

Forced Lockdown And Measures Taken By The Government Of India And The Various State Governments Under Existing Legal Framework. Does It Violates The Rights Under Other Laws?

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ABSTRACT:

The Government of India has imposed an unprecedented 21-day national lockdown, as part of a series of steps to reduce the transmission of the Covid-19, on 25.03.2020. The virus had assumed the status of a pandemic, impacting almost every country across the globe including India. The measures taken by the government of India and various other state governments poses serious legal challenges.

INTRODUCTION

The lockdown imposed and various measures taken by the government of India and other state governments under different laws and regulations / guidelines framed by the governments to meet out the medical exigencies, impacting the whole life of each and every individual and entity of the country

Though the lockdown has been welcomed by the medical community as a necessary measure, the enforcement has left millions of people unprepared for this severe disruption, particularly farmers and workforce engaged in the informal sector. Apart from this, there are complex issues involved in confining over a billion people to their homes.

LOCKDOWN ENFORCEMENT

“**Lockdown**” is not a legal term. The term is being used by government officials and others to describe a situation where free movement of goods is restricted, with the exception of essential items declared by the Government of India under Section 2, 3, 4 of

the Epidemic Diseases Act, 2005. Certain examples of exercise of lockdown powers of the government can be found in The Delhi Epidemic Diseases COVID 19 Regulations, 2020; the Maharashtra Epidemic Diseases COVID-19 Regulations, 2020; the Punjab Epidemic Diseases COVID-19 Regulations, 2020; the Himachal Pradesh Epidemic Disease (COVID-19) Regulations, 2020, etc.

There is a difference between Lockdown and curfew. One of the foremost differences between the two is that in the lockdown, state enforcement authorities like the police cannot arrest persons for not following the lockdown without the permission of the competent court. They can, however, enforce a lockdown through the mechanism provided under 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) of the Indian Penal Code, 1860.

'Curfew' again is not a legal term. Generally, exercise of a power available to the District Magistrate, SDM, or any other executive magistrate under Section 144 of the Code of Criminal Procedure, 1973 is, in common parlance, referred to as a 'curfew'. The authorities in these circumstances, for preventing danger to human life, health or safety, disturbance of public tranquillity, or a riot or an affray, may issue such orders. If anyone defies such orders issued under Section 144 Cr.P.C, the enforcement agencies have a right to detain/arrest the violators.

Now we come to the terms **'quarantine'** and **'isolation'**, which have been defined under the **Indian Aircraft (Public Health) Rules, 1954**. Similar restrictions are found under the Indian Port Health Rules 1955, framed under the Indian Port Act, for passenger ships, cargo ships, and cruise ships.

"Quarantine" means the restriction of activities and/or separation of suspect persons from others who are not ill or of suspect baggage, cargo, containers, aircraft or conveyances, facilities, goods and postal parcels in such a manner as to prevent the possible spread of infection or contamination.

"Isolation" means separation of ill or contaminated persons or affected baggage, containers, aircraft or conveyance, facilities, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination. Though not defined, similar provisions are found in the Epidemic Diseases Act, 1897.

THE EPIDEMIC DISEASES ACT, 1897

This law was one of the most hurriedly drafted legislations to stonewall the bubonic plague that devastated life in Bombay in 1896, forcing people to migrate out of the city. The statute has only four provisions.

Sections 2 and 2A of the Act allows the government to take measures if it is satisfied that any state or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease. If the government thinks that the ordinary provisions of the law are insufficient for the purpose then it may take, or require or empower any person to take some measures and by public notice prescribe such temporary regulations to be observed by the public including travel by air, railways, or otherwise including detention of any ship or vessel, as the case may be.

Section 3 prescribes the penalty for disobeying any regulation or order made under the Act in accordance with Section 188 of the Indian Penal Code, which is an offence of disobeying directions of a public servant. This law has been invoked many times since it has been enacted.

DISASTER MANAGEMENT ACT, 2005

The Disaster Management Act, 2005 provides the administrative framework to take measures to deal with a disaster, meaning 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.

The purpose of this law was to cater to a situation such as an earthquake, flood or fire rather than a disease like COVID-19. However, on March 14, 2020 the Home Ministry declared the Coronavirus outbreak as a "notified disaster", thus, bringing into play the provisions of the Disaster Management Act, 2005.

This has allowed the National Executive Committee to give directions to the governments to take certain measures and has delegated powers to act under the Act of 2005 to the Union Health Secretary. It further allows usage of disaster funds created for this purpose.

The Act has more teeth to deal with a disaster situation and includes the power to imprison, fine etc. The Act of 2005 also has the means to control social media. The Act of 2005 has been

used in tandem with the Epidemic Diseases Act, 1897 with the latter providing the basis for containment measures such as restrictions on flights landing in India, prohibiting gatherings beyond a certain number of people, and various other measures adopted since the outbreak.

In the current health needs of the nation, the Act seems to be an archaic framework, owing to the changing priorities in public health emergency management. The first and the basic flaw that can be seen is that the Epidemic Act 1897 is silent on the definition of "dangerous epidemic disease".

However, looking at the outbreak of COVID-19 that has been declared as a pandemic disease by the World Health Organization, this Act comes in handy for the state functionaries to issue measures relating to isolation or 'quarantine measure'. There is a definite need for a legal framework regulating the availability and distribution of vaccine and drugs and implementation of response measures.

It is clear that no single law can effectually control the present outbreak. It is this reason that you will find that various provisions of Indian Penal Code, 1860, Code of Criminal Procedure, 1973, the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 are being invoked to control the current outbreak.

Following the Prime Minister's address to the nation on the "vital aspects of Coronavirus" on March 25, 2020 when a national lockdown was announced, different states have sought to enforce it by issuing Executive Orders under Section 144 of Code of Criminal Procedure, 1973, and some by invocation of the Epidemic Diseases Act, 1897 only.

These Executive Orders have been primarily issued to enforce the national lockdown in letter and spirit, and to restrict unnecessary movement of people.

This announcement of lockdown by the Prime Minister finds its basis in Section 2 of Epidemic Diseases Act, 1897.

Thus, the implications of not following a national lockdown could be:

- Invocation of powers under Section 188 of the Code of Criminal Procedure, 1973 whereby disobedience to the directions of a public servant is punishable with both imprisonment and fine.
- Section 269 of the Indian Penal Code,

1860 can be invoked to ensure that nobody spreads infection of a dangerous disease.

- Section 270 of the Indian Penal Code, 1860 can be invoked if people malignantly fail to act during an epidemic.
- Once these provisions are invoked, the enforcement authorities may arrest the person involved.
- If someone escapes “quarantine”, the authorities may invoke provisions of Section 271 IPC.
- Lastly, if there is imposition of Section 144 Cr.P.C conditions, then it is a curfew.

Steps Taken by the Government of India

The government has announced a ₹1,70,000-crore relief package (around 0.8% of GDP) — Pradhan Mantri Garib Kalyan Yojana (PMGKY), as a first step towards alleviating the distress caused to vulnerable sections of the population by the 21-day lockdown. Apart from this, there are several other relief measures taken by the government.

Reserve Bank of India (RBI) announced a slew of measures to supplement government efforts to address the economic upheaval caused by the coronavirus.

- The benchmark repo rate has been cut by 75 basis points to 4.4%, from 5.15% earlier, this will lower the cost of borrowing.
- The cash reserve ratio has been reduced by 100 basis points to 3%, in order to ensure ample liquidity in the market. The liquidity availed through this route ought have to be deployed in corporate bonds, commercial papers, and debentures.
- RBI has also provided a moratorium on instalments for three months on all term loans of retail and corporate borrowers.
- The three-month moratorium on instalments of all term loans was another welcome step as it provided relief to all retail

and corporate borrowers who are finding it difficult to service their loans.

The Centre has also advised state governments to transfer funds to construction workers from the cess fund collected by the labour welfare boards.

The Finance Ministry has also announced that the threshold for taking companies through the insolvency and bankruptcy proceedings has been increased from Rs 1 lakh to Rs 1 crore.

This prevent creditors from taking small and medium-sized companies, who may be facing temporary cash flow management issues due to the lockdown, and hence are unable to meet their obligations, through the Insolvency and Bankruptcy Code process.

The process followed in relation to declaring the “National Lockdown”

- (a) After the World Health Organization on 11.03.2020 declared Covid – 19 a global pandemic, the Ministry of Home Affairs (“MHA”) vide its letter dated 14.03.2020 to Chief Secretaries of all the States declared Covid-19 as a “disaster” falling under Section 2(d) of the Disaster Management Act 2005 (“2005 Act”).
- (b) The National Disaster Management Authority (**“hereinafter NDMA”**) is conferred with the power under Section 6(2) of the 2005 Act to lay down policies on the disaster management. As per Section 3(2) (a) of the 2005 Act, the Hon’ble Prime Minister, being the Chairman of NDMA, exercising powers under Section 6(2) (i) of the 2005 Act, issued Order No. 1-29/2020 (PP) (Pt 2) dated 24.03.2020, directing the National Executive Committee, as constituted under Section 8(1) of the 2005 Act, to assist the NDMA to perform its functions as mentioned under the 2005 Act.
- (c) Pursuant thereto, the MHA acting through the Home Secretary in his capacity as Chairperson of the National Executive Committee, issued the order of lockdown under the Section 10(2)(l) of the 2005 Act vide Letter DO No. 40-3/2020-DM-I(A) dated 24.03.2020 w.e.f. 25.03.2020 till 14.04.2020. Thereafter, on the recommendation of the NDMA vide order bearing No. 1-137/2018-Mit-II (FTS-10548) dated 14.04.2020, the MHA vide

Letter DO No. 40-3/2020-DM-I(A) dated 14.04.2020 extended the lockdown period from 14.04.2020 till 03.05.2020.

- (d) The 2005 Act is enacted to provide for the effective management of disasters and for matters connected therewith or incidental thereto¹. In the case of **Swaraj Abhiyan - (I) Vs. Union of India (UOI) and others**² the Hon'ble Apex Court held that the scope of the NDMA is not only to monitor and implement disaster management plans but also to prevent and mitigate the effects of a disaster.
- (e) In this context, it is relevant to note that Entry 81 of the Union List provides for interstate migration and interstate quarantine; Entries 2 and 6 of the State List provides for police, public health and sanitation, including hospitals and dispensaries; Entry 29 of the Concurrent List provides for prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants. The Hon'ble Supreme Court in the case of **Bandhua Mukti Morcha Vs. Union of India**³ has held that the "right to live with human dignity, enshrined in Article 21, derives from the directive principles of state policy and therefore includes protection of health". The Hon'ble Apex Court in the case of **State of Punjab Vs. Mohinder Singh Chawla**⁴ has held

¹ Preamble, Disaster Management Act, 2005

² (2016) 7 SCC 498

³ AIR 1984 SC 802

⁴ (1997) 2 SCC 83

that “the right to health is integral to the right to life and the Government has a constitutional obligation to provide health facilities”.

(f) There is no doubt that the right to health being a fundamental right, the protection of the same is an obligation on the Central and State Governments. In view of having declared Covid - 19 a national disaster, Central and State Governments - exercising its powers under the Seventh Schedule of the Constitution of India, the Disaster Management Act 2005 and the Epidemic Diseases Act 1897 - have taken extraordinary measures to control and prevent the wide spread of the pandemic. If one considers the pith and substance of the nature of measures taken to control the pandemic, it is abundantly clear that the lockdown measures are legally sound and are taken to prevent the extension and wide spread of the infection by enforcing social distancing and isolation.

“Lockdown”, “Curfew” and other restrictions imposed – meaning and interpretations

(a) In the recent times, we have come across the terms such as “lockdown”, “curfew”, “Janta-curfew” and other allied terms in the restriction of our free movement and also free movement of commerce and e-commerce.

- (b) The 2005 Act provides for the implementation of a National Plan for disaster management for the whole of the country under Section 11 of the 2005 Act. The National Executive Committee set up under Section 8 of the 2005 Act, in discharge of its power under Section 10 of the 2005 Act, will implement the National Plan which would include methods for prevention, integration and preparedness for dealing with the disaster - which again is unfettered to an extent, which provides for the Government to take extreme measures as it exists today for curtailing the disaster.
- (c) The 2005 Act under Section 14 also casts a duty on the State Governments to follow the directions of the NDMA. Only when the State Governments are not cooperating or a State Government is ineffective, then the national emergency is declared. Since all the State Governments are cooperating and coordinating with the Central Government, there arose no need for declaring national emergency in the current situation.
- (d) For the better prevention of the spread of a dangerous epidemic, State Governments under Section 2 of the Epidemic Diseases Act 1897 have the “power to take special measures and prescribe regulations as to dangerous epidemic disease”. Under this section State Governments have sweeping discretionary powers to mould restrictions as per the need.
- (e) Another measure adopted by the State Governments for the proper implementation of the lockdown is under Section 144 of the Code

of Criminal Procedure, 1973 (**“herein after Cr.P.C”**). The State Governments acting through the District Magistrate have issued guidelines for the closure of shops, gathering of people and restricted the movement of the public. More commonly, the restrictions imposed under the Section 144 of Cr.P.C, is also termed as “Curfew” as in colloquial term. Curfew refers to the restrictions imposed on the public against their free movement. However, there is no legal meaning as assigned under any law to the term “curfew”.

- (f) The State Governments have used a combination of provisions under the Epidemic Diseases Act 1897 and Section 144 of Cr.P.C to impose restrictions on free movement.

The framework of Essential Commodities Act 1955 and the guidelines issued for the supply and distribution of essential commodities

- (a) The Essential Commodities Act 1955 (“1955 Act”) is enacted to regulate the production, supply and distribution of a whole host of commodities that it declares ‘essential’, in order to make them available to consumers at fair prices. Additionally, the Government can also fix the maximum retail price (MRP) of any packaged product that it declares to be an “essential commodity”.
- (b) Section 2A of the 1955 Act envisages powers to the Central Government, if it is satisfied that it is necessary in the public interest and for reasons to be specified in the notification published in the Official Gazette, to add or remove any essential commodities from the Schedule issued under the 1955 Act.
- (c) The Central Government is vested with the power under Section 3 of the 1955 Act to control the production, supply, distribution., etc. of essential commodities where, if it is of the opinion that it is necessary or expedient so to do, for maintaining or increasing supplies of the essential commodities or for securing their equitable distribution and availability at fair prices.
- (d) The MHA in its Annexure to the Order No. 40-3/2020-DM-I (A) dated 24.03.2020 issued guidelines on the measures to be

taken by the Ministries/Departments of Government of India/State/Union Territories for the he containment of Covid-19 epidemic in the Country. These guidelines essentially specify the services that are available for the general public during the lockdown period. Pursuant to the extension of lockdown vide Letter DO No. 40-3/2020-DM-I (A) dated 14.04.2020, the MHA has issued revised consolidated guidelines vide order dated 15.04.2020. The latter guidelines stated that the former guidelines would continue to remain in force till 03.05.2020. However, to mitigate the hardship faced by the public, certain additional activities are allowed to come into effect from 20.04.2020.

- (e) To implement these guidelines, the District Magistrate has deployed Executive Magistrates as Incident Commanders in the respective local jurisdictions. The Incident Commanders are responsible for the overall implementation of measures taken by the Central Government during the lockdown period. All other Department Officials in the specified area will work under the directions of such Incident Commanders. The Incident Commanders will issue passes for enabling essential movements and will, in particular, ensure that all efforts for the mobilization of resources, workers and material to augment and expand hospital infrastructure shall continue without any hindrance.

Consequences of a breach of lockdown/guidelines issued for such supply and distribution

- (a) The MHA in its Annexure to the Order No. 40-3/2020-DM-I(A) dated 24.03.2020, while issuing guidelines on the measures to be taken by the Ministries/Departments of Government of India/State/Union Territories for containment of Covid-19 epidemic in the Country, has also specified that whoever, without reasonable cause, is found violating any of these containment measures during the lockdown period, they will be held liable to be proceeded against as per the provisions of Section 51 - 60 of the 2005 Act.
- (b) The 2005 Act provides for punishments for obstruction, false claim, misappropriation of monies or material and false warning with both imprisonment and fine.

- (c) The 2005 Act also provides for punishing the heads of the Department of the Government and its officers, with the sanction of the Central/State Government, if they fail to discharge the duty as envisaged upon them under this Act, and if they are found to be in violation of the guidelines /provisions of the 2005 Act.
- (d) Section 71 of the 2005 Act bars the jurisdiction of all Courts and vests the Supreme Court and High Courts with the exclusive jurisdiction to try the matters in relation to the guidelines issued under the said Act. Section 72 of the 2005 Act is a non-obstante clause, with overriding powers over any other law for the time being in force. The said provision reaffirms the extra ordinary powers vested with the authorities to take measures during the time of a notified disaster.
- (e) Apart from the punishment prescribed under 2005 Act, whoever is found to be in contravention of the guidelines issued by the 2005 Act can also be prosecuted under Section 188 and Section 270 of the Indian Penal Code, 1860.
- (f) In the midst of the lockdown period, amidst the stringent steps and the extraordinary measures, there have been few incidents of violation of the guidelines. It is interesting to see how the Government intends to prosecute such offenders, since few State Governments did mention that they may prosecute under the National Security Act 1980 as well.

Conclusion

In the wake of the unprecedented times, and the unprecedented methods adopted by the Government, it is not wrong to state that these measures will go a long way in determining the legal future of the implementation of these laws and that it would also lead to a radical change of the laws which are being put into test.

In order to curtail and control the situation at hand, the Government has relied upon statutes such as the Disaster Management Act, 2005; the Epidemic Disease Act, 1897; the Essential Commodities Act, 1955; the Code of Criminal Procedure, 1973 and the Indian Penal Code, 1860. It is interesting to see that in view of the existing circumstances, the lockdown order or the

welfare measures taken /guidelines issued by the Government has not been questioned before any Courts and that the nation is united to fight the bigger enemy i.e., the pandemic Covid-19.
