



COVID - THE LAWS, THE MEASURES & THE NEEDED AMENDMENT

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Abstract

It is true that pandemics bring forth a lot of problems like anxiety, depression and economic problems. Though the cause of the pandemics vary, these factors are common in all pandemics. Earlier, one more factor, superstition was there in the list and this caused greater havoc than the others combined. But luckily due to literacy, this has reduced. Pandemics has been in the world as long as the world existed, but how the world has reacted to it has changed. And yet the change has not been totally satisfactory. As more and more new diseases come up every day, it becomes imperative to create a system that ensures individual space and social order. The Epidemic Diseases Act, 1897 serves this purpose. But it needs some amendment to keep up with the needs of the present times. It should put in place protection for the victims of the disease, people working in hospitals, health officers and others involved, in case of any harm to them and other required measures so as to curtail the disease. This paper focuses on the existing law and the need for the changes in it. It also stresses on the need to enforce a system which could control the otherwise chaotic nature of the people.

The provisions of Section 2 and 2A of the Epidemic Diseases Act 1897, prescribe that the State Government and Central

Government can take any precautions. These measures entail the screening of passengers commuting by rail or otherwise and the quarantine or isolation in hospital, temporary accommodation of persons accused of being infected with any such disease. Section 3 prescribes penalty for disobeying any law or order issued under the Act, in accordance to Section 188 of the Indian Penal Code. Section 4 clearly states that no complaint or other legal action shall be taken against any person for anything done or supposed to be undertaken in good faith under this Act. But this Act does not clearly define 'epidemic' or 'contagious' disease. This is very much required for the kind of measures need to be taken in case of such occurrences. There is a provision for segregation, but quarantine is not clearly mentioned. The precautions and provisions that need to be taken in places where the disease has spread or where there are chances of spreading is to be made more clear. The first and foremost step that the government has to take is deciphering the route of the infection and the probable survey as to what kind of steps are to be taken in the possible places of spread. This survey would help in analysing the number of patients that could be accommodated in a hospital in that area, the number of doctors or health workers needed for the job and the steps to protect themselves and the victims of the disease.

In a 3 bench Judgment¹ comprising of Justices Ashok Bhushan, S K Kaul and M R Shah, SC directed the Centre to issue directions to states for payment of salaries and providing necessary quarantine facilities to the doctors and healthcare workers engaged in treating COVID-19 patients. Dr. Arushi Jain who had filed the petition,

¹ Dr. Arushi Jain v. Union of India, 2020 SCC OnLine SC 515 (17 June 2020)



stated that doctors and health workers are not receiving their salaries regularly and hence, a direction is necessary to the State Governments, Central Government and all the other concerned authorities to ensure that salaries and emoluments of the doctors and health workers, who are front-line warriors, are timely paid. And with regard to quarantine, there are no details of appropriate accommodations. She also has stated that doctors or health workers, who are directly looking to the patients in COVID ward are not given the facility of quarantine as per guidelines dated 15.05.2020 unless they are covered by high risk exposure. The court observed that it shall not be involved in the non payment of wages and it was rather the government's work. It was also argued by the Petitioner, that they should be provided places to stay near the hospitals, so that their families/friends are not exposed to risk. Without proper PPE kits and protection, they run a high risk.

In another case,² the Government directed the authorities to check the availability of appropriate Personal Protective Equipments, including sterile medical/Nitrile gloves, starch apparels, medical masks, goggles, face shield, respirators (i.e. N-95 Respirator Mask or Triple Layer Medical Mask or equivalent), shoe covers, head covers and coveralls/gowns to all the Health Workers including Doctors, Nurses, Ward Boys, other medical and paramedical professionals actively attending to, and treating patients suffering from COVID-19 in India, in Metro cities, Tier-2 and Tier-3 cities. Further it said that necessary police security is to be extended to doctors and action would be

taken against anyone who obstruct and commit any offence in respect to performance of duties by Doctors, medical staff and 12 other Government Officials deputed to contain COVID-19.

Analysing this beforehand would also help in gathering funds for the required job. After the survey, educating the public about the nature of the disease through media or any other channel is quite important. This would help in curtailing the fear and panic caused by the spread of the disease and also from taking self-medication by the public. As H.P.Lovecraft, an American writer says "*The oldest and strongest emotion of mankind is fear, and the oldest and strongest kind of fear is fear of the unknown*". One such example would be the case of Dr.Simon. In this, the case of the prosecution is that on 20.04.2020 at about 3.15 a.m., the petitioner along with other local residents, protested and refused for the burial of one Dr.Simon Hercules, who died on 19.04.2020, due to the infection of Corona Virus. The petitioner and the other residents also attacked the de-facto complainant and other officials with sticks and by throwing stones and damaged the windshield of the ambulance. Hence, this complaint was filed. The crowd pelted stones, hit people with sticks in fear that the burial will spread the virus. This led the Madras High court to suo moto register a PIL over the issue, asserting that Article 21 of the constitution also entails the right to have a decent burial.³ This is just one of the many examples of how people behave when there is no system in place.

There is no clarity on the "lockdown" procedures needed, in case the disease sets

² Jerryl Banait v, Union of India, 2020 SCC OnLine SC 357 (08 Apr 2020)

³ Suo Motu V. State of Tamil Nadu, W.P.No.7492 of 2020, MHC (20 Apr,2020)



out of hand. This needs to be given attention in the amendment of the Act. The public should be aware as to what rights they have and do not have at such times. Strict penalty and short term imprisonments would only enforce this. Fear and panic is also caused due to the inability to cope up with the sudden changes in the lifestyle due to the diseases. Loss of livelihood for many people living in the poverty line also adds to the chaos. The Covid situation has further worsened the woes of the poor. It has happened so for the millions of informal workers, on their way back home or struggling to meet two ends in their urban and rural homes. Sudden loss over labour, land and housing tenure has uprooted and shaken them multiplying their already entrenched nutrition vulnerability.

Millions of migrant workers have come to starve because of the covid situation. Due to the loss of jobs, these workers heading towards their rural homes, were only informal labourers and farmers. These landless agriculture labourers, tenants and small farmers are the rural food producers, city-makers, urban manufacturers and service providers, who feed the nation, take care of the citizens in their homes and nurture their health and nutrition. Together constituting more than half of India's population, this group, however, remains ultra-vulnerable to hunger, due to their informal and insecure tenure. They are the hardest hit with their women and children during the pandemic.⁴ The Supreme Court had taken suo moto

cognizance of the situation based on the various newspaper and media reports. The Court said that they have been continuously showing the unfortunate and miserable conditions of migrant labourers walking on-foot and cycles from long distances. They have also been complaining of not being provided food and water by the administration at places where they were stranded or in the way i.e. highways from which they proceeded on-foot, cycles or other modes of transport. It stated that although the Government of India and the state governments have taken measures there have been inadequacies and lapses, hence immediate action was required and adequate transport, food and shelter was to be provided.⁵

Many observed that such a situation would not have arisen if there had been a gradual lockdown, instead of a sudden lockdown. But experts were of the opinion that in developing countries such as India, which have limited healthcare capacities, a lockdown should be enforced as early as possible. This would help minimise the loss of lives and not overburden healthcare systems.⁶ Even in case of such an emergency, proper care has to be taken by the Government to its people and it should see that the poorest of the poor do not suffer its consequences the most. The Disaster Management Act proved to be of some help in this case, as funds could be distributed after declaring it as a 'disaster'. But it was not sufficient to cover the vast loss

⁴ Arabinda K. Padhee, Basanta K. Kar and Pranab R. Choudhury, The lockdown revealed the Extent of poverty and Misery faced by Migrant workers, (18 Nov, 3 pm) <https://thewire.in/labour/covid-19-poverty-migrant-workers>

⁵ Re : Problems and Miseries of Migrant Labourers. suo motu writ petition (civil) no(s). 6/2020, SC (26th May 2020)

⁶ Srijan Shukla, why India has opted for a china style lockdown and not like the one in Italy, (19Nov, 7.30 pm), <https://theprint.in/india/why-india-has-opted-for-a-china-style-lockdown-and-not-like-the-one-in-italy/388137/>



of expense due to the loss of livelihood, and the hospital and food expenses of over a million people living under the poverty line. Moreover, it still could not control the disease to a great extent and there were yet a lot of requirements.

The quarantine measures have to be given more attention. It is very much required at this time, even after the total lockdown is lifted and we are left with certain restrictions to take care of ourselves. Government should atleast make available the basic requirements like food and shelter free of cost for people travelling from one place to another and in case they are suspected of being infected, they should be either given proper accommodation, food and medical facilities at the place of stay or should be allowed to quarantine at home at their comforts, if possible. The Government should make a proper list of the people affected in that state and direct a committee in each area of the state to take care of the medical requirements of these people and inform the government of the needs of any ambulances, or doctors or any such necessities. The court should keep an eye on whether the government replenishes their needs in time. Besides this, it should also take care of the people who are not infected, by providing check-up facilities. Medical kits and proper sanitation facilities, any other necessity which would be mandatory in case of a medical emergency, should be maintained in all public places. Civilians should be always kept informed of the importance of these check-ups and how to maintain their general health and overall hygiene at all times. Children from a tender age, in all schools should be taught the importance of taking care of their health.

As half of India's population is in rural areas, it is necessary to give attention to this aspect. Lack of medical requirement has been a problem, in these areas not only in this time of crises, but for a long time. Many doctors and health workers prefer the comfort and luxury of being near their homes and hesitate to take jobs in rural areas. On times of crises, all the doctors should be given the work in rotation and the government can through a G.O, ensure the working of such a system. Proper facilities and set ups should be made in the rural areas too. Even if it is not possible to carry it at such a short notice, atleast first aid kits and ambulance facilities and remote checkup centres should be made available. The government should make it mandatory that the hospitals have either a separate section or a section that could be converted to treat patients during pandemics. This should be insisted and ensured before the hospital is given approval. The Government should also ensure that these hospitals do not charge exorbitantly. A law should be passed to that effect. All these provisions should be brought under legislation to provide help during pandemics.
