

The Urge of Legislation:- To Combat Epidemical Administration

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ABSTRACT

The Pandemic of Covid – 19 reminds dreadful time mankind has underwent. The entire globe had been affected in the means of social, economic and political life. The outbreak of Covid Pandemic was one the huge and widespread disaster which enfolds the mankind and made the Government disable and handicap at the initial stage. Pre and post India had evident the epidemical situations very frequently due to lack of awareness, medical development and economical crises but the legislative support to overcome the situations was not upgraded. The Epidemic Diseases Act 1897 was the only legislation to be invoked at the time of medical emergency. Prior to Covid pandemic, EDA 1897 was enforced and implemented at all alarming medical emergencies but this brief legislation would not equipped against Pandemic of Covid19.¹ The powers provided under DMA 2005 were also invoked by the Central Government. Soon the Government has realised that the existing legislative measures are lacking and there is an urgent need to enact new laws and amend the existing laws, to deal with such situations in future. The Outbreak of Covid 19 Pandemic was evident most recently which have left its scars in the minds, thoughts and hearts of millions over the globe. The pre Independent laws to combat the epidemic are quite short and could not prevent the spread of epidemic in the heterogeneous society like India.

In this research paper, researchers have tried to study and present the current Constitutional and legislative provisions in India to deal with health emergencies. On the basis of analysis this paper suggests some recommendations for amending current legal provisions and suggests the pronouncement of comprehensive public health law. This paper is mainly based on primary sources such as the EDA, DMA and Constitutional Health provisions along with secondary sources such as articles and published papers. This research paper also emphasizes the need for comprehensive public health law for effectual prevention, control, and management of pandemics. The present study relies on secondary sources which are collected from authenticated sources available through physical and digital modes².

KEYWORDS: Constitutional Provision, Covid-19, Disaster Management, Epidemic diseases, Legislation

INTRODUCTION:

Case Study of Covid Pandemic 19

India, being second largest populated nation in the world, encountered a diversity of epidemics and pandemics during 19th – 20th century. Several epidemics like influenza, cholera, polio, small pox, dengue, chikungunya, SARS have eroded the mankind morally, socially and economically. The development in medicine and research has effectively eradicated many of diseases; but few of ailments have alarmed the society at different times.

The biggest pandemic which shuttered the entire globe and hit the mankind in 2019 “Novel Corona Virus Disease 2019” in its short forms known to be COVID-19. Corona Virus was a dreadful disease causing infection in the respiratory system and proved to be fatal. The origin of the virus was located in Wuhan city of China after which March 2020, the World Health Organisation (WHO) declared the Corona Virus outbreak a pandemic. The spread of disease was basically through the contact with infectious person primarily through respiratory system.³

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As a consequence of outbreak of pandemic in India, all social, economical life came to standstill. The educational institutions, business work place, commercial Governmental and non-governmental offices, transport and communication system came to pause. The mankind was stuck and to avoid the flourishing of the pandemic initial lockdown of 21 days was declared unfortunately extended further. The national and International, intra-state travel, was prohibited. Stringent measures were made applicable by the state and centre to promote social distancing.

Thousands of migrant workers were walking from corner to corner of India to come together with their families in their native places. Migrant workers have faced multiple hardships during the **COVID-19** pandemic. Because of the closure of factories and workplaces due to lockdown, millions of **migrant workers** had to bear with the loss of income, food shortages, and insecurity. This disease has affected various industries and sectors including the pharmaceuticals industry, power sector, educational institution, tourism, agriculture, justice system etc. Covid- 19 has devastating impact on the economy.

The Epidemic Diseases Act 1897, Quarantine Act 1870 along with other legislative provisions was enforceable to control and come out of dreadful situation. The Covid 19 pandemic stimulated a need of urgent legislation to control the human fatality by equipping

the State to implement the measures so as to sustain the nation with health and maintain the economic stability. In battle with Covid 19 it was well comprehended that a medical preparedness and detailed legislation can significantly curb down the worst epidemic situation.

Aligned with this background, this paper focuses on identifying and understanding the pre & post Covid-19 constitutional and statutory provisions in India that are existing to face a health emergency like the Covid-19 pandemic. Also the researcher is identifying possible areas for reinforcement of the legislative structure to face health emergencies in the future.

OBJECTIVES OF THE STUDY:

1. To examine the implementation of legislation during Epidemic and disaster situations.
2. To suggest the need of amending law measures for overcoming health emergencies.

RESEARCH METHODOLOGY:

The present research paper is based on qualitative information gathered through authentic various secondary data available through physical and digital sources. The information collected through the reliable sources such as online journals, books, magazines, government reports, research articles, and websites, etc.

REVIEW OF RELATED LITERATURE:

Provisions related to Health and Pandemic:-

The Indian Constitution containing preamble and 448 articles is the longest constitution in the world, divided into 12 schedules and 22 parts. India is declared as a “sovereign, socialist, secular, democratic republic” and secures all its citizens “justice, liberty, equality, and fraternity.” Taking into consideration these broader principles, laws are drafted, discussed, and passed in Parliament and state legislatures, and then executed. Considering the context, it is a basic responsibility of the state towards the welfare of the citizens in unanticipated situations and calamities. From this perspective, this paper is divided into two parts. The first part concentrates on the health-related provisions enumerated in the Indian Constitution with the second part providing an analysis of different legislations which the Government of India has evoked during this pandemic, including the Epidemic Diseases Act and the Disaster Management Act.

Since the nationwide lockdown the constitutional and legal structure of the management of epidemics and health emergencies has been at the front position of discussion and debates throughout the nation.

Indian Constitutional provisions related to health

The Covid 19 Pandemic was the massive epidemic post Independence which alarmed the political, social, economical and moral value of the state. The state administration was at stake as the health departments and medical services were falling short with the spread of pandemic. The distress was created among mankind as they were losing their near and dear ones; also every individual was under the shadow of fear. The State government was facing challenges on various fronts as to protect and preserve the citizen and to patiently remedying the medical crisis. The Constitution of India ensures fundamental rights including the Right to Health without any discrimination, Article 21 of the Indian Constitution explicitly guarantees the citizen's fundamental right to life and personal liberty. The nationwide lockdown was enforceable to distance the population as medically it was proven that social distancing was the only remedy to break the chain of spreading pandemic.⁴ Conversely it was derived that lockdown was violative of Article 21, as it restricted the freedom of movement which is integral part of Right to Life. The Part IV of the Constitution contains the provision related to health in terms of the Directive Principles of State Policy, which are the collection of instructions and directions to be followed by state for creating the welfare state. The Supreme Court of India through various judgements has held that right to live with human dignity which is enshrined in Article 21 is derived from the DPSP and consequently includes protection of health, so logically given wider interpretation to Right to Life to include Right to Health.⁵

Consumer Education and Research Centre V. Union of India AIR 1995 SC 922, it was said that right to health and medical aid to protect the health and vigor of a worker, both whilst in service and post-retirement, is a fundamental right recognised under Article 21. State of Punjab and others versus Mohinder Singh Chawala (1997) and Paschim Banga Khet Mazdoor Samity versus State of West Bengal (1996) incorporated the Right to Health as part of Article 21 of the Indian Constitution i.e., Right to Life, and the Government is under constitutional obligation to provide health facilities to citizens.

Article 39(a) speaks about the duty of the State to provide security to citizens by ensuring the Right to adequate means of Livelihood. Article 39(e) also mentions that the State is responsible to ensure that "health and strength of workers, men, and women and the tender age of children are not abused. Article 41 of Indian Constitution imposes a duty on the State to offer public assistance in cases of unemployment, old age, sickness, and disablement. Article 42 makes provision to protect the health of the infant and mother by awarding

maternity benefit. Article 47 also provides for raising the level of nutrition and the standard of living of people and improving public health.

India is a united country having federal structure that is power is divided between Union and State governments. Article 245 - 255 of the Constitution of India deals with the distribution of legislative powers. The Seventh Schedule contains three lists: the Union List, the State List, and the Concurrent List. The Parliament can enact laws on items that are mentioned in the Union List, whereas the state legislatures can make laws related to the matter in the State List. The Concurrent List, on the other hand, has subjects over which both Parliament and state legislatures have authority to enact laws. However, the Constitution gives federal supremacy to Parliament in case of conflict on the Concurrent List items. Both the Central and the states governments are empowered to formulate laws related to public health. Items related to public health are mentioned in all three lists of the Indian Constitution. The Union and states can make laws related to the health profession and the prevention of the extension from one state to another of infectious or contagious diseases or pests affecting people, animals, or plants under entries 26 and 29 of the Concurrent List.

Historically it has been proved that Centre, State and Local administrative system participate in crucial role of providing health care to all citizens. Though, “health emergency” is not part of the emergency provisions under article 352 of Part XVIII the Indian Constitution. Impliedly imposing a lockdown or keeping strict measures to control the spread of disease at the time of Covid 19 Pandemic had a identical framework of emergency.

Quarantine was first introduced in 1377 in Dubrovnik on Croatia’s Dalmatian Coast. The first English quarantine regulations, was implemented in 1663, for the confinement of ships with suspected plague-infected passengers or crew. In India the Quarantine Act 1870 was implemented to isolate the ships and the crew carrying infection and disease. The Epidemic Disease Act 1897 empowered the State Government to authorise any person to take measure necessary to prevent the outbreak of any disease.⁶ The Post Independence method and policies applied to combat the various epidemic situations in India had always been as always temporary considering the mode and consequence of epidemic.

Statutory Provisions in India for prevention of spread of Epidemic

The Penal Code of India provides certain legislations provisions to put the check on the spread of Epidemic by penalising and authorising the State with necessary authority.

Sec 271 of Indian Penal Code State that “Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other

vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

Sec 269 of the Indian Penal Code, 1860:-“Negligent act likely to spread infection of disease dangerous to life. This section applies to those who negligently act to spread the virus. They shall be penalized with imprisonment or fine or both.

Section 144 of the Criminal Procedure Code: “Section 144 of Criminal Procedure Code (Criminal Procedure Code) imposes power to the executive magistrate to restrict particular or a group of persons residing in a particular area while visiting a certain place or area.” The most important preventive measure against corona is safeguarded by this section that restricts to a gathering of people and thus in a way supports social distancing.⁷

The Disaster Management Act 2005 aims at implementing the continuous and integrated process of planning, organizing, coordinating and implementing measures to mitigate and reduce the risk of any disaster and also provide for promptness to the response by assessing the severity of magnitude of disaster.⁸

The Epidemic Disease Act 1897 is colonial era legislation under execution to control epidemic. The legal framework proves significant to respond the public health emergencies during epidemic. The revision of act with respect to its current scenario, its capacity to handle the fatal disease outbreaks, its surveillance and challenges needs to be investigated.⁹

The Act need to be focussed for below disabilities:-

- The act does not clarifies an epidemic, criteria to be declared as epidemic and silent on magnitude of problem with reference to affected population.
- The act does not have any focus on Fundamental Rights which needs to be considered and observed at the implementation of epidemic act.
- The act only recognises the authority of State but fails to enumerate the duties of State with respect to rights available to citizen.
- The act does not signify the role of health professional machinery and State Functionaries and its surveillance over the epidemic which gives wider interpretation power to the state.

The Act was amended in the form of Ordinance in April 2020 when the Covid 19 Pandemic had hit the Country. The amendment protected healthcare personnel engaged in Covid 19 and majorly expanded powers of Central Government. Also it prescribed the penalty for the violence against health care personnel and damaging any property like quarantine facility, mobile medical unit etc.

The Disaster Management Act 2005 defines disaster under section 2(d) simply means any catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, leading to substantial loss of life, property, degradation of environment beyond coping capacity of affected area. Under Sec 2(e) disaster management signifies the continuous and integrated process of planning, organising, coordinating and implementing measures necessary to prevent and mitigate the risk of disaster. Not all disasters can be prevented; good risk management, evacuation plans, environmental planning and design standards can reduce risk of loss of life and injury mitigation.¹⁰ The Disaster Management Act 2005 is elaborative and extensively covers all the sectors of disaster management but still faces certain challenges:-

- Absence of identification of most disaster prone zones, so that the state can be proactive in measures.
- The functional system is overlapping and no substantial arrangements made to direct local authority, which is playing a crucial and immediate role in any disaster management.
- The delayed responses and absences of technological implementation plague the disaster management strategy in India. (<https://testbook.com/ias-preparation/disaster-management-act-2005>)
- The act does not provide for procedural assurance for any infringement of Fundamental Rights. The act is regulatory in nature and does not provide scientific reasoning to tackle the epidemics which can affect the large population.

CONCLUSION

The pandemic Covid – 19 has posed questions for efficient performance of administrative system regards to the health care, legislative response and other operative measures for the period of disastrous or health emergencies. Study of special statutes of The Disaster Management Act 2005, The Epidemic Disease Act 1897 along with relative provisions in Constitutional and legislative framework identifies the inefficiency of state machinery to overcome the medical or any emergency. The Quarantine Act 1870, The Epidemic Disease Act 1897 being the statutes of colonial era is inadequate to triumph over the medical emergency in the dynamic and heterogeneous current society, post independence. The Constitutional framework along with revised and amended statutes should be enforced to eradicate any lacuna in any future medical emergency. Being the welfare State the

administrative framework should aim to facilitate a future generations to be better organized for any health emergency. Through this paper researchers analyse for better statute for best healthy society.

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