

EMERGENCY

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1. The Malaysian Constitution provides for the declaration of a state of emergency.

2. A state of emergency is necessary because the ordinary or normal structure, constitution or laws of the country do not provide for action to be taken to deal with a situation threatening the country.

3. Under a state of emergency actions, and structures not provided in the constitution and laws can be taken so as to deal with the reason or threats facing the nation.

4. The threats or cause which justify the declaration of the emergency has to be identified.

5. In the 1969 case, the reason was the race riots resulting in the breakdown of law and order.

6. In 2020 the stated reason for a declaration of the state of emergency was the COVID-19 pandemic. No other reason was stated.

7. Therefore the Government needs to show and to act beyond the provision of the Constitution and the laws specifically to deal with the threat posed by the COVID-19 pandemic.

8. The Government may claim that a sitting of Parliament would obstruct the actions needed to deal with the COVID-19 pandemic. But the sitting on 26 July is merely to brief members on the Government's plans for dealing with the pandemic. It has already been demonstrated that these plans are ineffective. The number of new cases, deaths and suicides have actually greatly increased during the emergency period.

9. Both the plan and the briefings do not require a state of emergency as they are not against the Constitution or the laws of the country.

10. So they do not warrant the declaration of an emergency. On the other hand it is evident that the COVID-19 pandemic has taken a serious turn. New cases have increased above 8,000 daily, deaths have reached 6,260 and suicide cases have reached 468 (as of Jan – May 2021).

11. People are suffering from the loss of their loved ones, from inability to work or do business and earn a living, from the tensions caused by the lockdown, lack of food, inability to look after their families etc.

12. The pandemic has also affected the country's economy and finance, the social life of the people and the uncertainties in politics.

13. The Government has used the emergency to make laws by decree e.g. the fake news law and the raising of funds for the Government.

14. Clearly under the emergency anything that can mitigate or blunt the effect of the pandemic is legitimate.

15. The King under the constitution acts on the advice of the Prime Minister or the Ministers. But this requirement is for normal situations.

16. But in an emergency if the action is in order to deal with the cause of the emergency i.e. the COVID-19 pandemic, the ordinary requirement for the King to be advised by the Prime Minister, if this stands in the way of dealing with the epidemic, then this provision in the Constitution can be disregarded.

17. The situation is very serious. There is a need for immediate action, even if the action is contrary to the provisions of the Constitution or the laws of the country.

18. It is proposed that a special organisation be set up immediately, with special powers to act in whatever ways to reduce the increase in new cases, to reduce it until it ceases to be a threat to the lives and normal activities of the people.

19. The actions to be taken should be funded by the Government under a special allocation commensurate with the needs of the actions. Civil servants involved in the implementation must be put at the disposal of the organisation.

20. The organisation must be given the same powers and authority as that given to the National Operation Council in the 1969-1971 Emergency.

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