**Regulatory Framework for COVID-19 In India: Relevance of Draft Model Public Health Act 1987**

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**Keywords:** Covid-19, Corona, Pandemic, Public Health

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**Abstract:**

COVID-19 pandemic, a Black Swan Event has wreaked havoc impacting millions of people globally. Ever since the emergence of Patient 0 at Wuhan, the virus within a matter of days, was declared as a major health hazard globally in the back of significant spurt in morbidity & mortality. It also enlisted call from World Health Organization (WHO) for a globally coordinated response to tackle the unfolding catastrophe. Till date, India has been the second most affected country after US with more than 8 million patients. The pandemic has put to test, the regulatory framework, health system preparedness & emergency response protocols not just in India but globally with an objective to control the disease. India with a massive population has been facing a situation far more complex compared to any other nation.

Faced with growing challenges, India had to resort to centuries old Epidemic Diseases Act of 1897 which is considered grossly inadequate for dealing with health emergency of current magnitude. In addition, India has used the Disaster Management Act of 2005 for dealing with COVID-19. The acts, in general have been perceived to have limited scope to cater to health exigencies. Hence various health departments such as Ministry of health & family welfare (MoHFW), ICMR, Directorate of Health Services (DHS), National Centre for Disease Control (NCDC) etc were forced to release multiple advisories with daily briefings ever since the last 8 months. This made the uniform implementation of disease management strategies difficult at the very grassroot level hinting at a major gap in the policy planning and execution.

A major contribution of the study is the comprehensive review of the regulatory frameworks with special reference to the Draft Model Public Health Act ,1987 (now shelved) which appeared to be better placed to deal with health emergencies. In light of the same, the study highlights the elaborate provisions for governing health infrastructure in India and for prevention, control and treatment of communicable diseases. These provisions are considerably more adaptive to current COVID19 scenario compared to the present acts. Considering the urgent need, the paper recommends creating a new legal architecture combining COVID19 experience and useful provisions of DMPHA, 1987 a unique contribution of the study. The new legislation can become a milestone in managing future health emergencies with profound impact on future health policy.

**Introduction**

The advent of the COVID-19 pandemic is the single biggest health, economy, socio- cultural (1) as well as a technological disrupter of the century. It is by far the most widespread pandemic that happened in the new millennium. The Wuhan-born virus has lead to large-scale morbidity & mortality (2) devastating the economic, social & mental fabric of all big and small nations. The pandemic has put to test, the health infrastructure, health system preparedness & swift response from the countries for control of the disease to its prevention. While it is true that healthcare systems have been put to the test for the first time in many decades, it has also exposed the health infrastructure (or lack of it) for dealing with such health emergencies (3). The impact of COVID-19 has been a sombre story for the health sector worldwide with cases piling up on a daily basis. Globally more than 41.99 million people have contracted the disease with more than a million lives lost due to COVID. Amongst the worst-hit countries, USA stands at number one with more than 8.66 million cases while India is at second with 7.7 million cases and counting(4). India has reached its peak of close to 0.1 million cases per day in the second week of September-2020. As on date, the daily reported cases are coming down & currently it is hovering around 60000-65000 cases per day (5,6). This has raised hopes that India might have passed its peak, however, it’s too early to expect that a pandemic will be over any time soon as t cases are expected to surge with the arrival of winter.

Since the onset of COVID 19, India has taken multi-pronged, drastic and even draconian measures to control the pandemic which includes early lockdown (7) (cases were just a few hundred at the time of lockdown) to prevent the spread of disease. Capacity building of health infrastructure (8) like increasing testing facilities, creating COVID care facilities, increasing ICU beds, creating separate facilities for Quarantine, medical staff safety laws, increasing support towards state governments to fight COVID, aiding vaccine research and development of health equipment’s within the country etc added much needed teeth to the fight against COVID. We can safely attribute the initial lower rate of diagnosis to inadequate testing facilities early on, when we had a capacity of just a few thousand tests per day in May’20. Subsequently, India has been able to fill the gap to reach the capacity of up to 1.5 million tests per day, an achievement considering the situation India and the world at large has been facing. As of 22nd Oct,’20, India has conducted 100 million tests & is currently testing 1 to 1.5 million individuals every day (9) which speaks of the efforts made by the Government. On the one hand, it is appreciable to see the ramp-up of testing facilities, on the other hand, the testing strategies have not been consistent across all the states with changes too frequent & sometimes even confusing. The case of infection ratio was at staggering 80-130 undiagnosed cases per detected case in May’20. The survey estimation shows that around 6.46 million cases were missed by May 20 itself (10). Even the current case to an infection ratio of somewhere around 1 diagnosed case to 30 undiagnosed cases shows the magnanimity of the problem India still has at her hand. The key to all the woes is building an effective health infrastructure to deal with the pandemic. The responses from different states have been varied, the capacity building has been different & so are the standards of management (11). There are frequent reports of unavailability of beds in quarantine facilities, shortage of ICU beds aggravating the situation (12).

If we critically look at the management of COVID-19, the decision making and execution can be connected to three levels: Central govt., State govt., and at the District levels. From the beginning, it was the Central government and its wisdom which was entrusted with taking all the policy decisions which included formulating the guidelines, and directing the states for its implementation. Subsequently, based on central directives, states have formulated their own guidelines depending on the severity & spread of the disease. District authorities & municipal corporations further modified it with the aim of effective control, containment & prevention of disease. While all this appeared quite in sync with each other, the interpretations differed, there was a lack of clarity in communication and as a result, implementation was far from expected. Lack of resources further complicated the matter (13). COVID-19 Pandemic thus, is an eye-opener in many ways. It has pointed out the need for health architecture and framework to deal with an epidemic of this magnitude (14). While it is true that optimism, feel-good factor and hope adds to the fight against the disease, yet they can hardly substitute the requirement for health architecture and framework to address the emerging health crisis. The health architecture required for management of such pandemics includes a well-defined regulatory framework, established health governance structure, clear guidelines, training & resources for grassroot health workers. Against this backdrop and in the absence of a comprehensive public health act coupled with lack of proactive approach of the state and central Governments towards health provision support for all, it would not be surprising to find deficiencies in the system.

Till date, India lacks detailed regulatory framework supplemented by an all-encompassing public health system. India severely lacks medical resources & adequate training of health professionals given the fact that even after 5 years of Indian Independence, non-certified Rural medical practitioners (RMPs ,also referred as Quacks) in the Indian villages continue to fill the void left by doctors and trained, accredited medical staff.. All these above deficiencies, compromised the health system preparedness while dealing with imminent health emergencies. The inherent absence of a comprehensive regulatory framework has severely affected the management of COVID-19 pandemic which has costed thousands of unsaved lives and billions of dollar in economic costs. This is visible from the fact that Govt. had no option but to use the bygone era “The Epidemic Diseases Act 1897” & “Disaster management Act 2005” (15) which unfortunately cannot be classified even under the purview of health-related act. It is unfortunate that in the 21st century, India has to resort to a 19th-century act. It also raises serious questions as to why India struggled to create a strong regulatory framework for managing health emergencies and the intent of successive Governments ever since India’s independence. This also underlines the need for enacting a comprehensive public health act for a sound management of health emergencies or at least creating a comprehensive act that would help manage similar health emergencies in the near future (15).

It would though be improper to say that no initiative had been taken since India’s independence to draft a model public health act. In fact, in 1946, the Bhore Committee had comprehensively worked on identifying the requirements of health infrastructure for India and for all good reasons, it did envisage Indian public health infrastructure on the lines of the NHS, UK (16). It even recommended having a comprehensive public health Act way back in 1946 indicating the vision of the policymakers! Accordingly, India had drafted the model public health act for the first time in 1955, which later went through multiple modifications. It was last modified in 1987 keeping the requirements of the time (17). Unfortunately, the lack of political will ever since, the cold treatment, it received & delay in enacting led to continuous deferring of the public health act indicates the sad state of affairs in the health policy department of the Government and the lack of vision towards future. If that was not enough, the deferment of the Act in 2015 was the final nail in its coffin.

Given the widening gaps, it would be prudent to pose a question as to whether India could have managed COVID19 better with the Public health act rather than using the Epidemic Diseases Act 1897 & Disaster management Act 2005. To answer this question, a holistic review of provisions of these three acts was done which included: The Epidemic Diseases Act 1897, Disaster management Act 2005 & Draft Model Public Health Act, 1987.

**Study Objectives**

1. Highlight the efforts done by the State and Central government of India in the fight against COVID-19.
2. Detail the scope of various Healthcare and disaster acts adopted to control the Covid Pandemic.
3. Provide alternated measures and solutions to control the Spread of COVID by proposing suggested amends.

**Research Questions**

RQ 1 What are the current management practices followed by the Governing bodies to curtail the spread and control COVID-19 in India?

RQ 2. What are the pros and cons, scope of the current Acts incorporated, and currently in vogue to control COVID and maintain public order during times of pandemic?

RQ 3. What is the work done by Governing institutions in formulating epidemic and disease mitigation acts, laws and by laws till now and whether they require corrective measures or revaluation?

**Scope of the Epidemic Diseases act 1897** (17, 18)

The Epidemic Diseases Act 1897 is a colonial-era act that was enacted to tackle the Bubonic plague in Mumbai. This act is one of the shortest acts comprising of only 4 sections. Section 2 of the act empowers state and central government to take measures and prescribe temporary regulations if ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak or spread of disease. Further, it allows for inspection of railways or ships or vessels & allows for the segregation of suspected or infected person.

However, except for the mere mention of segregation, the regulation lacks teeth to deal with the requirements of a large-scale epidemic. As it appears the act was formulated to give British govt. powers to prescribe regulations which they deemed fit during the 19th century. The act seems to be highly out of place in the current context.

***The epidemic diseases (amendment) bill, 2020*** *(A bill further to amend the Epidemic Diseases Act, 1897)(19):*

The epidemic diseases (amendment) bill, 2020 passed in Sept 2020 primarily aimed at safeguarding the health personnel against any kind of violence. This amendment bill was an opportunity to expand the epidemic diseases act 1897 & formulate detailed guidelines on the management of a pandemic. However, through its piece meal approach of restricting itself to mainly safeguarding health personnel, lawmakers missed yet another opportunity to create a regulatory framework at least for a pandemic like COVID19.

**Scope of Disaster Management act 2005** (20)

Disaster management act 2005 provides for the effective management of disasters. Various guidelines issued by NDMA; the nodal agency includes biological disasters & health emergencies. As a result, the 2019 National Disaster Management Plan deals extensively with biological disasters & health emergencies. Like Epidemic Diseases Act 1897, The DMA act 2005 also gives powers (including over-riding powers) to take necessary measures (e.g. Lockdown) for effective management of disasters. However, DMA 2005, is for the management of disasters & hence the act does not provide the required framework needed for managing epidemics.

In a nutshell, acts like Epidemic Diseases Act 1897 & DMA 2005, can only be used in case of emergencies where it empowers the government to take necessary measures, formulate strategies & take actions to prevent, control & contain the spread of disease. However, these measures are purely short term, primarily help in damage control & crisis management. These acts cannot substitute for a specific, detailed & comprehensive regulatory framework, which can become the backbone for effective management of COVID19 like pandemics.

Given the discussion carried above, some questions pertaining to the same needs to be answered. What is the work done by Governing institutions in formulating epidemic and disease mitigation acts, laws and by laws till now and whether they require corrective measures or revaluation? In that regard, does India also needs to draft comprehensive legislation? Does India need to take a leaf out of the previous work and build an all-encompassing framework? In this context, the Draft model public health act 1987, by far offers the most detailed, specific, and comprehensive guidelines and hint for the future. Accordingly, the review to answer the questions is discussed along with proposed areas for improvement if any.

**Review of Draft Model public health act 1987**(21)

Draft model public health act 1987 is an extensive regulatory framework that brings under one roof all the aspects required for delivering health. To its credit, it has 23 chapters & multiple sections written over almost 100 pages. It starts with defining health authorities & their functions, moves on to health institutions. Its subsequent chapters focus on regulating various aspects for delivering better health via regulating water supply, drainage, sanitary conveniences, buildings, food sanitation, etc. The act elaborately deals with prevention, treatment & control of communicable, insect & vector-borne diseases. The act also deals with Sanitary & health arrangements pertaining to fair & festivals, regulates lodging houses, health resorts, holiday camps, parks, labour camps, markets & inns, slaughterhouses, burial & burning grounds. The act ends with provisions for financing health & penalties. This detailed act assumes significance since the pandemic with the magnanimity of COVID 19 requires all the provisions under one roof in a methodical manner. This acts precisely offers three things:

1. It helps with the organizational structure of health authorities and their functions
2. It provides specific, detailed, and comprehensive guidelines for the management of communicable diseases
3. It provides for controlling the spread of disease through various sections dedicated to fairs, festivals, health resorts, temporary camps, markets, even burial of infected dead bodies.

Hence let’s look at how COVID 19 could have been managed differently with the help of the Draft model public health act 1987.

***Health infrastructure as envisaged in the Draft Model Public Health Act 1987***

The fundamental thing that the Public health act 1987 does, is to define the organizational structure for health authorities. 22 sections of chapter 2 of the act lay down in detail the structure of health authorities & their functions. The act mandates the central government to constitute a ***Board of health.*** Further, the public health act 1987 empowers the board of health to create *state coordinating health committees & district/block health committees*.

**Panel 1. Health Infrastructure as envisaged in the Draft Model Public Health Act 1987**

|  |  |
| --- | --- |
| ***Board of Health (National statutory body)*** | ***State coordinating health committee*** |
| *President*   * Minister of health   *Ministers/representatives from*   * Ministry of education & social welfare * Food & agriculture * Finance * Local self-government * Public works * IMA and IPHA   *Members include*   * Director of medical services * Director of public health * Director of health services from each state | *President*   * Minister of health   *Vice-President*   * Secretary of health   *Representatives from organizations like*   * ESIS * Defence * Railways * Municipalities * Airports * State-level voluntary organization * DHS, secretory (Ex-officio) |
| ***District health committee*** | ***Block health committee*** |
| *Chairman*   * District collector   *Members include*   * President of Zila Parishad * District inspector of schools * District Medical Officer * Medical Officer of primary health centres | *Chairman*   * Chairman of Panchayat Samiti   *Members include*   * BDO * Medical officer * Social welfare officer   Members from public |

Source: Author Compilation

The act just doesn’t stop at mandating the formulation of the Board of Health & health committees. The act suggests the formation of a *Directorate of health services* with as many divisions and sub-divisions as it needs. The act clearly defines the functions & responsibilities of the Directorate of health services***.***

***Prevention, treatment & control of communicable diseases: Chapter X of model public health act 1987***

Unlike Epidemic Diseases Act 1897 which has just 4 sections to deal with, chapter X of the public health act 1987 is an elaborate Act divided into 3 parts with 42 sections & multiple subsections spanning over 13 pages laying out detailed guidelines for the management of communicable diseases. Part I of the act has general provisions, whereas part II deals with the Management of notified communicable diseases, and Part III deals with selected communicable diseases. From the preview of this paper, part I and Part II are important. Hence, we have reviewed the key provisions of part 1 and part 2 of this study.

**Panel 2: Provisions under part I of chapter X**

***Section 112: Power of govt. to define a communicable disease***

* It clearly defines the communicable diseases & empowers govt. categorise other diseases through a notification as communicable diseases.

***Section 113:******Power to health officers & local authorities to take immediate action in case of threatening outbreak***

* Provides power to Health officers & local authorities to act immediately to prevent, treat & control the spread of disease by obtaining additional staff, medicines, equipment’s & other requirements necessary for the management of diseases.
* For this purpose, local authorities are mandated fund the expenses.

***Section 114 to 118: Building Infrastructure for management of disease***

This requires local authorities to provide various facilities (with directive from state government or director of health services) such as

* *Section 114 (I)*: Facilities for vaccination & immunization
* *Section 114 (II)*: Provide hospitals or other places for reception & treatment of disease. If adequate number of such places are not available, the local authority may build such places or enter the contract for such places.
* *Section 116*: Provide for diagnostic facilities by running & maintaining laboratories by itself or enter into an agreement with any organization having such facilities
* *Section 118 (I)*: Provide & maintain suitable conveyances (Ambulance) with sufficient attendants & other requisites for the carriage of persons suffering from the disease.
* *Section 118 (II)*: Provide for facilities for disinfection of conveyances, clothing, bedding or other articles exposed to infected person.

***Management of infected persons (****Section 120 to 124)*

These sections provide clear guidelines to health officers on how to handle an infected person.

* *Section 120* provides for removal of an infected person to an hospital or a facility for treatment of disease when the infected person
  + does not have proper accommodation
  + lives with more than one family or
  + is danger to the neighbourhood or
  + he doesn’t have access to medical supervision.
* *Section 120* provides for special accommodation for women suffering from the disease.
* *Section 120* alsoprovides for penalty for obstructing the removal of infected person.
* *Section 121* prohibits the infected person’s presence (A person who is diagnosed & knows about the infection) from various places such as markets, cinema, schools & colleges, playgrounds, gyms, hotels, hostels, clubs etc. to contain the spread of disease
* *Section 122* even prohibits the infected person from selling, exposing or lending any clothing articles or rugs etc. to avoid spread of infection.
* *Section 123* prohibits the infected person from engaging in any occupation without HO permission specially focusing on occupations like sale of food.

**Panel 3: Provisions under part II of chapter X**

***Information about incidence of disease***

*Section 126* mandates that medical practitioners, managers of factories, offices, hotels, landlords, even the head of family should report about the person suffering from the disease or died due to it to health officer, health inspector, PHC, in an village even to a village headman.

***Controlling the spread of disease***

1. *Section 127* authorises health officer to inspect premises/workplaces to identify suspected patients & take necessary measures to prevent the spread of disease.
2. *Section 128* restrictsentry of people other than health personnel into the house where an infected person is identified.
3. *Section 129* provides for disinfection of premises/places.
4. *Section 130* authorises HO to issue prohibitory orders to stop certain works to be carried on like cleaning, washing, repairing of apparels or packing of food stuff etc.
5. *Section 132* provides for closure of places where food is manufactured or sold to contain the spread of disease.
6. *Section 133* deals with the infected clothing, articles etc. & prohibits it to be washed at public places, laundered or disposed in dustbins without disinfection.
7. *Section 134* prohibits renting out a premise for 3 months where an infected person has died.
8. *Section 136 & section 137* are detailed sections restricting the infected personvisiting various places/using public conveyances. Section 136 lists down all such possible places whereas section 137 restricts a person from using public transport, advises others to prevent such a person from using it as well as allows drivers to refuse the entry/carriage of such persons.
9. *Subsection 6 of Section 137* also provides power to magistrate to prohibit assemblies of people exceeding 50.

***Power of the govt. to confer special powers to officers to control the disease***

*Section 140 & 141* elaborately describes the special powers that the government can confer to its officers for effectively controlling the disease. The key provisions are:

1. Power to notify a place with outbreak of disease.
2. Power to evacuate the infected house/localities/neighbourhood
3. Power to make vaccination & preventive inoculations compulsory
4. Power to examine persons in the neighbourhood of infected house or arriving outside local area
5. Power to restrict movement of infected persons or their direct contacts
6. Power to disinfect / destruct infected articles
7. Power to close existing markets & appoint special places for market
8. Power to penalise persons for breach of act

*Continued…*

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**Panel 3: Provisions under part II of chapter X**

***Isolation of infected persons***

*Section 142* lays provides special powers to officers

1. To remove of an infected person to hospital where home isolation is not possible.
2. Provides for removal of female infected person only if special arrangements are made for female
3. Mandates a person in home isolation to leave the place only after permission from HO

***Disposal of bodies of persons died due to disease***

*Section 138* In detail deals with handling of dead bodies of infected persons.

1. Restricts other people from coming in contact or proximity of dead body
2. Disallows retaining dead body (except mortuary) for more than 12 hours without permission
3. Mandates immediate disposal of dead body if considered necessary with in specified time
4. If a person is died in hospital, mandates the body be taken directly to burial/burning ground with least practical delay

Further, *Section 115* of the act makes the local authority accountable by stating

“A local authority shall not be deemed to have discharged its obligation under section 114 (2) and the hospitals, wards, or the places are not maintained in accordance with such general or special orders as may time to time issued by the director of health services.”

In 2009, MOHFW drafted the National Health Bill 2009 (22) have incorporated the above suggestions relating to the board of Health. However, this draft also did not see the light of the day. The bill also fails to provide clear regulations for managing various diseases including communicable diseases which is the strength of DMPHA1987.

**The relevance of Draft Model Public Health Act 1987 for effective management of COVID19**

The above review of the Draft Model Public Health Act 1987 suggests, unlike The Epidemic Diseases Act 1897, Draft Model Public Health Act 1987 has a comprehensive regulatory framework that could have been relevant for managing COVID19 effectively. To substantiate our argument, various provisions of the Draft Model Public Health Act 1987 were compared with measures currently taken for management of COVID19 from the following two perspectives:

1. Current health architecture vis a vis health architecture proposed in the Draft Model Public Health Act 1987 and & its role in COVID19 management.
2. Health strategies, advisories, guidelines vis a vis provisions of Draft Model Public Health Act 1987 (DMPHA 1987).

***Current health architecture & it’s role in COVID management vis a vis health architecture proposed in Draft Model Public Health Act 1987***

Draft Model Public Health Act 1987 made 2 key suggestions. The first suggestion was to create a statutory Board of Health along with state, district & block committees. The second suggestion was to create the directorate of health services.

***NHM vs Board of Health***

Let us now examine two bodies (one already functional and one proposed) and evaluate their roles critically in light of the first suggestion made. The Draft Model Public Health Act 1987 had mandated to constitute a board of health as a statutory body with complete health architecture. The Board of Health would have functioned as a statutory body responsible for policy & decision making governed by the Public health act. Till date, India does not have any such board which is vested with responsibility to draft the policy and take decisions connected to the same.Instead, the govt. has carved out the **National Health Mission (NHM) (23)** under the aegis of the Ministry of Health and Family Welfare. The health system developed through **NHM (23)** is nothing, but the health architecture proposed in the Draft Model Public Health Act 1987. The NHM has at national level Mission steering group (MSG) on par to board of health & then the state/district/block level health societies/ committees. The objective of the national health mission is to create a fully functional health system to attain health goals set from time to time (23).

Though NHM provides the much-needed health architecture, MSG, in the absence of public health act, cannot function as an apex statutory body like the Board of Health. rather it is responsible for attaining the set goals. Hence, having a *Board of Health* would have bridged the most vital need gap for a statutory body & nodal agency responsible for delivering health, policy formulation, implementation of health programs & dealing with health emergencies.

For managing the COVID-19 pandemic, this board of health would have been better placed with the know-how for creating strategies for the prevention, treatment, control & for containing the spread of diseases. From the central government point of view, the *Board of Health* would have become the nodal agency for effective management of COVID19.The integrated structure having the *Board of Health* at the top along with *state coordinating health committees and district/block health committees* would have played a major role in evaluating the ground situation, releasing the guidelines & taking appropriate measures for effective management of COVID19. While *Board of Health* formulatedstrategies for management of pandemic, *state coordinating health committees and district/block health committees* would have ensured the implementation of strategy by reaching till tertiary level up to villages by involving every community health professional & health worker.

***Directorate of health services***

Let us now look at the second suggestion made which proposed a Directorate of health services and ascertain their status. To its credit, India now has established a directorate of health services with all its divisions and subdivisions as envisaged in the Draft Model Public Health Act 1987. Had Public Health Act 1987 been enacted, *Section 12.3 of Chapter II* would have empowered the Directorate of Health Services to take measures necessary for effective management of COVID19. This section gives the Directorate of health services explicit powers to manage epidemics & health emergencies w.r.t. organizing public health services, appointing additional personnel & assume all or any of the power & functions of the local authority.

Hence, we feel, such acts are necessary to empower the Directorate of health services while dealing with COVID19 and similar health emergencies, particularly when the Directorate of health services assumes role of chief health administrative agency. More importantly, it has all the divisions & subdivisions percolating down till the level of local authority & health officers at its disposal.

This means despite having the health architecture closely as recommended by Draft Model Public Health Act 1987, in the absence of public health act guiding, regulating & directing the actions, putting health machinery to work for health emergencies solely depends on govt. directives. It also limits the fast, effective use & utilization of the health infrastructure for dealing with health emergencies like COVID19.

***Health strategies, advisories, guidelines vis a vis provisions of Draft Model Public Health Act 1987 (DMPHA 1987)***

It can be safely said that understanding various strategies, guidelines, advisories & its interpretation at grassroot level might lead to elimination of a lot of confusion surrounding various measures. To quote a personal example, when one of the author’s relatives suffered from COVID19, there was abject confusion about the need & way isolation, the duration of isolation, the quarantine policies for persons visiting from outside district & state, etc would be facilitated/ imposed or carried to its legitimate goal. To understand the policies, the author filed RTIs at 2 levels: first, with the Ministry of Health & family welfare at national level & second with the municipal corporation at local level. In response, the first RTI has been transferred to the Director General of health services & the national centre for disease control. However, all the RTIs filed in May 2020, remain unanswered till date i.e. Oct 2020.

During the course of our research, it was found that govt. has heavily relied on issuing advisories & guidelines. Till now govt. has issues hundreds of guidelines. Further, the advisories were issued by multiple bodies like the Ministry of health & family welfare, Director General of health services, ICMR, NCDC, pollution board, DGS, etc. Hence the management evolved along with the progression of the disease.

Looking at these challenges, it would be prudent to analyse the provisions of the Draft Model Public Health Act 1987 vis- a-vis advisories issued at different point of time. It was felt that, while the need for detailed advisories would remain there, the constitutional provisions the act would have provided would have helped create uniform & comprehensive strategies to manage the disease better. It would have also put the entire health system to better use enabling much better outcomes. For the sake of better understanding, we have picked up a few advisories & done a comparative analysis with provisions of the public health act 1987 from four important aspects.

***Surveillance of disease***

*Table 1: Advisories & guidelines relating to surveillance of disease*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sr. No.** | **Advisory/guidelines issued** | **Issuing authority** | **Date of Issue** | **Relevant section(s) of MDPHA 1987** |
| 1 | GUIDANCE DOCUMENT FOR POEs, STATES AND UTs FOR SURVEILLANCE OF 2019-nCoV**(24)** | MOHFW | 25 January 2020 | 126, 127 |
| 2 | Guidelines for notifying COVID-19 affected persons by Private Institutions**(25)** | MOHFW | 17 March 2020 | 126 |
| 3 | District level Facility based surveillance for COVID-19**(26)** | MOHFW | 11 May 2020 | 126 |

Source: Author Compilation

***Building infrastructure for management of disease***

*Table 2: Advisories & guidelines relating to building infrastructure for management of disease*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sr. No.** | **Advisory/guidelines issued** | **Issuing authority** | **Date of Issue** | **Relevant section(s) of MDPHA 1987** |
| 1 | Advisory for Hospitals and Medical Education Institutions**(27)** | MOHFW | 03 March 2020 | 113, 114 |
| 2 | Norms of assistance from State Disaster Response Fund (SDRF) in wake of COVID-19 outbreak**(28)** | MOEA | 14 March 2020 | 113 (2) |
| 3 | Quarantine facilities for the management of COVID-19**(29)** | NCDC | 05 April 2020 | 114 (2) |
| 4 | Additional guidelines for quarantine in private facilities enabling hotels, lodging facilities to be used as quarantine facilities**(30)** | DGHS | 07 May 2020 | 113 (2) |
| 5 | Guidelines for Gated Residential Complexes Desirous of Setting Up Small Covid Care Facility by Resident Welfare Associations / Residential Societies / Non-Governmental Organizations**(31)** | DGHS | 17 July 2020 | 114 (2) |

Source: Author Compilation

***Controlling the spread of disease***

*Table 3: Advisories & guidelines relating to controlling the spread of disease*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sr. No.** | **Advisory/guidelines issued** | **Issuing authority** | **Date of Issue** | **Relevant section(s) of MDPHA 1987** |
| 1 | Mass gathering **(32)** | MOHFW | 05 March 2020 | 137 (6) |
| 2 | Home quarantine of direct contact**(33)** | DGHS | 11 March 2020 | 140 (2d (i)) |
| 3 | DoPT OM - Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19)**(34)** | DoPT OM | 18 March 2020 | 6 |
| 4 | Instructions to all major and minor ports for dealing with novel coronavirus (COVID-19) pandemic**(35)** | DGSM | 20 March 2020 | 117 |
| 5 | Micro-plan for Containing Local Outbreak of COVID-19**(36)** | MOHFW | 24 March 2020 | 140 |
| 6 | Disinfection of common public places including offices**(37)** | MOHFW | 29 March 2020 | 129 |
| 7 | Advisory for quarantine of migrant workers**(38)** | MOHFW | 31 March 2020 | 140 |
| 8 | Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of COVID-19 **(39)** | Central pollution control board | 05 April 2020 | 118 (2), 133 |
| 9 | Guidelines issued by ICMR for Rapid antibody test' in Hotspot Area**(40)** | ICMR | 17 April 2020 | 116 |
| 10 | SOP on preventive measures in Hotels / Shopping malls /Restaurants/ places of worship/offices to contain spread of COVID-19 **(41, 42, 43, 44, 45)** | MOHFW | 04 June 2020 | 180 (c), 190, 191 |
| 11 | Cluster Containment Plan for COVID-19 **(46)** | MOHFW | 16th May 2020 | 140 |
| 12 | Multiple travel advisories **(47)** | MOHFW | Jan 2020-Aug 2020 | 137, 140 |

Source: Author Compilation

***Management of Infected Persons***

*Table 4: Advisories & guidelines relating to the management of infected persons*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sr. No.** | **Advisory/guidelines issued** | **Issuing authority** | **Date of Issue** | **Relevant section(s) of MDPHA 1987** |
| 1 | Strategy for COVlD testing in India **(48)** | ICMR | 09 March 2020 | 116 |
| 2 | Coronavirus Disease 2019 (COVID-19): Standard Operating Procedure (SOP) for transporting a suspect/confirmed case of COVID-19 **(49)** | DGHS | 29 March 2020 | 118 (i) |
| 3 | Preliminary Stakeholder Engagement Plan (SEP) – India COVID-19 Emergency Response and Health Systems Preparedness Project (P173836) **(50)** | MOHFW | 31 March 2020 | Entire public health act |
| 4 | Guidance document on appropriate management of suspect/confirmed cases of COVID-19 **(51)** | DGHS | 07 April 2020 | 114, 120, 140, 152 |
| 5 | Guidelines to be followed on detection of suspect/confirmed COVID-19 case in a non COVID Health Facility **(52)** | DGHS | 20 April 2020 | 126, 127 |
| 6 | Revised guidelines for Home Isolation of very mild/pre-symptomatic COVID-19 cases **(53)**. | MOHFW | 02 July 2020 | 120, 142 |
| 7 | Post COVID management protocol **(54)** | DGHS | 13 Sept 2020 | 5.5, 12.5 |

Source: Author Compilation

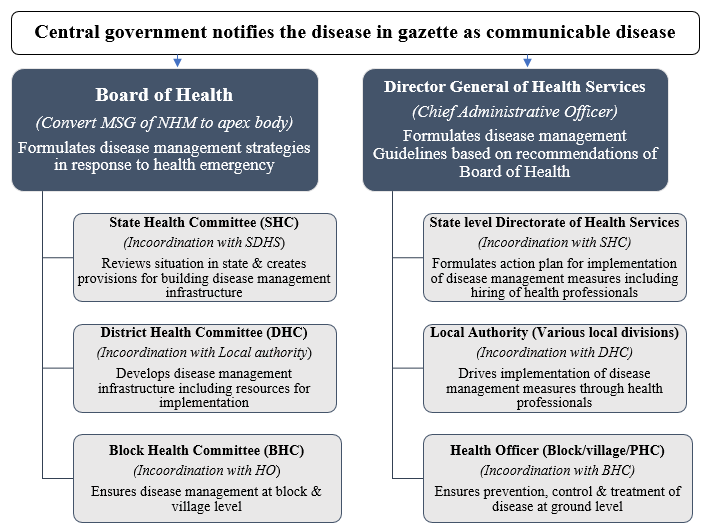
**The way forward: Reforming the Epidemic Diseases Act 1897 for future health emergencies:**

The current crisis in the form of COVID19 has tested India’s ability to respond to health emergencies. Based on the analysis, three important learnings for better management of future health emergencies could be summarised.

1. The current legal architecture primarily the Epidemic Diseases Act 1897 does not seem to be adequate for COVID19 like health emergencies
2. India has comprehensive work already done in the form of the Draft Model Public Health Act 1987 which offers a good legal draft creating legal architecture for the management of health emergencies
3. Based on the health infrastructure envisaged in the Draft Model Public Health Act 1987, India has developed the National Health Mission and Directorate of health services

Based on the above three learnings, it can be safely presumed that a comprehensive regulatory framework is the requirement of the time as compared to taking temporary measures limited towards managing that particular health emergency. The study proposes the following Health Emergency Response Management flow based on the Model Draft Public Health Act 1987 and currently available health infrastructure in the form of National Health Mission (NHM) and Director General of Health Services (DGHS).

***Diagram 1: The proposed Health Emergency Response management flow based on MDPHA 1987, NHM and DGHS***



1. The study also proposes that the new legal architecture should bring both the National Health Mission (NHM) and Director General of Health services under its ambit for the management of health emergencies.
2. The study proposes to convert the mission steering group (MSG) of NHM into a statutory apex body like the Board of Health. Once the act is put in place, Disease management would formally start with the Central Government notification the disease in the gazette.
3. The proposed Board of Health may be entrusted to work on formulating strategies and policies for the management of disease, while the state / District/block health committees can work on building infrastructure for the management of health emergencies. If we look at it closely it is one of the main goals of NHM.
4. The Directorate of Health Services, in its capacity of the chief administrative officer may be empowered to oversee the disease management and associated works. It may issue practical guidelines, whereas health officers on the ground could be motivated to work on practically managing the disease.
5. Both NHM and Directorate of Health Services may complement each other’s work in coordination with each other but are governed by a single legal architecture.

It is believed that the current health emergency rightly or wrongly in the garb of COVID-19 has given us valuable experience in terms of dealing with health emergencies. The collective experience coupled with the provisions of managing communicable diseases from DMPHA 1987 can help India draft a detailed act that will serve as a guide and regulatory framework for future needs. Although, 30 years have passed since the draft of the Public Health Act was last modified, during the time there are various new health issues and legislations which have come into force as well. Hence the DMPHA 1987, in its current form may not be the right choice for enactment. However, this doesn’t prevent the policymakers from adopting relevant provisions of this act which are still important for the management of communicable diseases, which in turn might be utilized to create a new legal architecture.

**Conclusion**

COVID-19 pandemic has exposed the limited legal architecture and ecosystem pervasive in India undermining the optimum functioning of the health systems and processes during public health emergencies. It may be presumed that a combination of provisions of the Draft Model Public Health Act 1987 with the learnings accumulated as part of the study dealing with the COVID-19 pandemic may greatly help create a legal architecture that may prove effective in managing health emergencies. The enactment of the Act shall assist positively in bringing accountability and responsibility in the ambit of the authority/officer, providing sufficient guidelines to aid measures to be taken for prevention, treatment, and control of COVID19 or a similar pandemic to a considerable extent. The central government may in that case notify the disease as a communicable disease or a pandemic citing guidelines from Global institutions like WHO. The Act shall lead to affirmative actions for prevention, treatment, and control of health emergencies greatly improving the response to the management of health emergencies beyond faster, swifter, and better.

**References**

1. John Scott, World Economic Forum, The economic, geopolitical and health impacts of COVID-19 [cited 2020 Oct 25].

Available from: <https://www.weforum.org/agenda/2020/03/the-economic-geopolitical-and-health-consequences-of-covid-19/>

1. Aman Rajpal, Leili Rahimi, Faramarz Ismail‐Beigi, Factors leading to high morbidity and mortality of COVID‐19 in patients with type 2 diabetes, Journal of Diabetes. 2020;1–14. DOI: <https://doi.org/10.1111/1753-0407.13085>
2. Patralekha Chetterje, Gaps in India's preparedness for COVID-19 control, The Lancet Infectious Diseases, April 17, 2020, DOI:https://doi.org/10.1016/S1473-3099(20)30300-5
3. worldometers.info [citied 2020 Oct 23].

Available from https://www.worldometers.info/coronavirus/

1. mohfw.gov.in [citied 2020 Oct 23].

Available from <https://www.mohfw.gov.in/>

1. covid19india.org [cited 2020 Oct 23]

Available from <https://www.covid19india.org/>

1. Laetitia Warjri and Anushka Shah, “India and Africa: Charting a Post-COVID-19 Future,” ORF Special Report No. 111, June 2020, Observer Research Foundation.

Available from: <https://www.orfonline.org/wp-content/uploads/2020/06/ORF_SpecialReport_111_India-Africa-Health.pdf>

1. K. Iyengar et al., Learning opportunities from COVID-19 and future effects on health care system, Diabetes & Metabolic Syndrome: Clinical Research & Reviews, Volume 14, Issue 5, September–October 2020, Pages 943-946, DOI:<https://doi.org/10.1016/j.dsx.2020.06.036>
2. Indian Council of Medical Research [cited 2020 Oct 23].

Available from: <https://www.icmr.gov.in/index.html>

1. Manoj V Murhekar et al, Prevalence of SARS-CoV-2 infection in India: Findings from the national serosurvey, May-June 2020, Indian J Med Res 152, July & August 2020, pp 48-60, DOI: 10.4103/ijmr.IJMR\_3290\_20
2. The Lancet. India under COVID-19 lockdown. Lancet. 2020 Apr 25;395(10233):1315. doi: 10.1016/S0140-6736(20)30938-7. PMID: 32334687; PMCID: PMC7180023.
3. Patients run from one hospital to other, Ahmedabad Mirror, June 8, 2020 [cited 2020 Oct 25].

Available from: <https://www.orfonline.org/wp-content/uploads/2020/06/ORF_SpecialReport_111_India-Africa-Health.pdf>

1. Apurba Sarkar, Pradip Chouhan, COVID-19: District level vulnerability assessment in India, Clinical Epidemiology and Global Health, Available online 3 September 2020, DOI: https://doi.org/10.1016/j.cegh.2020.08.017
2. Golechha M, India should ramp up its emergency medicine and critical care infrastructure to combat COVID-19. Postgraduate Medical Journal Published Online First: 19 June 2020. doi: 10.1136/postgradmedj-2020-138249
3. Manish Tewari, “India’s Fight against Health Emergencies: In Search of a Legal Architecture,” ORF Issue Brief No. 349, March 2020, Observer Research Foundation
4. Bhore Committee (1946), "Report of the Health Survey and Development Committee", Vol. 1: Survey, Vol. II: Recommendations New Delhi: GOI, Manager of Publications.

Available from <http://legislative.gov.in/sites/default/files/A1897-03.pdf>

1. Tiwari, Manish (19 March 2020). ["The legal hole in battling Covid-19"](https://www.hindustantimes.com/analysis/the-legal-hole-in-battling-covid-19/story-s0VFHssIu68N01oHs5LgDI.html). Hindustan Times.

Available from https://www.hindustantimes.com/analysis/the-legal-hole-in-battling-covid-19/story-s0VFHssIu68N01oHs5LgDI.html

1. Rakesh PS. The Epidemic Diseases Act of 1897: public health relevance in the current scenario. Indian J Med Ethics. 2016 Jul-Sep;1(3) NS:156-60.
2. The Epidemic Diseases (Amendment) Bill, 2020

Available from <https://www.prsindia.org/billtrack/epidemic-diseases-amendment-bill-2020>

1. M.P. Ram Mohan, Jacob P. Alex, COVID-19 and the ambit of the Disaster Management Act, the week, [cited 2020 April 26]
2. Draft Model Health Act, 1987, downloaded from Central Bureau of Health Intelligence, [cited 2020 Oct 12]

Available from <https://cbhidghs.gov.in/WriteReadData/l892s/Draft%20Model%20Pubilc%20Health%20Act%20(1).pdf>,

1. Draft National Health Bill. Jan 2009 [cited 2020 Oct 18].

Available from: https://www.prsindia.org/uploads/media/Draft\_National\_Bill.pdf

1. National health mission, manual for district level functionaries 2017, downloaded from department of administrative reforms & public grievances, [cited 2020 Oct 16].

Available from <https://darpg.gov.in/sites/default/files/National%20Health%20Mission.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, GUIDANCE DOCUMENT FOR POEs, STATES AND UTs FOR SURVEILLANCE OF 2019-nCoV, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/Guidance%20document%20-%202019-nCoV.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Guidelines for notifying COVID-19 affected persons by Private Institutions, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/GuidelinesfornotifyingCOVID-19affectedpersonsbyPrivateInstitutions.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, District level Facility based surveillance for COVID-19, [cited 2020 Oct 2020].

Available from: <https://www.mohfw.gov.in/pdf/DistrictlevelFacilitybasedsurveillanceforCOVID19.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Advisory for Hospitals and Medical Education Institutions, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/AdvisoryforHospitalsandMedicalInstitutions.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Norms of assistance from State Disaster Response Fund (SDRF) in wake of COVID-19 outbreak, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/RevisedItem&NormsforutilisationofSDRFdt14032020.pdf>

1. Ministry of health & family welfare, citizens, Guidelines for quarantine facilities COVID-19, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/90542653311584546120quartineguidelines.pdf>

1. Ministry of health & family welfare, citizens, Additional guidelines for quarantine of returnees from abroad /contacts/isolation of suspect or confirmed cases in private facilities, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/Additionalguidelinesforquarantineofreturneesfromabroadcontactsisolationofsuspectorconfirmedcaseinprivatefacilities.pdf>

1. Ministry of health & family welfare, citizens, Guidelines for Gated Residential Complexes Desirous of Setting Up Small Covid Care Facility by Resident Welfare Associations / Residential Societies / Non-Governmental Organizations (NGOs), [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/CovidCareFacilityinGatedcomplexes.pdf>

1. Ministry of health & family welfare, citizens, advisory-mass gathering, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/advisoryformassgathering.pdf>

1. Ministry of health & family welfare, citizens, guidelines for home quarantine, accessed [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/Guidelinesforhomequarantine.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19),[cited 2020 Oct 2020].

Available from: <https://www.mohfw.gov.in/pdf/PreventivemeasuresDOPT.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Instructions to all major and minor ports for dealing with novel coronavirus (COVID-19) pandemic, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/DGSOrder04of2020.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Micro-plan for Containing Local Outbreak of COVID-19, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/ModelMicroplanforcontainmentoflocaltransmissionofCOVID19.pdf>

1. Ministry of health & family welfare, citizens, disinfection of public places including offices, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/Guidelinesondisinfectionofcommonpublicplacesincludingoffices.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Advisory for quarantine of migrant workers, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/Advisoryforquarantineofmigrantworkers.pdf>

1. Ministry of health & family welfare, citizens, Guidelines for waste management, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/63948609501585568987wastesguidelines.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Guidelines issued by ICMR for Rapid antibody test' in Hotspot Area, [cited 2020 Oct 18].

Available from: <https://www.mohfw.gov.in/pdf/ProtocolRapidAntibodytest.pdf>

1. Ministry of health & family welfare, citizens, SOP on preventive measures in Hotels and Other Hospitality Units to contain spread of COVID-19, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/5SoPstobefollowedinHotelsandotherunits.pdf>

1. Ministry of health & family welfare, citizens, SOP on preventive measures in Shopping malls offices to contain spread of COVID-19, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/4SoPstobefollowedinShoppingMalls.pdf>

1. Ministry of health & family welfare, citizens, SOP on preventive measures in Restaurants to contain spread of COVID-19, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/3SoPstobefollowedinRestaurants.pdf>

1. Ministry of health & family welfare, citizens, SOP on preventive measures in places of worship to contain spread of COVID-19, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/2SoPstobefollowedinReligiousPlaces.pdf>

1. Ministry of health & family welfare, citizens, SOP on preventive measures in offices to contain spread of COVID-19, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/1SoPstobefollowedinOffices.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Cluster Containment Plan for COVID-19 [Reissued on 16th May 2020], [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/Containmentplan16052020.pdf>

1. Ministry of health & family welfare, Travel Advisories, [cited 2020 Oct 18].

Available from: <https://www.mohfw.gov.in/>

1. Ministry of health & family welfare, citizens, Revised testing guidelines, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/Revisedtestingguidelines.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Coronavirus Disease 2019 (COVID-19): Standard Operating Procedure (SOP) for transporting a suspect/confirmed case of COVID-19, [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/StandardOperatingProcedureSOPfortransportingasuspectorconfirmedcaseofCOVID19.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Preliminary Stakeholder Engagement Plan (SEP) – India COVID-19 Emergency Response and Health Systems Preparedness Project (P173836), [cited 2020 Oct 17].

Available from: <https://www.mohfw.gov.in/pdf/1PreliminaryStakeholderEngagementPlan.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Guidance document on appropriate management of suspect/confirmed cases of COVID-19, [cited 2020 Oct 18]

Available from: <https://www.mohfw.gov.in/pdf/FinalGuidanceonMangaementofCovidcasesversion2.pdf>

1. Ministry of health & family welfare, States/Departments/ministries, Guidelines to be followed on detection of suspect/confirmed COVID-19 case in a non-COVID Health Facility, [cited 2020 Oct 18]

Available from: <https://www.mohfw.gov.in/pdf/GuidelinestobefollowedondetectionofsuspectorconfirmedCOVID19case.pdf>

1. Ministry of health & family welfare, citizens, Revised guidelines for home isolation, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/RevisedHomeIsolationGuidelines.pdf>

1. Ministry of health & family welfare, citizens, Post COVID management protocol, [cited 2020 Oct 16].

Available from: <https://www.mohfw.gov.in/pdf/PostCOVID13092020.pdf>