

Covid-19 And Federalism In India

Abstract

The pandemic due to novel corona-virus in the Indian federation is controlled in its initial stage through centralized institutional arrangements with synergistic relationships of all state governments. Public servants and security forces are responsible to enforce lockdowns. These arrangements, in the exit plan, need to gradually give way to the decentralized responsibilities of local governments including panchayats and municipalities. The contagion can only be prevented by changing human attitudes and behaviours. Local governments and community, closest to the residents, are best placed to bring this change and inculcate physical distancing on sustainable basis. Hence, the role of local governments must be prominent, at least, in the Disaster Management Act, 2005.

Introduction

Unlike in many federations in the world, the pandemic of Covid-19 in India brought new vigour to federalism and devolved governance. The Union and 31 state governments (including three union territories with legislative assemblies) are cooperating and acting almost uniformly. Prime Minister Modi announced a national lockdown on March 24 for three weeks and extended it till May 3 and extended this further in different forms. Each time, through video conferencing the prime minister consulted chief ministers of states before notifying on the extension of the national shutdown. Federalism and devolution have been enshrined in the Indian constitution and powers and functions are clearly divided between the union and states by drawing union and state lists in the 7th schedule. Both levels of governments have powers to enact legislation on the subjects enumerated in the concurrent list. However, 'Disaster Management' is not specifically mentioned in all the three lists of the seventh schedule of the constitution.

Such an unlisted subject comes under the residuary power of the union under entry 97 of the union list. Therefore, the Indian parliament has the competence to legislate on the subject. However, the primary responsibility of managing disasters rests with the state governments. Moreover, 'Public Order' and 'Public Health' have been part of the state list since the framing of the constitution of India. Further, consequent upon the 73rd and 74th amendments to the constitution in 1993, 'Public Health' was further elaborated in the 11th and 12th schedules. As a result, *panchayats* (rural local governments) and municipalities (urban local governments) have been assigned civic powers to render 'public health', to the residents in their respective jurisdictions.

Both union and state governments have the responsibility to prevent "*the extension from one State to another of infectious or contagious diseases*" [entry 29 of the concurrent list]. In addition, part XVIII of the Indian constitution provides emergency provisions. Until the mid-1970s, the proclamation of an emergency was permitted, under article 352, on three grounds- war, external aggression and internal disturbance. On the third ground, i.e. 'internal disturbance', Mrs Indira Gandhi, the then Prime Minister, imposed an emergency by invoking (misusing) article 352, in June 1975. Accordingly, civil rights of citizens were curtailed considerably. In 1977 as a result, the Congress Party led by Mrs Gandhi, lost the general election miserably. In 1978, through the 44th constitutional amendment, the Janata Party substituted "internal disturbance" with 'armed rebellion'. However, another provision, i.e. article 355 still allows the union to give directions to the states to protect the latter against 'external aggression' and 'internal disturbance'.

Under an emergency situation, the constitution allows the union to give executive directions to the states and to the legislatures on matters that fall under the state list such as law and order and public health. Even under normal circumstances, article 257 stipulates that the states should not exercise the executive power in a manner to impede or prejudice the executive power of the union.

The outbreak of the pandemic is arguably a case akin to a situation of 'internal disturbance', but cannot be a case for the promulgation of a state of emergency by invoking article 352 as 'internal disturbance' had been deleted in this article.

Statutes Applied to Fight Covid-19

Irrespective of the emergency provisions in the constitution, union and states have the statutory basis to deal with Covid-19. These are the Epidemic Diseases Act, 1897 of 19th century vintage, enacted by the British colonial authorities. Under this law, the power of the Government of India is restricted to "*the inspection of any ship or vessel leaving or arriving at any port [in India] and such detention thereof*".

The second legislation is the National Disaster Management Act, 2005 (DM Act). The parliament enacted the law by invoking entry 23, namely, "*Social Security and Social Insurance; Employment and Unemployment*" in the concurrent list of the constitution of India. Hence, it empowers union and state governments to frame rules and issue executive orders.

The DM Act is unambiguous in assigning powers to union and state governments. Section 62 of the DM Act stipulates

extraordinary powers to the union government by which any authority in union ministries, statutory bodies, state governments etc is bound to take direction from the ministry of home affairs of the government of India. The secretary of this ministry is ex-officio chairperson of the National Executive Committee under Section 8 of DM Act. The committee assists the National Authority that is created under Section 3 and headed by the Prime Minister of India.

The authority exercised its power on March 24 in the application and implementation of various measures including the nationwide lockdown, mandatory quarantine of certain cases, closing of all commercial and private establishments (except of essential items and health infrastructure), industries, hotels, educational institutions, places of worship of all faiths, political gathering, and travel bans by air, rail and road. Media, fuel station and essential goods store etc have been exempted. In normal circumstances, powers to lockdown, police, public health, shops and establishments are all in the hands of the states.

In addition, a national plan was drawn up under Section 11. Accordingly, states had been warned early on February 4, 2020 by referring National Disaster Management Plan, 2019 and the Biological Disaster Management Guidelines, 2008. Both are recurring exercises under the law.

At the state level under section 14, a 'State Disaster Management Authority' is required under the chairmanship of the Chief Minister of the respective state. This authority is assisted by a State Executive Committee headed by the Chief Secretary of the State. The committee prepares the State Disaster Management Plan after following the guidelines of the National Authority and a select consultation with the district and local authorities.

State and districts are authorized under Sections 24 and 34 to "control and restrict" the entry of any person and vehicular traffic from or within, the vulnerable or affected area.

Further, section 31 of the DM Act provides for a 'district plan' by the district authority in consultation with local authorities subject to approval by the state authority. The provision is akin to article 243 ZD, a mandatory constitutional provision, which envisages a 'district planning committee' (DPC) for spatial planning, infrastructure development, environmental conservation etc. State governments have provided the provision of DPC in their respective Acts but seem to be reluctant to make them operational. As a result, the process of decentralized planning is hampered and associated capacity development is completely denied.

Penal provisions in Chapter 10 of the DM Act pave the way of the security personnel to take coercive measures against offenders. However, medical professionals are not covered under this provision. Recent incidents of stone pelting and misbehaviour with doctors and nurses compelled the Government of India to introduce penal provisions protecting healthcare service personnel and their property against violence. For the purpose, an Ordinance has been promulgated on 22 April to amend the Epidemic Diseases Act, 1897 in the light of the pandemic situation of COVID-19. This could be a permanent provision to maintain the morale of the healthcare professionals and discipline miscreants.

Fiscal Transfer Mechanisms in Emergency Situations

The Union government provides financial assistance to meet expenditure on specified natural or man-made disasters on the basis of the recommendation of the union finance commission. The commission is mandated to make recommendations for two types of funds, one for disaster response and the other for mitigation. These two funds are envisaged under the DM Act. These funds are to be set up at three levels, i.e. national, state and district. Hence, for disaster response, the DM Act stipulates three funds called National Disaster Response Fund (NDRF) at national level, State Disaster Response Fund (SDRF) at state level and District Disaster Response Fund (DDRF) in each district. Similarly, the DM Act provides National Disaster Mitigation Fund (NDMF) at national level, State Disaster Mitigation Fund (SDMF) at state level and District Disaster Mitigation Fund (DDMF) in each district.

The 15th Finance Commission in its first report for 2020-21 has merged these two funds into one and calls it National Disaster Risk Management Fund (NDRMF) and State Disaster Risk Management Fund (SDRMF). Two windows of DM Act- 'mitigation'

and 'response' are part of this fund. However, resource requirements needed to fight Covid-19 are enormous and cannot be met through the usual financial provision recommended by the Finance Commission constituted every five years. Hence, on March 24, the union finance minister Mrs Sitaraman has announced a financial package which is about seven times bigger than the amount recommended by the 15th Finance Commission. The money is targeting 800 million people for three months. With this announcement many decisions related to social security and welfare have been taken including direct benefit cash transfers in the bank accounts of unemployed workers, poor women, disabled people and the like. For the purpose, resources are being transferred to states. In addition, there are a number of other big windows in the Prime Minister Care Fund in which almost every income tax payer has contributed liberally. Further on April 18, the Reserve Bank of India (the central bank) has increased the credit facility by 30 percent for state governments till September 30. The move was intended to help states in improving their liquidity to undertake short term expenditure over long term market borrowings.

The Last Mile

It may be observed that the pandemic until now is being controlled through centralized institutional arrangements with synergistic relationships of all state governments. Public servants and security forces have been enforcing the lockdown. These arrangements, in the exit plan, will gradually give way to the decentralized responsibilities of local governments including *panchayats* and municipalities.

Prime Minister Modi has already envisaged such a shift towards localization and decentralized planning. On April 24, he prominently pronounced the role of local self governments to combat COVID-19. He reiterated the same on 12 May. The contagion can only be prevented by changing human attitudes and behaviours. Local governments and community, closest to the residents, are best placed to bring this change and inculcate physical distancing on sustainable basis. Hence, the role of local governments must be prominent, at least, in the DM Act.

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Further Reading

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