

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

COVID 19 PANDEMIC BEING A BREAKTHROUGH TO THE JUSTICE SYSTEM IN INDIA

AUTHORED BY - ANUSREE J & AKHIL SAJEEV

ABSTRACT

The COVID-19 pandemic situation has paved way for the Indian society to look into the different aspects of flaws in the practicalities of the existing legislations in the Indian Administration. Though this research, the researcher is focusing on two main areas of failure on the part of the government in the process of handling pandemic situation. The former refers to the existing limited legislations on healthcare to deal with crisis situations including pandemic outbreak or any other unexpected disease outbreak, the latter refers to the various privacy infringement during this COVID-19 pandemic situation. The Researcher also aims at suggesting some practical measures that shall be adopted by the government to solve these drawbacks thus being a model administrative body for other countries to look up to.

Keywords: - Epidemic Disease Act 1897; Disaster Management Act 2005; Right to Privacy.

INTRODUCTION

The unprecedented situation of COVID – 19 pandemics is one of the biggest challenges before the Government of India. The Government in this crisis is duty bound to prevent spread of the pandemic and ensure that the public health is not compromised. Considering the absence of a rational structured legislation, the center decided to invoke the Epidemic Disease Act 1897 and The Disaster Management Act 2005 to handle the pandemic. The central government and state government are duty bound to deal with dangerous epidemic disease under Epidemic Diseases Act, 1897 for better prevention of the widespread of dangerous epidemic diseases. The Disaster Management Act, 2005, which plays an eminent role in the COVID-19 pandemic situation, also suffers from some major flaws. Even during the initial stages of pandemic, the central government could have used its powers to increase the preparedness of COVID-19 at the hospitals and could have also enabled the states to use the State Disaster Response Fund for taking necessary precautionary measures for its prevention. The government is in charge of taking measures for providing better facilities and amenities for protecting the citizens from

these viruses, providing enough healthcare workers, hospitals, intensive care units etc. it also has the responsibility of providing vaccines to the citizens for preventing the disease from affecting us. Through this research, the researcher also focuses on bringing up practical suggestions that shall be adopted by the government to solve the drawbacks of the existing legislation.

Another area on which government involvement is mandatory is on protecting the right to privacy of citizen provided under Art 21 of the Constitution of India. The pandemic situation has brought to light the cases of privacy infringement of citizens rights through newspapers and other media resources. The right to privacy being a fundamental right shall not be violated even during times of health emergencies; therefore the government has the utmost responsibility to prevent any kind of infringement of privacy right of the individual and the state must take every effort to retain the rights of the citizens with the governing rules of the central government. With this research, the researchers also analysis the reasonability of the various measures taken by the government during this pandemic situation through theoretical analysis to draw a conclusion on the efficiency of the government.

THE EPIDEMIC DISEASE ACT 1897

In September 1896, one case of Bubonic Plague was detected in Mamdvi (then in Bombay Presidency) now in Gujarat. Bombay Presidency was one of the densely populated area and rapidly the Plague epidemic had spread throughout the population in Bombay. India under the rule of queen and British Parliament had enacted the Epidemic Disease Act 1897 to prevent the Plague from spreading to the rest of India. This century old blunt Act “The Epidemic Disease Act 1897 “enacted by the British Parliament was the only enactment for the Indian government to rely upon to tackle the COVID 19 Pandemic outbreak which had spread throughout the India. The Act provided the power to invoke and search for suspected plague cases in homes and among passenger and thereafter forcible segregation of affected person, disinfection, evacuation and demolition of infected place.

The Act also confers power to prevent assembly of crowd, public meetings, festivals and suspended pilgrimages. Corresponding to it military powers were used to ensure the proper implementation of the preventive measures. The Act was criticized as one of the most

draconian pieces of sanitary legislation ever adopted in colonial India¹. The Act is purely regulatory in nature and emphasis the power of the government , “when 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 and if it thinks that the ordinary provisions of the law are insufficient for the purpose , then the state 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 , the state government may prescribe regulations for inspection of persons travelling by railway or otherwise and the segregation in hospital , temporary accommodation or otherwise of persons suspected by the inspecting officer of being infected with any such disease “². It also imposes punishment of 6month imprisonment and 1000 rupees fine for disobeying the Act³. The punishment for such disobedience shall be same as that in section - 188 of Indian Penal Code.

The Act legally protects the implementing officer who acts under the Act⁴. This shortest Act comprising 4 section was one of the frameworks to assist the central government in the COVID 19 pandemic situation.

Drawbacks of the Epidemic Disease Act 1897

The Act is not in the line with the contemporary scientific understanding of outbreak prevention and response but only reflects the scientific and legal standards that prevailed at the time when it was framed the Act doesn't reflect the spread of disease in the modern world. Some of the drawbacks of the Act are as follows:

1. It is a century old blunt Act for about 118 years old which is the major drawback of the changing era.
2. Main motive is to prevent the spread of the disease and not to curb or eradicate the disease which has already started to spread.
3. Inadequate definition if the word epidemic.
4. It doesn't provide the scientific measures or directions which have to be followed by the government at the time of epidemic.
5. It does not provide the guideline for formation of a special committee or a

¹ Criticism of the Act by Historian David Arnold

² Section -2 of The Epidemic Disease Act 1897

³ Section -3 of The Epidemic Disease Act 1897

⁴ Section -4 of The Epidemic Disease Act 1897

disastermanagement team to act in emergency.

6. Act is silent in taking measures for isolation of the suspected patients of isolation centers.
7. Guidelines for the distribution of vaccines and drugs are not provided in the Act.
8. The Act so concentrated towards the travel by ship or vessels and it is silent in regard to air travel which is common in the present scenario.

The Act is not sufficient to deal with the prevention and control of communicable disease in the current situation. So, the inadequacy of the legal frame has to be considered by the Government.

Suggestion

Different states in India had invoked the provisions of Epidemic Disease Act 1897, including Maharashtra, Punjab, Gujarat. Then also the state and central government is struggling to cope up with the Pandemic situation. Even the WORLD HEALTH ORGANISATION & UNITED NATIONS were not established at the time of such an enactment. With this COVID 19 pandemic the Government is understood with the difficulties faced by the country to face such a pandemic so accordingly the legislature has to enact a new enactment and the right to health has to be incorporated in Fundamental Rights. Some of the suggestions for a better legislation are as follows:

1. Right to health has to be added in Fundamental Rights. Strong health laws have to be implemented with due diligence and transparency.
2. Healthcare system has to be imposed
3. The state and local authorities have to be empowered to take appropriate action to tackle the health emergency
4. The Epidemic Act 1897 has to be repealed.
5. The terms epidemic, isolation, quarantine and social distancing has to be defined
6. Act has to emphasize on right of citizen and impose duties to the government to prevent and control epidemic
7. Delegated power should be limited

DISASTER MANAGEMENT ACT 2005

From the early stages of breakdown of the pandemic, government invoked the powers under the Disaster Management Act, 2005 to increase the preparedness of COVID 19 at the hospitals. It has enabled the states to use funds from the State Disaster Response Fund and also provided a list of penal provisions against the person not abiding the government. Sec 51 to 60 of the Disaster Management Act, 2005 provided for the offences relating to false claims, obstructions, warnings etc which amounts to an maximum imprisonment for 2 years and fine.

The Disaster Management Act, 2005 has enabled the establishment of institutional framework necessary for preventing and mitigating the adverse effects of disasters and chalks out robust mechanism for the Disaster Management⁵. As per the Act, The National Disaster Management Authority (NDMA) is established which is headed by the Prime Minister, similarly, State Disaster Management Authorities (SDMAs) is heading by the respective Chief Minister and at the District Level the District Disaster Management Authorities (DDMAs) is heading by the District Collector. These bodies are statutorily bound to provide “a more proactive, holistic and integrated approach of strengthening disaster preparedness, mitigation and emergency response⁶.” The executive committee of the NDMA is called the National Executive Committee. It coordinates the response on behalf of the NDMA. It consists of 14 Secretaries of the government of India as well as the chief of the integrated defence staff. To assist the NDMA two other bodies have been created called the National Institute of Disaster Management (NIDM) and the National Disaster Response Force (NDRF). The act also envisages the establishment of National Executive Council, Preparation of National Plan, and Guidelines for minimum Standards of relief⁷.

The National Disaster Management Authority under the DM Act is the nodal central body for coordinating disaster management. The 2019 national disaster management plan issues deals exclusively with biological disaster and health emergency, which is the broad legal framework within which the activities under COVID 19 are being carried out by the union and state governments⁸. The chairperson of the authority, declared COVID 19 as a national disaster

⁵ Vishwanath Maraiyah, “Disaster Mangement Law: The Indian Experience” Paper presented at International Conferece on Treads IN Economics, Humaities and Management (ICTEHM’14), Pattaya, Thailand (Aug, 13-14, 2014)

⁶ National Disaster Management Plan, 2016, A Publication of the National Disaster Management Authority, Government of India XIII (May 2016)

⁷ Disaster Management Act, 2005, ss 8, 11, 12.

⁸ ‘COVID 19 AND THE AMBIT OF THE DISASTER MANAGEMENT ACT’ M.P Ram Mohan, Jacob P Alex;

under Sec 6 and 10 of the Act, to undertake uniform lockdown regulation to implement throughout the country. National Disaster Management Act under the Disaster Management Act lays down policies, plans and guidelines for management of disaster and has formulated 30 guidelines on various disasters including the 'guidelines of management of biological disaster 2008'. These guidelines include; -

- Closing of certain establishments and institutions, place of worship etc in order to avoid crowding and social distancing.
- Seeks to ensure unhindered access to essential services like ration shops, pharmacies, health services, banking services, telecommunications, petrol pumps, manufacturing of essential commodities and unhindered supply of food, medical equipment etc.
- The Disaster Management Authority was conceived to operate as part of co- operative federalism, with the national authority issuing advisories and guidelines and the respective state governments formulating state and district level responses and measures to ensure that region and location specific needs and challenges are addressed.
- From an operational perspective, the deputy commissioners and SDMs at the district level are undertaking the task of ensuring inter departmental coordination, evacuation of those endangered or likely to spread effects of disease, identification of building to act as relief centres, establishment of stockpiles of relief and rescue materials, provision of shelter, food, drinking water, and essential provisions, health services amongst others.
- The authority also undertook protocol to deal with biological or epidemiological disasters such as COVID 19, for which special isolated health facilities have been created.
- The National and State Disaster relief forces have been trained to deal with biological disasters, especially with regards to immediate evacuation of the people.
- The authority also notified guidelines to provide monetary relief and compensation to poor people across the country who suffered loss during this pandemic.
- The Act provides for detention of any person for defying government orders including government officials and directors of the private companies. Sec 51 to 60 deals with these provisions with a prescribed penalty of one year for first offence and two years for the second. The officials notified as nodal officers; district magistrates in this case

can summon anyone to perform duties for disaster mitigation and relief. A department head could be held responsible for any dereliction of duty by the personnel reporting to him. A complaint against any official can be made only to chairpersons of national, state or district disaster management authorities.

Drawbacks of the Disaster Management Act, 2005

The Pandemic has exposed the country to various dimensions of which we have not travelled so far. The three main aspects namely accountability, transparency and access to the government have become central to the discourse around the state, law and the citizenship which is based on representation and emergencies. The response of the government had load bare the opaque mechanisms of governance in today's world. It has outlined a peculiar effect of governance in the form of partisan communication between the media and the government. This is made possible by alteration in law, its operations and processes to suit the purpose of the state in the name of contingency.

Even though the Disaster Management Act, 2005 gave the Central government power to take quick policy decisions and impose restrictions on people to manage a disaster, the Act had its failures, which includes; -

- It failed to classify properly what constitutes a disaster, which is the reason why the current pandemic was not under the purview of the disaster management authority.
- Failed to locate disaster prone zones and make special provisions for those areas in need for special attention. The states can play a more active role when such provisions are made as this classification can help in mitigating the damages that will be caused.
- Even though the act provided a detailed action plan right from the central government to the district and the local levels to draw implement and execute a disaster management plan, it did not take the responsibilities of each level. It failed to involve local communities in management practices.
- They failed to take into account the different gender roles and responsibilities that are socially attributed to men and women when making policies and designing disaster recovery programmes. The researchers in this field have shown that the disaster impacts men and women differently.
- There are complaints of discrimination, police excesses, starvation, lack of medical aid etc from various corners of the country. There is bar on jurisdiction of courts and no

grievance redressal mechanisms under Disaster Management Act.

- The pandemic exposed the lack of resourcefulness of the government and its various institutions whether it was the unavailability of sufficient healthcare spaces, lack of basic equipment for healthcare professionals and supporting staff, or the lack of properly equipped laboratories capable of testing the samples. The government could not regulate the market, which was flooded with overpriced and counterfeit masks and sanitizers.
- Another important aspect of lockdown was the rumour mill sustained by ill-informed WhatsApp forwards and the irresponsible sections of media.
- The worst sufferers have been the daily wage workers. The pandemic has exposed the apathy of the government towards its migrant labourers. COVID 19 had rendered most of them without food, proper living space and more unemployment. Unable to pay the rents, exposed them to protest on the streets.

Suggestions for improvement in the Disaster Management Act, 2005

- By keeping in mind, the drawbacks of the said act, it shall be an eye opener for the authorities concerned to take immediate and necessary actions for the people in need.
- The establishment of 'disaster prone zones' helps in promoting more active and detailed study analysis of the state and hence provide assistance to every person.
- The establishment of proper grievance cells, courts and laws will help people to address their issues and get easy remedies for their issues.
- Establishment of laws for protection of children, women and other vulnerable categories of people from exploitation and mental trauma during these situations of pandemic.
- Need for establishment of provisions in laws regarding the information and data passed on the media as well as social networking sites.
- Addressing the needs of the poor, accessibility to resources irrespective of class, caste etc should be the one of the key areas where the law should be stringent.
- Expanding the definition of disaster to include provisions for Pandemic situations and hence including more stringent laws for dealing with situations of these kinds.

The **Epidemic Diseases Act of 1897 and the National Disaster Management Act of 2005** which was the most prevailing act during this pandemic situation, clearly states that there is no

provision in these acts to permits or legitimizes the publication of personal data of the persons in a public database.

During this COVID 19 pandemic situation, the use of electronic data and transmission has replaced physical documentation to a larger extent; hence increase in privacy infringement also. Government took the responsibility of stringening the measures to protect the infringement of right to privacy as the existing laws were not successful in meeting its objective and lead to the introduction of **Personal Data Protection Bill, 2019** in Lok Sabha.

The bill recognizes the protection of personal data as a vital element of information privacy, use and flow of personal data, a structure for processing of data and also prescribes remedies for harmful and unauthorized processing of data. The bill also recommends establishment of Data Protection Authority of India to safeguard the interests of the data principal by preventing abuse and misuse of their data and it shall be held responsible for monitoring and enforcing the provision of this bill.

Failure on the part of the government to protect the interest of the citizens

India is undergoing many challenges which include the inability to control the disease; immense economic losses, huge unemployment rate; increasing death rate etc which is an outcome of the violation of those rights provided to them by the Indian government. The most heartbreaking effect of COVID 19 pandemic is not the death caused or spread of disease but the means and measures taken by the government in this matter. The reluctant or casual responses from the side of the government are the reasons of this uncontrollable spread of disease in the Indian society.

Some of the policies of the government that evidently shows the failure on the part of the government are as follows⁹:-

- The abrupt decision of LOCKDOWN as a containment strategy

Lockdown was the most prevailing and most adopted strategy adopted by most of the countries across the world to prevent the spread of the disease by maintaining a physical distance between them. India being a nation with around 95% of the population is involved in unskilled employment of which most of them are paid on the basic of daily

⁹ Jayati Ghosh, A critique of the Indian government's response to the COVID 19 pandemic, Journal of Industrial and Business Economics, 2020,47:519-530.

wages. They are completely depended on the day to day work and run their family according to it. The strategy of adopting Lock down in India with short notice to the public has created a panicking situation among the population of India as they were not given enough time to prepare for the following days of unemployment which eventually lead them to die out of poverty.

Moreover, around one-third of the urban population and quarter of the rural population live in congested and crowded areas in small dwellings with five or more people confined in one room facilities as they have left their home land and settled in the cities in search of better job opportunities and work and their inability to afford better environment. The “stay at home” policy has confined them to these single room environments for a prolonged period with lack of basic necessities and clean environment, has later become the breeding ground for wide spread of disease effecting a huge number of citizens in a very short period of time. Due to the unavailability of the expected physical distancing, clean water to wash hands regularly, lack of money to even pay for the essentials has lead to this disasteristic effect in the society.

If these factors were taken into consideration beforehand, essentials commodities were given free of cost to these poor people, essential measures to provide social distancing environment by replacing them from their confined environment to schools, flats etc. before adopting lockdown provisions in it would have reduced the death rate as well as wide spread of disease in most of the states in India. This flaw from the government has lead to death of huge masses of population in India.

- The concentration of power with the central government alone.

The decision of adopting lockdown was imposed by the central government with the consultation with the National Disaster Management Authority alone. The state government was not given an opportunity to address their concerns and their requests were abruptly ignored or brushed aside. The lack of consultation and coordination among the state has created confusion among the state in matters of interstate movement of trains and buses which has lead to chaos and delayed services to the citizen which has hindered the lives of common individuals who used to travel from one area to another due to employment etc. similarly abrupt cancellation of air services

without giving proper beforehand instructions of rules of lockdown has created a chaos to the people.

Above all, the state government was made responsible for providing essential public health and economic assistance during lockdown to the citizens but no funding was provided by the central government for meeting the additional requirements of the state which put the state in an unhelpful situation to meet the health and economic requirements of the state.

- Unplanned, untimely declaration of lockdown

Lockdown is a strategy that should be adopted as the past weapon for the prevention of the spread of the disease when all other strategies have failed to do so, whereas in India, lockdown was adopted as the first measure to prevent the spread of the disease. It was initiated in India when the virus has started to be found in the individuals. It has inadequately affected the economic development as well as the livelihood of the citizen and forced the government to lift lockdown due to the unemployment environment created in the society. Hence the state of lifting of lockdown was during the crucial times of spread of disease which is the factor responsible for immense spread of the disease in the country. The government's lack of vision, plan and observation of the spread of virus has led to thus untimely declarations in the society which is the sole reason for the death and wide spread of the disease in the society.

- Immense pressure on the health sector

The government during this pandemic situation has failed to provide enough amenities such as personal protective equipments which created an unsafe environment for both the patients as well as the health services and is the root cause of increase in death rate of many patients and health workers which is a violation of their basic fundamental right to live with dignity which includes the right to die with dignity.

The health care workers were under the duty to take care for the patients and to prevent the spread of the virus. the measures taken by them includes expanding, training and deploying the public health force, ramping up testing capacity and availability, developing a clear plan to trace and quarantine contacts and ensuring key facilities including hospital beds, intensive care units, ventilators and other machines, personal

protective equipment for health care workers etc. to treat and isolate the patients. The central government's actions and involvements were extremely limited and inadequate in respect with the rate of spread of the disease; therefore, the whole pressure was left on to the hospital workers with no help from the government. The lack of amenities like personal protection kits, intensive care units, beds for the patients and doctors and nurses taking double shifts were not even solving the issue. This careless attitude can be experienced in the matters of vaccine availability also. The failure of the government to take necessary steps including providing the required necessities and amenities have led to death of patients in the hospital.

Other impact can be seen in the delay of medication and treatment given to those patients with other adverse health implications like TB, kidney failure, cancers etc. these people require regular study and checkup. The single minded focus on the COVID 19 because of the extreme pressure from the government has put the other patients' lives also in risk.

- Failure on the part of the government to protect the privacy rights of the citizens. A pandemic situation is not common to an Indian society, our past history has records of earlier pandemic situations and how our health workers came and fought for the prevention of the disease spread. The same strategy is followed by the health workers now but with the advancement and use of technology. The health workers across the country are fighting together to provide prevention of excessive spread of this disease, which is to an extent successful. Artificial intelligence and app based on technologies are used by them to track hotspots, monitor and understand the nature of COVID-19. The government of India has introduced the **Aarogya Setu application**¹⁰ to have a track on the spread of the virus by digitally tracking COVID-19 patients and those in close contact with the patients. The government also urged the citizens to download the application to identify potential risks and provide immediate help. Even though the application aims at providing users information as to whether they are prone to a COVID-19 infection by analyzing their proximity to COVID Positive persons, the application had a drawback of collecting information from persons without their

¹⁰ Sukhpreet kaur, Seerat Gill, Namita Bhardaj, Rajinder kaur, Mitigating the Impact of COVID 19 Through Technological Interventions in India Legally Equipped: Aarogya App Case Study, Vol. 21, Medico-Legal Update, April-June 2021, No:2.

knowledge and hence interfering in the privacy of the individual. It also had negative impacts in the society for instance the health workers will be shown prone to COVID-19 disease through the application, because of which the lot of landlords or neighbors harassed or even refused to accommodate them.

Aarogya Setu application also have the technological advancement of monitoring the GPS location of an individual who is sick and also considers medical data to be personal sensitive data and provides for inbuilt privacy features to protect these data, because of the lack of stringent laws in India for the protection of privacy, these data's are prone to be misused. The lack of proper study on an application for calculating the effected individual of a society and the impact it shall have on the society are to be studied before hand of the pandemic and not after the attack of the virus, which is why the government could not provide enough measures for preventing the adverse impact on the society.

For establishing an analytical framework for the creation of categorical variable To assist the health workers in collecting data of COVID-19 cases, a **multidimensional descriptive typology**¹¹ was developed which would establish an analytical framework focusing on these categories such as proximity and contact tracing; symptom monitoring; quarantine control and flow modeling. The information is obtained through telephone towers, mobile applications, Bluetooth connections, surveillance video, social media feeds, smart thermometers, credit card records, wearable, and several other devices. In addition to these, Apple and Google which is world's largest information technology companies have unprecedentedly banded together to create application programming interfaces that shall enable an inter- operation between android and iOS devices to provide a Bluetooth based exposure notification platform by building this functionality into the platform, thus providing information related to health status, behavior or location of individuals to the public health authorities or any other authorities to monitor on individuals personal information without their explicit consent, which is an infringement of an individual's right to privacy guaranteed by the Indian Constitution.

¹¹ Urs Gasser, Marcello Ienca, James Scheibner, Joanna Sleight, Effy Vagena, Digital tools against COVID 19: taxonomy, ethical challenges, and navigation aid, Vol.2, Lancet Digital Health 2020, e425-34.

The lack of stringent laws on privacy is the root cause for the companies having access to the personal data's of the individual, which are sources by which the personal data are collected without the consent of the individual as an explicit consent is provided by us while using the devices, which is the main gateway through with the personal information are used and prevented from questioning the consent.

Government Websites¹² like corona virus disease 19; trace together and COVID safe are also eminent platforms for infringement of a person's right to privacy as a central server is used to collect and record PII information of citizens and upon which evaluation is conducted. Another authority such as marketing company or advertising company shall be able to collect these information which includes their personal data such as name, phone number, contact lists, postcode. Home addresses, location trails and deduce a social communication through messages to their phone numbers and market for their product. These kinds of getting text messages to our personal phone without us providing information to them has increased to a larger extent in this COVID 19 pandemic out of which majority of them turned to be fraudulent company with the intention to obtain money from the patients or patients family making full utilization of this pandemic situation.

The lack of proper guidelines on what data shall be displayed and what shall not be displayed is a reason for the personal data being published without any restriction. The government should have made necessary rules and regulations on the working of the government website as it is a platform which is accessible to all citizens and therefore those data have an high chance of being misused for other purposes which shall also include crimes.

- Negligence on the impact of lockdown on youngsters

This COVID 19 pandemic situation has forced the government to initiate lockdown measures across the country where the individual's right to free movement is curtailed to reduce the spread of disease. But prolonged lock down scenarios affects the mental health of the individual. The online classes, work from home situations engage students and employees whereas the majority unemployed youngsters are forced to live in

¹² Hyunghoon Cho, Daphne Ippolite, Yun William Yu, Contract Tracing Mobile Apps for COVID 19: Privacy Considerations and Related Trade-offs, arXiv.2003, cs.CR, 30 Mar 2020.

isolation. To escape from boredom they engage in **online gaming platforms**¹³ such as video games. This may later become an addiction. To an extent it is a stress management mechanism, but may also open up a platform for hacking experts to utilize the information and even control the minds of the player i.e. the youngster. The player shall not check for what all have they given consent to as they blindfoldly accept the “accept cookie” icon and fall for these traps, which indirectly is an impact of COVID 19 pandemic situation.

Studies have also proved that lockdown have created a platform for increasing rates of crimes in the society and the shocking news is that most of the crimes are committed by youngsters. The untimely and prolonged lockdown by the government without giving any pre hand notice to the citizen gave them less time to prepare for the lockdown situation. It has adversely impacted the youngsters who are neither like school going children who had online classes, nor employees who have work. They eventually fall victims to heinous crimes of online fraud, child pornography also. The lack of government’s vision on how the lockdown shall impact the youngsters are the reasons for increase in crimes committed by them like online frauds, child pornography etc and those to which they are victims also.

Conclusion and Suggestions

The researchers also suggest the following measures that shall be taken for better governance in this matter, which includes;

- The term ‘data’ shall be also included in the definition clause of Indian Penal Code, 1857 and the inclusion of “data theft” as a crime and necessary punishment shall be prescribed for the same.
- Strengthening of Cyber Security laws and other laws for stringening the requirement of data protection of the citizens.
- Amending the age-old Epidemic Disease Act to include provisions for new bio weapons and mode it according to the needs of the existing society.
- Establishment of a separate legislation for protection of the rights of the citizens during pandemic situations like COVID-19 as a preparation for future pandemics and

¹³ Kritika Premnath Amin, Mark D.Griffiths, Deena Dimple Dsouza, Online Gaming During the COVID 19 Pandemic in India: Strategies for Work-Life Balance, International Journal of Mental Health and Addiction, <https://doi.org/10.1007/s11469-020-00358-1>.

hence preventing this chaos situation in the future.

Thus, by following the suggestions, it can be ensured that the privacy of the citizens is not violated during COVID-19 pandemic.

Along this research, the researcher focused her study on the main two areas on which government need to incorporate more adequate measures for the welfare of the citizen and also put forth suggestions that shall be taken by the government for solving the issues of the existing scenarios.

