



Constitutionality and Legality of Corona Virus (COVID-19) in India: Limits of Sanction and Extent of Liberation

M.Z.M. Nomani¹ and Madiha Tahreem²

¹Professor, Faculty of Law, Aligarh Muslim University, Aligarh-202001 (Uttar Pradesh), India.

²S.S. School (Girls), Women's College, Aligarh Muslim University, Aligarh (Uttar Pradesh), India.

(Corresponding author: M.Z.M. Nomani)

(Received 27 March 2019, Revised 20 April 2020, Accepted 22 April 2020)

(Published by Research Trend, Website: www.researchtrend.net)

ABSTRACT: The Corona Virus (COVID-19) and its global spread have resulted in declaring a pandemic by the World Health Organization. India rapidly responded and clamped Lockdown from March 25, 2020, to April 14, 2020. The Government legitimized move on the constitutional mandate of Article 47 and Entry 29 of the seventh schedule of the *Constitution of India*, 1950. It has also utilized time tested quarantine law contained under *Indian Penal Code*, 1860, and *Epidemic Diseases Act*, 1897. Such a health emergency was not contemplated under the *Constitution of India*, 1950; therefore, it has envisioned calamitous situation underpinned *Disaster Management Act*, 2005, to chart the preventive strategy of COVID-19. The innovation of COVID-19 as disaster and catastrophe fitted into the phrase 'beyond the coping capacity of the community.' The Central Government assumed the role of the custodian to undertake all preventive and anticipatory measures. Because of rising death cases after two weeks of Lockdown, it wanted to extend for the prevention of infectious and contagious diseases further. The paper is a critical appraisal of the constitutionality and legality of COVID-19 induced Lockdown and attendant sanction and liberation in the context of social and egalitarian context.

Keywords: Lockdown, Pandemic, COVID-19, Disaster & Catastrophe, Social Impact, Egalitarian Context.

I. INTRODUCTION

The Corona Virus (COVID-19) pandemic forced India to clamp 21-day Lockdown-I from March 25 2020 to April 14 2020 [1]. There are 17,357 positive cases and 560 deaths as of 20.4.2020 at 10:04 IST [2]. The trend of infections led to an extension of Lockdown-II from April 15 2020 to May 3, 2020 [3]. The Central Government extended the Lockdown till May 3, 2020. The central Government has legitimized by under Entry 29 of the Concurrent List attached to the Seventh Schedule *Constitution of India*, 1950. The Constitutional provision confers power to center and states for the 'prevention of the infectious or contagious diseases or pests affecting men, animals or plants and their extension from one State to another state.

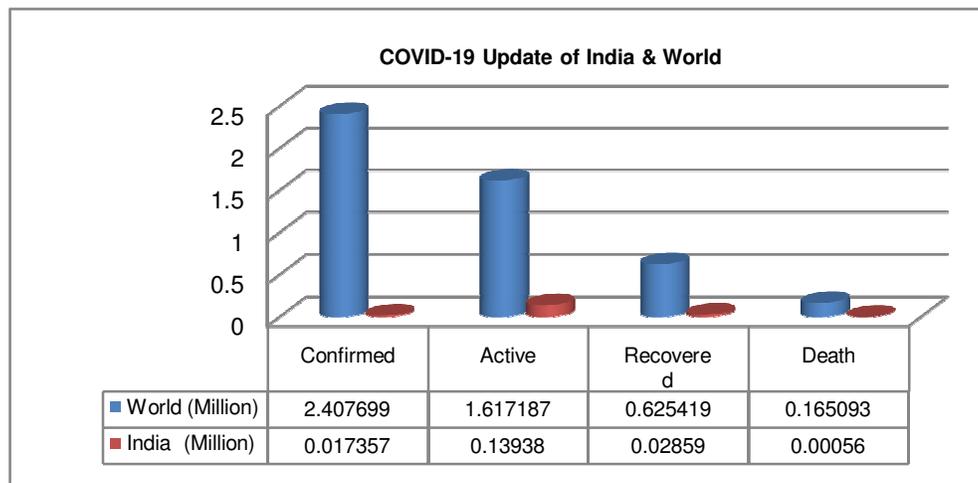
The entry 29 does not limit the powers of the legislating authority to direct public order or health, but 'allows for any relevant legislation to be passed,' so long that it addressed to the prevention of contagious disease from spreading across state jurisdictions [4]. India, instead of passing an ordinance on COVID-19, has resorted to 123-year-old legislation of *Epidemic Diseases Act*, 1897 [5]. Prior to Lockdown, Section 2 and 2A of the *Epidemic Diseases Act*, 1897, has been enforced by the Cabinet Secretary on March 11, 2020, in all states and Union territories to control COVID-19 in India [6]. India uniquely located the COVID-19 as disasters, catastrophe, and calamity arising from natural or manmade causes and resorted to the provisions of *Disaster Management Act*, 2005. The preventive strategy of the COVID-19 has thus been equated *ipso facto* to disaster management measure underpinned in Sections 6 and 10 of the *Disaster Management Act*,

2005. This is promulgated through Sections 38 and 72 of the Act in justification of the nation-wide Lockdown [7]. Thus overall scenario of the constitutionality and legality of COVID-19 pandemic and Lockdown in India is seen in the slew of quarantine enforcement provisions contained under the *Indian Penal Code*, 1860, *Epidemic Diseases Act*, 1897 *Constitution of India*, 1950 and the *Disaster Management Act*, 2005. The paper is a critical appraisal of impact and overreach of these laws on the in India's fight against COVID-19 pandemic in the context of limits of sanction and extent of the liberation of the people.

II. MAGNITUDE OF COVID-19

The COVID-19 epidemic has affected many countries, and the World Health Organization has declared it a pandemic. In the wake of corona virus cases across glob touching the 2,407,699 positive cases 165,093 deaths [8], the legitimacy of the lockdown order is constitutionally tested under Entry 29 of the Concurrent List. It is legally tenable under Entry 1 and Entry 6 of the State List [9]. The COVID-19 pandemic necessarily dealt with the prevention of highly infectious diseases that have the capability of extending beyond a state's border. India has seen around 17357 positive cases and 560 deaths.

The number is likely to increase as the country progresses into advanced stages of the spread more so by *Tablighi Jamaat* Congregational Centre in Delhi and other states in India. The data continues to indicate that India is so far on the right trajectory, and should be able to ease the 21-day Lockdown once the acceleration stage gets over by mid-April.

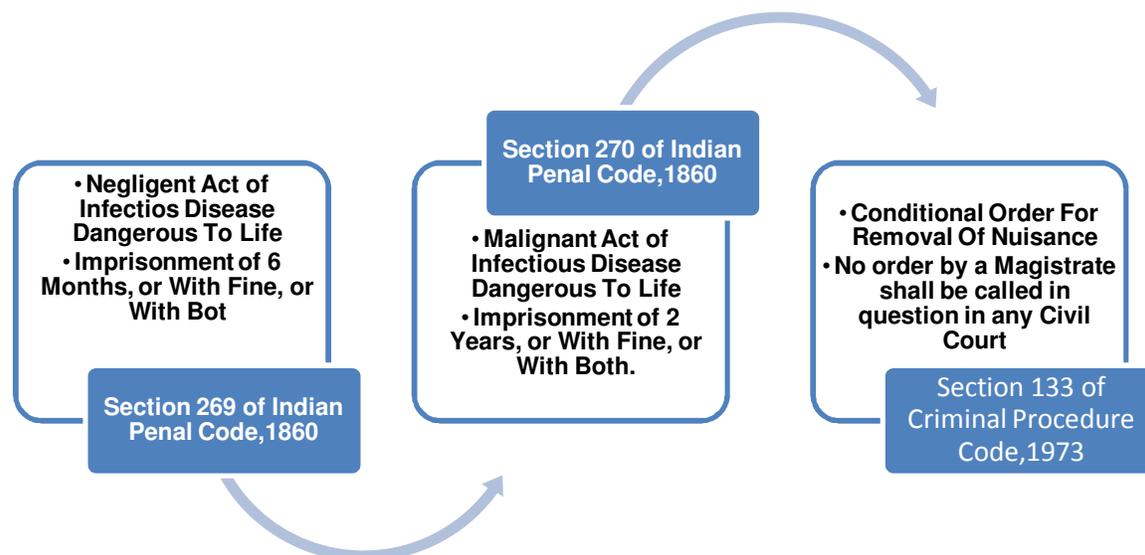


However, it reasonably estimated that the current rate, the 'ending phase' of the spread in India, would start from May 9 under the given medical care situations [10]. The relevance of the criminal sanction for quarantine and health protection in the context of COVID-19 pandemic in the country owes to time tested *Indian Penal Code*, 1860. It is applied universally to stop spread of infectious diseases and derived from the application of an innate sense of justice and the dictates of conscience.

III. COVID-19 AND QUARANTINE LAW

The quarantine rule is placed under public health and safety provision of Sections 188, 269, 270 and 271 of

the *Indian Penal Code*, 1860 and Section 133 of the *Criminal Procedure Code*, 1973 [11]. The rule relating 'to negligent Act likely to spread infection of disease dangerous to life', says that 'whoever unlawfully or negligently does any act knowingly to spread the infection of any disease dangerous to life shall be punished with imprisonment of six months and fine or both [12]. Any malignant act likely to spread infection of disease dangerous to life shall be punished for the imprisonment of two years [13]. The disobedience to quarantine rule is also subjected to imprisonment of six months or with the fine [14].



These provisions relating to negligent and malignant act spreading infection, which is dangerous to life, have seminal significance in controlling pandemic, epidemic, and protecting public health and safety [15]. The procedural version of the law is contained under Section 133 of *Criminal Procedure Code*, 1973, but possesses a high potential and salutary impact. The interpretation of this law reached its widest amplitude by the Supreme Court enunciation in *Municipal Council Ratlam v. Vardichand* [16]. The court upheld the magisterial power under Section 133 *Code of Criminal Procedure*, 1973 is not discretionary but mandatory.

The discretion becomes a duty when the circumstances for its exercise genuinely exist. It concluded that 'all power is a trust and we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist. Thus the quarantine provision of Sections 188, 269, 270 and 271 of *Indian Penal Code*, 1860 and Section 133 *Criminal Procedure Code*, 1973 assumes pivotal significance in the present scenario of COVID-19 pandemic and lockdown order [17].

IV. CHALLENGES OF PANDEMIC

In addition to the quarantine rule underpinned in Sections 188, 269, 270, and 271 of *Indian Penal Code*, 1860, the state government is empowered to take extraordinary measures and prescribe regulations as to dangerous epidemic disease under the *Epidemic Diseases Act*, 1897 [18]. The *Epidemic Diseases Amendment Act*, 1937, empowered the Central Government to take measures and prescribe regulations for the inspection of any ship and detention of a person intending to sail and arrive at port [19]. That is why the Central Government ordained social distancing, closure of establishments, and limitation on travel to control COVID-19 in all states and Union territories in India [20]. Section 3 of the *Epidemic Diseases Act*, 1897 attracts punishment for violation of the Act, which are at par with Section 188 of the *Indian Penal Code*, 1860. The officers are acting in good faith to implement the law. Further, Section 4 of the Act is analogous to the provision of Section 133 *Criminal Procedure Code*, 1973. The *Epidemic Diseases Act*, 1897 was enacted primarily in colonial India to control the epidemic of bubonic plague [21] in colonial India but applied to control cholera [22], malaria [23] and dengue [24] and swine flu [25] in independent India [26].

V. CATASTROPHE AND COPING CAPACITY

The national strategy of prevention of COVID-19 came from the pounds and shells of the vintage laws such as common law remedy, quarantine law enforcement, and epidemic control laws. Leaving nothing to chance, it fitted the COVID-19 pandemic as a national disaster because it is beyond the coping capacity of the community [27]. Thus it made the best use of the definition of disaster contained under Sections 2(d) by making COVID-19 as catastrophe and calamity [28]. It allowed the Government to make full use of disaster management strategies by a continuous and integrated process of planning and implementing measures [29]. By doing so, the Central Government became custodian to undertake the responsibility for disaster management. It also ensured a timely and effective response to the disaster. It took such other measures for the prevention of emergency, or the mitigation, or preparedness, and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary [30]. The National Disaster Management Authority in unison with the National Executive Committee charted policy in prescription and implementation at central and state levels [31]. The directions of the National Disaster Management Authority is to be carried out by the states without any constitutional hiccups [32] as the Act has an overriding effect on all other laws, to the extent that they are inconsistent [33].

VI. CONCLUSION AND SUMMATION

Given the highly contagious nature of the disease and the large population of India, Lockdown is logical. Still, it came slowly against daily wagers, migrant workers, marginalized communities, and poor people because of the inadequacy of social security and safety norms [34]. Their right to movement crippled by absence of transportation blockade and thus been strangled in fear of COVID pandemic.

These people trapped to location, which was neither their workplace nor the home. In prolonged transit often it became difficult for them to make both the ends well [35]. This vagaries and suffering of the people was petitioned in *A.A.Srivastava Case* [36] by way of public interest litigation. The writ highlighted the plight of thousands of migrant laborers who, along with their families, were walking hundreds of kilometers from their workplace to their villages and towns in defiance of COVID-19 lockdown Order [37]. The jobless and migrant workers stranded without any means of transportation are nothing short of forced detainees in the midland. The police actions under Section 188 are justifiable but resulted in abuses against people in need. The sealing of state borders have caused disrupted freedom of movement besides supply of essential goods, inflation and crunch [38]. The virtual Supreme Court on 31.3.2020 directed by the Union of India, Police, and other authorities ruled to deal with the migrants' workers in transit humanely during the Lockdown. The petition is still undergoing hearing, and hopefully, the court will examine the social impact of COVID -19 pandemic and Lockdown on poor and concerns of health care [39] and therapeutic perception of consumer justice [40]. There is an urgent need for an effective legal strategy to come out with the formidable challenges of COVID-19 for the protection of the health, safety, and security of the people of India.

REFERENCES

- [1]. The Press Information Bureau Website. [Online] Available: <http://www.pib.gov.in>; 'Government issues orders prescribing lockdown for containment of COVID-19 epidemic in the country.' (2020).
- [2]. *The COVID-19 India.org Website*. [Online]. Available: <https://www.covid19india.org/> 'India COVID-19 Tracker: A Crowd sourced Initiative.' (2020).
- [3]. *The Economic Times Website*. [Online]. Available: (2020). <https://economictimes.indiatimes.com/news/politics-and-nation/centre-mulls-extension-after-states-experts-raise-red-flags/articleshow/75035987.cms?from=mdr> 'Lockdown beyond April 14? Centre mulls extension after state govts, experts raise red flags.'
- [4]. Nomani, M. Z. M. (1992). *Right To Health: A Socio-Legal Perspective*, New Delhi, India: Uppal Publications, 56-59.
- [5]. Patro, B. K., Tripathy, J. P., & Kashyap, R. (2013). Epidemic diseases act 1897, India: Whether sufficient to address the current challenges?. *Journal of Mahatma Gandhi Institute of Medical Sciences*, 18(2), 109-111.
- [6]. The Economic Times website. "[Online]. Available: <https://economictimes.indiatimes.com/news/politics-and-nation/the-123-year-old-law-that-india-may-invoke-as-more-and-more-coronavirus-cases-emerge/articleshow/74593639.cms> (2020).
- [7]. Nomani, M. Z. M. (2020). Quarantine Law Enforcement & Corona Virus (COVID-19) Pandemic in India. *Journal of X'idian University*, 14 (4), 536-542, 2020; DOI Number: <https://doi.org/10.37896/jxu14.4/068>.
- [8]. The Corna Virus Worldometre Website. [Online]. Available: <https://www.worldometers.info/coronavirus/> (2020).

- [9]. Nomani, M. Z. M. (1997). Federalism under Indian Constitution: A Study of Environmental Law," *Indian Bar Review*, 24(2), 203-222.
- [10]. *The Economic Times & India Times website*. [Online]. Available: <https://economictimes.indiatimes.com/> (2020).
- [11]. Nomani, M. Z. M. (2020). Legal and Intellectual Property Dimension of Health and Access to Medicines in India. *Indian Journal of Forensic Medicine & Toxicology*, 14(1), 118-122, 2020; DOI Number: 10.37506/v14/i1/2020/ijfnt/192878.
- [12]. Section 269, *Indian Penal Code*, 1860: Negligent Act likely to spread infection of disease dangerous to life: Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- [13]. Section 270, *Indian Penal Code*, 1860: Malignant Act likely to spread infection of disease dangerous to life: 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 disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- [14]. Section 271, *Indian Penal Code*, 1860: Disobedience to quarantine rule: Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- [15]. Nomani, M. Z. M. (2000). The Human Right to Environment in India: Legal Precepts and Judicial Doctrines in Critical Perspective. *Asia and Pacific Journal of Environmental Law*, 5(2), 113-34.
- [16]. All India Reporter 1980 Supreme Court 1622 at 1629.
- [17]. Section 133, *Code of Criminal Procedure*, 1973: Conditional order for removal of nuisance: (1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers.
- [18]. Section 2, *Epidemic Diseases Act*, 1897: Power to take special measures and prescribe regulations as to dangerous epidemic disease: (1) 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.
- [19]. Section 2A, *Epidemic Diseases Amendment Act*, 1937- Powers of Central Government: When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.
- [20]. (2020) *The Livemint website*. [Online]. Available: <https://www.livemint.com/news/india/a-123-yr-old-act-to-combat-coronavirus-in-india-experts-say-nothing-wrong-11584182501707.html>.
- [21]. Biswamoy Pati & Mark Harrison, (Eds.) *The Social History of Health and Medicine In Colonial India*. Routledge, 2008.
- [22]. Iyer, V., Azhar, G. S., Choudhury, N., Singh, D., Dacombe, R., & Upadhyay, A. (2014). Infectious Disease Burden In Gujarat (2005–2011): Comparison of Selected Infectious Disease Rates with India. *Emerging Health Threats Journal*, 7(1), 228-238.
- [23]. Thapa, B. R., Narang, A., & Bhakoo, O. N. (1987). Neonatal Malaria: A Clinical Study of Congenital and Transfusional Malaria. *Journal of Tropical Pediatrics*, 33(5), 266-268.
- [24]. Gupta, E., Dar, L., Kapoor, G., & Broor, S. (2006). The Changing Epidemiology of Dengue in Delhi, India. *Virology journal*, 3(1), 92-96.
- [25]. Phadke, A. (2009). Response To An Epidemic Of Novel H1N1 Flu In Pune: Need For Introspection," *Indian J Med Ethics*, 6(4), 176-178.
- [26]. Nomani, M. Z. M. (2019). Prevention of Chronic Diseases in Climate Change Scenario in India. *Environmental Justice*, 2019; DOI:10.1089/env.2019.0032
- [27]. Nomani M. Z. M. (2000). Environmental Insurance Liability for Industrial Disaster in India: A Study of Therapeutic Perception of Compensatory Jurisprudence. *Indian Bar Review*, 29(1), 77-102.
- [28]. Section 2(d), *Disaster Management Act*, 2005: "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.
- [29]. *Id.* Section 2(e): 'disaster management' means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for (i) prevention of danger or threat of any disaster; (ii) mitigation or reduction of risk of any disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any disaster; (v) prompt response to any threatening disaster situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster; (vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction.

[30]. Section 6 in the Disaster Management Act, 2005-Powers and Functions of National Authority: (1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.(2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may- (i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.

[31]. *Id.* Section 10-Powers and Functions of National Executive Committee: (1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country. (2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may- (i) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster.

[32]. *Id.* Section 38 (2) The measures which the State Government may take under sub-section (1) include measures with respect to all or any of the following matters, namely:(a) coordination of actions of different departments of the Government of the State, the State Authority, District Authorities, local authority and other non-governmental organisations; and (b) cooperation and assistance in the disaster management to the National Authority and National Executive Committee, the State Authority and the State Executive Committee, and the District Authorities.

[33]. *Id.* Section 72 Act to have overriding effect: The provisions of this Act, shall have effect, notwithstanding

anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

[34]. Nomani, M. Z. M. (1996). Environment and Industrial Relation: Emerging Judicial Trend in India. *Academy Law Review*, 20, 153-172.

[35]. The *New York Website*. [Online]. Available:<https://www.nytimes.com/2020/03/30/world/asia/coronavirus-india-lockdown.html>; (2020) The *Livemint* website. [Online]. Available: For India's Laborers, Corona virus Lockdown Is an Order to Starve'.

[36] *Alakh Alok Srivastava v. Union of India*, Writ Petition(s)(Civil) No(s).468/2020/

[37]. (2020) The *aljazeera Website*. [Online]. Available:<https://www.aljazeera.com/news/2020/04/>' India COVID-19 lockdown means no food or work for rural poor.'

[38]. Nomani, M. Z. M., Rahman, F. & Alhalboosi, A. K. (2019). Consumer Protection Act, 2019 and its Implication for the Medical Profession and Health Care Services in India, *Journal of Indian Academy of Forensic Medicine*, 41(4), 282-285, doi: 10.5958/0974-0848.2019.00084.8

[39]. Nomani, M. Z. M. (2020). Health Care Services Under Consumer Protection Laws Of Union Territories Of Jammu And Kashmir: A Socio-Legal Mapping," *Indian Journal of Public Health Research & Development*, 11(2) pp.273-278,2020; DOI Number: 10.37506/v11/i2/2020/ijphrd/194796.

[40]. Nomani, M. Z. M. (2020). Therapeutic Perception of Access to Medicines and Health Care in Government Hospital of Union Territories of Jammu and Kashmir. *Indian Journal of Forensic Medicine & Pathology*, 13(1) 57-63.

How to cite this article: Nomani, M. Z. M. and Tahreem, M. (2020). Constitutionality and Legality of Corona Virus (COVID-19) in India: Limits of Sanction and Extent of Liberation. *International Journal on Emerging Technologies*, 11(3): 14–18.