

Research Article

Need for a New Legal Framework for Pandemic like Covid-19

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ABSTRACT

The major piece of legislation existing in India to fight this Covid-19 pandemic is the Epidemic Diseases Act of 1897 which was a draconian British law. It is supplemented with the provisions of the Indian Penal Code, Disaster Management Act etc. The different countries of the world came up with legislation to confront the challenge. No one can be faulted for it as this is the first real pandemic we are fighting as an independent nation. However, India now urgently needs a progressive, comprehensive, humane and all-encompassing law that propagates a federal and decentralised structure to fight global pandemics or localised outbreaks which seem a certainty with Global Warming taking full effect of the planet's weather and therefore our lives. This law should focus on Centre-State relationship and responsibilities, Decentralisation of Power till Gram Panchayats for effective management. It should focus on all sorts of class and sections like migrant labours, street vendors, homeless, beggars, small businesses, allied businesses, media, industry, agriculture, etc. It should have clear economic policies for all sectors. It should have clear mandates for both Centre and States in terms of medical and allied services capacity building, lockdown procedures, relaxation procedures, social behavioural changes required, etc.

Keywords: Comprehensive, Constitution, Covid-19, India, Law

INTRODUCTION

Covid-19 was declared a pandemic by the World Health Organisation in the start of 2020. Whatever knowledge has been open about it has made it clear that is caused by a virus and it is communicable. The other viruses are also communicable but with

regard to Covid-19, the transmission is different and more dangerous. Different countries as per the requirements of time have enacted the new advanced laws and policies to deal with the epidemics and communicable diseases. Current global governance structures and operational synergies within and among various countries, institutions, and international bodies may be unable to respond adequately to catastrophic infectious disease crises. Since independence, in India, there have been different areas of life which are still regulated by laws passed by the Britishers for its colony. The only piece of legislation in India to fight this Covid-19 pandemic is the Epidemic Diseases Act, 1897 which was a draconian British law. Consequently, the Himachal Pradesh government announced The Himachal Pradesh Epidemic Disease (COVID–19) Regulations, 2020, the Delhi government announced The Delhi Epidemic Diseases COVID–19 Regulations, 2020 and the Government of Maharashtra announced The Maharashtra COVID–19 Regulations, 2020. No one can be faulted for it as this is the first real pandemic which India as an independent nation has to confront.

Urgently, a new comprehensive law is required that propagates a federal and decentralised structure to fight global pandemics or localised outbreaks which seem a certainty with Global Warming taking full effect of the planet’s weather and therefore humans’ lives. Health issues often overlap with development, foreign policy, trade, sovereignty, and intellectual property—a phenomenon that is reflected in a policy transition from the Millennium Development Goals to a “sustainable development agenda.”

LEGAL REGULATION OF PANDEMIC IN INDIA

A patchwork of legislations governs the regulation of pandemic in India-

Relevant Constitutional Provisions

Directive principle of state policy

Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Fundamental duty

Article 51 (h) provides that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform.

Epidemics Act, 1897

The Epidemic Diseases Act, 1897 was enacted as a response to the Bombay plague that spread across the country and led to the death of thousands. The century-old law allows states to take whatever measures they need to implement to prevent infections, and anyone contravening them can face prosecution, including imprisonment up to six months. Section 2 of the law authorises state governments to take exceptional measures and prescribe regulations that are to be observed to limit the spread of the disease.

Amended Disaster Management Act

The Disaster Management Act, 2005 mandates creation of new institutions and assignment of specific roles for Central, state and local governments. Under provisions of the Act, the NDMA has been established under the chairmanship of the prime minister and National Executive Committee (NEC) of Secretaries has been created to assist the NDMA in the performance of its functions. gives considerable freedom to the government to take decisions and spend money from Disaster Relief Fund and empowers district magistrates with wide powers for requisition resources. The Ministry of Home Affairs passed an order on 11th March under Section 35 of the said Act invoking the Disaster Management Act, 2005 under which the Union home secretary, who is the chairman of the National Executive Committee, delegated power to the Union health secretary to enhance the preparedness and containment of COVID-19. The order has been implemented retrospectively, and is in effect from 17 January.

The Act permits the Union government to constitute inter-ministerial central teams (IMCTs) and despatch them to states to make on-spot assessments, issue necessary directions to state authorities, and submit their report to the Centre. The Ministry of Home Affairs (MHA) has constituted six such teams which are, for the moment, headed by bureaucrats and will tour affected areas to report omissions and commissions by the state governments in the management of the Covid-19 situation. These include incidents of violence on frontline health care professionals, violations of social distancing norms, and movement of vehicles in urban areas.

Union Ministry of Home Affairs (MHA) issued detailed guidelines on 11 May, 2020 under the Disaster Management Act, 2005 on restarting manufacturing industries after the lockdown period. National Disaster Management Authority has issued - Guidelines on Chemical Disasters, 2007; Guidelines on Management of Chemical (Terrorism) Disasters, 2009 and Strengthening of Safety and Security for Transportation of POL Tankers, 2010, which are relevant for chemical industries. The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 under Environment Protection Act,

1086 provide the statutory requirements for these industries. State Governments shall also ensure that the off-site disaster management plan of the respective Major Accidental Hazard (MAH) units are up to date and preparedness to implement them is high. It is also advised that all the responsible officers of the district shall ensure the Industrial On-Site Disaster Management Plans are also in place and cover Standard Operating Procedures for safe re-starting of the industries during & after COVID 19 lock down.

Relevant Provisions of the Indian Penal Code

Section 188

Section 3 of Epidemic Diseases Act, 1897 makes it a criminal offence to disobey any regulation or order under the Act. This punishment is according to Section 188 of the Indian Penal Code, which provides for a fine of Rs 200 and simple imprisonment of one month for violating an order of a public servant. The penalty of Rs 1,000 and imprisonment of six months can also be imposed, depending on the impact of the disobedience.

Sections 269, 270 and 271

Disobedience to quarantine rule is punishable under Section 271 of the Indian Penal Code, 1860 with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Failure to take requisite precautions despite being aware of the possibility of the spread of such infection or disease is punishable under Sections 269 and 270 of the IPC. Under Section 269, whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description up to six months or fine or with both fine and imprisonment. Under Section 270, Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Malignancy is characterized in diseases that are highly virulent, infectious and life-threatening. Disobeying the norms prescribed for social distancing, coughing or sneezing without covering the nose and mouth, not wearing masks in public, disregarding norms for social isolation, loitering on the streets in groups, socializing in disregard of the prescribed regulations, etc. are all punishable offences under Section 270.

The central government conceptualised the Model Public Health Act in 1955 and updated it in 1987. It however, failed to convince the states to adopt it. The draft Public Health Bill, 2017, which looked at the control of epidemics, disasters and acts

of bio-terrorism, also attempted to overhaul the current system. This bill would have replaced the 1897. It has still not been tabled in the Parliament and is under the law ministry's consideration. However, just replacing one law with another is not going to solve the problem.

CONCLUSION

A complex balance exists between humans and the microbial world. Robust and sustainable health systems are a prerequisite for preventing, detecting, and responding to pandemics and to pandemic threats. Advancements in science and technology related to diagnostic capacities, vaccines, and antivirals have provided more effective tools for preventing responding to infectious disease threats. Given the host of challenges associated with the timely development and deployment of strain-specific influenza vaccines, international efforts for developing a universal vaccine have generated optimism. Growing knowledge of the nature and severity of the threat posed by emerging viral diseases has encouraged a range of responses from multiple sectors. Technical efforts to address emerging viral diseases include pandemic prediction; risk assessment; surveillance and detection; descriptive and analytic epidemiology; pathogen characterization; public health interventions; and drug and vaccine development. Legal and political means to reconcile the "borderless world" of microbes with the macroscopic structures of sovereignty continue to be developed and debated. As public health broadens its goals, perspectives, and connection to other sectors, a concomitant transition will change approaches to addressing emerging infectious diseases. Pandemics represent a unique threat to the health and well-being of human populations and ultimately to the functioning of society. As products of a complex ecosystem, their timing cannot be predicted and their emergence cannot be controlled. Because novel influenza viruses meet little immunological resistance in the population, their impact is widespread and can be severe, threatening the functioning of all elements of society. The recognition of this potential impact has led governments around the globe to accelerate their planning efforts to combat and prepare for a pandemic. It has also led governments and international health organizations around the globe to call for transparency in reporting of cases of pandemic influenza, scientific cooperation to characterize the virus and develop effective vaccines, and coordinated international plans to stop, slow, or limit the spread of a pandemic virus after it emerges.

SUGGESTION

To meet this important international challenge, all nations and the broader international community must be able to detect and respond rapidly to outbreaks of animal or human pandemic potential to contain the infection and delay its spread. The role of W.H.O.

is really significant to counter future pandemic. The World Health Organization (WHO), the United Nations (UN), and broader global health or humanitarian systems must be strengthened. Prevention goals within the International Health Regulations (IHR) should align with those in the universal health coverage (UHC) agenda, and accountability should be built into both frameworks. The country-level core capacities need to be enhanced and compliance with the International Health Regulations be ensured. The proposed law should focus on Centre-State relationship and responsibilities, Decentralisation of Power till Gram Panchayats for effective management. It should also cover all sorts of class and sections like migrant labours, street vendors, homeless, beggars, small businesses, allied businesses, media, industry, agriculture, etc. It should have clear economic policies for all sectors. It should have clear mandates for both Centre and States in terms of medical and allied services capacity building, lockdown procedures, relaxation procedures, social behavioural changes required, etc. It is hoped that a progressive, comprehensive, humane and all-encompassing law would bring clarity for dealing with the present and the future pandemics.

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