

# Constitutional Legality of the Limits of Sanctions and Extent of Liberty in the View of Coronavirus Pandemic in India

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## Abstract

*As we all are familiar with the word coronavirus officially named as (COVID-19). The World Health Organization (WHO) declared it as a pandemic situation because of its global spread. India rapidly responded and clamped Lockdown after a JANTA CURFEW ordered by our honorable Prime Minister on 22<sup>nd</sup> of March 2020. Then after that curfew a new challenge for all came into light (i.e. Lockdown) from March 25, 2020, to April 14, 2020 which was named as a first lockdown and then 2<sup>nd</sup> lockdown started from 15<sup>th</sup> April 2020 to 3<sup>rd</sup> May 2020 then followed third lockdown mainly from 4<sup>th</sup> May 2020 to 17<sup>th</sup> May 2020. The government has played a very important role to fight from this epidemic situation by applying restrictions on social gathering that comes under section-144 of CRPC Act. In the recent speech of our honorable PM Narendra Modi which was held on 13<sup>th</sup> May 2020 he talked about Self-reliance and 5 Pillars. Economy Infrastructure System Demography and Demand (supply chain). Announced MSME package (for land, labor, liquidity) of Rs.20 Lakh Crore (10% of GDP, more to be announced by FM). The Government legitimized flow into at the constructional mandate of Article 47 and Entry 29 of the 7<sup>th</sup> agenda of the Constitution of India, 1950. It has moreover carried out time tested quarantine regulation contained beneath Indian Penal Code, 1860, and Epidemic Diseases Act, 1897. Such a health emergency turns out to be no longer contemplated under the Constitution of India, 1950; therefore, it has anticipated calamitous situation underpinned Disaster Management Act, 2005, to chart the preventive approach of COVID-19. The innovation of COVID-19 as disaster and disaster equipped into the word' beyond the coping capability of the network.'*

**Keywords:** Janta Curfew, Lockdown, Pandemic, Epidemic, MSME, Self-Reliance.

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## INTRODUCTION

The coronavirus was originated from China and is started spreading widely all over the Globe. The government has applied some sections like section 144 of [CRPC] which is a type of Sanction and the lockdown under SECTION 6 of the Disaster Management Act. But when lockdown came into light it was not registered in any of the law rule of India then government declared Coronavirus as a “Notified Disaster” and also mentioned Lockdown as a law under Disaster Management Act. The home minister affairs gave guidelines to State and Central Government that they must take during the lockdown from [Section 10 (2) (I)] of Disaster

Management Act, 2005. India, instead of passing an ordinance on COVID-19 resorted to 123-year-old legislation of Epidemic Diseases Act, 1897 [1]. Prior to Lockdown, [Section 2] and [Section 2A] of the Epidemic Diseases Act, 1897, has been enforced through the Cabinet Secretary on March 11, 2020, within every states and Union territories on the way to be in cost of COVID-19 as failures, upheaval, and misfortune springing up from predicted or synthetic causes and resorted to the chuck of Disaster Management Act, 2005.

The disincentive ploy of the COVID-19 has thus been equated *Ipsa Facto* to devastation administration estimate underpinned in

Sections 6 and 10 of the Disaster Management Act, 2005. This is promulgated through (Section 38) and (Section 72) of the Act in amplification of the state-huge lockdown [2]. Thus, in hefty part instances of the constitutionality and legitimacy of COVID-19 Bubonic pestilence and Lockdown in India is seen within the swing over of quarantine enforcement chunk together with this underneath the Indian Penal Code, 1860, Epidemic Diseases Act, 1897, Disaster Management Act, 2005.

The paper is an analyses assessment of effect and overstretches of these legal guidelines on the India's combat against COVID-19 pandemic inside the milieu of limits of sanction and extent of the liberation of the human beings. The Central Government has legitimized via under Entry 29 of the Concurrent listing connected to the Seventh Schedule Constitution of India, 1950. The Constitutional provision confers incomparability to middle and states for the 'prevention of the communicable or catching diseases or vermin affecting men, animals or plants and their conservatory from one State to some other country. The entry 29 does now not limit the powers of the legislating clout to direct public order or health, however 'let's in for any suitable rules to be conceded,' see you later that it addressed to the preclusion of contagious bad health from scattering right through monarchy command [3].

### MAGNITUDE OF COVID-19

The COVID-19 epidemic has affected many nations, and the World Health Organization has declared it a pandemic. In the wake of coronavirus instances at some point of glob touching the 2,407,699 super instances 1,65,093 deaths [4], the legitimacy of the lockdown order is constitutionally examined below Entry 29 of the Concurrent List. It is legally tenable below Entry 1 and Entry 6 of the State List [5]. The COVID-19 pandemic always handled the prevention of opportunity infectious illnesses that have the capability of extending past a country's border. India has seen spherical 17357 splendid times and 560 deaths. Figure 1 given below illustrates the daily COVID-19 Cases in India.

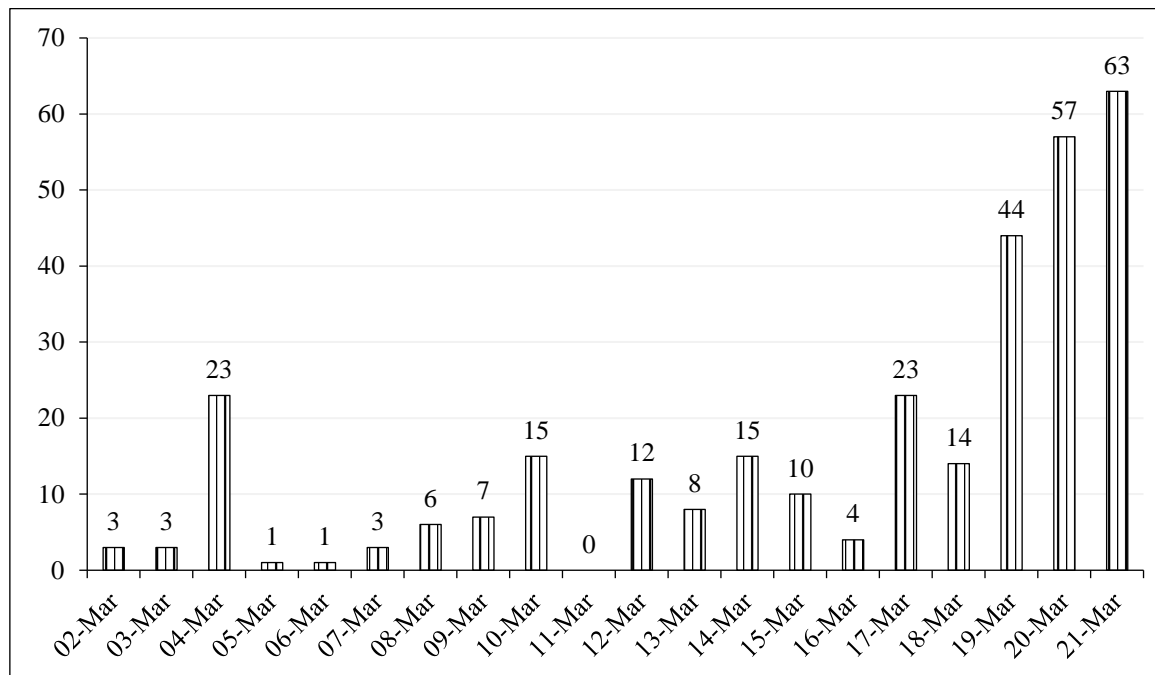
The range is in all likelihood to growth because of the truth of a progresses into superior stages of the unfold more so by means of Tablighi Jamaat Congregational Centre in Delhi and amazing states in India. The information keeps to suggest that India is thus far at the proper trajectory, and need to have the potential to ease the 21-day Lockdown as quickly due to the fact the acceleration diploma gets over via mid-April.

However, it pretty predicted that the cutting-edge charge, the 'ending phase' of the unfold in India, might begin from May 9 underneath the given hospital therapy situations [6]. The relevance of the crook sanction for quarantine and fitness safety inside the context of COVID-19 pandemic in the US owes to time tested Indian Penal Code, 1860. It is implemented universally to for stall unfold of infectious sicknesses and derived from the software of an innate enjoy of justice and the dictates of judgment of right and incorrect.

### COVID-19 AND QUARANTINE LAW

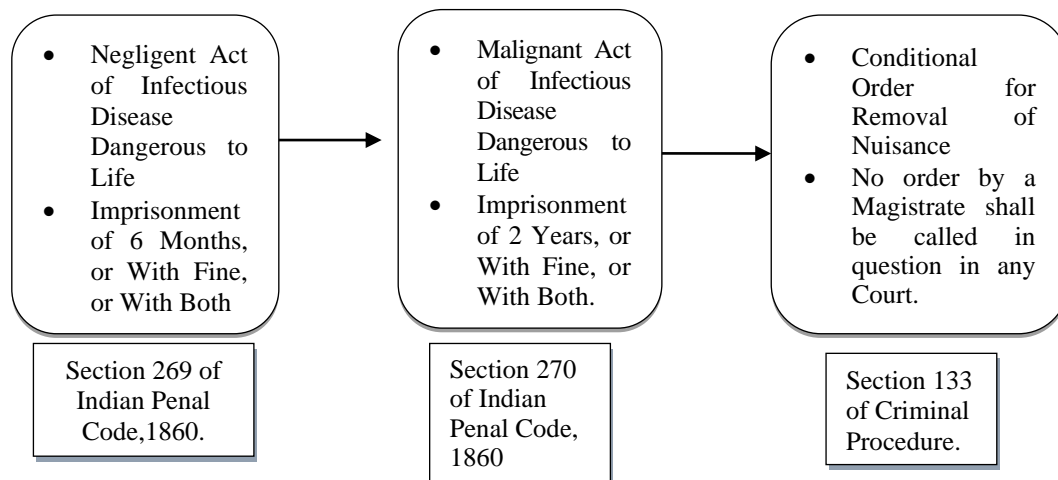
The quarantine imperative is positioned beneath public health and safety provision of Sections 188, 269, 270 and 271 of the Indian Penal Code, 1860 and Section 133 of the Criminal Procedure Code, 1973 [7]. The law regarding 'to shoddy Act probably to illuminate contamination of disease impulsive to lifestyles', says that 'whoever illegitimately or negligently does any act with intent to spread the contagion of any complaint explosive to life can be punished with incarceration of six months and extremely good or every [8]. Any malignant act likely to spread contamination of ailment unstable to life may be punished for the imprisonment of years [9]. The disobedience to quarantine rule is also subjected to imprisonment of six months or with the nice [10].

These provisions concerning negligent and malignant act spreading contamination, that is risky to lifestyles, have seminal importance in controlling pandemic, epidemic, and shielding public fitness and safety [11]. The procedural model of the regulation is contained under Section 133 of Criminal Procedure Code, 1973, but possesses aim moderate capability and salutary effect.



**Fig. 1: Daily COVID-19 Cases: India.**

Source: <https://www.orfonline.org/covid19-tracker/>



The interpretation of this law reached its widest amplitude via manner of the Supreme Court enunciation in *Municipal Council Ratlam v. Vardichand* [12]. The court docket upheld the magisterial energy underneath Section 133 Code of Criminal Procedure, 1973 is now not discretionary however obligatory.

The discretion becomes a responsibility while the situations for its workout truly exist. It concluded that 'all strength is agreed with and we are responsible for its exercising that, from the people, and for the humans, all springs, and all want to exist. Thus, the

quarantine provision of Sections 188, 269, 270 and 271 of Indian Penal Code, 1860 and Section 133 Criminal Procedure Code, 1973 assumes pivotal significance inside the gift scenario of COVID-19 pandemic and lockdown order [13].

### CHALLENGES OF PANDEMIC

In addition to the quarantine rule underpinned in Sections 188, 269, 270, and 271 of Indian Penal Code, 1860, the kingdom authorities is empowered to take splendid measures and prescribe regulations as to unstable epidemic contamination underneath the Epidemic

Diseases Act, 1897 [14]. The Epidemic Diseases Amendment Act, 1937, empowered the Central Government to take measures and prescribe guidelines for the inspection of any deliver and detention of someone proceeding to sail and arrive at port [15]. That is why the Central Government ordained social distancing, closure of establishments, and 'catch twenty-two' and adventure to govern COVID-19 in all states and Union territories in India [16]. Section three of the Epidemic Diseases Act, 1897 attracts punishment for violation of the Act, which can be at par with Section 188 of the Indian Penal Code, 1860. The officers are appearing in suitable faith to put into impact the regulation. Further, Section 4 of the Act is analogous to the provision of Section 133 Criminal Procedure Code, 1973.

The Epidemic Diseases Act, 1897 come to be enacted normally in colonial India to manipulate the epidemic of bubonic plague [17] in colonial India however accomplished to Control cholera [18], malaria [19] and dengue [20] and swine flu [21] in unbiased India [22].

### **CATASTROPHE AND COPING CAPACITY**

The broad technique of interfering of COVID-19 came from the kilos and shells of the amount criminal tips about board aspect common regulation treatment; quarantine regulation, social distancing, and epidemic manipulate jail tips. Exploit nothing to threat; it readies the COVID-19 pandemic as a rustic wide catastrophe because of the truth it's past the brick realism of the community [23]. So, it created the first-rate use of the definition of disaster contained below Sections 2(d) by means of making COVID-19 as catastrophe and disaster [24]. It allowed the govt to make entire use of disaster manage techniques through a non-prevent and guarded technique of making plans and imposing measures [25].

By doing therefore, the Central Government have come to be supporter to undertake the responsibility for disaster management [26]. It moreover ensured a well regular and powerful reaction to the disaster.

It took such delicate measures for the interference of emergency, or the mitigation, or state, and capability constructing for handling the threatening disaster set-up or disaster because it's The National Disaster Management Authority in unison with the National government Committee charted coverage in prescription and implementation at essential and kingdom tiers [27]. The directions of the National Disaster Management Authority is to be through with the useful resource of the states with none constitutional hiccups [28] as a results of the Act has associate outweigh impact on all one-of-a-type jail pointers, to the number that they are getting to be in standard [29].

### **CONCLUSION AND SUMMATION**

Given the quite contagious nature of the disorder and the large population of India, Lockdown is logical. Their freedom to movement rippled by way of the use of manner of absence of transportation blockade and therefore been strangled in worry of COVID pandemic.

In prolonged transit often it has become tough for them to make each the ends nicely [30]. This vagaries and struggling of the human beings turn out to be petitioned in A.A. Srivastava Case [31] by using manner of manner of public interest litigation. The writ highlighted the plight of loads of migrant those who, together with their families, have been strolling loads of kilometers from their place of business to their villages and cities in defiance of COVID-19 lockdown Order [32]. The jobless and migrant people stranded with none way of transportation aren't a few factors short of pressured detainees in the midland. The police move under Section 188 are justifiable but precipitated abuses in the direction of humans in want. The sealing of USA borders has precipitated disrupted freedom of movement besides supply of essential gadgets, inflation and crunch [33]. The virtual Supreme Court on 31.Three.2020 directed thru the Union of India, Police, and one of a kind government dominated to deal with the migrants' human beings in transit humanely in some unspecified time in the future of the Lockdown. The petition stays present process being attentive to, and

hopefully, the courtroom docket will study the social effect of COVID-19 pandemic and Lockdown on bad and issues of health care [34] and recuperation belief of client justice [35]. There is an urgent want for an effective prison approach to come out with the bold challenges of COVID-19 for the safety of the fitness, for the people of India.

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8. I.P.C. Section 269. Negligent Act likely to spread infection of: Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a disease dangerous, 1860.
9. I.P.C. Section 270. Malignant Act likely to spread infection of disease dangerous to life: Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
10. I.P.C. Section 271. Disobedience to quarantine rule: Whoever knowingly disobeys any rule made and promulgated 1 by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with, other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
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13. C.O.C.P. Section 133. Conditional order for removal of nuisance:(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers.
14. E.D.A. P.T.T.S.M.A. Section 2. prescribe regulations as to dangerous epidemic disease: (1) When at any time the [State Government] is satisfied that [the State] or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the [State Government], thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the, 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 disease or expenses incurred (including compensation if any) shall be defrayed.
15. E.D.A.A. P.o.C. Section 2A. Government: When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient. to prevent the outbreak of such disease or the spread thereof, the Central Government may take and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any, port and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.
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  25. Id. Section 2(e): disaster management; means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for (i) prevention of danger or threat of any disaster; (ii) mitigate, or reduction of risk of any disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any disaster; (v) prompt response to any threatening disaster, situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster;(vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction.
  26. Section 6 in the Disaster Management Act. Powers and functions of Authority: (1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management, for ensuring timely and effective response to disaster.(2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may- (i) take such other measures for the prevention of disaster, or the mitigation, capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.

27. I.S.-P.A.F.O.N.E. Committee. (1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the, National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country. (2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive, Committee may- (1) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any disaster situation.
28. I.S. 3.(2). The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely; (a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations; and (b) cooperation and assistance in the disaster, management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee, and the District Authorities.
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