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India Striving for Public Health Emergency

AUTHOR'S NAME - Shreyanta Nag, BALL.B (Hons.), Fifth Year.

INSTITUTION NAME - Adamas University, School of Law and Justice, Kolkata, West Bengal.

ABSTRACT:

We, the humans, are striving every day to stay alive and live according to our whims and fancies. We work to earn, to get the three basic necessities of life i.e. food, clothing, and shelter. Living has been the utmost priority for us. The most essential part of the life that we strive to live is our health. We get our body and organs when we are born, but to keep that body and those organs working for long, it is important for us to take the utmost care. The World Health Organization defines health as "*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*". But health is not just this, it's the most precious wealth that keeps us alive and the value of life cannot be expressed in mere words.

Decision of Government:

With time humans have not only developed the technologies but also various health issues for degrading the environment. With time human civilization has encountered a lot of viruses. Currently, one such virus that infected the entire world is the novel Coronavirus. Laws are devised to protect us from the very moment we are born. Likewise, even laws are there to protect our most precious asset, health. India also has laws like the Consumer Protection Act, 2019; Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011; Mental Health Act, 1987, etc.¹, to safeguard and look after the health welfare of citizens. However, in India, there are no laws to protect or guide the citizens in such pandemic situations. On March 11, the Cabinet Secretary meeting decided that the Indian States and Union Territories should invoke section 2 of the Epidemic Diseases Act so that the measures of the Health Ministry can be enforced as laws^{2,3}.

¹ INDIAN LAWS AND REGULATIONS RELATED TO HEALTH, Medindia, https://www.medindia.net/indian_health_act/acts.asp.

² EXPLAINED: GOVT INVOKES EPIDEMIC DISEASES ACT, 1897 TO FIGHT CORONAVIRUS; WHAT IS IT?, TheIndianExpress (March 12, 2020, 09:24 AM), <https://indianexpress.com/article/explained/explained-what-is-the-epidemic-act-of-1897-govt-has-invoked-to-fight-coronavirus-6309925>.

³ Explained Desk, Explained: Govt invokes Epidemic Diseases Act, 1897 to fight coronavirus; what is it?, indianexpress, (Aug. 21, 2023, 7:25 PM), <https://indianexpress.com/article/explained/explained-what-is-the-epidemic-act-of-1897-govt-has-invoked-to-fight-coronavirus-6309925/>

Analysis of the Epidemic Diseases Act:

The Epidemic Diseases Act of 1897 (EDA) is India's only law that has been used from historical times when any form of epidemic arose through various diseases like cholera, malaria, etc⁴. The British Government introduced the Epidemic Diseases Act to handle the epidemic of the bubonic plague that started to spread all over Mumbai in 1890. The Act powered the British government to search various places for the suspected plague cases even in the homes of the citizens and even on the roads while they were walking. The Act also empowered the British to forcefully separate or move the suspected people to a designated place or an isolated area. Also, they could evacuate the houses of the suspected people and demolish them at their own choice in the name of safeguarding the other citizens. For such extensive and unruly powers, many historians have put their views against this Act. The law was enforced in the year 1987.⁵ In the same year realizing the potential abuse from the British, freedom fighter Keshav Gangadhar Tilak (popularly known as Bal Gangadhar Tilak) put his views against the Act. He warned and expressed his resentment towards the British government about their way of handling the epidemic through his newspapers namely 'Kesari' (in Marathi) and 'Maharatta' (in English) for which he was arrested and punished with 18 months of rigorous imprisonment⁶. The history itself shows how the law was used to abuse the power of the colonial British Government in the name of protecting its citizens from the epidemic. Invoking this law which has its roots based on abuse is contrary to the interests of a democratic country like India.

The Epidemic Diseases Act, of 1897 included four sections altogether. The first section stated that it would apply to all places and people of India except the places which, just before the 1st of November, 1956, were falling under Part B States⁷. The Part B States included Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra and Travancore-Cochin. The second section empowered the State

⁴ Manish Tewari, *INDIA'S FIGHT AGAINST HEALTH EMERGENCIES: IN SEARCH OF A LEGAL ARCHITECTURE*, ORF (March 31, 2020, 9:29 PM), https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/#_edn1.

⁵ Wallace, Anne D., 'The Results of Destination', *Walking, Literature, and English Culture: The Origins and Uses of Peripatetic in the Nineteenth Century*, Clarendon Paperbacks (Oxford, 1994; online edn, Oxford Academic, 3 Oct. 2011), <https://doi.org/10.1093/acprof:oso/9780198183280.003.0002>, accessed 27 Aug. 2023.

⁶ *EXPLAINED: GOVT INVOKES EPIDEMIC DISEASES ACT, 1897 TO FIGHT CORONAVIRUS; WHAT IS IT?*, TheIndianExpress (March 12, 2020, 09:24 AM), <https://indianexpress.com/article/explained/explained-what-is-the-epidemic-act-of-1897-govt-has-invoked-to-fight-coronavirus-6309925>.

⁷ Epidemic Diseases Act, 1897, § 1. No 3, Acts of Parliament, 1897 (India).

Governments and the Union Territory Governments to take necessary special measures and order regulations during the time of an epidemic. These Governments can do so if there is a time when the State Government is of the opinion and satisfied that the State or any part of the State is either visited by or threatened with, an outbreak of any epidemic disease that is dangerous in nature. It is seen that the existing ordinary laws are insufficient for the epidemic. In such situations, groups are made by administrative authorities to tackle the situation along with the prescription of public notices. In such situations, all expenses will be incurred by the government, including any compensation if any shall be paid⁸.

The State Government can take special measures without having any prejudice towards the generality of the existing or ongoing laws for the inspection of persons traveling either by railway or by any other means of transport. To separate them, in hospitals, for their temporary accommodation or otherwise, those persons are suspected by the officer in charge of being infected with the epidemic disease⁹.

The Act not only confers powers over the State Governments and the Union Territory Government but also on the Central Government. The Central Government can take necessary special measures and order regulations during the time of an epidemic. The Government can do so in conditions of the pandemic mentioned above in Section 2. In these circumstances, the Government can issue inspections of any ship or vessel either arriving or leaving any port in the states and union territories to which the Epidemic Diseases Act extends and also issue detention of the ship or any vessel thereof, or of any person intending to sail therein, or arriving thereby, as the Government feels necessary¹⁰.

Section 3 of the Epidemic Diseases Act says any person who defies or goes against any measures like any order or regulation taken by the State Governments, Union Territory Governments, and the Central Government regulation, under this Act, shall be considered to have committed an offense punishable under Section 188 of the Indian Penal Code (IPC) (45 of 1860)¹¹. So such a section would apply to any person residing within the territory of India

⁸ Epidemic Diseases Act, 1897, § 2. No 3, Acts of Parliament, 1897 (India).

⁹ *Id*, at 777.

¹⁰ *Id*, at 777.

¹¹ Epidemic Diseases Act, 1897, § 3. No 3, Acts of Parliament, 1897 (India).

during such times irrespective of their rank in society. Section 188 of the Indian Penal Code prohibits any person who knows that order promulgated by a public servant who is empowered by the law to promulgate such order; he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, to disobey such direction¹². Provided that the disobedience of that causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, shall be punished. The punishment under the Section varies from simple imprisonment for a term which may extend to one month or with a fine which may extend to two hundred rupees, or with both. But provided that the disobedience of that person causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.¹³ Section 188 provides support to the Government measures by managing to control the citizens by prohibiting their disobedience but also helps the Government to make any law under the Epidemic Diseases Act according to their choices which may lead to abuse of power as the Act itself was made in the colonial times to do so.¹⁴

The last section of the Epidemic Diseases Act mentions no legal proceeding or suit shall lie against any person or group of persons for anything done in good faith¹⁵. Section 4 provides legal defense to the persons like officers appointed by the States, Union Territories, and the Central to implement their epidemic measures.

Effect of the Act in past and in current times:

The Epidemic Diseases Act that came into effect on 4th February 1897 had proved to be ineffective in the past when the bubonic plague had spread to various parts of India after taking lives in Mumbai¹⁶. The law merely tells the government to set guidelines regarding restrictions

¹² Indian Penal Code, 1860, § 188, No. 45, Acts of Parliament, 1860 (India).

¹³ Prabhav Ralli, Key ingredients for indictment under Section 188 of the Indian Penal Code, barandbench, (Aug. 21, 2023, 7:25 PM), <https://www.barandbench.com/columns/key-ingredients-for-an-indictment-under-section-188-ipc>

¹⁴ *Id.*, at 778.

¹⁵ Epidemic Diseases Act, 1897, § 3. No 3, Acts of Parliament, 1897 (India).

¹⁶ Manish Tewari, INDIA'S FIGHT AGAINST HEALTH EMERGENCIES: IN SEARCH OF A LEGAL ARCHITECTURE, ORF (March 31, 2020, 9:29 PM), https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/#_edn1.

over traveling, examining the suspected persons and their separation from other non-suspicious or non-infected persons through quarantine in places like hospitals and checking the ships, etc. arriving and leaving the Indian ports. For a law to provide adequate guidelines it is important to differentiate between the types on which the laws should be applied and in what way.¹⁷ Also, it does not state elaborately on that part of what quarantine measures should be taken. Lastly, the Act emphasizes the Rights of the Government to control the pandemic situation and the duties of the citizens. The Act overall is not suited for the current times and cannot be a guide for the Government to prevent and control the Coronavirus or any such diseases.

Analysis of Disaster Management Act:

There are other laws, which can be used not directly but indirectly to deal with pandemic and epidemic situations which are written in the Disaster Management Act¹⁸. The Act defines a disaster as "*a calamity, mishap, catastrophe or grave occurrence in any area, arising from either human-made or natural causes, or by negligence or an accident resulting in substantial loss of life or human suffering or damage and destruction of property or degradation of the environment, which is of such a nature or magnitude as to be beyond the coping capacity of the people of the affected area*"¹⁹. So the pandemic or epidemic does not fit into the very primary definition of the act but the act provides separate guidelines about the powers and duties of the Government. If the Indian government wants to consider the Corona pandemic as a disaster then the Act can help it to a certain extent but not completely as the act is not focused on Health matters for which it lacks exact responsive solutions to such disease outbreaks.

CONCLUSION:

In 2017, The Union Ministry of Health & Family Welfare drafted a Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism, and Disasters) Bill, to fill the shortcomings of the Epidemic Diseases Act and also fulfill the need for a transparent Health

¹⁷ Vageshwari Deswal, Covid-19: Laws related to quarantine in India, timesofindia, (Aug. 21, 2023, 7:25 PM), <https://timesofindia.indiatimes.com/blogs/legally-speaking/covid-19-law-related-to-quarantine-in-india/>

¹⁸ Akshat Agarwal, Kim D'Souza, Shreya Shrivastava, Yogini Oke, Dhvani Mehta, *WHAT SHOULD A PUBLIC HEALTH EMERGENCY LAW FOR INDIA LOOK LIKE?*, Vidhi (March 17, 2021, 9:29 PM), <https://vidhilegalpolicy.in/research/what-should-a-public-health-emergency-law-for-india-look-like>.

¹⁹ Disaster Management Act, 2005, § 2(d). No. 53, Acts of Parliament, 2005 (India).

Emergency Law^{20,21} The Directorate General of Health Services (DGHS) and the National Centre for Disease Control (NCDC) had prepared the bill together. It also tried to address the need to bestow power on the local government bodies, given the peculiarities of each emergency situation and the need to reach people's voices with greater efficiency. It was expected that with the implementation of this law, the old Epidemic Diseases Act, of 1897 would be repealed²². However, for reasons that are unknown, the Bill has not been presented in the Parliament till date. In the past, there have been attempts to draft laws based on health issues of the citizens such as the Model Public Health Act of 1955 updated in 1987. The Union government, however, has been unable to convince states to adopt the law since health is a State subject. Many Indian states had their own epidemic disease acts since the colonial British Era, like the Malabar Public Health Act, of 1939 and the Madras Public Health Act, of 1939. More recently, states like Karnataka and Gujarat have drafted their own public health legislation.

Recommendations:

We can see how India as a developing country lacks a Public Health Emergency Law, which is very necessary and important in today's lives as new viruses are popping up due to various human activities worldwide. The existing framework on the Public Health Emergencies should be considered an utmost priority while fighting with the current pandemic. India should devise a proper Act describing the various aspects and nitty-gritty of the health emergencies. While formulating the laws, things like whether the laws would be obligated by international organizations like WHO, etc., or by the country's government, or both should be taken into consideration. Also, India should divide the duties amongst the District, State, and Central authorities for a smooth and hierarchical operation and may also provide State-specific functions. There should be a committee so as to ensure proper redressal of the health issues following the Health Emergency Law. The Central Health Ministry and the State Health Ministries can keep a check on the structure and functions of the committee at their own levels.

²⁰ Manish Tewari, *INDIA'S FIGHT AGAINST HEALTH EMERGENCIES: IN SEARCH OF A LEGAL ARCHITECTURE*, ORF (March 31, 2020, 9:29 PM), https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/#_edn1.

²¹ drishtiias, <https://www.drishtiias.com/daily-news-analysis/draft-bill-for-a-new-national-public-health-law> (last visited Aug. 6, 2023).

²² Manish Tewari, *INDIA'S FIGHT AGAINST HEALTH EMERGENCIES: IN SEARCH OF A LEGAL ARCHITECTURE*, ORF (March 31, 2020), https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/#_edn1.

Most importantly following the Indian democracy, the Health Emergency Laws should state the rights of the citizens and ways to access the Emergency Law during such pandemic situations.

