

## Constitutionality of Lockdown in India

**Author-** Aditi patel

**College-** UPES, Dehradun

On March 24 following the PM's speech nationwide lockdown was declared for a period of 21 days. Since then there have been debates regarding the constitutionality of the lockdown. In order to understand the legality of lockdown in India, we need to understand the constitutional provisions as well as other statutory provisions granting the power for the same.

### Constitutional provisions

Emergency provisions are given under article 352 to 360 of the Indian Constitution. Emergency can be War, external aggression, internal disturbance, War like situations, Financial collapse, Democratic failure in a state but the word epidemic has not been reflected under the emergency provisions but this Peculiar Situation where a COVID 19 virus spread from part of one country outside India and has taken grip in all over the world and this is deadly virus that no vaccine or medicine is till date found.

### Why it isn't declared as emergency?

- Since India is democratic country like USA, Britain and France having some inherent weaknesses in our system which restrain us to proclaim national emergency as there is no such provision under our constitution for this pandemic situation.
- In absence of provision for such a situation to declare emergency, if govt take such steps which certainly create another type of rampage (Political Disturbance) and it will be impossible to protect the citizens and residents from Covid attack.
- In the view of above govt has only option to take legal action under the epidemic law rather than emergency provision under the constitutional to save the health and life of the citizen's action.
- Rather than proclaiming the emergency under the constitution govt has decided to control and handle the situation by implementing the provision under epidemic and other relevant laws available so that life health, hygiene of citizens and resident taken care without political disturbance.

- It is surprising to see that the terms ‘lockdown’ and ‘curfew’ have not been defined under Indian law but are still being used to curtail the fundamental right of movement enshrined under **Article 19(1)** of the Indian Constitution. This cannot be termed invalid as this right is subject to reasonable restrictions under Article 19(2).

### **Why lockdown was declared?**

- Symptoms and movement of Virus are also not specific and perfectly known to the experts of the medical field, Therefore, treatment is not very sure and accurate.
- Since it is a very new and threatening situation in the country across the borders therefore it has been declared worldwide alarming situation by WHO and other scientific organisations.
- Since world is fighting with such enemy whose movements are not well known to scientific world, therefore Precaution is the only solution in this pandemic situation to fight with deadly virus.
- In absence of provision for such a situation to declare emergency, if govt take such steps which certainly create another type of rampage (Political Disturbance) and it will be impossible to protect the citizens and residents from covid attack.
- When constitution was written they can't foresee this type of situation.

### **What is lockdown?**

- The Lockdown is an advisory from the Government to the public, though it is curfew like situation but not a curfew in legal language, it is a unique example of trust and cooperation between administration and public. It includes some safety measures and guidelines (made compulsory) by the administration on the basis of WHO or National health Program guidelines which are widely accepted by the public for their benefits
- Some examples of misadministration have also been noticed in some metro cities like Mumbai, Delhi, Bengaluru, Ahmedabad and Hyderabad, large no of working class

people ran away to their hometowns and villages by road or own vehicle which has spread the Covid 19 epidemic to small town and villages also

- The measures include the shutting of all non-essential government establishments, all commercial and private establishments, industries, transport by air, rail and road, hospitality services, educational institutions, places of worship, political gatherings, etc.

## Statutory Provisions

Apart from the emergency provisions, these two statutes provide Centre enough power to tackle the coronavirus situation by imposing lockdown:

- The Centre also took recourse to two other laws which provide the Centre and the states the statutory basis for acting against the pandemic: the Epidemic Diseases Act, 1897 (EDA) and the Disaster Management Act, 2005 (DMA).
- Epidemic diseases Act - EDA was enacted to tackle the situation of the State during the outbreak of a disease like Covid-19. It gives vast powers to take, or empower such measures and by public notice make such temporary rules that are necessary to prevent the spread of the disease. " **BURNISHED LAW JOURNAL**
- Disaster Management act -The Disaster Management Act was enacted for the effective disaster management and the related measures, and to set up a three tier disaster management system at national, state and district levels.
- In several states, the competent authorities have issued orders under Section 144 of the Code of Criminal Procedure, 1973, prohibiting more than five people from assembling in public places.
- The Home Affairs Ministry released the official notification and invoked the lockdown based on section 6 of the Disaster Management Act. The Home Secretary, as the Chairman of the National Executive Committee formed under Section 8 of the Act, provided guidelines for this lockdown under his powers under Section 10 of the Disaster Management Act.

On March 24 the NDMA issued guidelines to wear mask and maintain social distancing, recognizing Coronavirus as a disaster under the scope of this act.

All the guidelines issued to regulate the opening of restaurants and hotels or the movement of vehicles are issued by the NDMA. Even the SOP issued while unlocking are issued by the NDMA to control the spread of the epidemic.

**FAQ- The DMA was enacted to deal the natural disasters and not the pandemics. So, is it legally correct to issue guidelines under the DMA in the correct pandemic situation?**

As it is always said that ‘the necessity knows no law’, the Covid 19 pandemic was declared as disaster by the Centre following the doctrine of necessity.

## Fundamental Rights

**Article 19(1)(d)** of the Constitution of India grants every citizen right to move freely in the Indian territory.

Article 19(5) of the Indian Constitution states that *“Nothing in 1 [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.”*

***It basically implies that state can put reasonable restrictions on the travel for the public good and to protect the interest of schedule tribes and by allowing a person to go out to buy essential items, goods, services it is clear that the state has restricted the right to travel only due to infectious disease, COIVD-19 reflects that the restrictions on the travel are reasonable and are not violating fundamental right to travel freely in the Indian Territory.***

**Article 21** of the Indian Constitution grants the Right to life and personal liberty to every citizen and also includes Right to health under its purview. It is also granted under article 25 of the UDHR.

It states that *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and*

*necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”*

It imposes a duty on the state to protect life of every citizen and ensure that their rights are not violated, indicating that the lockout is constitutionally justified.

