Centre-States Role - Pandemic Times

What is the issue?

- The Central government has so far followed mostly a top-down approach in tackling the COVID-19 pandemic.
- Guidelines issued by the Centre to the States under the Disaster Management Act are said to be unconstitutional. Here is why.

What has the Centre's role been?

- During lockdowns 1.0, 2.0 and 3.0, the Centre has issued guidelines from time to time.
- These were issued under the Disaster Management Act of 2005.
- They contained varying restrictions on public activity and commerce, which the States are expected to enforce meticulously.
- In this, the States are only being allowed to increase and not dilute the restrictions.
- The centralised approach has put the federal structure of India under strain and this has turned out counterproductive.

- **E.g.** The Central government, in its latest guidelines, has classified all districts in the country as red, orange or green zones.
- But at instances were cases are only from a small portion of a district, keeping economic activity on hold in the entire district is undesirable.
- Another instance is in regards with Kerala, probably the best-performing State in terms of COVID-19 response.
- The Kerala government had issued revised guidelines in mid-April 2020.
- This was after a near-perfect recovery rate and a steep fall in the number of cases.
- But it was sent a communication by the Central government to refrain from relaxing restrictions in the State.

How does the federal scheme work?

- Under the federal scheme, Parliament and Stage legislatures can legislate on matters under the Union List (List I) and State List (List II) respectively.
- Both Parliament and State legislatures can legislate on matters under the Concurrent List (List III).
- The residuary power to legislate on matters that are not mentioned in either

List II or List III vests with Parliament.
- The Supreme Court too has held at various points that the entries in the legislative lists must be interpreted harmoniously.
- Finally, as per Articles 73 and 162, the executive power of the Centre and the States is co-extensive with their respective legislative powers.

What is the case with disaster management?

- Disaster management as a field of legislation does not find mention in either List II or List III.
- Nor does any particular entry in List I specifically deal with this.
- Thus, the Disaster Management Act could only have been enacted by Parliament in exercise of its residuary powers of legislation.
- [This is as per Article 248 read with Entry 97 of List I.]
- Can the Act be applied at all for dealing with a pandemic is the question now.
- The Disaster Management Act allows the Centre to issue guidelines, directions or orders to the States for mitigating the effects of any disaster.
- The definition of 'disaster' under the Act is quite broad and, literally speaking, would include a pandemic too.
- However, 'public health and sanitation' is a specific and exclusive field of legislation under Entry 6 of List II.
- This would imply that States have the exclusive right to legislate and act on matters concerning public health.
- Thus, the Centre's guidelines and directions to the States for dealing with the pandemic become contentious.

What does the Constitution specify?

- The Supreme Court has held repeatedly that federalism is a basic feature of the Constitution.
- Although the Union enjoys many more powers than States, the States are sovereign.
- Under Entry 29 of List III, both Parliament and State legislatures can legislate on matters of inter-State spread of contagious diseases.
- So, Parliament would be competent to pass a law that allows the Central government to issue directions to the States to prevent COVID-19.
- But that law is not the Disaster Management Act, which is concerned with disasters in general, and not pandemics in particular.
- In other words, 'Prevention of inter-State spread of contagious and infectious diseases' is a specific legislative head provided in List III.
- So, it should have been excluded from Parliament's residuary legislative powers.
- Clearly, the Disaster Management Act (enacted under Parliament's residuary

legislative powers) cannot be applied in this case.

Is there a specific law already in place?

- The Epidemic Diseases Act, 1897 has the objective of preventing the spread of dangerous epidemic diseases.
- However, under this Act, it is the State governments which have the prerogative to take appropriate measures.
- The Central government's powers are limited to taking measures for inspecting and detaining persons travelling out of or into the country.
- Even if it were amended, it would not empower the Central government to issue directions to the States to contain the pandemic within the State.
- It can only deal with inter-State spread of the disease.
- So by the present means, the States are not legally bound to observe the directions/guidelines issued by the Centre on the pandemic.
- It would be well within their rights to challenge them before the apex court.

Source: The Hindu