

ANALYZING THE CONTOURS OF EXECUTIVE ACTIONS IN COVID CRISIS MANAGEMENT VIA THE LENS OF ADMINISTRATIVE LAW PRINCIPLES

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SECTION – 1

1. INTRODUCTION

In the modern era, disasters, man-made or natural, knock the doors of mankind quite often throwing out of gear the community and individual life. The governments of the day have to muster their resources to tackle the effect of these disasters. To effectively deal with the impact of disasters and to mitigate their impact, various nation states have enacted laws dealing with varied aspects of disasters. Sometimes, the impact of the disaster may lead to a national or state emergency owing to the impact of the disasters like earthquakes, Tsunamis etc. Such situations call for emergency measures and the executive, deriving their powers from the legal framework, take mitigating and other actions. These actions of the executive, taken during an emergency caused by a disaster, are also required to conform to constitutional ethos and the principles of administrative law. As such, constitutions of various nation-states lay down emergency provisions empowering the executive to take action during such emergency. However, such constitutional provisions also put curbs on the powers of the executive. However, most constitutions of the world, do not lay down effective provisions for dealing with health emergency leaving room for the executive to take whatever actions, it desires.

Covid-19 led to world-wide health crisis and a state of emergency across the globe including India.

To tackle such widespread health emergency, the nation-wide lockdown was imposed in many countries including India throwing out of gear the entire life of individuals, society and corporations. Various curbs were imposed and many decisions including compulsory vaccination etc. were taken by the executive. The Government of India invoked the provisions of Disaster Management Act, 2005 which was enacted to deal with disasters and to mitigate the impact of such disasters. States invoked the colonial law i.e. Epidemic Diseases Act, 1897 to deal with health crisis. The questions, therefore, arise as to which of these laws was designed to deal with Covid-19 like situation; whether Covid-19 can be called as a disaster; whether the executive action of lockdown and similar other actions without declaring emergency under the Constitution can be declared valid; whether the executive was justified in by-passing the legislature and checks on legislative and executive actions by invoking Disaster Management Act? This paper attempts to analyse the executive actions in the wake of Covid-19 crisis from the perspective of administrative law principles and to answer these questions.

Before proceeding further, it is essential to briefly understand the meaning of the term 'disaster'. The World has from time to time witnessed natural calamities like earthquakes, volcanic eruptions, droughts, famines, floods and Tsunamis. Despite the frequent occurrence of disasters, there is no universally accepted definition of the term 'disaster'.

The word 'disaster' is derived from the Middle French 'dassastre' and from the old Italian 'disastro', which in turn comes from the Greek pejorative prefix (dus-) 'bad'+ ca'nep (aster), meaning 'star', the origin of which traces back to astrological theme in which the ancient Greeks used to refer destruction or

deconstruction of a star as a disaster.¹Term ‘disaster’ has been defined by World Health Organizationas:

"Any occurrence that causes damage, ecological disruption, human life loss, deterioration of health and health services, on a scale sufficient to warrant an extraordinary response from outside the affected community or area."²

To put it in other words, a disaster majorly interferes with the functioning of society and results in extensive loss to the people, property, or to the environment which may last from a few seconds to several years. The loss caused is usually greater than what can be reasonably recovered by the affected society or community by using its own resources.³

Today disasters are viewed as result of improper risk management by the academic community.⁴The un-predictable nature of natural disasters does not allow a welfare State like India to shun off its responsibility of effectively managing the crisis situations, to keep the loss caused as minimal as possible and to protect the future generations. The right to safety from crisis or disaster situations is included in the right to life and personal liberty as guaranteed by the Indian Constitution.⁵There is a need of multidisciplinary strategy to manage crisis effectively in the dangerous situations brought on by natural or man-made disasters. All disaster-related

¹ Adrita Saha & Sagnik Chowdhury, “Legal Framework of Disaster Management in India along with the Functioning of NDRF”, *International Journal of Management and Human Rights*, Vol. 3, 2020, p. 529.

² Community Emergency Preparedness: A Manual for Managers and Policy-Makers, WHO, Geneva, 1999, p. 1.

³ Satish Modh, *Introduction to Disaster Management*, McMillon Publishers India Ltd., Delhi, 2018, p. 6.

⁴ Vishnu Konoorayar and V.S Jaya, “Disaster Management Law”, *Indian Law Institute*, New Delhi, 2006, p. 1.

⁵ Gurusimran Singh Narula v. Union of India, (2021) 1 SCC 152;Distribution of Essential Supplies & Services During Pandemic, In re, (2021) 18 SCC 201, Assn. of Medical Super-speciality Aspirants & Residents v. Union of India, (2019) 8 SCC 607, Democratic Youth Federation of India v. Union of India, (2011) 15 SCC 530.

operations in their entirety are covered with the ambit of ‘disaster management’.⁶

SECTION - 2

2. COVID-19 AND INDIA

The major health crisis induced by Covid-19 was faced at global level in the years 2019-22. The first case of Covid-19 was reported in India on January 30, 2020 and hundredth case on March 14th.⁷ By March 24th a nationwide lockdown was imposed in the country.⁸ Essential services were supposed to function and transport services were reduced to minimal. Although there was little clarity at the outset of the lockdown with respect to its implementation, yet it was imposed with strict conditions causing unrest among migrant labourers, middle and lower classes of Indian society. Some states in India even imposed Curfew with little or no relaxations. People were left stranded wherever they were, buses, trains and other transport services came to a standstill and lakhs of migrant workers were left stranded lining up in queues and even walking on foot for hundreds of kilometers. There were reports of police brutalizing people who were leaving their homes.⁹ India is reported to have highest death toll in the entire world owing to Covid-19 crisis.¹⁰

All this happened in India where right to life and personal liberty, as enshrined in Article 21, is considered as most fundamental of the fundamental rights and this right cannot be suspended even

⁶ Mukesh Kapoor, *Disaster Management Law*, Sourabh Publishing House, New Delhi, 2012, pp. 47-48.

⁷ Down To Earth, *COVID-19: Future of pandemic will depend on India's response*, say WHO, 2020, <https://www.downtoearth.org.in/news/health/covid-19-future-of-pandemic-will-depend-onindia-s-response-says-who-69951> (accessed July 5, 2024)

⁸ Alaknanda Shringare and Seema Fernandes, COVID-19 Pandemic in India Points to Need for a Decentralized Response, *State & Local Government Review*, September 2020, Vol. 52, No. 3 (September 2020), pp. 195-199

⁹ Bhavya Dore, “Covid-19: Collateral Damage of Lockdown in India”, *BMJ: British Medical Journal*, 27 April 2020 - 03 May 2020, Vol. 369, pp. 1-2.

¹⁰ Goutham Shivshankar, “The Challenges of Administrative Law Review in the Covid-19 Pandemic: The Case of India”, *Australian Journal of Asian Law*, 2022, Vol. 22 No 2, pp. 75-97.

during emergency. However, the impact of the strict lock-down was the suspension of the right to life and personal liberty which hitherto was not possible through the Constitutional provisions and through the Parliamentary law.

Based on the Siracusa Principles¹¹, international guidelines are established about the rights-limiting measures that may be permitted under a state of emergency. Regardless of the type or intensity of the emergency, these principles stipulate that any limitations on human rights must adhere to the following criteria: legality, legitimacy, need, proportionality, proof, and non-discrimination.¹² According to General Comment 14 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), states must "prove that restrictive measures are required to curb the spread of infectious diseases so as to ultimately promote the rights and freedoms of individuals" in order to justify such drastic measures.¹³

The implementation challenges in implementing lockdown and severe economic side effects prompted widespread criticism and demonstrations.¹⁴ Despite the above criticism of the imposition of

¹¹ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (1984).

¹² A. Ponta, "Human Rights Law in the Time of the Coronavirus," *American Society of International Law*, Vol.24/5, 2020.

¹³ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), Article 14; D. S. Silva and M. J. Smith, "Limiting rights and freedoms in the context of Ebola and other public health emergencies: How the principle of reciprocity can enrich the application of the Siracusa principles," *Health and Human Rights Journal* 17/1 (2015), p. 52; Zweig, Sophia A., Alexander J. Zapf, Chris Beyrer, Debarati Guha-Sapir, and Rohini J. Haar. "Ensuring Rights While Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19." *Health and Human Rights* 23, no. 2 (2021): 173–86. <https://www.jstor.org/stable/48636264>.

¹⁴ Iza Rumesten, FirmanMuntaqo, (*et. al.*), "Discretionary Policy Responses in India and Indonesia amidst the COVID-19 Pandemic: Challenges, Strategies, and the Imperative for Legal Reform", *JILS*, Vol. 8, 2023, p. 1151.

strict lockdown, the government justified these actions being necessary to safeguard the public health and safety.

SECTION - 3

3. LEGAL FRAMEWORK TO DEAL WITH CRISIS OR DISASTER MANAGEMENT IN INDIA

Indian Constitutional architecture lays down Parliamentary democracy governed as a system of governance. Constitution is premised on the Rule of Law wherein the legislative and administrative actions are required to comply with constitutional provisions and principles. The legislative and administrative actions are subject to various checks and balances, including but not limited to, Parliamentary control over the legislation and the delegated legislation, judicial control over legislative and administrative actions etc. yet most of these safeguards were given a go-bye in response to crisis induced by Covid-19. Unrestricted and unscrutinized executive orders became the main tool of the federal and state governments to combat the pandemic. The way India responded to COVID-19 led to revelation about centralized tendencies of the Union government. It also exposed lack of administrative and planning processes required to launch a national response, specifically pointing out lack of public health infrastructure. Lockdown was imposed without consulting the States who have an equal stake in subject of health, since it is a concurrent subject. Further, imposition of lock-down adversely affected 'public order' which is a State-subject. In a federal country like India, where the Constitution Bench of the Supreme Court has declared that federalism and federal principles are part of basic structure of the Constitution of India, this decision dented the federal principles enshrined in the Constitution.

The constitutional validity of the lockdown and other restrictions on movement, usage of vehicles etc. was questioned before the Gujarat High Court¹⁵, however, the matter is still unresolved.

The Covid-19 problem had a negative impact on the rights to life and personal liberty guaranteed by Article 21, as well as the rights

¹⁵ Vishwas Sudanshu Bhamburkar v. Union of India, Writ Petition (PIL) No 77 of 2020, still pending in the High Court of Gujarat as on December 31, 2024.

to dignity, mobility, and the ability to pursue a career or business. The livelihood concerns of hundreds of thousands of migrant workers who were left without a job, food, or a way to return to their homeland were not taken into account during the nationwide lockdown.¹⁶

Any legislative or executive action must pass the "proportionality test," which was established by the Supreme Court and covered in a number of seminal rulings, such as the *Justice K.S. Puttaswamy case*¹⁷. Would the "proportionality test" be passed by the stringent lockdown? Whether the measure was required and whether it was the least restrictive force the State utilized to accomplish its objective are the two criteria that form the basis of the test. Given that not even four hours' warning was given before it was implemented, the Indian lockdown is among the most severe in the world. Furthermore, the methods used to implement this lockdown were capricious, opaque, and insensitive to the impoverished, disregarding their basic need for existence. The 'Proportionality Test' was thus not fulfilled.¹⁸

3.1 Provisions under the Constitution of India

Indian Constitution is federal in nature and it has divided the Central-state relations in three domains which are- legislative relations,¹⁹ administrative relations²⁰ and financial relations.²¹ The governments are supreme in the spheres allotted to them, but harmony and coordination is inevitable requirement for a federal system to function effectively. The division of relations does not fall under a watertight compartment rather there are several overlapping areas for which we need a strong cooperation

¹⁶ Alaknanda Shringare and Seema Fernandes, "COVID-19 Pandemic in India Points to Need for a Decentralized Response", *State & Local Government Review*, September 2020, Vol. 52, No. 3, pp. 195-199.

¹⁷ (2017) 10 SCC 1.

¹⁸ Harshit Sankhla, "Preserving Justice, Constitutionality and Human Rights in Times of COVID-19", *Supremo Amicus*, 2020, p. 217.

¹⁹ Constitution of India, Part XI, Articles, 245-255, Schedule VII.

²⁰ Id., Articles 256-263.

²¹ Id., Articles 264-293.

between Central and State governments to properly discharge powers and functions there under.²²

A cursory glance at the constitutional provisions shows that the Constitution of India the following provisions which can be referred to here for the purpose of dealing with Covid-19

1. Emergency provision in part XX of the Constitution;
2. Entries, 1 & 6 of the List II, Seventh Schedule, Constitution of India, dealing with Public order and public health and sanitation; hospitals and dispensaries;
3. Entry 28, List I, Seventh Schedule, Constitution of India, dealing with Port quarantine including hospitals connected therewith; seamen's and Marine hospitals;
4. Entry 81, List I, Seventh Schedule, Constitution of India, dealing with Inter-State Migration; inter-state quarantine;
5. Entry 6, Twelfth Schedule, Constitution of India, dealing with Public health, sanitation conservancy and solid waste management.

However, there is no direct entry in the Constitution of India which deal with health emergency or with disasters. Further, no such law has been enacted by the Union Parliament till date for declaring health emergency and for conferring executive powers on the Union or the States.

Further, 'health emergencies' are not covered by the emergency clauses²³ under the Indian Constitution. The President has the authority to declare national²⁴, state²⁵, and financial²⁶ emergencies under the Indian Constitution. The reasons for declaration of a National Emergency can be threat to national security from war, external aggression, or armed rebellion. If the administration of state cannot be carried out according to provisions of

²² Pradip Banerjee & Pritam Banerjee, "Application of Cooperative Federalism in India during Covid-19 Pandemic", International Journal of Management and Human Rights, Vol. 4, 2021, p. 1485.

²³ Constitution of India, Part XX, Articles 352 to 360.

²⁴ *Id.*, Article 352.

²⁵ *Id.*, Article 356.

²⁶ *Id.*, Article 360.

Constitution, State emergency is declared in the that very particular state. If a country's economy is in danger of collapsing, financial emergency may be declared.²⁷

However, the Covid like situation does not fit in the criteria laid down in Article 352 (National Emergency) or Article 356 (State emergency). Though Article 355 (duty of the Union to protect the states against internal disturbance) might lend some help to the federal government in issuing directions and executive orders over the issue of Covid management believing that the outbreak made the states vulnerable to internal disturbance like situation. However, it has been ruled by the Apex Court in *Gujarat Mazdoor Sabha v. State of Gujarat*,²⁸ that the expression internal disturbance cannot be divorced from its context or be read in a manner divorced from the other two expressions that precede it. An internal disturbance must be of the similar gravity as that of threat to security or integrity of India or any part thereof and armed rebellion. Only then a situation will fall under the category of public emergency under provisions of the Constitution which will make a way for unbridled exercise of powers. Therefore, a perfunctory look at the Constitutional provisions lead to the logical conclusion that the founding fathers of the Constitution did not perceive Covid like situation as a situation of emergency and the Constitution is actually silent on emergency induced by Covid-19 crisis.

3.2 Disaster Management Act, 2005

Interestingly there is no specific entry in the Seventh Schedule of the Constitution of India dealing with disasters or disaster management. In-fact, the legislative competence of the Union to enact the *Disaster Management Act, 2005* has been traced to entry

²⁷ Iza Rumesten, FirmanMuntaqo, (*et. al.*), “Discretionary Policy Responses in India and Indonesia amidst the COVID-19 Pandemic: Challenges, Strategies, and the Imperative for Legal Reform”, *JILS*, Vol. 8, 2023, p. 1151.

²⁸ (2020) 10 SCC 459.

23 of the Concurrent List i.e. Social Security and social insurance; employment and unemployment'.²⁹

Accordingly, till 2005, there was no legislative framework to provide for disaster management. Such issues were dealt through administrative structure by the Ministry of Home Affairs. The High-Powered Committee on Disaster Management, under the Chairmanship of Shri J. C. Pant, was constituted in the year in 1999.³⁰ It recommended for institutional and legislative measures to address disasters in the future which ultimately led to the passing of the *Disaster Management Act, 2005*. The *Disaster Management Act* of 2005³¹, received the assent of President on December 23, 2005 and came into force as per the dates assigned by Central Government.³²

The Act provided for a legislative and institutional- framework for the efficient handling of catastrophes and any issues related to or incidental to them.³³ The Act lays down an institutional framework for thorough and coordinated disaster management at the federal, state and municipal levels.³⁴ The Act also outlines the procedures for funding disaster relief and rehabilitation of disaster victims contemplating two sorts of grants i.e. one for disaster response and the other for disaster mitigation.³⁵ *The Disaster Management Act* of 2005 defines disaster management as a continuous and integrated process of planning, organizing, coordinating, and implementing measures that are necessary or

²⁹ Vidhi Legal, "Covid-19 and the Need for clear Centre-State Roles", 2020, available at <https://vidhilegalpolicy.in/blog/covid-19-and-the-need-for-clear-centre-state-roles/> last accessed on December 31, 2024.

³⁰ High Powered Committee on Disaster Management, Report, Department of Agriculture and Cooperation Ministry of Agriculture, Government of India October, 2001.

³¹ Act 53 of 2005.

³² The Disaster Management Act, 2005, Section 1(2).

³³ The Disaster Management Act, 2005, Preamble.

³⁴ Prof. Arvind Kumar, "Environment and Disaster Management" Shree Publishers and Distributors, New Delhi, 2009 at p. 212.

³⁵ N Mani, "Environment, Climate Change and Disaster Management", New Century Publications, New Delhi, 2017, p. 183.

expedient for disaster prevention, mitigation, and risk reduction, capacity building. It also covers preparedness to deal with disasters, prompt response to any threatening disaster situation, and assessment of the severity or magnitude of it.³⁶

The Act established the National Disaster Management Authority (NDMA), headed by the Prime Minister. Further, National Executive Committee (NEA) which is chaired by the Home Secretary was also formulated under the Act by the Ministry of Health and Family Welfare. The lockdown was implemented by the State governments and district authorities as per the directions of the Union Ministry of Home Affairs under the *Disaster Management Act, 2005*. The sale of surgical masks, hand sanitizers, and gloves was also regulated and they were added in the category of Essential goods under the *Essential Commodities Act, 1955* in order to prevent their hoarding and black marketing.³⁷ Executive orders were issued by the NDMA and NEA on March 24, 2020 which directed the Union Ministries, State governments and other authorities to take effective measures to prevent the spread of COVID-19. Certain guidelines were also issued to illustrate which establishments would be closed and which services would be suspended during the lockdown period.³⁸ The provisions relating to the governmental measures for disaster management are specifically contained in Chapter V of this Act. The Central government³⁹ along with State governments⁴⁰ can take such measures by taking recourse to concerned provisions of this Act. Section 35(2)(a) calls for coordination between the Central and State Governments; and

³⁶ The Disaster Management Act, 2005, Section 2(e).

³⁷ Press Information Bureau, Government invoke Disaster Management Act to ensure prices regulation and availability of Surgical and protective mask, Hand sanitizer and Gloves, (July 03, 2020, 05:13 PM).

³⁸ Manuraj Shunmugasundram, "India Needs to Enact a COVID-19 Law, *Lead*, July 04, 2020. <https://www.thehindu.com/opinion/lead/indianeeds-to-enact-a-covid-19-law/article31529036.ece>.

³⁹ The Disaster Management Act, 2005, No. 53, Acts of Parliament, § 35 (2005).

⁴⁰ The Disaster Management Act, 2005, Section 38.

Section 35(2)(e) aims at securing assistance and cooperation of the State Governments. The Act further lays down that the disaster management plan should be well prepared, be reviewed annually and should be up to date. These responsibilities are cast upon both Central ministries or departments⁴¹ as well as for departments of State governments.⁴²The Prime Minister of India and concerned Chief Minister of State are designated as *ex officio* Chairperson for the National Disaster Management Authority and the State Disaster Management Authority respectively by the Act.⁴³As per section 11(2) the State governments should be consulted while preparing the National Plan for Disaster Management⁴⁴

3.3 The Epidemic Disease Act, 1897

At the time of its enactment, the EDA's main goals were to strengthen ties with the *International Sanitary Convention*, safeguard trade and commerce during epidemic outbreaks, and allay international concerns about the spread of cholera or plague outside of India. The *Epidemic Act* of 1897 was not intended to address the public health system as a whole, but rather to activate the government apparatus when an epidemic was imminent. The Central and State governments have been granted extensive powers under the legislation. 'Dangerous epidemic sickness' is a subject of state government regulation. The Union government controls the flow of ships and other vessels entering Indian territory. Disobedience to actions conducted under the Act is penalized in any way. The Act gives state governments the authority to shut down schools and universities until the threat is resolved and to prohibit public assemblies and gatherings. The Act was passed with the intention of creating a connection with

⁴¹ *Id.*, Sections 36-37.

⁴² *Id.*, Sections 39-40

⁴³ *Id.*, Sections 3(2)(a) & 14(2)(a).

⁴⁴ Pradip Banerjee & Pritam Banerjee, "Application of Cooperative Federalism in India during Covid-19 Pandemic", *International Journal of Management and Human Rights*, Vol. 4, 2021, p. 1485.

international legislation concerning epidemics.⁴⁵ Every State Government is authorized by Section 2 of the Act to enact rules and take specific actions in response to an outbreak. When an epidemic disease breakout threatens even their own territory, the governments of the respective states are free to initiate and carry out such measures on their own initiative.⁴⁶

The need to update the age-old law has been raised time and again, but the legislative has always been reluctant for this. It has been described as "one of the most draconian pieces of sanitary legislation ever adopted in colonial India" by David Arnold.⁴⁷

3.4 Other Measures

Different nodal ministries have been established to handle various crisis or disaster situations. For example, the Ministry of Civil Aviation is responsible for handling aircraft accidents; the Ministry of Home Affairs is in charge of handling civil unrest; the concerned ministries are in charge of handling major breakdowns of any essential services that pose widespread problems; the Ministry of Railways is in charge of handling railway accidents; and the Ministry of Environment is in charge of handling chemical explosions and accidents; drought circumstances are handled by the Ministry of Agriculture; and all other natural disasters are handled by the Ministry of Home Affairs.

In dealing with Covid-19 crisis, various state governments invoked the provisions of the Epidemic Diseases Act of 1897 (EDA) and the federal government invoked the provisions of the Disaster Management Act of 2005 (DMA) and issued various executive orders under these enactments. While the DMA empowers the federal to take any action which the government deems appropriate to combat a disaster yet the law does not deal

⁴⁵ Manuraj Shunmugasundram, "India Needs to Enact a COVID-19 Law, *Lead*, July 04, 2020. <https://www.thehindu.com/opinion/lead/indianeeds-to-enact-a-covid-19-law/article31529036.ece>.

⁴⁶ Pradip Banerjee & Pritam Banerjee, "Application of Cooperative Federalism in India during Covid-19 Pandemic", *International Journal of Management and Human Rights*, Vol. 4, 2021, p. 1485.

⁴⁷ Arnold D. Science, "Technology and Medicine in Colonial India", Cambridge University Press, UK, 2000, p. 143.

with Covid-19 like diseases and was meant to deal with man-made and natural disasters. The invocation of DMA to justify stringent social distancing and widespread quarantines, seal state borders, halt individual movement, and impose a nationwide "lock-down" raises serious and interesting questions regarding the checks and balances on the powers of the government in emergency response. Interestingly, phrase "lock-down" has not been precisely defined in either of the enactments though the same was imposed by way of executive orders. By invoking DMA and other legislative provisions to deal with Covid emergency, the Union has been able to exercise nearly unrestricted powers suspending human rights without necessitating the need for legislating and subjecting its actions to legislative and judicial checks and balances. This use of such extensive executive authority has led to the development of a complex network of interconnected and federal and state administrative directives governing pandemic response actions. There has been complete circumvention of the state legislatures and the federal Parliament making it impossible for India's representational and deliberative bodies to scrutinize or oversee executive activities.

SECTION - 4

4. CONTROL OF EXECUTIVE ACTION THROUGH ADMINISTRATIVE LAW PRINCIPLES

To keep a check on executive action, various control mechanism exist in the form of administrative law principles. These controls include Legislative or Parliamentary Control and Judicial Control of Executive action through judicial review of administrative action.

4.1 Judicial Control of Executive Action

Supreme Court and High Courts can be called upon through appropriate writs under Article 32, 226; supervisory jurisdiction of the High Courts under Article 227; special leave petition under Article 136, apart from challenging the constitutionality of the executive action being *ultra vires* the law.

The concept of Judicial review is of immense importance and cannot be ignored even at the time of the outbreak of any disaster or epidemic such as COVID-19. In a democratic country it is crucial to keep a check on the functioning of various administrative or governmental bodies etc.

The legal validity of the lockdown imposed in India during COVID-19 was challenged by the way of petition in the Gujarat High Court on the ground that the "lockdown was outside the purview of the Indian Constitution and was ultra-vires for being illegal, unjust and arbitrary in nature."⁴⁸ This case is yet to be decided by the High Court of India and the High Court lost the opportunity to effectively check the executive action

A PIL filed in the Supreme, for mandating the Central Government to develop a National Disaster Management Plan, presented an opportunity to the Supreme Court to analyse the constitutionality of the matter but to no avail. The Court restricted itself to the questions posed before it and held in *Centre for Public Interest Litigation v. Union of India*⁴⁹ that, "The union government had already fulfilled its statutory obligation to develop a National Disaster Management Plan that was broadly applicable to all disasters, including biological disasters such as the Covid-19 pandemic, and there is no need to develop specific disaster management plans for specific disasters." The case of *Gujarat Mazdoor Sabha v. State of Gujarat* provided yet another opportunity to the Hon'ble Supreme Court but to no avail.

Again, the Supreme Court lost the plot when the Executive decision of reducing the amount of *ex-gratia* payment from Rs. 4,00,000 (four lakhs) to Rs. 50,000 (fifty thousand) to victims of disasters including victims of Covid-19 under section 12 of the Disaster Management Act, was challenged before the Supreme Court in *Reepak Kansal v. Union of India*⁵⁰. The government had issued an advisory wherein it was made mandatory that the

⁴⁸ Vishwas Sudanshu Bhamburkar v. Union of India, Writ Petition (PIL) No 77 of 2020.

⁴⁹ Centre for Public Interest Litigation v. Union of India, (2021) 11 SCC 111.

⁵⁰ (2021) 9 SCC 251.

victims shall be given ex-gratia payment only when the hospital certifies the death to be caused by Covid-19. Lakhs of patients died at home or because of related ailments which became severe due to Covid-19.⁵¹ The NDMA justified the reduction owing to the burden it would put on the exchequer⁵² and the Supreme Court concurred. Though it did issued guidelines for issuance of certificates and related matters⁵³ but the reduction of *ex gratia* payment did not receive much judicial or Parliamentary attention. The Supreme Court did pass various orders including extension of period of limitation, providing of relief to migrant labourers stranded on roads etc. The judiciary lent a helping hand in implementing the administrative decisions, and, sometimes aided to improve the efficiency of the haphazard decisions of the public authorities at a time when it was needed the most i.e. throughout the outbreak of COVID-19 when the situation was critical.⁵⁴ However, at none of the occasions the Supreme Court dealt with the constitutionality of executive orders, instructions etc. Thus, the doctrine of judicial review, which is part of basic structure, has not been of much avail in scrutinizing executive decisions during Covid crisis.

4.2 Parliamentary Control of Executive Action

The lockdown and other restrictions were imposed by the Union Executive without calling session of the Parliament. Initially, Janta Curfew was imposed on March 22, 2020 and thereafter,

⁵¹ Peter McGowan, Hannah Johns (et.al.), The Making of India's COVID-19 Disaster: A Disaster Risk Management (DRM) Assemblage Analysis, *International Journal of Disaster Risk Reduction*, 2023.

⁵² Ministry of Home Affairs (Disaster Management Division), Amendment in Revised List of Items and Norms of Assistance under State Disaster Response Fund (SDRF): No. 33-04/2020-NDM-I (25/09/21).

⁵³ National Disaster Management Authority, Guidelines for Ex-Gratia Assistance to Next of Kin of the Deceased by Covid-19 (Issued in Compliance to the Hon'ble Supreme Court Order Dated 30.06.2021 in Reepak Kansal v. Union of India, (2021) 9 SCC 251.

⁵⁴ Maanvi Trivedi & Pranav Saini, "Challenges of Administrative Law: Review of COVID-19 in India", 5 *Indian Journal of Law and Legal Research*, Vol. 5, 2023, p. 1.

absolute lock-down was imposed on March 24, 2020 giving only a few hours to the general public to arrange for necessities and to reach their respective places. Initially, the lockdown was imposed for twenty days which was subsequently amended from time to time.

It was expected that the Parliament shall hold the Executive accountable for its actions and the common issues faced by the general public would be discussed in the legislature. However, it appears that the Parliamentarians were also scared of the Covid-19 pandemic. The budget session of the Parliament which was scheduled to continue till April 1, 2020 was shortened by two-weeks. Monsoon session of the Parliament was deferred till September 2020. No attempt was made to hold Parliamentary session online.⁵⁵ Therefore, during the first six months of the crisis, the Parliament did not meet to effectively discuss the situation and control executive actions.

The Parliamentary control over Executive actions can be exercised not only through checks on delegated legislation but also through debates, questions being asked by members in the House, be it starred questions or unstarred questions. However, during the pandemic, during the Monsoon session even the Zero Hour and Question Hour were greatly limited, thus abandoning control over the executive actions. The situation continued till September 2020.⁵⁶ Thus, during the most crucial period, the Parliament allowed hundred percent leeway to the executive without any Parliamentary control.

Thus, the Executive actions during the pandemic were not subject to traditional checks and balances. Neither the Constitutional ethos nor the Parliamentary or Judicial control was exercised over the plethora of administrative actions affecting fundamental rights of the citizenry.

⁵⁵ Dam, S, "India is in a Crisis: Why isn't the Parliament Assembling Online", *News Laundry*, 1 April, 2020.

⁵⁶ Goutham Shivshankar, "The Challenges of Administrative Law Review in the Covid-19 Pandemic: The Case of India", *Australian Journal of Asian Law*, 2022, Vol. 22 No 2, pp. 75-97.

SECTION -5

5. CONCLUDING OBSERVATIONS

While stating concern on the probability of disasters, Mr. Kofi Annan, a former UN Secretary General has said that, "natural hazards will always challenge us. But it is within our power to join forces to address the immense complexities of disaster reduction and build a world of resilient communities and nations equipped to counter the adverse impact of natural hazards and related environmental and technological disasters."

Disasters always lead to destruction, leaving people in a condition of perplexity, helplessness, and pain. It interrupts with daily life of people, causes harm to property and interferes in government operations, jeopardizing even the communication lines and life-support services.⁵⁷

There is, thus, a need of multidisciplinary strategy to manage crisis effectively in the dangerous situations brought on by natural or man-made disasters. All disaster-related operations in their entirety are covered with the ambit of "disaster management".⁵⁸

India's shutdown announcement was entirely an executive decision. Executive officials were able to utilize the epidemic era and lack of control to amass authority that they would then attempt to misuse, either during or after the pandemic. Changes to both substantive and structural regulations, such the centralization of power, may be necessary in order to meet the enormous threats posed by a pandemic. However, this does not mean that such centralized authority may be used unchallenged while the government is addressing the disease outbreak. After all, it is undeniable that public officials take advantage of emergencies to use their recently obtained authority in ways that are not warranted, generally to accomplish objectives or implement

⁵⁷ Joshi SonoPant G, "Disaster Management for Healthcare Professionals" Jaypee Brothers Medical Publishers Private Limited, New Delhi, 2012, p. 3.

⁵⁸ Mukesh Kapoor, "Disaster Management Law", Sourabh Publishing House, New Delhi, 2012, pp. 47-48.

policies that have nothing to do with the public health emergency.⁵⁹

Thus, in line with the recommendations of the Venkatachaliah Commission⁶⁰ and Second Administrative Reforms Commission⁶¹, there is a need to amend the Constitution of India to specifically include an entry dealing with Disasters and Disaster Management to infuse clarity in legal roles of the Union and the States. Not only amendment in the Constitution is required but there is a need for a law which balances the roles of the Union and the State governments in Covid-19 like situations to dispel centralizing tendencies which were witnessed during the initial response to Covid.

At the time of crisis, when the administrative framework is put to test, the authorities along with the governmental agencies as well as judiciary should ensure better application of the existing laws, get more insights about the administrative law and apply the same in the practical world for a better and efficient functioning of the entire country. The legal experts, legislators, and the judiciary should draw insights from the pandemic and work together to guarantee that existing statutory mechanisms and foundational principles of administrative law are completely and adequately employed in the future.⁶² The safeguards against arbitrary rules and human rights breaches should be adopted.

In this context, firstly, there should be transparency and consistency in policymaking. There needs to be nationwide uniformity in handling pandemics by the government. The policy decisions, rationales behind such decisions and details on how

⁵⁹ Cary Coglianese and Neysun A. Mahboubi, "Administrative Law in Times of Crisis", *Administrative Law Review*, American Bar Association, Winter 2021, Vol. 73, No. 1 pp. 1-18.

⁶⁰ Report of the National Commission to Review the Working of the Constitution, (2002) Vol. 1, Chapter 8, para 8.2.14.

⁶¹ Third Report of the Second Administrative Reforms Commission (2006), Chapter 4, para 4.1.5

⁶² Maanvi Trivedi & Pranav Saini, "Challenges of Administrative Law: Review of COVID-19 in India", 5 *Indian Journal of Law and Legal Research*, Vol. 5, 2023, p. 1.

they will be carried out must be made public. Secondly, there should be administrative accountability⁶³ and supervision. In order to ensure reasonable exercise of discretion, there must be a rigorous system of checks and balances. The discretionary abuse must be dealt with grave consequences. Thirdly, policy decisions should be based on evidence and not on ideology. This is imperative to ensure that the policies implemented to combat the epidemic do not prove detrimental to society. To address future pandemics, we need a balanced approach integrating centralized efficiency with local discretion while upholding accountability, proportionality, transparency, human rights, and justice principles.⁶⁴

⁶³ V. Anup Menon, “Legislative Failure in the Management of the Covid-19 Crisis: Identifying and Addressing the Lacune in the Extant Law”, *International Journal of Management and Human Rights*, Vol. 5, 2023, p. 2231.

⁶⁴ Iza Rumesten, FirmanMuntaqo, (*et. al.*), “Discretionary Policy Responses in India and Indonesia amidst the COVID-19 Pandemic: Challenges, Strategies, and the Imperative for Legal Reform”, *JILS*, Vol. 8, 2023, p. 1151.