

QUARANTINE AND THE LAW

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It was about 196 years ago (1824) that the U.S. Supreme Court, in an *en banc* sitting led by Chief Justice John Marshall, affirmed the powers of the state to enact quarantine laws and impose health regulations. The world has since faced many health emergencies caused by dangerous diseases. This [virus crisis](#) is also not new.

Quarantine is considered the oldest mechanism to reduce the rapid spread of bacterial infections and viral onslaughts. It has been legally sanctioned by all jurisdictions in the world for the maintenance of public health and to control the transmission of diseases. Since ancient times, societies have practised isolation, and imposed a ban on travel or transport and resorted to maritime quarantine of persons.

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These measures were often forcibly enforced to prevent or reduce the wider spread of disease and to safeguard the health of citizens not yet exposed to such diseases. In the list of diseases that may require quarantine, issued by the Centers for Disease Control and Prevention, the Severe Acute Respiratory Syndrome that can go on to become pandemic has been recently added to the existing ones — cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever and viral hemorrhagic fever. It shows that quarantine is a medically accepted mode to reduce community transmission. However, a constructive alternative method of treating patients exposed to infectious diseases is the imperative need in the arena of public health.

The first law on medical isolation was passed by the Great Council in 1377, when the plague was rapidly ruining European countries. Detention for medical reasons was justified and disobedience made a punishable offence. The law prescribed isolation for 30 days, called a '*trentino*'. Subsequently, many countries adopted similar laws to protect the people. When the duration of isolation was enhanced to 40 days, the name also changed to 'quarantine' by adopting the Latin *quadraginta*, which referred to a 40-day detention placed on ships.

In common parlance, 'quarantine' and 'isolation' are used interchangeably, but they convey two different meanings and are two different mechanisms in public health practice. Quarantine is imposed to separate and restrict the movement of persons, who may have been exposed to infectious disease, but not yet known to be ill. But, isolation is a complete separation from others of a person known or reasonably believed to be infected with communicable diseases.

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The current COVID-19 crisis, with its closure of shops, academic institutions and postponement of public examinations, has put the people in a *de facto* quarantine. Nonetheless, the question whether a public authority or state can promulgate an order for quarantine is a legal issue.

When an employee of the World Wildlife Federation was diagnosed with Human Immunodeficiency Virus (HIV) in 1990, he was terminated from service and detained for 64 days in quarantine-like isolation under Goa Public Health (Amendment) Act, 1957 (GPH). The Bombay High Court (1990) felt that solitary detention was a serious infringement of basic human rights guaranteed to the individual, but held that under unusual situations and exceptional

exigencies, such isolated detentions are justifiable for the cause of public health. Such isolation, undoubtedly, has several serious consequences. It is an invasion upon the liberty of a person. It can affect a person very adversely in many matters, including economic condition.

But in matters involving a threat to the health of the community, individual rights have to be balanced with public interest. In fact, individual liberty and public health are not opposed to each other but are well in accord. The reason assigned by the High Court to uphold the quarantine was that even if there was a conflict between the right of an individual and public interest, the former must yield to the latter.

In 2014, Kaci Hickox, a nurse and health worker who voluntarily rendered service to Ebola patients and returned to New Jersey, was quarantined in the U.S.. It was opposed by her peers serving in public health. But the dreadful consequences of the disease, and the possibility of its spreading at an alarming rate, made the forcible isolation rational and reasonable.

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In India, the Epidemic Diseases Act, 1897, a law of colonial vintage, empowers the state to take special measures, including inspection of passengers, segregation of people and other special steps for the better prevention of the spread of dangerous diseases. It was amended in 1956 to confer powers upon the Central government to prescribe regulations or impose restrictions in the whole or any parts of India to control and prevent the outbreak of hazardous diseases. Quarantine is not an alien concept or strange action and it has been invoked several times during the bizarre situations caused by the cholera, smallpox, plague and other diseases in India.

The Director of World Health Organization (WHO) on March 30 determined that the outbreak of COVID-19 constitutes a public health emergency of international concern and issued interim guidance for quarantines of individuals. The guidance permitted the restriction of activities by separation of persons who are not ill, but who may have been exposed to an infectious disease within the legal framework of the International Health Regulations (2005). It also distinguished quarantine from isolation, which is the separation of ill or infected persons from others, so as to prevent this spread of infection or contamination. As per the WHO guidelines, possible quarantine settings are: hotels or dormitories and well-ventilated single rooms or homes, where a distance of at least one metre can be maintained from other members.

The Centers for Disease Control and Prevention, U.S., in its order on quarantine, expressly made it clear (Rule 9) that the people whose right is affected by an order of quarantine by a public health authority have the right to seek judicial review including the right to habeas corpus. Previously, it was in 1900, in response to an outbreak of bubonic plague, that an order of quarantine imposed on a Chinese citizen was struck down by the Federal Court in the U.S. because it was racially motivated and ill-suited to stop the outbreak. Therefore, courts have exercised their jurisdiction and powers to review and reverse quarantine orders.

The Supreme Court suo motu took cognisance of fears over the COVID-19 pandemic affecting overcrowded prisons in India, on March 16. The difficulties in observing social distancing among prison inmates, where the occupancy rate is at 117.6%, were highlighted and directions issued to prevent the spread of COVID-19 in prisons in India.

The setting up of isolation cells within prisons across Kerala, and the decision of the Tihar Jail authorities to screen new inmates and put them in different wards for three days are appreciated as reasonable preventive measures. Further, notices were issued to all States to deal with the present health crisis in prisons and juvenile observation homes.

Quarantine rooms may have strong closed doors or may be water and air tight compartments, but the rays of justice from the courtrooms have the powers to intrude in them. Of course, under the sun every object is subject to judicial review and quarantine orders are not exempted from it.

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