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Legal Aspects of 2019-nCoV In India

Ayushman Verma & Adarsh Mani Tripathi

ABSTRACT

When the whole globe is fighting against a tragic virus, everyone is impacted with it and also India is not unknown to this pandemic, in addition to the health and economy of the country, the question arises, does COVID-19 also had a impact on the legal system of India? To answer this question here is the study on legal aspects behind COVID in India. In this study we are making an attempt to lay down our thoughts on the legal changes that have been done in the wake of COVID-19. To answer the question in a better manner, here is the short introduction of the virus, How the virus laid its steps in India? What measures were and are taken by the government to control its outbreak? Which laws are invoked? What are the primordial laws behind it? What are the new transfigured laws and also what laws should be changed with the effect of time? After a thorough analysis it was found that many appreciable measures have been taken both by the government and the Supreme Court. Also, we have mentioned the position of fundamental rights in these times of lockdown and some changes that should also be done in the laws which will help in creating a good society.

INTRODUCTION

“These Epidemics are happening in every 100 years See the frailty of humans. You may do anything and everything, you may devise all weapons. But you can’t fight this virus. We have to fight this at our own level”

An invisible misanthropist from which the whole globe is trying to combat named coronavirus or COVID-19 is a deadly virus which has impacted the whole globe. This zoonotic virus started its havoc from the Wuhan, China in the month of December 2019 and till the end of the May it infected almost 5.92 million people across the globe and took away the life of more than 3 lakh people. The WHO declared the outbreak of the deadly virus a public emergency on international concern on January 30, 2020, but when its outbreak spread to more than 100 countries of the world on March 11, 2020 WHO declared the outbreak as a Pandemic². This fatal virus is responsible for the closing of schools, colleges, public and private offices, factories, industries and also the worldwide lockdown which affected millions of life and various economies of the world. The deadly virus made us realize of the doomsday when the humans are not able to receive the graveyard. Antonio Richardi the largest funeral director of Bergamo, Italy stated ***“In a normal month we would do about 10, A generation has died in just over two weeks. We have never seen anything like this and it makes you cry”***.³

This ruinous virus from Europe as its epicentre, moved to other parts of the world and now India is also one of the countries with high number of infected persons and ranked 11th globally⁴. The first case of this mortal virus was reported in Kerala on January 30. Further with the spread of virus the Ministry of health with the Government of India opted various appreciable measures to overcome the outbreak in the country which includes thermal screening to detect the immigrants

¹ ANI, “we can’t fight against the virus in this Kalyuga”, says Justice Arun Mishra”, ANI(Wed, 18, 2020), available at, https://www.aninews-in.cdn.ampproject.org/v/s/www.aninews.in/news/national/general-news/we-cant-fight-against-virus-in-this-kalyuga-says-justice-arun-mishra20200318225922?amp_js_v=a2&_gsa=1&=1&usqp=mq331AQFKAGwASA%3D#aoh=15894433592914&referrer=https (last visited on May 18, 2020)

² Jamie Ducharme, “World Health Organization declares COVID-19 a ‘Pandemic’”, TIME(Wed, March 11, 2020) available at, <https://time.com/5791661/who-coronavirus-pandemic-declaration/>

³ Angela Guiffreda & Lorenzo Tondo, “A generation has died’: Italian province struggles to bury its corona virus dead”, The Guardian(Thu, March 19, 2020), available at, <https://www.theguardian.com/world/2020/mar/19/generation-has-died-italian-province-struggles-bury-coronavirus-dead> (last visited on May18, 2020)

⁴ India.com News Desk, “India crosses China: with over85000 cases, India Ranks 11th Globally”, India.com(Fri, May 15, 2020), available at, https://www-india-com.cdn.ampproject.org/v/s/www.india.com/news/india/india-crosses-china-with-over-85000-cases-india-ranks-11th-globally-check-list-4030257/amp/?amp_js_v=a2&_gsa=1&usqp=mq331AQFKAGwASA%3D#aoh=15899593100965&referrer=https%3A%2F%2Fwww.go (last visited on May 21, 2020)

at various Airports⁵ using section 2(A) of the epidemic disease amendment ordinance which says that to prevent the outbreak, measures may be taken by the government of India for the inspection of any train or bus or aircraft vessel or ship leaving or arriving at land, ports or at aerodrome and for the detention of such people identified with the infection, as may required⁶. To counter the spread of the infection, the Government of India on March 13, 2020 declared masks and sanitizers as essential commodities till June 30. Further government invoked DM act 2005⁷ for the availability and price regulation of masks and sanitizers, section 24(d) of DM act 2005 provide essential provisions, healthcare services in accordance with the standards made by the National Authority and State Authority⁸. The government of India using section 2(d) of the above act declared COVID-19 as a notified disaster⁹. Several states of India using section 24(a)(b) of the same act, and section 2 of epidemic disease act 1897 enforced the restrictions on the vehicular movement as well as movement of persons¹⁰. When the number of cases kept on proliferating, the central government announced the World's largest nationwide lockdown¹¹. The government used the section 6(2)(a)(f) of the same act which empowers the government to coordinate and implement the required stratagem on disaster management and also under section 10(2)(l) the government may lay guidelines to concerned ministries and state government of the same act¹². The spread of the lethal virus affected not only the health but also the economy and the legal system of the country.

⁵ Sushmi Dey, "India reports first positive case of coronavirus; screening tightened at airports", TNN(Thu, January 30, 2020), available at, <https://timesofindia.indiatimes.com/india/india-reports-first-positive-case-of-coronavirus-screening-tightened-at-airports/articleshow/73779828.cms> (last visited on May 21 2020)

⁶ Epidemic Diseases Amendment(ordinance) Act 2020, sec.2(A), available at, <https://www.prsindia.org/billtrack/epidemic-diseases-amendment-ordinance-2020> (last visited on May 21, 2020)

⁷ Dipak k Dash, " Masks & sanitizers declared essential commodities, govt can cap storage and fix price", TNN(Sat, March 14, 2020), available at, https://m-timesofindia-com.cdn.ampproject.org/v/s/m.timesofindia.com/business/india-business/masks-hand-sanitizers-declared-essential-commodities-govt-can-cap-storage-quantity-fix-price/amp_articleshow/74616373.cms?amp_js_v=a2&_gsa=1&usqp=mq331AQFKAGwAS(last visited on May 21, 2020)

⁸ Disaster Management Act 2005, sec. 24(d), available at, <https://ndma.gov.in/en/disaster.html>(last visited on May 21, 2020)

⁹ Agencies, "India declares COVID-19 a 'Notified Disaster'", Economic Times(Sat, March 14, 2020), available at,

¹⁰ Disaster Management Act 2005, sec. 24(a)(b),), available at, <https://ndma.gov.in/en/disaster.html>(last visited on May 21, 2020)

¹¹ Nistula Hebbar, "PM Modi announces 21-days lockdown as COVID-19 toll reaches 12", The Hindu(Tue, March 24, 2020) available at,https://www.thehindu-com.cdn.ampproject.org/v/s/www.thehindu.com/news/national/pm-announces-21-day-lockdown-as-covid-19-toll-touches-10/article31156691.ece/amp/?amp_js_v=a2&_gsa=1&usqp=mq331AQFKAGwASA%3D#aoh=15900303076216&referrer=https%3A%2F%2Fwww.google(last visited on May 21, 2020)

¹² Disaster Management Act 2005, sec. 6(2)(a)(f), sec. 10(2)(l), available at, <https://ndma.gov.in/en/disaster.html>(last visited on May 21, 2020)

DECODING THE LAWS IN THE WAKE OF COVID-19 IN INDIA

Once Cicero quoted that *“The safety of the people shall be the highest law”*¹³. Keeping the statement in mind, Lord Thomas Babington Macaulay drafted the Indian Penal code in 1860. Section 269 and 270 of the IPC deals with the laws relating to the spread of infection, according to section 269, if a person negligently commits an act which can spread infection dangerous to life is liable for a punishment of imprisonment for a period which may extend to six months or with the fine or both¹⁴. Section 269 is for a negligent act but section 270 is for malignant act, in which the punishment may extend up to 2 years with the fine or with both¹⁵. These sections were invoked to enforce lockdown orders, as a result certain cases were reported in which many persons were booked under these sections¹⁶. Earlier the above sections were often used in the cases of food adulteration and medical negligence. But apart from the above mentioned sections one can be booked under section 271 of the IPC which talks about the criminalization of disobedience of quarantine order, according to which whosoever violates the quarantine rules made by the government shall be punished with imprisonment for a period which may extend up to six months or with the fine or with both¹⁷.

As Epidemic Disease act 1897 has already been invoked by the government of India, so section 3 of the same act awards punishment under section 188 of IPC, which provided a punishment of imprisonment which may extend up to six months or with the fine which may extend up to one thousand rupees, to any person whoever commits any act which disobeys the regulations of the above act.

When government preconized COVID as a notified disaster, so chapter X of the DM act contains the offences and penalties respecting the act. The ministry of Home affairs directed the states to book the people who violate lockdown under IPC and DM act¹⁸. Section 51 of the act provides that whosoever refuses to obey the employee or officer of central or state government or authority

¹³ Stated by famous Roman Statesman, **Marcus Tullius Cicero**

¹⁴ Indian Penal Code 1860, Sec. 269

¹⁵ Indian Penal Code 1860, Sec. 270

¹⁶ Explained Desk, “Explained: sections 269 and 270 IPC, invoked against those accused of spreading diseases?”, The Indian Express(Mon, March 30, 2020), available at, https://indianexpress.com/cdn.ampproject.org/v/s/indianexpress.com/article/explained/explained-what-are-sections-269-270-ipc-invoked-against-those-accused-of-spreading-disease-6336810/lite/?amp_js_v=a2&_gsa=1&usqp=mq331AQFKAGwASA%3D#aoh=15900570620293&r(last visited on May 21, 2020)

¹⁷ Indian Penal Code 1860, Sec. 271

¹⁸ Varsha Chavan, “Lockdown violators Should be booked under IPC, DM Act: Home Secy To States”, Republicworld.com(Wed, April 15, 2020), available at, https://www-republicworld-com.cdn.ampproject.org/v/s/www.republicworld.com/amp/india-news/law-and-order/lockdown-violators-should-be-booked-under-ipc-dm-act-home-secy-to-st.html?amp_js_v=a2&_gsa=1&usqp=mq331AQFKAGwASA%3D#aoh=15903030394376&referrer=http(last visited on May 23, 2020)

of central, state or district if convicted than the person should be punished with imprisonment for a period which may extend to one year or with the fine or with both. If the disobedience leads to loss of lives or impending danger, then on conviction shall be punished with imprisonment which may extend to two years. Section 52 punishes a convict who claims to be a victim of the disaster and obtains relief but found to be false with imprisonment which may extend up to 2 years or with fine or with both. Section 53 of the act deals with misappropriation of money and material includes the cases of black marketing, hoarding, selling of relief material etc. According to this section the convict in this case is punishable with imprisonment which may extend up to two year or with the fine. Section 54 deals with the false warning or alarming which includes rumours, under this section convict is punished with imprisonment which may extend to one year or with the fine. At this time of Pandemic the country has witnessed many such cases of rumours, many people have been booked under this section. Section 55 talks about the offences by the Government departments. In obedience to this section the head of the department deemed to be guilty for the offence shall be punished in accordance with the proceeding against him. Section(55)(2) provides that if any officer, other than the head found guilty for the offence must also be proceeded against and punished accordingly. Section 56 provides punishment with imprisonment which may extend to one year or with fine to any officer for the failure of his duty.

This act also binds the powers of the court to take cognizance in this act, as section 60 of the act provides that cognizance shall not be taken by any court of an offence in this act except a complaint if made by national, state or district authority or central or state government and the alleged person but within 13 days through the proper procedure.⁹

These were the laws found in the wake of COVID-19 in India.

TRANSFIGURED LAWS DURING COVID-19 IN INDIA

“Law cannot stand apart from the social changes around it”¹⁹. The attack of the virus was so malignant that it lead to the drastic changes in the legal system in India. When the whole country is affected by the COVID-19, the legal system of India is also not uninfluenced by it, A lot of changes have been witnessed by it.

“Justice delayed is justice denied”²⁰, keeping this statement in mind the Supreme Court of India, issued order to authorize video conferencing trial in courts for the continuous dispensation

¹⁹ As stated by William J. Brennan Jr. (former associate justice of the Supreme Court of U.S.A)

²⁰ As stated by William E. Gladstone (former Prime Minister of United Kingdom)

of justice²¹. In case of *State Of Maharashtra v. Praful Desai*²², the Supreme Court gave its judicial recognition to this technology holding that where the attendance of the witness cannot be ensured without delay, expense and inconvenience, the recording of evidence by way of video recording might be done. Article 142 of the Indian constitution says that the Supreme Court exercising its jurisdiction can pass any decree which is necessary for doing complete justice²³.

As the Ministry of Health directed social distancing as a preventive measure from COVID but how it could be maintained in prisons? as our prisons are overcrowded. In India there are 1339 total prisons and approx. 4.6 lakh prisoners. According to NCRB data 117.6% is the occupancy rate in the prisons in India²⁴ which makes it strenuous to maintain proper social distancing.

Hence, keeping this in mind, The Supreme Court of India exercising power to do complete justice under article 142 of the Constitution of India, setup a High Powered Committee. This committee was set up with Justice Hima Kohli of Delhi HC as its head²⁵ in Suo moto writ petition (civil) No. 1 of 2020 in *“Re-Contagion of Covid-19 virus in prisons”*²⁶. The high powered committee issued advisory to the states and the union territories to provide interim bail to the prisoners facing trial which prescribes sentence up to 7 years. The inmates under trial of section 4 & 6 of POSCO act, section 376, 376A, 376B, 376C, 376D, 376E of the IPC and of acid attacks, those who are foreign nationals, those who are facing trial under prevention of Corruption act and of those whose cases are been investigated by CBI/ED/NIA/Special cell are excluded, police and terror related cases and also cases under anti-national activities and unlawful activities(prevention) act etc²⁷ are exempted from interim bail. For granting bail, generally an under trial person has to fulfill the conditions under section 436 of CrPc, but to save the lives of prisoners amid COVID those conditions were not fulfilled. It is quite appreciating that prisoners were granted bail but it must

²¹ India Legal, “Supreme Court frames guidelines for hearing of cases via video conferencing”, India legal(Mon, April 6, 2020), available at, <https://www.indialegallive.com/constitutional-law-news/supreme-court-news/supreme-court-frame-guidelines-hearing-cases-via-video-conferencing-94965> (last visited on May 25, 2020)

²² (2003) 4 SCC 601

²³ The Constitution of India, Art. 142(1)

²⁴ Nikhil Rampal, “Can prisons become the epicenter of the epidemic in India?”, India today(Fri, March 20, 2020), available at, <https://www.indiatoday.in/diu/story/coronavirus-prisoners-india-jails-inmates-data-1658001-2020-03-20> (last visited on May 25, 2020)

²⁵ India Legal, “High powered committee headed by Delhi HC Judge resolve to decongest Jails:COVID-19”, India legal(Mon, March 30, 2020), available at <https://www.indialegallive.com/top-news-of-the-day/news/high-powered-committee-headed-delhihc-judge-resolve-decongest-jails-covid19-93970>, (last visited on May 25, 2020)

²⁶ In suo moto writ petition (C)no. 1/2020, In Re: contagion of COVID-19 Virus in Prisons before bench of CJI SA Bobde and Justices L. Nageshwar Rao and Surya Kant, available at, <https://indiankanoon.org/doc/12490871/> (last visited on May 25, 2020)

²⁷ Aditi Singh, “Coronavirus: Criteria for release of undertrial prisoners on interim bail relaxed to decongest Delhi jails”, Bar & Bench(Tue, March 31, 2020), available at, https://www.barandbench.com/cdn.ampproject.org/v/s/www.barandbench.com/amp/story/news%2Fcoronavirus-criteria-for-release-of-undertrial-prisoners-on-interim-bail-relaxed-to-decongest-delhi-jails?amp_js_v=a2&_gsa=1&usqp=mq331AQFKAGwASA%3D#aoh=159041031309 (last visited on May 25, 2020)

also be kept in mind that after the completion of the period of bail, they all must be get back to the prisons otherwise the results may be unfortunate.

“We were given a list of contacts of covid-19 patients and were screening them when some of them suddenly started pelting stones at us. We ran away to save our lives”²⁸ stated by a lady doctor to the media person in Indore. As cases of violence against public servants and Health workers has also been reported, so it becomes necessary for us to decode the laws behind such cases and also laws which are transfigured. Under IPC whosoever holds any threat of injury to a public servant with the motive of inducing him to perform or to abstain or to retard any act which is connected with the public functions to be exercised by him, shall be punished with imprisonment which may extend up to two years or with fine or with both²⁹.

On April 22, 2020 The President of India exercising his powers under article 123(1) of the Indian Constitution, passed an ordinance named ***“The Epidemic Diseases(Amendment) Ordinance, 2020”***, in which section 1(A) defines the act of violence, healthcare workers and property. Under this ordinance it is provided that whoever abet or commits any act of violence or any loss to the property of any healthcare personnel, on conviction shall be punished with imprisonment which must be minimum 3 months and which may extend up to five years with fine of minimum fifty thousand rupees and it may extend up to two lakh rupees³⁰. Further if any person commits act of violence against a healthcare personnel, causes grievous hurt to him as defined in section 320 of IPC, such person on conviction shall be punished with imprisonment for a period which shall minimum be six months and which may extend up to seven years and with fine which shall one lakh rupees and which may extend up to five lakh rupees³¹. An offence committed under sub section (2)(3) shall be cognizable, non bailable, the case shall be investigated by an officer not beneath the rank of an inspector³².

Hence, this ordinance must be appreciated as it must not only the duty of government, but also of the citizens to protect the life of those, altruistic who are working far away from their families, even in lockdown, on the frontline, saving the lives of others.

²⁸ Sagar Choukse, “Four held for attack on doctors in Indore, 10 booked”, TNN(Thu, April 2, 2020), available at, <https://timesofindia.indiatimes.com/city/indore/four-held-for-attack-on-doctors-in-indore-10-booked/articleshow/74945890.cms> (last visited on May 25, 2020)

²⁹ Indian Penal Code 1860, Sec. 189

³⁰ Epidemic Diseases Amendment(ordinance) Act 2020, sec. 3(2), available at, <https://www.prsindia.org/billtrack/epidemic-diseases-amendment-ordinance-2020> (last visited on May 25, 2020)

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POSITION OF FUNDAMENTAL RIGHTS

Only National emergency in India can suspend fundamental rights but this COVID-19 now has suspended them. Nationwide lockdown has curtailed article 21 of the Indian constitution “*protection of life and personal liberty*”³³ which provides one has the right to live a meaningful life, but right to life also includes right to health held by the Supreme Court in “*State of Punjab v. Mohinder Singh Chawala*”³⁴, so this right is not violated by the lockdown. Article 19(1)(b) which talks about right to peaceful assembly, article 19(1)(d) talks about right to move anywhere freely in Indian Territory, article 19(1)(e) provides right to reside and settle anywhere in India. But at the same time Article 19(2) state can make laws according to the conditions prevailing at that time³⁵ which can impose reasonable restrictions.

³³ The Constitution of India, Art. 21

³⁴ AIR 1997 SC 1225

³⁵ P.M Bakshi, pg. 68 Test for reasonableness, The Constitution of India, (lexis Nexis Publication, Haryana, India, 2019)

CONCLUSION

This devastating virus has exploded all over the world, eating health and economy of the country, within a span of 3 months the virus has also brought radical changes to the legal system of India. As COVID has changed the whole country, then laws must also be changed, as change is the necessity of life and also of law so it must be changed with the needs of the society. To decide what change is required is quite a difficult task but it is appreciable that the govt. and the Supreme Court took initiative and tried to brought the change.

According to us, when the whole world is under lockdown then we have brought innovative changes to our legal system, which otherwise could not be possible during normal time, it would be difficult to have trials with video conferencing but due to COVID, now even the lower courts of the country are having trials by the way of same technology.

According to us the decision of court to release prisoners on bail is appreciable but will the executive will be able to get back them into the jail easily?, they must get ready for the trouble in getting back to them in the prisons after the COVID, here the question arises that why the prisons of India are overcrowded? If the facilities would be made from time to time then this situation would not come, but unfortunately this was not done.

The provisions of IPC regarding spread of the virus are quite moderate talking about section 269, 270 and 271 the sentence of imprisonment under these sections can be extended up to 2 years only now here the question comes is this punishment sufficient for a person who has tried to take lives of a large number of people malignantly? our opinion on this is that the person should be booked under section 307 of IPC ***“attempt to murder”***.

Section 188 of the IPC provides punishment with imprisonment for one month or with fine which may extend up to one thousand rupees for a person who disobeys the order duly promulgated by the public servant which may also result in danger to human life. Now asking the lawmakers that is imposing a fine of 1000 rupees or imprisonment up to one month for person whose act may cause danger to human life is sufficient? No, the law must be changed or at least same should be booked under section 307 of IPC ***“attempt to murder”*** according to us.

The decision of Hon;ble President of India is appreciable to pass the Epidemic disease amendment ordinance to reduce the cases of mob attack on the Healthcare Personnel, as in these days of COVID outbreak when schools, colleges, offices etc. are closed but then also there are some far away from their families serving the society they should be honoured with flower petals not with stones.

Talking about the position of fundamental rights of the citizens, then it can be said lockdown only curtails the fundamental rights it is not violating them, but it must be kept in mind that no fundamental rights are unlimited all have some reasonable restrictions.

Now, it can be concluded that many appreciable changes have been already done by the government and the Supreme Court but then also keeping the changing nature of society, the law must also be changed.

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