

# Legal Dimensions of Public Health with Special Reference to COVID-19 Pandemic in India

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## ABSTRACT

The public health laws are passing through a process churning in the COVID-19 pandemic in India. The effectiveness of quarantine law under 160 years old *Indian Penal Code*, 1860, and 123 years old *Epidemic Diseases Act*, 1897 proved short-lived euphoria in controlling horrendous COVID-19 pandemic. The nation-wide Lockdowns on the ground of Sections 6, 10, 38, and 72 of the *Disaster Management Act*, 2005, provided significant assistance in dealing with formidable challenges of COVID-19. The execution of these laws revealed the safety and security of public health professionals and the delivery system to high vulnerability. Therefore, the President of India promulgated the *Epidemic Diseases (Amendment) Ordinance*, 2020 declaring 'act of violence' cognizable and non-bailable with high deterrent value. The paper explores the range of normative choices in refurbishing the public health laws beyond the command and control approach evidenced in *Epidemic Diseases (Amendment) Ordinance*, 2020, to therapeutic perception public health and equity in India.

**Keywords:** Public Health Law, Soft International Law, Health & Hazards, Violence & Damage, Preparedness & Response, Epidemic-Pandemic.

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## INTRODUCTION

The novel corona virus (COVID-19) embarked on the Indian government to hone out public health strategy provided under national laws and policies. The incidence and prevalence of COVID-19 compelled the government to clamp the *Epidemic Diseases Act*, 1897, on March 11, 2020, by social distancing and the voluntary public curfew norm in the country [1]. The time-tested quarantine enforcement under Sections 188, 269, 270, and 271 of the *Indian Penal Code*, 1860, and Section 133 of the *Criminal Procedure Code*, 1973 came under flak. The promises and pitfalls of the 160 years old *Indian Penal Code*, 1860, and 123 old *Epidemic Diseases Act*, 1897 in controlling the horrendous dimension of novel COVID-19, was considered at great length and breadth. It eventually led the nation-wide Lockdowns-I (March 25, 2020, to April 14, 2020) [2] II (April 15, 2020, to May 3, 2020) [3], and III (May 4, 2020, to May 17, 2020) [4] by invoking Sections 6, 10, 38, and 72 of the *Disaster Management Act*, 2005. The catastrophic COVID-19 pandemic declared a calamity believing it beyond the coping capacity of the community and necessitates emergency measures. It posed an unprecedented challenge to the public health system and paraphernalia and put a plethora of public health legislation on trial in epidemic-pandemic syndrome. There are 9, 41,660 confirmed cases and 24371 deaths reported by the covid19india website by July15, 06:53PM IST on COVID-19. The paper critically appraises the potentiality of Indian public health legislation and embarks on a fundamental change in the legal discourse of health and equity in India.

## MATERIALS AND METHODS

The material and method of study is the understanding of the colonial law in the global world view and legal pluralism of the modern Indian state [5]. The colonial discourse of the public health laws is mainly drawn from the methodological refinement of Harrison in the contemporary context [6]. The modern and post-modernist social order created new diseases and the health burden. The legal remedy acquired critical dimensions for health improvement, evidence-based interventions, and preventive public health legislation [7]. The prevention of chronic diseases in the climate change scenario

in India [8] *vis-a-vis* the novel COVID 19 by quarantine law enforcement under the Indian Constitutional and legal framework synergized with qualitative research methods in the health care delivery system [9].

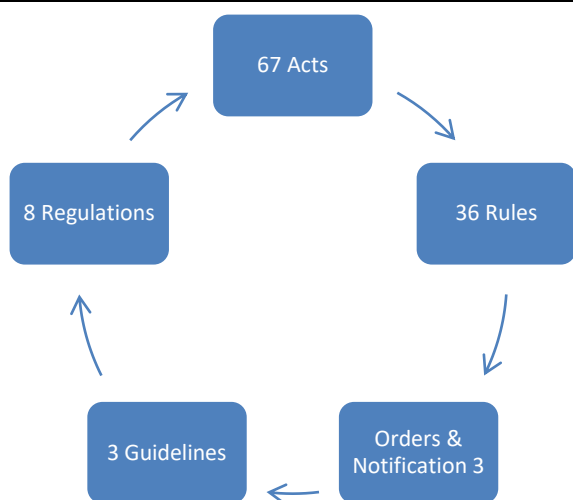
## RESULTS

A legislative survey of Indian public health legislation reveals a plethora of laws that, in enumerative terms, run into more than a hundred. It consists of legislation rules, regulations, administrative orders, and notifications having a bearing on the various facets of public health dimensions. From the standpoint of COVID pandemic, the prominent public health-oriented legislations are the *Indian Penal Code*, 1860, *Epidemic Diseases Act*, 1897, *Livestock Importation Act*, 1898, *Indian Ports Act*, 1908, *Drugs and Cosmetics Act*, 1940, *Essential Services Maintenance Act*, 1968, *Indian Aircraft (Public Health) Rules*, 2015 and *Consumer (Protection) Act*, 2019 [10].

## Anatomy of Public Health Legislations

Broadly speaking, there is 124 direct and incidental legislation having a bearing on the public health dimensions. Among these, there are 67 Acts administered by the concerned ministries of health, agriculture, chemical, environment and science and technology of the Indian government. There are incidental laws not specific to any hazard or an entry point - but relevant for containment and mitigation of disease outbreaks. These include *Births, Deaths and Marriages Registration Act*, 1886; *Indian Red Cross Society Act*, 1920; *Drugs (Control) Act*, 1950; and *Consumer Protection Act*, 1986, etc [11].

However, there are certain enactments governed by more than one ministry. These include the *Drugs and Cosmetics Act*, 1940 administered by the Ministry of Health and Family Welfare and Ministry of Chemicals & Fertilizers. The *Environment (Protection) Act*, 1986, is governed by the Ministry of Environment & Forests and Ministry of Science & Technology [12]. The *Infant Milk Substitutes, Feeding Bottles & Infant Foods (Regulation of Production, Supply & Distribution) Act*, 1992, administered by the Ministry of



Food Processing and Ministry of Women and Child Development. The *Destructive Insects & Pests Act*, 1914 and 1992, is jointly regulated by the Ministry of Agriculture and Ministry of Rural Development [13].

### Epidemic Diseases Act, 1897 & 1937

The *Epidemic Diseases Act*, 1897, is a brief short enactment consisting of four sections. The preamble specified the objective of the law to prevent the spread of *dangerous* epidemic diseases. It has elaborated on the importance of hazardous in prefixing with an epidemic. The Act applies to the entire country but abdicates powers for extraordinary measures and regulations by the State government (Section 1). The authority for the control of dangerous epidemic diseases includes banning travel and social segregation at point of entry, such as port and ground (Section 2). The *Epidemic Diseases Act*, 1897, is in addition to the quarantine rule underpinned in the *Indian Penal Code*, 1860, and not in derogation of it. Therefore, Sections 3 and 4 of the *Epidemic Diseases Act*, 1897 is read with Section 188, 269, 270, and 271 of *Indian Penal Code*, 1860 to reach the holistic purview of epidemic laws [14]. After the 40 years of the enactment of the *Epidemic Diseases Act*, 1897, the colonial government realized the disastrous situation of epidemic control. It empowered the Central Government to take measures and prescribe regulations for the inspection of any ship and detention of a person intending to sail and arrive at the port under the *Epidemic Diseases Amendment Act*, 1937 (Section 2A). It is under this backdrop the Central Government ordained social distancing, closure of establishments, and limitation on travel to control COVID-19 in all states and Union territories in India by invoking Section 2 and 2A of *Epidemic Diseases Act*, 1897. Section 3 of the *Epidemic Diseases Act*, 1897, prescribes punishment for violation of the quarantine and epidemic regulation at par with Section 188 of the *Indian Penal Code*, 1860. Section 4 of the Act exempts officers engaged in epidemic control in right earnest from civil and criminal liability analogous to the provision of Section 133 *Criminal Procedure Code*, 1973. The invocation of the *Epidemic Diseases Act*, 1897, to control daunting challenges of the COVID-19 pandemic surprised the after 123 of its enactment. However, the critics are often silenced by its historical testing in controlling the epidemic of bubonic plague, cholera, malaria, dengue, and swine flu in independent India [15].

### Disaster Management Act, 2005

Standing at the crossroad, the government has given careful consideration to the efficacy of the *Epidemic Diseases Act*, 1897, in combating the COVID-19 pandemic in a present

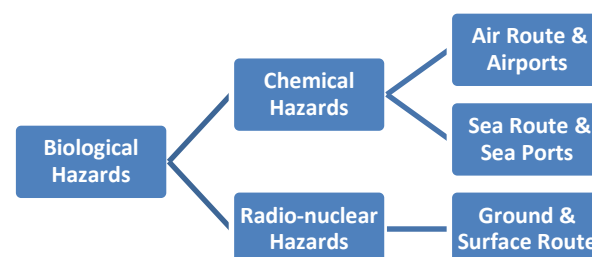
public health crisis of horrific magnitude [16]. It earnestly realized its constitutional duty of improvement of public health under Article 47 of the *Constitution of India*, 1950. It declared COVID-19 pandemic a national catastrophe beyond the coping capacity of the community under Section 2(d) of *Disaster Management Act*, 2005. The sledgehammer manner 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) stood justified by the central Government disaster management strategies under Section 2(e) of the Act. It adopted the coping capacity of the prevention of emergency (Section 6) or the mitigation, or preparedness, and capacity building (Section 10) for dealing with the threatening disaster situation or disastrous circumstances [17]. The National Disaster Management Authority assumed its omnibus power and an overriding effect on all other laws (Section 38) to direct to all states of India for its compliance (Section 72). The COVID pandemic crisis would have served an excellent opportunity for long-standing reform of public legislations in India. But it seems a case of a great miss. The Centre can pass laws under Entries 28 and Entry 81 of the Union List attached to the Seventh Schedule of the *Constitution of India*, 1950 for legislative initiative for the 'port quarantine and marine hospitals' and 'inter-state migration and inter-state quarantine' respectively [18].

### DISCUSSION

The legislative framework of the epidemic control law in India studied under the twin mechanism of the criminal law under Section 188, 269, 270 and 271 of *Indian Penal Code*, 1860, and the public health-oriented legislations of the *Epidemic Diseases Act*, 1897. But at no point in historical annals, the relevance of *Epidemic Diseases Act*, 1897, seems to have been undervalued despite dramatic changes in the innovative technologies, disease surveillance, and international legal compliance [19].

### International Health Regulations, 2005

The *International Health Regulations*, 2005, placed several obligations on the concerning Article 5, 6, and 7 in developing disease-related events, public health emergency, national health surveillance, and response capacities and share information on occurrences of public health and chronic diseases. The WHO Report on *International Health Regulations*, 2005 identified numerous public health legislation to combat biological, chemical, and radio-nuclear hazards at the level of entry, control, and mitigation [20]. These laws possess a potential impact in regulation at source and entry point into the Indian territory.



The possible route of entry is by air and airports, sea and seaports, surface transportation and ground crossings. However, there is a point of entry beyond these three routes and validly addressed under the Indian laws. The contracting

parties of *International Health Regulations*, 2005 mandated to develop capacity building, disease surveillance, preparedness and response systems, and mitigation of the risk.

### National Health Bill, 2009

The *International Health Regulations*, 2005, came into force in June 2007 as a soft international health law. The obligations emanated from the Regulations enjoins upon the Member States for proactive legislative reform. The *International Health Regulations*, Fifty Eighth World Health Assembly, 2005, reiterated for the compliance of public health legislation on the outbreak of epidemic and pandemic. There are no constitutional hiccups as Article 252 and Item 14 in List of Union List in Schedule VII of the *Constitution of India*, 1950 advises to implement the international treaties and declarations. It is under this backdrop, the Ministry of Health and Family Welfare (MoH & FW) drafted the *National Health Bill*, 2009. The Bill provides for protection and fulfillment of the right to health and wellbeing, health equity and justice, and a robust health care system. The Bill recognized 71 enactments on public health under Schedule III to establish cohesiveness and of the compatibility in the realization of health rights [21]. The Bill creates a robust structure for the public health services responsive to public health emergencies with collaboration between the Centre and the states. The formation of public health boards at the national and state levels with community-based monitoring, grievance mechanisms, and transparency are salubrious provisions for epidemic-pandemic health emergencies. Though the Bill has limited reference to right based health care delivery, it tries to create some space for human rights during the quarantine and isolation [22].

### Epidemic Diseases Ordinance, 2020

Since public health legislation like *National Health Bill*, 2009 seems a distant reality; the MoH & FW visualized violence against healthcare professionals and damage to the property of clinical establishments in undertaking public health emergencies and health delivery [23]. The *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill*, 2019 prohibits acts of violence committed against healthcare service personnel, including doctors, nurses, para medical workers. It also protect damage to hospitals, clinics, and property defines under *Clinical Establishment and (Registration and Regulation) Act*, 2010 [24]. It proposed assault on doctors and healthcare professionals a non-bailable offence prescribing imprisonment for a term to 10 years but unfortunately did not mature into law. During the COVID-19 induced lockdown, I, II, and III, the medical and paramedical forces confronted harassment and violence by the public in flagrant violation of sections 188, 269, 270, 271 of *Indian Penal Code*, 1860 and Section 4 of the *Epidemic Diseases Act*, 1897. Therefore, the President under Article 123 of the *Constitution of India*, 1950, promulgated the *Epidemic Diseases (Amendment) Ordinance*, 2020 [25]. The Ordinance has enlarged the powers of the central government to regulate all means of transportation besides the prohibition of travel and act of violence (Section 2B). It introduced definitional clauses relating to the act of violence (Section 1Aa), health care, and service personnel (Section 1Ab) and property of clinical establishments (Section 1Ac). The Ordinance declares 'act of violence' cognizable and non-bailable offence having imprisonment between three months to seven years, and a fine of ₹50,000 to ₹ five lakhs. Besides the clamping sanctioning regime, the Ordinance provides monetary compensation to the healthcare service personnel for injury and damage to property on market value or decided by the Court. The investigation and trial will be fast track mode and completed within 30 days from the date of

registration of the First Information Report and concluded within one year extendable to six months [26]. The perusal of 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 and indeed a quantum leap in public health delivery system.

### CONCLUSION

The critical appraisal of Indian public health legislation reveals that the government has not discharged its constitutional obligation for the enactment of public health and emergency preparedness laws in epidemic-pandemic COVID-19 like situations. It cloaked under the colonial legislation of *Epidemic Diseases Act*, 1897, or at best charted the route of *Disaster Management Act*, 2005. The slew of legal reform heralded under the *International Health Regulations*, 2005 to combat biological, chemical, and radio-nuclear hazards at the level of entry, control, and mitigation is also a case of neglect and apathy. The *National Health Bill*, 2009 and *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill*, 2019, are still in abeyance. The COVID-19 being a crisis, also served an opportunity to redress the long-standing reform of public health laws, but it passed as a great miss. The promulgation of the *Epidemic Diseases (Amendment) Ordinance*, 2020, is seen to be aligned with 123 years old colonial legislation more as a criminal statute than that civilian approach to health care and equity.

### REFERENCES

1. A 123-yr-old Act to combat coronavirus in India; experts say nothing wrong Available at: <https://www.livemint.com/news/india/a-123-yr-old-act-to-combat-coronavirus-in-india-experts-say-nothing-wrong-11584182501707.html>
2. Singh, K. D., Goel, V., Kumar, H., & Gettleman, J. (2020). India, Day 1: World's Largest Coronavirus Lockdown Begins. *New York Times*.
3. India to remain closed till May 3, economy to open up gradually in lockdown 2.0 Available at: <https://www.livemint.com/news/india/pm-modi-announces-extension-of-lockdown-till-3-may-11586839412073.html>
4. Coronavirus: India extends limited lockdown till May 17, tally climbs to 35,365; Available at: <https://www.indiatoday.in/india/story/coronavirus-india-extends-limited-lockdown-till-may-17-tally-climbs-to-35-365-1673493-2020-05-02>
5. Tamanaha, B. Z. (2008). Understanding legal pluralism: past to present, local to global. *Sydney L. Rev.*, 30, 375.
6. Harrison, M. (1994). *Public Health in British India: Anglo-Indian Preventive Medicine 1859-1914*. Cambridge University Press.
7. Moulton, A. D., Albright, A. L., Gregg, E. W., & Goodman, R. A. (2013). Law, public health, and the diabetes epidemic. *American journal of preventive medicine*, 45(4), 486-493.
8. Nomani, M.Z.M., and Parveen, R. (2020). Prevention of chronic diseases in climate change scenario in India. *Environmental justice*, 13(4); <https://doi.org/10.1089/env.2019.0032>
9. Holloway, I. (2005). *Qualitative research in health care*. McGraw-Hill Education: (UK).

10. Nomani, M.Z.M., Rahman, F., and Alhalboosi, A.K.K.(2019). Consumer Protection Act, 2019 and its implication for the medical profession and health care services in India. *Journal of Indian academy of forensic medicine*, 41(4): 282-285; <https://doi.org/10.5958/0974-0848.2019.00084.8>
11. Nomani, M.Z.M.; Alhalboosi, A.K.K., and Rauf, M.(2020). Legal and intellectual property dimension of health and access to medicines in India. *Indian journal of forensic medicine & toxicology*,14(1):118-122;<https://doi.org/10.37506/v14/i1/2020/ijfmt/192878>.
12. Nomani, M.Z.M. (2000). The human right to environment in India: legal precepts and judicial doctrines in critical perspective. *Asia pacific journal of environmental law*, 5(2):113-34.
13. World Health Organization, (2015). Regional Office for South-East Asia. International public health hazards: Indian legislative provisions, 9
14. Nomani, M.Z.M. (1992). *Right to health: a socio-legal perspective*, New Delhi, India: Uppal Publications ;pp. 56-59.
15. Pati, B., and Harrison, M. (Eds.) (2008). *The social history of health and medicine in colonial India*. Routledge.
16. Nomani,M.Z.M., Rauf, M. Ahmed, Z. Faiyaz, T. Khan, S.A., and Tahreem, M. (2020). Quarantine law enforcement & Corona Virus (COVID-19) pandemic in India. *Journal of Xidian university*, 14(4):536-542;<https://doi.org/10.37896/jxu14.4/068>.
17. Nomani, M.Z.M. (2000). Environmental insurance liability for industrial disaster in India: a study of therapeutic perception of compensatory jurisprudence. *Indian bar review*, 29(1):77-102.
18. Nomani, M.Z.M., and Tahreem, M. (2020). Constitutionality and legality of corona virus (COVID-19) in India: limits of sanction and extent of liberation, *International journal on emerging technologies*, 11(3):14-18.
19. Nomani, M.Z.M., and Hussain, Z. (2020). Innovation technology in health care management in the context of Indian environmental planning and sustainable development. *International journal on emerging technologies*, 11(2):560-564.
20. Nomani, M.Z.M. (2004). Legal control of radiation pollution, New Delhi: Regency Publication; pp.132-143.
21. Nomani, M.Z.M., Lone, A.A., Alhalboosi, A.K.K., Raj, A.A., and Ahmed, Z. (2020). Health care services under consumer protection laws of union territories of Jammu and Kashmir: a socio-legal mapping. *Indian journal of public health research & development*, 11(2):273-278; <https://doi.org/10.37506/v11/i2/2020/ijphrd/194796>.
22. [http://mohfw.nic.in/NRHM/Draft\\_Health\\_Bill/General/Draft\\_National\\_Bill.pdf](http://mohfw.nic.in/NRHM/Draft_Health_Bill/General/Draft_National_Bill.pdf).
23. Nomani, M.Z.M., Lone A.A., Alhalboosi, A.K.K., Raj, A.A., and Allail, B. (2020). Therapeutic perception of access to medicines and health care in government hospital of union territories of Jammu and Kashmir. *Indian journal of forensic medicine & pathology*,13(1):57-63; <http://dx.doi.org/10.21088/ijfmp.0974.3383.13120.8>
24. Explaining the draft Bill on violence against healthcare professionals and clinical establishments; Available at: <https://www.prsindia.org/theprsblog/explaining-draft-bill-violence-against-healthcare-professionals-and-clinical>
25. The Epidemic Diseases (Amendment) Ordinance, 2020; Available at: <https://www.prsindia.org/billtrack/epidemic-diseases-amendment-ordinance-2020>.
26. Nomani, M.Z.M., and Sherwani, F. (2020). Security and safety of health care professionals during covid-19 pandemic in the context of epidemic diseases (amendment) ordinance, 2020. *International journal on emerging technologies*, 11(4): 23-26.