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A Review of the Epidemic Diseases Act, 1987: What it is & what it would be

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Background

The Epidemic Diseases Act, 1897 was first enacted in India to tackle the bubonic plague which was widespread throughout Mumbai (previously known as Bombay), during the rule of the British in India. The plague had led to losses in life, and is said to have killed hundreds of people per week in Mumbai. The source of contagion of the disease was said to have been rats¹. This plague caused migrations out of Mumbai by many.

The Act conferred powers which included searches in homes and among passenger. It also permitted various measures to ensure the containment of the disease. This was done by segregation of infected persons. Public assemblies were either prohibited or suspended, including but not limited to public meetings, festivals and pilgrimages. Allegedly, public humiliation and acts of violence against women took place. This gave rise to many concerns for citizens in already trying times. Riots were also reported in some areas.² There was also abandonment or demolition of places which had been occupied by those affected by the disease.

The Act confers special powers to state and local authorities to take necessary measures to control the spread of epidemics.

The Epidemic Diseases Act of 1897

The Act is one of the shortest in India with only four sections. It includes the powers vested upon the Central and State Governments to take certain actions to prevent spread of such diseases.

6.2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—

(1) When at any time the 7 [State Government] is satisfied that 7 [the State] or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the 8 [State Government], if 9 [it] thinks that the ordinary provisions of the law for the time being in force are

¹ Ankoosh Mehta, Kriti Srivastava & Anushka Shah, 'Epidemic Diseases Act 1897- Dusting an Old Cloak' (India CorporateLaw, 31 March 2020) <https://corporate.cyrilamarchandblogs.com/2020/03/epidemic-diseases-act-1897-dusting-an-old-cloak/#_ftn3>

²Echenberg M. Plague ports: the global urban impact of Bubonic plague, 1894-1901. London: New York University Press; 2007: p 58.

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. (2) In particular and without prejudice to the generality of the foregoing provisions, the [State Government] may take measures and prescribe regulations for— (b) the 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.

a) Section 2 of the Act gives State Governments power to take special measures and prescribe regulations during the outbreak of an epidemic disease- Under this Section, the State governments can regulate the general public or empower measures to be taken to prevent further outbreak of any disease. It may even prescribe temporary regulations and may determine how the expenses incurred during this period will be defrayed, limit travelling or impose restrictions on the same, and even the functioning and treatment in hospitals or those suspected to be infected by the disease. [2A. Powers of Central Government.—When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in [the territories to which this Act extends] and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.]

b) According to Section 2A of the Act states the powers of the Central Government during an epidemic situation, which include the restriction and issuing of measures or regulations for vessels or ships leaving Indian territories or detention of any person intending to sail therein, if it is felt that the current measures in place will not suffice.

c) Section 3 of the Act states that a person will have been deemed to commit an offence punishable under Section 188 of the Indian Penal Code (45 of 186) if found to be disobeying any regulation or order under this Act.

Under this Section, a person is punishable with simple imprisonment which can extend up to a month, and/or be fined of a sum up to Rs. 200. A person could also be imprisoned for a period up to six months and/or be fined up to Rs. 1000 if deemed to be dangerous to human life, health or safety or can be seen to be cause “riots of affray”.

d) Section 4 of the Act provides for the protection to public servants from legal action while acting in good faith.³

Enforcement of Act

Most recently, the Act was enforced in 2018 in the Vadodara region of Gujarat. This was to contain the spread of a dengue and malaria outbreak. It has also been enforced in 2015 in Chandigarh to

³The Epidemic Diseases Act 1897

deal with the dengue and malaria outbreak. Before that, it was invoked in Pune to Combat with the breakout of swine flu.

The first case of COVID-19 reported in India was on the 30th of January, 2020. Post this, with its development in India and around the world, the Cabinet Secretary of India, on 11 March 2020, announced that all states and Union Territories should enforce Section 2 of the Epidemic Diseases Act, 1897. This would be an attempt to prevent any widespread infection or outbreak of the disease. Many Indian states have taken recourse of this Act.⁴

Attempts to change

A Public Health Emergencies Bill was drafted during the first term of the UPA government. But the bill went on the back burner after states called it a contravention upon their powers.

The Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill 2017 was then introduced in 2017. It was proposed to repeal the epidemic law of 1897. The draft bill explained provisions relating to quarantine of suspects, isolation of the infected & the powers granted to the Center in regards to directing local, state and district authorities in situations of widespread infection of any disease. Powers bestowed to states under Section 3 could also be expropriated if the circumstances could prove it to be necessary.

A meeting was also conducted of the members of the Rajya Sabha Committee on Home Affairs. In said meeting, there were suggestions given, pointing towards the need to amend the Act. This was as of the 15th of July. “There was a view among the members that the Epidemic Disease Act has become dated. Also, there is a need to define clearly what constitutes a disaster under the National Disaster Management Act,” a panel member, who attended the meeting said.⁵

Limitations to the Act

“The Epidemic Disease Act was enacted in 1897 and needs to be repealed. The Act does not provide any power to the Centre to intervene in biological emergencies. It has to be substituted by an Act which takes care of the prevailing and foreseeable public health needs, including emergencies such as BT (bioterrorism) attack and use of biological weapons by an adversary, cross border issues and international spread of diseases”

— Management of Biological Disaster Guideline, GoI, 2008

The Act lacks reflections of modern day realities. These include:

- There are no provisions for any number of inter state migrations taking place, especially in context of urban areas. Neither is there any proper recourse nor resources present to facilitate these movements.

⁴To combat coronavirus, India invokes provisions of colonial-era Epidemic Diseases Act: A look at what this means' (Firstpost.com, 12 March 2020) <<https://www.firstpost.com/health/to-combat-coronavirus-india-invokes-provisions-of-colonial-era-epidemic-act-all-you-need-to-know-8142601.html>>. Retrieved 2020-03-12

⁵ Moushumi das gupta, 'Parliamentary panel flags black-marketing of remdesivir, govt says 'taking action'' (The Print, 15th July 2020) <<https://theprint.in/india/governance/parliamentary-panel-flags-black-marketing-of-remdesivir-govt-says-taking-action/461786/>> accessed 16 July 2020

- Since the Act was introduced in the end of the 19th century, there was more emphasis on travel by ship and is completely silent on air travel. This reflects the prevalence of different modes of travel at the time of the Act coming into place which is vastly different now.
- The act lacks an understanding of modern and contemporary scientific methods of prevention and response. While it does look at processes of quarantining and detention, it lacks a mention and explanation for usage and distribution of vaccines, maintenance of surveillance to curb violations of any mobility restrictions, and organization of public health.⁶
- The punishment defined in Section 3 of the Act may not remain an effective deterrent in today's context.
- The Act does not define what a “dangerous epidemic disease” means/ is. This is the major cause for criticism faced by the Act. The small Act fails to include several more minute, but necessary criteria to be used to distinguish the severity of the disease, the rate of infection & the potential of its spread in different areas, the magnitude of its contagion, or the section of the population most prone to harm. It is absolutely necessary for this Act to define what circumstances would define dangerous diseases and also must entail who the power of defining these distinctions lies with, The Act allows for carrying out of many activities (personal and potentially humiliating in nature; and even of military powers) to ensure proper implementation and a lack of clarity in these aspects can easily lead to a misuse of power.
- The Act is completely deprived of any human rights considerations. It does not reference how there would be equitable access to healthcare and the lack of sufficient resources in terms of medical supplies can be seen in the ongoing COVID-19 pandemic.
- Patients with pre existing conditions who need essential treatment may not be able to receive treatment with most hospitals overburdened, several having shut their OPDs and postponement of surgeries.⁷

⁶ Rakesh PS, 'The Epidemic Diseases Act of 1897: public health relevance in the current scenario' (2016) 1(3) Indian Journal of Medical Ethics <<http://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenario/?galley=html#six>>

⁷ Rema Nagaranjan & Shobita Dhar, 'How Covid War is hurting India's Non Covid patients' (Timesofindia.indiatimes.com, 3 April 2020) <<https://timesofindia.indiatimes.com/india/how-covid-war-is-hurting-indias-non-covid-patients/articleshow/74949121.cms>> accessed 7 May 2020

- There are many victims of domestic abuse, who, due to the extended periods of lockdown in the country have been forced to share close quarters with their abusers. Restricted mobility of people has increased this abuse.⁸
- There has also been a rise in racially fueled attacks against people belonging to North Eastern States of India.⁹

The Act is among the only legislations that deal directly with the regulation of epidemics in India. Considering the same, the Act is also being criticized for not describing duties or providing clarity to situations in which public rights can be curtailed.

The Epidemic Diseases (Amendment) Ordinance, 2020

There have been incidents during the COVID-19 pandemic, where the medical service providers i.e. members of healthcare services were being targeted and attacked by malfeants, and thus obstructing them from doing work. The Medical Community has unfortunately become the most vulnerable victims as they have been judged by some as the spreader of the virus, as they continue to perform persistently round the clock to save human lives, which has led to numerous cases of stigmatization & ostracization. But some cases are even worse like cases of harassment and various other forms of violence to the healthcare service workers who are working to contain the spread of the disease and these acts of violence have been taking place, in different places even including the cremation grounds. The Union Cabinet in April 2020, approved promulgation of the Ordinance which is to amend the Epidemic Diseases Act, 1897 for protection of healthcare workforce and including their property (living and working premises) against violence during epidemics and the President of India has given his assent for the same.¹⁰

The Epidemic Diseases (Amendment) Ordinance, 2020¹¹ amended the Act for the protection of the healthcare workforce who is fighting the epidemic and it also adds to the powers of the central government to forestall the spread of similar diseases in the future. The Amendment makes any act of violence against any health personnel as well as medical staff, as a cognizable and non-bailable offence and instigation or commission of violence against them will be punished with imprisonment for 3 to 5 years and fine from Rs.50,000 to Rs.2 Lakhs and in cases of causing grievous hurt to the health workers, the imprisonment will be for a term 6 months to 7 years and a fine of Rs.1 Lakh to 5 Lakhs and addition to it, the offender will also be liable to pay compensation

⁸ Jagriti chandra, 'Strict restrictions of mobility resulted increased violence against women, says study' (The Hindu, 30 July, 2020) <<https://www.thehindu.com/news/national/strict-restrictions-of-mobility-resulted-increased-violence-against-women-says-study/article32233772.ece>> accessed 31 July 2020

⁹Murali Krishnan, 'Coronavirus: 'Chinese-looking' Indians targeted in racist attacks' (Dwcom, 30 March 2020) <<https://www.dw.com/en/coronavirus-chinese-looking-indians-targeted-in-racist-attacks/a-52956212>> accessed 5 May 2020

¹⁰Government of India, 'Promulgation of an Ordinance to amend the Epidemic Diseases Act, 1897 in the light of the pandemic situation of COVID-19' (Press Information Bureau Government of India Ministry of Health and Family Welfare, 22 April 2020) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=202493>> accessed 20 July 2020

¹¹The Epidemic Diseases (Amendment) Ordinance 2020

to the victim which would be twice the fair market value for any damage done to the property that features living or working premises etc. The document also suggests that the law does not only support the doctors and nurses but also ASHA (Accredited Social Health Activist), Anganwadi workers and also the medical property like mobile units, etc.

Besides this, the Amendment also includes provisions to provide for compensation for the injury or for causing any kind of damage/ loss to the property caused to the healthcare service personnel. The Amendment also states that, the Court will presume that person is guilty of the offence, when a person for causes grievous harm to healthcare service personnel, unless the contrary is proved.

Changes needed in the Act and Indian Legislation

There are two ways of look at the way the offences have been dealt with in the given Amendment. In which, one can say that the current amendment can become a tool of harassment by the law enforcement agencies and the punishment given and the other viewpoint is that the the long term of imprisonment and hefty fine can be a grave deterrent to future offender¹² There is a need for a proper check system on Public Officers, so that there is no misuse of power.

The Amendment also fails to take into consideration the large scale migrant labour force across the country, which are thousands of miles away from their hometown and are trying to back and a quick legislative action to regulate and control inter-state migration which was and could be (for future epidemics) the need of the hour.¹³

Although relief is provided through the Amendment amid the attacks during the pandemic, a more permanent solution for the attacks on doctors is needed. Dr. Adarsh Pratap Singh, president of the Resident Doctors' Association of the All India Institute of Medical Science, told Anadolu Agency: "This is an Epidemic Ordinance, thus a temporary solution. Attacks on doctors are not new, and hundreds of cases of assault on doctors have been reported in the last few years. We need better infrastructure, more recruitments of doctors and a better health budget so that the doctor-patient ratio can be brought down and we also demand a central protection act for our safety..."¹⁴

Then the issues like circulation of fake news, attempts to promote enmity between religions disturbing communal harmony and blatant misinformation pose formidable challenges in the fight

¹²Sabrangindia, 'Can harsher punitive measures as per ordinance amending Epidemic Disease Act be misused?' (Sabrangindia, 25 April 2020) <<https://www.sabrangindia.in/article/can-harsher-punitive-measures-ordinance-amending-epidemic-disease-act-be-misused>> accessed 7 May 2020

¹³Tapesh Kumar Singh, 'A Critique On The Epidemic Diseases (Amendment) Ordinance, 2020' (LiveLaw.in, 27 April 2020) <<https://www.livelaw.in/columns/a-critique-on-the-epidemic-diseases-amendment-ordinance-2020-155819>> accessed on 7 May 2020

¹⁴Cheena Kapoor, 'Doctors in India hail new epidemic disease ordinance' (Anadolu Agency, 24 April 2020) <<https://www.aa.com.tr/en/asia-pacific/doctors-in-india-hail-new-epidemic-disease-ordinance/1816684>> accessed 6 May 2020

against COVID-19 or any other Epidemic, were not taken into consideration while making the Amendment.

The current pandemic has shown how important Healthcare is for people and especially for the people who are not privileged enough to get basic facilities or means, which reminds of the National Health Bill, 2009. This bill recognized the health of every citizen as a Fundamental Right and also states that each and every citizen has a right to attain the best standard of health. Article 14, 15 and 21 of The Constitution of India recognizes right to life as a Fundamental Right and also states that it is the right to health is Governments obligation, which should be provided to them without any kind of discrimination or inequality.¹⁵ It also provides for a response mechanism by outlining a collaborative federal framework for public health emergencies. But none of those initiatives ever fruitful as the states considered the bill as an encroachment on their domains.¹⁶ In a way, it was a very dynamic and progressive bill but unfortunately never saw the daylight. Recent events had shown that India should consider revisiting certain aspects of the bill as they can be helpful for the future.

Lastly, while the states are heavily dependent for supply of Personal Protective Equipment (PPE) and Testing Kits, drugs, sanitizers, medical equipment etc., the Centre, in the absence of its own census/data collection mechanism, is nearly relying upon the former to furnish daily statistics for fatalities and also the number of persons affected and cured. Which means legislation similar to the Coroners Act¹⁷ could be helpful in future.

Conclusion

Throughout this period of lockdown, the country as a whole has dealt with this pandemic through improvisation. It has become increasingly clear that a new, modern Act is imperative. The next pandemic cannot be dealt with, with this outdated law. Even as other rundown colonial Acts still be in use in the country (such as the IPC), epidemics like COVID-19 highlight the necessity to update both the Act and government health policies, and to invest in the health system in India so as to make it more efficient to manage and mitigate health risks to the country.

¹⁵Sanjeev V. Thomas, 'The National Health Bill 2009 and afterwards'(2009) 12(2) ANN INDIAN ACAD NEUR <<http://www.annalsofian.org/article.asp?issn=0972-2327;year=2009;volume=12;issue=2;spage=79;epage=79;aualast=Thomas/>> accessed 20 July 2020

¹⁶Manish Tewari, 'India's fight against health emergencies: In search of a legal architecture' (2020) ORF <https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/#_edn8> accessed 20 July 2020

¹⁷ Coroners Act 1871