



ILS Law College, Pune

CENTRE FOR PUBLIC LAW'S

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THEME: PUBLIC LAW AND COVID-19



# Public Law Bulletin

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CENTRE FOR PUBLIC LAW AT ILS LAW COLLEGE,  
PUNE

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IV BALLB

RASHMI RAGHAVAN

IV BALLB



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## A. MESSAGE FROM THE EDITOR

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Date: 14 April 2020

Dear All,

We pay our homage to Dr. B. R Ambedkar, one of the architects of Indian Constitution. on his 129<sup>th</sup> birth anniversary. At the time when the entire world is reeling under the catastrophe brought out by the pandemic Covid-19, every aspect of life is going through unprecedented and unimaginable shifts and changes and the field of law is no exception to the same. Although our Constitution does emphasize on Coordination Councils for the efficient administration of States and Centre and the President of India has already established a National Health Council as early as 1954, it has remained by and large, a paper tiger. This is the 105<sup>th</sup> day of corona crisis and still, the Centre is speaking in many voices. The entire world is speaking in different voices whereas the corona response as a deadly virus has been singularly cataclysmic claiming thousands of lives and leaving the entire world economy in tatters

From the above observations, we should not be misunderstood to mean that Corona should be combated through uniform strategies around the world/country. Indeed, multiple and plurality of responses are the order but what about the establishment of coordinated and efficient machinery and evolution of a cohesive policy? This is not a time for blame-game nor is it a moment to advocate Darwinism. It is a time to help the weak and vulnerable and reach out to those who need help and assistance the most. Let's not misunderstand social distancing as distancing from humanity. We are presenting in this crisis period the XII issue of PLB to conscientious students and legal academia about interface Public law, Right to health and Pandemic.

In this issue, we have added a new feature i.e. articles from students. We received 10 articles and 4 have been selected for publication. I place on record my appreciation to Mr Varad Kolhe and Mr Rajmohan CV for assisting us screen these articles. I congratulate the new team of new student editors who have been handed down the baton by senior final year students, like Varad Kolhe and C.V. Rajmohan who very successfully brought the earlier XI issue of this publication. I hope that this issue will stimulate discussion amongst all of us to conceive innovatively and out of box strategies to create a legal mechanism to balance right to health with measures to keep the economy going.



Dr Sanjay Jain, Associate Professor &  
Additional Charge Principal; Faculty  
Coordinator Centre for Public Law  
**(Editor-in- Chief)**

Mr DP Kendre, Assistant Professor &  
Faculty Coordinator Centre for Public Law  
**(Faculty Editor)**

B. "LOOKING FOR REDRESSAL AMIDST  
ISOLATION."\*



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\*RudhdiWalawalkar, IV BALLB.



## C. PUBLIC LAW IN THE NEWS

COMPILED BY: NIHAR CHITRE; IV BALLB

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### SUPREME COURT IN THE NEWS

#### **A. Question of law could be referred to larger bench while hearing a review petition.**

*Kantaru Rajeevaru v. Indian Young Lawyers Assn*<sup>1</sup>

The 9-judge bench of the SC hearing the Sabarimala reference held that SC could refer questions of law to a larger bench when exercising its review jurisdiction. It reserved its February 6<sup>th</sup>, 2020 order after Senior advocate Fali Nariman objected to the manner in which the SC turned a review of Sabarimala Case into an opportunity to set up a nine-judge bench and examined whether certain essential religious practices of various faiths, including Zoroastrianism should be constitutionally protected.

#### **B. No lapse of acquisition proceedings if government has “paid” compensation.**

*Indore Development Authority v. Manohar Lal Sharma*<sup>2</sup>

The five-judge bench of SC unanimously held that *the land owners who refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Land Acquisition Act, 2013).*

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<sup>1</sup>2020 SCC OnLine SC 158

<sup>2</sup> 2020 SCC OnLine SC 316

Read more at, <https://www.sconline.com/blog/post/2020/03/06/no-lapse-of-acquisition-proceedings-if-government-has-paid-compensation/>



The bench also held that under the provisions of Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in case the award is not made as on 1.1.2014, the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation to be determined under the provisions of Act of 2013. The case was particularly in the news for refusal of recusal by Justice Arun Mishra. His recusal was sought on the ground that he was heading a Bench meant to re-examine a judgment that he had himself given in 2018 in *Indore Development Authority v. Shailendra*, (2018) 3 SCC 412.

**C. District Consumer cannot extend limitation period of 45 days for filing response under S.13 of Consumer Protection act.**

*New India Assurance v. Hilli Multipurpose Cold Storage Pvt. Ltd*<sup>3</sup>

The five-judge bench of SC held that the District Consumer Forum has no power to extend the time for filing the response to the complaint beyond the period of 15 days in addition to 30 days as is envisaged under Section 13 of the Consumer Protection Act, 1986.

**D. SC extends limitation period for filing petitions, applications, suits, appeals, etc.**

*In Re: Cognisance of Extension of Limitation*<sup>4</sup>

Invoking its power under art. 142 read with art. 141 of the Constitution of India, the three-judge bench of the SC extended the limitation period of appeals from high courts and tribunals on account of Covid-19 pandemic.

**E. Government approved Private Labs to facilitate free testing of Corona Virus (Covid -19) test.**

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<sup>3</sup>2020 SCC OnLine SC 287

<sup>4</sup>2020 SCC OnLine SC 343



*Shashank Deo Sudhi v. Union of India*<sup>5</sup>

The division bench of SC suggested the Central government should create a mechanism wherein the government laboratories and approved private laboratories would conduct Covid-19 test free of cost. Further it directed that all tests should be conducted in NABL accredited Laboratory according to WHO and ICMR standards. This order has now been modified only to apply to those who cannot pay.

HIGH COURTS IN THE NEWS

**A. Any decision taken by the state in securing and enjoyment of the rights of the citizen is valid in the eyes of law: Orissa HC**

*Geetanjali Kanhar v. State of Odisha*<sup>6</sup>

The single judge bench of the Orissa HC dismissed a petition on the ground that State is the owner of the land under Scheduled Area as per the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Odisha) Order, 1977 in exercise of power conferred under 5th Schedule of the Constitution of India. It has a solemn function and is under duty as ordained under the Constitution in securing its citizens and their enjoyment of the rights as guaranteed to them under the Constitution and any decision taken by the State in the furtherance of the said objective is valid in the eyes of law.

**B. Judicial Officer who completed 58 ½ years cannot be recommended by SC Collegium as a judge: Kerala HC**

*John K. Illikkadan v. Union of India*<sup>7</sup>

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<sup>5</sup> 2020 SCC OnLine SC 358

<sup>6</sup> 2020 SCC OnLine Ori 50



The division bench of the Kerala HC dismissed an appeal filed by the senior-most district judge in High Judicial service of the state. The petitioner was aggrieved as his was not considered for elevation as judge of the Kerala HC under art. 217 read with art. 224 of the Constitution of India. One of grounds for rejection of petition was, the position claimed by the appellant is a constitutional post to which he has no substantive right of appointment nor is there any violation of service conditions.

**C. Art. 343 does not interfere with the supremacy of the states to decide upon the language used by them: Bombay HC**

*Rashtrabhasha Mahasangh v. Union of India*<sup>8</sup>

The divisional bench of the Bombay High Court dismissed a writ petition filed that sought to declare Official Language Act, 1963 unconstitutional or in alternate, quash and set aside its S. 3(5) as unconstitutional. It held:

*“Union cannot exist without State and States therefore, form important part of consideration when language of Union is to be looked into. Thus, Parliament has in Section 3(5) of Official Language Act, 1963 envisaged resolution of discontinuance of use of English Language.”*

**D. Article 19 not couched in negative or restrictive Language; Art. 21 and art. 19 harmonious and do not cancel out each other: Calcutta HC.**

*Kamil Siedczynski v. Union of India*<sup>9</sup>

The single judge bench of the Calcutta HC set aside impugned order of expulsion of a polish student from India for violating the visa rules by participating in political rallies. The Court held that the impugned order violated the basic principle of natural justice i.e. *audi alteram partem*. Fundamental Rights of the petitioner cannot be taken away as

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<sup>7</sup>2020 SCC OnLine Ker 495

<sup>8</sup>2020 SCC OnLine Bom 417

<sup>9</sup>Calcutta High Court; WP No. 4432(W) of 2020



enshrined under Article 21 of the Constitution by not being provided opportunity of hearing.

Neither the Foreigners Act 1954, nor any other statute, debar any person, be her/him an Indian citizen or a foreigner, from taking part in political activities.

### BILLS, LEGISLATIONS AND ORDINANCES

#### **A. The Medical Termination of Pregnancy (Amendment) Bill, 2020.<sup>10</sup>**

Introduced in the Lok Sabha on 2<sup>nd</sup> March 2020. The Medical Termination of Pregnancy (Amendment) Bill, 2020, provides for:

- (a) Requirement of opinion of one registered medical practitioner for termination of pregnancy up to twenty weeks of gestation;
- (b) Requirement of opinion of two registered medical practitioners for termination of pregnancy of twenty to twenty-four weeks of gestation;
- (c) Enhancing the upper gestation limit from twenty to twenty-four weeks for such category of woman as may be prescribed by rules in this behalf;
- (d) Non applicability of the provisions relating to the length of pregnancy in cases where the termination of pregnancy is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board;
- (e) Protection of privacy of a woman whose pregnancy has been terminated.

#### **B. President promulgates - Taxation and other laws (Relaxation of certain Provisions), Ordinance Act 2020.<sup>11</sup>**

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<sup>10</sup> [http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/55\\_2020\\_LS\\_Eng.pdf](http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/55_2020_LS_Eng.pdf)



Taxation and other Laws (Relaxation of Certain Provisions) Ordinance, 2020 has been promulgated to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto. In view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws.

Relaxation of certain provisions of specified Act.

Specified Act means:

- (i) Wealth-tax Act, 1957;
- (ii) Income-tax Act, 1961;
- (iii) Prohibition of Benami Property Transactions Act, 1988;
- (iv) Chapter VII of the Finance (No. 2) Act, 2004;
- (v) Chapter VII of the Finance Act, 2013 ;(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;
- (vii) Chapter VIII of the Finance Act, 2016; or
- (viii) The Direct Tax Vivad se Vishwas Act, 2020;
- (ix) Amendment of Sections 10 and 80 G of Income Tax Act 1961.

**C. Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020.<sup>12</sup>**

Union Ministry for Home Affairs (MHA) issued an order for adaptation and modification of State Laws specific to the erstwhile State of Jammu and Kashmir, to further facilitate the application of Central Laws to the newly formed Union Territory of Jammu and Kashmir.

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<sup>11</sup> <http://egazette.nic.in/WriteReadData/2020/218979.pdf>

<sup>12</sup> <http://egazette.nic.in/WriteReadData/2020/218978.pdf>



The General Clauses Act, 1897 applies for the interpretation of this Order as it applies for the interpretation of laws in force in the territory of India.

With immediate effect, the Acts mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect, subject to the adaptations and modifications directed by the said Schedule, or if it is so directed, shall stand repealed.

**D. Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 2020.<sup>13</sup>**

President of India promulgated the Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 2020 and amended S. 3 with addition of sub-section 1A after sub-section 1.

“Notwithstanding anything contained in sub-section (1), the salary payable to Members of Parliament under sub-section (1) shall be reduced by thirty per cent to meet the exigencies arising out of Corona Virus (COVID-19) PANDEMIC.”

**E. Salaries and Allowances of Ministers (Amendment) Ordinance, 2020.<sup>14</sup>**

In the Salaries and Allowances of Ministers Act, 1952, section 5 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

“(2)Notwithstanding anything contained in sub-section (1), the sumptuary allowance payable to each Minister under that sub-section shall be reduced by thirty per cent. for a period of one year commencing from the 1st April, 2020, to meet the exigencies arising out of Corona Virus (COVID-19) pandemic.”

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<sup>13</sup> <http://egazette.nic.in/WriteReadData/2020/219020.pdf>

<sup>14</sup> <https://elibrary.syamlaw.ac.in:2062/blog/post/2020/04/10/president-promulgates-salaries-and-allowances-of-ministers-amendment-ordinance-2020-ministers-sumptuary-allowance-to-be-reduced-by-30/>



## D. CASES ACROSS THE POND

COMPILED BY: NIHAR CHITRE, IV BALLB

DATE	NAME OF THE CASE AND COURT	JUDGMENT
23-12-2019	Alvin Teage Jalloh v. Olubankie King-Akerele, A.D. 2019 <sup>15</sup>	<p>A Full Bench of Supreme Court of Liberia allowed a petition of a petitioner who wasn't granted travel permit by Liberia government as per Aliens and Nationality law which was termed by them, to be violative of certain sections of the constitution of Liberia.</p> <p>The Court adjudged Section 22.2 of the Aliens and Nationality Law to be in direct conflict with requirements of Article 20(a) of the Liberian Constitution which calls for the protection of life, liberty, the security of person, property</p>

<sup>15</sup> <https://elibrary.sylaw.ac.in:2062/blog/post/2020/01/27/liberia-sc-governments-policy-of-taking-away-citizenship-on-the-basis-of-aliens-and-nationality-law-declared-to-be-null-and-void/> accessed on 7<sup>th</sup> April 2020 at 11:10 hrs.



		<p>and his privilege.</p> <p>Also, the government's policy of taking away citizenship solely on account of a person's performance of acts or fulfilment of conditions mentioned in Article 22.1 of any proceedings, nullifying or cancelling citizenship in violation of due process clause under Article 20(a) of 1986 constitution was declared null and void.</p> <p>In view thereof, Court found the petitioner to have been directly affected by government policy and his Liberian citizenship has suffered due to Section 22.1 and Section 22.2 of Aliens and Nationality Law and thus allowed the petition.</p>
22-01-2020	T.M. Premadasa v. Ceylon Electricity Board <sup>16</sup>	The Division Bench of Court of Appeal of the Democratic Socialist Republic of Sri Lanka held that the writ of Mandamus would be only

<sup>16</sup><https://elibrary.sylmlaw.ac.in:2062/blog/post/2020/02/12/sl-coa-writ-of-mandamus-to-be-issued-only-in-case-of-public-or-statutory-duty-court-rejects-appeal/> accessed on 7<sup>th</sup> April 2020 at 11:16 hrs.



		<p>issued in case of public and statutory duty.</p> <p>The Court while dismissing the appeal disagreed to the petitioners view that they had invoked a constitutional remedy and that they should not be disentitled simply because they had sought to accept the later appointment since the jurisdiction of this Court was constitutional and writ of mandamus being a discretionary remedy there are several grounds that it could be refused. Also, it was not disputed that petitioners were given this appointment consequent to them sitting for an exam subsequent to the filing of this application. This was a tacit admission on the part of these petitioners that they were not entitled to promotion based on the competitive examination held in 2011 and writ of mandamus could be issued only if there was a public</p>
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		or statutory duty.
26-03-2020	Human Rights Network v. Attorney General <sup>17</sup>	<p>The Constitutional Court of Uganda overturned the Public Order Management Act which gave supernatural powers to police to stop public gatherings and protests.</p> <p>Justice Cheborion Barishaki noted, "It is only in undemocratic and authoritarian regimes that peaceful protests and public gatherings of a political nature are not tolerated.</p>
31-03-2020	Gonese & Anor v Parliament of Zimbabwe & 4 Others <sup>18</sup>	<p>The Constitutional Court of Zimbabwe declared the Constitutional Amendment No. 1 which gave the President the power to appoint the Chief Justice, the deputy Chief Justice and the Judge President as unconstitutional.</p>

<sup>17</sup><https://chapterfouruganda.org/sites/default/files/downloads/POMA-Judgment.pdf> accessed on 8th April 2020 at 12:14 hrs.

To read more, <https://www.theguardian.com/global-development/2020/mar/28/ugandas-crackdown-on-public-gatherings-ruled-unconstitutional>

<sup>18</sup> <https://zimlil.org/zw/judgment/constitutional-court-zimbabwe/2020/4> accessed on 7<sup>th</sup> April 2020 at 12:15 hrs.

To read more, <https://www.herald.co.zw/concourt-rules-against-amendment-no-1/> accessed on 7<sup>th</sup> April at 12:15 hrs.



## E. CORONA WAVE-A NEW PATHWAY FOR PLANNING LIFE AND LAW \*<sup>+</sup>

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At the very outset let me pay homage to Dr. B.R. Ambedkar, one of the architects of our Anti Fragile Constitution on the momentous occasion of his birth anniversary. Today the mood around the world is somber with more than millions of people being in the Jaws of a Microcosmic virus CORONA, turning what was an epidemic in China into a pandemic around the world. I salute Dr. Ambedkar in these testing times for his foresight. As true visionary, he showed courage to trade off freedom of religion, which was a non-negotiable right those days with public health.

Let me examine what is the record of Public health in 2020. Available statistics show that over 40% of WHO Member States report to have less than 10 medical doctors per 10,000 population. Over 26% report to have less than 3 of the already low 10 benchmark. Health workers are distributed unevenly across the globe. Countries with the lowest relative need have the highest numbers of health workers, while those with the greatest burden of disease must make do with a much smaller health workforce. The African Region suffers more than 22% of the global burden of disease but has access to only 3% of health workers and less than 1% of the world's financial resources.<sup>19</sup> Qatar, with its 77.4 physicians per 10,000 people, leads the way, followed by Monaco (71.7), Cuba (67.2), Greece, San Marino (54, 51), Spain (49.5), and Austria (48.3) approaching the top of the list. Physicians per 1000-

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\* Dr. Sanjay Jain Associate professor and Additional charge Principal, ILS Law College Pune

<sup>+</sup>The views expressed here are authors personal and are not endorsed by the Bulletin in any way.

<sup>19</sup> <https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors>



### **Physicians per 1000**

France 3.2 (2016) , China 1.8 (2015) ,India 0.8, (2017), Pakistan 0.9 (2015) Bangladesh 0.5 (2017), Japan 2.4 (2016), Italy 4.1 (2017) Germany 4.2 (2016), Nepal 0.7 (2017) Srilanka 1.0 (2017) Russian Federation 4.0 (2016) , USA 2.6 (2016) , and UK 2.8 (2017)<sup>20</sup>

### **Hospital Beds per 1000-**

Bangladesh 0.8 (2015) China 4.2 (2012), France 6.5(2013), Germany 8.3 (2013) ,India 1.1 (2020) Italy 3.4(2012) , Japan 13.4(2012), Nepal 0.3(2012) ,Pakistan 0.6 (2014) , Russian Federation 8.2 (2013) Srilanka 3.6(2012), UK 2.8 (2013), US 2.9 (2013)

A look on the global scenario on health facilities does not provide a very impressive picture with countries like US, UK, falling behind and countries like India doing worse compared to tiny states like Sri Lanka and Nepal. Presenting a Pan India perspective, recently, through a written reply to a question in Rajya Sabha, Minister of State (Independent Charge) Smt. Anupriya Patel informed about the Registration of Allopathic Doctors with various medical councils across the country. The minister informed that as per information provided by Medical Council of India, there are a total 10, 41,395 allopathic doctors registered with the State Medical Councils/Medical Council of India as on 30th September, 2017. As per records, Maximum number of registered medical practitioners have their registrations in Maharashtra with 153513

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<sup>20</sup> <https://data.worldbank.org/indicator/SH.MED.PHYS.ZS>



registered doctors. This is followed by Tamil Nadu and Karnataka who also account for more than 1 lakh registered doctors each.<sup>21</sup>

Is it not paradoxical that despite one of the top public health services Italy recording more than 20000 deaths and despite most number of doctors and health care workers per capita and relatively less spread of the virus compared to the WEST , the death record of Maharashtra during this pandemic is highest in the World. The question is important because it very perennially exposes the weaknesses of the statistics and challenges our so-called ability to predict. In our Ego to have mastered in the science of Predictability, we have become obsessed of being efficient. We don't want to produce anything beyond necessity and even do not find it appropriate to fall in for contingencies and emergencies. It is therefore no wonder that in USA, during the 2 to 3 weeks of Lock down, Millions of people go unemployed and are virtually exposed to the mercy of State aid. State of Maharashtra becomes financial vulnerable within 2 weeks of Lock down to the extent of not even been able to pay the salaries of its selective employees.

The above state of affairs is an eye opener for all of us and gives us a rude reminder of proper planning and to be anti-fragile. To focus on the topic of Public health, what we are doing around the world. President Donald Trump is busy in blowing his own trumpet in triumph by making nebulous and empty statements and firing and reinstating his highest health officials through TWEETS. He is virtually trying to embody constitution unto himself by disproportionately challenging the idea of principle of government of limited powers. Prime Minister Boris Johnson who had earlier assumed the role of scientist as if by advocating for idea of 'herd immunity', in

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<sup>21</sup> <https://medicaldialogues.in/10-4-lakh-registered-doctors-in-india-maximum-in-maharashtra-health-minister>



absence of any scientific evidence ended up in an ICU in the hospital and now having pushed the UK in the locked up mode though very late, is singing the song of thanks giving rightly so in praise of the health care worker for having saved his life and UK, a country virtually without a substantive leader. We have a common trend among western Countries blaming Doctors and health workers for mismanagement of PPEs and Donald Trump has gone even to the extent of accusing the Hospital staff (without any evidence) of stealing the same. It is a common scene in most of the hospitals in Europe to go for a make shift facemasks and other virus saving equipments. Instead of seating and planning to ensure optimum allocation of ventilators across the US through a federal policy, we are told by governor of New York through one of his televised briefing on a very famous news channel CNN that how all 50 States and the federal government of US led by Trump being busy in separate bidding to procure the same from China, the birthplace of the virus and how owing to self-competition, the cost of ventilators are getting increased. Is it not laughable to observe the same? On the other hand, to fight the pandemic of Corona the prime minister of Hungary assumed all the powers to govern the country through decree by suspending the Constitution.

In India, although Prime Minister Modi went for the early nationwide lock down, lack of planning was evident, as the same was not backed up with any contingency plan to deal with lakhs of Migrant workers. Although under Article 355 of the constitution, union is obligated to protect States, what we are observing is a very pluralist response in absence of a cohesive National plan, of course this observation is not by way of criticism but at the same time it goes to show that like WEST we also lack long term planning and ability to address contingencies. Are we not behind time to employ colonial legislation like The Epidemic Diseases Act 1897 and The National Disaster Management Act 2005 to combat the global pandemic of Corona? This pandemic is not merely a health issue and in intersection with economy, civil rights, unemployment, social etiquettes, language, identities etc., it exposes us to unprecedented challenges.



E.g. dispassionate use of the term 'Social distancing' may have very adverse ramifications for the progression of our diverse society. It is quite conceivable to see the revival of sociocultural hierarchies and even espousal of pernicious practices like untouchability. Already in the west, there are unashamed guidelines to practice Darwinism by trading off Persons with disability with so called Non-disabled 'in the interest of Nation'. To my mind, this is a worst form of neo-eugenics and the text book example of flagrant violation of principle of human dignity at the forefront of UN charter, a magna carta of human civilization. Let us be clear about the social distancing, it merely means the observance of physical distance, urging us thereby to restrain from crowding in public places and by no means it does advocate the idea of distancing from humanity. In fact, this is the time to eliminate the social distance to forego the so-called notion of human kind being self-made and to cultivate the ideals of human interdependence, communitarianism and human dignity. To fight a global pandemic, although you need a local response in order to be context sensitive, we need a global brinkmanship with certain world leaders assuming responsibility to evolve a global strategy. The strategy needs to address both combating and contentment of virus as well as ensuring smooth supply of health equipments and bare minimums necessary for survival of every human kind on the globe. Countries like US, china and UK must realise that nuclear weapons and missiles cannot defeat the world that easily, rather what would bring all of us on our knees is the unseen and unknown enemies like CORONA virus, whose minuscule size is indeed quite disproportionate to its unfathomable ability to bring death, pain and misery around the world.

One can blame WHO for being bureaucratic and being complacent and even to quote Trump, being "China centric". To my mind WHO is too bureaucratic and is virtually hijacked by Medico-psychiatric thinking. It needs to be interdisciplinary. Despite all this, with its global reach, presently we cannot have a better mechanism than to make optimum use of its office and postpone its dissection for the time being. The idea



propounded by Trump to defunct WHO if advocated would prove to be a worst medicine than the cure of disease.

Taking into account the magnitude of this pandemic, it would be futile to expect State alone to combat it, the entire Civil society has to come in action and evolve new badges of responsibilities like staying at home during Lock up, wearing Masks, washing hands, avoiding shake hands, maintaining personal hygiene etc. When I observe most of private medical Practitioners having locked up themselves behind the doors of their homes, I take pity on their selfish attitude and lack of social and Civic responsibility. Have we ever heard or would we ever like to hear our brave soldiers refusing to go at war with our enemies on the ground that the weaponry of the latter being too sophisticated? Even if such doctors may not have enough PPEs, I find it surprising if they blame state for the same. All of us are aware of this pandemic from last three to four months and therefore the onus was on such doctors to ensure the procurement of these instruments on their own expenses. What I have paint till now are my random thoughts with one common thread, right to life and personal liberty under our Constitution is no longer is an autonomous act and in order to ensure that every citizen be able to exercise the same not only each citizen has to take care of himself but he is also obligated to observe the new badges of responsibilities mentioned above so that his other fellow beings also enjoy this right equally like him or her. Government must also start planning to strengthen the economy by ensuring liquidity and to restart the life, which would never be normal in a pre-pandemic mode again, adoption of piece meal approach is an order of hour by dividing the world in general and Nation and states in particular in zones in terms of degree of severity of the infection. I hope that all of us would follow the path so elaborately articulated by Dr. Ambedkar by attaching due importance to public health. In my opinion to come out of pandemics, we have to be unselfish, un-egoistic and mindful of perpetuating ableist hierarchies. I salute the all unselfish doctors, health workers, Policemen and NGOs, who are doing unprecedented



and ceaseless work to ensure our comfort zone. Let us try and disruptively innovate ourselves to be part of this ongoing struggle of survival in a constructive way.



## F. SURVEILLANCE IN THE TIMES OF CORONA VIRUS OUTBREAK<sup>\*+</sup>

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The corona virus outbreak presents onion-peel-like problems in the world. In what translated to a plague-like crisis is no longer a battle only for the healthcare industry. Economists and industrialists have drawn comparisons to the 1929 Great Depression. Major epicenters of the outbreak have borne direct economic impact. Labor markets have received colossal blows due to quarantine and lockdown policies of various countries. Corporations are declaring the outbreak as a force majeure event leaving supply chains disrupted. In a bid to combat the virus outbreak, several countries have employed surveillance measures to avoid quarantine breaches. This article explores the vices of these surveillance mechanisms.

A lot of countries such as Taiwan, Israel and Italy are resorting to location tracking, facial recognition apps to track the people who have tested positive for the virus.<sup>22</sup> Moscow proudly claimed that they were able to bust more than 200 people who had breached the quarantine rules using such apps. These apps use effective sensors to trace the movements of infected people by using heat maps, geographical thermometer, and cloud computing. South Korea had also stated that it was rapidly tracing credit card purchases of its citizens and that it had installed several surveillance cameras to trace

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\* N Raghav Harini, IV BALLB.

<sup>+</sup>The views expressed here are author's personal and are not endorsed by the Bulletin in any way.

<sup>22</sup> As Coronavirus Surveillance Escalates, Personal Privacy Plummet. Available at <https://www.nytimes.com/2020/03/23/technology/coronavirus-surveillance-tracking-privacy.html>



the transmission chains. These are a few instances of how intelligence mechanisms are employed to combat the virus. A layman who cannot appreciate the intricacies of law can still recognise that such surveillance mechanisms are infracting upon the broad idea of privacy. However, such measures cannot be sacrificed in times like these. A lockdown exit plan is not plausible without surveillance. In recognising that right to privacy is not absolute, we understand that at various points of time, the citizens are conferred with various degrees and iterations of privacy. The state must be able to take all and any measures to combat the outbreak. Surveillance mechanisms in such times are crucial to curb spreading. However; such temporary measures need to be aligned with the fundamental constitutional mandates.

There are two unsettling issues in that regard. Firstly, history suggests that short-term measures that are implemented as a reaction to imminent threats turn into a vestige which might serve other ill-conceived purposes. The surveillance measures undertaken by the Congress of the United States to track terrorists as a response to the 9/11 attack outlived its initial objective. In the wake of the war of Independence in Israel, the state declared emergency with several restrictions on the freedoms of its citizens. It took more than half a century and a group of resilient people to get the decree overturned.<sup>23</sup> Moreover, in a research conducted by Compritech, a UK-based research firm, India was ranked 3rd among 47 non-European countries right after China and Russia citing “*systemic failure to maintain (privacy) safeguards*”.<sup>24</sup> Such instances validate the concern that surveillance mechanisms may survive the virus outbreak. Secondly, measures taken during such times tend to skip the democratic process; in what would otherwise be a long drawn cumbersome agenda is immediately implemented. The executive in a bid to combat the imminent threat may, by way of notifications or public

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<sup>23</sup> Does Israel really need to be in a state of emergency? Available at <https://www.al-monitor.com/pulse/fa/originals/2018/07/israel-state-of-emergency-1948-independence-war-strike.html>

<sup>24</sup> India's among the world's top three surveillance states. Available at <https://qz.com/india/1728927/indias-among-the-worlds-top-three-surveillance-states/>



announcements implement several measures which may not be within the constitutional contours. While immediate and effective measures are indispensable in ensuring effective containment measures, vesting unrestricted powers on bureaucracy lacks both accountability and transparency; a minimally accountable bureaucracy increases the costs of privacy and does little to achieve the stated purpose.

These issues can be redressed in two ways. Firstly, *ex-ante* judicial approval of the intelligence strategies may cure the vices of the surveillance mechanisms. Judicial scrutiny is favoured since the court of law guarantees impartiality, independence and procedural fairness. In recognizing privacy as a constitutional prerogative, the Supreme Court in the case of *Justice K.S. Puttaswamy (Retd) vs. Union of India*<sup>25</sup> held that an executive organ cannot make decisions on surveillance and data protection without legislative or judicial oversight. In December 2018, the Ministry of Home Affairs by way of a notification conferred unfettered powers on 10 central investigation agencies to monitor and decrypt communications of citizens.<sup>26</sup> This notification attracted heated debates in the legal fraternity for a simple reason; that the powers were vested in an executive organ without any judicial oversight.

Secondly, states need to build reliable and honest surveillance systems. The state needs to kindle trust in its citizens by assuring that the intelligence system would comply with the privacy principles and would not be used for any other purposes. For example, the European Commissioner for the internal market, Mr. Thierry Breton earlier this month guaranteed the European Union (EU) inhabitants that there would be no individual tracing of the infected people.<sup>27</sup> Instead, EU along with several telecommunication

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<sup>25</sup> Justice K.S. Puttaswamy (Retd) vs. Union of India, 2017 SCC OnLine SC 996.

<sup>26</sup> A Surveillance State?: A Look At India's Surveillance Notification. Available at <https://blogs.lse.ac.uk/humanrights/2019/03/11/a-surveillance-state-a-look-at-indias-surveillance-notification/>

<sup>27</sup> Tracking corona virus: big data and the challenge to privacy. Available at <https://www.ft.com/content/7cfad020-78c4-11ea-9840-1b8019d9a987>



companies is working on employing data aggregation sensors to trace the migration in and out of heavily infected areas. This also aids in establishing epidemiological patterns of a particular region. It has also resorted to pseudo-anonymisation of data sets of infected people. Privacy proponents of EU have suggested decentralised data tracing of infected people with an inbuilt expiration date for the data sets in a white paper titled *“Decentralized Privacy-Preserving Proximity Tracing”*.<sup>28</sup> On lines of these suggestions, EU is currently working on privacy-compliant data tracing of infected people.

Indian legal system is fraught with several regulatory lapses on data protection and privacy. While the suggestions proposed above are not strictly required under the law of the day, such measures become imperative to avoid nurturing a police state.

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<sup>28</sup> EU privacy experts push a decentralized approach to COVID-19 contacts tracing. Available at <https://techcrunch.com/2020/04/06/eu-privacy-experts-push-a-decentralized-approach-to-covid-19-contacts-tracing/>



# G.COVID- 19 AND THE PLIGHT OF INDIA'S URBAN POOR\*+

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As the summer Sun continues to augment its presence across the nation, India faces one of its biggest humanitarian challenges of the recent times in the backdrop of a global public health disaster. Scores of inter-state migrant labourers – the pillars of India's informal economic sector are now braving a loss – loss situation. With luggage perched on their heads, infants reaching the zenith of their resilience in their parents' arms, and elderly struggling alongside, migrants are fleeing *en masse* to their native villages.<sup>29</sup> All this began with the Prime Minister's announcement of the 21 day lockdown in the country, starting from 25<sup>th</sup> of March, 2020, to combat the cancerous spread of the novel Corona Virus – COVID n19.

The Inter-State Migrant Workmen Act, 1979 defines an inter-state migrant workman/labour as *“any person who is recruited by or through a contractor in any state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer of such establishment.”*<sup>30</sup> About 92% of the entire labour population falls under unorganized sector that is numerically 120

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\*Samraggi Debroy, II BALLB and Rupal Kalbere, IV BA LLB.

+The views expressed here are author's personal and are not endorsed by the Bulletin in any way.

<sup>29</sup>N. Lal, *COVID – 19 and India's Nowhere People*, The Diplomat (01/04/2020), available at <https://thediplomat.com/2020/04/covid-19-and-indias-nowhere-people/>, last seen on 09/04/2020.

<sup>30</sup> Interstate Migrant Workmen Act, 1979.



million.<sup>31</sup> Internal migration forms an essential requirement to sustain the economic balance across any nation.

Amidst the ongoing COVID 19 scare, there is a plausible menace of reverse migration. Apart from public health management, the interstate migration management at the convergence of India's urban poor and the corona virus pandemic is also being tested. The migrant workmen plummet from a scarce - employment economy to a no - work economy. The blanket closing of the state borders as a preventive measure has caused panic in this section of the society. As businesses have shut down,<sup>32</sup> the poor migrants are mourning their loss of jobs, loss of shelter, and above all - loss of lives.<sup>33</sup> The primary worry is that of the risk of exposure by this class. While social distancing is being advocated, the cluster movement by the migrant class will increase the chances of their infection. Owing to the lack of awareness in the migrant community, many are afraid to declare their travel details to the authorities<sup>34</sup> resulting in serious slip in the public health management. Since reverse migration results in the influx of migrants in the rural hinterlands, lack of information to the health authorities will eventually put the more vulnerable rural India, with poor health system and infrastructure, at risk.

The Government's response to the ongoing crisis has been anything but tactless. The Finance Minister announced a Rs 1.70 Lakh Crore relief package under Pradhan Mantri

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<sup>31</sup> W. N. Salve, *Labour Rights and Labour Standards for Migrant Labour in India*, available at <http://www.oit.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf>, last seen on 09/04/2020.

<sup>32</sup> *Supra* 26.

<sup>33</sup> A. Mishra, *Migrant workers in India on move as COVID - 19 stalls world*, Deccan Herald (28/03/2020), available at <https://www.deccanherald.com/national/migrant-workers-in-india-on-move-as-covid-19-stalls-world-818723.html>, last seen on 09/04/2020.

<sup>34</sup> S. Jha, *Covid-19: Migrants kill resident in Bihar village for informing officials about their arrival*, India Today (31/04/2020), available at <https://www.indiatoday.in/india/story/covid-19-migrants-kill-resident-in-bihar-village-for-informing-officials-about-their-arrival-1661626-2020-03-31>, last seen on 09/04/2020.



Garib Kalyan Yojana for the poor to help them fight the battle.<sup>35</sup> However to critically analyse the relief package from the migrant problem perspective, it is clear that there is no specific provision for them. The scheme can be analysed by keeping in mind the three categories of labour - i) Formal workmen of organized sector ii) Construction workers iii) Unorganized sector and informal workmen of organized sector. The scheme has laid down provisions for the first two categories but there is an absence of well - defined provisions for the workers of unincorporated economy. The Ministry of Home Affairs had issued an advisory to all the states and union territories to make the necessary arrangements including food and shelter for the stranded migrant workers and workers of the unorganized sector. Arrangements are also being made to enable cash in hand assistance to the workmen.<sup>36</sup>

The vulnerability of the migrant class is due to the indifference they face by the Urban Labour Market which denies them basic entitlements. The capitalist market is the first to escape its responsibility towards them. Therefore, the onus of protecting the fundamental rights of the inter-state migrant workmen lies on the welfare state. Articles 14, 16, 19, 21, 23, 24, 39 and 39A are the essential provisions that safeguard the rights of interstate migrant workmen. Article 39, 39A, 41, 42, 43 and 43A can be termed "Magna Carta" of working class in India.<sup>37</sup> In *Rajan Kudumbathil v. Union of India*<sup>38</sup>, it was asserted that it is the

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<sup>35</sup> Ministry of Finance, Government of India, *Finance Minister announces Rs 1.70 Lakh Crore relief package* (26/03/2020), available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1608345>, last seen on 09/04/2020.

<sup>36</sup> S. Mahajan, *Migrant Workers' plight during Coronavirus Lockdown: Will not interfere in government decision for few days*, CJI SA Bobde, Bar and Bench (07/04/2020), available at <https://www.barandbench.com/news/litigation/migrant-workers-plight-during-coronavirus-lockdown-will-not-interfere-in-government-decision-for-few-days-cji-sa-bobde>, last seen on 09/04/2020.

<sup>37</sup> Q. Alam, *Role of Indian Judiciary in Protection of Rights of the Migrant Workers*, 24 IOSR Journal Of Humanities And Social Science (IOSR-JHSS) 49, 51 (2019), available at <http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2024%20Issue11/Series-3/H2411034951.pdf>, last seen on 09/04/2020.

<sup>38</sup>WP (C) No 15393 of 2009(S)



*“responsibility of a welfare State to ensure that no citizen of this country is denied his right to live in dignity, that he is entitled to get basic amenities in life, atleast to reasonable levels, whether he belongs to the same State or hails from outside the State.”*

The Interstate Migrant Workmen Act, 1979, (IMWA, 1979) is the only legislation available for the migrant workmen. In *Tradeline Enterprises Pvt. Ltd. v State of Tamil Nadu*<sup>39</sup>, Justice T.S. Sivagnanam observed that

*“the Migrant Workmen Act was enacted with a view to eliminate the abuses to which the workmen recruited from one state and taken for work to another state were subjected by contractors and others who are recruiting them.”*

However, the legislation has not been enforced seriously in any part of the country. A major constraint that the policy making bodies face is the lack of credible data on the incidence of seasonal migration. In 2008, the Unorganized Worker’s Social Security Act (UWSSA, 2008) was enacted. The objective of the Act was “to provide social security and the welfare of the unorganized workmen and all matters that liked and connected with it.”<sup>40</sup> But sadly, very few states formulated rules and the Act remains as just another legal document. With these ineffectual legislations, the Government has a greater responsibility to address the ongoing humanitarian crisis with sensitivity.

In the current scenario, a PIL was filed by former bureaucrat *Harsh Mander* and RTI activist *Anjali Bhardwaj*. The petition is concerned about the plight of the migrant workers in the unorganized sector.<sup>41</sup> Hon’ble Judges *L Nageswara Rao* and *Deepak Gupta* issued a notice

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<sup>39</sup> W.P. Nos 14005 & 14035 of 2008

<sup>40</sup> Unorganized Workers Social Security Act, 2008.

<sup>41</sup> S. Mahajan, *Payment of wages to migrant workers during Coronavirus lockdown: Supreme Court issues notice in PIL by Harsh Mander and Anjali Bhardwaj*, Bar and Bench (03/04/2020), available at <https://www.barandbench.com/news/litigation/payment-of-wages-to-migrant-workers-supreme-court-issues-notice-to-centre-in-pil-by-harsh-mander-and-anjali-bharadwaj>, last seen on 09/04/2020.



*seeking a direction to the Central and State governments to ensure the same. Following this, the State has issued a status report on the shelter homes and food arrangements for the needy. Hon'ble CJI Bobde opined that at this stage, the Judiciary does not want to interfere with the decision making of the Centre to avoid confusion.<sup>42</sup>*

Migration based occupation, in the times of the pandemic has been dealt with a severe death blow. This has only unleashed the hidden blemishes of the social security legislations and schemes for the migrant workmen. It is social security that leads to social legitimacy. Elections in India have only been about power and identity politics. Social reforms found their place only on party manifestos. In a country where problems are social in nature and not political, there is an urgent need to reform the legislative framework, to narrow the economic inconsistencies and widen opportunities for all. It is incumbent upon us to transform migration into a dignified and rewarding opportunity.

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<sup>42</sup>*Supra* note 34.



# H. LEGAL INCONGRUITIES DURING A PANDEMIC\*<sup>†</sup>

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Extraordinary times, the proverb goes, call for extraordinary measures- what it does not add is that these extraordinary measures can get too catastrophic. This might not be the first time collectively we are enduring a crisis such as this, yet this one remains incomparable. In order to deal with such a calamity nationally, one of our primary tools has been the pre-constitutional law called the Epidemic Diseases Act, 1897, once used in a tyrannical manner rather than purposefully.

The legal inadequacy to deal with epidemics was known for a long time, however it was the year 1896 when erstwhile Bombay suffered the most terrible outbreak of a plague costing the lives of thousands, due to which the British were forced to hurriedly enact a law to curb the spread. This Act consisting only 4 sections happens to be one of the most draconian laws devised by the British. Public health being a State subject, Section 2 empowers the State government to take special measures and prescribe regulations to deal with the epidemic as the situation calls. Prima facie, on a cursory perusal of this section it may seem to be very innocuous, however because of its wide-ranging verbatim it can be maneuvered in a rather oppressive way. The Act says that “the state may empower any person to take such measures”, the word ‘any’ cannot be accepted in today’s concept without containing any further executive instructions. The Act can be said to be an enabling act giving the Government the power to govern by

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\* Avisha Pawar, IV BALLB

<sup>†</sup>The views expressed here are author’s personal and are not endorsed by the Bulletin in any way.



decree under Section 2. This is also one of the reasons why the Act has been called more regulatory and policing in nature without actually having any thematic focus on public health systems<sup>43</sup>. Despite bestowing such overarching powers on the State and Central Government, the act does not obligate them to set up public health infrastructure or undertake scientific measures for a coordinated and concerted response to a crisis such as this. Regardless of its shortcomings, this law has been used number of times like in 2018 in Gujarat to prevent the spread of cholera, in 2009 in Pune during the H1N1 influenza and in 1994 in Surat. When this law was evoked during the *Nipah* Virus in Kerala, it was observed that one of the main fronts where the law lacks is its lack of focus on the rights of citizens and overemphasis on the duties of the government in trying to control the epidemic<sup>44</sup>.

Given this, the Central Government has invoked the Disaster Management Act 2005, even though the definition of 'disaster' does not include outbreak of epidemics or pandemic like situation, it is so sketchily worded that it can subsume a like situation. This contemporary law however happens to be very cogent and resolutely framed to deal with a calamitous condition. It not only provides an exhaustive administrative setup for disaster preparedness but also allows the Union to coordinate with the States as mandated under it. Additionally, the Act explicitly lays down the powers of the authority to mobilise resources, vehicles, etc. for rescue operations; payment of compensation; directions to the media while communicating warnings; and also structures the agencies that have to be instituted in case of an emergency. Moreover, the National Disaster Management Guidelines 2008<sup>45</sup> has in a very lucid

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<sup>43</sup> Shantanu Sharma, How India is fighting Corona Virus with a colonial-era law on epidemics, ET, March 22, 2020.

<sup>44</sup> Asma Ayesha Rahim & Thomas V Chacko, Nipah Outbreak in North Kerala-What Worked? Insights For Future Response and Recovery based on examination of various existing frameworks, *Indian J Public Health* 2019;63:261-4

<sup>45</sup> National Disaster Management Guidelines – Management of Biological Disasters, 2008. A publication of National Disaster Management Authority, Government of India.



manner laid down timelines for implementation of the activities in the phases such as short, medium and long term action plans. To effectually use this Act in contemporary times, the government must undertake measures such as establishing an Early Warning System (EWS), adequate laboratory support, and stockpiling of necessary vaccines to ameliorate the unnerving situation.

While the Government's approach to use both these Acts in tandem may be ingenious and innovative, there's just so much so that these acts can do when they've not been tailored to handle a crisis as severe as the current one. To reason this out, States have come out with their own Acts such as the Gujarat Public Health Bill 2009, Pondicherry Public Health Act 1973, Kerala Public Health Bill 2009, etc. The lack of uniformity of these Acts followed in different States has been highlighted in this instance: During the smallpox outbreak, State governments in some provinces wiped out smallpox in part by using their health and police departments to stop trains and buses from transporting disease carriers; but lackadaisical officials in some other states complicated the effort by failing to contain the epidemic disease spreaders<sup>46</sup>. This is why we should have an Act that is commensurate, rights-based, people-centric and public health infrastructural focused. The National Health Bill 2009 was one such attempt in this direction as it not only adopted a rights-based approach but also made provisions for public health boards at national and state levels<sup>47</sup>. There is also a need to look into the interplay between these acts and civil liberties, which happen to be the most vulnerable during such times. For this purpose, we can emulate the recent Gujarat and Karnataka Public Health Acts which seem promising, as they respect individual rights of bodily integrity, health information privacy, non-discrimination and other health interests. Similar ethical issues must be accredited with a clear description of individual civil rights.

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ISBN 978-81-906483-6-3, July 2008, New Delhi.

<sup>46</sup> Jeffrey Staples, *Preparing For A Pandemic*, HARV. BUS. REV., May-2006, at 30.

<sup>47</sup> nhrcinida.org, *Approach Paper On Public Health Act*, July 2012, at 22.



It is the inherent prerogative of a democratically elected government to protect the public health, safety and welfare of its people while striking a balance with their constitutionally protected rights of autonomy, liberty, equality. While this outbreak has engulfed the rich and poor both, ironically it amplifies the present inequalities between the haves and have-nots. It is in this situation, where the Supreme Court being the sentinel of the *qui vive* is clothed with extraordinary powers, takes up the role of a Welfare State. It is the underlying duty of the State to ensure that the poor especially the migrants in the current situation are treated humanely and to safeguard their social and economic disruptions expected to arise during such pandemics. Therefore, the revision of the Epidemic Diseases Act in the form of a holistic National Health Bill is instrumental, and for this we should start building consensus from the grassroot level. The 73<sup>rd</sup> Amendment of the three-tier structure, our Panchayat Raj Institutions, is the most peripheral body which must be able to take decisions on health matters for the community. Considering our heterogeneity, it has also been suggested that a Central agency be created, wherein the Centre is the observer and the States can develop their own protocol<sup>48</sup>. Although we have several State level legislations, they are very fragmented and vary in quality and content. There is an urgent need to assemble all these measures in one broadscale legislature, being less coercive, in nature and more supervisory. Hence, so as to effectively frame public health concerns in the context of evolving political cultures and priorities we must create a uniform framework of standard operating procedures to accurately tackle an outbreak as such in the future.

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<sup>48</sup>Kakkar, Manish & Hazarika, Sukanya & Zodpey, Sanjay & Reddy, K. (2010). Influenza pandemic preparedness and response: A review of legal frameworks in India. *Indian journal of public health*. 54. 11-7. 10.4103/0019-557X.70539.



## I. FATAL FAKE NEWS\*\*

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Unfortunately, COVID-19 is not the only crisis the world is facing currently, the virus has come with an add-on of “Fake News” and seemingly the community transmission of fake news is as wide spread as the virus itself. Many cases have popped up during this pandemic period ranging from Brazilian President stating that hydroxychloroquine is totally effective in treating corona virus<sup>49</sup> to New York Radio host claiming toothpaste kills the whole SARS-corona family at point-blank range<sup>50</sup>.

Here are a few reasons why people are spreading fake news regarding corona virus and how to put a break on it.

### **Reader’s Psychology:**

The cycle of fake news begins from the curator/author of the fake news, then it is passed on by people who spread the misinformation, and then forwarded to another set of people, this is how the misinformation spreads like a wildfire especially during vulnerable situation, like a pandemic.

It is essential to differentiate between the author of fake news and the people who merely forward it. The author is agenda driven; it could either be for monetary benefits

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\*Apeksha Singh & Ekta, III BA LLB

†The views expressed here are author’s personal and are not endorsed by the Bulletin in any way.

<sup>49</sup>Coronavirus: World leaders' posts deleted over fake news, BBC News (April. 13, 2020, 23:19 PM), <https://www.bbc.com/news/technology-52106321>

<sup>50</sup>Alex Jones Is Told to Stop Selling Sham Anti-Coronavirus Toothpaste, The New York Times (April. 13, 2020, 23:22 PM), <https://www.nytimes.com/2020/03/13/nyregion/alex-jones-coronavirus-cure.html>



or for psychological benefits. Whereas, this not the case with the people who are intermediaries, they read the news and indulge in communicating it to family and friends. The question arises why do people spread fake news? To comprehend this, we have to understand the psychology behind it. Psychology defines a cognitive tendency called confirmation bias, so when we like or share news, the algorithms provides us with similar news articles on that subject. Thereon, every article we read confirms our inclination towards that topic, we slowly start forming a steady belief on that bias which we already agree to; automatically the next step is to forward it. When the news served to consumer is already of their liking, they don't take the effort of fact checking or doing any self-research and this could have an adverse effect on them. Few recent examples could corroborate this idea of psychology wherein people believe in all news related to the recent Covid-19 outbreak and consider it as their duty to forward it to others so that they could also be informed about the same. These kinds of news include fake treatments, remedies, and reasons of outbreak and claim of large number of people dying.

Alan Rudolph once said that, it's part of the general global hypnotism to accept lies as the new truth<sup>51</sup>. Fake news more often than not will have a shock value, it could be a provocative headline or disturbing visuals, this stimulates the readers to forward said news almost as a reaction. They believe spreading this sensational news is their social responsibility. When one consumes news posted by their favourite influencer or their family member, their natural instinct is to believe it. As it happened in the recent case wherein 10 people landed on a hospital bed after following a "home remedy" posted on Tiktok to keep away from contracting corona virus<sup>52</sup>. Not only individuals but a

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<sup>51</sup><https://www.idlehearts.com/2179100/its-part-of-the-general-global-hypnotism-to-accept-lies-as-the-new-truth-2>

<sup>52</sup>TikTok coronavirus 'remedy' lands 10 in hospital, The New Indian Express (April. 13, 2020, 23:30 PM), <https://www.newindianexpress.com/states/andhra-pradesh/2020/apr/08/tiktok-coronavirus-remedy-lands-10-in-hospital-2127304.html>



prominent media house has also fallen prey for one such misinformation and broadcasted it on national television<sup>53</sup>. Also, the Tablighi jamaat incident and the rumour related to it has increased communal tension where they have associated one particular religion to the spread of virus in our Country<sup>54</sup>.

### **Stop the flow offake news cycle:**

In today's time when there is an overflow of news from all media avenues and there is proliferation of misinformation, it could be difficult to identify and stop the spread of misinformation, but it could be done by the consumers and by the government.

While it is understood that every time you receive any information it is not possible to dive in and research on every topic, but the reader can inherit a few qualities to identify fake news during such miserable times:

- 1) The first move should be to see the source of information, a dead giveaway will be if you have never heard of the news outlet name or the institution name.
- 2) While reading the article notice the format, sometimes when an original article is tweaked the font or the caps changes and the article is not worded properly.
- 3) If the article is not easily available through a simple google search, then it could be a fake article.

Even if the article seems true and has passed the above test, it is still urged to read it carefully and determine if the article is provocative in any sense or if it appears

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<sup>53</sup>Tablighi Jamaat fake news saga continues: Arunachal Pradesh government calls out Zee News for false report (April. 13, 2020, 23:35 PM), <https://www.newslandry.com/2020/04/10/tablighi-jamaat-fake-news-saga-continues-arunachal-pradesh-government-calls-out-zee-news-for-false-report>

<sup>54</sup>Communal Corona? Is It Justified To Blame Tablighi Jamaat For Nizamuddin Outbreak?, Outlook India (April. 13, 2020, 23:39 PM), <https://www.outlookindia.com/website/story/india-news-corona-outbreak-afflicted-by-communal-virus-blaming-tablighi-jamaat-could-be-misdirected/349784>



outrightly biased or it could also happen that the information is partly correct. In any case, one must rethink and analyse before forwarding any news information.

### **Provisions for containing fake news in India**

There is no specific provision in India to tackle the spread of fake news, however we could find some provisions in some acts which could deter the spread of fake news to certain extent such as:

- Section 505(2) of Indian Penal Code which deals with publishing or circulating any statement or rumour or report with intentions which are mentioned in further subclauses.
- Section 54 of Disaster Management Act, 2005 provides punishment for false warning.
- Section 2 of The Epidemic Disease Act allows the central government to make regulations during the epidemic if the laws at that time are insufficient. Section 3 of the same act provides for penalty if any person disobeys any regulations made under this act.
- The Fake News (Prohibition) Bill was introduced in the parliament in 2019 but it was never passed.

However, these provisions exercise a lesser control and the need for all-encompassing provisions for fake news in the IT act gains importance because in today's infotech world the medium for spreading of such news is the IT tools. The large number of people unwittingly forward what they have received. This has to be stopped somewhere and the enforcement agencies need to take strict actions against the generators of the fake news as well as the transmitters. Government can curb the spread of misinformation by regulating the media outlets, spreading awareness and promoting media literacy. The communication experts and technology experts can develop suitable



software to verify viral news. The government can also impose liability on social media platforms for spread of fake news.

There should be awareness amongst the masses, as to which information is correct and which to avoid. For this amendment in IT act should take a lead which can further be supported by other institutions such as media, influencers, etc. False and misleading information or rumours related to Covid-19 must be cleared out to save the already suffering public from further loss.



# J. VITAL CONSTITUTION QUESTIONS: IS THE LOCKDOWN CONSTITUTIONALLY VALID?

AUTHORED BY: SOHAM BHALERAU, IV BALLB & BHARGAV BHAMIDIPATI, III BALLB

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An actual emergency is which unites not just the people but political and social forces at large. The outbreak COVID 19 virus or coronavirus has brought the Centre, State and the people at large together in this fight against the pandemic. The Prime Minister, as a large-scale precautionary measure, announced a 21-day national lockdown throughout India.<sup>55</sup> While essential services and commodities were exempted, the lockdown received a strict enforcement across the country. We are compelled, in these times, to find the basis and constitutionality of this extraordinary legal order and to examine whether this legal order amounts to a de-facto imposition of the emergency provisions of our Constitution.

## i) **Interplay of the lockdown with Part III provisions.**

The imposition of this nation-wide lockdown primarily finds its sanction in the Disaster Management Act which establishes the National Disaster Management Authority (“NDMA”).<sup>56</sup> The NDMA, headed by the prime minister, is authorised to take measures for “the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary”.<sup>57</sup> The Act also provides for the national executive authority to exercise powers to issue guidelines that will be in effect during the lockdown.<sup>58</sup>

Due to the lack of clarity from government on what law is being invoked, some may argue that the imposition of lockdown by Centre is a mere guideline which is being enforced by the State

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<sup>55</sup> See, Govt announces complete nationwide lockdown for 21 days to fight COVID-19, available at <http://newsonair.com/Main-News-Details.aspx?id=383752>

<sup>56</sup> Section 3, The Disaster Management Act 2005

<sup>57</sup> Section 6(2)(i), The Disaster Management Act 2005

<sup>58</sup> Section 8, The Disaster Management Act 2005



using the section 2 of the Epidemic Diseases Act, 1897 and the provisions of the Indian Penal Code.<sup>59</sup> The State as well is under a duty to follow and implement the directions of the NDMA.<sup>60</sup> As the State can be kept in coherence with the directions of the Centre, the government must have decided to derive its powers from this legislation. State governments in pursuance of the lockdown called for by the NDMA, restricted assembly of people, imposed curfews and even imposed communication restrictions in some areas.<sup>61</sup> Implementation of curfews further saw rampant instances of stern police action, even dubbed as police brutality in some cases.

The imposition of lockdown and the measures that entailed for its enforcement are a clear restriction on the free movement of the citizens of India and their right to assemble peacefully guaranteed under Article 19(1)(b) and (d) of the Constitution of India. The impositions under the said laws are primarily to maintain public order in the interest of general public and can be well argued that the matter is of public emergency.

Fundamental rights ought to be viewed as principles, wherein the rights are portrayed in a normative manner where they require that something be realized to the greatest extent possible given the legal and factual possibilities.<sup>62</sup> Thus, the nature of these principles implies the principle of proportionality.<sup>63</sup> This proportionality may be assessed by a consideration of the rights infringed, underlying purpose of restriction imposed, the extent and urgency, and the prevailing conditions at the time.<sup>64</sup> The importance of avoiding public engagements, the large scale repercussions of the pandemic and lack of resources to tackle healthcare crisis that may

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<sup>59</sup> IPC provisions like **Section 188** (disobedience to the directions given by a public servant), **Section 269** (negligent act likely to spread infection of disease dangerous to life) and **Section 270** (malignant act likely to spread infection of disease dangerous to life) are being used.

<sup>60</sup> Section 38, The Disaster Management Act 2005

<sup>61</sup> See: States go all out to control coronavirus spread in India, available at, <https://timesofindia.indiatimes.com/india/curfew-lockdowns-states-go-all-out-to-control-coronavirus-spread-in-india/articleshow/74780162.cms>

<sup>62</sup> R. Alexy, A Theory of Constitutional Rights (Oxford, Oxford University Press, 2002), p. 47

<sup>63</sup> Ibid, p. 66

<sup>64</sup> State of Madras v. VG Row, AIR 1952 SC 196; See also: State of Bihar v. Kamla Kant Misra (1969) 3 SCC 337; BishambharDayal Chandra Mohan v. State of Uttar Pradesh (1982) 1 SCC 39.



arise were reasons that tell us that these impositions were well within the requirements of the principle of proportionality as well as necessity.

Further, the modern constitutional theory establishes that rights ought to be relative, where such relativity grants a constitutional license to limit those rights in as much as these limitations will be justified to protect public interest or the rights of others.<sup>65</sup> In addition, the government exempted essential services which further evidence the intention of the government to only facilitate social distancing as much as possible. Thus, the fact that lives of all citizens are at stake a restriction on their liberty for a limited prescribed duration with necessary precautions to ensure necessary services is a clear attempt to strike a balance between competing rights in the Constitution.

An observation regarding the legal order resulting from the lockdown can be that it resembles a lot to the provisions of emergency under Article 352 of the Constitution. But we intend to highlight necessary differences between the same. A clear distinction would be that the national emergency can only be invoked in situation of “an external aggression or an armed rebellion”, a requirement the present situation cannot be classified into. Further, the proclamation under Article 352 needs an approval of the Parliament.<sup>66</sup> On the other hand, the present lockdown is largely an executive course of action and can be taken by a State government exclusively under section 2 of the Epidemic Diseases Act.

Further, this lockdown does not entail a suspension of fundamental rights under Part III, which would be a case in an emergency. Only in an emergency can all the fundamental rights be suspended. This is because no person could be denied fundamental rights until the Constitution itself provides for such limitations.<sup>67</sup> The lockdown being an executive decision by invoking a provision of legislations like NDMA and the Epidemic Diseases Act, cannot result in suspension of all fundamental rights. Thus, decisions during the lockdown shall be subject of judicial review on tests of necessity and proportionality while a proclamation of emergency may only face

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<sup>65</sup> Modern Dental College & Research Centre v. State of Madhya Pradesh (2016) 7 SCC 353

<sup>66</sup> Article 352, Constitution of India, 1950

<sup>67</sup> Anuradha Bhasin and Ors. V. Union of India and Ors. MANU/SC/0022/2020



judicial review on whether Article 352 requirements are met. With this we can conclude that the lockdown amounts to a reasonable restriction over the citizens' freedom of movement and assembly and its effects slightly reflect a situation of emergency but clearly in pith and substance differ widely.

**ii) Interplay of Centre- State relations pertaining to a lockdown.**

Having looked upon the legality of the lockdown per se, it is imperative to analyse the Centre-State power distribution in times of a crisis like this. India being a "Union of States", Part XI of the Indian constitution specifies the distribution of Legislative, Administrative and Executive powers between the Union or Central government, and the States of India.<sup>68</sup> Federalism is one of the fundamental pillars of our polity and is part of the basic structure of the Constitution.<sup>69</sup> The exact division of powers between the Centre and the States is enumerated in the Union, State and Concurrent Lists of the Seventh Schedule of the Constitution and residual powers are vested in the Central Government

In order to address the issue at hand, a combination of two acts have been used namely the Disaster Management Act, 2005<sup>70</sup> (DMA) and the Epidemic Diseases Act, 1897<sup>71</sup> (EDA). While the EDA empowers the States to lay down regulations in dealing with an "Epidemic Disease" the same term finds no mention in the Act. Section 2(1) of the Act mentions that the State Government may prescribe temporary regulations to be observed by the public as it shall deem necessary to prevent the outbreak or spread of an epidemic disease. Before the National lockdown was announced by the Centre, States like Maharashtra, Kerala, Uttar Pradesh have used this Act to bring about restrictions amounting to a lockdown. The States get this power from Entry 1 and Entry 6 of the State List which talk about Public order and Public Health respectively<sup>72</sup>. In addition to this, Entry 29 of the Concurrent list gives the power both to the Union as well as the State to legislate on matters related to 'Prevention of the extension from one

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<sup>68</sup> Art. 245, 246 of the Constitution of India

<sup>69</sup> K. Bharti v. State of Kerala AIR 1973 SC 1461

<sup>70</sup> Disaster Management Act, 2005

<sup>71</sup> Epidemic Diseases Act, 1897

<sup>72</sup> Entry 1 and 6, State List, Schedule VII



State to another of infectious or contagious diseases’<sup>73</sup>. In such a manner even if the Nation-wide lockdown would not have been announced by the Centre, the States would have had ample constitutionally mandated power to bring about a similar lockdown in their respective States. In a scenario where the Centre does not extend the 21day lockdown which is supposed to end on the 14<sup>th</sup> of March, it is not unlikely that the States would extend it much beyond the 14<sup>th</sup>. States like Odisha, Punjab have already imposed the same till the 31<sup>st</sup> of March.

Coming to the power of the Centre, The Centre has invoked the Disaster Management Act, 2005 to impose the nationwide lockdown. The pith and substance of the Act lies in creating a National Disaster Management Authority with the Prime Minister as its ex-officio Chairperson<sup>74</sup> and giving out suitable instructions and formulating policies in order to control the disaster at hand.<sup>75</sup> A “disaster” according to the Act means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.<sup>76</sup> As far as the overriding power of the Centre over the State is concerned, Section 38 of the Act binds the States to take actions in accordance to the guidelines provided by the National Authority.<sup>77</sup> Section 72 acts as the final nail in the coffin with it stating that the Act has an overriding effect over any other law in force. The Constitutionality of the Centre using the Act overriding the power of the States to impose a lockdown is untainted as the Act was legislated under the head of 'Social Security' which is provided by Entry 23 of the Concurrent List. Furthermore Entry 81 of the Union List which deals with Inter-State migration and Entry 29 of the Concurrent list which deals with prevention of infectious or contagious diseases gives the Centre ample power to impose their instructions over the States.

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<sup>73</sup> Entry 29, Concurrent List, Schedule VII

<sup>74</sup> S. 3(2)(a) DMA

<sup>75</sup> S. 6 (2) (i) DMA

<sup>76</sup> S. 2 (d) DMA

<sup>77</sup> S. 38 DMA



In the event of a clash between the Centre and the State when it comes to the deciding matters provided in the Concurrent List, The Doctrine of Repugnancy as provided in Article 254<sup>78</sup> comes into the picture. The same was expounded in the case of *M. Karunanidhi v. Union of India* where the Apex Court held that

*“Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy”.*<sup>79</sup>

Though the Epidemic Diseases Act may not strictly be a State Act, irrespective of it, the Executive power of every State is bound to be exercised in compliance with laws of the Parliament courtesy Article 256 of the Constitution<sup>80</sup>.

Moreover, it is important to note that during a national crisis like this, there lies a duty on the Centre to protect the States against “internal disturbances” as mentioned in Article 355 of the Constitution. There is an evolving jurisprudence on the use of Article 355 as the case of *State of Rajasthan v. Union of India*<sup>81</sup> states that it can only be used to justify an Emergency proclaimed under Article 352 or if the President’s rule is recommended in States under Article 356. However, *H.S Jain v. Union of India*<sup>82</sup> coupled with the Sarkaria Commission on Centre-State Relations made it clear that it no longer is an exclusive emergency provision but an important cog in the Constitution’s federal scheme. Therefore it is vital for the Centre to tend to the States and have a final say on the lockdown not only as matter of good governance but as a part of a constitutionally mandated obligation.

It has to be understood that in dire times like these, minor legal modalities should not act as an impediment to the Government to act seamlessly and in a prompt manner. The Doctrine of Necessity proclaims loud and clear that “Necessity knows no law”. This is founded on the

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<sup>78</sup>Article 254 of the Constitution of India

<sup>79</sup> *M. Karunanidhi v. Union of India* 1979 AIR 898

<sup>80</sup>Article 256 Constitution of India

<sup>81</sup> *State of Rajasthan v. Union of India* (1977) 3 SCC 592

<sup>82</sup> *H.S Jain v. Union of India* (1997) 1 UPLBEC 594



principle “*necessitas non habet legem*” –necessity knows no law. In the times of Corona, we should not lose sight of the creative ability of the law to uphold its own majesty<sup>83</sup>.

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<sup>83</sup><https://thewire.in/law/can-an-1897-law-empower-the-modern-indian-state-to-do-whats-needed-to-fight-an-epidemic>



# K. A COMPARATIVE ANALYSIS OF COMBATING MEASURES

AUTHORED BY: RASHMI RAGHAVAN & ADITHI RAO IV BA LLB

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Since the coronavirus broke out in late December last year, some nations like Singapore, South Korea and Hong Kong have taken the concern seriously learning lessons from the previously deadly SARS virus of 2002-03. Other nations which refused to take the alerts seriously are now facing a looming failure of its healthcare systems, rising mortalities and a cry for help from other nations. The virus has challenged most of our existing systems of order and this piece is an attempt to identify how states have equipped themselves to protect such systems.

## Commitment to Democracy

The biggest threat such a virus produces is to democratic functioning. As Courts, public offices and educational institutions see shutdowns; more importance is placed on the frontrunners of governance, the Executive heads and the Parliament. While much debate has gone around whether the virus is more successfully handled by authoritarian regimes like China because of their ideological disregard for individual rights, it needs to be analyzed whether such authoritarian tendencies seem most 'natural' and 'reasonable' in such situations.<sup>84</sup> The gravest turn was taken by Hungary's Parliament which conferred its Prime Minister Viktor Orban the power to rule Hungary, bypassing its lawmakers. Orban's new powers give him unlimited authority to fight the coronavirus by suspending parliament and all future elections, overriding

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<sup>84</sup><https://qz.com/1819911/how-countries-are-successfully-containing-coronavirus/>



the Hungarian constitution and imprisoning people for the new crimes of “violating a quarantine” and “spreading false information.” Similarly, Cambodia is seeking to enforce martial law on its citizens during the ‘period of emergency’. While consolidation of powers to the Supreme heads seems agreeable to the larger public it puts into question whether democratic processes are by themselves incompatible of being followed committedly during crisis times.<sup>85</sup> As more powers are being assumed by the State, its citizens lose any voice to protest and voice their concerns, even through their elected lawmakers. Most nations have even sought to postpone their elections to avoid crowding and this inevitably means that citizens have to endure incompetent governments for a longer and rather indefinite period. Most states in the US have sought to postpone their primaries but the State of Wisconsin went into a polls last week because some positions at stake – mayoral, county, and judicial races – have terms that begin on April 20<sup>th</sup>. Most campaigners and the State Election Commission pushed citizens to ask for extended absentee ballot votings that extended beyond the physical day of voting, the Supreme Court thought otherwise.<sup>86</sup> As a result the District Court agreed to extend the deadline to accommodate growing voter concerns to vote through mail than physically, the High Court enforced a stay on this decision. The battle went up to the Supreme Court the night before the election, the conservative majority of the Bench held that the Court must not ‘*ordinarily*’ change the rules of election on the eve of the polls.<sup>87</sup> Here, the dissenting judges understood the real contrast- that between citizens’ constitutional rights to vote and that of their health. The dissent recognized that the District Court extended the deadline in response to a rapidly evolving pandemic and the unique situation itself justified a departure from ordinary poll rules. Justice Ginsberg here rightly recognized that such non-intervention would typically

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<sup>85</sup><https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470>

<sup>86</sup><https://qz.com/1833742/scotus-sides-with-republicans-in-wisconsin-election-case/>

<sup>87</sup>REPUBLICAN NATIONAL COMMITTEE, ET AL. v. DEMOCRATIC NATIONAL COMMITTEE, ET AL. ,589 U. S. \_\_\_\_ (2020)



lead to the disenfranchisement of millions of voters while at the same time putting their health at jeopardy in order to elect a government of their choice. Thus, while Wisconsin went to polls on 7<sup>th</sup> April, millions of people refrained from voting, for fear of their safety and others. A welcome commitment to citizens' polling rights was seen in South Korea, where polling stations had rapid temperature checks and poll workers separated people at risk by taking them to farther polling booths.<sup>88</sup> Patients testing positive who would have inevitably not voted, were given the choice of sending their ballots by email and polling booths were also set up in their quarantine wards. Such changes by South Korea show that citizens can effectively exercise their civil rights when an evolving mindset of inclusivity exists. Commitment to democracy needs more zeal and (financial) assistance now more than ever.

### Management of Prison Systems

While our world entered lockdown, the status of those already in lockdown in prisons became a concern for all governments. More than 10 million people are imprisoned worldwide.<sup>89</sup> And this excludes all those in other forms of police custody. Prison health is a large part of public health. Prisons are highly vulnerable to contracting disease either due to lack of nutrition, tattooing, substance abuse etc. and their close confinement.

The Indian courts have suo-moto taken cognizance of the fact that jails in India are overcrowded therefore making it difficult to maintain social distancing.<sup>90</sup> An isolation ward is being set up for prisoners who are showing some kind of symptoms. The Court was of the opinion that prisoners who have been sentenced for less than seven years can

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<sup>88</sup><https://www.nytimes.com/2020/04/10/world/asia/coronavirus-south-korea-election.html>

<sup>89</sup><http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2018/2/new-article-on-emerging-challenges-in-prison-health>

<sup>90</sup>IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS



be released on parole basis. It also directed the state/UTs to set up high power committees which will determine which class of prisoners could be released on parole or interim-bail. In countries like Iran and China there have been reports of prisoners contracting the disease.<sup>91</sup>

In Iran 70,000 prisoners have been freed but it includes only people serving punishment less than five years.<sup>92</sup> Political prisoners and people with higher punishments are still confined. Panic among prisoners led to riots which claimed lives of almost 36 prisoners as the security forces were trying to control the protests.<sup>93</sup>

In Italy, one of the hard hit countries has stopped visits to prison visits from the families who live near/in the red-zone areas. They have alternatively arranged online contacts or phone calls to contact them without leaving their houses. In countries where the lockdown is not as strict, less drastic steps such as screening the visitors and limiting the number of visitors has been taken.<sup>94</sup> The same step has been taken by prisons in New York, USA. In jails quarantine or isolation would mean solitary confinement. The authorities have to make sure that this is to be done by adhering to international standards laid down in the UN Nelson Mandela Rules in order to avoid violation of human rights of prisoners. This is the most adequate time to fast-track paroles and early release towards the goal of a more criminally just system.

### Justice during a Pandemic

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<sup>91</sup><https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>

<sup>92</sup><https://iranhumanrights.org/2020/03/political-prisoners-excluded-from-mass-release-as-more-inmates-exhibit-covid-19-symptoms/>

<sup>93</sup><https://www.amnesty.org/en/latest/news/2020/04/iran-prisoners-killed-by-security-forces-during-covid19-pandemic-protests/>

<sup>94</sup>Supra note 86.



Courts are designed to be public institutions. The notion that justice can be done behind closed doors is antithetical to the norms of a free and fair trial. But most world courts have largely closed its doors now as a precautionary measure to avoid overcrowding at its most contested '*public space*' to prevent the proliferation of the virus. While most courts in the US, have suspended its criminal and jury trials due to the sizable number of people involved this has meant longer incarceration periods for undertrials. <sup>95</sup>This violates their constitutional right to a speedy trial. Most Public defenders are also vary of incorporating technology now to conduct trials. They fear that having remote witnesses participate through video-conferencing would violate a Defendant's constitutional right to be confronted '*face-to-face*' with the witness testifying against him. They inevitably fear that rule of law will take a backseat in the name of expediency. The virus has also triggered the worst economic crisis known to mankind which inevitably means that cases of bankruptcy will soar. Such cases will need to be handled immediately-electronically- as contesting parties and claims are heavy and long lasting. <sup>96</sup>These claims arise majorly due to the crisis and their deferment to a later date only paralyzes an already over-burdened judiciary.

While most Courts took a more pragmatic approach, the Courts in UK are breaking new ground by incorporating technology while hearing cases. The Courts are using commercial applications like Skype to hear civil and family matters and links are provided to all litigants and their solicitors. Contested custody matters are especially seeing new grounds as parties have adversarial interests and putting them together in person only makes environments more hostile. Although using live technology is tricky, it has helped parties to communicate their suggestions to their attorneys in real

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<sup>95</sup><https://theconversation.com/coronavirus-will-courts-continue-to-operate-preserving-the-rule-of-law-134084>

<sup>96</sup><https://abcnews.go.com/US/coronavirus-crippling-courts-raising-concerns-civil-liberties-advocates/story?id=69757862>



time via text while simultaneously raising objections and producing evidence electronically.<sup>97</sup> This has made justice 'modern' in the sense that it is quick, cost-effective and accessible to all. Respecting the rule of law, UK, in its Coronavirus Act 2020 has also included measures to allow live broadcasts of such hearings to the public. Such initiatives not only show that justice can be done, but also can be seen to be done. Denmark only recently digitized its entire court system so that all applications, objections, extensions of deadlines and written arguments have to be made only through an online portal accessible to the parties at dispute. This service makes delays minute, while ensuring that all records are available to litigants, their attorneys and judges simultaneously.<sup>98</sup>

Our Essential Commodities Act and Essential Services Maintenance Act do not characterize 'justice' as an essential service although there is debate on why it ought to be one.<sup>99</sup> The Indian Judiciary, being one of the largest public service institutions took the decision to shut its Courts and took the pre-emptive step of extending limitation periods for all cases until further notice. Cases are being heard on an 'urgency' basis through audio/video-conferencing means by smaller benches of High Courts and Supreme Courts. However, all Courts are functioning on apps of their own choosing, with some Courts using Skype, others using Zoom and the Apex Court using Vidyio. This raises concerns as Courts are not uniform in their approach. The Executive has shown no concern in acquiring licenses to technology that can digitize and make justice delivery expedient yet uniform throughout Courts in India. The e-services App for District Courts and websites of higher Courts show case statuses' but are limited to the

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<sup>97</sup><https://www.lawgazette.co.uk/practice/family-court-overcomes-teething-difficulties-in-contested-skype-hearing/5103722.article>

<sup>98</sup><https://www.lexology.com/library/detail.aspx?g=7dcc8159-e2e9-4716-9c46-7252733313c4>

<sup>99</sup><https://www.livelaw.in/columns/deate-judiciary-during-lockdown-judicial-service-is-an-essential-service-amid-covid-19-lockdown-154770>



dates of next hearings and do not show the pleadings of the case-file. The increased dependence on Court files seems like a wasted opportunity in digitization when physical copies are prioritized over online records. Thus, half hearted commitment towards incorporating technology does no good while operational delays continue. The Courts when choose to work during a pandemic, show that they are strong even during times of adversity. While some countries have easily incorporated technology as the future for justice, India seems far behind and needs an urgent update in its mindset and internet bandwidth for justice.

### Combating Fake News

Fear and misinformation in the time of a Pandemic is not making this fight easier for the governments across the world. The spread of a false report on social media has been analogized to the spread of a virus: “*Infected Internet users, who may have picked up bogus info from an inaccurate media report, another person on social media or word-of-mouth, proceed to ‘infect’ others with each false tweet or Facebook post.*”<sup>100</sup> When social media in today’s time is embodied deep into the society it is likely that a lot of people are to believe the information when there is fear, anxiety and uncertainty all around.

In India various states have invoked the provisions of Disaster Management Act, 2005<sup>101</sup> which deals by penalizing any person who spreads *false alarm or warning* as to a disaster or its severity or magnitude *which leads to panic*, and will be punishable with imprisonment of up to one year, upon conviction. The authorities also have recourse to Section 505(1)(b) of the IPC which punishes a person who circulates or publishes information which is likely to cause a false alarm in the society. The Central Government has also ordered telecom companies to make an audio clip explaining coronavirus as a caller tune for mobile phone users, as it fights misinformation. Under

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<sup>100</sup><https://jolt.law.harvard.edu/assets/articlePDFs/v31/31HarvJLTech65.pdf>

<sup>101</sup>Section 54



the New York Penal Law falsely reporting an incident in the third degree is a class 'A' misdemeanour and is punishable by up to one year's imprisonment and a \$1,000 fine. In these cases the *mens rea* requirement limits itself only to the intent requirement regarding the veracity of the claims and the second one being knowledge that the act is likely to cause harm. The EU is on its way of drafting new proposals in order to tackle the misinformation. The prime ministers of various countries are urging people to stop forwarding messages especially on WhatsApp which is scaring and confusing people to a large extent. Meanwhile there are spirited online activists and news channels who are taking it upon themselves to combat fake news by separating facts from *myths* and keep citizens regularly updated about essential developments by governments.

### Securing Women's Rights

Countries across the globe have strictly imposed lockdown orders to prevent the spread of the novel disease COVID-19. This has forced people to spend more time at home. As a result countries such USA, UK, Italy and other Asian countries have seen a surge in the number of Domestic Violence cases being reported. Common reasons for the surge include unemployment, pay cuts, lack of basic facilities, stressed household due to lack of uncertainty about the future, etc.

In Australia, the Prime Minister has announced nearly US \$100 million to tackle the domestic violence cases.<sup>102</sup> The Russian Secretary of state for equality between men and women announced to contribute 1 million euros (roughly \$1.1 million) towards assisting victims. It included paying for the hotels for the victims to reside, setting up assistance points at supermarkets and pharmacies across the country.<sup>103</sup> It also has an

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<sup>102</sup><https://www.straitstimes.com/asia/australianz/coronavirus-drives-surge-in-australia-domestic-violence-cases>

<sup>103</sup><https://www.npr.org/sections/coronavirus-live-updates/2020/03/31/824720162/france-announces-plan-to-aid-domestic-abuse-victims-during-coronavirus-crisis>



online website where the victims can report a case against them. Such websites during a pandemic definitely make sure that cases are reported easily without getting out of the house. In USA usually under the Prevention of Domestic Violence Act the victim is allowed to obtain a restraining order which is issued by the court and prevents any further contact, communication from the abuser. But in an emergency situation like this the police is given the power to place the victim to an emergency judge who can issue a restraining order and temporarily solve the problem. This can either be done by going to the police station if feasible or by simply making a 911 call.<sup>104</sup> A lot of NGOs also have started chat services for the victims. Shelter facilities are still operating and are practising social distancing. In India the National Commission for women has started an online Whatsapp facility in addition to complain links and emails.<sup>105</sup> Apart from this, the commission has not taken any steps. Starting a facility is not enough, other precautionary steps providing alternate living facilities for them, arrest in an emergency situation have not been addressed.

All the above instances indicate that the increase in domestic violence is not confined to a particular developed or under-developed country but is a universal problem. Hence governments are taking necessary measures so that women and children live their life harmoniously, in a dignified manner.

### Conclusion

While problems in the pandemic are rapidly evolving in newer avenues, some problems like Domestic Violence are general across the spectrum as was first reported when China went into lockdown. This gives nations the opportunity to incorporate best practices to combat these issues in their own territories. While the economic effects of

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<sup>104</sup><https://www.natlawreview.com/article/family-law-and-covid-19-protections-domestic-violence>

<sup>105</sup><https://economictimes.indiatimes.com/news/politics-and-nation/ncw-launches-whatsapp-number-to-report-domestic-violence-during-covid-19-lockdown/articleshow/75082848.cms?from=mdr>



the virus continue to unfold in new ways with each passing day, countries will have to embrace more citizen friendly policies like making retrenchment from unemployment unlawful, impose moratoriums on debts and rent control for tenants. Bigger solidarity is yet expected by allowing free flow of pharmaceuticals and disallowing closing off borders when essential medicines are to be transported. As the Queen remarked in her speech *“This time we join with all nations across the globe in a common endeavor, using the great advances of science and our instinctive compassion to heal.”*<sup>106</sup>

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<sup>106</sup><https://www.independent.co.uk/news/uk/home-news/queens-speech-coronavirus-full-transcript-text-read-a9448531.html>



## L. PUBLIC LAW ON OTHER BLOGS

COMPILED BY: ASHOK PANDEY, III BALLB

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The COVID-19 pandemic has had widespread implications in every walk of life. Here are some must read blogs discussing its interference with Public Law.

1. <https://indconlawphil.wordpress.com/2020/03/17/coronavirus-and-the-constitution/>

Please read the other 11 blogs on Coronavirus and the Constitution too, on the same blog

2. <https://blogs.loc.gov/law/2020/03/falqs-indias-government-response-to-covid-19-novel-coronavirus/>
3. <https://indconlawphil.wordpress.com/2020/03/22/caa-coronavirus-and-civil-rights-at-the-bar-of-the-high-courts/>
4. <https://www.hhrjournal.org/2020/03/human-rights-and-coronavirus-whats-at-stake-for-truth-trust-and-democracy/>
5. <https://blogs.scientificamerican.com/observations/uncertainty-in-a-time-of-coronavirus/>
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# M. MESMERIZING QUOTES BY DR AMBEDKAR

COMPILED BY: VARADKOLHE, V BALLB

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“If you ask me, my ideal would be the society based on liberty, equality and fraternity. An ideal society should be mobile and full of channels of conveying a change taking place in one part to other parts.”

“For a successful revolution it is not enough that there is discontent. What is required is a profound and thorough conviction of the justice, necessity and importance of political and social rights.”

“The basic idea underlying religion is to create an atmosphere for the spiritual development of the individual.”

“The outcaste is a bye-product of the caste system. There will be outcastes as long as there are castes. Nothing can emancipate the outcaste except the destruction of the caste system.”



“I refuse to join with them in performing the miracle – I will not say trick – of liberating the oppressed with the gold of the tyrant, and raising the poor with the cash of the rich.”

“Every man must have a philosophy of life, for everyone must have a standard by which to measure his conduct. And philosophy is nothing but a standard by which to measure.”



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Feel free to reach out to our Student Editors at:

Nihar Chitre                      Rashmi Raghavan  
niharchitre@gmail.com      rashmiraghavan12102@gmail.com