

COVID 19 PANDEMIC AND THE CONSEQUENTIAL REGULATORY FRAMEWORK IN INDIA

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ABSTRACT

With the emergence of the Corona Virus Disease 2019, there has been a massive revelation of how humans react to a global crisis. The need for modification of law in every aspect has been prevalent all these years. During the pandemic, there is a higher degree of requirement for appropriate legislation to regulate and control the continuously deteriorating situation with the rise in cases of patients affected by the virus due to lack of healthcare facilities, hygiene, and, most importantly, public control. The researchers have examined the legal challenges that obstruct combating the Corona Virus Disease 2019. The paper identifies the implications of vulnerabilities of a large population caused by the disease and the challenges it posed to the regulators, including the judiciary. Therefore, a need arises for reform in the existing legislative framework in India.

Keywords : *Corona Virus Disease, Epidemic Management, Disaster Management, Law Enforcement, Pandemic, Legislation*

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I. Introduction

IN INDIA, the Epidemic Disease Act (hereinafter referred to as EDA), 1897¹ is the legislation that calls for the prevention of the spread of diseases.² Amidst this health crisis, the need for a legal apparatus to combat the pandemic became essential. Due to its inherent adequacy to deal with the widespread epidemic in the present scenario, the need arises for the utilization of the

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¹ The Epidemic Diseases Act 1897, Preamble.

² *Ibid.*

Disaster Management Act of 2005 (DMA). However, it was not an act enacted in the time of a health crisis. As the name suggests, the DMA is not a legal apparatus that is to be used during a health crisis. Still, it provided for rules and regulations that restricted public movement³ and helped maintain the concept of social distancing. In the DMA, the main element of function is 'risk', which needs a response from the state in a targeted manner to reach the most vulnerable to such disaster. The majority of the cases in India⁴, being asymptomatic adds on the exposure and in turn risk, which justifies the invoking of this Act during the pandemic. Another issue that increases the vulnerability is the surge in domestic violence and sexual abuse cases, which needs urgent action. The EDA, 1897, includes provisions and regulations for testing, isolation, the seclusion of people, and the closing of borders.⁵ The COVID-19 legislative provisions under the 1897 Act even conferred ultimate power to the government, such as the direction that no information concerning the management of the pandemic will be released without the government's prior consent.⁶

To manage such a crisis, it is essential to uphold the spirit of the nation and work in unity. It also involves supporting the less fortunate and most affected in these difficult times. Along with enacting a useful legal apparatus, we must instigate a sense of moral obligation and responsibility in each individual. The present research work looks into the application and feasibility of enacted legislation like the EDA, 1897 and the DMA of 2005 in the current scenario. The researchers plan to elaborate on the history, significance, consequence, and importance of the acts mentioned above and contrast the present needs and earlier requirements when the Act was first invoked. In the first part, the researchers discuss the history, amendments, and current implications of the EDA, 1897. The second part will discuss about the DMA, 2005, and its enforcement during the present scenario. The third part is a critical analysis of the existing legislation. The fourth part puts forward recommendations and discusses better methods India can adopt, taking a clue from best practices from other countries to battle the pandemic. In the last part, an argument has been made for reform.

³ Ambar Kumar Ghosh, "India: Governmental Accountability during the Pandemic", *ORF*, available at: <https://www.orfonline.org/research/india-governmental-accountability-during-the-pandemic/> (last visited on July 27, 2022).

⁴ Reddy KS, "India's high number of asymptomatic cases worrying, and herd immunity is far off", *The Print*. April 24, 2020, available at: <https://theprint.in/opinion/indias-high-number-of-asymptomaticcases-worrying-and-herd-immunity-is-far-off/407931/> (last visited on September 4, 2020).

⁵ *Supra* note 1, s.2, s.3, s. 4 g.

⁶ *Supra* note 1.

II. The Epidemic Diseases Act 1869: History, Amendments and Implications in the Present Scenario

The EDA was enacted during the pre-independence period keeping in mind the prevailing situation in the society at that point in time. There are significant changes taken place, and accordingly, legal reforms were brought either in the form of amendments in EDA or other legislation to deal with the situations. To understand the entire historical development, the present part will discuss history and evolution in the beginning, followed by the scope and state amendment as well as the need for reform.

2.1 History of the Epidemic Diseases Act, 1897

In the year 1896, in September, a case of the bubonic plague was first identified in a locality that was initially in the Bombay Presidency called Mandvi.⁷ When the number of deaths went up to 1900, the EDA, 1897, was enacted by the Imperial Legislative Council, the then-existing legislative organ of British India, the British Parliament.⁸ When John Woodburn laid down the bill in the Parliament in Calcutta, he stated that the powers conferred to the government through this bill are extraordinary but necessary for controlling the spread of the disease. He believed that it is essential for the citizens to place their trust in the executive and that the executive has to take the responsibility of controlling and preventing damage during a crisis for the citizens.⁹ This Act initially conferred power upon the colonial authorities to be able to "detain the plague suspects, destroy or demolish infected property and dwellings, prohibit fairs and pilgrimages and examine the passengers at will."¹⁰ Concerning the same, the issue that arose among women was regarding their 'check-up' at public places; they felt violated.¹¹

Rifts emerged between the Hindu and Muslim communities and the colonial authorities because of what they concluded from these acts. Their conclusion was that the authorities were trying to

⁷ Pushkraj Deshpande, "The Epidemic Act of India 1897: An Analysis Vis-À-Vis The Covid-19 Pandemic - Coronavirus (COVID-19) - India", *Mondaq*, available at: <https://www.mondaq.com/india/government-measures/928706/the-epidemic-act-of-india-1897-an-analysis-vis-vis-the-covid-19-pandemic> (last visited on September 4, 2020).

⁸ *Ibid.*

⁹ Saurav Kumar Rai, "How the Epidemic Diseases Act of 1897 Came to Be" *The Wire*, available at: <https://thewire.in/history/colonialism-epidemic-diseases-act> (last visited on September 4, 2020).

¹⁰ *Ibid.*

¹¹ *Id.* at 9.

dishonour and disrespect the women of India.¹² To back this argument, we have the instance of the famous riot in the city of Kanpur, termed as the Plague riot, which had been instigated due to the issue of the respect and integrity of women.¹³ In the country of India, during the bubonic period, the power conferred by the EDA, 1896 upon the colonial authorities was arbitrary.¹⁴ The authority granted to them seemed arbitrary because no inbuilt accountability mechanism was prescribed in the Act to check its misuse.¹⁵ Since they had the power to detain citizens in railway stations for more than 48 hours, segregate citizens and further isolate them, it caused civil unrest among the citizens. It also led to riots based on the grounds of segregation.¹⁶

The law is enacted in the light of regulating a period of an epidemic with the hope to control and curb it by conferring special powers to the government and creating new authoritative roles that are essential for the implementation of containment measures to keep in check and eventually impede the spread of the epidemic. However, as it is, in fact, colonial-era legislation, it did carry with it certain atrocities towards Indians in the due context of extraordinary power that the executive held. Many riots and conflicts arose in the name of caste, class and creed where during quarantine, the upper caste individuals would refuse to be quarantined with the lower caste groups. It led to massive protests, manipulation of the citizens by bringing in divisions and prejudices that some had to face in Bombay.¹⁷ Thus the use of excessive force by the authorities is not new. Ample evidence is present of such misuse of power by law enforcement agencies during the British Raj.

2.2 The Scope, Extent and Amendments Made by the Different States in the Act

This very Act has four sections and has been amended concerning unique scenarios. The first section enumerates the title, scope and extent of the Act. Section 2 of the Act confers power on the state government to make and execute special procedures and regulations to help the motive

¹² *Id.* at 9.

¹³ *Id.* at 9.

¹⁴ WD Betenson, "The Epidemic of Plague In India" 165 *The Lancet* 1031 (1905).

¹⁵ *Ibid.*

¹⁶ Anita Prakash, "Plague Riot In Kanpur - Perspectives On Colonial Public Health Policy" 69 *Indian History Congress* 839 (2008), available at: <https://www.jstor.org/stable/44147246> (last visited on February 24, 2022).

¹⁷ "The Plague in Bombay: Riots and Blackmail.—Recent Returns" 2 *Br Med J* 1606 (1896), available at: <https://www.bmj.com/content/2/1874/1606.2> (last visited on September 17, 2020).

of the Act, which is to prevent the spread of the diseases and thereby end it.¹⁸ State amendments by Haryana and Punjab were brought about to the section above that interpreted the meaning of the word 'inspection' and added subsections (3) and (4) to the section that provided for the state government to confer powers of public control under reasonable restrictions.¹⁹ Section 2A confers regulation power to the central government.

The state of Bihar made the amendment, which empowers the government to requisition vehicles, consequently adding section 2B.²⁰ The terms vehicle and owner are also given sharp definitions under this section.²¹ The state also brought changes in section 2C, which talks about the principles and method of determining compensation.²² Section 2D of the Act provides for the release from requisition.²³ Section 2 E brought in by the State of Bihar is regarding the payment of the balance, and the last section 2F is all about distributing the law-making power during such scenarios to the government.²⁴

The State of Bihar amended the same in 1960.²⁵ Section 3 of the Act deals with the penalty to be imposed on those who breach and disobey the law prescribed under EDAA.²⁶ The liability to be

¹⁸ *Supra* note 1; s. 2: “Power to take special measures and prescribe regulations as to dangerous epidemic disease.— (1) When at any time the 7 [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”.

¹⁹ Inserted by Epidemic Diseases (East Punjab Amendment) Act, 1947 (Haryana).

²⁰ Inserted by Court Fees (Bihar Amendment) Act, 2010, s. 2B, clause (3) provides as follows: “Whenever any vehicle is requisitioned under sub-section (1) the period of such requisition shall not ordinarily extend beyond the period for which such vehicle is required for the purpose mentioned in the said sub-section”.

²¹ *Ibid.*

²² *Id.*, s. 2C provides for principles and method of determining compensation in the following words; “(1) Where any vehicle is requisitioned under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles” laid down in the act.

²³ *Id.*, s. 2D provides as follows: “Release from requisition.- (1) The State Government or the requisitioning authority may, at any time, release any vehicle requisitioned under this Act and shall, as far as possible, restore the vehicle after proper disinfection, if necessary, in as good a condition as it was when possession thereof was taken, subject only to the changes caused by normal wear and tear and irresistible force: Provided that where the purpose for which any requisitioned vehicle was being used ceases to exist, the State Government or the requisitioning authority shall release the vehicle, as soon as may be, from requisition”.

²⁴ *Id.*, s. 2E, 2F. 2E. Payment of compensation. - The amount of compensation payable under an award made under s. 2C shall, subject to any rules made under this Act, be paid to persons entitled thereto in such manner and within such time as may be specified in the award.

²⁵ Inserted by Epidemic Diseases (Bihar Amendment) Act, 1960, (Jharkhand).

²⁶ *Supra* note 1; s. 3, Penalty.—Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under s. 188 of the Indian Penal Code (45 of 1860).

charged is as present under section 118 of the Indian Penal Code, 1860 (hereinafter referred to as IPC).²⁷ Subsection (2) was inserted into this section by a state amendment by the state of Haryana regarding the jurisdiction of courts to try these cases.²⁸ Section 4 of the Act grants protection to citizens within the scope of EDAA.²⁹ Thus, the concerned state government further strengthens the legislation depending on the need prevalent in the respective state to deal with a pandemic.

Another legislation applied by the Indian government to curb the spread of this disease is IPC. As discussed above the epidemic act refers to section 188³⁰ of the IPC intending to prescribe punishment for disobeying the orders and rules that a public servant promulgates. Section 21 of the IPC defines the term 'public servant' as someone who is an officer of the government with the duty to prevent the commission of an offence and ensure the protection of public health or convenience. In Maharashtra, 60,005 cases have been registered for the commission of this offense from March 22 to April 21, 2020.³¹ This shows how incorporative people are with the government, mainly due to lack of communication with the government and access to resources. This is also due to the lack of education and awareness among the people. Section 269 of the code punishes an individual who tries to spread the infection of any disease that is dangerous.³² Section 270 of the Act provides for the punishment of those who malignantly commit such acts to spread any illness or infection with a term of imprisonment for up to two years or fine or both.³³ Section 271 of the IPC prescribes a term of imprisonment for up to six years in case of violation of their quarantine.³⁴

²⁷ Indian Penal Code, 1860; s. 118 provides as follows; “Concealing design to commit offence punishable with death or imprisonment for life. —Whoever intending to facilitate or know-ing it to be likely that he will thereby facilitate the commis-sion of an offence punishable with death or imprisonment for life”.

²⁸ *Supra* note 20. In s. 2 After the word "inspection" in clause (b) of sub-section (2) of s. 2 of Epidemic Diseases Act, 1897 the words "vaccination and inoculation" shall be inserted.

²⁹ *Supra* note 1, s. 4 provides as follows; “Protection to persons acting under Act.—No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act”.

³⁰ *Supra* note 27.

³¹ “COVID-19 Cases in India 18,985; Death Toll Crosses 600” *DNA India*, April 21, 2020, *available at*: <https://www.dnaindia.com/india/report-covid-19-cases-in-india-18985-death-toll-crosses-600-2821873> (last visited on October 11, 2020).

³² *Supra* note 27; s. 269 Negligent act likely to spread infection of disease dangerous to life.—Whoever 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 of either description for a term which may extend to six months, or with fine, or with both.

³³ *Supra* note 27, s. 270.

³⁴ *Supra* note 27, s. 271.

2.3 Recent Invocation and Legal Reforms

This legislation that was formed more than a century ago invoked now, has a history too. It helped us tackle the bubonic plague in Bombay during the early British rule under the Parliament of the queen. It was now invoked by the union government mandating all states and Union territories to follow. Some of the current uses of the Act in the present century had been in 2015 in the state of Madhya Pradesh to tackle the disease of Malaria. In 2018, the Act was invoked in Vadodara, Gujarat, to fight the disease of cholera. In 2009, it was invoked in Pune to prevent the spread of the disease swine flu.³⁵

The above deliberations make it amply clear that the legislation in its present form is inadequate to tackle the pandemic, which led to many state amendments. Therefore many modifications to the Act were needed to curb the spread of the deadly coronavirus. In this background, considering the vulnerability of the population due to the vicious cycle of the spread of the disease, the government brought in an amendment in the exercise of the law-making power of the executive through an Ordinance.³⁶

The Ministry of Health and Family Welfare,³⁷ in its press release dated April 22, 2020, said that "perceived as carriers of the diseases, there has been stigmatization and ostracization and sometimes worse, acts of unwarranted violence and harassment against our medical professionals. 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 a national health crisis."³⁸ The amendments brought by the ordinance include: deciding upon the cognizance of the offence of any form of attack on the healthcare personnel;³⁹ defining the meaning scope and ambit of 'healthcare personnel';⁴⁰ defining the term 'violence';⁴¹ specific fines and punishment such as imprisonment for different kinds of nuisance and harm caused to health

³⁵ "A 123-yr-old Act to combat coronavirus in India; experts say nothing wrong", *Livemint*, March 14, 2020, available at: <https://www.livemint.com/news/india/a-123-yr-old-act-to-combat-coronavirus-in-india-experts-say-nothing-wrong-11584182501707.html> (last visited on October 28, 2020).

³⁶ Epidemic Diseases (Amendment) Ordinance, 2020 (hereinafter referred as EDAO).

³⁷ More information can be found at, Ministry of Health and Family Welfare, Government of India, available at: <https://www.mohfw.gov.in/> (last visited on September 9, 2020).

³⁸ ISAA, "Corona Prevention Monitor | International Social Security Association (ISSA)" available at: <https://www1.issa.int/coronavirus/prevention-responses> (last visited on September 9, 2020).

³⁹ *Supra* note 36.

⁴⁰ *Supra* note 36.

⁴¹ *Supra* note 36.

personnel, doubled compensation for damage of property and so on.⁴² During a press release, the ministry also stated that the commission or abetment of acts that may cause any harm to the health care workers and those protected under this Act would be fined with a sum of Rs. 50,000 to Rs. 2, 00,000.⁴³ It is also stated that in case of any individual trying to cause grievous hurt to healthcare workers and other protected personnel, the imprisonment for those individuals shall be for a term of 6 months to 7 years along with fine upto 5 lakhs of rupees. It also prescribed for the damage to the extent of double the property's market value as compensation.⁴⁴

The ordinance brings section 1A of the EDA, which addresses the definitions of 'act of violence', 'healthcare service personnel', 'property'.⁴⁵ Section 2A of the Act is amended in such a way that the central government has the power to inspect any vehicle and thereby detain any person on contravention.⁴⁶ Section 2B codifies and specially prohibits violence against healthcare workers.⁴⁷ Five new sections have also been added under section 3 of the EDA.⁴⁸ These sections make the offences under section 3 cognizable and non-bailable.⁴⁹ It specifies the position and authority to investigate and inspect individuals.⁵⁰ It allows a case of violence against property

⁴² *Supra* note 36.

⁴³ "President Gives Assent to Promulgation of Ordinance to Amend the Epidemic Diseases Act" *ANI News*, available at: <https://www.aninews.in/news/national/politics/president-gives-assent-to-promulgation-of-ordinance-to-amend-the-epidemic-diseases-act20200423092913/> (last visited on October 10, 2020).

⁴⁴ *Supra* note 36; s. 3 has been amended to penalize acts of violence against healthcare personnel and damaging property. As per s. 3(2) of the Ordinance committing or abetting acts of violence against personnel, damage or loss to any property will attract fine within Rs 50,000-2, 00,000 and imprisonment not less than three months but which may extend to five years. And as per s. 3(3) of the Ordinance any act of violence which causes grievous hurt (as per s. 320 IPC) shall be punishable with imprisonment of not less than six months but which may extend to seven years and fine within Rs 1,00,000-5,00,000.

⁴⁵ *Supra* note 36; According to s. 1A 'Act of violence' is acts done by any person against a 'healthcare service personnel' during an epidemic. These acts may be in the form of harassment, harm, injury, hurt, intimidation, and obstruction in discharge of duties or loss/damage to any documents/property in their custody. Healthcare service personnel is a person who while carrying out his duties in relation to epidemic related responsibilities may come in contact with affected patients and is at risk of being infected and also includes any public and clinical healthcare provider such as doctor, nurse, paramedical worker and community health worker; any other person empowered under the Act to take measures to prevent the outbreak and any person declared as such by the State Government. Property includes a clinical establishment as defined in the Clinical Establishments (Registration and Regulation) Act, 2010; any facility identified for quarantine and isolation of patients during an epidemic; a mobile medical unit; and any property in which personnel has direct interest in relation to epidemic.

⁴⁶ *Supra* note 36; s. 2A of the Act has been amended to give the Central government the power to additionally inspect any bus or train or goods vehicle or vessel or aircraft leaving (before just ships) and detain any person related to them.

⁴⁷ *Supra* note 36, s. 2B provides for "prohibition of violence against health-care service personnel and damage to property" and laid down that "no person shall indulge in any act of violence against a healthcare service personnel or cause any damage or loss to any property during an epidemic".

⁴⁸ *Supra* note 36, s.3.

⁴⁹ *Supra* note 36.

⁵⁰ *Supra* note 36.

and health care personnel to be compounded with prior permission from the court.⁵¹ It provides for the presumption in case of grievous hurt towards Healthcare personals which will *inter alia*, helps in securing the conviction of perpetrators.⁵² Most significantly, it further addresses the issue of compensation that shall be payable in case of property damage.⁵³

As we see from the above additions in the legislation, we notice that the ordinance is mainly aimed at granting protection to healthcare personnel because of how extraordinary their work and importance are during this pandemic period. The Epidemic Diseases (Amendment) Ordinance, 2020 is sought to cover some existing gaps by tackling the issue of health care workers' protection.⁵⁴

The COVID-19 pandemic is a huge issue that we need to work on and battle efficiently. Other countries have similarly launched legislations that help combat the epidemic, just like the Ordinance 2020 passed in India to protect medical care professionals, reward them, and bring about public control required during this period. Countries like China and Italy were among the first countries to have been affected severely, and they had imposed stringent regulations on the control of movement for their population. Italy is the country that had the most number of fatalities due to the virus after China controlled the pandemic only when they reached a critical high through executive orders imposing a tight lockdown and strict quarantine.⁵⁵ Hopefully, this legislation passed under the ordinance will instill a sense of unity, trust, and good morale amongst the citizens and the medical profession. This may motivate everyone to contribute positively and help them realize the nobility and integrity of their work during this period.

⁵¹ *Supra* note 36, s. 3B - Cognizance, investigation and trial of offences.

⁵² *Supra* note 36, s. 3C provides for presumption as to certain offences in the following words, 'where a person is prosecuted for committing an offence punishable under sub-section (3) of s. 3, the Court shall presume that such person has committed such offence, unless the contrary is proved.

⁵³ *Supra* note 36, s. 3E provides that "notwithstanding court's power to compound the offence, compensation shall be payable in case of damage to property" and "shall be twice the amount of fair market value' and recoverable 'as an arrear of land revenue under the Revenue Recovery Act, 1890".

⁵⁴ Sharma, N., "President Approves Ordinance To Protect Healthcare Workers", *Livemint*, April 24, 2020, available at: <https://www.livemint.com/news/india/president-approves-ordinance-making-violence-against-doctors-punishable-offence-11587616074735.html> (last visited on September, 2020).

⁵⁵ "How Countries around the World Are Battling Coronavirus", *Financial Times*, March 10, 2020, available at: <https://www.ft.com/content/151fa92c-5ed3-11ea-8033-fa40a0d65a98> (last visited on October 11, 2020).

III. Enforcement of the Disaster Management Act 2005

In India, the EDA, 1897 is the legislation that calls for the prevention of the spread of diseases.⁵⁶ Amidst this health crisis, the need for a legal apparatus to combat the pandemic became essential. Still, it came to notice that the Act was inadequate in the present scenario. The main issue of the Act was being outdated as it was enacted during the British Raj and legislative updates in the form of amendments are not enough for it to be the sole legislative apparatus to deal with the current pandemic. So, the DMA, of 2005⁵⁷ came into the picture even though it was not an act enacted in the time of a health crisis. A disaster can be very similar to a health crisis in terms of rehabilitation, quarantine, management, compensation for law, struggle, and so on, which is why the researchers find it apt to be used along with the EDA. This will be further elaborated, showing the relationship between managing a disaster and a health crisis in the latter section.

The National Disaster Management Authority of India formulated 30 Guidelines on various disasters, including the "Guidelines on Management of Biological Disasters, 2008". The 2019 National Disaster Management Plan also deals extensively with Biological Disaster and Health Emergency. This is the broad legal framework within which activities to contain the pandemic have been carried out by Union and State governments.⁵⁸ The DMA, of 2005 even though it is not directed towards health crisis and healthcare personnel, it was brought into force by the government to control the situation.⁵⁹ The researchers believe that this was an appropriate action taken to manage the present situation due to the similarity of managing natural disasters and a health crisis. Any natural disaster requires proper administration and political harmonization, which is to be led by the Central government and then followed by State governments, Disaster Management Authorities, and other concerned authorities. The DMA 2005 calls for proper administration, political harmonization, and collaboration.⁶⁰ The challenges that arise such as

⁵⁶ *Supra* note 1.

⁵⁷ Ministry of Law and Justice, The Disaster Management Act, 2005, No. 53 of 2005, (*hereafter* referred to as DMA), *available at*: <https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf> (last visited on September 4, 2020).

⁵⁸ *Supra* note 54.

⁵⁹ MP Ram Mohan and Jacob P Alex, "COVID-19 and the Ambit of the Disaster Management Act", *The week*, April 26, 2020, *available at*: <https://www.theweek.in/news/india/2020/04/26/covid-19-and-the-ambit-of-the-disaster-management-act.html> (last visited on August 19, 2021).

⁶⁰ *Supra* note 57.

transfer and traffic of migrant labourers, availability, and accessibility of food, putting together livelihoods for daily wage workers, relief camps, the making availability of statutory minimum relief, and so on that undeviatingly affects more than millions of citizens and workers in the country needs specific and appropriate attention. Incidentally, the 'Report of the Task Force to review DMA' 2013 suggested that "the present structure of various authorities under the DMA is not conducive for carrying out the tasks it has been mandated to perform."⁶¹

The next most important action to be enforced is the effective implementation of laws that govern public control and management of citizens to prevent further damage to the then-current situation. Ground-level performance is sought for when the rules are to be enforced on people, including district administration and local self-government institutions. Section 30 and 41 of the DMA 2005 put in place a concerted effort to ensure that these bodies are administratively, politically, and financially empowered, which addresses the above issue.⁶²

There are other vast and critical issues such as discrimination, police brutality, domestic violence, extreme poverty leading to starvation, deficiency of healthcare facilities, unemployment and loss of jobs, a physical vulnerability that we often see happening around us.⁶³ Any state action must plan well with sufficient safeguard to ensure minimum impact on the downtrodden such as migrant labourers. There is well-established duty of *due diligence* on the state for the protection of the human rights of the vulnerable.⁶⁴ In case of violation of human rights, a redressal mechanism shall also be put in place, including effective judicial remedy so that the aggrieved party can approach the court. The availability of judicial remedy has to be addressed by the court, but there is an apparent difficulty in accessing courts to address these immediate and critical issues. This requires the functioning of the judiciary to adjudicate upon these issues and do the needful for the citizens who suffer a breach of their fundamental rights. Even though there is an absence of a redressal mechanism under the DMA, section 71 of the Act provides no bar on the jurisdiction of courts.⁶⁵ In the case of *State of Madras v. V G Row*,⁶⁶ the court held

⁶¹ *Supra* note 59.

⁶² *Supra* note 57 s. 30 and s. 42.

⁶³ *Supra* note 54.

⁶⁴ Dr. Sarfaraz Ahmed Khan, *Transnational Sex-Trafficking: An Integrated Reparation Model*, para 2.5.1 (Thomson Reuters, Delhi, 2019).

⁶⁵ *Supra* note 57, s. 71 Bar of jurisdiction of court.— "No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made,

that "it is obligatory on all the constitutional courts in the country to *suo motu* register PILs and closely monitor the implementation of DMA, ensure the rule of law and protection of human rights as guaranteed under the Constitution of India".⁶⁷

Therefore, the researchers in the overhead light of how the DMA can help manage the pandemic believe that this Act was essential to be invoked during this period, but the country needs a more specific and elaborates legislation that is dedicated to the management of a health crisis or an epidemic.

IV. A Critical Analysis of the Existing Legislation in India to Combat the Virus

With the declaration of the Covid-19, a pandemic, by the World Health Organization, there has been a trepidation that set off among nations throughout the world. In India, the virus outbreak is considered a 'natural disaster' since the DMA is applicable and some states have termed it an epidemic. Now, it is the duty of the centre and the government to adopt and execute regulations to protect the public and prevent the spread of the disease. Therefore there is extraordinary but necessary power in the hands of the government to enforce laws that can keep the situation in control and eventually eliminate the crisis.

In the case of *Devarshi Pragneshbhai Patel vs the State of Gujarat*,⁶⁸ a Public Interest Litigation (PIL) was filed in the Gujarat High Court during the epidemic of Swine Flu in the state, questioning the government action in tackling the issue and how the country is managing such a health crisis. As previously mentioned, the EDA 1897 and the DMA 2005 were the two laws established in India to fight the epidemic. The EDA 1897, includes the capacity to transfer power to the state and central governments to enact laws and form authorities as long as they are done in the public interest to prevent the spread of the disease.⁶⁹ When any act including rules that people must obey, there is also a serious necessity of repercussions that must be confronted by those who violate the invoked legislation or fail to do what the law instructs them to do. At the same time, such directions of the government must be reasonable and well planned. Otherwise,

direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act".

⁶⁶ *State of Madras v. V G Row*, AIR 1951 Mad 147.

⁶⁷ *Ibid.*

⁶⁸ *Devarshi Pragneshbhai Patel v. State of Gujarat*, 2015 SCC Online Guj 425.

⁶⁹ *Supra* note 1.

government directives become instrumental in violating human rights, which we have seen in India post declaration of sudden lockdown.⁷⁰ The penalty is explicitly specified in this Act. It is to be interpreted in conjunction with section 188 of the IPC whenever any kind of disobedience or obstruction is committed, resulting in injury. Section 4⁷¹ of the Act also offers protection to officials who implement these regulations.

In the case of *Ram Lall Mistry v. R.T. Greer*,⁷² it was determined that section 4 of the does not protect even the magistrate who acts in bad faith. If a public servant's position is abused or done with malice, they will be held to the same standard as everyone else. On the other hand, the DMA creates the NDMA and the National Executive Committee, which are the authorities with authority, establishing various rules to handle the disaster.⁷³ Section 46 of the Act empowers the central government⁷⁴ and section 48 empowers the state and district administrations, headed by the district magistrate, to develop funding, rules, and guidelines for managing and controlling the catastrophe in the District.⁷⁵

Many district authorities, such as district judges, have already set guidelines and curfews in their respective districts in accordance with the requirements of this section. The power is given to the local level officials because the severity of the pandemic and the number of current cases vary in each District. As a result, the rules that must be developed must be tailored to the specific requirements of each District and cannot be generalized. This also demonstrates that good or ineffective leadership at the district level significantly impacts the spread or containment of the epidemic in the District. As a result, the researchers think that this provision will substantially affect crisis containment and management. Given that the pandemic has impacted not just India

⁷⁰ Sarfaraz Ahmed Khan, "Non-State Actors, Plight Of Migrant Workers and Violation of Human Rights: States Responsibility of Due Diligence" 2 (1) *CMR University Journal for Contemporary Legal Affairs*, 7 (2020).

⁷¹ *Supra* note 1, s. 4 Protection to persons acting under Act No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

⁷² *Ram Lall Mistry v. R.T. Greer* (1904) ILR 31 Cal 829.

⁷³ *Supra* note 57.

⁷⁴ *Supra* note 57, Under s. 46 the Central Government may, by notification in the Official Gazette, constitute a fund to be called the National Disaster Response Fund for meeting any threatening disaster situation or disaster.

⁷⁵ *Supra* note 57, s. 48 provides for establishment of funds by State Government in the following words; "the State Government shall, immediately after notifications issued for constituting the State Authority and the District Authorities, establish for the purposes of this Act".

but the whole globe, section 35 of this Act enables the government to help and aid other nations in need.⁷⁶

The government has shipped the medication Hydroxychloroquine, which is an anti-malarial treatment with the potential to combat the illness. The medication was sold to 55 corona-affected nations across the globe, including the United States, Mauritius, France, and the Netherlands.⁷⁷ Initially, the government categorized these medicines as H1 drugs under the Drug and Cosmetics Rules of 1945,⁷⁸ and even prohibited the drug's export for a period. With the onset of the enormous spread of the pandemic and the authority granted by section 35 of the Act, the government began exporting to virus-affected countries.

The definition of an 'essential commodity' changes as the crisis unfolds. During a health crisis, what may not be absolutely vital for survival becomes so. As a result, the government issued a notice of an order to declare certain commodities, such as N95 masks, surgical masks (2ply and 3ply), and hand sanitizers, essential commodities by amending the Essential Commodities Act of 1955 (ECA)⁷⁹, and also issued an advisory under the Legal Metrology Act (LMA)⁸⁰, thereby issuing a directory to states to determine the maximum retail price of these commodities.⁸¹ Individuals who violate the Essential Commodities Act face prison sentences of up to seven years.⁸² This, in turn, would assist the government in regulating and controlling the supply and price of these goods, which are critical during the epidemic. However, following consultation with state governments, this legislation was discontinued on July 30, 2020, since the country's

⁷⁶ *Supra* note 57, s. 35 Central Government to take measures.—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster Management.

⁷⁷ "India Sending Hydroxychloroquine to 55 Coronavirus-Hit Countries" *The Economic Times*, September 20, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/india-sending-hydroxychloroquine-to-55-coronavirus-hit-countries/articleshow/75186938.cms?from=mdr> (last visited on September 20, 2020).

⁷⁸ The Drugs and Cosmetics Rules, 1945, available at: <http://vbch.dnh.nic.in/pdf/Rules%20and%20regulations%20of%20Drug%20and%20Cosmetics%20act.pdf> (last visited on September 20, 2020).

⁷⁹ Essential Commodities Act, 1955.

⁸⁰ Legal Metrology Act, 2009, Act No. 1 of 2010.

⁸¹ "Masks, Hand Sanitisers Now under Essential Commodities Act" , *The Hindu*, March 28, 2020, available at: <https://www.thehindu.com/news/resources/masks-hand-sanitisers-now-under-essential-commodities-act/article31191252.ece> (last visited on September 20, 2020).

⁸² *Ibid.*

supply of such goods was deemed enough.⁸³ The mobility of people must be regulated in the aftermath of any catastrophe or health issue. The central government may designate airport health officers under rule 2 (8) of the Aircraft Public Health Rules. The scope and meaning of a 'infectious aircraft'⁸⁴ are defined in Rule 30 (2). An infectious aircraft, according to this clause, is one that contains at least one person who has been exposed to the illness for a certain length of time.⁸⁵

This implies that the aircraft will be deemed infectious even if the individual is suspected of having acquired the illness. The airport health officer has the authority to examine people arriving from other nations at airports, according to Rule 31 of the Act. They may also be subjected to a medical checkup.⁸⁶ The Public Health (Prevention, Control, and Management of Epidemics, Bio-Terrorism, and Disasters) Bill 2017 was passed in 2017.⁸⁷ The law specifies terms such as public health emergency, quarantine, isolation, social distance, and so on.⁸⁸ It delegated law-making authority to the federal and state governments, allowing them to create further regulations on the Act as needed. It includes a more up-to-date and specified part on the punishment⁸⁹ that would be imposed on individuals who break the legal regulations.⁹⁰ The Act also provides for the repeal of epidemic illnesses, the authority to modify schedules, the Act's overriding effect, cognizance of offenses, the ability to supersede, appeal, protection for

⁸³ "As Supply Improves, Govt Says Face Masks, Hand Sanitisers No Longer under Essential Commodities Act" *CNBCTV18*, July 7, 2020, available at: <https://www.cnbctv18.com/healthcare/as-supply-improves-govt-says-face-masks-hand-sanitisers-no-longer-under-essential-commodities-act-6280461.htm> (last visited on September 20, 2020).

⁸⁴ Central Government Act the Aircraft (Public health) Rules, 1954; r. 2(8).

⁸⁵ *Id.* Rule 30 (2).

⁸⁶ *Supra note 84*, r. 31.

⁸⁷ "Draft PHPCM of Epidemics, Bio-Terrorism and Disasters Bill, 2017" , *PRS India*, February 13, 2017, available at: <https://www.prsindia.org/uploads/media/draft/Draft%20PHPCM%20of%20Epidemics,%20Bio-Terrorism%20and%20Disasters%20Bill,%202017.pdf> (last visited on October 11, 2020).

⁸⁸ *Id.*; Definitions: Public health emergency means "any sudden state of danger to public health including extension or spread of any infectious or contagious disease or pests affecting humans, animals or plants, occurrence of or threat of dangerous epidemic disease, epidemic prone disease, disaster or bio-terrorism or potential public health emergency requiring immediate action for its prevention, control and management which cannot be dealt with by any law other than this Act". "Quarantine" "refers to the restriction on the movement of people and goods which is intended to prevent the spread of disease or pests". "Social distancing" "is an expression defined by the Public health Law as a practice connected with public health measure, which control the spread of infection by maintaining a scientific distance between the individuals". "Isolation" "means separation of ill or contaminated persons or affected baggage, containers, conveyances, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination".

⁸⁹ *Id.* s.13.

⁹⁰ *Id.* s. 5.

individuals operating under this Act, inspection of people and public places, and so on.⁹¹ As previously said, the current law is insufficient in light of the problems we confront. However, we were able to better understand how various laws interact to assist in handling the situation. Thus, we can argue that undoubtedly the nation need better-drafted laws aimed at disease prevention and judicial action during a health crisis when required.

V. Conclusion

As we have seen and discussed, several legislations and regulatory frameworks may help us curbing the spread of the pandemic. However, there exists a lack of effectiveness and efficiency in the control of the health crisis. While the DMA is relatively new, it is a much better as well as an appropriate way to deal with the pandemic. On the other hand, the epidemic act with limited sections is not exhaustive, and all it does is confer power to the central and state government to make rules for controlling the pandemic.⁹² This is quite different from what we need.

Misuse of authority and power, as discussed above, has been prevalent since earlier times. As analyzed in the previous parts, during the bubonic plague crisis, the colonial authorities' misuse of power resulted in oppression. In today's time of the Corona Virus epidemic, we also observe different situations of brutality and intimidation by authorities in charge of public control. The attacking on journalists who fall under exempted workers from the lockdown, by the police on March 24, 2020, in Hyderabad and Delhi⁹³, the assault of Adivasi women in Assam who were carrying vegetables and walking amidst the lockdown,⁹⁴ the molesting of teenagers with autism by the police because the young boy was not able to communicate why he was out during the lockdown,⁹⁵ the assault of migrant workers, women⁹⁶ and many other instances of police

⁹¹ *Supra* note 77.

⁹² *Supra* note 1.

⁹³ "Journalists Assaulted by Police amid Coronavirus Lockdown in India" *Committee to Protect Journalists*, March 24, 2020, available at: <https://cpj.org/2020/03/journalists-assaulted-by-police-amid-coronavirus-l/> (last visited on October 14, 2020).

⁹⁴ Ayan Sharma, "Lockdown Brutality Continues: Policeman Assaults Adivasi Women in Assam", *NewsLaundry*, March 30, 2020, available at: <https://www.newsLaundry.com/2020/03/31/lockdown-brutality-continues-policeman-assaults-ativasi-women-in-assam> (last visited on October 15, 2020).

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

brutality during the lockdown leads to the formation of an opinion among us that under extraordinary situations, authorities are granted extra power which is most often misused.

The main reason for such brutality may be the lack of an accountability mechanism. Excessive power conferred to authority gives rise to loopholes and defiance of the law. Accountability of the police should be ensured by making them liable for their acts that constitute the Act of harm to an individual. Redressal committees can be established in every District to take unbiased actions on those policemen who abuse their power, infringe an individual's right, or omit to perform their duty. This way, police brutality can be avoided not just in extraordinary situations like the pandemic but also under normal circumstances.

We need adequate and robust legislation to keep a crisis in control. The ordinance that the president assented to in 2020 provides severe punishment for those who attack healthcare workers. The decision of the government to declare certain commodities like N95 Mask, Surgical Mask (2ply and 3ply) and hand sanitizers an essential item by amending the Essential Commodities Act of 1955⁹⁷ is an excellent decision because it helped increase the supply of these commodities drastically. The management of the crisis also mainly depends upon the kind of decisions we all make as individuals while we perform different roles in our lives. Law and order can control the people, but what is even more important is to be able to be responsible and wise citizens who can maintain control, follow regulations and work towards solving a crisis in unity.

Revisiting the analysis of the Draft PHPCM of Epidemics, Bio-Terrorism and Disasters Bill, 2017,⁹⁸ we can conclude that this bill addressed many issues that exist now, and these issues could have been dealt with if the bill passed in Parliament. Working on the legislation to make it viable for all states and focusing on building separate legislation to virtually target and deal with the management of a health crisis thereby repealing the EDA would be a step towards legislative reform that we are in dire need of. Any similar enactment in future will also make our regulatory framework much efficient, more robust and improved.

⁹⁷ *Supra* note 79.

⁹⁸ *Supra* note 83.