

# INDIAN JOURNAL OF LEGAL REVIEW



VOLUME 3 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



**Indian Journal of Legal Review [ISSN - 2583-2344]**

**(Free and Open Access Journal)**

**Journal's Home Page – <https://ijlr.iledu.in/>**

**Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>**

**Volume 3 and Issue 1 of 2022 (Access Full Issue on – <https://ijlr.iledu.in/volume-3-and-issue-1-of-2023/>)**

### **Publisher**

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Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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**PUBLIC HEALTH AND LEGAL DIMENSIONS OF  
COVID-19 IN INDIA: AN ANALYSIS**

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**Best Citation** - Dr. Sameera Khan, PUBLIC  
HEALTH AND LEGAL DIMENSIONS OF COVID-19 IN  
INDIA:AN ANALYSIS, Indian Journal of Legal  
Review (IJLR), 3 (1) of 2023, Pg. 567-572, ISSN -  
2583-2344.

**Abstract**

*The Covid-19 Pandemic affected all spheres of life across the globe be it social, economic, political, and cultural. The Pandemic came without a warning and the unpreparedness of the states around the globe was exposed. The legislative provisions to tackle the Pandemic were also found to be inadequate since they were outdated and enacted without envisioning a Pandemic of such a large scale. The provisions invoked by the Government were the 160 years old Indian Penal Code, 1860, the 123 years old Epidemic Diseases Act, 1897 and specific sections of Disaster Management Act, 2005. The execution of these laws was inadequate in controlling the spread of the virus. In order to provide a quick redressal, the Epidemic Diseases (Amendment) Ordinance, 2020 was also promulgated by the President. The vulnerability of the public health system in the face of the Pandemic was exposed. The aim of the paper is to examine the response of the Government to the Covid-19 Pandemic using legislative and constitutional provisions. It aims to identify the gap in existing legislation and the grey areas in the statutory provisions. The author further suggests recommendations for the amendment of current legislation.*

**Keywords:** Covid-19, Pandemic, Public Health, Legal Dimensions, Epidemic Diseases Act, 1897, Disaster Management Act, 2005.

**Introduction**

The Covid-19 Pandemic had a devastating impact on the global population. The Governments around the world were unprepared for such an eventuality and were faced with the monumental task of carving out an effective public health strategy rooted in national laws and policies. India had no modern legislation to specifically deal with a Pandemic like Covid-19. Therefore, the Indian Government resorted to the implementation of the century old Epidemic Diseases Act, 1897, the specific quarantine related sections of the Indian Penal Code, 1860 and the Criminal Procedure Code, 1973 with a view to control the spread of the Pandemic and provide effective treatment to the infected. With the Government running out of ideas to curb the spread of the Pandemic, it used its powers under Section 6, 10, 38 and 72 of the Disaster Management Act, 2005 to impose nationwide lockdowns from 25<sup>th</sup> March, 2020 to 17<sup>th</sup> May, 2020. Covid-19 was a calamitic event since the ordinary emergency measures to protect the health of the community were rendered inadequate. The public health system of India faced an unprecedented challenge. The existing legislations related to public health were invoked and tested as India combatted its greatest ever health challenge in the 21<sup>st</sup> century. The effectiveness of these measures and the urgent need for a major reform in the law relating to public health have been discussed further.

**Covid-19 response by India: Key elements**

The Indian Constitution has demarcated the health responsibilities between the Central and the State Governments. The responsibilities related to public health and sanitation is the task of the State and Local Governments. The Union Government has responsibilities related to port quarantine, inter-state migration and quarantine. However, there are only 8 States and Union Territories in India which have a specific public health legislation. The measures pertaining to existing legislations that had been

undertaken by the Union Government have been listed.

- The powers under the Disaster Management Act, 2005 were invoked as early as January. This was done in order to ensure better preparedness to tackle the Pandemic and confine it to the hospitals. The Pandemic was notified as a disaster. This was beneficial in the response since the states now had the authority to use the State Disaster Response fund to tackle the Covid-19 Pandemic.
- The states were advised by the Ministry of Health to invoke the provisions under Section 2 of the Epidemic Diseases Act, 1897 to combat the spread of the virus. The section provides that, *"When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed."*
- The Central Government also invoked its powers under Section 2A of the Act which empowers the Central Government to take similar measures. It provides that, *"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 such measures, as it deems fit and prescribe regulations for the inspection of any bus or train or goods vehicle or ship or vessel or aircraft leaving or arriving at any land port or aerodrome, as the case may be, in the territories to which this Act extends and for such detention thereof, or of any person intending to travel therein, or arriving thereby, as may be necessary."*

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

The Act is a colonial remnant which was enacted in the year 1897 to control the spread of bubonic plague in Bombay State. There are four sections in the Act to control the spread of Epidemics. The objective of the act as per the preamble is to *"prevent the spread of dangerous epidemic diseases."* It is the only law in the nation which can be utilized when a disease breaks out at the national or the sub-national level. When the Bill related to the act of the introduced, a Council Member remarked that people must *"trust the discretion of the executive in the grave and critical circumstances."* The decisions taken to counter such epidemics is to be taken only after considering the grave and critical circumstances and are taken for the *"greater good"*. The law has been at the receiving end of a lot of criticism. However, the utility of the law to contain outbreaks in the country like Cholera (1910), Spanish Flu (1918–20), Smallpox (1974), Swine flu (2014), and the Nipah Virus (2018) cannot be discounted.<sup>1534</sup> An ordinance was also promulgated by the Indian Government for the amendment of the Act keeping in mind the prevailing situation during the Covid-19 Pandemic. This was promulgated by the Government by using its power under Article 123 of the Indian Constitution. The section 3 of the Epidemic Diseases Act, 1897 was amended

<sup>1534</sup> Kiran Kumar Gowd et.al., *COVID-19 and the legislative response in India: The need for a comprehensive health care law*, 21(4) J PUBLIC AFF. (2021).



where it now punished a person who caused damage or loss to property with *“imprisonment for a term of 3 months to 5 years and with a fine of Rs. 50,000/- to Rs. 200,000/-.”* Moreover, in case there is an incident where there is a violent attack carried out on a health care worker, they can be imprisoned *“for a term of 6 months to 7 years and with a fine of Rs. 100,000/- to Rs. 500,000/.”* In addition, *“the offender shall also be liable to pay compensation to the victim and twice the fair market value for damage of property.”* This was necessitated due to the unfortunate attacks on the medical personnel who were treating Covid-19 patients.

### **Indian Penal Code, 1860**

Another colonial era Penal Law which contains the substantive provisions for Penal Law in India was utilized to regulate the citizens during the Pandemic. Section 269 of the Indian Penal Code, 1860 provides that, *“Any person unlawfully or negligently commits any act that is likely to transmit the infection of any life-threatening disease and that he knows or has reason to believe to be, shall be punished with imprisonment of any kind for a period of up to six months, or with fine or both.”* Section 270 further provides that, *“Someone who malignantly commits any act that is, and that he knows or has reason to believe to be, likely to transmit the infection of any life-threatening disease shall be punished with imprisonment of any kind for a period of up to two years, or with fine, or both.”* These provisions were used to penalise the persons breaking quarantine or violating mask mandates. Section 188 provides for penalties if the lawfully promulgated orders of the public servant are not followed. It gave legal backing to the enforcement of lockdown provisions during the Pandemic. The provisions were used to effectively enforce regulations for the Pandemic.

### **Power of States in the time of Pandemic**

The powers under the law had been invoked by most Indian state during the time of the

Pandemic. This allowed them to control the spread of the virus using Non-Pharmaceutical Interventions (NPIs). They include measures like lockdowns, restriction of public movement and closure of public facilities to prevent the spread of the virus. Some of the preventive measures that had been taken were the closure of gyms, restaurants, enforcement of social distancing and mask mandates. The provisions also empower the Government through its officers to isolate a person if necessitated by the situation. Some of the measures can be carried out with the use of force if the people refuse to comply.<sup>1535</sup>

The District Magistrate wields the authority to impose a lockdown. Moreover, the Government officials have the powers of surveillance over individuals as well as private premises. The Government can also monitor the spread of news and information with a view to counter the publication of fake news which can result in the spread of fear and panic.

### **Analysis of the Legislative Provisions and the Measures Taken**

During the advent of the Pandemic, there was constant demands by the members of the Lok Sabha and the Rajya Sabha for the Government to take appropriate measures to mitigate the harmful effects of the Pandemic. The task on the hands of the Government was enormous since India had not dealt with such a situation post-independence. The lack of a modern law to deal with such exigencies did not make the task any easier. However, the Government was proactive in its response and the imposition of a nationwide lockdown was pivotal to containing the spread of the virus in its initial stages. However, the implications of these provisions on the Human Rights and Constitutional Rights of the general population were grave which have been discussed.

<sup>1535</sup> Harleen Kaur, *Can the Indian legal framework deal with the COVID-19 pandemic? A review of the Epidemic Diseases Act*, BAR AND BENCH (Mar. 27, 2020, 01:35 PM), <https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>.

## Migrant Worker Crisis

In a report the ILO stated that it is the “worst global crisis since World War II due to COVID 19.” The estimation by ILO was that around 400 million workers will fall into the poverty trap due to the lockdown in India.<sup>1536</sup> The lockdown came as a bolt out of the blue for the migrant workers. They were caught off guard and the suspension of transportation services meant that they did not have any means to get home. Moreover, the atmosphere propagated by the Government was of fear and the assurances were hollow. This caused panic and anxiety in the migrant workers which caused them to go their hometown by hook or by crook. There were several sightings of migrant workers walking to their hometowns with heavy loads on their backs in sweltering heat.<sup>1537</sup> There was more than one instance of pregnant women giving birth on the road.<sup>1538</sup>

Their jobs were lost and they had no means of livelihood in their home ground. In addition to this, they were also stigmatized as the villagers feared them to be the potential carriers of the virus. They were also subjected to police brutality and the government largely turned a blind eye to it. Even after the transportation was opened, it was chargeable and a huge burden for the workers who had not earned any income for months. The village quarantine centres were not adequately prepared and the migrant workers were forced to quarantine in shoddy centres without adequate safety measures which rendered them vulnerable to illnesses. This was a grave violation of their Human Rights and the measures taken did not provide any assurance for the protection of the rights of the migrant workers. This is one of the many areas where the lack of an effective legal framework

<sup>1536</sup> Diganta Das, *Regional Disparities of Growth and Internal Migrant Workers in Informal Sectors in the Age of COVID-19*, Journal of Public Affairs (2020).

<sup>1537</sup> Ipsita Chakravarty, *A Story of Swollen Feet: The Physical Toll of Walking Home during Lockdown*, SCROLLIN (June 14, 2020, 9: 00 AM), <https://scroll.in/article/963641/a-story-of-swollen-feet-the-physical-toll-of-walking-home-during-lockdown>.

<sup>1538</sup> Trending Desk, *Migrant Woman Delivers Baby on Road, Walks Another 150 Km before Finding Help*, INDIA NEWS (May 13, 2020, 12:54 PM) <https://www.india.com/viral/migrant-woman-delivers-baby-on-road-walks-another-150-km-before-finding-help-4027848/>.

to deal with the Pandemic affected the rights of the Indian citizens.

## Privacy and the Pandemic

The measures which had been taken to regulate the spread of Covid-19 affected the Fundamental Rights of the citizens. A lot of the measures taken during the Pandemic included imposition of lockdowns, surveillance and stringent monitoring of the citizens. The Right to Privacy was interpreted to be a Fundamental Right under the ambit of Article 21 in the case of *K.S. Puttuswamy v. Union of India*.<sup>1539</sup> It also laid down specific tests which needs to be followed by the State in case it undertakes any actions which impinge on the right to privacy of the citizens.

- The action should have a legal action.
- There must be a legitimate aim for which the action is to be carried out.
- Such action must be proportionate to the desired goal.
- The citizens should be protected against the abuse of powers that may result from such interferences.

The Epidemic Disease Act, 1897 satisfies the first two criterion as it is a legislative provision which has the legitimate aim of preventing the spread of the disease. The proportionality of the action needs to be considered keeping in mind the specific circumstances in play. In the case of the Covid-19 Pandemic, there were a lot of variables which made the determination of proportionality extremely difficult. However, one of the major shortcomings of the act is the blanket immunity which has been provided to Government Officials. The lack of a redressal mechanism for citizens against the abuse of powers severely impedes the effectiveness of the Act in balancing the rights of citizens vis-à-vis the need for emergency measures. This puts the citizens in a precarious situation as a wide amount of discretion is granted to the public authorities and the citizens are unable to speak

<sup>1539</sup> *K.S. Puttuswamy v. Union of India*, (2017) 10 SCC 1.

up against coercion or excessive action by the State. There is a danger that the powers under the Act can be abused by the officials while carrying out their lawful duties. Therefore, the test of reasonable restriction on the Right to Privacy, which is a Fundamental Right is not passed by this Act.<sup>1540</sup> This necessitates the need for the development of a modern and more responsible framework to protect the rights of the citizens.

### The Way Forward: Conclusion and Suggestions

The utility of the Epidemic Diseases Act, 1897 to counter the adverse effects of Epidemics and Pandemics over the years has been immense. However, as seen during Covid-19, there have been serious concerns over the implementation of the provisions of the act with regards to the rights of the individuals. The powers afforded to the Government and its officials under the Act are immense and the scope of accountability for their actions is minimal. They are provided a significant amount of immunity for their actions. This also resulted in certain illegal actions which were in violation of the Fundamental Rights of the citizens. Moreover, no mechanism for coordination between the Central Government and various State Governments has been provided under the Act. The Union Government has limited powers under the Act. Therefore, there is a need for amendment in the legal framework used to tackle such scenarios since the Constitutional Rights of the people also need to be preserved. The framework should provide for an increased transparency and accountability towards the public.

The Disaster Management Act, 2005 is one such legislation which provides for this kind of procedural checks and balances. The authorities are set up at the national, state and different level. The role of Governments at the centre and the state level have been defined

clearly. The tasks of different ministries of the Government have also been demarcated. Moreover, it also has guidelines for capacity building. The Government officials are not provided with absolute immunity and must act in conformity with the law. They are provided immunity only in certain cases such as actions taken in good faith and warning communications. The Government is not allowed to discriminate in any manner while providing relief or compensation to the affected citizens. Moreover, in order to provide accountability, the authorities set up under law must publish annual reports.

There was also a National Health Bill, 2009 was tabled to provide a legal framework to provide essential public health services in furtherance of the recognition of the Right to Health as a Fundamental Right. It was also in furtherance of the International Health Regulations, 2005 which came into force in 2007 as an International Health Law. The Bill was significant since it provided for a mechanism of protection and fulfilment of the right to health and wellbeing, health equity and justice, and a robust health care system.<sup>1541</sup> It even recognized 71 enactments under Schedule III. It was aimed at establishing cohesiveness and compatibility to realise the health rights. It also provided a robust public health structure which is aimed at responding to public health emergencies. This was based on coordination between the Governments at the Union level and the State level. It even provided for public health boards at the state as well as national levels. For dealing with medical emergencies, it provides for community monitoring and quarantine. It also provided for grievance mechanisms and transparency, thereby, creating some space for right based health care delivery and respect for human rights. The Bill did not see the light of the day despite being much more in sync with the present-day realities of the country and having

<sup>1540</sup> Harleen Kaur, *Can the Indian legal framework deal with the COVID-19 pandemic? A review of the Epidemic Diseases Act*, BAR AND BENCH (Mar. 27, 2020, 01:35 PM), <https://www.barandbench.com/columns/can-the-indian-legal-framework-deal-with-the-covid-19-pandemic-a-review-of-the-epidemics-diseases-act>.

<sup>1541</sup> Md. Zafar Mahfooz Nomani & Rehana Parveen, *Legal Dimensions of Public Health with Special Reference to COVID-19 Pandemic in India*, 11(7) SYS REV PHARM (2020).

provisions which were in conformity with the Constitutional Provisions.

Some of the suggestions that can be implemented for a more robust legal framework have been discussed below.

- The Epidemic Diseases Act, 1897 should be amended accordingly with respect to special needs of the Pandemic. They should include identifying, testing, isolating, contact tracing, controlling, coordinating, and containing any epidemic.
- There is also need to categorize and speculate future outbreaks. This can be done using categorization of diseases into different types and developing proper response mechanisms for the same.
- The co-ordination mechanism between the State and Union Governments should be clearly defined.
- The lessons taken from Covid-19 should not be discounted. Quarantine facilities can be established in Airports and other points of arrival for International Arrivals.
- The National Health Bill, 2009 can be revived and take inspiration from global practices. India is more interconnected globally now and there is need to learn from the methods used by different nations to tackle such issues.
- In a globalised world, there is a pressing need for coordination between nations. The bodies like UN and WHO can be used as platforms to negotiate a law to deal with such global health emergencies which can be applied uniformly to govern the interactions between different countries during Pandemic.

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