

Advances in Epidemic Control Laws & COVID-19 Pandemic in India: A Medico-Legal Analysis

M.Z.M. Nomani¹, Faisal Sherwani², Jalal Allail³

¹Professor, Faculty of Law, Aligarh Muslim University, Aligarh-202001(U.P./India) ²Advocate-on-Record, Supreme Court of India, New Delhi & Partner, L&L Partners Law Firm, New Delhi, ³Faculty of Law, Alsham Private University, Damascus, Syria

Abstract

This paper deals with the efficacy of the *Epidemic Diseases Act*, 1897 and *Epidemic Diseases Amendment Act*, 1937 in the context of Covid-19 pandemic. The colonial mould of epidemic control laws reviewed the World Health Organization (WHO) legal guidelines for disease preparedness and response. The public health strategies of epidemic-pandemic control need juristic innovation, and blanket application of British enactment fall short of the expectation of the right based approach health and equity. The enforcement of the *Epidemic Diseases Act*, 1897 during dengue, swine flu, influenza and COVID-19 criticized by the Indian medico-legal community in India. The emerging discourse can be tailor-made to suit the magnitude of the Covid-19 and pandemics needs a careful analysis. Though the WHO *Revision of the International Health Regulations*, 2005 offers new paradigm the Indian government resort to the *Epidemic Diseases Amendment Ordinance*, 2020 needs a critical appraisal in COVID-19 pandemic in India.

Keywords: Epidemic Laws, Health Regulations, WHO Legal Guidelines, Epidemic Ordinance, COVID-19 Pandemic

Introduction

The nationwide lockdown and enforcement of quarantine law under *Epidemic Diseases Act*, 1897 *Epidemic Diseases Amendment Act*, 1937 *Epidemic Diseases Amendment Ordinance*, 2020 needs a legal examination in the context of Covid-19 pandemic. Entry 6 of the State List of the Seventh Schedule to the Constitution of India, 1950, envisages health within the exclusive domain of the states. The prevention of infectious or contagious diseases and pests affecting men, animals or plants placed under Entry 29 of the concurrent list. The central government sledgehammer declaration of national lockdowns logical sustainable and legally tenable for the implementation of coherent policies across the nation.¹ The catastrophic dimensions of Covid-19 pandemic necessitated either the national emergency under the constitutional power of the centre or promulgation of Ordinance on public health-giving a fillip to long-standing demands of health law reform.² The void seems to have filled by the Disaster Management Act, 2005's omnibus provisions of the 'catastrophe beyond the coping capacity of the community.'³ The

Indian Penal Code, 1860 and *Epidemic Diseases Act*, 1897 as colonial legislation analyzed in the precept of Britain's *Public Health Act*, 1875 and *Public Authorities Protection Act*, 1893. Independent India's health reform zeal reflected in the *National Health Bill*, 2009; *Public Health Bill*, 2017; and *Health Services Personnel and Clinical Establishments Bill*, 2019 did not mature in law in the emergency preparedness of COVID-19 pandemic.⁴ India's legal preparedness reflected in *Epidemic Diseases Amendment Ordinance*, 2020 is dominantly 'policing' in nature. The scale of emergencies and health preparedness needs a critical mass of public health legislation having the right and equity approach.

Material and Method

The material and method of epidemic-pandemic driven study rooted in the World Health Organization (WHO) legal guidelines for disease preparedness and response.⁵ The public health strategies of epidemic-pandemic control⁶ in the Parmet & Sinha's methods offer the novelty of juristic pragmatism.⁷ The legislative survey of the epidemic control laws also delineated in the right

based approach health and environment.⁸ The review of *Epidemic Diseases Act, 1897* in the context of Influenza response abounds in Indian writing by Kakkar,⁸ Patro¹⁰ and Rakesh.¹¹ The potential of these analyses can be tailor-made in the Covid-19 pandemics needs a thorough examination.¹² The *Revision of the International Health Regulations, 2005* by WHO in H5N1 avian flu epidemic provides meaningful narratives in COVID-19 pandemic to this end the established statutory canons of statutory interpretation and case law methods applied to the understanding of the *Indian Penal Code, 1860 Epidemic Diseases Act, 1897 Epidemic Diseases Amendment Act, 1937 Epidemic Diseases Amendment Ordinance, 2020* in combating COVID -19 pandemic.¹³

Findings

The recourse to a vintage *Epidemic Diseases Act of 1897* empowering the government to adopt special measures and stringent quarantine enforcement during COVID-19 pandemic deserves critical scrutiny. Its antiquity combined with the *Indian Penal Code, 1860* trust the lawmaker placed in the executive to deal with epidemic and pandemic.¹⁴ The repeal of the *Quarantine Act, 1870* placed excessive reliance on section 271 of the *Indian Penal Code, 1860* regarding the disobedience to quarantine rule.

Historical Legacy & Epidemic Laws

The *Epidemic Diseases Act, 1897* adopt special measures and stringent quarantine enforcement in line with the *Indian Penal Code, 1860* punitive import. The socio-legal dynamics of the law deserves historical and sociological inquiry. The bubonic plague which compelled Sir John Woodburn to bring a law on the prevention of the spread of epidemic diseases.¹⁵ The Governor-General empowered to undertake special regulatory measures as may be deemed expedient. The foreign trade was likely to suffer on account of the contagion spreading through the suspected ship whose departure from India with sickness on board might give grounds for severe measures to be taken against Indian shipping abroad.¹⁶ The *Epidemic Diseases Act, 1897* has little to offer about public health needs of the native masses. The law abdicated the legislative function in favour of the executive by conferring unbridled powers And legal immunity.¹⁷ It is reasonably believed the imposition of the *Epidemic Diseases Act, 1897* aimed at

protection of trading interest of colonial master sought to protect the British from the contagion of bubonic plague.¹⁸

Anglo-Indian Epidemic Laws

The Anglo-Indian comparative law offers a fascinating account of deadly contagion in the historical annals of the Black Death and the Great Plague from 1665 to 1666. The sovereign English legislature enacted a comprehensive law as *Public Health Act, 1875*. The regulatory framework spread over to 343 sections having robust infrastructure for infectious diseases and hospitals management. Section 264 of the *Public Health Act, 1875* empowers the citizenry for action only after the lapse of a months' notice on the local authorities.¹⁹ The immunization of administrative action, and personal liability clause replaced by the *Public Authorities Protection Act, 1893*.²⁰ The British were neither strangers to epidemic nor the notion of the epidemic law. But they adopted double standard for epidemic control while dealing with Indian masses. The *Epidemic Diseases Act, 1897* passed after the two elaborate enactments of *Public Health Act, 1875* and *Public Authorities Protection Act, 1893* but remained highly superficial in content and outlook. Thus the grounds for testing plenary legislation were far more limited in the pre-constitution era and applied in a wholesale manner in COVID-19 pandemic in India.²¹

Colonial Mould of Epidemic & COVID-19

A comparative study of the *Public Health Act, 1875* and *Public Authorities Protection Act, 1893* of Great Britain and *Epidemic Diseases Act, 1897* impels to examine the epidemic Law in a holistic framework. The colonial mould of epidemic law allowed perpetuating in COVID-19 scenario in India. The Indian government health reform reflected in the *National Health Bill, 2009*; *Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill, 2017*; *Prevention of Violence against Doctors, Medical Professional and Medical Institutions Bill, 2018* and *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019* did not see any progress in COVID-19 pandemic. After all the *Epidemic Diseases Act, 1897* is a colonial relic of conflicting moralities applied while legislating for the English masses and native Indian.²² The ambit

and scope such laws immunized all executive action and placed beyond judicial review. The *Indian High Courts Act, 1861* generally upheld the excessive delegation in emergent situations of the epidemic. The Council of the Governor-General seems justified by the Privy Council ruling in *Empress v. Burah 1878* tilting to the convenient mode of executive actions in an emergency.²³



Discussion

The *Epidemic Diseases Act, 1897* granted omnibus power to the Governor-General the power to epidemic regulations for the prevention and control of the dangerous epidemic disease. Later on *Epidemic Diseases Amendment Act, 1937* assumed the federal character from robust centralized driven epidemic control measure relating to inspection of vessels at ports.²⁴

Epidemic Diseases Act, 1897

The vintage law of *Epidemic Diseases Act, 1897* dates back to 123 years despite two-page law and five sectional enactments. The laws of more distant antiquity such as the *Indian Penal Code, 1860, Indian Evidence Act, 1872* and *Indian Contract Act, 1872* in the currency in contemporary India cloaked the antiquity of *Epidemic Diseases Act, 1897* during COVID-19 pandemic. The Central and state government have omnibus power for the prevention of infectious diseases. The disobedience of quarantine order dealt following Section 188 of the *Indian Penal Code, 1860*. The disobedience compounded with the tendency to cause danger to human life, health or safety converted with the offence of public order such as a riot or affray.²⁵ It may be mentioned that under

Section 188 of *Indian Penal Code, 1860*, an intention to cause harm is not relevant as mere knowledge of the order gives sufficient cause for liability of committing the offence. In *J. Choudhary v. State of Orissa*,²⁶ the Orissa High Court in the wake of kala-azar epidemic punished a homoeopathic doctor from refusal to vaccination under Section 3 of the *Epidemic Diseases Act, 1897*. The Court held that the intention of the doctor was irrelevant and mere disobedience is thus actionable *per se* under the Act. The perusal of the law prevention of epidemic disease reveals that although it prevents the spread of contagious diseases, health care and access to medicine²⁷ to the people has never been a goalpost during the epidemic and pandemic.

Epidemic Diseases Amendment Ordinance, 2020

The novel outcome of the COVID-19 pandemic has been the promulgation of *Epidemic Diseases Amendment Ordinance, 2020* which is ostensibly a security and safety law for the medical fraternity.²⁸ that is why the revamping of *Epidemic Diseases Act, 1897* laced with punitive overloads and stringency of the executive action.²⁹ The salient features of the Ordinance revolves around acts of violence, healthcare service personnel

and protection medical property.³⁰

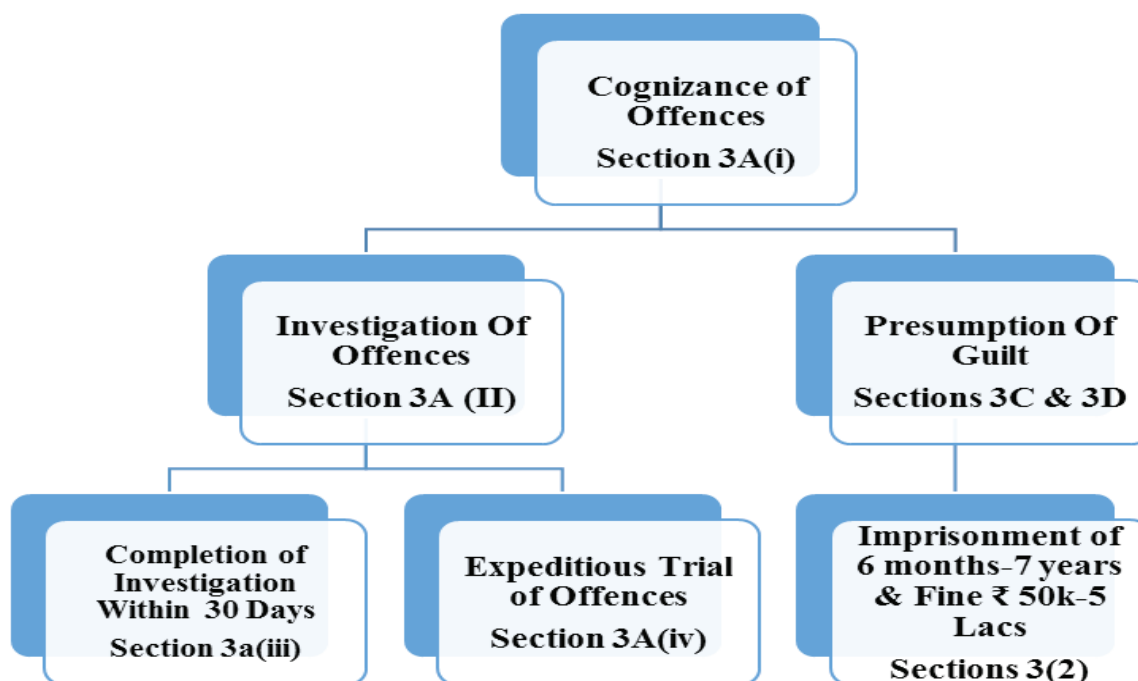
Salient Features of Epidemic Diseases Amendment Ordinance, 2020

The triangular approach to epidemic control manifested in acts of violence, healthcare service personnel and protection of medical property. Section 2 B of the *Epidemic Diseases Act, 1897*.³¹ The definition of 'acts of violence' encompasses harassment, intimidation, harm and injury to doctors, nurses, paramedical workers, community health workers in the discharge of duties within the precincts of the hospital and mobile health delivery.³² The acts of violence, healthcare service personnel and protection of medical

property provided under Section 1A (a), (b) and (c) is attracted when a health care service and delivery has direct nexus concerning the epidemic control drive.³³ The ambit and scope of the medical property enlarged to cover clinical establishments, quarantine and isolation facility, mobile medical units, and damage to medical data and documents.³⁴

Cognizance, Investigation and Trial Procedure

The cognizance, investigation and trial of offences are punitive as well as compensatory in under the ordinance nature. Sections 3(2) and 3(3) of the *Ordinance* provides for the punishment for commission as well as abetment of an offence.



The presumption of guilt for causing 'grievous hurt' under Section 3(3) entails that the commission of offence unless the contrary proved. The grievous hurt requires a culpable mental state for the commission of the crime by the accused. Section 3D (1) mandates that the Court shall presume the existence of such mental state with the caveat under Section 3D (2) that 'a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when a preponderance of probability establishes its existence.'

The Ordinance couched in anomalies on the count of presumption of the existence of facts. Section 114 of the *Evidence Act, 1872* envisages that the Court should draw a distinction of fact and culpable mental state on a preponderance of probability. The onus is upon a person prosecuted under Section 3(3) of the *Epidemic Diseases Amendment Ordinance, 2020*, cannot be derived from the mere preponderance of probability. On closer analysis, it appears that Section 3D (2) renders this presumption in Section 3D (1) perfunctory.³⁵

Conclusion

The *Epidemic Diseases Act, 1897*, *Epidemic Diseases Amendment Act, 1937*, *Epidemic Diseases Amendment Ordinance, 2020* is a continuum of the colonial and post-colonial mould of epidemic control and quarantine law. These enactments represent the state power to enforce sledgehammer enforcement with little regards to health right and equity. The objectives of the *Epidemic Diseases Act, 1897* is to contain the contagion of the bubonic plague spreading and prevent a slump in foreign trade by the British in India. Therefore, the government assumed power of the medical inspection of suspected Indian shipping abroad. The recourse to a pre-Constitution vintage of the *Epidemic Diseases Act, 1897* is antithetical to Entry 29 of the concurrent list of the *Constitution of India, 1950*. The President under Article 123 of the *Constitution of India, 1950* promulgated the *Epidemic Diseases (Amendment) Ordinance, 2020* on April 22, 2020, to deal with the emergent situations. They were, however slipping into the colonial mould of state action and executive power. The critiquing of the Ordinance discerns missed opportunities and misplaced priorities. The Ordinance miserably fails to envision a law in terms of Entry 81 of Union List dealing with the 'inter-state migration and inter-state quarantine.' The COVID-19 viewed as a catastrophe for the justification of the lockdown. Still, it adversely stifled health rights and public health delivery at national and the state *inter se* with silence on regulating inter-state migration of epidemic control.

Conflict of Interest-None

Source of Funding- Self

Ethical Clearance- Not Required

References

- Miano T.J. Understanding And Applying International Infectious Disease Law: UN Regulations During An H5N1 Avian Flu Epidemic: 6 Chi.-Kent Journal of International & Comparative Law, 2006; 26.
- Nomani, M.Z.M. & Parveen R. Medico-Legal Insights into COVID-19 Pandemic & the Platter of Health Law Reform in India: 12(1) Supp. International Journal of Pharmaceutical Research, 2020; 2328-2332; <https://doi.org/10.31838/ijpr/2020.SP1.332>
- Lawrence O. Gostin, J.D. Influenza A(H1N1) and Pandemic Preparedness Under the Rule of International Law: 301(22) JAMA 2009;2376-2378. doi:10.1001/jama.2009.849.
- Nomani, M.Z.M. & Parveen, R. Legal Dimensions of Public Health and COVID-19 Pandemic in India: 11(7) Systematic Review in Pharmacy, 2020; 131-134; <https://doi.org/10.31838/srp.2020.7.21>
- World Health Organization. Regional Office for South-East Asia. International Public Health Hazards: Indian Legislative Provisions, 2015;9
- Nomani, M.Z.M. & Sherwani, F. Legal Control of COVID-19 Pandemic & National Lockdown in India: 11(4) Journal of Cardiovascular Disease Research, 2020; Toxicological Assessment of Ethanolic Leaves Extract of Kalanchoe pinnata in Rats; <https://doi.org/10.31838/jcdr.2020.11.04.06>
- Parmet, W.E. & Sinha, M.S. Covid-19: The Law & Limits of Quarantine: 382(15) New England Journal of Medicine, 2020; e28-e28.
- Nomani, M.Z.M. The Human Right to Environment in India: Legal Precepts and Judicial Doctrines in Critical Perspective: 5(2) Asia Pacific Journal of Environmental Law, 2000; 113-34.
- Kakkar, M., Hazarika, S., Zodpey, S. & Reddy, K.S. Influenza pandemic preparedness and response: a review of legal frameworks in India: 54(1) *Indian Journal Public Health*, 2010; 11-7; <https://doi.org/10.4103/0019-557X.70539>.
- Patro, B.K., Tripathy, J.P., Kashyap, R. Epidemic Diseases Act 1897, and India: Whether Sufficient To Address The Current Challenges: 18(2) *Journal of Mahatma Gandhi Institute Medical Science*, 2013; 109-11; Available from: <http://www.jmgims.co.in/text.asp?2013/18/2/109/117796>
- Rakesh, P.S. The Epidemic Diseases Act Of 1897: Public Health Relevance In The Current Scenario: 1(3) *Indian Journal of Medical Ethics*, 2016;156-60; <https://doi.org/10.20529/IJME.2016.043>
- Nomani, M.Z.M. Rauf, M. Ahmed Z. Faiyaz, T. Khan, S.A. & Tahreem, M. Quarantine Law Enforcement & Corona Virus (COVID-19) Pandemic in India: 14(4) *Journal of X'idian University*, 2020; 536-542. <https://doi.org/10.37896/jxu14.4/068>.
- WHO Resources For Protection Of Health Workers And Emergency Responders 2020 :[Internet]. [Cited 2020 May 01]. Available from: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/operational-guide-for-health-workers>

- who.int/news-room/detail/09-03-2020-covid-19-occupational-health
14. Nomani, M.Z.M. Right To Health: A Socio-Legal Perspective, Uppal Publishing House; New Delhi; 2004, 56-59.
 15. Pati, B. & Harrison, M. The Social History of Health and Medicine in Colonial India. Routledge; London; 2008.
 16. Abstract of the Proceedings of the Council of the Governor General of India, Assembled for the purpose of making Laws and Regulations, 1897 Vol. XXXVI (Dated January 28, 1897:[Internet]. [cited June 12 2020].Available from: <https://eparlib.nic.in/>
 17. Nomani, M.Z.M. Alhalboosi, A.K.K. & Rauf, M. Legal And Intellectual Property Dimension Of Health And Access To Medicines In India: 14(1) Indian Journal of Forensic Medicine & Toxicology 2020; 118-122; <https://doi.org/10.37506/v14/i1/2020/ijfmt/192878>
 18. Echenberg M. Plague Ports: The Global Urban Impact of Bubonic plague, 1894-1901. London: New York University Press; London; 2007,58
 19. The Public Health Act, 1875: [Internet]. [cited June 15 2020].Available from: http://www.legislation.gov.uk/ukpga/1875/55/pdfs/ukpga_18750055_en.pdf
 20. Emden, C.S. Scope of the Public Authorities Protection Act 1893: 39 Law Quarterly Review, 1923; 341.
 21. Nomani, M.Z.M. & Tahreem M. Constitutionality and Legality of Coronavirus (COVID-19) In India: Limits Of Sanction & Extent of Liberation: 11(3) International Journal on Emerging Technologies, 2020; 14-18.
 22. Sherwani, F. (2020).The epidemic diseases act: the stench of colonial legislation? :[Internet]. [Cited 2019 May 29]. Available from: <https://www.barandbench.com/columns/the-stench-of-colonial-legislation>
 23. Empress v. Burah & Ors. (1878) ILR 4 P.C. 172
 24. Nomani, M.Z.M. Federalism Under Indian Constitution: A Study of Environmental Law: 24(1/2) Indian Bar Review, 1997; 203-222.
 25. Section 188, 269 & 270 of Indian Penal Code, 1860: Negligent Act Likely To Spread Infection Of Disease Dangerous To Life: [Internet]. [cited October 5 2020].Available from: <https://indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>
 26. All India Reporter 1963 Orissa 216; see also: 13. Ram Lall Mistry v. R.T. Greer (1904) ILR 31 Cal 829
 27. Nomani, M.Z.M. Lone A.A. Alhalboosi, A.K.K. Raj, A.A. & Ahmed Z. Health Care Services Under Consumer Protection Laws Of Union Territories Of Jammu & Kashmir: A Socio-Legal Mapping: 10(12) Indian Journal of Public Health Research & Development 2019; 83-88. [10.37506/v11/i2/2020/ijphrd/194796](https://doi.org/10.37506/v11/i2/2020/ijphrd/194796).
 28. Reddy, I.R., Ukrani, J., Indla, V., and Ukrani, V. Violence Against Doctors: A Viral Epidemic: 61(4) *Indian Journal of Psychiatry*, (2019);S782–S785; https://doi.org/10.4103/psychiatry.IndianJPsychiatry_120_19.
 29. The Epidemic Diseases (Amendment) Ordinance, 2020 Promulgated To Punish Those Attacking Healthcare Workers:[Internet]. [Cited 2019 May 01]. Available from: <https://www.barandbench.com/news/read-the-epidemic-diseases-amendment-ordinance-2020-promulgated-to-punish-those-attacking-healthcare-workers>
 30. Nomani, M.Z.M., and Sherwani, F. Security and Safety Of Health Care Professionals During Covid-19 Pandemic In The Context Of Epidemic Diseases (Amendment) Ordinance, 2020: 11(4) International Journal on Emerging Technologies, 2020; 23-26.
 31. The Epidemic Diseases (Amendment) Ordinance, 2020:[Internet]. [Cited 2019 May 01]. Available from:<https://www.prsindia.org/billtrack/epidemic-diseases-amendment-ordinance-2020>.
 32. Nomani M.Z.M. Rahman, F. & Alhalboosi, A.K.K. Consumer Protection Act, 2019 and its Implication for the Medical Profession and Health Care in India: 41(4) *Journal of Indian Academy of Forensic Medicine*, 2019;282-285; <https://doi.org/10.5958/0974-0848.2019.00084.8>
 33. Nomani, M.Z.M. & Parveen R. Contextualizing Epidemic Diseases (Amendment) Ordinance, 2020 in Epidemic-Pandemic Syndrome of COVID-19 in India: 11(8) Systematic Review In Pharmacy, 2020; 156-160; <https://doi.org/10.31838/srp.2020.8.24>
 34. Explaining the draft Bill on violence against healthcare professionals and clinical

establishments:[Internet]. [Cited 2019 May 15]. Available from: Available at: <https://www.prsindia.org/theprsblog/explaining-draft-bill-violence-against-healthcare-professionals-and-clinical>

35. Sherwani, F. (2020). Of disasters and epidemics: the constitution (44th amendment) act, a probe into the

wisdom of our choices:[Internet]. [Cited 2019 May 01]. Available from: <https://www.barandbench.com/columns/of-disasters-and-epidemics-the-constitution-44th-amendment-act-a-probe-into-the-wisdom-of-our-choices>