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Implication of Prohibitory orders: Section 144 of Cr P C, Curfew and Lockdown in a Pandemic Situation in India – A Socio -Legal Approach

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Abstract

In a pandemic situation government has invoked the provision of sec.144 of Code of Criminal Procedure (CrPC) and it imposed Lockdown to whole or any part of the country for the purpose of restriction of assembly of more than 4 people in a public or private place but there may be available of essential goods to get it. In order to avoid epidemic disease to spread in community sec.144 of CrPC has been a legal shield to control spread of any pandemic/ epidemic diseases in any place of a country. According to section 144 of CrPC is only a procedure that there is a sufficient ground of an apprehension of danger to human life, health or safety and immediate prevention is desirable the District Magistrate or the State government may direct that an order to be made that to any person to abstain from certain act for this reason the government has announced lockdown for invoking such provision. The Disaster Management Act, 2005 has envisaged that the National Disaster Management Authority has directed the National Executive Committee of Disaster Management to issue order of lockdown measures due to pandemic situation in the outbreak of COVID-19. The violator of the section 144 of lockdown measures shall be punished under the provisions of Disaster Management Act, Indian Penal Code and the Epidemic Diseases Act. The World Health Organization, the Centre and State has made several directives and the people at large must have knowledge and understanding about the need of application of section 144 of CrPC and special law provisions that implies to control such pandemic situations in India.

Key words: Section 144 of CrPC, Pandemic Situation, COVID-19, lockdown, National Disaster

I Introduction

Origin of Human being is traced from approximately six millions years ago, in view of society has been emerged in the civilized human structure from the primitive in nature. The society is developed gradually from pre-industrial society (hunter gatherer, pastoral, agriculture and feudal society), industrial society (increased productivity and technology), post-industrial society or digital society. In every society social interaction is inevitable such interaction is building the

block of society in further. While interaction one another there may be spread of communicable diseases in the society for which government established certain rules and regulations in order to avoid health risk in the community at large. Social gathering and their interaction would be a cause for spreading of epidemic in the society so the government has adopted various directives of national and international concern like social distancing and quarantine. Law is the important component like cement to build strong society in a civilized nation. It is an essential medium of change to transform welfare state, where a citizen has knowledge of law which increases understanding of public affairs.

Health is wealth; every country has to make policies for the welfare of public health. The national and international community has come forward to safeguard the public health in which they established a nodal agency called World Health Organisation preventing danger to health at national and international level. The world community has experienced several pandemic situations in earlier period but this pandemic COVID-19 epidemic is very crucial. The Novel Corona virus was said to have originated from Wuhan City of China. It has spread in the entire world through social contacting by each other the infected person is spreading such epidemic disease in a social interaction. In India, the restrictions on movement and services have been enforced by state government, after advisories from the Centre. These restrictions derive their legal basis from the Epidemic Diseases Act, 1897.

When an epidemic rages, state governments has empowered under Section 2 of the Act¹ have “power to take special measures and prescribe regulations as to dangerous epidemic disease”. The law was enacted because the provision in general laws like the Indian Penal Code were not sufficient to tackle the spread of dangerous infection this section gives discretionary powers to mould restrictions.² Section 144 of Criminal Procedure Code, 1973 has given power to Executive Magistrate to restrict an assembly of person or group of persons residing in a particular area while visiting a certain place or area. This restriction of movement is implemented to prevent a danger to human life or health and safety of such person and to control the spread of COVID-19 this section is invoked in every part of India.³

This paper has explored explicitly the implication of section 144 of CrPC to every stakeholder in order to avoid spread of epidemic diseases in any place of a country. Firstly this paper derives the meaning of prohibitory orders section 144 of Crpc, Curfew and Lockdown and Secondly it discusses implication of prohibitory order on a common man. Thirdly the legal dictum on special laws which supports the prohibitory order to control the outbreak of COVID-19 and declared such situation is a pandemic situation of the world. In the Concluding part this paper critically analysis

¹ Section 2 of the Epidemic Diseases Act, 1897

² Sruthisagaryamunan (2020), Corona virus Explainer: As India shuts down, what the difference between sec.144, lockdown and curfew”, www.scroll.in last visited on 14.06.2020

³ Sonamchandwani (2020),”Section 144: the need of the hour amid the COVID-19 crisis”, article published in yourstory.com, last visited on 16.06.2020

socio-legal implication on common man to tackle the pandemic and epidemic situation in India particularly COVID-19 situation. There is a well-known legal maxim is 'Ignorantio juris Non excusat' which means ignorance of legal knowledge never been excused. The violator must be prosecuted and punished under due process of law they never avail ignorance as a defence even but excessive force of legal sword is against rule of law.

II Meaning of prohibitory orders: section 144 of Crpc, Curfew and Lockdown

In order to issue the prohibitory orders concern the Criminal Procedure Code is a general law and it has wide power such is so called as conferred powers on an Executive Magistrate to deal with emergent situations.⁴ One such provision deals with the Magistrates powers to impose restrictions on the personal liberties of individuals, whether in a specific locality or in a town itself, where the situation has the potential to cause unrest or danger to peace and tranquility in such an area, due to certain disputes. The District Magistrate or a Sub-Divisional Magistrate may make such orders when in their opinion there is sufficient ground for proceeding under the section and immediate prevention or speedy remedy is desirable.

It requires that the magistrate has to issue the order in writing setting forth the material facts of the case and such order is to be served against a person to whom it is to be served or if it cannot be served it shall be notified by proclamation, publication in such manner as the state government may direct to convey the information to such person. The wording of the section envisages a situation where in the power provided there under may be exercised on the assessment of the Magistrate himself that is a subjective satisfaction. Usually this prohibitory order shall be issued on a squarely ground and it would be challenged before the court for unwarranted and unfettered order. But this COVID-19 situation is very crucial and most urgent case in order to invoke this provision to control the pandemic situation in India. It is one of the important prohibitory order to be imposed against the person or persons under urgent situation.

A curfew is a situation where in the people should not be allowed to go in a public places or the people off the streets and they shall be in indoors until further order to be announced by the government.⁵ In a pandemic situation the government has announced a curfew in order to control the outbreak of COVID-19 epidemic. It is a very serious situation in which people won't be allowed to wander and they have to be off the streets and to be in indoors only. It is a policy decision of a government in order to control a pandemic situation on its discretionary powers. It is another kind of prohibitory order which is exercised by the government.

⁴ Under section 144 of code of criminal procedure, 1973 provides that under urgent cases or apprehended circumstances this provision is invoked to control the situation and protect the life, health and safety of the people. Moreover this provision confers powers to issue an order absolute at once in urgent cases of nuisance or apprehended danger.

⁵ An Article titled "Here is the difference between Lockdown and Curfew" published in Business Insider India Bureau dated 22.03.2020; www.businessinsider.in last visited on 23.06.2020

The term Lockdown is more or less similar form of curfew but it is a quarantine⁶ measure which is imposed by the government in a pandemic or emergency situation. It means a bigger restriction measure where the people cannot travel without a emergency pass or a certificate from the appropriate authorities. During this period the people are allowed to avail essential services like getting groceries, medical assistance – getting medicines from the pharmacy, go to hospital in emergency situation.

A lockdown is an emergency protocol that prevents people from leaving a given area. A full lockdown will mean you must stay where you are and not exit or enter a building or the given area.⁷In a legal dictum except section 144 of crpc other the prohibitory orders curfew and lockdown are not coming in the purview of legal provision.

III Implication of Prohibitory Orders on a Common Man

Humans are social animals they have been evolved by social creatures and are accustomed to live as interactive groups. If they have been isolated from family, friends and colleagues can be unbalancing and traumatic and can result in short or long-term psychological and physical health issues. Under social implication of prohibitory orders the people are getting psycho-neuro problems and they have anxiety, aggression, depression, forgetfulness and hallucinations are possible psychological effects of isolation.⁸ Children are forced to be in isolation and they are unable to associate with their peer group which causes psychological issues and unable to concentrate their normal life. Even just few days of isolation can cause increased level of anxiety and depression but this pandemic situation has continued more than three months such longer period isolation would be a threat of dreadful disease or psychological problems the people may have mental and physical issues.

Public health law like the Epidemic Act, 1897 may contain certain provisions authorizing the authorities permitting them to exercise executive powers following the declaration of an emergency under pandemic situations moreover the health department authorities has to take such actions as are reasonably required to deal with the risk to human health in a pandemic period like COVID-19 period. Generally Prohibitory orders are invoked against whole or part of a place in order to control the situation the government has declared that there is an urgent situation or an apprehension of danger prevails in that place the government has to prevent such situation and

⁶Quarantine means separation of suspect person from other persons who are not ill and it is a possible method to prevent spreading of infected disease.

⁷ An article titled “What a coronavirus lockdown looks like, and what you can do & what you can't” published in economictimes.indiatimes.com; dated 25.03.2020 last visited on 16.06.2020.

⁸Ranjit Power, “psycho-social impact of covid period lockdown” tribuneindia the voice of the people, article published on 11.04.2020 www.tribuneindia.com last visited on 26.06.2020

exercised power to issue order of prohibition of restriction of right to movement of a person or group of person in such situation. In the outbreak of COVID-19 epidemic disease, the central and state governments have announced prohibitory orders and invoking the provision of section 144, section 2 of epidemic diseases act and disaster management act. According to these provisions the people should not be allowed to assemble in a public places (sec.144 of Crpc), people must be indoors that is to be in lockdown but they are allowed to get essential services.

A common man does not have an experience or understanding about the implication of prohibitory order like lockdown. In the initial period of the order the people were knowingly or unknowingly violated such order and were prosecuted and fined. In order to exercise public order the police authorities have imposed their own punishment like physical exercises – sit ups, dancing, and threatening the violators with corona pretending patient instead of a legal punishment. The law is very clear that during the pandemic period where the prohibitory orders are in existence only simple punishment may be provided under section 188 of IPC or sec.270 of IPC. Moreover, where the guidelines of the government are violated by a common man would be prosecuted under section 51 to 60 of Disaster Management Act, 2005.

Under the lockdown, legal services weren't classified as essential by the govt, which allowed only a little number of "virtual" courts to work. With virtual courts only taking over "urgent" cases that weren't clearly defined, access to representation, bail or a good investigation became virtually impossible. thanks to the pandemic, visits to prisons by lawyers and families were also banned. The prisoners can contact their relations through landline phones, but they need to attend for an extended roll. within the case of migrant workers they need lost their jobs and were worst affected within the prohibitory order period their livelihood was questioned but the Hon'ble Supreme Court of India also said that it's a policy of the govt in order that they cannot interfere in such situations. These labourers are returning with none transport facilities provided by the govt. Train and bus services are abruptly suspended with extremely short notice which has left workers stranded around railway stations and bus terminals everywhere the megacities of India. they need to steer many kilometres to succeed in their homes with their small kids and old parents without having adequate food and with only a couple of hundred rupees in their pockets. an outsized section of poor people in India has affected in worst form under this announcement of lockdown comes as a double crisis of health insecurity and economic nightmare.

IV The Legal dictum on Special Laws which necessitates the prohibitory order

The World Health Organisation has declared COVID-19 as an epidemic on 11th March, 2020. an epidemic is a plague which suggests a disease outbreak are going to be labeled as an epidemic when it's widespread, over several countries or continents, usually affecting an outsized number of individuals. The disease must even be infectious in nature like H1N1 and other diseases which is already declared as a plague by the WHO.

International Health Regulations (2005) (IHR), adopted by the planet Health Assembly in 2005, are binding on all World Health Organization (WHO) Member States and supply a regulatory framework for international management of public health emergencies. Public health laws contribute to effective disaster management by authorizing rapid and decisive government responses, and by temporarily suspending the operation of laws and processes that might otherwise disrupt an efficient emergency response. Public health laws should establish clear triggers for the appliance of emergency powers, like the size or seriousness of the emergency, or a proper declaration of emergency also as a selected period of time for the appliance of those powers (e.g. 30 days, renewable if necessary).

Disaster management may be a core function of public health law. The local laws and their emergency plans must happen in international obligations for the administration of public health emergencies, including the International Health Regulations (2005) (IHR). the aim of the IHR is to stop and protect the general public health risks arising from epidemic situations in sight of the international spread of disease. Each country must focus and administer the capacity of assessing health risks within its territory and it's to be notified by WHO under emergency situations which will cause a public health emergency of international concern therefore the international community has an obligation to adopt such IHR. so as to deal effectively with a public health emergency, emergency powers can include the facility to authorize compulsory medical treatment, and to form orders for isolation and quarantine. However, laws that are directly restrict the liberty of people during a disaster or public health emergency period and that they should suits the human rights protections too so as to line call at the IHR and with applicable domestically fundamental rights protection arena.

The WHO has conveyed an Executive board meeting and held that these agenda is adopted so as to insist such memorandum to the international community that it'll give clear picture on assessment and administration of public health services to all or any countries under unintended consequences of public health measures implemented to regulate the COVID-19 pandemic, including gender-based violence and maltreatment in association with UNICEF.

In further it supports countries to watch their ability to supply and strengthen essential health services throughout a possible extended COVID-19 response. this could include, but isn't limited to, essential prevention for communicable diseases, particularly vaccination; services associated with reproductive health, including care during pregnancy and childbirth; care of vulnerable populations, like young infants and older adults; provision of medicines and supplies for the continued management of chronic diseases, including psychological state conditions; continuity of critical inpatient therapies; management of emergency health conditions and customary acute presentations that need time-sensitive intervention; and auxiliary services, like basic diagnostic imaging, laboratory services, and bank services.

In India the epidemic situation is handled by its own legislation of the Epidemic Diseases Act, 1897 during which the Act was enacted to supply for the higher prevention of the spread of dangerous epidemic diseases, the Central and State Governments are empowered to undertake certain actions once they are satisfied that the State, country or any part thereof is visited by, or threatened with an epidemic of any dangerous infectious disease and therefore the ordinary provisions of law for the nonce effective are insufficient for the purpose and the COVID-19 spread is tackled by the govt under a notified disaster under the Disaster Management Act, 2005.

The District authorities in concurrence with State governments has administered the rules of lock down under the directions of the Union Ministry of Home Affairs invoking the provisions of the Disaster Management Act of 2005, during which it's intended to supply for the effective disaster management. Under the Act, the National Disaster Management Authority (NDMA) was found out under the leadership of the Prime Minister, and therefore the National Executive Committee (NEA) was chaired by the house Secretary. The NDMA and NEA has issued certain guidelines directing the authorities including Union Ministries, State governments has got to take effective measures to stop the spread of COVID-19, and which is laid down such guidelines illustrating which establishments would be closed and which services are required to be suspended during this pandemic period. The State governments and authorities exercised powers under the Epidemic Diseases Act of 1897 to issue further directions to impose social distancing and isolation measures which directed suspected cases and foreign returnees to stay under strict home quarantine and other people to remain reception and are available out just for accessing basic and essential services and strictly follow social distancing norms.

The Central and State governments have framed COVID-19 Regulations during which a person, institution or organisation is found violating any provisions of the COVID-19 Regulations, it might be deemed as an offence under Section 188 of the Indian legal code, 1860, which penalizes disobedience of an order duly promulgated by a employee. Where the Regulations are imposed during a COVID-19 period that a person who violates the regulation of Lockdown they shall be punished under section 270 of Indian legal code, 1860 as malignantly does an act which is probably going to spread the communicable disease. Though the govt has insisted several guidelines and controlling the epidemic situation the people don't have better understanding on these regulations. The lock down violation has been happened persistently and such violators are being penalized and therefore the authorities collected a fine of Rupees four crore and more.

V Conclusion

Constitution of India has envisaged fundamental rights of a citizen during which the supreme court of India has embodied these rights and delivered landmark judgements so as to safeguard the citizen of India. Part IV of the Constitution that's Directive Principles of State Policy can't be

enforceable before any court of law. The COVID-19 Regulations are the policy of the govt hence which isn't enforceable though it's going to affect the Part III of the constitution. the proper to movement may be a fundamental right under Part III of the Constitution which can be restricted under certain prohibitory orders like sec.144, curfew and lockdown that might necessitate safeguarding citizen's public health. a number of the Writ Petitions filed against the order of the lockdown which affects livelihood of a citizen under Art.21 of the Constitution. But the Hon'ble supreme court dismissed such petitions on the bottom of pandemic situation. The Courts have therefore laid much emphasis on the importance of following guidelines mentioned under section 134 of Crpc as also within the various sub-section of section 144 of Crpc.

The provision of section 144 of Crpc has limited access that it's going to have alive for a period of maximum six months but other prohibitory orders like lockdown has announced under special provisions of Epidemic Act and Disaster Management Act the govt has discretionary power to exercise / direct certain prohibitory order so as to stop the health or safety of citizen. Hence the prohibitory order of lockdown could also be extended till the eradication of epidemic particularly COVID-19 pandemic. within the social aspect of implication of prohibitory orders people are becoming struggle to survive during a day today subsistence and livelihood though the govt has given some kind of financial assistance and other food grains which won't be significantly sufficient to them. People live during a small room housing or slum dwellers the whole relations are how long are going to be in indoors without having sufficient housing facility. The daily wage earners who don't have work during this prohibitory orders period and that they would be suffering from psychological and physical problems. the youngsters are in indoors having mental stress and therefore the schooling is on online would also cause psychological and physical problems to them. the traditional lifetime of the people has worst affected that there's various sort of offences and violence is erupted within the society also within the family like violence, Suicide and Custodial deaths. Hence the implication of prohibitory orders may need been having positive also negative aspects.

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