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Public health legislation during COVID-19 in India: A brief analysis

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Abstract

Background and Purpose: The study's goal is to look into how COVID-19 has affected the nation's "Public Health Legislation" and "Medical and Legal Framework." The current research is unique in that it provides a medico-legal perspective on the subject, analyzing in depth how the aforementioned problem disrupted the country in both disciplines and had a negative effect on the economy. A doctrinal methodology has been used in the present research with qualitative analysis and a descriptive research strategy followed by the use of both primary and secondary sources of data collection.

Conclusion & Result: This research looks at the influence of the current COVID-19 on all such policies, laws and frameworks, starting with India's historical journey through the Plague, cholera, malaria, and other similar diseases, and ending with how they led to the creation of a legal framework. While the study's primary emphasis has been on Public Health Legislation and how it has evolved in response to pandemics, it has also briefly discussed how COVID-19 has affected other areas of law, particularly in the areas where quarantine has temporarily altered duties.

Keywords: Public health legislation, COVID-19, Medical and Legal Framework

Introduction

Sec. 188 ^[1], 269 ^[2], 270 ^[3], and 271 ^[4] of the IPC from 1860, as well as Sec. 144 of the Criminal Procedure Code (CPC) from 1973 ^[5], were used to impose the lockdown.

The Indian government developed a strategy for PH ^[6] in accordance with Indian policies and legislation in light of the new COVID-19. The "Epidemic Diseases Act" (EDA) of 1897 will become effective nationwide on March 11, 2020, due to the widespread COVID-19. As a result, residents in the area will be required to keep their distance from one another and a curfew will be imposed on them voluntarily. In order to effectively regulate the terrifying new COVID-19, it was necessary to do a thorough analysis of both the IPC of 1860 and the EDA of 1897. Both of these pieces of legislation are quite old, having been passed 160 and 123 years ago, respectively. After this, lockdowns were put in place all over the nation in 3 stages: I (25th Mar. 2020 to 14th Apr. 14, 2020), II (15th Apr. 2020 to 3rd May 2020), & III (4th May 2019 to 17th May 2020) by raising Sec.

¹ Indian Penal Code, 1860 S. 188, No. 45 Act of Parliament, 1860- Before acting, it is not essential that the offender intend to inflict harm or think his or her noncompliance is likely to produce injury. It is substantial evidence of his guilt that he is aware of the command he is disobeying and that his noncompliance has perpetrated harm or is likely to cause harm. A public official who is legally permitted to act accordingly proclaims an order prohibiting a religious procession from travelling through a specified street, with immediate effect. A person who willfully refuses to obey an order thereby raises the likelihood of a riot. An individual who has committed the offence listed in this section.

² IPC, 1860 S. 269, No. 45 Act of Parliament, 1860- In addition to other penalties, anyone who commits an unlawful or negligent act that he knows or has reason to believe is likely to spread the infection of a life-threatening disease is subject to imprisonment of either characterization for a term that may be extended to six months, a fine, or both.

³ IPC, 1860 S. 270, No. 45 Act of Parliament, 1860- Every act committed with malice that he knows or has reason to believe will spread a life-threatening disease is punishable by up to two years of imprisonment or a fine, or either punishment alone.

⁴ IPC, 1860 S. 271, No. 45 Act of Parliament, 1860 Disobedience to quarantine rule.

⁵ CCP 1973, S. 144 No. 2 Act of Parliament, 1973- In the event of a public nuisance or hindrance, to enable the Magistrate to issue an abrupt order and act swiftly.

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6^[7], 10^[8], 38,^[9] & 72^[10] of the Disaster Management Act (DMA), 2005.

People feared the devastating COVID-19 was too much for the community to endure and asked for emergency measures. In a pandemic-pandemic scenario, it presented a unique challenge to the PH system and equipment and tested a wide range of PH standards. The research will look at how several pieces of legislation were enacted in response to the Covid-19 disaster, including the “Disaster Management Act

⁷ DMA, 2005 S. 6 No. 53, Act of Parliament, 2005- The authority and responsibilities of the National Authority (NA) — In accordance with the requirements of this Act, the National Authority is responsible for developing policies, plans, and guidelines for disaster management in order to ensure prompt and effective disaster response. The NA may, without limiting the generality of the requirements of subsection (1), do any of the following: (a) establish catastrophe management policies; (b) ratify the National Plan; (c) approve plans submitted by Government of India Ministries or Departments that are in conformity with the National Plan; (c) establish guidelines for the State Authorities to follow in developing the State Plan; and (e) establish guidelines for the various Ministries or Departments of the Government of India. (1) The National Power may delegate authority to the Chairperson of the National Authority to exercise all or some of the National Authority’s responsibilities in the case of an emergency; however, such action must be approved by the National Authority *ex post facto* before it may be implemented.

⁸ Disaster Management Act, 2005 S. 10, No. 53, Act of Parliament, 2005- A total of eleven authorities and functions are delegated to the National Executive Committee. (11) The National Executive Committee (NEC) shall assist the NA in the discharge of its functions and shall be in charge of carrying out policies and plans developed by the NA and ensuring compliance with Central Government directives issued for the purpose of disaster management in the country. (2) The NEC shall be in charge of ensuring compliance with Central Government directives issued for disaster management in the country. The NEC may, without limiting the scope of the provisions of sub-section (1), perform the following functions: (a) act as the primary coordinating and monitoring body for disaster management; (b) construct the National Plan, which requires NA approval; (c) coordination and management of the execution of the National Policy; and (d) Establish standards for the various Ministries and Departments of the Indian government in order to develop disaster management strategies.

⁹ DMA, 2005 S. 38, No. 53, Act of Parliament, 2005- In this case, the state government will take the necessary steps. Subject to the terms of this Act, each state government is required to implement all of the disaster management procedures stated in the National Authority’s guidelines, as well as any additional actions it considers necessary or desirable. (2) The measures that the State Government may take under sub-section (1) may relate to all or any of the following matters: (a) coordination of actions of different departments of the State Authority, District Authorities, State Government, non-governmental organisations and local authorities; (b) partnership and aid in disaster management for the NA and NEC, the State Authority, and other non-government organisations; and (c) Cooperation and aid in disaster management for the NA and NEC, the State Authority, and other non-government groups; In addition, the State Government must: (e) ensure that departments of the State Government incorporate disaster prevention and mitigation measures into their development plans and projects; (f) incorporate into the State development plan measures to reduce or mitigate different parts of the State’s vulnerability to different disasters; and (g) Ensure that different state government departments prepare disaster management plans in compliance with the National Disaster Management Organization’s requirements.

¹⁰ DMA, 2005 S. 72, No. 53, Act of Parliament, 2005.

of 2005, the Epidemic Diseases Act of 1897” (also known as the Epidemic Diseases (Amendment) Act of 2020), and others. This research discusses the efforts made to halt the spread of COVID-19 and its consequences via the implementation of the DM Act¹¹ of 2005, the “Epidemic Diseases Act (EDA)” of 1897, and other legislation.

Literature Review

The Pandemic Planning law has been criticised in journal studies on the Asian continent, and it has been mentioned how the governments of various Asian nations cope with the severity of a pandemic utilising their current legal texts (Carney *et al*, 2011)^[12]. COVID-19 has wreaked havoc on governments all over the world. Established ideas and empirical understanding were also called into question in comparative politics and health policy (Mathews *et al* 2020)^[13]. The paper by Binoy primarily investigates and discusses the ongoing technological surveillance that the government of India has implemented, and how such surveillance essentially invites dangers into the lives of citizens (Binoy 2020). During the Pandemic, (Watson 2020)^[14] most Indian states and state governments grappled with the notion of implementing quarantine laws, and the reality is that after a certain point in time, the quarantine laws of the states deteriorated, and most states failed to keep their pandemic rules and regulations (Zubair)^[15].

It states that there have been significant disparities in the distribution and intensity of COVID-19, as well as the type and timing of reactions, among nations and situations over the last six months (Lowene 2020)^[16]. The books written by Anirudh 1981^[17], Diwan 1994 and Jain 2003^[18] includes a thorough examination of the obsolete Indian disaster management rules that have not been amended in a long time, and the Indian government’s response to the same has been heavily criticised in this area (Ghosh 2020)^[19]. The goal of health improvement has always been to work toward the realisation of a world wherein every individual is

¹¹ Disaster Management Act.

¹² Terry Carney, Bennett, and Belinda. “Asian Pandemic Preparedness: A Role for Law and Ethics?” *Asia Pacific Journal of Public Health*, vol. 23, no. 3, Sage Publications, Inc., 2011, pp. 419–30.

¹³ Matthew M. Kavanagh & Renu Singh -”Democracy, ability, and coercion in pandemic response: COVID-19 in comparative political perspective,” *Journal of Health Politics, Policy and Law* 45.6 (2020).

¹⁴ Watson, Marlene F., et al. “COVID-19 interconnectedness: Health inequity, the climate crisis, and collective trauma.” *Family Process* 59.3 (2020).

¹⁵ Zubair Ahmed, Mohammad Rauf, and M.Z.M. Noman- “Indian Quarantine Law Enforcement & Corona Virus (COVID-19) Pandemic.”

¹⁶ Loewenson, Rene, et al. “Reclaiming comprehensive public health.” *BMJ global health* 5.9 (2020).

¹⁷ Prasad, Anirudh “Centre and State Powers under Indian Federalism,” Deep and Deep Publications, New Delhi, 1981.

¹⁸ Paras Diwan, “Indian Constitution Law”, Allahabad Law Agency, Allahabad, 1994.

M.P Jain, “Indian Constitution Law”, Wadhwa and Company, Nagpur, 2003.

¹⁹ “A Critique of the Indian Government’s Response to the COVID-19 Pandemic,”

J. Ghosh. 519–530 in *J. Ind. Bus. Econ* (2020).

afforded the opportunity to live their life to the fullest (Plamondon 2021; Shamsunder 2020) ^[20, 21].

The COVID-19 pandemic has impacted people's rights since it has been used as justification for police violence, Research Scholaritarian power grabs, & corrupt practices (Forman 2020) ^[22]. Natural disasters and austerity measures (Nair 2020) ^[23], (Nomani 2021) ^[24] such as pandemics, highlight the fact that we are not all in this together (Dods *et al* 2020) ^[25]. COVID-19 is neither the first nor the deadliest pandemic in human history, and experts believe it is unlikely to be the last (Taghizade *et al* 2021) ^[26]. Mokbul Ali Laskar ^[27] in his work "*Dynamics of Indian Federalism: A Comprehensive Historical Review*" asserted that globalization has had a mixed impact on the process of federalization in India. The potentially once-in-a-century epidemic known as COVID-19 has generated enormous economic and societal concerns that would require international collective efforts to mitigate the repercussions. (Lee, 2020) ^[28], (Singh and Manish, 2020) ^[29].

Aim and Objectives

The present research paper unfolds the following aims and objectives:

1. To analyse the evolution in public health legislation during COVID 19 Pandemic.
2. To analyse the Constitutional scope of PHL.

Methodology

The researcher, who has limited themselves to doctrinal research methodology for this study, has consulted a wide variety of sources, such as relevant statutes, treaties, and judicial decisions. Parliamentary debates, international conventions, and other similar events are all excellent examples of primary sources. Some examples of primary sources are scholarly journals, books by well-known authors, national and international research papers, magazines, newspapers, websites, and other secondary sources.

²⁰ Shamasunder, Sriram, et al. "COVID-19 reveals weak health systems by design: why we must re-make global health in this historic moment." *Global Public Health* 15.7 (2020).

²¹ Plamondon, Katrina M. "Equity at a time of pandemic." *Health Promotion International* (2021).

²² Forman, Lisa, and Jillian Clare Kohler. "Global health and human rights in the time of COVID-19: Response, restrictions, and legitimacy." *Journal of Human Rights* 19.5 (2020).

²³ Nair, A. "Covid opportunity for India." (2020): 15-15.

²⁴ Nomani, M. Z. M., & Parveen, R. "COVID-19 pandemic and disaster preparedness in the context of public health laws and policies". *Bangladesh Journal of Medical Science*, (2021).

²⁵ Dodds, Klaus, et al. "The COVID-19 pandemic: territorial, political and governance dimensions of the crisis," (2020).

²⁶ Taghizade, S., Chattu, V. K., Jaafari-pooyan, E., & Kevany, S. "COVID-19 pandemic as an excellent opportunity for Global Health Diplomacy". *Frontiers in Public Health*, (2021).

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²⁸ Lee, Tsung-Ling. "Legal preparedness as part of COVID-19 response: the first 100 days in Taiwan." *BMJ Global Health* 5.5 (2020): e002608.

²⁹ Singh, Manish Kumar, and Yadawananda Neog. "Contagion effect of COVID-19 outbreak: Another recipe for disaster on Indian economy." *Journal of Public Affairs* (2020): e2171.

Result and Discussion

In preparation for a hypothetical COVID-19-style epidemic, Indian authorities passed new public health and disaster preparedness regulations. "Epidemic Diseases Act of 1897" or "Disaster Management Act of 2005" was utilised as cover. International Health Regulations, 2005 revised the law to cover biological, chemical, and radioactive hazards at the entrance, control, and remediation levels. "National Health Bill of 2009" and "Health Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill of 2019" are in peril. Using the COVID-19 problem to reform public health standards would have been a squandered opportunity. Since the "Epidemic Diseases (Amendment) Ordinance, 2020" was enacted 123 years ago, a civic approach to healthcare and justice has been illegal. While necessary, these laws, conventions, and actions do not solve the moral problem of uneven access to public healthcare. Previous legislation and legislative requirements were sufficient to address the concerns. The National Health Bill was a breakthrough event for universal healthcare because it protected people's human rights. Epidemics are times of exceptionally high illness rates or disease outbreaks.

The "Epidemic Diseases Act, 1897" and the "Amendment Bill, 2020" empower the federal and state governments to declare emergencies and give unrestricted powers in the case of a deadly pandemic. During a pandemic, "it is also an individual and communal obligation," according to Lawrence Gostin. Population health involves large-scale care. Authorities may coerce people and corporations to safeguard public health. After the COVID-19 growth curve levels out, India should consider revising its public health regulations to include pandemics and reinforce Montgomery's "Social Model."

The DM Act "provides effective disaster management." Under the DM Act, the PM oversees the NDMA. It organises disaster reactions. The National Disaster Management Act (NDMA) sets emergency standards. High-ranking officials created and staffed district, state, and municipal administrations. All these organisations should collaborate. The National Disaster Management Agency offers 30 suggestions for handling catastrophes, including "Biological Disaster Guidelines, 2008." The 2019 "National Disaster Management Plan" covers biological and health crises. Federal and state efforts to restrict COVID-19 fit within this legal framework. The DM Act gives the Central Government and NDMA greater authority. The Indian Central Government may provide disaster management directions to any Indian authority, independent of state or regional regulations. The NDMA issued a statewide shutdown order on March 24, 2020, to prevent COVID-19's proliferation. (Section 6(2)) (i).

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