**Contextualizing Epidemic Diseases (Amendment) Ordinance, 2020 in Epidemic-Pandemic Syndrome of COVID-19 in India**

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**Abstract:** The India's first case of novel corona virus  [(COVID-2019](https://en.wikipedia.org/wiki/Coronavirus_disease_2019)) detected on 30 January 2020 in the state of [Kerala](https://en.wikipedia.org/wiki/Kerala) and the government switched to alert mode. As the number of confirmed COVID-19 positive cases discerned an increase, the government clamped *Epidemic Diseases Act*, 1897 on March 11 2020 by mandating the norm of social distancing and the voluntary public curfew in the country. This is augured by the nation-wide Lockdowns-I (March 25, 2020, to April 14 2020), II (April 15, 2020, to May 3 2020), and III (May 4, 2020, to May 17, 2020) justify on the ground of Sections 6, 10, 38 and 72 of the ***Disaster Management Act*, 2005. During the lockdown period, t**he protection of medical and paramedical forces has been a central concern in controlling novel COVID-19 pandemic in India. Therefore the State also invoked quarantine disobedience under sections 188, 269, 270, 271 of *Indian Penal Code*, 1860 on command and control theory but unable to control the riotous situation working against medical care personnel. Realizing this exigency the President under Article 123 of the *Constitution of India*, 1950 promulgated the *Epidemic Diseases (Amendment) Ordinance*, 2020. To deal the miscreants effectively, the Ordinance declares 'act of violence' cognizable and non-bailable with high deterrent value. The paper contextualizes the Epidemic Diseases (Amendment) Ordinance, 2020 in controlling horrendous Epidemic-Pandemic Syndrome of COVID-19 in India in historical and contemporary parlance.

**Keyword:** Epidemic-Pandemic, Disaster Management, Command & Control, Sanctioning Regime, Deterrent Effect.

**I. Legislative History & Background**

The *Epidemic Diseases Act*, 1897 is a colonial piece of enactment passed for controlling the epidemic of bubonic plague in British India (1). The law is of ancient vintage but frequently clamped to control cholera (2), malaria and dengue and swine flu in independent India [3].The modern incarnation of the law in combating the coronavirus (COVID-19) pandemic (4) along with the mixture of a national catastrophe beyond the coping capacity of the community under *Disaster Management Act*, 2005 is indeed a new addition (5). The legislative framework of the epidemic control law in India is twofold. One administered through the fundamental criminal law under Section 188, 269, 270 and 271 of *Indian Penal Code*, 1860. The other is public health-oriented legislations the *Livestock Importation Act*, 1898, *Indian Ports Act* of 1908, *Drugs and Cosmetics Act* of 1940, *Essential Services Maintenance Act*, 1968, *Indian Aircraft (Public Health) Rules*, 2015(6). Bur at no point of historical annals the relevance of *Epidemic Diseases Act*, 1897 seems to have been undervalued despite dramatic changes in the innovative technologies, disease surveillance, and preparedness mechanism. The impact and potentiality of *Epidemic Diseases Act*, 1897 have been subject of legitimate criticism most notably by M.Kakkar, 2010 (7) B.K.Patro, 2013 (8) P.S.Rakesh, 2016 (9) especially its slavish following and colonial spill over in independent India. The arguments sustained under the State's constitutional duty of the State for nutritional security, the standard of living and improvement of public health. The State is under a legal mandate for the 'prevention of the infectious or contagious diseases or pests affecting men, animals or plants and their extension from one State to another state.' The entry 29 of the Concurrent List attached to the Seventh Schedule *Constitution of India*, 1950 'allows for any relevant legislation to be passed,' so long that it addressed to the prevention of contagious disease from spreading across state jurisdictions (10). Instead of passing an ordinance on COVID-19, India resorted to 123-year-old legislation of *Epidemic Diseases Act*, 1897 on March 11 2020(11), in all states and Union territories and promulgation of *Epidemic Diseases Ordinance*, 2020 on April 22 2020(12). The paper takes a critical study of the *Epidemic Diseases Act*, 1897, *Epidemic Diseases Amendment Act*, 1938 along with the judicial indoctrination and *Epidemic Diseases (Amendment) Ordinance*, 2020 in controlling COVID-19 pandemic in India.

**II.COVID 19 Pandemic & Epidemic Law**

The government clamped *Epidemic Diseases Act*, 1897 on March 11 2020 by mandating the norm of social distancing and the voluntary public curfew observed in the country. However the government was reeling under fear psychosis that the law does not have enough stamina to infuse new lease of life in COVID-19 pandemic scenario. Therefore it uniquely located the COVID-19 pandemic as disasters, catastrophe, and calamity arising from natural or manmade causes and resorted to the provisions of ***Disaster Management Act*, 2005(13). By virtue of this law the State assumed the platter of public health governance at par with the** disaster management measure (14) underpinned in Sections 6 (15) and 10 (16) of the ***Disaster Management Act*, 2005.** The nation-wide Lockdowns-I (March 25, 2020, to April 14 2020) (17), II (April 15, 2020, to May 3 2020)(18), and III (May 4, 2020, to May 17, 2020)(19) justify on the ground of Sections 38 and 72 of the Act. **There are 56,463 confirmed cases and 1,894 deaths reported by covid19india website by the May 8, 12:23 IST on COVID-19.** On the normative front the only innovative development discerned by thepromulgation of *Epidemic Diseases Ordinance*, 2020 more as health governance piece of law than that of the public health and epidemic-pandemic oriented legal reform. Thus India lost a novel opportunity of passing an ordinance on COVID-19 pandemic and prefers to remain in the pounds and shells of 123-year-old legislation of *Epidemic Diseases Act*, 1897. Therefore it seems appropriate to look into the provisions of the *Epidemic Diseases Act*, 1897 to build a continuum of our analysis.

**III. Features & Enforcement of *Epidemic Diseases Act*, 1897**

The *Epidemic Diseases Act*, 1897 empowers state to regulate dangerous disease by banning of travel and social segregation (21). The *Epidemic Diseases Amendment Act*, 1938 (Section 2A) conferred the powers on Central Government to undertake proactive measures and prescribes regulations for the ship at port and detention of persons (22). The Act prescribes imprisonment of 6 months or fine, or both as per section 188 of the *Indian Penal Code,* 1860 (23). The officers acting in good faith to implement the law enjoy exemption from any suit or other legal proceeding (24). The pre-lockdown phase marked by the implementation of Section 2 and 2A of the *Epidemic Diseases Act,* 1897 by the central and state governments. the enforcement of *Epidemic Diseases Act,* 1897 supplemented with quarantine rule contained under Sections 188, 269, 270, and 271 of *Indian Penal Code*, 1860 in two months scenario in India *vis-à-vis* Section 133 *Criminal Procedure Code*, 1973. The Indian government has moved beyond the salutary provisions of these enactments and resorted to the salubrious provisions of Sections 6, 10, 38 and 72 of the ***Disaster Management Act*, 2005.**

The disobedience by obstruction, annoyance or injury to any persons lawfully employed is punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ₹ 200. The disobedience of quarantine law with riotous tendency compounded with imprisonment continuing up to six months and fine up to ₹ 1,000. In *J. Choudhury v. State of Orissa* (26) a homoeopathic doctor refused to get himself inoculated against cholera mandated under [Section 2(1)](https://indiankanoon.org/doc/1005961/) of the *Epidemic Diseases Act* 1897 to prevent the spread of cholera in Puri District was convicted him under [Section 188](https://indiankanoon.org/doc/1432790/) I.P.C. and sentenced him to pay a fine of Rs. 20/- or undergo simple imprisonment for one week. The Court in India has to judiciously understand that the fine of ₹ 200 and ₹1000 under Section 188 of has been prescribed in *Indian Penal Code*  in 1860. With the passage of time there has been no amendment for enhancement of the fine till date. The enforcement of the quarantine law in the outbreak of Kalazar disease by the District Magistrate of Muzaffarpur called in question in Raj Mangal Ram v. State of Bihar(27). The Patna High Court held that merely filing an FIR is not sufficient to invoke the criminal liability under Section 3 *Epidemic Diseases Act,* 1897 *vis-à-vis* Section 188 of *Indian Penal Code,*1860. The complaint must be filed by the concerned public officer under Section 195 of the *Code of Criminal Procedure*, 1973 failing which the Court can quash the proceedings.

**IV. Protection of Medical & Para Medical Forces**

The protection of medical and paramedical forces has been a central concern during the control of COVID-19 pandemic in India. The critical service providers and members of healthcare services faced tormented assault. The Ram Lall Mistry v R.T. Greer (28) dwells on the ambit and scope of the Section 4 *Epidemic Diseases Act*, 1897. In this case, the defendant has, acting under the provisions of the Act destroyed the property of the plaintiff in the light of Rule 2, Plague Regulation A, dated October 8 1900, in the Calcutta Gazette, October 17 1900, page 1144. The Calcutta High Court held the defendant is personally liable. During the lockdown, I, II, and III, There are 141 registered cases under Section 188 of the *Indian Penal Code*, 1860 in Mumbai alone(29). The states of Kerala ((29), Haryana (30), Maharashtra (31) and Telangana (32) and other states, invoked Section 2 of the *Epidemic Diseases Act*, 1897, read with Section 38 of the *Disaster Management Act,* 2005.

This eventuality as visualized by the Ministry Of Health and Family Welfare by introducing *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill,* 2019. The proposed law criminalizes people indulging in to assault on doctors and other healthcare professionals a non-[bailable offence](https://health.economictimes.indiatimes.com/tag/bailable+offence?utm_source=ethealth&utm_medium=internal_link&utm_campaign=autolinked_page) with imprisonment from six months to three years (34).' The Bill mooted by the Home Ministry as well as the Law Ministry in rationalizing the punishment,investigation and expeditioustrial by a  
special Court(35). Since the proposed Bill did not mature into the Act, the *Epidemic Diseases Ordinance*, 2020 tries to fill the gap.

**V. Epidemic Diseases Ordinance, 2020**

It is under this background the *Epidemic Diseases (Amendment) Ordinance*, 2020 was promulgated on April 22, 2020, by the President under Article 123 of the *Constitution of India*, 1950. The Ordinance introduced definitional clauses which were missing in the original Act. It enumerates three types of definition, namely Act of violence, health care and service personnel and property of clinical establishments. The meaning of 'act of violence' is inclusive from harassment, harm, injury, hurt to obstruction of duties and danger to life besides the damage to the property (Section 1Ac) as contained under the *Clinical Establishment and (Registration and Regulation) Act,*2010 (Section 1Ac). The healthcare services and personnel takes in to account the entire paraphernalia of doctors and nurses, a person empowered to take measures (Section 1Ab) to prevent the outbreak of the disease and persons designated by the state government (36). The perusal of the definitional clauses under the *Epidemic Diseases (Amendment) Ordinance*, 2020 reflect *pari materia* incorporation of objectives of *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill,* 2019.

To deal with epidemic-pandemic of horrendous magnitude, the Ordinance declares 'act of violence' cognizable and non-bailable offence having imprisonment between three months to five years, and a fine between ₹50,000 and ₹ two lakh.  The Act of violence along with grievous hurt, compounded with imprisonment between six months to seven years, and a fine between ₹ one lakh and ₹ five lakh.  Besides clamping sanctioning regime the Ordinance **provides pecuniary** compensation to the healthcare service personnel for injury and   damage to property. The compensations are determined to the doubling of the fair market value or on the basis of *quantum meriut* principle by the Court (37).  Such compensation amount will be recovered as an arrear of land revenue under the *Revenue Recovery Act*, 1890. The **investigation and trial will be fast track mode and** completed within 30 days from the date of registration of the First Information Report and concluded within one year extendable to six months. The Ordinance has enlarged the **powers of the central government** to regulate all means of transportation besides the prohibition of travel and Act of violence (Section 2B). The government justified the *Epidemic Diseases (Amendment) Ordinance*, 2020 justified as the manifestation of the government's commitment to protecting every healthcare worker who is bravely battling COVID-19 on the frontline (38). The government would have passed *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill,* 2019 as an ordinance in COVID pandemic to do great service to medical and para medical fraternity in COVID-19 pandemic than resorting to new lease of life into *Epidemic Diseases Act*, 1897. It appears that government commitment was myopic to command and control regime of sanction and punishment than that of breaking new medical grounds of innovation, treatment and health equity (39).

**VII. Conclusion and Summations**

The 123 years of the legislative history of *Epidemic Diseases Act*, 1897 has not come out from the pounds and shells of colonial approach to the control of epidemic despite the COVID -19 declared as a pandemic by the world health organization. The law is shuttling between the powers structure of the British colonizers to the modern-day government with little changes into the platter of reform. It appears the mould of the law sets in colonial India was allowed to perpetuate in independent India and parameters of the modern medical sciences and health care innovation and technology debates not utilized to its fruition in the *Epidemic Diseases (Amendment) Ordinance*, 2020. The working of quarantine laws under time tested *Indian Penal Code*, 1860 and slew of a public health-oriented legislations met with partial success being too sanctioning in nature or fragmented and piecemeal in approach. The platter of reform vests with the central government as Entry 28 of the Union List attached to the Seventh Schedule of the *Constitution of India*, 1950 adumbrates for legislative initiative for the 'port quarantine and marine hospitals' need an amendment to extend quarantine to all places to arrest the pernicious tendencies of the COVID -19 and similar epidemic and pandemic. The subject of 'inter-state migration and inter-state quarantine' enumerated under Entry 81 of the Union List confers enormous freedom to the central government to embark on new generations of epidemic-pandemic control laws. The 'prevention of the extension from one state to another of infectious and contiguous diseases or pests affecting men, animals or plants' under Entry 20 of concurrent list compels the central government for upheavals of public health legislation to combat communicable diseases in India. The Integrated Disease Surveillance Project (IDSP)***,*** 2004 collects disease surveillance data to detect and respond to disease epidemics and estimated to report 30-40 outbreaks every weekby the states on an average. The *National Health Bill***,** 2009 attempts to ensure a legal framework for public health emergencies through active collaboration between the Centre and the states. The Bill balances the competing interest of the State***'s*** sledgehammer approach to quarantine law and rights- centric approach to treatment and care. The Bill is categorical in assigning roles and responsibilities for preventing and controlling epidemics on the typology of *Disaster Management Act*, 2005. There is an urgent need to consolidate and unify public health policy and law and on the lines Integrated Disease Surveillance Project (IDSP)***,*** 2004 and *National Health Bill,* 2009.

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13. Section 2(d), *Disaster Management Act*, 2005:"disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

14. *Id.* Section 2(e): 'disaster management' means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for-(i)        prevention of danger or threat of any disaster;(ii)mitigation or reduction of risk of any disaster or its severity or consequences;(iii)capacity-building;(iv)preparedness to deal with any disaster; (v)prompt response to any threatening disaster situation or disaster; (vi)assessing the severity or magnitude of effects of any disaster;(vii)evacuation, rescue and relief; (viii) rehabilitation and reconstruction.

15. Section 6 in the Disaster Management Act, 2005- Powers and functions of National Authority:[(1)](https://indiankanoon.org/doc/534218/) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster. [(2)](https://indiankanoon.org/doc/891669/) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may-[(i)](https://indiankanoon.org/doc/1691779/) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.

16. *Id.* Section 10**-Powers and functions of National Executive Committee:(1**)The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.(2)Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may-(l)lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster.

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23. Section 3 *Epidemic Diseases Act*, 1897-Penalty: Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

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