



PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

Priyanshi Sarin & Shweta Raj Lakshmi*

ABSTRACT

COVID-19, a public health emergency, is challenging the entire world. While the virus in itself is non-discriminatory, the negative implications of the measure to contain the same have divided the nation into the “privileged” and the “vulnerable” sections. This article presents the implications of quarantine as varied among groups of individuals differently situated in the crisis. In the first part of the paper, the danger to the human rights of certain identified vulnerable sections in light of the lockdown has been discussed at length. This part deals with the loopholes within the government policy. The second part of the paper analyses the legal basis of quarantine measures and harmonizes it with the constitutional right to life. This part provides a narrative of differentiated legal consciousness and identifies a balance between utilitarianism as a justification for quarantine as opposed to universally recognized individual rights being curtailed. Policies across the globe implemented during the SARS pandemic are also studied to understand its applicability in the Indian scenario. This part scrutinizes the inadequacies of the present legal framework and government policy, which presses upon the need to formulate COVID-19 legislation. The last part of the paper comprises suggestions and recommendations based on international standards and global history.

* Students, Symbiosis Law School, Pune.

INTRODUCTION

Vulnerability is the degree to which a population, individual, or organization is unable to anticipate, cope with, resist, and recover from the impacts of disasters.¹ India, a developing nation, houses various vulnerable sections such as disabled sections, aged, minority groups, women, children, and those suffering from economic difficulties. There persists an overlapping interface between public health and human rights.² Indian courts have time and again emphasized that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and must include protection of the health and strength of workers men and women, children, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities as well as just and humane conditions of work.³ Further, the UN Committee on Economic, Social, and Cultural Rights has prepared a list of obligations upon States for honoring the right to life, and a core dimension of the same is non-discrimination accompanied with a strong message that in hard times vulnerable members of society must be protected.⁴ This paper projects the susceptibility being faced by certain sections despite the literature and jurisprudence on the right to life. The authors argue that blanket imposition of quarantine would lead to violation of human rights and quarantine while accepted as an important measure, shall be accompanied by policy measures by the government, which enables access to basic amenities and prevents human rights abuses.

¹ B. Wisner, *Environmental health in emergencies and disasters*, ISBN 92 4 154541 0.

² World Health Organization (2002), *U.N. doc. Health and Human Rights Publication Series*, pg.10 Issue No. 1.

³ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India), *State of Maharashtra vs. Chandrabhan*, AIR 1983 SC 803(India).

⁴ *Ibid.*

VULNERABLE SEGMENTS OF THE POPULATION

COVID-19, a health disaster has devastating consequences for the people and the economies of low and middle-income countries (LMICs) as they respond to this pandemic.⁵ Unfortunately, the highly contagious nature of the virus and its constant mutating feature has imposed a mandatory lockdown upon the population. While the UN motto to fight the virus “leave no one behind”⁶ inculcates a sense of inclusiveness while drafting policies, the “Quarantine Policy” has had negative implications on certain sections bringing forth the question of their inclusiveness.

Quarantine is when the government or a government entity, a board of health, or police chief, restricts a person to a geographic location due to that individual having or being exposed to a contagious disease.⁷ This response of the government at the outset of the virus has brought forth the agony of certain vulnerable sections.⁸ The vulnerable sections covered by the present research are as follows.



MIGRANT WORKERS

Migrant workers are entitled to certain human rights and protections specifically linked to their vulnerable status.⁹ Factors that contribute to systemic patterns of human rights violations against migrant workers, and which can restrict access to effective redress for victims, include negative public attitudes, lack of awareness, the weak rule of law and impunity.¹⁰ These migrant workers were rendered jobless, devoid of food or shelter, and to add to their difficulties are bearing the brunt of social ostracization and stigmatized as

⁵ Kristalina Georgieva & Dr. Tedros Adhanom Ghebreyesus, *Op-Ed. The TGM*, Apr. 5, 2020, THE TELEGRAPH, at A1.

⁶ Alistair D. B. Cook, *COVID-19 & Humanitarian Response: Leave No-One Behind*, Mar 20, 2020, at 12.

⁷ Erin M. Page, *Balancing Individual Rights and Public Health Safety During Quarantine: The U.S. and Canada*, 38 Case W. Res. J. Int'l L. 517, 517 (2007).

⁸ *Redefining vulnerability in the Era of Covid-19*, VOLUME 395, ISSUE 10230, LANCET, P108, (2020). (discussing the importance of public health).

⁹ Narender Nagarwal, *Analyzing the Legal Framework of Human Rights of Migrant Workers*, 5 INDIAN J.L. & JUST. 99, (2014).

¹⁰ Browne & C.V. Braun, K.L. *Globalization: Women's Migration, and the Long-term-care Workforce*, Gerontologist, VOL, 48, NO, 11, PP. 16-24. (2008).

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

“carriers of the virus” in their hometowns owing to negative public attitudes.¹¹ They are unwelcomed in their villages and helpless in cities where they lack impunity and are subjected to police brutalities.¹²

The aftermath of lockdown has disrupted the life of the majority of the migrant workers and aggravated the above mentioned human rights abuses. The international standards most relevant to migrant workers, regional mechanisms for the protection of migrant workers, and other International treaties and ILO conventions are not being upheld to its true spirit in these tiring times.¹³ Personal interviews of some of these workers bring forth their agony wherein fear of death by hunger is severe than the virus.¹⁴ To mitigate the hardships of migrant workers government has converted schools into night shelters¹⁵ In order to prevent the spread of the virus, which would be inevitable due to dispersion, the deprived sections are being provided free meals and a safe shelter for their stay. Unfortunately, these shelters are overcrowded and unable to cater to the needs of all.¹⁶ A survey piloted by Stranded Workers Action Network stated that the rate of hunger and distress exceeded the rate of relief.¹⁷ Their survey also revealed that with 89% not having received salaries or payments, 78% had less than Rs. 300 in person.¹⁸ This survey exemplifies the gap between policy formulation and policy implementation, steps undertaken by the government are not reaching these migrants. Finally, after much deliberation and with due acknowledgment to the fact that anyone State/ Union Territory is not well-resourced to provide for these unemployed workers, the inter-state

¹¹ Chandan Kumar & Debabrata Mohanty, *Migrant workers battle stigma, bias back home*, HIND. TIMES, May 11, 2020, <https://www.hindustantimes.com/india-news/migrant-workers-battle-stigma-bias-back-home/story-0uuRSEZfoickVOrPU2agGL.html>.

¹² Sukanya Shantha, *Migrant Workers Beaten, Stuffed Into Container Trucks by Police at Gujarat-Maharashtra Border*, THE WIRE, Apr 2, 2020.

¹³ Asia Pacific Forum report, "Promoting and Protecting the Rights of Migrant Workers, 2012.

¹⁴ Gaurav Vivek Bhatnagar, *Thousands Confront Hunger in Delhi as Lockdown Leaves Daily Wage Workers Helpless*, THE WIRE, 26 Mar, 2020.

¹⁵ Nishtha Gupta, *Coronavirus outbreak: Delhi govt converts schools into night shelters for migrants fleeing state*, IND TODAY, Mar 28, 2020, <https://www.indiatoday.in/india/story/coronavirus-outbreak-delhi-govt-converts-schools-into-night-shelters-for-migrants-fleeing-state-1660701-2020-03-28>.

¹⁶ Vivek Singh, *India's poorest fear hunger may kill us before coronavirus*, Mar 25, 2020, BBC NEWS, <https://www.bbc.com/news/world-asia-india-52002734>.

¹⁷ Anindika Adhikari, *Lockdown and Migrant Work Distress in India: A Report by the Stranded Workers Action Network*, 84 COLUM. L. REV. 2020, 2020, (2020).

¹⁸ Sarah Farooki, *89% stranded migrants hadn't been paid wages during lockdown period: Report, Apr 17 2020*, BUSINESS. STAND, https://www.business-standard.com/article/economy-policy/89-stranded-migrants-hadn-t-been-paid-wages-during-lockdown-period-report-120041700786_1.html.

movement was permitted.¹⁹ However, in the circumstances like these wherein thousands of migrant workers, along with their families, including women, small children, elders, and differently-abled persons, are walking on foot for hundreds of kilometers, from big cities of India to their respective native villages, without food, water, transport, medicine or shelter the public servants and politicians have not stopped tossing these helpless workers for political gains. There has been a violation of article 19 and article 21 of the Indian constitution not only due to the unprecedented virus but also the deliberate party politics wherein when a party extended its help to enable inter-state movement for the workers; it was turned down by the opposite party.²⁰ This political move has also violated Article 8, 9 and 10 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²¹ This is the biggest fallacy of the Indian government's initiative towards protecting laborers; it is their duty to keep politics at bay for policy implementation.

CHILDREN

UNICEF has reported that millions of students are temporarily not getting proper sources of educational support from schools or the government, the plight of migrant children or the below poverty line comes forth strongly because they are not technologically equipped to access online education.²² These students belong to families who are not able to work from home, meaning thereby, they are private employees or just the ones who are working informally.²³ The discriminatory legacy of quarantine as a public health intervention stirs concerns about its potential as a vehicle for discrimination against vulnerable groups.²⁴

¹⁹Shashwati Das, *Centre allows interstate travel of migrant workers, tourists*, LIVE MINT, Apr 30, 2020, <https://www.livemint.com/news/india/relief-for-stranded-migrant-workers-tourists-as-mha-allows-inter-state-movement-11588167776575.html>.

²⁰Omar Rashid, *Coronavirus lockdown | U.P. government locks horns with Congress over buses for migrant workers*, THE HINDU, May 20, 2020, <https://www.thehindu.com/news/national/other-states/coronavirus-lockdown-up-government-locks-horns-with-congress-over-buses-for-migrant-workers/article31622653.ece>.

²¹ General Assembly resolution, 45/158 OF 18 DECEMBER 1990.

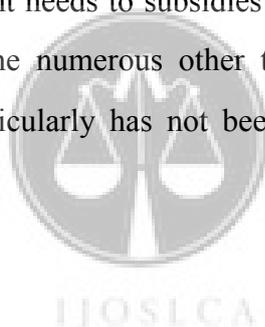
²²United Nations, *Policy Brief: The Impact of COVID-19 on children*, Apr 15, 2020, https://unsdg.un.org/sites/default/files/2020-04/160420_Covid_Children_Policy_Brief.pdf.

²³Clement Arockiasamy, *Covid-19 and The Vulnerable*, THE HINDU, Apr 26, 2020, <https://www.thehindu.com/opinion/open-page/covid-19-and-the-vulnerable/article31431710.ece>.

²⁴U.N, *Tobacco use and COVID-19*, WHO, May 14, 2020, <https://www.who.int/news-room/detail/11-05-2020-who-statement-tobacco-use-and-covid-19>.

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

Digital India and virtual learning serve the elite and privileged; in times like these, online educations bring out the stark contrasts and insensitive attitude of the haves for the have-nots, forcing the poor to commit suicide.²⁵ According to the Key Indicators of Household Social Consumption on Education in India report, based on the 2017-18 National Sample Survey, less than 15% of rural Indian households have Internet as opposed to 42% urban Indian households. A mere 13% of people surveyed (aged above five) in rural areas — just 8.5% of females — could use the Internet. The poorest households cannot afford a Smartphone or a computer.²⁶ Today 60% of children in the world are living in a country under full or partial lockdown where 1.5 billion are out of school, which is tragic for the poorest children who are dependent on school feeding schemes for their daily meals of government projects.²⁷ The above studies reveal the inexorable exclusion of the majority of children due to the use of the Internet.²⁸ Online education through video conferencing and apps like zoom might seem a plausible solution for the middle/upper-middle-class students but is certainly not capable of including rural India. The Government needs to subsidize phone data and phones for people in rural areas.²⁹ Thus, apart from the numerous other troubles faced by underprivileged children, the issue of education particularly has not been dealt with by way of inclusive policy.



WOMEN

The inequality of women is a global phenomenon, although education is a pivotal factor for empowering women and limiting the spread of the pandemic, in many societies even women

²⁵India: Unable to access online classes, Dalit girl kills herself: Fourteen-year-old daughter of daily wage worker in Kerala found dead near her home on the first day of new school term, LIVE INDIA, June 20, 2020, at A1.

²⁶Official Data: Key Indicators of Household Social Consumption on Education in India, THE HINDU, MAR 05, 2020, <https://www.thehinducentre.com/resources/article30980083.ece>.

²⁷Henrietta H. Fore & Zeinab Hijazi, COVID-19 is hurting children's mental health. Here are 3 ways we can help, THE HINDU CENTRE, May 01, 2020.

²⁸ Rohit Kumar, Lockdown Is Disrupting a Generation's Education. What Can Be Done? THE WIRE, Apr 24, 2020 available at <https://thewire.in/education/coronavirus-lockdown-education-students>.

²⁹ Praveen Sudevan, Why e-learning isn't a sustainable solution to the COVID-19 education crisis in India, MAY 11, 2020, <https://www.thehindu.com/sci-tech/technology/why-elearning-is-not-a-sustainable-solution-to-the-covid19-education-crisis-in-india/article31560007.ece>.

who are informed about ways to control infection are powerless to control the same.³⁰ Women's access to essential health services, such as those related to sexual and reproductive health, is likely to be affected by the increased restrictions on mobility and by the economic challenges that households are facing.³¹ Additionally, reports have highlighted that the stay at home measures are placing women at risk of/or in abusive relationships at increased risk of domestic or intimate partner violence. Violence against women and girls is an abject violation of human rights.³² The derogation of human rights during a public emergency restricts the ability of individuals and civil society to challenge the human rights abuses that occur during emergencies.³³

The government's decision to permit the sale of liquor not only negated social distancing norms on the outside, but it also posed a great threat to the well-being of women who are trapped inside in the lockdown.³⁴ It is a widely-held belief that alcohol contributes to mood enhancement and alcohol myopia in men.³⁵ Thereby, even if the policy decision is to boost the economy or to prevent withdrawal symptoms, it certainly has made women more vulnerable.³⁶ These two things go hand in hand, WHO has confirmed the relationship between alcohol and enhanced cases of domestic violence all over the world.³⁷

Thus, if domestic violence was a virus in itself, the lockdown has not only increased its breeding rate but has also morphed its DNA to make it a more tenacious variant. The victim

³⁰ Laurel Fletcher, *Allyn Taylor & Joan Fitzpatrick, Human Rights Violations against Women*, 15 WHITTIER L. REV. 319 (1994).

³¹ UNFPA, COVID-19: A gender lens.

³² WHO, COVID-19 and violence against women.

³³ Gregory P. Campbell, *Global HIN Pandemic, Quarantine Law, and the Due Process Conflict*, 12 SAN DIEGO INT'L L.J. 497, 530 (2011).

³⁴ L, Kumar S & Neelakantan N, *Physical spousal violence against women in India: some risk factors*, BIOSOC SCI. 2007 SEP; 39(5):657-70.

³⁵ Stoner SA Annu & George WH, *Understanding acute alcohol effects on sexual behavior.*, REV SEX RES. 2000; 11():92-124. (2000).

³⁶ Eesha Roy, *Domestic violence, abuse complaints rise in coronavirus lockdown: NCW*, IND. EXP. Apr 3, 2020, <https://indianexpress.com/article/india/domestic-violence-abuse-complaints-rise-in-coronavirus-lockdown-ncw-6344641/>.

³⁷ Roli Srivastava & Kim Harrisberg, *Covid-19 lockdown: Will India's move to ease alcohol restrictions fuel domestic abuse?* SCROLL.IN, May 10, 2020, <https://scroll.in/article/961208/covid-19-lockdown-will-indias-move-to-ease-alcohol-restrictions-fuel-domestic-abuse>.

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

is at the mercy of the abuser who can exercise constant surveillance by monitoring phones and can also not reach out to authorities for help.³⁸

The fallacy of the government policy here is that it is presently gender-neutral and thereby needs modification. For instance, Spain and Portugal acknowledged gender-based violence as essential services that operate during the lockdown.³⁹ France financed 20,000 hotel bookings for women seeking refuge from domestic abuse and set up toll booths at groceries and pharmacies so women can contact people away from their abuser.⁴⁰ Argentina, France, Italy, Norway, and Spain adopted Mask-19, wherein a woman asking a pharmacist for this type of mask is a pseudonym for him to call for help.⁴¹

Thus, it is imperious that our policy-makers adopt a gender perspective while drafting schemes.⁴²

QUARANTINE POLICY: UTILITARIANISM Vis-a-Vis INDIVIDUALISM

There is a great debate about the need to impose lockdown forcefully as opposed to the right of movement for access to basic necessities which violates the lockdown policy.⁴³ Researchers would delve into the moot question as to whether right to life is absolute. Quarantine presents legal, ethical, and socioeconomic issues that require a thoughtful balance between public health interests and individual and states rights.⁴⁴ In the context of public health, Utilitarianism attempts to achieve the greatest effect at the "population-level" rather than the individual, and it is here where utilitarianism can sometimes negatively affect some

³⁸ Joe Wallen, *India's lockdown 'places more women at risk from domestic violence than ever before' Current figures are thought to be a gross underestimation as it relies on women accessing the internet to lodge a complaint*, THE TELEGRAPH, Apr 16 2020, <https://www.telegraph.co.uk/global-health/science-and-disease/indias-lockdown-places-women-risk-domestic-violence-ever/>.

³⁹ *COVID-19 and Women's Human Rights: Guidance*, June 26, 2020, <https://reliefweb.int/report/world/covid-19-and-women-s-human-rights-guidance-15-april-2020>.

⁴⁰ Natalie Higgins, *Coronavirus: When home gets violent under lockdown in Europe*, BBC, Apr 13, 2020, <https://www.bbc.com/news/world-europe-52216966>.

⁴¹ *Id.*

⁴² Hema Swaminathan & Rahul Lahoti, *The COVID-19 Lockdown Will Ravage Prospects for India's Female Workforce*, THE WIRE, Apr 15, 2020.

⁴³ Lawrence O. Gostin, *When Terrorism Threatens Health: How Far are Limitations on Personal and Economic Liberties Justified*, 55 FLA. L. REV. 1105, 1138 (2003); International Covenant on Civil and Political Rights, Dec 19, 1966, 6 ILM 368, 999 U.N.T.S. 171, 175.

⁴⁴ Rothstein & Eugenia Tognotti, *Lessons from the History of Quarantine, from Plague to Influenza*, 254, 258 (2013). A1.

individuals for the greater good of the population.⁴⁵ On the contrary, there are several International Agreements involving Human Rights, glorifying individual rights that go against the traditional notion of utilitarianism. The Universal Declaration of Human Rights (UDHR) has become the authority in international law regarding the preservation of human rights.⁴⁶ Articles 3, 13, and 25 are a few of the most relevant provisions for the analysis of quarantine measures.⁴⁷ While Article 3 is more general in granting the right to life, liberty and security of person, Articles 13 and 25 are less ambiguous and recognize "freedom of movement and residence, and grant the right to "a standard of living adequate for the health of oneself and of one's family."⁴⁸ Other relevant international and regional agreements include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁴⁹

The ICESCR is significant to the enforcement of human rights during quarantines with its provision granting a right to work under "just and favorable conditions," as well as the "right to an adequate standard of living, including food, clothing, and housing."⁵⁰ Thus, all the conventions which are universally applicable recognize the right to life, freedom of movement, and an adequate standard of living as non-derogable human rights.

The author would now analyze the interpretation of the right to life in the Indian context.

In *Maneka Gandhi v. Union of India*⁵¹, the Supreme Court, gave a new dimension to Art. 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in *Francis Coralie v. Union Territory of Delhi*,⁵² observed that: *The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as*

⁴⁵*Institute national de santepubliquequebec, utilitarianism in public health* (Jan. 2016), http://www.ncchpp.ca/docs/2016_Ethics-UtilitarianismEn.pdf.

⁴⁶ Gregory P. Campbell, *The Global HINI Pandemic, Quarantine Law, and the Due Process Conflict*, 12 SAN DIEGO INT'L L.J. 497, 499 (2011).

⁴⁷ Melanie L. McCall, *Aids Quarantine Law in the International Community: Health and Safety Measures or Human Rights Violations?* 15 Loy. L.A. INT'L & COMP. L.J. 1010, A8.

⁴⁸ *Id.*

⁴⁹ Lauren Asher, *Confronting Disease in a Global Arena*, 9 CARDOZO J. 1 rr') &COMP. L. 147 (2001).

⁵⁰*Supra* note 55.

⁵¹ *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621, (India).

⁵² *Francis Coralie v. Union Territory of Delhi*, 1981 AIR 746, 1981 SCR (2) 516 (India).

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

*adequate nutrition, clothing, and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constituting the bare minimum expression of the human self.*⁵³ In *Shantistar Builders v. Narayan Khimalal Totame*,⁵⁴ Court held that: *The right to life would take within its sweep the right to food, the right to clothing, the right to a decent environment and reasonable accommodation to live in.* All these judgments broaden the ambit of right to life to an extent that permits the right to basic necessities and free movement, which is negated by the lockdown.

Thus, in quarantine orders, officials violate individual rights, resulting in increased harm to individuals and communities.⁵⁵ In an Oxfam report, Patrick Kamara provided a firsthand account of the impact of coercive quarantine measures, stating:

*Quarantine is very difficult. I am a government worker. I have a family. I used to walk to work and then got food for my family. But now we are in quarantine, and life is very difficult. We don't have any water to drink in our houses. We also need it to cook. We used to have breakfast in the morning, but now we have no provisions.*⁵⁶ *Quarantine also can be extraordinarily disruptive on a societal basis, and it may cause, among other things, severe economic disruptions.*⁵⁷

On the other hand, it is believed that the ethical basis of public health is utilitarianism.⁵⁸ Much of public health is based on utilitarianism, maximizing benefits for the public, often at

⁵³*Ibid.*

⁵⁴ *Shantistar Builders v. Narayan Khimalal Totame*, AIR (1990) SC 630 : (1990) 92 BOMLR 145 : JT 1990 (1) SC 106 (India).

⁵⁵ Jonathan M. Mann, *Medicine and Public Health, Ethics And Human Rights*, 27 HASTINGS CTR. REP. 6, 9 (1997).

⁵⁶ ThynnThynn Hlaing & Sierra Leone, *Mass Quarantines Causing Unnecessary Hardship and Risk Further Spread of Ebola Warns Oxfam*, OXFAM INT'L, OXFAM INT. (Dec. 5, 2014), <https://www.oxfam.org/en/pressroom/pressreleases/2014-12-05/sierra-leone-mass-quarantinescausing-unnecessary-hardship-and>.

⁵⁷ See Lawrence O. Gostin & Benjamin E. Berkman, *Pandemic Influenza: Ethics, Law and the Public's Health*, 59 ADMIN. L. REV. 121, 169 (2007).

⁵⁸ Antoon Hubert & Marie Kerkhoff, *Origin of Modern Public Health and Preventive Medicine, in ethical dilemmas in health promotion*, Dec 19, 1966, 6 ILM 368, 999 U.N.T.S. 171, 175.

the expense of the individual.⁵⁹For this reason, utilitarianism is considered to be “impartial because of each 'unit' of utility ... holds equal weight in the overall utility calculus.⁶⁰Efforts to prevent catastrophic diseases and alleviate mass suffering provide a broad justification for infringing on the rights of some members of the public through quarantine, property seizure, or other public health measures. A goal of public health intervention is to prevent harm to the public.⁶¹ As Fidler explained, "International law on human rights has long recognized that governments may infringe on civil and political rights for public health purposes" (2003)⁶².

After extensive research, the author came to a mid-way and stated that, in resolving the invariable conflict between utilitarianism and libertarianism, there are certain *justificatory conditions* which would permit curbing individual liberty for promoting public health.⁶³ The ethical considerations are (1) necessity, effectiveness, (2) proportionality and least infringement; (3) humane supportive services; and (4) public justification.⁶⁴ Additionally, in accordance with Siracusa Principles, a state must demonstrate that the limit is strictly necessary and is the least restrictive means.⁶⁵To be necessary a limit: (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant, (b) responds to a pressing public or social need, (c) pursues a legitimate aim, and (d) is proportionate to that aim.⁶⁶

It is safe to deduce that the stakeholders must reach a balance between the extremes of complete protection of public health without any protection of individual rights and complete

⁵⁹ Mark A. Rothstein, *From SARS to Ebola: Legal and Ethical Considerations For Modern Quarantine*, A3949, 216th Leg., Reg. Sess. (N.J. 2014); 12 IND. HEALTH L. REV. 227, 266 (2015) (describing the need for legislation to prohibit employment discrimination and provide income replacement for those in quarantine throughout the SARS epidemic).

⁶⁰ *Institute National De Sante Publique Quebec, Utilitarianism In Public Health*, Jan 24, 2016, http://www.ncchpp.ca/docs/2016_Ethics-UtilitarianismEn.pdf.

⁶¹ James F. Childress et al., *Public Health Ethics: Mapping the Terrain*, 30 J.L. MEDICINE & ETHICS 170, 171 (2002).

⁶²(2003) "SARS and International Law," April, <http://www.asil.org/insights> (accessed 5 May 2020).

⁶³ James F. Childress, *Public Health Ethics: Mapping the Terrain*, 30 J.L. MED. & ETHICS 170, 172 (2002). See also Nancy E. Kass, *An Ethics Framework for Public Health*, 91 AM. J. PUB. HEALTH 1776 (2001).

⁶⁴ Ross E.G. Upshur, *Principles for the Justification of Public Health Intervention*, 93 CAN. J. PUB. HEALTH 101, 102-03 (2002) (proposing the following principles: (1) necessity, (2) least restrictive means, (3) necessary support services, and (4) communication of reasons.)

⁶⁵ U.N., ESCOR, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, DOC. E/CN.4/1985/4, ANNEX (SEPT. 28, 1985).

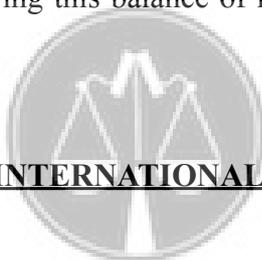
⁶⁶ Siracusa Principles, Art. A, 10.

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

protection of individual rights at the expense of public health.⁶⁷ The above conditions should be taken into account both prior to and after the imposition of mass quarantine.

The essence of this balance has been encapsulated in the opinion of *People v. Robertson*,⁶⁸ among all the objects sought to be secured by governmental laws, none is more important than the preservation of public health. But for every measure taken to protect the public health, it must be moderated against the risk it poses to restrict an individual's rights to personal liberty and due process.⁶⁹ The most obvious freedoms restricted by quarantines are freedom of movement, right of free association, freedom of assembly, and, in some cases, freedom of religion.⁷⁰ Health without liberty is more dangerous to human dignity than liberty without health.⁷¹

Therefore, public health and human rights are inextricably intertwined, too much of one leads to the detriment of the other. Therefore, the two must work sustainably and compatibly for interventions to be effective.⁷² Achieving this balance of rights would permit the imposition of lockdown in light Article 21.



ADOPTING THE SARS MODEL: INTERNATIONAL PERSPECTIVE

This segment of the paper probes the measures adopted during the SARS virus (similar to COVID-19) in various countries and whether India would benefit from the same.

The 2003 SARS crisis provides an especially instructive window on how the balance between rights concerns and community health security might be handled.⁷³ In an effort to mitigate

⁶⁷ Erin M. Page, *Balancing Individual Rights and Public Health Safety During Quarantine: The U.S. and Canada*, 45 CASE W. RES. J. INT'L L. 517, 517 (2007).

⁶⁸ *People v. Robertson*, 134 N.E. 815, 817 Ill. 1922.

⁶⁹ Carrie Lacey, *Abuse of Quarantine Authority the Case for a Federal Approach to Infectious Disease Containment*, J. Legal Med. 24: 199-214, 199 (2003).

⁷⁰ Christopher Ogolla, *Non-Criminal Habeas Corpus for Quarantine and Isolation Detainees: Serving the Private Right or Violating Public Policy?* 14 DEPAUL J. HEALTH CARE L. 135, 157-58, (2011).

⁷¹ David P. Fidler, *Fighting the Axis of Illness: HIV/AIDS, Human Rights, and U.S. Foreign Policy*, 17 HARV. HUM. RTS. J. 99, 129 (2004).

⁷² George J. Annas & Bioterrorism, *Public Health, and Civil Liberties*, 346 NEW ENG. J. MED. 1337, 1340 (2002); George J. Annas & Blinded by Bioterrorism, *Public Health and Liberty in the 21st Century*, 13 HEALTH MATRIX 33, 55 (2003).

⁷³ Lesley A. Jacobs, *Rights and Quarantine during the SARS Global Health Crisis: Differentiated Legal Consciousness in Hong Kong, Shanghai, and Toronto*, 41 LAW & SOC'Y REV. 511 (2007).

hardships, the Ontario government enacted a new law, the *SARS Assistance, and Recovery Act*, to give job protection to employees who were observing quarantine or had to stay home from work to care for another individual. A SARS Assistance Plan was also established to offer some financial compensation to people who lost income during periods of quarantine.⁷⁴ India is in dire need of a compensation scheme, unemployment arising out of the COVID-19 situation is leading to suicides.⁷⁵

Singapore enacted penalties for quarantine violation, utilized its Security Services and electronic, in-home cameras, and arrested at least one man violating a home quarantine order.⁷⁶ Authorities declared SARS a notifiable disease under the Infectious Disease Act ("IDA")⁷⁷ on March 17th,⁷⁸ allowing mandatory examination, treatment, medical information exchange, health care provider/institutional cooperation, use of facilities, quarantine, and isolation for SARS.⁷⁹ Approximately 740 people were in-home quarantine under the IDA; they were legally required to restrict visitors and maintain visitor registries and to keep children under eighteen years of age at home.⁸⁰ In India, by virtue of the Disaster Management Act 2005⁸¹ and Indian Penal code⁸², non-compliance would have legal implications⁸³, however, citizens are not legally bound to maintain visitor registries or keep children below the age of 18 years at home. While the installation of in-home cameras requires infrastructure and financial resources, the Indian government has developed surveillance using the Arogya Setu app.⁸⁴

⁷⁴ Nola M. Ries, *Public Health Law and Ethics: Lessons from SARS and Quarantine*, 29 Law Now [15] (2005).

⁷⁵ Wolfram Kawohl & Carlos Nordt *COVID-19, unemployment, and suicide*, 7(5): 389–390. MAY 24, 2020 DOI: 10.1016/S2215-0366(20)30141-3.

⁷⁶ Associated Press & Reuters, *WHO Sheds New Light on SARS*, CNN WORLD NEWS, May 10, 2020, <http://www.cnn.com/2003/WORLD/asiapcf/east/05/04/sars>.

⁷⁷ Infectious Disease Act, 2003, c. 137 (Sing.).

⁷⁸ Singapore Ministry of Health, *Chronology of SARS Events in Singapore* (2003).

⁷⁹ *Supra* note 19.

⁸⁰ Singapore Ministry of Health, *Information for Home Quarantine*, sess. 22. (2020).

⁸¹ Disaster Management Act 2005, Section 51-60.

⁸² Indian Penal Code 1860, Section 188.

⁸³ *Offences and Penalties for Violation of Lockdown Measures*, NY. TIMES, Apr 15 2020.

⁸⁴ *How safe is Arogya Setu compared to COVID-19 contact tracing apps of other countries?*, May 19, 2020, <https://www.thehindu.com/data/how-safe-is-aarogya-setu-compared-to-contact-tracing-apps-of-other-countries/article31618852.ece>.

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

Officials from Singapore's Ministry of Health maintained that broad surveillance, rapid and effective contact tracing, and early enforced quarantine were crucial in containing SARS,⁸⁵ their actions were built upon a strong foundation of accessible, high-quality health services.⁸⁶ The researcher holds that India's health infrastructure is inadequate, availability of government beds is abysmally low in India, and an epidemic like coronavirus can very quickly complicate the problem even further.⁸⁷ Thus, inspiration from Singapore's supreme health care measures is the need of the hour, supply of beds, and critical care equipment like ventilators that needs to be quickly ramped up. In this regard, the government has already banned the export of critical care medical equipment. Additionally, excess capacity in private healthcare can be strategically used by the government, and emergency plans of setting up hospital beds in army camps should be executed as soon as possible.⁸⁸

In China, the largest targeted group for quarantine during SARS was migrant workers in Shanghai's construction industry. The Shanghai Municipal Government announced that persons who report actual SARS cases are eligible for a reward from the authorities" (2003).⁸⁹ There was a provision that guaranteed to return migrant construction workers would not be fired. Additionally, a directive from the Shanghai Municipal Government stated that an employer must pay full compensation to employees for the quarantine as well as continue to provide workers with room and board. This order summarized that construction companies pay quarantined workers their regular wages.⁹⁰ India should definitely adopt this measure for those employed in the unorganized sector. Thus, India's response to the virus can include the health models adopted in other countries to a certain extent.

⁸⁵ Tan Chorh Chuan, *National Response to SARS: Singapore, Presentation Before the WHO Global Conference on SARS*, WHO, May 17, 2002, http://www.who.int/csr/sars/conference/june_2003/materials/presentations/en/sarssingapore170603.pdf.

⁸⁶ Y.S. Leo, *Severe Acute Respiratory Syndrome-Singapore*, 2003, 52 MMWR, May 11, 2002, <http://www.cdc.gov/mmwr/PDF/wk/mm5218.pdf>.

⁸⁷ World Bank data reports, 0.7 beds per 1000 for India for year 2011 which includes inpatient beds available in public, private, general, and specialized hospitals and rehabilitation centers.

⁸⁸ Yeolekar, M. E & S. Mehta, *ICU care in India-status and challenges*, JOURNAL-ASSOCIATION OF PHYSICIANS OF INDIA 56, no. R (2008): 221, (2008).

⁸⁹ Delisle & Jacques, *Atypical Pneumonia and Ambivalent Law and Politics: SARS and the Response to SARS in China*, 77 TEMPLE LAW REVIEW, 194-245, (2002).

⁹⁰ Jacques Delisle, *Atypical Pneumonia And Ambivalent Law And Politics: Sars And The Response To Sars In China*, 77 TEMP. L. REV. 193 (2004).

COVID LEGISLATION

The most important step, however, is the need to formulate COVID-19 legislation as has been drafted by various countries.

The UK Coronavirus Act, 2020 and The Health Protection (Coronavirus) Regulations 2020⁹¹ are perhaps one of the most comprehensive laws on a date. The legislation invites participation from the public and guarantees benefits and protection for their service to the Kingdom in this time of need.

To ensure their protection and to incentivize volunteering, the legislation provides for emergency volunteering leave and payments to emergency volunteers by way of compensation in the form of loss of earnings and for travel and subsistence. The legislation makes provision for payment by employers of statutory sick pay, to be funded by the Revenue and Customs Department for those infected with the virus.⁹² Further, the UK legislation also makes modifications to the Mental Health Act to ensure that the persons detained under the said Act are not prejudiced, and special care is given to them as required. Importantly, the legislation makes provision for seeking relevant information relating to the food supply chain and also prescribes penalties for failure to comply and provide information with respect to the same.⁹³ It also protects persons from eviction and forfeiture of residential and business tenancies due to non-payment of rent during this period. In addition to the above, the duty of local authorities to assess the financial resources and to meet the needs of care and support, including for patients discharged from hospitals, have been prescribed.⁹⁴

Singapore has also enacted the COVID-19 (Temporary Measures) Act, 2020⁹⁵, the Act provides for temporary relief from coercive actions and prohibits commencement or continuation of an action in court or arbitral proceedings for inability from performing

⁹¹ The Health Protection (Coronavirus) Regulations 2020.

⁹² Kirsti Olso & Tracey Summerell, *COVID-19 (coronavirus): summary of key legislation and guidance affecting the UK construction industry*, LEXOLOGY, Feb. 18, 2020, at 55.

⁹³ *Id.*

⁹⁴ Rohit Gandhi & Adhish Srivastava, *COVID-19: New legislation brought in the world over to counter a pandemic Apr 23, 2020*, BARNBENCH, MAR. 18, 2020, at 25.

⁹⁵ Heng Jun Meng, *COVID-19 (Temporary Measures) Act 2020 - Temporary Relief Measures for Certain Contractual Obligations*, LEXOLOGY, FEB. 18, 2020, at 15.

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

scheduled contracts due to COVID-19.⁹⁶ The legislation mandates every individual to stay at his or her residence in Singapore, with the exception of persons engaged in essential services.⁹⁷ There is also a complete ban on a person meeting another individual for any social purpose, use of sports or recreation facilities, etc.⁹⁸ One of the most citizen-pro clauses is pertaining to the booking of flights, as per the act airlines, transport, dining, tours etc., any non-refundable deposit must be refunded unless determined otherwise by an assessor. Failure to comply can result in a conviction and/or fine.⁹⁹

India has not enacted any new legislation specifically on COVID-19; the Central government has invoked the provisions of Disaster Management Act, 2005. This act does not specifically lay down the provisions to counter a pandemic like COVID-19 and does not provide safeguards and specific mechanisms to deal with the unprecedented challenges posed by it.¹⁰⁰ The author ardently advocates the need for structured legislation which should be comprehensive. It must seek inspiration from the above-mentioned legislations and contain protection clauses for the downtrodden sections, specifically during lockdown.¹⁰¹

India has a huge population, which makes it impossible for the government authorities, which are working to full capacity, to reach every person in need, and thereby the act must encourage and incentivize public participation as done under the UK legislation. There should be protection from termination of employment and provisions for payments of wages and salaries during the lockdown period or if the employee or any of their family members are diagnosed from the pandemic.¹⁰²

⁹⁶ *Ibid.*

⁹⁷ *COVID-19 (Temporary Measures) Act Provisions relating to Temporary Reliefs to Commence*, April 20, 2020, MINISTRY OF HEALTH, SINGAPORE, <https://www.mlaw.gov.sg/news/press-releases/2020-04-20-covid-19-temporary-measures-act-provisions-relating-to-temporary-reliefs-to-commence-on-20-april-2020>.

⁹⁸ *Ibid.*

⁹⁹ Renu Gupta, *Singapore COVID-19 (Temporary Measures) Act, 2020 and whether India can benefit by following the Singapore model?*, BARNBECNCH, Apr 22, 2020, at 43.

¹⁰⁰ Ruth Levush, *India's Government Response to COVID-19 (Novel Coronavirus)*, CUSTODIA LEGAS, Mar. 19, 2020, at 23.

¹⁰¹ SuchithramenonC, *Delhi to Kerala -State response to Covid-19 makes it clear India needs a new health polic*, THE PRINT, Apr 6, 2020, at 12.

¹⁰² Manuraj Shunmugasundaram, *India needs to enact a COVID-19 law* Manuraj Shunmugasundaram, THE HINDU, May08, 2020, <https://www.thehindu.com/opinion/lead/india-needs-to-enact-a-covid-19-law/article31529036.ece>.

RECOMMENDATIONS

India, as a nation that swears by democratic principles and socialism, must recognize the extraordinary responsibility necessarily undertaken by governments employing isolation measures for the vulnerable sections.¹⁰³ In a public health emergency, social justice must be considered, and there should be special efforts to protect those who are most vulnerable.¹⁰⁴

There is a dire need for protection from adverse social and economic consequences, such as lost income or employment or insurance discrimination during confinement.¹⁰⁵

Major legislative efforts are required to protect the vulnerable segments of the population.

¹⁰⁶The government needs to ensure that national and local response and recovery plans identify and put in place targeted measures to address the disproportionate impact of the virus on certain groups and individuals¹⁰⁷ and thus ensure that reporting mechanisms, hotlines, emergency shelters, and other forms of assistance are accessible to women and girls. The migrant workers must have access to urban healthcare systems, and the new legislation must entirely remove the burden of providing documentation from migrant communities.¹⁰⁸ To mitigate the technological gap, audio-based learning with the help of all India Radio can be initiated.¹⁰⁹ Underprivileged children should be provided with data packages, and the use of the internet can be restricted for academic purposes.¹¹⁰

A long term solution for the future is poverty reduction should be at the heart of the fight against communicable diseases. Poverty leads to bad nutritional and sanitary circumstances, unawareness, lack of adequate health care resources, etc. Conversely, communicable diseases

¹⁰³ Greg Botelho & Michael Martinez, *Woman Quarantined With Frustrated Sheets, Towels Soiled by Ebola Patient*, CNN.com, Oct. 2, 2014, <http://perma.cc/AVR5-W4EV>.

¹⁰⁴ Thomas R. Frieden, *The Future of Public Health*, 373 NEW ENG. J. MED. 1748, 1750 (Oct. 29, 2015); Mark A. Rothstein, *The Moral Challenge of Ebola*, 105 AM. J. PUB. HEALTH 6, 7-8 (an. 2015) (describing the world's public health system as only being "as strong as its weakest links");

¹⁰⁵ CTRS. FOR DISEASE CONTROL AND PREVENTION 1, 3, A CDC (Framework For Preventing Infectious Diseases: Sustaining the Essentials and Innovating for the Future.)

¹⁰⁶ Jason W. Sapsin, Lawrence O. Gostin, Jon S. Vernick & Scott Burris, *SARS and International Legal Preparedness*, 77 TEMP. L. REV. 155 (2004).

¹⁰⁷ Sharona Hoffman, *Preparing for Disaster: Protecting the Most Vulnerable in Emergencies*, 42 U.C. DAVIS L. REV. 1491, 1499 (2009).

¹⁰⁸ Satvik Varma, *Why India's Legal and Labour System Needs to be Reconfigured to Really Help Migrant Workers*, THE WIRE, May 19 2020, at 02.

¹⁰⁹ Rohit Kumar, *Lockdown Is Disrupting a Generation's Education. What Can Be Done?* THE WIRE, Feb. 18, 1991, at 55.

¹¹⁰ *Ibid.*

PUBLIC HEALTH LAW AND COVID-19: IMPLICATIONS OF QUARANTINE ON VULNERABLE SECTIONS

lead to severe economic losses, societal disruption, instability, and poverty.¹¹¹ Lastly, there needs to be a balance struck between public health emergencies and individual rights. This calls for thoughtful application of humane supportive services and ensuring access to basic amenities to the population when they are restricted to reach the same due to lockdown.¹¹²

CONCLUSION

It can be deduced that the right to life is not absolute; liberty at the expense of public health cannot be permitted under any circumstances. India can draw immense inspiration from the global history of quarantine measures that were adopted during the SARS pandemic in other nations and help mitigate the loopholes and fallacies of its present preventive measures, which are affecting the vulnerable segments. The authors leave the topic open for further research.



¹¹¹ Joseph Dute, *Communicable Diseases and Human Rights*, 11 EUR. J. HEALTH L. 45 (2004).

¹¹² Mark A. Rothstein, *From SARS to Ebola: Legal and Ethical Considerations for Modern Quarantine*, 12 IND. HEALTH L. REV. 227 (2015).