Pleasure or business-travelling and the pandemic virus: socio legal aspects

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Submission: 28 October 2020 Revised: 22 December 2020 Accepted: 21 January 2021

ABSTRACT

Ever since the corona pandemic hit the world with full rancour, people have gone into hiding thus restricting movement in all spheres, bringing their movement to a halt. It has been extrapolated since ages that movement of masses is the essence of economics. A man moves to earn, to seek visual pleasure, to seek social contact and as such the freedom to move freely, is both a legal and fundamental right, guaranteed under the Indian Constitution. The following research article aims to study the socio-legal aspect of restricted or altered human movement brought about by the pandemic and its effect on the tourism and hospitality industry. The study findings include the immense loss which the industry has suffered as result of the pandemic, followed by the path forward in terms of the new trends which may emerge in the year 2021, to cope with the loses. A further scope of study in the stated research topic may include developing fail-safe systems as method of check and balance to keep the tourism and hospitality industry afloat, in the event of such unforeseen crisis.

Keywords: Pandemic, Viral, Economics, Movement, Tourism and Hospitality Industry

JEL Classification: A10, A14, A19

1. INTRODUCTION

In Maneka Gandhi v. Union of India (1978) it has been established that freedom of movement is a fundamental right. So, no law can restrict a person from moving from one place to another. Frankly speaking, movement is essential from economic as well as social point of view. A man moves from one place to another in search of livelihood, or for business purposes as a basis of fiduciary relationships. Also human movement can be for social purposes like pleasure, tourism, religious beliefs, etc. At the base of each such action, economics is the moving fulcrum. It happened to be the usual norm till the corona virus entered the scene with all its deadliest fangs. People started getting infected, mortalities rose and the socio-legal order of the government which at the very outset outwitted by the virus as to how to tackle it, ensued clampdown. Their thought or your take: no movement, no infection.

But did this notion actually work or is it working? The Indian government introduced the archaic Pandemic Act of 1892 and the Disaster Management Act. The great wheel of human movement came to a grinding halt. People were locked down in their homes; the great pandemic lockdown. How much medical benefit the people reaped out of it is a thing of
conjecture and a study in itself. Lots of speculations and statistics will surface. If this was not done then this would have happened, and so on. Only prospective studies worldwide will reveal as to how much health wise this has been beneficial to the mankind. However, economically speaking there has been great economic slowdown and financial sectors have taken a real beating.

1.1. Objective of the Study

The present article is a study in ‘cause’ and ‘effect’, aimed at studying the socio-legal aspects of restricted or altered human movement in light of the lockdown imposed by the government, from 25th of March, 2020 in various phases for the tourism and hospitality industry and the after effect thereof.

1.2. Research Questions

The proposed study is directed towards answering the following questions:

- Was the effect of the imposition of lockdown on the tourism and hospitality industry?
- How did the imposition of a ‘total’ lockdown affect the common masses of the nation?
- What were the socio-legal issues which arose from the said lockdown?

2. Research Methodology

The present research work is based on doctrinal approach of research and makes use of secondary sources such as journals, newspaper editorials, internet articles, etc. and collation of data and records regarding the effect of lockdown, found on various websites.

3. Literature Review

The year 2020 started as annulus horribilis. It not only caused an era of undulating suffering through worldwide pandemic, but also caused great hardship in terms of travelling, whether be it for business, or work related acts or simply for tourism (Dash, 2020). The covid-19 pandemic cast an ever increasing gloom upon the tourism sector and in only one case caused an economic slashdown by 22 billion USD and 50 million jobs (Batra, 2020).

A new kind of interaction in the form of physical distancing aka, social distancing has been introduced in the society (Dev & Sengupta 2020). Wearing of masks made an essential social interaction apparatus, has in actuality created a social hiatus and has led to precipitation of interpersonal friction.¹ This has adversely affected all sorts of movements whether intercalated, or interdisciplinary (PTI, 2020).

Additional imposition of the Pandemic Act, Disaster Management Act, indiscriminate use of section 144 of the Indian Penal Code, night curfew has severely curtailed the act of population movement.² With the introduction and disseminated usage of vaccine, it is seen

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¹ Supra note 2.
² Supra note 4.
that the disease might be leashed to a certain extent. With this, there is a possible opening of the sector to allow more movement, subject to following certain strictly adopted measures (Djeebet, 2020).

4. PANDEMIC AND THE TRAVEL BUSINESS

The tourism business both in terms of business or leisure tourism is one of the biggest economic wheel on which economies of many state and countries move. The Tourism industry has been one of the largest contributors to India's GDP in recent years increasing from a share of 6.70% in 2017 to 9.20% in 2018. The World Travel and Tourism Council ("WTTC") 2020 has reported that in the year 2019, tourism generated 39,821 million jobs in India, which is 8.0% of total employment in the year 2019. The Pandemic has impacted the tourism industry throughout the world.

<table>
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<tr>
<th>Year</th>
<th>Contribution of Tourism Industry to the Indian GDP (Per Year)</th>
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<tr>
<td>2017</td>
<td>7</td>
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<td>2018</td>
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<td>2019</td>
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As per WTCC, the Covid-19 pandemic is expected to cost the tourism industry at least USD 22 billion resulting in a loss of 50 million jobs globally. The tourism sector adds to India's GDP by 9 per cent. India's aviation, tourism and hospitality industry sustained highest damage from Covid-19 outbreak. In India, the Pandemic first slowed it down and the lockdown brought it to a grinding halt. Lockdown eased but pandemic scare in the form of physical distancing, restricted movement and scare of virus has been a big economic loss to this sector. According to the Federation of Associations in Indian Tourism & Hospitality (FAITH) — the policy federation of all the national associations representing the tourism, travel and hospitality industry of India, "at a rough estimate, the Indian tourism sector is set

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3 Supra note 3.
4 Supra note 3.
5 Supra note 3.
6 Supra note 4.
to take a beating of Rs. 10 lakh crores, due to covid-19” (ET Bureau, 2020). This industry has been one of the biggest employees in the world. 50 million jobs internationally and 30 million jobs in Asia have entered into the red zone because of the pandemic after effect. Online businesses and tour operators till the recent past has been one of the prosperous entrepreneurs are likely to lose Rs. 4,312 crores and Rs, 2,500 crores, respectively.

The number of national and international travellers had been booming till 2019. In 2019, 28 million Indians travelled abroad and 120 crores travelled within the country. 1.89 crore foreigners came to India. The post pandemic scenario is going to be drastically altered. Hotels, gyms, religious tourism, eco tourism, visits to monuments, etc., had been booming till a few months back. The three month lockdown in the months of March, April, and May and the restrictions thereof have taken their toll. Temples are empty, gyms shut and monuments devoid of their admirers.

People have become sceptical of each other. Viewing a fellow with suspicious look has become the new norm. A new pariah has appeared on the horizon. The corona victim. People with slightest symptoms are actually facing a very different type of ostracism. Relatives are shunning them. Employees want medical certificates before employment. How can a tourism sector regain its own glory?

5. APPLICATION OF DOCTRINE OF FORCE MAJURE IN CASE OF PANDEMIC

Covid-19 disease has not only invoked fear and panic but also raised a set of legal issues on which a long term silence will be observed.

Force Majure legally is quite different from its conceptual perception. It has a 400 years old English and 75 years old Indian jurisprudential context. Arguably contract between parties is of Supreme importance if specifically a pandemic is anticipated. English law in this case, has persuasive values whereas in Indian context, courts are guided by sections 32 and 56 of the Indian Contract Act, 1872. The most preferable juristic principle is that of what a ‘legal’ hypothetical ‘reasonable man’ would be doing in an event of Force Majure. Critically speaking, in terms of case law, strong words and threshold puts successful application of Force Majure at a very high pedestal. This requires at the very outset that the foundation of bargains is upset from the very beginning. Force Majure is negated by alterations, minor or significant or highly onerous enhancements or humongous increase in expenditure. Judicial adumbration occurs even in a radically altered new contract or where there is break in identity with older contract. Least judicial importance is laid on price, cost and monetary changes. Thus travel contracts executed earlier seem to be rescinded in times of pandemic as has already been seen and any price or cost tag is not the least concern of the parties in vogue. A Chinese judgement (application of English law in Hongkong) in an identical context of Severe Acute Respiratory Syndrome (SARS), 2003 denied relief within the lock in period because of a month’s disruption of occupation due to SARS lockdown.

It is because lockdown rules clearly possess all the attributes of law and are bindings.
6. **HOW DOES THE VIRUS ALTER THE FUTURE OF TRAVEL ECONOMICS AND LAW?**

6.1. **Flying Less and Paying Through Nose**

During the last few years due to aviation boom, there was competitive travelling with lean periods seeing reduced costs for varying destinations. The terminals, stations, etc., were bustling but suddenly pandemic has made them into ghost towns. Travelling has become existential and only to be pursued in grave emergency. Flights have reduced and costs enhanced. However, airlines are going bust. According to Centre for Asia Pacific Aviation, “by the end of May, 2020 most airlines in the world will be bankrupt.”

6.2. **What lies in future?**

- With increased checking for infection, like temperature at entry and exit, less and less people will opt to travel with a resultant loss of economic serendipity.
- Contactless check ins and outs will become the order of the day, which in effect will place more reliance on digital accessories, resulting in more expenditure.
- Physical distancing in seating at public places and transports shall lead to lesser occupancy.
- Fewer flights and steep price as a non-negotiable factor and in most cases of cancellation, non-returnable dues\(^9\) shall become the prevailing norm.
- Buffets would become solo and hotels if required shall be turned to quarantine centres.
- Travel restrictions shall stay in place all over the world as 93% people reside in countries affected by the present pandemic.
- Partial or total border closures to non-citizens/immigrants both in inter country and interstate border\(^9\) maybe observed, which may lead to unnecessary management hassles, resulting in loss of manpower, loss of livelihood, etc.
- Asylum seeks, immigrants having a complete closure at doors of recipient countries, thereby cascading a human rights abuse of humongous proportions.

6.1.3. **Air Travel and COVID-19 Scare**

Flights resumed after 60 days of lockdown. Although only emergency flights to bring back the stranded Indians, which was quite redundant since regular domestic flights had been hold since March 25, 2020 the day lockdown began. The logic behind suspension of air travel was keeping in check the spread of virus. But this caused a catastrophic economic fallout to aviation industry and an equally difficult situation was thrown to the inconvenience of millions of people travelling for business or work related excursions. However, restrictions are being slowly eased and travelling allowed. But as discussed

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\(^7\) Annual Report by Centre for Asia Pacific Aviation.

\(^8\) Discussed under the Force Majeure clause.

\(^9\) As seen at UP- Delhi-Haryana border.
earlier, it wouldn’t be the same again. Presently there is an upsurge in afflicted cases and hence one cannot be complacent. But is it so on the ground?

Although many regulations are being framed on a day to day basis but with easing restrictions, people are less and less complying. Earlier the strict rules of pre-boarding etiquette i.e., medical examination, sanitisation, temperature mapping and post boarding quarantine is now taking a slow back burner. Airlines are in a rush to make good their losses. But they should be cautious. The worst is just starting with a steep rise in the number of cases.

7. NEWER TRENDS

With the spread of corona virus, worldwide movement got restricted. 2020 saw a complete disruption in travelling, No industry was spared by the pandemic, but travel industry was the worst hit. Now, that the anti covid vaccination has started and this can herald in rejuvenating the industry. Previous travel restrictions like those seen post 9/11 terrorist attacks actually became sheet anchor in prioritisation of air travel safety measures.

Certain trends which can be observed predominantly are as follows:

7.1. PROOF OF VACCINATION BEFORE INTERNATIONAL AIR TRAVEL:

As per Allen Jois, Quantas Airline chief, “in the month of November, Quantas Airline had said that the once the vaccine made available, it would be pertinent that air travellers produce proof of vaccination, before starting their air travel itenary”. Many other airlines are actually whetting the possible use of health care apps like Common Pass, ICC, AOK Pass, and Verify.

7.2. PRIORITY GIVEN TO ONLINE BOOKING PLATFORMS

According to Dr. Anthony Fauci (American infectious disease specialist), “for an effective and safe air travel, vaccine will play a pivotal role”.

With vaccination, getting worldwide approval and usage there will be an increased demand for travelling and priority shall be given to online booking platforms10.

7.3. EXPECTED TRENDS IN THE TRAVEL INDUSTRY IN 2021

The trend of working remotely from faraway places in “work from home” culture is expected to take precedence, as people would prefer this option which enables them to balance their work, while also enabling them to travel to faraway places.

7.4. MASKS WILL STILL BE NECESSARY

Despite the vaccination, wearing of masks will still be an essential component of outdoor movement, as it is not clear that despite the immunity obtained through vaccination, whether the virus will be completely obliterated from its port of entry i.e., nasal cavity.

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10 Scot Cage, Founder of Scots Cheap Flights on Rise of online booking platforms.
7.5. When Will Business Travel Resume?

As per Jen Fritag (Director of Real Estate firm-Costar), “business travel will gain momentum possibly in the third quarter of 2021. Due to cap on corporate travel and the ensued restrictions, the attendance in most offices in US has been approximately 24%.

7.6. Family Vacations

As per a survey done by home rental company URBO, “82% of American families have made plans to travel together in the year 2021” (Future of Tourism during Pandemic. New York Times 2020).

8. Conclusion: Work Through Failure

Almost every news portal or information dissemination platforms gives a despondent narrative- loss of jobs, pay cuts, rising prices, and to add to the confusion the new Chinese aggression. The scene just changed within a span of 90 days. Where everything was going smoothly it just went tops tarvy within a few days. The ground swell has occurred and earth beneath the feet is shaking.

However through many seminal issues of failure one must plan to move ahead.

“Pray to the God sailor, but row for the shore”

Old Russian sailor’s proverb.

If one looks negatively at stories of people currently facing a crisis then looking at answers to plans to deal with this situation is short of an ideal one. One must look at all variants from an open perspective. Many online advisors are giving dreamy solutions but if asked succinctly as to how do they recommend their intention to execute these dreams, only feeble answers emerge. Whatever happened? Did the Covid scare actually dulled our imagination and smashed to smithereens the ambition we had? Has the outcome, driven so much fear that one has become afraid to make real moves.

But as has been aptly put “If we live long enough without experiencing any setback we are redundant”.

This is the age of data and as one knows data outlives it very shortly. Knowledge and expanding skills is the only way out. There is a word in Urdu “aukat”. Hugely misconstrued this word actually gives one an outline of the limits, one must pose. The more you expand your “aukat” or limit, the more you’ll be relevant.

So economic reinvention backed by appropriate laws actually becomes a way out and that in essence is not very difficult. So instead of accepting failure one should give up boasting about past successes and move on into future with new skills and multitasking.

Reference:


