

Shall there be any provision of Medical Emergency in the Constitution of India?

Emergency is the situation where the normal functioning of the people as well as government in the State is not possible, whether it may be due to natural reasons (e.g. draught, floods, earthquake, etc.) or it may be because of human agency (e.g. war, armed rebellion, etc.). It causes great damage to life, property, health and requires immediate measures to combat that. In short emergency is due to the state of disaster. Disaster means “a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area”¹

This is the reason that the makers of Indian Constitution made provisions regarding Emergency in Part XVIII of the Constitution of India. As India is a welfare federal democratic State so it has three emergency provisions. *National Emergency* under Article 352 due to war, external aggression or armed rebellion², the effect of which is that the state’s executive power devolve in centre³, Union can make laws within State list and revenue distribution power goes with Union⁴. *State Emergency* under Article 356 due to failure of Constitutional machinery in the state⁵. The Sarkaria Commission report notes that even a ‘physical break down’ can amount to a constitutional breakdown and mentions a natural calamity, disaster or epidemic, which paralyses the government machinery – and which the state government is unable or unwilling to exercise its power to relieve – as an instance of such a breakdown⁶. The effect of State Emergency is that the legislative power of State goes with Union⁷. *Financial Emergency* under Article 360 if financial stability or credit of India is threatened, the effect of which is that President can give direction regarding financial propriety, salaries of central and union employees including Judges of High Court and

¹ The Disaster Management Act, 2005 (53 of 2005), sec.2(d)

² Indian Const. art. 352

³ Indian Const. art. 353

⁴ Indian Const. art. 354

⁵ Indian Const. art. 356

⁶ Sarkaria, Interstate Council, Inter-State Council Secretariat (April 26, 2020, 02:00 PM)

<http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/>

⁷ Indian Const. art. 357

Supreme Court can be reduced, bills passed will be reserved for the consideration of President e.g. Money bill⁸.

Now the question which arises here is that whether the Emergency provisions contained in the Constitution of India are sufficient and exhaustive to deal with every type of emergency or should these provisions be amended to meet the changing need of time. If we analyze the current provisions of Emergency in the Constitution than we see that neither there is any ground for declaration of Emergency whether it is National or State on the ground of Health or Medical necessity nor any liberal term which can be interpreted so as to declare Emergency on such ground of Health or Medical necessity or any other natural calamity. If we see the history of Indian Constitution regarding the amendment of Emergency provisions than we see that earlier there was a word “Internal Disturbance” which had very wide scope and includes within it all possible situations of Emergency but it was amended by the 44th Constitutional Amendment Act, 1978 and replaced by the word “Armed Rebellion” due to the misuse of this provision on June 25,1975 by the then Prime Minister for political motives and now the present replaced word is very restricted and has very limited scope. So we have very limited grounds for the declaration of Emergency and to meet the changing need of time.

There are many statutes under which there are provisions particularly regarding health contingencies. The one is a century old The Epidemic Diseases Act, 1897 which proved to effect since last century. This special law is invoked by the State Government on recommendations of Central Government to combat the impending threat of COVID-19, empowering the government to adopt special measures and enforce stringent policies, so as to prevent the outbreak of any dangerous epidemic diseases. Although this is not an exhaustive Act to meet current situations but instead of this, it is proved effective in corroboration with other laws such as Indian Penal Code, 1860⁹. The President of India has promulgated an ordinance for the Amendment of the century old Act i.e. The Epidemic Diseases (Amendment) Ordinance, 2020 to tackle the current situations. Now it has stringent provisions provision and fines. Other law is the Disaster Management Act, 2005 which has exhaustive provisions in regard to tackle all the situations of emergency or disaster, whether it may be natural or by human agency. This statute has different authorities namely National Authority, State Authority and District Authority which have powers for the procurement of

⁸ Indian Const. art. 360

⁹ Indian penal Code, 1860 (45 of 1860) sec. 188, 269, 270, 271

Emergency in their respective spheres¹⁰. This Statute is penal in nature as not only prescribe powers of different authorities and their constitution but also prescribes punishment and fine for the violation and omissions of the directions given by such authorities. It is this Act which is used by the government in the current COVID-19 situation for the lockdown and restrictions all over India.

The alternate of Emergency (in terms of restrictions) provision is Section 144¹¹ under which there are numerous grounds or we can say that district magistrate has discretion to invoke the said section for any natural calamity or health/ medical necessity or disturbance and what not. This section although has the same effect as that of emergency (in terms of restrictions) but is restricted within State's District and power is with the District Magistrate to invoke it. It is different matter that District Magistrate works under the direction of the State Government in administrative works. This section 144 has proved very effective in the last decade where there were numerous times Emergency needs to be proclaimed (in terms of restrictions) on the apprehension of extreme situations but due to not having of sufficient ground and law to do so, this section 144 was invoked. Example in case of struck down of Article 370, Pronouncement of Ayodhya verdict and even today in the outbreak of COVID-19.

If we see the laws of other countries regarding Emergency provisions particularly of developed countries and countries from which our legal system has been developed then we find out that there is no constitutional emergency provision in all these countries. United States of America has Public Health Service Act (42 U.S.C. 247d) which is a special law. United Kingdom does not have any written Constitution so it has The Emergency Powers Act 1920 (10 & 11 Geo. 5 c. 55). Again the Australian Constitution does not have any Emergency provision particularly regarding health. Although these countries have their special laws in this regard but indeed they don't have any Constitutional Emergency provision for the Health/ Medical emergency.

Now after analyzing the Indian laws and foreign laws it would be a vague argument that India should also not have any Constitutional Emergency provision regarding any natural calamity or medical necessity. As we have seen in the recent times that America, Australia, United Kingdom and many other developed countries have world's best medical health care system

¹⁰ The Disaster Management Act, 2005 (53 of 2005), sec. 50

¹¹ The Code of Criminal Procedure, 1973 (2 of 1974)

but all were failed during the current COVID-19 situation and India is in way better position than them. Indeed in the constitutional assembly, debate was regarding emergency provisions were a question regarding natural calamity arise and for the same reason the word “internal disturbance” was used but which was later amended. Although in the current COID-19 situation India performed well without any specific Emergency provision for Health and without proclamation of Emergency on any other ground as Necessity knows no law (Necessitas Non Habet Legem). But as stated by the Sarkaria Commission the word “internal disturbance” conveys something more than only internal violence. So there should be a more liberal word than ‘Armed rebellion’ to cover extreme situations.¹²

In the current situation there should be a provision regarding Health/ Medical Emergency in the Constitution of India as India is welfare democratic State and it is the duty of the State to protect its entire citizens from any health emergency or natural calamity. But it is not possible to state each and every ground for emergency as with the passage of time emergency situation changes and new emergencies evolve. So there should be a liberal word in the Constitution which can be constructed according to the need of time. Again, under current, most used law The Disaster Management Act, 2005, if the concerned authority authorize for the procurement of emergency than also there is no ground under the Constitution of India on the basis of which President of India can proclaim Emergency. Also the recommendation of Sarkaria Commission has not been implemented till now. So, there is no ground for the proclamation of Emergency in the State due to Health emergency or any other natural calamity. Therefore instead of any specific medical emergency provision, there should be more liberal words with restriction to prevent the misuse as used earlier and to cover all the future contingencies.

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¹² Sarkaria, Interstate Council, Inter-State Council Secretariat (April 27, 2020, 4:44 PM)
<http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/>

