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**ANALYSIS OF INDIAN LEGAL FRAMEWORK ON EPIDEMIC: A STUDY IN  
SPREAD OF COVID-19 IN INDIA**

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**ABSTRACT**

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The world is currently witnessing a Brobdingnagian health predicament caused due to a nanoscopic nemesis namely SARS-CoV-2 (Severe Acute Respiratory Syndrome Corona virus 2) as it has annihilated enormous human lives across the globe. Taking into account the agonizing state of the Earth, it will not be fallacious to articulate that most of the finest health mechanisms of the world have collapsed to conquer this global pandemic. Having said that, tackling the contagious outbreak would be certainly strenuous and burdensome task for India, as it is muffled with innumerable impediments like high population density, poor health infrastructure, illiteracy, poverty and many more. Thus, at this alarming situation the robust legal framework has a promising role to combat health emergency like Covid-19. Talking about India, beside various international obligations, it has numerous laws for mitigating health exigencies both at central and state level, viz, The Epidemic Diseases Act, 1897, Port Quarantine Laws, Disaster Management Act, 2005, The Epidemic Diseases (Amendment) Ordinance, 2020 and various state health laws. In the present paper an attempt has been made to scrutinize these legislations along with the international obligation of states to assess the efficiency of the health predicament control mechanism of India. That Apart, the public health bills, viz., National Health Bill of 2009, Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017 and the organizational structures of public health will also be brought into discussion to spot the dilemmas and deficiencies in the existing mechanism. Finally, the paper is concluded with the recommendations which aim to restore the civilization by way of mitigating the threat of the pandemic.

**KEYWORDS:** *Covid-19, Health Predicament, Legislations, Combating Pandemic.*

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## INTRODUCTION

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*‘The distinction between past, present and future is only a stubbornly persistent illusion.’*

These words of *Albert Einstein* are apropos in present situation where an infinitesimal element traumatized the entire Globe as the same was already predicted in 1980s.<sup>2</sup> In the month of December, 2019 pneumonia of an unknown cause detected in Wuhan, China which later announced by World Health Organization to be Corona Virus Disease (Covid-19) having international health concern.<sup>3</sup>

At this crucial phase health control mechanisms of countries play an indispensable role to vanquish the dilemma by way of showing utmost concern towards health of citizens. It is evident that most of the efficient health mechanisms of developed countries, like USA, Italy, Spain etc. have failed to normalize the out-break of Covid-19 which questions ability of their respective legal framework to tackle pandemic like this. This legitimately strikes a question in our mind about the viability and efficiency of health emergency mechanism of India. In the subsequent text Indian legal skeleton to counter Covid-19 will be scrutinized.

### CONSTITUTIONAL FRAMEWORK

Being union of twenty-nine states and eight union territories, Indian Constitution bifurcates legislative responsibilities between the central government and the states. Legislating on public health crisis management is cup of tea of both Union and States. The Union may deal with port quarantine, interstate migration and quarantine, seamen’s and marine hospitals under entries 28 and 81 of List I of Seventh Schedule read with Article 246.<sup>4</sup> State may legislate for matters relating to public health and sanitation, hospitals, and dispensaries under entry 6 of List II.

That separates central government and state laws may concurrently provide for the prevention of inter-state transmission of infectious or contagious diseases. However, in case the council of states, with its two-thirds members present and voting, deems it necessary to do in interest of national importance, may pass any law in relation to any matter in the state

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<sup>2</sup> Adam Roberts, *Fever dreams: did author Dean Koontz really predict coronavirus?* THE GUARDIAN (May 1, 2020, 3:30 P.M.) <https://www.theguardian.com/books/2020/mar/05/theres-something-out-there-spread-of-disease>.

<sup>3</sup> WHO Timeline - COVID-19, WHO (May 1, 2020), <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

<sup>4</sup> Indian Const. art 246.

list.<sup>5</sup> Not only this, to give effect to any international agreement relating to health, the Parliament can bring into effect any legislation.<sup>6</sup>

### UNION LAWS

In India, uniform health law applicable throughout the whole territory of India is not in existence. Despite several attempts of the central government it failed to bring into effect such legislation. However, provisions relating to health crisis management laws can be traced in various legislations in a scattered manner.

#### *The Epidemic Diseases Act, 1897*

Talking about laws preventing a pandemic like this, India has *Epidemic Disease Act, 1897*<sup>7</sup> which was brought in force to tackle plague in Bombay. The Act of 1897 aimed to provide for prevention of the spread of dangerous epidemic diseases. For which State governments under *Section 2* may adopt any measure or prescribe temporary regulation to prevent outbreak, if the government deems existing law to be inefficient.<sup>8</sup>

Similarly, *Section 3* empowers the central government to take measures and prescribe regulations for inspecting ship or vessel at any port and for the detention of persons arriving or intending to sail.<sup>9</sup> That apart, by virtue of *Section 4* any person who disobeys any order aforementioned, may be charged with an offense under *section 188* of the *Indian Penal Code*.<sup>10</sup> *Section 5* provides immunity from legal proceedings to any person or authority for anything done under this Act.<sup>11</sup>

#### *The Epidemic Diseases (Amendment) Ordinance, 2020*

The reprehensible attacks upon the medical professionals and health workers in this pandemic era led President of India, in exercise of powers under Article 123(1),<sup>12</sup> to promulgate an ordinance namely, *the Epidemic Diseases (Amendment) Ordinance, 2020*<sup>13</sup> on 22 April, 2020. The Ordinance aims to amend the Epidemic Diseases Act, 1897.

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<sup>5</sup> Indian Const. art 249.

<sup>6</sup> Indian Const. art 253.

<sup>7</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897 (India).

<sup>8</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 2 (India).

<sup>9</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 3 (India).

<sup>10</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 4 (India).

<sup>11</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 5 (India).

<sup>12</sup> Indian Const. art 123(3).

<sup>13</sup> Epidemic Diseases (Amendment) Ordinance, 2020 (Ordinance 5 of 2020)

This Ordinance provides few important definitions to secure the interest of the health workers, these are, act of violence,<sup>14</sup> healthcare service personnel<sup>15</sup>.

The Ordinance amends this law to include the protection of health care workers against epidemics and to increase the ability of the central government to prevent the spread of such diseases. The Ordinance extends the power of the central government to regulate the inspection of any bus, train, cargo, ship, or aircraft that leaves or arrives at any port or aerodrome. In addition, the central government may regulate the arrest of any person who intends to travel by these means.<sup>16</sup>

The Ordinance specifies that no person shall commit or abet the commission of an act of violence against the health care provider, or cause damage to any property at any time of violence. Non-compliance with this provision shall amount to imprisonment available between three months and five years, with a fine of between rupees fifty thousand and two lakh.<sup>17</sup>

This case is compoundable in nature by the victim with the consent of the Court. If an act of violence against health care workers causes serious harm, the person who commits the offense will be punished with imprisonment for six months which may exceed to seven years, with a fine of between one lakh rupees and five lakh rupees.<sup>18</sup> This ordinance also talks about the maximum time within which investigation and trial for the offences must be completed, which is thirty days and one year respectively.<sup>19</sup>

#### *Disaster Management Act, 2005*

*The Disaster Management Act, 2005*<sup>20</sup> was legislated to establish a legal framework for the effective management of disasters and other incidental matters. This Act tries to provide legal definition of a few terminologies which helps the Central Government to take necessary steps in cases of exigencies, e.g., ‘disaster’, ‘disaster management’ etc.

The term disaster has been defined as catastrophe, calamity, or mishap arising from any natural or man-made cause which amounts to substantial loss of life, threat to human life, destruction of property or degradation of environment and magnitude of which is beyond the

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<sup>14</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 1A (a) (India).

<sup>15</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 1A (b) (India).

<sup>16</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 2 (India).

<sup>17</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 3 (2) (India).

<sup>18</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 3 (3) (India).

<sup>19</sup> The Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897, § 3A (India).

<sup>20</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005 (India).

coping capacity of the affected area.<sup>21</sup> This definition is wide enough for a layman of ordinary prudence to equate the Covid-19 pandemic as disaster. Furthermore, the Act portrays disaster management<sup>22</sup> as a continuous and integrated process of initiating measures in order to prevent or mitigate the risk of disaster including capacity building, anticipating with upcoming danger and most importantly assessing the damage, rehabilitation and reconstruction.

That apart, the Act establishes three-tier Disaster Management Authority at National, State and District level to mitigate the disaster with enough ease and efficiency. The most relevant provision in this pandemic era would be Chapter IX where all these management authorities are bestowed with disaster management and disaster mitigation fund and in case of emergency all are authorized to make emergency procurement for rational purposes.<sup>23</sup>

Section 51 imposes sanction of imprisonment of one year with/without fine for obstructing any officer or authorized person working on behalf of the government and for violating directions issued by governments be it state or central. And if any disobedience amounts to loss of life or causes imminent danger then the imprisonment is for two years.<sup>24</sup> Like the Act of 1897 this law also provides legal immunity to officers or employees of the government for any act done in their official capacity.<sup>25</sup>

In a nutshell it can be said that, the Act of 2005 provides with the responsibilities, actions plans and measures which are to be taken to mitigate the risk of disaster.

#### *Port Quarantine Laws*

Indian Aircraft (Public Health) Rules, 1954 made under Aircraft Act, 1934<sup>26</sup> gives power to central government to prevent spread of disease. A health officer appointed by the central government is posted at the port of entry from abroad and such officer may grant critique to the vessel or aircraft for landing.<sup>27</sup> He may also inspect the aircraft, its passengers, crew, and subject them to medical examinations.

Except for an emergency that poses a serious public health hazard, the aircraft should not, due to an infectious disease that requires no quarantine, be prevented by the airport health

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<sup>21</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005, § 2(d) (India).

<sup>22</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005, § 2(e) (India).

<sup>23</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005, § 46, 47 & 50 (India).

<sup>24</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005, § 51 (India).

<sup>25</sup> Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005, § 74 (India).

<sup>26</sup> Air Craft Act, 1934, No. 22, Acts of Parliament, 1934) (India).

<sup>27</sup> Indian Aircraft (Public Health) Rules 1954, r 2(8) (India).

officer from discharging or unloading cargo, fuel, or water. However, where any person is required to be isolated for the time being, the health officer may cause him or her to be transported to a hospital or other approved place.<sup>28</sup>

If necessary, the said officer may require the person to report to him or her from time to time during the inspection.<sup>29</sup> The health authority may also remove, cause to be removed, or order the removal of any person who is likely to spread any invasive or contagious disease.<sup>30</sup> Once it is brought to the notice of health supervisor, he or she may prevent the launch of any flight of any person showing any signs of an attack and any person whom the health officer thinks may transmit the infection due to his or her contact with the symptomatic persons.<sup>31</sup>

Similar provisions of quarantine and health measures were made with regard to passenger ships, cargo or vessels under the Port Health Rules 1995 made under the parent Act namely Indian Port Act, 1908.<sup>32</sup>

### *National Health Bills*

Considering the importance of uniform public health law, the Central government entrusted various agencies to frame model public health laws. As of now, we have 3 such drafts in place; the Model Public Health Bill by Central Bureau of Health Intelligence (1987); the National Public Health Bill by National Institute of Communicable Diseases (2002); and the National Health Bill by the Ministry of Health and family Welfare Task Force (2009).<sup>33</sup> Among these the National Health Bill of 2009 framed by MoHFW Task Force is most comprehensive one aimed to protect and fulfill rights in relation to health, health equity and justice.

#### *1. National Health Bill of 2009*

This bill aims to secure fundamental rights enshrined under Articles 14, 15, 21 and also fulfils states responsibility as imposed under Articles 38, 39, 42, 47 and 51 of the constitution and most importantly it incorporates various international obligations relating to health of the public. It is pertinent to mention here that not only constitutional mandate,

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<sup>28</sup> Indian Aircraft (Public Health) Rules 1954, r 56 (India).

<sup>29</sup> Indian Aircraft (Public Health) Rules 1954, r 58 (India).

<sup>30</sup> Indian Aircraft (Public Health) Rules 1954, r 61 (India).

<sup>31</sup> Indian Aircraft (Public Health) Rules 1954, r 36 (India).

<sup>32</sup> Indian Port Act, 1908, No. 5, Acts of Parliament, 1908 (India).

<sup>33</sup> Subhas Salunke, P Padmanaban, Prasanth K S, P Saxena, Approach Paper on Public Health Act, NHRC India (May 1, 2020, 2:20 A.M.), [http://nhsrindia.org/sites/default/files/Task%20Force%20on%20Public%20Health%20Act\\_2012\\_approach%20paper.pdf](http://nhsrindia.org/sites/default/files/Task%20Force%20on%20Public%20Health%20Act_2012_approach%20paper.pdf).

Hon'ble Supreme Court of India, in its various rulings, has exhorted the central government to ensure legal recognition to the health rights. Moreover, National Human Rights Commission has also directed the Government of India to enact a health legislation, which mandated the govt. to present the bill before the Parliament.

This Bill defines terms like endemic<sup>34</sup>, epidemic<sup>35</sup>, communicable diseases<sup>36</sup>, public health emergency<sup>37</sup> which will definitely obliterate all confusions of administration while dealing with the health crisis. Further this bill provides various responsibilities of both central and state governments in order to decide progressive health determinants and to ensure health services to public at large.

## *2. Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017*

During UPA-I regime the Government contemplated a public health emergency bill which was again introduced by Ministry of Health and Family Welfare in 2017, namely *Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017*. This bill is aimed to prevent, control and manage epidemics, public health consequences of disasters, bio-terrorism etc. by way of giving extensive powers mainly to state government to counter the dilemma.<sup>38</sup>

Central Government may also render necessary directions to State or Union Territories and if the Central Government deems it expedient to do so, it may assume the powers of State Government.<sup>39</sup>

Apart from these there are incidental legislations which indirectly bring focus on health crisis management. These are Indian Penal Code, 1860 (s. 188, 269, 270, 271) Red Cross Society Act, 1920, Guidelines on Biological Disasters, 2008 (in cases of bio-war), National Disaster Management Plan, 2019 and many more.

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<sup>34</sup> National Health Bill, 2009, § 2 (f) (India).

<sup>35</sup> National Health Bill, 2009, § 2 (g) (India).

<sup>36</sup> National Health Bill, 2009, § 2 (e) (India).

<sup>37</sup> National Health Bill, 2009, § 2 (dd), 2 (ee) (India).

<sup>38</sup> Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017, § 3 (India).

<sup>39</sup> Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017, § 4 (India).

## STATE LAWS

Not only Central Govt. various states legislated public health laws within their ambit. For the first time Madras Public Health Act was promulgated in 1939. Till now there are more than 8 states having public health law/bills in place. It is interesting that Kerala has two sets of public health laws viz., Travancore-Cochin Public Health Act, 1955 (for southern districts) and Malabar Public Health Act, 1939 (for northern districts).<sup>40</sup>

Apart from public health laws various state governments of Kerala, Odisha, Rajasthan, Delhi, Assam, West Bengal have passed ordinances or regulation to counter the outbreak of Covid-19. The Public Health legislations existing in States as of now are archaic and require a re-thinking in their approach in dealing with public health problems in India. These state laws are inefficacious in want of uniform legislation although priorities of States differ. The isolated ventures now need to be united by a common purpose, principles and direction.<sup>41</sup>

## ORGANIZATIONAL STRUCTURE

Apart from legislative and treaty obligations, India has various organizations which have key role to provide an efficacious strategy against Covid-19. These bodies are either any statutory organ or other instrumentality of state to serve the purpose of government.

*National Centre for Disease Control*, earlier known as National Institute of Communicable Diseases (NICD) has been set up under the Ministry of Health and Family Welfare in 2009 with a larger mandate for controlling emerging and re-emerging diseases. It is headed by a director with various other relevant departments including bio-technology, virology, epidemiology, micro-biology etc.

In order to tackle any contagious disease, it has role of establishing an early warning mechanism; increasing the presence of laboratories in different states; establishing a network for surveillance and rapid confirmation of diagnosis and instituting appropriate and timely response for the prevention and control of outbreaks. Numerous guidelines were issued by NCDC for citizens, health workers, hospitals and even government to deal with the pandemic.<sup>42</sup>

“*Indian Council of Medical Research*” (ICMR) is the Apex body in India and one of the oldest medical research bodies in the world, for the formulation, co-ordination and

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<sup>40</sup> Supra note 32 at 5

<sup>41</sup> Ibid

<sup>42</sup> World Health Organisation, *International public health hazards: Indian legislative provisions*, NCDC, (May 3, 2020, 12:36 A.M.), <https://ncdc.gov.in/WriteReadData/1892s/File573.pdf>.



promotion of bio-medical research. ICMR’s “*Vial Research and Diagnostic Laboratories*” has significant role in identifying the viruses and is capable of giving appropriate guideline for conducting test.

Data analysis of any contagious disease and framing guidelines on the basis of that for better results is also within the ambit of ICMR. It has its various cell parts across India, viz. National Institute of Cholera and Enteric Diseases (NICED), Kolkata, National Institute of Virology (NIV), Pune, National Institute of Epidemiology (NIE), Chennai; which are tirelessly working under the umbrella of ICMR which is indeed appreciative.<sup>43</sup>

### CONCLUSION

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Solutions to these problems can be found in Bills of 2009 and 2017 but unfortunately these are engulfed by the debate of Pith and substance between Centre and State. It would be fallacious to characterize Indian public health mechanism as deplorable, as various wings of government i.e. National Centre for Disease Control (NCDC), Indian Council of Medical Research (ICMR) and its organs are rigorously striving to normalize the situation. At this crucial juncture all we need non-fragile public health legislation with both coercive and right based approach which must ensure co-operation among Centre, state and various authorities. Because it is only the cooperation and understanding which can make the tiring efforts of health workers worthwhile and indeed, at the end of day, make us smile.

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<sup>43</sup> Patro BK, Tripathy JP, Kashyap R., Epidemic diseases act 1897, *India: Whether sufficient to address the current challenges?* JOURNAL OF MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES, (May, 3, 2020, 12:57 A.M.), [http://www.jmgims.co.in/temp/JMahatmaGandhiInstMedSci182109-5777097\\_160250.pdf](http://www.jmgims.co.in/temp/JMahatmaGandhiInstMedSci182109-5777097_160250.pdf).