

ANALYZING THE INDIAN LEGISLATIONS IN WAKE OF COVID-19

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ABSTRACT

Claiming thousands of lives and shutting the economies, the COVID-19 pandemic has brought the world to standstill. Countries around the globe are struggling to cope with the deteriorating situation and are talking the necessary measures to contain it. In the wake of this pandemic, various legislations have been invoked by the Indian Government to tackle this problem and to strive towards a better condition. This paper aims to analyze various legislations that have been invoked by the government to tackle the pandemic effectively. Legislations such as Epidemic Disease Act, 1897 and Disaster Management Act, 2005 have been used as the primary weapon by the government in this fight against COVID-19. Further to keep a check on the supply cycle of goods and services, legislations such as Essential Commodities Act, 1955 and Essential Services and Maintenance Act, 1968 have been used. The paper further attempts to shed some light on the possibility of exploring the emergency provisions during the time of such a pandemic.

INTRODUCTION

“Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.” Tedros Adhanom

To declare a pandemic globally, the World Health Organization is the concerned body²¹¹⁰ and thereby it defines the term pandemic in a very unconfined and relaxed terms, stated as, “the worldwide spread of a new disease”.²¹¹¹ On 11th March 2020, the outbreak of Corona virus (hereinafter referred as **COVID-19**) was declared as a Public Health Emergency of

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²¹¹⁰ About World Health Organization, available at: <https://www.who.int/about/what-we-do> (Visited on June 23, 2020).

²¹¹¹ Bulletin of the World Health Organization, available at: <https://www.who.int/bulletin/volumes/89/7/11-088815/en/#:~:text=A%20pandemic%20is%20defined%20as,are%20not%20considered%20pandemics> (Visited on June 23, 2020).

International Concern, thereby declaring it as a pandemic.²¹¹² Soon after this 114 countries reported the outbreak of this pandemic. The virus first appeared in Wuhan, China, in the early December²¹¹³ and since then the virus has set foot around the globe taking thousands of lives. The sudden outbreak of COVID-19 around the globe has resulted in a surging number of cases, and almost all the countries across the globe are adopting various measures to deal with this deadly virus which has set foot in most of the countries. Many countries have resorted to curfews and complete lockdowns, and in an extension to this, some pieces of legislations have been invoked as well to tackle the pandemic.

Taking a closer look at the worrisome condition in India, The colonial era legislation, i.e. “Epidemic Disease Act, 1897”²¹¹⁴ is continuously being used as a primary weapon against the virus, and has been adopted by many states. In addition to this, the Epidemic disease act is coupled with another act, which is the “Disaster management Act, 2005”²¹¹⁵. The Indian Government has been heavily relying upon these two legislations to control this pandemic, however a closer analysis of implementation suggests that none have proved to be sufficient to handle the problem at hand.

AN INSIGHT TO THE PROBLEM

On 30th of January 2020, the first positive case of COVID-19 was found in Kerala.²¹¹⁶ A student of Wuhan University in China, who had recently returned to India, was found positive. Thereafter it began spreading and within a few days the number of positive cases across the country increased by leaps and bound.

With the onset of March and thereafter April, the number of positive cases rose to a frightening level and continued to remain so. Increasing rate of cases and deteriorating health condition of the people has brought the country to standstill.

Amid the increasing number of cases, the Indian government took stringent measures to handle the situation. It suspended visas, placed travel bans and ensured a proper screening at

²¹¹² Coronavirus disease (COVID-19) pandemic, *available at*: <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/novel-coronavirus-2019-ncov> (Visited on June 23, 2020).

²¹¹³ World Health Organization, Corona virus disease 2019 (COVID-19), Situation Report – 94 (23 April, 2020).

²¹¹⁴ Epidemic Disease Act, 1897 (Act 3 of 1897).

²¹¹⁵ The Disaster Management Act, 2005 (Act 53 of 2005).

²¹¹⁶ Government of India, Press release: One positive case reported in Kerala (Ministry of Health and Family Welfare, 30 January, 2020).

all airports to deal with the problem in its early phase itself.²¹¹⁷ Despite these efforts the number of cases increased drastically, at last the government had to impose a “Janta Curfew”²¹¹⁸ on 22nd March followed by a complete lockdown of 21 days.²¹¹⁹

LEGISLATIONS INVOKED BY INDIA

Dealing with COVID-19 by implementing curfew and lockdown was not enough, and therefore the government had to resort to invoke some legislation to keep the situation under control. The legislations invoked by the Government are:

Epidemic Disease Act, 1897

The primary weapon of the government in the fight against COVID-19 is colonial era legislation, i.e. **Epidemic Disease Act, 1897**²¹²⁰ (hereinafter referred as **EDA**). The EDA is a document of four sections, and is being used by the government to ban public gatherings, to shut down the large institutes and to book the defaulters who flee from quarantine. The act allows the inspections of all the vessels arriving in India as well. Let’s go through a short analysis of this act.

Section 2²¹²¹ by giving wide powers to the state government, authorizes it to take any particular measures as it deems fit in the best interest of the public to protect them from the outbreak of epidemic. This is further enforced through public notices and imposing temporary regulations.

As per Section 2A²¹²², owing to the satisfaction of the government, if it feels that there exist a need for the inspection of ships and vessels, either arriving or leaving India, then the government can take necessary steps to adhere to inspection and even detain people if necessary.

Section 3²¹²³ of this act defines the quantum of punishment to be awarded to the defaulter, thereby the punishment is given as per Section 188 of the Indian Penal Code²¹²⁴. In case of

²¹¹⁷ Government of India, Press release: All existing Visas granted to Foreigners, except certain categories, to remain suspended till the Prohibition on International Air Travel of passengers from/to India is lifted (Ministry of Home Affairs, 5 May, 2020).

²¹¹⁸ Editorial, “Janata Curfew” The Hindu, March 22, 2020.

²¹¹⁹ Government of India, Press release: PM calls for complete lockdown of entire nation for 21 days (Prime Minister’s Office, 24 March, 2020).

²¹²⁰ Epidemic Disease Act, 1897 (Act 3 of 1897).

²¹²¹ *Ibid.*

²¹²² *Ibid.*

²¹²³ *Ibid.*

²¹²⁴ Indian Penal Code, 1860 (Act 45 of 1860).

defiance of any regulation or order made under this act, the defaulter shall be punished with an imprisonment of a term up to six months and/or a fine up to Rs 1000.

Section 4²¹²⁵ of this act grants protection to an official or any other person who is carrying out an official duty under this section against any act done in good faith.

In the case of *J. Choudhary v. The State*,²¹²⁶ a question was put up before the court that if a person refuses to get himself vaccinated by the concerned authorities against a disease, in lieu with the regulations passed by the State Government, would that action of omission be called as a violation under Section 3²¹²⁷ of the EDA. In reply to this the Orissa High Court affirmed the fact that the intention of the doctor was irrelevant and the act of his disobedience would be enough to constitute the punishment under Section 3²¹²⁸ of the EDA.

In relation to Section 4²¹²⁹ of the EDA, the Calcutta High Court gave a verdict in the case of *Ram Lall Mistry v. R.T. Greer*,²¹³⁰ whereby it held that if an official or a person acting under the section 4²¹³¹ of the EDA, commits an omission to pay compensation to the plaintiff as a result of his personal action or in his personal capacity, then such a person or official shall not be protected under the said act.

The implementation of this Act has been adopted by many states so far. Here is a state wise scenario, to begin with, Karnataka became the first state to implement this Act after the number of positive cases of COVID-19 increased by leaps and bounds. Followed by Haryana, Maharashtra, Delhi, Goa and other states, many states have now implemented the Act through passing the necessary regulations.²¹³²

However, this four section document and the lacking measures it entails, were insufficient to deal with the current scenario, hence the government has invoked another piece of legislation to deal with this pandemic effectively, i.e. **Disaster Management Act, 2005**.²¹³³

Disaster Management Act, 2005

Amid the ongoing chaos of COVID-19, the Indian Government issued a directive and announced a national lockdown for a period of 21 days²¹³⁴, to contain the spread of the

²¹²⁵ *Supra*.

²¹²⁶ (1963), AIR 1963 Ori 216.

²¹²⁷ *Supra*.

²¹²⁸ *Ibid*.

²¹²⁹ *Ibid*.

²¹³⁰ (1904), ILR 31 Cal 829.

²¹³¹ *Ibid*.

²¹³² Editorial, "States to be asked to invoke Epidemic Disease Act: Centre" The Hindu, March 22, 2020.

²¹³³ The Disaster Management Act, 2005 (Act 53 of 2005).

deadly virus. The following directive was issued by invoking the **Disaster Management Act, 2005**²¹³⁵ (hereinafter referred as **DMA**). The DMA enables the Government to enforce a mandatory quarantine, maintain social distancing, a quick release of money to provide relief and to take an action against the rumour mongers.

The DMA defines the term disaster as, "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."²¹³⁶

Coupled along with "Guidelines on Management of Biological Disasters, 2008"²¹³⁷ and "National Disaster Management Plan, 2019"²¹³⁸, an extensive plan on the problem of Biological Disaster (such as COVID-19) has been discussed upon. It is in reference with these layouts, that the present activities to tackle COVID-19 are being carried out by the government. The overriding powers of Section 62²¹³⁹ of the DMA, provides for an absolute authority to the government to carry out its mandates throughout the country.

Analyzing the definition of the term disaster as per the DMA, it is clear that it includes incidents such as earthquakes, floods, fire, rather than a disease. Nevertheless, on 14th March 2020,²¹⁴⁰ the home ministry declared the COVID-19 outbreak as a "notified disaster", thus bringing into action the provisions of the Disaster Management Act.

Under the purview of this DMA, the authorities have the power to create special isolated health facilities and as per now authorities have already notified guidelines to provide cash relief and compensation to poor people across the country. Further, it allows the Central and State Government in setting up disaster mitigation funds.

Discussed in the case of *Swaraj Abhiyan and Ors. v. Union of India and Ors.*²¹⁴¹ the court held that, any kind of unacceptable delay on the part of the Government in releasing the funds

²¹³⁴ *Supra.*

²¹³⁵ *Ibid.*

²¹³⁶ *Supra.*

²¹³⁷ Government of India, National Disaster Management Guidelines: *Management Of Biological Disasters* (National Disaster Management Authority Government of India, 2008).

²¹³⁸ Government of India, Report: *National Disaster Management Plan* (Ministry of Home Affairs, November, 2019).

²¹³⁹ *Supra.*

²¹⁴⁰ World Health Organization, Novel Coronavirus Disease (COVID-19), Situation Update Report – 7 (14 April, 2020).

²¹⁴¹ AIR (2016) SC 2929.

shall not be entertained. The court further stated that “The State Governments ought to present a realistic budget which should then be pragmatically considered by the Empowered Committee and this procedure should avoid any unnecessary controversy between the State Governments and the Central Government.”

Any person knowingly making a false claim or having a reason to believe that such claim made is false shall be booked under Section 52 of the EDA for a term extending up to 2 years along with fine. Circulating a “false alarm” in connection to the disaster or any of its specificity like magnitude shall be booked under Section 54. Further discussing the penalizing powers under EDA, Section 51-60 discusses such offences and punishments.²¹⁴²

Essential Commodities Act, 1955²¹⁴³

Taking further measures and stepping up in the fight against pandemic, the government on 21st March 2020, issued an order²¹⁴⁴ to bring the hand sanitizers and masks under the umbrella of Essential Commodities. If the Central Government is of the opinion that there exist a need to regulate, maintain or increase the supply of any commodity so as to make it accessible to the people at a nominal price, then the government may take cognizance of the matter and issue a notification to include such commodity under the **Essential Commodities Act²¹⁴⁵** (hereinafter referred to as **ECA**).

Previously the ECA has been frequently used to keep a check on the price of food products and agricultural produce. It is often argued that putting a commodity under the umbrella of the ECA hampers the growth of profit margins, thereby discouraging the manufacturers and frustrating the investment in storage infrastructures.

However, by not going into the details of the arguments, we will be discussing some of the important provisions of this Act:

As stated in Section 2A²¹⁴⁶ of the ECA, every commodity mentioned under the schedule shall be considered as an Essential Commodity, furthermore the Central Government can add or remove any commodity from this schedule thereby stating a reason for doing the same.

Issuing the power to the Central Government to control and regulate the production, supply and distribution of an essential commodity, the ECA thereby grants these powers under

²¹⁴² *Supra*.

²¹⁴³ Essential Commodities Act, 1955 (Act 10 of 1955).

²¹⁴⁴ Editorial, “Govt notification capping sanitiser price protects people from black marketers” Hindustantimes, March 21, 2020.

²¹⁴⁵ *Supra*.

²¹⁴⁶ *Ibid*.

Section 3. Incorporating a non-obstante clause, the orders issued under Section 3 of this Act shall supersede any other Act of instrument. So in case of conflict with any other provisions of a statute, orders issued under Section 3 of the ECA shall prevail.²¹⁴⁷

In the case of *Prag Ice & Oil Mills & Anr. Etc v. Union of India*²¹⁴⁸, whereby a question was raised challenging the validity of Mustard Oil (Price Control) Order, 1977 issued under the ECA, the Hon'ble Supreme Court stated that, "The dominant purpose of these provisions is to ensure the availability of essential commodities to the consumers at a fair price. And though patent injustice to the producer is not to be encouraged, a reasonable return on investment or a reasonable rate of profit is not the sine qua non of the validity of action taken in furtherance of the powers conferred by Section 3 (1) and Section 3 (2) (c) of the Essential Commodities Act."

Failure to comply with the norms of ECA, shall attract punishment up to seven years and/or fine. The application of this Act in the present situation of the pandemic is a much needed step as this would help to tackle the problem of black marketing and hoarding the commodity so as to sell it at an increased price. Further the government has fixed the prices of such commodities and made them available to the people at a nominal cost. Moreover, the manufacturers have been ordered to speed up the production capacity and to work in three shifts if needed.

Essential Services Maintenance Act, 1968

The **Essential Services Maintenance Act**²¹⁴⁹ (hereinafter referred as **ESMA**) provides the power to the state governments to prohibit the disruption of essential services to carry out the governing smoothly. This Act in itself has an overriding effect (Section 8) and has the power to lay down any other law inconsistent for the time being with respect to its provisions.

Section 2²¹⁵⁰ of ESMA, defines the services to be included under the ambit of essential services. The government through a notification in the Official Gazette, may add, remove or change any of the entry as it deem fit. The section has a wide ambit to cover various services pertaining to different areas such as, postal, telegraph or telephone services, supply or distribution of coal, hospitals or dispensaries, etc.

²¹⁴⁷ *Ibid.*

²¹⁴⁸ (1978), 1978 AIR 1296.

²¹⁴⁹ Essential Services Maintenance Act, 1968 (Act 59 of 1968).

²¹⁵⁰ *Ibid.*

Further, Section 3²¹⁵¹ of the ESMA empowers the government to prohibit strikes by the employees in certain type of employments, especially which have been listed under Section 2 of this Act. Having an enforceability period of such an order as 6 months, it can further be extended if government is of the opinion that it the services are still needed without any disruption for the interest of the people.

Further, this has been corroborated in the judgement of *G.Y.N. Chainulu and Ors. v. The Depot Manager, A.P.S.R.T.C., Amalapuram and Ors.*²¹⁵², whereby the Andhra Pradesh High Court stated that a strike organized by the workmen during the implementation of the Essential Services Maintenance Act shall be considered illegal and would not be protected under any act for the time being in force as the ESMA has overriding powers.

Any failure to comply with the order and resorting to illegal strikes shall attract punishment for a period of 6 months to 1 year along with fine ranging from 200 rupees to 1000 rupees, depending upon the nature of the act committed.

As the doctors battle to fight this pandemic, there have been instances all over India where the doctors have been mistreated and assaulted. Owing to such an incident when the doctors threatened to go on strike, the state government of Delhi resorted to the provisions of this Act, thereby prohibiting the strike by any of the doctors. The same has been followed by Maharashtra, Telangana, and Madhya Pradesh and many other states.²¹⁵³

Indian Penal Code and Criminal Procedure Code

Considering the penalizing powers, many such provisions of the **Indian Penal Code**²¹⁵⁴ (hereinafter referred to as **IPC**) have been used by the government to punish the defaulters. Chapter XIV²¹⁵⁵ discusses the “Offences Affecting the Public Health, Safety, Convenience, Decency and Morals” and thereby provisions of this chapter have been used to deal with the defaulters and punish them accordingly.

As stated under Section 269²¹⁵⁶, “whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description up to six months or fine or with both fine and imprisonment.” Therefore, any act or omission

²¹⁵¹ *Ibid.*

²¹⁵² (1990), 1991 (1) ALT 492.

²¹⁵³ Editorial, “Gandhi hospital doctors go on strike after attack on colleague” Hindustantimes, March 10, 2020.

²¹⁵⁴ *Supra.*

²¹⁵⁵ *Ibid.*

²¹⁵⁶ *Ibid.*

committed towards the spreading of disease shall be punished. Such acts include, omission to provide any information that is likely to increase the spreading of disease further or giving wrong information to the police about the an individual's travel history or whereabouts when asked.

As per Section 270²¹⁵⁷, "if a person knows or has a reason to believe that that any act committed by him is likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both". The standards prescribed by the government in regard to social distancing, covering face with mask, avoiding social gatherings, etc. are all to be strictly followed and any defiance of such norms would be punishable under section 270 of IPC.

Punishment for disobedience to the quarantine rule is given under section 271 of the IPC. The person convicted under this section may be imprisoned for a term up to 6 months, or with fine, or both.²¹⁵⁸

In addition to this, implementing a curfew by order of section 144 of **Criminal Procedure Code**²¹⁵⁹ (hereinafter referred to as **CrPC**) to ban public gatherings and avoid the spreading of the disease, the violators of such order shall be punished under Section 188 of IPC.

LACUNAS IN THE EXISTING LEGISLATIONS

Taking a closer look at the Epidemic Disease Act, we observe that it does not even define what an 'epidemic' is or what should be the magnitude of danger to declare a disease as an epidemic. This act consists of a document of four sections which has various loop holes, thereby making it a Draconian Act. The EDA fails to provide a standard framework, which should deliver the people with basic and important necessities like food, water and shelter. It fails to prioritize public health as a concern and rather promotes the actions of government in an arbitrary manner.

The abundance of power granted to the police authorities by the government has made the situation even worse. Several cases of police brutalities²¹⁶⁰ and use of excessive force have come to light, allegedly causing death of a person in one case as well.

Although the Disaster Management Act is a properly framed legislation, yet there are various problems associated with it. The lack of proper execution at various levels within the system

²¹⁵⁷ *Ibid.*

²¹⁵⁸ *Ibid.*

²¹⁵⁹ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

²¹⁶⁰ Editorial, "Police brutality' during Covid-19 lockdown" Hindustantimes, July 3, 2020.

has created a major setback. Even after constituting proper funds, the channelization of resources is inadequate. A major failure of the government is the inability to ensure that the State borders do not hinder the entry of essential services has majorly affected the supply of food and other commodities. At the ground level the whole situation is a knee jerk and in a haphazard manner.

Considering the implementation of the Essential Commodities Act, it has been called as a draconian Act because it prohibits the manufacturer to carry out the business. Many a times the producer of the commodity has to bear losses due to a certain cap on the price fixed by the government. Moreover, the discretion to fix the price of a commodity has been left to the whims and fancies of executive authorities and it can only be challenged if there is a clear discrimination towards any particular class of operators, or else whatever the price fixed has to be adhered to by the operators as valid. As already mentioned before, putting a commodity under the umbrella of the ECA hampers the growth of profit margins, thereby discouraging the manufacturers and frustrating the investment in storage infrastructures.

Infringing upon a person's liberty and rights, the Essential Services and Maintenance Act is one of the poorly framed pieces of legislation. The persons providing a particular service, as per mentioned in the Act, are denied of their rights and are forced to work. Sacrificing the personal liberty of an individual it further penalizes if a person resorts to a strike. Any strike becomes illegal after the passing of the order.

The punishments under the prescribed sections of the IPC and CrPC need a revision as to keep the punishment at par with the magnitude of the offence committed. Also a check should be done on the powers of the Police as providing them with excessive powers, results in the infringement of rights of an individual, thereby promoting exploitation of the poor.

EXPLORING THE EMERGENCY PROVISIONS

Failure of the present enactments to deal with the outspread of pandemic has put the government in standstill situation and there exist a need to revisit the provisions of our Constitution. Moreover, the lacunas in the present legislations being enforced has further aggravated the problem and owing to the federal structure of India, it is further a roadblock for the government to make laws in the area of 'public health', as by virtue of the powers

granted by our constitution, the abovementioned entry falls under the State List (under Seventh Schedule).²¹⁶¹

Discussing part XVIII²¹⁶² of the Indian Constitution whereby the emergency provisions have been stated, it defines the emergency powers and discusses the conditions as to when these provisions can be invoked. Article 352 – 360, states the different kinds of emergencies, along with the explanation as to how they have to be exercised in accordance to the provisions.²¹⁶³

Referring to the scope of National Emergency (Article 352),²¹⁶⁴ it could only be invoked on the grounds of war, external disturbance and armed rebellion. However, prior to the 44th constitutional amendment the term ‘internal disturbance’ was used instead of ‘armed rebellion’. The formerly used term had a wider ambit as compared to the latter and thereby this became one of the reasons to frequently invoke the National Emergency and was up to the whims and fancies of the government. Considering the flexibility of the term ‘internal disturbance’ it could have covered the situation of a pandemic in the present case but as of now the term being replaced it stands impossible.

INVESTIGATING ARTICLE 355

Putting forth a duty upon the Central Government, Article 355²¹⁶⁵ of our Constitution discusses as to how the Central Government shall have a duty to protect the states in case of an internal disturbance. The article provides as follows, “It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution”. Thereby the term ‘internal disturbance’ being used, it is open to interpretation and has a wider ambit.

The drafters of our constitution were well aware of the possibility of any such circumstances, and therefore the term has been given such a wide interpretation. Further, Centre being more powerful and stable, it is given overriding powers and the idea behind this notion is to align the powers of the state government with that of the Central government to establish an effective machinery, thereby taking appropriate measures.

²¹⁶¹ The Constitution of India, 1950.

²¹⁶² *Ibid.*

²¹⁶³ *Ibid.*

²¹⁶⁴ *Ibid.*

²¹⁶⁵ *Ibid.*

The Sarkaria Commission Report,²¹⁶⁶ has laid down some references to the constitution in connection to the emergency provisions. Referring to the report of the commission, it states that the term ‘internal disturbance’ can be interpreted to include nature-made disturbances as well. The natural calamities of unprecedented magnitude, such as cyclones, earthquakes, epidemics, etc. hold the potential to give a setback to the government, thereby putting the machinery of the state in jeopardy.

“Under Article 355, a whole range of action on the part of the Union is possible depending on the circumstances of the case, the nature, the timing and the gravity of the internal disturbance.”

In extension to this, the report states “The Constitution-framers conceived these provisions as more than a mere grant of overriding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail.”

Considering the report of the commission, read along with Article 355 of the constitution, it forms a nexus between them. The scope of the term ‘internal disturbance’²¹⁶⁷ is broadened and therefore it could be used to control the situation.

EXPLORING ARTICLE 356 i.e. STATE EMERGENCY

Defining the provision for State Emergency under Article 356²¹⁶⁸ of the constitution, the emergency is invoked in case of failure of constitutional machinery in the state. It denotes that the emergency can be imposed only when there is a breakdown of the constitutional machinery in a state. Forming a nexus between the Sarkaria Commission report and Article 356, the report has further mentioned certain grounds on which the condition of breakdown of the constitutional machinery in a state can be considered, namely:

- (a) Political crisis.
- (b) Internal subversion.
- (c) Physical breakdown.
- (d) Non-compliance with constitutional directions of the Union Executive.

²¹⁶⁶ Government of India, Report: *Report of the Sarkaria Commission* (Ministry of Home Affairs, 2015).

²¹⁶⁷ Arvind P Datar, *Commentary on The Constitution of India* (Lexis Nexis, Volume 3, 2nd edn., 2010).

²¹⁶⁸ *Supra*.

In addition to this, the report²¹⁶⁹ further furnishes the grounds under which a physical breakdown can be considered. As provided in the report, the conditions of natural calamity such as an earthquake, cyclone, epidemic, flood, etc. of an unprecedented magnitude and severity, which completely paralyses the administration and endangers the security of the State, thereby making the State Government unwilling or unable to exercise its governmental power to relieve it. Thus, in such cases, the proclamation of emergency in a state can be adopted.

The report clearly states the term epidemic as one of the possible grounds for physical breakdown. It further widens the scope of this article in relation to the declaration of an emergency to control the epidemic. Therefore, a public panic situation and mass lawlessness endangering the security of the state triggered by the outbreak of COVID-19 could easily be addressed under the umbrella of a State Emergency.

Discussing the effect of proclamation of an emergency, Article 353 comes into play clearly stating, that during an emergency, Article 353, permits the Central government to direct any state on how to use its executive power as well as it permits the parliament to, even make the laws on matters which are in the State List, consequently, providing superseding powers to the Central Government. In addition to this, Article 358 suspends Article 19 during the time of emergency and Article 359 suspends the whole part III of the constitution, i.e. Fundamental Rights.²¹⁷⁰

As stated above, the implementation of constitution provisions can be discussed under two folds:

Firstly, the applicability of section 355 will ensure that there exists an obligation on the Centre to protect the States in case of an internal disturbance and as already mentioned in the report, the term internal disturbance can be interpreted to include the natural made disturbances as well.

Secondly, failure of constitutional machinery could be a ground to declare a State Emergency as per Article 356.²¹⁷¹ As it has already been explained in the report that an epidemic can be one of the grounds for the physical breakdown, thereby resulting in failure of constitutional machinery.

²¹⁶⁹ *Supra*.

²¹⁷⁰ Durga Das Basu, *Constitution of India* (Lexis Nexis, Volume 3, 14th edn., 2011).

²¹⁷¹ Dr. J.N Pandey, *Constitutional Law of India* (Central Law Agency, 56th edn., 2019).

Therefore, in states where the conditions are deteriorating every day, there needs to be an applicability of strict and effective laws to tackle the situation, and thereby by implementing State Emergency, the control of the state being moved to the centre government, effective laws and its execution could be carried out.

SUGGESTIONS

Seeing the present steps taken by the Government to tackle the outbreak of the virus following suggestion could be implemented and pondered upon:

1. There exists a need for a legislation to deal with the public health as most of the legislations that are currently being used by the government don't address this issue. International standards of public health should be kept in mind while addressing this and India being a signatory to WHO's International Health Regulations 2005 should strictly adhere to it while adopting any such policies in regard to the public health.
2. Granting powers to the executive authorities under the legislations should be in check as granting a carte blanche power is extremely dangerous and it results in violation of an individual's rights.
3. Public Health being an entry in the State List, it becomes difficult for the Central Government to make laws on it. Therefore, to effectively tackle the problem of pandemic more powers should reside with the Centre thereby exploring the possibility of State Emergency under Article 356 and transferring the control from State to Centre.
4. Revision and overhauling of the current legislation being used should be done as some of these are more than century old legislations and are poorly drafted with various ambiguities, thereby creating possibility for abuse of power by the authorities who are in a position to do so.

CONCLUSION

The implementation of these legislations could help the country in a short run to tackle with the problem of COVID-19, but there is no doubt about it that in the long run the country will have to bring an effective legislation to deal with the problems such as an epidemic or any other nature made disaster as well.

Hence, it is beyond doubt, that the present legislations require an overhauling to cope with the problems that have been created in the current scenario. A proper evaluation of the powers of the authorities should be kept in mind.

The implementation of an Emergency could even prove to be an asset during such an outburst of an epidemic disease, as this provides further authority and power to the government to take stricter actions. The powers shouldn't be a carte blanche, and instead it ought to be followed in good faith as well as in a reasonable manner. This could help to handle the current situation in an effective manner, or else it could turn out be hazardous, hence affecting the social, political and economic condition of the country.

