



Martial Law: Worldwide Perspective

– Dr Kanika Sharma

Introduction

On December 3, 2024, President of South Korea, Mr Yoon Suk Yeol declared martial law in the country, citing national security threats. President was of the view that the opposition, the Liberal Democratic Party of Korea, was engaged in anti-state activities and collaborating with North-Korean Communists.¹ This proclamation of martial law meant that all political meetings, rallies, and strikes would be banned and the media would come under military censorship. This martial law was imposed in the country after a gap of 45 years. Martial law was swiftly overturned by the Korean National Assembly (NA) following public protests and political opposition, leading to its repeal within hours. Post-repeal events were more drastic. The Korean army chief of staff General Part An-su was arrested for his role in martial law on charges of insurrection. As martial law commander he has issued an order to ban all political activities. Earlier, former defence minister Kim Yong-hyun and three military commanders involved in acts relating to the imposition of martial law, such as deployment of military personnel at NA were also arrested. On December 14, Yoon Suk was impeached by the NA. Korea's Constitutional Court.

Four months after the imposition of martial law, on April 4, 2015, the Constitutional

Court announced its decision, anonymously upholding former President Yoon Suk Yeol's impeachment on all five grounds. These included the unconstitutional declaration of martial law, seizing the National Election Commission and arresting its personnel without a warrant, the takeover of the National Assembly by the military and police, and ordering the arrest of politicians and lawyers. The Court said that Yoon's action was a violation of the warrant requirement and provisions in the constitution. The Court also opined on the deployment of armed forces and the crackdown on opposition, saying that "he [the respondent] violated his constitutional duty as their commander in chief," and "infringed on the freedom of activities of political parties."²

Martial law is a common law concept. It is not clearly defined but relates to the use of the military to counter certain emergent situations like insurrections or rebellion in a country. During British rule, martial law was proclaimed in India on various occasions. An attempt has been made in this paper to clarify how martial law is understood and practiced in a few states and its likely proclamation in India in the future.³

What is Martial Law

Martial law is the answer of common law to situations of grave disorder and rests on the

legal maxim *salus populi suprema est lex* (safety of the people is the supreme law). It is based on the premise that when the civil power in an area becomes incapable of maintaining law and order, it is lawful for all loyal citizens, including the military, to use necessary force for the restoration of order. The US Supreme Court has defined martial law as: “the law of military necessity in the actual presence of war. It is administered by the General of the Army, and is in fact his will. Of necessity it is arbitrary, but it must be obeyed.”⁴ According to Winthrop (1920), Martial law is military rule exercised by a State over its own citizens (not being enemies), in an emergency justifying it.⁵ According to Wiener (1940), “martial law is the public law of necessity. Necessity calls it forth, necessity justifies its exercise, and necessity measures the extent and degree to which it may be employed. That necessity is no formal, artificial, legalistic concept but an actual and factual one: it is the necessity of taking action to safeguard the state against insurrection, riot, disorder, or public calamity. What constitutes necessity is a question of fact in each case.”⁶

Black’s Law Dictionary defines the term martial law as, “The law by which during wartime the army, instead of civil authority, governs the country because of a perceived need for military security or public safety. The military assumes control purportedly until civil authority can be restored.” Further, “A body of firm, strictly enforced rules that are imposed because of a perception by the country’s rulers that civil government has failed to function. Martial law is usually imposed when the rulers foresee an invasion, insurrection, economic collapse, or other breakdown of the rulers’ desired social order.”⁷

The concept of martial law has been included in the Constitutions or other legislations in a number of States. For instance, Article 1 of the Ukraine’s law on the ‘Legal Regime of Martial Law’ defines the term martial law as a special legal regime that is introduced in the country in case of an armed aggression or a threat of an attack, a threat to

state sovereignty and territorial indivisibility of the country.⁸ Martial law is thus that rule which comes into play when civil authority in that area is made subordinate to military, either for repelling invasion or suppressing rebellion or to secure the primary objectives of a government when the ordinary administration fails to do so. It is at once both a domestic and ordinarily an unwritten law. Terms such as ‘state of emergency’, ‘state of alarm’, ‘state of exception’ and ‘state of siege’ have been used in other countries to refer to the crisis situation that calls for imposition of special legal order. Imposition of martial law amounts to predominance of the military authority over the civil authority for the sole purpose of restoring normal conditions as expeditiously as possible to enable the civil authority to resume charge. Martial law must not be confused with military law, which is a statute for the preservation of discipline in the armed forces.

Advantages of Martial law

Martial law is elastic in its nature, and easily adapted to varying circumstances. A few advantages of martial law are that actions not normally offences can be made criminal, or the scale of punishment for crimes can be raised which can act as a deterrent. This could be applicable in the case of things done to hamper military action. Similar advantage also occurs from the fact that judicial machinery remains under the military authority and prosecution can be speeded up to ensure maximum deterrent. The establishment of martial law may also facilitate the establishment of an efficient intelligence service since the police intelligence organization may be brought under the direct control of the military.

Martial Law in India

Over the course of history, martial law has been imposed in many parts of the world, as and when there has been breakdown of civil government, due to rebellion or internal disorder, and is not limited to any one geographic or ethnic domain.

During British rule, martial law was proclaimed in India on various occasions. After gaining territorial possessions in India, the East India Company proclaimed martial law under the Bengal State Offences Act of 1804 and later, under the ordinances issued by the Governor-General in India. The ordinances empowered the military authorities to issue regulations and orders and to set up special courts, and laid down the procedure to be followed by these courts.

In 1919, a countrywide campaign was called by Mahatma Gandhi in response to the Rowlatt Act.⁹ It led to anti-British demonstrations in Calcutta, Bombay, Delhi, Ahmadabad, etc. In Punjab, the situation became volatile due to wartime repression and forcible recruitment. During the intense demonstrations, Punjab also witnessed the Jallianwala Bagh Massacre. The government declared martial law in the Punjab province and a few other parts on 15 Apr 1919. It led to violence in the districts of Delhi, Ahmadabad, Amritsar, Lahore, Gujranwala, and Lyallpur. During the protest, a lady doctor, Miss Marcella Sherwood, who was also Superintendent of the Mission Day School for Girls was caught on her bicycle, beaten badly and left to die until some nearby Hindu shopkeepers took her to refuge. Among the orders passed by Lt. Governor of Punjab, Michael O'Dwyer at Amritsar, was an order that has been styled "Crawling Order." This order related to a street where Miss Sherwood was attacked. The street was narrow, but of considerable length, and had abuttings on it on both sides' houses of different dimensions. The order was to the effect that no Indians should be allowed to pass through the street, except by crawling on all fours a distance of about 150 yards, between the two pickets which were placed at certain points in the street to enforce obedience to this order. The pickets had instructions to be there from 6 am to 8 pm.¹⁰

During martial law, aircraft were used to machine gun unarmed civilians, bomb villages and drop incendiary bombs in Gujranwala to destroy huts

and localities.¹¹ Dwyer justified the use of aeroplanes for dropping eight bombs, of which two did not explode. According to him, the spread of disorder from Amritsar to Lahore to Kasur was alarming, and troops were not always readily available for deployment to quell the disturbances. In 1942, martial law was imposed under the common law rule in Sindh. During martial law in Sindh, a military court was constituted for the trial of the main rebel, Soreh Badshah, who was sentenced to death. The implementation of martial law in Punjab and Sindh was characterized by the use of excessive force, and the infliction of avoidable suffering, torture and inhuman treatment and punishments on citizens. In most instances, special courts awarded harsh punishments to the natives. After Independence, no martial law has been imposed in India.

The Manual of Military Law

The Manual of Military Law (2011) of India has a few provisions relating to martial law in India. According to the Manual, "Martial Law" means the suppression of the civil authority, by military authority, whose sole object is to restore conditions, as expeditiously as possible, to enable the civil authority to resume charge. The Manual provides that conditions of extreme disorder may sometimes arise when the civil authorities, even with the help of the armed forces, are unable to bring the situation under control. In such cases Martial Law may be imposed in the disturbed area by a military commander. Martial Law may also be imposed by a military commander when there is a complete breakdown of civil administration e.g., during an insurrection against the Government. Martial Law is thus, the exercise of the right of private defence by repelling force by force.¹²

The Manual provides that a military commander by imposing Martial Law assumes the appointment of Martial Law Administrator (MLA) and takes control of the affected area. He may require the civil authorities to discharge their normal functions under such conditions as may be prescribed by

him. Being an extreme step, the decision to declare Martial Law has to be taken at the highest level possible. Before imposing Martial Law, as far as practicable, the military commander should obtain the approval of the Central Government. Where the situation is grave, and the circumstances are such that it is not possible to obtain the prior approval of the Central Government, the military commander may, on his own, assume supreme authority for the maintenance of law and order. He should, however, inform the Central Government as soon as possible after Martial Law is proclaimed. He should also issue proclamation for the information of the inhabitants that Martial Law has been declared.¹³ The military commander should issue Martial Law Regulations, specifying therein the Martial Law offences, punishments for such offences, and constitute military courts for the trial of offenders against Martial Law.¹⁴

When law and order has been restored, and civil authority resumes charge, civil courts may inquire into the legality of acts of military authorities while Martial Law was in force. For this reason, it is necessary to protect persons who have been administering Martial Law from actions and prosecutions. This is done by an Act of Indemnity passed by the Parliament (under Article 34 of the Constitution). Such an Act would make transactions legal which were illegal when they took place; free the individuals concerned from legal liability, and make the judgments/ sentences of Military Courts valid and fully operative irrespective of whether the martial law continues to be in force or not. It is to be borne in mind that protection is afforded under an Act of Indemnity only to those where acts were bonafide and performed in the honest belief that they were part of their duty.¹⁵

Indemnity Act

Under martial law, military commanders may order certain measures that violate the fundamental rights of the citizens. In ordinary

circumstances, violation of fundamental rights by state action would invite judicial review of such acts. However, since martial law is imposed and enforced by the executive to tackle extraordinary situations, there is no provision for judicial review of acts done during the imposition of this law but accountability lies before the Parliament which may indemnify acts done in connection with maintenance or restoration of order passing a legislation in this regard. This is done by passing an Indemnity Act which debars judicial examination of the martial law measures and sentences. The Indemnity Act is a retrospective statute protecting all persons who have acted, or have intended to act, under the powers given to the government by the statute.

The framers of the Indian Constitution were aware about the concept of martial law, though they have not made any express provision about the proclamation under the Constitution. Article 34 of the Constitution makes provision for the passing of an Act of Indemnity by the Parliament in respect of acts done under martial law; reads as follows:¹⁶

Restriction on rights conferred by this Part while martial law is in force in any area:-

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Article 34 seeks to indemnify public servants and other persons for acts done by them in connection with the maintenance or restoration of order in any area within the country where martial law has been declared. The object of the Act of Indemnity

is to make actions legal which, when took place, were illegal. This Act has no application to conduct which, however severe, is strictly lawful.

Doctrine of Necessity and Martial Law

Martial law is a consequence of circumstances where the usual functioning of civilian government has practically ceased. In such a situation, the doctrine of necessity enables those in de facto control, such as the military, to respond to and deal with a sudden and stark crisis in circumstances which had not been provided for in the written Constitution or where the emergency powers machinery in that Constitution was inadequate for the occasion. The extra-constitutional action authorized by that doctrine is essentially of a temporary character and it ceases to apply once the crisis has passed.¹⁷ The imposition of martial law becomes essential to the continued existence of government and law. A more extreme view is that martial law is an instrument of state terror. It knows very few bounds and authorizes extreme measures of brutality in order to terrorize certain elements of the population into submission.

AFSPA v. Martial Law

A few researchers and international human rights organizations have raised a concern that in India the Armed Forces (Special Powers) Act (AFSPA) confers sweeping powers on the armed forces and areas where the AFSPA is applicable remains under de facto martial law. This concern is wrong. The primary role of the armed forces is to defend the State from external threats by using lethal force offensively. In the last three decades, terrorist attacks all over the world have changed the security situation and blurred the lines between internal security and external threats. The threat posed to internal security by terrorists has changed the role played by the military and their professionalism is now being utilized to deal with internal security matters. The governments of Australia, Belgium, Canada, Germany, India, Italy, Japan, the UK, the

USA among others have employed the armed forces for internal security duties. The internal security or police duties of the military may be grouped into three non-rigid interchangeable categories: (i) Riot Control, (ii) The Small Wars, and (iii) Martial Law. Riot control pertains to those occasions when the civil power continues to exercise undivided control, but finds the police forces on which it normally relies insufficient. In such cases, unlawful assembly can be dispersed by district magistrate with the help of the armed forces under the power vested by section 149 of the Bhartiya Nagarik Suraksha Sanhita.

Small wars are akin to counterinsurgency operations. No limitations are placed on the amount of force which can legitimately be exercised, and the military is free to employ all the weapons that the nature of the threat permits. Such campaigns are clearly a purely military responsibility. Special Forces may be called in certain circumstances during such wars. Special legislation (such as AFSPA), is required to give additional powers to the security forces to deal with situations in small wars. The US and Canada, have created separate military commands, specifically tasked with internal security. In India, the AFSPA gives power to the members of the security forces to deal with such contingencies in a disturbed area. The 'special powers' under AFSPA conferred upon the armed forces to open fire, even causing death, is not unfettered. It may be used in a disturbed area, where the assembly of five or more persons or the carrying of weapons is forbidden, only if a person is seen as violating such a law. The Supreme Court has held that the powers conferred on the officers of the armed forces, including a non-commissioned officer under the AFSPA are not arbitrary and unreasonable and are not violative of the provisions of Articles 14, 19 or 21 of the Constitution.¹⁸

Martial law is distinct from merely using force to suppress internal disturbances because it extends to fulfilling some functions of civilian government, even legislative and judicial functions.¹⁹ The

imposition of martial law is essentially based upon necessity and is an act of self-preservation and self-defence of the State. It is a response to a temporary emergency in a state. The state practices show that in the event of terrorist attacks, invasion, insurrection or rebellion, martial law has not been proclaimed on a matter of routine. Martial Law is the exercise of the State's right of private defence by repelling force by force, for a temporary period till restoration of peace and order. The military commander is empowered to supersede all laws by his own authority and carry out the orders of the government fearlessly and justly.

Martial Law in Other States

The Australian Government has passed the Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000 (Cth), which came into force on 12 Sep 2000, when it received royal assent by the Governor-General. Under the amended Defence Act 1903, the Federal Government now has the power to call out the armed forces on domestic soil against perceived threats to 'Commonwealth interests', with or without the agreement of a state government. The legislation authorizes the Prime Minister, the Defence Minister and the Attorney-General, or 'for reasons of urgency', one of these 'authorizing ministers', to advise the Governor-General (the Commander-in-Chief of the armed forces under the Constitution) to call out military personnel to deal with 'domestic violence'. Once deployed, military officers can order troops to open fire on civilians, as long as they determine that it is reasonably necessary to prevent death or serious injury. Soldiers will have greater powers than the police in some circumstances, including the right to shoot to kill someone escaping detention, search premises without warrants, detain people without formally arresting them, seal off areas and issue general orders to civilians.²⁰

Historically, the doctrine of martial law was inherited by Canada from the British system. In Canada martial law was invoked in the form

of the War Measures Act in 1970 because of a supposition about 'apprehended insurrection', for which there was apparently very little evidence. A number of undemocratic objectives were pursued during the few weeks of martial law in Canada, but the basic democratic structure of Canada was not disturbed by the military. However, if deemed necessary, the Canadian Parliament or the Government has the power to resort to martial law. It can proclaim martial under a Crown prerogative or under common law, as well as under statutory authority. The power to declare martial law under a prerogative or under the common law exists in Canada. If considered necessary during an emergency, the Canadian Parliament is also empowered to declare martial law.

The history of martial law in China dates back to the Qing dynasty. The Chinese People's Liberation Army's (PLA) domestic security role, since the 1980s, was codified in legal documents. The 1982 Constitution allowed the State Council of the People's Republic of China (PRC) or the National People's Congress (NPC) Standing Committee to impose martial law, but did not specify the functions of the troops in maintaining martial law.²¹ In 1989 the PRC imposed martial law in two different cities within the space of two months. Martial law was first declared in Lhasa (Tibetan Autonomous Region) in March of that year. In May 1989, after a month of student protests and a massive outpouring of popular discontent in Beijing, martial law was imposed in sections of the nation's capital. After China's 1989 declarations of martial law was condemned abroad and criticized at home, martial law legislation was promulgated in 1996 and the NPC adopted the Law on Martial Law²² and the National Defence Law, respectively. The 1996 Martial Law of the PRC provides that in case of occurrence of turmoil, tumult or serious riot that imperils the unity, safety or social public order of the state to such an extent that the social order cannot be maintained and the people's personal and property safety not protected if extraordinary

measures are not adopted, the state may decide to enforce the martial law.²³

The state of siege in France is an ancient practice. It has a military origin conferring full powers of government on the general in command of a besieged fortress. The French state of siege is similar to martial law concept in the US, since both transfer the responsibility for the security of cities to the army, but has a distinct origin and has been implemented far differently.²⁴ The French Constitution, Article 36 (1958) now provides that a state of siege (Martial Law) shall be decreed in the Council of Ministers. The extension thereof after a period of twelve days may be authorized solely by Parliament.²⁵ During a siege, military authorities have independent power over all offences like treason, espionage, sabotage, and any other acts that hamper or interfere with the army or the war effort. In these matters the Code of Military Justice, part II, applies and departure from it can be justified only by necessity.²⁶ Both the state of siege and martial law are designed to increase the power of the executive, enabling him to deal quickly and effectively with a crisis. Article 36 of the French Constitution gives the executive the authority to declare a state of siege for a maximum of 12 days without approval by the Parliament.

Pakistan army, in a period of seventy-seven years of its existence since its independence from the British rule, has evolved into a political hegemony and exercises more power than any other competing institution.²⁷ The army commanders, on several occasions, have staged a coup, abrogated or suspended the Constitution and proclaimed nation-wide martial law. Military has ruled the country for nearly 35 years under dictatorships. In recent times, Pakistan is witnessing a political crisis, and people are claiming that an undeclared martial law has been imposed in the country. The government in Pakistan swooped down on party leaders and supporters of ex-prime minister Imran Khan after their show of strength in Islamabad. It used a new stringent law to arrest protesters.

Military courts in Pakistan are authorized to try and punish civilians.²⁸ Military courts, however, do not serve the purpose, instead, they are said to create a parallel system that is considered devoid of higher principles of equity, justice and good conscience.²⁹

In the UK, martial law was used to address a range of circumstances, which included civil war, administration of distant colonies, the suppression of political dissent, suppression of rebellion, and military governance. In British law, Military Aid to the Civil Authority (MACA) is a collective term used by the Ministry of Defence to refer to the operational deployment of the armed forces of the United Kingdom in support of the civilian authorities, other government departments and the community as a whole. MACA can be of two kinds: Military Aid to the Civil Power (MACP) and Military Aid to the Civil Community (MACC). The MACP relates to the use of the armed forces to assist the civil authorities in the restoration of law; while MACC involves disaster relief, but may also in response to a mass terrorist attack. The British Civil Contingency Act of 2004 defines emergency as: (i) an event or situation which threatens serious damage to human welfare in the United Kingdom or in a part or region; (ii) an event or situation which threatens serious damage to the environment of the United Kingdom or of a part or region; or (iii) war, terrorism, which threaten serious damage to the security of the United Kingdom. The Crown also has the power to make an emergency regulation in the United Kingdom, which shall be a subordinate legislation for the purpose of the Human rights Act, 1998.³⁰

Martial law in the US came from the British. Several times in the history of the US, martial law of varying degrees has been declared. One of the first instances of the use of martial law in American history was by General Jackson during the Battle of New Orleans, Louisiana in 1812, before repulsing the British in the battle. Martial law was also imposed in a four-mile radius around the vicinity.

The US Supreme Court has held that during martial law, any person may be arrested by the military authorities on suspicion of participating in, or aiding and abetting insurrection. He may be imprisoned without hearing or bail, and the legality of the arrest and detention cannot be inquired into or reviewed by the courts. The arrested person held by the military may not be guilty of crime and may not have rendered himself or herself in any way amenable to the laws of the state, but if, in the opinion of the military authorities, he is a suspect or dangerous character, an agitator, whose presence is deemed “prejudicial to public order” or “incompatible with public tranquillity”, he may be arrested without warrant, may be imprisoned for weeks and months, and may then be removed by force to any other place.³¹

In the US, armed forces enjoy a relatively high level of respect within the country. Along with this increased popularity, the American military establishment has become increasingly involved in domestic affairs. In the history of US, federal and state officials have declared martial law at least 68 times. The Supreme Court in 1849, upheld the legality of Rhode Island’s martial law declaration in *Luther v. Borden* [*Luther*, 48 US at 47]. The recent trends have shown that the President and Congress are directing the military into more and more operations that are traditionally civilian in nature; however, after World War II martial law has not been presidentially directed or approved for any area of the US. The US President under the Enforcement of the Laws to Restore Public Order Act (17 Oct 2006), as amended, can deploy the armed forces, including the National Guard in Federal service, to restore public order and enforce the laws of the US during terrorist attack or incident. In 2019, President Donald Trump has proclaimed a state of national emergency on the southern US border to mobilize the military to build a wall along the US-Mexico border to prevent refugees from entering the country.

Possibility of Martial Law in India

Over the past century, governments throughout the world have declared states of emergency in response to a variety of real and perceived crises, including not only threats of insurrection, but also political unrest, general civil unrest, criminal or terrorist violence, labour strikes, economic crises, the collapse of public institutions, the spread of infectious diseases, and natural disasters. In modern times, besides the use of the term martial law, States may use various other terms for special legal orders introduced in crisis situations. These include ‘state of exception’, ‘state of emergency’, ‘state of alarm’ and ‘state of siege’.

The Constitution is silent about the circumstances in which martial law may be proclaimed in India. There is no certainty that martial law will never be proclaimed in India. The proclamation of martial law depends upon necessity, when less drastic measures have failed. Necessity would justify its proclamation by the government and necessity would limit its duration. The Manual of Military Law, as discussed earlier, contains a few provisions relating to the imposition of martial law, but these are old and have not been revised earnestly after India gained Independence. Moreover, these provisions are not supported by legislation or governmental policy. The extent of the military force to be used, sentences passed, punishments inflicted, forfeitures ordered or other actions taken under martial law would depend upon the actual threat to order and public safety at that point of time.

While the decision to impose martial law may be made by the local military commander, if the circumstances demand immediate action, the final decision for its imposition will be made by the chief executive or the Prime Minister. However, the Committee of the Group of Ministers on National Security,³² constituted in 2000, sums up the Governments’ view succinctly in paragraph 14.4 of its report:

The reins of Government must, of course, never be handed over to the Armed Forces. The civil face of governance must remain visible at all levels, even in situations of militancy and terrorism. The Armed Forces of the Union can be used only in aid of civil power and not in supersession of it.”³³

Therefore, the government may like to avoid imposing martial law at all costs as it would threaten civil liberties and the values of democracy in the country. Possibility of a situation which emerged in Korea is not likely to happen in a state like India having strong democratic values and an independent higher judiciary. Martial rule can never exist where the courts are open, and are exercising their jurisdiction in a proper and unobstructed manner. In emergency situations, the rights to freedom of expression, association and assembly may, however, be restricted.

Conclusion

Martial law is the gravest form of emergency power to deal with insurrection or a national emergency. In a few modern Constitutions, the power to

proclaim martial law lies with the Parliament or chief executive. Many modern constitutions contain explicit, detailed emergency provisions, which legitimizes emergency powers since a society must be equipped to face extreme and urgent challenges. Martial law in a democratic state cannot be a legal black hole. A response to an exceptional threat has to be governed by the rule of law. The need to impose martial law in the territory of a state has to be based on exceptional necessity and intended only to meet a pressing public emergency. The rights and privileges of citizens may be temporarily curtailed in a democratic state, which must always remain subject to its international obligations relating to civil and political rights and future judicial investigations. Those responsible for illegal and unjustified acts and excesses can always be questioned and punished after the restoration of normalcy. Since martial law contains the word ‘law’, it cannot be used to signify unequivocal and unlawful authority of a military commander.

Endnotes

- 1 President Mr Yoon described the National Assembly as “den of criminals” and stated that the National Assembly is paralyzing the executive branch and the judicial branch through repeated impeachment attempts on key government officials such as the Minister of Interior, Minister of National Defense, Chairperson of the Korea Communications Commission and the Chair of the Board of Audit and Inspection, and the opposition party’s one-sided budget cut is causing chaos to public safety and people’s livelihood. From Declaration to Repeal: Overnight Martial Law in Korea, GR Korea Newsletter, December 4, 2024.
- 2 Yoon impeachment saga might be over, but South Korea remains a society divided, *The Indian Express*, April 8, 2025.
- 3 Martial law is distinct from military law. Military legal system concerns the governance and discipline of the members of the armed forces. In contrast, martial law consists of a system of rules and principles regulating or modifying the rights, liabilities, and duties, the social, municipal, and international relations in times of war, of all persons. Donohue Conor, “The ‘Soul of an Army’: A Defence of Military Court Trials for Violations of the Law of Armed Conflict”, *Israel Law Review*, Vol, 54(1), 2021, pp. 25.
- 4 *United States v. Diekelman*, 92 US 520 (1876), 526.
- 5 Winthrop William, 1920, *Military Law and Precedents*, Washington: Government Printing Office, p. 817.
- 6 Frederick B. Wiener, *A Practical Manual of Martial Law* (1940), p. 16.
- 7 Garner Bryan A, *Black’s Law Dictionary*, Tenth Edition, Thomson Reuters, 2014, p.1122.
- 8 Article 1, Law of Ukraine “On the Legal Regime of Martial Law.”
- 9 The Anarchical and Revolutionary Crimes Act of 1919 (Rowlatt Act) was based on the recommendations of the Sedition Committee chaired by Sir Sidney Rowlatt. It authorized the Government to exercise certain emergency powers to deal with anarchical and revolutionary movements.
- 10 For more details on the subject, see: Ratnabali and UC Jha, *Martial Law in India: Historical, Comparative and Constitutional Perspective*, Vij Books India Pvt. Ltd. (2020).
- 11 Wisal M. Khan (retd Major General), “Hur Operation in Sindh”, Published in *Sindh Quarterly* in Five Parts in 1980 and 1981, p. 2, available at: <http://www.sanipanhwar.com/HUR%20OPERATIONS%20IN%20SINDH.pdf>.
- 12 Para 15, *The Manual of Military Law* (2011), Vol. I, Chapter VII.
- 13 Para 16, *The Manual of Military Law* (2011), Vol. I, Chapter VII.
- 14 The Manual provides that the military courts under Martial Law may be convened under the orders of the MLA. One civil member having judicial experience should, if possible, be appointed to each court. These courts will deal with all offences including breaches of Martial Law Regulations. Para 17-18, *The Manual of Military Law* (2011), Vol. I, Chapter VII.
- 15 Para 19, *The Manual of Military Law* (2011), Vol. I, Chapter VII.
- 16 Minattur Joseph, 1962, *Martial Law in India, Pakistan and Ceylon*, The Hague: Martinus Nijhoff, p. 40.
- 17 Fiji Court of Appeal, Casey J (Presiding), Barker, Kapi, Ward and Handley JJA, in *Republic of Fiji v Prasad*, 1 March 2001.
- 18 *Naga People’s Movement of Human Rights v Union of India* (1998) 2 SCC 109.
- 19 Moore Cameron, 2017, *Crown and Sword: Executive power and the use of force by the Australian Defence Force*, ANU Press, pp. 129.
- 20 As a result of the amendments passed in 2000, 2006 and 2018, Australian Defence Act 1903 grants Australian Defence Force personnel extraordinary powers in various circumstance. Head Michael, *Domestic Military Powers, Law and Human Rights: Calling Out the Armed Forces*, London: Routledge (2020), p. 171.
- 21 The 1982 Chinese Constitution includes three mentions of martial law. The first, in Article 67, states that the Standing Committee of the National People’s Congress (NPC) is empowered to “decide to impose martial law on the entire nation or on individual provinces, autonomous regions, and direct-jurisdiction municipalities.” The second mention of martial law in Article 80 provides that the President issues the martial law decree on the basis of the decisions of the NPC and of the Standing Committee of the NPC. The third appearance of the term in Article 89 authorizes the State Council to decide to impose martial law on sections within the boundaries of provinces, autonomous regions, and direct-jurisdiction municipalities. David S. da Silva Cornell, “The

Legal Structure of Martial Law in Beijing”, *China Law Reporter*, Vol. 7, 1993, p. 133-159.

- 22 According to a Chinese law dictionary (1986), martial law is defined as a special measure that a state can take in the event of war or other extraordinary situations. Zhao Guochao, Zhuang Zheng, Xu Furong and Kuang Yaozhong, (Eds), 1986, Dictionary of legal studies, Shanghai: Cishu chubanshe, p. 481.
- 23 Article 2, Martial Law of the People’s Republic of China, 1996.
- 24 Gerard E.K. Kamga, The State of Siege: Origin and History, Global Emergency and Counterterrorism Institute, pp. 4, available at: http://www.geciafrica.org/assets/lesson-n0-1_the-state-of-siege_origin-and-history.pdf.
- 25 Anna Khakee, Securing Democracy? A Comparative Analysis of Emergency Powers in Europe, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Policy Paper No. 30, 2009, pp. 21-23.
- 26 Radin Max, “Martial Law and the State of Siege”, *Cal. L. Rev.*, Vol. 30, Issue 6, 1942, pp. 634-647, p. 641.
- 27 Siddiq Ayesha, “Pakistan—From Hybrid-Democracy to Hybrid-Martial Law”, *Journal of South Asian and Middle East Studies*, Vol. 42, No. 2, Winter 2019, p. 52-72.
- 28 Pakistan: The Trial of Civilians by Military Courts, International Commission of Jurists, Jan 2016, pp. 16.
- 29 Hassan Muhammad, “Military Court Trials of Civilians in Pakistan: Constitutional Rights, International Obligations and Sustainable Justice”, *Policy Perspectives*, Vol. 20(2), January 2023, pp. 1-18.
- 30 Emergency Regulations are limited in relation to the creation of offences and may not amend the emergency provisions of the Civil Contingencies Act, 2004 or the Human Rights Act 1998.
- 31 In re Moyer, 35 Colo. 159, 12 LRA (NS) 979, 117 Am. St. Rep. 189.
- 32 Following the submission of the Kargil Review Committee (KRC) Report, the Prime Minister had set up a Group of Ministers (GoM), vide Cabinet Secretariat OM No.141/1/2000/TS dated 17 April 2000, to review the national security system in its entirety and in particular, to consider the recommendations of the KRC and formulate specific proposals for implementation. The composition of the GoM was as follows: L.K. Advani, Minister of Home Affairs; George Fernandes, Minister of Defence; Jaswant Singh, Minister of External Affairs; and Yashwant Sinha, Minister of Finance. The National Security Adviser, Brajesh Mishra, was designated as a special invitee to the meetings of the GoM and the Cabinet Secretariat (National Security Council Secretariat) was tasked to service it.
- 33 Available at: <http://indianstrategicknowledgeonline.com/web/chapter-iv%20is.pdf>.

About the Author



Dr. Kanika Sharma, Assistant Professor, Head - Centre for Advanced Studies in International Humanitarian Law and Military Law at the Indian Society of International Law, New Delhi; did her Ph D in International Refugee Law and LL M from University of Jammu, Jammu & Kashmir. She has delivered lectures in the field of humanitarian and refugee law at national and international universities. She has published various papers in Journals of repute and also presented papers in National and International Conferences. She is a course coordinator of PG Diploma Course in International Law and Diplomacy and PG Diploma Course in Human Rights, International Humanitarian and Refugee Law conducted by the Indian Academy of International Law and Diplomacy, the teaching wing of the Indian Society of International Law.

About the ISIL

The Indian Society of International Law (ISIL), a premier national institution for teaching, research and promotion of international law was established in 1959. In sixty-six years of its existence, the ISIL, under the dynamic leadership and guidance of distinguished persons, has grown into a prestigious research and teaching centre of international law in India. It has played a leading role in shaping the thoughts on international legal issues not only in the region, but also in generating informed debates across the world. The ISIL aspires to foster nation-wide study, research, interpretation, development, and appreciation of international law. In order to transform ISIL as a multi-disciplinary progressive policy research and narrative building in international legal matters and achieve its vision, ISIL brings out publications in the form of Journals, Books, Monographs, Occasional Papers, and articles by the researchers and members.

At present ISIL enjoys the able stewardship of its President Prof. (Dr.) Manoj Kumar Sinha.



The Indian Society of International Law (ISIL)

VK Krishna Menon Bhawan, 9, Bhagwan Das Road, New Delhi 110001

Tel: 91-11-23384458/59, E-mail: isil@isil-aca.org