



CRIME AND JUDICIARY IN THE TIME OF COVID-19

Samridhi Talwar*

ABSTRACT

The novel coronavirus has been mushrooming at an ever-pacing, alarming rate, such that WHO declared it as a pandemic. With a vaccine or cure being few months away, the world has resorted to lockdown to prevent the spread of this disease.

COVID-19 has sent the entire world up for spout. It has affected business, tourism, economy, physical and mental health of individuals, and the governments alike. In order to cope with the adverse situation, the government has been taking measures such as imposing a lockdown via relevant legislative provisions and advisories etc. However, while the world is on a standstill due to this virus, the same cannot be said for criminal activities all over the world. As a consequence, the need for judiciary has also increased manifold in this crisis.

This article seeks to address the pandemic situation and the statutes and provisions resorted to by the government to tackle this crisis in India. The functioning of the courts in India as well as around the globe are also addressed. The criminal activities during the pandemic and its regulation in India as well as abroad are discussed. Lastly legislative and judicial orders paving India's way ahead from the pandemic are mentioned.

* Student, University School of Law and Legal Studies, GGSIPU

OVERVIEW

Covid-19 has impacted the world in ways that are unfathomable. The entire world has been cumulating diverse responses to cope and combat this issue. India's initial response to Coronavirus has been far reaching and hefty in scale. India has exiled into an extended lockdown that had initiated with almost shutting down of all establishments and ample restriction on movement, the only exception being for essential services.

To comprehend India's retort to Covid-19, it is imperative to revise the fact that India has a defined Constitution, is a federal republic and has a parliamentary system of democracy. In accordance with the Constitution, the legislative and executive actions in India are subject to judicial review by the Courts. Hence, India's stance and policies on Covid-19 should be viewed keeping in mind the fact that it comprises of various levels of institutional actors and governmental authorities

THE POSSIBILITY OF IMPOSING EMERGENCY TO COMBAT THE PANDEMIC

While India went forward to face Covid-19 with a lockdown, the alternative could have been imposing an emergency in India. The Constitution of India has authorized the president in Part XVIII of the Constitution to impose an emergency with the advice of his council of ministers. Such an emergency is to be ratified within the span of a month by the Parliament. The Constitution states that whilst the emergency is in force, the Fundamental Rights of citizens except Article 21 i.e. the right to life and liberty¹ are eligible to be suspended. The Constitution and the precedents have reinforced time and again that an emergency can be proclaimed only in situations of war, armed rebellion or external aggression.

However, the imposing of emergency was a road not taken in India for two main reasons. Firstly, the Constitution of India is not armored with the provision and authority to declare an emergency for the purpose of environment or health issues. Secondly, with the harsh experiences of various emergencies that were imposed with political intent, the governments

¹ INDIA CONST. art. 21.

have been wary of imposing a formal emergency. Hence, an emergency was not an option to tackle this pandemic.

RULE BY DECREE – THE HOBSON’S CHOICE

Instead of imposing an emergency, the governments at both levels i.e. the Centre and State have opted to rule by virtue of decree. The enabling factor for the governments has been the sweeping powers that have been endowed to them sans any legislative checks.

The response of the central government began with the invoking of the National Disaster Management Act.² However, this was questioned on the basic premise that the present situation does not fall in the ambit of a natural disaster. Moreover, the efficiency and effectiveness of the Natural Disaster Management Act with regards to pandemics and health emergencies is dubious. In order to apply the act with ease, the government was forced to declare Covid-19 as a disaster so it falls within the definition of the act. This has enabled the central government the power to centralize the ambit of operations by superseding the enforcement powers despite public health being a part of the State List according to the Constitution. Thus, applying its powers under Section 10 of the Natural Disaster Management Act³, the Centre imposed a nationwide lockdown with the only exception being for essential services.

The response of the states is similar to that of the Centre. Various states have applied the Epidemic Diseases Act⁴ even before the Centre applied the provision of the Natural Disaster Management Act. Section 2A of the Epidemic Diseases Act⁵ empowers the state governments to pass and implement any rules and regulations as necessary in order to prevent the spread and outbreak of epidemic diseases. Thus, numerous states had imposed a lockdown, provisions of quarantine, banning of public gatherings, sealing of areas and provisions of isolation even before the national lockdown as a measure to prevent the spread of this pandemic.

² National Disaster Management Act, 2005.

³ National Disaster Management Act, 2005 § 10.

⁴ Epidemic Diseases Act, 1897.

⁵ Epidemic Diseases Act, 1897 § 2A.

Apart from the Centre and State actions of implementing the Natural Disaster Management Act⁶ and the Epidemic Diseases Act⁷ respectively, the movement of people is being restricted with the provision of the Code of Criminal Procedure⁸. The Code of Criminal Procedure endows police officers of senior rank with the authority to pass orders that restrict movement of individuals in a situation of expected perils of human health, life and safety within the jurisdiction of their districts. This provision of CrPC has been put to use adequately in this pandemic situation.

Thus, a conclusion of India's policy framework to combat and manage the Covid-19 outbreak can be summarized as a multifaceted, three-pronged web. This web is weaved with the central government's implementation of the National Disaster Management Act⁹; the State government's implementation of the Epidemic Diseases Act¹⁰; and lastly the orders of local officers in accordance with the Code of Criminal Procedure.¹¹ This approach is an umbrella legislation that has taken place of what is precisely a rule of the decree of the executive. The chronology of this three-pronged approach of executive decrees is the arbitrariness in the enforcement of the lockdown. The arbitrariness which has also taken violent turns at times, occurs due various factors. The first reason being the difficulty in movement without a pass that is issued by the government and the lack of preconditions and situations for the issuance of passes. The other reason is the lack of appropriate and specific limitations on going out of an individual for basic purposes such as to purchase essential goods or to exercise etc.

LEGISLATIVE PROVISIONS RELATING TO THE COVID-19 LOCKDOWN

The Epidemic Diseases Act, 1897

This legislation was passed in order to stonewall the bubonic plague that had ravaged Bombay in 1896 to such a drastic extent that people had to migrate from the city.

⁶ National Disaster Management Act, 2005.

⁷ Epidemic Diseases Act, 1897.

⁸ Criminal Procedure Code, 1973.

⁹ National Disaster Management Act, 2005.

¹⁰ Epidemic Diseases Act, 1897.

¹¹ Criminal Procedure Code, 1973.

This statute allows the government to take all measures as necessary in case it is satisfied that a state or a part of the state is infected or threatened with the outbreak of a disease that is dangerous and epidemic in nature.¹² The government can prescribe temporary laws and regulations to be followed if the government feels that the present laws are inadequate to deal with the pandemic.

This act empowers the state to undertake any non-pharmaceutical intervention to manage the spread of the epidemic disease where there is an absence of the medical facilities to combat the disease. The officers of the State can isolate and admit persons in certain cases and can also forcefully conduct the surveillance of persons and premises. Moreover, the State can issue a lockdown as and when necessary.¹³

However, an essential blemish that can be seen is that the Epidemic Diseases Act 1897¹⁴ is quiet on the meaning of "dangerous epidemic diseases". Moreover, the freedom of speech and expression¹⁵ is also curtailed and nobody can publish any material regarding the disease sans prior permission from the government as an attempt to control fake news.

The National Disaster Management Act, 2005

The Disaster Management Act, 2005¹⁶ is a statute that provides the framework to undertake all measures as necessary with the object of managing a disaster i.e. a catastrophe, calamity, mishap or grave occurrences in a place that is caused due to any natural or manmade reasons, by negligence, or by accident such that it results in a substantial loss of life and induces human suffering, degradation or damage to environment or destruction and damage of property and is of a magnitude that is beyond the coping capacity of the society.¹⁷

¹²Kunal Tandon, *Lockdown is not Coronavirus: The legal framework behind lockdown, curfew, and quarantine*, BAR AND BENCH (last visited May 6, 2020) <https://www.barandbench.com/columns/coronavirus-the-legal-framework-behind-lockdown-curfew-and-quarantine>.

¹³Harleen Kaur, *Can the Indian legal framework deal with the COVID-19 pandemic? A review of the Epidemic Diseases Act*, BAR AND BENCH (last visited May 6, 2020), <https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>.

¹⁴Epidemic Diseases Act, 1897 § 2, 2A.

¹⁵INDIA CONST. art. 19.

¹⁶National Disaster Management Act, 2005.

¹⁷*Supra* note 1.

This legislation was enacted to handle situations such as earthquakes, fire and flood instead of a disease. This statute has more teeth to manage a circumstance of disaster and incorporates the ability to detain, fine and so forth to manage the disaster. The Act also has the authority to administer social media. The Act has been utilized in tandem and in accord with the Epidemic Diseases Act¹⁸, with the EDA giving the premise to manage and contain the disaster.¹⁹

In the present needs of the country, the Act is by all accounts an obsolete structure, attributable to the changing needs in public health crisis management.

Section 144 Of the Criminal Procedure Code

Section 144 of the Criminal Procedure Code²⁰ is a provision that empowers the executive magistrate to take all necessary actions to restrict a person or a group of persons in a particular area. Section 144 of the CrPC has been imposed in order to ensure the prime health concerns for the health and safety of all the citizens and to avert the possible dangers to human life due to Covid-19.

This order is a cardinal weapon to impose restrictions on movement of persons and public conglomerations which cannot be challenged on the grounds of violation of the freedom of speech and expression under Article 19 of the Constitution of India.²¹ Section 144 of the CrPC prohibits the assemblage of five or more persons in a prescribed region. This provision is meant to be used to minimize the threat to the society and maximize public safety and tranquility. Though Section 144 is within the reasonable restrictions of Article 19, the magistrate imposing Section 144 has to adhere with Section 134 of the Code of Criminal Procedure.²² For instance, the order under this provision cannot be for more than two

¹⁸ Epidemic Diseases Act, 1897.

¹⁹ *Supra* note 1.

²⁰ Criminal Procedure Code, 1973 § 144.

²¹ INDIA CONST. art. 19.

²² Criminal Procedure Code, 1973 § 134.

months. The exception to this rule is that the State government is empowered to enhance this time span for up to six months.²³

Thus, the imposition of Section 144 is within the ambit of the legal competency of the statute and can help tackle the covid situation. The imposition of these provisions has become necessary because of the imperativeness of restricting the gatherings of large number of people in order to contain the spread of this disease.

THE SLIPPERY SLOPE RELATING TO THE PANDEMIC AND HUMAN RIGHTS

This situation has led to an outbreak not only in the coronavirus cases, but also the cases of violation of the civil rights of individuals with dubious premises. This is due to the ambiguous and the open-ended nature of the laws, notifications and guidelines that have been imposed. The act of stamping quarantined individuals did more harm than good by bringing a lot of shame and embarrassment to induce them to stay at home. Some states also made public the details of the quarantined individuals along with asking them to send selfies on hourly basis whilst checking the GPS location of the pictures so as to ensure that they are adhering with the quarantine rules and regulations.²⁴

Certain states have also opted to track the quarantined persons using mobile data and also employing private vendors to issue passes for movement of individuals sans analyzing the data policies of such vendors and data providers. The lack of firm legal reason for such moves is intensified by the fact that despite a landmark case on the right to privacy, India isn't equipped with data protection laws. Thus, there is no legal standard that administers information assortment, handling, and use by the state governments, or by the middleman. There exists a constitutional benchmark of proportionality that requires the actions of the State to meet the tests of rationality, proportionality, legality and necessity. The State action fails to meet this test.

²³ Sonam Chandwani, Section 144: The need of the hour amid COVID-19 crisis, YOUR STORY (last visited May 6, 2020), <https://yourstory.com/2020/03/section-144-crpc-needed-covid-19>.

²⁴ People in home quarantine told to send selfies every hour to govt., THE HINDU, (last visited June 28, 2020), <https://www.thehindu.com/news/national/karnataka/covid-19-people-in-home-quarantine-told-to-send-selfies-every-hour-to-govt/article31208001.ece>.

THE OUTLOOK OF INDIAN JUDICIARY IN RESOLVING DISPUTES AMIDST COVID-19

Indeed, courts are an imperative in the civil society that we live in. The working of the courts has not yet been suspended formally. However, to adhere with the lockdown, the Apex court of the Country and various High Courts had pioneered to hold hearings virtually on an online-only and urgent-only basis. Thus, cases continue to be filed electronically, further burdening our already overburdened courts. This ingenious use of technology does not take away from the fact that the functioning capacity of the courts has witnessed a sharp decline. Moreover, the courts are only tending to matters that are extremely urgent and ironically did not perceive it urgent enough to define what constitutes as extremely urgent cases and the same has been left open for interpretation. This move of the courts clearly highlighted that the right to personal liberty has been abandoned by the courts which is not even done during the period of emergency.

This urgent-only model of the judiciary that has been restricting judicial access can in no manner prove to be sustainable. The courts will indeed have to resume with their usual and full-time workload. However, the methods adopted for such resumption shall be extremely different and polar from the ordinary ways that we have seen until now. This pandemic situation is proving to be a breakthrough for the courts where they finally embrace the virtual formats not only during this situation of adversity but also in its regular functioning. Since estimates state that India shall be going further with the lockdown at least till May, the resurrection of the usual jam-packed courtroom is impossible. Thus, the Supreme Court has begun seizing this opportunity and Suo-moto issued an order that set out regulations and guidelines regarding the working of the courts during this lockdown period on 6th April 2020.²⁵With complete regard to the situation of Covid-19 where realities have metamorphosed into social distancing, electronic communication and remote, distant working, the judicial system has started preparing for the new normal.

²⁵ Shruti Mahajan, *This is how Supreme Court Judges are using Video Conferencing to hear urgent matters*, BAR AND BENCH (last visited May 7, 2020), <https://www.barandbench.com/news/litigation/this-is-how-supreme-court-judges-are-using-video-conference-to-hear-urgent-matters>.

This order by the court has highlighted that the Indian judiciary is not shirking off its responsibilities amidst this pandemic. Rather the judicial machinery is proving that it is equipped with the abilities and potential to act expediently and decisively. This has further been corroborated by Justice. (Retd.) B. N. Srikrishna who reinforced his confidence in courts stating that “*Remote working is a tried and tested model for arbitrations, and courts can adopt it very easily. Hiccups are only a mindset problem. Article 141/ 142 can be used for this to be effected in a timely manner.*”²⁶

On account of the same, the Supreme Court has seen numerous petitions being filed for various fundamental rights’ infringements during this lockdown. Moreover, there are certain cases wherein the apex court has taken suo-moto cognizance.

The astonishing fact is that India has been in the process of transforming its judicial machinery from the gavel to the click i.e. to the virtual platform for more than a decade. In 2004, the government had constituted a judicial committee with the objective to oversee the adoption of and the transition to electronic infrastructure for all the courts in India. The second phase of this project had also envisaged for video conferencing facility or court matters in 2014.²⁷ This technology was contemplated to be utilized to record evidence in cases that are sensitive in nature and progressively capture more ground as feasible. A landmark accomplishment of this project is that by 2019 approximately 16755 courtrooms in 3388 courts complexes had been computerized. Moreover, 3240 courts and 1272 jail complexes had been equipped with video conferencing apparatus.

A perusal of the current adaptation of our courts with the virtual arena is a clear evidence of the fact that online-only can indeed become the new ordinary in the normal, day to day functioning of the courts. Courts can order for necessary electronic filings and enlisting of applications and pleadings endowed with summary of contentions and law depended upon. In the normal course, in light of the pleadings, outline and submissions that are filed, the Judges have the power to pass speaking orders that can be published.

²⁶ Anuradha Mukherjee, Amita Katragadda, Ayushi Singhal & Shubhankar Jain, *From the Gavel to the Click: COVID 19 poised to be the inflection point for Online Courts in India*, SNAPSHOT (last visited May 6, 2020), <https://corporate.cyrilamarchandblogs.com/2020/04/gavel-to-click-covid-19-online-courts-in-india/>.

²⁷Supra note 9.

Indeed, even trials can be held electronically, the affidavits of evidence can be submitted, cross examinations can be conducted and documents can be marked, not face to face, yet through video conferencing. While it very well may be normal that the written submissions can be the essential mode for the presentation of cases, the concerned judges may seek oral hearings in specific situations with the help from the corresponding lawyers who can present their contentions via video conferencing which would satisfy and meet the ends of justice.

Adapting and adopting in this manner shall enable Indian courts to kick back with full functionality despite not being able to have regular court attendance, by virtue of the internet. Since an elephantine portion of the population of the country is employed by the judicial sector including lawyers, court staff, judges etc, online functioning would help maintain and adhere to the social distancing and other mandates of the health advisory for this entire sector.

Further, in courts which haven't been computerized and where conducting the proceedings virtually isn't feasible due to inadequate infrastructure, this pandemic situation should be treated as a warning sign and these courts should also be equipped with the required technology as soon as this lockdown is over. Until then, these courts can undertake written submission instead of oral arguments wherever feasible. This could also prove to be a milestone in removing the biggest blotch on Indian judiciary i.e. the pendency of cases. When the initial submission will be via written documents instead of by lawyers who are physically present in court, approximately forty percent of the cases are likely to be disposed off on the merits or the lack thereof in the written arguments.²⁸

If dealt with properly, the post Covid-19 period shall embark fundamental alterations to the legal field. The authenticity of legal discourse in litigation is likely to be intensified as oral arguments will take a backseat and written submission will be preferred. Moreover, virtual proceeding will also result in making the costs and duration of the cases more transparent and predictable. Virtual proceedings will boost the participation of the general public in matters of public importance where they will be able to view the proceedings through live links on the web. All said and done, the balance of convenience will lie in the prompt endorsement of technology and electronic functioning of the judicial system.

²⁸*Supra* note 9.

However, the Supreme Court Bar Association is not a fan of the virtual functioning of the courts and has stated that the virtual hearings should not be made the 'new normal' and must only be conducted until the pandemic situation demands. The SCBA recently drafted and passed a resolution which states that the usual open court hearings must be resumed as soon as feasible. This resolution of the SCBA is in line with the case of Swapnil Tripathi v. Supreme Court of India²⁹ that emphasized on the cardinality of transparency in judicial proceedings.³⁰

THE FUNCTIONING OF THE COURTS AROUND THE WORLD AS A RESPONSE TO COVID-19

The judicial systems of various countries have already initiated their rapid response to the profound impact that Covid-19 has had on the world. Each jurisdiction of the globe has enacted certain policy measures and legislations to restart the process of dispute resolution.

The United Kingdom which has been adversely hit by the pandemic has passed a legislation i.e. the Coronavirus Act, 2020. The courts have been ordered to shut down and the judgement hand-downs and cases are to be conducted through virtual means.³¹ Moreover, the United Kingdom has also amended various provisions of the relevant statutes to aid the facilitation of operations of the judicial machinery via virtual mediums and various software such as Skype, BT Meet Me, Justice Video Service etc. While trying to maintain the regular functioning of the courts, regard has also been given to public participation via live online links, which used to be a norm pre-covid. These initiatives have been implemented in order to enable a diverse spectrum of matters to be conducted via virtual means. This is to achieve the agenda of resuming and rekindling the functioning of the courts and maintain the access to justice to citizens amidst the pandemic.³²

²⁹ 2018 (11) SCALE 475.

³⁰ Shruti Mahajan, [COVID-19 Lockdown] *Video Conferencing hearings in Supreme Court should not become the "new normal" to replace open Court hearings: SCBA, BAR AND BENCH* (last visited May 6, 2020), <https://www.barandbench.com/news/covid-19-lockdown-video-conferencing-hearings-in-supreme-court-should-not-become-the-new-normal-to-replace-open-court-hearings-scba>.

³¹ Ben Knowles and Maurice Kenton, *COVID-19 Global: Arbitration and court impacts*, CLYDE & CO (last visited May 6, 2020), <https://www.clydeco.com/insight/article/covid-19-impact-on-courts-and-arbitration>.

³² *Ibid.*

In the European Union, the courts are shut and the matters are being conducted by following work for home practices. The European Court of Justice is prioritizing expedited, urgent and interim proceedings and has postponed various cases. A similar course of action has been adopted by the general courts. The deadlines for filing appeals have been increased in all courts except the ECJ.³³

Finland has revised its rules for the Chamber of Commerce with the intention of augmenting the performance and competence of the process of arbitration. The provisions of the revision include greater flexibility to the parties, adapting to more electronic submissions of documents and evidence, compulsory advance costs and fixed fee etc.³⁴

In Spain, Italy, France and Germany, the lockdown due to the widespread pandemic is being gradually lifted. In these countries urgent and essential cases are being heard in the courthouses whilst following social distancing and issuing judgments remotely.³⁵

Hong Kong has taken a landmark step forward in the direction of paperless litigation. In accordance with the Judicial Information Technology Strategy Plan, the implementation of an integrated Court Case Management System has been put to work.³⁶ This is aimed at standardizing and streamlining the processes of electronic courts across various hierarchies. The key elements of this bill include the electronic filing of documents, the use of electronic and digital signatures for court proceedings and electronic service of legal documents with mutual consent of the parties involved.³⁷

In China, rules for evidence have been revised for the civil proceedings. This legislation will come to effect from 1st May, 2020.³⁸ These provisions have been implemented for the objective of rendering enhanced efficiency for the parties in the lawsuit. These provisions

³³*Supra* note 14.

³⁴ Snapshot, <https://arbitration.fi/2019/12/17/revised-arbitration-rules-of-the-finland-chamber-of-commerce-to-enter-into-force-on-1-january-2020/> (last visited May 6, 2020).

³⁵*Supra* note 14.

³⁶ Benjamin Roe, *Global DR Legal Update - April 2020*, BAKER MCKENZIE (last visited May 6, 2020), <https://www.bakermckenzie.com/en/insight/publications/2020/04/global-dr-legal-update-april-2020>.

³⁷*Supra* note 19.

³⁸ Fung Simon Hui, Haifeng Li and Emma Chen, *PRC Supreme People's Court Releases Revised Rules of Evidence for Civil Proceedings – Global Litigation News*, BAKER MCKENZIE (last visited May 6, 2020), <https://globallitigationnews.bakermckenzie.com/2020/04/17/prc-supreme-peoples-court-releases-revised-rules-of-evidence-for-civil-proceedings/>.

entail the varied types of admissible evidence in the time of coronavirus, including electronic evidence. Relaxations have also been granted on the requirements of legalization of evidence that has been formed overseas. The duties of disclosure have also been given an expanded and enhanced explanation.³⁹

In Singapore, the courts including the Apex Court, High Court and lower courts have opted to pursue matters, conduct hearings, mediation and client counseling via online video conferencing in accordance with the COVID-19(Temporary Measures) Bill.⁴⁰

In the Philippines, the apex court has made amendments to Civil Procedure rules and the evidence rules. These amendments are intended to simplify and expedite the process of litigation. The amendments include narrowing the grounds for dismissal of motion, contemporary ways of making service to the parties, modifying the procedure of service and filings to convert it into electronic form.⁴¹ These provisions are being implemented to combat the delay caused in the judicial redress due to the pandemic and shall be applicable to cases filed post 1st May, 2020 as well as to the cases that are pending in courts.⁴²

The United States of America had had through discussion on social distancing and the functioning of the courts. However, unlike the stringent measures in other countries, the lockdown is being lifted in certain parts while the social distancing norms aren't being renewed. Moreover, the businesses are already opening and starting to function in some states. Most Courts continue to be suspended and jury trials have been cancelled. Post relevant discussions it has been concluded that hearing cases and public meetings that are feasible to be postponed should be held post the period of social distancing. The cases and meetings that can't be postponed should be held virtually but the notice for the same must be prompt and timely.⁴³ An appellate court in Michigan also held the State's fixed open meeting

³⁹*Supra* note 19.

⁴⁰Padmaja Kaul, Varun Khanna& Aman Chaudhary, *The trial of technology in litigation: COVID and beyond*, BAR AND BENCH (last visited May 6, 2020), <https://www.barandbench.com/columns/the-trial-of-technology-in-litigation-covid-and-beyond>.

⁴¹*Philippines: Amendments to the Rules of Civil Procedure and Evidence to take effect on 1 May 2020*, BAKER MCKENZIE (last visited May 6, 2020), https://insightplus.bakermckenzie.com/bm/dispute-resolution_1/amendments-to-the-rules-of-civil-procedure-and-evidence-to-take-effect-on-1-may-2020.

⁴²*Supra* note 19.

⁴³ Hilary Aidun, *Public Participation in the Coronavirus Age*, CLIMATE LAW BLOG (last visited May 6, 2020), <http://blogs.law.columbia.edu/climatechange/2020/03/30/public-participation-in-the-coronavirus-age/>.

laws are flexible enough to include in its ambit holding meetings and cases via video conferencing and other virtual means. Moreover, the Supreme Court had also laid precedents in various cases that the essentials of due process are not rigid and are rather flexible and case specific. Thus, the constitutional dimension of the proceedings being conducted virtually due to this pandemic are satisfied⁴⁴

South African courts are open despite the lockdown but are working in restricted capacity of dealing with urgent cases only. The physical access to courts remains restricted. Virtual mediums such as videoconferencing and teleconferencing are being used sparingly.⁴⁵ Moreover, the courts have held that non urgent civil suits cannot be placed on the court roster whilst the lockdown persists.

In Australia, the Federal Court is setting up the technology to hear all cases through virtual means i.e. via video conferencing. The courts that are not equipped with the facilities to enable video conferencing have been encouraged to do more on paper and initiate the adopting of technology.⁴⁶



CRIME AND ITS REGULATION IN INDIA DURING COVID-19

Indeed Covid-19 is a disease that is brutally consuming and affecting human lives. However, this virus has led to a diminution of crime rates of certain crimes in the country. The corona scare has led to a decline in the graph of criminal activities such as molestations, kidnapping, robberies, motor vehicle thefts etc. all over the country according to the police officials⁴⁷. It is believed that covid-19 situation and the lockdown are the reason for these dwindling crime rates and the criminals are themselves afraid of contacting the virus. In fact, crimes on the road have also reduced as people stay indoors due to the lockdown.⁴⁸ However, the apt

⁴⁴Supra note 26.

⁴⁵Supra note 14.

⁴⁶Supra note 14.

⁴⁷ Pretika Khanna and Shaswati Das, *Crime rate plunges amid lockdown, but domestic cases may go up*, LIVEMINT (last visited May 6, 2020), <https://www.livemint.com/news/india/covid-19-stay-at-home-reduces-crime-rate-but-fear-of-domestic-violence-rises-11586746861558.html>.

⁴⁸*Covid-19 'positive' effect: Crime rate witnesses' downward trend in Andhra Pradesh*, THE NEW INDIAN EXPRESS (Last visited 6 May, 2020), <https://www.newindianexpress.com/states/andhra-pradesh/2020/mar/19/covid-19-positive-effect-crime-rate-witnesses-downward-trend-in-andhra-pradesh-2118636.html>.

analogy for the situation of crime is that during the initial phases of the lockdown, even crime had preferred to be on self-quarantine. Post the germinal stages, certain crimes have spiked up and the criminals have gotten creative.

A major dilemma relating to crimes during the pandemic is whether the negligent spreading of the virus can be classified as a crime or not. In accordance with the laws in places, disease is within the ambit of injury. The laws further state that any person who causes injury intentionally can be made liable under both, criminal and civil law. Thus any person who does not adhere with the lockdown and violates the social distancing rule whilst the lockdown is still functioning commits a public wrong and can be made liable for intentionally injuring and harming the community.⁴⁹ In such a case, the individuals who are affected due to the person who infringed the rules and the entire society are victims and the State can take action for the same in the court of law. Additionally, a person who has been infected with the disease due to another person who broke the lockdown rules can bring civil action and claim damages and compensation in individual capacity to the infector.

Apart from classifying the disease as an injury, the Indian Penal Code⁵⁰ also has certain provisions relating spreading of a disease. Section 271 of the Indian Penal Code⁵¹ makes punishable, an act of maliciously spreading a disease that is dangerous to life. This implies that a person who intentionally and malignantly breaks social distancing and mingles with other people will attract Section 271.⁵² Moreover, Section 278 of the IPC⁵³ is also applicable in case a person breaks the lockdown and social distancing and the same results in spread of the virus.

Moreover, the crimes relating to breaking the lockdown have been so many in number that it questions the legitimacy of the lockdown. Numerous vehicles have been impounded and plentiful cases have been registered. However, a major fraction of these cases can be

⁴⁹*Is negligent spreading of COVID-19 a crime?* TIMES OF INDIA (last visited May 6, 2020), <https://timesofindia.indiatimes.com/home/education/news/is-negligent-spreading-of-covid-19-a-crime/articleshow/74977396.cms>.

⁵⁰ Indian Penal Code, 1860.

⁵¹ Indian Penal Code, 1860 § 271.

⁵²*Supra* note 33.

⁵³ Indian Penal Code, 1860 § 278.

entrenched from unavailability of specific laws and regulations that are to be adhered to during the lockdown.

Despite a reduction in physical crimes, the rate of cybercrime has not reduced, and has rather seen an upward trend. This is believed to be because the cyber criminals do not have the threat of contacting the virus while committing the contactless cyber crimes.⁵⁴

India had already been witnessing communal tensions and violence due to the CAA. However, communal violence and crimes against a specific religious group have found their place amidst the Covid-19 pandemic as well. Since the news about the Tablighi Jamaat convention has spurred, even coronavirus has taken a communal turn. This Muslim religious convention at Nazimuddin in Delhi led to circulation of (now debunked) fake news showing Muslims spreading the disease by licking plates, spitting on food, intentionally sneezing etc. The situation worsened when various organizations such as Right wing political party's IT cell and news channels solely blamed Muslims for spreading coronavirus.⁵⁵ In certain states the state government health ministry disclosed the names and details of persons who were covid-19 positive and had attended the Tablighi Jamaat convention.

This led to obvious violence, hostility and clashes with people getting seriously injured and even succumbing to death in places such as Jharkhand, New Delhi, Assam, Uttar Pradesh, Bhopal, Haryana etc. Moreover, the violence was such that it even hit the Muslims who were trying to help ease the pandemic situation by volunteering to distribute food in slums etc. and even vendors of essential commodities in various states including Bangalore. Muslims are facing backlash and are being subject to hate crimes even in the covid period.⁵⁶ Thus, this pandemic has made the country even more Islamophobic.⁵⁷

This lockdown does have the potential to keep women protected from the deadly disease however, it has opened their doors to sexual harassment and domestic violence in the confines of their homes. Domestic violence and sexual harassment cases have seen a sharp

⁵⁴*Supra* note 32.

⁵⁵Arunabh Saikia, *The other virus: Hate crimes against India's Muslims are spreading with Covid-19*, SCROLL.IN (last visited May 7, 2020), <https://scroll.in/article/958543/the-other-virus-hate-crimes-against-indias-muslims-are-spreading-with-covid-19>.

⁵⁶ *Supra* note 39.

⁵⁷ Helen Regan, *India's Muslims feel targeted by rumors they're spreading Covid-19*, CNN (last visited May 7, 2020), <https://edition.cnn.com/2020/04/23/asia/india-coronavirus-muslim-targeted-intl-hnk/index.html>.

rise ever since the lockdown.⁵⁸The National Commission for Women reported an upsurge of 130% in cases on domestic violence against women. According to the National Commission for Women 116 cases of criminal activities against women were registered between the period of 2nd March, 2020 to 8th March, 2020. However, 257 cases were recorded online between the period of 23rd March, 2020 to 1st April, 2020 i.e. the lockdown period.⁵⁹ The cases of rape and attempt to rape have also increased multi-fold. The cases that have been registered are seeking the fundamental right to dignity⁶⁰ and also seeking redress under the Protection of Women from Domestic Violence Act.⁶¹ A majority of these cases have been registered online rather than in physical FIRs. The stark increase in the crimes against women has been because being trapped in the house round the clock makes her a facile target. Another reason is that the condition that the country is in, leaves the aggrieved women helpless and sans any remedy as they cannot even step out to seek help.⁶²

Adding to the criminal menace, several cases of police brutality and certain acts of sadism by the police while dealing with the people during the lockdown has clearly marred the lockdown. Moreover, burning questions regarding the deprivation of the fundamental right to life, dignity and health are raised in the treatment of the migrant workers. The mass spraying of the migrants and the fiasco of the migrant exodus is a clear violation of human rights.⁶³

The police in certain areas have started adopting technology in their regular functioning such as use of drones to detect and track even the slightest movement in the country.⁶⁴ However, the lockdown has had an impact on the investigation agencies who were in between ongoing investigations. The Covid-19 situation has resulted in the investigation agencies losing out on precious time to conduct comprehensive investigations. Investigations in the time of

⁵⁸ Lachmi Deb Roy, *Domestic Violence Cases Across India Swell Since Coronavirus Lockdown*, OUTLOOK INDIA (last visited May 7, 2020), <https://www.outlookindia.com/website/story/india-news-rise-in-domestic-violence-across-all-strata-of-society-in-the-coronavirus-lockdown-period/350249>.

⁵⁹ Anushika Srivastava, *India Witnesses A Steep Rise in Crime Against Women During Lockdown*, SHE THE PEOPLE (last visited May 7, 2020), <https://www.shethepeople.tv/news/india-lockdown-crime-women-rise>.

⁶⁰ INDIA CONST. art. 21.

⁶¹ Protection of Women from Domestic Violence Act, 2005.

⁶² *Supra* note 43.

⁶³ Prof. Upendra Baxi, *Emerging Laws & Jurisprudence*, INDIA LEGAL (last visited May 7, 2020), <https://www.indialegalive.com/top-news-of-the-day/emerging-laws-jurisprudence-95465>.

⁶⁴ *Supra* note 31.

Covid-19 become essential as according to Section 167 of the Code of Criminal Procedure⁶⁵ which stipulates that a complete charge sheet must be filed within the prescribed time else the accused is entitled to a default bail.⁶⁶

THE STATE OF CRIME AND ITS RESPONSE IN OTHER COVID AFFECTED COUNTRIES

Countries all over the world have gone through several changes in the crime rates and the management of such crimes.

In Italy, the Carabinieri, typically entrusted with patrolling rural areas, have been sent to urban communities to patrol shops, restaurants and bistros during the lockdown. In Spain, the government has conveyed the military for enforcement of quarantine regulations similar to that in Italy. In parts of Central America and Africa, the militaries may likewise be called upon, as they were during the 2013 Ebola episode in West Africa. The United States is thinking about assembling the National Guard, as police powers as the policies getting infected with the disease.⁶⁷ This is a clear depiction of how countries are leaving rural areas to be vulnerable to crimes of desperation and opportunity.

The United States of America is reporting lesser and lesser crimes since the advent of the pandemic. However, the United States is complementarily witnessing a change in policing with police officers catching the virus faster than the spread of bushfire.⁶⁸ The United States are also issuing citations as a replacement to low level arrests, sending detectives in patrol cars and policing the social distancing. These moves have the potential to further reduce the crime rates according to authorities.⁶⁹ According to experts, these actions merely highlight

⁶⁵ Criminal Procedure Code, 1973 § 167.

⁶⁶ Sumer Boparai, *Personal Liberty vis-a-vis Coronavirus*, BAR AND BENCH (last visited May 7, 2020), <https://www.barandbench.com/columns/personal-liberty-vis-vis-coronavirus>.

⁶⁷ Vanda Felbab-Brown, *How COVID-19 is changing law enforcement practices by police and by criminal groups*, BROOKINGS (last visited May 7, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/04/07/how-covid-19-is-changing-law-enforcement-practices-by-police-and-by-criminal-groups/>.

⁶⁸ Tara McKelvey, *Coronavirus lockdown: How has it affected crime?*, BBC News (last visited May 7, 2020), <https://www.bbc.com/news/world-us-canada-52416330>.

⁶⁹ *Supra* note 52.

the US Police Department has gone deep into survival mode.⁷⁰ The police department is also backing off and ignoring certain crimes without publicly announcing the same.⁷¹

In the European Union, criminals have been seen to be grabbing every opportunity possible to exploit this crisis. The exploitation has been adapting their working and devising new schemes and mechanisms according to Europol. Organized crime in the EU has grown and has also targeted the medical realms of protective gear, masks etc. Moreover, the cyber security concerns have also grown multi-fold during this pandemic as the criminals are abusing the spur in demand of supplies and basic information by taking advantage of the panic and stress revolving around the disease and the lockdown. Frauds, supply of substandard goods, theft, counterfeiting have also increased during this pandemic.⁷²

In Canada, the pandemic caused extreme emergency declarations regarding movement, business, recreation and work. This period of self-isolation has brought some positive impact on crime rates.⁷³ However, certain crimes including commercial break-ins, stunt driving, domestic violence and shootings have increased. The police are taking a proactive role and making more patrols and being more vigilant to reduce the spike in crimes.⁷⁴

India did not keep gender aspects under consideration while imposing the lockdown. However, countries such as France have done a commendable job in ensuring that the gender aspect is kept in mind whilst tackling this disease. In order to control, manage and give redressal to the victims of domestic violence, France has made provision for free hotel rooms during the lockdown to ensure the safety of the aggrieved.⁷⁵

⁷⁰ *Crime Rates Plummet Around the World as the Coronavirus Keeps People Inside*, TIME (last visited May 7, 2020), <https://time.com/5819507/crime-drop-coronavirus/>.

⁷¹ *Crime drops around the world as Covid-19 keeps people inside*, CNBC (last visited May 7, 2020), <https://www.cnn.com/2020/04/11/crime-drops-around-the-world-as-covid-19-keeps-people-inside.html>.

⁷² *Crime in the time of COVID-19*, THE SHIFT NEWS (last visited May 7, 2020), <https://theshiftnews.com/2020/03/28/crime-in-the-time-of-covid-19/>.

⁷³ Adrian Humphreys, *Crime in a time of COVID-19: How the pandemic is changing criminality in our neighborhoods*, NATIONAL POST (last visited May 7, 2020), <https://nationalpost.com/news/crime-in-a-time-of-covid-19-how-the-pandemic-is-changing-criminality-in-our-neighbourhoods>.

⁷⁴ Meagan Fitzpatrick, *Crime data during COVID-19 shows spike in business break-ins, stunt driving*, CBC News (last visited May 7, 2020), <https://www.cbc.ca/news/canada/crime-data-during-covid-19-shows-spike-in-business-break-ins-stunt-driving-1.5539331>.

⁷⁵ *Supra* note 43.

INDIA'S LEGISLATIVE AND JUDICIAL RESPONSE AMIDST THE PANDEMIC AND ITS AFTERMATH

The way forward requires a lot of dedication by the State and the citizens alike. The government has already started taking some measures that shall be beneficial not only during the Covid-19 pandemic but also beyond that, in the years to come.⁷⁶ This provision is being implemented in accordance with the National Disaster Management Act by the Centre, the Epidemics Disease Act by the states, the provisions of the Code of Criminal Procedure and the Indian Penal Code.

The Union Health Ministry has taken the step of prohibiting the use of and the spitting of smokeless tobacco in public places. This shall help prevent the spread of Covid-19 disease. The same has also been ratified by the Indian Council for Medical Research who had also urged the public not to consume the smokeless tobacco products and to not spit in public places.⁷⁷ Amidst the Covid-19 backdrop, it is imperative to impose such preventive measures in accordance with the laws in place. States have already begun imposing this rule.

The Government of India has also issued several travel advisories to restrict travel during the pandemic.⁷⁸ Apart from the legislative provisions, various court ruling has come to place regarding the Covid-19 pandemic, brought to action either suo-moto, by aggrieved parties or by PIL and writs

As discussed before, the Supreme Court of India had directed all the courts including the High Courts and District Courts to conduct all proceedings via video conferencing in order to adapt with the changing times. The court had paid specific regard to the importance of social distancing and crowd control. The apex court wanted to ensure that courts do not become another reason for the spread of this virus.⁷⁹ Further, the three judge bench also stated that the

⁷⁶ COVID-19: Prohibit use, spitting of smokeless tobacco in public places, health ministry tells states, THE ECONOMIC TIMES (last visited May 7, 2020), <https://economictimes.indiatimes.com/industry/cons-products/tobacco/covid-19-prohibit-use-spitting-of-smokeless-tobacco-in-public-places-health-ministry-tells-states/articleshow/75091929.cms?from=mdr>.

⁷⁷ *Supra* note 60.

⁷⁸ Anjali Mody, *India's travel advisories since Jan 17 suggest Covid-19 policy was designed on a wing and a prayer*, SCROLL.IN (last visited May 7, 2020), <https://scroll.in/article/957563/indias-travel-advisories-since-jan-17-suggest-covid-19-policy-was-designed-on-a-wing-and-a-prayer>.

⁷⁹ *Supra* note 60.

judicial machinery should start taking into consideration that it is high time that the courts incorporate technology in its day to day functioning. Digitizing the entire system has the potential of transforming and enhancing the working of judicial machinery.

In one of the hearing regarding the fiasco caused by migrant workers due to fake news, that occurred before the Chief Justice of India, the Court's reaction can be perceived to be agnostic. This implies that it has expressed its tacit support and contentment with the Centre's actions, post this, the court seemed to accuse the distress of the migrant workers for "fake news" that is with no proof to validate the claim, aside from the statements of the Solicitor-General. This, in any case, follows an ongoing pattern where the Supreme Court has tended to be exceptionally deferential and respectful towards the government, and has – on various events – fully trusted the State's side of the case, as opposed to exposing them to thorough legal investigation.

The Supreme Court of India in an order stated that the testing of Covid-19 should be free of cost in both the private and government laboratories. This order was cardinal to be passed as testing is an imperative to combat the disease and if testing wasn't affordable, it would not have been accessible to all thus bringing more persons to danger. Moreover, the court also directed that all tests should be conducted by laboratories accredited by NABL and other agencies approved by ICMR or WHO.⁸⁰ However, shortly after this order was passed, the order was amended by the Supreme Court. The amended order stated that the free testing will only be provided to persons who belong to the Economically Weaker Sections.

Regarding the prisoners in jail, the Supreme Court had advised all states in the country to consider the release of jail inmates who are facing a sentence of seven year or less on parole or interim bail. This advisory was aimed at decongesting prisons amidst the Covid-19 pandemic. This decision was taken in light of Right to Life under Article 21 as in order to safeguard the lives of prisoners, the spread of the disease needs to be controlled in prisons.⁸¹

⁸⁰ Debayan Roy, *Make COVID-19 Testing free of cost in government and private labs: Supreme Court*, BAR AND BENCH (last visited May 7, 2020), <https://www.barandbench.com/news/litigation/breaking-make-covid-19-testing-free-in-govt-private-labs-private-labs-need-to-be-philanthropic-during-national-crisis-supreme-court>.

⁸¹ Shruti Mahajan, *Coronavirus: Consider bail for all undertrials facing up to 7 years in jail to decongest prisons*, Supreme Court to states, BAR AND BENCH (last visited May 7, 2020), <https://www.barandbench.com/news/litigation/coronavirus-consider-bail-for-all-undertrials-facing-up-to-7-years-in-jail-to-decongest-prisons-supreme-court-to-states>.

However, in a decision regarding release on bail on the ground that the person may contact the virus, the Bombay High Court denied the bail and stated that the accused was better off in jail rather than in the city. This decision was taken as a balancing act between the Supreme Court advisory and the grim situations in the cities right now.⁸²

In a recent order, the High Court of Telangana had directed the state government to safeguard and duly maintain the free supply of medicines and other essential commodities to the members of the transgender community. According to the order, the production of the ration cards is not required to obtain the commodities and the commodities should be provided free of cost.⁸³

With the rise in the cases of coronavirus, a lockdown is essential. However, this lockdown is bound to have a massive impact on the period of limitation. Questions are raised regarding whether the judiciary would consider Covid-19 as a sufficient cause to cease the limitation period. The apex court addressed this issue in an order to a Suo moto writ taking cognizance for the extension of limitation period.⁸⁴ The court issued a blanket order by extending the limitation period of all limitations arising from specific laws and general laws i.e. the Limitation Act, 1963,⁸⁵ without paying heed to it being condonable or not. This extension to limitation has begun from 15th March, 2020 and shall persist until further directions.⁸⁶

CONCLUSION

Though the Covid-19 has posed mankind to very difficult times, the courts and the criminal procedure have to step up. The judiciary and criminal procedure need to adhere to the

⁸² Meera Emmanuel, "You're probably better off in jail", *Bombay HC declines urgent plea for release of murder accused from prison amid COVID-19 lockdown*, BAR AND BENCH (last visited May 7, 2020), <https://www.barandbench.com/news/litigation/youre-probably-better-off-in-jail-bombay-hc-declines-urgent-plea-for-release-of-murder-accused-from-prison-amid-covid-19-lockdown>.

⁸³ Rintu Mariam Biju, *Ensure free food grains, medicines to Transgenders without insisting on production of ration cards: Telangana HC to state*, BAR AND BENCH (last visited May 7, 2020), <https://www.barandbench.com/news/litigation/covid-19-lockdown-ensure-free-foodgrains-medicines-to-transgenders-without-insisting-on-production-of-ration-cards-telangana-hc-to-state>.

⁸⁴ Alipak Banerjee, Payel Chatterjee & Sahil Kanuga, *Covid 19: Supreme Court saves the day on limitation*.

⁸⁵ Limitation Act, 1963.

⁸⁶ Nandini Khaitan, Raj Panchmatia, Aseem Chaturvedi, Shashank Diddi and Nikhilesh Rao, *COVID-19: Is The Indian Judiciary BattleReady?*, KHAITAN & CO (last visited May 7, 2020), <https://www.mondaq.com/india/litigation-contracts-and-force-majeure/911188/covid-19-is-the-indian-judiciary-battle-ready>.

maxims *Salus populi suprema lex esto* i.e. the health and well-being of the people should be the supreme law and *Fiat justitia ruat caelum* i.e. justice should be done even though the heavens fall.

This pandemic has given way to a potential tectonic shift in the legal machinery of India. Considering the relative trade-offs witnessed during this period of Covid-19, it is a bright possibility that the judicial framework shall adapt and adopt with this testing time and come out with flying colors. Indeed, this is a turbulent but apt storm and the Indian judicial machinery cannot afford to put a crisis of this level to waste.

