

UNDERSTANDING THE LAWS INVOKED FROM A CITIZEN'S PERSPECTIVE

The outbreak of COVID-19 in India in the recent weeks, has constrained the Central and State Governments to impose several restrictions on the local population in an attempt to curb the spread of the pandemic within our borders, with the most recent measure being the 21 day lockdown imposed across the nation by the Central Government under the provisions of the Disaster Management Act, 2005 ("**Disaster Management Act**"). These far reaching measures have been put in place taking into account not only the size of the Indian population and the available healthcare infrastructure but also, the nonchalance with which the population treated previous directives/ advisory issued by the Government and health officials. The common man, however, is still is not aware of the extent of regulations, which authorities are empowered under each law and importantly the repercussions of violating these laws. This article seeks to answer these questions.

Epidemic Diseases Act, 1897: Invoked by various States

Empowered Authorities: States such as Delhi, Karnataka, Maharashtra, Punjab and Himachal Pradesh have notified temporary regulations to battle COVID – 19 under which the said states have authorized persons/empowered authorities who are responsible with discharging such duties and functions as prescribed under the Epidemic Diseases Act, 1897 for the said state. In Maharashtra, under Rule 3 of the Maharashtra COVID-19 Regulations, 2020 Commissioner Health Services, Director of Health Services (DHS 1 & II), Director Medical Education and Research (DMER), all Divisional Commissioners of Revenue Divisions & all Collectors and Municipal Commissioners have been defined as "Empowered Officer" as per Section 2(1) of the Epidemic Diseases Act, 1897.

The Epidemic Diseases Act, 1897 ("**Act**") is a special law that was first invoked by State governments to combat the outbreak of COVID-19. The Act empowers State governments to take measures to prevent the spread of a dangerous epidemic disease including by means of any temporary regulations as it deems fit to check the spread of the disease. The Act therefore confers broad powers on the State government to keep the spread of the disease in check.

Several states such as Delhi, Karnataka, Maharashtra, Punjab and Himachal Pradesh took the lead and framed their respective regulations under the provisions of the Act. These regulations enable the authorities to, confine individuals suspected of being infected with COVID-19 to home quarantine or escort them to an institutional quarantine facility or an isolation facility. The authorities also have a right to enforce several containment measures including but not limited to sealing of the geographical area, banning entry, exit from the containment area and closure of schools, offices and banning of public gatherings.

Failure to adhere to directions under the regulations, render the offender liable to be punished under Section 188 of the Indian Penal Code, 1860 ("**I.P.C**") i.e. '*disobedience to order duly promulgated by public servant*'. This offence carries with it imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or both.

The State of Kerala has however gone a step ahead by repealing previous state acts dealing with epidemics including the Epidemic Diseases Act, 1897 and instead promulgated the Kerala Epidemic Diseases Ordinance, 2020 (**Ordinance**), being the first time, a state has unified laws dealing with epidemics. This Ordinance while imbibing the essence of the Epidemics Act, 1987 has given wide powers to the State Government, apart from the power to frame regulations under the Ordinance, including but not limited to the power of sealing state

borders, restrict or regulate functioning of offices etc. The penalty for any act of disobedience under the Ordinance or abetment of the is 2 years or with fine which may be extended to INR 10,000 or both

Disaster Management Act, 2005 (Disaster Management Act): Invoked by the Centre

Empowered Authorities: The Central Government, State Governments, National Authority and National Executive Committee constituted by the Central Government and the State Authorities and the State Executive Committees constituted by the state governments, District Disaster Management Authorities.

While invocation of the provisions of the Act have been viewed as a step in the right direction, the Central Government in a bid to ensure uniformity in the measures adopted to contain the spread of COVID-19 as well as in their implementation by the States, invoked its powers under the Disaster Management Act.

The wording of Sections 10 and 24(e), of the Disaster Management Act are broad enough for any measures to be introduced including those for containment of population as may be required for preventing the spread of COVID-19. Since COVID-19 has spread across the entire nation, the Disaster Management Act has enabled the Central Government to form guidelines for tackling the pandemic at a national level as opposed to states framing their own regulations under the Epidemic and Diseases Act, 1897.

In order to avoid any ambiguity in the scope of the powers, Disaster Management Act also expressly provides powers for the state and district disaster management authorities take such measures that include but are not limited to restricting movement of persons and vehicles to and from the affected areas (Section 24 and 34)

Accordingly, the guidelines issued on 24 March 2020 under the Disaster Management Act lay down additional measures for containment of the population during the 21-day lock down period. Vide the said guidelines, the Government has suspended the functioning of offices of the Central and State governments, commercial, private and industrial establishments amongst several others, and has also carved out certain exceptions to the lockdown under each category, including an almost complete exemption to the medical services being rendered. Furthermore, in order to ensure that the orders and directions passed by the authorities are adhered to, the Disaster Management Act provides punishment with imprisonment which may extend to one year or fine or both. Pertinently, if any loss of life or any imminent danger is attributable to a refusal to comply with any directions issued by the authorities, then the term of imprisonment may extend to two years (Section 51(b)), besides prosecution under Section 188 of the I.P.C.

Code of Criminal Procedure, 1973: Invoked by States

Empowered authorities: District Magistrate

As a means of achieving the aforesaid objective of ensuring social distancing, several State Governments such as Maharashtra, Kerala, Tamil Nadu, Union Territories of Jammu & Kashmir have imposed Section 144 of the Code of Criminal Procedure, 1973 (CrPC). This provision permits the district administration (i.e. District Magistrate) to pass orders directing any person to abstain from doing a certain act if the District Magistrate is of the opinion that such a measure is likely to prevent injury or danger to human life, health or safety.

An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area. The District Magistrate can therefore pass orders restricting the assembly and movement of persons.

Importantly however, it must be noted that such an order cannot remain in force for more than two months from the date on which it was made. The proviso to this section however enables the State Government to direct that an order made by a District Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the District Magistrate.

Flouting of any orders passed under Section 144 of the CrPC can attract an imprisonment of a term up to two years (unlawful assembly under the Indian Penal Code, 1860).

Conclusion

Given the present outbreak of the COVID-19, the Central and State Governments are duly empowered to curtail the rights of the citizenry including that of freedom of movement. While such restrictions do cause inconveniences to the general public, the larger impact of these measures continues to be in favor of public health. In any event, such measures are statutorily temporary in their duration and would remain in place so long as public health demands. The restrictions also cannot be seen as being constitutionally invalid, being in the form of a reasonable restrictions to constitutional freedoms for the benefit for public health and order. Bearing in mind the seriousness and scale of COVID-19, it is likely that any infraction with the aforesaid directives/regulations/orders, will be strictly dealt with under law.

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Note : This article is one amongst a series Business Continuity articles which ELP has instituted in light of COVID-19. Through these articles we hope to address legal and regulatory issues which will have an impact for doing business in and with India. To read our other articles please [click here](#).

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