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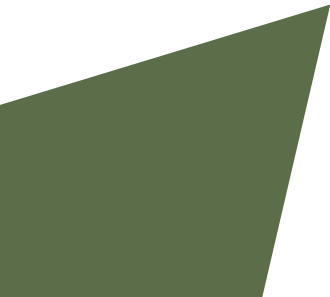
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**Is there a need of Amending the Epidemic Disease Act of 1897**

**Abinash Das**

*“Extraordinary situations warrant extra ordinary remedy”*

## **OVERVIEW OF THE EPIDEMIC DISEASES ACT, 1897: FALLOUT OF EXISTING LAWS**

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The Epidemic Diseases Act, 1897 is one hundred- and twenty-three-years old legislation. It was incorporated by the Britishers to fight the bubonic plague epidemic in 1896 in the Bombay Presidency. This underlines a vital fact which cannot be ignored, i.e. the Act was a mechanism for handling epidemics when the technology was not present, medical advancement had not occurred, and India was not independent. This law was helpful in the aforesaid conditions. This colonial-era law was meant to ‘to provide for the better prevention of the spread of dangerous epidemic diseases. At the outset, this Act<sup>1</sup> merely talks about giving powers to the government when they are ‘satisfied’ that the ordinary laws are insufficient. The Act has a mere four sections which are supposed to help us through large-scale epidemics. Out of those four sections, one is about the title and extent of applicability of this Act.<sup>2</sup> Sections 2 and 2A of the Act empowers the State Government to take temporary measures for preventing a threatening epidemic if the existing laws are insufficient to curtail it.<sup>3</sup> It also has the power to determine the method and manner of covering the expenses undertaken. However, the state government has to inform the people of such measures through public notice. Another section prescribed the penal provisions, which said that any disobedience of the Act would lead to an offence punishable under Section 188 of the Indian Penal Code (IPC).<sup>4</sup> The fourth section deals with legal protection to implementing officers acting under the Act, i.e. it is a defence provision which exempts anyone doing an act in good faith under the Act. This Act places too much emphasis on isolation or quarantine measures, but is silent on the other scientific methods of outbreak prevention and control, such as vaccination, surveillance and organised public health response.<sup>5</sup>

The existing state laws do not have a wide sweep and ambit. They generally do not cover harassment at home and workplace and are focused more on physical violence only. Merely shifting the burden on to the government to take necessary steps or to address quarantine measures is not just the solution. This is a power which will be difficult to challenge because the threshold set is very subjective and vague. Secondly, the Act refers to Section 188 of the IPC for punishment

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<sup>1</sup> The Epidemic Diseases Act, 1897

<sup>2</sup> Section 1, The Epidemic Diseases Act, (1897)

<sup>3</sup> Section 2, The Epidemic Diseases Act, (1897)

<sup>4</sup> Section 3 prescribes the penalty for disobeying any regulation or order made under the Act in accordance with Section 188 of the Indian Penal Code, which is an offence of disobeying directions of a public servant.

<sup>5</sup> Owing to the current health needs of the nation, the first and the basic flaw that can be seen in the Epidemic Act 1897 is that it is silent on the definition of “dangerous epidemic disease”.

which can give a maximum punishment of six months imprisonment or a thousand rupees.<sup>6</sup> Breaking of such laws can be fatal and might increase the spreading of the diseases as we have seen in the COVID-19 case. *Henceforth, in such demanding circumstances, the maximum punishment is at such a low standard that it might not act as a deterrent.* Additionally, the need for amendment of the Act is there despite the existence of other provisions like Section 269 and 270 of the Indian Penal Code, 1860. Primarily, these provisions which talk about spreading fatal diseases have a maximum punishment of six months and two years respectively. Moreover, both of these offences are bailable. This shows the level of stringency of these provisions, which should be more, considering the situation during the COVID-19 outbreak. Section 269 of the Indian Penal Code covers any unlawful and negligent act and Section 270 covers a malignant act. These provisions do not cover an act that was done legally, carefully and was a harmless or non-malignant act. During the COVID-19 outbreak, there were instances all over the world where the virus was transferred by doing legal and careful actions that were harmless, like handshaking, touching a common surface, etc. The Act works hand-in-hand with the IPC, but in case of a conflict between the both, the Act will override IPC since a special law overrides a general law. So, the Act needs to cover various aspects that are not covered in the general laws.

## **OVERVIEW OF THE ORDINANCE TO AMEND THE EPIDEMIC DISEASES ACT, 1897**

The recent ordinance to amend the 'Epidemic Disease Act, 1897' traces its origin from the directions issued by the Supreme Court in the case of '*Dr. Jerryl Banait vs. Union of India*'.<sup>7</sup> The Union Cabinet has approved promulgation of an Ordinance to amend the Epidemic Diseases Act, 1897 to protect healthcare service personnel and property including their living or working premises against violence during epidemics.<sup>8</sup> The ordinance is intended to ensure that during any situation akin to the current pandemic, there is zero tolerance to any form of violence against healthcare service personnel and damage to property. The intention of developing a law like this is to help people and maintain peace and health. If the law is not able to achieve it efficiently, then there

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<sup>6</sup> Section 188 of Indian Penal Code: Disobedience to order duly promulgated by public servant will warrant simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or both.

<sup>7</sup> **Writ Petition (C) Diary No. 10795 of 2020.** The PIL originally sought availability of Personal Protection Equipments (PPEs) for medical professionals and highlighted the plight of doctors and nurses due to incidents of violence.

<sup>8</sup> Prior to the issuance of the 2020 ordinance, the prevention of violence against Doctors, Medical professional and Medical Institutions Bill, 2018 was introduced on 28<sup>th</sup> December 2018 and was pending consideration.



might be a need to amend it. Therefore, the need to amend the Act is present even when provisions from a general law exist.

Thus the government had to find that flicker of light by passing the ordinance in order to extend protection to the health care workers against the acts of violence. The Supreme Court also issued directions in a Public Interest Litigation<sup>9</sup> directing the Union and the States to provide Police security to medical professionals working in hospitals, where patients diagnosed or suspected of COVID-19 are housed. The apex Court also further directed the State to take necessary action against those people who obstruct medical professionals in the discharge of their duties. Thus, the amendment to Epidemic Diseases Act, 1897 was necessitated in order to include stringent penal provisions for persons who attack and harass doctors, nurses, pre-medics and Asha workers, and also against persons who prevent the decent burial of victims of epidemic disease.<sup>10</sup> The ordinance proposes that the police investigation of crimes against medical workers should be completed within 30 days, and that the trial should be completed within one year. The punishment ranges from 3 months to 5 years of imprisonment, and fine amount of rupees fifty thousand to two lakhs. Commission or abetment of such acts of violence shall be punished with imprisonment for a term of three months to five years, and with fine which may range upto two lakhs. In case of causing grievous hurt, imprisonment shall be for a term six months to seven years and with fine amount of rupees one lakh to five lakh. Where the violence is of the level of causing “grievous hurt” as defined under Section 320 of the Indian Penal Code, Section 3(3) prescribes a harsher punishment. Furthermore, if the injuries are more serious in nature, the punishment will extend upto seven years of imprisonment.

The new Ordinance with its harsh punishments for violence against healthcare service professionals is a great solution for governments which remain non-committal to heavy spending on social justice issues and remain antithetical to values such as transparency in governance through a crisis which has upended the lives of crores of citizens. *The amendment makes acts of violence cognizable and non-bailable offences, i.e. the offence committed under this Act will be Cognizable as per Section 2(C) of the Code of Criminal Procedure, 1973 and also non-bailable. In such cases, the police can arrest persons without a warrant, and bail is not a matter of right for them.*<sup>11</sup> The penal provisions can be invoked in instances of damage to property including a clinical establishment, any facility identified for quarantine and isolation of patients, mobile medical units and any other property in which the

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<sup>9</sup> *Dr. Jeryl Banait vs. Union of India, Writ Petition No. 10795 of 2020.*

<sup>10</sup> The right to a decent burial has been judicially recognised as a fundamental right in the case of “**Parmanand Katara vs. Union of India**” and “**DMK vs. State of Tamil Nadu**”.

<sup>11</sup> In Cognizable cases, the police can arrest without warrant, i.e. without the order of the magistrate.

healthcare service personnel have direct interest in relation to the epidemic. In addition, the offender shall also be liable to pay compensation to the victim and twice the fair market value for damage of property.

## **NEED FOR A NATIONAL LEVEL LEGISLATION TO PROTECT THE CRITICAL SERVICE PROVIDERS**

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India, for all its glaring inefficiencies has done remarkably well so far. Credit is due for all the health workers and the frontline staff for averting the crisis. Now the State under the doctrine of '*parens patriae*' is under a Constitutional obligation to protect the rights and liberties of the health workers as envisaged under the Constitution of India.<sup>12</sup> A life-threatening epidemic like COVID-19 is an eye-opener for us. It tells us that in tough situations, time-worn laws cannot help us. Instances of violence against the health care professionals acted as an impediment to the smooth functioning of medical facilities. Members of healthcare services are targeted and attacked by miscreants, thereby obstructing them from doing their duties. They have become the most vulnerable victims as they have been perceived by some as carriers of the virus. Such a situation tends to hamper the medical community from performing their duties to their optimum best and maintaining their morale, which is a critical need in this hour of national health crisis. This has led to cases of their stigmatization and ostracization and sometimes worse, acts of unwarranted violence and harassment.<sup>13</sup> Currently, doctors are the ones who are most prone to viral infection. They are being spat at and assaulted for entering their own homes because of their exposure to the virus. Landlords are evicting them from their rented premises due to the risk of infection, police officers are assaulting the female doctors and the relatives of the deceased are attacking the doctors for negligence. All these instances demand protection for healthcare workers.

There should be incorporation of stringent laws which deter the mischief mongering, like implementation of Section 353 of Indian Penal Code 1860.<sup>14</sup> It provides that "*whoever assaults or uses criminal force to any person being a public servant in the execution of his duty with the intention to prevent or deter that person from discharging his duty*" will be punished with imprisonment of either description for a term which may extend to five years or fine. With the increasing amount of pressure on health

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<sup>12</sup> Article 21 of the Constitution of India, 1950.

<sup>13</sup> Promulgation of an Ordinance to amend the Epidemic Diseases Act, 1897 in the light of the pandemic situation of COVID-19; Press Information Bureau.

<sup>14</sup> It should not be a mere dead letter and can act as a stonewall for the protection of health workers who are dispensing public duty.

care personnel, their protection takes precedence over other issues. The 2020 ordinance brings a sigh of relief to such professionals but the true test of legislation lies in its effective implementation.

It is often said that the government machinery is slow, inept and ponderous. But having a billion-plus people confined to homes for well over a month is no mean task. The ulterior object of the government passing this ordinance is that the number of people getting cured is increasing day by day. So the protection of health workers in averting this crisis is quintessential. This can be done in following two-fold measures:

1. If the Central government is of the view that it is not feasible to enact special legislation for the protection of doctors, relevant amendments can be made to the Indian Penal Code to include a specific provision stating violence against them as an offence.
2. Article 249 of the Indian Constitution gives power to the Parliament to make laws on any subject matter enumerated in the state list in the national interest. Considering the present scenario of COVID-19 and increasing violence against the doctors and other medical staff, there is a dire need for a central law ensuring protection to be enacted in the national interest. The Indian Judiciary should play a more active role in taking up cases of violence against the healthcare professionals and assuring justice to them.<sup>15</sup>

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<sup>15</sup> The right to health has been recognized by the Hon'ble Supreme Court time and again as an integral part of the right to life and personal liberty. Article 21 of the Constitution of India, 1950.