



सत्ये स्थितो धर्मः



**CENTRE FOR DISASTER MANAGEMENT AND LAW,  
NATIONAL LAW UNIVERISTY, ODISHA**

**PUBLICATION OF SELECTED ARTICLES**

**-OF THE-**

**1<sup>ST</sup> ARTICLE WRITING COMPETETION**

**-THEME-**

**LEGAL ASPECTS OF CORONAVIRUS PANDEMIC**

**IN ASSOCIATION WITH MEDIA PARTNER**

**KATCHERI.IN**



---

## INTRODUCTION

---

### ➤ ABOUT THE CENTRE

The Centre for Disaster Management and Law has been set up with the objective to promote vivid research in the field of Disaster Management, which is emerging globally as a full-fledged academic discipline. In the backdrop of its evolution from the practitioner's domain, its boundaries have been permeable. However, as a field of research, it demands specialisation to meet with the dynamic challenges posed by not only conventionally categorised disasters but new ones not viewed traditionally as disasters.

As India is a country vulnerable to disasters, comprehensive research on disaster management is quintessential to minimise its adverse impact on the growth of the country. The legal framework related to Disaster Management remains a grey area with a lot of ambiguities prevalent. Rehabilitation, systematic reconstruction and sustainable recovery post-disaster are areas which require persistent activism. The centre suggests a holistic legal resolution to deal with the integral aspects of preparedness, response and recovery. The mission of the Centre is to cater to the advancement of knowledge in disaster management, to respond to the sectoral needs and promote positive practices.

### ➤ MISSION OF THE CENTRE

The mission of the Centre is to cater to the advancement of knowledge in disaster management, to respond to the sectoral needs and promote positive practices. The disaster and its management need to be studied and talked more about. To be a think tank who by thorough research papers, webinar and various competitions makes the whole disaster management and its bye-laws a general discussion.

### ➤ VISION OF THE CENTRE

The Centre for Disaster Management and Law is one of its kinds and is the first Centre for such studies across the premium law schools. We have the vision to generalize the high/low-intensity disasters and preventions measures as a topic for rigorous research. We see ourselves to be centre for researching on disaster risk mitigations and management in India and to work or make efforts to make a disaster-free India by developing and promoting a culture of prevention and preparedness at all levels.

➤ **ABOUT THE COMPETITION**

There are seldom times when the survivability of humanity is tested and the current situation is one of those. The recent outbreak of COVID-19 has to put test people's patience, resilience and determination to survive against the unseen enemy. One of the ways in which such pandemic can be prevented is through the implementation of different kinds of laws addressing a variety of issues like the supply of essential commodities, ban against public gathering, implementation of section 144 and varied other issues. The idea of the competition is to make analyse the different action taken by the government in such drastic times and whether such action is being taken under the ambit of law or not. In that regard, the Centre has organized its 1<sup>st</sup> Article Writing Competition on the theme of "*Legal Aspects of Coronavirus*".

---

## MESSAGE FROM THE FACULTY ADVISOR

---

*The Centre for Disaster Management and Law was given to me by the National Law University, Odisha in a nascent state and as the idea became familiar to me, it gradually shaped itself into its present form. Throughout its execution, it has had complete possession of me and my Centre members. A strong desire was upon us then to embody it in our own person. I, along with my Centre members have so far verified what is done in these pages to keep it updated. Whenever any reference is made here in the webpage of our Centre, The Centre for Disaster Management and Law, during any event conducted by the Centre, it is done purely on the basis of truthfulness, dedication and commitment. The Centre aims to bring out the best through various events and is striving towards it with spontaneity.*

**Faculty Advisor,**  
Ms. Megha Sadhu,  
Research Associate cum Teaching Assistant,  
National Law University, Odisha

---

## PREFACE

---

The Coronavirus pandemic has halted our daily life and has forced us to live our lives virtually- some are calling it as the 2<sup>nd</sup> innings of their life. Such drastic changes in our daily schedule did not go as smoothly as expected since many people have faced a myriad of problems starting with lack of internet infrastructure, lack of availability of daily essentials, the imposition of lockdown by the central government, and above all, an exponential increase in the circulation of the fake news. Issues like these have compelled us to increase awareness regarding various aspects of coronavirus and in that regard, the Centre for Disaster Management and Law (CDML) has organised its 1<sup>st</sup> Article Writing Competition on the theme of “Legal Aspects of Coronavirus” in collaboration with media partner Katcheri. In

The details of the competition were released in the form of a brochure on 16<sup>th</sup> April on various platforms and the results were declared on 18<sup>th</sup> June. Over the course of the competition, we have received around 500 submissions from under-graduate and post-graduate students across various laws schools, advocates, professors of different universities and one foreign submission from the United States. Each of the articles dealt with various issues related to coronavirus in an in-depth manner which made the selection process tougher.

So, we undertook a 2 stag review process wherein, in the 1<sup>st</sup> stage the articles were checked for plagiarism and in the 2<sup>nd</sup> stage double blind-review was undertaken by the Centre. In the end, we selected 24 articles of which 20 articles were selected from the student pool and 4 articles were selected from the professional pool.

Though we couldn't publish all the articles, we were glad to see that participants were quite aware of the various issues related to Coronavirus and are doing their bit to increase awareness. It is only when people start to write about neglected issues that the attention of the people is shifted. That's why it is said that the first step towards curing any social evil is to write about that issue. We, as a Centre believe that till the time people continue to write about such issues, no issue will go unaddressed. We wish all the participants the best of luck for their future endeavours.

Lastly, we would like to thank our Hon'ble Vice-Chancellor Prof. Srikrishna Deva Rao and our registrar Prof. (Dr.) Yogesh Pratap Singh for their constant support, guidance and

motivation in conducting this competition. We, as a Centre would also like to thank our faculty advisor, Ms. Megha Sadhu, for believing in us and standing with us whenever we needed her guidance and support.

### **MEMBERS**

|                   |  |
|-------------------|--|
| Faculty-in-charge | Ms. Megha Sadhu  |
| Convenor          | Sagnik Sarkar  |
| Co-Convenor       | Mukesh Kumar   |
| Researcher        | Aayush Akar  |
| Members           | Parul Priya Nayak<br>Vartika Prajapati<br>Manas Shrivastava<br>Pency Agarwal<br>Nithya Reddy<br>Junaid Muhammad Anshad |

---

## DISCLAIMER

---

The facts and opinions in the articles published herein are solely the personal statements of the respective authors. The authors are responsible for all contents in their article(s) including accuracy of the facts, statements, citing resources, and so on. The Centre and the University disclaim any liability for violations of other parties' rights or any damage incurred as a consequence of using or applying any of the contents of the articles. Publication of articles, advertisements or product information does not constitute endorsement or approval by the Centre and the University.

The authors are responsible for getting permission from the previous publisher or copyright holder if an author is re-using any part of the paper (i.e. figure or figures) published elsewhere, or which is copyrighted. The Centre and the University have accepted the material submitted in good faith under the belief that the authors have full permission to publish every part of the submitted material including illustrations.

Information contained in our published works has been obtained by different authors from a multitude of sources believed to be reliable. Every effort has been made by the editorial board of the Centre to see that no inaccurate or misleading data, opinion or statements appear in the selected articles. However, neither the Centre nor the University guarantees the accuracy or completeness of any information published herein and neither the Centre nor the University shall be responsible for any errors, omissions, or claims for damages, including exemplary damages, arising out of use, inability to use, or with regard to the accuracy or sufficiency of the information contained herein.

All rights reserved. No part of the published articles may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the Centre since the copyright of the articles lies with the Centre as mentioned in the brochure –under the head of submission guidelines in point 10. Prior permission of the Centre should be sought before publishing the articles in any other forum.

---

**TABLE OF CONTENTS**

---

| <b>Sl. No</b> | <b>Name of the Article</b>   | <b>Authors Name</b>                   |
|---------------|--|---------------------------------------|
| 1)            | COVID-19 – Domestic Abuse And Violence In India  | Aditi Kalbhor<br>Anushita Dubey       |
| 2)            | Special Quarantine Legislation–Need Of An Hour   | Ms. Anagha<br>Pedgoankar              |
| 3)            | News in the times of coronavirus- True Or False?   | Himani Shakya<br>Astha Tiwari         |
| 4)            | Deconstructing The Epidemic Diseases Act, 1897 – Tackling<br>Structural Flaws And Inequities | Ishan Bhatngar<br>Ritesh Patnaik      |
| 5)            | Fake News Vicious Than Virus   | Mallika Sinha<br>Sudhanshu Pathak     |
| 6)            | The Threat Of Rising Coronavirus Cases In Indian Jails                                       | Raj Nandini Singh<br>Abdul Samad Khan |
| 7)            | Prisons In The Prevailing Paradigm Of COVID-19: An<br>Indian Perspective                     | Samiksha Agarwal                      |
| 8)            | The 1897 Indian Law Is A Toothless Lion Vis-À-Vis<br>Coronavirus                             | Sangram Singh<br>Shivansh Dwivedi     |
| 9)            | Evaluation Of Epidemic Disease Act, 1897   | Sanskriti Yagnik                      |
| 10)           | COVID Disaster: Health And Human Rights  | Simran Sabharwal<br>Shatakshi Arora   |
| 11)           | The Legality Of Quarantine Powers And Lockdown Orders<br>In India                            | Sonakshi Singh                        |
| 12)           | Curfew- A Preventive Measure For Coronavirus Pandemic  | Sonia S. Chillarge                    |
| 13)           | Combating COVID-19 In Education Sector: A Legal<br>Scenario                                  | Garima singh<br>Sharvin Vats          |
| 14)           | Is Coronavirus Pandemic An Act Of God?   | Kishan Singh Rathore<br>Aditi Choubey |
| 15)           | On Lockdown And Fundamental Rights – A Reflection  | Naganathan<br>Ramaswamy Iyer          |

|     |  |                                   |
|-----|--|-----------------------------------|
| 16) | Evaluation Of Epidemic Diseases Act, 1897  | Nidhi Prakriti<br>Kushagra Kundan |
| 17) | Aarogya Setu: A Function Creep In The Existing<br>Surveillance Regime?                     | Sanah Javed                       |
| 18) | Analysing The Lockdown As A Force Majeure Event For<br>The Lessors And Lessees             | Satyam Tandon                     |
| 19) | Legal Aspects For Persons With Disabilities During<br>COVID-19: Room For Improvement       | Sharon Raju                       |
| 20) | Fake News During A Pandemic  | Shaunak Choudhury                 |
| 21) | Legality Of Imposing Section 144 Of CrPc Amid COVID-<br>19 Pandemic                        | Simran Yadav                      |
| 22) | COVID-19 And “Shadow Pandemic” Of Domestic Violence<br>In India: An Unexpected Correlation | Sovik Mukherjee<br>Sneha Singh    |
| 23) | Evaluating The Epidemic Diseases Act, 1897   | Varun Srivastava                  |
| 24) | Prisoner’s Rights At Risk During COVID-19 Pandemic?  | Yash Tandon                       |

## COVID-19 – DOMESTIC ABUSE AND VIOLENCE IN INDIA

- By Aditi Kalbhor\*

Anushita Dubey#

The on-going global coronavirus outbreak, officially known as COVID-19 is declared as a 'pandemic' by the WHO (World Health Organization).<sup>1</sup> Coronavirus started from the city of Wuhan in China and it rapidly spread to other parts of the world. Today, it has affected each and every part of the world, from north to south and east to west, the states are locking down their cities to bring the situation of spread of virus under control. This novel pandemic is beyond ones imagination. Lockdown is the world's best bet against COVID-19, but it has left victims of domestic abuse even more vulnerable and helpless.<sup>2</sup> Secretary- General Antonio Guterres appealed to all the governments for maintaining peace in homes around the world. Further, he said that peace is not just the absence of war. Thus, women's safety should also be looked into during this lockdown.<sup>3</sup> The nationwide lockdown was announced by the Government of India on 24<sup>th</sup> March, 2020 but with this step of locking down the country, the government failed to make plans and policies in addressing some major issues as a result of lockdown. One of these issues is rise in the cases of Domestic Violence across the nation.

In this article, the author would like to shed light upon the current COVID-19 pandemic in relation with domestic violence in India, which can make the situation of existing domestic violence cases intense. This article also suggests some measures which can be taken by government to minimize this issue.

According to WHO (World Health Organization), out of every three women across the globe, one women face physical and sexual violence once in their lifetime and 30% of women who are in relationships have experienced Domestic Violence by their partners.<sup>4</sup> Many countries

---

\* Students, MMM's Shankarrao Chavan Law College, Pune.

# Students, MMM's Shankarrao Chavan Law College, Pune.

<sup>1</sup> 'WHO Director-General's Opening Remarks at the Media Briefing on COVID-19' (*WHO*, 11 March 2020) <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed on 5 May 2020.

<sup>2</sup> 'COVID-19 Lockdown: Statistics Show Surge in Domestic Violence Globally' *News18* (5 May 2020) <<https://www.news18.com/photogallery/india/covid-19-lockdown-statistics-show-surge-in-domestic-violence-globally-2606269-5.html>> accessed on 4 May 2020.

<sup>3</sup> UN, 'UN Chief Calls for Domestic Violence 'Ceasefire' amid 'Horrible Global Surge' <<https://news.un.org/en/story/2020/04/1061052>> accessed on 4 May 2020.

<sup>4</sup> WHO, 'Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence' <[https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1)> accessed on 5 May 2020.

in the world consider Domestic Violence as 'intimate partner violence'. It is not only associated with women but includes child and elderly abuse too. Domestic Violence includes physical violence, sexual violence, psychological abuse, threat, and humiliation towards women.

Domestic Violence is prevalent in India since many years due to orthodox and conservative society where the mind-set of the people is narrow and fixed that men are superior to women. Today, domestic violence is not only seen in rural areas but also in urban areas. In rural areas, domestic violence is caused mainly due to dissatisfaction of dowry, habitual consumption of alcohol by husband and desire of a male child. Whereas, in urban areas we find that domestic violence is caused due to higher income of woman than the men and working pattern of the woman. Further, even widows face abuse and are neglected. Such a situation is already horrific and now when women are staying indoors, it is more threatening to them resulting into domestic violence.

According to National Commission for Women (NCW), between February 27 to March 22, 396 complaints of Domestic violence whereas after 22 March, that is From March 23 to April 16, 587 Domestic violence complaints were registered. Similarly, in the initial 11 days of lockdown, 92000 SOS calls were received by Child Line India Helpline Number.

A Hindustan Times analysis of cases recorded across the country reveals two important aspects. First, there are some states such as Rajasthan, Madhya Pradesh, and Telangana that have reported a decline in complaints. While Delhi, Noida and Mumbai has reported a rise in calls received by different helplines. This indicates that domestic violence during lockdown depends upon the ability of victims to make complaints while they share domestic spaces with perpetrators.<sup>5</sup>

Many researchers have find out through their study that the number of domestic violence cases are increased mostly when the members of the family live together for a longer period of time.

Apart from this, the reasons for increase in number of domestic violence cases during Lockdown can be due to compulsory stay at home orders by the government, lack of external support and communication, anxiety & uncertainty as to for how many days this situation of lockdown will continue & economic crisis etc.

---

<sup>5</sup>Dhamini Ratnam, 'Domestic Violence during COVID-19 Lockdown Emerges as Serious Concern' *Hindustan Times* (26 April 2020) <<https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehgLOOPpe8J.html>> accessed on 6 May 2020.

Another reason for such shadow pandemic during COVID-19 in India can be the patriarchal system prevailing in the society. The burden of household work is wholly shifted on the women's shoulder because it is one of the said principles of our Indian society that the household chores are to be done by women only. Due to this, whole day women have to keep doing the work in which they don't find any sort of help by other members of the family and especially from their husbands, which finally resulted into depression, frustration & aggression. As the lockdown has been extended, women who are already facing domestic violence may have to suffer more due to the government's decision to open liquor shops. This has worsen the condition of women

The lockdown in India and rise in domestic violence cases have through light upon the loopholes in anti-domestic violence laws. A detailed study of MS Radha Lyengart at Harvard University contends that police actions in case of domestic violence are the main reason for increase intimate partner homicides. So, now the question is that should we adopt punitive punishments or penal sanctions on the abuser of domestic violence during Lockdown or not?<sup>6</sup>Even though we have laws for Anti Domestic Violence, many states have failed in its proper implementation. There are many questions related to appointment of Protection Officers in terms of their qualifications because most of them don't have any social work background or legal knowledge, so how can they be sensitive to the issue of domestic violence is at the top of the list of questions. Lack of budget allocation, poor infrastructure for shelter homes are also the major concern. Medical profession doesn't consider Domestic Violence as public health issue even though they are the stakeholders in Protection of Women against Domestic Violence Act, 2005.

Not only in India, but there is global surge in increase in number of domestic violence cases all around the world during lockdown. It is very contending noticeable rise. The actual number of cases out of which are reported through calls and e-mails might vary as many of the victims are unable to seek help. It was reported that the shelter homes in Italy for women who face domestic violence started to get occupied soon after the lockdown was announced. It was noted in Spain that 18% more calls were received on daily basis by women facing domestic violence on their emergency helpline number after the commencement of lockdown

---

<sup>6</sup>Sanjay Vashishtha, 'Domestic Violence during the Coronavirus Lockdown: Potential Solution from a Criminologist's Perspective' (*Bar and Bench*, 16 April 2020) <<https://www.barandbench.com/columns/policy-columns/domestic-violence-and-lockdown-potential-solution-from-a-criminologists-perspective>> accessed on 5 May 2020.

orders. Similarly, in Singapore and Australia, 33% rise was calculated on the basis of phone calls received on women helpline number and 75% Google searchers for domestic violence was found respectively.

Some of the measures taken up by the government of various countries to curb the drastic increase in domestic violence cases during Lockdown are helpful. In France, pharmacies are trained to report domestic violence cases which come up to them by women who can alert the shopkeepers with the code word 'MASK 19' if they face any kind of violence. Those women who are afraid of returning back to their homes are giving hotel rooms to stay for which government pays up to ₹20,000. In Australia, \$92 million was announced by the government as a support to victims of domestic violence, family and sexual violence during the COVID-19 pandemic. In Spain, the vacant hotels are converted into shelter homes for the women who face domestic violence. Italy has also launched an app that let women who face domestic violence to report it without making any call or email. Such steps need to be brought into practice in context of India also.

The governments inventing plans for fighting against COVID-19, addressing domestic violence should be prioritised during lockdown this can be done by undertaking various measures.

Administration and law enforcement agencies should provide safety and security to women. The provisions of Domestic Violence Act and other legislations such as Section 498 A of Indian Penal Code, 1860 should be effectively implemented. State governments should ensure that the helpline services are running. Civil societies and NGOs should provide assistance by providing legal aid, medical facilities and shelter homes. Awareness regarding domestic violence should be promoted through news channels, radio and social media as these platforms have wide reach during lockdown. Citizens and neighbours should be alert, careful and urged to intervene, if they suspect any abuse and report the case. Legal Services Authorities at the National, State, District and block level, constituted through the Legal Services Authorities Act, 1987, are required to provide free legal aid and advice to women at all levels. Counselling should be promoted for the promotion of better mental health of an individual during the lockdown because it is observed that increase in tension or pressure from the surrounding circumstance increase the aggression level of an individual which eventually leads to domestic violence. 24/7 helpline numbers must be effectively implemented according to every district or zone. Appointment of 2 qualified protection officers must be made in every area during Lockdown so that quick access to the help for women who face domestic violence indoors can be made possible. Those women who are ready to shift in the

shelter homes must be given the assurance of taking their children along with them. Bringing in practice these measures, it would be easy to suspect and report domestic violence cases and eventually suppress it.

Domestic violence is one of the crucial and hidden challenges faced by our country in terms of women which need to be tackled quickly along with the global pandemic that is COVID-19. We the people of our country should not neglect women's rights and safety. This lockdown has not only resulted into greater level of abuse suffered by existing victims but also led to new victims. Thus, quarantine or staying safe at home is a different outlook for women. As this is the third phase of lockdown, we don't know when we will emerge out of this situation government should arrange efficient measures and resources to help women in distress.

## **SPECIAL QUARANTINE LEGISLATION–NEED OF AN HOUR**

**-By Ms. Anagha Pedgoankar\***

### **ABSTRACT**

*Coronavirus disease (COVID-19) is an infectious disease caused by coronavirus. Virus spreads primarily through contact of infected person. And hence, to prevent further spread Indian government like or countries quarantined people coming from abroad and people having COVID-19 symptoms. However, a fundamental question arises in our case ‘is government empowered to quarantine people in India?’ Unlike or countries India has no legal framework empowering government to quarantine people. As a need of an hour Indian Government resorted to 120 years old pre constitutional Epidemics Disease Act, 1897 to frame quarantine regulations. However, quarantine regulations scratches concept of Right to life, livelihood, privacy, move freely throughout India it contradicts constitutional framework. Though rights are subject to certain reasonable restrictions but again question comes what are reasonable restrictions? Are restrictions imposed by government authorities reasonable in real sense? Ignoring this fact and without proclaiming emergency authorities have taken away rights of people. Though loss of liberty is worth paying, tussle between quarantine – need of an hour and rights – guaranteed by constitution is evidence of absence of legal framework and dependence of authorities on 120 yrs. old law. Thus, this research paper aims to search legality of quarantine powers, assessing tussle of present times, legal framework in India, finding out loopholes in present framework and proposing a legal solution in form of a separate legislation to bring unanimity between fundamental rights and public health regulations.*

---

**\*Advocate, Bombay High Court.**

## I. INTRODUCTION

Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus.<sup>1</sup> Virus spreads primarily through droplets of saliva or discharge from nose when an infected person coughs or sneezes<sup>2</sup>. Hence, various countries like Canada under Federal Quarantine Act, England under Health Protection Regulation, 2020 etc. quarantined people so as to prevent further spread of COVID-19. Indian government, in this brink of Catastrophe, also quarantined people. However, fundamental question arises is government empowered to quarantine people in India? Unlike or countries India has no legal framework empowering government to quarantine people. As a need of an hour Indian Government resorted to 120 years pre constitutional Epidemics Disease Act, 1897. However, as Act was pre constitutional it had no provisions of quarantining people by protecting fundamental rights. Quarantine regulations framed by Indian Government pursuant to Epidemics Disease Act, 1897 thus, contradicts Constitutional framework. As quarantine regulations scratches concept of Right to life, livelihood, privacy, move freely throughout India. Though this right is subject to certain reasonable restrictions but again question comes what are reasonable restrictions? Are restrictions imposed by government authorities reasonable in real sense? Again fact comes that authorities are not empowered to take away se fundamental rights without imposing emergency and not even can take some of se in emergency. However, without resorting to emergency powers authorities have taken away rights of people though it is worth doing so. Tussle between quarantine – need of an hour and rights – guaranteed by constitution is evidence of absence of legal framework and dependence of authorities on 120 yrs. old law. Thus, this research paper aims to draft new legislation for quarantining people, looking back into bad experiences in past, assessing tussle of present times, legal framework in India, and finding out loopholes in present framework.

## II. OBJECTIVES OF STUDY

- To explore legality of quarantine powers.

---

<sup>1</sup> WHO, 'Coronavirus' <[https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1)> accessed on 13<sup>th</sup> April, 2020.

<sup>2</sup> *ibid.*

- To find out a legal solution to curb tussle between need of quarantining and rights of people.

### III. RESEARCH METHOD

Researcher has chosen doctrinaire method of study. Researcher has referred to primary as well as secondary sources. Amongst primary sources bare Acts, various judgments of judiciary and various commission reports and amongst secondary sources research articles, newspaper clippings and information available on various websites is referred for study and conclusion.

### IV. QUARANTINE – CONCEPT

Word quarantine has its roots originated from Italian word “*quaranta giorni*<sup>34</sup>”. In Cambridge Dictionary, “Quarantine” is defined as a period for an animal or person that might have a disease is kept away from or people or animals so that disease cannot spread.

Quarantine is an ancient tool used to prevent spread of disease. Bible describes sequestering of persons with leprosy, and practice was used widely in 14th-century Europe to control spread of bubonic and pneumonic plague.<sup>5</sup>.

As COVID-19 spreads through contact Government of India is quarantining people having symptoms of COVID-19 for generally 14 days and/or till COVID-19 test of isolated person comes negative.

### V. LEGALITY OF QUARANTINE IN INDIA

Ministry of Health and Family Welfare of India has issued proper guidelines for home quarantine which is applicable to all form of suspect and confirmed cases of COVID-19<sup>6</sup>. Now fundamental question arises here ‘can authorities forcibly quarantine COVID-19 suspect though loss of liberty is worth paying?’

---

<sup>3</sup> Gian Franco Gensini, ‘Concept of Quarantine in History: From Plague to SARS’ (2004) 49 Journal of Infection.

<sup>4</sup> Arya Anand, ‘Power of Quarantine and Related Laws in India’ (*Legal Bites*, 4 April 2020), <<https://www.legalbites.in/quarantine-related-laws-india/>> assessed on 9April 2020.

<sup>5</sup>S Knobler, ‘Learning from SARS: Preparing for Next Disease Outbreak’ <<https://www.ncbi.nlm.nih.gov/books/NBK92450/>> accessed on 9April, 2020.

<sup>6</sup>Ministry of Health and Family Welfare, ‘Guidelines for Home Quarantine’ <<https://www.mohfw.gov.in/pdf/Guidelinesforhomequarantine.pdf>> accessed on 29 April 2020.

One of earliest precedents is found in decision of US Supreme Court case *Gibbons v Ogden*, wherein powers of state to enact quarantine laws are justified in cases of health emergencies<sup>7</sup>.

When we come to India, government of India under several following laws is empowered to quarantine people.

### 1) CONSTITUTION OF INDIA:

**Article 21** –To protect right to health and curb spread of COVID-19 authorities are quarantining people having symptoms.

**Article 47** – As primary duty of state to improve public health state may make regulations to improve public health thus including quarantine regulations.

**Seventh Schedule** - both central and state government are empowered to carry out measures to control COVID-19 so have powers to quarantine people.

**Emergency Provisions:** Union Government is empowered to declare national emergency in case of epidemic and frame regulations during emergency.

### 2) CONSTITUTIONAL IMPEDIMENT:

Though, the right to health is an integral part of right to live<sup>8</sup> quarantining can affect right guaranteed under Article 19 of constitution. Though this right is subject to certain reasonable restrictions but again question comes what are reasonable restrictions? Are restrictions imposed by government authorities reasonable in real sense?

Right to privacy and right to livelihood again come in contradiction with existing imposition of quarantine. By quarantining people authorities are taking away right to livelihood of citizens as

---

<sup>7</sup> Tarique Faiyaz, 'COVID-19 and Current Challenges For Enforcement of Quarantine Law In India' (*Legal news and research*, 14 April 14 2020) <<https://www.jurist.org/commentary/2020/04/tarique-faiyaz-covid-19-quarantine-india/>> accessed on 9April 2020.

<sup>8</sup> State of Punjab and Ors v Monider Singh Civil Appeal Nos 16980-81 of 1996.

they are not able to work. Disseminating list of quarantined people as happened in Mohali is again violative of Right to privacy, a fundamental right<sup>9</sup>.

Now again without imposing emergency authorities are not empowered to take away fundamental rights of people and even in emergency authorities are not empowered to suspend some fundamental rights. However, this imposition of quarantine has created debate as government under garb of reasonable restriction has taken away fundamental rights without any emergency and also those rights are suspended which cannot be even suspended during emergency.

### **3) EPIDEMIC ACT, 1897**

This Act was framed British government after bubonic plague out broke at Bombay Presidency.

**Section 2** of Act is significant as it permits state and central government to take special measures and give regulations for general public that helps in containing spread of disease. It has a wide scope of legislation<sup>10</sup>.

**Section 3** of Act prescribes penalty for disobeying of any regulation along with section 188 of IPC. Presently people who are disobeying quarantine rules are charged under this section r/w 188 of IPC.

Some states and union territories pursuant to this Act have issued regulations like Delhi Epidemic Diseases, COVID-19 Regulations, 2020, Maharashtra Epidemic Diseases COVID-19 Regulations, 2020 to deal with COVID-19.

#### **A. LOOPHOLES:**

This 120 years old Act is described as archaic having major limitations. Though its emphasize is on quarantine without providing or scientific methods of outbreak prevention and control, such as vaccination, surveillance and organized public health response it is silent on how quarantine

---

<sup>9</sup> KS Puttaswamy v Union of India Writ Petition (Civil) No 494 of 2012.

<sup>10</sup> Epidemic Diseases Act 1897, § 2.

<sup>11</sup> Arya Anand, 'Power of Quarantine and Related Laws in India' (Legal Bites, 4 April 2020), <<https://www.legalbites.in/quarantine-related-laws-india/>> accessed on April 23, 2020.

shall be followed. Total dependence of Act on section 188 of IPC for punishment leads to ambiguity in Act. The Act being pre-constitutional in nature provides eminent powers to Centre and states without any parliament overview<sup>12</sup>.

#### **4) *DISASTER MANAGEMENT ACT, 2005***

Center in order to curb novel corona virus has also invoked provisions of Disaster Management Act, 2005. Center has invoked section 10 of said Act which deals with monitoring and implementation of national plan prepared by ministry<sup>13</sup>. By invoking power conferred under this Act Ministry of Health and Family welfare has issued regulations to quarantine people coming from or countries, to quarantine people having symptoms of COVID-19.

##### **A. LOOPHOLES:**

Though this Act deals with monitoring and implementation of National Plan but again this Act is also silent on quarantine measures in particular.

#### **5) INDIAN PENAL CODE:**

Section 188 read with (r/w) section 3 of Epidemic Act punishes people for not following rules and 271 deals with punishment for disobeying quarantine rule. Section 269 and Section 270 empowers police to charge for negligent act of spreading virus. Thus, indirectly for those who violates the quarantine.

#### **6) OTHER LAWS:**

Air Craft Act, Indian Aircraft rules and Indian Port Health Rules, 1955, are some other legislation empowering authorities to quarantine during health emergencies.

---

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

Besides these substantive provisions, imperative tone of procedural rigors of Section 133 of Criminal Procedure Code read with punitive temper of section 188 IPC makes prohibitory act an obligatory duty<sup>14</sup>.

(Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017 was introduced which also empowered authorities quarantine people who might have been exposed to disease.

## VI. CONCLUSION AND RECOMMENDATIONS

As India grapples outbreak of COVID-19 authorities started to quarantine people having symptoms of COVID-19 so as to prevent further spread. By resorting mainly to more than a century old pre constitutional Epidemics Act authorities framed quarantine regulations in India. Authorities while doing so ignored the fact of taking away fundamental rights without resorting to emergency provisions and depending upon outdated pre constitutional law framed quarantine regulations which in turn resulted in violation of fundamental rights. This is only because of absence of specific regulation governing quarantine as are specifically enacted in or countries like Australia. Researcher with an aim to provide guidance to policymakers and address present scenario researcher concludes research with following suggestions:

1. Instead of depending upon Epidemic Act and n correlating it with IPC Specific legislation empowering police and local administrative bodies to quarantine people having symptoms of any infectious disease shall be enacted also having provisions of punishments.
2. It shall provide under which circumstances authorities are empowered to quarantine.
3. It shall also lay down rights of quarantined people and remedies for violation.
4. It shall lay down procedure to be followed before quarantining people and also some short procedure in case of emergencies to be followed by authorities.

---

<sup>14</sup> Tarique Faiyaz , ‘COVID-19 And Current Challenges For Enforcement of Quarantine Law In India’, (*Jurist*, 14 April 2020) <<https://www.jurist.org/commentary/2020/04/tarique-faiyaz-covid-19-quarantine-india>> accessed on 23 April 2020.

5. It shall define different types of quarantines like self-quarantine, quarantine by authorities, and quarantine by health officers.
6. It shall consist of provision of confidentiality and shall provide punishment for violation.
7. Guidelines for protecting civil rights of quarantined shall be laid down.

## NEWS IN THE TIMES OF CORONAVIRUS- TRUE OR FALSE?

- By Himani Shakya\*

Astha Tiwari#

Amongst the entire novel virus discovered in the recent past, severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2), has become a basis for panic in people. There's more which is adding fuel to the fire, that is, fake news on every platform. Fake news is spreading on every social media platform; irrespective of the fact, it is an open or a closed platform. News with false claims is spreading with rapid speed and sadly, faster than the virus itself. Nowadays, in no time, fake news becomes viral on the social media platform. The irreparable consequences of misleading pieces of viral information are spectated by most of us. No one can overlook the impact of fake news all over the world. This news with fraudulent claims has often put countless innocent lives in jeopardy.

While addressing foreign policy and security experts at Munich Conference, Director-General of World Health Organisation (WHO) Dr Ted Adhanom Ghebreyesus said: 'We are not just fighting to the epidemic; we are fighting infodemic.'<sup>1</sup>To conclude his speech, WHO's Director-General said "This is a time for facts, not rumours. This is a time for solidarity not stigma."<sup>2</sup> These remarks by Director-General certainly communicate his deep-felt concerns about the mortifying outcomes of false news throughout this pandemic. The issue of fake news/misleading information is notably pressing that Dr. Ted had frequently discoursed concerning it. He had tweeted 'Our common enemy is COVID-19, but our common enemy is also "infodemic" of misinformation.'<sup>3</sup>From scammers trying to sell fake preventive cures with exaggerated claims to perpetrators breaching sensitive information from hospital's database is making the crisis worse.

It was in Wuhan, China; when for the first-time uprising of COVID-19 cases were reported. After then, social media in India began overflowing with awareness messages about the virus as the awareness about this life-threatening virus has suddenly taken a surge. Social medium

---

<sup>Ⓓ\*</sup> Student, Galgotias University.

<sup>Ⓓ#</sup> Student, Galgotias University.

<sup>1</sup> 'This Is a Time for Facts, Not Fear,' says WHO Chief as COVID-19 Virus Spreads' (*UN News*, 2020) <<https://news.un.org/en/story/2020/02/1057481>> accessed 1 May 2020.

<sup>2</sup> *ibid.*

<sup>3</sup> UN, 'Coronavirus' <<https://www.un.org/en/un-coronavirus-communications-team/un-tackling-%E2%80%98infodemic%E2%80%99-misinformation-and-cybercrime-covid-19>> accessed 1 May 2020.

has then abruptly taken up a new role, that is, provider of information on the outbreak-various theories on the origin and advertisements of untested treatment<sup>4</sup> for the coronavirus. It even offered unusual precautionary diets. These viral messages with false claims challenged both medical science and reasoning.

In the recent past, there has been a chaos which resulted in some serious damage because of the surge in fake news on social media due to which SC gave certain directions for curbing fake news from causing further social disharmony. The Apex of India, on 31<sup>st</sup> March 2020, directed the Centre Government to take strict action against the person indulged in spreading fake news with an aim to cause social disharmony in society, within its powers. Supreme Court had also directed the media (print, electronic or social) to refer and publish the official version of developments on COVID- 19. The media, also considered as fourth pillar of democracy, was directed to not disseminate any unverified news which is capable of spreading panic among general public. Taking the note of imperils of news; Supreme Court had further observed on the menace of fake news: ‘It is well known that panic can severely affect mental health. We are informed that the Union of India is conscious of the importance of mental health and need to calm down those who are in a state of panic.’

The on-going pandemic has uncovered the obvious loopholes in the legislative framework of India. There are no specific laws for deterring mischievous people to spread fake news. The freedom of press flows from the article 19(1) (a) of the constitution of India guaranteeing freedom of speech. The constitution makers have provided us a freedom of speech, but this fundamental right has reasonable restrictions. The present statutory laws to curb fake news in The Indian Penal Code, 1960, which is section 504( Intentional insult with intent to provoke breach of peace), 505(statements conducing public mischief, creating/promoting enmity, hatred or ill-will between classes), 507(criminal intimidation by an anonymous communication) 153A(promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and committing acts prejudicial to maintenance of harmony) and 295A (acts intending to insult religion/religious beliefs) along with sections 66D (punishment for cheating by personation by using computer resource) and 67(punishment for publishing or transmitting obscene material in electronic form) of the Information Technology Law, 2000.

---

<sup>4</sup> National and others, ‘Fighting Fake News Amidst Covid-19’ (*businessline*, 2 April 2020) <<https://www.thehindubusinessline.com/opinion/fighting-fake-news-during-covid-19/article31233348.ece#>> accessed 1 May 2020.

In the case of *Selvi J Kavlin v The Commissioner of Police*<sup>5</sup> the High Court had held that *'Forwarded messages are equal to accepting the message and endorsing the message.'* The same observation of court can be applied to WhatsApp messages because we blindly forward any forwarded message with a firm belief of creating awareness among friends and family. This is necessary for responsible digital citizen to prevent blind forwarding of messages on internet. These blind forwarding have often resulted in mob-lynching at various places in our country.

For the current scenario of COVID-19, section 54 of the Disaster Management Act, 2005 has a provision which awards for punishment for false warning about a crisis.

*'Punishment for false warning'*

*'Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.'*

Notwithstanding, the ambit of this section is circumscribed. This particular section can be applied in similar situation like this current pandemic and could hardly have any deterrent effect in other situation. This act since colonial days has many lacunas but still has been left un-scrutinised by the Indian judiciary. There are regulatory bodies to regulate the content published by news agencies and broadcasted by electronic media houses. Press Council of India (a statutory body) can censor any content of a newspaper, news agency, an editor or journalist or disapprove the conduct of an editor or a journalist on the ground of violation of ethics of journalism. Sanction of Central Board of Film Certification (CBFC) is required for broadcasting films via television. However, CBFC doesn't have power like Press Council of India. Similar to the existing legislation in Singapore, India also need a statutory framework to tackle the spread of false news via media, 'Protection from Falsehood and Manipulation Act', to prevent the electronic communication of false statements or misleading information and ordering sanctions up to a maximum fine of \$500,000 (roughly INR 2,65,38,000) and maximum jail time of 10 years<sup>6</sup>. There are countries like Germany and France which have laws to curb fake news by imposing a fine, if social media didn't put down the concerned post with false claims within 24 hours.<sup>7</sup>

---

<sup>5</sup> *Selvi J Kavlin v The Commissioner of Police* WP No 12570 of 2018.

<sup>6</sup> Prabudh Sunil, 'Towards a Legal Framework to Tackle Fake News' (*Livelaw.in*, 21 April 2020) <<https://www.livelaw.in/lawschool/articles/towards-a-legal-framework-to-tackle-fake-news-155556>> accessed 30 April 2020.

<sup>7</sup> *ibid.*

The imperils of content with false claims on open social media platforms forced the Information Technology Ministry, on 5th April 2020, to request Tiktok and Facebook to remove users who were indulged in spreading misinformation on their respective platforms and to ensure that any rogue message<sup>8</sup> should not go viral. While addressing a press conference in Lucknow on 14th April 2020, Additional Chief Secretary (Home), UP Avinash Awasthi informed that several social media accounts Tiktok, Facebook accounts were blocked. This action was taken because these users were indulged in spreading fake news amid Coronavirus. These ignorant users were spreading misinformation regarding COVID-19 on their social media accounts and misinformation was capable of misleading common masses. The IT Ministry has profound concern because these are free open platform and easily accessible by anyone, and these ignorant people were adding fuel to this current crisis. The fake messages or videos will only weaken the efforts of government to contain and control this life-threatening virus.

Many voluntary initiatives have been taken by the fact-checking websites to verify any viral post or message on social media platform and capable of causing social disharmony in society. There are many facts checking websites, and their whole line of work is dedicated to verifying the authenticity of a viral post regarding any fact, information or statement. Even media houses have setup a fact-checking department. These fact-checking are all voluntary initiatives taken by state actors.

## **I. CONCLUSION**

The impact of COVID-19 around the globe is perceived by all of us. The world has come to a halt as almost every country is under lockdown to contain this fatal virus. The mortality rate of every country has experienced a surge. There is at present panic among people. Fake news or misinformation is making the situation worse and causing mayhem. The lack of statutory laws to combat fake news in our country is a matter of concern. Viral messages and videos with fraudulent claims are doing nothing except undermining the government's effort to contain the virus. Our effort to prevent this infodemic doesn't seem to cause a deterrent effect on mischievous or ignorant people. The necessity of the time recommends enacting new laws with a more systematic and comprehensive approach which can tackle fake news.

---

<sup>8</sup> 'Tiktok, Facebook Asked to Remove Users Spreading Virus Misinformation' (*NDTV Gadgets 360*, 2020) <<https://gadgets.ndtv.com/apps/news/government-said-to-ask-tiktok-facebook-to-remove-users-spreading-coronavirus-misinformation-2208024>> accessed 1 May 2020.

# DECONSTRUCTING THE EPIDEMIC DISEASES ACT, 1897 – TACKLING STRUCTURAL FLAWS AND INEQUITIES

-By Ishan Bhatngar\*

Ritesh Patnaik#

## I. INTRODUCTION

As the daily cases in India continues to defy the expected curve of a slowdown, the past two months have posed interesting questions on the wake of the government, falling back on a 123 year old law as well as the Disaster Management Act,<sup>1</sup> which provides no provision for its exercise in this context.<sup>2</sup>With healthcare being India's Achille's heel,<sup>3</sup>the already declining economy has taken a turn for the worse<sup>4</sup>, disproportionately impacting certain marginalized sections that is characteristic of the deep seated inequality that still permeates Indian economic and political life.<sup>5</sup>

The Epidemic Diseases Act, 1897 (*hereinafter 'the Act'*)<sup>6</sup> consists of merely four sections which *firstly*, does not define an epidemic disease or provide an eligibility criterion for when the Act may be enabled.<sup>7</sup>It does not provide the standard operating procedure or the manner in which the extraordinary powers may be exercised.<sup>8</sup> It simply gives the governments at the state level a legislative basis to assume extraordinary powers in case the Government *thinks* that its ordinary powers do not suffice in mitigating the epidemic.<sup>9</sup>*Secondly*, we raise concerns over the state capacity and the legislative mechanism to enforce and regulate bodies

---

\*Student, National Law University, Delhi.

#Student, National Law University, Delhi.

<sup>1</sup> Gautam Bhatia, 'An Executive Emergency: India's Response to Covid-19', (*VerfBlog*, 13 Apr 2020), <https://verfassungsblog.de/an-executive-emergency-indias-response-to-covid-19/> accessed on 10 May 2020.

<sup>2</sup> Disaster Management Act 2005, § 2(d).

<sup>3</sup> Kasthuri, Arvind, 'Challenges to Healthcare in India - The Five A's.' (2018) 43 *Indian Journal of Community Medicine* 141-143.

<sup>4</sup> PTI, 'World Bank Sees FY 21 India Growth At 1.5-2.8%; Slowest Since Economic Reforms Three Decades Back' (*The Economic Times*, 13 April, 2020) <<https://economictimes.indiatimes.com/news/economy/finance/covid-19-causes-severe-disruption-to-indian-economy-says-world-bank/articleshow/75104474.cms?from=mdr>> accessed 10 May, 2020.

<sup>5</sup> Homi Kharas and Kristofer Hamel, 'The Covid Effect: Poverty Headcount to Rise The Most in India: 10 Million to Be Affected' (*The Print*, 8 May 2020) <<https://theprint.in/opinion/the-covid-effect-poverty-headcount-to-rise-the-most-in-india-10-million-to-be-affected/417230/>> accessed on 10 May 2020.

<sup>6</sup> The Epidemic Diseases Act, 1897.

<sup>7</sup> Manavi Kapur, 'A 123-year old law, Once Used To Imprison Freedom Fighters, Is India's Primary Weapon Against Coronavirus' (*Quartz India*, 23 March 2020) <<https://qz.com/india/1820143/india-battles-coronavirus-with-british-era-epidemic-diseases-act/>> accessed on 10 May 2020.

<sup>8</sup> Manuraj Shummugasundaram, 'India Needs To Enact a COVID-19 LAW' (*The Hindu*, 8 May 2020) <<https://www.thehindu.com/opinion/lead/india-needs-to-enact-a-covid-19-law/article31529036.ece>> accessed on 10 May 2020.

<sup>9</sup> The Epidemic Diseases Act, 1897, § 2.

that are responsible to manage such capacity- building. *Thirdly*, we discuss the socio-economic implications of the law and its unequal impact affecting the unprivileged and poor in the country.

The Central Government has acknowledged the inadequacy of the Act which not only fails to address the risks associated with air travel in the present interconnected world but also fails to guarantee the basic protection of health workers, who constitute the frontline workers amongst the pandemic.<sup>10</sup>The recent amendment brought through ordinance does not sufficiently remedy the legislative void that exists on three major fronts: state power, state capacity and social security. We discuss them in the following sections.

## II. STATE POWER

While there exists fair consensus that the state must assume all powers necessary in order to respond to the pandemic,<sup>11</sup> it still does not warrant that these powers assumed be exercised without an objective basis.<sup>12</sup>*Firstly*, by failing to give any definition to an epidemic, does not provide for an objective basis for the Government to assume extraordinary powers. More importantly, the Act does not provide for the fundamental principle of proportionality: the state is under no obligation to respond to the pandemic within time, and the response is also not graded in any manner under the Act, which basically establishes a ‘*do as you may*’ regime. *Secondly*, there is simply no parliamentary oversight or responsibility required under the Act.<sup>13</sup> The measures undertaken under the Act do not require any consensus of the parliament, and are more in the nature of executive discretion. Even the National Emergency, proclaimed by the President on the advice of the Prime Minister, must be ratified by the Parliament.<sup>14</sup> However, this Act, being pre-constitutional, does not foresee even that degree of a system of checks and balances.

---

<sup>10</sup> Ministry of Health and Family Welfare, ‘Promulgation Of An Ordinance To Amend The Epidemic Diseases Act, 1897 In The Light Of The Pandemic Situation Of COVID-19’ (22 April 2020) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=202493>> accessed on 10 May 2020.

<sup>11</sup> Jyoti Yadav, ‘Go Corona to Go Democracy: How Covid showed Indians’ Love for Autocracy’ *The Print* (2 May 2020) <<https://theprint.in/opinion/pov/go-corona-to-go-democracy-how-covid-showed-indians-love-for-autocracy/413174/>> accessed on 10 May 2020.

<sup>12</sup> Gautam Bhatia, ‘Coronavirus and The Constitution XVIII: Models of Accountability’ *Indian Constitutional Law and Philosophy* (16 April 2020) <<https://indconlawphil.wordpress.com/2020/04/16/coronavirus-and-the-constitution-xviii-models-of-accountability/>> accessed on 10 May 2020.

<sup>13</sup> Gautam Bhatia, ‘Coronavirus and the Constitution XX: Parliamentary Accountability’ *Indian Constitutional Law and Philosophy* (1 May 2020) <<https://indconlawphil.wordpress.com/2020/04/16/coronavirus-and-the-constitution-xviii-models-of-accountability/>> accessed on 10 May 2020.

<sup>14</sup> The Constitution of India 1950, art 352.

*Thirdly* and importantly, the Act stems from a duty-based regime, meant to govern native ‘subjects’ and thus does not address the most important component of a democracy: rights of the individual.<sup>15</sup> As the recent controversy over the Aarogya Setu app illustrates, there is tremendous uncertainty over what rights may be exercised by an individual during the pandemic and to what extent they may be enforced in a court of law.<sup>16</sup> The legislative debate around the Act shows that the powers being granted to the government being exceptional and overarching was conceded even by John Woodburn, the member introducing the Act, and it was said that the people must trust the discretion of the executive<sup>17</sup>. It becomes interesting to note that the Act was used more as a tool of surveillance and contributed to around 12-15 million deaths in India during the bubonic plague of 1918.<sup>18</sup> This is miles away from the ideals of accountability that permeate the foundations of a representative democracy.

*Fourthly*, the Act also fails in providing a blueprint of the sort of state actions that would be expedient in the face of the pandemic. It provides neither any obligations on the state nor even an operating procedure with regard to sequestering in terms of disseminating drugs or vaccines and deploying its resources in order to boost up healthcare operation during such a pandemic.<sup>19</sup> It also raises concerns as to the abandonment of these assumed powers once the epidemic has subsided. This has led to the worry that the state assuming greater powers would lead to a rollback of the rights of the individuals, such as the right to privacy, which might not be restored once the pandemic is declared to have ended.<sup>20</sup>

On these aforementioned fronts, The Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill of 2017 offers partial solutions as it defines the term epidemic in terms of the WHO definition and also prescribes possible courses of action that would be available to the government. However, it fails on the front of allocating any parliamentary responsibility or the requirement that Government measures be backed by a

---

<sup>15</sup> Shyamlal Yadav, ‘Explained: 123 Years Ago, When Bubonic Plague Led To Country’s Epidemic Diseases Act (*Indian Express*, 7 May 2020) <<https://indianexpress.com/article/explained/epidemic-disease-act-amended-coronavirus-pandemic-bubonic-plague-healthcare-workers-6397400/>> accessed on 10 May 2020.

<sup>16</sup> Internet Freedom Forum, ‘Is Aarogya Setu privacy first?’ (14 April 2020) <<https://internetfreedom.in/is-aarogya-setu-privacy-first-nope-but-it-could-be-if-the-government-wanted/>> accessed on 10 May 2020.

<sup>17</sup> Saurav Kumar Rai, ‘How the Epidemic Diseases Act Came to be’ (*The Wire*, 2 April 2020) <<https://thewire.in/history/colonialism-epidemic-diseases-act>> accessed on 10 May 2020.

<sup>18</sup> *ibid.*

<sup>19</sup> Niranjana Sahoo, ‘COVID 19 and Cooperative Federalism in India: So far, So Good’ (*Observer Research Foundation*, 30 April 2020) <<https://www.orfonline.org/expert-speak/covid19-cooperative-federalism-india-so-far-good-65429/>> accessed on 10 May 2020.

<sup>20</sup> India Legal, ‘In Any Emergency, The Liberties of Citizens Can Only Be Reasonably Restricted and not Trampled’ (2 May 2020) <<https://www.indialegallive.com/top-news-of-the-day/in-any-emergency-the-liberties-of-citizens-can-only-be-reasonably-restricted-and-not-trampled-former-cji-s-rajendra-babu-98157/>> accessed on 10 May 2020.

majority of elected representative. It also does not provide a methodology for the Government to resume status quo once the threat has passed.

### III. STATE CAPACITY

In the long run, solutions to the problems of persistent healthcare flaws as well as possible future pandemics lie on the front of state capacity. India has a massively underdeveloped health infrastructure. To put this in perspective, in our country of 1.3 billion people, we have a mere 40,000 ventilators out of which more than 31,000 are in private hospitals.<sup>21</sup> Our servicing capacity is extremely low, with a dismal 0.55 beds per 1000 population<sup>22</sup>. Moreover, our healthcare system is extremely regimented with primary, secondary and tertiary healthcare being separated, with very little coordination<sup>23</sup>. It raises important questions not just on the state response to the present pandemic but to the state of affairs of India's healthcare sector in general. The need of the hour is an infrastructure that is at once responsive to and aware of global trends in public health, and optimizes state of the art technology in order to combat epidemics. To some extent, the National Center for Disease Control (NCDC), with its mandate to track the spread of epidemic diseases across the country serves this purpose. However, this is not done within a broad overarching structure that emphasizes the rights of the people.

Building capacity would entail imposing obligations on the Government to provide for the rights of the people. While the right to health and consequently the right to healthcare have been recognized by the Supreme Court as part of the right to life and personal liberty under Article 21 of the Constitution<sup>24</sup>, on account of these rights accruing out of judicial precedent, no broad parameters appear to have been set in terms of the precise obligations of the state under the same<sup>25</sup>. Thus, a legislative basis to a rights regime concerned intimately with health would provide greater impetus in capability building.

---

<sup>21</sup> Derek O' Brien, 'What Covid-19 Will Change About Us' *Hindustan Times* (1 April 2020) <<https://www.hindustantimes.com/analysis/what-covid-19-will-change-about-us-opinion/story-0yWDiLRnD9bLSOoCHd2F9J.html>> accessed on 10 May 2020.

<sup>22</sup> Prachi Singh, 'Is India's Health Infrastructure Equipped To Handle An Epidemic?' *Brookings* (24 March 2020) <<https://www.brookings.edu/blog/up-front/2020/03/24/is-indias-health-infrastructure-equipped-to-handle-an-epidemic/>> accessed on 10 May 2020.

<sup>23</sup> *ibid.*

<sup>24</sup> *State of Punjab v Mohinder Singh Chawla* (1997) 2 SCC 83.

<sup>25</sup> V.G. Shreeram, 'Coronavirus and the Constitution – XXV: Socio-Economic Rights and the Shifting Standards of Review' *Indian Constitutional Law and Philosophy* (9 May 2020) <<https://indconlawphil.wordpress.com/2020/05/09/coronavirus-and-the-constitution-xxv-socio-economic-rights-and-the-shifting-standards-of-review-guest-post/>> accessed on 10 May 2020.

The National Health Bill of 2008 enumerates certain health rights that can be used as a takeoff point for inspiration<sup>26</sup>. Moreover, the Central and State Health Boards can be treated as coordinating bodies in order to monitor the National Center for Disease Control and associated functions of healthcare dissemination and coordination across the country, in light of the larger objectives of capacity building. In order to truly address these imperatives, the Bill must focus on the twin imperatives of achieving service readiness by upgrading facilities as also conducting human resources management in order to ensure the optimal utilization of the healthcare personnel, especially at the rural level, where MBBS doctors have been reported to remain grossly underutilized<sup>27</sup>.

The National Disaster Management guidelines, 2008 have not been adhered to, for the same would lead to a better Act being in place.<sup>28</sup> The National Health Bill was also introduced in parliament in 2008 and it sought to make structural changes in the way healthcare functions but failed to gather enough steam. The The Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill of 2017, that particularly dealt with bio-terrorism and health emergencies, though it was prophetic of the Government response to the present pandemic in that it empowers officials to quarantine and isolate victims, restrict movement, prohibit activities inimical to public health etc.<sup>29</sup> The Act does not address the questions arising out of federalism adequately. For starters, it does not establish for funds that State and Central Governments would need to draw from in order to discharge their functions, especially of testing and capacity building, in the short or long term.

At present, funds have been accessed under the State Disaster Relief Fund, but it must be noted that these are meant for entirely different kinds of contingencies, which could happen in addition to, and contemporaneously with a public health emergency such as the one we are

---

<sup>26</sup> National Health Bill 2009, ch 3.

<sup>27</sup>R Duggal, 'Healthcare Utilization in India' *Health Millions* (1994) 2 *Health Millions* <<https://www.ncbi.nlm.nih.gov/pubmed/12288588>> accessed on 10 May 2020.

<sup>28</sup> Niranjan Sahoo, 'COVID 19 and Cooperative Federalism in India: So far, So Good' (*Observer Research Foundation*, 30 April 2020) <<https://www.orfonline.org/expert-speak/covid19-cooperative-federalism-india-so-far-good-65429/>> accessed on 10 May 2020.

<sup>29</sup> Upendra Baxi, 'Emerging Laws & Jurisprudence' (*India Legal*, 11 April 2020) <<https://www.indialegalive.com/top-news-of-the-day/emerging-laws-jurisprudence-95465>> accessed on 10 May 2020; Ishan Bhatnagar and Ritesh Patnaik, '(Evolving The) Law in the Time of Corona – A Critical Analysis of the Epidemic Diseases Act, 1897' *Journal of Indian Legal Studies Blog* (5 April 2020) <<https://jilsblognujs.wordpress.com/2020/04/05/evolving-the-law-in-the-time-of-corona-a-critical-analysis-of-the-epidemic-diseases-act-1897/>> accessed on 10 May 2020.

facing at the moment.<sup>30</sup> For instance, the preliminary prediction of a cyclone in the Bay of Bengal posed tough questions for the Central Government as well as the State of Odisha, which was struck by Cyclone Fani at this time of the year in 2019.<sup>31</sup> Similarly, the questions have also been raised about the rationale to not include CM Relief fund donations within the ambit of Corporate Social Responsibility (CSR) under Companies Act, 2013.<sup>32</sup> Moreover, depending on the extent of the spread and the nature of the disease, measures beyond social distancing, testing and building quarantine wards may be required in the future, requiring substantially greater funds that must be provided for, with some indication of contributions from both Center and the State Governments.

#### IV. SOCIO ECONOMIC RIGHTS

However, even building capacity does not suffice if the legislation does not address the deep seated inequalities in Indian society and the disproportionate harm that lockdowns or other measures restricting the economy cause to certain sections of the population.<sup>33</sup> Migrant laborers have emerged as particularly vulnerable groups in the present pandemic, and their forced mass migration is being seen as a human tragedy.<sup>34</sup> There have been instances of death by starvation. This is not even to account for the fact that their malnourishment makes them even more likely to contract the virus, making this not only a human rights issue, but one of public health<sup>35</sup>. This also tells us that certain Socioeconomic Rights in here in the Right to Health, particularly in context of an epidemic - one simply cannot be healthy on a hungry stomach. Thus, legislation guaranteeing Right to Health would itself be meaningless without these corresponding rights also being similarly guaranteed. Similarly, concepts like social distancing cease to make sense in India's slums, with cramped living conditions and utter lack of hygiene. No legislation addressing Public Health can afford to ignore this

---

<sup>30</sup> Ishan Bhatnagar and Ritesh Patnaik, '(Evolving The) Law in the Time of Corona – A Critical Analysis of the Epidemic Diseases Act, 1897' *Journal of Indian Legal Studies Blog* (5 April 2020) <<https://jilsblognujs.wordpress.com/2020/04/05/evolving-the-law-in-the-time-of-corona-a-critical-analysis-of-the-epidemic-diseases-act-1897/>> accessed on 10 May 2020.

<sup>31</sup> 'Low Pressure Threat To Odisha In Cyclone – Fani Month' *Indian Express* (25 April 2020) <<https://www.newindianexpress.com/cities/bhubaneswar/2020/apr/25/low-pressure-threat-to-odisha-in-cyclone-fani-month-2134989.html>> accessed on 10 May 2020.

<sup>32</sup> Companies Act, 2013 sch VII.

<sup>33</sup> Arun Kumar, 'The Pandemic Is Changing the Face of Indian Labour' (*The Wire*, 9 May 2020) <<https://thewire.in/economy/covid-19-pandemic-indian-labour>> accessed on 10 May 2020.

<sup>34</sup> Soutik Biswas, 'Coronavirus: India's Pandemic Lockdown Turns into a Human Tragedy' *BBC* (30 March 2020) <<https://www.bbc.com/news/world-asia-india-52086274>> accessed on 10 May 2020.

<sup>35</sup> Harsh Mander, 'A Pandemic in an Unequal India' *The Hindu* (1 April 2020) <<https://www.thehindu.com/opinion/op-ed/a-pandemic-in-an-unequal-india/article31221919.ece>> accessed on 10 May 2020.

fundamental reality. Institutions responsible for dealing with elements of the problem already exist, but lack a unifying legislative framework: Health Boards established under the new Act must be empowered to coordinate with the Department of Sanitation and Drinking water, as also the Ministry of Housing and Urban Poverty Alleviation in order to jointly deal with the situation of hygiene, with specific emphasis on areas prone to an epidemic, in order to truly mitigate the severe threat to public health.

## **V. CONCLUSION**

In the wake of the pandemic, India faces a severe challenge not only to its healthcare and capacity, but also to its resilience as a democracy. As such, the fate of the world under the pandemic remains uncertain. In the long term, Epidemic Control becomes unviable in the absence of legislation that addresses underlying structural flaws within the healthcare system and its transactions with the inequalities present in the Indian society. Thus, comprehensive response to the pandemic would necessarily entail changes along the line of state power, state capacity and socioeconomic rights.

## FAKE NEWS VICIOUS THAN VIRUS

-By Mallika Sinha\*

Sudhanshu Pathak#

Human civilization has witnessed many pandemics in its history right from the Circa in 3000 BC to Zika Virus in 2015. In this line, novel corona virus has been detected late in 2019, which has affected almost every country throughout the world. Countries have adopted the lockdown strategy to battle against this virus. Before going into nooks and corners, we need to understand the terms 'Epidemic and Pandemic'. According to World Health Organization, Epidemic is defined as: *'The occurrence in a community or region of cases of an illness, specific health-related behaviour, or other health-related events clearly in excess of normal expectancy'*,<sup>1</sup> on the other hand, Pandemic is defined as *'an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people'*.<sup>2</sup>

In December 2019 the virus is known to have originated from the wet markets of Wuhan, China and has effectively spread throughout the world. According to the reports of WHO (World Health Organization), Covid-19 is an infectious disease detected by the newly emerged virus known as Corona virus and it is transmitted through contact. It is suspected that Covid-19 originated from consumption of bats found in the wet markets of Wuhan. All-around there are 35lakhs confirmed cases till now are infected from this virus along with more than 2.5 million death tolls aimed.<sup>3</sup> Amongst the countries: USA, Italy, France, UK and many other countries where cases are increasing rapidly day by day, also this deadly virus has crippled the world economy. In India, the first case was reported in Kerala on January 2020 and subsequently affecting India. The number of active cases has crossed over 35,000, and the cured/discharged cases are around 15,266, with deaths nearly 1783<sup>4</sup> along with 1 migrated

---

\* Students, New Law College, Bharati Vidhyapeeth University, Pune.

# Students, New Law College, Bharati Vidhyapeeth University, Pune.

<sup>1</sup> World Health Organisation, 'Humanitarian Health Action' <<https://www.who.int/hac/about/definitions/en/>> accessed 10 May 2020.

<sup>2</sup> World Health Organisation, 'Bulletin of WHO' <<http://www9.who.int/bulletin/volumes/89/7/11-088815/en/>> accessed 10 May 2020.

<sup>3</sup> World Health Organisation, 'Covid-19 outbreak situation' <[https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=CjwKCAjwwMn1BRAUEiwAZ\\_jnEpR1QGt\\_Ps0\\_GhTSNbeIZWX\\_TFO2vJf-0cxL9IUUe9iGF2hATUytBxoCkdgQAvD\\_BwE](https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=CjwKCAjwwMn1BRAUEiwAZ_jnEpR1QGt_Ps0_GhTSNbeIZWX_TFO2vJf-0cxL9IUUe9iGF2hATUytBxoCkdgQAvD_BwE)> accessed 10 May 2020.

<sup>4</sup> Variable in Nature

and in addition to this recovery rate also stand at 29% from 20% before.<sup>5</sup> Many states in India are affected by the virus like Maharashtra, Delhi, etc. some of the areas are considered to be the main hotspots of this virus. Due to this pandemic, the concerning authorities suggested locking down to be the initial step for fighting Covid-19. On 22nd of March, India observed the Janta Curfew to express their solidarity and unity towards the frontline workers (doctors, police or cleaning staff etc.) who are contributing their full efforts to ensure the safety and security of citizens of India.

The government has imposed a nationwide lockdown from 24th of March till the 14th of April 2020. It restricted the movement of people in inter-district and inter-state, shops were closed except essential commodities were in service, borders were sealed, industries and businesses were halted completely, schools and colleges are closed till the next announcement. Transport facilities like trains, flight, buses etc. were also suspended. Employees are entrusted by their respective companies to work from home. Due to rapid increase in the cases during this lockdown has led to a nationwide meeting in consultation with our respected Prime Minister Mr. Narendra Modi and the chief ministers of all the states regarding the extension of lockdown which has resulted in the favour of extension till 3<sup>rd</sup> of May 2020 in order to contain the spread of virus which was later extended to 17<sup>th</sup> May 2020. During the first lockdown, an event called Tablighi Jamaat took place in Delhi which consisted of about 2000 people and escalated the cases exponentially in addition to existing cases. There are number of fake news which is spreading through different social media platforms and which has led to creating fear and panic among the people.

Fake news is circulated by rumour mongers who lead people to the believing of the unsaid. It stated 'the government was planning to extend the lockdown' due to which Bandra West Railway station was flooded with migrant workers who were hoping to get back to their home, because of this gathering the situation became worse. Another fake news went viral on social media where one woman who reported herself to be an employee of Rao Tula Ram hospital, claiming that Delhi government is forcing her to vacate the hotel, where she was kept away from her family in order to save them from catching the virus but after verification it was found that this hospital was not designated as a Covid-19 treatment centre by the Delhi government. A fake message that piqued the interest of people reads that no citizen can be allowed to post or update any information related to this virus except the government

---

<sup>5</sup> Government of India, 'India Fights Corona Covid-19' <<https://www.mygov.in/covid-19>> accessed 10 May 2020.

authority. Adding to this Ministry of Telecommunication introduced new guidelines and regulations from 4th of April 2020 stating that all phone calls will be recorded and social media handles will be monitored.

As this fake news are rising the Hon'ble Supreme Court of India had to take actions because of this inaccuracy in the news creating hustle and bustle within the people. Such a mass approach in this national lockdown went mad as a hatter and many of them died too, because of such negligence from the side of media who are liable for reliable information.

But such ignorance fabricated the situation dreadful and the law had to take a step to clear the air of fake news which was spreading quicker than Covid-19.

So, in the case of *Alakh Alok Srivastava v Union of India*<sup>6</sup>, the order was passed and it was mentioned that no such fake news should be published and it is just as dangerous as Covid-19 and because of it many have lost their lives which induced panic in the labour class and as well as affecting our mental health. Also, such a situation of migrants should be handled responsibly by the government authorities.

We are now quite aware how in this modern world with the leading technology helps in the spreading of information very quickly applications such as WhatsApp, Instagram etc. which are predominantly used are the leaders of fake data distribution.

Like at the time of demonetization it was a fake news going that there is a GPS chip in every new currency which can detect your location<sup>7</sup>, similarly there is news which was spreading in such a pandemic situation that India is in the third stage of Covid-19 at the time when there were hardly 1500 active cases were recorded. So, before discovering a cure from the Covid-19 it is essential we cure our minds from the fake news around us and stop circulating it by telling others who are participating in such menace without any knowledge and believing it to be true.

There might be some people who believe that it's their fundamental right under Article 19 i.e. freedom of speech and expression, So, in the case of *Anuradha Bhasin v Union of India and Others* and *Ghulam Nabi Azad v Union of India and Anr*<sup>8</sup> it was very well mentioned that fake news or images create violence in the society and media should know how to balance between the safety of the society and the fundamental rights.

---

<sup>6</sup> Alakh Alok Srivastava v Union of India 2020 SCC OnLine SC 345.

<sup>7</sup> Suman Pathak and Akanksha Derashree, *Internet Censorship in India: Boon and Bane* (2018).

<sup>8</sup> Anuradha Bhasin v Union of India and Others [2019] SCC 1031; Ghulam Nabi Azad v Union of India and Anr [2019] SCC 1164.

Section 54 of Disaster Management Act, 2005<sup>9</sup> provides for punishment to a person who makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic. Such person shall be punished with imprisonment which may extend to one year or with fine. Different types of websites and application are being launched by Indian government and WHO (World Health Organization) to avoid such rumours and fake news and conspiracy theories which are being spread nationwide as well as internationally:

- **Who.int** is the website of the World Health Organization which provides with reports happening around the world. It also has an alert column which gives a list of the fake news which is circulating.
- **Arogya Setu Application** by e-government of India for mobile where one needs to put all your health-related information, one's recent travel information etc. and when one goes out in the market just switch on the Bluetooth to know what the other person is suffering from if he/she has uploaded their information in this application.
- **Mohfw.gov.in** is a website of the Ministry of Health and Family Welfare of India which provides one with all the information such as emergency help lines and toll-free numbers to contact in case of emergency and will update well with everything happening in India.
- **Covid19india.org** is the tracker for India which gives you all the authentic information about all the states vividly like how many cases are confirmed, active, recovered, and deceased. There is also a search bar where you can write the specific place about which you want to know, or about the testing labs. It provides Graphical information as well.
- **Covid19 Fast Checker Unit Portal** released by Press Information Bureau on 1st April 2020 which deals with all corona virus news. Through this portal PIB will announce the covid19 bulletin daily at 8 pm.

To stall/stem the spread of fake news many portal or program launched by the government after the court took the cognizance of this serious issue and directed the Centre to monitor this in a very effective manner. Even now all news channels bound by this and will broadcast the information of the virus after taking authenticity of the news from the Centre. This deadly virus brought the human lives standstill and rippled the world economy. Many countries are putting their best efforts into making a vaccine to cure and prevent this virus further. The government has announced many stimulus packages for reviving or boost the economy. In

---

<sup>9</sup> Disaster Management Act, 2005 § 54.

lockdown 3.0, government divided the whole country into three zones Red, orange, and green which may help the authorities to identify or trace the contracted patients and help them in treatment. Along with some relaxation including essential or non-essential things, inter-state movement of people and vehicles are allowed based on the gravity of the virus in that particular area. The whole world is on the tough path and hoping to get rid of this worst situation soon. Every individual includes corona warriors, police personnel, and armed forces and normal people contributing their best part for battling this virus, definitely, we will defeat this virus.

# **THE THREAT OF RISING CORONAVIRUS CASES IN INDIAN JAILS**

- **By Raj Nandini Singh\***  
**Abdul Samad Khan#**

## **I. CORONA VIRUS**

Coronavirus disease (COVID-19) is a recently discovered coronavirus-caused infectious disease. The coronavirus epidemic came to light on December 31, 2019, when China reported a cluster of cases related to pneumonia of an unexplained origin in Wuhan City, Hubei Province, to the World Health Organization.

In India, the first case was reported on 30<sup>th</sup> January. The transmission intensified during March, following reports of multiple cases across the nation, among these cases most of the cases were related to people having travel history to the affected countries. The government had formulated few measures to deal with the country's pandemic to stop it from worsening, by early to mid-March. Several ministries are working together to provide treatment facilities, medicines, food and other essentials to people. Government has urged everyone to practice social distancing. The Prime Minister of India declared a full countrywide lockdown on 24 March. The Government has announced the country's recent coronavirus outbreak a 'notified disaster' to control the spread of the infectious virus; in a move it called 'a special one-time dispensation'.

## **II. SPREAD OF CORONA VIRUS IN INDIAN PRISONS**

India has gone into lockdown to prevent the coronavirus spread. However, the unexpected move is causing tremendous misery, particularly for the poor and migrant workers who now walk hundreds of miles to just get home. Similarly, the lockdown also jeopardizes the health of prisoners. Although the government has started to implement social distancing, things aren't the same for inmates residing in the country's prisons living in shared housing, using a communal bathroom, and living in closed borders.

---

\*Students, Symbiosis Law School, Noida.

#Students, Symbiosis Law School, Noida.

Indian prisons are heavily overcrowded. According to the statistics of World Prison Brief, India's rank in terms of prison population is fifth<sup>1</sup>. As per the latest data released in 2018 by the National Crimes Record Bureau, India has approximately 450,000 prisoners, which exceeds the official prison capacity of the country by about 17 percent<sup>2</sup>. Prisons in New Delhi and neighboring Uttar Pradesh state have the highest occupancy rates, at over 50 percent above capacity.<sup>3</sup> Official figures indicate that in 2018, just 4 percent of overall jail spending was spent for medical requirements of inmates. It also indicates a shortage of 40 per cent medical staff in Indian prisons<sup>4</sup>. Moreover, the retired inspector general of prisons of Rajasthan, RK Saxena recently stated that the sanitation facilities in prisons are horrible. The epidemic has spread exponentially around the world in overcrowded jails, leading governments to mass release of the inmates.

During the pandemic, experts from the World Health Organization and the United Nations encouraged all the nations to reduce their prison population. Recently at a press conference, Michael J Ryan of the World Health Organization said: 'We cannot forget migrants, we cannot forget undocumented workers, we can't forget prisoners in prisons...they may be serving sentences, but they deserve no less protection under the law than others. We must leave no one behind.'<sup>5</sup>

While we do not have any official statistics on how many prisoners have been diagnosed with the virus, India's correctional facilities are increasingly reporting increasing rate of infections and as of now barring visitors.

---

<sup>1</sup> 'Highest To Lowest - Prison Population Total | World Prison Brief' (*Prisonstudies.org*) <<https://prisonstudies.org/highest-to-lowest/prison-population-total>> accessed 8 May 2020.

<sup>2</sup> NCRB, 'Prison Statistics India 2018' <<https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>> accessed 8 May 2020.

<sup>3</sup> 'Rise in Virus Cases in Crowded Indian Jails Prompts Concerns' (*Connecticut Post*, 2020) <<https://www.ctpost.com/news/article/Rise-in-virus-cases-in-crowded-indian-jails-15241990.php>> accessed 5 May 2020.

<sup>4</sup> 'Prison Statistics India 2018' <<https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>> accessed 8 May 2020.

<sup>5</sup> Sejal Sahu, 'Rising Coronavirus Threat In Prisons | Lawlex.Org' (*LawLex.Org*, 2020) <<https://lawlex.org/lex-pedia/rising-coronavirus-threat-in-prisons/19390>> accessed 5 May 2020.

### **III. MODEL PRISON MANUAL, 2016**

Model Prison Manual<sup>6</sup> aims at development of the country's prison system as an important tool for reforming and rehabilitating criminals. The Model Prison Manual forms the general guidelines for the operation of jails, which states must adhere to by implementing these in their own prison guidelines.

Rule 12.73 of the 2016 Model Prison Manual provides for detailed instructions on the steps that the prison authorities are expected to take. Such rules include requirements such as separated sheds for each inmate to efficiently conduct social distancing, detention of infected inmates in a separate building apart from all other inmates, and proper care of clothing and hygiene for patients. According to the 2016 Model Prison Manual, prisons are to build toilets at a ratio of one in 10 prisoners during the night and one in six prisoners during the daytime. Many prisons in our country currently do not have adequate toilets and very few obey the Model Prison Manual instructions. Apart from overcrowding in the prisons, the other reason the custodial institutions lack sanitation is the lack of adequate water supply. Lack of washing and bathing soaps can add to the issue. In addition to the Model Prison Rules 2016, the 2018 Delhi Prison Rules<sup>7</sup> provide for specific steps to deal with epidemic. But, because of overpopulated jails, certain laws are obsolete.

### **IV. STEPS TAKEN BY SUPREME COURT**

The Supreme Court took In Re: *Suo Moto* cognizance<sup>8</sup> of the problem and directed state governments to file affidavits on the measures being taken to avoid the disease transmission in jails and juvenile homes. Many states have agreed to release a significant number of undertrials on bail in response to the public interest lawsuits, particularly those arrested for less serious offenses.

---

<sup>6</sup> Bureau of Police Research and Development, 'Model Prison Manual' <[http://bprd.nic.in/content/423\\_1\\_model.aspx](http://bprd.nic.in/content/423_1_model.aspx)> accessed 8 May 2020.

<sup>7</sup> Delhi Government, 'Delhi Prison Rules'

<<http://tte.delhigovt.nic.in/wps/wcm/connect/ad693e00479000078773c72dd8755fce/Jail+manual+2018.pdf?MOD=AJPERES&lmod=-820682994&CACHEID=ad693e00479000078773c72dd8755fce>> accessed 8 May 2020.

<sup>8</sup>Suo Motu Writ Petition (Civil) No1/ [2020].

The apex court, in its orders passed on March 23, directed state governments to release prisoners convicted in crimes where the maximum punishment is less than seven years or where the prisoners are sentenced on temporary bail or parole to less than seven years. It also directed states to set up a high-powered committee, headed by the Chairperson of the State Legal Services Authorities, to release inmates who could be released on the basis of conditions they had agreed upon. In addition, it has requested the District-level Undertrial Review Committees to meet each week to discuss releasing on bail or a personal bond under trials. The Supreme Court ordered the authorities to ensure that none of the prisoners released was homeless as a result of a 21-day lockdown, to provide them with transportation to their homes or to provide them with the option of staying in temporary shelter houses during the lockdown time. In the aftermath of last month's prodding by the Supreme Court, the campaign for decongesting prisons has started in right earnest.

Asia's largest jail complex, Delhi's Tihar Prison, said last week that 3,000 inmates will be released: 1,500 on parole or furlough convicts and 1,500 on temporary bail. It also said that none of the released ones will be hardened criminals. Madhya Pradesh amended the MP Prisoner's Leave Rules, 1989, which allowed inmates to be on parole for up to 60 days. It was also announced by the State, that 5,000 convicts would be released on 60-day emergency parole. Around 3,000 under-trials shall be placed on 45-day interim bail. Punjab has agreed to release 6,000 inmates who face up to seven years of imprisonment. In Uttar Pradesh, the bail or parole will free 11,000 inmates — convicts and under-trials — from 71 jails. Similarly, Maharashtra has plans to release 11,000 inmates for decongesting jails.

## **V. CONCLUSION**

The ongoing crisis of coronavirus continues to have great effect on our society. And although anyone may become infected with the coronavirus, certain groups are more at risk of getting infected with it. Addressing fear among prisoners, government should take certain measures. Simple solutions such as supplying staff and prisoners with masks, installing hand-washing bottles at the prison gate entrance and access to all barracks and cells, the water availability by water tankers, and keeping toilets and premises clean by contractually hiring housekeeping staff will go a long way in improving staff and inmates' morale. If decongesting the jail is necessary in

order to preserve social isolation, we suggest that eligible inmates should be released on probation or parole – depending on whether they are under-trials or convicts – and held in temporary shelters with facilities for water, sanitation and food until the lockdown is lifted.

We are all worried while sitting at home during this period. Prisoners may have been even more nervous today. It is important that government communicates in a clear manner that it values people who maintain these institutions and ensure the safety and protection of institutional populations.<sup>9</sup>

---

<sup>9</sup> Vijay Raghavan, 'India's Jails Are Vastly Overcrowded. Here Are Some Ways to Protect Inmates from Covid-19' *Scroll.in* (8 April 2020) <<https://scroll.in/article/958334/indias-jails-are-vastly-overcrowded-here-are-some-ways-to-protect-inmates-from-covid-19>> accessed 7 May 2020.

# **PRISONS IN THE PREVAILING PARADIGM OF COVID-19: AN INDIAN PERSPECTIVE**

**-BY SAMIKSHA AGARWAL\***

In late 2019, the world saw the rise of a Pandemic coming but did not realize the gravity of the situation. COVID-19, the disease caused by the virus SARS-COV-2, is a deadly virus which is capable of spreading at a very high rate. It has created debilitating effects in the whole wide world, as much as in India. The Indian Healthcare system, Economy, Geo-Political scenario, MSME Sector, Migrants and labors are wretched and in a deplorable condition and about the same, the government and the authorities are doing an outstanding job in handling the crisis as better as possible. Meanwhile, the judiciary in India took a Suo moto cognizance of the risk created by the Pandemic in the prisons and jail facilities of the country.

The prisons in India suffer through overcrowding and are notorious for the quality of facilities they have for the prisoners.<sup>1</sup> With this comes the grave risk of contracting the virus by the prisoners when social distancing is the norm everyone is following to be safe from the outbreak.

## **I. THE PANDEMIC EFFECT: PRISON VIEW**

The Pandemic so far has infected 33,050 lives and claimed 1,074 lives in India itself.<sup>2</sup> In this case, the prisons of India are highly vulnerable as it houses more than 4, 50,000 prisoners. The Prison Statistics of India has revealed that it is 17.6% more than what is their authorized capacity.<sup>3</sup>

As various research studies have shown, that the prisoners are physically living closely and in horrendous conditions which includes no clean toilets, not being able to sanitize hands regularly, living with very minimal protections, absence of qualified and adequate doctors,

---

\*Student, Symbiosis Law School, Pune.

<sup>1</sup> Sukanya Shantha 'Maharashtra Prisoner Released On Parole Says Jails Unprepared To Handle Covid-19 Pandemic' *The Wire* (30 March 2020) <<https://thewire.in/rights/maharashtra-prisons-covid-19-pandemic>> accessed 28 April 2020.

<sup>2</sup>Express Web Desk 'Coronavirus Live Updates' *The Indian Express* (30 April 2020).

<sup>3</sup> National Crime Records Bureau, 'Prison Statistics India 2018' <<https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>> accessed 28 April 2020.

insufficient and inedible food and the list goes on.<sup>4</sup> Their condition of health is worse in comparison to the other population. Along with this, there are numerous people visiting the prisons on a daily basis such as the staff, the relatives, the lawyers, people from administration, etc.<sup>5</sup> which increases the possibility of increasing the spread of virus inside the cells in no time.

The above-mentioned research shows that the humans inside the prisons are more vulnerable to the virus and at a greater risk than the overall population. Looking at this condition, the Supreme Court decided to pass an order in this regard to correct the ongoing situation in Prisons.<sup>6</sup>

## II. RECOMMENDATIONS BY THE SUPREME COURT

The concern in this regard was highlighted by the Supreme Court after a violent incident took place in the Dum Dum Correctional facility in Kolkata where the prisoners protested after coming to know about the decision of the prison authorities that no visits would be allowed looking at the rise of the outbreak and until and unless it is fully brought under control.<sup>7</sup>

Subsequently, the Supreme Court observed the vulnerability of the prisoners to the virus Covid-19, and asked the States and UTs to submit their replies on the measures taken to prevent this issue. The Supreme Court took *Suo moto* Cognizance and suggested that prisoners with a jail term of seven years or less could be counted under the provision for Parole or Interim Bail.<sup>8</sup> This was done to reduce the overcrowding inside the prison cells.

Furthermore, the States were directed to form a High-Powered Committee which will finalize as to which class of prisoners and for what amount of time, will be released in consultation with the State Legal Services Authority.<sup>9</sup> It was specified that only the committee is empowered to decide on the eligibility for releasing the prisoners which will include the

---

<sup>4</sup>Namita Wahi, 'A Study of Rehabilitative Penology as an Alternative Theory of Punishment' (2002)14 NLSIR 92, 102.

<sup>5</sup> Nicole Wetsman, 'Prisons And Jails Are Vulnerable To Covid-19 Outbreak' (*The Verge*, 7 March 2020) <<https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>> accessed 28 April 2020.

<sup>6</sup>Asia: Coronavirus, Prison Fever' (*Prison Insider*, 18 March 2020) <<https://www.prison-insider.com/en/articles/asia-coronavirus-la-fievre-des-prisons>> accessed 28 April 2020.

<sup>7</sup>*Shantha* (n 1).

<sup>8</sup>Chaitanya Mallapur, 'Covid-19: Overcrowded Jails to Release Prisoners on Parole, But This May Just Kick the Can' (*India Spend*, 25 March 2020) <<https://www.indiaspend.com/covid-19-overcrowded-jails-to-release-prisoners-on-parole-but-this-may-just-kick-the-can/>> accessed 29 April 2020.

<sup>9</sup>'Coronavirus: Supreme Court Orders Release of Prisoners to Decongest Jails' (*Business Today*, 23 March 2020) <<https://www.businesstoday.in/current/economy-politics/coronavirus-supreme-court-orders-release-of-prisoners-to-decongest-jails/story/398982.html>> accessed 29 April 2020.

nature of crime, the sentence, seriousness of the offence, undertrials or not, or any other factor as needed for the purpose.<sup>10</sup>

The committee was formed on the basis of the judgment on '*Re-inhuman conditions in 1382 Prisons*'<sup>11</sup> and finally laid down that those prisoners will be favored for Parole or Interim Bail who are undertrial and are booked for offences whose punishment is 7 or less than that, for a period of 45 days or until the time the notification under the act<sup>12</sup> is rescinded by the Government, whichever is earlier. It was also noted that these prisoners are required to report to the police station, once every 30 days, within whose jurisdiction they are residing. But an exception is laid down for those who are covered under severe economic offences for e.g. PLMA, MCOCA, NDPS, etc.<sup>13</sup>The Supreme Court also declared some recommendations to be adhered to by the prison authorities such as:

- Prisoners with symptoms like fever and cough must be observed and kept separately and medical support should be provided expediently.
- Follow the norm of Social Distancing among all the prisoners.
- Increase the use of video conferencing instead of presenting the prisoners physically in front of any authority.
- Transferring the prisoners to a medical facility as soon as they show a tendency of catching the virus.<sup>14</sup>

### **III. COURSE OF ACTION TAKEN BY STATES IN FURTHERANCE OF THE PRESENT DEPLORABLE SITUATION**

The States in India made sure that they follow the guidelines by Supreme Court and their quick action was apparent in furtherance of checking the spread of the virus inside prisons. The state prisons have started arranging medical facilities inside prisons, creating isolation wards for everyone, supplying hand sanitization facilities, distributing masks, putting a halt

---

<sup>10</sup>Shantha (n 1).

<sup>11</sup> Re: Inhuman Conditions In 1382 Prisons (2016) 3 SCC 700.

<sup>12</sup> The Epidemic Diseases Act, 1897.

<sup>13</sup>Shantha (n 1).

<sup>14</sup>Arpan Chaturvedi, 'Coronavirus Outbreak: Supreme Court Asks States to Consider Releasing Some Prisoners to Reduce Crowd in Jails' (*Bloomberg*, 23 March 2020)<<https://www.bloombergquint.com/law-and-policy/coronavirus-outbreak-supreme-court-asks-states-to-consider-releasing-some-prisoners-to-reduce-crowd-in-jails>> accessed 29 April 2020.

on any group activity, and restricting the number of visitors.<sup>15</sup> Further, the jail staff and the prison inmates are being made aware on the importance of hygiene and steps against the Coronavirus.<sup>16</sup>

Delhi Government, for instance, has amended its regulations on Parole and Bail in relation to the prisoners who have served at least 1 year and undertrials who have been in prison for the past 3 months. Maharashtra Government, on the other hand, has released more than 4000 inmates and simultaneously made testing necessary for the new incoming prisoners. The other states which have been rampant in taking an action in this regard are Haryana government, which has made the provisions for making a group-wise timetable for food in order to lessen overcrowding. Rajasthan & Jharkhand government are transferring prisoners to other jails to decrease congestion. In Kerala, prisoners are being taught about the virus and precautions needed and other states such as Andhra Pradesh, Uttarakhand, Punjab and Ladakh are classifying prisoners in classes to give focused attention to the ones who are vulnerable.<sup>17</sup>

Such measures as releasing the prisoners and obtaining careful measures with the ones still inside the prisons shall contribute in fighting this virulent outbreak to a great extent.

#### **IV. RIGHT TO PAROLE IN THE PRESENT SCENARIO**

The Indian Prisons have taken the preventive measures against COVID-19 in their capacities but are still going through unnerving pressure and tension all across as to how to hold and operate the inmates' demands to be able to meet their families regularly. With these preventive measures contributing in stopping the spread of the virus, it still comes under the ambit of biasness as it only focuses on releasing the prisoners on the basis of the offence committed.<sup>18</sup> Moreover, a lot of new prisoners have come inside the jails and pose

---

<sup>15</sup> Mallapur (n 8).

<sup>16</sup> Tanushree Pandey, 'Coronavirus: India's Packed Prisons Raise Covid-19 Alarm' *India Today* (30 March 2020) <<https://www.indiatoday.in/mail-today/story/india-packed-prisons-raise-coronavirus-alarm-1661136-2020-03-30>> accessed 29 April 2020.

<sup>17</sup> *ibid*.

<sup>18</sup> Penal Reform International, 'Coronavirus: Healthcare and Human Rights of People in Prison' (*Penal Reform International* 2020) <<https://www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/?fbclid=IwAR0KFoy8iyKNh2PESkKIZAjr0Qa8IUwGg5S9eCozpruWQ-PZvKu-H4g72MQ>> accessed 20 April 2020.

an equal threat of spreading the virus inside the prisons to the ones who are sick and vulnerable, like inmates of old age.<sup>19</sup>

With this, it is safe to say, that these wretched times bring with them the Right of Parole or Interim Bail to the prisoners who need it the most, making it an issue of Right to Life. Looking from the perspective of Constitution, the Supreme Court has at various levels has scrutinized the combination of Personal Liberty with Right to Life as entailed under article 21<sup>20</sup> of the Constitution of India.<sup>21</sup>

In the case of *Gudikanti Narasimhulu*,<sup>22</sup> Justice VR Krishna Iyer, who extensively wrote about prisoner rights in India, laid down that denying bail on any unjust ground would be a violation of personal liberty which is fundamental and crucial to a person's free existence.

In another case of *Gurbaksh Singh Sibbia*,<sup>23</sup> Chief Justice YV Chandrachud opined on the importance of bail from a constitutional perspective. He believed that it is inhuman and cruel to object to bail, of which the sole object is to establish the presence of the accused at the trial. The rule is to grant the bail and to deny it is the exception.

The court is rightly justified in not freeing those inmates charged with violent offences but at the same time, the court should undertake some leniency in regard to the old aged vulnerable group who is undertrial and not charged with severe offences.<sup>24</sup> By taking the aid of such precedents, and the threat of COVID-19, those inmates must also be considered whose being in prison at such times is against their Right to Life.<sup>25</sup>

## **V. WEIGHING PROS AND CONS: UNDER LEGAL AND SOCIAL CONTEXT**

### **➤ LEGAL CONTEXT**

Granting the right to Parole and Interim Bail has its pros such as decongestion, less crowding, increase in social distancing. But the way it is executed is arbitrary in the eyes of law and not

---

<sup>19</sup>*Shantha* (n 1).

<sup>20</sup>Constitution of India 1950, art 21.

<sup>21</sup>Constitution of India 1950.

<sup>22</sup>*Gudikanti Narasimhulu and Ors v Public Prosecutor* 1978 SCR (2) 371.

<sup>23</sup>*Gurbaksh Singh Sibbia et al v State of Punjab* 1980 SCR (3) 383.

<sup>24</sup> Jai Dehadrai, 'In the time of Coronavirus, the Right to Bail is part of an Undertrial's Right to Life' *The Wire* (26 March 2020) <<https://thewire.in/law/in-the-time-of-coronavirus-the-right-to-bail-is-part-of-an-undertrials-right-to-life>> accessed 29 April 2020.

<sup>25</sup>*ibid.*

a well-thought-out decision. The virus has the capability of striking anyone and does not distinguish between the prisoners on the basis of seriousness of the offence. The way this categorization is done is lamenting for the ones still languishing inside. The state should rethink the execution and let the prisoners out on a bail bond until the situation is under control.<sup>26</sup>

#### ➤ SOCIAL CONTEXT

Along with the pros that this possess, which is discussed above, this decision has its cons in the societal context as well. While states have decided to release the prisoners, there is a lacuna in the execution as no transport is available to carry the prisoners on Parole to their houses, and no arrangement has been done by the prison authorities as they are also burdened by the lack of staff and police presence to ensure the whole procedure sails glibly. Another setback is that the legal authorities have not had any consultation about the same with the victims, who might suffer with unknown trauma. On the other note, some of the prisoners may not chose to go outside even if they are eligible for the release with the fear of scarcity of economic means for survival, social out casting, etc.<sup>27</sup> With this, the society might feel that encumber has been shifted back to the society as they might not see it as a positive change.

## VI. CONCLUSION

The efforts and the distress shown by the authorities in charge and the judiciary of India is laudable. But it raises several concerns as it seemed to transpose the liability from the prison administration to the society, which has already suffered and crumpled by the outbreak. The main focus should lie in bettering the languishing conditions inside the prisons and trying to find a discourse to address the long-term issues and challenges which lies with courts and prisons.<sup>28</sup>The administration should not require the fearful presence of outbreaks of such magnitudinous scale to realize the poor conditions of the prisoners which sometimes cannot even be qualified as humane. The prison system should be looked after, not only in such times of crisis, but also on a regular basis to make sure that their penurious state of affairs is alleviated.

---

<sup>26</sup> *Shantha* (n 1).

<sup>27</sup> Arpita Mitra, 'Prisoner Releases across Asia: A Right Move Gone Wrong' *The Wire* (26 April 2020) <<https://thewire.in/world/prisoner-releases-across-asia-a-right-move-gone-wrong>> accessed 29 April 2020.

<sup>28</sup> *Mallapur* (n 8).

Keeping these concerns aside, the act of releasing prisoners as a measure to fight against the vicious COVID-19 cannot be denigrated and it definitely serves as a supreme and paramount instance of how despairing course of action has to be undertaken expediently to rise above such anguishing times.

# THE 1897 INDIAN LAW IS A TOOTHLESS LION VIS-À-VIS CORONAVIRUS

-By Sangram Singh\*

ShivanshDwivedi#

## I. INTRODUCTION

COVID – 19, the ‘global pandemic’ declared by WHO on 11<sup>th</sup> March 2020 has disclosed various audacious ditches in India’s local laws. As far as authorizing laws to contain Covid-19, the Center can take very few actions on ground reality. The lawful insufficiency to handle disease outbreaks was known for long, gradual steps were taken, yet by the day's end, the Centre wasn't prepared when it experienced another pandemic — seemingly the severest since the 1918 Spanish flu pandemic that killed around 18 million Indians.<sup>1</sup>

The primary legal weapon the Indian government has today is the Epidemic Disease Act of 1897<sup>2</sup>, a quickly drafted short enactment to stonewall the bubonic plague that crushed life in Bombay in 1896, compelling individuals to maneuver out of the town. No big surprise that on 11<sup>th</sup> March 2020, Ministry of Health and Family Welfare (MoHFW) advised all states and UT’s to invoke section 2 of Epidemic Disease Act 1897 with the goal that all advisories given by MoHFW, the states and UTs’ enforceable.<sup>3</sup>

## II. TRACING THE HISTORICAL BACKGROUND OF EDA 1897

The bubonic plague surge of Bombay which was starting to spread in September 1896 is a notable significant episode in the history of British India. On January 19, 1897, around four months after the plague was established in Bombay presidency, Queen Victoria conveyed an address to the houses of the British Parliament, and ordered her Government to take the most strengthen measures available to them for the destruction of the plague. The EDC is the symbol

---

\*Student, Hamdard Institute of Legal Studies and Research (HILSR), JamiaHamdard University, New Delhi.

#Student, Hamdard Institute of Legal Studies and Research (HILSR), JamiaHamdard University, New Delhi.

<sup>1</sup>Biswas S, 'Coronavirus: What India Can Learn from the Deadly 1918 Flu' *BBC* (18 March 2020)

<<https://www.bbc.com/news/world-asia-india-51904019>> accessed 16 April 2020.

<sup>2</sup>Biswas S, 'Coronavirus: What India Can Learn from the Deadly 1918 Flu' *BBC* (18 March 2020)

<<https://www.bbc.com/news/world-asia-india-51904019>> accessed 16 April 2020.

<sup>3</sup>PIB, 'High Level Group of Ministers Reviews Current Status, And Actions for Prevention and Management of COVID-19' <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1606056>> accessed 16 April 2020.

of these strengthen measures in the end took.<sup>4</sup> A week after Victoria's orders, the EDA was introduced by John Woodburn (Council member in the Council of the Governor-General of India in Calcutta for better prevention of the spread of dangerous epidemic diseases) and enacted on 4<sup>th</sup> February 1897 in the wake of the flare-up of the bubonic plague<sup>5</sup>, which was transported to British India from Hong Kong, gave atrocious authority to the British government.

The EDA authorizes the British officials to confine plague suspects, wreck or obliterate contaminated property and abodes, preclude fairs and journeys and inspect the ships and trains freely. The major controversy arises with the matter of examination of women at public and social areas. The opposition of ICS officer Walter Rand's committee at Poona in May 1897<sup>6</sup> and the plague riots of Kanpur in 1900<sup>7</sup> are some of the major episodes of that controversy. Later on the act was used as an emerging juggle by British bureaucrats to imprison freedom fighters maliciously.<sup>8</sup>

### **1) A SHORT OVERVIEW OF THE ACT:-**

The EDA 1897 was instituted to put a bar on the spread of epidemic diseases. The act authorizes both the Center and State authorities to take several steps and measures to put a brake on the spreading of epidemics. Basically the act is divided into four sections and it is one of the shortest existing acts in India. The first section defines the title and the jurisdiction, while the second authorizes State government to take certain steps and codify some rules for public interest in order to prevent the spread of disease. It says that when the state convinced that the whole state or any specific area of that state is affected or under any jeopardy of spreading of any epidemic disease; and if it believes that the usual actions of state are lacking for the sole purpose, it might take such measures by circulating a public notice to endorse transitory guidelines in the public interest. Section 2A authorizes Central government to inspect any ship or vessel which is arriving or departing within the territorial jurisdiction of the act. The third section specifies the

---

<sup>4</sup>. Kumbhar K, 'Epidemic Diseases Act, India's 123-Year-Old Law To Help Fight the Pandemic' *The Wire* (22 March 2020) <<https://science.thewire.in/health/epidemic-diseases-act-india-pandemic/>> accessed 16 April 2020.

<sup>5</sup>Legislative Council I, 'Abstract of the Proceedings of The Council of The Governor-General of India, Assembled For The Purpose Of Making Laws And Regulations.' [2020] Office of the Supt. of Govt. Print., India

<sup>6</sup>. Nanda B, *Gokhale* (Princeton University Press 2016).

<sup>7</sup>. Rai S, 'How The Epidemic Diseases Act Of 1897 Came To Be' *The Wire* (2 April 2020) <<https://thewire.in/history/colonialism-epidemic-diseases-act>> accessed 16 April 2020.

<sup>8</sup>. Mehta A, Srivastava K and Shah A., 'Epidemic Diseases Act 1897 – Dusting an Old Cloak' (*Indian Corporate Law*, 31 March 2020) <<https://corporate.cyrilamarchandblogs.com/2020/03/epidemic-diseases-act-1897-dusting-an-old-cloak/>> accessed 16 April 2020.

punishments and fine for disregarding the regulations read with section 188 of IPC 1860. Additionally with section 188, an individual may also be booked under section 269, 270 or 271 of IPC for violating state orders.<sup>9</sup>The fourth section equips government officers who are acting under the act from any legal actions against them. Moreover section 4 of the Act would not cover an omission to pay compensation as prescribed under the regulation passed under the act.<sup>10</sup>

## **2) CONSTRAINTS OF EDA 1860:-**

The act was passed 123 years back and along these lines has significant constraints in the present times of changing preferences in public health emergency and its administration. The issues prompting the development and spread of transferable diseases have likewise changed throughout the years. Additionally EDA has no provision on control of the random hicks in the price of essential commodities.

The Act does not lay out any criteria on which a disease is declared to be epidemic even it fails to provide the basic definitions of 'dangerous epidemic disease', 'quarantine', 'contagious disease', 'isolation' and 'social distancing'. Apart from inspection and segregation of individuals the act is silent on legitimate structure of accessibility and dissemination of health kits and drugs.

In India's medical framework, the Integrated Disease Surveillance Program (IDSP) units are accountable for initial detection. The healthcare authority positioned in the primary healthcare office, the community health operators and field operators, work in close coordination with the Chief Medical Officer of the district and the assigned district level groups for control of spread of the disease. At the point when a framework as of now exists, particularly with respect to disease surveillance, the arrangement in the 1897 EDA for devolution of capacity to 'any' person does not make any reasonable sense; in an exigency, the greatest test is to break progressive systems and set up consistent coordination. Aside from accommodating anodyne administrative

---

<sup>9</sup> 'Venturing Out During A Lockdown? You May Be Booked under These Clauses' *The Economic Times* (23 March 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/venturing-out-during-a-lockdown-you-may-be-booked-under-these-clauses/articleshow/74779262.cms>> accessed 29 April 2020.

<sup>10</sup>Ram Lall Mistry v RT Greer on 13 June (1904) ILR 31 Cal 829.

bearings for various degrees of government apparatus, the 1897 Act doesn't make reference to any scientific and logical provisions that are required to put a bar on the spread of the epidemic.<sup>11</sup>

Section 3 of the Act with section 188 of the Indian Penal Code needs to be reconsidered and frame in a balanced way between public and authorities because it is observed that it is highly abused by public officials (especially by police). However on 15<sup>th</sup> March, 2020 a PIL filed by Centre for Accountability and Systematic Change Chairman Dr. Vikram Singh in Supreme Court for quashing FIR which are logged under section 188 of IPC for violating section 3 of the EDA on the basis of procedural irregularity. The Apex Court pronounced that since an offence under section 188 of IPC 1860 is cognizable and bail able, courts will not take cognizance by merely filing an FIR. A complaint must be logged by the concerned policemen under section 195 of the CrPc the Apex Court judgment leads to the bifurcation of the FIR's filled under section 188 into two categories. In first category the FIR will be logged under section 188 with some other sections of IPC like 269, 270 and 271 and secondly in cases where FIR has been filed only under section 188 of IPC which leads to a handy trouble before the authorities as of now is the way that when the greater part of the Courts have been closed down during the lockdown in what capacity will the law be gotten underway if there is any violation punishable under section 3 of EDA, 1897 read with S. 188 of the IPC during lockdown?<sup>12</sup>

The regulations provided in EDA also affect the principles of test which are laid down by Supreme Court in *K.S. Puttaswamy* case for putting bar on the draconian powers of state with respect to right to privacy. The test of legitimate aim is fulfilled by the Epidemic Diseases Act, 1897 as its capacity to forestall the spread of a dangerous epidemic disease. It is difficult to characterize specific proportionate rules for a novel infectious disease in a parent law. Therefore, the law provides for delegated legislative power to the states.

Section 2 of the Act just engages a state to inspect individuals and isolate suspected patients. Also, The Act was codified around 123 years back and thus has major shifts in this age of

---

<sup>11</sup>Tewari M, 'India'S Fight against Health Emergencies: In Search of a Legal Architecture' (*ORF*, 31 March 2020) <<https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/>> accessed 29 April 2020.

<sup>12</sup>Singh A, 'The Legality of Firs Filed u/s 188 IPC during Lockdown: What Is the Legal Ammunition of the Police to Control COVID-19' *LiveLaw* (21 March 2020) <<https://www.livelaw.in/columns/the-legality-of-firs-filed-us-188-ipc-during-lockdown-what-is-the-legal-ammunition-of-the-police-to-control-covid-19-155543>> accessed 30 April 2020.

changing preferences in public health and administration. The components prompting the rise and spread of transmittable ailments have additionally changed throughout the years. A portion of the variables that should be tended to now are the expanding paces of global travel, progressively broad utilization of air make a trip contrasted with ocean travel, more noteworthy relocation inside states for acquiring an occupation, the change from agrarian to mechanical social orders, expanded urbanization, horribly expanded thickness of populaces in specific zones, expanding force of contact with creatures and winged animals, man-rolled out natural improvements, changing climatic conditions, advances of mass nourishment creation, breakdown of general wellbeing measures and biosafety lapses. The Epidemic Diseases Act needs alterations in the evolving situation. For instance, it is excessively situated towards movement by transport and quiet on "air travel", which was not present at that time.<sup>13</sup> The epidemiological ideas utilized according to the counteraction and control of pandemic diseases has changed over a period of time. The Epidemic Diseases Act isn't following the contemporary logical comprehension of episode counteraction and reaction, yet just mirrors the logical and legitimate guidelines that won when it was encircled. To refer to a model, the Act puts an excessive amount of accentuation on disconnection or isolates measures, yet is quiet on the other logical techniques for flare-up counteraction and control, for example, inoculation, reconnaissance and sorted out general wellbeing reaction. The political situation in the nation and Centre-state connections has changed. The Act of 1897, in that capacity, isn't adequate to manage the anticipation and control of transmittable disease in the present circumstance. Moreover, the Epidemic Diseases Act is absolutely administrative in nature and comes up short on a public health focus. It doesn't portray the obligations of the administration in forestalling and controlling pandemics. Hence, Act of 1897, in that capacity, isn't adequate to manage the anticipation and control of epidemic in the present circumstance.

### **III. CONCLUSION**

There is a need to reinforce lawful systems to forestall and control on spreading the epidemics. The Epidemic Diseases Act 1897, which is over exceptionally old, has a major drawback with regards to handling the development and reappearance of communicable diseases in the nation,

---

<sup>13</sup>Rakesh PS, 'The Epidemic Diseases Act Of 1897: Public Health Relevance In The Current Scenario' (2016)1 Indian Journal of Medical Ethics.

particularly in the changing public health scenario. Throughout the years, numerous states have figured their own health laws and some have amended their provisions to tackle with the epidemics. Be that as it may, these Acts shift in quality and substance. Most are simply 'policing' acts planned for controlling epidemics and don't manage composed and logical reactions to forestall and handle flare-ups. There is a requirement for a coordinated, far-reaching, noteworthy and pertinent legal arrangement for the control of epidemic episodes in India that ought to be enunciated in a rights-based, individuals engaged and general wellbeing focused way. The draft 'Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism and Disasters) Bill' is one such proposed legislation, but it is still in its long gestation period and its destiny is unpredictable.

## EVALUATION OF EPIDEMIC DISEASE ACT, 1897

-By Sanskruti Yagnik\*

In times of a global health crisis, a colonial-era law comes to India's rescue. The Government of India to avoid a mass spread of the Novel Coronavirus took relevant steps and out got a 123 years old law in force. In the past, India has seen repeated outbreaks of dangerous infectious diseases.<sup>1</sup>

Legal doctrine is essential during emergencies, since it can determine the scope of the response Central and State governments to community health emergencies as well as citizens' rights and duties. In India, recent state governments have invoked provisions of The Epidemics Disease Act, 1897 to compel H1N1 – ordering hospitals to create isolation treatment facilities<sup>2</sup> for infected persons. In that sense, crucial evaluation the Epidemic Disease Act, 1897, is cardinal.

### I. WHAT IS THE EPIDEMIC DISEASE ACT, 1897?

Epidemic Disease Act, enacted in February 1897, with the primary objective of preventing and avoiding 'emerging epidemic diseases'<sup>3</sup> as a result of the eruption of the bubonic plague in India (mostly the Bombay presidency), claimed to have spread through rats, killed 10 million people, gave the colonial government draconian powers to regulate the outbreak and take requisite steps to contain the outbreak.<sup>4</sup> There had been forcible separation of people affected, disinfections and relocation, and destruction of contaminated areas. In this situation chaos, charges of abuse, allegations of humiliation against Indians including public stripping, extreme violence against women certainly raised serious concerns.<sup>5</sup> A historian named David Arnold called the Act as 'one of colonial India's most stringent pieces of sanitary health

---

\*Student, Pravin Gandhi College of Law, University of Mumbai.

<sup>1</sup> Dikid T Jain, 'Emerging and Re-Emerging Infections in India: an Overview' (2013) 138 IJMR 19.

<sup>2</sup> 'Dengue Case : Chandigarh Invoke Epidemic Disease Act, Challans Private Lab Owners' *Indian Express* (4 Oct 2015) <<http://indianexpress.com/article/cities/chandigarh/dengue-cases-chandigarh-invokes-epidemic-diseases-act-challans-private-lab-owner/>> accessed 23 April 2020.

<sup>3</sup>The Epidemic Disease Act 1897.

<sup>4</sup>Vibha Varshney, 'Unravelling the Bombay Plague' (*Down to Earth*, 16 July 2015) <<https://www.downtoearth.org.in/reviews/unravelling-the-bombay-plague-50165>> accessed 22 April 2020.

<sup>5</sup>Biswas AK, 'Swine Flu and India Strategy to Combat the Menace' (2009) XLVII Mainstream Weekly <<http://www.mainstreamweekly.net/article1477.html>> accessed 23 April 2020.

legislations ever adopted'.<sup>6</sup> Needless to say the execution and modernization of the Act remained supine even after Independence.

The Act is an orchestral document that doesn't explicitly address any practical steps that the government must take to control the epidemic; instead, it is a strictly legislative and lacks a clear emphasis on public health that is necessary in times of a pandemic.

## II. EPIDEMIC DISEASE ACT – ANALYSIS

The act containing just 4 sections is one of India's shortest Acts, – enacted to avoid an outbreak of contagious diseases and grants the government power to take appropriate steps to prevent the spread of dangerous disease. The Act, however, did not describe what is a 'dangerous disease'? There is no certainty whether an outbreak is "dangerous" owing to the enormity of the issue at hand, populations that might have been affected due to the outbreak, the severity of the crisis, or the ability to spread globally if we are to avoid misuse of the act.

- (1) Section 2 empowers the state government to take preventive steps and approve regulations as to when threatened with, an outbreak of epidemic diseases and gives them necessary powers to decide on required travel inspection regulations, precautions to be taken by the government with regards to segregation and temporary accommodation of infected persons.
- (2) Section 2A authorizes the central government to take reasonable and appropriate measures and lay down regulations for inspection of any ship or vessels leaving or arriving in India that the Central government<sup>7</sup> shall take requisite steps to avoid the outbreak of that disease.
- (3) Section 3 states, 'Any person who disobeys any regulations or order made under the Act shall be deemed to have been imprisoned for six months or be charged with a fine of rupees 1,000 or both could be charged to a person for disobeying the act.' The offense committed under this act is punishable by another colonial- era law which still holds a place in Indian criminology i.e. Indian Penal Code (IPC) and section 188<sup>8</sup> in this regard.
- (4) Section 4 protects acts done by persons acting in good faith and also assures that no suit or legal proceedings are brought against that person.

---

<sup>6</sup>Arnold D Science, 'Technology and Medicine in Colonial India' (2000) UKCUP 143.

<sup>7</sup>The Epidemic Disease Act 1897, s 2A.

<sup>8</sup>Indian Penal Code 1860.

From the above analysis, we must see that the act does not serve a vital function in modern-day India to deal with an outbreak and also to view the aftermath that will further result in an economic emergency.<sup>9</sup> *First* of all, the act does not specifically rule out government's role and obligations in warding off or controlling epidemics which essentially means that the government is at total liberty. *Second*, the act places emphasis on the government's potential, but is entirely silent on citizens' rights and this is why colonial laws shouldn't be regulating modern India's health crisis. *Third*, the act has no provision that takes into account people's consideration/need. This is because the colonial rulers wanted to suppress the Indians and not take their belief, history, principles, and desires into considerations while developing appropriate solutions. *Fourth*, and importantly the act doesn't take into account human rights and ethical principles that comes into play during an epidemic. *Fifth*, considerable emphasis is placed on quarantine measures, and even though it doesn't necessarily tell us anything about the scientific methods for controlling and preventing the outbreak by taking appropriate steps such as vaccination, monitoring, testing, surveillance and an organized public health response which is essential and required in today's Socio-political Scenario as in India Centre – states relationships have changed after independence.

Looking at the present-day India under lockdown there have been major human rights violations and particularly migrant workers treated as animals by the local and well as central governments. Who gives them the power to treat the poor in this manner? Violate their Fundamental right to live? In present-day situation, the act is not adequate to deal with the prevention and control of the infectious disease.

### **III. WHAT IS SECTION 188 OF THE IPC?**

Section 188, IPC punishes a public official for disobeying an order<sup>10</sup> Disobedience causes or attempts to cause obstruction, annoyance or damage to any person, who is lawfully employed or working, shall be punished with simple jail sentence which may extend to one month, or fine of two hundred rupees, or with both.

However, if such disobedience causes or trends to causes to endanger human life, health or safety, or in any way causes or trends to trigger a riot the offense shall be punishable with

---

<sup>9</sup> Rakesh PS, 'The Epidemic Disease Act 1897: Public Health Relevance in the Current Scenario' (2016) 1 IJME <<https://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenario/?galley=html>> accessed 22 April 2020.

<sup>10</sup> Indian Penal Code 1860, § 188.

imprisonment that may extend to six months, or with fine which may extend to 1000 rupees or both.

Given the current scenario, violations of regulations that are passed under the Act due to the outbreak of the novel Coronavirus would attract the latter punishment as it specifically focuses on public health and safety.

#### **IV. OTHER PROVISIONS OF THE IPC ATTRACTED**

- (1) Section 269 IPC, states that whoever unlawfully or negligently spreads infection shall be imprisoned for six months or pay fine or both.
- (2) Section 270 IPC, prescribes punishment for any person whose malignant act likely to spread infection shall be punished with two years in prison, or with fine, or both.
- (3) Section 271 IPC, prescribes punishment for disobeying quarantine rules will be punished with imprisonment that shall extend to six months, or fine, or both.

#### **I. THE PRESENT TIMES**

The act is used to contain the spread of the novel corona virus, undoubtedly strikes a chord between modern- day realities. The Act doesn't even envisage the very definition of an "Epidemic Disease". However, it'll be inconsiderate to say that the government did not do anything. In 2017 a bill was introduced called the 'Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism and Disasters) Bill' <sup>11</sup>(**'Bill'**). The said bill was to repeal the above act; however, even after three years, it is yet to see the daylight.

While the factors that needs to be addressed now are the growing rates of mode of transportation especially air travel compared to sea travel 100 years ago, rapid migration of workers, primarily daily wage earners within the states for the sake of earning a livelihood, increased urbanisation and globalisation, significantly increased density of population within the states and metro cities, man – made ecological shift, changing climatic conditions, a rapid evolution from agrarian to industrial community technology and a lot more which clearly states that pieces of legislations need to evolve as human evolve.<sup>12</sup>

---

<sup>11</sup>Public Health (Prevention, Control, and Management of Epidemics, Bio-Terrorism and Disasters) Bill 2017.

<sup>12</sup>Rakesh PS, 'The Epidemic Disease Act 1897: Public Health Relevance in the Current Scenerio' (2016) 1 IJME <<https://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenerio/?galley=html>> accessed 22 April 2020.

There is an immediate need to strength the legal structure within the country to control diseases transmission. The act that is currently governs India's health crisis as seen above has major loopholes in tackling diseases, especially in a growing health context. Nevertheless, several India states have amended the act over the years, and have also formulated their own public health laws, although these acts vary in quality and content. There must be an integrated, comprehensive, actionable and modern specific legal framework for managing outbreaks that must be articulated in a right- based, people-focused and public health oriented manner.

# COVID DISASTER: HEALTH AND HUMAN RIGHTS

-By Simran Sabharwal\*

Shatakshi Arora#

## I. INTRODUCTION

*'Human rights violations hinder, rather than facilitate, responses to public health emergencies, and undercut their efficiency.'*<sup>1</sup>

Unprecedented times may call for distressed manoeuvre, but certainly not unlawful ones. The Covid-19 crisis is now an uncontrollable global pandemic, a pandemic which the modern world has never encountered.<sup>2</sup> The article will revolve around the research question “Whether the emergency procedures adopted during pandemic offer immunity to the government for any gross human right violation they may commit during this period?”

From Singapore to China to Israel, to stop the virus transmission, the government have ordered electronic monitoring of the citizens' movements and started accessing the users' data for extraordinary surveillance. South Korea is using a robust surveillance method to fight the spread of such virus; this method includes immigration records, credit card history, smartphone location history, and CCTV footage – of the confirmed patients to compile meticulous logs of their contacts and travels. To keep a record of how many people are obeying the government instructions, the authorities have analyzed the location data transmitted by the citizens' mobile phones. In India, Ministry of Electronics and Information Technology recently came up with 'Aarogya Setu', by scrutinizing the app in these testing times, we find various concerns with it such as the collection of unnecessary and unwarranted personal data, ambiguity in the privacy policy and limited liability of the government in case of any personal data leakage. The government all around the world has infringed human rights by censorship, arbitrary detention, discrimination, xenophobia, and breaching privacy.

---

\*Student, Rajiv Gandhi National University of Law, Punjab.

#Student, Hidayatullah National Law University, Raipur.

<sup>1</sup> 'Explainer: Seven ways the coronavirus affects human rights' (*Amnesty International*, 5 February 2020) <<https://www.amnesty.org/en/latest/news/2020/02/explainer-seven-ways-the-coronavirus-affects-human-rights/>> accessed 28 April 2020.

<sup>2</sup> Nikhil Pratap and KashishAneja '1.3 Billion People. One Virus. How Much Privacy?' *The Wire* (30 March 2020) <<https://thewire.in/government/covid-19-pandemic-privacy-india>> accessed 28 April 2020.

## II. PANDEMIC AND HUMAN RIGHTS

Health organisations around the world are using technology to communicate and predict the spread of COVID-19. The pandemic is forcing a trade-off between human rights and public health. The number of deaths because of the pandemic in India is on a rise. It has become a world war except all the countries are on the same side.<sup>3</sup> The principle that can be mentioned here is ‘Necessitas inducit privilegium quoad jura privata’ which means necessity induces a privilege in respect of private rights. The government to protect the lives of citizens imposed the lockdown which led to the restraint on freedom of movement<sup>4</sup> and curtailment of certain other rights like transparency or the right to dignity under article 21<sup>5</sup>. However, importance to human rights should be placed on the same pedestal.

Section 24(k) of the Disaster Management Act, 2005 provides the power to the State Executive to disseminate information to the public during a threatening situation. Under section 30 (2) (xiv) of the same Act, the District Authority is empowered to review and upgrade the procedure to spread proper information to the public. The ambit of these sections was not explained then and the exploitation can be noticed now. The overly broad measures are hampering the privacy rights. Can an exceptional situation jeopardize democratic principles? The exceptional measures by the government have degraded the basic rights in relation to the working hours and condition of an employee. The administration follows the ‘Shock Doctrine’ which means applying brutal tactics by taking advantage of natural disasters, terrorist attacks, or market crashes.<sup>6</sup> The government may make radical changes by coming with policies that were never acceptable before. As the global pandemic and health concerns increase the fear increases in the minds of the people. The citizens may agree on giving up their constitutional rights to protect the lives of the people. This can be seen in the case of the Arogya Setu app. The data collected for the safety of the people may be converted later for surveillance.

The Hon’ble Supreme Court in *KS Puttaswamy v Union of India*<sup>7</sup> recognised data protection as an integral part of the privacy of an individual. The Personal Data Protection Bill, 2019

---

<sup>3</sup>James Crump, ‘This is like a World War’ (*The Independent*, 24 April 2020) <<https://www.independent.co.uk/news/world/americas/bill-gates-coronavirus-pandemic-world-war-define-era-generations-a9482306.html>> accessed 29 April 2020

<sup>4</sup>‘Human Rights Dimensions of Covid-19 Response’ (*Human Rights Watch*, 19 March 2020) <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>> accessed 29 April 2020

<sup>5</sup>The Constitution of India, 1950.

<sup>6</sup>Naomi Klein, *The Shock Doctrine* (1<sup>st</sup>edn, Random House of Canada 2007)

<sup>7</sup>*KS Puttuswamy v Union of India* (2017) 10 SCC 1.

also aims to protect the private data of individuals by establishing a Data Protection Authority. The fundamental rights should not be sidestepped and be viewed together even in the pandemic condition.

### III. RIGHTS- VICTIM OF COVID-19?

Coronavirus does not discriminate between the rich and the poor. Though we can see that the poorer you are, the chances of contracting the virus increases. The people are distressed because of the job losses, shelter, and wages in the lockdown. The labourers neither have money nor homes. They have to travel kilometres on foot to reach their home state.<sup>8</sup> Migrants cannot be called violators and punished because they have been compelled to choose Covid-19 over lack of food.<sup>9</sup> Lockdown is a luxury only for people who have proper houses and regular income. A basic guideline issued by the government of 'confining yourself' or 'social distancing' can only be followed by people who have proper homes to live. Social inequality and gross indifferences can easily be noticed here.

The coronavirus has intensified the discrimination against the Muslim minority of India. Muslims were thrown out of their homes by suspicious neighbours. A pregnant Muslim woman was denied a hospital bed because of her religion.<sup>10</sup> The news media is easily blaming the Muslims for the spread of the virus. Article 25 to article 28 of the Indian Constitution has been ignored by the authorities and the media. Another victim of the coronavirus will be privacy rights. The government has blatantly abused the privacy of its citizens. The State government has launched its apps for tracking people without discussing privacy issues.

The fundamental rights of people and the minorities are at a risk because of the government's step to prevent the transmission of COVID-19. The coronavirus pandemic may lead to a human rights crisis if the current policies remain unchanged.<sup>11</sup>

---

<sup>8</sup>Mass exodus of migrants: Are They the Covid-19 Lockdown Violators or Victims?' *The Print* (30 March 2020) <<https://theprint.in/talk-point/mass-exodus-of-migrants-are-they-the-covid-19-lockdown-violators-or-victims/391324/>> accessed on 30 April 2020.

<sup>9</sup> *ibid.*

<sup>10</sup>RanaAyub 'IslamophobiaTaints India's Response to the Coronavirus' *The Washington Post* (7 April 2020) <<https://www.washingtonpost.com/opinions/2020/04/06/islamophobia-taints-indias-response-coronavirus/>> accessed 30 April 2020.

<sup>11</sup>Martin Levine 'COVID-19 Will Strike Poor People More Harshly and Further Widen Wealth Gap' (*Non-Profit Quarterly*, 19 March 2020) <<https://nonprofitquarterly.org/covid-19-will-strike-poor-people-more-harshly-and-further-widen-wealth-gap/>> accessed 30 April 2020

#### IV. CHANGING LANDSCAPE OF INDIA AND ITS CITIZENS PRIVACY

The pandemic has made the world enter into a volatile and unstable phase. While some form of crime has reduced<sup>12</sup>, there has been an increased threat to cyber data. The digital revolution has emerged as one of the main issues in human rights. Currently, the nation does not have a comprehensive framework to protect the health data of its citizens. Information Technology Act, 2002<sup>13</sup> includes Sensitive Personal Data like travel history. The Sensitive Data was put on various official websites that have brutally violated the citizens' privacy rights. There lies a concussion between Public Health and the Right to Information. There are citizens in India, Bangladesh, etc. who are not aware of privacy rights and without any knowledge, their data is stored on such applications.

Covid-19 is general bait. Most of the conferences happen on the Zoom Application. Hackers look for opportunities like these and steal the data. One of the recent applications launched by the Indian government is Aarogya Setu. The application crossed 50 million downloads in 24 hours.<sup>14</sup> Central Government made the Aarogya application mandatory for all its employees<sup>15</sup> without considering their will. The application takes personal data and analyses whether a person is Covid-19 affected. There has been no guideline issued by the government on the storage of the data. Also, the privacy rules do not specify which ministry or department will have the right over data. It also accesses location data via GPS which violates the privacy-focused global standards.<sup>16</sup> The Singapore government has launched a similar application stating that the Ministry of Health has access to data and decision-making power.<sup>17</sup> It is certainly helpful in combating Covid-19 but certain loopholes exist. There is no legal framework to govern the Indian Aarogya Setu App. It is also hampering the speed of detecting cases. The government lacks the approach to secure data as it was never discussed widely in India.

---

<sup>12</sup>Robert Muggah and Steven Pinker 'We Can Make the Post-Coronavirus World a Much Less Violent Place' (*Foreign Policy*, 14 April 2020) <<https://foreignpolicy.com/2020/04/14/we-can-make-the-post-coronavirus-world-much-less-violent/>> accessed 2 May 2020.

<sup>13</sup>Information Technology Act 2002.

<sup>14</sup>Karishma Mehrotra and Krishn Kaushik 'Coronavirus: AarogyaSetu app Crosses 50 Million Users' *The Indian Express* (16 April 2020) <<https://indianexpress.com/article/coronavirus/coronavirus-aarogya-setu-app-crosses-50-million-users-6364471/>> accessed 2 May 2020.

<sup>15</sup>Abhishek Bhalla 'Centre Makes AarogyaSetu App Must for All Central Govt Employees' *India Today* (29 April 2020) <<https://www.indiatoday.in/india/story/centre-makes-aarogya-setu-app-must-for-all-central-govt-employees-1672415-2020-04-29>> accessed 2 May 2020.

<sup>16</sup>Digital contact tracing is key to combat Covid-19: Vijay Raghavan' *The Economic Times* (16 April 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/digital-contact-tracing-is-key-to-combat-covid-19-vijay-raghavan/articleshow/75188736.cms>> accessed 2 May 2020.

<sup>17</sup> *ibid.*

The user's data was exposed to online platforms like YouTube. The government should monitor these issues and take necessary action. Data privacy is one of the basic human rights<sup>18</sup> and it should not be taken away in the garb of the pandemic.

## V. RESTORING DATA PRIVACY AFTER COVID

The government-sanctioned surveillance program for Covid-19 is certainly well-intentioned but raises privacy concerns throughout the country. A virus should not undermine human rights. It is important to keep a close eye on their movement as it is effective and provides safety to citizens. In ordinary circumstances, sensitive data of the patient is usually kept private. However, the pandemic has overlooked privacy rights. The data can easily be stored for commercial gains. World Economic Forum has suggested an alternative that enables private companies to access data without revealing confidential information.<sup>19</sup> This is termed as Privacy Enhancing Technology (PET). India should start research and develop an application on the same lines. The proper implementation of PET will empower the third parties without constraining the privacy rights.

There is a need to ensure data privacy which is not only concerned with the technology. The traditional policies implemented by the Indian government should be on the same wavelength. United Nations has already termed coronavirus as a 'human rights disaster.'<sup>20</sup> Undermining human rights to curb COVID-19 cause incurable damage. Any effort taken by the government in the state of pandemic or emergency should be in conscience with proper judicial rules and public health. This will help to avoid the misuse of human rights. The police officials were also reported to punish people who came out to take the essential commodities. This is hampering their right to movement. The government should also not restrain freedom of expression. India has never been in 'Janta Curfew'. The ambiguous laws and rules have resulted in the violation of rights. The nation has always framed the law after the situation happens, instead, we should frame laws before keeping in mind the circumstances lying ahead. Similar has happened with the gross human rights violations to safeguard public health.

---

<sup>18</sup>KS Puttuswamy v Union of India (2017) 10 SCC 1.

<sup>19</sup>'The Next Generation of Data-Sharing in Financial Services: Using Privacy Enhancing Techniques to Unlock New Value' (*World Economic Forum*, 12 September 2020) <<https://www.weforum.org/whitepapers/the-next-generation-of-data-sharing-in-financial-services-using-privacy-enhancing-techniques-to-unlock-new-value>> accessed 3 May 2020.

<sup>20</sup> *ibid.*

It is essential to fill the gap otherwise the coronavirus pandemic will result in a human rights disaster. This will be more disastrous than the current pandemic. We need all the international treaties and conventions that focus on human rights should implement strong policies to protect human rights in this digital era. People should have the liberty to determine who will use their data and how their data will be used. This makes us answer our research question that the emergency procedures adopted by the government do not entitle them to assign public health instead of human rights. Surely, public health is a priority but there needs to be a balance drawn between the two.

## **VI. CONCLUSION**

The situation in India can be summarised in the phrase – ‘Public Health v. Human Rights – Choose only one?’ The privacy rights, religious rights, and widening gaps between the rich and the poor should be a concern for the nation. Health authorities do not have the power to coerce individuals for protecting the wellbeing of the community. The answer to the research question adopted in this is negative. The government does not have the right to violate human rights in an emergency. Neither the Disaster Management Act, 2005 nor the Epidemics Act, 1897 gives the power to the government to prioritize incomplete policies over privacy rights. India is in a need to draft a Public Healthcare Law which addresses all the problems comprehensively. The colonial laws cannot address the multi-faceted dimensions of public health issues in India. We need to bridge the gap between public health and human rights. Once India manages to flatten the curve, it should work on the public health law bill which includes privacy rights. We need to follow the World Health Organisation’s guideline that ‘the measures taken by the government to stay at home for slowing the pandemic should not be done by sacrificing the basic human rights.’

# THE LEGALITY OF QUARANTINE POWERS AND LOCKDOWN ORDERS IN INDIA

-By Sonakshi Singh\*

Coronavirus or COVID-19 is an infectious disease caused by a new virus. This disease is widespread over the entire world so much that the World Health Organization (WHO) declared the same as a 'pandemic'. The word 'pandemic' here means that the epidemic is affecting beyond a country's border i.e. it has spread to various countries altogether. This outbreak has not only created social and economic problems, but has resulted in adverse legal issues across the world. In order to minimize the spread of this outbreak, it was necessary to put the affected people in quarantine.

The word 'quarantine' means restricting the movement of people or animals, which have been exposed to some infectious or contagious disease in order to stop such disease from spreading further. In common parlance, the words 'quarantine' and 'isolation' are used interchangeably. However, it must be understood that they are two different terms. The former only deals with the cases where a person is only exposed to such disease, but has not been affected by it, while the latter deals with situations where the person is infected with such disease. In quarantine, restrictions are put only on the movement of people, while in isolation complete seclusion of the affected person is made. This article will discuss about the legal provisions justifying the imposition of quarantine and lockdown by the government of India.

## I. ORIGIN OF QUARANTINE LAW:

During the plague epidemic in the European countries, the great council passed the first law on medical isolation in 1377. Under it, justification for detention for medical reasons was justified and non-compliance was criminalized. This detention was for 30 days and was called '*trentino*'. Gradually, other countries started to adopt this law. The detention period also increased to 40 days and the name changed to 'quarantine'.

---

\*Amity Law School, Amity University, Noida, Uttar Pradesh.

This new word found its origin in the Latin word of ‘*quadraginta*’, which was used for the detention of ships for 40 days.<sup>1</sup>

## II. INDIAN LEGISLATIONS:

India is a signatory to the International Health Regulations, 2005 (IHR) and therefore, it has to be prepared to respond to international outbreak of diseases through International Diseases Surveillance Program (IDSP). Article 253 of the Indian constitution empowers the union to make legislation in order to execute the International Health Regulations. Constitutionally speaking, both the union and the states have the authority to deal with public health and sanitation.<sup>2</sup> While the Centre plays an advisory role, the formulating and executing of such laws is the duty of the States as provided under the state list of seventh schedule.

- **Epidemic Diseases Act, 1987:**

The British government passed this legislation to deal with the Bubonic plague. Now, this Act is used in situations when there is a threat of spread of a perilous epidemic disease. However, the definition of ‘dangerous epidemic disease’ is itself nowhere defined in the Act. This Act comprises only of four provisions. The main objective of this Act is to provide the Central and State government with the authority to take all essential measures to stop the spread of such dangerous epidemic disease. This authority to take preventive and ameliorative measures includes the ‘power to quarantine’. Additionally, it allows the State to inspect any ship or vessel arriving or leaving any port or to order detention of any person arriving or intending to sail if there is imminent threat of spread of such dangerous epidemic disease. Non-adherence to the provisions of the Act was made a punishable offence. It also grants immunity against legal action to the officers exercising functions under the Act.

The Government of India enforced this Act on March 11 over the entire country to take hold of the COVID-19 pandemic situation.

- **Indian Penal Code, 1860:**

The Indian Penal Code also has provisions for justifying the quarantine powers of the government. Section 188, 269, 270, and 271 of the Code are relevant in the present

---

<sup>1</sup> L.S Sthaimurthy, ‘Quarantine and the Law’ *The Hindu* (3 April 2020) <<https://www.thehindu.com/opinion/lead/quarantine-and-the-law/article31241185.ece>> accessed 17 April 2020.

<sup>2</sup>Harleen Kaur, ‘Can the Indian Legal Framework deal with COVID-19 Pandemic? A review of Epidemic Diseases Act’ (*Bar and Bench*, 27 March 2020) <<https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>> accessed 17 April 2020.

case. Section 269 specifically lays down the punishment for knowingly spreading any infectious disease that is life-threatening. Section 270 criminalizes the malignant act which has the likelihood of spreading such infectious disease. Therefore, for this offence, the malign intention of the person is an important element. Section 188 is a general provision making disobedience of the order of a public servant as a punishable offence, while, Section 271 is a specific provision which makes the disobedience of quarantine provision as a punishable offence under the Code.<sup>3</sup>

In the current COVID-19 scenario, defying the regulations of social distancing, not wearing masks, coughing without covering nose and mouth, disregarding quarantine rules and the like are all punishable acts under the above-mentioned sections.

- **Criminal Procedure Code, 1973:**

Section 133 and 144 of the Code are relevant to the matter in issue. Section 133 empowers the District Magistrate or Sub-divisional Magistrate may pass the orders as given under the section for removal of public nuisance. This section is relevant in the current COVID-19 scenario because it provides the above-mentioned persons with the authority to restrict, regulate or prohibit any trade or occupation which is harmful or causing public nuisance. Carrying on trade or occupation amidst this COVID-19 lockdown period, which are non-essential, is a violation of law and the powers under Section 133 can be invoked.

In *Municipal Council Ratlam v Vardichand*, it was observed that section 133 of CrPC can be invoked to safeguard the citizens from situations of epidemics and pandemics like the current coronavirus attack.<sup>4</sup>

Section 144 has been invoked in a number of districts in order to restrict public gatherings and imposition of a curfew. It prohibits the gathering of four or more people in the concerned area. This power is akin to the power of ordering quarantine. The violation of the orders under this section is punishable under Section 188 of the Indian Penal Code.

- **Disaster Management Act, 2005:**

---

<sup>3</sup>Tarique Faiyaz, 'COVID-19 and the Current Challenges of Quarantine Law Enforcement in India' (*Jurist*, 14 April 2020) <<https://www.jurist.org/commentary/2020/04/tarique-faiyaz-covid-19-quarantine-india/#>> accessed on 18 April 2020.

<sup>4</sup>Tarique Faiyaz, 'COVID-19 and the Current Challenges of Quarantine Law Enforcement in India' (*Jurist*, 14 April 2020) <<https://www.jurist.org/commentary/2020/04/tarique-faiyaz-covid-19-quarantine-india/#>> accessed on 20 April 2020.

This Act was drafted for effective management of man-made and natural disasters which are likely to be life-threatening or cause human suffering. For implementing the current quarantine and lockdown orders, the Modi government invoked the powers under this Act. Sections 51 to 60 of the Act provide penalties for specific offences. It also makes the act of hindering the duty of any officer or employee under the Act as a punishable offence with imprisonment up to one year or fine or both.<sup>5</sup>

### III. POWERS OF STATE GOVERNMENT:

Many States like Haryana, Delhi, Uttar Pradesh, Karnataka and Maharashtra have invoked the Non-Pharmaceutical Interventions (NPI) to tackle the COVID-19 situation in the absence of the curative medicine for the disease. Actions taken under this include shutting down of schools, educational institutions, malls, gyms and such other public places, spreading awareness regarding social distancing and making regulations of social isolation and quarantine. Some of the states have drafted specific regulations for COVID-19 like the Delhi Epidemic Diseases COVID-19 Regulations, 2020, to empower the government officers to impose compulsory quarantine and isolation on persons in certain cases. The compliance of these regulations is mandatory and forceful. The officers also have the power of surveillance of persons and private premises. The District Magistrates have been given the power to order lockdowns.<sup>6</sup>

- **Directive Principles of State Policy:**

The Directive Principle of State Policy contained in part IV of the constitution of India, through article 47, imposes a duty on the state to improve the nutrition level and health of the people. Article 38 also empowers the State to secure a social order for the promotion of the welfare of the people. However, in *Municipal Council, Ratlam v Vardichan*, the Supreme Court held that before enforcement of article 38,

---

<sup>5</sup> 'Jail Term, Fine for Offenders as MHA Invokes Disaster Management Act to Fight COVID-19 during Lockdown' *News18* (24 March, 2020) <<https://www.news18.com/news/india/jail-term-fine-for-offenders-as-mha-invokes-disaster-management-act-to-fight-covid-19-during-lockdown-2549809.html>> accessed 20 April 2020.

<sup>6</sup>Harleen Kaur, 'Can the Indian Legal Framework deal with COVID-19 Pandemic? A review of Epidemic Diseases Act' (*Bar and Bench*, 27 March 2020) <<https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>> accessed 20 April 2020.

the Government must inform the judiciary in order for the latter to test the action to be taken on the basis of reasonableness and procedural preparedness.<sup>7</sup>

- **Fundamental Rights:**

The imposition of lockdown and quarantine hampers with the exercise of the fundamental rights of the people guaranteed by the Constitution of India, especially the right to privacy and freedom of movement.

**Right to Privacy:**

The right to privacy is a part of right to life under Article 21, which is a fundamental right. However, the exercise of such a right is subject to be restricted for the public interest. In the case of *Justice K.S Puttaswamy v Union of India*, the Apex court declared that right to privacy as included in fundamental right to life under article 21 and laid down the following test to check the reasonableness of restrictions put by the State on the exercise of this right:

1. There must be legal sanction behind the action.
2. There must be a legitimate objective for the action.
3. There must be adequate balance between the restriction imposed and the need for the same.
4. Existence of procedural assurances against the abuse of such restriction.<sup>8</sup>

In the current COVID-19 situation, the imposition of restriction needs to be tested on the above-stated parameter. The second condition is fulfilled as the threat to public health and life is a legitimate objective for the action. The provisions of the Epidemic Diseases Act, 1987 provide a legal sanction for the action taken, thereby, passing the first parameter. There is also a reasonable balance between the State interference with the fundamental rights and the need for the same. The only lacuna that seems to exist here is in case of the last parameter. The aforesaid Act neither defines the term ‘dangerous epidemic disease’ nor does it provide any protection to the people against the misuse of the powers given to the State. It additionally grants immunity to the officers of the State in discharging their functions under the Act from any legal action against them, thereby, leading to possibility of abuse of power given by the Act.

---

<sup>7</sup>Tarique Faiyaz, ‘COVID-19 and the Current Challenges of Quarantine Law Enforcement in India’ (*Jurist*, 14 April 2020) <<https://www.jurist.org/commentary/2020/04/tarique-faiyaz-covid-19-quarantine-india/#>> accessed on 21 April 2020.

<sup>8</sup>Harleen Kaur, ‘Can the Indian Legal Framework deal with COVID-19 Pandemic? A review of Epidemic Diseases Act’ (*Bar and Bench*, 27 March 2020) <<https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>> accessed 21 April 2020.

Hence, the Act does not seem to be fully passing the Puttaswamy test of reasonableness.

**Right to Freedom of Movement:**

Article 19(1) (d) protects the fundamental right of movement of the citizens of India. However, State can put reasonable restrictions on this right in the interest of general public as per sub clause (5) of the article.

The interference of the State with this fundamental right can be justified only when it is lawful, has a valid aim and is proportional to its impact.<sup>9</sup>

**IV. CONCLUSION:**

The power of imposition of lockdown and quarantine by the Government of India has a legal backing, but lacks constitutional spirit. The justification of coercive practices of the State under the Epidemic Diseases Act is against the very institution of democracy. There is a need for a proper legislation to deal with the health emergencies that arise due to epidemics and pandemics like COVID-19. Such legislation must incorporate the principle of State accountability and include procedural checks in the exercise of power of the officers of the State. The rights of the people must be adequately balanced with the duty of the State to protect the health of the people. Hence, a harmonious construction of part-III and part-IV of the Constitution of India is the right solution as enshrined by the Supreme Court of India in various cases.

---

<sup>9</sup>'Human Rights Dimensions of COVID-19 Response' (*Human Rights Watch*, 20 March 2020) <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>> accessed 21 April 2020.

# CURFEW- A PREVENTIVE MEASURE FOR CORONAVIRUS PANDEMIC

-By Sonia S. Chillarge\*

## ABSTRACT

*The concept of curfew comes under the purview of section 144 of the code of criminal procedure.*

*This article focuses into three parts: Firstly, It focusses the essential conditions for issue of urgent order under section 144 of code of criminal procedure. Secondly, it analyses about legal framework of Disaster Management Act, section 144, lockdown and curfew. Lastly, it highlights about the constitutional validity of the curfew with the touchstones of article 14 and 19 of the constitution of India. Hence, in this article the author particularly tries to recognize the legal status of curfew under section 144 of Code of Criminal Procedure, all over the territory of India.*

## I. INTRODUCTION

Recently, The Prime Minister of India announced 'Janta Curfew' from 7 am to 9 pm on 22<sup>nd</sup> March 2020 to contain outbreak of Novel Coronavirus Pandemic.<sup>1</sup> Since, there are four stages of coronavirus disease is *firstly*, Travel history from coronavirus affected country; *secondly*, contact with a Travel history person, Then, Coronavirus is a community spread disease from one human to another human which results into pandemic. So to break the community spread chain the most important concern is related to the implementation of the section 144 of the code of criminal procedure. This behavioral Pattern will change only after the law reaches its maximum capacity and design in the form of a curfew as a speedy and effective remedy. This article particularly tries to recognize the legal status of curfew under section 144 all over the territory of India.

## II. LEGAL FRAMEWORK ON DISASTER MANAGEMENT ACT, SECTION 144, LOCKDOWN AND CURFEW

The Disaster Management Act, 2005 defines 'disaster' means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or

---

\* Assistant Professor of Law, Lokmanya Tilak Law College of Tilak Maharashtra Vidyapeeth, Pune.

<sup>1</sup> Government of India issues orders prescribing voluntary 'Janta curfew' for containment of Covid-19 epidemic in the country (22<sup>nd</sup> March 2020).

magnitude as to be beyond the coping capacity of the community of the affected area.<sup>2</sup> So in the present COVID-19 outbreak situation, the coronavirus is considered as a disaster under the purview of meaning of disaster.

So the Implementation of curfew is legally valid in accordance with the special law of Disaster Management Act, 2005 as special law prevails over general law. Since it provides the provision of Immunity from legal process which defines as

*officers and employees of the Central Government, National Authority, National Executive Committee, State Government, State Authority, State Executive Committee or District Authority shall be immune from legal process in regard to any warning in respect of any impending disaster communicated or disseminated by them in their official capacity or any action taken or direction issued by them in pursuance of such communication or dissemination.*<sup>3</sup>

### **III. DIFFERENCE BETWEEN SECTION 144, LOCKDOWN AND CURFEW:**

The above all measures are to contain the spread of coronavirus effectively. Due to the coronavirus outbreak situation, Government implements section 144 of the Code of Criminal Procedure.

**Power to issue order in urgent cases of nuisance or apprehended danger:**<sup>4</sup> It is an urgent order issued by executive Magistrate which is a prohibitory order by the state government in the public interest. In severe situation situation, it applies lockdown and in very severe situation such as to control coronavirus Pandemic, curfew is implemented by the government through district magistrate in the public interest. Generally, section 144 can be ordered by executive magistrate whereas lockdown and curfew is ordered by district magistrate. All these three are different but grounds for imposing it are same. Whenever there is a situation of apprehension of danger to human life, health, riot, affray, public tranquility or public peace then any of the above provisions can be imposed by urgent order under the law. It also provides the provision to block Internet in the all above provisions under the law.

---

<sup>2</sup> Disaster Management Act 2005, § 2(d).

<sup>3</sup> Disaster Management Act 2005, §74.

<sup>4</sup> Code of Criminal Procedure 1973, § 144.

Whenever section 144 of the Code of Criminal Procedure is imposed, then unlawful assembly is provided which means five or more persons cannot gather together in a public place. It also prohibits carrying and possession of arms. Whereas lockdown is same as that of the section 144 but it also includes shutdown of flights, trains and public transport which has the main objective to restrict the movements of people. In the section 144 and Lockdown essential services such as grocery shops, milk products sellers, banks, petrol pump will remain open for a fixed period of time. It depends upon the essential services defined under the order issued by the Ministry of Home Affairs which listed the relaxations and essential services in the lockdown period due to the coronavirus outbreak situation.

Whereas, in case of a severe situation a curfew is imposed. In this case, the essential services are also curtailed for a fixed period of time. The main objective is to keep people inside home and maintain social distancing. Police Permission is necessary to move outside the home in case of a curfew. It is a result of failure of Lockdown provision and the most speedy and effective remedy to contain spread of coronavirus Pandemic.

#### **IV. VIOLATION OF THE PROVISIONS OF SECTION 144, LOCKDOWN AND CURFEW IN THE CORONAVIRUS OUTBREAK SITUATION:**

The Punishments are provided under the Indian Penal Code which are as follows and will be applicable in this coronavirus outbreak situation.

**Disobedience to order duly promulgated by public servant:** Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.<sup>5</sup>

Whenever there is a violation of section 144 of Code of Criminal Procedure such as when unlawful assembly is formed in which five or more persons gather together in a public place,

---

<sup>5</sup> Indian Penal Code 1860, § 188.

then the government officials disperse them but if still orders are violated then section 188 is imposed as a punishment which provides maximum 6 months imprisonment and fine.

**Negligent act likely to spread infection of disease dangerous to life:<sup>6</sup>**

It deals about public health, if any person moves negligently in a public place, and such person knows that this can spread disease from one human being to another human being. Then such person will be punished under section 269 of the Indian Penal Code which provides 6 months imprisonment and fine.

**Malignant act likely to spread infection of disease dangerous to life:<sup>7</sup>**

This section is more severely punishable than section 269 which also deals about public health. In this case, if any person knows that he is suffering from any disease which can spread community disease and still violates order by moving negligently in a public place. Such person will be punished under section 270 of the Indian Penal Code which imposes maximum 2 years of imprisonment and fine.

**Disobedience to quarantine rule:<sup>8</sup>**

If any person suffering from a disease has been imposed or warned to be under quarantine facility to contain spread of a disease and if such person violates order and leaves such facility then such person will be punished under section 271 of the Indian Penal Code which imposes maximum punishment of 2 years imprisonment and fine.

**V. CONSTITUTIONAL VALIDITY OF CURFEW:**

It is administrative in nature and not judicial or non-judicial nature. The provisions of this section are valid, legal and according to law. The provisions of this section appear to be a class by themselves and, therefore, can be justified. On the basis of reasonable classification, having nexus to the object of statute, namely, to prevent disputes which may result in violence. The provision is not violative of article 14 of the constitution of India. The provisions of this section are valid and legal.<sup>9</sup>

---

<sup>6</sup> Indian Penal Code 1860, § 269.

<sup>7</sup> Indian Penal Code 1860, § 270.

<sup>8</sup> Indian Penal Code 1860, § 271.

<sup>9</sup> Abdul Rashid Wani v State 1987(2) Crimes 22, 24.

The constitution of India specifically states that the right to move freely throughout the territory of India, on which reasonable restriction is imposed on the exercise of any of the right in the interest of public.<sup>10</sup> So, there is no violation of any fundamental right provided to the citizens of India, in the case of a curfew situation caused by coronavirus outbreak.

## **VI. CONCLUSION:**

The author has endeavored to critically analyze the curfew as a preventive measure to control the coronavirus pandemic in order to determine its effectiveness in curbing issues and challenges faced by COVID-19 outbreak situation. To attain the above mentioned purpose, the legal status is valid in imposing curfew in various parts of the territory of the country. Thus, It has been tested by all legal principles and various statutes wherein justification behind imposing curfew was the need of the situation and also legally valid in nature.

---

<sup>10</sup> Constitution of India 1950, art 19(1) (d), (5).

# COMBATING COVID-19 IN EDUCATION SECTOR: A LEGAL SCENARIO

-By Garima Singh\*

Sharvin Vats#

## I. INTRODUCTION

Education has turned out to be a great concern amidst coronavirus crisis in the country. Around 157 crore students have been affected due to closure of educational institutions because of the pandemic. In India, more than 32 crores students<sup>1</sup> have been affected by the various restrictions and the nationwide lockdown. On 11<sup>th</sup> March 2020, section 2 of Epidemic Diseases Act 1897<sup>2</sup> was enforced by the Cabinet Secretary of India in all states and union Territories in India to combat Covid-19 which empowers the state government to implement specific measures and give regulations so as to curb the epidemic diseases. Hence many state governments across the nation began shutting down of schools, colleges and universities. Furthermore, by this social distancing was encouraged as a preventive measure to control the spread of novel coronavirus through human contact in the country. Now it's been more than a month since the closure of educational institutions and there is no certainty when they will reopen. This pandemic is crucial not only for the health sector but for education too. Since board examinations, school/college admissions, entrance test and competitive examinations are all held during this period. Closure came up with many unprecedented hurdles for educational institutions, teachers and students. There is no instant solution to stop the outbreak of COVID-19 and the closure of schools and universities seem to have a short-term effect on the learning of students. The pandemic has considerably disturbed higher education in the country as well, which is a critical detriment for our economic future. Many Indian students enrolled in American<sup>3</sup> and European universities are forced to stay inside their homes because these are the countries which are badly affected by the outbreak and have

---

\* Student, Galgotias University, Uttar Pradesh.

# Student, Galgotias University, Uttar Pradesh.

<sup>1</sup> Kritika Sharma, 'In India, Over 32 Crore Students Hit by Covid-19 as Schools and Colleges are Shut: UNESCO' *The Print* (16 April 2020) <<https://theprint.in/india/education/in-india-over-32-crore-students-hit-by-covid-19-as-schools-and-colleges-are-shut-unesco/402889/>> accessed 6 May 2020.

<sup>2</sup> Epidemic Diseases Act 1897, § 2.

<sup>3</sup> Elizabeth Redden, 'International and Study Abroad Students See Major Disruptions' (*Inside Higher Ed*, 20 March 2020) <<https://www.insidehighered.com/news/2020/03/20/covid-19-disrupts-international-student-exchange-both-directions>> accessed 6 May 2020.

high death tolls. This situation may even lead to decline in international higher education in recent years.

The pandemic has changed the old method of chalk-talk teaching practice to technology driven learning. This disturbance has its impact on both teachers and students ranging from teaching and assessment to learning and giving examinations. This crisis is forcing policymakers to ensure inclusive e-learning. Countries are tackling the crisis by various methods of education through different technologies. Administrators have urged teachers to communicate with students by virtual live lessons. Now the online education is followed at all levels of education from preschool to higher learning institutions. Education through technology is enabled by several online platforms like Google Meet, Google Classroom, Zoom, Blackboard etc. all these applications have efficiently changed the face of traditional education. With the development of Information and Communication technologies in education, online video lectures, simulations, e-books, graphics, animations and quizzes are making learning more easy and accessible.

## **II. PROBLEMS IN CURRENT SCENARIO**

Schools and Universities have always used digital applications as a supplementary tool for education along with classroom teaching, but mainstreaming the online education has placed some challenges, mostly due to not understanding its efficacy. However in the current scenario we can experiment with online education by adoption of technology and measure its success. India is a digital country but not in its true sense there is gap in technology also and this gap shows a digital divide in the country. Students living in remote areas and those who are poor and lack the infrastructure and the means needed to access to online education are vulnerable in these times. Most of the learning applications are accessed by a 4G network and in these remote areas people don't have access to even 3G network. This is turning out to be a significant hurdle across the country.

March 2020 will always be remembered as the month when institutions across the world were shut down due to the pandemic. In our country almost all the educational institutions were closed by mid-march 2020 to promote social distancing among people. With such closure we all got a very little time to plan the implementation of Ed-Tech and to address security risks associated with it.

Students are affected by coronavirus crisis. These students are now studying and socializing more on digital platform. But there are risks associated with spending more time virtually as such students are vulnerable to many cyber threats of online sexual exploitation, cyber bullying or exposing children to violent content which may not be appropriate for them.

Recently a video calling application ZOOM had been caught in a few controversies related to privacy concerns of users. The ministry of home affairs, a few weeks ago has issued a cautious warning to the users of ZOOM calling it unsafe<sup>4</sup>. It said that the application has security loopholes. Previously even FBI had warned its users in US in relation to daily video meetings. There have been a lot of instances of ZOOM bombing where intruders would insert objectionable signs and pornography and this has increased exponentially.

Although government and academic institutions have announced that the mode of teaching will be online classes conducted by the faculty. But this is not as easy as being said. While some private institution may have resources and infrastructure for technology based education. State-run academic institutions are facing immense difficulties in implementing technology based education.

The Public institutions located in remote districts are not able to implement online classes because they are not well equipped with such facilities. This issue will fall under section 32 & 56 of Indian Contract Act, 1872 which is *Force majeure* which in literal sense means 'superior force'<sup>5</sup>. It means that a party is protected from failure to perform the contractual liability. Here the party which failing to discharge the contractual liability is the academic institution which has failed to conduct online classes breaching the contract to provide education. Force majeure events include act of God, disasters, war, strikes, epidemics etc. It is important to note that force majeure saves the party at default from the consequences which were unforeseeable and unavoidable in present scenario. This law in India was laid down by Hon'ble SC in the case of *Satyabrata Ghose v Mugneeram Bangur*<sup>6</sup>.

Assuming if faculty has good internet facility, many students living in far away areas have complained about lack of internet facilities. Apart from these the additional difficulties faced

---

<sup>4</sup> 'Zoom Not Safe, Says Ministry of Home Affairs, Issues Guidelines on Use of App' *The Indian Express* (17 April 2020) <<https://indianexpress.com/article/technology/tech-news-technology/zoom-video-call-app-safety-hack-6366143/>> accessed 7 May 2020.

<sup>5</sup> Cyril Amarchand Mangaldas, 'Coronavirus: Key Legal Issues for India Inc with Covid-19' (*Bloomberg Quint*, 14 March 2020) <<https://www.bloombergquint.com/opinion/coronavirus-key-legal-issues-for-india-inc-with-covid-19>> accessed 7 May 2020.

<sup>6</sup> *Satyabrata Ghose v Mugneeram Bangur* [1954] SCR 310.

by teachers are in disciplines like social sciences, language, humanity etc. where the teachers are used to the traditional method of classroom teaching and are not preparing good quality reading material to be delivered to students.

In practical based studies like management, commerce etc. where students are supposed to do field surveys, internships with industries as a component to fulfil their course criteria, or in courses where conduct of practical classes is important for them to learn. How can such students be able to perform such activities fruitfully amidst this crisis? It is evident that some industries may reopen but do they be able to focus on internship requirement rather than sales and productivity.

Another contentious issue is of examinations and campus placements for students with the extension of academic year. Conduct of semester exams, their evaluation and declaring the results is a major challenge for every academic institution as it is a very unprecedented situation and most of the students are used to the offline mode of examinations.

A very considerable issue is the development of testing kits and other medical equipment needed to battle the novel coronavirus. IIT-DELHI and IISc (Indian Institute of Sciences) have come up with testing kits for COVID-19 and these kits are approved by ICMR. But other institutions are not introspecting to come forward with solutions to battle this pandemic, despite the fact that government gives huge money in these institutions. It is pathetic because of the kind of research carried out by our institutions. Even the tracking of mortality rate and handling of other significant data is done by Indians residing abroad.

As the coronavirus pandemic is slowly turning into an economic pandemic, it is likely that the allocation of funds to higher education may be reduced and passed on to health care sector or areas which are more important in dealing with economic situation.

With every difficulty comes challenges and opportunities to transform the past and move forward successfully into future. Past few days in the pandemic has taught us about loopholes in education sector and motivated us to build better. Apart from serious challenges mentioned above there are some opportunities too. We can practice blended learning. We all know that traditional learning is more interactive and better than online learning. But this mixed approach of both classroom teaching and online teaching will bring out the best in each of them and it's possible that this approach might yield better than results.

### **III. LEGACY**

The question is what does online education mean for future? Our present system has the problem of inequity. Only some students have access to resources of Ed-Tech while a major portion of students lack such resources. If online education is seen as an alternative to traditional chalk and talk teaching then our present system cannot sustain in the long run. Higher education is not about exams or grades it the essence of it is the experience and skills which helps the student to become an efficient member of the society.

In next 15 years it is expected that India is going to have 50% increase in students and only few institutions have the capacity to accommodate them<sup>7</sup>. Online education could be a logical solution for this problem. Previously the government of India has limited only 20% of the courses to be offered online and now it has lifted this restriction by allowing 100% courses to be offered online. And to promote the higher learning through technology, the Indian government is also allowing the Indian Universities to offer degrees online.

### **IV. CONCLUSION**

The sudden coronavirus outbreak has forced the learners into virtual learning. While the outbreak across the world has not been prevented yet but the education system continues to sustain itself. Under the gloom of pandemic people are forced to shrink in their homes and screens temporarily. But we must be aware of how to navigate through such reality. It is foreseeable that education is going to be digitalized in the future and we all should be better prepared to handle it. Let the learning never stop!

---

<sup>7</sup> Richa Chaudhary, 'COVID-19 Pandemic: Impact and Strategies for Education Sector in India' *Economic Times* (16 April 2020) <<https://government.economictimes.indiatimes.com/news/education/covid-19-pandemic-impact-and-strategies-for-education-sector-in-india/75173099>> accessed 7 May 2020.

# IS CORONAVIRUS PANDEMIC AN ACT OF GOD?

-By Kishan Singh Rathore\*

Aditi Choubey#

## ABSTRACT

*Currently, the point of convergence of all the countries across the globe is towards tackling the wreaked havoc created by the Coronavirus (COVID-19) pandemic. It has forced the countries to put a halt on production activities, restrict the movement of people as well as trade within the cities as well as with other countries, causing an unprecedented break in the chain of supply of goods and services and ultimately the economy, resulting in failure or delay on part of the performing party of a contract to fulfil its obligations or performance arising out of such contracts. In this article, an attempt has been made to understand the consequences of COVID-19 on the existing contracts and their future. The article attempts to analyse the current situation from a global perspective and how this has changed the execution of existing contracts in light of the quarantine measures ordered by the States. The article attempts to understand whether the pandemic can be classified as an “Act of God” or “Force Majeure”. The article is divided into sections beginning with the introduction that gives the gist of the situation created by the pandemic including an overview of the negative impact on the stability of the economies across the globe thus creating apprehension of worldwide economic crisis. The article will then proceed to delve into the ramifications of the pandemic and the lockdown enforced by almost all the countries of the world on the existing contracts and the contractual obligation of the parties towards each other. Lastly, before culminating in a conclusion the article explores the provisions and case laws that can help clarify the position on whether the pandemic is an “Act of God” or “Force Majeure”?*

## I. INTRODUCTION

Pneumonia of unknown aetiology was detected in Wuhan, Hubei province of China on 31<sup>st</sup> December 2019 and has claimed over 3.5 million cases across the globe and close to a quarter-million deaths in the last 4 months since its outbreak.<sup>1</sup> Coronavirus has quickly become one of the most dreaded pandemics to occur, its transmission from one human to another makes it a pernicious disease. Coupled with the delay to develop a vaccine has made

---

\* Student, Bharati Vidyapeeth Deemed University, Pune.

# Student, Bharati Vidyapeeth Deemed University, Pune.

<sup>1</sup> WHO, ‘Covid-19 Dashboard’ <<https://covid19.who.int/>> accessed 6 May 2020.

the virus only more deleterious. Nations, in order to save lives, were forced to close down their borders and seal their towns by imposing lockdown under quarantine measures. The lockdown is inimical to the economy of any country as it disrupts all the economic activities such as construction, retail and wholesale sales, including the agricultural activities as the markets are shut. The decision to lockdown the country was taken by the government in order to break the chain of transmission of the virus from one person to another. In India, the order of nation-wide lockdown was ordered on 24<sup>th</sup> March 2020 which came into effect on 25<sup>th</sup> March 2020.<sup>2</sup> Ever since the supply chains and business arrangements are being disrupted. This is leading many businesses to ask whether their contractual force majeure clauses will apply.

## II. FATE OF EXISTING CONTRACTS

### 1. *Force Majeure or Act of God*

Invariably almost every economic activity, including sporting events, is governed by contracts between a promisor and a promisee. Thus, inevitably it will be left for the courts or the arbitral tribunal to adjudicate or to interpret based upon facts and contractual clauses that the force majeure clause which contains “Act of God” will apply to all the disruptions caused to supply chains and business arrangements. Understanding the difference between Act of God and Force Majeure is apropos here.

Act of God includes all causes of the inevitable accident occasioned by elementary forces of nature not connected with any agency of man directly or indirectly<sup>3</sup>. But, on the other hand, Force Majeure includes event or effect that can neither be anticipated nor controlled and includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes, and wars)<sup>4</sup>. Therefore, it is quite evident that “Force Majeure” is a wider term than the “Act of God” and the latter can be assumed as a subset of the former. Nonetheless both the terms enable a party to the contract to take defence in situations of non-performance of the contract when the conditions rendering such non-performance are beyond the control of

---

<sup>2</sup> Jeffrey Gettleman, ‘Modi Orders 3-Week Total Lockdown for All 1.3 Billion Indians’ *NY Times* (India, 24 March 2020) <<https://www.nytimes.com/2020/03/24/world/asia/india-coronavirus-lockdown.html>> 6 May 2020.

<sup>3</sup> Justice GP Singh, *Ratanlal & Dhirajlal’s Law of torts* (26<sup>th</sup> edn, Lexis Nexis 2012) 92.

<sup>4</sup> *BlackLaw Dictionary* (11<sup>th</sup> edn, 2019).

the parties<sup>5</sup>. Therefore, for the purpose of this article force majeure and the act of God may be used interchangeably.

## ***2. Impossibility of performance or Doctrine of Frustration***

The concept of Force Majeure and Doctrine of Frustration is often closely knit. Force Majeure is often a clause in the contract, whereas, the Doctrine of Frustration is a statutory provision, that enables the parties to seek defence in case the performance of the contract becomes impossible. Therefore, if the contract does not expressly or impliedly contain exemptions for non-performance in the nature of Force Majeure, a party seeking to set up a defence *dehors* the contract can place reliance on section 56 of Indian Contract Act, 1872. *Section 56 of the Act* deals with the impossibility of performance of contract. It says that if an unexpected event occurs that frustrates the contracts fundamentally and changes the very basis of the contract entirely and then such contract ends<sup>6</sup>. In the case of *Satyabrata Ghose v Mugneeram Bangur & Co.*<sup>7</sup>, it was held that the performance of an act may not be literally impossible, but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view.

### **III. ESSENTIALS FOR APPLICATION OF FORCE MAJEURE**

#### ***1. The event should render the performance of the contract impossible -***

The event should have altered the circumstances to such extremes that it upsets the foundation of the contract which existed when the contract was entered into. It was held in the case of *Smt. Sharda Mahajan v Maple Leaf Trading International*<sup>8</sup>, that it should be examined whether the changed circumstances have destroyed the basis of the agreement and the objective of the contract. It further stated that, when the circumstances go such a drastic change that the altered circumstances were never contemplated then the contract becomes *ex-facie* unenforceable. The doctrine of '*non haec in foedera veni*' (it was not this that I had promised to do) is applicable.

---

<sup>5</sup> Dhanrajamal Gobindram v Shamji Kalidas & Co AIR 1961 SC 1285.

<sup>6</sup> Energy Watchdog and Ors v Central Electricity Regulatory Commission and Ors (2017) 14 SCC 18.

<sup>7</sup> Satyabrata Ghose v Mugneeram Bangur & Co AIR 1954 SC 44.

<sup>8</sup> Smt Sharda Mahajan v Maple Leaf Trading International [2007] 78 SCL 367 (Delhi).

## **2. *The event shall be unavoidable -***

The event should be one such which is unavoidable by the parties to the contract. It should be noted that the economic hardships and rise in costs cannot be a ground to take this defence. Thus, burdensomeness is not the necessary consideration; the impossibility of performance of the contract is the true criterion<sup>9</sup>.

## **3. *Unforeseeability of the event -***

The event must be beyond the anticipation of the parties. It is necessary that no warning of the looming perilous event was made. The event by all means should be beyond the foresight of the parties thus rendering it unforeseeable. One of the crucial tests for invoking the clause of Force majeure is the test of foreseeability at the time of entering into the contract<sup>10</sup>.

It is appurtenant at this juncture to state the case of *Industrial Finance Corporation of India Ltd. v Cannanore Spinning and Weaving Mills Ltd*,<sup>11</sup> where the Supreme Court of India, laid down the valid conditions for Doctrine of Frustration, as-

- a. There should be a subsisting contract,
- b. Some part of the contract is still to be performed,
- c. After the contract is entered into it becomes impossible to perform.

## **IV. PANDEMIC UNDER ACT OF GOD/FORCE MAJEURE CLAUSE**

### **1. *Foreign Courts-***

As far as the Indian courts are concerned, they have never adjudged that pandemic/epidemic is an Act of God, whereas under the foreign courts what qualifies as an Act of God varies from country to country. The courts of the USA and UK have declared at various instances pandemic as the Act of God. For instance, in the case of *Lakeman v Pollard*<sup>12</sup>, the Supreme Court of Maine held the outbreak of Cholera as an Act of God. Similarly, the Supreme Court of North Dakota, in the case of *Sandry v Brooklyn School District*<sup>13</sup> held an outbreak of Influenza pandemic as an Act of God.

---

<sup>9</sup> Peak Chemicals Corporation Inc v National Aluminium Co Ltd 188 (2012) DLT 680.

<sup>10</sup> DDA v Kenneth Builders and Developers Private Limited and Ors (2016) 13 SCC 561.

<sup>11</sup> Industrial Finance Corporation of India Ltd v Cannanore Spinning and Weaving Mills Ltd (2002) 5 SCC 54.

<sup>12</sup> Lakeman v Pollard 43 Me 463 (1857).

<sup>13</sup> Sandry v Brooklyn School District 182 NW 689.

Similarly, in the UK, when a pandemic made it impossible to perform a contract on time, the defence of the Force Majeure clause was invoked and was held valid<sup>14</sup>.

Under English Law, the Act of God has the following conditions for its valid application.

*A) THE EVENT MUST EXCLUSIVELY FOLLOW FROM A NATURAL CAUSE.*

In the case of *Nugent v Smith*<sup>15</sup>, it was held by the court that the act in question must involve ‘elementary forces of nature unconnected with the agency of man or other cause’. It should also be pointed in the context of the present situation that the English court has on various occasions considered an illness to be an Act of God, for instance in cases of *Hall v Wright*<sup>16</sup> and *Ryan v Young*<sup>17</sup>.

*B) THE EVENT MUST BE OF EXTRAORDINARY NATURE*

In the case of *Nugent v Smith*, it was also held that the event should be ‘extraordinary’ and ‘overwhelming’. It is favourable if the event and its consequences are unprecedented.

*C) THE EVENT WAS NOT ANTICIPATED BY THE PARTIES RELYING ON IT*

Lastly, the case of *Nugent v Smith* also held that the event in question should have been beyond any foresight and reasonable care of the parties. Additionally, in the case of *Nicholas v Marsland*<sup>18</sup>, the court also opined that the defendant could not have been reasonably expected to take measures to prevent the damage arising from the event.

Therefore, the time of entering the contract is crucial, at least under the purview of the English jurisprudence.

---

<sup>14</sup> Aviation Holdings Ltd v Aero Toy Store LLC [2010] 2 Lloyd’s Rep 668.

<sup>15</sup> Nugent v Smith [1876] 1 CPD 423.

<sup>16</sup> Hall v Wright (1859) 120 ER 695.

<sup>17</sup> Ryan v Young [1868-69] LR 4 CP 1.

<sup>18</sup> Nicholas v Marsland [1876] 2 Ex D 1.

## 2. *Indian Courts-*

Under the Indian context, in juxtaposition to the decisions of the English courts, the Indian courts have not delivered a definite rule as to the inclusion of a disease or a pandemic as an Act of God. Although, arguments may find support in the Supreme court's decision in *Divisional Controller, KSRTC v Mahadava Shetty*<sup>19</sup>, where it stated that the expression 'Act of God' signifies the operation of natural forces free from human intervention with the caveat that every unexpected natural event does not operate as an excuse from liability if there is a reasonable possibility of anticipating their happening.

But nonetheless, it is important to understand that, the happening of a Force Majeure event does not per se, absolves the party from any liability. The event should have a direct impact so as to render its performance impossible. The party seeking to rely on such defence will also be under the duty to mitigate the damage and explore any alternative for performing the contract. The House of Lords in the case of *Tsakiroglou & Co. Ltd. v Noble Thorl GmbH*<sup>20</sup> held that the closure of Suez Canal does not render the performance of the contract impossible, it certainly makes the task onerous to accomplish as the party liable will have to take the longer route in order to complete the delivery of the goods. Therefore, as long as there are alternatives available to meet the ends of the promise, one cannot reasonably stipulate that the performance has become impossible.

## V. CONCLUSION

It is beyond doubt that the havoc caused by the COVID-19 pandemic was unprecedented the last greatest pandemic known to mankind was the spread of 1918 Influenza (H1N1 virus). But none of the past pandemics have affected the world on such a large scale. The outbreak of Nipah virus or Ebola, were all contained within certain geographic locations, whereas the COVID-19 has spread to almost all the countries. The anthroponosis nature of this disease makes it lethal. Therefore, the government's drive to lock down the country and imposing strict quarantine measures seems a viable strategy at the moment to prevent the further international spread of the virus, because nothing triumphs the importance of human lives.

The unprecedented nature of the pandemic took all the countries off-guard. And this is what makes it an Act of God, it's extraordinary nature and the fact that the humans are just victims

---

<sup>19</sup> *Divisional Controller, KSRTC v Mahadava Shetty* 2003 (7) SCC 197.

<sup>20</sup> *Tsakiroglou & Co Ltd v Noble Thorl GmbH* [1961] 2 All ER 179.

here and not the agency of this disaster. No contract should be allowed to take priority over human lives. In the following months, the doyens of economics predicted a worldwide financial crisis. It would only defeat the purpose of justice if in such unpropitious times the law is interpreted harshly.

## ON LOCKDOWN AND FUNDAMENTAL RIGHTS – A REFLECTION

-By Naganathan Ramaswamy Iyer\*

The Coronavirus disease (known as COVID-19), which has been declared as a pandemic by the World Health Organization has shattered countries across the globe, destabilized living standards of people and disrupted world economies. It has caused more than 248 thousand deaths<sup>1</sup> world-wide. This disease was first discovered in the city of Wuhan in China and has spread to almost all the countries in the world including India. The Indian government has taken various precautionary measures right from the day COVID-19 was identified in India. On 24<sup>th</sup> of March, 2020, the Indian government announced a nation-wide lockdown as a measure to stop the spread of the disease. The lockdown was initially enforced for 21 days, which was later extended by another 14 days and recently the government has again extended it by 14 days. The main question posed by politicians, academicians, scholars, influential personalities and the public is that, ‘Was the lockdown enforced legally, and is it violating the Fundamental Rights of the citizens?’

A disaster is a sudden, calamitous event that seriously disrupts the functioning of a community or society and causes human, material, and economic or environmental losses that exceed the community’s or society’s ability to cope using its resources.<sup>2</sup> In the purview of the said definition, COVID-19 falls under the category of a disaster because there are no vaccines or medications available which will help in fighting the disease and it has disrupted the functioning of the country. The section 6 of the Disaster Management Act states that the government can take any measure for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with such threatening disaster situation or disaster as it may consider necessary.<sup>3</sup> According to section 35 of the Disaster Management Act, the central government has all the powers to take any measure it deems necessary for the purpose of disaster management.<sup>4</sup>

---

\* Student, SASTRA Deemed to be University, Thanjavur.

<sup>1</sup>Worldometer, ‘Reported Cases and Deaths by Country, Territory, or Conveyance’ <<https://www.worldometers.info/coronavirus/>> accessed 4 May 2020.

<sup>2</sup> IFRC, ‘What is a disaster?’ <<https://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/>> accessed 4 May 2020.

<sup>3</sup> Disaster Management Act 2005, § 6(2)(i).

<sup>4</sup> Disaster Management Act 2005, § 35(1).

On 11<sup>th</sup> March, 2020, The World Health Organization classified COVID-19 as a pandemic<sup>5</sup>. A pandemic is the spread of an epidemic worldwide. So, COVID-19 is also an epidemic. Therefore, under section 2 of the Epidemic Diseases Act, the government has all the powers to introduce regulations which it thinks fit to overcome the epidemic in any part of the country<sup>6</sup> and to also inspect and segregate persons who are suspected to have been infected with the disease<sup>7</sup>.

Hence, the central government announced the lockdown measures by invoking sections 6 and 35 of the Disaster Management Act and also section 2 of the Epidemic Diseases Act. The government laid out key guidelines that should be followed by all citizens during the lockdown highlighting social distancing norms which are in compliance with the guidelines issued by The World Health Organization.

Now, the scholars raised another question as to what alternatives could have been there instead of imposing a lockdown: Could the Government have under the powers of article 352 of the Indian Constitution announced an Emergency and taken full control to curb the spread of the disease? The answer to this question is 'no'. The government could not have invoked article 352 of the Constitution because it no longer encloses the term 'internal disturbance', which was a broad term inclusive of various activities, as the 44<sup>th</sup> Amendment to the Indian Constitution amended article 352 and shrunk its applicability to situations of security of the country due to war or external aggression or armed rebellion.

Certain sections of people are protesting against the lockdown measures. Instead of complying with the rules such as social distancing they have been frequently violating and questioning the government's decision on enforcing the lockdown. They seem to be contesting that the lockdown is violating human rights as they are unable to move and function freely which has been provided under article 19 of the constitution.<sup>8</sup>

Fundamental rights have been enshrined under part III of the Indian constitution. It is true that everyone must be given the liberty to exercise their rights without any prejudice, but, none of the provisions and statutes can be taken to be an absolute one as exceptions arise at special circumstances. This point was laid out by the honourable Supreme Court in the case

---

<sup>5</sup> WHO, 'WHO Timeline - COVID-19' <<https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>> accessed 5 May 2020.

<sup>6</sup> The Epidemic Disease Act 1897, § 2(1).

<sup>7</sup> The Epidemic Disease Act 1897, § 2(2) (b).

<sup>8</sup> The Constitution of India 1950, art 19(1) (d).

Re: Noise Pollution v Unknown<sup>9</sup> where, the honourable Supreme Court stressed on the point that the freedom of speech and right to expression are fundamental rights, but they are not absolute ones.

Moreover, when an individual exercises his fundamental rights, he should exercise it in such a way that it does not cause harm to others. The honourable Supreme Court has discussed that demonstrations are also a mode of expression of the rights guaranteed under article 19(1) (a).<sup>10</sup> Demonstrations whether political, religious or social or other demonstrations which create public, disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under article 19(1).<sup>11</sup>

Hence, depending on the judgements provided by the honourable Supreme Court, we can deduce that mass gatherings and protests by few sections of the society might pose major inconvenience and potential danger of further spread of the deadly disease to other sections of the society, which endangers the lives of others in the society, amounting to violation of article 21 of the constitution which provides for the right to life and personal liberty<sup>12</sup>.

It is also pertinent to take cognizance of the Fundamental duties of a citizen. Article 51-A provides that every citizen should uphold and protect the sovereignty, unity and integrity of India<sup>13</sup> and to also promote harmony and brotherhood<sup>14</sup>. The Bombay High Court under a daily order on the 8<sup>th</sup> of April has said that, in times like this the citizens must understand that, it is the duty of citizens to promote harmony and brotherhood among all and this might be the time for its immediate application<sup>15</sup>.

In Javed v State of Haryana<sup>16</sup>, it has been held that fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of state policy and the fundamental duties enshrined in article 51A<sup>17</sup>. In the case State of Gujarat v. Mirzapur<sup>18</sup>, the honourable Supreme court held that:

*It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness*

---

<sup>9</sup> Re: Noise Pollution v Unknown AIR [2005] SC 3136.

<sup>10</sup> Bimal Gurung v Union of India [2018] SCC SC 233.

<sup>11</sup> *ibid.*

<sup>12</sup> The Constitution of India 1950, art 21.

<sup>13</sup> The Constitution of India 1950, art 51-A(c).

<sup>14</sup> The Constitution of India 1950, art 51-A(e).

<sup>15</sup> The Registrar High Court v The State of Maharashtra Suo moto PIL No 10541 of 2020.

<sup>16</sup> Javed v State of Haryana [2003] 8 SCC 369.

<sup>17</sup> Javed v State of Haryana [2003] 8 SCC 369.

<sup>18</sup> State of Gujarat v Mirzapur [2005] 8 SCC 534.

*of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role.*<sup>19</sup>

According to a daily order in the case, *The Registrar High Court v The State of Maharashtra*<sup>20</sup>, the court has stated that while the court expects effective measures from the State authorities, it also expects the citizens to remind themselves of their fundamental duties to deal with the outbreak of COVID-19 pandemic<sup>21</sup>.

Therefore, when certain sections of people who whilst disregarding the lockdown, take to the streets in mass numbers and function in their own way, are themselves violating the basic fundamental duties mentioned in the Constitution. When they gather in huge numbers, they are not only breaking the rules, but are paving way for the spread of the disease. This will be a detriment to others surrounding them.

We are aware of the doctrine of necessity which implies that ‘Necessity knows no law’. The ‘doctrine of necessity’ is a common law doctrine, and is applied to tide over situations where there are difficulties<sup>22</sup>. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over.<sup>23</sup> Hence, the government by applying the ‘principle of necessity’ enforced the Lockdown as the only solution to curb the spread of COVID-19. Moreover, article 31-B of the constitution provides that certain acts can override the fundamental rights and these cannot be made unconstitutional on that basis.

The Lockdown doesn’t deprive the citizens of their fundamental rights as such. Even though certain activities are not allowed, the government facilitates the availability of essential goods which are the basic requirement for the life of an individual. In addition, the government provides food and relief materials to the weaker sections of the society. All medical facilities are available and the government officials are always ready to help those in need. Recently, the government has arranged special trains and buses to transport the migrant labourers to their homes. It has efficiently optimized the use of technology in the private as well as public sector companies to facilitate work from home and also used the same for online education in schools and universities.

---

<sup>19</sup> *State of Gujarat v Mirzapur* [2005] 8 SCC 534.

<sup>20</sup> *The Registrar High Court v The State of Maharashtra Suo moto PIL No. 10541 of 2020.*

<sup>21</sup> *ibid.*

<sup>22</sup> *Leo Matriculation Higher Secondary v The Chairperson* [2013] 1 CWC 353.

<sup>23</sup> *ibid.*

Hence, the lockdown which has been enforced by the central government is lawful and has a nexus with the common objective of reducing the spread of COVID-19 by maintaining social distancing norms. The arguments posed by people against the lockdown highlighting the violation of fundamental rights don't have a congruous backing. Therefore, the Fundamental Rights have not been violated or jeopardised.

Many countries including the USA and UK and appreciated India's efforts in fighting the COVID-19 and hence, it is essential that we as citizens must also appreciate the measures and fight against the pandemic.

Therefore, it is important that in tough and calamitous situation everyone must come together, stand in unity, follow the measures and overcome the situation strongly.

# EVALUATION OF EPIDEMIC DISEASES ACT, 1897

-By Nidhi Prakriti\*

Kushagra Kundan#

## I. INTRODUCTION

India has witnessed many outbreaks of various kinds<sup>1</sup> till date but still lags inefficient handling of a pandemic or an epidemic due to dense population, lack of resources, or due to delay in decision making. In recent times, we have seen the outbreak of a cholera epidemic of 1992 due to the 0139 strain, plague outbreak in Surat in 1992, that of Chikungunya, dengue fever, H5N1 influenza and the widespread outbreak of H1N1 influenza<sup>2</sup>. Apart from these, in the last decade, we have also seen Nipah, Chandipura and Japanese encephalitis virus and diseases with the potential of global spread like Zika and Ebola virus outbreaks posing a threat to the public health in India. And the contemporary of all, there is the global outbreak of COVID-19 pandemic affecting India enormously. At the time of writing, there are 64,139 confirmed cases in India including 2,114 deaths.

Amidst the outbreak of coronavirus pandemic and the complete lockdown, the centre invoked the provisions of Epidemic Diseases Act, 1897<sup>3</sup> (EDA) for all states and union territories<sup>4</sup>. The Act came to effect on February 4<sup>th</sup>, 1897 during the bubonic plague outbreak in Bombay, with the aim being the prevention of 'dangerous epidemic diseases'. Being one of the shortest acts in India, it has only four sections. The first<sup>5</sup> being the title and the extent, second<sup>6</sup> empowering powers for taking required measures and forming regulations to the Centre and State governments. While the third<sup>7</sup> gives description of the penalties for violation and the fourth<sup>8</sup> deals with legal protection to officers implementing the Act. This is not the first

---

\* Student, Chanakya National Law University, Patna.

# Student, Chanakya National Law University, Patna.

<sup>1</sup>The Global Burden of Disease: 2004 Update, 'WHO' <[www.who.int/healthinfo/global\\_burden\\_disease/2004\\_report\\_update/en/](http://www.who.int/healthinfo/global_burden_disease/2004_report_update/en/)> accessed 2 May 2020.

<sup>2</sup> T Dikit, 'Emerging and Re-Emerging infections in India: An Overview' (*Indian Journal of Medical Research*) <[www.ncbi.nlm.nih.gov/pmc/articles/PMC3767269/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3767269/)> accessed 5 May 2020.

<sup>3</sup> The Epidemic Diseases Act 1897.

<sup>4</sup> Kiran Kumbhar, 'Epidemic Diseases Act, India's 123-Year Old Law To Help Find the Pandemic' *The Wire* (21 March 2020) <<https://thewire.in/health/epidemic-diseases-act-india-pandemic>> accessed 6 May 2020.

<sup>5</sup> The Epidemic Diseases Act 1897, § 1.

<sup>6</sup> The Epidemic Diseases Act 1897, § 2.

<sup>7</sup> The Epidemic Diseases Act 1897, § 3.

<sup>8</sup> The Epidemic Diseases Act 1897, § 4.

instance of this Act's implementation. The Act in the past has been rather found frequent usages for outbreaks of malaria, dengue<sup>9</sup>, swine flu<sup>10</sup> and the plague. Last time it was used in 2018 to contain the cholera spread in Gujarat.

When the Act was executed for the first time to control the plague epidemic of 1897, it conferred various powers on the authorities which led to misuse. It was alleged that there was public humiliation such as forceful stripping and violence against women, destruction of infected place and misuse of military power for implementation. This led to the rise of hue and cry among the citizens and eventually riots were reported in some areas. Under this Act, for the dissident coverage of the plague in his newspaper Kesari, Bal Gangadhar Tilak was punished with imprisonment of 18 months<sup>11</sup>. Being one of the various critics of the Act, historian David Arnold<sup>12</sup> said that the Act is '*one of the most draconian pieces of sanitary legislation ever adopted in colonial India*' and Myron Echenberg in his book<sup>13</sup> observed that '*the potential for abuse was enormous*'.

## II. KEY PROVISIONS OF THE EPIDEMIC DISEASE ACT, 1897

### ➤ SECTION 2<sup>14</sup>

Section 2 of the Act which states the powers of the Central and State governments, says that if the state or any part of it affected or there is an imminent threat of an outbreak of a dangerous epidemic and if the provisions of prevalent laws are not sufficient to control the epidemic, then the state may notify the public about these temporary provisions and the need for adherence. The regulations may be for inspecting persons travelling by the mode of railways or any other, the segregation of those infected or suspected to be by the investigating officer; in hospitals or any other temporary accommodation. The Central government is also empowered by section 2(A) for inspection of any ship or vessel which arrives at any port and the corresponding detention of the ship or any person intending to sail.

---

<sup>9</sup>'Dengue Cases: Chandigarh invokes Epidemic Diseases Act' *The Indian Express* (4 October 2015) <<http://indianexpress.com/article/cities/chandigarh/dengue-caseschandigarh-invokes-epidemic-diseases-act-challans-private-labowner>> accessed 6 May 2020.

<sup>10</sup>'Swine flu, dengue now notifiable diseases' *The Times of India* (29 January 2016) <<https://timesofindia.indiatimes.com/life-style/health-fitness/health-news/Swine-fludengue-now-notifiable-diseases/articleshow/50768699.cms>> accessed 6 May 2020.

<sup>11</sup>'What is Epidemic Diseases Act, 1987?' *The Indian Express* (12 March 2020) <<https://indianexpress.com/article/explained/explained-what-is-the-epidemic-act-of-1897-govt-has-invoked-to-fight-coronavirus-6309925/>> accessed 6 May 2020.

<sup>12</sup> David Arnold, *Science, Technology and Medicine in Colonial India* (Cambridge University Press 2000) 143.

<sup>13</sup> Myron Echenberg, *Plague Ports: The Global Urban Impact of Bubonic Plague, 1894-1901* (New York University Press 2007) 58.

<sup>14</sup> *Epidemic Diseases Act* (n 6).

### ➤ SECTION 3 <sup>15</sup>

Section 3 of the Act talks about the penalty and punishment for disobeying the provisions of the Act or any order made under this act, states six months imprisonment or the fine of Rs.1,000 or both for disobedience. This is made under Section 188 of Indian Penal Code (IPC).

In 1963, the case of *J. Chaudhury v The State*<sup>16</sup> came into existence. There was an outbreak of Cholera in the Puri district of Orissa and the state had invoked the Epidemic Diseases Act, 1897. Under the provisions of section 3 of the Act read with section 188 of IPC, a doctor was punished for refusing to get vaccinated when diagnosed with cholera. The petitioner argued that he has a diligent objection against vaccination as it can be fatal for human health due to the reactions it may cause. Further, he stated that he was a homeopathic doctor and has taken necessary steps under homeopathy for his protection. The court found him guilty under section 3 of the Act and was punished under sec 188 of IPC. The court stated that it is immaterial whether the inoculation is essential or dangerous or if there exist; any better remedy in other system of medicine, the simple question here is about the failure of adhering to the provisions which the petitioner has admitted on his own.

### ➤ UNDER SECTION 4 <sup>17</sup>

Under section 4 of the Act, legal protection is given to anyone who has done anything under the provisions of the Act in good faith. This section exempts those persons from any suit or legal proceeding and has been proved as an integral step to bring action and accountability in society. This section not only encourages the general public to act but also helps in overcoming the hesitation due to the fear of legal repercussions and procedural hassles.

In *Ram Lall Mistry v R.T. Green*<sup>18</sup>, the Calcutta High Court discussed, in brief, the scope of protection under section 4. The main contention that arose before the court was whether the chairman of the Calcutta Corporation was protected after the demolition of a building under rule 14 of the Plague Regulations of 1900 for controlling the spread of plague outbreak. The court observed that rule 14 of the Plague Regulations of 1900<sup>19</sup> also gives rise to a distinct duty, namely, to pay adequate compensation and the omission on the part of Calcutta Corporation is not protected under section 4 of the Epidemic Diseases Act. This case proves that Act gives protection for any action only when it is done in good faith and not otherwise.

---

<sup>15</sup> *Epidemic Diseases Act* (n 7).

<sup>16</sup> *J Chaudhury v The State* AIR (1963) Ori 216.

<sup>17</sup> *Epidemic Diseases Act* (n 8).

<sup>18</sup> *Ram Lall Mistry v RT Green* [1904] 31 ILR 829 (Calcutta).

<sup>19</sup> Plague Regulation 1900.

### III. LIMITATIONS

#### ➤ **AMBIGUOUS DEFINITION-**

The law isn't able to provide a solid definition regarding the words<sup>20</sup> "dangerous", "contagious" or "infectious", let alone key words of the contemporary issues like "epidemic". It also fails to give a stringent structure or rules which can prove to be a determinative factor while labelling a disease as an "epidemic". The law remains silent when it comes to categorisation of diseases based on certain variables like – scale of spread within the country and age groups, the severity of the disease, ability to spread internationally, non-availability of basic precautionary materials, unknown cure, etc.

#### ➤ **OUTDATED AND INCOMPLETE MEASURES-**

The law fails to provide a hassle-free path for the Central and State governments to follow. It only outlines basic measures like – travel restrictions, or quarantining people who are infected in temporary accommodations like quarantine centres or hospitals, and compulsory health inspections of any ships<sup>21</sup> arriving or leaving a port. The law doesn't talk about travel by air, as it wasn't a prevalent mode of transportation at the time of enactment of the law but is a contemporary favourite. It also provides for no stringent rules and regulations to be followed as a corollary to the said law.

#### ➤ **SILENCE UPON OTHER SCIENTIFIC METHODS OF PREVENTION**

The Act doesn't provide for a legal substructure that can be used to look after the availability and distribution of vaccines<sup>22</sup> or other essential equipment. It does not give a skeleton for any kind of responsive or precautionary measures to be carried out. It emphasises upon the quarantining measures too much, while completely side-lining other scientific preventive measures.

---

<sup>20</sup> Binod Kumar Patro, 'Epidemic Diseases Act, 1897: Whether Sufficient to Address the Current Challenges?' (2013 18 Journal of Mahatma Gandhi Institute of Medical Science <[https://www.researchgate.net/publication/270017332\\_Epidemic\\_diseases\\_act\\_1897\\_India\\_Whether\\_sufficient\\_to\\_address\\_the\\_current\\_challenges](https://www.researchgate.net/publication/270017332_Epidemic_diseases_act_1897_India_Whether_sufficient_to_address_the_current_challenges)> accessed 8 May 2020.

<sup>21</sup> *Epidemic Diseases Act* (n 6).

<sup>22</sup> *Kiran Kumbhar* (n 4).

➤ **INCONSISTENCY WITH COUNTRY'S HEALTHCARE APPARATUS-**

Unlike other contemporary laws from across the world, this Act fails to define and specify the roles of different institutions and authorities in dealing with contagious diseases and identification or handling of the infected persons. As stated in the Act, the State has the power to empower any person to take some measures if required<sup>23</sup>. The healthcare apparatus of the country is regimented, with proper assignment of duties. The Integrated Disease Surveillance Project (IDSP) is present for early detection of outbreaks while the District Chief Medical Officer, along with the district team and community health workers is in place for the control and prevention of outbreaks. In the presence of such a role defining a structure, the law proves to be insignificant.

➤ **OTHER STATES' PUBLIC HEALTH LAWS-**

Various states have formulated their public health laws or have amended the EDA favourably. Madras Public Act, 1939<sup>24</sup> was the first such act to be formulated. While Himachal Pradesh included compulsory vaccination in its EDA<sup>25</sup>, states like Punjab, Chandigarh and Madhya Pradesh have conferred the power of implementing certain provisions of the law upon specific officials. Bihar included provisions of asking for vehicles during such epidemics.<sup>26</sup> Certain Intra-State laws are also in play, like Travancore- Cochin Public Health Act, 1955, and the Malabar Public Health Act, 1939 are followed in southern and northern districts of Kerala respectively. The law fails miserably on the account of providing uniformity.

The Centre-State relationship has also changed significantly from the time of formulation of law and this law doesn't take it into account.

#### **IV. EPIDEMICS ACT: FROM A RIGHTS PERSPECTIVE**

While the Act emphasises about the powers conferred upon the government, its deafening silence upon the obligations and duties of the government and the rights of citizens makes it extremely vulnerable to misuse. The Act provides an opportunity for the dilution of a

---

<sup>23</sup>*Epidemic Diseases Act* (n 6).

<sup>24</sup>The Tamil Nadu Public Health Act 1939, § 3.

<sup>25</sup> National Health Mission, 'Immunization'

<<https://nhm.gov.in/index1.php?lang=1&level=2&sublinkid=824&lid=220>> accessed 6 May 2020.

<sup>26</sup> Sonam Chandwani, 'What Legal Measures Can Be Adopted by the Government to Control Corona Pandemic?' <<https://www.lexology.com/library/detail.aspx?g=6731d185-270c-4ba3-b828-9c15f252db21>> accessed 6 May 2020.

person's liberty, autonomy and privacy without clearly prescribed situations to do so thus failing to take the human rights principles into account. An Act should be in concurrence with the public's interests like basic need, values, liberty, desires and lifestyle, considered to an extreme extent. The recent cases of mass migration of labourers showcase the fact that how the Act fails to protect the most vulnerable strata of society at frightening times like the COVID-19 pandemic. Daily wage earners were forced to leave for their hometowns on foot as there was a lack of basic necessities like food and money. The rights or the obligation of the government towards them have not been mentioned in the Act, making a vulnerable section which accounts for one-third of the 80% of the Indians employed in the informal sector<sup>27</sup>, prone to further exploitation without fixing its accountability upon someone. 16 migrant workers were run over by trains<sup>28</sup> after walking for 45 km in the quest of reaching home. Many have lost their lives on the way, their basic human rights succumbing to the incompetence of the law<sup>29</sup>.

## V. SUGGESTIONS AND CONCLUSION

This colonial-era Act comes with more vices than virtues in this era of different priorities and requirements. It fails to take the contemporary scientific advancements and challenges into its stride while also not paying heed to various issues like human rights, public interest and government's duties towards its citizens. This COVID-19 pandemic provides a rare opportunity to lessen the legislative and policy gap in India's public health system.

Lessons can be learned from global best practices. In Canada<sup>30</sup>, most crises are steered down at provincial levels itself in coordination with Centre because the provincial levels have greater power to impose regulations and impose penalties thus increasing the efficiency at lower levels. While Australia<sup>31</sup> has very sophisticated legislation clearly defining procedures and punishments, it also has various coordination committees for effective control of the

---

<sup>27</sup> Ministry of Labour & Employment, 'Report on Fifth Annual Employment – Unemployment Survey' <[http://labourbureaunew.gov.in/UserContent/EUS\\_5th\\_1.pdf](http://labourbureaunew.gov.in/UserContent/EUS_5th_1.pdf)> accessed 5 May 2020.

<sup>28</sup> 'Aurangabad Train Accident: 16 Migrant Workers Run Over, Probe Ordered' *The Indian Express* (8 May 2020) <<https://indianexpress.com/article/india/india-lockdown-maharashtra-aurangabad-migrant-workers-killed-train-6399556/>> accessed 9 May 2020.

<sup>29</sup> Kabir Agrawal, 'Not Just the Aurangabad Accident, 383 People Have Died Due to the Punitive Lockdown' *The Indian Express* (10 May 2020) <<https://thewire.in/rights/migrant-workers-non-coronavirus-lockdown-deaths>> accessed 10 May 2020.

<sup>30</sup> Manish Tiwari, 'India's Fight against Legal Emergencies: In Search of a Legal Architecture' (*Observer Research Foundation*, 31 March 2020) <<https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/>> accessed 6 May 2020.

<sup>31</sup> *ibid.*

situation. On the other hand, England<sup>32</sup> is not only sticking to existing laws to contain the virus outbreak but it is also updating these laws according to the current challenges. Even in the USA<sup>33</sup>, the legislation was last updated in December 2019.

This act needs a complete overhaul structurally, by learning from public health laws across the world and rehabilitating solutions to contemporary problems so that it can be modified into a self-sufficient and holistic law. On such legislation proposed was the National Health Bill of 2009,<sup>34</sup> but it is still undergoing evolution and its fate is unforeseeable.

---

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> National Health Bill draft 2009.

# **AAROGYA SETU: A FUNCTION CREEP IN THE EXISTING SURVEILLANCE REGIME?**

**-By Sanah Javed\***

## **ABSTRACT**

*“Sometimes the scandal is not what law was broken but what the law allows.”*

*-Edward Snowden*

*India’s privacy rights framework is still in its nascent stage. The concept of privacy as a fundamental right gained credibility only through the Puttaswamy judgment. However, the surveillance regime has existed long before and its foundation is capable of supporting a government mechanism of mass-data control. These existing concerns in light of the contact tracing application, ‘Aarogya Setu’ released to combat the COVID-19 crisis raises fundamental questions of whether a function creep is underway. The existing surveillance laws have the potential to act as a catalyst to turn the contact tracing application into a surveillance device. An emergency such as the one before us often gives credibility to overreach by state functionaries. To prevent a function creep, the existing legal regime supporting surveillance without adequate safeguards must be reformed.*

## **I. INTRODUCTION**

In the fight against the pandemic, the World Health Organisation in February, 2020 released a draft strategic preparedness and response plan<sup>1</sup> which suggests surveillance programs must be undertaken by national authorities to detect infected persons. The draft encourages community surveillance and sentinel surveillance. This has invariably led to varied technological developments deployed to trace the spread of the virus,<sup>2</sup> such as contact tracing applications, tracing location data, manual data collection and documentation.<sup>3</sup>

---

\* Student, School of Law, Christ University.

<sup>1</sup> WHO, ‘2019 Novel Coronavirus (2019-nCoV): Strategic Preparedness and Response Plan’ <<https://www.who.int/docs/default-source/coronaviruse/srp-04022020.pdf>> accessed 10 May 2020.

<sup>2</sup> ‘Countries are Using Apps and Data Networks to Keep Tabs on the Pandemic’ *The Economist* (26 March 2020) <<https://www.economist.com/briefing/2020/03/26/countries-are-using-apps-and-data-networks-to-keep-tabs-on-the-pandemic>> accessed 8 May 2020.

<sup>3</sup> Chantal Bernier, ‘Pandemics In A Connected World: Integrating Privacy With Public Health Surveillance’ (2018) 66 *University of New Brunswick Law Journal*; Michael A Stoto, ‘Public Health Surveillance in the Twenty-First Century: Achieving Population Health Goals While Protecting Individuals’ Privacy and Confidentiality’ (2009) 96 *The Georgetown Law Journal* 703.

India, following the mandate of the WHO released the ‘Aarogya Setu’ application to carry out contact tracing using Bluetooth and GPS generated location graphs. The app helps the user self-test for the virus and also intimates the user if he/she has crossed paths with a person infected.<sup>4</sup> Contact tracing apps have proved to be a central technological solution to track cases of the virus and contain its spread however it has also accommodated a mechanism for mass surveillance and huge amounts of personal data to be accumulated with state and even private entities endangering key privacy rights.

This paper will examine the legal foundation of surveillance technology in India and the role played by a contact tracing application in this background setting.

## II. SURVEILLANCE STATE

Over the past decade with fast-paced technological developments, the State has deployed sophisticated mass surveillance systems. The Centralised Monitoring System (CMS) being the most prominent. The CMS was introduced in 2009 without any legal framework.<sup>5</sup> The system facilitates the use of algorithms to intercept and analyse data on any communication device<sup>6</sup> equipping the government with ascendancy overall information including location data and personal information. In fact, most surveillance technologies deployed in India finds no mention in the legislature or public policy hence raising questions of accountability and transparency.<sup>7</sup>

The Indian Telegraph Act, 1885 and the Information Technology Act, 2000 (IT Act) are the closest, one gets to a legal framework that governs the domain of surveillance. Questions of surveillance and its infringement into privacy rights of the citizens have been raised before the judiciary<sup>8</sup> and have been acknowledged to pose a threat to a healthy democratic citizenry<sup>9</sup> however, the legislative framework remains stagnant. The Indian Telegraph Act, 1885 provides for exceptions wherein the State can access information transmitted through devices

---

<sup>4</sup> ‘How to Use Aarogya Setu App and Find out If You Have Covid-19 Symptoms’ *The Economic Times* (15 April 2020) <<https://economictimes.indiatimes.com/tech/software/how-to-use-aarogya-setu-app-and-find-out-if-you-have-covid-19-symptoms/articleshow/75023152.cms?from=mdr>> accessed 8 May 2020.

<sup>5</sup> Pranesh Prakash, ‘How Surveillance Works in India’, *NY Times* (10 July 2013) <<https://india.blogs.nytimes.com/2013/07/10/how-surveillance-works-in-india/>> accessed 10 May 2020.

<sup>6</sup> Snehashish Gosh, ‘The State is Snooping: Can You Escape?’ (*CIS*, 27 June 2013) <<https://cis-india.org/internet-governance/blog/india-together-june-26-2013-snehashish-ghosh-the-state-is-snooping-can-you-escape>> accessed 10 May 2020.

<sup>7</sup> Udbhav Tiwari, ‘The Design And Technology Behind India’s Surveillance Programmes’ ( *CIS*, 20 January 2017) <<https://cis-india.org/internet-governance/blog/the-design-technology-behind-india2019s-surveillance-programmes>> accessed 9 May 2020.

<sup>8</sup> Chinmayi Arun, ‘Paper-Thin Safeguards and Mass Surveillance in India’ (2014) 26 NLSIR 105.

<sup>9</sup> Justice K.S. Puttaswamy (Retd) and Another v Union of India 2018 (9) SCJ 224.

provided it is required for ‘public emergency’ or ‘public safety’.<sup>10</sup> The contours of these terms were undefined creating broad and vague contingencies on the power of authorities to clampdown on data.<sup>11</sup> The court in *PUCL v UOI*<sup>12</sup> addressed the following by elucidating on the requirement of procedural safeguards before carrying out the functions mentioned in section 5(2) and advanced the codification of 419(A) which lays down the said safeguards.

The IT Act, 2000 further lowers the bar by removing the threshold of public emergency or safety. The IT (Procedures and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 mention the requirement of authorization and the procedure of interception however fails to address which situations warrant the interception in the first place, leaving it to the discretion of state functionaries.

*Justice KS Puttaswamy v UOI* was perspicuous in holding that privacy is an inherent and fundamental right. In order to interfere with this right, legislative safeguards are essential, especially considering the advancement of technology and the possibilities of surveillance.<sup>13</sup> The Bombay HC in *Vinit Kumar v CBI*<sup>14</sup> analysed the prerequisite of ‘public safety’ or ‘public necessity’ specified in the 1885 Act and reiterated the importance of the ‘principle of proportionality and limitation’.

Hence, surveillance is patently legal and forms a fundamental part of government functioning. The privacy rights are not absolute and interference in accordance with law is permissible. The Aarogya Setu app has been released to curb the pandemic and may hence find a justification in ‘public safety’ however legal sanction does not negate the possibility of privacy infringement.

### **III. AAROGYA SETU AND ITS LEGAL STANDING**

The Aarogya Setu application released by Ministry of Electronics and Information Technology (MeitY) uses Bluetooth and GPS location to determine whether the user has been nearby (within six feet) to an infected person. The application also facilitates self-testing by collecting symptomatic information. To address privacy concerns the app is equipped with certain safeguards. Firstly, a temporary Device ID is provided to every user to keep the user’s identity anonymous, further, all information stays on the phone and does not transfer to the

---

<sup>10</sup> Indian Telegraph Act 1885, § 5(2).

<sup>11</sup> Chaitanya Ramachandran, ‘PUCL v. UOI Revised: Why India’s Surveillance Law Must Be Redesigned for the Digital Age’ (2014) 7 NUJS LR 105.

<sup>12</sup> People’s Union for Civil Liberties v Union of India [1997] 1 SCC 301.

<sup>13</sup> Justice KS Puttaswamy and Anr v UOI and Ors 2018 (9) SCJ 224.

<sup>14</sup> Vinit Kumar v CBI (2019) ALL MR (Cri) 5227.

cloud unless the case tests positive. To ensure data isn't misused, it is deleted automatically after 30 days in case of individuals tested negative for the virus and for those tested positive, the data is deleted after 45 days. At first glance, the policy seems adequate, however on a deeper review, there exist certain drawbacks.<sup>15</sup>

An interference with the right to privacy is justified in case of a legitimate purpose such as national security; however the interference must be in accordance with the law, legitimately address the concern and be proportional to the objective. The application fails to have a legal standing.<sup>16</sup> Hence, the first leg of the test laid down in *Puttaswamy* is not met in the functioning of the application.

To understand the legitimacy of the application it needs to be measured against the privacy principles mentioned in the judgment.<sup>17</sup>

- a) Consent and Choice: The data subject must be given adequate choice on the disclosure and use of data. The app claims to be a voluntary mechanism, whereas, individuals have the choice to download it, however, the government has recently made the app mandatory for all office workers in the public and private sector.<sup>18</sup> Following then creates only an illusion of being voluntary, when in practice it is a government mandate.<sup>19</sup> Various organizations, individuals and collectives have advocated against the implied effects of the app becoming a mandatory device.<sup>20</sup>
- b) Purpose limitation: The data must be utilized for the limited purpose specified. The utilisation of data subsequently for other purposes leads to a function creep and violates the principle of purpose limitation. The Privacy policy of Aarogya Setu specifies that the information collected will be used to develop heat maps and reports for the management of the disease and further they will be correlated with the

---

<sup>15</sup> Pranav Bhaskar Tiwari, 'Privacy Framework for the Aarogya Setu App', <<https://thedialogue.co/wp-content/uploads/2020/05/Privacy-Framework-for-the-Aarogya-Set-App.pdf>> accessed May 10 2020.

<sup>16</sup> Sidharth Deb, 'Privacy Prescriptions for Technology Interventions on Covid-19 in India' (*Internet Freedom Foundation*, 13 April 2020) <<https://drive.google.com/file/d/1UK5rElhcdP5T3Y-8fYP6cCgQKKpQBeOX/view>> accessed 7 May 2020.

<sup>17</sup> Justice K.S. Puttaswamy (Retd) and Another v Union of India 2018 (9) SCJ 224 [184].

<sup>18</sup> 'Home Ministry Says Aarogya Setu App to Be Made Mandatory for All Office Workers', *The Wire* (1 May 2020) <<https://thewire.in/government/home-ministry-aarogya-setu-office-workers>> accessed 7 May 2020.

<sup>19</sup> Gautam Bhatia, 'Coronavirus and the Constitution – XXI: The Mandatory imposition of the Aarogya Setu App' (*Indian Constitution Law and Philosophy*, 2 May 2020) <<https://indconlawphil.wordpress.com/2020/05/02/coronavirus-and-the-constitution-xxi-the-mandatory-imposition-of-the-aarogya-setu-app/>> accessed 10 May 2020.

<sup>20</sup> 'Not Having Aarogya Setu on Your Phone Might Get You Booked by Noida Police', *Hindustan Times* (5 May 2020) <<https://www.hindustantimes.com/tech/not-having-aarogya-setu-on-your-phone-might-get-you-booked-by-noida-police/story-xkLW7ZQpMvGxJcD1YxwZyL.html>> accessed 6 May 2020.

personal information of the user to provide information to medical and administrative staff curbing the disease.<sup>21</sup> This is problematic because once the data shared with a third party, the latter is not subject to the privacy policy and hence the data limitation principle is not applicable making it possible for the third parties to use the data for purposes other than those specified. Further, the failure of a sunset clause aggravates the fear of non-compliance with purpose limitation.<sup>22</sup>

- c) Accountability: The government must comply with the requirements enshrined in the privacy policy and the right of privacy guaranteed under the constitution. A system of accountability is essential. There is an absence of a law or a neutral body to act as a privacy commissioner that will ensure the data limitation criteria aren't breached by the State.
- d) Openness: The information regarding compliance with privacy principles must be made available to the data subject. In the present case, the Aarogya Setu application is not open - sourced hence failing in making transparent the technological functioning of the application.

There exist conflicting legal developments about the balance between surveillance and the right to privacy. The development of Crime and Criminal Tracking Networks and Systems (CCTNS), continued use of CMS, National Intelligence Grid (NATGRID) and Network Traffic Analysis (NETRA)<sup>23</sup> and the stagnancy in development of the privacy framework implies that the surveillance State is not a mere illusion and has gained credibility with the state functionaries. The *Puttaswamy judgement* and the PDP Bill, 2019 indicate however the necessity of a privacy regime wherein interference with privacy is permissible only when it meets the principle of proportionality and limitation and is bound by legal limitations and safeguards. The use of contact tracing apps heightens the importance of this timely debate.

#### **IV. PERSONAL DATA PROTECTION BILL, 2019**

The Personal Data Protection Bill, 2019 as per section 12(d) provides that the requirement of consent to process personal data by any entity can be forgone in case of an epidemic, disease

---

<sup>21</sup> Gayathri Vaidyanathan 'Aarogya Setu Surveillance COVID Tracking App' *Huffington Post* (8 April 2020) <[https://www.huffingtonpost.in/entry/aarogya-setu-surveillance-covid-tracking-app\\_in\\_5e8d6e26c5b6e1d10a6bdea6](https://www.huffingtonpost.in/entry/aarogya-setu-surveillance-covid-tracking-app_in_5e8d6e26c5b6e1d10a6bdea6)> accessed 5 May 2020.

<sup>22</sup> Dhruv Shekhar, 'Sensitive Nature of Data Validates Privacy Concerns Over Centre's Aarogya Setu App Legislation with Sunset Clause Can Curb Potential Misuse' *Firstpost* (4 May 2020) <<https://www.firstpost.com/health/sensitive-nature-of-data-validates-privacy-concerns-over-centres-aarogya-setu-app-legislation-with-sunset-clause-can-curb-potential-misuse-8326461.html>> accessed 10 May 2020.

<sup>23</sup> Udbhav Tiwari, 'The Design and Technology Behind India's Surveillance Programmes' ( *CIS*, 20 January 2017) <<https://cis-india.org/internet-governance/blog/the-design-technology-behind-india2019s-surveillance-programmes>> accessed 9 May 2020.

outbreak or any other threat to public health.<sup>24</sup> This provides a blanket exception to the requirement of consent. If the PDP had become law it would have facilitated a legal standing to the Aarogya Setu application even if it lacks privacy safeguards.<sup>25</sup> The following highlights a drawback with the bill as it not only waves the criterion of consent against government functionaries but also private entities. With Apple and Google working towards developing contact tracing applications, the bill allowed unfettered access to these entities of sensitive personal data as long as it is said to be used for the public health emergency.<sup>26</sup>

In the absence of an independent body to regulate the functioning of the contact tracing applications to ensure that the purpose limitation rules are complied with, it is impossible to guarantee that a function creep is not underway.

## V. COMBATING FUNCTION CREEP

It may be argued that the application is not a surveillance device its purpose is to conduct contact tracing to wipe out the virus. However, the application if used subsequently for surveillance by the State, will find a justification in the existing surveillance regime, impairing the right to privacy and facilitating a function creep.

A function creep refers to the phenomenon of the personal data to be used for any purpose other than what was previously specified or agreed to.<sup>27</sup> The contact tracing applications can be used for varied other purposes even post the pandemic leading to a fear that the technology is here to stay.<sup>28</sup> This fear is not unfounded considering there have been previous instances of function creep with surveillance technology in India.<sup>29</sup>

For us to prevent a function creep the surveillance regime must be modified. The current legislative framework is conducive for a function creep, endangering privacy. To prevent the following legislative framework must be ameliorated. This would include not just looking at

---

<sup>24</sup> Data Protection Bill 2019, § 12 (d).

<sup>25</sup> Anirudh Burman, 'Intrusive Pandemic Era Monitoring Is Same Old Surveillance State Not A New One' (*Carnegie India*, 7 May 2020) <<https://carnegieindia.org/2020/05/07/intrusive-pandemic-era-monitoring-is-same-old-surveillance-state-not-new-one-pub-81728>> accessed 10 May 2020.

<sup>26</sup> Leo Kelion, 'Apple and Google Accelerate Contact Tracing Apps Plan' *BBC News* (24 April 2020) <<https://www.bbc.com/news/technology-52415593>> accessed 10 May 2020.

<sup>27</sup> Maria Tzanou, 'The EU as an Emerging 'Surveillance Society': The Function Creep Case Study and Challenges To Privacy and Data Protection' (2010) 4 *VJICL* 407-427.

<sup>28</sup> Yuval Noah Harari, 'The world after coronavirus' *Financial Times* (20 March 2020) <<https://www.ft.com/content/19d90308-6858-11ea-a3c9-1fe6fedcca75>> accessed 1 May 2020.

<sup>29</sup> Jay Mazoomdaar, 'Delhi Police Film Protests, Run Its Images through Facial Recognition Software to Screen Crowds' *Indian Express* (28 December 2019) <<https://indianexpress.com/article/india/police-film-protests-run-its-images-through-face-recognition-software-to-screen-crowd-6188246/>> accessed 4 May 2020.

the PDP Bill, 2019 in the new light of learning from the pandemic but also the Indian Telegraph Act, 1885 and IT Act, 2000.

A public health emergency is undoubtedly a time for action aimed at containing the virus and providing treatment along with other essential governmental functions in force. However, an overreach in power is not the most viable solution to the problem.<sup>30</sup> The rapid technological changes make any society more susceptible to a function creep. The legal framework must be modified in order to prevent the possibility of technology to be used for purposes other than those consented to by the user. The IT Act, 2000 and the Indian Telegraph Act, 1885 must take into consideration the rapid digital advances and the right to privacy being a fundamental right. Surveillance in a democratic society must be within limitations. Changes to the surveillance laws will bring forth trust in government mechanisms and halt a function creep, facilitating the purpose limitation principle to be realized.

---

<sup>30</sup> Neve Gordon and Cathrine Rottenberg, 'The Coronavirus Conundrum and Human Rights' *Al Jazeera* (21 March 2020) <<https://www.aljazeera.com/indepth/opinion/coronavirus-conundrum-human-rights-200320120352737.html>> accessed 1 May 2020.

# ANALYSING THE LOCKDOWN AS A FORCE MAJEURE EVENT FOR THE LESSORS AND LESSEES

-By Satyam Tandon\*

## I. MEANING OF FORCE MAJEURE CLAUSE

In Black's Law Dictionary, the term Force Majeure (hereinafter referred to as 'FM') is defined as, '*an event or effect that can be neither anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled.*' A FM event can typically be anything which is beyond the control of the parties, for example, a war, an act of God, terrorism, an act of government, plague or even a pandemic like COVID-19. Essentially, for a party to plead FM in order to relieve themselves from the liability, a FM clause is necessary to be included in the contractual agreement.

## II. APPLICABILITY OF INDIAN CONTRACT ACT, 1872

Although, the term FM has nowhere been defined, however, section 32 of the Indian Contract Act, 1872 (hereinafter referred to as 'ICA'), envisages that the contingent contracts which become impossible to perform are void. Further, the section 56 of the ICA deals with the doctrine of frustration of contract, which says, that an agreement to do an act impossible in itself is void. And a contract to do any act which becomes unlawful or impossible to perform, after the contract was made, such contract becomes void. This means, that a contract can be frustrated in its entirety when an event which the parties had not contemplated prior to the happening of such event which made the performance of the contract 'impossible'. The same in the context of leases was elaborated upon in the case of *Raja Dhruv Dev*<sup>1</sup>, where it was clarified that the claim of FM under section 56 was not valid for a lease agreement because (i) rights under a lease are not simply contractual rights but are instead governed under the provisions of the Transfer of Property Act, 1872 (hereinafter referred to as 'TPA') and (ii) the Court reasoned that section 56 of the ICA does not apply to a concluded contract where no further performance was required.

---

\*Advocate, Punjab & Haryana High Court, Proud Alumnus of Jindal Global Law School.

<sup>1</sup> *Raja Dhruv Dev Chand v Harmohinder Singh and Anr* [1968] 3 SCR 339.

### III. APPLICABILITY OF TRANSFER OF PROPERTY ACT, 1882

Considering concepts such as frustration and impossibility belong to the realm of Law of Contracts, the concept of irresistible force under section 108(B) (e) of TPA will be applicable. An irresistible force has not been defined but the obiter in the case of *Mishrilal*<sup>2</sup> mentioned that it is not merely unreasonable wear and tear and it could be similar to the ambit allotted to FM. Moreover, it is settled law as held in the *Airport Authority*<sup>3</sup> case that,

*10.14. Section 108(e) is based on the principle of frustration of contract and was enacted to safeguard the rights of the tenant in case of the total destruction of the property leased to him. It gives him the right to escape his liability as a tenant by declaring the lease void. However, if the tenant does not exercise the option under clause (e) that is, does not invoke the doctrine of frustration, the lease shall continue for the benefit of both the parties. It is the general rule that the rent continues to be payable notwithstanding that, in the case of a dwelling-house or flat, it is at the time of letting, or subsequently becomes, unfit for habitation; or in the case of land near the seashore, that it is of no value; or in the case of agricultural land, that it is unsuitable for the intended use; or that the premises are subsequently destroyed by fire, or carried away by a flood, or inundated by fresh water; or destroyed by enemy action; the premises have become useless to the tenant. It would thus appear that in case of the destruction of the leased accommodation though no fault of the landlord, the tenant can avoid payment of rent only if he declares the lease void under Section 108(e) of the Transfer of Property Act, but if he fails to do so, the lease will subsist for the benefit of both parties and the landlord is entitled to claim rent.*

Therefore, it is implied that the concepts of irresistible force and FM are similar. Moreover, on a careful analysis of both the legislations, when such an event happens; under TPA the contract is

---

<sup>2</sup> State of Bombay v Mishrilal Onkardas Joshi [1958] 60 Bom LR 560.

<sup>3</sup> Airports Authority of India v Hotel Leela Venture Ltd [2016] 159 DRJ 544.

voidable on the option of lessee whereas, in the ICA, the contract immediately becomes void. Therefore, the TPA is considerably favourable to the lessee.

#### **IV. ESTABLISHED THRESHOLDS**

The legal threshold allotted to FM is not, highly enhanced onerousness<sup>4</sup>; or availability of delayed performance alternatives<sup>5</sup>. It cannot be used to avoid a bad bargain<sup>6</sup>. In essence, the event should upset the foundation of the agreement and should render performance, useless<sup>7</sup>. Factually, instances such as a massive increase in the price of coal or ghee; or a land agreed to be developed but later requisitioned during the war did not qualify. On the other hand, strikes and breakdown of machinery<sup>8</sup> have been cited to be instances of FM.

Considering, both concepts are implied to be similar; we shall delve into an analysis of both thresholds. Under TPA, a FM or irresistible force must render the property ‘substantially and permanently unfit for the purposes for which it was let’. Two important instances are mentioned below: -

1. Demolition has been held to be an irresistible force<sup>9</sup>.
2. Eviction by plague authorities under the Epidemic Diseases Act, 1897 was not held by the authorities to render the property unfit<sup>10</sup>.

#### **V. OBLIGATIONS UNDER THE TRANSFER OF PROPERTY ACT, 1882**

When section 108(B) (e) is invoked, the lessee has the option to treat the lease as void, and in absence of conveying their decision to the lessor, the lessee must pay. Operative portions from judgments are mentioned below: -

1. *Trilok Chand case*<sup>11</sup>

---

<sup>4</sup> M/s Alopi Parshad & Sons Ltd v Union of India [1960] 2 SCR 973.

<sup>5</sup> Energy Watchdog v Central Electricity Regulatory Commission [2017] All SCR 1004.

<sup>6</sup> Airports Authority of India v Hotel Leela Venture Ltd [2016] 159 DRJ 544.

<sup>7</sup> Satyabrata Ghose v Mugneeram Bangur & Co AIR 1954 SC 44.

<sup>8</sup> Dhanrajamal Gobindram v Shamji Kalidas & Co AIR 1961 SC 1285.

<sup>9</sup> Vidyawati Bhargava v VIII th Additional District Judge, Kanpur [2003] 50 ALR 61.

<sup>10</sup> Merwanji v Syed Sirdar [1899] 1 Bom LR 267.

<sup>11</sup> Chamber of Colours and Chemicals Pvt Ltd v Trilok Chand [1973] RCR Rent 758.

*In Gandayalla Munuswamy v. Margu Muniramiah (A.I.R. 1965) Andhra Pradesh 167) it was observed: "Under Section 108 (e), Transfer of Property Act a lease is not automatically determined on the destruction by fire or irresistible force of a substantial portion of the property leased. It is a matter of option with the lessee to get rid of the lease or not. He could treat it as void if he so desired. But the law does not compel him to do so. This aspect of the matter makes it all the more necessary that an unambiguous declaration of the lessee's intention to treat the lease as void must be communicated to the lessor. The lessor would not otherwise be able to take appropriate steps on the footing that the lease has come to an end and he is therefore at liberty to deal with the property as he chooses. What is even more important is that a mere declaration of intention to treat the lease as void is not sufficient. The lessee must also yield up possession of the property to the lessor as required by the provisions of Section 108 (q) of the Transfer of Property Act. He cannot continue in possession and yet declare that he has treated the lease as void. That would obviously be an inconsistent and impermissible position to adopt. So long as a lessee has not surrendered to his lessor the possession which he obtained from the latter at the time of the lease, he cannot rid himself of his obligations under the lease.*

The same principle is also followed in *Amalgamated Bean Coffee Trading*<sup>12</sup>. Also, the language of the FM clause in the lease deed must be read in conjunction with the TPA to construe the true intent of parties.

## **VI. PROPORTIONALITY OF PAYMENT**

The case of *Kishan Chand*<sup>13</sup> summarizes the principle of a Supreme Court judgment. It holds that

*The Supreme Court has also observed in Surendra Nath Bibra v. Stephen Court Ltd, AIR 1966 Supreme Court 1361 that it would depend on each case whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of the rent when it is found that the whole of*

---

<sup>12</sup> *Amalgamated Bean Coffee Trading v Surjit Singh Jolly* [2017] Delhi High Court FAO No 189/2017.

<sup>13</sup> *Shri Kishan Chand Mehra v Shri Ramesh Chander Nijhawan* [1979] Rent LR 2 683.

*the premises were not in his possession and that a part of the premises were with the landlord. In that case, the landlord had failed to give possession of one out of the three bed rooms in the premises and yet it was held that the tenant was not entitled to suspend the payment of the rent, but was bound to pay a proportionate part of the rent. This was the decision even when the fault lay with the landlord. In the present case, the landlord was not to be blamed at all. It was the tenant who voluntarily surrendered a part of the premises. The tenant could not, therefore, unilaterally suspend payment of rent after such surrender. He continued to be liable for the whole of the rent until he obtained an order of the court or agreement of the landlord for the reduction of a proportionate part of the rent.*

Therefore, payment can be avoided if the whole of the property is destroyed or demolished. However, in view of the lockdown, none of that can will be applicable as nothing has been destroyed.

## **VII. CONCLUSION**

Although COVID-19 does not fulfill the threshold allotted to FM by case law, it will clear the threshold in view of *Halliburton*<sup>14</sup> and various government notifications. The case held that *'the countrywide lockdown, which came into place on 24th March 2020 was, in my opinion, prima facie in the nature of force majeure. Such a lockdown is unprecedented and was incapable of having been predicted either by the respondent or by the petitioner.'*

The FM in this case was granted and invocation of bank guarantees was stopped because the work would ordinarily be completed by 31<sup>st</sup> March 2020, however, because of the lockdown the work could not be completed. So, although the case can be factually distinguished at this point, the abovementioned case law does indicate that the court would take a liberal outlook while dealing with such cases. So, when applied to the present factual matrix, i.e. the lockdown being used as a defence by the lessee to avoid their payment obligations. It is advisable that: -

1. If you are the lessee and have a FM clause in your lease deed that includes pandemics, you should not be required to pay.

---

<sup>14</sup> *Halliburton Offshore Services Inc v Vedanta Limited & Anr* [2020] OMP I COMM & IA 3697.

2. If you are the lessee and have a FM clause in your lease deed but it does not include pandemics; you will be covered under the government notifications stating that the lockdown is a FM event. However, under section 108(B)(e), you must intimate your lessor that the lockdown is a FM event and that accessing the property has become unlawful and therefore, you need to treat the lease as void/ or continue it (as you wish to do), and by way of such notice you are surrendering the possession of the property (symbolically) to him
3. If you are a lessee and do not have a FM clause in your lease deed; you can rely upon section 108(B) (e) of TPA and follow the route mentioned above; wherein you have the option of treating the lease as voidable. Thereafter as your obligation under section 108(B) (q) you must surrender the property's possession to the lessor and accordingly determine the lease under section 111.

#### **VIII. ADDITIONAL REMARKS**

Every good business is the end product of a good business relationship between both the clients. In such an unprecedented event, one such as the lockdown it is evident that the economy and businesses as a whole shall take a huge hit. Therefore, all business must understand the same and the real solution will not be to play the waiting game in the court, but to: -

1. Stagger the amounts of rent over a period of time. Parties must negotiate the same depending on capacity to pay; or
2. Agree on a lump-sum arrangement.
3. In the event that one deals with a highly unreasonable client, only then taking the case to Court would make sense.

# LEGAL ASPECTS FOR PERSONS WITH DISABILITIES DURING COVID-19: ROOM FOR IMPROVEMENT

-By Sharon Raju\*

## I. INTRODUCTION

Coronaviruses are a large family of viruses that not only circulates among animals but also transmits to humans. It causes mild to moderate upper-respiratory-tract infections, and the intensity may differ from case to case. The strain of Coronavirus has not been identified in humans before late 2019. Undoubtedly, Cov-2 has made our lives upside-down. Generally, it causes symptoms to include fever, dry cough, shortness of breath, and difficulty in breathing.<sup>1</sup> Severe cases can be fatal due to pneumonia or SARS. Because no one is immune to developing Coronavirus disease 2019 (COVID-19), Cov-2 has been unbeatable so far. In March 2020, the World Health Organization declared COVID-19 as a pandemic. COVID-19 is contagious, and Cov-2 enters the body via eyes, nose, or mouth.<sup>2</sup> Being a primary global health concern, nations have adopted various measures and strategies to curb the outspread of the virus. The crucial strategies include limited contact, lockdowns, quarantines, restricted travelling, physical distancing, maintain at least a one-meter distance, avoid touching eyes, nose, and mouth.<sup>3</sup> To lower the transmission rate of the virus, the emphasis is laid upon personal hygiene, proper hand-washing techniques, sanitization, use gels, tissues, or alcohol-based solutions (minimum 70% alcohol content).<sup>4</sup>

In the present scenario where the Nation is under lockdown, disabled people being vulnerable are afflicted a lot and need special considerations. 'Rights of Persons with Disabilities act 2016' repealed the existing 'The Persons with Disabilities (Equal Opportunities, Protection of Rights

---

\* Student, Rayat Bahra University, Mohali.

<sup>1</sup> CDC, 'Coronavirus Disease 2019 (COVID-19) – Symptoms' <<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>> accessed 8 May 2020.

<sup>2</sup> WHO, 'Modes of Transmission of Virus Causing COVID-19: Implications for IPC Precaution Recommendations' <<https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>> accessed 8 May 2020.

<sup>3</sup> WHO, 'Advice for Public' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>> accessed 8 May 2020.

<sup>4</sup> *ibid.*

and Full Participation) Act, 1995.’ This Act<sup>5</sup> includes 21 types of disabilities: ‘person with disability’ are defined as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.<sup>6</sup> Thalassaemia was added to the list of 21 disabilities mentioned in the Act, 2016. A Chhattisgarh girl with thalassaemia got medical admission after the Supreme Court's intervention.<sup>7</sup> The Act grants the central government, power to include more disabilities. Therefore, the government must take appropriate steps to promote equity by assuring that Persons with Disabilities (PWDs) are not left behind.

*People with disabilities are vulnerable because of the many barriers we face: attitudinal, physical, and financial. Addressing these barriers is within our reach, and we have a moral duty to do so. Most important, addressing these barriers will unlock the potential of so many people with so much to contribute to the world. Governments everywhere can no longer overlook the hundreds of millions of People with disabilities who are denied access to health, rehabilitation, support, education, and employment—and never get the chance to shine.*

-Stephen Hawking

Over 1 billion of the world's population (15%) is affected by some kind of special needs. In the total population, around 2% to 4% encounter notable problems while functioning.<sup>8</sup> Results of Indian survey in 2011 suggested that, Out of the total Indian population, 2.68 Cr (2.21%) were PWDS, accounting for 2.4% males, and 1.9% females.

---

<sup>5</sup> Rights of Persons with Disabilities Act 2016.

<sup>6</sup> Rights of Persons with Disabilities Act 2016, § 2(s).

<sup>7</sup> Bhadra Sinha, ‘Supreme Court Helps Girl with Thalassaemia Join Medical Course’ *Hindustan Times*’ (21 August 2017)<<https://www.hindustantimes.com/india-news/supreme-court-helps-girl-with-thalassaemia-join-medical-course/story-B4LDJaMi3URAyF3UGJoPtJ.html>> accessed 9 May 2020.

<sup>8</sup> World Health Organization, 'World report on disability 2011' <<https://apps.who.int/iris/handle/10665/44575>> accessed 8 May 2020.

## **II. GOVERNMENT STRATEGIES:**

An optimistic view suggests that the Pandemic has, in some manner, provided a prospect to the authorities to re-orient the health care system for this vulnerable population. Many advocacy groups and organizations believe that enacting the PWD Act of 2016, coining terms like divyang, and initiatives like the 'DivyangKumbh Mela,' which was held at Allahabad, has paved way to protect rights of the disability sector. Prime Minister's repetitive message about PWDs has made a significant impact. Unfortunately, the current government initiatives to curb the virus are practically challenging for PWDs. This vulnerable population is more prone to illnesses like COVID-19 than others. However, there is a lack of effective government measures to relieve the burden on this population. PWDs face additional barriers due to their fragile condition and also suffer from severe limitations to follow standard precautionary methods such as hand-washing.

Equal protection and safety are guaranteed for PWD in these situations. Disaster management authorities at Districts/State/Nation levels are obligated to take measures to include PWDs in disaster management activities and to keep them duly informed.<sup>9</sup> Appropriate medical benefits should not be hampered for disabled people.<sup>10</sup>

The government has come up with several measures for the welfare of disabled people since COVID-19 outbreak. For poor PWDs, the government has announced ex-gratia of Rs. 1,000 (to be dispersed in two installments in three months). Moreover, PWDs under NSAP would provide three months pension in advance. However, the amount is insufficient, that it won't make much of a difference. Moreover, the National Platform for the Rights of the Disabled (NPRD) has mentioned that this amount cannot be availed by all, as approximately 50% of disabled persons do not have their disability certificates.

The Department of Empowerment of Persons with Disabilities (DEPWD) has recognised PWDs as a susceptible group to be exposed to Cov-2. Unfortunately, the current government initiatives to curb the virus are practically challenging for PWDs. They must be regarded as a vulnerable population as they are more prone to illnesses like COVID-19 than others. However, there is a lack of effective government measures to relieve the burden of this population. PWDs face additional barriers due to their fragile condition.

---

<sup>9</sup> Rights of Persons with Disabilities act 2016, § 8.

<sup>10</sup> Rights of Persons with Disabilities act 2016, § 25.

Moreover, PWDs suffer from severe limitations to follow standard precautionary methods such as hand-washing, social distancing, isolation. Additionally, the majority of PWDs are in some way or the other dependent on others. During this challenging time, many caregivers are unwilling to provide their services. Needs of this population is not only limited to food and shelters like others, but it goes beyond to physiological dependence and moral support. Many PWDs even require frequent visits to health centers or rehabilitation centers. In standing of the ongoing COVID-19 pandemic situation, it is critical to not only spread awareness about the fundamental right to equal access services but also to assure that all Disabled persons are treated with decency and honour.

### **III. CHALLENGES IN VARIOUS DISABILITIES:**

Visual disabilities: People with vision-related disabilities depend on ‘Touch functions for mobility and work.’ The dependency to touch objects results in an increased risk of infection. Globally, about 39 million people are blind and rely more on their sense of touch as a substitute for impaired vision.<sup>11</sup> In an initiative to spread awareness regarding COVID-19 to those with visual challenges, the Ministry of Social Justice and Empowerment has asked the States/UTs departments to make this information accessible in Braille or audio-formats.

Impaired hearing: In India, sign language is not well known to all. Necessary communication pieces of equipment are not available to a large portion of the deaf population. It is challenging for people with impaired hearing (5% of the world population)<sup>12</sup> to lip-read when everyone around is wearing masks. Again, the Ministry of Social Justice and Empowerment has asked state/UT's to make COVID-19 related information accessible in visual-formats or in sign language.

Spinal cord injury, Cerebral palsy, or any other form of physical disorder: people suffering from the physical disorder have to depend on others for their basic daily needs. Thus, it becomes complicated to follow precautionary measures.

---

<sup>11</sup> Wafa Elmannai ‘Sensor-Based Assistive Devices for Visually-Impaired People: Current Status, Challenges, and Future Directions’ <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5375851/>> accessed 9 May 2020.

<sup>12</sup> WHO, ‘Deafness and hearing loss’ <<https://www.who.int/news-room/fact-sheets/detail/deafness-and-hearing-loss#:~:text=Over%205%25%20of%20the%20world's,will%20have%20disabling%20hearing%20loss.>> accessed 8 May 2020.

**Limb Amputees**: people with upper limb amputees suffer from a significant problem to develop proper hand-washing techniques, which to date are considered as a significant method to control infection. Taking care of prosthetic limbs and disinfecting them is very important, limb amputees have to depend on others for the same.

**Mental Illness**: People suffering from any mental disorder or retardation need special assistance throughout their life and especially during such time. Many mentally ill patients require frequent medical checkups or visit reformation centers. About 200 million people have an intellectual disability.<sup>13</sup> However, People are reluctant to take care of and come into contact with a mentally ill patient.

#### **IV. RECOMMENDATIONS:**

A requisite method to prevent the COVID-19 is imparting people with accurate information in an easy-to-understand manner, without forgetting those who have difficulty comprehending due to their disabilities. There must be a deliberative effort to ensure that disabled people and their caregivers have unconstrained access to the necessary information, including the resources like government amenities they can avail.

In this time of need, India must have a ‘National Disability Commission’ to safeguard the rights of PWDs and also to reduce the sufferings of this vulnerable population during this Pandemic. Although, India is on its toes to constrain the COVID-19 cases, however, there is a need to have well-planned innovative individual quarantine centers for PWDs. Generally, this population requires special attention by trained health professionals. Moreover, the chances of getting infected in mass-living are higher. Therefore, specific guidelines to avoid the spread of the virus must be provided to centers.

Extraordinary arrangements must be explored for this vulnerable population under ‘Ayushman Bharat.’ Undoubtedly, it is hard for PWDs to go out for grocery shopping, especially in rural India. Door-to-door services for essential daily goods like food, medicines, sanitation products, etc., should be implemented during this emergency. Medical conditions of PWDs are generally

---

<sup>13</sup> Special Olympics World News, ‘Intellectually Disabled Need Better Healthcare, Forum Hears’ <<https://www.thenational.ae/uae/intellectually-disabled-need-better-healthcare-forum-hears-1.837092>> accessed 9 May 2020.

fragile. The Central government has, therefore, instructed the State government to render adequate medical care to disabled people at their home and make sure uninterrupted services by caregivers. The caretaker must follow guidelines to prevent the transmission of COVID-19 to PWDs.

During the relaxation time, exclusive privileges should be given to PWDs with less severe conditions, such as fixed parking space or some worker's assistance. This step would facilitate them to buy essential goods. India can adopt some measures taken by other countries like Australia, which has booked a separate time slot in supermarkets only for senior citizens and PWDs.<sup>14</sup> Even after The Delhi High Court ruled that 3 per cent of the “total strength” of employees in any Government establishment should be disabled persons.<sup>15</sup> Majority of PWDs are unemployed. Female disabled persons are less employed in comparison to a male disabled person. The bleak scenario in respect to employment is of the approximately 26% of the total population constitute the working class; out of this working population, 78% are males.<sup>16</sup> Priority should be given to rehabilitate the migrated PWDs. Reasonable and safe accommodation should be granted to these individuals to reduce the risk of contamination. 71.2% of PWDs don't even have their disability certificates<sup>17</sup>. Alternative provisions should be prepared for this category. The step would ensure that such people could avail of uninterrupted government services. Additionally, protection shall be provided to PWDs in custody or jails in comparison to other jail inmates. It is unethical to shunt PWDs solely on the fact of their physical condition. Also, not because they require more intensive care or might have a lower likelihood of survival. No person shall be deprived of his life or personal liberty except according to the procedure established by

---

<sup>14</sup> Baikunth Roy, ‘Covid-19: Implications for the Disabled’ *Businessline* (3 April 2020) <<https://www.thehindubusinessline.com/opinion/covid-19-implications-for-the-disabled/article31250730.ece>> accessed 9 May 2020.

<sup>15</sup> Utkarsh Anand, ‘SC Clears 3% Reservation for Disabled in Jobs, Promotions’ *The Indian Express* (12 September 2014) <<https://indianexpress.com/article/india/india-others/3-quota-must-for-disabled-in-all-govt-jobs-including-ias-supreme-court/>> accessed 9 May 2020.

<sup>16</sup> National Centre for Promotion of Employment for Disabled People, ‘Employment Scenario of People with Disabilities in India’ <<https://www.deoc.in/wp-content/uploads/2018/03/White-paper-on-Employment-updated-27-Nov.pdf>> accessed 9 May 2020.

<sup>17</sup> ‘India’s 2.2% Population Suffering from Disability: NSO Survey for July-Dec 2018’ *The Economic Times* (23 November 2019) <<https://economictimes.indiatimes.com/news/economy/indicators/indias-2-2-population-suffering-from-disability-nso-survey-for-july-dec-2018/articleshow/72202650.cms?from=mdr>> accessed 9 May 2020.

law.<sup>18</sup> Thus, the life of a disabled person has the same importance as the life of a physically and mentally fit person.

## **V. CONCLUSION:**

Disability is a human rights issue. Indian Constitution favours equality of all its subjects. For a long period of time, globally as well as in India, the social perception has shifted towards PWDs. The issue of disability has metamorphosed from medical problem to human right paradigm. India has been committed to purging specific barriers that PWD face. There is vast potential for improvement in the quality of life for PWDs. From time immemorial, PWDs is one such category among the others who are more prone to suffer during the hour of emergencies, Whether it be recession period, war times, natural disasters, the collapse of government, pandemic outbreak such as COVID-19 or any other unanticipated events. The government should take necessary measures before-hand to affectively handle future emergencies. Disaster preparedness is essential to tackle the situation. Thus, there is an urgent need for the enactment of a specific law for protecting and safeguarding the rights of PWDs during such an unforeseen condition. The enforcements must be clear in its terms to avoid unnecessary conflicts and for its effective implementation.

---

<sup>18</sup> The Constitution of India 1950, art 21.

# **FAKE NEWS DURING A PANDEMIC**

**-By Shaunak Choudhury\***

## **I. INTRODUCTION**

The advent of technology and the invention of the internet have made communication of information more accessible and cheaper than ever. But with this comes the problem of misinformation. The internet is vast beyond imagination, and that means that it is impossible for us to filter through every single thing being put on it. In times like this, where information is crucial to maintain a semblance of order and discipline, Fake News thrives. More information and an increased frequency of it seem to create more Fake News.

It may start off as someone misunderstanding the news and reposting the information as they understood it. The misinformation can also stem from people portraying the news not as facts but as opinions but stating them in a way that the reader finds the material to be factual. Maliciously spreading Fake News is also a possibility. All these methods of spreading Fake News can be very deceptive and with the help of a few uninformed individuals it can become the news that thousands if not millions are exposed to. It becomes exceedingly difficult to discern the real from the fake because they might be remarkably similar and the fake one may look as convincing as the real.

During the COVID-19 pandemic, we have witnessed a series of Fake News items that have had real-world consequences. It is easy to reject news that we see on WhatsApp messages and from random accounts on Twitter, but what do we do when the institutions that are meant to give us the Real News, fail to do so. Fake News becomes more realistic and eventually the reality, when it comes from sources of information we trust. The professional media, international institutions and the government are supposed to be the sources of News we look up to for Real News.

In order for us to get to the root of the issue we must look at certain large and impactful examples that can make the position clearer.

## **II. WHO AND CHINA**

The World Health Organization (WHO) is a body under the United Nations Economic and Social Council that was formed in the year 1948. Its objective as given in its Constitution is

---

\* Student, SVKM's NMIMS Kirit P. Mehta School of Law, Mumbai.

‘the attainment by all peoples of the highest possible level of health.’<sup>1</sup> Two of the functions listed in the Constitution of the WHO is providing information on public health matters<sup>2</sup> and developing informed public opinion in matters relating to health.<sup>3</sup>

On January 14, 2020, (at 4:48pm) an tweet was posted by the official twitter account of WHO saying, “Preliminary investigations conducted by the Chinese authorities have found no clear evidence of human-to-human transmission of the novel #coronavirus (2019-nCoV) identified in #Wuhan, #China.”<sup>4</sup>

This directly contradicts the findings of the Associated Press<sup>5</sup> and the findings of experts based on retrospective infection data.<sup>6</sup> China was aware of the dangers of the virus from 14<sup>th</sup> of January 2020 but chose to keep that a secret until 20<sup>th</sup> January 2020. The reasons for the silence are unknown. But during this time, the Chinese government held a mass banquet in Wuhan for tens of thousands of people for the Lunar New Year celebrations. It is also to be noted that the WHO also tweeted about a case of the Corona Virus in Thailand being detected on 13<sup>th</sup> January, (tweeted on January 14, 2020, at 11:57 pm).<sup>7</sup> But the organization did not revisit the claim made by China.

Due to these facts, there was a huge disadvantage handed to the entire world. The effect of the delay cannot be exactly quantified but instead of being complacent with the information handed to them by China, the WHO could have investigated into the matter themselves. But to the WHO’s credit, it did tweet out the next day that further investigation into human-to-human transmission is required.<sup>8</sup>

---

<sup>1</sup> The Constitution of the World Health Organisation 1950, art 1.

<sup>2</sup> *ibid*, art 2 (q).

<sup>3</sup> *ibid*, art 2(r).

<sup>4</sup> WHO, ‘Twitter [January 2020, 4:48pm]’ <<https://twitter.com/WHO/status/1217043229427761152?s=20>> accessed 4 May 2020.

<sup>5</sup> The Associated Press, ‘China didn’t Warn Public of Likely Pandemic for 6 Key Days’ *Associated Press* (15 April 2020) <<https://apnews.com/68a9e1b91de4ffc166acd6012d82c2f9>> accessed 4 May 2020.

<sup>6</sup> The Novel Coronavirus Pneumonia Emergency Response Epidemiology Team, ‘The Epidemiological Characteristics of an Outbreak of 2019 Novel Coronavirus Diseases (COVID-19) — China, 2020’ (2020) 2 *China CDC Weekly* 113 <<http://weekly.chinacdc.cn/en/article/id/e53946e2-c6c4-41e9-9a9b-fea8db1a8f51>> accessed 4 May 2020.

<sup>7</sup> Twitter, ‘WHO [14 January 2020, 11:57pm]’ <<https://twitter.com/WHO/status/1217151178884222976?s=20>> accessed 4 May 2020.

<sup>8</sup> Twitter, ‘WHO [15 January 2020, 12:20am]’ <<https://twitter.com/WHO/status/1217157045318836224?s=20>> accessed 4 May 2020.

The WHO had sent a delegation to China on 21<sup>st</sup> January 2020, only after China had declared that the virus could spread between humans. The WHO also did not add the original tweet to the timeline on its website, whereas it had put up the tweet about the first case in Thailand.<sup>9</sup>

China on the other hand has also tried to hide the fact that it knew about the virus. The whistleblower, Dr. Li Wenliang had tried to warn the public about the virus but was apprehended and silenced by the Government. He died of the coronavirus himself and now the Communist Party is trying to create a narrative where he was a member of the party and he died a martyr.<sup>10</sup> So here we see an entire central government in the business of producing fake news.

### III. INDIA

During the pandemic, there have been several instances of fake news spreading like wildfire. Not only, through Twitter and WhatsApp but also, through real media news. ABP journalist Rahul Kulkarni, before the Prime Minister's announcement about the lockdown extension, claimed that he had received information based 'on verified internal communications of the railways department', that the railways would be relaxing the restrictions on a few trains. This may have prompted the large crowd of migrant workers at Bandra station. Information was also being spread about the Maharashtra government relaxing the lockdown for the period of Ramazan which was also fake news, as the Police clarified that the lockdown would go as it is.<sup>11</sup>

Looking at the instances of Fake News, even statistically there has been an increase in the cases that have been discovered. Most of these are unsurprisingly related to culture and religion. References to Muslims increased especially after the Nizamuddin Markaz meet. Several public figures have been caught spreading false claims as well and low-level

---

<sup>9</sup>WHO, 'First Case of Novel Coronavirus Outside of China Confirmed' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>> accessed 4 May 2020.

<sup>10</sup> David Gilbert, 'China Is Trying to Rewrite the History of Silenced Coronavirus Whistle blower Doctor Li Wenliang' *VICE NEWS* (20 March 2020) <[https://www.vice.com/en\\_us/article/xgqk9n/china-is-trying-to-rewrite-the-history-of-silenced-whistleblower-doctor-li-wenliang](https://www.vice.com/en_us/article/xgqk9n/china-is-trying-to-rewrite-the-history-of-silenced-whistleblower-doctor-li-wenliang)> accessed 5 May 2020.

<sup>11</sup> Digital Desk, 'Mumbai Police Clarifies on Rumours of Lockdown Relaxation for Ramzan; Says 'No Such Order' *REPUBLICWORLD.COM* (25 April 2020) <<https://www.republicworld.com/india-news/general-news/mumbai-police-clarifies-on-rumours-of-lockdown-relaxation-for-ramzan.html>> accessed 5 May 2020.

politicians have also been caught in the act. Maximum Fake News has been spread about the Government of India and its actions taken for battling the epidemic.<sup>12</sup>

#### IV. FAKE NEWS AND LAW

Reports have been coming in from across India of people being arrested for spreading Fake News. A man was arrested under sections 153A, 504 and 5050 in Odisha for allegedly spreading Fake News.<sup>13</sup> In Rajasthan a public worker was arrested for spreading Fake News and his service was terminated.<sup>14</sup>

There are several different laws under which the problem can be dealt with. Like, section 52 of the Disaster Management Act 2005 (DMA),<sup>15</sup> and section 505 & 504 of the Indian Penal Code 1860 (IPC)<sup>16</sup>. Section 2 and 2A of the Epidemic Diseases Act 1897 (EDA) allows the state and central governments to make temporary regulations at the time of an epidemic and section 3 penalizes any act contravening the regulations.<sup>17</sup>

Maharashtra for example has made it a crime for any person/Institution/organization to give news about the virus through print, electronic or social media without the government's consent.<sup>18</sup> The regulation is so broad and overreaching that, if interpreted in a way, could mean that private conversations online could be penalized. It could also include the views of private citizens.

Although it can seem incredibly attractive to arrest people under sections in the DMA and IPC for spreading Fake News, an important note to be remembered is that they not only require the dissemination of misinformation but also an intent to cause harm. Arresting random civilians for spreading Fake News because they believe it to be genuinely true is thus

---

<sup>12</sup> Syeda Zainab Akbar, 'Temporal Patterns in Covid-19 Related Digital Misinformation in India' (*Joyojeet Pal*) <<http://joyojeet.people.si.umich.edu/temporal-patterns-in-covid-19-misinformation-in-india/>> accessed 5 May 2020.

<sup>13</sup> Muhammad Suffian, 'Odisha: 32-Year-Old Held For Spreading Fake News on Coronavirus on Social Media' *India Today* (14 March 2020) <<https://www.indiatoday.in/india/story/odisha-32-year-old-held-spreading-fake-news-coronavirus-social-media-1655623-2020-03-14>> accessed on 5 May 2020.

<sup>14</sup> Press Trust of India, 'Rajasthan: Health Worker Arrested for Spreading Fake News about Coronavirus' *India Today* (16 March 2020) <<https://www.indiatoday.in/india/story/rajasthan-health-worker-arrested-for-spreading-fake-news-about-coronavirus-1655950-2020-03-16>> accessed 5 April 2020.

<sup>15</sup> The Disaster Management Act 2005, § 52.

<sup>16</sup> Indian Penal Code 1860, §§ 504 and 505.

<sup>17</sup> The Epidemic Diseases Act 1897, § 2, 2A and 3.

<sup>18</sup> Government of Maharashtra Public Health Department, 'Notification No. Corona-2020/CR-58/Aarogya-5' <<https://www.maharashtra.gov.in/Site/Upload/Acts%20Rules/Marathi/Korona%20Notification%2014%20March%202020....pdf>> accessed 5 May 2020.

not an option. Section 54 of the DMA act on the other hand does not incorporate the element of intent within its vocabulary.<sup>19</sup> And the central government has invoked it in this situation.<sup>20</sup>

The problem of Fake News seems like it can be solved through mandates, but the fact is that it cannot. Fake News is only a side effect of freedom of speech and it is something that cannot be eradicated through mass surveillance<sup>21</sup> over what every single person says. It is but obvious that persons in government positions cannot be excused for spreading misinformation, even if they did so unknowingly, because it is their job to be vigilant and provide accurate information to the people through official notifications. But private citizens cannot be held to that standard. Like the notification from Maharashtra, regulations on speech can be a slippery slope towards losing the right all together. It may seem hyperbolic, but who is to say that the government will not exercise its power to expand the definition of Fake News to encapsulate criticism. Before we know it, everything under the sun would become Fake News, unless it is sanctioned by the government.

The problem of misinformation and the rapid spread of it through social media is indeed a novel and unique problem that needs addressing but not through arbitrary mandate and restrictions on speech. People have the right to lie and make false claims. The Constitution of India does not put restrictions on lying or spreading misinformation, as much as that fact may irk people. But speech can be dealt with through speech. If a false claim is being made then citizens or the media that are aware of its falsity should refute those claims themselves. And if someone comes across such messages, they should not forward it. The government should only intervene when the consequence of spreading that misinformation is quantifiably damaging to the public at large or to certain individuals (like in the case of journalists spreading Fake News and having real life consequences).

## V. INTERNATIONAL FAKE NEWS

It is abundantly clear that if another country is actively spreading Fake News for its own interests, nothing can be done by a country to stop that. A country like China (which has a veto power in the United Nations Security Council) can openly proclaim anything it wants, and India will not be able to do anything about that. And when a trusted international

---

<sup>19</sup> Disaster Management Act, 2005, § 54.

<sup>20</sup> Government of India, Ministry of Home Affairs, 'Notification No. 40-3/2020-DM-I (A) dated 1<sup>st</sup> May 2020' <[https://static.mygov.in/rest/s3fs-public/mygov\\_15883406691.pdf](https://static.mygov.in/rest/s3fs-public/mygov_15883406691.pdf)> accessed 5 May 2020.

<sup>21</sup> Virendra Singh Rawat, 'Covid-19 Impact: UP Police Probing 346 Cases of Fake News on Social Media' *Business Standard* (16 April 2020) <[https://www.business-standard.com/article/current-affairs/covid-19-impact-up-police-probing-346-cases-of-fake-news-on-social-media-120041601335\\_1.html](https://www.business-standard.com/article/current-affairs/covid-19-impact-up-police-probing-346-cases-of-fake-news-on-social-media-120041601335_1.html)> accessed 5 May 2020.

organization, with the objective of informing the media, also puts those claims forward, there is no question that those claims become the reality that other countries have to live with. It is not as though China is the first country to lie on an International Level but when that lie has potentially caused the deaths of thousands due to the spread of a virus, whose nature was kept hidden, it is almost criminal. As much as people would like to retaliate, not much can be done. Private individuals and governments plan to sue China for damages but China giving compensation does not seem likely.

## **VI. CONCLUSION**

The challenge seems unsolvable and hopelessly ubiquitous. Every time someone looks at the news they have to check twice whether it is Fake or not and that is simply not how people should be receiving their news. But we are benefitting from communication technology like never before and this is only a consequence of that. Fake News existed before coronavirus; it is just that it has been amplified to an extreme level under the lockdown as people sit at their homes surfing the internet. An individual can only find Real News if he/she confirms the facts with multiple sources before asserting it and making sure that they do not forward Fake News. No mandate can curb the issue people need to keep themselves under check. The government's involvement at this point in time, when it has to sort the issues of the pandemic, cannot be focused on policing all news.

The challenge may seem even worse when we see trusted institutions relaying messages that they themselves have not verified.

Unfortunately, every piece of news is to be taken with a grain of salt. This does not mean that nothing in the news is to be believed but means that people need to stop looking at Facebook, Twitter, WhatsApp, and other such websites as credible sources. Just looking at credible media sites does not help either, as the news may be factually accurate, but the opinions of the writer may distort the facts. Constant verification of claims needs to be made by looking at multiple sources of news and then perhaps the issue can be curbed.

# LEGALITY OF IMPOSING SECTION 144 OF CrPC AMID COVID-19 PANDEMIC

-By Simran Yadav\*

## I. INTRODUCTION

Coronavirus disease (COVID-19) is a communicable disease which has been declared as pandemic by WHO as it has covered wide geographic area across the world with infecting people in millions and the effect is so adverse that it has not only increased the mortality and morbidity rate but also has endangered the economy of many countries. Government of various countries, have taken suitable measures to contain the spread of the disease. Indian government has also taken all possible steps which were necessary to mitigate its deleterious effects productively which also includes imposition of section 144<sup>1</sup> of Code of Criminal Procedure (CrPC) (hereafter “section 144”) in various parts of the country. Under the Section, District magistrate if satisfied that a situation exists which can imperil the life, health or security of public or that there is an apprehension of such situation then he may pass order to abstain any person from doing any specific act.

## II. VALIDITY OF THE SECTION

### ➤ EXISTENCE OF AN EXIGENT SITUATION

The term emergency means a grave, unanticipated and threatening situation demanding an instant measure.<sup>2</sup> And it must exist to justify a defensive or inhibitory order.

The main object of the order passed under section 144, is to serve and secure large public interest. This section gives the authority to the executive to bring it in effect once it is satisfied that there exists a situation which demands instant prohibition or quick solution requisite to avert any hazard to health or safety of human and to safeguard the interest of public then any action under the section which can prove to be a remedy to such a situation or advantageous to welfare and health security of the public, then it is at the discretion of the District Magistrate to impose it and would be valid<sup>3</sup>. Power under this section can be

---

\* Student, Dr. Ram Manohar Lohiya National Law University, Lucknow.

<sup>1</sup> The Code of Criminal Procedure 1973, § 144.

<sup>2</sup> *Concise Oxford English Dictionary* (12th edn, OUP 2011) 37.

<sup>3</sup> *Gulam Abbas v State of UP* AIR 1981 SC 2198.

exercised not only at the time of existence of a menace but also in a case of apprehension of such dander.<sup>4</sup>

Any issue which has an effect over section or group of people at large, would amount to public order. Therefore any order by the District Magistrate, invoking this section under the above circumstances would not be unconstitutional.

The main ground on which section 144 can be imposed is the exigency of the situation. Such order is the immediate requisite of the time because the most effective and immediate step that can be taken to prevent people from contacting those who are already infected. Number of infected patients is on rise every next day with no cure available. Therefore the District Magistrate can override private rights transiently.<sup>5</sup>

The court has held that the chief and foremost task of the government is to safeguard public peace and order and power to do so under the ambit of section 144 has been conferred on the executive. Security of State is the core of term law and order<sup>6</sup>. In current situation fear of the pandemic imperils security of the state.

And in any such demanding situation an individual right must be surrendered in favour of large public interest. The effectiveness of such provision lies in preventing some deleterious happenings instantly.<sup>7</sup>

There is no defined situation where the section can be brought into effect but this is to be decided from circumstances which are prevalent in a specific area and at a specific time.<sup>8</sup>

#### ➤ **REASONABLENESS OF THE RESTRICTION IMPOSED**

The restriction by such order on rights of people if properly applied, permitted by the Constitution and is in favour of large public interest, then it cannot be ultra vires and falls within the reasonable restrictions. Merely on the basis that this power can be abused, the order cannot be struck down.<sup>9</sup>

Talking about the restrictions that can be placed over the rights conferred by the article 19, clauses 2 (amendment in 1951) and 3 of the article, allow the legislature to make laws for

---

<sup>4</sup> Babulal Parate v State of Maharashtra AIR 1961 SC 884.

<sup>5</sup> Anuradha Bhasin v Union of India and another 2020 SCC Online SC 25.

<sup>6</sup> Ram Manohar Lohia v State of Bihar AIR 1966 SC 740.

<sup>7</sup> Mohd. Gulam Abbas v Mohd Ibrahim (1978) 1 SCC 226.

<sup>8</sup> *ibid.*

<sup>9</sup> Madhu Limaye v Sub-Divisional Magistrate (1970) 3 SCC 746 758.

large public interest and these laws are reasonable enough to control the rights under article 19. Order of the Magistrate cannot be made unconstitutional on either of the grounds that section 144 violates the fundamental rights or it puts unreasonable restrictions on these rights. Since these rights are subject to limitations under clause (2) of article 19. Article 19 (2) also provides that an appropriate law in the interest of the security of the State can be imposed on the rights under clause (a) of article 19.<sup>10</sup>

While it is the duty of the government to preserve law and order in the society by passing necessary orders required, though citizens enjoy their freedom of rights which are not absolute and reasonable restrictions can be imposed there also lies duty on citizens to comply with such orders and provide full cooperation to the government to keep up the public order and peace.<sup>11</sup>

The restriction by such order on rights of people if properly applied, permitted by the Constitution and is in favour of large public interest<sup>12</sup>, then it cannot be ultra vires and falls within the reasonable restrictions. Merely on the basis that this power can be abused, the order cannot be struck down.<sup>13</sup>

This CrPC provision comes from a statute empowering state to make sure that freedoms given to citizens are enjoyed within the ambit of law and do not go against the law.<sup>14</sup>

In current situation if any forceful action is taken by the authority under section 144, would also be valid because orders have already been given not to assemble or move out of the houses unless unavoidable circumstance arises and in a case where people are not ready to obey the rules and are forming prohibited assembly, which is having tendency to cause threat to safety of people.<sup>15</sup>

The Supreme Court held that imposition of section 144 should have direct and near relation with the action which is hindered, also it has to be absolutely necessary and very less interfering.<sup>16</sup>

---

<sup>10</sup> State of Madras v VG Row AIR 1952 SC 196.

<sup>11</sup> Ramlila Maidan Incident In re, (2012) 5 SCC 1.

<sup>12</sup> Modern Dental College & Research Centre v State of Madhya Pradesh (2016) 7 SCC 353.

<sup>13</sup> *Madhu Limaye* (n 9).

<sup>14</sup> Anita Thakur v State of J&K (2016) 15 SCC 525.

<sup>15</sup> Karam Singh v Hardayal Singh 1979 SCC OnLine P&H 180.

<sup>16</sup> *Ramlila Maidan* (n 11).

Amid global health crisis due to COVID-19, the action taken by government in context of section 144 to force social distancing and restrain people from moving out of their houses unless necessity requires so, restrictions have been put on the freedom of people but here the danger which is to be prevented, is not remote or far-fetched but has a direct and proximate nexus with the preventive measures taken and with the rights on which limits have been put.<sup>17</sup> Therefore amounts to a rational action. If people cut connection with the infected people, the disease can be inhibited from spreading and infecting healthy people. The action qualifies the test of direct nexus and also is least invasive with the rights of public and is absolutely required<sup>18</sup> in the instant case.

To protect the public from pandemic COVID-19, section 144 has been invoked in view of averting an actual threat to safety of people and the imposition is justified therefore qualifies to be a valid action.<sup>19</sup> It has been held by the court that state can put reasonable restrictions on article 19 (1) (g) in welfare of larger public.<sup>20</sup>

In the present circumstances it was an immediate requirement to put limitations not only on rights of an individual having the infection but also on the rights of the public in general to stop the spread of the disease because it is impossible at the earliest to test each individual of such a populous country. The only practical way in which the particular activities referred to in the order could be restrained or restricted would be by making those restrictions applicable to the public generally.<sup>21</sup> Action taken under section 144, is directed towards those who do not obey the order passed and through their actions or in any way do such things which put in danger the life and safety of public then such measure taken would fall within the ambit of restrictions which the Constitution considers permissible in favour of general section of people.<sup>22</sup>

#### ➤ **LIMITATION IMPOSED IS BALANCED WITH THOSE RIGHTS OF PEOPLE WHICH ARE RESTRICTED**

Right to health is integrated in right to life<sup>23</sup> (article 21) and by virtue of article 38<sup>24</sup> there is a responsibility on the State to secure social order to promote well-being and health of public

---

<sup>17</sup> S Rangarajan v P Jagjivan Ram (1989) 2 SCC 574.

<sup>18</sup> *Ramlila Maidan* (n 11).

<sup>19</sup> *ibid.*

<sup>20</sup> *Anita Thakur* (n 14).

<sup>21</sup> *Mazdoor Kisan Shakti Sangathan v Union of India* (2018) 17 SCC 324.

<sup>22</sup> *Jagrupa Kumari v Babu Chotey Narain Singh* 1935 SCC OnLine Pat 278.

<sup>23</sup> *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802.

<sup>24</sup> The Constitution of India 1950, art 38.

and even if this article comes under DPSP, state should duly implement it.<sup>25</sup> The same case it was also held that DPSP. When talking only in context of India, after the outbreak of the pandemic people are at risk of catching the disease at faster rate since it is contagious and will spread through people who are already infected. Therefore if section 144 is imposed and fundamental rights of citizens are restricted in view of protecting right to life of larger public. Then while balancing the two rights, fundamental rights of larger public will prevail.<sup>26</sup> And the imposition so placed on the personal liberty of people, is requisite for wellbeing of larger public<sup>27</sup> hence rational restriction.<sup>28</sup> When Constitutional rights are not watertight then some rights can be limited in view of public good.<sup>29</sup>

The restriction so placed on the rights of people is in proportion with the health risk that people are at, because there is an immediate call to put a stop on an unnecessary movement and meeting of people with others to curtail the growth of the malady. Also the restrictions if viewed from the point of general public interest and in an objective mode then it would be rational to impose them.<sup>30</sup>

Equilibrium has also been maintained<sup>31</sup> between the rights of the people and limitations foisted on such rights since the movement is not absolutely prohibited. Keeping in mind needs of people, government has permitted movement for urgent needs.

The objective behind this administrative order is to protect health and life of people and stop the growth of the pandemic therefore the object is sufficient to justify the order which can control the constitutional rights. The action flows from a statute, it is of utmost importance for the lawful goal i.e., public safety, it is proportional to the requirement to curb the pandemic and is proportional in limiting rights and is subject to judicial review.<sup>32</sup> Evidently the action is fulfilling all requirements to be a rational action.<sup>33</sup>

Here the action is proportionate with the need to eliminate danger to which human life and safety is exposed. All necessary sub components have been taken care of (1) the measure has a lawful object i.e., securing safety to human health. (2) Apt in the current situation since

---

<sup>25</sup> *Bandhua Mukti Morcha* (n 23).

<sup>26</sup> *Mazdoor Kisan Shakti Sangathan v Union of India* (2018) 17 SCC 324.

<sup>27</sup> *Mohammed Faruk v State of Madhya Pradesh* (1969) 1 SCC 853.

<sup>28</sup> *Chintaman Rao v State of Madhya Pradesh* AIR 1951 SC 118.

<sup>29</sup> *Ramlila Maidan* (n 11).

<sup>30</sup> *Mohd. Hanif Quareshi v State of Bihar* AIR 1958 SC 731).

<sup>31</sup> *Om Kumar v Union of India* (2001) 2 SCC 386.

<sup>32</sup> *Madhu Limaye* (n 9).

<sup>33</sup> *K S Puttaswamy v Union of India* (2017) 10 SCC 1.

preventing contact amongst people is one of the ways to stop the spread. (3) No other measure available which would be as effective as this. (4) Limitation imposed on rights is balanced with the rights since the movement of people is not absolutely limited.<sup>34</sup>

### **III. CONCLUSION**

Bearing in mind the health emergency caused by COVID -19, which is posing danger to health and safety of human life, it can rightly be concluded that order passed under section 144 is well within the ambit of law and any person who is found disobeying the order despite having the knowledge of it, shall be punished under section 188 of IPC. The action under section 144 should be used in judicial manner and can further stand judicial scrutiny.

---

<sup>34</sup> Modern Dental College & Research Centre (n 12).

# COVID-19 AND “SHADOW PANDEMIC” OF DOMESTIC VIOLENCE IN INDIA: AN UNEXPECTED CORRELATION

-By Sovik Mukherjee\*

Sneha Singh#

## I. BACKGROUND

Women around the world are fighting two battles – the COVID-19 pandemic and the violence inside their houses (shadow pandemic). Lockdowns have proved to be an effective measure for battling the pandemic, but the society has been exposed to gender inequalities in view of the threats to women from one corner to other corners of the globe. According to the new data released by the UN Population Fund (UNFPA), there has been a 20 per cent growth in domestic violence cases during the three month lockdown in all 193 UN member states alone. ‘....we have seen a horrifying surge in domestic violence,’ the statement of the UN Secretary-General, Mr. Antonio Guterres sums up the current situation.

To put it in simple words, domestic violence is the emotional, mental, physical or sexual abuse of women, typically, at the hands of a male member in their family. Apart from other threats which the pandemic had signaled, one very dangerous situation which the society failed to apprehend was the chance of an increase in the number of domestic violence cases. As per the report of the World Health Organization dated April 7 2020, there have been reports of an increase in the domestic violence cases since the COVID-19 outbreak in countries like China, UK, US, France, Italy among others. India is no such exception.

## II. WHERE WE STAND?

As per the ‘The Thomas Reuters’ survey in June 2018, India was ranked as one of the world’s most unsafe country for women, even surpassing the likes of the Syria and Afghanistan. The country is in lockdown since March 25, 2020. This has been a major economic blow for the common Indian ‘man’. Closed business, the threat of job security, limited economic resources,

---

\*Assistant Professor in Economics, Faculty of Commerce and Management, St. Xavier’s University, Kolkata, West Bengal.

#Assistant Professor in Law, Faculty of Commerce and Management, St. Xavier’s University, Kolkata, West Bengal.

and even hunger have all added to this fear, anxiety, helplessness and anger — a perfect environment to vent out ‘his’ (read men) frustration on ‘her’ (read women). Going through the database of National Commission for Women (NCW) India, the number of reported cases of domestic violence went up from 123 between February 27 – March 22 to 239 between March 23 – April 20 apart from the other crimes against women like dowry killings, acid attacks, and rapes to name a few horrific ones. The National Commission for Women (NCW) has already recorded 400 online complaints since March, the highest since August last year — a quantum jump of sorts. Another interesting point is the concentration of cases in the agrarian based societies of Uttar Pradesh, Bihar, Haryana and Punjab substantiate the fact that the cases have increased in families which have farmers or daily labourers. Then the pertinent question is — why is the number of domestic violence is on the rise?

### **III. CAUSES**

Domestic violence can be on any female member sharing the residential premises with a male member. It would not be only a wife or a spouse but could include all forms of female relations like mother, daughter and sisters sharing the household. The idea of complaining against the domestic violence during such troubled times is also scary for women. It is not that the protection officer could provide them with some sort of immediate relief because it is ultimately for them to co-exist with the tormentor. The right of residence will give them shelter but the preservation of the sanctity of the relationship will be amiss. As per the account of many housemaids, whose husbands were either engaged as daily labourers or rickshaw pullers, each day of survival is tough. The frustration of staying indoors 24 x 7 without company and work or basic leisure of socialising, men tends to be over-demanding. The demands can be in terms of care, companionship or forms of physical needs. Any disinterest on the part of the women affects the balance of harmony and starts with minor scuffles to major fights or physical or mental abuses.

In looking at the causes, the primary cause is obviously the threat of poverty on account of employment opportunities drying up amid the pandemic in India. The lockdown situation has made things worse as the country is going through a severe employment crisis (as per Centre for Monitoring Indian Economy’s (CMIE) predictions on April 6, 23.4% is the unemployment rate

in India). In such a situation, it needs to be pointed out that some men just cannot tolerate women doing well while they themselves are unemployed; this happens mainly in a poor household. And if the woman is working to take care of the family with her earnings, the level of frustration for the man increases manifold. Out of this frustration, unemployed men have found ways of beating their wives on account of very trivial domestic issues. Many victims also believe that they can no longer seek refuge at their parents' home; in fear of exposing their elderly parents to the coronavirus. On top of it, travelling to parent's place can be an inter-state issue which cannot be immediately resolved amid lockdown. For many, the fear of contracting the coronavirus is stopping them from seeking out medical care even after experiencing physical abuse. Driven to the brink of existence, the man also starts considering the woman in the family as an extra mouth to feed in the period of crisis. However, there is a redressal mechanism in place.

#### **IV. WHAT LEGAL MACHINERY WE HAVE FOR REDRESSAL?**

To begin with the legal machinery, India has 2 laws that are dedicated to handle the cases of domestic violence: first, section 498A of The Indian Penal Code and second, The Protection of Women from Domestic Violence Act, 2005. To begin with, under section 498A of the Indian Penal Code (IPC), 'cruelty by husband or relatives of husband' is a cognizable offence and the police have to take action, once a complaint is registered by the victim or any of her relatives. Cruelty in the form of injury, bodily harm, danger to life and limb, physical and mental health, capturing of property, sexual and verbal abuse to name a few comes under its ambit subject to imprisonment of maximum three years along with a fine (of some decided amount).

Moving on, The Protection of Women from Domestic Violence Act, 2005,<sup>1</sup> women can seek protection against domestic violence in terms of 'physical, sexual, verbal, emotional and economic abuse', financial compensation, the right to live in their shared household, and they can get maintenance from their abuser in case they are living apart. Even The Dowry Prohibition Act, 1961 can be a handy tool for women in case the victim is put through domestic violence in terms of being abused and tortured for dowry. Also, India gave her consent to and ratified the International Covenant on Civil and Political Rights (ICCPR) in July 1979. The article 4 (2) of the Act, lists seven provisions of the ICCPR from which no derogation is permitted. Out of these

---

<sup>1</sup> The Protection of Women from Domestic Violence Act 2005, § 3.

seven, in the context of domestic violence, ‘women’ should be aware of article 6 (right to life), article 7 (prohibition of torture), article 8 [para 1 & 2] (i.e. prohibition of slavery and servitude)<sup>2</sup> and the party State (read India) is bound to honour ‘her’ rights being a signatory.

## **V. POSSIBLE REMEDIES**

Law alone is a weak instrument to enhance social conditions and has limited scope in the eradication of social problems as women stigmatisation persists in a country like India. The stigma attached in Indian society towards broken marriages makes women accept all forms of abuses and violations without reporting the same. Many victims are afraid to even share such experiences, forget about filing a case more so under this lockdown period. Since the cases filed under the Domestic Violence Act, 2005 will not be considered as those requiring immediate action, it can lead to further distortion of the situation. Fast track courts can be also considered an option here. The need of the hour is the effective intervention of the government (at all levels).

A Division Bench of the Delhi High Court on April 24, 2020<sup>3</sup> laid down certain temporary outreach programmes which authorities are to consider in terms of ensuring the overall safety of the victims. Appointment of temporary protection officers with limited but effective authority could show the way for a successful application of section 18 of the Domestic Violence Act and thus, increasing the number of authorities for the women to seek help from in case of domestic violence and abuse. The persons dealing with the helpline created for these victims as were emphasized by the Delhi High Court, ‘must be trained about possible remedies of the common difficulties of complainants.’ Some related complaints and cases have been highlighted with states like Tamil Nadu and Odisha. The Social Welfare Department of the government of Tamil Nadu submitted in the High Court that specially hired vehicles are being deployed to rescue women in distress during this lockdown period, counselling is being offered and the matters are being instantly referred to the police. District Social Welfare Officers (DSWO) are being given added responsibility coupled with the existing number of protection officers to monitor the

---

<sup>2</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>3</sup> All India Council Of Human Rights, Liberties And Social Justice v Union Of India & Ors 2020 SCC OnLine Del 537; The order was passed by the Delhi High Court after having considered a petition of Non-Governmental Organization called All India Council of Human Rights, Liberties and Social Justice (AICHLS) seeking measures to curb domestic violence and protection of victims.

situation and the cases in the state (district wise) coupled with follow up visits after the case. Tamil Nadu has even started counselling<sup>4</sup> not only for the victims but also for the perpetrators.

At the national level, already, a complaint and investigation cell has been set up by the NCW to receive complaints with regards to domestic violence, dowry, torture etc. The National Commission for Women launched a WhatsApp number during the period of lockdown to help victims of domestic violence to report their complaints easily. The Ministry of Child and Women Development, Government of India has announced a 24 x 7 helpline number for the victims and also provisions for rescuing the victims on an emergency basis. The state having the maximum number of complaints, Uttar Pradesh, came up with the ‘*Suppress Corona Not Your Voice*’ initiative encouraging women to call up at a helpline number and seek assistance from women police officers in case of any difficulty. Pushing for celebrity campaigns like ‘*#BasKuchDinAur*’ can be a good idea apart from posting of video clips and use of social media handles to put a stop to domestic violence. Other states to follow launching of a helpline 24 x 7 WhatsApp number are Orissa, Maharashtra and Kerala. Thus, promotion of both app and email-based reporting by state women commissions is also a welcome step, but all said and done, the question remains as to how effective these app-based and online mechanisms are for the uneducated poor women of rural India? In such cases, we feel that utilizing the local empowered NGOs to track down cases and be in contact with the sufferers can be immensely helpful.

## **VI. SUMMING UP**

Awareness, awareness and awareness is the key given the social structure and biases which exists in our society. Women in the country have to be made aware of her rights; educated to make informed choices and given the freedom in the society to co-exist with her male counterpart. In this context, one aspect needs to be emphasized upon. Some of the people appointed by the government who are functioning at the forefront to handle this COVID-19 pandemic happen to be women. Ms. Preeti Sudan the Secretary of Ministry of Health and Family Welfare (MHFW), Government of India (GoI), Ms. Priya Abraham who is the director of National Institute of Virology at Pune, then we have Secretary to the Department of

---

<sup>4</sup> ‘High Court Apprised of Steps Taken to Protect Victims of Domestic Abuse’ *The Hindu* (25 April 2020) <<https://www.thehindu.com/news/national/tamil-nadu/high-court-apprised-of-steps-taken-to-protect-victims-of-domestic-violence-during-lockdown/article31434971.ece>> accessed on 25 April 2020.

Biotechnology, GoI, Dr. Renu Swarup and countless others. The number is huge, standing roughly at 9, 00,000, from female health workers to SHG members engaged in providing service to humanity in this hour of crisis.<sup>5</sup> For the victims and the vulnerable, seeing active women participation can be a morale booster in terms of challenging ‘her’ limits rather than simply accepting things as they stand.

---

<sup>5</sup> Nishita Jha, ‘India’s First Line of Defense against the Coronavirus Is an Army of 900,000 Women without Masks or Hand Sanitizer’ *BuzzFeed.News* (20 March 2020) <<https://www.buzzfeednews.com/article/nishitajha/india-coronavirus-cases-ashas>> accessed on 25 April 2020.

## **EVALUATING THE EPIDEMIC DISEASES ACT, 1897**

**-By Varun Srivastava\***

The Epidemic Diseases Act, 1897 (**'ED Act'**) was enacted by the British India government in 1896 in the light of the Bubonic Plague which engulfed Bombay. The then Governor-General of India, under the various provisions of the ED Act, conferred powers in the hands of the local authorities to make them autonomous and give them enough regulatory control to implement the required measures that became necessary in order to control the spread of the epidemic. This was significant considering there were no legislative measures dealing with Epidemics prior to the enactment of the ED Act. Pertinently, the ED Act was enacted in the 19<sup>th</sup> century i.e. 1897 when the technological as well as medical developments were limited, as compared to today. The question therefore, that arises today, is that with COVID-19 causing havoc in India, should the Indian government rely on a legislation enacted in 1897 to solve the problems of 2020?

### **I. INTRODUCTION TO THE ED ACT**

The ED Act is one of the shortest pieces of legislations in the country, with effectively only 4 sections. For its times, the ED Act is still considered to be a crisp and reactionary legislation. Section 1 of the Act only talks about the extent of this act, the delimitation of the power is observed in section 2 and section 2A of the Act and the penalty and the protection of persons acting under the Act is determined under sections 3 and 4, respectively.

Section 2 of the Act, specifically section 2(1) empowers the state government to take the cognizance of the situation within their territory and sanctions them to take special measures in order to combat the epidemic. The state governments may issue guidelines, advisories, regulations and orders for the public at large or for a particular section, if it is convinced that the existing legislations are insufficient to fight the epidemic. Moreover, the powers given to the central government, which fall under the purview of the section 2A of the ED Act, allow the central government to take similar actions. The section also allows the union government to examine any incoming or outgoing ship (since at the time of the enactment of Act, ships were the main source of intercontinental commutation) and place restrictions of any kind if the union

---

\* Student, Presidency University, Bangalore.

government is convinced that the country is threatened with any pandemic or disease of similar nature and the existing legal framework is not sufficient enough to fight them.

Section 3 of the Act provides for levy of penalty. This section gives the governments, the power to punish the persons who disobey the regulations and decisions taken by the central government under the purview of this Act. The punishment is linked to the section 188 of the Indian Penal Code, 1860 (**IPC**), which mandates that any person disobeying the legal order of a public servant or the regulations of the state, which *‘if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, is punishable with simple imprisonment which may extend up to a month and/or a fine of up to Rs. 200’*. However, if this disobedience *‘causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray’*, it shall be punishable with imprisonment extending up to six months and/or fine up to Rs. 1,000’. Pertinently, violation of the regulations passed under the ED Act due to the outbreak COVID-19 would attract the latter punishment as it would tend to harm human life, health and safety.”<sup>1</sup>

These provisions of Section 188 of the IPC have also been considered and deliberated upon by many cases, as one might observe that the intention of the person is of subjective nature in the given section. Unlike the most sections in IPC, section 188 does not require the intention to “harm” as much as it requires the sufficient knowledge about one’s action would make them liable for their actions as well as for committing the crime. The structure of the section will not compel the courts to accept the normal complaints, even though the offence is cognizable and bailable. A formal complaint needs to be filed by the public officer under the purview of Section 195 of the Criminal Procedure Code, 1973 (**CrPC**), as non-compliance with the said provision may lead to quashing of the complaint, as mere FIR is not sufficient under the section.<sup>2</sup>

Further, in the *Chinnamuthu Ambalam case*<sup>3</sup>, the Hon’ble Madras High Court has dealt with section 188, explaining it in great detail. In the said case, various aspects of section 188 have been discussed elaborately, emphasizing on the importance of a formal order issued by a public

---

<sup>1</sup> Akoosh Mehta et al, ‘Epidemic Disease Act 1897, Dusting an Old Cloak’ (*Cyril Amarchand Blogs*, 31 March 2020) <<https://corporate.cyrilamarchandblogs.com/2020/03/epidemic-diseases-act-1897-dusting-an-old-cloak/>> accessed 2 May 2020.

<sup>2</sup> Raj Mangal Ram v State of Bihar (1993) SCC Online Pat 290.

<sup>3</sup> Chinnamuthu Ambalam v S Jagannatha Chariar AIR 1959 Mad 89.

servant who must be in a legal capacity to issue the order, whereas the person accused should have knowledge of the order and such disobedience of the said order must cause obstruction, annoyance or endanger human life and safety.<sup>4</sup> This principle has also been observed in the *J Choudhary case*<sup>5</sup> which even considered the disobedience of a doctor to vaccinate himself as an affirmative crime, as the intention was of no importance but the knowledge of the promulgated order was the determining factor to ascertain the liability.

Section 4 of the ED Act provides for protection to public servants and the state authorities from potential legal actions when they act in good faith under the ED Act. Although this provision has been criticized for shielding the authorities for misuse of their powers which may be on the higher side in a case of chaos initiated by an epidemic. However, the section has to be interpreted narrowly. The Hon'ble Calcutta High Court, in the *Ram Lall Mistry case*<sup>6</sup>, has clarified that omission and/or failure to pay the compensation pursuant to the orders passed by the authorities do not provide the protection under section 4.

Other sections that will be attracted in this process are also related to public safety and public health. One such section is section 269 of IPC which penalizes the negligent act that may lead to spreading of the infection, of the person who disobeys the order of the public servant. This will incur an imprisonment up to 6 months and/or fine. Further, section 270 imposes punishment of two years of imprisonment and/or fine for the malignant actions for spreading the diseases which may threaten the lives of humans and their safety. Section 271 in turn prescribes 6 months of imprisonment and/or fine for breaking the rules of quarantine.

## II. LIMITATIONS TO THE ED ACT

Before we begin to address the shortcomings of the ED Act, we must take note that the ED Act was introduced in 1897 to deal with the bubonic plague in Bombay. The Act was and has been accused by the historians to be of distinctively oppressive nature, as it was unapologetically and systematically used by the Britishers to quell the criticism that surfaced against the handling of the plague by the government. For instance, the Late Bal Gangadhar Tilak was charged for the

---

<sup>4</sup> Law Street Journal, 'Understanding Epidemic Disease Act' <<https://lawstreet.co/speak-legal/understanding-epidemic-disease-act/>> accessed 2 May 2020.

<sup>5</sup> *J Choudhary v the State of Orissa* AIR 1963 Ori 216.

<sup>6</sup> *Ram Lall Mistry v R T Greer* (1904) ILR 31 Cal 829.

same. Today the same archaic act is being used to defend the country with such a huge population from pandemic like COVID-19 and other such infectious diseases. COVID-19 is not the first, and most certainly will not be the last of the pandemics to arrive in this country. Yet, the Act remains our only legislative answer to epidemics and pandemics. It clearly, as we will note hereinbelow, is not sufficient in this era of technological, medical and societal transformation.

*Firstly*, the Act rests a lot of powers in the hands of the government and the subjectivity of the term “*satisfied*” used to determine the role of the government in order to determine the validity of the ordinary laws is insufficient, arbitrary and provides a scope for misuse.<sup>7</sup> This would mean that the entire response strategy to any pandemic, irrespective of its magnitude like COVID-19 or the H1N1 flu, depends on the cognizance of the government, as and when the state decides to react and it has complete discretion to react in the manner it so desires. The disparity in the response rate and alacrity has been seen in the various parts of India in the outbreak of COVID-19. States like Haryana, Himachal Pradesh, Karnataka, Kerala and Odisha have shown a quick and prompt reaction to the developing situation as against Gujarat, Maharashtra or Madhya Pradesh which clearly failed to act in time. Moreover, a lot of criticism has also been directed on the Central Government for relying on the ED Act repeatedly and at times, unnecessarily.

*Secondly*, the ED Act relies on the Section 188 of the Indian Penal Code, which prescribes only for 6 months of imprisonment and/or fine. Moreover, the same requires a specific complaint by the public servant and an FIR is usually not sufficient. The problem with this position of the legislation is that any such breach of the orders under the ED Act could cost lives or even result in spreading of infection to an unprecedented scale. The principle of deterrence is absolutely important for any legislation dealing with the emergency situations and therefore, it is necessary to have a higher threshold of penalties.

*Thirdly*, the ED Act makes no attempt to define the term ‘Dangerous epidemic disease’<sup>8</sup> and since there is no clear definition available for the determination of the term, the threshold for any epidemic or a disease to become dangerous is extremely subjective. This also creates a hurdle in

---

<sup>7</sup> Manan Daga, ‘Does the Epidemic Diseases Act of 1897 Call for an Amendment’ (*Criminal Law Studies NLUJ*, 3 April 2020) <<https://criminallawstudiesnluj.wordpress.com/2020/04/03/does-the-epidemic-diseases-act-of-1897-call-for-an-amendment/>> accessed 2 May 2020.

<sup>8</sup> Rakesh PS, ‘The Epidemic Diseases Act of 1897: Public Health Relevance in the current scenario’ (2016) 1 *Indian Journal of Medical Ethics* <<https://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenario/?galley=html>> accessed 3 May 2020.

determination of the extent, effect and response to a disease. For instance, the Chinese government and the WHO are accused of quelling the claims of novel coronavirus in the initial stages by refusing to declare it either an epidemic or a pandemic at the appropriate stage. In India, the union government has been criticized in failing to prepare a response at the earliest possible opportunity. The determination of the disease as dangerous for the society should be aptly clear and determinative to increase the transparency of the ED Act.

*Fourthly*, the ED Act has been utilized by the governments to implement surveillance and the monitoring which may breach the privacy of the citizens, as there is absolutely no framework to prevent the government to stop them from invading the privacy of the individuals during pandemic. The 'Aarogya Setu App' has been accused of being multi-party database app, which breaches the privacy of the users. This also goes to the duty of the medical practitioners to inform the authorities about any person with the said infection and to make his identity public.

Although, it is understandable that monitoring, contact tracing and surveillance is important for effective containment of the disease and stopping the infection spread, it has to be done in a transparent, regulated and legislatively sanctioned manner. One clear example of the surveillance is the implementation of the Integrated Disease Surveillance Units (IDSP) wherein the respective districts have allotted themselves a surveillance unit which is compounded with the respective rapid response teams in order to speed up the response time. However, with multi-party surveillance, the privacy of the individuals and citizens at large gets affected and at times, breached. With complete delocalization of the surveillance and monitoring process, the threat of abuse of discretion, arbitrariness and systematic targeting becomes real.

The *fifth* main concern is that proper and equitable distribution of the essential items such as vaccinations and other medicines are not directly covered by the Act and end up being managed by executive orders which are unregulated. COVID-19 has exposed the vulnerability of the state to manage the vulnerable sections of the society in times of pandemic, where in the supply of essential materials have also not been ensured to the migrant labors and the other poorer sections of the society. This raises a huge question on the validity of the section 4 of the Act, which provides the immunity to the state from any such liability if acting in good faith, while providing no relief for incompetence, if any. The state authorities will not be held liable for their

mismanagement, lack of professionalism as well as failure to protect the safety and dignity of the weaker sections of the society.

### **III. CONCLUSION**

There is no doubt that ED Act has come quite handy in India's battle against COVID-19. Is it sufficient, though? The Answer will be no. Should the government have brought any ordinance at this stage to amend it? Probably yes. There is no doubt or debate that the ED Act does not meet the requirements of the country as of now. The Act should have evolved with the times and this is not the first time we are dealing with epidemics in this century. The world in the recent times has seen Bird Flu, Swine Flu, Ebola, SARS and many other viruses or flu based diseases, with few of them rising to become epidemics. The country has to be ready-legislatively, medically as well as at a society level, to deal with these occurrences. India should have amended or enacted a new law in January or February when we had the time. However, as of now, in the interest of certainty, we may have to continue with the ED Act which has lived its time. One can only hope that we will see a legislative urgency to reform the ED Act or the entire response structure once the COVID-19 situation ends.

## **PRISONER'S RIGHTS AT RISK DURING COVID-19 PANDEMIC?**

**-By Yash Tandon\***

The catastrophic effect of COVID-19 over the health of the individuals throughout the world impelled the World Health Organisation (WHO) to declare a Public Health Emergency of International Concern.<sup>1</sup> India, being one of the first nations to act actively implemented a nationwide lockdown, in order to contain the spread of the virus, however on account of no vaccine till date being discovered the virus keeps on thriving in India as well. The only plausible solution in order to curb the spread is to maintain social distancing which has attained significant importance as well throughout the world. In the light of this India has entered in its third phase of the nationwide lockdown, maintaining social distance to break the chain of the virus. Though the Indian government is endeavouring with the situation of migrant labourers, prisons remain potential hub for the outbreak of COVID-19, ridiculing the concept of social distancing. In the backdrop of this, the vital question that demands attention is the 'rights' of the prisoners locked up in the cells. What are the state government's obligations towards the health of the prisoners who are locked up in the cells exceeding their capacity undoubtedly?

### **I. FUNDAMENTAL RIGHT TO PRISONERS: RIGHT TO HEALTH**

Right to Health, though not expressly considered as a fundamental right under part III of the Constitution, however the ambit of right to life<sup>2</sup> being very vast, the apex court in the case of Paschim Bangal Khet Mazdoor Samity and Others v State of West Bengal and Others<sup>3</sup>, held that the right to healthcare facilities forms an essential part of the right to life, hence the same comes under the ambit of fundamental right. Further, the judiciary in the landmark case of Charles Sobhraj v The Superintendent, Central Jail, Tehar, New Delhi<sup>4</sup> held that fundamental rights are also available to prisoners, notwithstanding with some restrictions because of the imprisonment. To quote, the Supreme Court stated that 'imprisonment does not spell farewell to the fundamental rights', therefore proper health facilities to prisoners if not provided would lead to violation of their fundamental rights.

---

\* Student, Tamil Nadu National Law University, Tiruchirappalli.

<sup>1</sup>World Health Organisation, 'Rolling Updates on Coronavirus Disease (COVID-19)' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>> accessed 4 May 2020.

<sup>2</sup> The Constitution of India 1950, article 21.

<sup>3</sup> Paschim Bangal Khet Mazdoor Samity and Others v State of West Bengal and Others (1996) 4 SCC 37.

<sup>4</sup> Charles Sobhraj v The Superintendent, Central Jail, Tehar, New Delhi (1979) 1 SCR 512.

The legislature also, through Prisons Act, 1894, provides for sanitary accommodation facilities<sup>5</sup> whereas shelter and safe custody facilities shall also be provided to those prisoners who are found in excess of the prison capacity of a prison.<sup>6</sup> In addition, the Model Prison Manual, 2016 stipulates extensive guidelines<sup>7</sup> for prisons in case of epidemic breakout important ones being the permanent segregation shelter for every infected prisoner treatment of patient's clothing and avoiding overcrowding in isolation wards and cells. In addition to the Model Prison Rules, 2016, the Delhi Prison Rules, 2018 also provides for similar actions to handle epidemics in prison. Therefore, it is imperative to recognise the rights of the prisoners locked in prisons exceeding their capacities, and it is incumbent upon the state to protect them.

## **II. INDIA'S OBLIGATION UNDER INTERNATIONAL LAW**

The United Nations Human Rights Committee in its concluding observations on Moldova<sup>8</sup> has clearly observed that failure of a state in taking positive steps towards the prevention of the spread of contagious diseases in prison would amount to violation of right to life<sup>9</sup> and liberty<sup>10</sup> enshrined under International Convention on Civil and Political Rights, 1966 (ICCPR), to which India is a party and have ratified the same. This stipulates that not only through domestic law but also through international law, Indian government owes obligations to prevent the spread of this deadly COVID-19 in prisons, thus protecting the rights of the prisoners.

## **III. INDIAN GOVERNMENT EFFORTS TO SAFE-GUARD PRISONERS' RIGHTS**

With the Judiciary being recognised as the guardian of the Indian Constitution, in these unprecedented times, yet again the Supreme Court came into light to protect the prisoner's rights. The Apex court took *suo moto* cognizance and directed the state governments and Union Territories to consider granting paroles of four to six weeks to prisoners booked under offences which are not heinous in nature thus attracting lesser punishment.<sup>11</sup> Following such

---

<sup>5</sup> Prisons Act 1894, § 4.

<sup>6</sup> *ibid* § 7.

<sup>7</sup> Model Prison Manual 2016, rule 13.73.

<sup>8</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>9</sup> ICCPR, 1966, Art. 6

<sup>10</sup> *ibid*, art 9.

<sup>11</sup> In Re: Contagion of COVID-19 Virus in Prisons 2020 SCC OnLine SC 320.

directions, the State Governments of U.P., Maharashtra and many other densely populated states granted paroles and interim bails to undertrials resulting in decongestion of prisons. Certain States have also put a ban on prison visits from relatives for the time being.

However, such law becomes infructuous because of the overpopulated prisons. At the end of 2018, the prisons in India held 4,66,804 inmates against the designated capacity of 3,96,223.<sup>12</sup> With a capacity of 10,000 the capital of India, Delhi, houses nearly 17,000 prisoners. Similar situation prevails in Uttar Pradesh with the occupancy rate being 174%, and Chhattisgarh 153%<sup>13</sup>. With such inundated occupancy the release of prisoners won't be sufficient, as there will still be huge amount of population left in the prison. In addition, the states where the prisons are not over-occupied are also not safe as the numbers are not that welcoming, for instance in Bihar it is 93.3%, Punjab 95% and Rajasthan 92%.<sup>14</sup>

#### **IV. MENTAL HEALTH OF PRISONERS: PERTINENT ISSUE TO CONSIDER**

The provisions of the Model Prison Manual, 2016 as well as the judiciary emphasises upon the rights of the prisoners in the times of epidemic. The more gruesome issue which neither the judiciary nor the legislature has considered is the mental health of the prisoners. With the apex court direction, certain states have also put a ban on prison visits from relatives for the time being, this could create mental disorder as the prisoners will be completely isolated. The jail authorities have also isolated prisoners in jail cancelling all social activities. The case of Italy is a pertinent example for the same.<sup>15</sup> After the COVID-19 outbreak, Italy strengthens the prison rules by not allowing the inmates to meet visitors, even the family members. This resulted in prison riots, cause of the mental disharmony being faced by the inmates leading to the death of prisoners and jail authorities. Similar incidents were being reported in USA as well.<sup>16</sup>

---

<sup>12</sup> N. Rampal, 'Can Prisons Become the Epicentre of Epidemics in India' *India Today* (20 March 2020) <<https://www.indiatoday.in/diu/story/coronavirus-prisoners-india-jails-inmates-data-1658001-2020-03-20>> accessed 08 May 2020.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> Y. Nardi, 'Death Toll Rises From Italy's Coronavirus Prison Riots' *The Reuters* (London, 10 March 2020) <<https://www.reuters.com/article/us-health-coronavirus-italy-prisons/death-toll-rises-from-italys-coronavirus-prison-riots-idUSKBN20X2DG>> accessed 4 May 2020.

<sup>16</sup> Kenya Evelyn, 'Prison Uprising Put down as Us Inmates Demand Protection from Coronavirus' *The Guardian* (London, 10 April 2020), <<https://www.theguardian.com/us-news/2020/apr/10/us-prisons-coronavirus-uprising-riot>> accessed 06 May 2020.

## V. CONCLUSION AND SUGGESTIONS

Although the Model Prison Manual provides for safeguarding mental health of prisoners<sup>17</sup>, and the Mental Healthcare Act, 2017, also requires the government to set up mental health establishments in their respective states.<sup>18</sup> However, keeping in mind the history of implementation of policies in the country, such provisions are not enforced properly either because of volume of prisoners or less staff.

In addition, the solution that has been taken of providing paroles and interim bails is also not sufficient because of the overcrowded population and the rate at which it is being carried out poses serious questions before the government. Therefore, the situation demands for an efficient and effective mechanism to be done because the inevitable filthy conditions<sup>19</sup> and poor state of healthcare facilities during COVID-19 tests being conducted in the prison aggravates the risk of the virus being spread. The situation gets worsened because of the severe shortage of medical professionals in prisons of India, as 1914 medical professionals are posted against the requirement of 3220.<sup>20</sup> The apex court in the light of this has ordered not to release those prisoners who have suffered from the virus.<sup>21</sup>

Rubbing salt into the wound, 69% of the total prison inmates in India are undertrials.<sup>22</sup> The 1983 A.N. Mulla Committee on Prison Reforms may be useful in this regard as it recommended establishment of separate prisons for undertrials, and granting bail to undertrial unless proved that it could endanger the process of justice.

Therefore, the prison system needs to re-valued in such unprecedented times in order to safeguard the rights of the prisoners as well as to protect the population from facing another crisis in future.

---

<sup>17</sup> Model Prison Manual 2016, rule 15.03.

<sup>18</sup> Mental Healthcare Act 2017, § 103 (6).

<sup>19</sup> HRW, 'Prison Conditions in India' <<https://www.hrw.org/sites/default/files/reports/INDIA914.pdf>> accessed 7 May 2020.

<sup>20</sup> Chaitanya Mallapur, 'COVID-19: Overcrowded Jails to Release Prisoners on Parole, But This May Just Kick The Can' (Indiaspend, 25 March 2020) <<https://www.indiaspend.com/covid-19-overcrowded-jails-to-release-prisoners-on-parole-but-this-may-just-kick-the-can/>> accessed 08 May 2020.

<sup>21</sup> In Re: Contagion of COVID-19 Virus in Prisons, Suo Mot WP No 1/2020.

<sup>22</sup> 'Telling Numbers: Prison Space Grows, But Prisoner Count Grows Faster, Data Show' *The Indian Express* (New Delhi, 13 January 2020) <<https://indianexpress.com/article/explained/prison-space-grows-but-prisoner-count-grows-faster-data-show-6213175/>> accessed 08 May 2020.