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NEED FOR AN ENFORCEABLE INTERNATIONAL REGIMEN ON PANDEMICS AND ISSUES ARISING THEREFROM

The COVID-19 pandemic, that has brought the world onto a standstill, has brought into sharp focus the need for a comprehensive enforceable international regimen on pandemics, dealing with medical, commercial, contractual, employment, reporting, international monitoring, penalty for negligence or non-compliance and other emerging issues.

Recurring pandemic outbreaks in 20th & 21st Century

At the outset, it is important to note that right from the inception of 20th Century till date (the period we may describe as the 'Modern Age'), the world has suffered pandemics in almost every decade. The most dangerous was the outbreak of Spanish Flu of 1918-20 which infected about 500 million people (a third of the then world population) and resulted in at least 50 million deaths worldwide. WHO website also reports numerous pandemics of Cholera, AIDS, Malaria, Typhus, Tuberculosis and Small Pox which collectively killed several hundred millions of people worldwide during the 20th Century.

The two decades of this 21st Century have fared no better. There was outbreak of SARS-CoV (Severe Acute Respiratory Syndrome – Corona Virus) pandemic in 2002-03 which affected about 8437 persons and

resulted in about 813 deaths worldwide. According to WHO, the disease was caused by an animal virus from an as-yet-uncertain animal reservoir, perhaps bats, that spread to other animals (civet cats) and first infected humans in the Guangdong province of southern China in 2002. The H1N1 Swine Flu pandemic of 2009 killed more than 18,000 people. There were also serious epidemics of Ebola Virus Disease which killed 11,323 people in West Africa during 2014-16 and Zika Virus of South America in 2016, which were contained before they could reach pandemic level. And now in 2019-20 a scourge like the Spanish Flu has reappeared in the form of COVID-19.

Present international regimen on pandemics

Despite the recurring pandemics during the last 12 decades, the present international legal regimen on pandemics is rudimentary, non-binding, unenforceable, non-specific and non-comprehensive.

The source of the present international regimen flows from Article 12(1) of the United Nations' International Covenant on Economic, Social and Cultural Rights which was adopted on 16th December 1966 and came into force on 3rd January, 1976. It provides – 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'

More specific to the topic of prevention of pandemics, International Health Regulations (IHR) have been devised by WHO setting out guidelines on reporting, surveillance, monitoring and control against international spread of disease. The IHR were first devised in 1969 and

after the SARS outbreak, a new and detailed IHR was framed in 2005 which entered into force on 15th June, 2007. In 2011, WHO introduced a Pandemic Influenza Preparedness (PIP) Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits, with 194 participating countries. Under a Global Influenza Surveillance and Response System (GISRS), an international network of influenza laboratories conduct year-round surveillance of influenza, assessing the risk of pandemic influenza and assisting in preparedness measures. Countries are expected to share their pandemic potential influenza viruses and the laboratories coordinate in trying to develop vaccine thereto. WHO tries to ensure that all countries get some of the vaccines.

Why a new international regimen is necessary

COVID-19 has shown that a pandemic has serious medical, economic and legal consequences worldwide and therefore it cannot be left to the originating or affected countries to deal with it as it pleases.

To give an example, there is evidence that the first death due to COVID-19 took place in Wuhan, China in mid-November, 2019 (though it was at that time ascribed to pneumonia due to unknown cause). China reported to WHO China office only on 31st December 2019 after thousands of people had already been infected. Again it was only on 9th January 2020 that China reported the outbreak to be a new type of Corona virus. Even on 24th & 27th January, 2020 WHO issued advisories that “measures to limit the risk of exportation or importation of the disease should be implemented, *without unnecessary restrictions of international traffic*”. The outbreak was declared a Public Health

Emergency of International Concern by WHO only on 30th January 2020, by which time it had already spread to most of the globe. Yet on 29th February, 2020, WHO issued advisory stating that – “*WHO continues to advise against the application of travel or trade restrictions to countries experiencing COVID-19 outbreaks.*” The result of lapses by both China in initial reporting and by WHO in dealing with the initial outbreak, is for all to see. Under the present regimen, there is no accountability for the lapse. There is no liability fixed for the mass loss of lives and livelihoods. It is another matter that USA has sought to cut off funding to WHO and is contemplating legal action against China, but any such action would be under the general law of torts.

It is important to note that it has been found that countries routinely do not report epidemics in their territory for fear that it would hamper international trade and tourism and impact their economy. This delinquency needs to be taken seriously after the COVID-19 outbreak which shows the extent of damage that can arise internationally on failure to report. The obligation to report must be accompanied by adequate penalties for non-compliance.

Even after COVID-19 affected tens of thousands all over the world, there was no common international regimen followed by the different countries. Some countries imposed different degrees of restrictions on movements, some countries went ahead to impose a lockdown, some countries let the infection spread amongst the people to obtain ‘herd immunity’ while some others did nothing. The world leaders spoke in divergent voices even on such issues as wearing of masks and avoiding handshakes, leading to wide confusion amongst the public. The

guidelines given by WHO itself (even apart from the travel advisories), were found faulty on several occasions. It is necessary that a proper medical regimen be established for pandemics, to be compulsorily followed by all countries.

In this context, it is pertinent to note that according to WHO, SARS-CoV outbreak may have originated from bats. COVID-19 is also widely suspected to have originated from consumption of wild bats or pangolins. It is therefore necessary to give a mandate to all countries to ban consumption of certain animals, either permanently or temporarily, that have the potential of zoonotic (animal to human) transmission. It is important to ensure that where a non-human carrier or vector is identified, the same does not cause an epidemic or pandemic in future.

The existing international regimen only focuses on medical measures and not the commercial or legal aspects. COVID-19 outbreak has resulted in lockdowns and restrictions all over the world, but in different degrees. However, there are no guidelines regarding the legal effects of such lockdowns in some areas on international commercial contracts, services & employments (especially foreign employees). It is necessary to issue guidelines on various issues like applicability of Force Majeure clause, extension of limitation, revocation of contracts, expiry of visas, expatriation of foreign nationals, lay off of workmen with or without pay for the period of lockdown etc. so that there is some degree of uniformity amongst the various countries in dealing with these aspects. Hence the need arises for a comprehensive international code.

The present regimen on pandemics is non-binding and unenforceable. There are no penalties prescribed. It is necessary that a new

international regimen be set up which would bring to book (through International Court of Justice) countries that have through deliberate acts or omissions or through culpable negligence, endangered lives and livelihoods across the globe. The enforcement of any compensation or penalty in this regard, should be non-vetoable and in case of non-compliance, punishable by removal from United Nations and/or imposition of international sanctions.

COVID-19 has been an existential threat to mankind. It is necessary to learn from the mistakes that have led to a calamity of this magnitude and initiate measures to prevent and deal with such a scourge.

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