

# The Supreme Committee to Combat Covid-19 between Constitutional Basis and Legitimacy of Its procedures in Oman Sultunate

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## ABSTRACT

Coronavirus pandemic (Covid 19) is a worldwide one as declared by World Health Organization (WHO). It is one of the exceptional unexpected pandemics for which countries shoulder moral and constitutional responsibilities. Therefore, they have to confront it for being very dangerous and threatens the countries' existence, in addition to peace, stability, and health of society. This can be done through enacting wide range exceptional legislations and procedures which would have never been taken in ordinary circumstances because they could have affected individual rights and freedoms. Such legislations and procedures grant the executive authority broad powers to ignore regular laws which prevent restricting freedom to move, travel ban, and shutdowns to all activities.

Unlike other countries, the Sultunate of Oman didn't resort to such exceptional regulations, but formed a supreme committee to detect a mechanism in order to deal with the spread of coronavirus (covid 19) though it could have imposed emergency law, but it didn't. What is this committee? What are its legislative or constitutional foundations? What are its procedures?

**KEYWORDS:** Covid 19; pandemic; Sultunate; Supreme Committee; WHO; Constitutional; Legitimacy.

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## 1.0 Introduction

Rights and general freedoms are practiced within the limitations of legitimacy. This implies that both the state and individuals are subject to law in its broadest concept. In other words, to a general legal basis that was previously acted upon.

Such a principle was not absolute, but had its own exceptions such as "necessity or the theory of exceptional emergency circumstances" that emerged during first world war when the French military used some exceptional authorities that contradicted with provisions of the constitution and law at that time, with no legal support to permit it. Such a theory was applied later to other exceptional situations such as general disasters for which

jurists and French legislature were supportive. The theory was adopted later by constitutional legislators in most countries of the world including the Sultunate of Oman.

Since the mechanism of dealing and issuing decisions with their hard impact on the society in exceptional circumstances restrict or nullify some of the individual, personal, or general rights or ban enjoying them, it is not permissible to resort to such a kind of treatment except in very dangerous crises as the case with the spread of coronavirus (covid-19) which (WHO) considered pandemic. Therefore, such a case that is founded on emergency exceptional circumstances with the discussions it arouses by encroaching upon individual, personal, and general rights and freedoms, deserves to be the topic of the current study.

### 1.1 Statement of the problem

The problem of this study stems from the queries related to the supreme committee that was authorized to examine steps taken to face the exceptional epidemic conditions (covid-19) with regard to constitutional foundation and legitimacy of procedures.

### 1.2 Significance of the study

The significance stems from shedding light on the way adopted to face and to deal with emergency exceptional epidemic circumstances "Spread of coronavirus in the Sultunate of Oman".

### 1.3 Objectives of the study

The study aims to clarify the constitutional, legislative, and procedural foundation the supreme committee adopted to face the exceptional emergency epidemic circumstances.

### 1.4 Scope and limitation of the study

The study focuses on the exceptional epidemic conditions: how to deal with them, and which party in the Sultunate decides on that.

### 1.5 Study methodology

The researcher of this study adopted the descriptive analytical approach to analyze constitutions and legislations that govern exceptional emergency circumstances the coronavirus pandemic.

## 2.0 Discussion and Analysis

The researcher will divide the study into three requisites:

First requisite: concept of exceptional emergency circumstances from the juristic point of view.

Second requisite: exceptional emergency case, its qualities and legal nature.

Third requisite: The exceptional epidemic case in the Sultunate of Oman and the constitutional foundation of the supreme committee authorized to face the epidemic besides the legitimacy of its procedures.

### 2.0.1 First requisite: Concept of exceptional emergency circumstances

According to Tamawi (1986, p. 21) all world countries, irrespective of their forms, are in normal conditions subject to the principle of legitimacy that applies to all including individuals and the public; whether such a principle was written or not, constitutional or regular. But sometimes some abnormal and exceptional circumstances like pandemic might occur and threaten the existence of that country. In such a case, it is forced to take propitious measures and procedures till things are settled and the case prior to epidemic outburst is restored.

From the viewpoint of jurisdiction, the exceptional circumstances restrict the principle of legitimacy. Some like Ahmed Ahmed (2011, 34) defined it as "a statutory system enacted in compliance with urgent constitutional laws to protect national interests. It is never resorted to except in provisional exceptional circumstances to face emergency cases. "others like Mawludi, Jalool (2008, no.p) saw that the occurrence of exceptional circumstances whose severity and length of time are unexpected could threaten public life unexpectedly. It is a system adopted to meet unstable and infrequent circumstances that could never be handled with regular laws. But Bin Amarah, Afaf (2015, 9) saw that the French jurist George Boudreaux defined exceptional circumstances to be "unexpected events that are restricted to martial laws or case of necessity that make authorities unable to face them, when they occur; with laws based on administration control and legislation in force. Thus, the exceptional law grants authorities exceptional procedures to confront such a circumstance through court control".

All the preceding definitions reiterate that the exceptional circumstances that befall countries, irrespective of the identity, seriously threaten their existence and wouldn't be confronted with extant legislations in force. Therefore, confronting such circumstances obligates adopting an exceptional or procedural law by which executive authority is granted broad exceptional powers that usually disappear at the demise of danger.

The researcher sees that the exceptional case is not more than a period of time in which grievous events that threaten health and public safety occur, but can't be confronted by regular laws. Such a situation dictates imposing more strict exceptional and provisional procedures in order to grant general bodies of the country

authorities broader than those conferred in regular circumstances, in proportion with the new situation under court control, that disappear when the situation vanishes. In addition, no country can avoid international criteria with regard to that case as they are all committed to their international obligations, being a member of the international community, which produced the international covenant of civil and political rights. (International covenant, 1976). Article (4) of that covenant defined the exceptional emergency circumstances to be:

“The circumstances that threaten life of the nation that is officially acknowledged. Member states of the covenant can take measures within the narrowest limits required for the situation without abiding by its obligations towards the covenant, pending that such measures don’t negate other obligations pursuant to international law. Those measures shouldn’t also justify any discrimination with regard to race, color, sex language, religion, or gender”. (Basyoonely Mahmoud, 2013, 241).

The previous definition of the international covenant identified the measures to be taken in case of exceptional emergency circumstances with the obligation needed for that. When the case threatens life of the nation, then it is considered exceptional and needs certain measures to be taken within the narrowest limits.

The European Convention of human Rights (amended in 1971) had its own stance on the issue as stated in article (15) “In war time or during any general emergency when there is a threat to life of the nation, any signatory party can take measures that violate, within the narrowest limits, the obligations stipulated on in the convention according to requirements of the case on condition that they don’t contradict with its other obligations within the framework of international law (protocol 5). This convention, unlike the international covenant openly allowed resorting to emergency case in time of war.

It also added “other emergencies that threaten nations life”. “It authorized any state to take the necessary measures within the narrowest limits and in accordance with the case requirements. The researcher agrees with this stance.

Khousee, San (1969) tackled the attitude of American Convention on Human Rights and how it held a different stance with regard to exceptional emergency case as stipulated in article (27) which reads “the member state

in times of war or general danger or in both, can in emergency cases take procedures that limit its obligations toward the current convention, but with the amount and period within the requirements of emergency requirements, pending that such measures don’t contradict with the obligations to which it committed itself in accordance with the international law. They should not also include any discrimination related to race, color, sex, language, religion, or gender.

By reviewing the indicated test, one finds that the American convention on human rights was extensive, as it restricted the situations in which the state could resort to exceptional procedures limiting that to state of war, or to any other emergency circumstances that threaten state independence and safety.

But in return, it conditioned that the procedures taken toward such cases should be time limited pursuant to requirements of those cases.

Abul Al-Ainein, Mohammed (2013,241) pointed out that despite the different interpretations of the concept regarding taking strict procedures during the exceptional emergency measures, yet it is difficult to put down a comprehensive definition for those procedures, due to the differences between countries with different ideologies and to the relation between public authorities, besides the range of exceptional authorities given to the bodies in charge of implementation.

## **2.0.2 Second requisite: Exceptional emergency circumstances: characteristics and legitimacy**

### **1- Characteristics**

Abdul Hafeeth, Zakaria (1966,13) reported that the exceptional emergency circumstances are distinguished for being a system that is based on constitutional and legal foundations that grant them legitimacy. These circumstances have their justifications embedded in constitutional and legislative regulations and disappear once the justifications vanish. As stated before, the exceptional case is provisional and is imposed at a certain time and in a certain situation when ordinary regulations stand short of facing that exceptional time. Thus, the emergency case helps to protect the state’s safety, stability, national interests, and safety of the community through the broad powers given to the extant executive authority. Al-Sarraj, Aboud (1989, 84) confirmed that such a case is

exceptional and legitimate, but differs in nature and place of implementation.

## 2- Legitimacy

Juristic opinions varied regarding the legal nature of the procedures taken in the exceptional emergency circumstances. Some considered them a sovereignty issue, while for others they were administration issues. Shatnawi, Ali (2000, 126) mentioned that “Dujee, Brimon, Jeaz, Loubadair, Lafreer, and Careigh” consider the issue to be a form of sovereignty. He considered such procedures to be a sovereignty act in origin and the executive authority in an exceptional and provisional manner in compliance with an authorization from the parliament which has the final decision to accept or abrogate it. Thus, being a parliamentary act, it is then an act of sovereignty. The overlapping between the executive authority and the parliament in such an act is also an act of sovereignty. One of the juristic opinions supports such a stance because the measures were taken to protect security of the country, hence it is an act of sovereignty. Among Arab jurists according to Ghweiri Ahmed (200, 380). Who consider it an act of sovereignty and the courts decision is unappealable are for example: Suleiman Tamawi, Ismael Baryooni, and Tawfiq Al-Khishen.

Among the foreign and Arab jurists who consider the decision administrative are: Fedel and Valen, foreign, Said Asfour and Sami Jamal, Arabs. Because of that, it is subject to judicial control. Those jurists say that though the decision, in origin, was an act of the parliament, it was implemented by the executive authority which derived it from legal provision, not from the parliament.

The researcher agrees with the opinion that the decision on exceptional emergency circumstances is an act of sovereignty as it is taken to protect the supreme interests of the state. Besides, it is adopted to maintain general system and health safety. Thus, the decision itself needs to be consolidated, but not the ensuing results.

As for the second requisite, the researcher will discuss the exceptional emergency circumstances – Coronavirus case in the Sultanate of Oman.

### **2.0.3 Third requisite: The exceptional epidemic case in Oman Sultanate and the constitutional foundation given to the supreme committee to face it.**

In accordance with nature of the political and legal systems, each country reveals the emergency exceptional cases and the mechanisms it adopts to deal with them, besides the authority in charge. Some of these mechanisms are given under an independent law, some in compliance with the state's constitutional systems, while others are in accordance with an independent law under a name that differs or copes with other names like the defense law in Jordan which was taken to face coronavirus case, as an example.

The Sultanate of Oman formed a supreme committee to deal with the emergency exceptional circumstances of Covid-19.

Before discussing the issue of exceptional circumstances, the researcher would like to point out that though the Sultanate can declare the state of emergency, it didn't resort to it. But still, he will tackle it from the constitutional and legislative perspectives by highlighting three major points: Legislative basis, Formation and procedures of the supreme committee, and finally obligatory foundation of the committee.

#### First: Legislative basis

Undoubtedly, the Sultanate of Oman, like other states, has enacted laws propitious to normal circumstances. Therefore, it is natural that it acts in a natural way with regard to respect for such laws as it is a state of law based on legitimacy manifested in legal regulations which shouldn't be violated.

But sometimes certain events and exceptional circumstances might occur such as: war, disasters, epidemics, and floods that would be impossible to face using regular laws. Such circumstances obligate granting the administration broader and stronger authorities to confront emergency circumstances in a suitable manner.

Al-Khani, Abdul Elah (1973, 79) indicated that “Elements of control play a preventive and suppressive role at the same time in exceptional circumstances to achieve the set objectives. In addition, the objective has not been solely to secure and maintain order and safety, but to establish homogeneity between efforts of the state in exceptional circumstances and administration control efforts. This concordance depends on rapid decision in talking

preventive and suppressive measures and on coordination between the urgent need for order, security, health, and safety dominance, without affecting or disabling state facilities completely or partially. However, this concordance should continue for a satisfactory period of time even after the exceptional case is over. In addition, individual's internal activity within boundaries of the country should be isolated from extraneous influences.

Shbat, Yusuf & Shawabkeh, Mohammed (2017, 55) noted that as a result, the administration under such exceptional circumstances is free to overmount regular legal rules that restrict its activity in normal conditions. In that case, it is authorized to amend, stop, or abrogate them by enacting exceptional legal rules and by taking whatever decisions it sees propitious and necessary to deal with such circumstances, pending that such regulations stop once the objectives are accomplished.

If the state could deal with such circumstances via normal legal laws, but didn't, then its action in such a case would be rendered null and void.

The question that poses itself: whenever exceptional circumstances that endanger the state itself such as wars, epidemics, disasters, etc. occur and threaten state security and the administration is unable to confront them through normal rules, what will the Omani legislative stance be? In fact, one needs to look into the issue through examining the constitution of the Sultunate which charts the way to such issues.

The basic Omani system issued by the Sultanic decree No. 6/2021 is considered the pillar on which the constitutional authorities addressed to bodies in charge of maintaining security and stability of the Sultunate rests. The political principles adopted by the state are to protect its sovereignty, security and defence of which maintaining peace of the country and individuals is the responsibility of every citizen. Articles 13, 17, 48, 49 ascertain that, the Sultan who is the head of the state and supreme commander of the army is in charge of protecting state sovereignty, security, citizens rights and freedoms, ensuring law implementation, and steering general policies of the state. The Sultan is also the person who takes prompt procedures to face any danger that threatens safety of the state, its territorial integrity, citizens interests, or obstacles that might hinder state institutions from carrying out their duties. In addition, the he also can declare state of emergency, general mobilization, war and peace by

referring such things to relevant provisions. The preceding law is in fact the emergency law which was issued by the Sultanic decree No. (15/2008) on May 21, 2008. The first article of that law stipulates that "state of emergency can be declared whenever general security in the Sultunate or in parts of it is endangered because of war, or threat of war, commotions, internal criminal acts, general disasters, or epidemic outburst that threatens the society or state security and peace.

What is noted in article (1) is that declaring state of emergency is not obligatory when the state is in danger. The person in charge, in this case, the Sultan, is the person who assesses the degree of threat and decides accordingly. Despite the spread of (Covid-19) in the Sultunate of Oman like other world states, the person in authority didn't declare a state of emergency which proves that the issue is not obligatory though the Coronavirus was considered world-wide to be pandemic. Several countries, if not all, declared states of emergency to confront the pandemic like Jordan which rapidly declared defence law, that in itself, is a state of emergency, besides the necessary procedures to confront it.

It is relevant to indicate that Corona, the pandemic, was discovered in December 2019 in Ohan, China and spread throughout the world. It is caused by a deadly virus that affects the respiratory system or the digestive canal. Thus, the virus affects individual and general health. The World Health organization as manifested in article (1) defined general health which is one of the basic rights of human beings as "a sound, corporal, mental, and social health; it doesn't only imply that the person is not sick or disabled".

Due to the outburst of this epidemic, an exceptional emergency case that caused the death of millions. Through the constitutional, moral, and international responsibilities, countries had to shoulder their responsibilities toward their citizens and foreigners living in their countries to combat this epidemic. Oman, subject of the study, is not an exception.

In fact, countries varied in the procedures they adopted such as declaring state of emergency and enacting defense laws. Oman, as mentioned before, took another direction by not declaring state of emergency, though it could. Instead, it formed a supreme committee which was authorized to look for mechanisms to deal with the epidemic. Such a decision taken by head of the state, within



his constitutional responsibilities, was for the researcher a wise act. The following part of the research will discuss the committee formation and its constitutional obligations.

### **Second: Supreme committee formation and procedures**

State responsibility for the society is a constitutional one. Article (15) of the basic system discloses that “The state cooperates with its people in bearing the consequences and aftermath of disasters and distresses. It also ensures health care for citizens, provides prevention methods and medication for diseases and epidemics, help establish hospitals and dispensaries under its supervision in compliance with law. “Article (22) of the same system adds that the state is also committed to secure a safe, peaceful life for its citizens”.

Thus, provisions of the constitution reveal that the responsibility is absolute towards any one on the soil of the Sultanate with regard to peace, security health, and safety. It is, undoubtedly, a constitutional obligation.

In going back to provisions of the constitution regarding the state’s responsibilities, one finds that one of the powers of the head of state is to ensure a constitutional protection for the society against any threat that endangers state safety, territorial integrity, interest of its people, or hinders state bodies from performing their duties. Due to the constitutional responsibility of the head of state, the Sultan on 10/3/2020 issued a decree to form a supreme committee to deal with the developments resulting from the outburst of covid-19 in light of new health indications and instructions of WHO. In addition, the committee has to monitor virus development, territorial and international efforts exerted to confront it. The committee also has to provide propitious suggestions, solutions, and recommendations based on results of the assessment of general health, making use of available tools and potentials needed to accomplish the duties set for it.

Since its inception and starting its duties, the committee issued various decisions like physical distancing to stop virus spread. Moreover, other decisions which were more difficult than the epidemic itself, were taken. Those were: it stopped issuing tourist visas, stopped sport activities, suspended classes, stopped non-citizens from entering the country, closed tourism sites, reduced number of employees in offices, banned all forms of gatherings, banned activities of socialization, stopped air flights to and from the state, forced mask wearing in public

places, and banned vehicle movements from 8:00 p.m. – 6:00 a.m.

Actually, though such procedures left negative impacts on citizens such as: restricting rights and freedoms and harming economy, yet they were unavoidable to protect general interest of the society.

### **Third: Mandatory basis for the committee’s procedures**

The committee was formed at the request of head of the state, the Sultan, in accordance with provisions stipulated on in article (47) of the basic system which reads: “citizens and foreigners living in the Sultanate have to respect the basic system of the state, its laws, Sultanic orders, regulations and decisions issued by public authorities, and to respect public morals. “Article (48) of the basic system stipulates that “the Sultan, head of the state and supreme commander of the army, himself is venerable and his orders have to be obeyed”.

From what preceded, the researcher can tell that the procedures necessity taken in compliance with the Sultan’s orders are binding and should be obeyed. Therefore, the procedures adopted by the supreme committee are constitutional. With regard to the implementation of such procedures, since they are issued by the Sultan whose orders are obeyed, then they are binding to all state authorities whether they are executive, legislative, or legal. To fight rumors regarding health situation in the state, the public attorney took legal measures against that. In addition, the judiciary authorities issued several deterrent regulations against violaters of supreme committee decisions. To help the committee implement its decisions, Oman Sultanate police took several decisions to deal with violaters to stop spread of the epidemic.

Thus, the police was authorized to monitor the compliance of individuals, establishments, public and private institutions with the relevant decrees. The police was also authorized to impose financial fines and imprisonment on violaters. The legislative authority also played its role in dealing with covid-19 by amending some regulations to combat contagious diseases as stipulated in the Sultanic decree No. 32/2020. The amendment included severer chastisement against law violaters.

As for cabinet of ministers, the executive authority in charge of executing general policy of the state,

it directly oversees implementation of Sultanic decrees, regulations, agreements and court rulings, according to article (51) of the basic system of the state.

The researcher would like to point out that, due to the procedures the supreme committee took through closures, quarantine, and restrictions imposed in the exceptional epidemic circumstances, negative effects ensued that impacted the society in business and economy, in addition to contracts and obligations besides litigation times previously set.

In spite of that the state administrative judiciary showed a positive stance when in one of its rulings it called for adopting the procedures taken because of the outburst of the pandemic as a force majeure. Though the adaptation was taken to halt implementations of procedural schedules related to the administrative judiciary, yet it could be applied to contracts and contractual obligations. In its ruling No. 1301 on October, 2020, it stated that "What is agreed upon judicially and legally condition that the force majeure or sudden event results in suspending validity of schedules, inability to expect it and impossibility to push it back. These two conditions are derived from each case and every court of concern interprets it in accordance with its own documents. Assessing the nature of the event to be a

force majeure is an objective assessment left to the court discretion when it builds its ruling on reasonable causes. The force majeure has several reasons, some are physical such as war, fire, or natural disasters, while others are legal such as orders and decisions issued by higher competent bodies of the country that take into consideration general situation and national interest which should be put into effect.

As covid-19 was classified a pandemic by WHO, and as the supreme committee was formed to combat it, it dictated to take exceptional measures as restricting travel, quarantine, ... etc. such measures affected individuals freedom to practice regular activities preventing some to get to courts as scheduled such a thing represents a provisional cut back of practicing right of litigation and defence which regulations of the basic system secure. Based on what preceded, the force majeure was never expected and could never be pushed back due to the measures of chastisement for violaters. Thus, the period in which such measures taken by the committee could unavoidably be considered force majeure because of which all procedural schedules including grievances against administrative decisions starting from April, 1, 2020 would be resumed.

### 3.0 Conclusion and Recommendation

#### 3.0.1 Conclusion

The study revealed that the exceptional emergency circumstances like covid-19 could never have been anticipated. That virus which WHO considered an epidemic spread worldwide killing more than one million throughout the world. Such an epidemic obliged world countries to declare state of emergency, or to resort to defense laws, the way Jordan did. Other countries, like the Sultanate of Oman, formed a supreme committee that adopted procedures which restricted individuals freedom and rights, a step that was unavoidable. It was made clear that forming the committee was constitutional as it was a result of the constitutional authority the Sultan, the head of state, has. The researcher outlines his findings in the following:

1- Coronavirus was declared by WHO a pandemic, an exceptional emergency circumstance that could have never been anticipated.

2- Covid-19 spread worldwide infecting millions of people need to be confronted by tougher exceptional procedures that dictate imposing restrictions on rights and freedoms which constitute infringements of contractual obligations.

3- Constitutional legislations of the Sultanate of Oman in its basic system didn't frankly specify how to face epidemics, but the committee formation was based on orders from the Sultan.

4- Because that committee was formed in compliance with Sultanic orders, therefore, it is constitutional.

#### 3.0.2 Recommendations

The researcher would like to recommend the following:

1- The Omani constitution legislator should include a clearly stated provision in the basic system and a mechanism of how to deal with exceptional emergency cases like the unexpected pandemics.

2- The Omani constitution legislator should explicitly include in the basic system how to deal with the outcomes of the exceptional procedures that affect rights and freedoms of citizens.

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