**Implementation of Epidemic Disease Act to combat COVID-19 in India- an ethical analysis**

**Abstract**

Many states in India have invoked the provisions of the Epidemic Disease Act 1897 as a major tool for the fight against COVID pandemic. The current review attempts to discuss the ethical aspects in implementation of the Epidemic Disease Act 1857 to combat COVID-19 in India. Implementation of Epidemic Disease Act to fight COVID in India has exposed its major limitations. Being remaining merely as a ‘policing’ act with no emphasis on coordinated and scientific responses to deal outbreaks and without provisions for protecting rights of citizens, the Epidemic Disease Act in its current form has the potential to cause more harm than good. There is need for a rights-based, people-focused and public health-oriented legal provision in India to deal epidemics.

**Introduction**

Following the COVID-19 pandemic, on 11th March 2020, the Ministry of Health, Government of India asked the states to invoke the provisions of the Epidemic Diseases Act, 1897. Most Indian states have invoked their powers under the law to combat COVID-19.1-5 As calls for the government action grows; the Epidemic Diseases Act has been a subject of debate.

On 22 April 2020, the Government of India announced the promulgation of ‘The Epidemic Diseases (Amendment) Ordinance 2020', to amend the act, adding provisions to punish those attacking doctors or health workers which was recently passed by both the houses of Parliament as ‘The Epidemic Disease (Amendment) Bill 2020’.6

The current review attempts to discuss the ethical aspects in implementation of the Epidemic Disease Act 1857 to combat COVID-19 in India.

**The Epidemic Disease Act, 1857 and its limitations in current scenario**

The Epidemic Diseases Act which was evolved to tackle the epidemic of bubonic plague in colonial India was passed in 1857 with the aim of better preventing the spread of “dangerous epidemic diseases”. The act has four sections. The first section explains the title and the extent. Second section gives powers to the governments to take special measures and formulate regulations that are to be observed by the people to contain the spread of disease. Penalties for violating the regulations, in accordance with Section 188 of the Indian Penal Code have been described in section three and legal protection to the implementing officers acting under the Act have been depicted in section four.7

Limitations of the act have been described in detail earlier.8 Implementation of the act during pre-independence era has witnessed an enormous potential for abuse. The Epidemic Diseases Act only reflects the governance and scientific standards that prevailed in 17th century and is not in line with the contemporary political scenario and scientific understanding of outbreak prevention and response. The Epidemic Diseases Act is purely regulatory in nature and lacks a specific public health focus. The Act is silent on the ethical aspects or human rights principles that come into play during the implementation.

As an attempt to address these concerns regarding Epidemic disease act of 1857, draft Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill of 2017was proposed*.9* The draft bill laid down clear definitions of “epidemic”. It also detailed potential responses by a State Government or administration of any Union Territory or district and the Central Government. Provisions for appeal for the victim has been narrated. The key positive changes in the draft bill when compared to the act have been described in detail elsewhere.10 However, the bill did not get tabled in Parliament.

**Invocation of Epidemic Disease Act during COVID-19 pandemic**

Most of the states in country have evoked Epidemic Disease Act 1857 for combating COVID-19.1-5 Schools, colleges, cinema halls, public swimming pools were suspended with provisions of the act. All hospitals were asked to start flu corners. Hospitals were asked to record information regarding travel and contact and decide on quarantine/ isolation as per guidelines. The act conferred powers to surveillance personnel to do inspection, enquiry and examination by entering any premises and put the eligible persons in quarantine or isolation. There were provisions for enforcing cooperation by coercive actions against owner or occupier or individual who is not complying the directions of the surveillance personnel. Nobody was allowed to use any print or electronic media to share any information regarding COVID-19 without permission of government to avoid spread of rumour or unauthenticated information regarding COVID-19. The act was also used to give powers to authority for containment measures in defined geographical areas including sealing, banning entry and exit and banning vehicular movements. Many states have made the use of facemask mandatory with provisions of Epidemic Disease Act. The act was also used by many states to seal the state borders, restricting public and private transport, inspecting or quarantining persons arriving into the state by air, rail, road, or sea, restricting congregation of persons in public or religious spaces, and prohibiting and restricting the functioning of shops and commercial establishments.

**Ethical Analysis of Implementation of Epidemic Disease Act**

Legal and ethical norms go hand in hand. A framework has been proposed by Nancy E and a similar framework was proposed for public health and human rights by Gostin and Lazzarini.11,12 For discussing the ethical aspects of implementation of the Epidemic Disease Act 1857 in the context of COVID-19, above mentioned frameworks have been used with contextual customisation.

**What were the public health goals by invoking epidemic disease act?**

The World Health Organization declared COVID-19 as a public health emergency of international concern on 30th January 2020, WHO’s highest level of alarm. On March 11th when GOI advised to invoke Epidemic Disease Act, 37364 cases have been reported outside China form 113 countries including 1130 deaths. Countries like Korea, Italy, Iran had more than 5000 cases. India had 60 confirmed cases.13

In a country with a huge population and with inherent weaknesses in the health system, tackling epidemics is a complex task. States across the world were employing far-reaching measures to handle the corona virus outbreak. It could not be fully accomplished without a well-thought-out system having a proper statutory backing. Prevention and control of epidemics requires preventing avoidable risks and to respond effectively and timely. Invoking provisions of Epidemic Disease Act are targeted to one set of individuals to protect society’s health. Epidemic Disease Act was the only specific legislation on the subject available. Therefore, the intention to invoke ‘Epidemic Disease Act’ was justifiable.

**What evidences were available regarding effectiveness of the intervention in achieving its stated goals?**

Next question for ethics analysis, is what was the evidence for effectiveness to justify the invoking of the Act. The greater the burdens posed by an intervention- in terms of constraints on individual autonomy and liberty—the stronger the evidence must be to demonstrate that intervention will achieve its goals. What was available regarding effectiveness of regulatory measures during pandemic was only a few experiences. Strict legally backed lockdown measures were implemented in China and South Korea; countries like US, UK, France were reluctant to impose stringent restrictions initially and with the rapid increase in cases later led to adoption of increasingly severe measures to protect health systems at risk of collapse. In such circumstances, with an obligation to protect populations against reasonably foreseeable threats, state-imposed restriction with available laws, even in the absence of complete scientific information may be justified.

**What were the burdens due to implementation of the act?**

Extensive enforcement of law to fight the pandemic has to be balanced by checks on the use of power to protect the rights of the individuals. The Epidemic Disease Act does not provide for procedural guarantees against the abuse of power of interference with the rights of citizens.

There were many reports which suggest that the State power has been exercised for sharing publicly the list of patients, for [arresting](https://bangaloremirror.indiatimes.com/bangalore/crime/karnataka-3-arrested-for-spreading-fake-news-on-covid-19/articleshow/74632372.cms) persons and booking cases for spreading fake news on the disease, persons not disclosing information, persons not following quarantine or isolation and persons going out to meet basic needs during ‘lock-down’ phase.14-19

Enforcing quarantine and isolation were the areas where the Act has been used widely. While doing so, personal autonomy is curtailed, presuming beneficence to the wider public. Here, the states have introduced compulsory isolation, as means by which to prevent further harm to its people (duty of non-maleficence), by isolating the affected or quarantining the exposed ones (duty of beneficence). However, provisions for addressing medical, non-medical and psychological needs of people in quarantine were not established in many places. Forceful quarantine and isolation have led to inconveniences to individuals which has even resulted in suicides in many places.20 Many institutional quarantine facilities led to congregation of many people in a confined space, led to transmission of disease within the setting.21 There were risks causing inadvertent harm, which go against the principle of nonmaleficence to the individuals. And, many suffered adverse consequences. What are there compensations, for a lack of beneficence or non-maleficence?

Many governments used provision in epidemic disease act to obtain, process, maintain and use sensitive personal data; track locations; employ contact tracing measures without any data protection framework in place.14,22 Surveillance and contact tracing raise potential privacy concerns, especially since data collection is mandatory and data often are individually identifiable and, in many cases, made publicly available. List of COVID positive individuals, Route map of COVID positive cases published for contact tracing, public notice at houses of quarantined individuals had the risk to privacy and confidentiality. In many places contact tracing, which is a scientific process, was entrusted with ‘Police’ rather than trained health professionals.23 ‘Police’ who harbours an ‘instinctive distrust’ from the community in such role handled the data without any respect to privacy and sourced the contact tracing details as in a ‘criminal investigation’.

Section 4 of the Epidemic Diseases Act protects those who are acting in good faith under the act against any legal proceeding. There are many instances where the unchecked powers given under the Act became a bulwark for policy brutality with risks to citizen’s rights.14-24 Citizens were reportedly assaulted and subjected to harsh treatment when they went out to meet their basic needs or even opened their small grocery shops. Some instances were reported where the Act was used to supress political disagreements or personal conflicts.16,19 Since the provisions under the act were broadly phrased, those resulted in arbitrary actions. For example, a news reporter was arrested for writing against corruption in public distribution systems.19

There were risks to justice, when the authorities targeted public health interventions only to certain groups. Many states publicly announced patterns about ethnic groups and that were stigmatizing and otherwise harmful. There were reported strong protests by communities for stigmatising them with provisions under the Act.25 Social harms result if social stereotypes are created or perpetuated, such as only certain segments of the population are the causes of the disease spread. In many places Non-Resident Indians and Non-Residents of states faced stigma and discrimination.26

Using excessive power has shown a negative impact on the community participation. It has even led to emergence of disorder in some places.16, 25,27 Cohesion has given way to conflict between society and authorities. Many reports are there where community have become hostile to ‘strict measures’ against epidemic control.25,27 In many places, there are reports saying people moved away from ‘testing’ and ‘disclosing symptoms’ for fear of ‘strict’ measures.28

The Act was silent on the Government’s responsibilities during the pandemic. It is felt that, the Act has been used by authorities in many places as a short cut to get things done without addressing the basic causes. It is felt that the implementation of the epidemic disease Act also made the attitude of authorities inclined towards a ‘regulatory’ role rather than educating and empowering citizens to be part of the fight.

**Can burdens be minimized? Are there alternative approaches?**

Ethically an approach that poses fewer risks to autonomy and justice to be chosen if available. Siracusa Principles narrates the principles for an international law in which human rights may be restricted in view of a public health emergency. The major principles are as follows (i) directed toward a legitimate objective of public interest; (ii) absolutely necessary in a democratic society to achieve the objective; (iii) least restrictive to achieve the objective; (iv) be based on scientific evidence; (v) neither arbitrary nor discriminatory in application and of limited duration; (vi) respectful of human dignity; and (viii) subject to review.29 When we look at Epidemic Disease Act implementation during COVID times in India, many of the above said principles were not met.

Least restrictive measures should be taken to control the spread of the disease and these measures should be voluntary to the best possible extent. Medical and social needs of the person for whom the movement was restricted must be met, and the application of restriction should be equally fair and transparent for all people. Where compliance with physical distancing or quarantine or isolation is directly at risks with meeting basic needs, societal harms are inevitable and need to be mitigated. Necessary precautions should have been taken to avoid discrimination and stigmatization during the quarantine, isolation or containment. All legal enforcements should go hand in hand with informed and transparent public communication strategies. If properly informed, most people will follow their instincts to stay safe. Strategies need to be implemented to address public’s lack of scientific understanding of risks, if any. Good and effective communication strategies should have been adopted through official channels to fill the vacuum in which misinformation proliferates.

**How can the benefits and burdens be fairly balanced?**

Programs that are coercive must be kept to a minimum and should be implemented only if there is a clear public health need and good data demonstrating effectiveness. Community to be engaged in a democratic process to determine which interventions it wants its government to maintain and how restrictive the measures could be. Open discussions with community to be promoted regarding the restrictive measures and why such benefits cannot be obtained through more liberty-preserving methods. Different states and communities may decide differently which public health activities are appropriate and which are overly burdensome. Different communities may adopt locally customised public policies, based on their own balancing of benefits and burdens.

Ethics analysis of implementing legal measures during the pandemic strengthen our reasoning and we can recommend interventions on the basis of facts and not merely belief. The participation of the communities in the process will help to identify the potential threats many groups will face especially vulnerable segments of the society. Any fight against pandemics is possible only through community ownerships and for that public’s trust is more important. If legal enforcements lead to public's distrust, then it can cause more harm than good during the fight against pandemics.

Every legal enforcement by the government has to stand the test of right of privacy which is a fundamental right. The protection of civil rights during implementation of the epidemic disease Acts could have improved population health. For example, privacy and antidiscrimination protections for individuals with stigmatized conditions may encourage them to seek testing and treatment. If the public health laws protect civil rights, it is likely that the trust and participation of the citizens also increases. The demand during the pandemic is also a robust law that provides for the collection, processing, usage and retention of a sensitive personal data, efficiently balancing the right to privacy of an individual with public interests.  Policies of action which are consistent with the preservation of human dignity and those showing equal respect for the interests of all members of the community will ensure social justice also.

**The Epidemic Diseases (Amendment) Bill 2020**

One of the important changes in the Amendment Bill is that it defines the terms ‘healthcare service personnel’, ‘property’ and ‘act of violence’ before stating that “no one shall indulge in any act of violence against a healthcare services professional or cause any damage or loss to any property during an epidemic*.”* The Bill allows for up to seven years of jail for attacking doctors or health workers (including [community health volunteers workers](https://en.wikipedia.org/wiki/ASHA_worker)). Such offenses have been made [cognizable](https://en.wikipedia.org/wiki/Cognisable_offence) and non-bailable.6

The penalty provisions prescribed in the Amendment Bill are more stringent in terms of years of imprisonment and penalty amount. The Amendment Bill has also expedited the investigation process, which has to be completed within 30 days and the burden of proof has also been reversed where the accused will be considered guilty until proven innocent. The Amendment Bill also provides a broad definition to the term ‘violence’ to include harassments which affect the living or working conditions of healthcare personnel. This is relevant while healthcare personnel are facing stigma due to their work where they were being forced to vacate their accommodation by land lord or by residential associations. The Bill also has provisions to charge the guilty to remit twice the market value of the damaged property as compensation for damaging the assets of health care staff including vehicles and clinics.6

The Amendment Bill clearly states the violence or damage has to be ‘during an epidemic’, thus making it highly contextual and limiting to a certain extent. However, instances of violent confrontation between doctors and the public is neither a recent phenomenon nor occurring as a result of an epidemic. Ensuring safety of healthcare personnel has to be guaranteed by law, not only in the context of epidemic, but during the epidemic free time also.

**Conclusion**

Implementation of Epidemic Disease Act to fight COVID in India has exposed its major limitations. These limitations include not mentioning the role of Government during epidemic, not considering the mechanisms to protect the rights of citizens, not clearly mentioning the roles and responsibilities of agencies and departments in combating epidemic and not having a regulatory authority or appellate mechanisms for its implementation. Being remaining merely as a ‘policing’ act with no emphasis on coordinated and scientific responses to deal outbreaks, the Epidemic Disease Act in its current form has the potential to cause more harm than good. The current amendment Bill has not addressed any of these concerns. It tried to address a major problem related to the safety of health care personnel with a narrow lens. There is a need for an integrated, comprehensive, actionable and relevant legal provision for the control of outbreaks in India that should be articulated in a rights-based, people-focused and public health-oriented manner.

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