


Contextualizing Epidemic Diseases (Amendment) Ordinance, 2020 in Epidemic-Pandemic Syndrome of COVID-19 in India

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ABSTRACT


India's first case of novel coronavirus (COVID-19) detected on January 30, 2020, in the State of Kerala, and the government switched to alert mode. As the number of confirmed COVID-19 positive cases discerned an increase, the government clamped *Epidemic Diseases Act, 1897* on March 11, 2020, by mandating the norm of social distancing and the voluntary public curfew in the country. The nation-wide Lockdowns-I (March 25, 2020, to April 14 2020), II (April 15, 2020, to May 3 2020), and III (May 4, 2020, to May 17, 2020) justified on the ground of Sections 6, 10, 38 and 72 of the *Disaster Management Act, 2005*. During the lockdown period, the protection of medical and paramedical forces has been a central concern in controlling novel COVID-19 pandemic in India. Therefore, the State also invoked quarantine disobedience under sections 188, 269, 270, 271 of *Indian Penal Code, 1860* on command and control theory but unable to control the riotous situation working against medical care personnel. Realizing this exigency, the President under Article 123 of the *Constitution of India, 1950* promulgated the *Epidemic Diseases (Amendment) Ordinance, 2020*. To deal with the miscreants effectively, the Ordinance declares 'act of violence' cognizable and non-bailable with high deterrent value. The paper contextualizes the *Epidemic Diseases (Amendment) Ordinance, 2020* in controlling horrendous Epidemic-Pandemic Syndrome of COVID-19 in India in historical and contemporary perspective.

Keywords: Epidemic-Pandemic, Disaster Management, Communicable Diseases, Command & Control, Sanctioning Regime, Deterrent Effect.

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INTRODUCTION

The *Epidemic Diseases Act, 1897* is a colonial piece of enactment passed for controlling the epidemic of bubonic plague in British India [1]. The law is of ancient vintage but frequently clamped to prevent cholera [2], malaria and dengue and swine flu in independent India [3]. The modern incarnation of the law in combating the coronavirus (COVID-19) pandemic [4] along with the mixture of a national catastrophe beyond the coping capacity of the community under *Disaster Management Act, 2005* is indeed a new addition [5]. The legislative framework of the epidemic control law in India is twofold. One administered through the fundamental criminal law under Section 188, 269, 270 and 271 of *Indian Penal Code, 1860* [6]. The other is public health-oriented legislations the *Livestock Importation Act, 1898*, *Indian Ports Act of 1908*, *Drugs and Cosmetics Act of 1940*, *Essential Services Maintenance Act, 1968*, *Indian Aircraft (Public Health) Rules, 2015* [7]. But at no point of historical annals the relevance of *Epidemic Diseases Act, 1897* seems to have been undervalued despite dramatic changes in the innovative technologies, disease surveillance, and preparedness mechanism. The entry 29 of the Concurrent List attached to the Seventh Schedule *Constitution of India, 1950* 'allows for any relevant legislation to be passed,' so long that it addressed to the prevention of contagious disease from spreading across state jurisdictions [8]. Instead of passing an ordinance on COVID-19, India resorted to 123-year-old legislation of *Epidemic Diseases Act, 1897* on March 11 2020 [9], in all states and Union territories and promulgation of *Epidemic Diseases Ordinance, 2020* on April 22 2020 [10]. The paper takes a critical study of the *Epidemic Diseases Act, 1897*, *Epidemic Diseases Amendment Act, 1938* along with the judicial indoctrination and *Epidemic Diseases (Amendment) Ordinance, 2020* in controlling COVID-19 pandemic in India.

Materials and Methods

The impact and potentiality of *Epidemic Diseases Act, 1897* have been subject of legitimate criticism in literature, materials and methods of many writers and commentators in medico-legal academia. The study reviewed the methodological approach of M.Kakkar in the context of pandemic preparedness and proper responsiveness in India [11]. The enormous burden of chronic, infectious diseases and communicable diseases like COVID-19 analyzed in the spectrum of epidemiological transition under the methodological framework of B.K.Patro [12]. The present study derived from the methodology of P.S.Rakesh, highlighting the significant limitations of the *Epidemic Diseases Act, 1897* in the epidemic-pandemic scenario and the need for a comprehensive legal framework [13]. The antiquity of law falls short of a rights-based approach to health and patient-friendly in independent India [14]. The safety and security of health care professionals studied under the WHO Reports on the *Corona Virus Disease (COVID-19) Outbreak: Rights, Roles and Responsibilities of Health Workers, Including Key Considerations for Occupational Safety and Health, 2019* [15] besides employing seminal work of James G. Adams study on the *Supporting the Health Care Workforce during the COVID-19 Global Epidemic, 2020* [16].

Results

The arguments deduced from the literature, materials and methods sustained under the State's constitutional duty of the State for nutritional security, the standard of living and improvement of public health. The State is under a legal mandate for the prevention of the infectious or contagious diseases or pests affecting men, animals or plants and their extension from one State to another state [17].

3.1 COVID 19 Pandemic & Epidemic Law: The government clamped *Epidemic Diseases Act, 1897* on March 11, 2020, by mandating the norm of social distancing and the voluntary public curfew observed in the country. However, the government was reeling under fear psychosis that the law does not have enough stamina to infuse a new lease of life in COVID-19 pandemic scenario. Therefore, it uniquely located the COVID-19 pandemic as disasters, catastrophe, and calamity arising from natural or human made causes and resorted to the provisions of *Disaster Management Act, 2005* [18]. Under this law, the State assumed the platter of public health governance at par with the disaster management measure [19] underpinned in Sections 6 [20] and 10 [21] (16) of the *Disaster Management Act, 2005*. The nation-wide Lockdowns-I (March 25, 2020, to April 14 2020) [22], II (April 15, 2020, to May 3 2020) [23], and III (May 4, 2020, to May 17, 2020) [24] justify on the ground of Sections 38 and 72 of the Act. There are 19,65,364 confirmed cases and 40,752 deaths reported by covid19india website by the August 6, 2020, 09:53 IST on COVID-19. On the normative front the only innovative development discerned by the promulgation of *Epidemic Diseases Ordinance, 2020* more as health governance piece of law than that of the public health and epidemic-pandemic oriented legal reform. Thus, India lost a novel opportunity of passing an ordinance on COVID-19 pandemic and prefers to remain in the pounds and shells of 123-year-old legislation of *Epidemic Diseases Act, 1897*. Therefore, it seems appropriate to look into the provisions of the *Epidemic Diseases Act, 1897* to build a continuum of our analysis.

3.2 Features of Epidemic Diseases Act, 1897: The *Epidemic Diseases Act, 1897* empowers the State to regulate dangerous disease by banning travel and social segregation [25]. The *Epidemic Diseases Amendment Act, 1938* (Section 2A) conferred the powers on Central Government to undertake proactive measures and prescribes regulations for the ship at port and detention of persons [26]. It prescribes imprisonment of 6 months or fine, or both as per section 188 of the *Indian Penal Code, 1860* [27]. The officers acting in good faith to implement the law enjoy exemption from any suit or other legal proceeding [28]. The pre-lockdown phase marked by the implementation of Section 2 and 2A of the *Epidemic Diseases Act, 1897* by the central and State governments. The enforcement of *Epidemic Diseases Act, 1897* supplemented with quarantine rule contained under Sections 188, 269, 270, and 271 of *Indian Penal Code, 1860* in two month scenario in India vis-à-vis Section 133 *Criminal Procedure Code, 1973*. The Indian government has moved beyond the salutary provisions of these enactments and resorted to the salubrious provisions of Sections 6, 10, 38 and 72 of the *Disaster Management Act, 2005*.

3.3 Judicial Enforcement of Epidemic Diseases Act, 1897: The disobedience by obstruction, annoyance or injury to any persons lawfully employed is punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ₹ 200. The disobedience of quarantine law with riotous tendency compounded with imprisonment continuing up to six months and fine up to ₹ 1,000. In the case of *J. Choudhury v. State of Orissa* [29] a homoeopathic doctor convicted under Section 188 *Indian Penal Code, 1860* and sentenced him to pay a fine of Rs. 20/- or undergo simple imprisonment for one week. The doctor refused to get himself inoculated against cholera mandated under Section 2(1) of the *Epidemic Diseases Act 1897* to prevent the spread of cholera in Puri District was convicted him under Section 188 of *Indian Penal Code, 1860*. The fine

of ₹ 200 and ₹1000 prescribed almost 160 years ago under Section 188 of *Indian Penal Code, 1860*. Over time there has been no amendment for enhancement of the penalty till date. The enforcement of the quarantine law in the outbreak of *Kalazar disease* by the District Magistrate of Muzaffarpur called in question in *Raj Mangal Ram v. State of Bihar* [30]. The Patna High Court held that merely filing a First Information Report is not sufficient to invoke the criminal liability under Section 3 *Epidemic Diseases Act, 1897 vis-à-vis* Section 188 of *Indian Penal Code, 1860*. The complaint to quarantine disobedience by the concerned public officer governed under Section 195 of the *Code of Criminal Procedure, 1973* failing which the Court can quash the proceedings.

Discussion

The protection of doctors and health care professionals is the paramount concern in COVID-19 pandemic. The formidable challenges of a prolonged response to COVID-19 stressed on the hospital personnel and safety, and security laws and policies must emphasize the importance of liberating clinicians and administrative team members from other tasks and commitments.

4.1 Protection of Medical & Para Medical Forces: The protection of medical and paramedical forces has been a central concern during the control of COVID-19 pandemic in India. The critical service providers and members of healthcare services faced tormented assault. The *Ram Lall Mistry v R.T. Greer* [31] dwells on the ambit and scope of the Section 4 *Epidemic Diseases Act, 1897*. In this case, the defendant has, acting under the provisions of the Act destroyed the property of the plaintiff in the light of Rule 2, Plague Regulation A, dated October 8 1900, in the Calcutta Gazette, October 17 1900, page 1144. The Calcutta High Court held the defendant is personally liable. During the lockdown, I, II, and III, there are 141 registered cases under Section 188 of the *Indian Penal Code, 1860* in Mumbai alone [32]. The states of Kerala [33], Haryana [34], Maharashtra [35] and Telangana [36], invoked Section 2 of the *Epidemic Diseases Act, 1897*, read with Section 38 of the *Disaster Management Act, 2005*. This eventuality as visualized by the Ministry Of Health and Family Welfare (MoH & F) by introducing *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019*. The proposed law criminalizes people indulging into attacks on doctors, healthcare personnel and paramedical forces non-bailable offence with imprisonment from six months to three years [37]. The Bill mooted by the Home Ministry as well as the Law Ministry. The focal reference was for the rationalizing the punishment, investigation and expeditious trial by a Special Court [38]. Since the proposed Bill did not mature into the legislation, the *Epidemic Diseases Ordinance, 2020* tries to fill the gap.

4.2 Epidemic Diseases Ordinance, 2020: It is under this background the *Epidemic Diseases (Amendment) Ordinance, 2020* was promulgated on April 22, 2020, by the President under Article 123 of the *Constitution of India, 1950*. The Ordinance introduced definitional clauses which were missing in the original Act. It enumerates three types of definition, namely act of violence, health care and service personnel and property of clinical establishments. The meaning of 'act of violence' is inclusive from harassment, harm, injury, hurt to obstruction of duties and danger to life besides the damage to the property (Section 1Ac) as contained under the *Clinical Establishment and (Registration and Regulation) Act, 2010*

(Section 1Ac). The healthcare services and personnel takes in to account the entire paraphernalia of doctors and nurses, a person empowered to take measures (Section 1Ab) to prevent the outbreak of the disease and persons designated by the state government [39]. The perusal of the definitional clauses under the *Epidemic Diseases (Amendment) Ordinance, 2020* reflect *pari materia* incorporation of objectives of *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019*[40]. To deal with epidemic-pandemic of horrendous magnitude, the Ordinance declares 'act of violence' cognizable and non-bailable offence having imprisonment between three months to five years, and a fine between ₹50,000 and ₹ two lakhs. The act of violence along with grievous hurt, compounded with imprisonment between six months to seven years, and a fine between ₹ one lakh and ₹ five lakhs. Besides clamping sanctioning regime, the Ordinance provides monetary compensation to the healthcare service personnel for injury and damage to property[41]. The payment of compensation is determined to the doubling of the fair market value or based on *quantum meruit* principle by the Court [42].

4.3 Pending Legislative Reform: The amount of compensation realized as an arrear of land revenue under the *Revenue Recovery Act, 1890* for payment of compensation. The trial will be fast track mode and completed within one month from the registration of the case and concluded within one year extendable to six months. The Ordinance has enlarged the role and functions of the central government to monitor all means of transportation besides the prohibition of travel and act of violence (Section 2B). The government justified the *Epidemic Diseases (Amendment) Ordinance, 2020* justified as the manifestation of the government's commitment to protecting every healthcare worker who is bravely battling COVID-19 on the frontline [43]. The law seeks to protect health care professionals ranging from doctors, paramedical staff to accredited social health activists. The Ordinance makes such attacks, an offence of a cognizable and non-bailable nature. A safety and security law envisioned earlier under *Prevention of Violence against Doctors, Medical Professional and Medical Institutions Bill, 2018*. The proposed legislation is pending for legislative consideration and enactment. The *Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019* also covers the safety and security of health professional. The law mooted by the MoH&F contains analogous provisions to the *Epidemic Diseases (Amendment) Ordinance, 2020*. The legislative reform emanated from the Entry 28 of the Union List of the Seventh Schedule of the *Constitution of India, 1950*. It adumbrates for the 'port quarantine and marine hospitals.' The pending and overdue legislative reform needs innovative health care management to arrest the damaging tendencies of the COVID -19 and similar epidemic and pandemic [44].

Conclusion

The 123 years of the legislative history of *Epidemic Diseases Act, 1897* has not come out from the pounds and shells of colonial approach to the control of epidemic despite the COVID -19 declared as a pandemic by the world health organization. The law is shuttling between the powers structure of the British colonizers to the modern-day government with little changes into the platter of reform. It appears the mould of the law sets in colonial India was allowed to perpetuate in independent India and parameters of the modern medical sciences and health care innovation and technology debates not utilized to its fruition in the *Epidemic Diseases (Amendment) Ordinance, 2020*. The working of quarantine laws under time tested Indian *Penal Code, 1860*

and slew of a public health-oriented legislation met with partial success being too sanctioning in nature or fragmented and piecemeal in approach. The subject of 'inter-state migration and inter-state quarantine' enumerated under Entry 81 of the Union List confers enormous freedom to the central government to embark on new generations of epidemic-pandemic control laws. The 'prevention of the extension from one state to another of infectious and contiguous diseases or pests affecting men, animals or plants' under Entry 29 of concurrent list compels the central government for upheavals of public health laws. The Integrated Disease Surveillance Project (IDSP), 2004 collects disease surveillance data to detect and respond to disease epidemics and estimated to report 30-40 outbreaks every week by the states on an average. The *National Health Bill, 2009* endeavors to legally sustainable paraphernalia in epidemic-pandemic syndrome for public health and equity with multi stake holding at the central and the states. The Bill balances the competing interest of the State's sledgehammer approach to quarantine law and rights-centric approach to treatment and care. The Bill is categorical in assigning roles and responsibilities for preventing and controlling epidemics on the typology of *Disaster Management Act, 2005*. There is an urgent need to consolidate and unify public health policy and law and, on the lines, Integrated Disease Surveillance Project (IDSP), 2004 and *National Health Bill, 2009*.

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Conflict of interest – No

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 19. *Id.* Section 2(e): 'disaster management' means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for-(i) prevention of danger or threat of any disaster;(ii) mitigation or reduction of risk of any disaster or its severity or consequences;(iii) capacity-building;(iv) preparedness to deal with any disaster;(v) prompt response to any threatening disaster situation or disaster;(vi) assessing the severity or magnitude of effects of any disaster;(vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction.
 20. *Id.* Section 6:- Powers and functions of National Authority:(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster. (2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may-(i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.
 21. *Id.* Section 10-Powers and functions of National Executive Committee:(1)The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.(2)Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may-(1)lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster.
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 26. *Id.* Section 2A, *Epidemic Diseases Amendment Act*, 1937-Powers of Central Government: When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.
 27. *Id.* Section 3 *Epidemic Diseases Act*, 1897-Penalty: Any person disobeying any regulation or order made under this

- Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).
28. *Id.* Section 4 *Epidemic Diseases Act*, 1897-Protection to persons acting under Act: No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.
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