can easily get approval of renewal for emergency bills for unlimited number of times because the involvement of the opposition parties in reviewing emergency bills is very limited. Indefinite stay via emergency bills shall be repulsed back at most because prolonged emergent decree compromises the constitutional democratic order.

6. Recommendation

This paper recommends the following

- We shall foresee an amendment to the FDRE constitution that awards an active participation of the opposition parties in auditing emergency bills of the incumbent government, the suggestion here is by requiring more approbation vote whenever repeated renewal request is made for emergency bills, the opposition parties will be in pole position to force the government to convince them on why should assent to the proffered request for renewal of emergency bills, if it the government doesn't lived up to the expectation of the members of the opposition parties to this heavy loaded question, then the government draft bills will be thrown into dust bins, whereby incurring loss of credibility in th eyes of the public on the government capability to restore the lost peace, security and the constitutional order:- where along the way, this will curtail the government intuition to stay behind the wheels of emergency decrees beyond the necessities of the exigencies, thereby these strong partaking of the opposition parties saves the constitutional democratic order from dissipation through in-out sabotage via extension of emergency decree for façade reasons.
- To facilities involvement of the opposition parties in reviewing emergency decree, the first task to those who are tasked with amending the constitution, is to change the electoral system from first past the post to the proportional electoral system because the later system creates fertile grounds for seizing of parliamentary seats by those who partake in the election.

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