

APPLICABILITY OF EPIDEMIC DISEASE ACT, 1897 AND DISASTER MANAGEMENT ACT, 2005 UNDER THE AMBIT OF COVID-19

Written by Sriparna Pal

2nd year BA LLB Student, Calcutta University

ABSTRACT

India witnessed many large outbreaks emerging and re-emerging infectious disease in the recent past. Although there are several legal mechanisms to support health emergency in any epidemic or pandemic situation, they are not being addressed under a single legislation. The Epidemic Disease Act, 1897 is a century old Act passed to prevent the spread of “dangerous epidemic disease” but it still lacks the attributes to combat with the rising health emergency due to the spread of COVID-19. The Disaster Management Act, 2005 was enacted to provide for the effective management of disasters. But, in some places supply of essential commodities are disrupted. The current situation has brought the malleability of the legal framework to test by necessitating a realignment of laws to curb the spread of the pandemic by prioritising life over personal liberty and at the same time ensuring the continued and uninterrupted flow of essential commodities and services.

Keywords: *Epidemic Disease Act, 1897, Disaster Management Act, 2005, COVID-19, pandemic.*

INTRODUCTION

India is witnessing epidemiological transition. In the 21st century, the country is facing dual burden of diseases. While struggling to combat the burden of communicable diseases, our health system is also challenged to address chronic non communicable diseases.ⁱ Hundreds of epidemics occur each year but go unnoticed and unreported. Example- Cholera epidemic (1992), Plague (1994), Avian Influenza (H5N1) etc. To combat with any emergency situation, Legal frameworks are important as they can delineate the scope of Government's responses to public health emergencies and also the rights and duties of the citizens. In any pandemic situation, the acts that are required or invoked by the Central Government are Epidemic Disease Act, 1897, the Disaster Management Act, 2005 and many others.

The Epidemic Disease Act, 1897ⁱⁱ is a century old act passed with the aim of preventing the spread of "dangerous epidemic disease". Section 2 of the Act states that when the State Government is satisfied that the State or any part is threatened with an outbreak of any dangerous epidemic disease, and if it considers the provisions of the law are insufficient for the purpose of the State, then it may prescribe regulations for inspection of persons travelling by railway, or segregation in hospital, temporary accommodation, or of persons suspected by the Inspecting Officer of being infected with any such disease. Section 3, prescribes penalty for disobeying any regulation or order made under the act in accordance with section 188 of the Indian Penal Code, 1860.ⁱⁱⁱ Under this provision, a punishment of six months imprisonment or Rs. 1000/- fine or both if a person disobeys any order under the Act. Section 4, mentions that no suit or any other legal proceeding held against any person who intended to do anything with good faith under the Act. But this old act needs a substantial overhaul to counter the rising burden of infectious diseases.

This act is an ancient framework which is 123-year-old. It has accumulated number of flaws in these years which attributed to the changing priorities in public health emergency management. Apart from the isolation or quarantine measure the act is numb on the legal framework of availability and distribution of vaccine, drugs and implementation of response measures. Although India has a number of legal mechanisms to support public health measures in an epidemic situation, they are not being addressed under a single legislation. There is an urgent need to assemble all the provisions in one over-arching public health legislation, so that the

implementation of the responses to an epidemic can be effectively monitored. Without a comprehensive Public Health Act, we are dependent upon old blunt instruments like Epidemic Act 1897 which is non-functional in itself. Integrated Disease Surveillance Program (IDSP), through which routine disease surveillance data are collected and epidemics are responded, would also be used in responding the case of dangerous epidemics as perceived in this Act. A new law replacing this archaic legislation is required in the need of the hour. The Central Government is contemplating a new law to repeal the Act; hence it drafted the Public Health (Prevention, Control, Management of Epidemics, Bioterrorism and Disasters) Bill, 2017, which lays down measures taken by appropriate authorities in case of Public Health Emergency.^{iv}

In this contrast, the lawmakers can draw a leaf out of the Disaster Management Act, 2005, as it clearly defines all the terms and has an explicit description of all the implementing measures and agencies to be instituted in the event of any emergency. It provides for setting up a chain of disaster management authorities right from the Central to the District and Local levels to draw, implement and execute a disaster management action plan. It also ensures measures by various wings of the Government for the prevention and mitigation of disasters. National Disaster Response Fund (NDRF) was constituted by the Disaster Management Act, 2005 [Section 46]. It acts as a fund managed by the Central Government for meeting expenses during emergency response, relief and rehabilitation due to any threatening disaster situation. Disaster Mitigation Fund at National, State and District levels are also constituted under this Act. Section 12 of the Act, ensures strict compliance with minimum standards. It assists the respective State Government in the task of providing temporary, safe, hygienic, and secure living space, shelter and relief camps to meet the needs of people in disaster-affected areas.^v

The enactment of the Disaster Management Act, 2005 has adopted a new multidisciplinary focus on disaster prevention-

- a) The institutional structure under the Law required the creation of National Disaster Management Authority and the State Disaster Management authorities responsible for disaster preparedness and risk reduction at respective levels.
- b) The Disaster Management division of the Ministry of Internal Affairs maintained the responsibility for directing disaster response overall.

- c) Provisions for financial procedures, such as creation of funds, National Disaster Mitigation Fund and similar funds at district levels.^{vi}

Now, India is facing a crisis, which is declared by World Health Organisation (WHO) as a pandemic emergency due to the outbreak of COVID-19 (Novel Corona Virus). It is the first pan India 'Biological Disaster' being handled by the legal and constitutional institutions of the country. The current lockdown has been imposed under the Disaster Management Act, 2005 as per order dated 24-03-2020 of National Disaster Management Authority (NDMA), Government of India to take measures for ensuring social distancing so as to spread of COVID-19 (Section 6(2) (i) of the said Act).

India's large population poses an administrative challenge in dealing with any disasters, especially a pandemic such as COVID-19. In the true spirit of the Disaster Management Act, 2005, and federal structure National and State political as well as the administrative agencies should be more collaborative and consultative. Issues like movement of migrant labourers, availability of food to daily wages, relief camps, entitlement of statutory minimum relief, etc. that directly affects millions in the country needs special attention. The "Report of the Task Force to Review Disaster Management Act 2013" suggested that the present structure of various authorities under the Act is not conducive for carrying out the tasks it has been mandated to perform. As per the Act, District administration and local self-government should be administratively, politically, and financially empowered (Section 30 and 41 of the said Act).^{vii}

During the pandemic emergency (COVID-19) Constitutional Courts play a significant role. But there are complaints of discrimination in police cases, lack of medical aid from all corners of the country. Pertinently, there is bar on jurisdiction of Courts (Section-71 of the said Act) and there is no redressal mechanism under the Disaster Management Act, 2005. Having assumed the role of "*sentinel on the qui vive*",^{viii} it is obligatory on all Constitutional Courts in the country to "*sue moto*" register Public Interest Litigation (PILs) and closely monitor the implementation of the Disaster Management Act, 2005, ensure rule of law and protection of human rights as guaranteed under the Constitution of India.

However, the Epidemic Disease Act, 1897 gives the Central and State Governments overarching powers, it lacks provision enabling them to speedily set up management systems

required for a coordinated and converted response. It has also been criticised for being ancient and not up to speed for contemporary health challenges.

Basically, India lacks specific legislations to deal with pandemic like COVID-19. While the Disaster Management Act, 2005 and Epidemic Disease Act, 1897 has been invoked to deal with the present situation, both Acts lack specific provision in dealing with the pandemic. Here, we can take lessons from the UK's Corona Virus Act and Singapore's Regulations to create a well-drafted Indian COVID-19 Law-

- U.K's Corona Virus Act, 2020: It deals with issues including emergency registration of healthcare professionals, temporary closure of educational institutions, audio-visual facilities for criminal proceedings, powers to restrict gatherings, and financial assistance to industry.
- Singapore's Infectious Diseases Regulations, 2020: These regulations provide for the issuance of stay orders which can send 'at-risk individuals' to a government-specified accommodation facility.^{ix}
- Both U.K.'s and Singapore's laws set out unambiguous conditions and legally binding obligations.

As such, under Singaporean law, the violators may be penalised up to \$10,000 or face six months imprisonment or both.

In contrast, Section 188 of the Indian Penal Code has a fine amount of \$200 to \$1,000 or imprisonment of one to six months. Even then, proceedings under Section 188 can only be initiated by private complaint and not through a First Information Report. As such, offences arising out of these guidelines and orders have a weak basis in terms of criminal jurisdiction thereby weakening the objectives of the lockdown.

In case of health emergency, hospital system also collapses. The indirect health impacts are usually caused due to various factors including insufficient supply of drinking water, collapse of the sanitisation system, reduced access to health services and food insecurity. Overcrowding and inadequate shelter only aggravate the situation. Thus, access to adequate health care is a critical determinant for affected community's survival during the initial stages of pandemic health emergency.

It is felt that the Acts have major limitations in the current scenario as it is outdated, merely regulatory and not right-based and also lacks a focus on the people. There is a need for an integrated, comprehensive, actionable and relevant legal provision for the control of outbreaks in India.

To conclude, we may say that a new and robust epidemic law must form to combat with the current emergency situation.

The Act should provide a body like National Disaster Management Authority (NDMA) having representation from both the Centre and States, responsible for designing and implementing well-coordinated surveillance, identification of affected persons, tracing them, quarantine, isolation, testing strategy and treatment. It must also empower the body to plan a comprehensive and reasoned lockdown strategy, taking into account disruptions to supply lines, essential and non-essential services, human migration, relief and food support and all non-health services and utilities.

The Act must have provisions to allow financial support and relief measures to the weaker section of the society, health care providers, animal care and livelihood safeguards.

The Act must provide adequate power to the States to design and enforce responses as per their local assessments, such as preparing health facilities to respond to various challenges at the District, Block and Gram Panchayat-level. For example, the West Bengal Government has conferred powers on the Mayors, Municipality Chairman and Gram Panchayat to enforce isolation and quarantine of the migrant workers returning home from outside.

The Act must put in a more robust disincentive scheme, which should include a combination of civil and criminal penalties for violation of authorities' orders. Currently, it provides only for criminal penalties. This should also include stringent punitive action against people abusing or mistreating frontline workers like doctors, nurses, paramedics, village-level health workers, and sanitary staff and police personnel, accompanied, of course, by sufficient safeguards against overuse or misuse.

The Act must also have provisions to protect every citizen's rights such as privacy. The balance between public health and the right to privacy must not be sacrificed at the altar of an emergency response. Any government response which involves surveillance or collection of

personal data of individuals must also have adequate checks and balances to ensure proportionality and reasonableness of data collection. It must have provisions of anonymising the personal data, rigorous record-keeping, non-disclosure of personal data publicly and its deletion when the purpose of collection has been exhausted.^x

Thus, The Disaster Management Act, 2005, and the Epidemic Diseases Act, 1897 are innovative, but they still fall short of comprehensively dealing with outbreaks.

REFERENCES

ⁱDepartment of Community Medicine, Post Graduate Institute of Medical Education and Research School of Public Health, Chandigarh, India.

ⁱⁱ Act no. 3 of 1897.

ⁱⁱⁱ Act no. 5 of 1860.

^{iv} Public Health Bill, cl.2(y).

^v DR. SUBHRADIPTA SARKAR, DISASTER MANAGEMENT AND PROTECTION OF HUMAN RIGHTS IN INDIA, (Page- 100, Thomas Reuters 2019).

^{vi} Diva Ral, *Disaster Management Act, 2005 with respect to COVID-19*, i- Pleadings, Apr. 21, 2020.

^{vii} M.P. Ram Mohan & Jacob P. Alex, *COVID-19 and Ambit of Disaster Management Act*, The Week, Apr.26, 2020.

^{viii} State of Madras v V.G. Row, (1952) AIR 196 SCR 597.

^{ix} Manuraj Shunmugasundaram, *India needs to enact a COVID-19 Law*, The Hindu, May 08, 2020.

^x Amar Patnaik & Nikhil Pratap, *India needs a new Epidemic Control and Management Law*, Hindustan Times, May 21, 2020.