

REVIEW ARTICLE

The COVID-19 Pandemic and its Medicolegal Aspects in the Indian Context

Purohit P,¹ Ateriya A,² Setia P.³

Additional Professor,^{1,3} Assistant Professor.²

1,3. Department of Biochemistry, All India Institute of Medical Sciences, Jodhpur.

2. Department of Forensic Medicine and Toxicology, All India Institute of Medical Sciences, Gorakhpur.

Abstract:

Coronavirus disease (COVID-19) is an infectious viral disease caused by a novel coronavirus. The disease has crossed international boundaries and is affecting a large number of people. The present coronavirus outbreak started in China in December 2019 and rapidly spread to other countries. It has involved almost 205 countries around the world and has been declared a pandemic by WHO in March 2020. Human coronaviruses have different strains and these strains cause a severe degree of infection leading to higher mortality in the community.

In the time of the recent COVID-19 pandemic, the priority of every healthcare professional was to provide treatment to the affected and suspected person. With no vaccine and insufficient treatment in sight as of now, it is concluded that it is a combined duty of healthcare personnel and citizens across the globe, that correct measures of screening, quarantining, and social distancing are maintained. Healthcare professionals need to be aware of relevant medicolegal issues to avoid future litigations in the court of law. The governments can also work in tandem with the medico-legal experts for improving existing policies and drafting new ones wherever required, so as to be better prepared for any future pandemics.

Keywords: COVID-19; Novel coronavirus; Law; Quarantine; Infection.

Introduction:

Coronavirus disease (COVID-19) is an infectious viral disease caused by a newly discovered coronavirus. 2019-novel Coronavirus is officially called SARS-CoV-2 and is the cause of the recent pandemic.¹ A pandemic is defined by World Health Organisation (WHO) as “A worldwide spread of a new disease” i.e the disease has crossed international boundaries and is affecting a large number of people.² WHO declared COVID-19 as a “pandemic” on March 11, 2020. It has involved 205 countries having 53,02,66,292 confirmed COVID-19 cases till date (Table-1) as per the WHO datasheet.³

The coronaviruses were first identified in the 1960s. Currently, there are a total of 7 known strains. Human coronaviruses 229E, OC43, NL63, and HKU1 are the four commonly detected strains causing mild infection.¹ They are responsible for 15% of the common cold.⁴ Three other strains of coronavirus include severe acute respiratory syndrome coronavirus (SARS-CoV), Middle East respiratory syndrome coronavirus (MERS-CoV), and severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). These strains cause a severe degree of infection leading to higher mortality in the community.¹

Most people infected with COVID-19 virus experience mild to moderate respiratory problems and recover without any special

treatment. Children, older people with pre-existing cardiovascular, diabetes, respiratory diseases, etc are more prone to develop a life-threatening illness. The coronaviruses primarily spread through droplets of saliva or discharge from the nose upon coughing or sneezing by an infected person. At present, there are no specific treatments or vaccines available for COVID19 Thus, preventive measures like regular hand washing or using alcohol-based sanitizer, not touching the face, and maintaining social distancing are very essential to reduce the spread of infection.^{1,5-8}

In the time of the COVID-19 pandemic, the priority of every healthcare professional is to provide treatment to the affected and suspected person. But, they must be aware of important medicolegal issues that can be encountered while dealing with such patients, so that any future litigation can be avoided in a court of law. Various legal and medical issues applicable to the present COVID-19 pandemic are discussed here.

Review:

Laws in India Applicable to COVID-19 pandemic

1. Indian Penal Code (IPC), 1860: Section 188, 269, and 270 IPC specifically deal with the spread of infectious disease. Any person disobeying any regulation or order made under The Epidemic Diseases Act, 1897 shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to one thousand rupees, under section 188 of the Indian Penal Code. Section 269 IPC deals with negligent acts likely to spread infection or disease dangerous to life, and punishment for the section is imprisonment extended to six months with or without a fine. Section 270 IPC goes one step ahead of the previous one stating malignant act likely to spread infection or disease dangerous to life and attracts

Corresponding Author

Dr. Navneet Ateriya

Email : dr.navneet06@gmail.com

Mobile No. : +91-9971629313

Article History

DOR : 09.07.2022 DOA : 29.03.2023

punishment as imprisonment extended to two years with or without fine. States had also imposed the charge of an attempt to murder under section 307 of IPC against a person belonging to a specific community/group for deliberately hiding the information about attending the religious events and violating curfew in the state.^{9,10}

2. The Indian Telegraph Act, 1885: The government is also using the power given by this act during coronavirus outbreaks. department of Telecommunication has developed an application called COVID-19 Quarantine Alert System (CQAS). The government is using the provision of the India telegraph act to get information from telecom companies at regular intervals to track the quarantined person. This will act as “geo-fencing” for such a person. If any such person violates quarantine or isolation, e-mails and SMS alerts will be sent to the government agency. The location of that person will be shared based on a person's mobile phone signals identified by the nearest telecom tower. The government will collect this data only for tracking and monitoring coronavirus-affected persons. The mobile numbers of all such persons will be deleted from the list after the quarantine period is over. Violation of any provision of this act would attract appropriate punishment.^{11,12}

3. The Epidemic Diseases Act, 1897: This 1897 law was enacted to tackle the epidemic of bubonic plague in the then Bombay state. It gives special powers to the local authorities to take necessary action to control epidemics. It states that “When at any time 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, the state government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.” This act also confers the provision of inspection of a person in different premises.¹³

4. The Live Stock Importation Act, 1898: Livestock has led to economic development across the world. But, this also resulted in various diseases transmitted to humans due to proximity. The central government has the power to regulate, restrict or prohibit the import of any livestock which are likely to be affected by any infectious or contagious disorders. The central government has the power to detention, inspection, disinfection, or destruction of imported livestock or their product (meat and meat products of all kinds) which may affect human health.¹⁴

5. The Indian Ports Act, 1908: This act helps to prevent the

danger of introduction and spread of infections through the vessels entering the country. The government has the necessary power for inspection, and detention of vessels and/or on-board passengers as well as the crew. It is the liability of the master of the ship as well as the other crew members and onboard passengers to provide necessary information regarding the infection to the government agency. The suspected person can also be sent to the hospital for further check-ups. In the case of suspected infectious contamination, cleansing and disinfection of the ship can also be done.¹⁵

6. The Drugs and Cosmetics Act, 1940: It deals with the import, manufacture, sale, and distribution of drugs in the country. In case of emergency, there are certain relaxations in the provisions to ensure the availability of drugs. For example, the toxicological and clinical data requirements of any drug can be deferred if the intended drug is to be used to treat life-threatening diseases. In these cases, the medical officer of the hospital (also certified by the medical superintendent) may import such drugs making sure this drug is approved in the country of origin and will be used solely for the treatment.¹⁶

7. The Aircraft (Public health) Rules, 1954: According to these rules, the aircraft may be refused to enter if it's coming from an infected area or if any of the onboard passengers is infected or suspicious. The medical officer at the airport can examine the passenger and/or crew members medically upon arrival in India. Based on the examination and history of infectious contact, the passengers can be put in isolation or quarantine. Originally these rules were meant to quarantine the affected/suspected person of yellow fever, plague, cholera, smallpox, typhus, and relapsing fever. But, these rules are equally applicable in the current pandemic and are being used by the government.¹⁷ In the prevailing crisis of COVID19, the government of India imposed a complete grounding of all International as well as domestic flights for a period of 21 days in order to quarantine and control the spread of this deadly disease.

8. The Essential Services Maintenance Act (ESMA), 1968: This act came into effect to provide for the maintenance of certain essential services and the normal life of the community. Any type of service which is required to maintain public utility, and public safety and are necessary for the life of the community are to be declared an essential service under this act. These services also include health and medical services. Cessation of work by a body of persons employed in any essential service is prohibited under this law. If any activity compromises essential services, the government may evoke ESMA to maintain the normal life of the community. The police have given the power to arrest any person without a warrant if he is suspected of having committed any offense under this Act.¹⁸

9. International Health Regulations (IHR), 1969: The World Health Assembly adopted a revision of the 1969 International Health Regulations in May 2005. The 1969 version had focused on three diseases (cholera, plague, and yellow fever) only. The IHR 2005 has broadened its scope by including existing, new and re-emerging diseases in the community. The IHR (2005) also includes provisions regarding designated points of contact, disease control measures such as quarantine and border controls,

Table 1. Current situation of confirmed cases of COVID-19 globally.³

WHO Region	Confirmed cases
Europe	22,16,99,970
Americas	15,83,05,571
Western Pacific	6,12,57,605
South-East Asia	5,81,85,955
Eastern Mediterranean	2,17,97,169
Africa	90,19,258

and others. It was accepted by WHO and the member states, that they will work together to prevent the spread of the infection across the countries. India is also a signatory to WHO's International Health Regulations 2005. As per IHR 2005, it is mandatory to have dedicated health units present at all international airports. The health units should have capacities for undertaking routine public health measures (24X7) and at the times of Public Health Emergencies of International Concern (PHEICs) like H1N1, Zika, etc.¹⁹⁻²⁰

10. The National Security Act, 1980: The doctors and the police across the country are doing their duty to treat and prevent the transmission of novel coronavirus. There have been incidents in the various states in which doctors and policemen were attacked by people. The home ministry has taken cognizance of incidents of such attacks and directed the authorities to take stringent action under national security act.¹⁰ According to this act "The central government or the state government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the state or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained." If any person fails without sufficient cause to surrender himself he shall be punishable with imprisonment for a term which may extend to two years, or with a fine, or with both as per the said act.²¹

11. Management of biological disaster guidelines (National Disaster Management Act 2005): These guidelines were prepared with a focus on prevention, mitigation, preparedness, medical response, and relief in cases of biological disaster management including bioterrorism. More emphasis was given to preventive approaches such as immunization on one hand and developing medical facilities to reduce the number of deaths during biological disasters whether accidental or intentional on the other. This act gives power to the government to restrict or quarantine the affected person. The importance of social distancing in disease control is highlighted in the act. A competent central office has been established under the ministry of health & family welfare, government of India, to transmit relevant information regarding the pandemic to various agencies as well as to the general public.²²

12. Declaration of Public Health Emergency of International Concern, 2009: On April 25, 2009, WHO declared that the influenza A (H1N1) virus outbreak constituted a "Public Health Emergency of International Concern" under the IHR (2005). PHEICs are the extraordinary events that require a coordinated international response against the diseases having a risk of global spread.¹⁹ COVID-19 management has proven to be a global public health issue in developed as well as developing countries and thus it is covered under the aegis of this law and the Indian government has taken a lead internationally by forming a task force of the SAARC (South Asian Association for Regional Cooperation) nations for a coordinate effort to overcome this menacing pandemic.

13. Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism, and Disasters) Bill, 2017: The Epidemic Diseases Act, of 1897 is almost a century old and needs modification to deal with various challenges. For this, the central government of India drafted the Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism, and Disasters) Bill, 2017. Apart from the provisions of the previous act, it includes a provision on bioterrorism which involve various biological agents such as viruses, bacteria, or toxin released in the environment. This act has also defined social distancing as a "public health practice designed to limit the spread of infection by ensuring sufficient physical distance between individuals" as a measure of disease control. The current crisis of COVID-19 is being managed by social distancing in many countries and this has been effective in containing the infection and not letting it spread in the community. It is due to this mode of infection control that the trajectory of COVID-19 in South Korea, Singapore, or India for positive cases is much flatter as compared to the United States or Italy, or Spain, where there has been a huge surge in positive cases owing to the lack of social distancing.²³

Liabilities of healthcare professionals: When pandemics occur, it is the responsibility of healthcare professionals to provide medical services. It is also very common for volunteer health professionals to go-to hot spot areas of infection and renders their services to the affected population. Whatever may be the case, they have certain civil liabilities towards the patients such as:

1. Duty of care: COVID-19 is a pandemic, which is spreading rapidly from human to human. Healthcare workers are at great risk while dealing with such patients. Once the doctor-patient relationship is established, it is the responsibility of the doctor to provide due care and treatment. Healthcare professionals should clearly define their roles and responsibilities in such pandemics.

2. Privacy and confidentiality: The right to privacy has been an integral part of medical ethics. The International Code of Medical Ethics mandates that health practitioners must maintain confidentiality regarding the personal information of the patient they encounter during the treatment. But, in certain situations like the pandemics, where the ultimate target is the beneficence of the society, the information of the patients can be divulged to the government officials when necessary. However, it must be remembered that the information can be divulged only to the concerned government official and not to any other person or on social media.

3. Autonomy of the patient: During the usual course of treatment, the autonomy of the patient has to be maintained at all times. However, during pandemics like the current one; the government has the power to restrict the autonomy of the patient in an attempt to prevent the spread of infection.

4. Product liability: It is the liability of manufacturers for any harm caused to the patient by supplying a defective product. Thus, it means the duty of care is owed by the manufacturer responsible for the maintenance of the products used in the treatment of the patient.

5. Medical claim reimbursement: Currently, health insurance coverage to the healthcare professional and their dependents are

given by the employer hospital. This insurance covers all types of ailments including COVID 19. The general public is also availing of health insurance coverage from private insurers, but they cover only certain types of illnesses. Presently private medical insurance companies are also giving provisions for reimbursement for the COVID-19 affected person.

Civil rights of the person affected by pandemics: Infectious diseases, such as the current COVID-19 pandemic, may raise various civil rights issues. The important one is to what extent the liberty of the person can be withheld to ensure goodness for society as a whole? Article 14 of the Constitution of India reads: "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". The law provides for the protection of individual rights in the country, but these rights need to be balanced for the sake of the community. In specific situations, like the present one; classical health measures eg. Isolation, quarantine, and contact tracing are crucial to prevent the spread of infectious/contagious diseases. Article 15 secures the citizens from every sort of discrimination by the state, on the grounds of religion, race, caste, sex, or place of birth or any of them.²⁴

Therefore, in the modern era, it is very important to keep a balance between individual rights and the beneficence of society. Isolation and quarantine may also cause a wrongful discharge of the person from their duties. A person cannot be terminated simply because he was absent from his duty due to isolation and quarantine. The law should not allow the termination of such an employee because isolation of the person was necessary for the public welfare.

Conclusion:

COVID-19 is a pandemic that has affected the health and economy of almost all the countries worldwide, including India. With no vaccine and no appropriate treatment in sight as of now, it is concluded that it is a combined duty of healthcare personnel and citizens across the globe, that correct measures of screening, quarantining, and social distancing are maintained. The governments can work in tandem with the medico-legal experts for improving existing policies and drafting new ones wherever required, so as to be better prepared for any future pandemics. It is important to maintain individual rights e.g. autonomy, privacy, confidentiality, etc. Attention to the needs of all populations regardless of their legal status has to be ensured by the appropriate authorities. Apart from this, surveillance and contact tracing of the affected and/or quarantine population, development of the central policy with public involvement to deal with such pandemics, and maintaining transparency regarding the use of the identity of the person are vital issues to deal in such situations.

Acknowledgment: None

Financial support & Sponsorship: None

Conflicts of interest: No conflict of interest to declare

References:

1. Yang Y, Peng F, Wang R, et al.: The deadly coronaviruses: The 2003 SARS pandemic and the 2020 novel coronavirus epidemic in China. *J Autoimmun.* 2020, 3:102434. 10.1016/j.jaut.2020.102434
2. What is a pandemic? [Internet]. World Health Organization. (2010). Accessed: 30 May 2022: https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/.
3. Coronavirus [Internet]. WHO. (2022). Accessed: 08 June 2022: <https://covid19.who.int/>.
4. Greenberg SB: Update on human rhinovirus and coronavirus infections. *Semin Respir Crit Care Med.* 2016, 37:555-571. 10.1055/s-0036-1584797
5. Coronavirus [Internet]. World Health Organization. (2020). Accessed: 30 May 2022: <https://www.who.int/health-topics/coronavirus>.
6. Consensus document on the epidemiology of severe acute respiratory syndrome (SARS) [Internet]. World Health Organization. (2003). Accessed: 30 May 2022: <https://apps.who.int/iris/handle/10665/70863>.
7. Maier J, Bickerton E, Britton P: Coronaviruses. Totowa, N.J.: Humana Press. 2015. <https://link.springer.com/book/10.1007/978-1-4939-2438-7>.
8. M. Malik, Elkholy AA, Khan W, et al.: Middle East respiratory syndrome coronavirus: current knowledge and future considerations. *Eastern Mediterranean Health J.* 22. 2016:533-542.
9. The Indian Penal Code [Internet]. Indiacode.nic.in. (1860). Accessed: 30 May 2022: <https://indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>.
10. News at Nine. [internet] News Service Division, All India Radio.(2020). Accessed: 30 May 2022: Available from : <http://newsonair.com/Text-Bulletin-Details.aspx>.
11. The Indian Telegraph Act, 1885 [Internet]. Dot.gov.in. [cited 30 May. (2022). Accessed: 30 May 2022: Available from : <https://dot.gov.in/sites/default/files/Indian%20Telegraph%20Act%201885.pdf>.
12. C-DOT and Telecom Service Providers develop COVID Quarantine Alert System [Internet]. Newsonair.com. (2020). Accessed: 30 May 2022: Available from : <http://newsonair.com/Main-News-Details.aspx>.
13. The Epidemic Diseases Act, 1897. Legislative Department. Ministry of Law and Justice, GOI [Internet]. Legislative.gov.in.. (2022). Accessed: 30 May 2022: Available from : <http://legislative.gov.in/actsofparliamentfromtheyear/epidemic-diseases-act-1897>.
14. The Live-Stock Importation Act, 1898. [Internet] Indiacode.nic.in. (2022). Accessed: 30 May 2022: Available from : <https://indiacode.nic.in/bitstream/123456789/2330/1/a1898-09.pdf>.
15. The Indian Ports Act, 1908 [Internet]. Legislative.gov.in. (2020). Accessed: 30 May 2022: Available from : <http://legislative.gov.in/sites/default/files/A1908-15.pdf>.

16. The Drugs and Cosmetics Act, 1940 [Internet]. Naco.gov.in. (1940). Accessed: 30 May 2022: http://naco.gov.in/sites/default/files/Drug%20%26%20Cosmetic%20Act%201940_1.pdf.
17. The Aircraft (Public health) Rules, 1954 [Internet]. Ihrpoe.co.in.(1954). Accessed: 30 May 2022: <https://www.ihrpoe.co.in/pdf/rules/IA%20Rules1954.pdf>.
18. The Essential Services Maintenance Act, 1968 [Internet]. Indiankanoon.org. (1968). Accessed: 30 May 2022: <https://indiankanoon.org/doc/902835/>.
19. Swendiman K, Jones N: The 2009 Influenza A (H1N1) Outbreak: Selected Legal Issues [Internet]. Biotech. law.lsu.edu. 2009.
20. Public Health (International Health). Director General of Health Services: Ministry of Health & Family Welfare, GOI [Internet]. dghs.gov.in. 2020.
21. The National Security Act, 1980. (1980). Accessed: 30 May 2022: <http://home.karnataka.gov.in/en/Documents/National-Security-Act-1980.pdf>.
22. National disaster management guidelines. National Disaster Management Authority [Internet]. Ndma.gov.in. (2008). Accessed: 30 May 2022: https://ndma.gov.in/images/guidelines/biological_disasters.pdf.
23. Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill, 2017. Ministry of Health & Family Welfare, GOI [Internet]. Prsindia.org. (2017). Accessed: 30 May 2022: <https://www.prsindia.org/uploads/media/draft/Draft%20PHPCM%20of%20Epidemics>
24. The Constitution of India, 1949 [Internet]. . (2022). Accessed: 30 May 2022: https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.