



LEGAL COVERAGE ON COVID-19



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FROM THE EDITOR'S DESK

“Law is Social Engineering which means a balance between the competing interests in society.”

- Roscoe Pound

Announcement of a National Lockdown spanning 21 days, by the Government of India on 24th March, 2020, as a measure to contain Covid-19, not only placed police, civil servants, doctors and medical staff on a 24x7 work schedule but also placed citizens under unexpected and unprecedented restraints. These restrictions against the Fundamental rights of citizens guaranteeing free movement throughout the territory of India, peaceful assembly, speech and expression, occupation, trade, profession and business, freedom to practice and profess any religion and right to privacy had put the majority of our population under unforeseen misery and distress while also subjecting the government agencies to tremendous pressure to ensure people's health and safety in these challenging times. While implementing these policy decisions and putting them into practice, our police and medical staff worked as warriors. They overcame all hardships, physical or psychological, with a smile on their face and courage in heart and received much deserved national and global praise for the same. However, ill-fated incidents such as barbarous attack on ASI Harjit Singh and beating of doctors and medical staff in different parts of the country also made shocking headlines. This has exposed insensitive attitude and lack of commitment on part of certain citizens in keeping our constitutional vow to defend our country and render national service when called upon to do so.

While challenging these restrictions, many have forgotten that Fundamental rights are not absolute. Reasonable restrictions can be imposed by the State and some of these restrictions are expressly incorporated within the articles of our Constitution. For instance, article 19(1)(d) of the Constitution provides for Fundamental right to move freely throughout the territory of India, which can be restricted in the interest of general public under article 19(5). Also, freedom to assemble peacefully guaranteed under article 19(1)(b) can be restricted on the grounds of public order, sovereignty and integrity of India. Right to freedom of religion provided in articles 25, 26, 27 and 28 can be restrained on the grounds of public order, morality or health. Similarly, right to freedom of speech and expression allowed under article 19(1)(a) can be limited in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Cautiously and thoughtfully our law makers mentioned these restraints as “*reasonable restrictions*”. An unreasonable restriction cannot have any legal validity. The test of reasonableness is that “*whether the restraint caused by the law is more than necessary in the interest of the general public*”.¹ In *Bannari Amman Sugars Ltd. V. CTO*,² the Supreme Court observed that a restriction does not become unreasonable merely because it operates in a harsh manner. The aim of present

¹ *Narendra Kumar v. Union of India*, AIR 1960 SC 430.

² (2005) 1 SCC 625.



lockdown is to ensure social distancing so as to prevent spreading of Corona Virus for the purpose of securing health and life of our citizens. Therefore, “social distancing” very well qualifies the test of reasonableness.

Trying to ensure effective balance between these restrictions and enjoyment of rights, Police have emerged as a multidimensional force. From maintaining law and order to supplying ration at the door steps of citizens in need, from innovating new regulatory mechanisms to being mediators or counselors, transitioning from traditional marchers to techies, from strict implementers of law to social activists, from legal experts to medical assistants in times of need, the police have won the hearts of citizens with their exemplary work and effective policing. Leaving their own families behind, they have risen to the occasion to serve their motherland, i.e. their nation - India. If they can work with such zeal and fortitude, then as responsible citizens we shall endeavor to follow our principal duty i.e. to assist and facilitate our government and its agencies in implementing all that is necessary to contain COVID-19 crisis. One shall remember that self restraint and sacrifice are the highest orders of humanity. In such challenging times, we as informed and responsible citizens shall remember that while pressing for our precious fundamental rights, it is also our fundamental duty to promote harmony and spirit of common brotherhood amongst the people of India.

Being a part of the Police Force and as conscientious citizens of this country, it becomes our bounden duty to stand as one with the COVID warriors. To this end, this special issue of Law Bulletin, covering legal aspects of COVID-19 Lockdown, is being taken out by IPS Probationers of 72RR and Members, Law Society. In these uncertain times, our endeavor is to dispel legal doubts and highlight legal issues of contemporary relevance furthering the goals of justice and rule of law. We earnestly hope that it would be of immense help to those serving in the field in particular and people in general.

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Part I – Lock down and Curfew

On March 24, 2020, Prime Minister Narendra Modi announced a nation-wide lockdown, from Mar. 25, 2020 to Apr. 14, 2020 as a preventive measure against the COVID-19 pandemic in India saying that only solution to control the spread of coronavirus was to break the cycle of transmission through social distancing. Initially 'Janata Curfew' (people's curfew) was announced on 19th March, 2020 which was a 14-hour curfew (from 7 a.m. to 9 p.m.) on 22 March 2020. Now the Government of India has extended the nationwide lockdown further by two weeks until 17 May. Order under section 144 of Criminal Procedure Code (Cr.P.C) has been implemented to stop assembly or gathering of 5 or more than 5 persons in order to implement social distancing effectively. However, many have questioned the Constitutional validity of such an action. Also the difference between lockdown and curfew was debated upon. At outset it is clarified that present situation in India is not only lockdown but a mixture of lockdown and curfew as lockdown has been announced nationally but in many parts the order u/s 144 Cr.P.C has also been imposed.

Lockdown versus Curfew:

Both lockdown and curfew impose certain restrictions on free movement of the citizens and to assemble peacefully within the territory of India, guaranteed under article 19(1)(b) and (d) of the constitution of India, however, the two are not the same.

“Lockdown” per se is not a legal term. The term is being used by government officials and others to describe a situation where free movement of men and material is restricted, with the exception of essential items declared by the Government of India under provisions of the Epidemic Diseases Act.

Competent authorities can enforce a lockdown through the mechanisms 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.

'Curfew' again is not a legal term. Curfew is a prohibitory order imposed by the administration using inherent executive powers vested in the state government u/s 144 Cr.P.C and exercised through District Magistrate, SDM, or any other Executive Magistrate. The authorities in certain circumstances, to prevent danger to human life, health or safety, disturbance of public tranquility, 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. Usually under curfew, people are forced to stay indoors and no one can venture out even individually.

In present situation application of Emergency provisions, as provided under Article 352 of Constitution of India, are not possible as the qualifying conditions for declaration of Emergency are war, external aggression or armed rebellion. The spread of Corona Virus is medical emergency not covered by any of the above three situations. Therefore, the government had to invoke the provisions of Disaster Management Act. The Act was legislated under the head 'Social Security' provided by Entry 23 of the Concurrent List.

The Act defines the term "disaster" broadly and includes within its ambit a "grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life, human suffering." The lockdown has been announced by NDMA (National Disaster Management Authority) under Disaster Management Act. Section 6 of the



Disaster Management Act provides for a National Disaster Management Authority and section 8 provides for the composition of NEC (National Executive Committee).

Section 6(2)(i) of the Act authorizes the NDMA, headed by the Prime Minister, 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”.

On 14.03.2020, the Ministry of Home Affairs had declared COVID-19 as a “Notified Disaster” under Section 2(d) of the Act.

Difference between the Lockdown and Curfew

- During the curfew, essential services such as markets, schools, colleges, and banks remain locked. When curfew is relaxed only then people get benefit from all these services. While during the lockdown; essential services like banks, ATMs, Gas agencies, post offices, fire offices, hospitals, medical stores, milk booths, etc. are open to serve the general public.
- Curfew is imposed for a set number of hours but lockdown is done usually for a longer period.
- The coverage of the curfew is generally less than the lockdown. As we see that lockdown is declared in 30 Indian states while curfew is imposed in a specific area for a specific time period.

During lockdown, many violations have been witnessed in all the States. Police also invoked different provisions of law to suppress these violations:

- **Plying Vehicles:** Police forces used concerned sections of their State Police Act. In Delhi section 65 of Delhi police act has been used for temporary detention of person. Section 66 has been used for

detention of vehicles. In Gujarat, section 135 of Gujarat Police Act has been invoked.

- **Opening shop of non essential items:** violators have been booked under section 188 IPC and Section 51 (b) Disaster Management Act, 2005.
- **Vehicles carrying the immigrants:** Section 65 and 66 of Delhi Police Act along with section 188 IPC have been invoked.
- **Making False Claim to move out:** Complaints have been filed under section 52 Disaster Management Act, 2005 against violators. Section 52 provides that whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.
- **False news:** Social media platforms are intermediaries u/s 2 (1)(w) under IT Act and they have been directed to inform their users not to host false information or post on social media and same is restricted u/s 79 IT Act and an Advisory dated 20th March, 2020 has also been issued by Ministry of Electronic and Information Technology. Section 54 of Disaster Management Act which provides punishment for false warning has also been invoked. Also Section 153 of IPC (Wantonly giving provocation with intent to cause riot- if rioting be committed- if not committed), section 153A (Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony), section 182 (False information,



with intent to cause public servant to use his lawful power to the injury of another person) and section 505 (Statements conducing to public mischief) are relevant sections for such violations.

- **Selling commodities at higher rates:** In Punjab Cases have been registered u/s 3 and 7 Essential Commodities Act and also section 420 IPC making it non bailable and also getting remand from Duty Magistrate.

Epidemic Diseases Act, 1897

During this emergency time, the government invoked the provisions of 123-year-old colonial law Epidemic Diseases Act, 1897. Reason being that “Public health” is a state subject. States have been advised to invoke Section 2 of the Act so that all advisories of the Union Health Ministry could be enforced on the ground. Union government’s role could, at best, be advisory and coordinating in nature. Section 2 of the Act only empowers a state to inspect people and segregate suspected patients. Epidemic Diseases Act, 1897, however, does not even define what a disease is, let alone an epidemic or a pandemic. Indeed, a Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill had been drafted in 2017, intended to replace the Epidemic Diseases Act of 1897. The Bill has yet to be tabled in Parliament.

Even if lockdown is lifted but order u/s 144 Cr.P.C is still in operation, then gatherings of 5 or more than 5 people still will be prohibited. Necessary legal action will be taken against any person found in violation of these guidelines. In next Chapters we have covered important legal provisions, Important Supreme Court and other High Court Judgments and discussion on section 188 Cr.P.C.

PART II

LEGAL PROVISIONS

INDIAN PENAL CODE, 1860

The Indian Penal Code (IPC) covers all substantive aspects of criminal law. Major sections of “IPC” having bearing on the present crisis include:

Section 188 - Disobedience to order duly promulgated by public servant

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 269 - Negligent act likely to spread infection of disease dangerous to life

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.



Section 270 - Malignant act likely to spread infection of disease dangerous to life:

Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CODE OF CRIMINAL PROCEDURE, 1973

Cr.P.C is the main procedural legislation for administration of substantive criminal law in India. Besides providing machinery for the investigation of crime, it contains significant provisions for dealing with public nuisance, prevention of offences and maintenance of pace and security, especially during times of national crisis like present Covid-19 crisis. Important sections of the act include:

Section 144 Cr.P.C: Preventive Order

Section empowers a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the state government in this behalf to issue orders to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.

The magistrate has to pass a written order which may be directed against a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area. This usually includes restrictions on movement, carrying arms and from assembling unlawfully. In emergency cases, the magistrate can pass

these orders without prior notice to the individual against whom the order is directed. The magistrate can direct any person to abstain from a certain act or to take a certain order with respect to certain property in his possession or under his management.

However, no order passed under Section 144 can remain in force for more than two months from the date of the order, unless the state government considers it necessary. Even then, the total period cannot extend to more than six months.

In 1970 (*MadhuLimaye vs Sub-Divisional Magistrate*), a seven-judge Bench headed by then Chief Justice of India M Hidayatullah said the power of a Magistrate under Section 144 “is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny”. It ruled that the restrictions imposed through Section 144 cannot be held to be violative of the right to freedom of speech and expression, because it falls under the “reasonable restrictions” under Article 19(2) of the Constitution. The fact that the “law may be abused” is no reason to strike it down, the court said. Supreme Court made the following points with regard to the use of Section 144 of the Code of Criminal Procedure (Cr.P.C), 1973.

- Sec 144 cannot be used to suppress the legitimate expression of opinion or grievance, or the exercise of democratic rights
- When Sec 144 is imposed for reasons of apprehended danger, that danger must be an “emergency”.
- The imposition of Sec 144 must strike a balance between the rights of the individual and the concerns of the state.
- Powers under Sec 144 should be exercised in a reasonable and bona fide manner, and the order must state material facts in order to enable judicial review.



THE DISASTER MANAGEMENT ACT, 2005

The Act provides for "the effective management of disasters and for matters connected there with or incidental thereto."

Background

The Central Ministry of Home Affairs (MHA), which is the nodal ministry dealing with disasters, issued directions under the DMA, 2005 (referred to as the "Act" subsequently) using the powers bestowed to it under Section 10(2) of the Act. Section 10(2) deals with Powers and functions of National Executive Committee (NEC) and Section 8 provides for the composition of the NEC. As per Section 10(2)(1) of the said act, the NEC may -

"lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster."

Earlier on 14.03.2020, the Ministry of Home Affairs had declared COVID-19 as a "notified Disaster" under Section 2(d) of the Act. This enabled not just the Central government to issue guidelines under Section 10 of the Act but also the State Governments to use a larger part of the State Disaster Response Fund (SDRF) to combat the spread of the virus.

The National Disaster Management Authority (NDMA) under Section 6(2)(i) of the Act had issued an order dated 24.03.2020 directing the Ministries/Departments of Government of India, State/Union Territory

Governments and State/Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country.

In consequent to the above order of NDMA, the NEC Chairperson had on 24.03.2020 issued initial order under Section 10(2)(1) of the act prescribing guidelines which were to remain in force from 25.03.2020 till 14.04.2020. However, assessing the spread of the COVID-19 pandemic, the NEC Chairperson issued further orders dated 14.04.2020 extending the lockdown measures stipulated in the guidelines till 03.05.2020.

Important provisions with respect to these offenses and penalties are detailed below:

Section 51- Punishment for obstruction, etc.

Whoever, without reasonable cause-

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorized by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

Section 52 - Punishment for false claim-

Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to



disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

Section 53 - Punishment for misappropriation of money or materials, etc.

Whoever, being entrusted with any money or materials, or otherwise being, in custody of, or dominion over, any money or goods, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates for his own use or disposes of such money or materials or any part thereof or willfully compels any other person so to do, shall on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

Section 54 - Punishment for false warning-

Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.

Section 56 - Failure of officer in duty or his connivance at the contravention of the provisions of this Act-

Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.

Section 60 - Cognizance of offences-

No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorized as aforesaid.

Other important sections: Section 55 - Offences by Departments of the Government, Section 57- Penalty for contravention of any order regarding requisitioning, Section 58 - Offence by companies, Section 59 - Previous sanction for prosecution.

THE EPIDEMICS DISEASES ACT, 1897

The law is meant for containment of epidemics by providing special powers that are required for the implementation of containment measures to control the spread of the disease. The Act has been routinely used to contain various diseases in India such as swine flu, cholera, malaria and dengue. Important provisions of the act include:

Section 2 - Power to take special measures and prescribe regulations as to dangerous epidemic disease

(1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or



require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

Section 3 – Penalty

Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code 1860.

Section 4 - Protection to persons acting under Act: No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

THE EPIDEMIC DISEASES (AMENDMENT) ORDINANCE, 2020

During the current COVID-19 pandemic, there have been instances of violence against doctors and nurses. To allay this problem, the Union Cabinet, on 22nd April, 2020, approved promulgation of an Ordinance to amend the Epidemic Diseases Act, 1897. Major provisions of the ordinance include:

Section 2A (Amended) - Inspection and detention of any vehicle

Central government may take such measures as it deems fit and prescribe regulations for inspection and for detention, if necessary, of any bus or train or goods vehicle or ship or vessel or aircraft leaving or arriving at any land port or port or aerodrome or in any other territory to which this act extends.

Section 2B (Inserted) - Prohibition of violence

against healthcare service personnel and damage to property

Section3 (Amended) - Punishment for commission and abetment

Commission or abetment of such acts of violence shall be punished with imprisonment for a term of three months to five years, and with fine of Rs.50,000/- to Rs.2,00,000/-. In case of causing grievous hurt, imprisonment shall be for a term six months to seven years and with fine of Rs.1,00,000/- to Rs.5,00,000/-.

Section 3A (Inserted) - Cognizance, investigation and trial of offences

Offences which are cognizable and non-bailable shall be investigated by an officer of the rank of Inspector within a period of 30 days, and trial has to be completed in one year, unless extended by the court for reasons to be recorded in writing.

Section 3B (Inserted) - Compounding allowed for offence defined in subsection (2) of section (3) with the consent of the person against whom such an offence is committed.

Section 3C (Inserted) - Presumption for offence defined in subsection (3) of section (3) will be against the person being prosecuted for the same

Section 3D (Inserted) - Presumption as to the existence of a culpable Mental state (Mens Rea) for offence defined in subsection (3) of section (3) will be against the person being prosecuted for the same.

Section 3E (Inserted) - Compensation for acts of violence

Offender shall also be liable to pay compensation to the victim and twice the fair



market value for damage of property or as the court may decide.

INDIAN CONTRACT ACT, 1872

The Indian Contract Act, 1872 prescribes the law relating to contracts in India. It determines the circumstances in which promises made by the parties to a contract shall be legally binding. Under Section 2(h), the Indian Contract Act defines a contract as an agreement which is enforceable by law.

Measures taken under the Act

Ministry of Finance has by way of an office memorandum (O.M. No. 18/4/2020-PPD) issued on February 20, 2020 clarified that the disruption of the supply chains due to spread of corona virus should be considered as a case of natural calamity and “force majeure clause” may be invoked.

The term ‘force majeure’ has been defined, as ‘an event or effect that can be neither anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled.’ While force majeure has neither been defined nor specifically dealt with, in Indian statutes, some reference can be found in Section 32 of the Indian Contract Act, 1872 envisages that if a contract is contingent on the happening of an event which event becomes impossible, then the contract becomes void.

From a contractual perspective, a force majeure clause provides temporary reprieve to a party from performing its obligations under a contract upon occurrence of a force majeure event.

If a contract does not include a force majeure clause, the parties would have to ascertain in light factors such as the nature of the contract, the nature of event and so forth, as to whether Section 56 of the Contract Act (which deals with agreements between the parties to do an impossible act)

If performance of an act becomes impossible or unlawful, after a contract has been executed, and such impossibility is due to an event which the party undertaking the performance could not prevent, then such contract itself becomes void or one can say that the contract becomes ‘frustrated’.

INFORMATION TECHNOLOGY ACT, 2000 & CYBER CRIMES

It is the primary law in India dealing with cybercrime and electronic commerce. Major provisions of the act having a bearing on the present Covid 19 crisis include:

Section 43 - Penalty and compensation for damage to computer, computer system, etc.

If any person does any damage without permission of the owner or any other person who is in charge of a computer, computer system or computer network, he shall be liable to pay damages by way of compensation to the person so affected.

Section 66 - Computer related offences

If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Section 66C - Punishment for identity theft

Whoever, fraudulently or dishonestly make use of the electronic signature, password or any



other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

Section 66D - Punishment for cheating by personation by using computer resource

Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

Section 66E - Punishment for violation of privacy

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

Section 67A - Punishment for publishing or transmitting material containing sexually explicit act, etc., in electronic form

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

IPC Provisions pertaining to Cyber Crime

Section 383 - Extortion

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Section 384 - Punishment for extortion

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 420 - Cheating and dishonestly inducing delivery of property

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 465 - Punishment for forgery

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 468 - Forgery for purpose of cheating

Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 471 - Using as genuine a forged document



Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Section 505 - Statements conducing to public mischief

(1) Whoever makes, publishes or circulates any statement, rumor or report,-

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility;

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

ESSENTIAL COMMODITIES ACT, 1955

The EC Act (hereinafter referred to as the “act”) allows Central Government to ensure and enhance the supplies of essential commodities or make them available at fair prices. The Government can regulate or prohibit the production, supply, distribution and sale of essential commodities.

While traditionally the act has been used for commodities listed out in the schedule such as edible oils and oilseeds, drugs, fertilizers, petroleum and petroleum products, but the government has the power to add or remove any commodity in the public interest from this list. Further, the government can control the prices of these commodities, impose stock-holding limits to prevent hoarding, confiscate stocks of violators and impose punishments.

In order to deal with the shortage and price rise of masks and hand sanitizers amidst the COVID-19

pandemic, the Ministry of Consumer Affairs, Food and Public Distribution, which is the nodal ministry administering the act has issued an order dated 21.03.2020 under sub-Section 2A and Section 3 of the act to regulate the prices of masks (2 ply and 3 ply) the Melt Brown Non-Woven Fabric used in the production of masks and hand sanitizers.

As per sub-section 2A, “essential commodity” means a commodity specified in the Schedule. The sub-section 2A(2) allows the central government

”in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to — (a) add a commodity to the said Schedule; (b) remove any commodity from the said Schedule, in consultation with the State Governments.”

Section 3, on the other hand provides the Central Government the Powers to control production, supply, distribution, etc., of essential commodities.

As per the order dated 21.03.2020, the retail prices of masks (3ply surgical mask) shall not be more than the prices prevailing one month prior to the issue of the notification or Rs.10/- per piece whichever is lower and that of 2ply mask shall not be lower than Rs.8/- per piece. Similarly, for hand sanitizers, the price shall not be more than Rs. 100/- per bottle of 200ml. The notification shall remain in force upto 30.06.2020.

The Section 7 of the act provides for a maximum penalty of 7 years and fine for the contravention of an order made by the government under Section 3 of the act. The government may also take action under the PBMMSEC Act (Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act) 1980. An offender



under the PBMMSEC Act, one can be detained for maximum six months.

The government has also issued an advisory under the Legal Metrology Act. Under the LMA, States can ensure sale of both the items at maximum retail price under the Legal Metrology Act.

Further, the Centre has also invoked Disaster Management Act to ensure price regulation and availability of surgical and protective mask, hand sanitizer and gloves. The health ministry has mandated the National Pharmaceutical Pricing Authority (NPPA) to notify these items as drugs.

The Ministry of Health and Family Welfare vide order dated 13.03.2020 under clause (I) of sub-section (2) of section 10 of the Disaster Management Act, 2005 has mandated the National Pharmaceutical Pricing Authority to regulate the availability and prices of the Surgical and protective masks, Hand sanitizers and Gloves.

PART III

CAN POLICE REGISTER FIR UNDER SECTION 188 IPC FOR VIOLATION OF LOCKDOWN?

- SH. RAKESH K. SINGH, (DJS)

The recent action of police registering cases under section 188 IPC has come under legal scanner after filing of PIL titled *Dr. Vikram Singh, Chairman, CASC vs. Union of India and Ors.* in Supreme Court seeking quashing of all the FIR's registered u/s 188 IPC for lockdown violations alleging that Magistrates will not take cognizance of these cases as they are barred from taking cognizance in view of embargo created u/s 195 Cr.P.C.

A bare perusal of Section-188 will go to show that violation of lockdown certainly comes under its ambit and therefore is punishable as such. Therefore the only issue is as to how action can be

initiated for such violation. It is the Code of Criminal Procedure which deals with the procedural part in respect of offence punishable under IPC. Section-4(1) says "All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained". It is therefore clear that even an offence under Section-188 has to be investigated, inquired into, tried, and otherwise dealt with as provided in Cr. P.C. As far as the scheme of the Cr. P.C is concerned, Section 154 of the Code prescribes that in respect of every offence which is a cognizable one, information thereof is to be given to an officer in-charge of a police station, who shall reduce the same into writing.

Section-188 IPC has been classified as cognizable in the Schedule appended to Code. Once it is known that offence under Section-188 is cognizable, Section-154 Cr.P.C will come into play which obligates the Officer in-charge of a police station to reduce the information if given, into writing. The constitution bench of Supreme Court held in *Lalita Kumari vs. State of UP, 2014 (2) SCC 1* wherein it mandated that once it is found that information so given discloses a cognizable offence, there remains no discretion with the police not to register an FIR.

It is at this stage that the actual problem arises which is being debated now a days in the legal circle stating that Section-188 IPC is a specified offence which is procedurally controlled by Section-195 Cr.P.C. Section-195(1) Cr.P.C to the relevant extent reads as "No Court shall take cognizance- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860)..... except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate".

What is being emphasized is that a court is precluded from taking cognizance of offence under Section-188 unless the public servant or his



superior files a complaint in writing for the Violation and therefore, the police cannot initiate an action by registering FIR & investigating the matter. For our present purpose, the terms investigation and cognizance are relevant, former is a defined term whereas later is not so defined. Supreme Court has repeatedly indicated that cognizance is concerned with a Magistrate/Court when it applies its mind for proceeding further in matter of an offence. It is therefore clear that investigation and cognizance are different terms having different meaning and apply at different stages. Section-195 Cr.P.C creates an embargo on the court from taking cognizance. It does not talk about action of police or power of a police officer.

A Three Judges bench of Supreme Court in *M.L. Sethi vs R.P. Kapur AIR 1967 SC 528* held that the embargo of Section 195 cannot be raised prior to the time when the cognizance is taken by the court. Police has no concern with the cognizance part. Whether a court will take cognizance or not is not for police to decide. The Supreme Court nowhere says that the FIR or police investigation was illegal. In *C. Muniappan & Ors vs State Of Tamil Nadu (2010) 9 SCC 567*, the Supreme Court refused to agree with the further submission that absence of a complaint under Section 195 Cr.PC falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case.

The question that arises is that what would be the fate of the FIRs that have been registered all over the country u/s 188 IPC especially during the period of lockdown. The cases can be broadly divided into two categories, which are as under:

A. Cases in which FIR has been registered under S.188 IPC and also under certain other sections like: S. 269 IPC (Negligent act are likely to spread infection or disease dangerous to life), S. 270 IPC (Malignant act likely to spread infection of disease dangerous to life) and S. 271 IPC (Disobedience to quarantine rule).

B. Cases registered only under section 188 Cr.P.C.

So far as **the first category** of cases are concerned, the police can omit the offence u/s 188 IPC during investigation, prior to filing the charge sheet in the competent Court, and the charge sheet can be filed under the remaining sections, if they are made out. Court can take cognizance under other sections and charge sheet with other sections will still be intact and the whole process will not be vitiated *ab initio*. It is a well settled law that the courts are not bound to take cognizance of all the offences under which the charge sheet has been filed by the police, and they can take cognizance of the offences made out from charge sheet.

However, so far as **the second category** of cases are concerned where FIR has been registered only u/s 188 IPC, the police is left with no option but to drop the cases and file a fresh complaint in the competent Court. The public servant who has promulgated the order and order has been violated shall be competent to file the complaint in Court after which the court can take cognizance. The written complaint of the public servant (the promulgating authority in this case) should be addressed to the court and should comply with all the requirements of complaint as given in section 2(d) Cr.P.C. Nothing more is required to satisfy the ingredients of section 195 Cr.P.C which creates an embargo on the power of cognizance. Once a written complaint is made available to the court, the embargo of Section 195 will vanish and the court will be able to take cognizance of the offence under Section 188 IPC. Proviso appended to section 200 clearly says that if a public servant files a complaint in writing, the court will not be required to examine him on oath.

Same process has to be followed if police wants to proceed under Disaster Management Act. Now the powers for filing complaint under sections of Disaster Management Act have been delegated even at SHO rank. So the concerned SHOs can file the complaint in Court after which the court can take cognizance and summon the accused and can proceed u/s 251 Cr.P.C.



In view of the above, we can safely say that police has every power to register FIR for offence punishable under Section-188 IPC if it receives information that lockdown order has been violated in such a manner that the activity comes within the ambit of the provision. Police has the power to investigate the offence even if there is an embargo on taking cognizance as envisaged under section 195 Cr.P.C. The Court cannot take cognizance of offence under section 188 on the basis of police report and it has to indicate that it is taking cognizance on written complaint of the public servant. The case then shall proceed as a case instituted on complaint. Further, a Magisterial court cannot issue any direction to the police not to register FIR for offence punishable under section-188 as though it has power to direct initiation of investigation in terms of section 156(3) Cr.P.C, it has no negative power to direct stoppage of registration FIR or investigation of cognizable offence.

PART IV

IMPORTANT JUDGMENTS PERTAINING TO LOCKDOWN PERIOD

Re: Contagion of COVID 19 Virus in Prisons - Writ Petition (C) No.1/2020 dated 23.03.2020: DoD (SC)

HELD: After considering the outbreak of COVID-19, hardships faced by the litigants/lawyers, staff in the Courts, convict prisoners, as well as under-trials, the Hon'ble Supreme Court directed each State/Union Territory to constitute a High Powered Committee to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate and directed JJB's to consider taking steps to release all children alleged to be in conflict with law, residing in Observation Homes, on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.

The Court while taking note of Article 21 of the Constitution of India issued the following directions:

“We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services committee, (ii) the principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are under-trial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The Under-trial Review Committee contemplated by this Court In Re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in Para no.11 of Arnesh Kumar V. State of Bihar, (2014) 8 SCC 273.”

Suo Motu Writ Petition – COVID-19, W.P. (C) No.9400 OF 2020 (Suo Motu): DoD 25.03.2020 (Kerala HC)

HELD: Interim Orders whether passed in civil or criminal matters, which are due to expire during the lock down period of 21 days, to be extended for one month - Arrests shall be avoided during lockdown except in heinous cases.



While taking suo motu case, the Full Bench of High Court of Kerala it has been held that in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India, all interim orders passed by all the Courts/Tribunals or all interim orders of bail or anticipatory bail, restricted for a limited period, upon which High Court exercises supervisory jurisdiction under Article 227, which are due to expire during the lock down period of 21 days, were extended by Court by one month from today.

No recovery proceedings to be initiated or recovery proceedings already initiated, would not be proceeded further until 30.04.2020.

Arrests shall be avoided during lockdown except in heinous cases and when accused is produced before Magistrate after arrest then learned Magistrates/Judges before whom the accused is produced, depending upon the nature of offence, shall consider as to whether judicial/police custody is required or not.

IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS: Writ Petition (C) No.1/2020 dated 23.03.2020: DoD 07.04.2020 (SC)

HELD: UOI shall issue necessary guidelines under DM Act, 2005 and ensure that all the prisoners having been released by the States/UT are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown.

Hon'ble Supreme Court gave observations while listening to the arguments that prisoners who have been released according to the guidelines framed by High Powered Committees in various States are stranded because they have no means to reach their homes or places of residence.

T.Ganesh Kumar vs. UOI and Ors.: W.P.No.7457 of 2020: DoD 09.04.2020 (Madras HC)

HELD: Mere apprehension or least probability cannot be a ground to prohibit the publication of newspapers as it would amount to violation of the Fundamental Rights, of not only the publisher, editor but also the readers, guaranteed under Article 19(1) (a) of the Constitution of India.

While dismissing the petition challenging the exemption of print media operations from lockdown imposed to curb the spread of COVID-19, the Madras High Court observed that viral transmission through newspapers is least probable. It was also added that any possible spread of the virus through newspapers - and currency, for that matter - could be guarded against by simply washing one's hands after handling the newspaper.

Suo Moto W.P.(C). NO.9401 OF 2020: DoD 17.04.2020 (Kerala HC)

HELD: The High Court of Kerala ordered the release of vehicles seized by police for alleged violations of lockdown guidelines if the vehicle owner executes a personal bond and deposits the copies of RC, License and Insurance Certificate with the concerned Station House Officer.

Tanuj Dhawan vs. COURT IN ITS OWN MOTION: W.P. (C) Dairy No. 11058/2020: DoD 30.04.2020 (SC)

HELD: The Supreme Court held that if any of the parents has visitation rights, then electronic contact instead of physical visits can be substituted in these times.

The Supreme Court was hearing the petition wherein it was argued that because of lockdown, the children are unable to interact with their parents even though they have visitation rights for the purpose. The Court further observed that the parties can arrive at a mutually acceptable arrangement in this behalf. If there is an aggrieved party, the same can approach the Family Court.

Sachin Jain vs. UOI: W.P. (C) Dairy No. 10918/2020: DoD 30.04.2020 (SC)



HELD: While hearing a plea seeking nationwide cost related regulations for treatment of Corona virus patients at private and corporate hospitals, the Supreme Court issued notice, observing that the Court could not interfere in matters of Private Hospitals, without giving them an opportunity of being heard.

Advocate Sachin Jain, petitioner-in-person argued that there must be a regulation for all entities as government has given them unfettered powers to charge patients. It was argued that Private hospitals that are dedicated Covid hospitals, there is no qualification as to how much they hospitals can charge. Patients are being charged between 10 and 12 lakhs. Government has given them unfettered powers to charge. Private hospitals were commercially exploiting patients suffering from the deadly virus to make a fortune out of their miseries in the hour of national crisis.

Aayom Welfare Society & Anr. vs. UOI and Ors. : W.P. (C) Dairy No. 11031/2020: DoD 30.04.2020 (SC)

HELD: While hearing a plea seeking provision for providing ration to those people who do not have any ration card and also for universalization of the Public Distribution system, the Supreme Court issued notice, observing that the Court could not interfere in matters of policy issue and left it open to the Government of India and also the concerned States/Union Territories to consider such relief.

Vibha Datta Makhija & Anr. vs. UOI & Ors.: W.P. (C) No. 10885/2020: DoD 21-04-2020 (SC)

HELD: Let Government to take a call as to when it would be best suited to bring back Indians stranded in the United States of America (US) and Moldova, and refused to interfere.

The Supreme Court disposed of two pleas which sought the evacuation of Indians stranded in the United States of America (US) and Moldova respectively, amid the COVID-19 outbreak.

Dr. Vikram Singh vs. UOI and Anr.: W.P. (Criminal) No. 10953/2020: DoD 05.05.2020 (SC)

HELD: Petition challenging the validity and seeking quashing of FIR's registered under section 188 Cr.P.C dismissed as Court not inclined to entertain it under article 32 of the Constitution.



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