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# Inadequacy of Indian laws to deal with a pandemic

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**Abstract**---While the pandemic diseases have progressed and taken brutal shape and forms, the Indian state is equipped with a pre-colonial Epidemic Diseases Act, 1897 to deal with the vast challenges put forth by a pandemic. The country banked on age old techniques of quarantine, physical separation (incorrectly calling it social distancing) and a general practice of several trial and hit methods. This article examines the adequacy of the law in dealing with a pandemic in modern times that is riddled with complex economic relations, need for personal freedom and a huge amount of pressure on limited resources to deliver public health and safety in a self-acclaimed welfare state. It delves into various aspects of working through a pandemic where the law was found wanting or not actively assisting or supporting the efforts of the state and its enforcement agencies in curbing the pandemic.

**Keywords**---pandemic, COVID-19, framework, act.

**Introduction**

The Constitution of India puts the onus on both the state and the union government in dealing with health catastrophes such as a pandemic. It is required that in such strenuous times the efforts of the two are coordinated whereas the state is also equipped with power and resources to deal with the unique challenges that might emerge locally. Various states used the laws enlisted below to deal with a pandemic:-

- Epidemic Diseases Act, 1897
- Disaster Management Act, 2005
- Essential Commodities Act, 1955
- Section 260 and 270 (Negligent and malignant act likely to spread infection of disease dangerous to life)
- Drugs and Cosmetics Rules, 1945
- The Essential Services Maintenance Act, 1968
- State Public Health Act (if any)

At the beginning of the pandemic, the Union Government summoned its powers under the Disaster Management Act, 2005 to improve the readiness and regulation of COVID-19 at national level. Notifying the pandemic as a 'disaster' empowered the states to utilize assets from the State Disaster Response Fund on COVID-19. Later, the Ministry of Health directed the state governments to ensure the enforcement of Section 2 of the Epidemic Diseases Act, 1897 which empowers the state government to take any suitable action to contain the spread of a pandemic.

It is noteworthy, that international laws also exist that make it binding on a country to take pro- active steps for the containment of a pandemic. India being a signatory to the International Health Regulations, 2005 (IHR) promulgated by World Health Organisation is required to cooperate and coordinate internationally in the management of a disease and its containment and to ensure that it does not spread outside national boundaries and at the same time ensuring that least amount of disruption is caused to international trade and traffic. This is done through the Integrated Disease Surveillance Program (IDSP).

### **The scope of the Epidemic Diseases Act, 1897**

The Epidemic Diseases Act, 1897 has three major aspects to prevent the spread of an infectious- disease. Firstly, it empowers the government to take all suitable actions for control of spread of the disease, including but not limited to quarantine, isolation and ban on gatherings. Secondly, it enforces a penalty on those who disobey government directions and orders. This penalty is Rs 200 and/or imprisonment for upto a month for disobeying the orders of a public authority and if the interference of a person amounts to cause a danger to public safety then the fine imposed is Rs 2000 and imprisonment upto 6 months can be given. The act also safeguards the public servants from litigation or any adverse action against them for duties performed under the act. Section 4 of the act states that no civil suit can be brought against officers working under this Act.

However, needless to say, as experience has already shown, the act suffers from major lacunae and shortcomings. Some of which are enlisted below:

1. It does not address the issue of violence against medical authorities and enforcement agencies or damage to public property. A fine of Rs 200 or 2000 along with imprisonment ranging from 1 month to 6 months is grossly insufficient to deal with the challenges posed. A lack of proper set of rules and law in this regard resulted in demotivation and fatigue amongst the frontline workers who were already under paid and overworked.
2. Lack of law-regulated compensation to frontline workers serving during the pandemic. In absence of a proper mechanism and policy related to compensation for workers, the disbursement of compensation to the kin those frontline workers who lost their lives was haphazard and in complete disarray further causing confusion and discontentment among the workers.
3. For the compensation of those who lost their life in the pandemic, and were the sole bread winners of the family, the law is again silent. Infact, the Hon'ble Supreme Court of India had to intervene to ensure the compensation to the kin of those who die in the pandemic.

4. The silence of the law with respect to vaccination is especially daunting considering it is the major long-term weapon in fighting a pandemic. As witnessed during the corona virus pandemic there was a major hue and cry with respect to disbursement of vaccines as well as those refusing the vaccines. Law also needs to state clearly the compensation available to the person if one suffers from any grave side-effects of vaccine. At the same time, costs including restriction of travel amongst others, need to be imposed on those refusing vaccines for ingenuine and flagrant reasons. A district level high committee, mandated by law, should be empowered to grant exemption for vaccines for medical and other reasons
5. While managing the isolation centres during the pandemic, various administrative issues were faced by the local authorities. The epidemic law was silent on what percentage of beds could be reserved in hospitals for the management of infected patients. In absence of the same, various districts and states devised their own formulas to reserve beds, at times through use of coercion and force.
6. The law was designed during colonial times and does not cater to modern needs. It was seen that public movement including essential movement of goods and persons was arbitrarily curbed by the enforcement authorities which resulted in lack of access to emergency medical care for many. Old aged persons and vulnerable persons who needed access to their care takers for their daily life were also rendered helpless. Thus, it is required that such details be pre planned in mandated by law so that suitable arrangements can be made in advance.
7. A rampant practice that flourished during the pandemic was illegal raising of funds. While there are laws in place to prevent the same. However, given the special circumstances of a pandemic the law needs to be more stringent in pandemic times so as to proactively discourage people from resorting to these malpractices.

In absence of a law adjudicating on the above listed matters, the states were compelled to draft their own rules and regulations in the middle the pandemic to deal with the challenges being faced. For example, the Bihar Epidemic Diseases COVID-19 Regulations 2020, Uttar Pradesh Epidemic Diseases COVID-19 Regulations 2020, Delhi Epidemic Diseases COVID-19 Regulations, 2020 were drafted and issued to empower the officials to quarantine the infected people or people suspected of being infected.

### **Regulations vis-a-vis Right to Privacy**

It becomes imminent to also evaluate the law with respect to its ability to not cause any infringement on the right to privacy. In its recent judgements, Supreme Court has repeatedly upheld the right of privacy, which also includes the right to be left alone. However, in context of a pandemic, the law needs to evolve a balance between the right to privacy and the right to protection, both of which are fundamental rights extended to the citizens of India. Certain reasonable limitations have to be imposed in the practice of right to privacy so as to enable the state to govern its citizens with efficiency. These limitations, however, must be in the general public interest.

Previously, in Kharak Singh case and M P Sharma case, the Hon'ble Supreme Court had adjudicated that the constitution does not guarantee the right to privacy. However, in its subsequent judgements like the Maneka Gandhi case, Govind vs State of MP, R Rajagoapala vs State of Tamil Nadu, the Hon'ble Supreme Court began recognising the right of privacy as an essential right and began giving it protection under the constitution. In the landmark judgement, with respect to privacy, the Puttaswamy judgment, the court set out the accompanying tests for restricting the watchfulness of the State while impinging on the central right to protection. The tests imposed are as follows:

1. The basis for limitation of right to privacy should be "legitimate aim".
2. There should "proportionality" in the aims to be achieved and the limitations placed on privacy of an individual.
3. The actions of the state must be legal.

While the Epidemic Act provides for over-arching powers to the state, it becomes impossible to gauge the application of these criteria. However, it is still extremely beneficial since it holds the state accountable for its actions performed under the Act or for regulations germinating from the Act which fail to meet the criteria set by the Hon'ble Supreme Court. The Epidemic Diseases Act, 1897 provides wide ranging and unencumbered powers to the state authorities. A gore example of the same was seen when during the outbreak of the coronavirus in the state, the police forces brutally beat up ordinary people on the streets for violating the lockdown, even if the people had legitimate reasons for stepping out of their residences. Undoubtedly, the Act does not validate or legalise such police brutalities, but it also does not provide a remedy for police and administrative abuse and misuse of power. However, the people have a remedy and can challenge the police excesses after the Puttaswamy judgement.

### **Filling the gap**

The Epidemic Diseases act empowers the state authorities to issue temporary regulations to prevent the outbreak of the disease in case the existing laws are found insufficient to deal with the challenge imposed. Many instances of the same can be seen from the recent pandemic. For instance, using the powers extended by this Act a few states (Uttarakhand, Chhattisgarh, Madhya Pradesh, Bihar) regulated the spread of rumours and misinformation and regulated that publication of any information with respect to coronavirus without the prior approval of the government is a punishable offence. Other states utilised the Act, to establish isolation centres, enforce lockdowns, establish containment zones, regulate timing of shops etc.

### **The Way Forward**

While the Epidemic Act, 1897 was designed to fight the Bubonic Plague that emerged in Bombay under the rule of erstwhile British Empire, it is grossly insufficient to deal with the welfare state ambitions of the current Indian State. It is a welcome change that the policy makers have recognised the same to at least some extent and have come with the ordinance to meet the current challenges, if not fully then at least partially. The ordinance aims to protect the healthcare

workers from violence and raises the penalty for the offence. The offence has been made non-bailable and cognizable, punishable with imprisonment upto 6 years and fine ranging from fifty thousand rupees to 5 lakh rupees along with compensation to the victim or kin of the victim.

### **Conclusion**

As is being seen with the repeat occurrences of coronavirus and predictions of the scientists, our fight with the pandemic is long and arduous. In these circumstances it is essential that we are equipped with laws that maximise the welfare of the people and also protects the life and liberty of the law enforcement officers, medical professionals, sanitation workers and other frontline workers. Clapping, lighting of diyas and showering of petals are not a substitute for legal framework to protect the frontline workers. Many lives can be saved and limited precious resources utilised efficiently if the law is designed suitably. Stakeholder consultation is essential in its drafting so as to balance the unique interests of different sets of people. At the heart of the legislation, however, must be to save the maximum number of lives without encroaching upon the right to privacy of individuals. The lacunae as discussed above in the current laws must be addressed and filled to prevent the chaos and unplanned action taking witnessed in the management of current crisis. The law must also punish and penalise the inaction and neglect by the state which results in loss of life of its citizens. It is hoped that the policy makers have learnt valuable lessons after this crisis and we can look forward to better management and legal framework to deal with challenges in the future.

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