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.

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-II (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 24,371 deaths reported by the covid19india website by July 15, 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, 908, 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, thereis124 direct and incidental legislation having a bearing on the public health dimensions. Among these, there are 67 Actsadministered 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, administrated by the Ministry of
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 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.
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 precursors 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 imprisonmen 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 constitutional hiccup 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
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**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.

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