

## PANDEMIC LEGAL GUIDELINES IN INDIA AND USA

### A Comparative Study

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#### Abstract :

*In every country legislation performs a very essential role. They assure rights and protection to their citizens. COVID-19, that is usually referred to as the corona virus, has affected all the countries throughout the globe causing most important demanding situations mentally, financially and in phrases of availability of services.*

*At this point in time, legislation is required to devise a strategy for dealing with the situation and standing up to the challenge. Different countries have enacted new legislation to deal with COVID-19 and its consequences. The pandemic has affected people all around the world; at the top of the priority list, human safety has become more important than anything else. The authorities of every country have created and have come up with their own Pandemic Plan, which lays out the steps to deal with the COVID-19 outbreak. We can observe few pieces of legislation which have been mentioned, as below: It consists of legislative components that have been altered through the use of authorities in response to the COVID-19 pandemic.*



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**Key Words** - Covid-19, Legislation, Pandemic, USA, WHO,.

#### Introduction :

COVID-19 was firstly identified in wuhan, Chaina in December 2019 as a respiratory track infectious symptoms like fever, chills, dry cough, fatigue, and shortness of breath. This viral pneumonia has disabled the world causes fatal loss. Coronavirus is brought about by an infection called SARS-CoV-2. It is important for the Covid family, which incorporate normal infections that cause an assortment of illnesses from head or chest colds to more extreme (yet more interesting) sicknesses like serious intense respiratory condition (SARS) and Middle East respiratory disorder (MERS).

In the same way as other respiratory infections, Covid spread rapidly through beads that you project out of your mouth or nose when you inhale, hack, wheeze, or talk. The word crown implies crown and alludes to the appearance that Covid get from the spike proteins standing out of them.

These spike proteins are mean a lot to the science of this infection. The spike protein is the piece of the infection that joins to a human cell to contaminate it, permitting it to repeat within the cell and spread to different cells. A few antibodies can shield you from SARS-CoV-2 by focusing on these spike proteins. In light of the significance of this particular piece of the infection, researchers who grouping the infection for research continually screen transformations making changes the spike protein through an interaction called genomic observation.

Toward the finish of 2019, a novel Covid assigned as SARS-CoV-2 arose in the city of Wuhan, China, and caused a flare-up of surprising viral pneumonia. Being profoundly contagious, this novel Covid infection, otherwise called Covid illness 2019 (COVID-19), has spread quick all around the world.<sup>1</sup>

It has predominantly outperformed SARS and MERS concerning both the quantity of tainted individuals and the spatial scope of scourge regions. The continuous flare-up of COVID-19 has represented a phenomenal danger to worldwide public health<sup>4,5</sup>. In this Review, we sum up the ongoing comprehension of the idea of SARS-CoV-2 and COVID-19. Based on as of late distributed discoveries, this far reaching Review covers the essential science of SARS-CoV-2, including the hereditary qualities, the likely zoonotic beginning and its receptor restricting. Moreover, we will talk about the clinical and epidemiological highlights, determination of and countermeasures against COVID-19.

### **Corona Virus as disease**

Corona viruses are virus-like organisms. There are many different types, and only a few cause disorder. SARS-CoV-2, a corona virus discovered in 2019, has caused COVID-19, a virulent disease of breathing pollution. A novel virus known as SARS-CoV-2 (severe acute respiratory syndrome corona virus 2) has been discovered as the source of a sickness outbreak that began in China in 2019.

COVID-19 is a condition caused by SARS-CoV-2, a corona virus that first appeared in December of 2019. COVID-19 is a dangerous virus that has resulted in tens of thousands of deaths around the world, as well as long-term health problems in those who have survived it. The corona virus can spread from one character to the next. A laboratory test is used to identify it. COVID-19 was declared a pandemic by the World Health Organization (WHO) in March 2020. The Centers for Disease Control and Prevention (CDC) in the United States and the World Health Organization (WHO) are keeping tabs on the epidemic and providing updates on their websites. These organizations have also made recommendations for preventing the spread of the COVID-19 virus.

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<sup>1</sup> Indian Council of Medical Research Kits Validation & Batch Testing. [(accessed on 14 November 2020)]; Available online: <https://www.icmr.gov.in/ckitevaluation.html>.

With the help of the US Food and Drug Administration, COVID-19 vaccines were approved for emergency use, and immunization packages are currently being developed across the country . In the event that an individual gets sick, he/she should keep distance from others by wearing a mask, washing hands, and staying away from others in the general public as well as his/her own family too.

### **How does the corona virus unfold?**

Researchers now believe that the corona virus spreads through droplets and virus particles released into the air. Larger droplets may fall to the ground in a matter of seconds, but little infectious particles can persist in the air and spread in enclosed areas, particularly where a large number of people are gathered and there is poor ventilation. This is why it's critical to wear a mask, wash hands, and keep a safe distance from COVID-19.

### **How did the corona virus start?**

The first case of COVID-19 was reported on December 1, 2019, and the cause was a then-unknown corona virus that was later dubbed SARS-CoV-2. SARS-CoV-2 could have started in an animal and then evolved (mutated) to cause human infection. Viruses that originated in birds, pigs, bats, and other animals changed to become dangerous to people in the past, causing several infectious disease outbreaks. More research is needed to determine how and why the coronavirus evolved to cause pandemic disease.

### **What is the incubation length for COVID-19?**

Symptoms display up in humans inside to fourteen days of publicity to the virus. A individual affected with corona virus is contagious to others for up to 2 days earlier than signs appear, and that they stay contagious to others for 10 to twenty days, relying upon their immune gadget and the severity in their contamination.<sup>2</sup>

**Comparative study of legislations between USA &India that are in placeto address & combat Covid 19 pandemic.**

### **Situation in USA**

The Commerce Clause of the United States Constitution gives the federal government of the state the ability to isolate and quarantine people.

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<sup>2</sup>Covid 19 disease, World Health Organization (accessed on 14 Nov 2020) available online at [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1)

The United States Secretary of Health and Human Services is empowered & is authorized to take measures to prevent the admission and spread of infectious illnesses from foreign countries into the United States and between states under section 361 of the Public Health Service Act (42 U.S. Code 264).

The Centers for Disease Control and Prevention has been given the authority to carry out these responsibilities on a daily basis (CDC).

### **Role of CDC**

CDC is authorized to hold, medically evaluate, and release anyone suspected of possessing these infectious diseases who arrive in the United States or travel between states under 42 Code of Federal Regulations parts 70 and 71.

CDC routinely monitors travelers arriving at U.S. land border crossings, as well as passengers and crew arriving at U.S. ports of entry, for indications or symptoms of infectious diseases, as part of its federal mandate.

When a plane's pilot or a ship's captain reports an unwell passenger or crew member, the CDC may hold passengers and crew as needed to determine whether the illness on board is caused by a communicable disease.

Following legislations have been passed in the United States of America owing to COVID 19 situation;

- **Corona virus Preparedness and Response Supplemental Appropriations Act,2020**

On March 6, 2020, President Trump signed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123), which received near unanimous support in both the House and Senate. The bill provides federal agencies with \$8.3 billion in emergency financing to respond to the corona virus pandemic. The domestic reaction will receive \$6.7 billion (81%) while the international response will receive \$1.6 billion (19%) of the \$8.3 billion.

- **Family First Corona Virus Response Act,2020.**

The Families First Corona virus Response Act is an Act of Congress (H.R. 6201) meant to respond to the economic impacts of the ongoing COVID-19 pandemic. The act provides funding for free corona virus testing, 14-day paid leave for American workers affected by the pandemic, and increased funding for food stamps. Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – Includes \$1200 stimulus checks, 2020.

- **American Rescue Plan Act of 2021 – Includes \$1400 stimulus checks,2021**

The American Rescue Plan Act of 2021, also known as the COVID-19 Stimulus Plan or American Rescue Plan, is a US\$1.9 trillion economic stimulus bill passed by the 117<sup>th</sup> United

States Congress and signed into law by President Joe Biden on March 11, 2021, to help the country restore from the economic and health effects of the COVID-19 pandemic and the ongoing economic downturn. [1] The package, which was first introduced on January 14, 2021, builds on many of the provisions of the CARES Act, which went into effect in March 2020, and the Consolidated Appropriations Act, which went into effect in December 2021.

- **Consolidated Appropriation Act 2021**

The Consolidated Appropriations Act, 2021 (H.R. 133) is a \$2.3 trillion spending bill that combines \$900 billion in stimulus relief for the COVID-19 pandemic in the United States with a \$1.4 trillion omnibus spending bill for the fiscal year 2021 (combining 12 separate annual appropriations bills) and avoids a government shutdown. The bill surpasses the \$2.2 trillion CARES Act, which was passed in March 2020, as one of the largest spending bills ever authorized. Since April 2020, this is the first bill to address the epidemic. The law is the longest bill ever approved by Congress, according to the Senate Historical Office, with 5,593 pages.

- **A bill to extend the authority for commitments for the paycheck protection program – 2020.**
- **Paycheck Protection Program Flexibility Act of 2020**
- **Paycheck Protection Program and Health Care Enhancement Act, 2020** are some other legislations which were enacted in USA in order to combat COVID 19 situation.<sup>3</sup>

### **Scenario in India**

The government is stepping up efforts to combat the COVID-19 epidemic, and the 123-year-old rule or law, The Epidemics Disaster Act 1897 is the top priority.

The colonial-generation ordinance, adopted to battle the bubonic plague within the former Bombay, is divided into four sections that span only three pages. One of the most significant issues confronting directors coping with the pandemic state of affairs, according to experts, is India's federal structure. Within the country, public health functions are listed in the Constitution's Seventh Schedule. Centre can best advise states on how to use the legal principles and policies, rather than imposing them.

Furthermore, not all states have developed measures to combat the pandemic. While the authorities have designated the virus a "notified catastrophe" under the Disaster Management Act, the fact

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<sup>3</sup> Consolidated Appropriations Act, 2021: Wikipedia available online at [https://en.m.wikipedia.org/wiki/Consolidated\\_Appropriations\\_Act,\\_2021](https://en.m.wikipedia.org/wiki/Consolidated_Appropriations_Act,_2021)

remains that India lacks a virus-specific regulation. In India's fight against the COVID-19 epidemic, an overarching regulation guiding public healthcare is a clear flaw. The Epidemic Act does not meet the standards set forth in Articles 19 and 21 of the Indian Constitution, according to Kashish Aneja, an international health lawyer affiliated with the World Health Organization. This pandemic is also infringing on our most fundamental rights, such as Article 21, the right to life and liberty. **“No person can be deprived of his life or personal liberty unless in accordance with a procedure established by law,” says Article 21.** Article 21 protects two fundamental rights: 1) the right to life and 2) the right to personal liberty.

### Legislations in India for COVID 19

- A) Section 271 of the Indian Penal Code, 1860
- B) Section 269 of the Indian Penal Code, 1860
- C) Section 270 of the Indian Penal Code, 1860
- D) The Epidemic Disease Act, 1897- Power to take special measures and prescribe regulations as a too dangerous epidemic disease.

If the [State Government] believes that the ordinary provisions of the law for the time being in force are insufficient for the purpose, the [State Government] may take, or require or empower

- (1) Any person to take, such measures as, by public notice, prescribe such temporary regulations to be observed by the public or by a government agency (including compensation if any) shall be defrayed.
- (2) Without limiting the breadth of the preceding articles, the [State Government] may adopt measures and issue rules for the following purposes:
  - (b) The inspection of persons travelling by train or otherwise, and the segregation of persons suspected by the inspecting officer of being infected with any such disease, in hospital, temporary accommodation, or otherwise.

2A. Central Government Powers.— When the Central Government determines that India or any part of it is experiencing or is at risk of experiencing an outbreak of any dangerous epidemic disease, and that the ordinary provisions of the law currently in force are insufficient to prevent the outbreak or spread of such disease, the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in India.

- (3) Penalty.—Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offense punishable under section 188 of the Indian Penal Code (45 of 1860).
- (4) Protection to persons acting under Act.—No suit or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Act

- E) Section 188 of Indian Penal Code – “Section 188 of the Indian Penal Code prescribes punishment for disobeying an order duly promulgated by a public servant.”
- F) Section 144 of the Criminal Procedure Code “Section 144 of Criminal Procedure Code (CrPC) imposes power to the executive magistrate to restrict particular or a group of persons residing in a particular area while visiting a certain place or area.” This provision helps in restricting gathering of people.
- A) Section 3 of the Essential Commodities Act, 1955 During this time of global crisis, the citizens need to know what counts as essential commodities and what items are to be avoided.
- B) Disaster Management Act, 2005 & National Disaster Management Guidelines, 2008 deals with the management of biological disasters

### Significance of Puttaswamy Judgement

The Puttaswamy decision established the following guidelines for restricting the State’s discretion without infringing on the fundamental right to privacy:

- I. The motion should be approved by the use of regulation.
- II. The proposed motion must be necessary to achieving a valid purpose.
- III. The amount of interference should be proportional to the lack of interference.
- IV. Procedural safeguards should be in place to prevent such interference from being abused.

In a determined regulation, it is impossible to specify specific proportionate requirements for a single infectious condition. As a result, the regulation provides for the delegation of legislative power to the states. A criminal framework for infectious diseases within the field of public health is essential for increasing the state’s openness and accountability to the public. The Disaster Management Act of 2005 in India is an example of a criminal framework with such procedural checks and balances. This law establishes the national, kingdom, and district levels of governance. The function of union and kingdom governments is then defined under various ministries. The law also includes provisions for skill development through the use of setting up institutes, finance mechanisms, and human response teams. However, Article 253 of the Indian Constitution allows the federal government to implement legislation to give effect to the International Health Regulations, which calls for the establishment of systems to protect you, defend against, manage, and provide a public health response to global disorder. Any such regulation, while intended for India, seeks to circumvent the tests for reasonableness established by the Supreme Court.<sup>4</sup>

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<sup>4</sup> Justice K.S. Puttaswamy (Retd) vs Union Of India on 26 September, 2018 Judgement, Indiakanon available online at <https://indiankanon.org/doc/127517806/>

### Conclusion & Suggestions -

It can be thus concluded that to address the virus's challenges, a new, advanced, and powerful epidemic law should be drafted in both the countries including USA & India. A new law should be drafted that establishes a nodal authority that is represented by both the centre and the state and is responsible for planning and implementing the necessary actions such as isolation, quarantine, surveillance, testing, and so on. The Act shall provide the states with sufficient authority and powers to develop and implement actions at the district, block, and gram panchayat levels in India. The Act should also include provisions for financial support to local governments, farmers, healthcare providers, businesses, and vulnerable groups, as well as details on how money are allocated to various sectors of society. In the event of a violation of an authority's instruction or order, the Act should include both civil and criminal penalties. The act should also handle migratory workers, food availability, access to statutory minimum relief, and securing daily wage labourers' livelihoods. A coronavirus outbreak, for example, necessitates unusual measures and actions. Only when the government is transparent and accountable can the public have faith in it. India has an excessive number of laws and acts. It is pointless to pass legislation if it is not enforced. If a new law is enacted to address the pandemic's implications, it must be efficiently implemented and carried out.

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<sup>1</sup> Justice K.S.Puttaswamy (Retd) vs Union Of India on 26 September, 2018 Judgement, Indiankanoon available online at <https://indiankanoon.org/doc/127517806/>