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LEGAL MEASURES TO DEAL WITH COVID-19 PANDEMIC DISASTER IN INDIA

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Abstract:

The main purpose of this paper is to find a legal framework to deal with an unexpected epidemic i. e. Covid-19 disaster in India. This paper is also focused on to legal control the outbreak of deadly global pandemic Covid-19 in India; the Government of India imposed a nationwide lockdown. The lockdown has been carried out by State Governments on the directions of the Union Ministry of Home Affairs under the Disaster Management Act, 2005. Secondary data has been taken in this paper to identify the legal aspect of disaster management. Several legal arrangements have been cited in the context of disaster management in India.

Keywords: Covid-19, Disaster Management, Natural Disasters.

Introduction

India is a welfare State, so it is the normal duty of the State to protect the life and health of citizen. As a welfare state, India is responsible under the doctrine of *Parens Patriae*.¹ The Preamble of the Indian Constitution read with D.P.S.P. (Directive Principles of State Policy) enjoins the State to take up above responsibilities. The functions of a State governed by Constitution and Rule of Law are to take necessary remedial measures as parent and guardian of the citizen of the country to help and support helpless victim of a massive disaster.² In the past, disaster management system mainly included the management of natural disasters like earth quakes, floods, epidemic etc. But now a day's man-made disasters such as fire, building collapses, gas leaks, accidents, etc. are subject to a desire for disaster management. India is vulnerable to many types of disasters. Both natural and man-made disasters work hard and weak, poor and rich all suffer equally. After all disaster, there is a need to provide all kinds of assistance to the affected people, in the form of cash, food, clothes, shelter, medical aid, with a view to rehabilitate the victims.

Today, new types of epidemics namely SARS, COVID-19, etc. They are quite different from the common disasters that threaten human health. Our country has faced numerous epidemics and pandemics since the turn of the century. Corona-virus³ pandemic poses unprecedented challenges for Indian society and represents a national exigency.

¹ Doctrine of Parens Patriae is the inherent power of a State to provide protection to the person and property of person's non sui juris.

² Bipin Chandra J. Diwan vs State of Gujrat, AIR 2002 Gujrat 99.

³ Coronavirus disease (COVID-19) is highly infectious disease caused by novel coronavirus (nCoV).

Existing Legal Measures to Deal with Disaster:

There is no provision in Indian Constitution regarding subject of disaster management. But Article 21 of the Indian Constitution guarantees every person right to life and personal liberty. It casts a positive obligation on the State to take all possible steps for prevention, preparedness and mitigation of disasters to secure the life of every person. Article 47 of Indian Constitution directs the Government to improve the public health and to raise the level of nutrition and the standard of living. Article 51(c) of Indian Constitution says that Indian Government should honor the International Law and treaty obligations. India is a party to a number of International treaties which contain several provisions on disaster management.

Seventh Schedule of Indian Constitution mentioned a number of subjects to support public health measures in an epidemic condition. The Union List of the Constitution of India gives powers to the Central Government to make laws, rules and regulations on subject of quarantine.⁴ The State List deals with public health.⁵ In a similar way, Concurrent List gives powers to Centre and States can make laws, rules and regulations on the subject of prevention of the extension from one State to another of contagious or infectious diseases or pests affecting men, animals or plants.⁶

India has many laws to achieve the Constitutional goals which can be used to ensure the public health measures to prevent and control an epidemic. Sections 269, 270 & 271 of Indian Penal Code⁷ of 1860, The Livestock Importation Act⁸ of 1898, Section 17 (c) of the Indian Ports Act of 1908, Section 26-B of Drugs and Cosmetics Act of 1940, Section 8-A of The Aircraft Act of 1934, The Aircraft (Public health) Rules of 1954 and Essential Commodities Act⁹ of 1955 have been enacted to implement the public health.

The Epidemic Diseases Act, 1897

Before independence The Epidemic Diseases Act, 1897 was enacted by the British Parliament to provide better prevention of the spread of Dangerous Epidemic Diseases for the society. The Act empowers both Central and State Governments to take special measures and prescribe regulations as to dangerous epidemic if it thinks that the ordinary provisions of the law for the time being in force are insufficient to controlled the epidemic.¹⁰ The powers confer under the Act, the Indian Government directed States Government and Union Territories should invoke provision of section 2 of the Epidemic Diseases Act, 1897 to fight the danger of Corona-virus disease.¹¹ Section 188 of the Indian Penal Code is the general law for those defaulters who disobey any regulation or order made under The Epidemic Diseases Act and roan around aimlessly during the lockdown order duly promulgated by a public servant.¹² Under the section 188 of the Indian Penal Code, *mens rea* is not important. It is sufficient that the defaulter knows of the certain Regulations or order relating to the Epidemic Diseases Act which they disobey.¹³ The

⁴ Entry 28 of the Union List related to port quarantine, including hospitals connected therewith and Entry 81 of the Union List related to inter-state quarantine.

⁵ Entry 6 of the State List related public health and sanitation, hospitals and dispensaries.

⁶ Entry 29 of the Concurrent List.

⁷ Sections 269, 270 & 271 of Indian Penal Code are related to offences affecting the public health, safety and quarantine.

⁸ This Act is related to importation or livestock which is liable to be affected by infectious or contagious disorders.

⁹ The Department of Consumer Affairs, under the Ministry of Consumer Affairs, Food and Public Distribution has published a Notification which may be called the fixation of prices of masks (2ply & 3ply), Melt Blown nonwoven Fabric and Hand Sanitizers (Amendment) Order, 2020, under the Essential Commodities Act, 1955 to declare the masks (2ply & 3ply) as Essential Commodities up to 30th June, 2020 by amending the Schedule of the Essential Commodities Act, 1955.

¹⁰ Sections 2 & 2A of The Epidemic Diseases Act, 1897

¹¹ COVID-19: Govt calls for invoking provisions of Epidemic Act; GOM reviews preparations, The Economic Times, Mar 11, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/covid-19-govt-calls-for-nvoking-provisions-of-epidemic-act-gom-reviews-preparations/articleshow/74582440.cms?from=mdr>, visited on 12-12-2020

¹² Section 3 of The Epidemic Diseases Act, 1897

¹³ J. Choudhury vs The State, AIR 1963 Ori 216

Epidemic Diseases (Amendment) Act, 2020 has made violence towards health care workers punishable by imprisonment and with fine. But the Epidemic Diseases Act, 1897 is unable to fulfill the requirements of the present legal situations because the Act does not define the terms 'dangerous epidemic disease'. The Act does not give any specific directions to the Government to follow at the time of spreading of dangerous epidemic disease' like COVID-19.

The National Disaster Management Act, 2005

In the absence of any legal provisions, for a long time, a committee was constituted on 11 January, 2005 by the Government of India to draft the Disaster Management Bill. The Bill was introduced in the Rajya Sabha and Lok Sabha. After the assent of President of India, the Bill became The National Disaster Management Act, 2005. As per the section 2(d) of the Disaster Management Act, 2005, disaster includes natural or man-made causes which results in substantial loss of life and destruction of property.

The legal framework of Disaster Management¹⁴ serves five dimensional purposes i.e. prevention of danger, capacity-building, mitigation or reduction of risk, preparedness and prompt response to any threatening disaster. A good law serves all three purposes. On the whole, the Act provides detailed action plan right from the Central Government to the district and local levels to draw implement and execute a Disaster Management Plan. At the apex level, the National Disaster Management Authority¹⁵ (NDMA) and the State Executive Committee¹⁶ (SEC) is constituted. At the State level the State Disaster Management Authority¹⁷ (SDMA) and the State Executive Committee¹⁸ (SEC) is constituted. Chapter four of the Act deals with District Disaster Management Authority (DDMA).

The Disaster Management Act provides a general plan for Biological Disaster and Health Emergency. Such disasters may be natural in the form of epidemics or pandemics or intentionally made by man, use of disease-causing agents in Biological Warfare (BW) operations or incidents of Bioterrorism (BT).¹⁹

Coronavirus Outbreak and Legal Provisions

The World Health Organization (WHO) declared the outbreak of COVID-19 to be a Public Health Emergency of International Concern (PHEIC) on January 30, 2020²⁰ and finally WHO has declared COVID-19 a global pandemic on March 11, 2020.²¹ Corona-virus is rapid spreading virus and most contagious disease. This pandemic not limited by geographic boundaries. Insofar as the speed of response is concerned, it was a challenge for India due to the current situations *i.e.* doctor-patient ratio, overcrowding, lack of hygiene and protective equipment, number of ventilators, number of beds per million, unavailability of adequate test kits, PPEs and face masks, etc. It is the first instance when India Government is handling the global pandemic disaster after the enactment of the Disaster Management Act, 2005.

¹⁴ Section 2(e) of The Disaster Management Act, 2005

¹⁵ Section 3 of The Disaster Management Act, 2005

¹⁶ Section 8 of The Disaster Management Act, 2005

¹⁷ Section 14 of The Disaster Management Act, 2005

¹⁸ Section 20 of The Disaster Management Act, 2005

¹⁹ National Disaster Management-Guidelines Management of Biological Disaster, 2008

²⁰ Available from [www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-commit-tee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov](http://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-commit-tee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov) visited on 12-12-2020

²¹ Available from www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020, visited on 12-12-2020

In the current scenario, NDMA is the decision-making authority for Covid-19 emergency. After declaring the COVID-19 as notified disaster,²² under the notification²³ of NDMA, in the exercise of its powers under Section 10(2)(1) of DM Act, Home Secretary, Ministry of Home Affairs in his capacity as Chairperson of NEC issued directions vide order²⁴ dated 24th March, 2020 to the entire country with guidelines to implement the lockdown measures except the essential services. If there are Epidemics and other Biological Disasters it will be the Department of Health that will play a key role.²⁵ So, in the light of section 69 of the DM Act, the NEC delegated its power under Section 10 (2) (i) & (ii) of the DM Act to the Secretary, Ministry of Health and Family Welfare of India to enhance the preparedness and containment of COVID-19.²⁶

Nationwide Lockdown to Control the Spread of Covid-19

To control the outbreak of deadly global pandemic COVID-19 in India, the Government of India imposed a nationwide lockdown on Tuesday, 24 March 2020. The lockdown has been carried out by State Governments on the directions of the Union Ministry of Home Affairs under the Disaster Management Act, 2005. Only essential services, such as security, food, medical supplies, and municipal cleaning, etc. were permitted to continue. The decision of the voluntary curfew was made two days after when the Prime Minister of India had advised the citizens to follow the *Janta Curfew* on 22 March, 2020, which was a lockdown.

Term Lockdown is not legally defined. General meaning of lockdown is a period of time in which public are not permitted to leave their houses or travel freely anywhere, because of a dangerous disease or pandemic.²⁷ To control the spread of coronavirus pandemic, the Epidemic Act was invoked, along with provisions of the Disaster Management Act. Section 38 of the Disaster Management Act casts a duty on the States to take all measures specified in the guidelines laid down by the NDMA. The States are bound to follow the lockdown order due to the arrangement of Constitutional provisions defined in Article 256 and Article 257.

During the coronavirus outbreak, penal provisions, such as Sections 188, 269 and 270 of the IPC and Section 51 to 60 (Offenses and Penalties) of the Disaster Management Act, 2005 are being invoked to enforce the lockdown orders in various States.

Conclusion:

There was widespread criticism of legality of the national lockdown proclamation because lockdown affects the fundamental rights which laid down in Article 19(1)(b), Article 19(1)(d) and Article 19(1)(g). Without emergency, in normal situation fundamental rights under Article 19 cannot be suspended. Because fundamental rights under Article 19 can be suspended automatically during the emergency on the grounds of war or external aggression. Emergency provisions of the Constitution does not deal with proclamation of an emergency in national disaster situation. Section 144 of Criminal Procedure Code as well the cognate provisions in state police Acts usually prohibit assemblies.

²² Available from economictimes.indiatimes.com/news/politics-and-nation/india-declares-covid-19-a-notified-disaster/articleshow/74631611.cms?from=mdr visited on 12-12-2020

²³ Order No. 1-29/2020-PP (Pt.II), dated 24.03.2020

²⁴ Order No. 40-3/2020-DM-I(A), dated 24.03.2020

²⁵ Available at https://nidm.gov.in/PDF/guidelines/Incident_Response_System.pdf visited on 17-12-2020

²⁶ F.No. 40-2/2020-DM-I(A), dated 11.03.2020, Ministry of Home Affairs (Disaster Management Division), Available at https://ndmindia.mha.gov.in/images/gallery/New%20Doc%202020-03-28%2017.56.35_2.pdf, visited on 12-12-2020

²⁷ <https://dictionary.cambridge.org/dictionary/english/lockdown>, visited on 24-12-2020.

The Doctrine of Necessity proclaims that “Necessity Knows No Law”. When the very right to life of citizens is put at risk of being harmed, such constitutional arguments are no mean. Article 19(5) and Article 19(6) of the Indian Constitution imposed restrictions on fundamental rights under Article 19 in the interest of the general public. In the case of Narendra Kumar vs. Union of India²⁸, the Apex Court states that the restrictions imposed by government not only necessarily reasonable but it should also be in the large interest of the people.

²⁸1960 AIR SC 430.