



Role of Law in the containment of community spread of COVID-19 Pandemic in India

Zakkariya TH

Assistant Professor, School of Law (VITSOL), Vellore Institute of Technology Deemed-to-be University, Chennai, Tamil Nadu, India

Abstract

In the verge of an alarming community spread of COVID-19 all around the globe, this Article is analysing the significant role of law in the prevention of community spread of Pandemic in India. The Article is identifying the necessary measures to be implemented to prevent a community wide spread of pandemic and critically analysing the strength of existing legal frame work for ensuring the effective implementation of these measures in India. This article also suggests the necessary reforms to be implemented to the legal regime to effectively address the issue of community wide spread of Pandemic in India.

Keywords: pandemic, covid-19, law, India

1. Introduction

The World Health Organization (WHO) is considered to be the bulwark of public health around the world. It is a specialized agency of United Nations (UN) concerned with international public health. Recently, the WHO was informed about a series of cases of pneumonia of unknown cause detected in Wuhan City, Hubei Province of China on December, 31, 2019^[1]. The Chinese authorities identified it as Corona virus disease, later officially named as COVID-19 and WHO declared the outbreak of COVID-19 as a Public Health Emergency of International Concern on January 30, 2020. Later, WHO declared COVID-19 as a pandemic on March 11, 2020. As an ill-effect of the globalization, there is a rapid spread and escalation of this disease all over the world. The first case of COVID-19 in India was reported in the state of Kerala on January 30. The state of Kerala was already succeeded in the containment of contagious diseases like *Nipah Virus*, *Zika Virus*, *Avian Influenza*, *H1 N1 flu*, etc. The state was also successful in curbing the early three cases reported in first wave of COVID-19 outbreak. However, there is a more dangerous second wave of COVID-19 outbreak happened in Kerala due to the entry of people from Corona affected foreign countries, without disclosing the same to the state officials despite their constant requests for self-reporting. The same happened in the other states of India also. It augmented the danger of community spread of the disease in India. The government of India directed the closing of educational institutions and requested the public to refrain from any form of public gathering. Many instances show that, the civic sense of the citizens alone will not be sufficient to effectively prevent this pandemic or any other contagious disease from spreading in the community. For example, despite all the directions, guidelines as well as requests of the state officials and social organizations to not to engage any public gathering, there were public gatherings arranged all over India. Similarly, there were instances of irresponsibility from the home quarantined people by going out and mingling with the society. The role of law is very much crucial in limiting the chances of community spread of the pandemic by:

- a. preventing public gatherings;
- b. forcefully arresting and providing medical aid and custody of those who are unwilling to co-operate with the medical service providers;
- c. preventing quarantined people from intermingling with the society;
- d. preventing unwarranted travel and wander of the members of the public;
- e. preventing hoarding and price hike of essential health care products like mask, hand sanitizer, etc.;
- f. preventing affected people from contacting with any person other than medical service providers;
- g. collecting necessary data from other service providers to trace primary and secondary contacts of the infected as well as the suspected;
- h. affixing special marks on the visible part of the body for public identification of the quarantined as well as infected persons;
- i. closing the prison and freeing of the prisoners till the outbreak under control;
- j. imposing of travel ban, cancellation of visa, closure of Airport, Railway station and Sea ports;
- k. Ensuring adequate fund to the state governments as well as the local self-bodies for providing medical care and facilities to the public.
- l. Prohibiting any medical service provider from not extending or showing unwillingness to provide essential medical care to the affected or suspected.
- m. Preventing the spread of rumours, mis-information, mis-guidance and false news through social media, visual media and print media as to the epidemic.
- n. Acquiring forcefully any building to establish temporary isolation wards or hospitals or place of residence for health care service providers.
- o. Locking down of the whole nation or a particular state in the extreme pandemic situation.
- p. Providing necessary social and economic support to the affected as well as to the quarantined.

All the above specified measures required strong legal patronage otherwise many of these measures may turn out to

be illegal or violative of human rights. Presently, the special law which allows to take preventive measures to the diseases from being spread to the community in India is the Epidemic Diseases Act, 1897.

2. The Epidemic Diseases Act, 1897

The statement of objects and reasons of the Act itself specified that the objects of the Act are sufficiently explained by the nomenclature of the Act itself. Section 2 of the Act granted power to state governments to take special measures and prescribe regulations as to dangerous epidemic diseases. Subsection (1) of Section 2 of the Act provides that when at any time the state government is satisfied that the state or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the state government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed. This provision provides a wide discretion to the state government to take any measures without stating a proper rationale. The Act is unguided as to what measures to be taken under what circumstances and the limit of the state governments. The measures taken under this Act are even fall within the exceptions of the fundamental rights. According to Prof. DD Basu, "the exception of public order also includes public safety, and Public safety ordinarily means security of the public or their freedom from danger, external or internal, which would also include the securing of public health, by prevention of epidemics and the like" ^[2]. However, a legislation cannot grant unguided and unfettered discretion to the executive that is a bad delegation in law. This law has to be amended to provide proper standards to the state in formulating the measures and in setting out regulations. The law has to prescribe the leaps and bounds of the power of the state legislature in the light of the more advance powers which can be exercised by the central government as they can take over the power from the state, when the endemic is beyond the control of state governments.

In *Shakuntala P. Devlekar v. Surat Municipal Corporation* ^[3], the Gujarat High Court held that, the actions under the Epidemic Diseases Act, 1897 are urgent in nature to safeguard public health. Hence, it is an exception to the right to fair hearing. In this case, as a response to the outbreak of pneumonic plague in Surat, the Municipal Commissioner, after getting appropriate sanction from the State Government to take special measures, gave a call through public notices to the employees of the Municipal Corporation to report for work in view of the emergency situation created by the dangerous disease with a warning that defaulters will be dismissed. Some employees, who did not turn up was dismissed without a formal hearing but after putting to notice the employees stating that if they did not report to duty, in view of the outbreak of plague they will be dismissed. In the post decisional hearing, the dismissal of the appellants was confirmed by the Standing Committee. The Appeal against the dismissal order was filed before the Gujarat High Court. The High court observed that the

Collector of Surat exercised his powers under the Epidemic Diseases Act, 1897 and declared the entire area of the Surat Municipal Corporation is affected by plague and such a declaration was published in the newspapers under section 2 of the Epidemic Diseases Act, 1897. In pursuance of the public notice, Municipal Commissioner informed the officers/employees of the Municipal Corporation that though holidays, all the offices/departments of the Municipal Corporation would be open in connection with the work relating to the epidemic situation called upon to remain present for duty and were warned that action will be taken against officer/employee who did not report. The High Court held that the action of dismissal is valid and not affected by arbitrariness or unreasonableness. The court also held that the right to a fair hearing may be excluded by the nature of the subject matter itself or by providing a special exception. The right may be excluded by the very nature of the power, such as, when urgent action must be taken to safeguard public health.

Further, Sub-section (2) of Section 2 granted power to the state government to take necessary measures and to prescribe regulations to inspect persons travelling in railway or otherwise, and a segregation in hospital, temporary accommodation or otherwise of persons suspected by the inspecting officer or of being infected with such disease. This provision granted power to the state government to regulate the travel or even imposing travel ban during the crisis time. However, this provision intrude into the powers of the centre, because the centre is having power to control railway and airports in India. It is better to keep this power within the domain of the centre. This provision also granted power to the state to demand acquisition of any building for establishing temporary isolation wards, hospitals or for the residence for the health care providers.

The Act confers very limited powers to the central government. Section 2A of the Act, 1897 provides that when the Central Government is satisfied that India is visited by, or threatened with, an outbreak of any dangerous epidemic disease, then the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in India and for such of any person intending to sail or arriving to India. This power granted is very narrow in nature, whereas it is limited to the sail and inspection of ship or vessel as well as detainment of the passenger or crew of the ship on the behest of the outbreak of epidemic disease. This section has to be amended to provide more powers to enable the central government to fight against the pandemics like COVID-19. Section 3 of the Act, 1897 provides the penal provision, as any person disobeying any regulation or order made under Section 2 or 2A of this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code. Section 4 protects the officers or other persons who acted in good faith under this Act from any suit or other legal proceeding.

3. Other Legal Measures to Combat Against the Epidemic in India

Previously, there was a permanent ordinance on public health called Public Health (Emergency Provisions) Ordinance, 1944 which made special provisions for preventing the spread of human disease, safeguarding the public health and providing and maintaining adequate medical services and other services essential to the health of

the community. The Law Commission in its 249th Report on “Obsolete Laws: Warranting Immediate Repeal” (Second Interim Report) recommended to repeal this Ordinance after due consultation with States, on the reasons of non-usage of this Act, similar concerns are already covered by The Epidemic Diseases Act, 1897, as well as the upon the questions of constitutional validity because the public health and sanitation is a state subject under Entry 6, List II, Seventh Schedule of the Constitution. Based on the recommendations of Law Commission, the Ordinance was repealed by The Repealing and Amending (Second) Act, 2017. Now it is the duty of the state legislatures to fill this gap by enacting laws for safeguarding and strengthening public health in view of the modern day challenges like COVID-19 and other contagious diseases. Still there are other legal provisions spread under different legislations which can be utilized to curtail the spread of contagious diseases in India.

a) Indian Penal Code, 1860

Section 269 of the IPC, 1860 is penalizing the negligent act of a person likely to spread infection of disease dangerous to life. As per this section any person unlawfully or negligently does any act which is likely to spread the infection of any disease dangerous to life shall liable to be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Section 270 penalize same action but done with malignant intention punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Further Section 271 is penalizing the disobedience to the quarantine rule ordered by the government to the vessel for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. This section shall not only be limited to vessels, but shall amended to extend it to an aircraft or even to the individuals who are received quarantine orders from the government of India.

As per section 176 of the IPC, persons who are bound to give information pertaining to their health, travel history, etc. should not refrain from disseminating the relevant information. As per this section, any person being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to furnish the same shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. This section can clearly be applied in case of non-furnishing of necessary information of the health conditions and travel history to the state authorities. On the other hand, Section 177 penalise those persons who were intentionally furnished false information to the authorities with a simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. If any person who are expected to give relevant information relating to their health or travel history, provided a false information, it may lead to catastrophic effect to the community spread of the contagious diseases. Hence, these provisions shall in prior be informed to the persons before seeking the relevant information. These provisions shall be strictly implemented especially in case fear of the community spread of the contagious diseases.

b) Code of Criminal Procedure, 1973

The District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government can reasonably impose the Section 144 proceedings in specified places for immediate preventing of community spread of Pandemic. As per the Section 144, the proceedings can be imposed to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety. This is an effective legal mechanism for the prevention of community spread of epidemic diseases

c) The Emigration Act, 1983

Section 31 of the Act granted the power to the central government to prohibit emigration due to outbreak of epidemics in a country. When the central has reason to believe that intending emigrants if allowed to immigrate to any country would be exposed to serious risk to life on arrival there by reason of outbreak of any disease, it may, by a notification which shall have effect not exceeding six months, prohibit emigration to that country. The Central Government can extend the prohibition of emigration to that country for such further other period, not exceeding six months on each occasion, as may be specified in the notification.

d) Disaster Management Act, 2005

The outbreak of epidemic disease and emergency medical situations are not ordinarily falling under the definition of ‘Disaster’ under the Disaster Management Act, 2005. Still the central government declared COVID-19 as a ‘notified disaster’ to make use of the beneficial provisions under the Act, 2005. Through declaring it as a notified disaster, the state governments can now utilize their State Disaster Response Fund for combating the pandemic in their respective states. The National Disaster Management Authority has already issued guidelines on the Management of Biological Disasters. Further there are provisions under National Disaster Management Plan 2019 to deal with Biological and Public Health Emergencies. In order to provide more clarity, it is essential to include the situation of ‘epidemic and pandemic’ into the definition of ‘disaster’ under Section 2(d) of the Disaster Management Act, 2005.

e) Other State legislative provisions

Section 56 of the Bombay Police Act, 1951 provides for ‘removal of persons about to commit offence.’ Clause (a) of Section 56 grants power to the Commissioner, to restrict the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property. Further Clause (c) of Section 56 stipulates that the outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the Commissioner by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent the outbreak or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto by such route and within such time as the said officer may prescribe and not to enter or return to the said area or the area and such contiguous districts, or part thereof as the case may be from which he was directed to remove himself. From the language of Sec. 56 it would

become very clear that the high ranking police officer is entrusted with the duty to prevent the communal spread of infectious diseases in India. Similarly, Section 118 of the Kerala Police Act, 2011, provides punishment for a person knowingly spreads rumours or gives false alarm to mislead the police, fire brigade or any other essential service, or knowingly does any act which causes danger to public or failure in public safety, shall be punishable with imprisonment for a term which may extend to three years or with fine not exceeding ten thousand rupees or with both. Here, the health care service can be considered as an essential service and knowingly spreading the infectious disease to the members of the public can be considered as an act causes danger to public or failure in public safety.

The Panchayat Raj Act as well as the Municipality Act cast a duty upon the Grama Sabha of the Panchayat or the Committees and Ward Sabha of the Municipality to make arrangements to report immediately the incidence of epidemics^[4]. Similarly the Grama Sabha is under the duty to assist the public health activities especially prevention of diseases within the area of the Grama Sabha^[5]. Further, Section 10 of the Madras Public Health Act, 1939 empowered the state government to appoint temporary Health Officers in the event of the prevalence or threatened outbreak of any infectious disease in any local Area. In such situation the local authority shall provide such additional staff, medicines, appliances, equipment and other things necessary for the treatment of such infectious disease and preventing it from spreading, or for investigating the cause of such mortality, and preventing it^[6]. Section 54 of the Act 1939, authorized the local authority, if so required by the Government shall, to provide or cause to be provided hospitals, wards or other places for the reception and treatment of persons suffering from infectious diseases. As per Section 55 of the Act, 1939, the local authority shall upon the request of the Director of Health Services, provide and maintain suitable conveyances, with sufficient attendants and other requisites for the free carriage of persons suffering from any infectious disease and provide proper places and apparatus and establishment, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection. Further as per Section 58 of the Act, 1939, if it appears to the Health Officer that any person is suffering from an infectious disease, and that such person is without proper lodging or accommodation or with more than one family, or without medical supervision directed to the prevention of the spread of the disease or is in a place where his presence is a danger to the people in the neighbourhood, then the Health Officer may remove such person or cause him to be removed to such hospital or place at which, patients suffering from such disease are received the treatment. Section 59 of the Act, 1939 prohibits a person suffering from an infectious disease to expose others to the risk of infection by his presence in market, school, hotel, etc. Section 60 put a prohibition on the infected person to engage in trade or occupations in which he is likely to spread the infectious disease. Hence, the Madras Public Health Act, 1939 provides for all the necessary measures to be taken by the local bodies to prevent the spread of infectious diseases. Furthermore, Section 81 of the Act, 1939 conferred the rule making power to the state government for the treatment of persons affected with any epidemic, endemic or infectious disease and also for the prevention of the spread of such disease.

4. Introduction of 'Public Health Emergency': A Constitutional Reform

It is an immediate necessity that the central government shall have the power to interfere in case of a wide spread contagious diseases even in a particular state or across the nation. A complete lock down of a state or the nation is impossible to be done on account of a spread of contagious disease from the present constitutional point of view. A national emergency or state emergency cannot be administered on account of pandemic in India. The constitution has to be amended to include a 'public health emergency' similar to the 'financial emergency' with necessary provisions to deal separately with the state or national lockdown in the fear of a wide community spread of a pandemic. A national emergency provided under the Article 352 or state emergency provided under Article 356 are to be treated differently from a 'public health emergency'. Because, there shall not be any mandate to dissolve the state assembly during a public health emergency, where the state assembly as well as the council of ministers of the state shall act purely upon the directions of the central government. The State Assembly must ensure that the directions of the parliament are properly adhered by the state. Both shall act as a unified entity to fight against the disease. The centre shall directly fund and aid the state activities to combat the community spread of the disease to other parts of the country. If a state failed to adhere to the instructions of the central government during the public health emergency, then it shall be made as a valid ground for the declaration of emergency in that state.

5. Conclusion

It is crystal clear that when the strict measures are being taken for the prevention of community spread of pandemic with the mandate of law, it will obviously goes against the liberty of the people. J.S Mill set out the principle that, the only objective in which the interference in the liberty is valid, is for the self-protection^[7]. Hence, this principle justifies and validates all the strict measures and regulations for the prevention of community spread of contagious diseases. The real problem lies in the non-experience of world countries in combating a pandemic, especially by India. The immediate action required from the Indian legislature is to move the entry 'public health and sanitation' from state list to the concurrent list of Schedule VII of the Constitution of India. As stated earlier, the fight against a pandemic will only be successful with the collective efforts of both state as well as central government. The Epidemic Diseases Act, 1897 shall immediately be amended to prescribe more standards to the state in their actions and directions, and also shall give all the residuary powers to the central government. The amended law should also validate all the preventive actions required for the curtailment the community spread of pandemic in India. Introduction of a new constitutional provision for 'public health emergency' is also a mandatory measure to effectuate an immediate reaction of a threat of state-wide or nationwide spread of pandemic in India. The role of law is crucial in the prevention of community spread of Pandemic in India. If the law is in-adequate to cop-up the situation or it is failed in the execution level, will result in catastrophic effects of mass death beyond any reasonable predictions. It is the high time to show the strength and effects of law in the society in order to sustain human race in this earth.

6. References

1. WHO, Coronavirus disease (COVID-2019) R&D Blueprint, Available at <https://www.who.int/blueprint/priority-diseases/key-action/novel-coronavirus/en/> Aailed on 17-03-2020.
2. Basu DD, Justice SS Subramani. DD Basu: Commentary on the Constitution of India - Article 19, 9th ed, Vol 4, LexisNexis India, 2014.
3. 2002(2) GHJ 248; 2004 (2) GCD 1026; (2003) 4 GLR 2922.
4. Section 3B of the Kerala Panchayat Raj Act, 1994; Section 46 of the Kerala Municipality Act, 1994.
5. Section 3A of the Kerala Panchayat Raj Act, 1994.
6. Section 53 of the Madras Public Health Act, 1939.
7. John Stuart Mill, *On Liberty*, Batoche Books, 1859, p13.