



## COVID-19: LEGAL DRAWBACKS & CHANGES SEEN ACROSS INDIA

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### ABSTRACT

The Covid-19 virus has proven to be one of the most deadly nightmares that the human race could have imagined. It has affected the world at large and does not discriminate between rich and poor, powerful and the meek, the good and the bad. It has caught everyone off-guard and clutches upon the life of individuals. As of now there are 2 million cases reported and we are waiting for the tables to turn on us. With this we see the changes that have occurred in society and affected us as a society at large. This pandemic has seen people perform their work in such a manner that they couldn't have imagined 6 months ago. We critically try to examine and discuss the significant changes that have occurred in the normal chain of human living. At the first we discuss the issue of contracts that are in motion and now cannot be put in action due to the circumstances vying around us. The term 'Force majeure' is discussed to its depth taking into consideration the contemporary issue of coronavirus. Further we have discussed the impact on the constitution, the violation of rights of people and how in these times they are rendered null and void. We also discuss the critical fragment of society i.e. judiciary the functioning of which is very important to avoid further conflicts. Lastly we discuss the public health and what measures the government and we as a society

should take to avoid contact and curb this deadly virus.

Keywords: Coronavirus, Force Majeure, Constitution, Courts, Public Health.

### INTRODUCTION

The mighty force of nature has always proved its dominance over mankind through varied instances of natural calamities disrupting mankind. One such instance was faced by the Wuhan district of China which witnessed an existential crisis with the introduction of the incorrigible, novel coronavirus (COVID-19) around the world. The virus had reportedly taken thousands of lives and is spreading like a wildfire in the adjacent countries as well. With the hue and cry arising out of this entire situation, all business sectors are severely affected. Especially for a country like India, where most of the trade target is fulfilled from Chinese vendors, the economic growth is suffering.

The macabre of the novel coronavirus was present on all continents with the exception of Antarctica, including as many as 112 countries and territories in the world and foreign transportation (Diamond Princess ship harbouring Yokohama, Japan). There are about 10,00,000 new cases of this new virus and 90,000 deaths reported, and the number of cases is continuing to rise in many countries. On Monday 9 March 2020, the WHO reported "there's been a real threat from the coronavirus pandemic" and "pandemic spread." The WHO defines a pandemic as the "worldwide spread of a new disease," and the determination is made based on the geographical spread of the disease, the severity of the illness it causes, and its effects on society.



The outbreak of COVID-19 was in reality described by the WHO as a 'public health emergency' on 30 January 2020 that gave rise to emergencies by governments around the world. Depending on how much effect such emergency steps are having on the nations, they vary from the enforcement of travel bans, refusal of entry into ports, stringent inspection, injection of quarantine suspects and patients to the isolation of infected individuals to avoid the virus from spread. These emergency measures have disrupted international trade with a complete slowdown in distribution channels of export and import, hindrance in access to cheap labour and manpower from other countries and shut down of workplaces among other such drastic measures.

In this midst, COVID-19 is continuing to threaten all human beings, regardless of age, sex, lifestyle, ethnic background, socio-economic status and nationality. It is causing suffering and death throughout the world. The humanity never expected COVID-19 to emerge. Outbreaks are a fact of life and the world remains vulnerable. Today we do not know when COVID-19 will end, but all that we know at present is that COVID-19 has taken a terrible toll, both on human life and on the global economy.

In the outbreak scaling of this measure, governments across the world are working expeditiously. In outbreaks of viruses with communicable properties, response time in communicating information and alerting the public and the world about the dangers of the virus is of the essence. Even a delay of a month can have a huge impact, in the absence of proper information, crowded public places act as a hub for transmission.

### Force Majeure

The concept of Force Majeure has originated from French civil law and is widely applied over several common law jurisdictions. The said clause is a provision in an agreement which allows both the parties for non-performance of their contractual duties due to unavoidable circumstances and situations beyond their control thereby relieving the parties from their respective liabilities arising in the course of non-performance.

Though the above clause allows for rescue in chaotic cases like the present situation, its applicability depends on the specific use of words. For example, for some contracts/agreements, the force majeure clause is quite extensive and it elaborately covers the circumstances describing exact state of affairs where the said clause can be invoked. In this regard, general terms like epidemic, government military actions, national or regional emergency are commonly used. With the use of the said terms, invoking the force majeure clause becomes subject to the exact situations are mentioned. However, in circumstances where the force majeure events are not clearly elucidated or the force majeure clause is present only in the form of a boilerplate clause, the enforcement of the same becomes a matter of varied interpretation. In these circumstances, the applicability of the clause is best determined by judicial interpretation.

Ordinarily such disruption, particularly in regarding to manufacturing/service/supply contracts may make the contract commercially unviable or in other circumstances frustrate them on account of impossibility of performance. In the former case contracts may become commercially



unviable as they can be stretched over a period of time and leading from the disruptions created by the government measures may have a domino effect leading to such contracts becoming commercially unviable. Such circumstances are not contemplated under the contracts and may result in a party suffering on account of such disruption without any recourse in law or contract. However, in the latter case, the contract could be considered to be frustrated on account of impossibility of performance. The remedy in such circumstances is often both in law and contract. More often than not, commercial contracts contemplate situations of 'Force majeure' which would absolve the parties of the obligations under the contracts without assuming any further liability. In case of existence of such Force majeure clause in a commercial contract, it is imperative to refer to the definition of the Force Majeure events contemplated therein to come to a conclusion if the Covid-19 disruptions would be covered by such clause. In the situations wherein the Force majeure clause is not sufficiently wide to cover event such as Covid-19 or there is non-existence of Force Majeure Clause, the Indian Contract Act, 1872 would come to the rescue of parties.

In case of existence of a Force majeure clause, it is stated that such clause may differ from one contract to another. A pandemic like the COVID-19 may fall within the category of 'Act of God' or 'other circumstance which hinders the performance of the contract' through ejusdem generis. Some definitions of Force Majeure may expressly include disease or epidemic.<sup>1</sup> To illustrate, the Standard Technical and

Commercial interconnection Agreements[CAS] prescribed by the Telecom Regulatory Authority of India in the Telecommunication (Broadcasting and Cable Service) Interconnection Regulation, 2004, includes any war, civil commotion, strike, Satellite Jamming, Satellite Feature, lockout, accident, epidemic or any other event of any nature or kind whatsoever beyond the control of the parties in its definition of Force Majeure. Furthermore, invocation of such clause may be subject to other conditions. Like the Bulk Power Transmission Agreements in India may require written notice of Force Majeure within a reasonable time for a party to avoid paying transmission charges for the period of force majeure when it cannot use the transmission line.<sup>2</sup>

Recently, on February 19, 2020, the Government of India clarified that the spread of coronavirus in China or any other country will be covered in the Force Measure clause of the Manual for Procurement of Goods, 2017. The said manual defines Force Majeure as extraordinary events or circumstances beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes .

Further in the absence of a Force Majeure clause, or in case where one which is not sufficiently wide to cover events such a Covid-19, the parties to the contract may take recourse to Section 56 of the Indian Contract Act. The said provision is based on the English 'doctrine of frustration'. Section 56 provides that an agreement to do an impossible act is void. It further clarifies that

<sup>1</sup><https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>

<sup>2</sup> Himachal Sorang Power Ltd v Central Electricity Regulatory Commission & Ors, SCC 2010 SC 603.



an event which after the contract is made and makes the contract impossible to perform will also be void. Thus, the circumstance of Covid-19, which may not have been contemplated by the parties at the time of entering into the contract, would also stand covered and parties would be discharged from performance of the contract by operation of law.

The doctrine of frustration would also apply to those contracts which were entered into after the outbreak, unless otherwise agreed to, when there were some uncertainties which subsequently made the contract impossible or unlawful as the pandemic progressed. Performance is considered to become impossible when change of circumstance totally upsets the very foundation upon which the parties entered their agreement. It is a settled principal of law, however, that unprofitability mere difficulties or rise in prices would not be considered as impossibility.

The pandemic has given rise to a unprecedented situation which is changing daily and in some aspects, on an hourly basis. The above analysis is based on the restrictions at the time of writing the article and may require significant modifications as the State's response progresses.

#### *JUDICIAL INTERPRETATION*

It is necessary to understand the criterion for impossible in the present circumstances, that is, whether the widespread emergence and effects of the virus would be an impossible challenge or whether it would be regarded merely as a problem. When reviewing this

threshold, it is important that we not lose sight of the rule that courts have no general power to exclude a party simply because its success has been costly because of unexpected circumstances. For instance in the landmark case of *Tsakiroglou & Co Ltd v Noble Thorl*<sup>3</sup>, it was observed that mere closure of the Suez Canal, given that there existed an alternative route to transport goods (through the Cape of Good Hope), did not qualify as a condition for the frustration of contracts on the sole ground that the alternative route was longer than the original route.

In the landmark decision of *Satyabrata v Mugneeram*<sup>4</sup>, the Supreme Court discussed various theories that have been propounded pertaining to the juridical premise of the doctrine of frustration yet the essential idea upon which the doctrine is based is that of the impossibility of performance of the contract. It was observed that Section 56 of the Act lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties derogating from the general idea of party autonomy that is central to contracts, globally today. However, in terms of determining the threshold for the applicability of this doctrine, it was observed that Section 56 of the Act allowed for discharge of obligations on grounds of impossibility if "*an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement*"<sup>5</sup>

Subsequently, however, the lines between frustration and impossibility seem to have

<sup>3</sup> *Tsakiroglou & Co Ltd v Noble Thorl GmbH*, 2 WLR 633.

<sup>4</sup> *Satyabrata Ghose v Mugneeram Bangur*, AIR 1954 SC 44.

<sup>5</sup> The Indian Contract Act S.56.



been blurred wherein, in its decision in *Energy Watchdog v Central Electricity Regulatory Commission and Anr*<sup>6</sup>, the Supreme Court held that “*in so far as a force majeure event occurs de hors the contract, it is dealt with by a rule of positive law under section 56 of the Contract. 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 purposes of the parties*”. However, it remains undisputed that when a contract contains a force majeure clause which on construction by the court is held attracted to the facts of the case, Section 56 of the Act can have no application.

At the outset, one of the fundamental premises of contract law is the principle of “*pacta sunt servanda*”, which means “*agreements must be kept*”. Having said this, accounting for exceptional circumstances that may render a party unable to honour its part of the obligations, a force majeure clause forms a boilerplate clause in agreements across the world today and aims at absolving one or both parties from liability to perform contract obligations when the inability to perform is due to some factor beyond the parties control.

The courts of India have time and again identified force majeure as a relevant ground for non-fulfilment or frustration of contract. In *Narasu Pictures Circuit v P.S.V Iyer and Ors*<sup>7</sup>, the court had observed that “Where it appears from the nature of the contract and the surrounding circumstances that the parties have contracted on the basis that some specified thing without which the contract

cannot be fulfilled will continue to exist or that a future event which forms the foundation of the contract will take place, the contract, though in terms absolute, is to be construed as being subject to an implied condition that if before breach, performance becomes impossible without default of either party and owing to circumstances which were not contemplated when the contract was made, the parties are to be excused from further performance”.

Under present situation of coronavirus outbreak in several countries, vendors, airline companies, shipment companies and in certain circumstances even consumers are like most likely to invoke the force majeure clause. It is evident that force majeure clause will result in monetary losses. Considering the example of airline companies in these circumstances, it can be anticipated that pre-booked tickets of consumers can be abruptly cancelled and refund may not be processed on force majeure.

#### Constitutional Impact

The Coronavirus poses a number of dynamic policy issues for lawmakers, government and health professionals. Over the years, Article 21 has read about the right to health and, if the right is anything to say, a certain number of interventions will be needed to protect the population during a pandemic.<sup>8</sup>

But here we talk about another matter. As scientists have said, a good “social distancing” is the most successful way of

<sup>6</sup> *Energy Watchdog v Central Electricity Regulatory Commission and Anr*, SCC 2017 SC 80

<sup>7</sup> *Narasu Pictures Circuit v P.S.V Iyer and Ors*, AIR 1953 Mad 300.

<sup>8</sup> D.D.Basu, *Introduction to the Constitution of India*, (21st ed. 2014).



combating the spread of the pandemic. As the coronavirus spreads through contact, maintaining distance from an infected individual prevents further transmission. The problem is, however, that coronavirus carriers are often asymptomatic, making quarantine and isolation much harder to identify and monitor. That is why in many countries officials have now urged people to operate in their homes whenever possible until the spread of the pandemic is sufficiently controlled. Authorities have stopped short, however, of making this a requirement, thus, it is up to individual private employers to decide whether or not to allow their employees to work from home.

We propose, on the one hand, (a) forcing an employee to work from home in the event of coronavirus exposure, and (b) losing his / her employment, on the other, forced labour in compliance with Article 23 of the Constitution of India.

Article 23 in The Constitution of India<sup>9</sup>  
*Prohibition of traffic in human beings and forced labour*

*Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.*

*Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.*

<sup>9</sup> The Constitution of India, art.23.

In fact, Article 23 as described by the PUDR v Unión of India<sup>10</sup> Supreme Court understands that there is forced labour where there is no true option before an employee. In relation to the case of PDR, the Supreme Court held that the right to a minimum wage was guaranteed under Article 23, which applies to private parties and not the State. The ruling of the Court was that 'any factor that deprives the person of the choice of option and obliges him to take a particular course of action may correctly be regarded as' force, 'and that would be' forced labour 'if labour or service were forced by that' power. The Court further explained that the non-payment of the minimum wages under the employment contract in the event of unequal bargaining power was proof of the fact that when the workers entered into contract, they "acted not as free agents with the option of alternatives but in the face of economic circumstances and the term" will "must be construed.

In other words, in "forced labour" the Court recognized not only physical coercion but also any circumstance where employers were able to use their administrative resources to efficiently deprive an employee of valid choices. The rationale of PUDR includes coronaviruses, which tells an employee "to choose between exposure to a pandemic and, on the one hand, medical advice and the loss of livelihoods" in an illusory way, just as "work for less than a minimum wage" is an illusion. Article 23 touches both.

When a pandemic is clearly shown to place an person at a non negligible risk of an infection, the right to work from home is presumed and enforceable if it fails to obey

<sup>10</sup> PUDR v Union of India, AIR 1982 SC 1473.



social distancing rules and self-quarantining. There is a question here, though, that the option is usually substitute, that working from office and working from home, but the majority of the cases require a physical presence of the employee. Currently, in some nations, plans have been made to offer paid sick leave where appropriate to help businesses recover losses. We may accept this, in the future, but I would like, in these situations, to point out that the full implementation of Article 23, in compliance with Article 19(1)(g), would invalidate the employer's freedom of business. Where two rights fall under the provisions of Part III of the Constitution, the Supreme Court's recent ruling on RTI held that the proportionality doctrine would apply, which in turn would entail harmonization of the two rights to ensure that both violations are not the least likely.

In accordance with the WHO advice (for example, supply of hand sanitisers as disinfectants, maintaining a minimum distance of employees and so forth), the nature of work where it needs a physical presence, the private employer is legally obligated to put in place all procedures needed to reduce the risk of exposure.

As we know, the right to privacy is a fundamental right. The Supreme Court's decision of Puttaswamy, it makes clear that it requires the right for everyone to determine for themselves, when and to what degree the knowledge about their privacy is transmitted to others. The right requires a right to self-determination. Chandrachud's thoughts, J. (Four judges on behalf), Nariman, J. J. And Kaul. And Kaul, J. Everybody in India makes clear that everyone is entitled to monitor the distribution of personal information to them.

When, as the State of Karnataka has done, the government publishes residential addresses, telephone numbers and travel history of individuals contaminated or otherwise quarantined with Covid-19, the right to secrecy is prima facie violated. The problem, however, is whether the breach is valid and legally justifiable in this case in the circumstances prevailing.

The right to privacy is not, of course, an unconditional guarantee, as is the case for any other human right. But in order legally to restrict the right, the State, as the Supreme Court ruled in Puttaswamy, it must first prove that a legitimate legislative act exists which allows the State to impose a restriction on the constitution. Moreover, these constraints must be made clear in nature as rulings because Puttaswamy I (including the rulings of Puttaswamy II, Anuradha Bhasin v. Union of India and Internet and the Mobile Association of India v. RBI), which should comply with the check proposed by Court of Modern Dental College and Research Center v. State of Madhya Pradesh. There, the court held, that the doctrine of partakes four separate lines of analyses: (1) that the measure has to be designated for a proper purpose; (2) that the measure undertaken is rationally connected to the fulfilment of that purpose; (3) that there are no alternative and less intrusive measures available that may similarly achieve that same purpose with a lesser degree of limitation; and (4) that there needs to be a proper relation between the importance of achieving the aim and the social importance of preventing the limitation on the constitutional right.

In this situation, either the Infectious Diseases Act, 1897 or the NDMA does not grant the authorities the authority to reveal



personal data of any sort. As such, the information received is unlawful. However, the point may be raised that if such a publication is considered necessary for the purposes of disease or disaster management, the fundamental residual power which such legislation gives the government also includes the power of publishing information of this nature within its reach. For example, the Epidemic Diseases Act gives the government the power to control temporarily. Similarly, section 6(i) of the NDMA grants to the “National Authority”—which has as its ex officio chief, the Prime Minister—the power to “take such other measures for the prevention of disaster, or the mitigation, preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.”<sup>11</sup>

Nevertheless, even though such laws provide the governments with the power to make such details public, they must be proportionate in nature and they must follow the criterion laid down in Modern Dental School. In this regard, however, no explicit regulatory mechanism for disclosure of the details, such as residential addresses, phone numbers, and travel history for the persons infected with the virus seems to have been drawn up under either Statute. However, the manner in which the details can be considered proportionate is also completely unclear.

The preservation of public health is without question a legitimate goal of the State, especially during a pandemic. But there is nothing documented here to explain how it is rationally related to the application of the measure undertaken — the release and the disclosure of a whole host of private data.

Why do public knowledge of the residence of an infected person and his / her mobile number assist in combating the pandemic, we may ask? There are definitely less disruptive acts. Would not a large range of local information be appropriate as opposed to publishing their exact addresses as to which infected persons may reside? Consequently, at least three elements of the exam expounded in modern dentistry are revealed by the Karnataka Government. In addition, the state government has launched its "Corona Watch" web-based mobile app, which not only shows movements made by individuals infected with the virus — public places they might have been in and the time they visited those places (information that you may find helpful), but also their addresses. Again, the release of this knowledge is unreasonable for us and is also highly disproportionate to the lawful intent of the State.

Those are peculiar days, it's no wonder. We allow the State to take special action. Chandrachud, Puttaswamy's majority opinion specifically acknowledges the public safety as legitimate grounds for the right to privacy in some types of restrictions. "To recognize and cope with a public health crisis, for example malaria or dengue, a valid interests in analysing data found in the hospital records may be claimed by the state to prevent significant public impact, â he wrote. "If the State preserves the anonymity of the individual it could legitimately assert a valid state interest in the preservation of public health to design appropriate policy interventions on the basis of the data available to it." But while the State will inevitably have to make encroachments on

<sup>11</sup> Disaster Management Act 2005, s.6(i).



certain swathes of private information that it otherwise cannot, in the interest of public health, any such intrusion, as Chandrachud, J. holds, must still be necessary and proportionate.

It is at least possible to overcome some of these illegalities if we have implemented a data protection law that enshrines basic principles of privacy, as demanded by the Supreme Court of Puttaswamy I. Such a regulation could have created a system where governments have been made more fully aware when and where private details could be revealed. In the current case, the government has opened up the possibility of stigmatization by indiscriminately revealing information regarding individuals who have been diagnosed with COVID19 or have been requested to remain quarantined due to their travel history. Therefore, leaks not only impact on the right to privacy, but also theoretically breach a range of other protections, including certain individuals' basic human dignity. The seriousness of the pandemic may also be justifying a civil rights restriction. Yet it can have negative effects, if it is to be accepted as a legal state operation, well beyond the immediate risks which we face today.

### Courts during COVID-19.

Amidst all the measures in India to curtail the spread of COVID-19, one thing that is becoming increasingly apparent is the judiciary's and the legal sector's absolute inability to function remotely. Even though CJI Bobde attempted to assuage concerns by stating that virtual courts would be a reality soon, those closely following the design and

the implementation of e-courts project know that the judiciary is nowhere close to having streamlined online capability. At best, a few courts might offer online hearings by relying on external service providers such as zoom or skype.

It is ironical that the judiciary, much like the government, while preaching 'self-isolation' and mandating work from home facility for private sector, the best that it has done for its own is decrease the number of regular benches and list only 'urgent matters', which as per ground report is not being followed. If the trajectory in USA and Italy is anything to go by, these measures in a typically crowded place such as courts is completely insufficient. The judges and the staff are not only putting themselves at risk, but also litigants and lawyers who are invariably compelled to be present in court. On the other hand, the CJI is right in ruling out the possibility of shutting down the top court or any other court in the country for that matter.

This choice between the devil and deep sea is a result of decades of negligence in adopting technology, effects of which are unfortunately being discovered in the face of a crisis. However, Indian legal sector or the Indian judiciary is not alone in slow adoption of technology. World over, legal technology has been one of the slowest to take off, especially in comparison to other service sectors such as banking or healthcare.

However, the present crisis might be the final push that was necessary to force both small and big players in the sector to adopt technology or risk perishing. As for the judiciary, it needs to thoroughly rethink what 'access to justice' means in a new world that is getting shaped by COVID-19 experience.



Countries like Australia, China and US which are at the forefront in technology adoption, are in these dire times already working towards moving their judiciary entirely online. For instance, China, recognizing the importance of Online Dispute Resolution in putting the economy back on track while also preventing the spread of COVID-19, has issued a guideline calling for accelerated development of 'internet arbitration systems'. India must similarly not let this crisis go to a waste and take immediate steps in building Online Dispute Resolution capabilities.

Even before the pressing need that is presently felt for online courts, it has been apparent for a while now that the Indian judiciary was in need of a major technology driven overhaul. The slow administrative processes, poor infrastructure and the oft-cited problem of judicial vacancy have all contributed to a staggering pendency of around 3.2 crores at district judiciary, 46 lakhs in the High Courts and around 60,000 in the Supreme Court.

Judiciary as it currently exists and functions is simply incapable of handling the existing burden, let alone intake the new-age disputes that are not even entering the judicial system due to uncertainties associated with cost and time. The justice-gap is currently being partially addressed through alternate dispute resolution mechanisms i.e. negotiation, mediation and arbitration. However, ADR has failed to take off at a scale required in India for umpteen number of reasons such as lack of quality private dispute resolution professionals across the country, importing of procedural complexities from the traditional court system, high costs etc. As an answer to these problems, private ODR

platforms are making inroads into dispute resolution ecosystem in India.

Private ODR platforms essentially work as aggregators connecting dispute resolution professionals with disputing parties. For now a small number of functional ODR platforms are catering to a very small segment of disputes such as low to medium value commercial disputes, consumer disputes, insurance cases etc.

While the exceptional arrangements made at the Supreme Court in its fight against the epidemic are commendable, it is difficult to gain access to the Court without rubbing shoulders. Unfortunately, it is unavoidable and far too ambitious primarily because every individual in the corridors of the Supreme Court is discharging his professional obligation zealously. Are we in any manner exposing the lives of advocates, the officers of the Registry, the security personnel, officers of the Health Department and that of the Hon'ble Judges to any danger? This question requires immediate redressal.

In the worst-case scenario, even if one member of the bar or an official contracts the virus, hundreds would have to be quarantined which may bring the institution to a grinding halt. Considering the age of the senior members of the bar, who may also be diabetic and suffer from hypertension in certain cases, the situation requires more and immediate deliberation.

Time is ripe to close the doors of the Supreme Court while the dispensation of justice can continue by adopting the facilities of tele and video conferencing, which is accessible to all.



To illustrate, a scanned copy of the petition could be e-mailed to the registrar accompanying an undertaking by the Advocate on Record certifying the correctness of the petition along with a letter of urgency. Should the Registrar be satisfied, he may forward the same to the Hon'ble Judges, who may convene the Court at their residence and while adjudication the matter the Court Master may call the Advocate on Record and provide him audience over a phone call. At that stage if the Hon'ble Court feels that personal appearance of the advocate is warranted, it may direct so accordingly.

A large business of the Court can be handled without a roadblock. There may be problems that can crop up in the aforesaid scenario, but I am of the view that technicalities such as affidavits, court fee, common defects and other requirements of the Supreme Court Rules can be dispensed with considering the epidemic.

As per this illustration, the advocate, the Registrar and the Hon'ble Court can continue to operate from their respective residences barring the exception of the Court Masters. I would like to reiterate that the option of mentioning the case for urgent listing with a right of audience would still be open to the advocate in deserving cases.

It is only Tilak Marg, the seat of the Supreme Court that requires shutting down temporarily and not the Court itself. I am certain that the Advocate on Record, who is a responsible officer of the Apex Court along with the Registry of the Court can temporarily create this virtual Court and exhibit that 'work from home' is the new normal even at the Supreme Court of India

and this would also mark the contribution of this institution in the fight against the epidemic. The respective High Courts may follow suit.

Without a shadow of doubt, the competence of the Registry cannot be impugned but the question is – should more be done.

#### Public Health and Pandemic Control.

Public International Law dictates that regardless of a health emergency or an epidemic, the measures taken to affect human rights should be legal, necessary, reasonable and proportional. Every measure must be recorded in evidence and there should be strict adherence to the procedure prescribed. An undemocratic regime leaves no scope for a consequence to the state for failures in terms of epidemic response and as a result, there is no accountability from the state. The people residing in affected areas are shunned out without any scope for the expression of dissent or discontent or even a cry for help from the international community. Human rights cannot be allowed to be violated under the garb of a health emergency and every nation should take a lesson from the incident of the Coronavirus outbreak. The priority of taking measures to restrict the outbreak lies in equal pedestal with the significance of following due process without depriving the people of their human rights. The international community needs to take a stand, and every response from a government during the outbreak of an epidemic or a pandemic must be within the four corners of human rights.

Public health care system includes not only the physical structures of public health agencies, clinics and hospitals and the human



resources to operate them, but also countries' legal infrastructure – the laws and policies that empower, obligate and limit government and private action concerning health<sup>[3]</sup>. A health emergency tests how effectively regulatory strategies, social contract principles and human rights norms have been embodied in the written laws of a country, and how closely, in turn, those legal embodiments guide action.<sup>[4]</sup> Disease outbreaks, for example, require a wide range of actions e.g. disease reporting, surveillance, quarantine, social distancing, curfews, lockdown import of medical supplies and personnel, and vector control, all of which are effected through, or subject to, national laws. Governments are also obliged to protect the human rights of individuals affected by an outbreak.

A long series of scourges for example the Ebola virus, in 1976, the Human Immunodeficiency Virus (HIV), in 1983, an Avian Strain Of Influenza in 1997, SARS – Severe Acute Respiratory Syndrome in 2003, the Novel Influenza Virus, H1N1 in 2009, MERS – Middle East Respiratory Syndrome in 2012-2013, the Ebola epidemic in West Africa (Guinea, Liberia, and Sierra Leone) in 2014, the Zika virus, in 2015 and the major outbreak of plague in Madagascar in 2017 have taught that public care health system must always be prepared for the unexpected. In a situation wherein there is no vaccine nor treatment available minimizing the transmission of infectious diseases is the only way before the Public health care system.

Generally the public health law play two major roles viz.,

- A proactive or preventive role
- A reactive role

#### 1. Proactive or preventive role of public health care law

A proactive or preventive role of public health care law involves improving access to vaccinations and contraceptives, together with screening, education, counselling and other strategies that aim to minimize exposure to disease. For example diseases like measles or polio which are entirely preventable by vaccination, or diseases like diarrhoeal and parasitic diseases are preventable by access to improved sanitation and clean drinking water and diseases like tuberculosis and malaria which are treatable when detected in a timely manner fall in this category.

#### 2. A reactive role of public health care law

However in situation like fighting an outbreaks of contagious and serious diseases like COVID- 19 public health law adorns reactive role *ie.*, supporting access to treatment, and authorizing health departments and health care providers to limit contact with infectious individuals and to exercise emergency powers in response to disease outbreaks.

This reactive role involve a wide range of administrative powers

- Conduct of surveillance, mandate vaccinations if available, treatment options, isolation or quarantine of infected or potentially infected individuals.
- Seize property in order to establish emergency response centres and to ensure the availability and rapid distribution of pharmaceuticals and supplies;
- Expand the health care or disaster



management workforce by co-opting personnel from other agencies and jurisdictions under a unified command structure.

- Interference with freedom of movement, the right to control one's health and body, and with privacy and property rights.
- The reactive role of public health care law is inevitable in the current situation but any measures taken to protect the population that limit people's rights and freedoms must be lawful, necessary, and proportionate

Thus the Epidemic Diseases Act 1897 is currently invoked viz.,

1. To restrict the movement of suspected coronavirus patients to prevent further spread of the disease.
2. To prohibited cruise ships, crew, or passengers from coronavirus-hit nations to come to India till March 31, 2020.
3. Starting from 13 March 2020, all existing visas, except diplomatic, official, UN/International Organizations, employment, project visas, stand suspended until 15 April 2020.

Though Epidemic Diseases Act, 1897, gives the Central and State Governments overarching powers but it lack speedily set up management systems required for a coordinated and concerted response to COVID -19 .

Therefore, the Disaster Management Act, 2005, which provide for an exhaustive administrative set up for disaster preparedness is also invoked . The DM Act clearly lays down a multidimensional strategy to handle pre-disaster and post-disaster situations and

mandates certain actions by the officers of different ministries to work in tandem, in mobilizing resources across the ministries and departments thereunder, to control and contain the damage wrought/liable to be wrought by a disaster

The powers held by the home ministry under the Disaster Management Act is currently delegated to the health ministry so as to enhance the preparedness and containment of novel Coronavirus(COVID-19). This includes *inter alia* lay down guidelines for preparing disaster management of novel Coronavirus plans by different Ministries or Departments of the Government of India and the State Authorities , providing necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans of novel Coronavirus in accordance with the guidelines laid down by the National Authority; monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India monitor, coordinate and give directions regarding the mitigation and preparedness measures regarding COVID -19 to be taken by different Ministries or Departments and agencies of the Government; evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation posed by COVID-19 , require any department or agency of the Government to make available such men or material resources as are available with it for the purposed of emergency COVID -19 response advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-



governmental organisations and others engaged in COVID -19 management ; provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions .

Invoking the DM Act, 1995 the Ministry of Health and Family Welfare directed all state/ UTs Government and concerned State Authorities to take necessary steps to ensure sufficient availability of surgical and protective masks, hand sanitizers and gloves at prices not exceeding the maximum retail price printed on the pack size. The 2 ply and 3 ply surgical masks and N95 and hand sanitizers have been declared as essential commodities under the Essential Commodities Act 1955 to ensure prevention of hoarding, black marketing and profiteering of these items.

The said Act also help the concerned authorities to nab any person who makes or circulates a false alarm or warning as to disaster or its severity or magnitude leading to panic. . On conviction, such person is liable to be punished with imprisonment which may extend to one year or with fine.

In addition to the Epidemic Diseases Act,1897 and Disaster Management Act, 1995 the Aircraft Act, of 1934 and R.2(8) Indian Aircraft (Public Health) Rules, 1954, allow airport authorities to screen the travellers who originate from or transit through COVID -19 affected nations, and track them after their arrival in India <sup>12</sup>. Passengers are also informed through in-flight announcements that mandatory self-reporting is required at immigration. The

government also set up facilities at airports and ports to manage travellers showing symptoms of the disease . The surveillance system will track travellers for four weeks and persons who develop symptoms will be advised to self-report and also for quarantine . Similarly for passenger ships, cargo ships, and cruise ships detailed health measures like, non-invasive medical examination of the passengers , isolation of the passengers , surveillance for a period not exceeding the incubation period of the PHEIC to which they have been exposed, undertake appropriate vaccination or other prophylactic measures in accordance with the recommendations of the WHO as communicated by the Central Government; to undertake disinfection, decontamination, disinfection or de-ratting of the ship/vessel, as appropriate, or cause these measures to be carried out under their supervision under the Indian Port Health Rules 1955, pursuant to the Indian Port Act<sup>13</sup>

As the outbreak continues to evolve, Indian just like other country across the world are considering options on a war footing to prevent introduction of the disease to new areas or to reduce human-to-human transmission in areas where the virus that causes COVID-19 is already circulating. But at times one can find that irresponsible behaviour from the side of the citizens put an entire society into acute danger.

Strict action can be taken against such irresponsible behaviour and certain provisions of the Indian Penal Code comes in handy. Sec.269 of Indian Penal Code, enumerates as to how to deal with persons who act carelessly to endanger the public

<sup>12</sup> Indian Aircraft (Public Health) Rules, 2015, R.2.

<sup>13</sup> The Indian Port Act 1908.



health and life . Once found guilty it can lead to up to six months imprisonment and fine.

The main ingredient of this section is the disease must be infectious. The section comes into play whether the communication of the disease is direct or indirect and whether they may be infectious or contagious. The diseases, which the medical authorities agree to be infectious, are all covered under this section and not those, which are suspected. Hence any person who is affected by diseases like plague, cholera etc exposes himself or travels through a public transport are likely to spread the disease and are attracted to this section.

In Chabumian's case the accused resided in plague-stricken house in the Ambala Cantonment, and had been in contact with a plague patient. He was taken to the plague shed with the patient who died there. The next day, the accused left the shed against orders, and travelled by rail to the neighbouring town. He was held to have committed an offence under this section as he had sufficient reasons to believe that his act was likely to spread the infection of plague which is dangerous to life.

Similarly , sec.270 of Indian Penal Code , which talks about any malignant act likely to spread infection of disease dangerous to life, is punishable with imprisonment for a term which may extend to two years, or with fine, or with both. <sup>14</sup>It is evident that Section 270 deals with malignant act likely to spread infection of disease dangerous to life.. The only difference between s.269 and 270 is that in s.269 deals with acts of careless or a negligent nature and sec.270 deals with

malignant or malicious act not done with a benevolent intention. If a person is traced under this section then he will be guilty of homicide and not merely nuisance.

Section 271 punishes a person who knowingly disobeys a rule of quarantine in existence made and promulgated by the government<sup>15</sup>. Quarantine relates to a vessel, which is segregated for prevention of contagious disease. The District Collector can also invoke sections relating to public tranquillity Government of Kerala has already directed the police to arrest COVID-19 infected people kept under isolation and home quarantine, if found roaming in public places.

The country has many legal provisions which can be used to take public health measures to prevent and control an epidemic, Bringing all the legal provisions for preventing outbreaks under a single legislation would be challenging, though it would be beneficial for effective implementation and monitoring. In 1955 and 1987, the Central government developed a Model Public Health Act, but failed to persuade the states to adopt this. The Public Health Act was revised by the National Institute of Communicable Disease (currently the National Centre for Disease Control) a decade ago, but the revisions have still not been approved by the government. Many states formulated their own public health laws and many amended the provisions of their epidemic disease Acts. The Madras Public Health Act was passed in 1939. This was the first of its kind in the country. The government of Himachal Pradesh included provisions for compulsory

<sup>14</sup> The Indian Penal Code, s.270.

<sup>15</sup> The Indian Penal Code, s.271.



vaccinations in its Epidemic Diseases Act, while Madhya Pradesh, Punjab, Haryana and Chandigarh conferred powers on specific officials to execute various provisions of the Act. Bihar gave the state government the power to make requests for vehicles during epidemics. While it is true that the priorities of the states are different, the platform of a common law for combating infectious disease that the states should work on should be the same. There are instances in which different parts of a state are following two different public health acts. For example, the southern districts of Kerala follow the Travancore- Cochin Public Health Act, 1955, while the northern districts follow the Malabar Public Health Act, 1939. Municipal Acts in different states vary in quality and content, and many are vague about the measures to be taken during the outbreak of a disease. Most of the public health Acts in the states are policing Acts, intended to control epidemics, and do not deal with coordinated and scientific responses to prevent and tackle outbreaks .

What we require is a legal framework relevant to the current context. A good public health law infrastructure establishes not only the powers of the government, but also shapes the government's role in preventing and controlling diseases. There is a need for an integrated, comprehensive, actionable and relevant legal provision for the control of disease outbreaks in India. This should be articulated in a rights-based, people-focused and public health-oriented manner. The National Health Bill 2009 was one such proposed legislation.

**CONCLUSION**

It is evident that the aftermath of this COVID-19 is going to be very drastic. Societies, institutions, business houses will not function as they used . They and we as individuals will experience change and we will have to cope up with it dynamically. It is suggested by most doctors that “social distancing” is the key and only way to avoid this virus. Taking into account all safety precautions we must also not forget that the economy is stumbling and we cannot do away with work. We must adhere to ‘Work from Home’ directives issued by most companies and do our bit in these desperate times and help each other. Contracts frustrated should be reincarnated and started at a later date. Constitutional rights affected have received a affirmative explanation and individuals are with the government on this issue. Courts have slowly started to adapt to technology and online dispute resolution and hearings are in course. The most important that is public health laws are being brilliantly being taken care of as the judiciary and the government at the centre and the states are in contention with each other to provide good infrastructure at low cost to individuals to counter this virus.

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