

Corona Virus: The Legal Framework Behind Lockdown, Curfew and Quarantine

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In these difficult times, we continue to hear the words "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. These provisions have been invoked in the midst of the Coronavirus lockdown.

Bar and Bench

I must start this Article by stating that all of the above terms impose a restriction on free movement of the citizens of India and to assemble peacefully in the territory of India, guaranteed under Article 19(1)(b) and (d) of the Constitution of India. The framework of the said laws imposing restrictions have been enacted to maintain public order and in the interest of general public.

Considering that these terms restrict our fundamental rights, it is important to understand the true import of these terms. "Lockdown" is not a legal term. The term is being used by government officials and others to describe a situation where free movement of goods is restricted, with the exception of essential items declared by the Government of India under Section 2, 3, 4 of the **Epidemic Diseases Act**.

Certain examples of exercise of lockdown powers of the government can be found in *The Delhi Epidemic Diseases COVID 19 Regulations, 2020*; the *Maharashtra Epidemic Diseases COVID-19 Regulations, 2020*; the *Punjab Epidemic Diseases COVID-19 Regulations, 2020*; the *Himachal Pradesh Epidemic Disease (COVID-19) Regulations, 2020*, etc.

Lockdown is not the same as curfew. One of the foremost differences between the two is that in lockdown, state enforcement authorities like the police cannot arrest persons for not following the lockdown without the permission of the competent court. They can, however, enforce a lockdown through the mechanism provided under **Section 188** (disobedience to the directions given by a public servant), **Section 269** (negligent act likely to spread infection of disease dangerous to life) and **Section 270** (malignant act likely to spread infection of disease dangerous to life) of the Indian Penal Code.

'Curfew' again is not a legal term. Generally, exercise of a power available to the District Magistrate, SDM, or any other executive magistrate under Section 144 of the Code of Criminal Procedure is, in common parlance, referred to as a 'curfew'.

The authorities in these circumstances, for preventing danger to human life, health or safety, disturbance of public tranquility, or a riot or an affray, may issue such orders. If anyone defies such orders issued under Section 144 CrPC, the enforcement agencies have a right to detain/arrest the violators.

Now we come to the terms 'quarantine' and 'isolation', which have been defined under the *Indian Aircraft (Public Health) Rules, 1954*. Similar restrictions are found under the *Indian Port Health Rules 1955*, framed under the Indian Port Act, for passenger ships, cargo ships, and cruise ships.

"Quarantine" means the restriction of activities and/or separation of suspect persons from others who are not ill or of suspect baggage, cargo, containers, aircraft or conveyances, facilities, goods and postal parcels in such a manner as to prevent the possible spread of infection or contamination.

"Isolation" means separation of ill or contaminated persons or affected baggage, containers, aircraft or conveyance, facilities, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination. Though not defined, similar provisions are found in the Epidemic Diseases Act, 1897.

The Epidemic Diseases Act, 1897

This law was one of the most hurriedly drafted legislations to stonewall the bubonic plague that devastated life in Bombay in 1896, forcing people to migrate out of the city. The statute has only four provisions.

Sections 2 and 2A of the Act allows the government to take measures if it is satisfied that any state or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease. If the government thinks that the ordinary provisions of the law are insufficient for the purpose then it may take, or require or empower any person to take some measures and by public notice prescribe such temporary regulations to be observed by the public including travel by air, railways, or otherwise including detention of any ship or vessel, as the case may be.

Section 3 prescribes the penalty for disobeying any regulation or order made under the Act in accordance with Section 188 of the Indian Penal Code, which is an offence of disobeying directions of a public servant. This law has been invoked many times since it has been enacted.

Disaster Management Act, 2005

The Disaster Management Act provides the administrative framework to take measures to deal with a disaster, meaning a *catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment*, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

The purpose of this law was to cater to a situation such as an earthquake, flood or fire rather than a disease like COVID-19. However, on March 14, the Home Ministry declared the Coronavirus outbreak as a ["notified disaster"](#), thus, bringing into play the provisions of the Disaster Management Act.

This has allowed the National Executive Committee to give directions to the governments to take certain measures and has delegated powers to act under the Act to the Union Health Secretary. It further allows usage of disaster funds created for this purpose.

The Act has more teeth to deal with a disaster situation and includes the power to imprison, fine etc. The Act also has the means to control social media. The Act has been used in tandem with the Epidemic Diseases Act, with the latter providing the basis for containment measures such as restrictions on flights landing in India, prohibiting gatherings beyond a certain number of people, and various other measures adopted since the outbreak.

In the current health needs of the nation, the Act seems to be an archaic framework, owing to the changing priorities in public health emergency management. The first and the basic flaw that can be seen is that the Epidemic Act 1897 is silent on the definition of "dangerous epidemic disease".

However, looking at the outbreak of COVID-19 that has been declared as a pandemic disease by the World Health Organization, this Act comes in handy for the state functionaries to issue measures relating to isolation or 'quarantine measure'. There is a definite need for a legal framework regulating the availability and distribution of vaccine and drugs and implementation of response measures.

It is clear that no single law can effectually control the present outbreak. It is this reason that you will find that various provisions of Indian Penal Code, Criminal Procedure Code, the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 are being invoked to control the current outbreak.

Following the Prime Minister's address to the nation on the "vital aspects of Coronavirus" on March 25, when a national lockdown was announced, different states have sought to enforce it by issuing Executive Orders under Section 144 of CrPC, and some by invocation of the Epidemic Diseases Act, 1897 only.

These Executive Orders have been primarily issued to enforce the national lockdown in letter and spirit, and to restrict unnecessary movement of people.

To quote the Prime Minister,

“Every State of the country, every Union Territory, every district, every municipality, every village, every street, every locality is being put under lockdown. This is in effect a type of curfew only.”

This announcement by the Prime Minister finds its basis in Section 2 of Epidemic Diseases Act, 1897.

Thus, the implications of not following a national lockdown could be:

- Invocation of powers under Section 188 of the CrPC whereby disobedience to the directions of a public servant is punishable with both imprisonment and fine.
- Section 269 of the Indian Penal Code can be invoked to ensure that nobody spreads infection of a dangerous disease.
- Section 270 of the Indian Penal Code can be invoked if people malignantly fail to act during an epidemic.
- Once these provisions are invoked, the enforcement authorities may arrest the person involved.
- If someone escapes "quarantine", the authorities may invoke provisions of Section 271 IPC.
- Lastly, if there is imposition of Section 144 CrPC conditions, then it is a curfew.

I will end this article by stating that lockdown is not a curfew (not allowing similar powers to enforcement agencies). However, the combined exercise of various laws allows the enforcement agencies to enforce a lockdown like a curfew if need be.