



LAW REGULATING CONTROL AND MANAGEMENT OF EPIDEMICS IN INDIA: A COVID-19 EXPERIENCE

Dr. Pankaj Kakde

Associate Professor

S. P. College of Law,
Chandrapur

ABSTRACT

The otherwise neglected law governing epidemics in India has garnered huge attention during Covid-19 pandemic. The critical examination of this law has led to discovery of several loopholes and grey areas in its application. It is necessary for any civilization to be prepared for the contingencies like this. This preparedness includes having good legislation in place to effectively deal with the situation. This need warrants systematic evaluation of the existing law so that the future contingencies can be mitigated effectively.

INTRODUCTION

The spread of Covid-19 novel corona virus all over the world has created serious challenges before the mankind. Different Nations responded differently to this unprecedented situation of corona virus pandemic. Response of any country in situations like this, especially of civilized country governed by rule of law, is based upon the rules and regulations it has adopted in this regard. The positive and efficient response in any such situation often depends upon how effective and relevant rules and regulation are in place to deal with it. It is experienced that the countries where strong and effective legislation was available to deal with the situation of epidemics performed better in its control and management. The pandemic also hit India severely and somehow India successfully kept it under control at least in its early stages by adopting suitable measures like lockdown and social distancing. In its fight against corona virus lot of discussion has taken place on the legality of measures adopted by the Governments in India. India being the federal nation both Central and State governments adopted different measures for controlling and regulating pandemic. Not only questions were raised on the legality of the measures thus adopted by the government but on several occasion conflicts and contradictions arose between the Central and State governments on the issue. This seriously hampered the effectiveness of the measures

adopted to control the pandemic and weakened India's fight against the deadly pandemic. Many believed lack of appropriate legislation to regulate and control pandemic in India is responsible for the lackluster approach and chaos caused in dealing with it. The situation therefore warrants for the detail exposition of the law governing epidemics in India. The analysis will lead to finding out the exact legal position and the lacunas therein. This is necessary to find out appropriate solution so that the country is better equipped and prepared to handle epidemic situations in India.

CONSTITUTIONAL POSITION

The Constitution of India though have not expressly conferred a status of fundamental right on right to health, the health is treated as part and parcel of right to life enshrined under Article 21 of the Indian Constitution and hence has acquired a status of fundamental right in India.¹ The Constitution envisages

¹ Parmanand Katra v. Union of India, AIR 1989 SC 2039, Spring Meadow Hospital v. Harijol Ahluwalia, AIR 1998 SC 180, State of Punjab v. Ram Lubhaya Bagga AIR 1998 SC 1703. In all the above cases the judiciary has given a very wide interpretation to the Art.21 of the Indian Constitution and emphasized the



upon a State a duty to protect health of the citizens in Part IV of the Indian Constitution, and owing to the status of fundamental right acquired by right to health, this duty of the State is of a mandatory nature.² The State is duty bound to take all necessary steps to protect this right of the citizens by adopting suitable measures and making arrangement for effective exercise of this right. The Indian Constitution has divided different subjects between the Union and State owing to its federal setup. In this division the subject of public health has been listed as a State subject viz. means that the State Legislatures in India are empowered to legislate on the subject of public health and the state governments in India are responsible to give effect to the provision of such laws.³ It must however be noted that the division of subjects between the Union and States is not watertight and there are several subjects that are overlapping. The Supreme Court while interpreting these list and the subjects therein has reiterated this position several times. It has been clearly laid down that each entry in the different lists must be interpreted as broadly as possible and in the process there is a possibility of overlapping of subjects to some extent. Unless the overlapping is to the extent that it robs either of the legislatures of its legitimate power to legislate on any subject completely, there is nothing unconstitutional in it.⁴ It must also be understood that the Constitution has accorded dominant position to the Union in Indian federalism and States are supposed to function under the directions issued by the Centre. The Union is responsible for protecting the interests of the States by providing them necessary assistance whenever required. In a situation of emergency the Constitution shreds its federal character and becomes unitary in nature. The declaration of emergency under the provisions of the Indian Constitution generally results into giving sweeping powers to the Centre even in the matters that normally fall within the reach of States. The States are constitutionally responsible to comply with the directions and the orders that are given by the Union while the emergency remains in force. The spirit underlying these Constitutional provisions must be understood while addressing the situations like

importance of protecting health of the citizens. Though many believe that still Right to Health does not enjoy the status of fundamental right in India and its direct incorporation as such is necessary to entail it the desired status.

² Art.39, 41, 42 and 47 of the Indian Constitution

³ Entry 6 of List II (State List)

⁴ State of Bombay v. Balasara (1951)2 SCR 682, Sajjan Singh v. State of Rajasthan AIR 1965 SC 1.

Covid-19 pandemic. Whenever these kinds of situations arise the States must adopt a role that is in line with the spirit of the Indian Constitution. No doubt the subjects of health and law and order are the State subjects and the States have every authority to take decisions upon them. But, in the situations of epidemics of the magnitude of Covid-19, there is a dire need to have a universal and uniform approach throughout the country to effectively address the challenges that are posed by it. The States if are left free to decide their own course of actions because health or law and order is a state subject, then it may produce highly uneven results in controlling the epidemic. The common guidelines issued by the Union must be adhered by the States in the interest of the citizens at large. This should not become a question of authority between the Centre and the State. The essence of cooperative federalism lies in extending the wholehearted support to the Centre in its endeavor of regulating and controlling epidemic so that lives of the maximum people can be saved. The petty party politics and the unnecessary authoritarian conflicts between the Centre and the State must be avoided in these testing times. The experience of Covid-19 shows us that the Centre though treat the situation of epidemic as emergency it refrains from making any such formal declaration by invoking Constitutional provisions. Though, it is possible for Centre to do so under Art.356 or Art.360 of the Indian Constitution. Any such declaration by the Centre may not only reduce the powers of the State to a considerable extent but will also make it difficult for the Centre to single handedly address the situation effectively. Therefore what Centre has done in addressing the situation of Covid-19 appears to be the most rational approach in dealing with the situations like these. This is the approach that is the best possible shot at effective and efficient response to the situation like Covid-19 without compromising the letter and spirit of the Indian Constitution.

THE EPIDEMIC DISEASES ACT, 1897

This is the one and the only law especially providing for dealing with epidemics in India. The law is 123 year old law that was enacted during the British rule to address the epidemic of Plague that time. This is a very small act consisting of only four provisions. The act is meant to give State Government and Central Government powers to take special measures in the outbreak of epidemics. The Act gives State government a dominant role in taking these special measures. The role of Central Government is limited to take requisite measures on ports in controlling the epidemic. The Act also provides that non-compliance of any orders made by the Government in this regard may attract



punishment under Sec.188 of the Indian Penal Code. The Act also provides protective cushion against any legal action to all those who have acted in good faith under the provisions of the law. The law thus is very general and does not contain detailed provision of how and in what manner the Governments need to act in the situation of epidemics. The Act even fails to define the word epidemics. There are no clear provisions regarding the quarantining of the people and the procedure to be followed thereupon. It lacks provisions that are necessary to deal with biological disasters as well. The comprehensive amendment to the law was always on cards however the Act was not amended all these years. Although, an Ordinance was promulgated introducing new provisions in the Act, to specially protect the healthcare workers from any kind of violence and abuse amidst the Covid-19 pandemic. The new ordinance provides that those who hurt healthcare workers engaged in the treatment of patients in epidemics will be liable for punishment. The Ordinance also expands the powers of the Central Government to some extent. Even with these amendments the law clearly is not sufficient to address the issue of effective regulation of epidemics in India. The long standing demand of repealing the law by some comprehensive legislation appears even more relevant in present set of circumstances. The government has already proposed a Bill called Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill in 2017 to repeal the old law. However, the Bill is yet to see daylight. The Epidemics Act, 1897 has been extensively used by the State Governments in India to deal with the Covid-19 pandemic. Many States have enacted special regulations in the name of Covid-19 to adopt suitable measures in the State for effective control and management of the pandemic. But, lack of uniformity and overriding powers exercised by the Central government has considerably diluted the use of the law for regulating the pandemic in India. The law though directly provide for the regulation of epidemics in India, acquired a secondary status due to its shortcomings.

THE DISASTER MANAGEMENT ACT, 2005

The Disaster Management Act, 2005 was enacted by the Indian Parliament with the objective of effective management of Disasters in India. The Act has established the Central Agency called National Disaster Management Authority which is a high level Authority having Prime Minister of India as its Chairperson. The Authority is responsible for formulation of guidelines to deal with different forms of disasters in the country. The State Disaster

Management Authorities and the local authorities to deal with the disasters have also been established under the provisions of the Act. All these authorities are expected to work in complete coordination in case of any disasters. The Act gives sweeping powers to the Central Government in dealing with any kind of disaster in India. The powers conferred on the Central Government are strong enough to override the decisions of the State Governments. The Act clearly provides that the State governments and the entire administration must follow the directions of the Centre in this regard. The NDMA has issues different guidelines to deal with specific type of disasters. This also includes the Guidelines issued to deal with the Biological Disasters. The NDMA has also come up with a National Disaster Management Plan in the year 2019 which details the step by step guide for the measures to be adopted and actions to be taken when the country is struck by any disaster. The Disaster Management Act emerged as a principal legislation used to regulate the pandemic of Covid-19 in India. The imposition of social distancing norms, declaration of nationwide lockdown and various other measures taken amidst the deadly pandemic derives its legality from the Act. The Central Government under the aegis of the NDMA and the Prime Minister of India took a principal responsibility of regulating the situation of Covid-19 pandemic. The use of DM Act by the Centre has also attracted lot of controversy. The States especially were not happy with Centre taking the commanding role in the situation. The Guidelines issued by the Centre were also criticized and many States even went to the extent of denial to follow these guidelines. This seriously affected the effectiveness of the measures adopted to control and manage the pandemic. The sync between the central, state and local agencies in battling the pandemic was completely missing. This diluted the effectiveness of the response and resulted into worsening the situation at large.

THE INDIAN PENAL CODE, CRIMINAL PROCEDURE CODE AND ESSENTIAL COMMODITIES ACT

The Indian Penal Code contains several provisions that are useful in fight against the epidemics. These provisions have been extensively used during Covid-19 outbreak in India. Section 271 of the IPC provides that if quarantine rule is in force anyone who disobeys this rule shall be punished with imprisonment or fine or both. Similarly anyone who is responsible for performing negligent or malignant act spreading the infectious diseases are punishable with imprisonment or fine or both under Section 269 and 271 respectively. The disobedience of the order of the public servant is



also a punishable act under Section 188 of the IPC. The executive magistrate is empowered to impose restrictions on any type of assembly in public places under section 144 of the Criminal Procedure Code. These provisions have come to the rescue of the administration amidst Covid-19 outbreak for taking action against those who were found performing irresponsible acts during the fight against the epidemic. The provisions of the Essential Commodities Act, 1955 also ensure that the measures taken to fight against the epidemic do not come in the way of ensuring continuous supply of essential commodities and services to the citizens.

CONCLUDING OBSERVATIONS

When any epidemic especially of the magnitude of the Covid-19 strikes the Nation, its effective control and management becomes highly necessary, and, it is responsibility of the government to ensure that it is so effectively controlled and managed. In a country governed by rule of law the strong legislation plays a very important role in effectively responding to the situation like this. The Covid-19 pandemic has clearly brought the loopholes in our legislative framework on forefront. It is clear that India is not well equipped to respond to the situation effectively by making use of strong legislative framework. The Epidemic Diseases Act, 1897 can hardly address the contemporary concerns in the situation of epidemics. The colonial law though has been extensively used by the governments fails miserably in achieving the highest standards of regulating control and management of the epidemic. Its generality is the source of ambiguity. The Disaster Management Act, 2005 is again a general law that provides for regulation of all sorts of disasters and lacks specific *modus operandi* to be adopted in the situation of epidemics. However, the objections raised by the States and many others to the use of law in handling of Covid-19 also do not make any sense. The law has been rightfully enacted by the Parliament by making reference to entry 29 (*Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants*) of the Concurrent list. The structure in the form of NDMA, SDMA and other local disaster management authority is already established under the provisions of the Act. The different forces like NDRF, Police etc. are aware of the *modus operandi* to be adopted in the situation of disasters that makes the use of law to deal with situation like Covid-19 very much practical. The response to the epidemics like Covid-19 needs to be uniform throughout the country and in absence of any other law if the Centre has used the DM Act to fight against the pandemic, there is no point in making an

unnecessary hue and cry against this. The States in India must cooperate with Centre in fighting the pandemic. In situations like this unnecessary banter between the Centre and the State Government over their respective authorities is avoidable. In tune with the spirit of Indian Federalism there is no harm in following the guidelines issued by the Centre under the provisions of DM Act, 2005. Of course there is no denial of the fact that there is a dire need of a law that specially provides for the mechanism to be followed in the outbreak of epidemics in India. The lesson is learnt and the Parliament must respond immediately by positively considering the possibility of enacting the law as soon as possible. The law will enable the government to deal more effectively and efficiently in battling the epidemics in future.

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