

# COVID-19: Analysing the Legal Nuances of the Lockdown Order

Swati Mohapatra<sup>1</sup>, Yogesh Mishra<sup>2</sup>, Lipsa Dash<sup>3</sup>

<sup>1</sup>Assistant Professor, <sup>2</sup>Assistant Professor, <sup>3</sup>Faculty Associate, School of Law, KIIT Deemed to be University, School of Law, KIIT, Campus 16, Patia, Bhubaneswar, Odisha

## Abstract

COVID-19 has posed a serious challenge to countries all over the world taking lives, destroying livelihood, bringing down the economies to the ground. The question now is not how soon it will pass away but how effective will it be dealt with it. Nearly 3/4<sup>th</sup> of the countries which are affected do not have sufficient preparedness to deal with it. It may be the lacking of a Mitigation Plan, or maybe the lack of an effective health care system, or maybe the lacking of an efficient R&D, or it may also be the lack of an efficient far-sighted Leader. India has been under the shadow of a few of many problems. The government of the country relies on the Laws to bring out a Preventive Mechanism to deal with the outburst of cases and other effects. One of which is the LockDown order which has been held as one of the first, earliest, and strictest in the World. The paper seeks to analyze critically the legal backing of such Lock Down, testing the nuances of it on the Constitutional Touchstone

**Key Words:** Lock Down Order, COVID-19, Mitigation, Constitution, Intelligible Differentia

## Introduction

Novel Corona popularly known as COVID-19 marked its presence in December when China informed the World Health Organisation that there is a cluster of Cases with unknown cause emerged in the City of Wuhan.<sup>1</sup> The disease took no time to spread in other parts of China and also in various other countries. The COVID-19 was termed as a Pandemic because Pandemic is an epidemic that spreads throughout an entire country, continent, or the whole world. As per the definition of WHO, Pandemic means “worldwide spread of a new disease”. On 11<sup>th</sup> March 2020, WHO declared the COVID-19 outbreak as a pandemic, the reason was its severity and global spread.

Most of the country invoked lockdown in their territory either fully or partially. The reason for this lockdown is that the disease spreads by coming in contact with the infected individual or anything which the individual has been in contact with. So the only possible preventive solution to this is “Social Distancing” and hence the government has ordered that every individual had to be inside their houses and follow social distancing norms.

Thus, the Government of India, as well as various State governments imposed lockdown. Initially, the lockdown was done for one-day which was also termed as ‘Janta-curfew, and then on the 24<sup>th</sup> of March, the lockdown was called for 21 days.<sup>2</sup> After the lockdown was brought into effect, various restrictions were placed in the Individual Rights and liberties. Apart from the essential commodities and important essential facilities, all the other goods and services were halted for 21 days i.e, till 14<sup>th</sup> April. The lockdown kept on getting further extended till 17<sup>th</sup> May as the disease started spreading exponentially, but with different relaxations and regulations.

---

### Corresponding Author:

**Yogesh Mishra**

Assistant Professor, School of Law, KIIT Deemed to be University, School of Law, KIIT, Campus 16, Patia, Bhubaneswar, Odisha,

EMail-ID- yogesh.mishra@kls.ac.in

Phone- 8827035720

Part III of the Indian Constitution talks about the various Fundamental Rights that have been given to the individuals by the Constitution. Individual fundamental rights can not be taken away by the legislature or the executive body without any justified reason. Neither the Constitution of India more any such law talks about the lockdown expressly. The implied power given by the laws has been given a much wider interpretation in this aspect. It can take up any justified steps to curb the situation and the pandemic. Although various rights are being curtailed during this lockdown it has to be kept in mind Fundamental Rights are not absolute and it can be curbed and curtailed in National Interest. Now the question here is, from where did the government have the right to impose lockdown? The imposition of Lockdown has infringed on various Fundamental Rights from the individuals. The paper will also analyze the various directives of the lockdown order in consonance of the Principles of Constitutional Law.

#### Analyzing THE LEGAL BACKING OF A LOCKDOWN ORDER:-

‘LOCKDOWN’ is comparatively a freshly coined term, and during the 1970s, this term was used in the United States of America. The 2<sup>nd</sup> Amendment of the US Constitution provides the right of the person to keep and bear arms. This was subsequently upheld in cases like the *District of Columbia v Heller (2008)*<sup>3</sup> and *McDonald v. Chicago (2010)*.<sup>4</sup> Keeping arms at their homes led to instances where the children and mentally disabled have misused it because of their underdeveloped mental conditions. During the 1970s, shootouts occurred near schools where the Students openly fired, and thus, considering the safety and life of other students they were locked- down in their classrooms. This was an instance that gave the impression that to control an unexpected situation against which there can be no immediate remedy, Lockdown can be called for.

In today’s context, India uses two concepts which are mostly used, they are-

#### **Section 144 of the Code of Criminal Procedure, 1972<sup>5</sup>, and Lockdown.**

Section 144 of Code of Criminal Procedure, it authorizes the Executive Magistrate of any State or territory to issue a written order which may be directed

against a particular individual, or a specific group of persons or on a particular. Even in very grave situations, the Magistrate can pass the order under Section 144 without giving prior notice to the individual against whom it is directed. It is generally believed that the assembly of three or more persons is prohibited under Section 144; however, it can be used to restrict even a single individual. There are various instances when this section has been invoked. Even initially Section 144 was imposed during COVID-19 situation also which was later on made much stricter.

Curfew has not been specifically mentioned in any law. The power regarding curfew is implied in a State Executive which can pass the order establishing a specific period during the people are asked to stay at their home and not to come out. It can be stated that it is an extended version of 144 which is exercised by the government. On 22<sup>nd</sup> March 2020 in the wake of COVID-19, the Government called for ‘*Janta- Curfew*’ in which people were asked to stay at their homes from 9 am to 5 pm.

However, In India, there have been numerous instances where Section 144 and Curfew has been used, but this was for the very first time we came across the term ‘Lockdown’. I delve into the legal provisions which are applicable in India we can come up which two such Laws backs up Lockdown, tacitly:-

Section 2(d) of the **Disaster Management Act, 2005**<sup>6</sup> has defined disaster as “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”. Section 6(1) of the Disaster Management Act, 2005 states that the National Authority shall have the responsibility for laying down the policies, plans, and guidelines for disaster management for ensuring a timely and effective response to the disaster. Section 6 (2)(i) also states that the National Authority may lay down policies on disaster management. The Indian Government has by official notification notified COVID-19 as National Disaster and Disaster Management Act, 2005 was invoked. Hence

becomes binding on the State Government.

**Epidemic Diseases Act, 1897**<sup>7</sup> provides the Union, and the State Government both have been given the power to serious epidemic disease can be regulated by various measures and can prescribe regulations.

Section 2 of the Act empowers the state government to take important measures to control the dangerous Epidemic Disease. Section 2A (as inserted in 1920) empowers the central government on its satisfaction that there is not sufficient law to meet the current situation allows it to take certain measures and impose certain regulations to control the outbreak of a particular disease. The Act has also prescribed punishment for the ones who do not obey the guidelines.

### **A Thread-Bare Analysis of the LockDown Order**

Assessing the legal backing is not enough keeping into consideration the effect it is showing on the have-nots of the society. Therefore it is essential in analyzing the content of the LockDown order (hereafter, The Order) w.r.t the Constitutional Litmus-Test. The Ministry of Home Affairs has laid down guidelines in the regulation of various sectors. The Guidelines provide for working of essential sectors -both Governmental, Private and Semi-Governmental Organisations, with minimum essential employees, thus enforcing the Social Distancing mandate. Although the Lockdown Order is the best possible step taken by the administration for the time being to put a check on the COVID cases, how it was imposed was sudden, without giving sufficient time to be prepared for the days ahead. The Lockdown began with the Janata Curfew, which was declared by the Prime Minister himself providing only a 4-hour duration to stock essentials. For a person who can afford well, protected with a secured source of employment and a stable roof above his head, these 4 Hours might not be enough but surely is sufficient. But for a person who is a contractual laborer inhabiting temporarily at a place which is not his home, with a Pregnant wife with him or an ailing Parent/Child back at home, sustaining on daily wages, with minimal or no savings living with a fear that the Contractor won't assure him of Wage Security, this 4 hour was nothing but a preparation of Death Sentence for many. The not so well beginning of the Lockdown jolted the unorganized sector out of its existence. Any Executive order of such nature has to have a systematic

Standard of Procedure. The Lockdown was laid on such a foundation that was arbitrary in itself, even if it had a legal Backup and a near-perfect content. The big schemes ensuring Right to Livelihood, a right to a well-dignified life vanishes in the thin airs when these have-nots were stranded neither with any sustenance nor with any sustenance.

The Order stands tall justifying its existence in the name of Public Interest. But assessing its contents forecasts a different narrative altogether. The Order allows for taking necessary steps for ensuring social distancing measures and puts the onus on the Central Government and State Government Authorities to ensure the same.<sup>8</sup> No authority can define and establish the framework within which measures are to be taken. Instead what could have been done is to gradually release a map after consulting the experts, within which the implementing authorities could work. Due to the absence of such a memorandum, the enforcing authorities who are equally scared of this Pandemic resorted to all kinds of measures starting from peaceful requests, Dramatic representations to Brute Force leading to even deaths.<sup>9</sup> Thus even if the direction is based on a reasonable restriction, being a vague provision exposes it to potential misuse, thus violating Article 14 (chance of Arbitrary exercise of power). Police brutality is a glaring example of it. Not only this, recently Migrants who worked in Rajasthan walked back to their villages in Uttar Pradesh but were stopped by authorities at the Uttar Pradesh border, citing safety as a reason, which is quite uncomprehending, because the alternative to walking home is to stay and die of hunger or disease. A petition<sup>10</sup> has been filed by Advocate Deepak Kansal, in the Supreme Court where he has highlighted the fact that the Centre's Reports which shows that "that there were no migrant workers on the roads anymore as governments had ensured that they were being housed and fed" was a false report. Along with the violation of the principles that our Constitution has laid down, all of these instances surely put a dent in our belief that we have a People-centered Governance. This is in gross distinction to the treatment meted out to the people who are stuck in other countries due to the Lockdown due to the global Covid-19. The Government of India has initiated a mission *Vande Mataram* to bring them back to the country, and where they are treated with utmost respect and dignity, whereas the migrants are being

sprayed with disinfectants. This violates Article-14 of the Indian Constitution, where the Government is undertaking Class Action without any *intelligible differentia*.

At the same time, we cannot ignore the Order made by the Ministry of Home Affairs made provisions for the rent deduction, salary payment, provision for rest, and food for stranded migrants. The Offices, Industries have been asked to work with Bare Minimum staff, thus balancing productivity and social distancing. The 29th March 2020 Order has directed the private establishments for payment of full salary to all its workers, and the amount cannot be reduced due to closure of the workplace.<sup>11</sup> The order seems to be made for the benefit of the daily wage workers. But at the same time, consideration must be given to the Private establishments, as without any economic help, many of them will go into closure.

States like Odisha have made ensured that no migrant will have to walk by foot within its area, and the State government will make provision to drop them at the border.<sup>12</sup> The absence of any such provision by any other State will amount to the futility of any such exercise and calls for the necessity of cooperation from the other states as well.

The Provisions under the lockdown order works towards strengthening the fabric of Decentralisation. It provides for the Executive magistrate being the nodal officer in ensuring the enforcement of the Containment measures.<sup>13</sup> In various States, the Sarpanch has been made the Person in charge to ensure that any person coming to the village from outside is to stay in quarantine for a fixed period. It is very essential to understand the need to engage the Local Self Government at such times. The various actors in the Grassroots governance will be effective in creating awareness about such a Pandemic which is new to this and the previous generation. They will help dissipate any kind of Paranoia among the ignorant.

### Conclusion

The Pandemic has shown us the best and the worst side of society. Now time is here when the theory of 'Welfare state'<sup>14</sup> will get to play its real role. For a country like India earning the distinction of successfully

holding the largest lockdown, and having one of the lowest possible death rates, is no easy feat to achieve, considering the level of poverty, illiteracy, despicable state of health. This is a result of the strong belief that we have placed in our Constitutional values, the right to hold our government accountable, the Watchdog of the Indian Constitution- Supreme Court.

**Conflict of Interest-** Nil

**Source of Funding -** Self

**Ethical Clearance-** The author has used a doctrinal method for research. All the information and discussion in the article in the paper is based on the author's analysis is of data secured on Informed consent and available publicly.

### References

1. Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19) [Internet] [cited on 2020 May 25] Available at: <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>. The overall goal of the Joint Mission was to rapidly inform national (China) and international planning on next steps in the response to the ongoing outbreak of the novel coronavirus disease (COVID-19) and on next steps in readiness and preparedness for geographic areas not yet affected.
2. "Coronavirus | Janata curfew on March 22 between 7 am and 9 pm. The Hindu [newspaper on Internet] 2020 MARCH 19 [cited on 2020 May 26]. Available at :<https://www.thehindu.com/news/national/narendra-modi-speech-live-updates-coronavirus/article31108793.ece>
3. *District of Columbia v Heller* [554 U.S. 570 (2008)] is landmark case in which the Supreme Court of the United States held that the Second Amendment protects an individual's right to keep and bear arms, unconnected with service in a militia, for traditionally lawful purposes, such as self-defense within the home
4. *McDonald v. City of Chicago* [ 561 U.S. 742], case in which on June 28, 2010, the U.S. Supreme Court ruled (5–4) that the Second Amendment to the U.S. Constitution, which guarantees "the right of the people to keep and bear Arms," applies to state and local governments as well as to the federal



government

5. Section - 144, Code of Criminal Procedure, 1973. [Internet][cited on 2020 May 27] Available at <http://legislative.gov.in/actsofparliamentfromtheyear/code-criminal-procedure-act-.1973> This provision authorises the Executive Magistrate of any state or territory to issue an order to prohibit the assembly of four or more people in an area. According to the law, every member of such 'unlawful assembly' can be booked for engaging in rioting
6. The Disaster Management Act, 2005. [Internet][cited on 2020 May 27] Available at : [https://indiacode.nic.in/handle/123456789/2045?view\\_type=browse&sam\\_handle=123456789/1362](https://indiacode.nic.in/handle/123456789/2045?view_type=browse&sam_handle=123456789/1362) The Government of India has declared COVID-19 as a National Disaster. The Act provides for "the effective management of disasters and for matters connected there with or incidental thereto
7. The Epidemic Diseases Act, 1897. [Internet][cited on 2020 May 27] Available at: [https://indiacode.nic.in/bitstream/123456789/10469/1/the\\_epidemic\\_diseases\\_act%2C\\_1897.pdf](https://indiacode.nic.in/bitstream/123456789/10469/1/the_epidemic_diseases_act%2C_1897.pdf) The Act is meant for containment of epidemics by providing special powers that are required for the implementation of containment measures to control the spread of the disease
8. "Government of India issues Orders prescribing lockdown for containment of COVID19 Epidemic in the country" [Internet][cited on 2020 June 1] Available at : <https://www.mha.gov.in/notifications/circulars-covid-19>
9. Rashid O. "Coronavirus lockdown | Youth dies after allegedly being beaten up by police in Uttar Pradesh" [Internet][cited on 2020 May 27] Available at: <https://www.thehindu.com/news/national/other-states/coronavirus-youth-dies-after-being-beaten-up-by-police-in-uttar-pradesh/article31375836.ece>
10. Talwar S. 'Inaction Towards Protection Of Migrant Workers Affected SC's Reputation': Plea In SC Seeks Directions To Protect & Safeguard Migrants [Internet] [cited on 2020 May 28] Available at : <https://www.livelaw.in/top-stories/inaction-towards-protection-of-migrant-workers-affected-scs-reputation-plea-in-sc-seeks-directions-to-protect-safeguard-migrants-157165>
11. "Consolidated Guidelines of MHA on Lockdown measures on containment of COVID-19"[Internet][cited on 2020 June 1] Available at : <https://www.mha.gov.in/notifications/circulars-covid-19>
12. Barik S. ,Odisha police ferry migrants to State borders [Internet][cited on 2020 May 28] Available at: <https://www.thehindu.com/news/national/other-states/odisha-police-ferry-migrants-to-state-borders/article31587191.ece>
13. Consolidated Guidelines of MHA on Lockdown measures on containment of COVID-19. [Internet] Available at : [https://www.mha.gov.in/sites/default/files/PR\\_ConsolidatedGuidelinesofMHA\\_28032020\\_0.pdf](https://www.mha.gov.in/sites/default/files/PR_ConsolidatedGuidelinesofMHA_28032020_0.pdf)
14. Quadagno J. Theories of the Welfare State. Annual Review of Sociology .Vol. 13:109-128 (Volume publication date August 1987)[Internet][cited on; 2020 June 1] Available at : <https://doi.org/10.1146/annurev.so.13.080187.000545> . The theory of welfare state provides that;-  
*"The welfare state provides that the state is the main protector and promoter of the economic and social well-being of the citizens, embodying the principles of equal opportunity, equitable distribution of wealth, and public responsibility especially for citizens unable to avail themselves."*