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THE DISASTER MANAGEMENT ACT 2005 AND THE EPIDEMIC DISEASE ACT 1897- ARE THESE LEGISLATIONS LEGALLY SUSTAINABLE

By Anukriti Rastogi

ABSTRACT

The focus of the paper is to unravel the lacunas of legislation passed to deal with the world-wide outbreak of COVID-19. The legislation and its working are also presented in the paper in a nutshell. A glimpse of how these acts are old and insufficient in curbing the atrocity of the outbreak. It also highlights the need for having an up-to-date law to deal with the major pandemic. The paper also highlights how the situation can be abated by scrutinizing the present legislations.

INTRODUCTION

The pandemic COVID-19 that surfaced in Wuhan, China is taking a toll on the global health and world economy. The casualties are mushrooming day by day and the setback that the economy faced can't be exacted or comprehended. Claiming a yet fruitful start of 2019. The pandemic thwarted the growth in such a way that it would take years to emerge from the horror let alone the lives lost. Almost 1,000,000 people are said to be infected worldwide but yet these are just figures, the catastrophe is much more than perceived. The number of deaths is soaring high, the debacle it caused will not be forgotten in years. The worldwide shutdown tells us a story of a war-like situation. The world is at standstill with just one virus causing such a misfortune. The global slowdown has clutched us and no horizon is yet to be seen. Coronavirus has also hindered one of the biggest economy- India's progress. The developing nation has been pushed back several years. Prime Minister Modi stated the alarming status of the pandemic knowing the difficulty India would be facing to contain it. COVID-19 has caused many hardships and its repercussions are unfathomable. Though the virus is enfeebling our health worldwide, the acts of various anti-social elements are stealthily causing more distress.

Globally, multiple methods are being practised to debilitate the virus, it is a long quarantine, social- isolation or travel-ban. Under the Indian constitution, the health of public and sanitation are the responsibilities of the state government. To subdue or curb the effects of the virus, the Indian government brought into picture predominantly two different laws namely Epidemic

Diseases Act, 1897 and National Disaster Management Act, 2005¹. These acts are an attempt to stifle the virus. Both of these acts are introduced to impose restrictions and safeguards Indians from the major outbreak. Many Indian states are invoking these legislations to legitimize measures like mandatory quarantine and screening. These acts also penalize the people who condone such legislation and violate the law. Are the legislations sufficient to abate the widespread of virus or are they yet another laws that have been included among the wide ranges of existing legislations.. is a question to ponder on. Are these legislations efficacious and operative is still uncomprehended? In this crucial stage where the rate of corona affected people is burgeoning day by day, quick action and effective laws are the need of an hour. The legal indifference was known to us for long, but it's worth questioning, 'Is India ready to face another major pandemic after 1918 Spanish flu'. I guess not!

ISSUES AND ITS MULTI-FACETED DIMENSIONS

The Epidemic Disease Act, 1897 was enacted by the ministry in the wake of the Bombay plague that caused severe havoc. The pre-constitutional law consists of measures that hand the prerogative to the government to prescribe regulations to unnerve the disease. (Broadly given in Section 2 of the act). Section 3 of the act makes it a penal offence under Section 188 of the IPC to infringe the said directive. The law also authorizes the central government to check upon ships entering or leaving India's water. Though such measures are significant yet they only delineate the rudimentary measures. Numerous health and legal experts had described the legislation as archaic and anachronistic. The Act has been said to be draconian and obsolete persisting to the situation in the present times. The question that bothers us all is whether such antediluvian legislation can deal with 21st-century pandemic where the milieu has changed? There has been a significant transition from the pre-modern era to the presentone. With the rapid urbanization and industrialization, India has been moving forward towards becoming the world largest economy overtaking China by 2025. About these, this legislation is timeworn. The legislation broadly addresses the scrutiny of the vessels and ships entering India's water but categorically cease to take into consideration the increasing exports/imports and International travel. The said law places too much focus on quarantine and isolated lifestyle but neglect the very facet of scientific methods of prevention or vaccination. The act is also described as non-democratic having stringent ideologies as it only empowers central government or the state government to authorize without the Parliament overseeing it. The law that was passed in the late 1800s condones the fundamental rights of free movement, which in the present day violates our constitution.² This ad-

¹<https://indiankanoon.org/doc/1005961/>
<http://legislative.gov.in/actsofparliamentfromtheyear/disaster-management-act-2005>

²<https://theprint.in/opinion/these-are-the-two-laws-modi-govt-has-invoked-to-tackle-coronavirus-but-its-not-enough/379919/>

hoc legal statute has worked in bits and pieces without successfully tackling the pandemic. The Epidemic Disease Act, 1897 very subtly forgets to mention 'Dangerous Epidemic Disease' and confers unhinged powers to the executive. The 123-year-old act is not in line with the current understanding of an epidemic. It only considers the legal phenomenon of the cases back then. The act though authoritative in nature has a cascade of drawbacks about modern legislations. In the present health, context is the passé law satisfactory or we are too tired to overlook such a disastrous pandemic?

To combat the deadly virus centre along-with the Epidemic Disease Act, 1897 also invoked Disaster Management Act, 2005, came into being after the 2004 Tsunami, the act's main objective is to mitigate the disaster, palliate the devastation and wreck owing to time-bound strategies, capacity-building and providing resources. Though the Act is passed to tackle the ghastly coronavirus, its main objective is to alleviate the catastrophe caused by natural disasters such as Earthquakes and Tsunamis. Even the Section 2(d) of the act states the same. The whole scenario indicates how we are failing even at a rudimentary level to tackle a pandemic. All these laws have been passed to pacify a certain kind of disaster and applying it to the present case is a futile pursuit. The act provides the authority to centre and states to impose the lockdown and retrieve funds from The National disaster fund and District disaster response fund for abatement of the disaster and protect people from the fiasco. The Disaster Management Act, 2005 is largely put in action for efficient preparation to avert the mishap and handling man-made calamities which are generally geographical-catastrophe happening for a certain time-frame and not disrupting everyday life in a large scale, unlike global pandemic. Such a callous attitude towards tackling a global health hazard brings about the inadequacies in law-implementation. The act states effective evacuation of the people for protection during the disaster but it is quite impossible and unrewarding to continue doing this in the present scenario.



A REVIEW OF THE FATALITY

"OUR MISSION YOUR SUCCESS"

The outbreak of COVID-19 is a significant challenge for the government to revive our failing economy and health. As it began to spread throughout the states of India causing casualties, the centre adopted varying laws to nip the contagion in the bud. But the lacunas of the legislations make us wonder about the upcoming fatality and its horrendous consequences. The Epidemic Disease Act forgets to build an equilibrium between the fundamental rights of people and the authority of the state. It has been called draconian for a reason. The existing regulations need to be amended to safeguard people against the illicit actions of the state. Disaster Management Act also doesn't solve the current problem. It is just amalgamation of various rules and programmes in fragments. The legislators overlooked the fact that the said act was passed only to curb the

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adversity of a disaster. Numerous Public Interest Litigations has been knocking the door of the courts to deal with the defectiveness of the legislations. There is a dire need to bolster legal frameworks in a country like India which is up-to-date, people-focused and relevant in the present scenario. These laws though passed in good- faith in all intents and purposes fall short to embark upon dealing the COVID- 19 pandemic. Some of the legislators call these acts as ‘Legally unsustainable’ which is sadly accurate. There is a prompt need to reassess the laws and expedite on enacting a new legal –framework which will come in handy for the current state of affairs. There is a necessity to develop a balance between central governments, state governments and even the citizens to save us all from this conundrum. The Constitution of India vividly under article 355³states that there is a duty of the central government to protect all against ‘external aggression’ and ‘internal disturbance’. Also to add to its list of safeguards Entry 29 of the concurrent list authorizes the central with state governments to bring about action for the prevention of infectious diseases. But the questions that perturb us all that even the well-coordinated legislation couldn’t accomplish the essence of the constitution.

CONCLUSION

The need of the hour against the alarming spate is to formulate a robust,advanced and fully synchronized implementation of combative modus operandi. The remedy sought has to be a concerted effort of both the central and state government to promulgate a law to terminate the blow of COVID-19.The Union Government has to show a proclivity toward enacting COVID-19 specific legislation to rein in the virus. If only the actions are taken in due time, India will have fair chances to vanquish and conquer the lethal virus until the situation becomes implacable.



³<https://indiankanoon.org/doc/490234/>

<https://www.thehindu.com/opinion/lead/india-needs-to-enact-a-covid-19-law/article31529036.ece>