

Analysis Of Legal Measures Of COVID-19 In India

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Abstract: The following is a brief analysis of the topic titled ‘ Analysis Of Legal Measures Of COVID-19 In India ’. This topic has been read, shortened and examined broadly under the following heads:- Introduction, Function of Epidemic Disease Act, The Power of State during Pandemic, rules regarding right to privacy, The Need for a Legal Framework for Epidemic Preparedness and Response and Conclusion. Many people across the globe lost their lives during the lockdown. Many activities like transportation, sports, recreational, and others were motionless during the lockdown.

The burden of the State increases to provide basic needs to the people without violating their rights. Several legal frameworks assisted the administration to safeguard the people. Moreover, the lockdown violates the rights of people. The violated rights were education, life, privacy and health etc.

Keywords: Epidemic, India, Pandemic, lockdown, violation, rights.

Citation: Abhishek Jain, Analysis Of Legal Measures Of COVID-19 In India, The International Journal of Advanced Research on Law and Governance, Vol. 3, Issue 2, 2021.

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Introduction:

Public health and social measures (PHSMs) are introduced across the globe to respond to the Covid-19 pandemic¹. Social distance, use of masks and sanitizers, avoid crowded places are some of the measures taken by the government during the lockdown. Before the vaccination, all the initiatives were essential and followed by people across the world. From International organisations to local level, all follow the guidelines issued by the concerned authorities.

People lost their family members, bread earner of the family, friends and colleagues. It is a bad time not only for India but for all the countries around the world. All the country has taken steps to protect the people. Indian government helps people by distributing essential commodities, conducts awareness programmes, imposed restrictions, cleaning areas every week and many more.

But at that time, there was also a violation of the rights of the individual. It is due to the implementation epidemic laws. There is no proper definition of the word 'Pandemic' in the law. It solely depends on the Centre to decide whether it is epidemic or not?

In this article, we will briefly discuss why the government requires more laws at the time of lockdown and how these laws will implement?

Elements of the Covid-19 Response:

In the Constitution of India, it is the responsibility of the States and local bodies to provide the facilities of sanitation and health and the Central government manage

¹ World Health Organisation, available at <https://www.who.int/publications/i/item/considerations-in-adjusting-public-health-and-social-measures-in-the-context-of-covid-19-interim-guidance> (last visited Aug. 7, 2021).

the migration of people from one State to another and quarantine the foreigners. In India, only the eight States and Union Territories have the legislature for the health of citizens.

The Tamil Nadu Public Health Act, 1939 was enacted to set up the committee for public health. It also appoints staff to distribute basic needs like water, medicine, etc.²

The administrative authorities took several measures to protect the people and respond to the COVID – 19 diseases. Some of the following steps are:-

- Disaster Management Act, 2005 – States can use funds from the State Disaster Response Fund for COVID – 19. The government implemented its power under the Disaster Management Act 2005 to spread awareness and control the Pandemic.
- Epidemic Disease Act, 1897 – The Ministry of Health recommended State Government to implement Section 2 of the Epidemic Disease Act, 1897. The section gives power to the government to take measures and suggests guidelines as to widespread disease.
- International Health Regulations, 2005 (IHR) – As India signs the International Health Regulations, there is a requirement to form an appropriate institute for public health to this spreading international disease.³ It can be done by programmes like Integrated Disease Surveillance Programme (IDSP).

The Function of the Epidemic Diseases Act, 1897:

The motive of the law is that governments should take action when there is a danger of wide- spreading disease and not for forming a general health care

² The Tamil Nadu Public Health Act, 1939, No. 3, Acts of Tamil Nadu Legislature, 1939 (India).

³ A.3, International Health Regulations, 2005.

system⁴. All the provisions of the law are harmless and in favour to safeguard the people. The said law comprises four sections. The term dangerous epidemic disease is unclear in the Act.

Section 2A⁵ of the Epidemic Disease Act stated that the Centre is permitted to make laws when they are sure that country is facing the dangerous wide-spreading disease. With this section, the Centre can also control the ships or vessels departure or arrival in the country.

Section 3 dealt with the punishment of six months imposed against the violator of section 2A. A person shall be punished with six months' imprisonment or with a fine and with both⁶.

There is a requirement to learn the method of implementing the law by the authorities. While defining the old infectious disease in India SL Polu stressed that the administration should first confirm agreement with the global sanitary conventions, protect the trade, and there may be no fear about the spreading disease in the world⁷.

According to David Arnold, the Epidemic Disease Act was one of the strict laws since the British era⁸. Compulsory isolation of plague suspects, demolishing the infected property, examining the people physically and restricting the movement of people from one place to another are some of the reasons for David's thought. They all are creating disbelief in the people and opposing the initiative taken by the government. David Arnold mentioned that the British government changed its strategies like awareness concerning health, voluntarily help by people and establishing an institution for research work on medical science.

⁴ Rakesh, P. S., The Epidemic Diseases Act of 1897: *public health relevance in the current scenario*. Indian journal of medical ethics, 1(3), (2016).

⁵ S. 2A, the Epidemic Disease Act, 1897.

⁶ S. 3, The Epidemic Disease Act, 1897.

⁷ Polu, S. L. *Plague and Cholera-The Epidemic versus the Endemic, Infectious Disease in India, 1892-1940* (pp. 50-81). Palgrave Macmillan, London, (2012).

⁸ Arnold, D., *Science, technology and medicine in colonial India* (Vol. 5). Cambridge University Press, (2000).

The Power of the State during a Pandemic:

At the time of the lockdown, the Indian States like Uttar Pradesh, Delhi, Haryana, Karnataka, and Maharashtra introduced regulations under the provision of the Constitution. They introduced Non- Pharmaceutical Interventions (NPIs) to restraint the spread of disease in lack of medicine to treat people.

NPI's means places where people came closer to each other. For example, educational institutions, shopping malls, gyms, restaurants and so on. State Government also ordered people to maintain social distancing, use masks and sanitizer. During the lockdown, people were isolated or quarantined at their respective houses instead of hospitals.

Some of the provisions of Indian law provide general powers to the government bureaucrats. For example, Epidemic Diseases COVID- 19 Regulations 2020 of Delhi, Uttar Pradesh, and Bihar permitted government officers to help the people by admitting them or isolate them in hospitals.

The bureaucrats are also allowed to investigate individual and private properties. Many people send fake news about the Covid-19 that terror the people. So, free speech is limited control such types of fake news. It protects the interest of people at large and not creating any disturbance and violence in the nation.

State Government has the power to arrest the person who violates the guidelines or rules of COVID – 19 like spreading fake news, not following the home isolation or quarantine, arrested people not following the social distancing. The unnecessary power given to the States creates disbelief between the people and governmental authorities that violates the rules. As per the report, many people were died in quarantine centres due to fear of disease. Many attempted suicide and escaped from the civil hospitals because of not getting proper treatment. Women and girls

are not safe in quarantine centres or hospitals, as staffs or doctors take advantage and rape them. Many incidents came in highlight in this Pandemic time.

The present COVID-19 regulation is severe than the previous one because these regulations limit certain aspects such as free speech, privacy, movement of people, and profession. They are lawful and essential for the people of the country.

There should be a check on the powers of the State government to safeguard the rights of people.

Rules Regarding Right to Privacy:

The various fundamental rights are providing by the Constitution to the people. But the rules of lockdown violate fundamental rights. The right to privacy got violated during the lockdown. It is definite under Article 21 of the Constitution that involves self-respect, freedom and own dependence. Public interest is one of the reasonable restrictions on privacy rights.

The Supreme Court in the case of Puttaswamy V Union of India⁹ put down numerous tests to limits the power of States while imposing on the right to privacy as fundamental. The tests are as follows:-

- The action should be legal.
- The suggested action should be essential for a legitimate aim.
- The extent of such intervention must be equivalent to the need for such intervention.
- Against the abuse of any interference, there must be a practical safeguard.

The purpose of the Epidemic Disease Act is to prevent the spread of epidemic disease. So, the examination of legitimate aim is contented by an act. In the law of parents, it is difficult to define specific equivalent rules for epidemic disease. Under the provision of law, States have law- making power.

⁹ Justice K. S. Puttaswamy v. Union of India, AIR 2017 SC 4161

Against the abuse of State Power of interference with the right to privacy, the parent law does not provide any practical promises. In the ruling, there is no proper definition of epidemic or pandemic disease. It is the Union government who decides epidemic with the doctor's assistance. It mainly depends on the situation.

In previous times, people moves to the Court by filing a petition seeking the State inaction or excessive power used by it or to take action. There is a misuse of the law by the government officials in reporting, quarantine of many people and individual targeting. This misuse of the law leads to abuse of power against the guarantee of practical safeguard. That's the reason Epidemic Disease Act does not pass the reasonable restriction test on the right to privacy as a fundamental right.

The Need for a Legal Framework for Epidemic Preparedness and Response :

The Parliament should make more laws concerning the epidemic. They can also take an idea from the past situation of pandemics and make new laws according to modern times. There is a need for the new law to solve the violation of any human or fundamental right. There is only one legal provision during the pandemic time called Epidemic Disease Act. It is too small and needs to implement more sections or acts. Only one law does not maintain a proper balance between the power of the States and individual rights.

From COVID- 19 instructions, against the unlawful act by state representatives, immunity should be prohibited. To increase the functions of the State government towards the public health, a legitimate structure for infectious diseases is compulsory that will be in the public interest. For instance, Disaster Management Act, 2005 act explains the essential functions of different departments in India. It also established various authorities at the national, district or local level. It is one

of the legal contexts with checks and balances practice. The Epidemic Disease Act dealt with the setting up of an institutions, authorities, and financial mechanisms for capability building.

The law ordered the government authorities to act legally or obey the rules and regulations. Legal protection is providing in certain circumstances like acts for good faith and caution of communication. It also provides a remedy to the affected and eliminates discrimination in providing any compensation or financial assistance.

In India, health infrastructure is vital to protect the people and respond to COVID-19. It also leads to maintain a balance between the security of health and civil liberties.

India, in the context of health policy, has a very fragmented landscape. In public health, Epidemic Disease Act is one of the basics of much interference. The main motive of this law is to provide power to State authorities to take necessary steps during the pandemic in the health, and other sectors. It is not a must to form an association between the Central government and State government. Under the law, the role of Union Government is minor.

Article 253 of the Indian Constitution¹⁰ stated that the Parliament makes any law that affects the International Health Regulations. International Health Regulation talks about the protection, control and public health services during a pandemic.

The Supreme Court observed that before the enactment of Article 253 of the Constitution, there should be a test of reasonableness.

¹⁰ Art. 253, the Constitution of India.

Conclusion:

During the COVID time, many national and international bodies participated to frames new laws and regulations. All the State government with Union conducted awareness programmes, providing basic needs to people such as rice, medicine, masks and sanitizer. Under the Essential Commodities Act 2020, masks and sanitizer were added an essential commodities for the people. The Epidemic Disease Act needs to be amended by the Parliament and should add more provisions to solve the issues of violation of fundamental rights. In the said law, the power of the State government should also be well-defined by the Parliament.

A new legal framework is mandatory for the preparedness and response to spreading diseases. It is needed to increase the responsibility of the officials towards its citizens. Such type of law should be passed by the Central governments while giving power to the States for better results.

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