

Enforcement and amendment of constitutional laws to fight covid-19

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Abstract

Corona virus disease 2019 (COVID-19) is highly infectious, primarily spreads between people during close contact, government enforced laws for public preventive measures which helped to flatten the epidemic peak curve.

Methods

We meticulously searched the Indian database in addition also pooled the current news from daily.

Discussion

Constitutional laws were enforced and realigned during the COVID-19 pandemic to secure 'Life' over 'Liberty'. The Epidemic Disease Act (EDA)1897 antique 123 year old British colonial era law, was the main legal weapon along with and section 144 of the Criminal Procedure Code (CrPC) of 1973 to restrict movement of people and spreading of the virus. An amendment was made in EDA act wherein attacking medics can cost 7 years jail. The Ministry of Consumer Affairs brought alcohol based hand sanitisers and masks (2-ply, 3-ply variety and N95) under the purview of the Essential Commodities Act (EC Act) until June 30 to enhance the availability of these products to the public, at fair prices and also applied the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (PBMMSEC). The Disaster Management Act 2005 took care of the law of lockdown and quarantine, preparedness of all hospitals. The others ACTs implemented were Essential Services Maintenance Act (ESMA), Disaster and Public Emergency Special Provisions Act.

Conclusions

Law proved to be the best medicine in taking precautionary measures to safe guard lives against the deadly COVID -19.

Keywords: Epidemic Disease Act (EDA)1897, Essential Commodities Act (EC Act) of 1955, Essential Services Maintenance Act (ESMA), Law of quarantine.

Introduction

Medical background of COVID 19 to understand the importance of enforcement of laws

Corona virus disease 2019 (COVID-19) is a highly infectious disease caused by Severe acute respiratory syndrome corona virus 2 (SARS-CoV-2) .[1] The disease was first identified in December 2019 in Wuhan, the capital of China's Hubei province, and has since spread globally, resulting in the ongoing 2019–20 coronavirus pandemic.[2] On 11th March 2020, the World Health Organization (WHO) declared this disease as pandemic. [3] As of 4 May 2020, the **Ministry of Health and Family Welfare** have confirmed a total of 43938 cases, 11975 recoveries (including 1 migration) and 1439 deaths in India. It is evident that the world has come to a standstill.

Mode of transmission of disease[4]

The virus primarily spreads between people during close contact, often via small droplets produced by coughing, [b] sneezing, or talking. The droplets usually fall to the ground or onto surfaces rather than remaining in the air over long distances. People may also become infected by touching a contaminated surface and then touching their face.

Measures which can halt the transmission of the disease(making transmission rate, "Rt" of less than one)

Some important public preventive measures to reduce the chances of infection include, staying at home/closing schools and workplaces restricting travel, avoiding crowded places/cancelling large public gatherings, Social distancing/keeping distance from others, at least 6 feet (1.8 m) apart

The CENTRE FOR DISEASE CONTROL (CDC) has recommended the use of cloth face coverings in public settings.

What is the need of preventive measures? $\log(R_t) \approx R_t - 1$

As a vaccine is not expected until 2021, a key part of managing COVID19 is trying to decrease and delay the epidemic peak, known as "flattening the curve" [5] This is done by slowing the infection rate

Since this is new disease, we need to get ready with our health system, which includes preparedness of hospital resources, the manpower and equipment's in addition to effective treatment to tackle the disease. This will also allow for better management of current cases, and delaying additional cases until appropriate treatments or a vaccine becomes available.

The key to control spread of this deadly pandemic is the enforcement of rules and regulations.

Materials and Methods

We meticulously searched the Indian database in addition also pooled the current news from daily.

The legal framework for the management of epidemics and health emergencies in India

India has twenty-eight states and seven union territories, with a constitutional division of legislative responsibilities between the union government and the states that are mentioned by legislative subject lists in the Seventh Schedule of India's Constitution. Both the union government and the state governments are constitutionally empowered to legislate on matters related to public health. The union government and states have concurrent jurisdiction to prevent transmission from one state to another of infectious or contagious diseases or pests affecting humans, animals, or plants. The Constitution of India is considered to be the back bone of the Government and all other laws laid down by the Government must not be ultra vires with the constitution. In case any law that has been laid is ultra vires then it is considered to be unconstitutional and not valid. Article 19 of the Constitution of India states about the fundamental rights of the Citizen, which include freedom of speech, freedom to go anywhere in the country, form association or unions, gather at a public place for a cause without any armour etc. but under certain emergency and critical time there are certain exceptions to the fundamental rights that are being exercised by the citizens of India, which are stated in Article 19(2) to Article 19 (6). Under this sub clause it is stated that the state can impose any law for the welfare of the people in emergency situation for example natural disaster etc. so it is our duty to follow the rules and restrictions and restrictions that has been imposed. Laws enforced and realigned during the COVID -19 pandemic to secure 'Life' over 'Liberty'

Discussion

Epidemic Disease Act (EDA) 1897[6-7]

Historically, India has adopted the common law remedies for quarantine enforcement, which has proved to be effective in times of epidemics and pandemics. The Indian Penal Code (IPC), deals with offenses affecting the public health safety convenience, decency, and morals, which can be split into two major parts: one dealing with the public nuisance and the other dealing with the quarantine rule. The IPC law is further supplemented by the Epidemic Diseases Act. The EDA 1897 is antique 123 year old British colonial era law, the main legal weapon at the union level for the and spread of dangerous epidemic diseases. It was enacted to tackle the epidemic of bubonic plague that broke out in the then Bombay state in 1896 forcing people to migrate out of city. According to one news report, this Act has been historically used to control the spread of various diseases — swine flu, cholera, malaria and dengue has staged back to fight today's deadly disease. Cabinet Secretary Rajiv Gauba advised states to invoke Section 2 of the Act so that all advisories the Union health ministry was issuing could be enforced on the ground. After all, health is a state subject. Union government's role could, at best, be advisory and coordinating in nature, since Section 2 of the Act only empowers a state to inspect people and segregate suspected patients. After all, the law does not bestow the Centre any power beyond issuing advisories and coordinating.

The Regulations mentioned above have been enacted under Sections 2,3 and 4 of the Act. Section 2 and 2A of the EDA give power to the State and Central governments to take necessary steps in the situation of an epidemic to control its outbreak, even if the steps are not mentioned in any law practice or theory in the country.

Section 2- of EDA 1897 includes special measures to be taken by the Centre to "prescribe regulations as to dangerous epidemic disease." It also includes the detention of people or any vessel that come from international shores and are seen potent to spread the epidemic in the country. The home ministry has also prohibited cruise ships, crew, or passengers from coronavirus-hit nations to come to India till March 31 under the act.

Section 2 of the Act states: "When at any time the State Government (now Centre) 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 provisions of the Act state that the government can fine people or imprison them for violating rules and regulations that will be set to contain the outbreak.

Section 3 of the Act states: "Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860). Section 188 is a part of Chapter X of the IPC, which covers offences related to 'contempt of lawful authority of public servants'. The provision specifically deals with the offence of disobedience to an order duly passed by a public servant. The law also safeguards officials and gives them overarching superintendence of power who act under the provisions of this law to contain the outbreak.

Section 4 of the act states -The Act can be used to restrict the movement of suspected corona virus patients to prevent further spread of the disease. The officials said the need to invoke the Act was felt to empower the central government to tackle the outbreak.

Prohibitory orders under Section 144 .[6-7]

With little or no legal backing for the government's actions, it has had to resort to the much-maligned Section 144 of the Indian Penal Code, curfews, and other draconian measures to limit the spread of COVID-19. The districts, which are COVID-19 affected areas, have invoked colonial era Epidemic Diseases Act, 1897 and section 144 of the Criminal Procedure Code (CrPC) of 1973 to restrict movement of people and spreading of the virus.

These districts have issued respective orders to restrict movement of people under these two Acts. Gathering of less than four people is allowed at any public place, and in states where most of the orders issued by the respective local administrations of 80 districts where Section 144 has been imposed.

Under Section 144 of the Criminal Procedure Code (CrPC) of 1973 authorises the Executive Magistrate of any state or territory to issue an order to prohibit the assembly of four or more people in an area. According to the law, every member of such 'unlawful assembly' can be booked for engaging in rioting.

Section 144 is imposed in urgent cases of nuisance or apprehended danger of some event that has the potential to cause trouble or damage to human life or property. Section 144 of CrPC generally prohibits public gathering. Other countries of the Commonwealth, that have analogous legal provisions in criminal law such as Section 144, are not compelled to invoke them to control the spread of an infectious diseases due to well-structured

Amendment of EDA 1987 for protection of health care workers:[8]

Attacking medics can cost up to 7 years in jail .The ordinance seeks to end violence against health workers amid several reports of attacks on medics .On 22nd April 2020, in a significant move,the Union cabinet amended the Epidemic Diseases Act, 1987 through an ordinance in order to ensure safety of health workers at a time when there has been a spate of attacks on

them. Any violence against health workers may now bring steep fines and even imprisonments of up to seven years. This move comes hours after Home Minister Amit Shah addressed Nina Medical Association through a video conference, assuring them of safety and urging them to withdraw the symbolic protest scheduled for later this month against incidents of violence on health workers pressed into COVID-19 duty. From now on, not just such violence is cognizable but also non-bailable offence. Additionally, it has provisions to provide compensation for injury to healthcare service personnel or for causing damage or loss to the property.

Amendment in Essential Commodities Act (EC Act) EC Act of 1955- For benefit of consumers.[9] During COVID -19 for people who tried buying a mask or a bottle of hand sanitiser , chances were that they may not have got one. Those who were lucky enough to get a mask would likely have paid much more than the normal cost .Under the EC Act of 1955, if the Central government thinks that it is necessary to maintain or increase supplies of any essential commodity or make it available at fair prices, it can regulate or prohibit the production, supply, distribution and sale of that commodity. Some of the essential commodities listed out in the schedule to this Act are foodstuffs including edible oils and oilseeds, drugs, fertilisers, petroleum and petroleum products. But the Centre has the power to add or remove any commodity in public interest from this list, and that's what it has done with masks and hand sanitisers. Due to the Covid-19 outbreak, the Ministry of Consumer Affairs has brought alcohol based hand sanitisers and masks (2-ply, 3-ply variety and N95) under the purview of the Essential Commodities Act (EC Act) until June 30. In the past, the EC Act was mostly invoked to control the price rise in food products. When the prices of any of these commodities rise, the government imposes stock-holding limits to prevent hoarding, confiscates the stocks of violators and imposes punishment.

Why is it important?

In recent years, there has been an argument that the EC Act was draconian and not suited for times when farmers face problems of plenty rather than scarcity. The Economic Survey 2019-20 argued that it hampered remunerative prices for farmers and discouraged investment in storage infrastructure.

But in the context of a crisis like the current one, the EC Act seems to serve a purpose. Bringing masks and sanitisers under the EC Act will enhance the availability of these products to the public, at fair prices. Producers have been urged to manufacture these up to full capacity over three shifts. The government can take action against hoarders, speculators and those involved in jacking up prices or black-marketing. Besides this, quota restrictions on raw material holdings can be relaxed. The Ministry of Corporate Affairs (MCA) has asked all State governments to issue licences and permit hand-sanitiser makers to store ethanol and extra neutral alcohol (ENA) without any quota restrictions. The Indian Sugar Mills Association and All India Distilleries Association have been asked to ensure that ethanol and ENA are made easily available to producers. Reports indicate prices of ethanol and ENA can not be increased till June 30 and will need to be sold at the price

levels as on March 5 this year. By placing them under the EC Act, the government has capped the prices of these items. Price of a 2-ply mask has been capped at ₹8 and that of 3-ply surgical mask can't exceed ₹10. Cost of hand sanitisers can't exceed ₹100 for a 200-ml pack. Responding to this directive, companies such as Godrej Consumer, ITC and Hindustan Unilever have slashed the prices of sanitisers.

Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (PBMMSEC Act).[9]

Invoking the Act makes it harder for retailers to hoodwink customers. If they violate the norms, States can take action under the EC Act and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (PBMMSEC Act). An offender under the EC Act may be punished with an imprisonment of up to seven years and/or fine; and under the PBMMSEC Act, they can be detained for maximum of six months. According to the Essential Commodities Act, the essential commodities that are said to be the basic needs during the emergency and disaster time must be sold at the price of MRP or at a reasonable cost based on demand and requirement but selling the essential things at unreasonable prices is said to be a crime and is subjected to imprisonment up to 7 years if anyone confronted with the non-availability of masks and sanitisers or finds it being sold for higher prices, can register a complaint with the National Consumer Helpline (NCH) number 1800-11-4000/online

Disaster Management Act 2005 in COVID -19

The law of lockdown Preparedness of all government and non-government hospitals for diagnosis treatment and care during COVID -19 The law of quarantine.

The law of lockdown and curfew

On 24 March 2020, Prime Minister Narendra Modi declared on national television that India would be under lockdown for twenty-one days in order to prevent the spread of the global pandemic COVID-19 (Coronavirus). The decision of the Prime Minister was made two days after he had advised the citizens of India to follow the Janta Curfew, which was a voluntary curfew. The Janta Curfew acted to prepare Indian citizens for the current lockdown.

The Ministry of Home Affairs(MHA) published the official notification and invoked the lockdown under Section 6 of the Disaster Management Act. The Home Secretary issued guidelines for this lockdown under his powers in Section 10 of the Disaster Management Act, as the Chairman of the National Executive Committee constituted under Section 8 of the Act.

It is surprising to see that the terms 'lockdown' and 'curfew' have not been defined under Indian law but are still being used to curtail the fundamental right of movement enshrined under Article 19(1) of the Indian Constitution. This cannot be termed invalid as this right is subject to reasonable restrictions under Article 19(2). The closest understanding of 'lockdown' can be

construed from the Epidemic Diseases Act (EDA). Section 2 and 2A of the EDA give power to the State and Central governments to take necessary steps in the situation of an epidemic to control its outbreak, even if the steps are not mentioned in any law practice or theory in the country.

Looking to the Disaster Management Act, which was used to enforce the lockdown, Section 2(d) reads: "Disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area." This section is not meant to deal with epidemics or diseases of any kind but causes such as, but not limited to, tsunamis and earthquakes. However, the Ministry of Home Affairs declared the spread of COVID-19 as a "notified disaster", thus bringing into play Section 2(d) of the Disaster Management Act. This enabled the State Governments to use a larger part of the State Disaster Response Fund (SDRF) to combat the spread of the virus.

It is interesting to see that when the lockdown was announced, its application was not sourced from any law. It is not explicitly provided anywhere that the government has the power to declare something of this nature. It looks as if the policy had first been declared, and then the later the government considered which law applied. Declaring the COVID-19 outbreak as a "notified disaster" is a first-of-its-kind measure taken to increase the scope of government powers that can be used in order to make quick administrative decisions to fight this disease. It is important for the government to back its policies and decisions with legal provisions as it validates those actions.

In furtherance of the declaration of a nationwide lockdown, the MHA published guidelines using Section 10(2)(I) of the Disaster Management Act on the measures State and Central Governments must take during this twenty-one day period. The guidelines established that all types of transport services (air, train, and road travel) will not be operational during this period. Commercial and private establishments shall remain closed, except for ration shops, banks, ATMs, media services, and telecommunication companies. The guidelines also said under paragraph 17 that any person who violates these containment measures will be liable under Sections 51 to 60 (Offenses and Penalties) of the Disaster Management Act, and under Section 188 of the Indian Penal Code which creates the punishment for disobedience to order duly promulgated by a public servant.

Preparedness of all health institutes for diagnosis treatment and care during COVID -19

Article 21 of Constitution imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government

hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. For example in the case of Paschim Banga Khet Mazdoor Samity V State of West Bengal, the Supreme Court held that the government is obligated to provide adequate health facilities to the citizens of India. But the current status of medical facilities in COVID -19 (including, but not limited to, testing kits, hospitals, and the number of people trained to combat something of this nature) suggests that India needs something more than a Disaster Management Act or an Epidemic Diseases Act that only grants powers to the government to take steps they deem necessary. India requires a methodological and comprehensive framework to combat a pandemic of this nature so the stress is being given on hospital preparedness by increasing resources, training of medical and paramedical staff, preparation of fever OPD, isolation wards and COVID special units.

Law of quarantine

According to this act the centre and state has the discretionary powers to take the control in their hands to stop further spread of the disease or epidemic or pandemic. as in case of COVID -19. Based on this act the centre and state have the power to quarantine the people affected with any contagious disease or the people who are suspected to have the symptoms of the contagious disease. Or even healthy people to protect them from further spread of the disease. According to the Section 270 of IPC which applies for a "malignant act likely to spread infection of disease dangerous to life". A violator can be jailed for up to two years or could be fined or both without bail.



Figure 1: Prohibitory orders under Section 144- application in COVID -19.

Under Section 144 of the Criminal Procedure Code (CrPC) of 1973 authorises the Executive Magistrate of any state or territory to issue an order to prohibit the assembly of four or more people in an area. According to the law, every member of such 'unlawful assembly' can be booked for engaging in rioting.

Section 144 is imposed in urgent cases of nuisance or apprehended danger of some event that has the potential to cause trouble or damage to human life or property. Section 144 of CrPC generally prohibits public gathering.

Essential Services Maintenance ACT (ESMA) in COVID -19

The objective of applying this ACT in COVID -19 is in spite of lockdown to curb the spread of the virus it should be ensured that our country can navigate through the challenges brought about by such lockdown by maintaining essential goods and services

What are essential services?

Medical Essential services for all areas include reproductive, maternal, new-born and child health, prevention and management of communicable diseases, treatment for chronic diseases to avoid complications, and addressing emergencies

For managing COVID -19, it is production and transportation of Personal Protective Equipment (PPE), hand sanitisers, N-95 masks, triple layer masks, gloves and all related antibiotics and anti-viral medicines

The other essential services are any postal, telegraph or telephone service, including any service connected therewith; railway service or any transport service for the carriage of passengers or goods by air and any service connected with the operation or maintenance of aerodromes, any service in any major port.

These also include any service connected with the clearance of goods, any service in any establishment of the armed forces, any service in any establishment dealing with the production of goods required for defence, and any service in any section of any industrial undertaking pertaining to a scheduled industry on the working of which the safety of such undertaking or the employees employed therein depends.

The industrial undertakings include any service in, or in connection with the working of, any system of public conservancy, sanitation or water supply, hospitals or dispensaries, cantonment, area or undertaking owned or controlled by the government.

It also includes any service in connection with or in relation to banking and other government service.

Essential services restricted

However, the government has restricted the carriage of passengers through train and metro rail. The various districts are taking independent measures whether to close or allowed to remain open of private offices which are not related to emergency services.

Disaster and Public Emergency Special Provisions Act

It gives the power to the state government to defer payment of salaries, up to 25 percent of all state government employees. Some state government used Disaster and Public Emergency Special Provisions Act, which gives power to the government to defer payment of salaries of all government employees, to raise funds for managing COVID-19

CONCLUSIONS

In India, state governments in coordination with central government took precautionary and relief measures by imposing

constitutional laws and amending some, wherever orders were violated for the welfare of people to fight COVID-19 proving laws to be the best preventive medicine.

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