



An analysis of the communicable diseases (prevention, control and elimination) act, 2018: Covid-19 perspective in Bangladesh

Amina Yesmin

Department of Law, University of Barishal, Bangladesh

Abstract

As new pathogens emerge and old ones re-emerge due to factors like urbanization, climate change, and increased human-animal contact, recent infectious diseases such as Ebola, Mpox and Corona virus continue to pose global health challenges. Developing Countries like Bangladesh are facing tremendous difficulties and challenges to tackle the one after one outbreak of communicable diseases. In the response of worldwide emergency, Bangladesh enacted the Communicable Diseases (Prevention, Control and Elimination) Act, 2018 during COVID-19 period. It provides comprehensive guidelines for the prevention, control and eradication of communicable diseases in Bangladesh. This study is objected to analysis the core sections of this Act.

During the COVID pandemic, the act became the primary legal tool that empowered the government to take critical activities such as lockdown, quarantines and vaccination programs though there remains several criticisms regarding the actions. The present research is focused to bring out those drawbacks so that Government and policy makers can take appropriate initiatives to mitigate the gaps and limitations of the act.

As Bangladesh continues to face new public health challenges, the act remains a keystone of the country's disease control and prevention efforts. So it is necessary to make this act more strong and effective to prevent upcoming challenges.

Keywords: Communicable, disease, COVID-19, Bangladesh, challenges

Introduction

With the outbreak of novel coronavirus-2 (nCoV-2) declared a pandemic and an international public health emergency by the World Health Organization (WHO), the entire world worked to address it (Saeed Anwar, 2020) [10]. Bangladesh confirmed the first COVID-19 case on 8th March, 2020 [2, 4]. Almost every country adopted aggressive non-therapeutic measures to control the spread of nCoV-2, Bangladesh in Southeastern Asia has followed the same trend. The Government has taken legal steps to tackle coronavirus by applying a law titled as "The Communicable Diseases (Prevention, Control and Elimination) Act, 2018". To follow the instructions of International Health Regulations (2005), Bangladesh created a bill to prevent infectious diseases. On October 25, 2018 the bill of the Communicable Diseases (Prevention, Control and Elimination) Act, 2018 was passed by the parliament. The Act is aimed to raise awareness of, prevent, control, and eradicate infectious or communicable diseases to address public health emergencies and reduce health risks. The Act officially came into force on 14th November, 2018. The Ministry of Health and Family Welfare issued a gazette on 23rd March, listing COVID-19 as a communicable disease and addressing COVID-19 as a public health emergency. It empowered the government to monitor the spread of disease.

Though the country continues to recover from the effects of the pandemic, it is also important to reflect the legal lessons learned and consider reforms to better preparedness for future public health crisis. So this study presents the fundamental provisions of the Act along with its limitations and criticisms observing the COVID-19 scenario in Bangladesh.

Objectives

The study is conducted to evaluate the provisions of The Communicable Diseases (Prevention, Control and Elimination) Act, 2018 on the perspective of COVID-19 crisis. The specific objectives are:

1. To assess the effectiveness of the Communicable Diseases (Prevention, Control and Elimination) Act, 2018 in the period of COVID 19.
2. To evaluate the legal and technical defects of the Act.
3. To find out the criticism regarding the Act during pandemic.
4. To identify the indifference of the government in taking action as per the law.
5. To examine the conflicting provisions of the Act with its own provisions as well as with that of other laws, if any.

Fundamental provisions of The Communicable Diseases (Prevention, Control and Elimination) Act, 2018

The Communicable Diseases (Prevention, Control and Elimination) Act, 2018 aims at increasing awareness as well as prevention, control and elimination of infectious diseases to deal with public health emergencies and reduce health risks.

- a. Definition of communicable disease:** Section 2 (8) of the Act defines the meaning of "Communicable disease". It referred any infectious disease which included in section 4. Section 4 of the Act contains a list of infectious diseases. In sub-section (x) of this section states that the list may include any merging or reemerging diseases declared by the Government, in the official Gazette.
- b. Priority of the act:** Section 3 of the 2018 Act states that, whatever the law may be for the time being in

force, the provisions of this Act shall prevail. It means that all other laws related to it (the Epidemic Disease Act 1897, the Public Health (Emergency Provisions) Ordinance 1944, the Bangladesh Malaria Eradication Board Ordinance, 1977' and the 'Prevention of Malaria Ordinance, 1978), stand to be repealed.

- c. Responsibilities and functions of Department of health:** Section 5 of the Act, confers various duties on Department of Health. The Department has to formulate a strategy for the prevention, control and eradication of infectious diseases and to protect the people from its national and international spread (section 5(a)). For the implementation of the strategies, section 5 (b) included the duties of the Department to receive assistance from public and private as well as domestic and international organizations. Moreover, the Department of Health has empowered to separate the infected from the infection-free area, providing necessary instructions to prevent the spread of the disease to the infected area and to prevent recurrence in the affected area; taking necessary measures to prevent unnecessary use and abuse of antibiotic drugs used in the treatment of infectious diseases. The Directorate of Health is authorized to inspect and take necessary measures with regard to any place, clinic, hospital and diagnostic lab that provides health care for contagious diseases. According to this section, to contain the spread of the disease, the Directorate can impose quarantine or isolation measures on any person suspected to be affected at any hospital, temporary hospital, establishment or their homes. Movements within the country as well as the arrival of flights, sea-vessels, bus, train or other vehicles can also be prohibited under this Act.
- d. Formulation of the Advisory Committee:** According to section 6 of the Act, there shall be an Advisory Committee which shall carry out responsibilities such as providing necessary advice to the Department in formulating strategies for the protection of the people from the national and international spread of communicable diseases (s.6(a)); provide necessary guidance to the Director General in the effective implementation of the law (s.6(d)) etc. (Jony, 2020)^[7]
- e. Follow the instructions of WHO:** Section 9 of the Act makes it compulsory to follow the World Health Organization's (WHO) publications and instructions relating to the infectious disease.
- f. Directions for authorized officials:** In section 10, there is the direction for the doctor, treating any infected patient, to notify the concerned civil surgeon if such patient dies and the existence of the disease becomes an alert in such premises or area. In addition, if a boarding, residential or temporary residence owner or person in charge has reason to believe that a person living in the place has been infected, he shall promptly notify the concerned Civil Surgeon and the Deputy Commissioner.
- g. Powers of authorized officials:** Section 11 empowers the Director General of the Department of Health, by

order of the Government to declare certain areas as infected areas, which includes, any local area or area of Bangladesh which has been infected or infected by an infectious disease, has been reasonably suspected; products, houses, courtyards, dwellings or vehicles used by an infected person to eradicate or limit the spread of infection etc. According to section 11 (2), if there are reasons to believe that the disease may be transmitted from an infected individual, the Director of Health or any empowered official may direct for that person to be isolated or transferred to a different location and restrict, limit or control the access of any other person to come in contact with the infected person or entry to the infected place.

The issues relating to sample collection and examination is regulated by section 12 of the Act. If the empowered employee has reason to believe that a person is infected or infected with an infectious disease in his body, then he may collect the sample from the person and examine it.

Section 13 states that, if an empowered employee has reason to believe that the substance used by a person infected with an infectious disease remains, he may, in the manner prescribed by the rules, purify or destroy such products and under section 18, if it is an infected vehicle then direct the owner for purification in the manner prescribed by rules.

The issue with regard to temporary isolation of a diseased person is dealt by section 14 of the Act. According to this section, the authorized official has the authority to transfer to other place or isolate such infected person temporarily, in the manner prescribed by rules, if he has reason to believe that through the patient others might be affected. Moreover, if the empowered official transfer or isolate the infected person then exactly in which sort of place he would be going to send or whether we have any such kind of place in existence, such contentions are opaque.

According to section 16, the empowered employee has the power to carry out inspection of suspicious sties, establishments or premises and thereby take necessary steps to disinfect those, if the presence of the infectious disease is confirmed. Besides, section 16 (c) empowers them to prohibit or restrict access and use of the public at such place unless the site, establishment or premises are sterilized. In case where disinfection is not possible under section 16, then the empowered employee shall notify the matter to the concerned Civil Surgeon and the Civil Surgeon may instruct to demolish such establishment with notifying the Director General (section 17).

As per Section 20, any individual who has died due to a contagious disease has to be buried or disposed of as per the directions of empowered officials.

- h. Restrictions on imports and exports can be placed under section 22 for the purpose of the Act.**
- i. Crime and punishment:** There are provisions relating to Crimes and its penalties in the Act regarding the spread of infectious disease and concealment of information of infectious disease. Sections 24, 25 and 26 of the Act contain penal provisions. According to section 24, if any person spread or helps spreading the

infectious germs, or in spite of having knowledgeable then he shall be punished with a maximum term of six months imprisonment, or a fine not exceeding one lakh taka, or both (section 24 (2)).

Moreover, according to section 25 (1), it will be an offence, if any person obstructs or hinders the Director General, Civil Surgeon or Empowered Officer from discharging any duty conferred on him, and disobeys to follow the instruction of Director General, Civil Surgeon or Empowered Officer for the prevention, control and eradication of infectious diseases, Any person committing this offence shall be punished with a term of maximum three (three) months, or a fine not exceeding 50 (fifty) thousand taka, or both (section 25 (2)).

Furthermore, Section 26 penalizes the furnishing of false information. Any person who provides false or incorrect information regarding any contagious disease despite possessing the correct information can be sentenced to maximum two months of imprisonment and/or a fine of BDT 25,000.

- j. It is important to mention that, the provisions of the Code of Criminal Procedure shall apply to the filing, investigation, trial and settlement of appeals of any offense committed under section 27 and the offences committed under this Act shall be non-cognizable, bailable and compoundable according to section 28.

Criticisms and Drawbacks of the Act

- The first human cases of COVID-19 were reported in Wuhan City, China, in December 2019. After the first identification, it was spreading rapidly throughout the whole world. India, a neighboring country of Bangladesh, reported its first positive case of the novel coronavirus (nCoV) on 30 January, 2020 [4]. (Perappadan, 2020) [9] Even on 4th March, 2020 the Institute of Epidemiology, Disease Control and Research (IEDCR) warned that Bangladesh is at high risk of getting affected by the novel coronavirus (COVID-19). (Bangladesh at high risk of coronavirus, 2020) [2] Besides, the World Health Organization (WHO) on March 11, 2020, has declared the outbreak as a global pandemic. (Boseley, 2020) [3] But the government enforced the communicable diseases act on 23rd March to deal with the novel coronavirus. (Govt incorporates COVID-19 in Communicable Diseases Act, 2020) [6] After so many warning news, Bangladesh, a densely populated country should be prepared earlier to take legal action for checking the pandemic.
- The High Court Division on March 18, 2020 directed the Government to issue a gazette declaring the novel corona virus as a contagious disease under this Act. (Declare coronavirus a contagious disease: HC to health ministry, 2020) [5] According to the direction, on March 23 the government issued a gazette where it is mentioned that the country confirmed the first COVID-19 case in its territory on March 8, though many experts speculated that nCoV-2 may have entered the country earlier than that but had not been detected due to inadequate monitoring.
- The government included the novel coronavirus as a contagious disease at the end of March although the WHO had declared the Covid-19 pandemic two months

earlier. But section 9 of the Act makes it compulsory to follow the publications and instructions of WHO. Here a clear violation of the Act is noticed.

- In the gazette of 23rd March, 2020 directed that the Communicable disease Act will be deemed to have come into enforce on 8th March, 2020. However Article 35 of the Constitution states that a person can not be convicted under any law which was not enforced at the time of committing crime. Such as a person who do a normal act today but it's not possible for him to know that the same act will turn into a crime in future. As it was not a crime in the committing period, so he should not be punished.
So this issue raises a confliction with our constitution.
- The health directorate has jurisdiction to take a strong decision during an epidemic and has been given a lot of powers to prevent a communicable disease under the communicable diseases act. It can take any legal action by applying those powers. At the same time, section 6 provides for an advisory committee, headed by the Minister of Health or the Minister of State. The Director General of the Department of Health is also on the advisory committee; but his position is at number ten. There remains a big question that "Is the Director General of the Department of Health really capable of taking decisions such as the scale of the epidemic where Additional Secretary, Minister of state are on the head of the Director General?"
- Section 11 of the Act empowers the Director General of the Department of Health, by order of the Government to declare certain areas as infected areas but the authority declared the whole country as 'at risk' instead of 'infected' or 'affected' which is not supported by any provision of the act.
- According to section 12, if the empowered employee has reason to believe that a person is infected with an infectious disease then he may collect the sample from the person and examine it. But there is no provision to ignore the patient. In reality, if there are symptoms of common sneezing and coughing, the hospital authorities refuse to admit the patient. So they have to take treatment by moving from one hospital to another.
- In section 14, the authorized official has the authority to transfer any infected person to other place or isolate temporarily if there is any possibility to spread the disease by that person. But in real, if there is any suspicion of corona then he has no place in the locality or he has been kept in one room.
- As per the law, if anyone catches a contagious disease and hides information on his being infected, there is a provision of punishment but no implementation of it has been seen yet.
- There are no guidelines in this Act such as ban on foreign travel, restrictions on people, ensuring social distance (3 feet), not having more than two people together and what will be the market management at this time.
- Many people do not have any idea about these laws. Besides, the government has no initiative to raise public awareness.

Relevant other laws

The Penal Code, 1860: Chapter XIV of The Penal Code 1860 is about offences affecting the public health, safety,

convenience, decency and morals. It contains provisions on the negligent and malignant spread of infectious diseases and criminalizes disobedience of quarantine rule. Sections 269 and 270 of the Code apply to negligent and malignant conduct respectively.

- According to section 269, if any person unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.
- Section 270 states that if any person malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.
- Arguably, the terms 'likely to spread' and 'has reason to believe' entail a wide scope of application, particularly against the backdrop of growing national and international pleas aimed at confinement of the virus.
- Section 271 of the code imposes punishment for disobeying quarantine rule. It states that if any person knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or 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.

Conclusion

We have the laws in our hand to deal with Coronavirus and other infectious disease in our country. It is vital to implement these laws along with some modifications and to ensure proper enforcement of the same. If we can strictly ensure this, then we can hope for better days to come soon through defeating Coronavirus completely as we still record the number of people affected by COVID 19. Moreover, it will be proved beneficial if other communicable diseases affect the country such as recently WHO declares Mpox outbreak a public health emergency of a international concern. So we need to prepare for facing the upcoming challenges with what we have.

It's true that the government alone can not able to handle the situation; individual efforts from the citizens, direct involvement of the nation's public health experts, religious institutions, and international help are urgently needed.

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