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**“NEGLIGENCE AND LIABILITY IN SPREADING COMMUNICABLE
DISEASE LIKE COVID-19.”**

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CRITIQUE:

Coronavirus is not hidden from anyone, it outsourced from China to the whole world leading everything to a halt. Initially, it was not known that virus had human to human transmission but eventually it was observed resulting in the diffusion of the virus so fast that even the world powers are facing the worst. Whereas there were few acts which could have been prevented but the negligence resulted in the scenario no one has ever dreamt of. This paper explains how Coronavirus got evolved over the years from animals to humans, mechanism of how the virus infects the human body, what are the duties of every citizen to prevent the spread of virus {Individual and Societal level} and what will be the liability of someone who fails to do so negligently {with or without intention}. Also, it scrutinizes the laws present in the country concerning corona circumstances- laws related to Epidemic Act 1897, Section 269 and 270 of Indian Penal Code, Culpable homicide. We have never imagined such condition on a large scale affecting the world, but here we are and the laws which were made a century ago are dealing with today's intense position. The paper investigates whether the existing laws are appropriate in the present situation, that one person losing life in few days due to another person's negligent act is liable only for a sentence of maximum 2 years.

CHAPTER 1: INTRODUCTION:

As on April 2020, due to the widely spreading Corona Virus all over the globe millions of people are infected and thousands had already lost their lives and the fight is still not over against this pandemic disease. So, what is this disease? How it is spreading so much that the entire world is in a lockdown. Covid19 is a virus spreading contagious respiratory infection, contagious disease is defined as which is communicable and can spread rapidly from one infectious person to another healthy person by direct contact (touching the infectious one), indirect contact (touching a contaminated object) or the droplet contact (inhalation of droplets when a person who is infectious talks or sneezes). It is even believed that it is a manmade virus and was firstly founded on 1st December, 2019 in Wuhan a place in China. The main symptoms of this disease are Cough, Fever and Difficulty in Breathing, so if any individual has these symptoms so he/she might be found Corona positive. The Union health ministry said that almost 60% of COVID deaths are of the people who are aged above 60 years. This states that Case fatality rate is certainly more in specific people, these are children under 10 years, old people more than 60 years and patients suffering from diabetes, heart disease, asthma, blood pressure, cancer, HIV etc¹. For a patient of Corona positive some reasonable care should be taken by him/her, he/she should keep himself/herself in isolation or quarantine till incubation period and maintaining social distancing from others so that he/she can't spread this communicable disease to others. At this time there is no explicit medicine to cure covid19. There were few antiquated laws which played a role when the similar disease was spread in the country and with the current situation those laws have been awakened to combat covid19. Certain provisions in IPC, Epidemic Disease Act, 1897 and Government guidelines in case of breaking the rule of quarantine and spreading such infectious diseases which are dangerous to life. In this present time, we see numerous cases in which infected are running away from quarantine spitting on medical and police staff and also attacks on the medical teams who are there to help these patients. The question is whether the punishment under sections in IPC worth for the one who spreads deadly virus like Covid19 which causes death just in 20 days or so! Does it not comply to attempt to murder? It is obvious that in the case

¹ Falsey AR, McCann RM, Hall WJ, et al. The "common cold" in frail older persons: impact of rhinovirus and coronavirus in a senior daycare center. J Am Geriatr Soc. 1997;45:706-711.

where there is some ill motive or intension present, they should be made liable but, what about the liability of those who don't have any intension to do so yet because of them several are infected and their life is in danger. Hereby we begin weighing the liability of a person spreading covid19 intentionally by studying various laws.

CHAPTER 2: HISTORY OF CORONAVIRUS:

Coronavirus has a large family of viruses that infect mammals and birds causing diseases these diseases can be categorized from mild to extreme. In the mild cases, it varies from common cold whereas in extreme cases can cause SARS, MERS and COVID-19. In human beings, it affects the respiratory tract and causes several infections, whereas in animals like in chicken they cause upper respiratory tract diseases and varying from other animals. Coronavirus was initially seen in the chickens in the 1930s causing infection in the respiratory tract and it was ended by taking them into isolation with the mortality rate of 40 to 90 per cent! Again, in 1940s new two more coronaviruses were seen in animals, which were again treated by keeping the infected into isolation. Later in 1960s, human coronaviruses were discovered. These viruses were studied in two different methods in the United Kingdom and the United States. EC Kendal, Malcolm Bayonne and David Tyrrel² were working in the British medical research Council found B814 whereas Dorthy Hamre and John Procknow³ were at the University of Chicago found 229E. When these two novel strains were imaged by an electron microscope in 1967⁴, it was held that both of them are related morphologically by their club-like spikes. In the same year, a research group at the National Institute of health was able to isolate a new member which was named OC 43⁵. Then later it was discovered that B814 229E⁶ and OC 43 are from the same family. The scientific labs kept studying about

² Tyrrell DA, Bynoe ML. Cultivation of viruses from a high proportion of patients with colds. *Lancet*. 1966;1:76-77.

³ Hamre D, Procknow JJ. A new virus isolated from the human respiratory tract. *Proc Soc Exp Biol Med*. 1966;121:190-193.

⁴ McIntosh K, Becker WB, Chanock RM. Growth in suckling-mouse brain of "IBV-like" viruses from patients with upper respiratory tract disease. *Proc Natl Acad Sci USA*. 1967;58:2268-2273.

⁵ McIntosh K, Dees JH, Becker WB, Kapikian AZ, Chanock RM. Recovery in tracheal organ cultures of novel viruses from patients with respiratory disease. *Proc Natl Acad Sci USA*. 1967;57:933-940.

⁶ Almeida JD, Tyrrell DA. The morphology of three previously uncharacterized human respiratory viruses that grow in organ culture. *J Gen Virol*. 1967;1:175-178.

these viruses and more of the other human coronaviruses were identified including SARS in 2003⁷, HCoV NL63 in 2004, HK U1 in 2005, MERS CoV 2012 SARS CoV 2 in 2019.

SEVERE ACUTE RESPIRATORY SYNDROME (SARS):

In 2003 SARS⁸ that is severe acute respiratory syndrome spread in Asia infected over 8000 people and 10% of them died⁹. WHO issued a press release stating that a coronavirus has been identified.

MIDDLE EAST RESPIRATORY SYNDROME:

In 2012 MERS that is Middle East respiratory syndrome was identified as a family member of coronavirus, initially, it was named novel coronavirus later the official name Middle East respiratory syndrome was given to it. It was observed that the virus did not pass from one person to another easily but later French Ministry of social affairs and health confirmed human to human transmission case. In Saudi Arabia, 124 cases were infected and 52 died as recorded¹⁰. Whereas in May 2015 there was an outbreak of MERS in the Republic of Korea where 2468 cases of infections were reported out of which 851 died, the mortality rate was 34.5%¹¹.

COVID-19:

In the year 2019 pneumonia outbreak was reported in the Chinese city Wuhan¹² which was later discovered that it was a virus which belongs to the coronavirus family; therefore, it was named as 2019nCoV. This was later renamed by the international committee on taxonomy of viruses as SARS CoV2. Experts say that the virus is evolved from the bat because it shows

⁷ Drosten C, Gunther S, Preiser W, et al. Identification of a novel coronavirus in patients with severe acute respiratory syndrome [see comment]. N Engl J Med. 2003;348:1967–1976.

⁸ Ksiazek TG, Erdman D, Goldsmith CS, et al. A novel coronavirus associated with severe acute respiratory syndrome [see comment]. N Engl J Med. 2003;348:1953–1966.

⁹ Centers for Disease Control and Prevention. Available at <http://www.cdc.gov/ncidod/sars/index.htm>

¹⁰ Zaki A. Novel coronavirus—Saudi Arabia: human isolate. Int Soc Infect Dis. 2012. Pro MED mail.

¹¹ Memish ZA, Al-Tawfiq JA, Makhdoom HQ, Al-Rabeeh AA, Assiri A, Alhakeem RF, AlRabiah FA, Al Hajar S, Albarrak A, Flemban H, Balkhy H, Barry M, Alhassan S, Alsubaie S, Zumla A Clin Microbiol Infect. 2014 May; 20(5):469-74.

¹² WHO Director-General's opening remarks at the media briefing on COVID-19". World Health Organization (WHO) (Press release).

96% of the similar traits with those which got evolved from bats¹³. Coronavirus started spreading from one of the wet markets which sell animals in china, but it infected the people who were not even in contact with those infected animals then this meant that it is due to human transmission¹⁴. Today not only china but the whole world is under the threat of this unknown and unseen opponent. Even those countries who call themselves as developed one are today in the lack of space to bury the dead bodies, every country is fighting with its best efforts. The fight is on in two directions: the one is to resist the outbreak of the virus and the other is to find a vaccine to treat those who are infected.

CHAPTER 3: MECHANISM OF N-COV/SARS COV 2:

Coronavirus is a large family of viruses which are found in humans and animals, many cases of the common cold are due to coronavirus. So, the virus is spread mainly by respiratory droplets i.e., a cough or a sneeze which aerosolises¹⁵ the virus allowing it to travel into our nasal or all cavities we also know that it can live on surfaces for hours and even up to a few days on some surfaces. So, if you touch an infected surface then touch your face and to inoculate the mucous membrane in your eyes, mouth or nose with the virus. Initially, it can get into the upper airway so the nasal or throat area and this is why you can get those symptoms like a common cold, stuffy nose, headache, sore throat and fever. It is within the mucosal epithelium of the upper respiratory tract where primary viral replication is thought to occur, similar to SARS. SARS coronavirus too can get into our respiratory system and our lung epithelial cells¹⁶.

A coronavirus particle consists of four structural proteins: the nucleocapsid, envelope, membrane and spike. The SARS CoV2 binds Spike or S protein (structural protein which is responsible for allowing the virus to attach to the membrane of the host cell) to the ACE2

¹³ Coronaviruses in bats from Mexico.

Anthony SJ, Ojeda-Flores R, Rico-Chávez O, Navarrete-Macias I, Zambrana-Torrelío CM, Rostal MK, Epstein JH, Tipps T, Liang E, Sanchez-Leon M, Sotomayor-Bonilla J, Aguirre AA, Ávila-Flores R, Medellín RA, Goldstein T, Suzán G, Daszak P, Lipkin WI J Gen Virol. 2013 May; 94(Pt 5):1028-1038.

¹⁴ How COVID-19 Spreads. Centers for Disease Control and Prevention (CDC). 2 April 2020.

¹⁵ Symptoms of Coronavirus. U.S. Centers for Disease Control and Prevention (CDC). 20 March 2020.

¹⁶ Hopkins C. "Loss of sense of smell as marker of COVID-19 infection". Ear, Nose and Throat surgery body of United Kingdom. Retrieved 28 March 2020.

receptor this mechanism is the same way that the SARS virus was able to bind epithelial cells. The host cells have proteases which are enzymes that break down proteins and this cleave the Spike protein and this process activates the protein to trigger the process of membrane fusion before injecting the viral genome into the host cell. The alveoli are the tiny air-filled pockets responsible for the gas exchange. We have around 600 million of these alveoli and they are responsible for exchanging Oxygen and Carbon Dioxide between the blood and the air we breathe in. Due to the direct action of the virus and also due to our immune system response to viral infection. The alveolar walls can become inflamed and thickened and filled the alveolus with fluid which can impair their ability to exchange gases and this can lead to the shortness of breath.

The cascade of inflammatory mediators an uncontrol systemic inflammatory response which leads to acute respiratory distress syndrome or RDS, this is the rapid and widespread inflammation in the lungs which causes the epithelial and endothelial cells of the lungs to secrete inflammatory mediators which fill the alveoli¹⁷. Overall, this pathological process severely impairs the ability of the lungs to exchange the Oxygen and Carbon Dioxide. In cases, of severe an RDS invasive mechanical ventilation is required to adequately oxygenate the body.

The main method of transmission of SARS CoV2 is through Person-to-Person contact¹⁸, let's say if you are sitting next to someone who is infected on a bus, in a meeting room or anywhere and suddenly that person sneezes or cough so that person could potentially spray you with respiratory droplets from their nose or mouth and those droplets will likely contain the virus. Or say if that person shakes hand so there are higher chances of transferring the virus to your hand and if you accidentally touch your mouth or nose you may give an entry point into your body to this virus. This is the reason why there's been so much emphasis on social distancing. This virus can only survive if it continues to find the new hosts. Being isolated we can eliminate the risk of transferring the virus.

¹⁷ Subramanian Boopathi, Adolfo B. Poma & Ponmalai Kolandaivel (2020): Novel 2019 coronavirus structure, mechanism of action, antiviral drug promises and rule out against its treatment, Journal of Biomolecular Structure and Dynamics, DOI: 10.1080/07391102.2020.1758788

¹⁸ How COVID-19 Spreads. Centers for Disease Control and Prevention (CDC). 2 April 2020.

**CHAPTER 4: DUTY TO PREVENT NEGLIGENT SPREAD OF
COMMUNICABLE DISEASE:**

A. SOCIAL RESPONSIBILITY AND DUTY:

Protecting the Public from communicable disease is a duty of a civilized society. India has witnessed numerous epidemic diseases, pandemics in the past, in which we loss many lives and also a huge loss to the economy of our country. To deal with such pandemic situations we need such a strategy, leadership on such a system, which can make the campaign successful. But such campaigns are successful only when the leadership gets the support of the society. Initially, the PM of the country announced 21 days lockdown, after this, it has been extended further. In these circumstances, the country is facing many challenges. The vicious cycle of nutrition concerns of the poor, fake news and the fast-pandemic epidemic are three such challenges that have drawn the lines of concern on the foreheads of government and administration. In such a situation, it becomes imperative for the civil society to come forward to make this campaign successful. The expectation from the civil society is that they not only cooperate with the governance administration but also understand their responsibility towards the society, the question is how can an epidemic be killed by the will of the society, although on the other hand, it's also a concern that what are the responsibilities of a government, administration, industrialists and other corporates towards the society, however, all are connected.

FAKE NEWS:

First of all, we look at the fake news and how we can control this fake news from spreading and causing a panic situation among the citizens. Due to the heat of rumours around the country, many obstacles are coming in the way of the campaign in front of corona warriors. Some group of people believe that there is no disease like COVID-19, it's a rumour from the side of the government and the government is trying to kill that particular group of people. Some people are trying to hide the disease and their family members are trying to hide that infected person. There are cases where several people trying to escape from the quarantine in

the hospital's isolated wards. In many places of the country, people threw stones and attacked the health care workers¹⁹ and police teams who went for the check-ups and to investigate about the Corona positive patients. Suspects of Coronavirus are not considering Quarantine as part of the treatment process and taking it into a kind of custody. Freedom of speech and expression is an important aspect of democracy and no one imagined that this opportunity and freedom that is given on the Social Media platforms will be misused in this way, as well rumours will be spread not only on social media but also at the local level, due to this the atmosphere of fear is increasing in the Public²⁰.

It is a result of this that people are hiding their disease due to which the administration is having trouble in finding the right number of Corona positive patients. As being a social person, we need to understand our responsibility and understand that spreading fake news is weakening the strategy to fight against this virus. This is why we have to avoid sharing any fake news at our level and also to stop others and suggest them to do so.

DUTY TOWARDS THE POORER SECTION OF THE SOCIETY:

Now if we talk about the responsibilities as a society towards the poor and daily wages workers, after the announcement of the lockdown the problem faced by them is not hidden from anyone, we have witnessed numerous cases of migration of labour from different part of the country. But no concrete result was revealed in this regard, and decisions took by authorities to take them home by providing them buses and trains was somehow too late as many workers reached their villages or homes by travelling hundreds of kilometres barefoot. The concern with them is that they don't have the option of work from home facility. Deep down we all know that jobs in India, the arrangement of health care, education, etc, on a large scale is a matter of great concern. The landlords are more concerned about the security of their tenant's rent, so their priority was that they should be freed from their homes as soon as possible and was the same concern of the small businessmen, they let them go and so that they are not compelled to sit and pay. As of today, it all goes with the responsibility as a

¹⁹ <https://www.livemint.com/news/india/coronavirus-update-attacking-doctors-medical-staff-to-be-non-bailable-offence-11587548102889.html>

²⁰ <https://www.newindianexpress.com/nation/2020/mar/25/fear-fake-news-and-coronavirus-the-new-indian-express-stands-by-you-in-this-battle-2121134.html>

citizen, we need to show readiness for social support, at this point the society does not require only some individuals but a whole unified effort with its members bound in a sense of affinity.

PROPER TESTING:

With more than 45 lakh confirmed cases and 3 lakh deaths the entire world has ground to a halt, the pandemic has likewise tested the medicinal services frameworks over the globe. The important thing is in the regard of the symptoms that has been said by the World Health Organization is that only mild symptoms are visible in 80% of the COVID-19 cases. Generally, on average it can take 5-6 days for symptoms to show up in your body. But you are contagious in those 5-6 days, you have contracted the infection while you assume yourself to be healthy and fit you have no disease but then too, you can spread the infection to other people. This is what makes COVID-19 dangerous. The symptoms are not visible in people and they go out, interact with other people. The next challenge in front of us is the asymptomatic corona patients, so if you had the coronavirus but you had no symptoms, no indicators that you had the virus no cough, no cold, no fever, no breathlessness none of these then you would be asymptomatic. In another word, no indicator that you were a corona carrier, the Indian Counsellor Medical Research said that 80% of COVID-19 patients not only in India but globally could be asymptomatic. Now asymptomatic patients are basically called silent corona spreaders because they are the persons that don't know they have the virus. Therefore, maybe carrying on with their normal life not practising social distancing, not taking any other precautions and therefore spreading it even further without any knowledge.

As every expert says practising social distancing and all other safety precautions testing for corona must go hand in hand. Testing is important because we have to detect every possible case so that we don't have cases that are unnoticed and passing on infection in the community²¹. And as we believe that with COVID-19 in some instances, people may not have any symptoms but still be able to transmit the infection. So, it's really important to

²¹ Rosenthal PJ. The Importance of Diagnostic Testing during a Viral Pandemic: Early Lessons from Novel Coronavirus Disease (COVID-19). Am J Trop Med Hyg. 2020;102(5):915-916. doi:10.4269/ajtmh.20-0216

identify those people and the only way we can do that is through testing. In countries like Japan and South Korea, when we look now, the epidemic seems to be in reasonably controlled because they have tested extensively. India is a country with a population more than 135 crores and on average if we perform 1 lac test per day even then it will take more than 36 years to test the last person in the country.

Different guidelines are given by World Health Organization and Health Ministry of India like maintaining social distancing, isolation and so on. So, let's say A is properly following all the guidelines and not breaking the rule of Quarantine, he properly sanitizing himself and his surroundings, he is performing all his social duty but what about his life if he is not getting essential stuff at his doorstep, to eat to drink, so what about his freedom of right to life²². Right to life means that nobody, including the Government, can try to end your life. It also means the Government should take appropriate measures to safeguard life by making laws to protect you and, in some circumstances, by taking steps to protect you if your life is at risk. Performing duty is mandatory for an individual but when the question comes to the life of that individual, we gave more priority to life instead of performing the duty. So, it becomes obvious for a daily wage worker if he doesn't get enough essential stuff for his family or for himself, he has to come outside, left with no option than to migrate. Various governments authorities have invoked their respective powers under the Disaster Management Act²³, to deal with the COVID-19 outbreak in the country. In the true manner of the DM Act government and administrative agencies should be more collaborated and consultative in dealing with the issues like movement of migrant labourers, availability of food, water, shelter medical cover and sanitation, livelihoods for daily wagers, reliefs camps, statutory minimum relief²⁴, etc. that needs special attention.

In the case of *Azra Usmail and Ors. vs. Union Territory of Jammu and Kashmir*²⁵ in High Court of Jammu&Kashmir on 17 March, 2020 doctors who are working at the two hospital

²² The Right to Life under Article 21 means a life of dignity in a proper and healthy environment, maintainance of health, proper sanitation system.

²³ Disaster Mangement Act, 2005

²⁴ Sec. 12 of Disater Management Act, 2005

²⁵ Azra Usmail and Ors. vs. Union Territory of Jammu and Kashmir, on 17 March, 2020

facilities in Srinagar wherein quarantining and isolating suspected/infected Covid-19 patients is being affected. These doctors have complained that the persons who have been isolated are misbehaving and have also resorted to damaging the available facilities. The doctors are apprehensive about their security at the hands of the persons who have been lodged. The court, therefore, directs the Secretary, Department of Health and Medical Education of both the Union Territories together with the IGP, Jammu, IGP, Kashmir and IGP, Ladakh to ensure that complete safety and security is provided to the personnel who are serving at all government facilities and no person can leave the medical facility till the period of quarantine/isolation is completed.

Doctors in different parts of the country came out and told that people with underlying conditions are often not enumerated as COVID deaths. When the doctors who are providing treatments to the corona positive patients with all the safety measures and wearing masks and using appropriate PPEs (Personal Protective Equipment) even they are getting infected when they come in any contact with the patient so they are front warriors who are defending the country so it's also a duty of the concerned authority to provide all the safety essential and necessary equipment of good quality to the medical staff. The other problem is India's testing, initially testing rate was lowest in the world which means there is no clear picture yet how bad the situation is. A doctor from southern India describes that they are not testing people, there are so many patients who are coming with symptoms and due to no testing facility, they are going out and spreading it to other people²⁶. For weeks India has been in lockdown and which will extend further but experts say without ramping up testing no nation can hope to beat the virus²⁷. More patients will keep coming until you have extensive testing and isolation strategy or you can just stay on lockdown for a long period of time, but staying on lockdown for India has again had massive cost especially for the poor. Each day is hard for those left without jobs, money, food and shelter; aid is reaching to some of them but the question is how long it can be sustained.

²⁶ <https://theprint.in/opinion/by-failing-to-scale-up-testing-coronavirus-india-may-have-lost-crucial-time/383639/>

²⁷ Rosenthal PJ. The Importance of Diagnostic Testing during a Viral Pandemic: Early Lessons from Novel Coronavirus Disease (COVID-19). *Am J Trop Med Hyg.* 2020;102(5):915-916. doi:10.4269/ajtmh.20-0216

In the case of *Corona Virus-COVID-19 PANDEMIC vs. The Government of Andhra Pradesh and Ors.*, in High Court of Andhra Pradesh on 1st April, 2020²⁸, this matter has been taken up by way of Public Interest Litigation whereby it is reported that 34 patients were brought to ASRAM Medical College, Eluru, West Godavari District. Out of those patients, 6 were found positive for Corona Virus-COVID 19 and the remaining are suspected to have contracted the virus as per the news item. The concern of the Court is the availability of WHO-approved Personal Protection Equipment (PPE) for Doctors, Para-medical staff in the hospital on duty and the treatment facility to the citizens. The news depicts that the staff went on leave or non-cooperative due to non-availability of the PPE. Representation sent to the District Collector with the signatures of 329 medical and para-medical staff is also available on record. In such circumstances and taking note of the order passed by Hon'ble the Supreme Court concerning the pandemic Corona Virus-COVID 19, it reveals that the Bench asked the Solicitor General to respond on the petition. The Court further observed that based on the pleadings, directions were sought against the Union of India to ensure the availability of PPE and Hazardous Material Suits as per the recommendations of the WHO.

B. NEGLIGENTLY TRANSMITTING THE DISEASE:

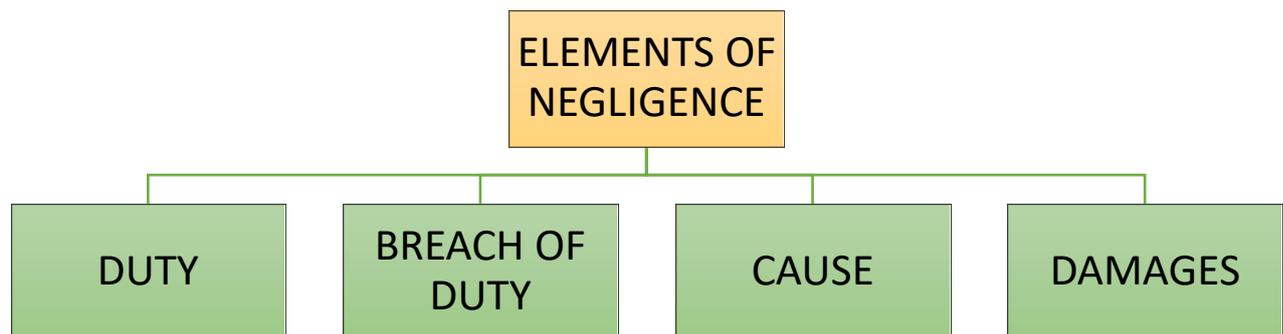
If the constitution of India provides Rights to all the citizens then in return it demands all the Duties to be fulfilled as well. Both rights and duties in the constitution cannot be separated. Former comes along with the imposition of the obligation in the form of later on the citizen for neither exposing his life to danger nor of the others. In the times when the world is facing a public health emergency, it becomes the duty of every citizen to abide by the guidelines issued by the government to prevent the spread of the coronavirus. It is a crucial time where no one can bear being negligent. Literal meaning of Negligence is the failure to take proper care over something, whereas in law negligence is defined as a breach of a duty of care which results in damage²⁹. We have the duty of care in the corona era to prevent it from showing its adverse phase and being negligent today can end up taking a life tomorrow! In the law of tort,

²⁸ Corona Virus-COVID-19 PANDEMIC vs. The Government of Andhra Pradesh and Ors., on 1st April, 2020

²⁹ Winfield and Jolowicz on Tort, Ninth Edition, 1971, p. 45

negligence is being careless³⁰ in a particular situation where a reasonable man would have acted in a specific way³¹.

Negligence has four elements which have to be proven so that plaintiff can show that defendant acted unreasonably^{32 33}. Those are mentioned below:



FOUR ELEMENTS: CONCERNING COVID-19:

DUTY: Each person has a primary duty of self-sanitation or precautions to be taken by oneself as guided by the government to wear masks and about washing hands for 20 secs or so, then it is the secondary duty to keep one's family safe by making sure everyone follows the hygiene rule then the third duty of any individual to make sure that they don't take part in any social event and be vigilant about the activities in the surrounding [societies, colonies etc.] so that if there is any positive case or of anyone who travelled from the area of suspicion then it becomes the duty of every citizen in that area to report about him to the concerned authorities only if he or she seems to be not doing so. For example: if A, a vegetable vendor is infected and he does not take care of the primary duties then he will end up spreading the virus to entire locality whereas if B, who bought vegetables from him take proper care like wearing mask and sanitizing hands, he would be saved.

BREACH OF DUTY: If anyone who fails to follow the above duty due to negligence with or without intentions then it is to be called the breach of duty by that party.

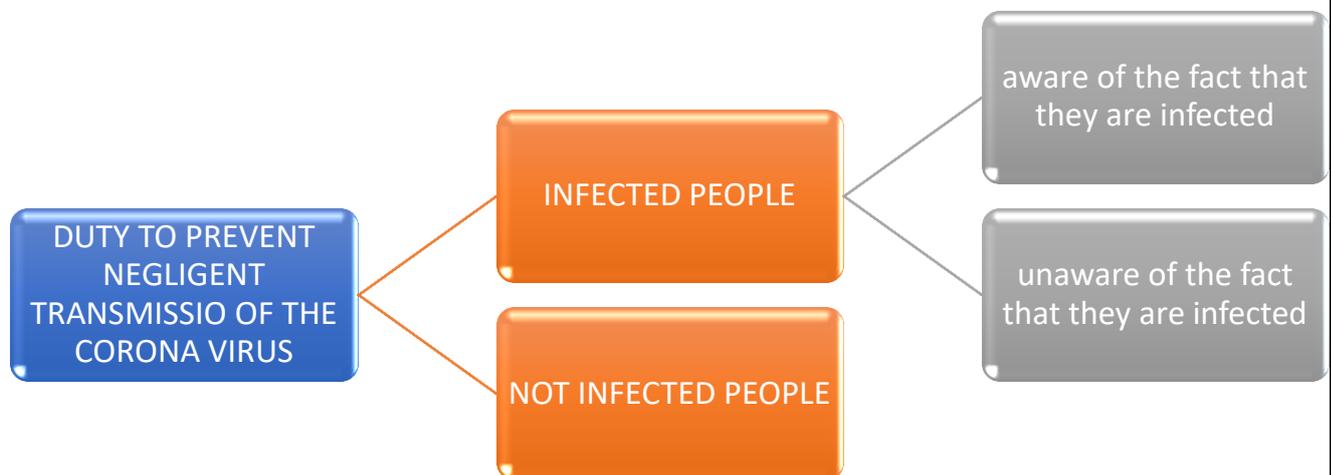
³⁰ Lochgelly Iron & Coal Co. v. Mc Mullan, 1934 AC 1
³¹ Blyth v. Birmingham Water Works Co., (1856) LR 11 Exch. 781
³² R.K. Bangia, Law of Torts , 19th Edition, 2008, Publisher: Allahabad Law Agency.
³³ Ratanlal and Dhirajlal, The Law of Torts, 24th Edition 1997 Reprint 2002; Published by Wadhwa and Company, Nagpur, India.

CAUSE: Cause is the basis to prove that merely due to one's negligent acts another has suffered. It becomes important to prove that the party suffered is due to the breach of duty by the one being negligent.

DAMAGES: It is just not about proving how one has been negligent it is also about how the breach of duty and being negligent has caused damage to the aggrieved. This is the last step, once this is established negligence is hence proved.

On concluding this, there must be a follow up of duty owed by each person towards the each other and if a breach of that duty is done, that is by acting carelessly which is the cause of the damage to the plaintiff. Every citizen has a duty of care to prevent the spread of this virus and any kind of breach to this duty will only exacerbate the pandemic.

Here, we begin by categorizing the people in the country and duty by each of them to prevent transmission of the disease.



NOT INFECTED CITIZENS:

People who are not infected must prevent the spread of this virus. Following this, the government has every right to take various steps in such mishap and we the citizens have the duty to abide by those regulations. And if we fail to do so the state has every right to file a case against us, in this scenario specifically under Sec. 269 and 270 of IPC.³⁴

³⁴ Indian Penal Code, 1860

All the countries are in lockdown to prevent the spread of covid19 and to save all the people who are not yet infected. But when the government is doing so much here, we are also obliged to follow the guidelines given by them. Since these circumstances are extraordinary then they too require actions far from the ordinary steps. In respect to covid19, the general guidelines given to the people are with regards to sanitation, social distancing, self-quarantine etc³⁵. And as explained above the duty of self-care, family care plays a very important part.

INFECTED PEOPLE:

People who got infected by the coronavirus have a duty to immediately to report it to the police so that medical processes can be followed up. Whereas if this is not done then even his own family members might face the threat of death. It has been seen that the symptoms show up in 14 days minimum, therefore, it becomes very obvious that someone might be infected but might not know and then that person can be a brilliant carrier of the virus, so he should be kept in proper isolation³⁶, whereas if we look at the above example where the vegetable vendor was positive but he did not know, in this case, if he took primary care that is to wear a mask then he might save many lives even on being positive to the virus. It's all about precautions as you never know when the virus hits you! Therefore, it becomes very much important for all of us to be very much vigilant³⁷.

CHAPTER 5: WHAT IF YOU ARE SPREADING COVID-19?

LIABILITY:

In this chapter of the paper the author basically emphasis and will give a detailed study of the criminal liability of a person who is negligently spreading this deadly virus in the society and infected who are hiding themselves to be disclosed and some other laws and their punishments in breaking the Quarantine rule and what the Epidemic Act 1897 is and its contribution in preventing the virus from the spread or the actions that a government can take

³⁵ Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19). Centers for Disease Control and Prevention (CDC), 2 March 2020.

³⁶ Matovinovic J. A short history of quarantine (Victor C. Vaughan) Univ Mich Med Cent J. 1969;35:224–8.

³⁷ Mafart B, Perret JL. History of the concept of quarantine [in French]. Med Trop (Mars). 1998;58(2 Suppl):14–20.

in an epidemic. So, as far we have discussed that it is a negligent act if any individual is not a concern in following the guidelines or the rules which are set by the government during such situation of epidemic. So, first of all, the biggest question is concern that who are negligently spreading the virus, Will they be booked for the charges or murder/attempt to murder or culpable homicide? Under what sections they should be punished or they should not be punished? The liability can be measured by ascertaining the chances of death along with the negligent act done with or without intention. It is very much important to not create any kind of severe fear of punishment among those who are positive with coronavirus because the fear in itself might become the reason of spreading it, as they are the one who are the very first victims. As it was seen in India that people who were related to Tablighi Jamaat refused to come forward since they were afraid of punishment resulting in the widespread of the virus in the country. It is very much important to keep in mind that they are the ones who are the victims and it is required by others to not treat them with partiality coming in mind one's safety.

EPIDEMIC DISEASE ACT:

There are existing laws in the country to prevent the spread of any such pandemic, we have Epidemic disease Act³⁸. So, we will see what the Epidemic Disease Act is and how it is helpful during a pandemic. This colonial-era law was meant to provide for the better prevention of the spread of dangerous epidemic diseases. The Epidemic Disease was introduced by the British to tackle the epidemic of Bubonic plague that broke out in the state of Bombay³⁹, it was passed in 1897. Then the Governor-General of colonial India had conferred special powers upon the local authorities to implement the measures necessary for the control of epidemic. The subsection 2A empowers the central government to take steps to prevent the spread of an epidemic, especially allowing the government to inspect any ship arriving or leaving any port and the powers to detain any person intending to sail or arriving in the country. According to the provision of Sec.2 of the Act⁴⁰, which describes the power of the government, "When the state government is satisfied that the state or any part thereof is

³⁸ Epidemic Disease Act, 1897

³⁹ <https://www.deccanherald.com/national/west/covid-19-epidemic-law-has-links-to-bombay-plague-814503.html>

⁴⁰ Epidemic Disease Act, 1897

visited by or threatened with an outbreak of any dangerous epidemic disease; and if it is thought 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 the inspection of the 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.”

The third section describes the penalties for violating the regulations under Sec. 188 of IPC. Sec.3 states, “Six months’ imprisonment or 1,000 rupees fine or both could be charged out to the person who disobeys this Act.” It is imperative to take note of that under Section 188, IPC, an aim to cause hurt isn't pertinent as simple information on the request gives adequate reason for risk of submitting the offence. Albeit an offence under Section 188, IPC is cognizable and bailable, courts won't take cognizance by just documenting a FIR. A protest must be recorded by the concerned open official under Section 195 of the Code of Criminal Procedure, 1973 ("CrPC"). The rebelliousness of the arrangements of Section 195 of CrPC⁴¹ may prompt the procedures being subdued as held by the Patna High Court on account of ***Raj Mangal Ram v State of Bihar***⁴². The said case was according to specific bearings gave by the District Magistrate of Muzaffarpur for usage of the 'counter Kalazar' conspire. The fourth and the last section deals with legal protection to implementing officers acting under this Act. Talking about the ambit of Section 4, the Calcutta High Court in 1904 on account of ***Ram Lall Mistry v R.T. Greer***⁴³ held that an oversight to pay remuneration as recommended under the guidelines went under the Act would not be secured under Section 4. In a judgment passed by the Orissa High Court in 1963 on account of ***J. Choudhary v The State***⁴⁴, the inquiry under the watchful eye of the High Court was whether the refusal of the specialist to get himself immunized against cholera as per the guidelines passed by the State Government would be culpable under Section 3 of the Act. The Orissa High Court addressed the said

⁴¹ Code of Criminal Procedure Code, 1973

⁴² 1993 SCC Online Pat 290.

⁴³ (1904) ILR 31 Cal 829.

⁴⁴ AIR 1963 Ori 216.

question in the certifiable and held that the goal of the said specialist was insignificant, his rebellion in itself was culpable under the Act.

IPC⁴⁵:

Section 188 of IPC states that Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. In simple words, the person who disobeys an order passed by the authority and produces harm does not necessarily have to prove the intention to do so, the mere knowledge of the order or law passed by that person and still acting in a certain way which results in disobedience in itself proves his intention to produce harm. Considering lockdown in India, if anyone tries to demolish the provision of lockdown and spreads corona then he will be held liable in which his intention to do so is not necessarily required to be proven.

Along with this government of India also imposed Section 144 of Cr.P.C prohibiting public gatherings and anyone violating it will be charged under section 188 of IPC. Also, section 269 and 270 of IPC are visited in this era of invincible enemy. Section 269 states that—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.

⁴⁵ Indian Penal Code, 1860

And Section 270 states that - 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.

In the case of *Sanjay Goel versus Dongsan Automotive India Pvt. Ltd*⁴⁶, the Madras High Court on August 5, 2016, dealt with an instance of defiled effluents and residue particles from a manufacturing plant being tossed into the neighbouring area, hurting the soundness of individuals and permitting reproducing of mosquitoes. It was held that there was an at first sight case under different offences, including Section 269, IPC. These are the laws which were enacted as per the conditions then present but now the situation is different and these laws have the urgent need of re-visitation. For instance, the punishment under section 270 is maximum to 2 years of imprisonment and if we consider it in the present scenario where the corona is taking lives and the one responsible is booked for a maximum of just 2 years imprisonment. Now for instance, if a person is corona positive and due to his negligent actions intentionally infects another person whose probability of death is less, then he or she should be charged with existing law that is Section 270. Again, if one infects another whose probability of death is more then, he should be booked for at least 3 years of imprisonment. Taking one more scenario into consideration where one is infected with corona due to negligence of another with due intentions to do so and that person dies under the treatment then the one responsible should be charged with 5 years of imprisonment to the least.

Also consider the scenario where a person who is not corona positive but he provokes another who is positive with covid19 to spread it then, that particular person who provokes another should be booked with an attempt to murder or if the incident was sudden then under culpable homicide. In the initial cases, the ministers and Chief Ministers of different states announced that the attendees of Tablighi Jamaat assembly or any other person who neglect to approach and hide their travel history and they failed to present themselves before authorities are

⁴⁶ Sanjay Goel versus Dongsan Automotive India Pvt. Ltd., the Madras High Court on August 5, 2016

booked for the murder under section 307 of Indian Penal Code 1860. But in the recent news, we have seen that these people are booked for the culpable homicide not amounting to murder⁴⁷. And similarly, like The Delhi Police has charged the chief of a Delhi-based Tablighi Jamaat Markaz under stringent sections for culpable homicide not amounting to murder.

Sec. 299 of IPC deals with culpable homicide whereas the Sec. 300 of IPC deals with the culpable homicide amounting to murder. The term “Culpable” refers to liable and “Homicide” refers to the act of killing of a human being by another human being. Homicide may be lawful under certain exceptional circumstances but in the absence of those circumstances, it is unlawful.

- *Under the IPC, unlawful homicide has been covered under Sec. 302, 304, 304 A, 305 and 306.*
- *While Sec. 304 deals with Culpable Homicide not amounting to murder, Sec. 304 A deals with Causing Death by Negligence,*
- *Sec. 305 and 306 deal with Suicidal and Sec. 302 deals with Culpable Homicide amounting to Murder.*

So, here the question arises in our mind that, what is the difference between culpable homicide and culpable homicide amounting to murder. “Murder is a specific form of Culpable Homicide.” In other words, every Murder is at first a Culpable Homicide. It will not be incorrect to state that murder is a special form of Culpable Homicide. However, every Culpable Homicide is not Murder. That is also the reason why culpable homicide is said to be the genus of which murder is only a species. Clause (1) of sec. 299 overlaps with clause (1) of sec. 300. Further, there are several exceptions laid down in sec. 300 which lay down circumstances under which culpable homicide will not amounting to murder. So, how we can interpret the overlapping provisions under sec 299 and 300 is by approaching all cases falling under clause (1) of sec 299 and 300 as murder until and unless an exception to sec 300 applies. In the event of applicability of an exception, the act may be established as Culpable Homicide not amounting to Murder. In the case of **Rakesh Khare and Ors. vs. State of**

⁴⁷ <https://www.thequint.com/voices/opinion/tablighi-jamaat-nizamuddin-coronavirus-contagion-ipc-attempt-to-murder-wrong-charges-law>

Chhattisgarh⁴⁸, on 12 September, 2019, allegations against Applicant/accused Dr. Ramesh Kumar Gupta conducted operations of 83 women in hospital in unhygienic conditions and rashly and negligently in a short span of time. Therefore, act of Applicant D falls within ambit of causing death of persons by his negligent act punishable under Section 304A of IPC, under Section 337 of IPC for causing hurt to persons by doing his act rashly and negligently and under Section 269 of IPC for doing his act negligently knowing that his said act could result into spreading of infection of any disease dangerous to life.

NEGLIGENT ACTS OBSERVED:

One of the most popular and important case which led to widespread corona infection is Tablighi Jamaat. Tablighi Jamaat is a Muslim missionary movement which organized a meeting on 13 and 14 march in Nizamuddin, but on March 22 when the authorities shut the door amid covid19 almost 2500 people were trapped in the five-storey building causing the biggest virus to ascend in the country. It was claimed that nearly 8000 people including foreigners attended this meeting and it was evident later on the days that people gathered in the Markaz were corona positive and after attending the meet all of them spread across the country of 1.3 billion people causing tension in 15 states of India.

It was observed that it impacted people in different states and till April 30 per cent of the cases in India was due to the Markaz. Similarly, the *Bollywood singer Kanika Kapoor*⁴⁹, failed to practice social distancing after coming from the United kingdom and directly went into a party to perform in Lucknow with several ministers of the state of Uttar Pradesh then later it was observed that she is corona positive which led to the beginning of chaos in the state. Due to her there was a registered spike in the number of people quarantined. She came into the controversy for being negligent amid covid19 for which FIR was filled and she was booked under Section 269 and 270 of IPC. Later there was the worst case reported by the Chief Medical Superintendent of MMG district hospital of Ghaziabad against a group of 5 people suspected of being corona positive doing obscenity and harassing the women staff

⁴⁸ Rakesh Khare and Ors. vs. State of Chhattisgarh, on 12 September, 2019

⁴⁹ <https://economictimes.indiatimes.com/news/politics-and-nation/singer-kanika-kapoor-who-tested-postive-for-coronavirus-booked-for-negligence/articleshow/74741688.cms>

nurses. These were the people from the Tablighi Jamaat, it was reported by the doctor that these people refuse to follow the rules and were roaming semi-naked in front of the nurses. The following act of negligence locates the lives of the nurses at danger by exposing them to covid19.

In the case of *Tokugha Yepthomi Vs. Apollo Hospital Enterprises Ltd.*⁵⁰, Ms Akali, with whom the marriage of the Appellant was settled, was saved in time by the disclosure of the vital Information that the Appellant was HIV (+). The communicable disease would have been positively communicated to her immediately on the consummation of marriage. As a human being, Ms Akali must also enjoy, as she is entitled to, all the Human Rights available to any other human being. This right would positively include the right to be told that a person, with whom she was proposed to be married, was the victim of a deadly disease, which was sexually communicable.

In the case of *Lucy R. D'Souza and Ors. vs. State of Goa and Ors.*⁵¹, the case questioned whether the Section 53(1)(viii) is reasonable and not violative of Articles 14, 19(1)(d) and 2 of the Constitution of India in a case of the isolation of the Acquired Immune Deficiency Syndrome (AIDS) patients. The isolation of the patients has a scientific basis and it is one of the proper measures for the prevention of AIDS. Hence, it was held that the above said Section is reasonable and not violative of the above-mentioned Article of the Constitution.

CONCLUSION:

COVID 19 is a virus infecting respiratory tract causing damage to lungs and human to human transmission has made the world to call for a world health emergency. Every country is dealing with the world pandemic, so is India by regulating movement and stirring up the existing laws. Epidemic act 1897 invokes the rights of the government to take important measures for the regulation of the spread of COVID 19 and if anyone doesn't obey then imprisonment of 6 months or fine of 1000rupees. Section 269 and 270 states that anyone who

⁵⁰1999 1 AWC 274 SC

⁵¹ AIR 1990 Bom 355

does any act negligently spreading the disease and malignantly acting to spread the disease dangerous to life respectively. The maximum punishment for doing so is up to 2 years, whereas looking the present scenario where one is dead due to negligent act of another, there arises the need to revise the laws which were made more than a century ago.

Pandemics are nothing new to the world or to Indian, the whole world has witnessed most severe pandemics in history like Plague, Cholera, Influenza, Spanish Flu and many more. The individuals felt so bad and terrible about the isolation and quarantine, and due to some carelessness we have lost millions of lives, but we all know how necessary and the importance of isolation and social distancing in dealing with the pandemics. *We should not repeat history in the times of COVID-19.*