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Is Indian Judicial System Equipped to Function a Crisis Like Corona?

Janmejay Singh

ABSTRACT

The entire world has been severely impacted by the unexpected outbreak of the COVID-19 Pandemic. As the effect of this pandemic Indian legal system is facing historically significant challenges regarding Law and Order. The Outbreak of Covid-19 is already disrupting in Profound Ways. The Pandemic has created an enormous amount of uncertainty as the People are facing an unenviable decision whether to close or Open his work. Work from home in the time of Epidemic has become the norm and standard work practice. The Labour Regulations in India do not consider work from Home as a norm. At present, there is a lack of specific Legislative Framework enabling Work from Home. What about the right to work, Health, Food, shelter. 16 Migrant workers run over by Goods train near Aurangabad in Maharashtra, this is the Condition of Labour in India. Main legal weapon The Epidemic Diseases Act 1897 is a Law in India For the implementation of Containment measures to Control the Spread of the Disease. The act does not provide any power to the Centre to Intervene in Biological emergencies. It has to be substituted by a foreseeable Public Health Needs, including Emergency Such as Bioterrorism attack International Spread Of Diseases. The legal Inadequacy to tackle disease Outbreak at the end of the day Country was not ready.

Key Word: Judicial System, Covid-19, Pandemic, Legislation,

“Eliminate all doubt and replace it with the full expectation that you will receive what you are asking for.”

Rhona Byrne

INTRODUCTION

The impact of Covid-19 has been far-reaching and not witnessed in modern times. Covid-19 has brought uncertainty to the present and the future. The Government has and will continue to have a huge role to play in ensuring the safety of the Citizen. As the Global Covid-19 Public health emergency Continued to spread and create Challenges for Everything worldwide. The nature of the Pandemic has sent individuals and Businesses alike in a frenzy of loss and risk mitigation. The Current Legal Framework of India to tackle Pandemic is The Epidemic Diseases Act, 1897 a law of British India. The VII Schedule of The Constitution of India enlists Public Health under State List. Therefore, a lot of discretion is with the state government to adopt, enact, and enforce public health-related regulations. Conversely, the state governments are not always financially equipped to take effective measures. Ensuring essential commodities during the time of epidemic is yet another crucial challenge. Despite these provisions, India’s existing laws fall short of meeting the challenges of a pandemic. With the dynamic and progressive era of globalization, it needs to update its public health law. For example, the modern-day challenges of international air travel, intra-state movement of migrant workers, escalation of population density of urban areas, changing patterns of food habits, use of social media, public distribution system, and even climate change contribute to pandemics. Never, in the history of Independent India, has the entire country witnessed such a lockdown. Although the Epidemic Diseases Act appears quite regulatory in nature, it does not address the multi-faceted dimensions of public health issues of India. Even after more than six weeks of national lockdown, there is no sign of any flattening of the curve but instead, the number of new novel coronavirus cases reported each day continues to increase. Expanded and increased testing alone cannot be the reason. In absolute numbers, India’s Case increased by 1.8 times (180%) in the last two weeks alone. However considering the infection period of 14 days the RO (The number of People one person can infect) has decreased from 2.13 to 1.82 from April 24 to May 8, with time increasing from 6.59 to 7.69 days. The increase in absolute numbers is due to states with higher population reporting cases. Apart from small states, the greatest increase in reporting is seen in Punjab(5.9 times), West Bengal (3 times) these have increased more than three times in the last two weeks. Increased in testing alone explain such an increase. Similarly, Delhi, Odisha, and

Jharkhand have around 250% increase in cases. It is possible that the surveillance systems in these States might have missed a cluster or two of infections in the earlier phase of the outbreak which has resulted in a large number of Coronavirus cases detected now. India's expanded testing (including random testing in red zones and surrounding areas) has indeed resulted in a spike in a case as earlier the testing criterion was centered mostly around people with symptoms. When testing expands you get more new cases only when the infection has spread either in a cluster or beyond. It is only improved surveillance measures that will get us to minimize casualties. Countries that had gone under lockdown including Italy saw a flattening of the curve in about three weeks. But lockdown alone will not flatten the curve. For flattening to occur the RO should be less than 1. To achieve that the focus of the surveillance system should be to find every case. Lockdowns are necessary only to mount the health system's response and accomplish successful containment. We have not done a great job in surveillance in some states and some districts of every state. Even now the focus is to identify every case in this country and isolate it. We should have a success story that success comes with hard of finding every case and isolating the person. Each State is a different country with different levels of preparedness and varied response. But it is the states with weak surveillance systems that will have more deaths and will result in spreading the infection to other states. Kerala did well in spreading the infection to other states. Kerala did well because of it's human approach to isolation and Quarantine due to a strong surveillance system. Our future depends on reflecting and reviewing the underlying surveillance system. What I feel it also makes it imperative to treat every person with a particular symptom complex in a syndromic approach. Anyone who has two of these symptoms should be isolated as Covid-19 unless otherwise proved- Fever, Cough, Shortness, of breath, Chills, Muscle Pain, Sore Throat, new loss of taste, or loss of smell. We should develop plans for home Isolation of cases, Wherever Possible. We need to decide whether to tame the tide or be a sitting duck. We should find active cases through the house to house search using the syndrome approach and isolate every person who has Covid-19 symptoms. The government should use the tests judiciously to test people who have symptoms and their contacts. Like Pulse polio Programme door to door surveillance to check the health status of the public is needed. Which requires a lot of workforces, which the government should pay heed to. Because without the health workforce and active testing we cannot say the curve will flatten anytime soon. District level task forces should be formed to plan and improve surveillance and testing and step up preparedness. Death is an unfortunate wake-up call to improve surveillance in that area. The unprecedented pandemic has brought about the adoption of technology by courts, now we are focused on how this technology

should be adopted. Virtual Courts must be strengthened. In order to move ahead need for all of us to marshal our resources. If we plan our future we have to figure out the existing resources that we have. Whether we like it or not this Pandemic will be with us for a long time. It will take another year for the vaccine to be developed. There will also be a limit to how much judges can work. The listing of cases post lockdown will be lower this will increase pendency. This is an area that must be tackled. Due to the difficult economic situation precipitated by Covid-19 many employers are expected and indeed many have already terminated or suspended the employment of their employees citing the difficult business environment which to them means that the contract of employment has been frustrated. This argument is legally unsustainable as far as Covid-19 has not rendered the performance of a contract of employment a thing radically different from what any employer contracted to perform. Some tenants, particularly those in the hospitality and leisure sector are likely to be making losses as a result of the restriction imposed to curb the spread of Covid-19. In a transaction for the sale and purchase of the real property where the purchaser is being financed, the sale agreement provides that the purchaser's advocate and the financier's advocate will issue

Covid-19 pandemic has led to the suspension of the land registry's operations making it impossible to complete registration within the undertaking period. "No Court's¹ decision should be a hostage to the times, prompted by current political, economic or other motives"

WHAT IS PANDEMIC AND INDIAN LAW REGARDING THIS SITUATION

The World Health Organization (WHO) declared COVID-19 as a "pandemic" on March 11, 2020. The outbreak and the rapid spread of COVID-19 have sent shock waves across global markets. It has disrupted supply chains, leading to the closure of several manufacturing facilities globally; serious disruption of air and sea traffic, and closure of vital air routes, like the one between the US and Europe. This in turn has led to the collapse of stock markets around the world, leading to the loss of billions of dollars, which got wiped out in a matter of days. A pandemic is defined by WHO as "an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people." This means a disease outbreak will be labeled as a pandemic when it is widespread, over several countries or continents, usually affecting a large

¹Valdimir Terebilov, Chief Justice, USSR Supreme Court.

number of people. The disease must also be infectious – cancer affects many people around the world, but it is not infectious and hence it is not defined as a pandemic. WHO declared a pandemic last in 2009 for the H1N1 influenza outbreak. At the time, the decision was criticised by some countries, which felt that it caused unnecessary panic. It also led to many nations wasting money on vaccines for a strain of flu that proved to be mild and relatively easy to contain. In India, COVID-19 has affected all three organs of the State, namely, the Legislature, Executive, and Judiciary. The Government of India has issued several advisories pertaining to travel restrictions on account of COVID-19. The Government of India and State Governments have issued several advisories related to the COVID-19 pandemic. Under the Epidemic Diseases Act, 1897, which was enacted to provide for the better prevention of the spread of dangerous epidemic diseases, the Central and State Governments are empowered to undertake certain actions when they are satisfied that the State, country or any part thereof is visited by, or threatened with an outbreak of any dangerous epidemic disease and the ordinary provisions of law for the time being in force are insufficient for the purpose. While the Central Government's power is limited to ships/vessels and ports, the State Government is empowered to take, or require any person to take any measures, and by public notice, to prescribe temporary regulations to be observed² by the public, or any class(es) of the public. Several states have issued advisories on management and containment of COVID-19, invoking the provisions of the Epidemic Diseases Act, 1897. For instance, the Karnataka Epidemic Diseases, COVID-19 Regulations, 2020, and Haryana Epidemic Diseases, COVID-19 Regulations, 2020, were notified on March 11, 2020, the Delhi Epidemic Diseases, COVID-19 Regulations, 2020 notified on March 12, 2020; and the Maharashtra COVID-19 Regulations, 2020, was notified on March 14, 2020, (collectively, the "COVID-19 Regulations"). The outbreak of COVID- has had far-reaching consequences all around the world. The turmoil associated with the pandemic has affected the different spheres of life, economic, financial, political, educational, travel and tourism, aviation, most of all the health of citizens and the healthcare resources of the country. Drastic prohibitory measures are being taken by both the Central and the State Governments in India to limit the spread and transmission of the virus to more people. Even these measures have not been able to ensure total compliance by the citizens of the Country. The question here however remains if India has enough healthcare laws to demand strict compliance, as is required in the present situation. The primary law that Indian State governments have been resorting to recently is a 123-year-old law from the British era, known as The Epidemic Diseases Act, 1897, formed to provide for the prevention of

²<https://corporate.cyrilamarchandblogs.com/2020/03/covid-19-officially-a-pandemic-faqs-coronavirus>.

the spread of dangerous epidemic diseases, and consists of only four sections. The State governments have used this Act to pass orders restricting movement in wake of outbreak of Coronavirus, and the same act has also been invoked in the past by the States to control the spread of H1N1(swine flu) and other such diseases. The Act empowers the state and the central governments to take measures as necessary to control further spread of the disease. Section 2 of the Act says that state government can measures if it is satisfied that it is threatened by an outbreak and ordinary provisions of the law are insufficient. Section 2A gives power to the Central Government to take measures of inspection in such situations, and even detain persons if necessary. Other than the absence of a more recent statute to govern protection and regulation against the spread of such pandemic diseases, another trouble that India faces is the inability of Centre to impose laws and regulations regarding healthcare on the States, owing to the federal structure of the Indian democracy and the fact that 'public health' is listed in the State List in the Seventh Schedule of the Constitution. The Epidemic Diseases Act, however, can only help the government in a brief manner, when inspection or quarantine or penalty has to be imposed, but do our present legal provisions or our Constitution allow the Government to take more serious measures if this worsens? The important question here is, in a situation where our Country might need to be prepared for the worst, can the Central Government declare a health emergency in India, under the present laws and the Constitution of the Country. Can a pandemic or an epidemic be a ground to declare an emergency? The provisions regarding the proclamation of emergency find a place under Article 352 of the Indian Constitution. An emergency under this Article could be declared on the grounds of war, external disturbance, and internal disturbances originally. The term internal disturbance was a flexible term broad enough to include disturbances caused in the country due to an epidemic. This word 'internal disturbances' was replaced with the term 'armed rebellion' by the 44th amendment to the Constitution, but not from Article 355. Article 355 of the Constitution places a duty on the Union Government to protect all States against external aggression and internal disturbance, and ensure that the government of the States are carried on in accordance with the Constitution. Article 353 includes the effect of proclamation of emergency and permits the Central Government to direct State on how to use its executive power, and the Parliament to make laws on matters from the state list. During an emergency, the freedoms provided under Article 19 are suspended and so is the enforcement of fundamental rights (under Article 358 and 359 respectively). The Chairman of the Drafting Committee in the Constituent Assembly had explained the underlying principle of Article 355 and had stated that the Constitution under provisions for emergency provides the Central

Government with some overriding powers and the use of that power or 'invasion' by Centre of the Provincial field. Therefore the introduction of Section 355 cast a duty on Union to protect the State was essential to prevent such unprincipled invasion. The Report of the *Sarkaria Commission* on the provisions of the Constitution had stated with reference to the Emergency provisions that "The Constitution-framers conceived these provisions as more than a mere grant of overriding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail."The report had also stated that the term '*internal disturbances*' has a broad scope and an internal disturbance can be Nature-made, also. Natural calamities of unprecedented magnitudes, such as flood, cyclone, earth-quake, epidemic, etc. may paralyze the government of the State and put its security in jeopardy. "Under Article 355, a whole range of action on the part of the Union is possible depending on the circumstances of the case, the nature, the timing, and the gravity of the internal disturbance. "Therefore, according to the³ Indian Constitution, a Health Emergency being invoked the Central Government, though not covered by Article 352 which deals with the proclamation of emergency on grounds of war, external aggression, and armed rebellion, but could be covered under the parasol of internal disturbance.

IMPACT OF COVID-19 IN INDIA

Coronavirus outbreak was first reported in Wuhan, China on 31 December 2019. Recently an industry survey that is jointly conducted by industry body Ficci and tax consultancy Dhruva advisors and took responses from about 380 companies across the sectors. It is said that businesses are grappling with "tremendous uncertainty" about their future. According to the survey, COVID-19 is having a 'deep impact' on Indian businesses, over the coming month's jobs are at high risk because firms are looking for some reduction in manpower. Further, it is added that already COVID-19 crisis has caused an unprecedented collapse in economic activities over the last few weeks. Ficci said in a statement, "The survey clearly highlights that unless a substantive economic package is announced by the government immediately, we could see a permanent impairment of a large section of the industry, which may lose the opportunity to come back to life again." According to Du &

³<https://www.indialegallive.com/top-news-of-the-day/news/can-pandemic-covid19-ground-declare-health-emergency-93407>.

Bradstreet, COVID-19 no doubt disrupted human lives and global supply chain but the pandemic is a severe demand shock that has offset the green shoots of recovery of the Indian economy that was visible towards the end of 2019 and early 2020. The revised **Gross Domestic Product (GDP)** estimates for India downwards by 0.2 percentage points for the fiscal year 2020 to 4.8 percent and by 0.5 percent for the fiscal year 2021 to 6 percent. Further, it is stated that the extent of the actual impact will depend upon the severity and duration of the outbreak. There are three major channels of impact for Indian businesses according to the report namely linkages, supply chain, and macroeconomic factors. The data of the Dun & Bradstreet shows that at least 6,606 Indian entities have legal linkages with companies in countries with a large number of confirmed COVID-19 cases. And business activity in the foreign markets is slow which implies a negative impact on the topline of these companies. Sectors that would be much affected includes logistics, auto, tourism, metals, drugs, pharmaceuticals, electronic goods, MSMEs, and retail among others. Due to weak domestic consumption and consumer sentiment, there can be a delay in investment which further adds pressure on growth. We can't ignore that post-COVID-19, some economies are expected to adopt de-risking strategies and shift their manufacturing bases from China. This can create opportunities for India. India's total **electronic imports** account for 45% of China. Around one-third of machinery and almost two-fifths of **organic chemicals** that India purchases from the world come from China? For automotive parts and fertilizers China's share in India's import is more than 25%. Around 65 to 70% of active **pharmaceutical** ingredients and around 90% of certain **mobile phones** come from China to India. Therefore, we can say that due to the current outbreak of coronavirus in China, the import dependence on China will have a significant impact on the **Indian industry. In terms of export**, China is India's 3rd largest export partner and accounts for around 5% share. The impact may result in the following sectors namely organic chemicals, plastics, fish products, cotton, ores, etc. We also can't ignore that most of the Indian companies are located in the eastern part of China. In China, about 72% of companies in India are located in cities like Shanghai, Beijing, provinces of Guangdong, Jiangsu, and Shandong. In various sectors, these companies work including Industrial manufacturing, manufacturing services, IT and BPO, Logistics, Chemicals, Airlines, and tourism. It has been seen that some sectors of India have been impacted by the outbreak of coronavirus in China including shipping, pharmaceuticals, automobiles, mobiles⁴, electronics, textiles, etc. Also, a supply chain may affect some disruptions associates with industries

⁴<https://www.jagranjosh.com/general-knowledge/what-is-the-impact-of-coronavirus-on-indian-economy-1582870052-1..>

and markets. Overall, the impact of coronavirus in the industry is moderate. Chemical Industry, Shipping Industry, Auto Industry, Pharmaceuticals Industry, Textiles Industry, etc effected by Covid-19. Coronavirus pandemic has significantly disrupted various sectors in India including oil and gas, automobiles, aviation, agriculture, retail, etc. We can't ignore that hardly a sector would remain unaffected by the crisis. The impact may be more or less. The same is with the education sector in India. As we know that due to coronavirus pandemic the state governments across the country temporarily started shutting down schools and colleges. As per the present situation, there is an⁵ uncertainty when schools and colleges will reopen. No doubt, this is the crucial time for the education sector because entrance tests of several universities and competitive examinations are held during this period. Along with them how can we forget about board examinations, nursery school admissions, etc ? The coronavirus pandemic is expected to impact more than⁶ 29 **lakh** jobs in the Indian aviation and dependent industries, global airlines' grouping IATA said.

CONCLUSION:

While the full impact of the COVID-19 outbreak is not clear at the moment, and the outbreak is likely to spread in the coming days, and it is seemingly becoming critical by the week. India, which has a population of 1.3 billion, wants to preempt such a situation from developing. Its fragile healthcare infrastructure will not be able to cope with such an outbreak. So, the government decided on a two-pronged strategy: lock down the entire nation to break the infection chain and quickly ramp up its tattered healthcare facilities to face the pandemic. Every Indian state today has similar priorities: add new beds, increase the capacity of intensive care units, requisition portions of private hospitals, order lifesaving ventilators, recruit medical practitioners on contract, weigh in on extending services of retiring doctors and nurses and earmark select government hospitals for Covid-19 patients. In India, as in most nations, not all available ventilators can be plugged out from the intensive care units.

So, the number of equipment that can be made available for Covid-19 interventions is far too less. In Assam, for example, 36 out of 200 ventilators being used in government hospitals are non-functional, says an official, adding that most of those in working condition has been deployed for critical patients. Italy has 4.1 doctors and 3.4 hospital beds per 1,000 persons. Yet its infrastructure

⁵<https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus-can-india-ramp-up-its-health-infrastructure-swiftly-to-contain-this-pandemic/articleshow/74866036.cms>

⁶ <https://www.ndtv.com/india-news/coronavirus-may-impact-over-29-lakh>.

appears to be crumbling today. In comparison, India has only 0.8 doctors and 0.7 hospital beds for 1,000 persons, according to a World Bank report collating global healthcare indices between 2011 and 2017. The warning comes almost three weeks after the International Labor Organization predicted that 25 million jobs were threatened by the new Coronavirus. One of the biggest problems in the system is the capacity of the state to deal with the problem. The reaction that we have is a knee-jerk reaction. The issue is to focus on health which we have never done, and see how you can establish the public system and the second is livelihood issues. The importance of social distancing and a lockdown in curbing the spread of the virus cannot be stressed enough but these measures also have huge repercussions on livelihoods and the economy at large. We sometimes have a tendency to act and then plan I worry about that. Because it creates confusion. We will not go back to normal from day one where everyone can do whatever they wished. The first thing that the government will have to do is testing. Children are not going to school some from well-off families may learn on the computer but what about those children who can not go to school, can't play, or do anything. Think about the parents who stuck in Lockdown or daily wagers how can they pay the fee. The coronavirus is a crisis like no other the world has faced in recent times in terms of its potential economic and social impacts. A large number of poor will suffer in India as they are already struggling with high poverty rates. Covid-19 will affect households in many ways, including job loss, rationing of food, and other basic goods. At the same time, the government's capacity to quickly provide income support to affected households in these areas is limited. Policies needed to mitigate poverty and distributional impacts will have to respond to each part of the country. Effective response in support of the poor will be required. Decision-makers need timely and policy-relevant information on impacts and the effectiveness of policy responses. What I feel there is a hard work needed to make law regarding pandemic in India, policy which help to the citizen, humanity who feel the pain of people.