
RESEARCH ARTICLE

The Limits of Presidential Discretion: Evaluating the Invocation of Emergency Powers Under Section 305 of the Nigerian Constitution

Richard u. Oyiwona

Faculty Of Law, Admiralty University of Nigeria, Ibusa. Delta State, Nigeria

Corresponding Author: Richard u. Oyiwona, **E-mail:** Oyiwona-law@adun.edu.ng

ABSTRACT

This paper examines the constitutional boundaries of executive power in Nigeria, focusing on the tension between national security frameworks and sub-national autonomy during a state of emergency. The study evaluates whether the presidential authority to deploy "extraordinary measures" under Section 305 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) includes an implied power to suspend or remove democratically elected state officials. Utilizing a doctrinal and comparative legal research methodology, this paper conducts a textual analysis of the constitutional framework, reviews historical precedents of central intervention, and critiques the landmark December 2025 Supreme Court split decision in *AG Adamawa State & Ors v. AG Federation & Anor*. It also provides a comparative analysis of Article 356 of the Indian Constitution ("President's Rule") to highlight potential judicial safeguards. The paper argues that while Section 305 grants the President broad discretion to manage severe public crises, it lacks explicit text permitting the removal of sub-national executives. Furthermore, the explicit prohibition in Section 11(4) barring legislative removals of governors, combined with the exclusive impeachment path under Section 188, creates a strong constitutional presumption against implied executive ousters. The 2025 majority decision holding state executive powers "in abeyance" represents a dangerous shift toward executive overreach that threatens the foundation of Nigerian federalism. The study aligns with the robust dissent of the 2025 Supreme Court ruling, concluding that leaving "extraordinary measures" undefined invites constitutional abuse. It recommends an urgent constitutional amendment to Section 305 to explicitly protect elected state structures from suspension, alongside the adoption of a judicial proportionality test modeled after India's *S.R. Bommai* jurisprudence.

KEYWORDS

Constitutional Law, Section 305, Presidential Discretion, Emergency Powers, Federalism, Grundnorm, Implied Powers, Section 188, Judicial Review, Sub-National Autonomy

ARTICLE INFORMATION

ACCEPTED: 10 July 2026

PUBLISHED: 31 July 2026

DOI: 10.32996/ijlps.2026.8.7.3

1. Introduction and Theoretical Framework

Nigeria operates under a democratic framework grounded in the principles of constitutional federalism and the rule of law. The bedrock of this governance model is the 1999 Constitution of the Federal Republic of Nigeria (as amended), which explicitly declares its supremacy in Section 1. This supremacy is structurally reinforced by Sections 4, 5, and 6, which establish that all organs of state—the Executive, the Legislature, and the Judiciary, at both federal and sub-national levels—derive their existence and authority exclusively from the constitutional text. The specific allocations and boundaries of these public powers are delineated under Part II of the Constitution.

The legislative architecture is defined by Section 4. Section 4(1) vests federal legislative authority in the National Assembly, comprising the Senate and the House of Representatives. By virtue of Section 4(2), the National Assembly is empowered to enact laws for the peace, order, and good government of the Federation regarding matters contained in the Exclusive and Concurrent Legislative Lists (Part I, Second Schedule). Correspondingly, at the sub-national level, Sections 4(6) and 4(7)** empower State

Houses of Assembly to legislate on matters within their legislative competence, provided such enactments do not conflict with validly passed federal legislation.

Executive powers are similarly bifurcated. Section 5(1) vests the executive powers of the Federation in the President, while Section 5(3) vests the executive powers of each constituent State in its Executive Governor. Judicial authority is anchored in Section 6(1), which vests the judicial powers of the state in the superior courts of record. The primary mandate of the Judiciary is to interpret the law and adjudicate disputes, including constitutional questions regarding the extent and limits of executive or legislative power. Within this constitutional design, the coordinate arms and tiers of government are co-equal; none is inherently superior or inferior to another.

Because all governmental powers are explicitly mapped out by the constitutional text, a profound legal crisis emerges when the Federal Executive purports to utilize emergency powers under Section 305 to displace sub-national democratic structures. The President lacks the authority to arbitrarily dissolve or remove a democratically elected state government under the guise of executing emergency measures. By extension, the National Assembly lacks the *vires* to ratify or validate an *ultra vires* executive action. Consequently, any presidential declaration that purports to remove a democratically elected Governor or suspend a State House of Assembly constitutes a fundamental abuse of constitutional power and a severe infraction on the principles of federalism.

To understand the nature of emergency powers, this study anchors its analysis on three competing jurisprudential theories:

1. *Carl Schmitt's Theory of the Exception*: Schmitt posits that "Sovereign is he who decides on the exception." Under this decisionist model, a state of emergency cannot be fully bound by a regular legal code. The sovereign must possess unchecked discretion to step outside the law to save the state.
2. *John Locke's Executive Prerogative*: Locke argues that the Executive possesses the power to act according to discretion for the public good, without the prescription of the law, and sometimes even against it. However, Locke warns that this power is a trust; if abused, the people retain the right to resist.
3. *A.V. Dicey's Rule of Law*: In absolute opposition to Schmitt, Dicey argues that the rule of law excludes any form of arbitrary power or wide discretionary authority by the government. All emergency actions must remain strictly subordinate to the regular, written laws of the land.

1.1 Literature Review

The boundary of executive power during national emergencies is a foundational debate in constitutional law. Academic discussion on Section 305 of the Nigerian Constitution generally divides into two main viewpoints: the structural constitutionalists and the progressive expansionists.

Structural constitutionalists like Nwabueze (1973, 1983) argue that emergency powers are strictly limited by the text of the constitution. They maintain that a state of emergency does not give the President a blank check to rewrite constitutional rules. Instead, it only allows for temporary administrative and security adjustments to restore order. Nwabueze warns that reading an implied power into Section 305 that allows the suspension of state governors completely undermines the foundation of Nigerian federalism. Similarly, Sagay (2006) points out that the removal of an elected official is a serious constitutional penalty. Because the constitution already provides a specific path for removal under Section 188, using an emergency decree to bypass it is a clear abuse of power.

On the other side, expansionist scholars like Mowoe (2008) argue that the primary duty of the state is to survive. They believe that when a serious internal crisis occurs, the written limits of the constitution must yield to the practical needs of national security. This perspective relies heavily on John Locke's theory of executive prerogative, suggesting that the phrase "extraordinary measures" in Section 305(3)(c) must include the power to replace ineffective or compromised state leaders. However, critics of this view note that it relies too much on the goodwill of the executive. Without clear limits, it can easily lead to a centralized, authoritarian government under the guise of security.

Recent studies look closely at how the judiciary handles these executive actions. Historically, Nigerian courts avoided reviewing emergency declarations, treating them as non-justiciable "political questions" (Ojo, 2018). However, legal analysts note that this hands-off approach began to change with cases following the Obasanjo-era emergency declarations. The academic consensus now favors active judicial review. Scholars argue that while the President has the sole authority to identify a crisis, the specific measures used to address it must always be checked by the courts to ensure they remain constitutional.

2. Constitutional Architecture of Section 305

The power of the President to declare a state of emergency is not a generalized residual power; it is an exceptional, textually constrained mechanism. Section 305(3) of the 1999 Constitution explicitly limits the invocation of this power to seven restrictive conditions:

- 305(3)(a): The Federation is at war.
- 305(3)(b): The Federation is in imminent danger of invasion or involvement in war.

- 305(3)(c): There is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security.
- 305(3)(d): There is a clear and present danger of an actual breakdown of public order and public safety.
- 305(3)(e): There is an occurrence or imminent danger of some disaster or natural calamity, affecting the community or a section of it.
- 305(3)(f): There is any other public danger which clearly constitutes a threat to the existence of the Federation.
- 305(3)(g): The President receives a request from a Governor in accordance with subsection (4).

The phrase "extraordinary measures" in Section 305(3)(c) must be construed *ejusdem generis* with the preservation of order, not the dismantling of constitutional institutions. It provides a license to deploy unique security frameworks, not a mechanism to rewrite constitutional tenures.

The Constitution establishes a strict bottom-up procedure for states facing localized unrest to preserve federal autonomy. Under Section 305(4), the Governor of a state, acting with the sanction of a two-thirds majority of the State House of Assembly, must formally request the President to issue the proclamation. The President can only bypass this state-level request under Section 305(5) if the Governor fails to make the request within a reasonable time, and the situation threatens the collective existence or safety of the entire Federation. This procedural wall indicates that the federal structure is designed to resist unilateral executive takeovers of sub-national components.

3. Institutional Checks and the Legislative Sifting Process

A proclamation of a state of emergency by the President does not possess independent permanence. It is subject to a strict legislative veto. Under Section 305(2), a proclamation will automatically expire—or textually "vaporize"—unless it is approved by a resolution of the National Assembly within a narrow timeframe: within forty-eight (48) hours when the National Assembly is in session, or within ten (10) days when the Assembly is in recess. This dual-chamber, super-majority requirement means that the National Assembly cannot remain passive. It must actively evaluate the substance of the declaration.

While Section 11 of the Constitution allows the National Assembly to step in and make laws for a state when its House of Assembly is genuinely unable to sit due to unrest, this power is highly restrictive. Section 11(4) explicitly provides that: "Nothing in this section shall be construed as conferring on the National Assembly power to remove the Governor or the Deputy Governor of the State." If the Constitution explicitly bars the highest legislative body in the land from removing a state governor during an emergency, it is a structural contradiction to argue that the President possesses an implied power to do so via an executive declaration.

4. Judicial Frontier, Federalism, and Case Law Analysis

The Constitution of the Federal Republic of Nigeria is the organic law, the *grundnorm*, and the *fons et origo* of the legal system. This foundational principle is rooted in Section 1(1) and Section 1(3), which declare that any law or executive action inconsistent with the Constitution is void to the extent of that inconsistency. Nigeria's political history reveals a recurring trend of the executive overstepping its emergency powers to settle political scores with sub-national entities.

During the 1962 Western Region Crisis, Prime Minister Tafawa Balewa's administration declared a state of emergency, suspended the regional government, and appointed an Administrator. This early precedent set a dangerous blueprint for central intervention. Decades later, the Obasanjo Administrations (2004 & 2006) declared states of emergency in Plateau State (suspending Governor Joshua Dariye) and Ekiti State (suspending Governor Ayo Fayose), replacing them with military/federal administrators. These acts bypassed the formal impeachment pathways under Section 188 and distorted the constitutional balance of power.

The legal landscape surrounding Section 305 experienced a major shift through two highly contentious court rulings in late 2025. In *Belema Briggs v. President of the CFRN* (2025), the Federal High Court accepted the argument that under extreme public unrest, the President could place the powers of a state executive "in abeyance" and install a federal administrator. The court reasoned that this did not constitute a permanent "removal" under Section 188, but rather a temporary suspension to protect national security.

On appeal, the Supreme Court delivered a split 6-1 judgment in *AG Adamawa State & Ors v. AG Federation & Anor* (2025) that formally redefined the scope of executive discretion. The majority position, led by Justice Mohammed Idris, held that Section 305 gives the President broad discretion to implement "extraordinary measures" to prevent total anarchy. The majority ruled that holding a governor's power "in abeyance" temporarily during a valid emergency is legally acceptable to restore public safety.

Conversely, in a strong dissenting position, Justice Obande Ogbuinya criticized the majority's view. He argued that allowing the President to suspend elected leaders undermines federalism and destroys sub-national autonomy. Justice Ogbuinya stated that a governor can only be removed through the explicit impeachment process under Section 188, and that "extraordinary measures"

cannot be stretched to subvert co-equal branches of government. This paper aligns with the dissent, maintaining that allowing the executive to unilaterally suspend state governments threatens the stability of a true federation.

4.1 Comparative Analysis — Article 356 of the Indian Constitution

To evaluate the limits of Section 305, it is useful to compare it with Article 356 of the Indian Constitution, commonly known as "President's Rule." Both Nigeria and India are post-colonial, multi-ethnic federations that struggle with balancing central authority and state autonomy during severe internal crises. Unlike Section 305 of the Nigerian Constitution, which is silent on suspending state governments, Article 356 of the Indian Constitution explicitly gives the central government this power. If the President of India receives a report from a state Governor, or is otherwise satisfied that a state government cannot function in accordance with the Constitution, the President may dissolve or suspend the State Legislative Assembly and assume the executive powers of that state.

Because this power was written directly into the text, the central government in India frequently misused Article 356 to dismiss state governments run by opposition parties. Between 1950 and 1990, President's Rule was invoked over 100 times, often for purely political reasons rather than genuine security crises. To stop this political weaponization, the Supreme Court of India delivered a landmark judgment in *S.R. Bommai v. Union of India* (1994). The court established several strict constitutional safeguards that Nigeria's judiciary has yet to fully adopt:

1. *Justiciability of the Proclamation:* The court ruled that the President's satisfaction is not absolute; it is subject to judicial review to ensure it is based on objective material.
2. *No Dissolution Before Parliamentary Approval:* The state assembly cannot be dissolved until both houses of the Indian Parliament ratify the proclamation. If Parliament rejects it, the suspended state government is automatically restored.
3. *Judicial Power of Restoration:* The Supreme Court affirmed that if an emergency declaration is found to be unconstitutional, the court has the power to restore the dismissed state government and reactivate the suspended assembly.

The comparison highlights a critical flaw in Nigerian jurisprudence. In *AG Adamawa State v. AG Federation* (2025), the Nigerian Supreme Court allowed the central government to hold state powers "in abeyance" without the explicit text found in India's constitution, and without the strict protections established by the *Bommai* case. Nigeria's courts should look to India's legal evolution to ensure the federal structure is protected from political abuse.

4.2 Textual Synergy — The Contradiction Between Sections 11 and 188

A careful textual reading of the Nigerian Constitution reveals that the document is designed to protect sub-national executives from federal interference, even during major national crises. The argument that the President possesses an implied power to suspend a governor is contradicted by the relationship between Section 11 and Section 188. Section 11 deals with public safety and order. Under Section 11(3), if a State House of Assembly is disrupted by unrest and cannot sit to make laws, the National Assembly is empowered to step in and legislate for that state until the crisis passes. However, Section 11(4) explicitly provides that: "Nothing in this section shall be construed as conferring on the National Assembly power to remove the Governor or the Deputy Governor of the State." This restriction is a powerful structural indicator. If the constitution explicitly bars this supreme legislative body from removing a state executive during a crisis, it is legally unsound to argue that the President possesses an implied power to do so via an emergency decree.

Furthermore, the constitution provides only one valid method for removing an elected State Governor or Deputy Governor: the impeachment process outlined in Section 188. This process is a detailed, multi-step framework that requires a formal notice of allegation signed by at least one-third of the State House of Assembly members, an independent investigation by a seven-member panel appointed by the state's Chief Judge, and a final trial and verification requiring a two-thirds super-majority vote in the State House of Assembly. The detailed structure of Section 188 shows that the removal of a governor is meant to be a local legislative matter, requiring a high level of consensus. In constitutional interpretation, the rule *expressio unius est exclusio alterius* applies: the explicit mention of one thing excludes others. Allowing the President to use Section 305 to hold a governor's office "in abeyance" creates an unconstitutional shortcut around Section 188, violating both the text and the spirit of the document.

5. Conclusion and Recommendations

5.1 Summary of Findings

1. *Constitutional Supremacy:* The 1999 Constitution serves as Nigeria's *grundnorm*. All executive emergency powers under Section 305 are strictly subject to its structural boundaries, including the separation of powers and federalism.
2. *Textual Limits:* While Section 305 grants broad discretion to handle public unrest, it contains no explicit text permitting the suspension or removal of democratically elected state officials.

- 3. *Structural Integrity*: Section 11(4) explicitly bars the National Assembly from removing a governor during emergencies, and Section 188 outlines the exclusive path for unseating a state executive. Bypassing these rules via executive declarations undermines the constitutional framework.
- 4. *Judicial Risks*: The December 2025 majority decision in *AG Adamawa State v. AG Federation* grants dangerous leeway to the Federal Executive, risking a return to civilian autocracy under the guise of national security.

5.2 Strategic Recommendations

To safeguard Nigeria's democracy from the risks of executive overreach, the following legal and structural reforms are recommended:

- *Constitutional Amendment of Section 305*: The National Assembly should amend Section 305 to clarify the definition of "extraordinary measures." The text must explicitly state that under no circumstances does an emergency declaration permit the suspension, removal, or displacement of democratically elected Governors or State Houses of Assembly.
- *Codification of the Proportionality Test*: The courts must move away from total deference to the executive on "political questions." The Judiciary should adopt a strict proportionality test, ensuring that any emergency measure is both necessary and the least disruptive option available to constitutional democracy.
- *Strengthening Legislative Oversight*: The National Assembly must establish robust review procedures during the 48-hour ratification window. Voice votes and partisan alignments must be replaced with recorded, substantive debates to verify the true necessity of a proclamation.

Funding:	This	research	received	no	external	funding.
Conflicts of Interest:	The	authors	declare	no	conflict	of interest.
ORCID ID:	[Insert	First	Author	ORCID	iD	if available]
Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.						

Funding: This research received no external funding.
Conflicts of Interest: The authors declare no conflict of interest.
Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

References

[1] *Abacha v. Fawehinmi*, 6 NWLR (Pt. 660) 228 (SC) (2000).
[2] *Attorney-General of Adamawa State & Ors v. Attorney-General of the Federation & Anor*, SC/CV/1084/2025 (Supreme Court of Nigeria December 12, 2025).
[3] *Belema Briggs v. President of the CFRN*, FHC/ABJ/CS/942/2025 (Federal High Court, Abuja Division September 18, 2025).
[4] Dicey, A. V. (1959). *Introduction to the study of the law of the constitution* (10th ed.). Macmillan.
[5] *Igbinedion v. E.S.B.I.R.*, 13 NWLR (Pt. 1583) 503 (SC) (2017).
[6] Locke, J. (1988). *Two treatises of government* (P. Laslett, Ed.). Cambridge University Press.
[7] *Minister of Home Affairs v. Fisher*, AC 319 (PC) (1980).
[8] Mowoe, K. M. (2008). *Constitutional law in Nigeria*. Malthouse Press.
[9] *Nospetco Oil & Gas Ltd v. Olorunimbe*, 10 NWLR (Pt. 1307) 114 (CA) (2012).
[10] Nwabueze, B. O. (1973). *Constitutionalism in the emergent states*. C. Hurst & Co.
[11] Nwabueze, B. O. (1983). *Federalism in Nigeria under the presidential constitution*. Sweet & Maxwell.
[12] *Nwokedi v. Anambra State Government*, 7 NWLR (Pt. 1828) 29 (SC) (2022).
[13] Ojo, O. (2018). The Nigeria armed forces and a state of emergency: A constitutional analysis. *African Journal of Legal Research*, 9(2), 145–163.
[14] *Onjefu v. K.S.M.C.I.*, 10 NWLR (Pt. 827) 40 (CA) (2003).
[15] *P.D.P v. I.N.E.C.*, FWLR (Pt. 723) 2735 (SC) (2001).
[16] Sagay, I. (2006). The abuse of executive discretion and the survival of Nigerian federalism. *Nigerian Bar Journal*, 4(1), 22–39.
[17] Schmitt, C. (1985). *Political theology: Four chapters on the concept of sovereignty* (G. Schwab, Trans.). MIT Press.
[18] *S.R. Bommai v. Union of India*, 3 SCC 1 (1994).
[19] *Ugba v. Suswam*, 14 NWLR (Pt. 1427) 264 (SC) (2014).