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LAW BEHIND THE LOCKDOWN: A GLOBAL PERSPECTIVE¹

Today the whole world is suffering from one of the worst disasters ever seen in the history of humankind. With the advent of the year 2020, we were introduced to a new type of virus which originated in China and has caused a massive loss to the whole world on each and every front. Coronavirus, which later was termed as COVID-19, has been declared as a pandemic by the WHO claiming thousands of deaths and bringing human life as we know it to a complete standstill. Such a situation has never been experienced or dealt with ever before and thus countries around the world had to devise their own methods of combating the spread of this virus in its own borders. As we are well aware that each and every action of the govt. needs to be backed by the law and fulfil certain criteria, so how did the world manage to lock everyone inside in a legal manner? This article will go on to discuss what the different methods adopted by some major countries to combat this sole enemy and what is the role of law in this field.

INDIA

India is one of the largest democracies in existence and one of the most populated in the world. Naturally, when the Coronavirus outbreak was evolving into a pandemic at its origin country, China, one of India's neighbours it was a matter of huge concern. If the outbreak were to spread in an uncontrolled manner here this densely populated country the same would be a disaster. Thus, the govt. had to take decisive action to ensure that the damage is controlled to as little as possible.

In such an unprecedented time, unprecedented actions were needed. For the first time ever a nation was shut under the provisions of the Disaster Management Act, 2005. This is also the first time a central government has issued directions of this magnitude to the states. One of the government's first steps was to declare the COVID-19 outbreak as a "notified disaster" to increase the scope of its powers that can be used in order to make quick decisions in this time of need.

Further, coinciding with the PM's address to the nation, the National Disaster Management Authority issued social distancing guidelines on March 24, 2020 classifying the coronavirus pandemic as a "disaster" within the meaning of the Disaster Management Act. The lockdown guidelines were forwarded to the states and UTs by an order and the measures included shutting of all non-essential government establishments, all commercial and private establishments,

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industries, transport by air, rail and road, hospitality services, educational institutions, places of worship, political gatherings, etc. Certain exceptions to the same were provided, but essentially, India was at a standstill.

Now moving on to how the govt. imposed these guidelines in a legal manner. One of the rumours floating around before the lockdown was the possibility of the imposition of a National Emergency as provided under the Constitution of India. In such an Emergency, the govt. acquires unitary features as opposed to its federal structure. The Emergency is a period of depression where barring a few exceptions all Fundamental Rights of a person is taken away. Such an imposition is required due to the failure of the government machinery which causes or demands immediate action from the authority. But such an extreme step which have been hugely detrimental to the country on many fronts was not pursued by the govt. and instead more viable legal options were opted for.

Today we have become quite familiar to the terms to "lockdown", "curfew", "quarantine" and "isolation". Except for lockdown and curfew, all the other terms have a legal connotation and are defined in various laws prevalent in India. Such a lockdown imposes a restriction on free movement of the citizens of India and to assemble peacefully, guaranteed under Article 19(1)(b) and (d) of the Constitution of India. Therefore the framework of the said laws imposing restrictions have been enacted to maintain public order and in the interest of general public which is, until found otherwise, legal in line with our Constitutional principles.

Even before this pandemic arrived at India there were present existing provisions in its various laws which could be used to enforce the actions taken in response of this outbreak. Apart from the Constitution which allows the Centre to exercise decision making power on the states, the authorities can enforce a lockdown through the mechanism provided under S. 188: disobedience to the directions given by a public servant, S. 269: negligent act likely to spread infection of disease dangerous to life and S. 270: malignant act likely to spread infection of disease dangerous to life of the Indian Penal Code.

'Curfew' is not a legal term. Generally, exercise of a power available to the District Magistrate, SDM, or any other executive magistrate under S. 144 of the Code of Criminal Procedure is referred to as a 'curfew'. The authorities in these circumstances, for preventing danger to human life, health or safety, may issue such orders. If anyone defies such orders issued, they have a right to detain/arrest the violators. Under S. 188 of the CrPC disobedience to the directions of a public servant is punishable with both imprisonment and fine. S. 269 of the Indian Penal Code can be invoked to ensure that nobody spreads infection of a dangerous disease, S. 270 of the same Act can be invoked if people malignantly fail to act during an epidemic and the authorities may arrest the accused under the aforementioned provisions and lastly if someone escapes such a quarantine the authorities may invoke provisions of S. 271 IPC.

The Centre also took recourse to two other laws which provide the Centre and the states the statutory basis for acting against the pandemic the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. It is interesting to see that when the lockdown was announced, its

application was not sourced from any law and the same is not explicitly provided anywhere that the government has the power to declare such a lockdown. In this situation the district collectors were to be the supreme authority in each district who would also decide on the various rule for the same.

The EDA gives wide powers to “take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by, the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.” The second legislation, the DMA, mandates setting up a three-tier Disaster Management Authority at the national, state and district level to formulate a disaster plan for its level. Some of its relevant sections contain provisions like measures to be taken, permits authorities to give directions and ensures compliance in response to the same, empowers authorities to control vehicular and other movement and permits the Central government to take such measures as to coordinate work between the various authorities and government departments, deployment of forces and other matters to secure “effective implementation”. The Act also empowers the Central government to issue binding directions to authorities and state governments as well as provide penalties for violators.

To conclude we can say that there can be many challenges to the aforementioned actions of the govt. which has caused huge losses to the country as a whole as well as encroached upon many rights enjoyed by the country’s citizens in a compulsory manner in their normal day to day life. Some might disagree with it, and some might find the same necessary for the protection of our country but that is a constitutional debate to be settled for a future time and at the end of the day, it came down to the Doctrine of Necessity, which proclaims loud and clear that “Necessity knows no law”.

UNITED STATES OF AMERICA

Moving on to one of the most powerful economic superpowers of the world, the **United States of America**, where the situation is very different from here in India. The USA is a country that trumps India in almost all aspects except population, with the backing of huge reserves, infrastructure and much better health as well as scientific facilities, on paper it should have fared much better than India but it didn’t. USA has one of the highest amount of Coronavirus cases as well as deaths to this day, its response is plagued with issues and it faces a huge amount of protests from its citizens which have been pressuring to reopen the country and relax the measures imposed on them. Let’s discuss why things are so different in another democratic country.

The Centres for Disease Control and Prevention (CDC) in USA were given the authority to prevent the entry and spread of communicable diseases from abroad and between states. The CDC stated that the state, local and tribal officials also have police power functions to protect the health and wellbeing of citizens within their own borders. Some states implemented additional restrictions on public life, including banning gatherings of more than 50 people.

In the USA, mass quarantine is enacted by federal laws, notably, by the Immigration & Nationality Act and Public Health Service Act. Its sections have been used for the first time to suspend the entry of all foreign national whom the president thinks is detrimental to the interests of the United States. The legal authority for these quarantine rules comes from the same Act, which authorizes the U.S. Department of Health and Human Services to issue necessary regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries. Apart from these federal laws, states can use their respective state powers to take decisions which help curb the spread of this disease.

Many states are acting to contain the viral spread through mass closures of businesses and orders to stay inside the home. However, unlike India, with the absence of a national-level order, such measures are not uniform across the whole country, and Americans can still travel from one area to another potentially carrying COVID-19 from “hot zones”. The approach towards the situation here can be said to be more piecemeal. Many states and localities have ordered businesses, schools, and workplaces to close and limited the number of people that can gather in public. Some states have directed all residents to shelter in place, or stay home. But other states have allowed businesses such as bars and restaurants to remain open to the public, or let their school districts decide whether to close schools. Furthermore, the USA is now considering opening the country again to avoid more economic losses despite the dire situation which essentially requires the opposite.

However, even if the president desired to take stronger action, America’s national-level response would be hampered in part by its federalist system, unlike India which has the ability to switch over to an unitary system for situations like these. The constitutional authority for ordering major public-health interventions, such as mass quarantines and physical distancing, lies primarily with U.S. states and localities via their police powers, which is drastically different from the process existing in India. Still, the federal government does have narrow authorities to reduce the spread of COVID-19, which are most expansive at the U.S. border. Congress has exclusive constitutional power to regulate interstate commerce and could restrict travel among the states, but the president cannot, unless Congress provides statutory authority. The CDC, as an executive agency under the Department of Health and Human Services, holds limited regulatory authority to issue quarantines, but lacks the authority to ban interstate travel outright.

Within states, the president has little to no power to act, because of states’ sovereign rights to exercise their police powers. The president cannot direct a governor to implement or withdraw an order to stay at home or to close businesses such as bars, restaurants, and theatres. Even in a national emergency, governors retain primary authority to control the spread of an infectious disease within their states. However, as governors’ powers extend only to their states’ borders, they can limit intrastate movement through travel restrictions, mass quarantines, or isolation orders, but cannot restrict interstate travel. Thus, unlike India, the USA has to some extent failed to control the spread of this virus by having uniform guidelines for the same like many other countries. This lack of control along with the resistance from its citizens is one of the major reasons for its odd response to this outbreak.

CHINA

Now moving on to China, another one of the world's economic superpowers. The Wuhan region in China was the source of this outbreak which plagues the world today and has been the cause of a number of deaths. One of the most successful economies with excellent infrastructure, China has been hailed, amongst much criticism, for controlling the spread of this virus in an effective manner amongst its population, the largest in existence. China has a different type of govt. from the rest of the world. This socialist republic ruled by a single party exercises complete control over its population and demands complete obedience without any exceptions. China is extremely secretive about various aspects of the country and punishes dissidents strictly. Thus, the govt. policies are the most effective here. Let's discuss the little information we have on how China dealt with this outbreak.

The legal groundwork for China's coronavirus response had been established on January 20th, when the National Health Commission designated the highest level of treatment and control to fight the same. After that, provinces and municipalities issued their own regulations, and the Chengdu government passed its first measures on January 24th. The citizens were allowed to leave and return as often as they pleased, provided that they carried passes that had been issued by the neighbourhood committee, the most local level of the Communist Party. In other parts of China individuals were restricted to one individual per household going out every two days, and often that person had to tell the authorities where they were headed. One of the Chengdu measures even banned "every sort of group dinner party."

China was later split into hundreds of thousands of isolated cells. Across the country, apartment complexes, villages, and whole cities closed themselves off to the world for weeks. As per the accounts of the various people living there, one could never figure out who and what was keeping them inside or what the rules were. Public health messages encouraged residents to take ordinary precautions and propaganda messages on red flags were displayed. It was clear that there was no such thing as a national plan—just thousands upon thousands of local officials, businesses, and village heads scrambling to respond.

After the lifting of the restrictions imposed, the same was replaced by surveillance and limited lockdowns. The city asked citizens to register with an online system created by the Zhejiang tech giant Alibaba, which rates infection risks as red, yellow, or green based on a short survey about recent travel, symptoms, and contact with infected people or people from Hubei. According to the news, yellow means seven days' isolation and red two weeks.

Thus we can observe that China's response to the outbreak was implemented in quite a different fashion, the governing authority were unclear, rules unknown and the party exercised complete control over the situation existing in the country. The measures of the govt. was effective, again to

much scepticism, due to its fear and requirement of complete obedience. Although the true complete situation in China will never be known, on the face of it, China was successful.

UNITED KINGDOM

Moving on to the United Kingdom, recently separated from the European Union is another one of the world's most important countries which exercise considerable influence over the same. This constitutional monarchy used to have India as one of its colonies and thus has a very similar form of govt. to the same but without a written constitution to govern the same. This island having a considerable amount of human population can be said to be one of the major economies of the world and has a good level of infrastructure to handle such an outbreak. Let's see how it has handled this outbreak within its borders.

In the UK, the British government ordered a lockdown on March 23, limiting people to trips outside the home solely for grocery shopping, medical needs and traveling to work if working from home was not an option. Social gatherings and meeting up in crowds were banned. One form of solitary exercise was permitted such as running or riding a bicycle and the police would be enforcing the same. The govt. also ordered the immediate closure of shops selling non-essential goods. The PM in his address to the nation stated that the country is facing a moment of national emergency and that staying at home was necessary to protect the NHS, save lives and tackle the biggest threat this country has faced for decades.

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (Reg 6) and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (Reg 8) provided the legal backing to the actions of the govt. Both of these regulations provide in identical wording that 'During the emergency period, no person may leave the place where they are living without reasonable excuse.' Both also enumerate thirteen exceptions to the rule. These are the restrictions widely referred to as the 'lockdown.'

The recently adopted Coronavirus Act 2020 confer new powers confer such powers on Northern Ireland specifically, the Northern Ireland Department of Health in Schedule 18; and on Scottish ministers in Schedule 19. The scheme in those two schedules is based on the powers accorded to UK and Welsh ministers under the Public Health (Control of Disease) Act 1984.

The relevant part of the 1984 Act, Part 2A, was inserted by Part III of the Health and Social Care Act 2008. That later Act was designed with epidemics in mind, as it was a response to the SARS epidemic of 2003. It does two main things. First, it empowers the Secretary of State to make regulations to respond to the protection of health in response to the spread of infectious disease. Second, it provides a framework for the exercise of powers by Justices of the Peace to make health protection orders against particular individuals or groups of individuals.

The government is facing a challenge to the legality of the coronavirus lockdown by a wealthy businessman who fears it will kill more people than it saves. Simon Dolan, whose Jota Aviation company has been delivering personal protective equipment (PPE) to the NHS, has put the health

secretary on notice that he intends to issue proceedings for a judicial review, unless the government reverses some of the lockdown measures and reinstates freedom of movement.

Dolan's lawyer said the challenge rested on three main points: first, that the lockdown is "ultra vires" outside of legal authority because it implemented regulations under the Public Health Act 1984 instead of the Civil Contingencies Act 2004 or the emergency Coronavirus Act 2020; second, that the government re-imposed the lockdown on a "disproportionate" basis in law, using an "over-rigid" test regarding its effect on containing the disease but not its impact on the economy, jobs and wider health; and third, that it breached the European convention on human rights covering the right to liberty, family life, education and property. The legality of these action have to be decided upon by the courts of England and until then, we can only assume to the same to be so.

AUSTRALIA

Moving on to Australia, another one of UK's colonies and part of the Commonwealth is an island having a huge amount of land mass in comparison to its relatively small population. The outbreak of Coronavirus in the country could not have come at a worse time for the country. Recently recovering from one of the worst wildfires in history which caused huge losses to country on all fronts, the spread of the virus here has been present but quite limited. Let's see how the govt. dealt with this outbreak.

In Australia, anyone not complying with new isolation rules will face the threat of heavy fines and even jail time in some areas. Under the Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 (NSW) the Minister has the Power to issue the order under the Public Health Act 2010 and was brought into effect from 30 March 2020 in New South Wales and the same provides the legal backing for the actions taken by the govt. in this situation. The object of this Order is to give certain Ministerial directions to deal with the public health risk of COVID- 19 and its possible consequences. In particular, this Order directs that a person must not, without reasonable excuse, leave the person's place of residence.

Some examples of a reasonable excuse include leaving for reasons involving- (a) obtaining food or other goods and services, or (b) travelling for the purposes of work or education if the person cannot do it at home, or (c) exercise, or (d) medical or caring reasons. In addition, this Order directs that a person must not participate in a gathering in a public place of more than 2 persons. The Public Health Act 2010 creates an offence if an individual or Corporation fails to comply with a direction. A list of reasonable excuses are provided under Schedule 1 of the aforementioned Act.

Australia is well into the Covid-19 lockdowns and every state is enforcing physical distancing laws slightly differently. With consistently low numbers of new infections, some states have begun to ease physical distancing laws, while others are holding firm. In most states enforcement is left up to police officers' discretion, therefore it is difficult to provide exact information on what is or isn't allowed.

To conclude we can observe that each country had a different method of dealing with this outbreak that has been plaguing the world today which were mostly dependent on the type or structure of government that governs the same. In this situation, no one was fully prepared with a response to this disease and had to come up with a framework in a fairly short amount of time, while some were pretty successful, others were not, and in the end there was no perfect method to handle the same. We were unprepared and in for a shock which has left us with a grim situation. The law here played a massive role which is not noticeable on the face of it but was the actual driving force behind each act done by the authorities and providing a suitable justification for the same. The law is the safety net which ensures that no matter what the govt. doesn't turn into a draconian one and ensures that we, its citizens are always protected. Sure, many of the rights we enjoy in our day to day lives were refused, but the same was legally justified and necessary for the protection of our health and safety which stands above all. Here we saw the Doctrine of Necessity in effect which states that "Necessity knows no law" but the law never fully vanished. The situation right now is grim, but things will be back to normal soon and the world will bounce back stronger than ever. Stay safe!

