

## Revisiting Old Laws in COVID-19 Times

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These are indeed very difficult times and India and the world is facing a huge challenge which has ramifications not only from a health perspective but also from a business perspective. The Central Government and the State Governments are doing a wonderful job in order to ensure that the virus COVID-19 does not spread. When there are difficult times, tough decisions have to be taken and one can see lock down or shutdown or partial shutdown being announced by the Government. Most of the orders refer to certain Acts and statutory provisions which many in business would not have encountered in the past.

### Epidemic Diseases Act, 1897

This colonial legislation was enacted to provide for better prevention of the spread of dangerous epidemic diseases. The legislation was suitably modified and made applicable to India. Section 2 empowers the State Government to take such measures and prescribe temporary regulations to be observed by the public as it thinks necessary when the State or any part thereof is *visited by or threatened with an outbreak of any dangerous epidemic diseases*.

Without prejudice to the general power regulations can be prescribed for inspection of persons travelling by railway *or otherwise* and the segregation in hospitals, temporary accommodation *or otherwise* of persons suspected by the inspecting officer of being infected with any such diseases. The scope of the term 'otherwise' is wide.

Section 2A empowers the Central Government under similar circumstances to take measures and prescribe regulations for inspection of any ship or vessel leaving or arriving at any port in the territories to which the Act extends and for such detention thereof of any person intending to sail therein or arrive thereby as necessary.

This provision refers to 'ship' since at the relevant point of time, air transport was not invented. However, there is a principle known as *principle of updating construction*. A construction that continuously updates the working of an ongoing act has to be adopted. Even though the language of the Act would be in its own time, it has to be construed in accordance of the need to treat it as current law.

In an interesting case, a notice under Section 143(2) of the Income Tax Act was sent by speed post. It was contended that the notice was not properly served since mere proof of despatch of post was not proof of service. The Jharkhand High Court in the case of **Milan Poddar Vs. CIT (2013) 357 ITR 619** held that speed post is a new mode of sending post and therefore this new postal mode, even if not mentioned in statute, it would be included in the generic word 'post' or 'registered post'. *Language of statute is generally extended to new things which were known and could not have been contemplated when the Act was passed.*

Applying the principle of updating construction. The powers under Section 2A goes beyond 'ship' and can cover 'aircraft'.

Section 3 provides for a penalty by considering the disobeying of the regulations under the Act as an offence committed under Section 188 of the Indian Penal Code.

Some of the orders passed by the Government provide that a person who disobeys the order would be deemed to have committed an offence under Section 188, 269, 270 and 271 of the IPC.

### Section 188 of the Indian Penal Code, 1860

Where any person knowing about an order whereby he is directed to abstain from a certain act or disobeys certain directions if such disobedience *causes obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed*, he may punished with simple imprisonment for a term which may extend to one month or fine which may extent to Rs.200 or both. In case, the disobedience causes or trends to cause *danger to human life, health or safety*, he shall be punished with imprisonment of either description which may extend to six months or with fine which may extend to Rs.1000 or both.

The explanation provides that intent to provide harm need not be established. Knowledge of the order which he disobeys is enough and that the disobedience produces or *is likely to produce harm*.

An offence under Section 188 is cognizable and bailable.

### Section 269 of the Indian Penal Code, 1860

Section 269 provides that whoever unlawfully or negligently does any act and which he knows or has reason to believe to be, *likely to spread infection of any diseases dangerous to life shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or with both*.

An offence under Section 269 is cognizable and bailable but non-compoundable.

### Section 270 of the Indian Penal Code, 1860

Section 270 provides that 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 diseases dangerous to life shall be punished with imprisonment of either description for a term which may extend to 2 years or with fine or with both*.

An offence under Section 270 is cognizable and bailable but non-compoundable.

### **Section 271 of the Indian Penal Code, 1860**

Section 271 provides that whoever knowingly disobeys any rule made and promulgated by the Government putting up any vessel into state of quarantine or for regulating the intercourse of vessel in the state of quarantine with the shore or with the vessel or for regulating the intercourse between places where the infectious diseases prevail and other places shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or with both.

An offence under this Section is non-cognizable, bailable and non-compoundable.

### **Section 144 of the Criminal Procedure Code, 1973**

This Section confers the power to issue orders in urgent cases of nuisance or apprehended danger. Orders can be passed directing any person from abstaining from certain acts if the Magistrate considers that such direction is likely to prevent or tends to prevent, obstruction or annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of the public tranquility or a riot or an affray.

An order under Section 144 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.

### **Essential Commodities Act, 1955**

This Act was enacted for control of production, supply and distribution of, and trade and commerce in certain commodities in the interest of the general public. Essential commodities mean a commodity specified in the schedule.

In most of the orders passed by the State Government imposing restrictions on movement of goods, exceptions have been provided for essential goods and in some cases essential services.

### **Challenges for Industries**

1. A business should be clear on the scope and ambit of the order restricting movement of people or goods or orders with reference to shutdown or lockdown, etc. and avoid interpretation of the provisions. This is critical since the offence is a criminal offence which has significant impact on the individual as well as on persons in management. Further, if any person is arrested during transit or while working in the factory or office, with the limited operation of courts, it would be a huge challenge to extend relief or support to the employee.
2. A company may be manufacturing a commodity such as a food product which is falling within the exception and is also responsible for ensuring that the food products are available across the country. It may have to examine whether the product can move across borders without any detention and whether its products falls within the exception across all States which have such restrictions. This would be a huge challenge. Further the transporter or the employees concerned with the movement of the goods either at the warehouse or at the depot will have to have adequate protection in handling the goods. When there is real fear and the Governments and medical professionals are also advising to stay put at home, it would not be easy to have critical employees reporting for work.
3. While the company manufacturing an essential commodity or goods which are listed in the exception in the State orders can move these goods, to manufacture these goods, raw materials and packing materials would be required.
4. The supplier of these raw materials and packing materials will have to examine whether his goods are also covered by the exception. Each State order is different and a cautious approach is advisable. In all such cases, the company will have to go through the orders passed by the State and approach the District Collector or such other authorities specified and ensure written orders are available so that critical raw materials for manufacturing of essential commodities or notified commodities move without any hindrance with adequate safeguards for the people involved in the movement.
5. There are certain businesses which are engaged in continuous production process and immediate shutdown may not be possible. These companies will have to anticipate decisions of the Government in advance and take preparatory steps for shutdown.
6. Some businesses are likely to have stock of inflammatory materials which cannot be stored in significant quantities on account of the dangers involved. Companies should revisit their businesses, visualize and identify potential danger and take appropriate permissions from the Authorities for storage or transport to prevent storage.
7. While work from home policies are to be implemented it is not easy for many businesses to implement such policies by the very nature of the work. There has to be out of box thinking solutions to move forward.
8. Given the lock down and shutdown, most offices would be closed but payments have to be made to vendors, contractors, sub-contractors, service providers as well as invoices have to be raised for receipt of money. Given the possibility of a significant period of lockdown with no or limited access to physical invoices or accounting systems, India will have no choice but to become digital. Companies will have to generate template e-invoices and share the same with their clients and the clients will have to be requested to pass the e-invoices and make direct payment through RTGS / NEFT and avoid issue of cheques. Similarly, the vendors and contractors will have to be requested to raise e-invoices which will have to be verified and passed virtually and payments will have to be made digitally.
9. While business payments and receipts are temporarily restructured in this format, care has to be taken as to ensure that the TDS if applicable and GST if any is also factored.
10. Every aspect of business administration, accounting and finance and tax compliance may have to be carried out virtually given the nature of the challenge of not being in a position to attend office but required to function.

Challenges are not new and India is likely to surmount these challenges and create its own destiny. While on one side the fight against the epidemic would continue on the other side innovation and the entrepreneurial spirit cannot be suppressed. There would be new ideas, new inventions, new business models and India would soon become an economy with majority of

transactions on the digital mode.