

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.  
All rights reserved.**

## ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

## ***PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT***

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

**EMERGENCY POWERS IN THE POST-PANDEMIC ERA:  
CONSTITUTIONAL LIMITS ON EXECUTIVE AUTHORITY  
DURING HEALTH CRISES**  
**Analysing the Balance Between Public Health and Constitutional Rights  
Based on COVID-19 Precedents**

AUTHORED BY - RAJAGURU C,

Student,

School of Law,

Vels Institute of Science, Technology & Advanced Studies, (VISTAS)

CO-AUTHOR - AKHIL SAJEEV,

Assistant Professor,

School of Law,

Vels Institute of Science, Technology & Advanced Studies, (VISTAS)

**ABSTRACT**

The COVID-19 pandemic marked an unprecedented global health crisis that compelled governments to invoke extraordinary emergency powers to safeguard public health. Across jurisdictions, executive authorities assumed expansive roles, often bypassing or minimizing ordinary legislative processes to respond swiftly to evolving threats. While such actions were widely justified on the grounds of necessity and urgency, they simultaneously raised profound constitutional questions regarding the limits of executive authority, the preservation of fundamental rights, and the durability of democratic governance during emergencies. This paper critically examines the use of emergency powers in the post-pandemic era, focusing on how constitutional frameworks have been interpreted, stretched, or, in some cases, challenged during health crises. It explores the legal foundations that permit governments to declare emergencies, impose restrictions such as lockdowns, quarantine mandates, and surveillance measures, and regulate individual behavior in the interest of collective safety. By analyzing judicial responses and constitutional doctrines, the study highlights the tension between state responsibility to protect public health and the obligation to uphold civil liberties, including freedom of movement, privacy, and personal autonomy. A central concern addressed in this research is the risk of executive overreach under the guise of emergency. The pandemic

illustrated how prolonged reliance on executive orders and delegated legislation can weaken institutional checks and balances. In several instances, courts were called upon to determine whether restrictions imposed were proportionate, necessary, and time-bound. The principle of proportionality emerged as a crucial standard, requiring that any limitation on rights must pursue a legitimate aim, be suitable to achieve that aim, and represent the least restrictive means available. However, the application of this 6 principle varied across jurisdictions, reflecting differences in constitutional culture, judicial activism, and political context. The study also evaluates how emergency powers have evolved in the post-pandemic landscape. Even as the immediate threat of COVID-19 has receded, many governments have retained or normalized certain extraordinary measures, including expanded surveillance capabilities and public health regulations. This raises concerns about the potential institutionalization of emergency governance, where exceptional powers become embedded in ordinary legal frameworks. Such developments necessitate a re-examination of constitutional safeguards to prevent the erosion of democratic accountability. Furthermore, this paper considers comparative perspectives, drawing insights from multiple legal systems to understand how different countries navigated the balance between public health imperatives and constitutional protections. It underscores the importance of transparency, legislative oversight, and judicial review in maintaining this balance. The role of courts as guardians of constitutional rights is particularly emphasized, as they serve as a critical check on executive excess while recognizing the need for deference in times of genuine crisis. In addition, the research highlights the significance of temporal limitations on emergency measures. Emergency powers are, by definition, intended to be temporary; however, the pandemic demonstrated how easily such measures can be extended without adequate scrutiny. Establishing clear sunset clauses, periodic review mechanisms, and accountability frameworks is essential to ensure that extraordinary powers do not outlive their necessity. The paper ultimately argues that while emergency powers are indispensable tools for managing public health crises, their exercise must remain firmly anchored within constitutional boundaries. The post-pandemic era presents an opportunity to refine legal doctrines and institutional practices to better prepare for future emergencies without compromising democratic values. Strengthening legal safeguards, enhancing institutional 7 resilience, and fostering a rights-conscious approach to governance are critical to achieving this objective. In conclusion, the experience of COVID-19 serves as a cautionary tale and a learning opportunity. It demonstrates the delicate balance between ensuring collective security and preserving individual freedoms. By critically assessing the constitutional limits on executive authority during health crises, this study contributes to the ongoing discourse on how

democracies can effectively respond to emergencies while remaining true to their foundational principles.

**Keywords:** *Emergency Powers, Executive Authority, Constitutional Law, COVID-19, Public Health Law, Fundamental Rights, Judicial Review, Proportionality Principle, Rule of Law, Democratic Governance, State of Emergency, Civil Liberties, Health Crisis Regulation, Separation of Powers, Post-Pandemic Legal Framework*

## 1. Introduction

The outbreak of the COVID-19 pandemic in early 2020 forced governments across the world into an extraordinary posture: invoking emergency powers that had rarely been tested at such scale or speed. Lockdowns were imposed, movement was restricted, businesses were shuttered, and civil liberties were curtailed — all justified under the rubric of public health protection. While the urgency of the crisis was indisputable, the manner in which emergency authority was exercised raised profound constitutional questions that continue to reverberate in legal scholarship and jurisprudence.

Emergency powers occupy a paradoxical space in constitutional design. They are intended to preserve the constitutional order against existential threats, yet their exercise often suspends the very freedoms that constitute that order. As the German jurist Carl Schmitt famously observed, “Sovereign is he who decides on the exception.”<sup>1</sup> This tension between constitutional normalcy and emergency exception is not merely theoretical — the pandemic rendered it a lived reality for billions of people.

In India, the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 became the twin legislative pillars of executive response. In the United States, the Public Health Service Act and state emergency statutes authorised sweeping restrictions. In Europe, national constitutions and the European Convention on Human Rights provided the normative scaffolding within which member states were expected to operate. In each jurisdiction, courts were called upon to adjudicate the boundaries of permissible state action.

This paper seeks to address three central questions: First, what are the constitutional sources and limits of executive emergency powers during health crises? Second, how did courts in India and comparative jurisdictions respond to challenges against COVID-19 measures? Third, what

principles should guide the exercise and judicial review of emergency powers in future health crises?

## 2. Constitutional Foundations of Emergency Powers

### 2.1 The Theoretical Basis

Emergency powers derive their legitimacy from necessity — the idea that the normal constitutional machinery is inadequate to address a crisis of exceptional magnitude. Constitutional theorists have articulated two broad models: the accommodation model, which stretches existing constitutional norms to meet emergencies, and the extra-legal model, which concedes that some emergencies require action outside the law, to be subsequently ratified.<sup>2</sup> Most modern constitutional democracies adopt a hybrid approach, embedding emergency power provisions within the constitutional text itself while retaining ordinary rights guarantees. The doctrine of necessity has deep roots in common law. In *Burmah Oil Co v Lord Advocate*,<sup>3</sup> the House of Lords acknowledged that acts done under genuine necessity could be constitutionally valid even without explicit statutory authorisation, albeit subject to subsequent compensation. This principle informed the executive response to COVID-19, where many governments relied on broad statutory delegations that had not been designed for pandemic-scale deployment.

### 2.2 Emergency Powers in the Indian Constitutional Framework

The Constitution of India contains explicit emergency provisions under Articles 352, 356, and 360, covering national emergency, state emergency, and financial emergency respectively. Notably, however, the COVID-19 response in India was not governed by any of these provisions. The Union and State Governments instead invoked the Disaster Management Act, 2005 (DMA) and the Epidemic Diseases Act, 1897 (EDA) — statutes enacted under the ordinary legislative power of Parliament and State Legislatures.

The DMA empowers the National Disaster Management Authority (NDMA) to issue guidelines for disaster management, and Section 6(2)(i) was invoked to issue guidelines for lockdown and movement restrictions.<sup>4</sup> The EDA, enacted during the bubonic plague, grants extraordinary powers to state governments to prescribe regulations for inspecting persons and segregating those suspected of being infected.<sup>5</sup> Both statutes were stretched far beyond their original contemplative scope to provide legal cover for an unprecedented national lockdown. The constitutional validity of these measures was contingent upon their conformity with Part III of the Constitution. Article 19 guarantees freedoms of movement, speech, and assembly,

subject to reasonable restrictions in the interest of public order, morality, and health under Article 19(2)–(6). Article 21 guarantees the right to life and personal liberty, which the Supreme Court of India has expansively interpreted to encompass the right to livelihood, dignity, and health.<sup>6</sup> The pandemic-era executive orders had to navigate these intersecting constitutional provisions.

### 2.3 Emergency Powers in the United States

The United States Constitution does not contain a general emergency powers clause. Emergency authority is distributed across the federal structure, with the President's powers derived from Article II and relevant statutes, while states retain broad police powers under the Tenth Amendment. The Public Health Service Act confers significant powers upon the Secretary of Health and Human Services to prevent the spread of communicable diseases, and the National Emergencies Act enables the President to unlock dormant statutory powers upon declaring a national emergency.<sup>7</sup>

The COVID-19 pandemic exposed significant gaps and ambiguities in this distributed framework. The Supreme Court of the United States addressed key challenges to executive measures in a series of decisions, most notably *National Federation of Independent Business v Department of Labor*<sup>8</sup> and *Biden v Missouri*,<sup>9</sup> which concerned federal vaccine mandates. These cases reinvigorated the major questions doctrine — the principle that Congress must clearly authorise agencies to address issues of vast economic and political significance — as a check on executive overreach.

## 3. COVID-19 and the Exercise of Executive Power: Key Precedents

### 3.1 India: Judicial Response to Lockdown Measures

The Supreme Court of India was called upon to address the consequences of the national lockdown almost immediately after its imposition. In *Alakh Alok Srivastava v Union of India*,<sup>10</sup> the Court took *suo motu* cognisance of the plight of migrant workers stranded during the lockdown — a direct consequence of executive action. The Court did not strike down the lockdown — a direct consequence of executive action. The Court did not strike down the lockdown but directed the government to ensure food, shelter, and transportation for migrants, thereby superimposing substantive obligations on the exercise of emergency power.

Similarly, in *In Re: Cognizance for Extension of Limitation*,<sup>11</sup> the Court exercised its extraordinary powers under Article 142 to extend limitation periods across all statutes, recognising that the lockdown had made it impossible for litigants to approach courts. This creative judicial response illustrated that emergency conditions can generate corresponding

judicial obligations, not merely executive ones.

The High Courts were more interventionist. In *Gaurav Kumar Bansal v Union of India*,<sup>12</sup> the Delhi High Court directed the Central Government to increase the supply of medical oxygen to Delhi during the devastating second wave in 2021, holding that the right to health under Article 21 imposed an affirmative obligation on the state to ensure the availability of life-saving medical resources. This decision illustrated the potential of Article 21 as an instrument of accountability against executive inaction during emergencies.

### 3.2 Proportionality as a Constitutional Standard

Across jurisdictions, the doctrine of proportionality emerged as the primary constitutional standard for evaluating COVID-19 measures. The Supreme Court of India had previously incorporated the proportionality test from European jurisprudence in *Modern Dental College and Research Centre v State of Madhya Pradesh*,<sup>13</sup> requiring that a restriction on fundamental rights must be: (i) justified by a legitimate aim; (ii) rationally connected to that aim; (iii) no more restrictive than necessary; and (iv) fair in its balance of costs and benefits.

Applied to COVID-19 measures, the proportionality inquiry revealed significant variation. National lockdowns — shutting down entire economies for weeks — were extreme measures. While they may have satisfied the first two limbs (legitimate public health aim, rational connection), their necessity and balance were more contested. Several petitions before Indian courts challenged the blanket closure of places of worship, the prohibition on inter-state movement, and the restriction of business activities as disproportionate to the public health objective.<sup>14</sup>

### 3.3 Comparative Perspectives: Europe and South Africa

In *Roman Zakharov v Russia*,<sup>15</sup> the European Court of Human Rights (ECtHR) had articulated the need for “adequate and effective guarantees against abuse” when states exercise powers that interfere with Convention rights — a standard that proved directly applicable to COVID-19 derogations under Article 15 of the European Convention on Human Rights. Several Council of Europe member states formally derogated from the Convention during the pandemic; others, including Germany and Sweden, did not. The differential approach generated important comparative data on the relationship between emergency power and rights. The Constitutional Court of South Africa offered perhaps the most rigorous proportionality analysis. In *De Beer v Minister of Cooperative Governance*,<sup>16</sup> the Court evaluated lockdown regulations under Section 36 of the Constitution, which permits limitation of rights by law of

general application to the extent “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.” The Court held that while the initial hard lockdown was justifiable, certain specific restrictions — including the prohibition on sale of warm clothing during winter — were not rationally connected to the epidemiological objective and were therefore unconstitutional.

## **4. Constitutional Limits on Emergency Powers: Doctrinal Analysis**

### **4.1 The Principle of Legality**

Emergency powers must be grounded in law. The principle of legality — that executive action requires legal authorisation — is a foundational constitutional requirement. The COVID-19 pandemic tested this principle acutely, as governments issued executive orders, guidelines, and notifications at a speed that often outpaced legislative scrutiny. In India, the NDMA guidelines and state government orders issued under the DMA occupied a grey zone, as neither instrument was subject to ordinary parliamentary approval.<sup>17</sup>

The question of sub-delegation was particularly acute. The DMA authorises the NDMA to issue guidelines; district authorities were, in turn, issuing further orders based on these guidelines. The resulting chain of authority raised questions about the extent to which the rule of law — which requires that restrictions on liberty be traceable to a valid source of legislative authority — was maintained throughout the pandemic response.

### **4.2 Sunset Clauses and the Duration of Emergency Powers**

One of the most significant constitutional failures of the pandemic era was the absence of built-in mechanisms for the termination of emergency powers. Emergency statutes that lack sunset clauses — provisions specifying a date or condition upon which the emergency power lapses — risk becoming permanent features of the legal landscape. The EDA, enacted in 1897, contains no sunset provision and was invoked for two years without legislative renewal or review.<sup>18</sup>

Comparative experience demonstrates the importance of temporality in emergency governance. The United Kingdom’s Coronavirus Act 2020 contained a two-year sunset clause and provided for six-monthly parliamentary reviews, allowing the House of Commons to vote to renew or terminate emergency powers.<sup>19</sup> This model of legislative accountability offers a constitutional template for future health emergencies.

### **4.3 The Role of the Legislature**

Emergency powers must not displace legislative authority. The constitutional design in most democracies vests the power to suspend rights and impose restrictions in the legislature, with the executive playing a secondary, implementing role. Yet the COVID-19 response inverted this relationship in many jurisdictions, with executives acting under broad delegated powers while legislatures remained sidelined.

In India, Parliament was not convened to specifically authorise the lockdown. The central government operated entirely under delegated statutory powers. While this was arguably lawful under the DMA, it raised democratic legitimacy concerns. The principle of constitutional dialogue — that decisions of exceptional gravity should engage the deliberative institutions of democracy — was not adequately observed.<sup>20</sup>

## **5. Balancing Public Health and Constitutional Rights: A Framework**

### **5.1 Necessity, Proportionality, and Non-Derogability**

Drawing on COVID-19 precedents and constitutional theory, the following framework is proposed for evaluating emergency health measures:

First, the necessity principle requires that emergency measures be adopted only when ordinary legal mechanisms are demonstrably inadequate. The invocation of pandemic-era lockdowns was justified in the initial phase of the crisis, when the parameters of the disease were unknown and health systems were unprepared. However, as scientific understanding improved, the continued blanket application of restrictions became harder to justify.

Second, proportionality requires that the restriction be the least intrusive measure capable of achieving the public health objective. Mask mandates and social distancing requirements satisfy this criterion more readily than complete lockdowns, because they restrict liberty to a lesser degree while still pursuing the epidemiological aim. Courts must apply proportionality rigorously, not deferentially, to executive claims during emergencies.

Third, certain rights are non-derogable — they cannot be restricted even in emergencies. The right to life (in its core sense, prohibiting arbitrary deprivation of life), the prohibition of torture, and the right to a fair trial are examples. COVID-19 measures that effectively denied individuals access to courts, medical care, or judicial review raised non-derogability concerns that courts were insufficiently attentive to.

### **5.2 Institutional Checks and Judicial Vigilance**

The pandemic demonstrated that courts must remain accessible and vigilant during health

emergencies. Judicial deference to executive judgment — appropriate in limited measure given the epistemic advantages of public health authorities — cannot shade into abdication. Courts in India, the United States, and South Africa demonstrated that meaningful judicial review is possible even in crisis conditions.

Specifically, courts should insist upon: (i) adequate legislative authorisation for executive action; (ii) periodic judicial review of ongoing restrictions; (iii) substantive scrutiny of the proportionality of measures; and (iv) effective remedies for those whose rights have been violated.

### **5.3 Post-Pandemic Legislative Reform**

The post-pandemic era demands legal reform. India's EDA — a colonial-era statute — is manifestly inadequate as the legal framework for twenty-first century health crises. The Law Commission of India has previously recommended a comprehensive Public Health Act that consolidates existing legislation, provides for clear executive powers, embeds proportionality requirements, and mandates parliamentary oversight.<sup>21</sup> The COVID-19 pandemic furnishes compelling empirical justification for this reform.

## **6. Conclusion**

The COVID-19 pandemic constitutes the most significant stress test that constitutional democracies have faced in peacetime. Emergency powers, once theoretical provisions of constitutional text, became lived instruments of governance affecting every person on the planet. The experience of the pandemic reveals both the necessity and the danger of such powers: necessary because states must be able to act decisively in the face of existential threats to public health; dangerous because unconstrained executive power is incompatible with constitutionalism itself.

The constitutional limits on emergency powers — legality, necessity, proportionality, parliamentary oversight, and judicial review — are not obstacles to effective governance; they are its guarantors. An executive that operates within constitutional bounds commands greater public legitimacy and therefore greater public compliance than one that governs by decree. The lessons of COVID-19 must be institutionalised through legislative reform, constitutional amendment where necessary, and a robust jurisprudence of rights that does not retreat in the face of emergency.

The post-pandemic era offers an opportunity to design emergency governance frameworks that honour both the duty of the state to protect public health and its equal duty to protect constitutional freedom. That opportunity must not be wasted.

