

## Impact of COVID-19 on Indian Legal Structure

Law and society are related to each other. Law develops as the society changes. According to Montesquieu (the originator of historical school) laws are the creation of climate, local situations, accidents, happenings etc. Law evolves in a particular society along with evolution of society. It is from here the essential connection between law and society was found. The same concept was reiterated by Herbert Spencer (follower of sociological school) that the law and society are mutually interlinked one cannot be understood without understanding the other. Contrary to it, analytical school which is famous for its positivism and imperative approach, and negates the societal aspect in law. Jeremy Bentham, a jurist of analytical school hammered his thoughts for link between law and society. According to Bentham purpose of law is to serve benefit of individual, and since the individual interest and societal interest are not different, thus serving the individual interest would automatically serve the societal interest. In addition to the above theories a new angle was propounded by HLA Hart (follower of Analytical school), but due to his peculiar approach he was regarded as analytical naturalist. According to him survival of individuals in the society is prime concern, and an individual knows that such a harmonious survival would not be possible unless some basic elements of morality are followed. HLA Hart advocated the existence of a minimum content of morality (Human Reasoning) and natural law in legal systems, in order to prevent the society from suicide bomb.

Keeping the aforesaid theories in mind, we will learn how COVID-19 changed the Indian legal Structure so far. A virus outbreak whose epicenter was Wuhan, China started in December 2019 and within a span of 3 months the virus injected its deep roots throughout the globe taking thousands of life, infecting millions, dispersing the trade & transportation via road, rail and air, deflating the economies, cancellation of various National and International events in sports, culture and conducting government summits and court trials through video conferencing and many more. World Health Organization declared this outbreak as a "*public health emergency of International concern*" on **30<sup>th</sup> January 2020**, and "*Pandemic*" on **11<sup>th</sup> February 2020**. According to Constitution of India Article 246 the Public Order

and Public Health and sanitation; hospitals and dispensaries are embodied in the State list of Schedule VII under entries 1 and 6 respectively. Entry no.23 of concurrent list deals with Social security and social insurance; employment and unemployment. Thus, the *State* found its recourse to various provisions of The Disaster Management Act), 2005 (hereinafter DM) and The Epidemic diseases Act, 1897 (hereinafter EDA) to fight against the outbreak of corona virus. **Firstly**, Reserve Bank of India allowed all lending institutions to grant **three months deferment on payment of interest on all working capital loans** and also **borrowers can avail three month moratorium on loan EMI payments**. This power was exercised by the central bank vide section 13 of DM Act which embodies the principal of *Relief in loan repayment*. This provision has peculiarity in itself which can be exercised only in situations of disaster or of likewise in nature to give monetary relief to the society as whole. This monetary relief was the need of the hour because of closure of business, trade and professions due to lockdown. Since DM Act barely talks about pandemic and virus outbreaks, therefore it is not an only statute to deal with present outbreak. Thus, The ED Act comes into picture to deal with such outbreak; source of this Act is Entry 6 of State list i.e. Public Health and sanitation; hospitals and dispensaries.

**Secondly**, on 27<sup>th</sup> March 2020 Kerala Epidemic Diseases Ordinance, 2020 (hereinafter KEDO, 2020) was promulgated by The Governor of Kerala under Article 213 of the constitution of India. With such promulgation The ED Act, 1897 was repealed in the state of Kerala. The definitions of "*epidemic*"; *penalty for obstruction, disobeying or contravening the order of said ordinance* are inserted and offenders shall be liable U/s 5 for 2 years Imprisonment or fine upto Rs.10,000/- or both, and same punishment has been prescribed if someone abets the offence U/s 6. And section7 makes the aforesaid offence Cognizable and Bailable. Moreover, U/s 4 of KEDO Government may take measure to prohibit any usage or act which is sufficient to spread or transmit epidemic diseases from person to person, to seal State borders, restrictions on the operation of public and private transport, to prescribe social distancing norms; to restrict or prohibit

congregation of persons in public places and religious institutions; to regulate or restrict the functioning of offices, Government and private, and educational institutions in the State; to impose prohibition or restrictions on the functioning of shops and commercial establishments, factories, workshops and godowns; to restrict duration of services in essential or emergency services such as banks, media, health care, food supply, electricity, water, fuel, etc.; such other measures as may be necessary for the regulation and prevention of epidemic diseases as decided by the Government. These provisions find slight indicia of Entry 29 of list III (concurrent list) of VII schedule. However, principal Ed Act, 1897 does not embody the definition of "epidemic", and penalty for contravention was "section 188" of Indian Penal Code 1860 (hereinafter IPC), which provides punishment of merely 1 month imprisonment or Rs. 200/- fine or both. The ED act, 1897 borrows the punishment from IPC, thus classification of offence will be as per IPC. The ED Act, found its root in State list as well as concurrent list thus it is a subject matter of state as well as centre, and therefore the states as well as centre is free to amend or repeal the said act. **Thirdly** The Epidemic Diseases (Amendment) Ordinance, 2020 (hereinafter EDAO) was promulgated by The President of India under article 123 of the constitution of India on 22<sup>nd</sup> April 2020. Various Definitions has been inserted U/s 1A which were need of the hour for instance "Act of violence"; "health care service personnel"; "property" and also various meanings from Indian Ports Act, 1908, the Aircraft Act, 1934 or the Land Ports Authority of India Act, 2010 were imported. By inserting section 2B a sheer preclusion has been expressed regarding indulgence in violence against health care personnel and damage or loss to property. The violators of shall be dealt more strictly as compared to Principal ED Act. Now onwards new punishment is imprisonment minimum 3 months and maximum 5 years plus fine minimum 50,000/- Rs. and maximum 2 Lakh Rs. The punishment gets aggravated if victim is grievously hurt (defined U/s 320 IPC) imprisonment minimum 6 months and maximum 7 years plus fine minimum Rs. 1 Lakh and maximum 5 lakhs. Some more stringency was added to the said Act by making the aforesaid offences as non bailable. The peculiarity about EDAO is in section 3C which embodies the principle of *presumption of guilt* unless contrary is proved. It negates the principle of presumption of innocence in which burden of proof is on prosecution to prove the guilt of offender beyond reasonable doubt. Whereas, now in section 3C it is the offender who

has to prove his innocence and the court presumes that he is guilty. Such principle is applicable only of few statutes that are made to preserve the National security of the nation.

Thus, it is clear that this outbreak is very serious and state can even impose principles having slight indicia of National Security Act to overcome it and to deal with the culprits who are violating and infringing the Act by attacking the medical workers. The principle of victim compensation scheme is also inclusive in EDAO U/s 3E thus in addition to hefty monetary fine the convict also has to pay monetary compensation to victim and if any property is damaged then, twice the amount of property to be recovered from the convict. It is appreciated that victim compensation scheme in EDAO is different from The Code of Criminal Procedure, 1973 (hereinafter CRPC) U/s 357A and 357B. Compensation is paid by the convict in EDAO, whereas compensation by the Government in CRPC. It seems to be more just and reasonable that compensation shall be paid by the convict, rather than burdening the Government. IPC already embodies the punishments for 1. Negligently act likely to spread infection of disease dangerous to life U/s 269, 2. Malignant act likely to spread infection of disease dangerous to life U/s 270, 3. Disobedience of Quarantine rule U/s 271, 4. Making atmosphere noxious to health U/s 278. Despite of availability of aforesaid provisions, EDAO has been promulgated for: Reason no.1 Punishments are miniature, resulting in culprits were devoid of sanction, reason no.2 lack of iron tight jacket law, covering all aspects without a single leakage of doubt, reason no. 3 Rationality behind this stringent law is, array of incidence were reported where medical staff, doctors, and health workers were beaten up or attempted therefore a protective shield has been given to health care professionals for their safety. **Fourthly**, With increase in number of mob/individual attack on medical professionals, sanitary workers and police Uttar Pradesh Government went a step ahead and on 15<sup>th</sup> April 2020 notified that convicts shall be dealt under National Security Act (hereinafter NSA) in addition to Disaster management Act. The purpose of NSA is *"to provide for preventive detention in certain cases and for matters connected therewith"*. This act empowers the Central Government and State Governments to detain a person to prevent him/her from acting in any manner prejudicial to the security of India, the relations of India with foreign countries, the maintenance of public order, or the maintenance of supplies and services essential to the community it is

necessary so to do. This surfaces the gravity of outbreak of corona virus, that obstructing or violating any procedure of person deputed in duty thereof shall be dealt stringently. **Fifthly** While the Government of India imposes nationwide lockdown from 24<sup>th</sup> March 2020 and ordered maintaining social distancing to prevent the spread of covid-19, but the bitter truth is that our prisons are overcrowded, making it difficult for the prisoners to maintain social distancing. There are 1339 prisons in this country, and approximately 4, 66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%. Thus making it infeasible to maintain social distance among the prisoners, thereby envisages rampant spread of virus in prisons. Therefore Supreme Court (SC) of India while exercising its power to do complete Justice under article 142 of constitution of India, setup a high powered committee headed by Justice Hima Kohli of Delhi High Court, in **Re: Contagion of covid-19 virus in prisons** where suo Motu cognizance was taken by the Supreme Court. The high powered committee issued advisory for release of convicts on emergency parole for 8 weeks, undertrial prisoners charged under offences whose punishment is maximum 7 years or less, will be released interim bail for 45 days. However the following category shall be excluded from aforesaid parole or interim bails i.e. under trial offenders of NDPS Act, Sections 4 & 6 of POCSO Act, sections 376, 376A, 376B, 376C, 376D, 376E of IPC, Acid attacks, Prevention of corruption act, prevention of money laundering act and cases being investigated by Central bureau of Investigation, Enforcement Directorate, National Investigation Agency, Terror related activities and of likewise act. Apprising the regular bail provisions of CRPC U/Ss. 436, 436A and 437, it is appreciated that none the conditions of bail provisions of CRPC were fulfilled while granting the bail to prisoners amid covid-19. Thus, taking into consideration the present situation, in order to save the lives of prisoners and to cease the effect of contagious virus the principal of criminal justice were superseded by the order of apex court of the country by the principal of precedent, which is statutorily embodied under article 141 of constitution of India i.e. "*law declared by supreme court is binding on all courts within the territory of India*". Hence it validates that law and society goes hand in hand.

**Sixthly** courts are doors of justice for the society, closing these doors will hamper the justice of the society. Therefore, Supreme Court of India while exercising powers to do complete justice under article 142 of Constitution of India. Supreme Court passed a slew of directions for all courts across the country to extensively use video-conferencing for judicial proceedings saying congregation of lawyers and litigants must be suspended to maintain social distancing amid corona virus pandemic. **Seventhly** amid to stop the spread of corona virus in India, the Government has imposed nationwide lockdown from 24th of March 2020. Only essentials commodities transportation and movement of public for purchase of same is allowed, subject to other relaxations as and when allowed by Central Government, State Governments and District authorities. The Government of India vide Essential Commodities Order, 2020 dated 13th March, 2020 had declared inclusion of Masks and surgical masks; and hand sanitizers, under the Schedule of the Act upto 30th June, 2020 to ensure smooth availability and sale. Previously essential commodities U/s 2A were Drugs as defined under the Drugs & Cosmetics Act, 1940; Fertilizer; Foodstuffs; hank yarn wholly made from cotton; petroleum and petroleum products; raw jute; and types of seeds. **Eighthly** in addition to stringent acts and ordinance, the state has also come up with beneficial piece of statutory order. Finance ministry on 24th March 2020 announced several relief measures in income tax, GST, banking sector and commerce. Last date for income tax return and aadhaar PAN linking has been extended from 31st march 2020 to 30th June 2020. Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal etc. expiring between 20th march 2020 to 29th June 2020 shall be extended till 30th June 2020. Several other relaxations in abolition of late fees have been announced.

Several other orders, ordinances and advisories are being issued and will be issued in near future if necessary to tackle the outbreak of this virus. However, the nationwide lockdown since 24th of March 2020 has halted the economy; movement of public has been completely banned and violators of lockdown or any other govt. advisory are dealt harshly either by monetary punishments or physical punishments. On the other hand we have a Fundamental rights under article 21 of constitution of India which embodies the principle of right to life and personal liberty, article 19(1) (b) right to assembly without arms; (1)

(d) right to move freely throughout territory of India; (1) (e) to reside and settle and settle in any part of the territory of India. It should be appraised that none of the Fundamental rights are unlimited they come with certain restrictions. Nationwide lockdown has curtailed the fundamental rights, but it has not violated any fundamental right because the lockdown was imposed to safeguard the life of a public and to cure the outbreak of virus. Same rationality can be used for curtailing the movement of trade and commerce in the country as embodied in article 301 of constitution of India. On the other hand in the public interest parliament can impose restrictions on movement of trade, commerce and intercourse under Article 302 of Constitution of India. Whatever steps, advisories, regulations, ordinances, orders are being taken by the government or local authorities are for the societal interest, because individual interest collectively forms the societal interest. It the societal interest which at the centre and all the laws, amendments and ordinances are at periphery to safeguard the societal interest at large from corona virus outbreak. Stay home stay safe.



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