

Indian Epidemic Diseases Act, 1897: A Critical Study Vis a vis Fundamental Rights

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Abstract - Communicable diseases contribute 30% of disease burden in India. Multiple epidemics happen every year and yet we fail to respond and contain most them effectively. Apart from various behavioral public health interventions, we need to have a close look at the structural intervention i.e. the legal framework to analyze the preparedness of Indian health system. Although India has multiple legal mechanism, it lacks a unified law under a single legislation.

The Epidemic Act 1897 is a 123-year-old blunt act which needs to be substantially overhauled to effectively counter the burden of infectious diseases both new and re-emerging. Issues like definitions of epidemic disease, ethics and human rights principles, empowerment of officials, punishment, etc., which need to undergo deliberations and warrant a relook have been discussed in this paper. Exploration of the possibilities under the Indian Constitutional Scheme that would lay down a pathway for creating a harmonious legislation between the Disease control Acts and the Fundamental Rights and with a liberalistic philosophical approach is the goal of this paper.

Keywords: Epidemic Act, Human Rights, Pandemic, Fundamental Rights, Health Policy.

I. INTRODUCTION

One of the crises that we have to deal with is a crisis of law enforcement officials that are not physically capable enough to handle without taking out the gun.

--- Niger Innis

A. Definition of Dangerous Epidemic Diseases

The term 'Epidemic Disease' refers to the communicable or infectious disease which surface or re-surface in a region.

An epidemic can be defined as the phenomena in which there is an unusual and atypical increase in the number of cases of an infectious disease. The infectious disease must be existing in a specific region or demographic section. It can be considered as an epidemic if there is an atypical rise of cases a certain infectious disease in population or region which, specifically if the disease is not native to. Epidemics can result from natural disasters like floods, tropical storms, droughts; earthquakes and they are their affect is not confined to Human beings. Animals also have the possibility to be affected by epidemic diseases or may act as carriers. The Ebola virus of Western Africa in 2014, Zika virus of South America and Central America, the outbreak of the cholera epidemic in 1992, all come under the ambit of the definition of 'epidemic

disease'. India also had been the epicenter of outbreaks of emerging and re-emerging infectious diseases.

The surgencies of diphtheria, outbreaks which rooted from by Nipah, the Japanese encephalitis virus, the Crimean–Congo haemorrhagic fever had posed grave a threat to the nation's public health in the recent past. Outbreak of cholera epidemic originating from the O139 strain in 1992, the plague of Surat in 1994, the wide scale spread of chikungunya, dengue fever, and the avian influenza (H5N1) and pandemic H1N1 influenza among other diseases had caused wide spread havoc in the nation. The legal framework the state and central government use as a pivot between the medical professionals and the government authorities is "Indian Epidemic Act of 1897". This antique law has not dissuaded governments from invoking it and many experts had been supporting the same. Diseases of these kind spread throughout a country and pose a threat to its health system.

Legal frameworks and policies can be of utmost importance during public health emergencies, as they can particularize the scope of the government's responses to emergencies and also, emphasize the rights and duties of citizens. One of the shortest Acts in India, "The Epidemic Diseases Act of 1897" comprises of four sections. The sections are brief in nature and it is very obvious that the act was formulated only considering the then existing conditions (i.e. the 18th century) of the Indian sub-continent.

The Epidemic Diseases Act of 1897, does not define the term 'dangerous'. There exists an ambiguity on when a disease should be considered "dangerous" by the state or central authority. Because of this the act carries the potential to be misused and has little transparency. The provisions of the act do not shed light on the factors which make a disease 'dangerous'. Factors like magnitude of the problem or the age of the people affected, among others can be considered, but there exists no well laid framework. For the better implementation of the act, an amendment should be brought.

B. Explanation of the Provisions of the Act

Known to be as one of the shortest Acts in India, "The Epidemic Diseases Act of 1897" comprises of four sections. The first section explains the title and the extent of the act. The second section defines the powers allotted to the Central and state governments to take specific measures and formulate required regulations for the purpose of containing the disease.

The third section lays down penalties for violation of the regulations, read with Section 188 of the Indian Penal Code (IPC). The fourth section deals with the legal protection available to implementing officers acting under the purview of this Act.

Concerns by legal professionals and commissions have been raised multiple times over the provisions and sections of the Epidemic Diseases act and its relevance in the twenty first century. The ambiguity which needs to be addressed was the term “dangerous epidemic disease”

Since Section 2 of the Act deals specifically with “Power to take special measures and prescribe regulations as to dangerous epidemic disease”, there have been complaints and issues raised with the framework on how an epidemic or outbreak can be considered as “dangerous”

Section 2 of the Act describes the powers of the government,

*“When 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**; and if it thinks that the ordinary provisions of the law are insufficient for the purpose, then the state may take, or require or empower any person to take some measures and by public notice prescribe such temporary regulations to be observed by the public. The state government may prescribe regulations for inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.”*

Section 2A of the Act empowers the Central government “to inspect any ship leaving or arriving at any port and for detention thereof, or of any person intending to sail therein, or arriving thereby”. This provision was inserted by the 1920 amendment, in light of Spanish Flu endemic.

Section 3 states, “Six months’ imprisonment or 1,000 rupees fine or both could be charged out to the person who disobeys this Act.”

The word “dangerous” brings under its purview every aspect which can be prone to disruption because of the epidemic which include grave economic loss, peril to the public health, the disruption of peace in the society and act as a hindrance to socially valuable activity, among other negative effects. To avoid or contain the impact created by the infectious disease, a primary solution is to enforce quarantine and ensure that people observe social distancing.

II. HISTORIC USE OF THE ACT

The Epidemic Diseases Act was passed and implemented in the year 1897 with the aim of controlling the outbreak of the bubonic plague. According to the colonial government, the spread of the disease was due to the people that travelled from Munchuria to Bombay in 1896. Coincidentally, the greatest number of cases in India lies with Maharashtra.

The powers the act conferred upon the executive were invoked to search for suspected plague cases in homes and among passengers. There was a use of the act in a forceful and inhuman manner. Segregation of affected persons, forced evacuation, disinfections and obliteration of infected places are among the other actions taken by the authorities to contain the outbreak. The Act was implemented extensively to control the epidemic that broke out in the 1890s.

The Act had provisions which empowered the provincial government to inspect corpses and the mandatory notification of all cases of deaths resulting from the plague. The assembly of crowds was prohibited, festivals, pilgrimages suspended, and public meetings were banned. In multiple places, to ensure the proper implementation of the preventive measures, martial law was enforced.

Allegations of humiliation (public stripping) and violence against women gave rise to resentment among the public, and multiple riots were reported in localities. The Act was called as “one of the most draconian pieces of sanitary legislation ever adopted in colonial India” by Historian David Arnold and Myron Echenberg his book “The global Urban impact of Bubonic plague”. The book stated that “the potential for abuse was enormous.”

III. HUMAN RIGHTS, FUNDAMENTAL RIGHTS AND THE ACT

In 1946, the Covenant of the World Health Organization declared that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” (World Health Organization 1946). Article 21 of the Indian Constitution provides a very wide ambit of rights to its citizens. It can be deduced from the provisions of the article, that sound health is a fundamental right and every individual should be provided quality health care and medical aid.

A person of ordinary prudence would also state that sound health of an individual should be a basic right and public health in general should be one of the prime priorities of the administration, government and policy making bodies. While on one hand, the goals of the policies are fulfillment of the aims stated, i.e. soundness of the health of the citizens of a nation, the actuality differs. For the fulfillment of well-being of an individual, there should be adequate medical personnel, enough treatment facilities, etc. Unlike this, the case of public health infrastructure which requires the preventive measures as well as health promotions is inadequate. To ensure the safety of the people at large, the organizations and the government have the duty to organize awareness programmes and health promotional events, which they fail to do so in the Indian context.

The treaties and laws point towards the fulfillment of the ideals and aims stated above, the actualities seem to push the stated ideals into “unthinkable” under the Overton window.

For the fulfillment of the above aims, there must be adequate medical personnel, treatment facilities and infrastructure. The doctor to patient ratio must be healthy and the local, district level medical centers must be fully operational. The case of India seems otherwise. While there exist decent medical facilities in highly urbanized areas centers of India, the medical system has not been able to penetrate the rural regions. There exists multiple reason for the ridge, like lack of political will, lack of awareness, resistance to education and resistance to modern medical care, taboos and lack of spending on health care.

The gulf between the actualities and goals may not seem as a crucial problem to be addressed in normal times, since the fragile health care system handled the huge population on regular times. Due to that, there was no incentive among the policy makers to act upon improving the medical care in immediacy.

Crisis like Covid-19 pandemic presents as a wake-up call for the government and people to overhaul the existing infrastructure and policies and to incentivize the amelioration process. While the crisis may be an opportunity to create a robust health care system in later stages, the ongoing pandemic has to be dealt with the existing facilities.

The novel strain of the virus was found highly contagious by research and the method to prevent the spread of the virus until a vaccine is create is to self-isolate, maintain social distance and quarantine self. The laymen of the nation may or may not understand the gravity of the situation, and it is responsibility of each individual to spread awareness on this. While nations like Italy, France, United States and other well-developed nations which possess far advanced medical care technology and robust health care infrastructure being unable to deal with Covid-19, the “Asian Tiger Economy” nations fared well in curbing the pandemic. They have implemented effective and stringent lockdown at an earlier stage. It is in the larger public interest of the people to enforce a lockdown in nation like India where there is potential for Covid-19 to cause high damage due to the high population density and low hygiene.

Article 19 of the Indian Constitution guarantees every citizen the right to move freely throughout the territory of India. Being a fundamental right, it cannot be infringed during ordinary times. A pandemic is an extraordinary circumstance, where if certain rights of individuals are not curtailed, the larger public interest will be compromised. This leads to a clash between the immediate public interest and the laws which grant rights to the people. A lockdown maybe a necessary to contain the spread the disease, but it violates multiple fundamental rights which include the right to move freely, the right to form associations, right to religion, education among others. The Epidemic Act, which came prior to the Constitution of India (considered mother of all laws in Independent India), is now in direct conflict with the provisions of the Indian Constitution. This conflict of law can

be resolved, since The Constitution of India states that the fundamental rights are not absolute and certain rights can be abrogated during emergencies. Covid-19 is considered as a health emergency and hence, certain fundamental rights can be abrogated. With the moral intention to keep the conflict minimal, there is a revisiting of court cases in India and other nations in the recent past. Most of the cases cited have their disputes with relation to the law in health emergency situations when the Act is in force.

IV. LEGAL SOLUTIONS – NON-VIOLATON OF FUNDAMENTAL RIGHTS

The lockdown and restrictions on the movement of the public during ordinary times is against the provisions of the constitution. To overcome this, the Epidemic Diseases Act provides the enforcement of the temporary solutions stated above for the duration of the ongoing pandemic.

An illustration of the friction between the fundamental rights and emergency provisions of an act can be explained by taking into account the famous case *Kaci Hickox vs. Governor Chris Christie*. Nurse Kaci Hickox is a volunteer of the “Ebola Fighters”, who worked at various places fighting the deadly Ebola virus. After the completion of her work, she returned to the United States in October 2014. Upon her arrival, the local authorities have quarantined her for a period of three days, to ensure that there is no risk of transmission. A year later, a suit was filed by her in Federal Court of New Jersey against the Governor. Her claims that her civil rights have been violated by keeping her in quarantine have been rejected. She supported her contention by asserting that the officials had no right to quarantine her as she never posed any risk of transmission. The verdict held that there was no violation of Hickox’s Fourth Amendment rights. These findings were backed by the Court’s reasoning the State has every right to enforce regulations that are necessary to prevent the introduction, transmission and spread of communicable diseases into the State. This also includes the State’s right to keep in observation and medically examine every foreigner entering into the state. The Court further opined that it was judicious on the part of the State to seize Hickox’s movement and the decision to quarantine the doctor was deliberate and not irrational.

The Hickox’s case sheds light on the conflict between the fundamental right to health and the fundamental right to movement. Although the fundamental rights are an important basic feature of the Constitution and the extent of their importance is such that any law which infringes them is amended to such expanse which is non violative in nature, yet there can be times where they are not given priority over few rights, especially when the larger public interest is under threat .

In *J. Chowdary vs The State*, a homeopathic doctor refused to inoculate himself after he was diagnosed with cholera. While the Act was in force in Puri region of Odisha to curb the Cholera spread, the doctor, who was exposed to the

disease refused to cure himself stating that vaccination has subtle negative effects on the human body and the disease can be cured by homeopathy. He was punished under Section 3 of the Act, since he acted as a catalyst in the spread of the virus. His decision not to take the vaccine was condemned by the court and he was asked directed to inoculate himself, since the effects of the vaccine on his body are miniscule relative to the impact of the spread of the disease.

The Calcutta High Court in *Ram Lall Mistry vs R.T. Greer* discussed about the compensation to the losses which need to be paid to the public for the actions taken under the provisions of the Act. Section 4 of the Act gives protection to the enforcement agencies working under the provisions of the act. The Calcutta City Corporation had to demolish an old building under the Plague Regulations Act, 1900, combined with section 4 of the Act. It was held by the court that the government had to pay compensate the residents and owner of the building adequately.

By going according to the judgement supra, the Indian Government should create a financial stimulus to push the economy back into motion.

With over 80 percent of India's workforce in the informal sector and one-third of the informal sector working under irregular employment, the working sector has taken a hard blow. Though this is temporary, vast portions of the Indian population are daily wage workers and their economic reserves are limited. The Non-Governmental Organizations have been doing their part to subdue the impact and the government has also been providing various transit welfare measures.

This crisis can be utilized to attract more industries and investments from the nations willing to pull out of China. The new industries created in the underutilized SEZ (special economic zones) can be a great source of employment generation. The workforce of India can be more regulated and formalized to a certain extent if new investments are attracted to India, especially the nations looking for an alternative to China.

Taking into consideration of the chaos the world is going through due to Covid-19 pandemic, the health care system of most nations is failing and seeking towards the quick development of a vaccine. Amidst this, what is left neglected is the unauthoritative and unjustified disclosure of personal information of the infected people. To control the epidemic, countries like China and Israel have formulated phone tracking devices. Indian officials have also taken some measures to track the infected people. Mobile applications like "*Arogya Setu*" have been launched and they act as a catalyst in the spreading of awareness.

The governments of certain Indian states like Karnataka have encroached on people's right to privacy by publishing a database of those persons who have either contracted the virus

or had been placed in self – isolation. The database includes the person's residential address and his travel history.

Another issue which needs to be addressed is the of infringement of Privacy of the individuals. Article 21 of the Indian Constitution states that "No person shall be deprived of his life or personal liberty except according to the procedure established by law". The right to privacy is protected as an intrinsic part under the "personal liberty" under this article.

The debatable point which arises here is whether the government is legitimate to publish the personal information of the people and is it constitutionally justified. Studying the case Justice K.S Puttuswamy vs. Union of India, the judgement throws light on the authenticity of right to privacy. The question which arises is whether the authenticity of this right is permissible in today's chaos. Presently, the disclosure of private information in public is not permissible under the 'Epidemics Diseases Act'. Moreover, there is no provision in it preventing such infringement. The opposing side may content that the legislature lies in the hands of the government and the publication of such information lies in its discretion, given the condition that the disclosure is necessary in times of an epidemic, as experienced today.

In due course, it is rational to prioritize public health over individual's right to privacy or his right to movement. At the end of the day, it is the responsibility of the government to liberate its citizens from the ties of menace an epidemic pose. This conflict between fundamental rights and emergency laws must not become a hinderance for the government to take every feasible justified step to curtail the spread of such lethal diseases and protect its citizens.

V. CONCLUSION

During emergencies, the rights of individuals are infringed to a certain extent, for the greater cause, being the safety of the overall public. The spread of Covid-19 has necessitated the order of a worldwide lockdown. This has forced people to stay in their homes. Therefore, it can be seen inferred those in times of a health emergency, the government is justified to prioritize public health over an individual's fundamental rights.

It is the liberal philosophy, which is also enshrined in the preamble of the Constitution of India, which needs to be revisited. Liberty is part of the preamble and the Basic structure of the constitution. It is an established philosophical statement "The right to swing my fist ends where the other man's nose begins". Every Individual has the right to exercise his/her liberty, until it does not infringe the liberty of another individual. This philosophical approach is now of utmost relevance. The Covid-19 presents as a threat to human life and every individual has to curtail their liberty to the extent other individuals would not suffer. The liberty to move freely has to be constrained in order for other individuals to protect their life and health.

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