

Legislative Framework to Combat Public Health Emergencies in India

In Light of the COVID-19 Pandemic

I. Introduction

The world is facing an unprecedented situation with the outbreak of COVID-19, a novel coronavirus. The virus has spread to 155 countries around the world, and as per data collected and released by the Johns Hopkins University, there are 198,155 confirmed cases of COVID-19 globally¹. India too is faced with the threat of COVID-19. As per the Ministry of Health and Family Welfare, 147 people in India have contracted the virus as of 18 March 2020, and the Government of India has declared the outbreak a national “disaster”. In light of this, the biggest challenge before the Government of India right now is to contain the spread of the disease and ensure the health and well-being of its population. To achieve this objective, the Government will first need to rely on existing legislative provisions and frameworks as a means of legally taking all measures necessary to fight the pandemic. Thus, this article seeks to elaborate on and highlight the various legislative provisions that exist to help the Government of India deal with a public health emergency.

Before getting into this analysis, it is important to note that India has dealt with public health emergencies before. The most recent national health emergency was during the swine flu pandemic that started in 2009. The outbreak of the H1N1 virus originated in the United States of America and Mexico, and soon spread to India. India had restricted the sale of Tamiflu (the only known drug to work against swine flu) in general medical stores out of a fear that the virus would develop a resistance to the drug if it was used excessively. During the peak of the swine flue outbreak, as of 24 March 2010, India had 20,164 confirmed cases of swine flu, and 1,444 deaths.

II. Constitutional Framework

Public health emergencies in India are dealt with jointly by the Central and State governments. The Union List of the Constitution of India (that is, List I of the seventh schedule of the Constitution of India) empowers the Central government (the **Centre**) to make laws on matters dealing with port quarantine, seamen’s and marine hospitals, and interstate migration and quarantine.² The State List of the Constitution of India (that is, List II of the seventh schedule of the Constitution of India) empowers all State governments (the **States**) to make laws relating to public health and sanitation,

¹ See <https://coronavirus.jhu.edu/map.html>. Last visited on 18 March 2020.

² Entries 28 and 81, List I, 7th Schedule, Constitution of India.

hospitals, and dispensaries.³ Additionally, the Concurrent List of the Constitution of India (that is, List III of the seventh schedule of the Constitution of India) allows both the Centre and the States to make laws on the prevention of the transmission from one state to another of infectious or contagious diseases or pests affecting humans, animals, or plants.⁴

III. Epidemic Diseases Act, 1897

The primary central legislation that deals with the control and prevention of the spread of dangerous epidemic diseases in India is the **Epidemic Diseases Act, 1897** (the **EDA**). The EDA empowers both the Centre and the States to take certain measures to deal with dangerous epidemic diseases:

- i. If the Centre is satisfied that India or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease, which the ordinary provisions of the law for the time being in force are insufficient to deal with, it may take measures and prescribe regulations allowing for the inspection of any ship or vessel leaving or arriving at any port and for the detention of such vessel or any person arriving on it;⁵
- ii. If any State is satisfied that the State or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease, which the ordinary provisions of the law for the time being in force are insufficient to deal with, it may take any measures and prescribe temporary regulations to prevent the outbreak of such disease or the spread thereof.⁶ Additionally, States can also make regulation for the inspection of persons travelling by railway or otherwise and the segregation, (in a hospital, temporary accommodation or otherwise) of anyone suspected of being infected with the disease.⁷

As per **Section 3 of the EDA**, any person disobeying any regulation or order made under the EDA will be deemed to have committed an offence punishable under **S.188 of the India Penal Code, 1860** – thus making such person liable, upon conviction, to a sentence of simple imprisonment for one month, a fine, or both. However, suit or legal proceeding lies against any person or authority for anything done, or in good faith intended to be done, under the EDA.⁸

While the EDA is an extremely old act, it has been invoked multiple times in the past by various States to deal with the spread of different dangerous diseases and pandemics. It was used by many States in 2011 to fight the H1N1 (swine flu) pandemic. It was also invoked in Chandigarh in 2015 to fight malaria, and by the Gujarat government in 2018 to tackle the outbreak of cholera in Vadodara. Currently, the

³ Entry 6, List II, 7th Schedule, Constitution of India.

⁴ Entry 29, List III, 7th Schedule, Constitution of India.

⁵ Section 2A, Epidemic Diseases Act, 1897

⁶ Section 2(1), Epidemic Diseases Act, 1897

⁷ Section 2(2), Epidemic Diseases Act, 1897

⁸ Section 4, Epidemic Diseases Act, 1897.

Centre has advised all States to invoke the provisions of the EDA to fight the novel coronavirus pandemic. In response, Goa, West Bengal, Maharashtra, Karnataka, and Uttar Pradesh have invoked the provisions of the Section of the EDA, in order to give public health officials the ability to operate with greater freedom and efficiency in curtailing the effect of the pandemic.

IV. Disaster Management Act, 2005

The **Disaster Management Act, 2005** (the **DMA**) is India's primary legislation that tackles the prevention, mitigation and preparedness of the country to disasters, in an effort to minimize losses to lives, livelihood and property. The DMA defines a disaster as any catastrophe, mishap, calamity or grave occurrence in any area, arising from either natural or man-made 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.⁹

The DMA splits the process of disaster management into 3 tiers – the national, state and district levels. Accordingly, it has set up 3 authorities, the National Disaster Management Authority, State Disaster Management Authority and District Disaster Management Authority. The three authorities are required to work together to lay down, approve the policies, plans and guidelines for disaster management, right down to coordinating and implementing measures for disaster management in the districts.

Amid the coronavirus outbreak, the Centre has declared COVID-19 as a '**notified disaster**'.¹⁰ This move allows the States to spend a larger chunk of funds from the State Disaster Response Fund (SDRF) to fight the pandemic. The additional resources can be used by the States for providing temporary accommodation, food, clothing and medical care for people affected and sheltered in quarantine camps, other than home quarantine, or for cluster containment operations. However, as of now, States are not allowed to spend more than 25 percent of their respective SRDF yearly limits for the purposes of fighting the COVID-19 pandemic.

V. Indian Aircraft (Public Health) Rules, 1954

The **Indian Aircraft (Public Health) Rules, 1954** (the **IAR**) made under the **Indian Aircraft Act, 1934**, provides for the powers and procedures to be followed by health officers appointed by the Centre when an aircraft infected (or suspected to be infected) with a dangerous disease, or which has taken off from an infected area, is arriving at an airport in India. The rules specify certain infectious diseases,

⁹ Section 2, Disaster Management Act, 2005.

¹⁰ <https://economictimes.indiatimes.com/news/politics-and-nation/india-declares-covid-19-a-notified-disaster/articleshow/74631611.cms>, last visited on 18 March 2020.

which also qualify as quarantinable diseases – yellow fever, plague, cholera, small-pox, typhus, and relapsing fever.¹¹ The main provisions of the IAR are as follows:

- i. The health officer posted at the post of entry has the power to inspect the aircraft, its passengers, and its crew, and subject them to medical examinations after their arrival;¹²
- ii. The officer must follow specific precautions with regard to the diseases that require a period of quarantine (as specified above) and other infectious diseases that do not require a period of quarantine;
- iii. Where any person is required under the rules to be disembarked and isolated for any period, the officer may cause him to be removed to a hospital or another approved place and detain him in quarantine;¹³ and
- iv. When it is brought to the attention of the health officer, he may prohibit the embarkation on any aircraft of any person showing symptoms of any quarantinable disease and any person whom the health officer considers likely to transmit infection because of his close contact with a person showing symptoms of a quarantinable disease.¹⁴

It is important to note that the IAR does not cover the novel coronavirus as a 'quarantinable disease'. However, the wide powers given to the Centre and States under the EDA have enabled them to take necessary measures with respect to the inspection and quarantining of relevant passengers entering India by air and by sea. Similar quarantine restrictions are provided under the Indian Port Health Rules 1955, pursuant to the Indian Port Act, for passenger ships, cargo ships, and cruise ships.

VI. Conclusion

It is clear that India's primary legislation for public health emergencies, the EDA, is more than a century old and does not contain detailed provisions on the procedures or steps to be followed by the Centre and/or the States when fighting a disease outbreak. Legislators have tried to introduce a fresh legislation to replace the EDA, with the most recent attempt coming in 2017 when the Public Health (Prevention, Control and Management of Epidemics, Bio-terrorism and Disasters) Bill, 2017 was introduced in Parliament. However, this bill was labelled as unclear and potentially harmful, as it allowed public health officials to use strict measures like quarantining with excessive freedom and without any checks and balances. Thus, this Bill did not pass in Parliament and as of today, the Centre and States still use the vague and open-ended wording of the EDA to implement whatever measures they deem appropriate in times of public health emergencies. As a step forward, it will be prudent for India to come with another public health bill, capturing the various roles and responsibilities of the government departments in detail.

¹¹ Regulation 30, Indian Aircraft (Public Health) Rules, 1954.

¹² Regulation 8(1), Indian Aircraft (Public Health) Rules, 1954.

¹³ Regulation 56, Indian Aircraft (Public Health) Rules, 1954.

¹⁴ Regulation 36(1), Indian Aircraft (Public Health) Rules, 1954.