

Covid -19 [Corona Virus Disease - 2019] & Legal Framework: An Indian Law Perspective

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Abstract

The main aim of this paper is to help ordinary citizens to know what laws are governing them in this pandemic and also helps in creating awareness about various provisions and recent ordinances passed by the centre and various states governments to effectively administer state and to enforce the lockdown. This paper extensively talks about the various acts and their provision and recent judgements by the honorable supreme court in the light of this pandemic. This paper is the analysis of the various bare acts and reported judgements and online web research. Also this paper puts forward the suggestion as to whether Indian government needs a singular law to tackle the corona virus situation as done by various nations such as United Kingdom and Singapore.

Keywords: Covid -19, Legal Framework, Constitution.

Introduction

A pneumonia of unknown cause detected in Wuhan, China was first reported to the WHO Country Office in China on 31 December 2019. The outbreak was declared by WHO a Public Health Emergency of International Concern on 30 January 2020. On 11 February 2020, WHO announced a name for the new corona virus disease¹: COVID-19² Novel corona virus (2019-nCoV) or corona virus disease 2019 (COVID-19) is communicable disease. On March 11, 2020 WHO declared COVID 19 as pandemic. This is the first pandemic caused by a corona virus. In India five lockdowns have been declared. Worst affected population is poor persons. It has affected economy of countries also.

Hon'ble Prime Minister Mr. Narendra Modi requested for 'Janta Curfew' through T.V. on March 19, 2020. This curfew was proposed on March 22 to 7.00 am to 9.00 pm. But State of Tamil Nadu by using power under the Epidemic Act, 1897 extended this period to 5.00 am on March 23.³ First lockdown to all over India was implemented on March 25. In this time of the pandemic the Union Government and State Governments are putting various restrictions on the people and using various measures to tackle the spread of the novel corona virus. Here we are going to talk extensively about the various laws and their provisions which the Governments are using to control the pandemic in India.

Constitution of India

Constitution of India contents law of land. Fundamental rights, DPSP, State list, Schedule XI and Schedule XII are involved. Most important points which are to be dealt are –

1. Public Health
2. Condition of workers and labourers

Public Health

Right to freedom of religion is subject to public health.⁴ It is duty of every State to make policy towards securing the health and strength of workers, men and women, and the tender age of children are not abused.⁵ It is duty of the State to raise the level of nutrition and the standard of living and to improve public health.⁶ Public health, sanitation, hospitals and dispensaries are subject matter of State List.⁷ Rural Local Bodies⁸ and Urban Local Bodies⁹ are also duties bound to maintain public health.

Condition of workers and labourers

Preamble of the Constitution of India secures its citizens economic justice also. Everyone has fundamental right of dignified life.¹⁰ According to Article 39 (e) it is the duty of the State to make such policy that anyone should not be forced by economic necessity to enter

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avocations unsuited to their age or strength. Enhancing working hours 8 to 12 will affect health of workers. Actual needy are workers rather than capitalist. Workers must be economically supported. The State shall make provision for securing just and humane conditions of work and for maternity relief.¹¹

The Epidemic 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. If the government had followed the National Disaster Management Guidelines (NDMG) of 2008, the situation would have been different. India would have had a comprehensive Act where it would not have had to take recourse to a 123-year-old law when airports didn't exist.¹²

Preamble

It provides for the better prevention of the spread of dangerous epidemic disease.

S.N.	Sections	Marginal Note
1	Section 1	Short title and extent.
2	Section 2	Power to take special measures and prescribe regulations as to dangerous epidemic disease. [By using power conferred under this section Maharashtra Government declared lockdown on March 23, 2020].
3	Section 2A	Powers of Central Government.
4	Section 3	Penalty [Section 188, IPC]
5	Section 4	Protection to persons acting under Act.

Section 1. Short Title and Extent

(1) This Act may be called the Epidemic Diseases Act, 1897.

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.

Amendment Inthe Epidemic Diseases Act, 1897

The Epidemic Diseases (Amendment) Ordinance, 2020¹³ (Promulgated by President on April 22, 2020)

Reason of Promulgation of ‘Ordinance’

During the current COVID-19 pandemic, there have been instances of the most critical service providers i.e. members of healthcare services being targeted and attacked by miscreants, thereby obstructing them from doing their duties. Members of the Medical community, even as they continue to perform relentlessly round the clock and save human lives, have unfortunately become the most vulnerable victims as they have been perceived by some as carriers of the virus.¹⁴

In this context ‘Ordinance’ was promulgated of to amend the Epidemic Diseases Act, 1897 to protect healthcare service personnel and property including their living/working premises against violence during epidemics¹⁴.

Special Features

Nature of Offence

The Ordinance provides for making such acts of violence cognizable and non-bailable offences.

Compensation

It also provides compensation for injury to healthcare service personnel or for causing damage or loss to the property in which healthcare service personnel may have a direct interest in relation to the epidemic.

Meaning of Violence

Violence as defined in the Ordinance will include harassment and physical injury and damage to property.

Investigation within 30 Days

Offences shall be investigated by an officer of the rank of Inspector within a period of 30 days.

Trial within One Year

Trial has to be completed in one year, unless extended by the court for reasons to be recorded in writing.

Punishment and Compensation

Offence	Imprisonment	Fine
Cognizable & Non-bailable Offence		
Commission or abetment of 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/-.
	In addition to this	Compensation
	In addition	the offender shall also be liable to pay compensation to the victim and twice the fair market value for damage of property

Indian Penal Code, 1860

The Indian Penal Code (IPC) is the official criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law.

Chapter X (Sections 172 -189)¹⁵ and Section 195 (1) (a)

Introduction

Relation between IPC and CrPC regarding CORONA can be discussed into two parts. These are- **No Cognizance without Written Complaint**

Non-compliance of directions of public servants and hiding themselves is an offence which

will come under sections 172 to 174 & 188. For such offences Court cannot take cognizance without prior written complaint of that public servants who has issues such order or direction [Section 195 (1) (a)].

Cognizance without Written Complaint

Knowingly or negligently spreading communicable disease and non-compliance of quarantine rule is an offence under sections 269 to 271, IPC. For such offence there is neither need of prior sanction nor written complaint of any authority. Court can take cognizance in such cases.

No Cognizance without Written Complaint

S. No.	Sections	Marginal Notes
1	Section 172	Absconding to avoid service of summons or other proceeding.
2	Section 173	Preventing service of summons or other proceeding, or preventing publication thereof
3	Section 174	Non-attendance in obedience to an order from public servant
4	Section 177	Furnishing false information.
5	Section 188	Disobedience to order duly promulgated by public servant

Section 188 is being used frequently. Section 3 of The Epidemic Diseases Act, 1897 refers section 188, IPC. According to section 195 (1) (a) Court cannot take cognizance for commission of offence without written complain of prescribed authority. There are two drawback of section 188. These are-

1. Proceedings under Section 188 can only be initiated by private complaint and not through a First Information Report.¹⁶
2. Punishment is not proportionate. Here maximum punishment six months and 1000 rs. as fine.

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 persons 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 tends 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.¹⁷

Explanation

It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.¹⁸

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order,

directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section¹⁹.

CrPC. Section 195 (1) (a)

Restriction on taking cognizance of offences under sections 172 to 188 IPC.	Prosecution for contempt of lawful authority of public servants	Only on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate
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[Section 195 (1)(a). Prosecution for contempt of Lawful Authority of Public Servants

- (1) No Court shall take cognizance -
- (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, or
 - (ii) Of any abetment of, or attempt to commit, such offence, or
 - (iii) Of any criminal conspiracy to commit such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate]²⁰,

Cognizance without written complaint (Here FIR is lodged)

S.No.	Section	Marginal Note
1	Section 268	Public nuisance
2	Section 269	Negligent act likely to spread infection of disease dangerous to life.
3	Section 270	Malignant act likely to spread infection of disease dangerous to life
4	Section 271	Disobedience to quarantine rule

Section 268. Public Nuisance

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common

1. injury,
2. danger or
3. annoyance

To the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage]²¹.

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.²².

Comment

Spitting or sneezing or roaming without mask negligently is punishable under this section if there is likely to spread the infection of any disease dangerous to life.

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.

Comment

Spitting or sneezing or roaming without mask malignantly is punishable under this section if there is likely to spread the infection of any disease dangerous to life.

Difference between section 269 and section 270

These sections can also be used by police for implementation of 'Swachh Bharat Mission' and persons can be arrested in case of dumping of garbage, spitting on public roads streets etc. Main differences between both sections depend upon mental condition of accused. There are following differences between both. These are following.

	Section 269	Section 270
Similarity	Cognizable, Bailable and triable by any Magistrate	Cognizable, Bailable and triable by any Magistrate
Mental Condition	Negligent activities	Malignant ²³ activities
Punishment	Six months imprisonment	Two year imprisonment
Seriousness	It is less serious	It is more serious

Section 271. Disobedience to Quarantine Rule

Whoever knowingly disobeys any rule made and promulgated for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both²⁴.

Comment

Section 271 is non-cognizable offence. CrPC must be amended and this offence should be put into the category of cognizable offence.

Code of Criminal Procedure, 1973

[The Code of Criminal Procedure commonly called Criminal Procedure Code (CrPC) is the main legislation on procedure for administration of substantive criminal law in India.

Regarding taking of cognizance I had already discussed. Section 144 authorises authority to regulate movement of public. It is very helpful to maintain social distancing.]²⁵

Indian Evidence Act, 1872

Indian evidence act contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law.

If accused is charged regarding non-disclosure about COVID-19, burden of prove shall lie on him to disprove this charge. He had knowledge regarding his disease.

Section 106. Burden of Proving Fact Especially Within Knowledge

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

[Illustrations]²⁶

- When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

The Disaster Management Act, 2005²⁷

The Act provides for the effective management of disasters and for matters connected therewith or incidental thereto. Lockdowns are being declared by this Act by NDMA (Central Government) and SDMA (State Government). Prime Minister (Section 3) and Chief Minister of the State (Section 14) are ex officio Chairperson of the NDMA and SDMA. Lockdowns are declared by these Chairpersons by using powers conferred under Section 6 and Section 14. Sections 51 to 60 deal with offences and penalties.

Proclamation of lockdown by NDMA [Central Government]

Lockdown is declared by National Disaster Management Authority [NDMA] constituted under section 3 of The Disaster Management Act, 2005. The Prime Minister of India is Chairperson of the National Authority, ex officio. Lockdown is declared by using power given under section 6 (2) (i) of the Act. It is implemented by National Executive Committee which is empowered under section 10²⁸ of the Act. Detail guidelines are prepared by Executive Committee. Its main function is to assist the National Authority.

Five lockdowns have been declared in India.

These are –

1. First Lockdown – March 25 – April 14²⁹
2. Second Lockdown – April 15 – May 03³⁰
3. Third Lockdown – May 4 – May 17³¹
4. Fourth Lockdown – May 18 – May 31³²
5. Fifth Lockdown – June 01 – June 30³³

Proclamation of lockdown by SDMA [State Government]

According to Section 2(q) of Disaster Management Act, 2005 "State Authority" means the State Disaster Management Authority established under subsection (1) of section 14 and includes the Disaster Management Authority for the Union territory constituted under that section.

According to Section 14 (2) A State Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the State Government and, unless the rules otherwise provide, the State Authority shall consist of the following members, namely: -

- (a) the Chief Minister of the State, who shall be Chairperson, ex officio.

Section 18 of the Act deals powers and functions of State Disaster Management Authority. By using power given under section 18 lockdown is declared in State.

Epidemic Disease Act, 1897 section 2 also authorise for declaration of lockdown. State of Maharashtra was first State to declare lockdown on March 23, 2020 by using power given under EDA, 1897 and DMA, 2005.³⁴

State of Tamil Nadu using power under section 2 of the Epidemic Disease Act, 1897 imposed restrictions from 18.00 hrs of 24.3.2020 to 06.00 hrs of 1.4.2020.³⁵

Spreading wrong information

Section 54 Punishment for False Warning

Section 54 of the Disaster Management Act, 2005 provides for punishment to a person who makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic. Such person shall be punished with imprisonment which may extend to one year or with fine.

The Essential Commodities Act, 1955³⁶

The Essential Commodities Act is an act of Parliament of India which was established to ensure the delivery of certain commodities or products, the supply of which if obstructed owing to hoarding or black marketing would affect the normal life of the people. This includes foodstuff, drugs, fuel (petroleum products) etc³⁷.

Section 3.

Powers to control production, supply, distribution, etc., of essential commodities - If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulation of essential commodities³⁸.

The Essential Services Maintenance Act, 1981

[The Essential Services Maintenance Act (ESMA) is an act of Parliament of India which was established to ensure the delivery of certain services, which if obstructed would affect the normal life of the people. This include services like public transport (bus services), health services (doctors and hospitals).

According to section 3 of this Act, Central Government may prohibit strike of certain employees. Several State Governments have also enacted similar laws to this. Such laws are being used by Central Government and State Government to continue to maintain essential services to fight against COVID-19³⁹.

Uttar Pradesh Cabinet Decision⁴⁰ [May 06, 2020]

1. Uttar Pradesh Public Health & Epidemic Disease Control Ordinance, 2020 (PP. no -1-2)
2. Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020. (PP. no - 11-12)

Labour Laws in Uttar Pradesh

In Uttar Pradesh thirty eight laws were prevailing. But when this proposed Ordinance comes, all labour laws except following will be suspended for three years. These three laws are –

1. The Employee's Compensation Act, 1923
2. The Bonded Labour System (Abolition) Act, 1976⁴¹
3. The Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996⁴²
4. Payment of Wages Grant Act, 1936⁴³ [Only section 5⁴⁴ will be enforce]
5. Labour Laws related to employment of Women and Children shall continue.

Uttar Pradesh Government exempted factories by issuing 'Shasanadesh'⁴⁵ on May 8, 2020 by using power given under section 5 of the Factories Act, 1948.⁴⁶ By this 'Shasanadesh' Employers were allowed to take work for 12 hours per day. But under public pressure State Government was compelled to withdraw this 'Shasanadesh' and issued another 'Shasanadesh' on May 15, 2020.⁴⁷

Remarks

Several State Governments are exempting industrialist from labour laws. In comparison to employers and employees, employees are weaker. So several labour laws were enacted after long struggle to protect weaker and vulnerable class. After such 'Shasanadesh' employers will exploit more. There will be no Trade Union to raise concern of employees. Single employee cannot do anything. Increasing working hour up to 12 hours, will directly affect health, family and nurturing of children.

Labourers Laws must not be abolished or relaxed in arbitrary manners. Suspension of labour laws including Trade Union Act, 1926⁴⁸ is violation of Article 19 (1) (c)⁴⁹ which gives right to form associations or unions.⁵⁰ If any State Government compels labourers to stay in State and not allowing to go their home is violation of Article 19 (1) (d)⁵¹ & Article 23⁵² of the Constitution of India.⁵³

Government should exempt or reduce taxes rather than suspending labour laws.

Condition of Workers and Labourers⁵⁴

Preamble of the Constitution of India secure its citizens economic justice also. Everyone has fundamental right of dignified life.⁵⁵ According to Article 39 (e) it is the duty of the State to make such policy that anyone should not be forced by economic necessity to enter avocations unsuited to their age or strength. Enhancing working hours 8 to 12 will affect health of workers. Actual needy are workers rather than capitalist. Workers must be economically supported. The State shall make provision for securing just and humane conditions of work and for maternity relief.⁵⁶

Legal Rights of Migrants – An Overview during Covid – 19

Introduction

Migrants are also human being. In his country he is citizen and in other country he is person. In case of citizen, they have all rights as a citizen. In case of person, they have all rights as a person.

Constitution of India provides some fundamental rights to persons and some fundamental rights only to citizens. For example Articles 14 and 21 provides fundamental rights to persons while Article 19 provides fundamental rights only to citizens.

Meaning of Migrants

Kind of Migrants

Kinds of Migrant workers may be divided on the basis of municipal laws as well as international laws. These are –

Municipal Laws

The Inter-State Migrant Workmen

International Laws

1. Migrant Worker.
2. Frontier Worker
3. Seasonal Worker.

Municipal Laws

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979⁵⁷

Section 2(e) - "inter-State migrant workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment⁵⁸.

International Laws

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990⁵⁹ deals issues related to

migrants workers. It was adopted by General Assembly in December, 1990. It came into force in 2003. Some important points are following -

Article 1

The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status⁶⁰.

Article 2 (1)“Migrant worker”

The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

Bande Bharat Mission

Through this Mission, Government is helping persons including migrants who are stranded in foreign countries.

Article 2 (1)(a)'Frontier Worker'

The term 'frontier worker' refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

Article 2 (1)(b)'Seasonal Worker'

The term 'seasonal worker' refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.

Role of Supreme Court During Covid -19



Date of Orders	Name of Cases	Name of Judges	Important points
Medical Test			
April 8, 2020.	Shashank DeoSudhiv. Union Of India &Ors. ⁶¹	Hon'ble JJ. Ashok Bhushan & S. Ravindra Bhat]	Test [Either in Public Lab or Private Lab] must be free of cost
Media &Migrants			
March 31, 2020	AlakhAlok Srivastava v. Union of India	Hon'ble Judges (1) Mr. Sharad Arvind Bobde (CJI – S.A.Bobde) (2) Mr. L. Nageswara Rao	Migrants should be treated with kindness and humanity. Supreme Court rejected to control social and print media.
May 28, 2020	In Re: Problems and Miseries of Migrant Labourers ⁶²	Hon'ble Judges Mr. (1)Ashok Bhushan (2) Sanjay KishanKaul (3) M.R. Shah	Guidelines for migrant workers to provide facilities
June 09, 2020	In Re: Problems and Miseries of Migrant Labourers ⁶³	Hon'ble Judges Mr. (1)Ashok Bhushan (2) Sanjay KishanKaul (3) M.R. Shah	Additional guidelines for migrant workers to provide facilities
Disposal of dead body			

June 12, 2020	In Re the Proper Treatment of COVID-19 Patients and Dignified Handling of Dead Bodies in the Hospitals Etc. ⁶⁴	Hon'ble Judges Mr. (1)Ashok Bhushan (2) Sanjay KishanKaul (3) M.R. Shah	Disposal of dead bodies in dignified manner.
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Test [Either in Public Lab or Private Lab] must be free of cost

Shashank DeoSudhiv. Union of India &Ors.⁶⁵ (Order – April 8, 2020)

[Division Bench Hon'ble JJ. Ashok Bhushan& S. Ravindra Bhat]

Chronology

Important Date	Authority/Case	Important Points
December 31, 2019	COVID – 19 [Corona Virus Disease -2019]	It was found in
March 11, 2020	WHO	COVID 19 was declared as 'Pandemic' by WHO
17 March, 2020	Indian Council of Medical Research, Department of Health Research	ICMR fixed Rs.4500 for private labs for screening and confirming COVID-19.
25 March, 2020	Lockdown was implemented	March 25 – 14 April
April 8, 2020	Shashank DeoSudhiv. Union Of India &Ors	Free of cost in all labs.

[We find prima facie substance in the submission of petitioner that at this time of national calamity permitting private Labs to charge Rs.4500 for screening and confirmation test of COVID-19 may not be within means of a large part of population of this country and no person be deprived to undergo the COVID-19 test due to non-payment of capped amount of Rs.4500]⁶⁶. It is submitted before us that insofar as Government Laboratories are concerned the COVID-19 test is conducted free of cost. The private Hospitals including Laboratories have an important role to play in containing the scale of pandemic by extending 3 philanthropic services in the hour of national crisis. We thus are satisfied that the petitioner has made out a case for issuing a direction to the respondents to issue necessary direction to accredited private Labs to conduct free of cost COVID-19 test. The question as to whether the private Laboratories carrying free of cost COVID-19 tests are entitled for any reimbursement of expenses incurred shall be considered later on. We further are of the view that tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by ICMR.

Is Government can regulate Media especially electronic media?

AlakhAlokSrivastava v. Union of India⁶⁷ (Order – 31 March, 2020)

Coram

Hon'ble The Chief Justice Hon.ble Mr. Justice L. Nageswara Rao
Central Government requested to regulate Media especially print media.

Crux

Disobedience to an order promulgated by a public servant would result in punishment under section 188 of the Indian Penal Code. An advisory which is in the nature of an order made by the public authority attracts section 188 of the Indian Penal Code. We trust and expect that all concerned viz., State Governments, Public Authorities and Citizens of this country will faithfully comply with the directives, advisories and orders issued by the Union of India in letter and spirit in the interest of public safety. [In

particular, we expect the Media (print, electronic or social) to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated. A daily bulletin by the Government of India through all media avenues including social media and forums to clear the doubts of people would be made active within a period of 24 hours as submitted by the Solicitor General of India. We do not intend to interfere with the free discussion about the pandemic, but direct the media refer to and publish the official version about the developments. 8 It is well known that panic can severely affect mental health. We are informed that the Union of India is conscious of the importance of mental health and the need to calm down those who are in a state of panic.]⁶⁸

AlakhAlok Srivastava v. Union of India (March 31, 2020)

Fact

AlakhAlok Srivastava (Advocate) filed writ petition in public interest for redressal of grievances of migrant labourers in different parts of the country. One more writ petition was clubbed along with this 'writ petition'. The petitioners have highlighted the plight of thousands of migrant labourers who along with their families were walking hundreds of kilometres from their work place to their villages/towns.

They are seeking a direction to the authorities to shift the migrant labourers to government shelter homes/accommodations and provide them with basic amenities like food, clean drinking water, medicines, etc.

Order

The anxiety and fear of the migrants should be understood by the Police and other authorities. As directed by the Union of India, they should deal with the migrants in a humane manner. Considering the situation, we are of the opinion that the State Governments/Union Territories should endeavour to engage volunteers along with the police to supervise the welfare activities of the migrants. We expect those concerned to appreciate the trepidation of the poor men, women and children and treat them with kindness.

In Re: Problems and Miseries of Migrant Labourers⁶⁹ (May 28, 2020).

Interim Relief

Supreme Court observed, "At present, looking into the difficulties and miseries of migrant workers, we are of the view that certain interim directions are required to be issued to be followed by the State Governments / Union Territories and the Central Government to redeem the immediate difficulties of the migrant workers. Pending consideration of the detailed reply and affidavits from the State Governments and the Central Government, we issue following interim directions:

No fare for migrants

No fare either by train or by bus shall be charged from any migrant workers. The railway fare shall be shared by the States as per their arrangement as submitted by the learned Solicitor General and in no case any fare should be asked or charged from any migrant workers by the States and the Railways.

Food free of cost

[The migrant workers who are stranded at different places in the country shall be provided food free of cost by the concerned States / Union Territories at different places which shall be publicized and notified to them during the period they are waiting for their turn to board the train or bus.]⁷⁰

Water and meal during the period of transportation either in the bus or in the camps on the way

Initially, as stated by the learned Solicitor General, the originating State shall provide water and meal and during the journey, the railways shall provide meal and water to the migrant workers and same facilities shall be extended when the migrant workers are transported by bus. The State shall take care of providing necessities water and meal during the period of transportation either in the bus or in the camps on the way⁷¹.

Registration of Migrant Workers

We further direct that the State shall simplify and speed up the process of registration of migrant workers and also provide help desk for registration at the places where they are stranded⁷².

Publication of information regarding transport

The State shall try to endeavour that after registration the workers should be asked to board the train or bus at the earliest and complete information should be publicized to all the concerned regarding mode of transport.

Facilities for migrants on road

We further direct that those migrant workers who are found walking on the highways or roads shall be immediately taken care by the concerned State / Union Territories and they shall be provided the transport to the destination and all facilities including food and water be provided to those found walking on the road⁷³.

Duties of receiving State

The receiving State, after the migrant workers reach his native place, shall provide transport, health screening and other facilities free of cost.

In Re: Problems and Miseries of Migrant Labourers⁷⁴ (June 09, 2020)

We have no doubt that National Human Rights Commission shall take those proceedings to its logical end. National Human Rights Commission has also suggested certain shortterm measures and long-term measures to ameliorate the conditions of the migrant workers. Reference of enactments, namely, Inter-state Migrant Workmen (Regulations of Employment and Conditions of Service), 1979 as well as Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 have been made to. Reference has also been made to Unorganised Workers' Social Security Act, 2008. With regard to working of the aforesaid enactments and the measures taken by the different States, we shall consider the response of the States and thereafter shall consider the issues raised regarding short-term measures and long-term measures.

High Court

It has also been brought before us that various High Courts have also taken notice of cases of migrant labourers. High Courts being constitutional Courts are well within their jurisdiction to take cognizance of violation of fundamental rights of migrant workers and we have no doubt that those proceedings shall proceed after considering all aspects including the response of concerned authorities.

NGO and Individuals

We may also notice one more fact. Although it is the responsibility and duty of the States and Union Territories to take care of all the needs of migrant labourers but in this difficult time non-governmental organisations and individuals have also contributed and played an important role in extending helping hand to the migrants. The society as a whole was moved by miseries and difficulties of migrant labourers and it exhibited its passion and devotion by way of individuals. Nongovernmental organisations coming forward to help the migrant workers and to fight the pandemic and extend help 21 by providing food, water and transportation at their cost which deserves all appreciation.

Directions of Supreme Court

Supreme Court observed, "We, thus, in addition to directions already issued by our order dated 28.05.2020 and measures as directed above, issue following further directions to the Central Government, all States and Union Territories:

Within 15 days

All the States/Union Territories shall take all necessary steps regarding identification of stranded migrant workers in their State which are willing to return to their native places and take steps for their return journey by train/bus which process may be completed within a period of 15 days from today.

Providing more Shramik Trains on Demand

In event of any additional demand, in addition to demand of 171 Shramik trains, as noticed above, railway shall provide Shramik trains within a period of 24 hours as submitted by learned Solicitor General to facilitate the return journey of migrant workers.

Providing details of all schemes by Central Government

The Central Government may give details of all schemes which can be availed by migrant workers who have returned to their native places.

Providing details of all schemes by all States and Union Territories Government

All States and Union Territories shall also give details of all schemes which are current in the State, benefit of which can be taken by the migrant labourers including different schemes for providing employment.

Establishment of counselling centres

The State shall establish counselling centres, help desk at block and district level to provide all necessary information regarding schemes of the Government and to extend helping hand to migrant labourers to identify avenues of employment and benefits which can be availed by them under the different schemes.

Details of Reached Migrant Labourers

The details of all migrant labourers, who have reached their native places, shall be maintained with details of their skill, nature of employment, earlier place of employment. The list of migrant labourers shall be maintained village wise, block wise and district wise to facilitate the administration to extend benefit of different schemes which may be applicable to such migrant workers.

Duties of the Counselling Centres

The counselling centres, established, as directed above, shall also provide necessary information by extending helping hand to those migrant workers who have returned to their native places and who want to return to their places of employment.

Withdrawal of offences against Migrants

All concerned States/UTs to consider withdrawal of prosecution/complaints under Section 51 of Disaster Management Act and other related offences lodged against the migrant labourers who alleged to have violated measures of Lockdown by moving on roads during the period of Lockdown enforced under Disaster Management Act, 2005. 36. List the matter on 08.07.2020.⁷⁵

Disposal of Dead Body**In the proper treatment of COVID-19 patients and dignified handling of dead bodies in the hospitals etc.**⁷⁶

Supreme Court took suo motu cognizance on the basis reporting of INDIA TV regarding pathetic conditions of patients in LNJP. This hospital is under control of Delhi Government. Supreme Court also directed for more testing. Supreme Court expressed its concern regarding disposal of dead bodies.

Suggestions

1. Co-ordination between Central and State Governments
2. Awareness
3. Economic support to workers and labourers
4. Free Medical education and Enhancement of medical facilities.
5. Saving of money to fight such types of contingency

6. Saving and Establishment of Government entities to generate employment
7. Time has come to adopt socialism and reject capitalism
8. Exemption or reduction of taxes rather than suspension of labour laws.
9. Decision must be taken with pre plan rather than hasty.
10. Special laws
11. Amendment in laws

Coordination between Central and State Government

Constitution of India establishes 'Federal Structure' of Governments. State Governments play vital role in success of any policy. Public health and sanitation; hospitals and dispensaries are subject matters of State List.⁷⁷ Mr. Amit Shah blamed Miss. Mamata Banerjee for non-cooperation to tackle migrant issues. This was vice-versa. Similar situations are in several States.

So in this worst time, it is demand of welfare of country to do work with co-operation of each other.

Awareness

At present time there is no vaccine to fight against COVID -19. Social distancing, using mask, cleaning hands, strengthening immunity system etc. are main tools to fight against CORONA-19. So there is need to make aware about these things.

Economic support to workers and labourers

During the lockdowns most affected class is labourers. Initially they followed direction of Government. But when there was nothing to take food and uncertainty regarding period of lockdown, they moved to their hometown in summer vacation. Labourers are fighting for livelihood. They must be supported.

Free Medical Education and Enhancement of Medical Facilities

This pandemic proved supremacy of hospitals over religious institutions. Medical education is very costly. Maximum talented poor students do not get admission in educational institutions. So medical education must be free at all level. Education must not be subject matter of gain and loss.

On May 12, 2020 our Prime Minister said, "When the crisis began, not a single PPE (Personal Protective Equipment) was being manufactured in India. N-95 masks were being manufactured in negligible quantity. Today, the situation is such that India is manufacturing 2 lakh PPE kits and N95 masks each per day. We are able to do so because India has turned a crisis into an opportunity".

This statement of Hon'ble Prime Minister clearly shows that how much we were negligent regarding medical facilities. This is grey area where special focus must be given.

Saving of money to fight such types of contingency

In normal circumstances Government never try to save money of tax payers. They use to advertise their small achievement. Huge money is spent to construct religious institutions and statutes. Government is announcing scheme for public. But indirectly these schemes are schemes to give loan.

Government had already withdrawn reserved money from Reserve Bank.

So it is suggestion to save money for future contingency.

Saving and Establishment of Government entities to generate employment

Government was totally failed to provide employment even before outbreak of COVID -19. COVID 19 is havoc. Government is selling public entities. Even during COVID 19 Government is trying to sell public entities. Government has failed on both front. One side it failed to establish new public entities and generate employment and other side it is selling public institutions and creating unemployment.

So it is request from Government to establish new entities and generate employment.

Time has come to adopt socialism and Reject Capitalism

Although 'Socialism' word has been used in preamble of the Constitution of India. But practically India has had dropped concept of 'Socialism'. Capitalist are giving huge amount of money to spend during election. After election they are indirectly ruling country. Public institutions were destroyed and private companies were promoted. BSNL, HAL, Public educational institutions are best examples.

Government was able to know minimum balance of poor people and unable to know balance of big defaulter. These big defaulters ran away from country one by one.

So time has come to run Government for public by public. Resources of country must be equally distributed otherwise extremist activities of public cannot be controlled.

Exemption or reduction of taxes rather than suspension of labour laws

Some States suspended labour laws to give benefits to employers. Company were exempted from paying salary during lockdown. It is unfortunate. Companies must be protected but not at the cost of labourers. Companies but be exempted from taxes rather than exemption from paying salary and labour laws.

Decision must be taken with pre plan rather than hasty

Last day of Budget Session was March 23, 2020. Nothing was discussed in Parliament regarding COVID -19 while WHO had declared COVID -19 as pandemic on March 11. Government was busy in hosting USA President. There was no pre-information regarding lockdown. No one was given opportunity. Suddenly everything was stopped. Our Prime Minister is well known for giving sudden and shocking news. Nothing was discussed in Parliament. This habit is wrong. Several people are dying on road and COVID 19 is spreading day by day.

Before taking any decision, implementation at ground level must be considered. Poor people are also part of this country. Policy must be made after taking problem and its solution related to last person.

Special Laws

Several Countries like Britain and Singapore had enacted special laws to fight against CORONA. India was silent. India was fighting with the help of

The Epidemic Disease Act, 1897. When Indian Medical Association made pressure on Government, then Government promulgated 'Ordinance' to amend to amend Epidemic Disease Act, 1897. This amend protects medical professional. But it is not sufficient to fight against this disease. There is need to enact special laws to cover all points which are necessary to fight this disease and other disease.

Amendment in laws

Some laws must be amended. Here I am mentioning some statutes. These are –

Indian Penal Code

Sections 188, 269, 270 and 271 of IPC must be amended and punishment must be enhanced.

Code of Criminal Procedure, 1973

First Schedule must be amended and section 271 of IPC must be declared as cognizable offence. Section 188 is cognizable offence. FIR can be lodged, but Court cannot take cognizance an absence of written complaint of prescribed authority. Section 195 (1) (a) must be amended and Court should be allowed to take cognizance even without written complaint of the authority.

Conclusion

Whole countries are facing problems due to outbreak of COVID -19. Time has come to unite and fight. In this war every person is soldier. We will win war against COVID-19. We have given some suggestions. Those suggestion should be followed. We hope will return in normal life very soon.

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