JUDICIAL DEFERENCE AND THE VITAL ROLE OF MINORITY OPINIONS IN CONSTITUTIONAL CRISES: LESSONS FROM *SATHKUNANATHAN V AG*

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"This is where the divergence of views between the majority opinion and myself starts, as I take the view that the events that I have just narrated, viewed from an objective standpoint, points to the existence of an unprecedented state of public emergency, and that, viewed from a subjective viewpoint, it was expedient in the interests of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community for the Acting President to have issued the impugned Proclamation."

Embodying the fundamental principle that judicial independence extends beyond the mere protection from external interference, stands the institution of judicial dissent, one of the most distinctive features of the common law tradition, which encompass the freedom of individual judges in expressing their reasoned disagreement with their colleagues. In the recent judgement of the Supreme Court of Sri Lanka in *Sathkunanathan v Attorney-General* (SC FR 246, 261, 262, 274 & 276/2022), when the Court examined the legality of utilising emergency powers invoked during Sri Lanka's unprecedented political and economic crisis, the dissenting opinion presented by Justice Arjuna Obeyesekere tenders a powerful illustration of how minority judgements can enlighten alternative paths of constitutional interpretation and propose profound insights into the delicate balance between executive authority and fundamental rights.

The majority opinion of the Court comprising of Chief Justice Murdu Fernando and Justice Yasantha Kodagoda, declared the emergency proclamation dated July 17th of 2022, to be illegal and a violation of the fundamental rights, whilst Justice Arjuna Obeyesekere reached the opposite conclusion, finding that the proclamation by the Acting President, at the time, to be both reasonable and necessary in the backdrop of the state of affairs in 2022. This divergence

Courtesy: Daily Mirror

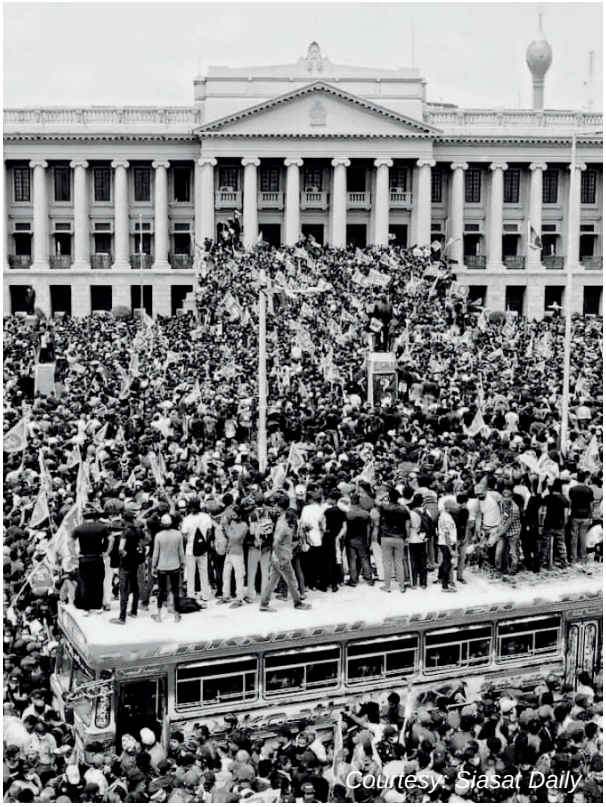
judicial opinion exemplifies the democratic judicial discourse and plays a vital role in constitutional interpretation.

This analysis into the judgement highlights several key themes. It underscores the importance of dissenting judgements in shaping legal development and protecting democratic values. It also illustrates the role of judicial deference when assessing executive action in emergencies. Finally, this analysis discusses how courts must balance individual rights with the practical demands of governance, especially during times of crises, based on the *Sathkunanathan* judgement. Together, these aspects provide important insights into how constitutional adjudication can maintain accountability while respecting reasoned discretion.

Judicial Dissent as a Pillar of Democracy and Legal Development

The Democratic Imperative of Dissent and its Function in Legal Development

The vitality of democratic governance depends fundamentally on preserving the voice of the minority that challenges prevailing orthodoxies. Amongst his seminal insights in On Liberty, John Stuart Mill highlighted that "the peculiar evil of silencing the expression of an opinion is that it is robbing the human race" (Mill, 1902, 31). This statement was given a sharper legal edge by Justice Oliver Wendell Holmes Jr., through his conception of a "marketplace of ideas" that



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recognises how the truth may emerge through competitive discourse. In the famous *Abrams v United States* [1919] 250 U.S. 616 dissent, he highlighted that "the best test of truth is the power of the thought to get itself accepted in the competition of the market."

Albert Weale reinforces this foundation with the argument that democratic values are "best understood in terms of the protection and promotion of common interests constrained by political equality and in conditions of human fallibility" (Murkens, 2018). Crucially he observes that "dissent does not undermine a society but underpins it". Echoing this principle in a contemporary judicial context, India's Supreme Court Justice D.Y.Chandrachud has described dissent as "the safety valve of democracy," highlighting its essential role in protecting freedom of expression and preventing the stifling of public debate (Press Trust of India, 2020). Taken together, these insights highlight why judicial dissent is not merely a theoretical luxury but a democratic necessity, capable of shaping future constitutional development, as vividly illustrated by Obeyesekere J.'s reasoned disagreement in *Sathkunanathan*, where he navigates the tension between executive discretion and fundamental rights during a national emergency, which will be analyzed later in this article.

Within the common law jurisdictions, dissenting opinions have historically played a crucial role in the evolution of legal doctrines and a formative role in shaping the integrity of law. Underscoring its importance Chief Justice Charles Evans Hughes of the United States of America, stated that "A dissent in a Court of last resort is an appeal. .. to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed" (Orlova, 2021, 616) Perhaps the main function of dissenting opinions lie in their purpose for the interpretation of the living constitution, in contrast to originalism. Lord Denning, in *Candler v Crane, Christmas & Co* 2 KB 164 opines, "I am content to go on fighting for the thing that is right, even though it may not be correct according to the books. For the law, like the Constitution, must be interpreted in the light of the prevailing conditions." In the Candler case, Lord Denning argues that accountants should owe a duty of care to third parties who relied on their accounts, a conception disregarded at the time but adopted later in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* AC 465 by the House of Lords. In a similar manner, this prophetic quality of dissent has been vindicated countless times throughout legal history, with many celebrated dissents eventually culminating to be the majority view.

Dissent as a Mechanism of Accountability

The inclusion of dissenting opinions also serve as a powerful mechanism of judicial accountability. As observed in the *In Re The Thirteenth Amendment to the Constitution and the Provincial Councils Bill* [1987] 2 Sri

LR 312, several judges disagreed with the majority and argued that key elements of the Amendment did, in fact require approval by referendum under Article 83. The existence and preservation of these dissenting judgements serve two main functions. On the one hand, these dissents ensured the government and the parliamentary majority were made accountable not simply to the will of the legislature but to the deeper constitutional value of public participation in sovereign matters. On the other hand, the dissents compelled the majority to rigorously justify its position that the amendment did not fundamentally alter the unitary structure of the state or the distribution of sovereignty, acting as an internal check against complacency, institutional capture, or mere political expediency. When the judge is aware that their reasoning will be subjected to a form of peer evaluation and indefinite public scrutiny, the judge is incentivised to ensure that their decisions are well reasoned and thoroughly considered.

Accordingly, it is apparent how the accountability function under dissent operates on multiple levels. Internally, the possibility of dissent encourages more thorough deliberation among judges and help prevent arbitrary decision-making. Externally, dissents provide transparency to the public about the reasoning process of the court and demonstrate that minority viewpoints have been given serious consideration.

The Constitutional Context of Emergency Powers

Emergency powers refer to exceptional legal authorities granted to governments, particularly the executive, to respond swiftly and effectively to crises that threaten national security, public order, or essential services. These powers allow the government to act beyond normal constitutional or legislative constraints in order to address urgent threats that cannot be managed adequately through ordinary legal processes (Silverstein, 2025). In Sri Lanka, emergency powers are primarily governed by the Public Security Ordinance, No. 25 of 1947 (PSO). Accordingly, under section 2 the President is empowered to issue a Proclamation declaring that the provisions of Part II of the Ordinance come into operation in view of the existence or imminence of a state of public emergency. The judgement of Sathkunanathan itself underscores a state of public emergency to be "a situation of exceptional gravity, posing a serious threat to the security of the State, public order, or maintenance of essential supplies and services, which justifies the invocation of extraordinary powers to restore normalcy in the interest of the public".

The Inherent Tension in Emergency Jurisprudence

Beyond dispute, the judicial review of emergency powers present one of the most challenging areas of constitutional law, since the court has to balance the competing values of democratic governance, the rights of the individual, and collective security. By their very nature, emergency situations create pressure that require rapid governmental response and under certain circumstances, a departure from ordinary constitutional procedures. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights [1985] 7 HRQ 3, under paragraph 39 emphasises that the derogation of rights under the International Covenant on Civil and Political Rights (ICCPR) are valid where it "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 recognized in the Covenant." The European Court of Human Rights in its Guide on Article 15 of European Convention on Human Rights, concerning the Derogation in Time of Emergency, updated for the year of 2025, stipulates that a government may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation. However, the written law seems to be incapable of properly pinpointing the definition of 'strictly required', reflecting the exceptional complexity courts are expected to analyse.

Thus the challenge for the court in reviewing emergency powers lies in avoiding both extremes, the excessive deference that renders protections under the constitution meaningless, and overly strict scrutiny that hampers legitimate government response to a genuine crisis. As highlighted in Writing Constitutions, "Because of its political nature the justiciability of a declaration of emergency presents special and difficult questions and problems" (Babeck & Weber, 2022, 19).

The Doctrine of Judicial Deference in Emergency Situations

In light of the foregoing, for the longest time the court has had to grapple with the appropriate degree of deference that must be granted to executive decisions in emergency situations. The rationale for such deference typically would rest on two foundations, the executive's superior access to information and expertise over matters concerning national security, and the doctrine of separation of powers that enumerates judicial restraint in areas of executive prerogative. Professor Eric Posner observes that "few people believe that the courts should impose exactly the same restrictions on the executive during an emergency as during normal times" (Posner, 2011). However, it has been argued by scholars that "excessive judicial deference has consistently created in cases involving national security considerations demonstrates the importance of a more human rights-centred approach that can act as a break on rule of law backsliding" (van Ark & Gherbaoui, 2024). Thus the persisting risk is that the deference intended to be temporary and context-specific tends to become entrenched, thereby eroding constitutional protections. Noting this, Robert Chesny observes that, "the executive is likely to argue that it should receive extra latitude

given the ostensible magnitude of its interest in preserving national security interests" (Chesny, 2009, 1420). Under such circumstances, Chesny underscores that a judge might refuse to defer to the government if strong individual rights are at stake and the government doesn't have a strong reason on their part. However, he elucidates that where the government does have a strong competing interest, "it may be best to set weighted accuracy concerns aside altogether, lest the judge confront the unenviable—and potentially impossible—task of assigning relative weights to the interests in issue and then determining whether the resulting differential between those interests, if any, somehow justifies a particular modification to whatever level of deference might otherwise have been applied" (Chesny, 2009, 1422). Thus, Chesney's approach reflects a rather pragmatic recognition that, in the most high-stakes cases, courts may be better served by relying on established doctrines of deference rather than attempting an unmanageable balancing exercise

The Sri Lankan Constitutional Framework

Influenced and reflecting both the common law tradition and civil law tradition, the Sri Lankan Constitution attempts to interlink the framework for emergency powers, though the laws are scattered across statutes and regulations. Article 155 establishes parliamentary oversight of emergency proclamations, requiring approval within fourteen days and regular renewal. This provides for checks and balances thereby seeking to prevent abuse while allowing for necessary executive action.

The Public Security Ordinance, No. 25 of 1947, which predates the current Constitution, provides for the substantive framework for emergency powers. Thus, this interaction between this colonial-era legislation and the modern constitutional framework creates complex interpretive questions that require careful judicial analysis.

Obeyesekere J.'s Dissent: Method, Context, and Constitutional Reasoning

Analytical Framework

The type of reasoning that Obeyesekere J. applies in delivering his dissenting opinion bears several characteristics, including systematic analysis, clear articulation of legal principles and careful attention to both the factual circumstances and constitutional doctrine, that can often be observed in sound judicial reasoning.

At the outset, Obeyesekere J. clearly lays out the analytical framework that will be used in scrutinising the emergency proclamation. Accordingly, drawing from established administrative law principles while adapting them to the unique constitutional context of emergency powers, he identifies the key legal test as

Courtesy: The Strait Times

whether "any sensible/reasonable authority acting with due appreciation of its responsibilities could have decided to arrive at such a decision" based on the circumstances known to the Acting President, at the time. Following this, his analysis endeavours into the doctrine of separation of powers. Obeyesekere J. considers whether the decision-making process was reasonable and whether the factual foundation for the decision was sufficient. This method upholds the constitutional distribution of powers while ensuring effective judicial supervision.

Grounding in Factual Context

Perhaps the most compelling aspect of Obeyesekere J.'s dissent is grounded in his comprehensive analysis of the factual circumstances that led to the emergency proclamation in the backdrop of the political vacuum following the economic crisis in 2022. While the majority opinion gives limited consideration to the severity of the situation, Obeyesekere J.'s detailed chronological account manifests the unprecedented nature of the crisis Sri Lanka was facing by July of 2022. Accordingly, his considered analysis is not limited to the immediate events of July 13-17 of 2022, but extensively rooted on the broader context of the economic collapse and the patterns of escalating unrest that had overtaken Sri Lanka. Accordingly this contextual approach recognises that emergency powers must be evaluated not in isolation but against the backdrop of the specific circumstances that gave rise to their invocation. The Supreme Court acknowledges, "the events of 2022 referred to by both the Petitioners and the Respondents associated with the 'Aragalaya' and in respect of which some amount of evidence has been placed before this Court are certainly unprecedented in the annals of the history of this country." The placement of these events in the historical context and the acknowledgement of the dire circumstance offers a useful paradigm for the evaluation of the reasonableness of the response by the executive, a task which, in the minority opinion, Obeysekere J. undertakes with particular clarity.

Constitutional Interpretation

Forthwith, Obeyesekere J.'s constitutional analysis demonstrates a sophisticated understanding of both the text and structure of the relevant provisions. His interpretation of section 2 of the Public Security Ordinance recognises the deliberate choice of the Parliament to vest emergency powers in the President whilst establishing appropriate safeguards through parliamentary oversight.

Obeyesekere J. importantly notes that the mere existence of alternative measures (such as those available under Part III of the Public Security Ordinance) does not automatically preclude resort to emergency powers. His reasoning here establishes the fact that a proper reading of constitutional provisions must take into account the practical realities of crisis management, particularly in situations where decision-makers often face genuine incertitude as to which measure may prove adequate. In the analysis relating o the ouster clause in Article 154J(2), Obeyesekere J. expresses some discomfort with the majority's focused reading of this provision, bearing in mind the complexity of the issue and the need for consideration of constitutional text and structure, thereby indicating a nuanced constitutional interpretation.

Administrative Law Principles

Apart from the constitutional analysis, throughout his dissenting opinion, Obeyesekere J. grounds his argument in the principles of administrative law, having relied on established authorities from the United Kingdom's common law tradition and Sri Lankan jurisprudence, channeling him away from the rather interventionist stance adopted by the majority.

Setting the seminal Wednesbury case as a threshold for his opinion, Obeyesekere J. concedes with the traditional boundary between judicial review and policy-making enumerated in the Wednesbury ase which highlights that an authority's discretion could only be challenged if it is "so unreasonable that no reasonable authority could ever have come to it". Reference has also been made to a modern affirmation of the Wednesbury principle where Lord Hoffman states that "The test is whether the decision is one which no reasonable authority could have reached."

By contrast, the majority's analysis appears to move toward a substantive reassessment of the necessity of the emergency, rather than applying the strict standard of reasonableness, which one may regard as risking an undue incursion into the executive's domain.
Furthermore, Obeyesekere J.'s reliance on the principle of procedural fairness guides him to refrain from second-guessing the executive's expertise or the factual evaluation where due process in decision-making is observed, rooted on the judgement of *Secretary of State for Education and Science v Metropolitan Borough Council of Tameside [1977] AC 1014.*

Judicial Deference in Emergencies

Obeyesekere J.'s citation of Lord Denning's observation in *Secretary of State v The Associated Society of Locomotive Engineers and Firemen* 2 All ER 949 that emergency procedures must be "set in motion quickly, when there is no time for minute analysis of facts or of law" reflects an understanding of the practical constraints facing decision-makers in crisis situations. With reference to *Secretary of State v ASLEF*, the Supreme Court of Sri Lanka in *Visuvalingam v Liyanage* [1984] 2 Sri LR 123, unanimously held that where a "decision is within the bounds of reasonableness, it is not the function of the Court to look further into the merits. What is obnoxious during a crisis or state of emergency may not be so in normal times." Consequently the dissent by Obeyesekere J. demonstrates appropriate judicial deference without abandoning the court's constitutional role. While this approach in no way advocates for the abandoning

judicial oversight, the body of precedent directs that the court must calibrate to account for the exigencies of the situation. To further support this approach, it is worth considering how the United Kingdom has developed a rather sophisticated doctrine of judicial deference in emergency contexts that attempts to avoid both extremes of complete non-justificability and inappropriate judicial activities. Following the landmark case of *A and Others v Secretary of State for the Home Department (the Belmarsh case)* [2004] UKHL 56, the courts shifted from an initial approach of strict judicial deference, with scholars describing this as a 'constitutional shift' towards a 'variable intensity of review (Kavanagh, 2011). Accordingly, the case stipulates that while courts should not adopt a 'completely hands-off approach' to emergency powers, they must accord the executive "an appropriate latitude" in National Security matters. Lord Bingham emphasises that while accepting that the government possessed primary responsibility for assessing national security threats, the court's "degree of respect will be conditioned by the nature of the decision" (Kavanagh, 2011). The British courts take cognisance that the executive possesses superior access to intelligence and security information, with reference to *Secretary of State For The Home Department v. Rehman* [2003] 1 AC 153, where Lord Hoffman observes that "In matters of national security, the cost of failure can be high … It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to persons responsible to the community through the democratic process." Thus, the *Belmarsh* case iterates that the government's assessment of a threat may be owed deference (as per *Rehman*), but the legality and proportionality of the government's response is very much a matter for the courts. Accordingly, the British courts seek to apply a reasonableness test that asks whether the decision falls within the range of responses that a reasonable authority could adopt. This mirrors Obeyesekere J.'s adoption of the standard asking whether "any sensible/reasonable authority acting with due appreciation of its responsibilities could have decided to arrive at such a decision." Further enumerating this test, in *U3 v Secretary of State for the Home Department* [2025] UKSC 19, the court emphasises that "if it considers in the light of its own findings of fact that a different assessment of the threat posed by the appellant to national security is possible, then the appeal should be allowed."

It is also worth noting that concurrently, the United States Supreme Court has consistently emphasised the 'totality of circumstances' test in constitutional analysis (Wex, 2024). In *United States v Arvizu* (534 U.S. 266, 273-74 [2002]) and *United States v Cortez* (449 U.S. 411, 417-18 [2001]), the Court has established that assessment must consider the totality of circumstances surrounding a situation, not isolated events.

The Majority Judgement in Comparative and International Perspective

Procedural Regularity and Constitutional Accountability

The majority judgement, delivered by Justice Kodagoda, places emphasis on the importance of procedural regularity and the duty of public officials to provide reasons in their decision-making. With emphasis on key principles of administrative law and good governance, the majority insists that even the President of the Republic must provide adequate justification since his decisions serve to reinforce the rule of law and the principle that no official is above constitutional accountability. This is well grounded in international law as well, since according to General Comment 29(5) of the UNHRC, every assessment of an emergency situation can be second-guessed by courts which emphasises that such derogations require 'careful justification', applied with recognition of state sovereignty and expertise.

However, based on the perspective rendered by the minority, it is important to consider whether such an approach by the majority reflects an overly rigid application of administrative law principles given the unique context of emergency powers at the core of this case. While detailed contemporaneous reasoning is fundamental for administrative decision-making, one may consider such action to be unrealistic in genuine emergency situations where rapid response is imperative. Moreover, when viewed in the broader timeline, the actual objective of a state of emergency in these circumstances was the restoration of normalcy, achieved shortly after the said actions by the executive, which is precisely what the UNHRC envisions when it states, "the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant", under General Comment 29(1).

The Question of Deference

The difference in the treatment of judicial deference between the majority opinion and the minority opinion is the crux which accounts for the divergence between the two opinions in this matter. The majority opinion does acknowledge that some deference may be appropriate in national security matters, but ultimately applies a relatively demanding standard of review that requires detailed justification for the decision of the executive.

This approach has both strengths and weaknesses. On the positive side, such an approach reinforces constitutional accountability and prevents emergency powers from becoming a shield against judicial review.

This approach by the majority can be understood in

light of international perspectives, which similarly recognize the tension between executive discretion and judicial oversight in emergency situations. The United Nations Human Rights Committee's approach to emergency derogations under the ICCPR, and further elaborated in the Siracusa Principles, recognise that States possess the primary responsibility for assessing threats and that international bodies should apply a deferential standard of review. Accordingly, whether viewed from a general perspective or through the lens of international frameworks, it is essential that the court takes the broader context into account, as failing to recognize the genuine constraints faced by decision-makers in crisis situations could be unfair.

In this regard, the principles articulated by the Venice Commission (CDL-STD 1995) enumerate that the determination of whether emergency measures are warranted should take into account the broader context of security and stability, rather than relying on individual or isolated events. The European Court of Human Rights (ECtHR) has observed that the scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background. In the case of *Brannigan & McBride v UK* [Application No. 14553/89; 14554/89], the court acknowledges that "contracting States have a wide margin of appreciation both as regards to the decision to call a state of emergency pursuant to Article 15 ECHR and as regards to the choice of the measures needed to face it." Therefore, "the Court must satisfy itself. that the measures taken are not disproportionate to the aim sought and that the safeguards against abuse are adequate" which showcases that the courts take into consideration the cumulative effect of various factors leading to the derogation of the laws, rather than ascertaining based on individual incidents. The International Institute for Democracy and Electoral Assistance observes "whether or not the assumption of emergency powers and the imposition of emergency measures are likely to do lasting damage to democracy is therefore a complex question - the answer will depend not only on the laws themselves, but also, and probably more importantly, on the broader legal, political and socio-economic context in which those laws are applied" (Houlihan & Underwood, 2021), further highlighting the need to consider the cumulative effect of various factors.

Courtesy: Eranga Jayawardena / AP

Viewed through this comparative and international lens, the majority's insistence on detailed post-hoc justification may overstate the judicial role in crises, whereas Obeyesekere J.'s reasonableness-focused approach aligns more closely with international best practices.

Temporal Reasoning and Its Limits

The majority's analysis might be understood as employing a degree of post-hoc reasoning in its evaluation of the emergency proclamation, a point that warrants careful consideration. Naturally, courts tend to consider subsequent events when evaluating the necessity of earlier decisions, but this approach can risk unfairly penalising decision-makers, who stood at the juncture of decision, with incomplete information under severe time pressure. Yet, in recognising the perspective of the majority judgement, it is worth noting that attention is drawn to the paucity of the evidence presented by the Attorney General, including the absence of an affidavit from the Acting President confirming that the impugned Proclamation was in fact issued by him on 17 July 2022. While not fatal, this deficiency was nevertheless highlighted.

Nevertheless, Having taken cognisance of potential point of vulnerability over the tendency of the court to consider subsequent events, Obeyesekere J.'s approach, specifically focuses on what was known or reasonably foreseen at the time of the decision, which provides a more appropriate and temporal framework for evaluating emergency powers.

The Enduring Significance of Individual Judicial Conscience

Obeyesekere J.'s independent disposition to dissent from the opinion of his colleagues goes on to underscore the very crucial role that individual judicial conscience has to play in constitutional adjudication. As with most things, competing moral and political values usually confront judges when interpreting constitutions and under these circumstances there may be no objective standard for what might be considered the 'correct' answer.

Where such is the case, it depends not on unanimity but rather on the willingness of individual judges to conscientiously discharge their understanding of constitutional requirements. The dissent by Obeyesekere J. helps underscore a commitment toward exercising individual conscience in the context of appropriate institutional norms and respect for collegial relationships.
Additionally, considerable intellectual and moral courage is required to dissent from one's colleagues. Generally, it can be more challenging to articulate a reasoned disagreement than to align with the majority. Such conviction to stand alone reflects the kind of judicial independence that is essential for a healthy constitutional democracy.

Conclusion

The dissenting opinion of Justice Arjuna Obeyesekere in Sathkunanathan v Attorney-General serves as a compelling reminder of the delicate balance that courts have to maintain between upholding constitutional rights and recognizing the practical exigencies of executive decision-making in times of crises. By applying a nuanced standard of judicial deference, Obeyesekere J. underscores that the legitimacy of emergency powers lies not merely in their legality but in their reasonableness and proportionality when assessed against the circumstances known to decision-makers at the time. The significance of his approach portrays how minority judgements perform multiple and yet critical functions, in reinforcing judicial accountability, preserving alternative interpretations for future legal development, and exemplifying the moral and intellectual courage pivotal to ensure judicial independence.

The significance of Obeyesekere J.'s approach transcends academic debate. Recent upheavals in Nepal, where protests led to the torching of Parliament and the Supreme Court and the collapse of governance (Singh, 2025), illustrate how fragile constitutional order can become when institutions fail to respond effectively in crises. Where executive hesitation or judicial rigidity leaves a vacuum, the result may not be strengthened liberty but the unraveling of constitutional governance itself. Against this backdrop, Obeyesekere J.'s dissent demonstrates how calibrated judicial deference can be a safeguard for democracy, enabling lawful and context-sensitive responses while preserving accountability and fundamental rights.

Constitutional interpretation is not a static exercise but a dynamic process enriched by the conscientious engagement of individual judges who are even willing to take a stand alone in the pursuit of reasoned justice. By valuing both executive expertise and individual rights, Obeyesekere J.'s minority opinion offers a model for balancing deference with oversight, serving as a touchstone for future courts grappling with the complex interface between emergency powers, democratic governance, and human rights. One should bear in mind that the legacy of dissenting opinion extends beyond immediate legal impact, since every thoughtful dissent represents a contribution to constitutional tradition and helps to preserve the dynamic character of constitutional interpretation.

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