

DE JURE NEXUS LAW JOURNAL

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1st Year, BBA LL.B.**PUBLIC HEALTH CRISIS AND THE CONSTITUTION****Abstract**

“Nations, economies, and people have all become more intertwined as a result of globalisation. It has also resulted in an unintentional increase in the globalisation of infectious illnesses. Several epidemics have struck the world in the last several decades, including the SARS (severe acute respiratory syndrome) outbreak in 2002-2004 and the Ebola pandemic in 2014-2016. The spread of infectious illnesses has been accelerated by the growing population, increasing urbanisation, and changing weather and environment. In today's digital era, it's been projected that an infectious agent may spread from a distant hamlet to any global centre in less than 36 hours, bringing with it the associated economic and societal consequences”.¹

Introduction

“We've seen officials promise the creation of health infrastructure and healthcare delivery systems at the community level as a result of previous epidemics. This has either not happened or is insufficient, as the present pandemic demonstrates. We must take advantage of this opportunity to devote cash, resources, and political capital to building robust global frameworks to respond to epidemics, perverse behaviours that make us more susceptible to epidemics, and underlying situations that can abruptly end our lives”.²

When the Covid-19 epidemic struck in early 2020, governments all around Asia and the Pacific were forced to act rapidly to deal with the enormous health crisis. Some nations were able to draw on past experience with the SARS and MERS epidemics as Covid-19 spread across the area, while others'

¹ Law journal / e- Article <https://www.orfonline.org/research/addressing-the-public-health-crisis-68974/>

² Law journal / e- Article <https://www.orfonline.org/research/addressing-the-public-health-crisis-68974/>

responses changed over time as the entire scope of the emergency and the enormity of the problem became obvious.³

Overview

Our constitution also gives power to the policy maker to tackle the health crisis. The Indian Constitution is the longest constitution in the world including a preamble and 448 articles. The Constitution is divided into 12 schedules and 22 parts. India is declared a "sovereign, socialist, secular, democratic republic" that guarantees "justice, liberty, equality, and fraternity" to all of its residents. Legislation is written, negotiated, and enacted in Parliament and state legislatures based on these fundamental principles, and it is then implemented. It is the state's essential obligation to protect its citizens' lives in unanticipated events and disasters. This document will be separated into two pieces from now on.⁴

In this situation, the Indian Government has invoke the Epidemic Disease Act (EDA) of 1897 to address the COVID-19 emergency. The powers granted by the Disaster Management Act (DMA) of 2005 have also been employed by the central government. As the country faces its first significant health emergency since independence, existing legal mechanisms to cope with a COVID19-like situation are insufficient and will require modifications in the future.⁵

I experienced first-hand the multiple conditions that rendered India and its people vulnerable to the last deadly COVID-19 wave as a son of India whose mother and family members acquired the virus despite safeguards. Decades of underinvestment in the country's primary healthcare infrastructure, as in other nations, was a factor, and, as is frequently the case when a crisis comes, individuals on the lowest end of the economic spectrum and in rural areas felt the brunt of the damage.⁶

Since the Nation-wide lockdown order, the constitutional and legal framework for managing epidemics and health emergencies has been at the centre of discussions and debates both inside and outside the country.⁷

The Indian Constitution guarantees everyone's right to health, regardless of race or religion (Kumar, 2015; Mathiharan, 2003). The essential right to life and personal liberty is plainly stated in Article 21 of the Indian Constitution, which might be claimed was infringed when the country imposed a country-wide curfew.

Provisions related to health are mentioned in Part IV of the Constitution in terms of the Directive Principles of State Policy;

- i. Article 39(a) mentions the responsibility of the State to provide security to citizens by ensuring the Right to adequate means of Livelihood.

³ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

⁴ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

⁵ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

⁶ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

⁷ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

- ii. Article 39(e) mentions the State's responsibility to ensure that "health and strength of workers, men, and women and the tender age of children are not abused."
- iii. Article 41 imposes a duty on the State to "provide public assistance in cases of unemployment, old age, sickness, and disablement."
- iv. Article 42 makes provision to "protect the health of the infant and mother by maternity benefit."
- v. Article 47 is about "raising the level of nutrition and the standard of living of people and improving public health."

India consists of 28 states and eight union territories. There is a constitutional divide between the central government's operating rights and obligations and those of the states and territories. Article 246 of the Indian Constitution has a seventh schedule that deals with the separation of powers between the Union and the States, and how legislation can be passed in each case. The Union List, the State List, and the Concurrent List are all included in the Seventh Schedule.⁸

The Union List has 97 things on which the Parliament can pass legislation, whereas the State List contains 62 items on which state legislatures can pass legislation. On the other hand, the Concurrent List contains 52 topics over which both Parliament and state legislatures have competence.

However, the Constitution gives federal supremacy to Parliament on the Concurrent List items in case of a conflict. Both the Central Government and the states are empowered to make laws related to public health. Items related to public health are mentioned in all three lists of the Indian Constitution. Quarantine, including all issues related to seamen's and marine hospitals and medical institutions, and are mentioned in numbers 28 and 81 of the Union List.⁹

The Right to Health is not explicitly mentioned in the Indian Constitution as is the Right to Education, but various judgments —

Consumer Education and Resource Centre versus *Union of India* (1995), *State of Punjab and others* versus *Mohinder Singh Chawala* (1997) and *Paschim Banga Khet Mazdoor Samity* versus *State of West Bengal* (1996) included the Right to Health as part of Article 21 of the Indian Constitution (i.e., Right to Life, and the Government has a constitutional obligation to provide health facilities to citizens) (Mathiwaran, 2003).

The Indian Constitution does not have any provisions for health emergencies, as previously stated. Following the proclamation of the pandemic, France quickly adopted the Emergency Response to the COVID19 Outbreak Act (2020290) to limit and manage the epidemic on March 23, 2020.¹⁰

⁸ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

⁹ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

¹⁰ Law journal / e- article by Kiran Kumar Gowd, Donthagani Veerababu, Veeraiahgari Revanth Reddy <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8250373/citedby/>

Conclusion

The COVID19 epidemic has raised concerns in India about a variety of issues, including the quality of health treatment, government and institutional responses, and law and order concerns. These issues should be addressed via the constitutional and legislative framework. While the Indian government effectively implemented the lockdown and decreased the number of cases, several MPs and legal experts questioned the lockdown's constitutional legitimacy and the government's response.

Though the Central Government has implemented the EDA and the DMA, these are not sufficient to face the health emergency effectively given the dynamic nature of the disease. This assignment has explored various options for bridging the gap and strengthening the constitutional and legal framework for addressing any future health emergency. These emergencies will give ample space to fill the lacuna in the legal framework, and allow our future generations to be better prepared for any type of health emergency.



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