

IS THERE A NEED FOR AMENDING THE EPIDEMIC DISEASE ACT OF 1897?

-by Arnav Kumar

B.A. LL. B, 3rd YEAR, LLOYD LAW COLLEGE

Abstract

An epidemic could even be a disease that spreads rapidly among many folks during a community at an equivalent time. India is additionally facing the same quite disease mentioned as COVID 19. Within the age of non-communicable disease, the disease itself contributes half-hour of the disease burden in India. There are numbers of the epidemic occurred in every past year and sometimes we failed and succeeded also to combat. If we've to combat with these kinds of an epidemic we don't need only the interventions of assorted biological and behavioral public health system rather we'd wish to closely inspect the structural intervention, that's nothing but the legal framework to review health system preparedness. Recently, most of the states in India have invoked various provisions of the Epidemic Diseases Act of 1897 to manage communicable diseases. So, during this text, we are becoming to work out that whether the Epidemic Diseases Act of 1897 is sufficient to reply to things of an epidemic and if not then what are the sections of the act which must be amended so as that it can fructify the aim for combating the epidemic.

INTRODUCTION

India has witnessed many large outbreaks of emerging and re-emerging infectious diseases within the recent past. Within the 21st century, the country is facing a twofold burden of diseases. Our health system is challenged to affect non-communicable diseases. They still contribute approximately 30% of the

burden of disease in India. Before going into the generality of provisions of the epidemic act 1897, we must understand the meaning of “epidemic” which suggests affecting or tending to affect a disproportionately sizable amount of people within a population, community, or region at an equivalent time. So it’s a plague of disease that spreads quickly and affects many individuals at the same time, which needs better handling by the govt. With proper care and caution. If we see the impact of epidemics of a disease, which imposes a crucial economic burden on families also as individuals, communities, and nations at large¹. We still have failed in handling influenza pandemics and struggling to contain them. There are certain historical aspects slightly a bit like the outbreak of a cholera epidemic thanks to the O139 strain in 1992, that of plague in Surat in 1994, the large-scale spread of chikungunya and dengue, which of avian influenza (H5N1) and pandemic H1N1 influenza were some which caused widespread havoc then on. COVID 19 has undoubtedly been probably the foremost important challenge that the humanity has witnessed in recorded history. It requires better public health interventions, which can be divided into four categories: Biological, behavioral, political, and structural. The biological interventions most believe containing communicable diseases and thus the behavioral interventions depend upon the change within the behavior of a personal also because the community whereas political interventions are the kinds of prescribing policies related to health. within the last structural intervention comes which is nothing but the absolute best results of a political process that’s , passing the laws and regulations².

¹ WHO, The global burden of disease: 2004

² Nutbeam D, Wise M. *Structures and strategies for public health intervention* Oxford Textbook of Public Health (4th eds)

BACKGROUND OF THE EPIDEMIC DISEASES ACT 1897

The Epidemic Diseases Act was passed in 1897 with the aim of upper preventing the spread of “dangerous epidemic diseases”³. It evolved to tackle the epidemic of plague that broke call at the Bombay state at the time. The governor of colonial India conferred special powers upon the local authorities to implement the measures necessary for the control of epidemics. It is the shortest acts of India, comprising just four sections, the first section describes the title and thus the extant, the second section empowers state and central government to wish special measures and prescribe regulations and this section was amended in 1920 and inserted section 2A⁴ which provides for the power of the Central Government. Under this section, when the Central Government is satisfied that either the whole territory or any part thereof of the country is visited by, or threatened with, a plague of any dangerous disease and thus the quality provisions of the law for the nonce effective are insufficient to stop the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations for the inspection of any ship, vessel as how of transportations leaving or arriving at anywhere within the country and for also any detention needed of a personal as could even be necessary. The third section defines a penalty for violating the regulations, whereas the fourth section gives legal protection to persons acting under the act⁵. The act was executed strenuously to manage the plague epidemic that broke out in the 1890s.

³ The Epidemic Disease Act 1897

⁴ The Epidemic Diseases Act 1897, s 2 (A)

⁵ The Epidemic Disease Act 1897

JUDICIAL PRONOUNCEMENT

In *Ram Laul Mistry v. R.T. Greer*⁶, Calcutta High Court held that the words “done or intended to be done” in sec 4 of the Epidemic Disease Act do not include omissions and Magistrate who omits to pay adequate compensation for property demolished under the provisions of the Act is personally liable, even though he is acting in his administrative capacity as Chairman of the Calcutta Corporation.

In *Queen Empress v South & Others*⁷, certain persons were charged with having disobeyed an order promulgated under the Epidemic Diseases Act and were acquitted on the ground that for prosecution under section 196 of code of criminal procedure, the previous sanction of the public servant who promulgated the order is required. However, Madras High Court held that the order of acquittal was wrong as in as much as the order was in question, it was promulgated by the Government and not by any public servant, and thus, no sanction was required.

In *Re Nagappa Thevan and Another*⁸, Madras High Court held that delegation of power to local government is void and in the case before the court a delegation under rule 104 by the collector to a Divisional Officer of the power to call upon people to evacuate houses is illegal and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission.

⁶ (1903-04) 8 CWN 681 (Cal)

⁷ ILR (1901) 24 Mad 70

⁸ AIR 1916 Mad 325

MAJOR LIMITATIONS OF THE ACT

As we've already seen that this act is 123 years old. Things and thus the factors leading to the emergence and spread of communicable diseases have also changed over the amount of a short time.

* The act needs modification within the changing scenario because the act is more specific and really much oriented towards “travel by ship” and silent on “air travel”. Which was aberrant at that time.

* The Act places an excessive amount of emphasis on isolation or quarantine measures, but is silent on the other scientific methods of outbreak prevention and control, like vaccination, surveillance and arranged public health response.

* It only reflects the scientific and legal standards that prevailed at the time when it had been framed. This act isn't sufficient to affect the prevention and control of disease within this example.

* Although India features quite legal mechanisms to support the overall public health measures during an epidemic situation, they are not being addressed during single legislation. It's an urgent need to assemble all the laws together in single legislation to understand the aim and implement it effectively.

* It's been 70 years of the countries independence and till now we aren't having a comprehensive public health act. We are still dependent upon the old law, which was passed in 1897 and is redundant in it.

* Epidemic act 1897 doesn't define the damaging disease that what is the clear definition of a dangerous epidemic or whether an epidemic is “dangerous” on the thought of the magnitude of the matter, the severity of the matter and thus the very essential question arises here that who decides on what a “dangerous epidemic disease” is and what are the standards on which the definition is based on.

* The punishment for violation of section 188⁹(provides for punishment for disobedience to any order promulgated by any public servant) of the Indian code also warrants a revision because we'll see that how healthcare service personnel the patients are misbehaving and even the general public has beaten them also. they're also damaging property like hospitals and each one.

So the moral of the thesis is that the target of an act is unsatisfactory. People aren't even bothered about the impact of violating the principles because the punishment isn't adequate at now situation. So it needs an urgent amendment.

CRITIQUE ON THE EPIDEMIC DISEASES (AMENDMENT) ORDINANCE, 2020

* **Definitions:** The Ordinance mainly defines healthcare service personnel as a personal who is in peril of contracting the disease while completing duties associated with the epidemic. It includes healthcare providers like doctors and nurses, a private empowered under the Act to wish measures to stop the outbreak of the disease, and other persons designated congenitally by the govt. An 'act of violence' includes any of the misbehavior act committed against a healthcare service personnel as like harassment impacting living or working conditions, harm, injury, hurt, or danger to life, obstruction in discharge of his duties, and loss or damage to the property or documents of the healthcare service personnel. Property is defined to assimilate clinical establishment, quarantine facility, and other property during which a healthcare service personnel has direct interest, in regard to the epidemic¹⁰.

* **Powers of the central government:** The Act specifies that the central government may regulate the inspection of any ship or vessel leaving or arriving at any port, and thus the detention of a personal going to travel from the port,

⁹ Indian Penal Code 1860, s 188

¹⁰ Ibid

during a plague . The Ordinance enlarges the powers of the central government to manage the inspection of any bus, train, goods vehicle, ship, vessel, or aircraft leaving or arriving at any land port, port or aerodrome. Further, the central government may regulate the detention of a personal going to travel by these means¹¹.

* **Protection for healthcare personnel and damage to property:** The Ordinance specifies that no-one can commit or abet the commission of an act of violence against healthcare service personnel, or abet or cause damage or loss to any property during a plague . Contravention of this provision is punishable with imprisonment between three months and five years, and a fine between fifty thousand's and two lakh rupees. If an act of violence against a healthcare service personnel causes grievous injury, the person committing the offence are getting to be punishable with imprisonment between six months and seven years, and a fine between one lakh rupees and five lakh rupees. Moreover, these offences are cognizable and non-bailable¹².

* **Compensation:** Those Persons who all are convicted of offences under the Ordinance also are going to be vulnerable to pay compensation to the healthcare service personnel also and thus the Court itself will determine such compensation. within the case of injury or loss of property, the compensation payable to the victim are getting to be twice the quantity of the fair market value of the damaged or lost property, as determined by the Court and If the convicted person fails to pay the compensation, the quantity are getting to be recovered as an debt of land revenue under the Revenue Recovery Act, 1890¹³.

* **Investigation:** under the amendment it has been inserted that the case, which may be registered, are often investigated only by the policeman not below the rank of Inspector and it has been also proposed that the investigation must be

¹¹ Ibid

¹² Ibid

¹³ Ibid

completed within 30 days from the date of registration of the first Information Report¹⁴.

* **Trial:** under the ordinance it's directed that the inquiry or trial must be concluded within one year. If it fails to undertake to so within the stipulated period, the Judge must get to record the explanations for the delay and can extend the amount of a short time. However, the numbers of a while are often extended only for six months at a time¹⁵.

If a private is being prosecuted for causing grievous harm to healthcare service personnel, the Court may presume that person is guilty of the offence, unless the contrary is proved.

CONCLUSION

Hence, undoubtedly there's a requirement to amend the 123 years old act to cater to the changing public health priorities and control the entry, spread, and existence of communicable diseases in India. This act has major limitations when it involves tackling the emergence and re-emergence of communicable diseases especially, within the changing of public health context. However Central government has promulgated an Ordinance to amend the Epidemic Diseases Act, 1897 to make attacks on doctors and healthcare workers a cognizable and non-bailable offence but still this amendment isn't capable control this instance. Over the years several states have formulated their own public health laws and a couple of others have amended the provisions of their diseases act but however, these acts vary in quality and content. So, it's the foremost important to assemble all laws together and convey it in single legislation so as that their implementation would be simpler.

¹⁴ Ibid

¹⁵ Ibid