

WHY 1-PAGE, 4-SECTION EPIDEMIC DISEASES ACT OF 1897 IS WHOLLY INCAPABLE OF DEALING WITH CORONAVIRUS

Relevant for: Developmental Issues | Topic: Health & Sanitation and related issues

With the world collapsing under the strain of the newly-discovered [coronavirus](#), it is essential to understand the legal framework that exists in our country to prevent, control and if need be defeat the now global virus.

The Indian Legal Landscape has seen considerable change in the last 70 years of Independence. Over time the country has tried to systematically, and in some areas with great promise, upturn the erstwhile colonial legal frameworks for more modern and India-centric legal systems. We were in 1950 one of the first countries to welcome universal adult franchise. In recent years, the Maintenance and Welfare of Senior Citizens Act of 2007 and the Delhi: Right of Citizens in a Time Bound Services Act are all examples of the legislature responding to inherently indian problems.

Yet in many crucial areas we remain bogged down by archaic pre-independence legislation. Public health and control of infectious disease epidemics unfortunately is one such area. The Epidemic Diseases Act of 1897 promulgated over a century ago was initially legislated by our colonial masters in an effort to combat the then deadly bubonic plague. It has a total of four provisions and can be summarised as providing different state governments unbridled powers to take any and all steps for preventing the outbreak or spread of a particular disease, and that's about it. Before moving further it would bode well to acknowledge that over a century and a quarter ago the Act in its use was widely condemned in the India Journal of Medical Ethics, by Rakesh P S who wrote: *"The Act was executed vigorously to control the plague epidemic that broke out in the 1890s. The powers it conferred were invoked to search for suspected plague cases in homes and among passengers. There was forcible segregation of affected persons, disinfections, evacuation, and demolition of infected places. The assembly of crowds was prevented, public meetings and festivals were banned and pilgrimages suspended. Alleged humiliation (including public stripping) of and violence against women gave rise to concerns among the citizens, and riots were reported in some areas. In many places, military powers were used to ensure the proper implementation of the preventive measures. Historian David Arnold called the Act "one of the most draconian pieces of sanitary legislation ever adopted in colonial India" and Myron Echenberg reported in his book that "the potential for abuse was enormous". The execution of the Act remained more or less dormant [after Independence](#)."*

The Act, last amended in 1956, lacks in most basic criterias when compared to comparable legislations as available in other democracies. In England, the [Public Health \(Control of Disease\) Act 1984](#) was promulgated with an aim of creating specific delineated roles of different authorities to combat infectious diseases. The act provides for notification of an infectious disease, the role and responsibilities of healthcare workers in identifying contagious individuals and a clear hierarchical chain in which the said identification is to be reported. It further provides for measures in which the said disease is to be controlled and as mentioned above delineates specific roles, responsibilities and powers on specific authorities in the time of a crises. These include responsibilities undertaken by the local authorities [right up to the national level](#). The responding authorities thus have a pre-planned format within which to operate. This undercuts the scope for confusion and jurisdictional issues amongst different state authorities in the time of crisis.

Another example would be The [Public Health Services Act](#) from the United States which also like its English counterpart creates an administrative super structure through which any public health emergency must be routed. The act prepares for a nationwide epidemic by anticipating the need for additional manpower by creating a reserve corps to supplement commissioned corps on short notice. Another key aspect of the act is clear and to the point separation of the roles of the center and states. The said point is one of the more obvious defects of our Epidemic Diseases Act of 1897, which gives no clarity of how a public health emergency would impact the inherent federal structure of our constitution. Being a pre-independence act the same fails to provide any clarity on how the responsibility of controlling a nationwide epidemic is to be shared between the different states and the Union.

Even the International Health Regulations of 2005 as adopted by the 58th World Health Assembly on May 23, 2005 mandates that the participating states (India has ratified the said regulations) create and diligently follow the detailed guidelines with regards to curbing the spread of infectious disease within member states. The 84-page document lists out the roles and responsibilities of member states as well as mandated the creation of competent authorities by the member states to inter alia carry out specific tasks ranging from baggage checks to disposal of remains.

The reason for denoting the above mentioned foreign and (in the case of the 2005 Health Regulations) international legislation was to put the legislative exoskeleton of the same in contrast to the less than bare bones structure of the Epidemic Diseases Act of 1897. While the above mentioned foreign legislations acknowledge the need for set and proven administrative channels coupled with detailed and well rehearsed protocols, our one-page, four-section act is wholly incapable of providing adequate legislative backing towards dealing with even a minor Public Health Emergency. The Act by its very nature provides for an abrupt knee-jerk reaction. Instead of anticipating that a public health emergency would require a robust and preplanned administrative framework, the Act merely gives the power to state authorities to subvert any and all existing laws and regulations while dealing with an epidemic. There is no provision to delineate specific roles to certain organisations, nothing to mandate any sort of pre planning or provide for any specific performance that the local or state level health or other authorities may follow in the case of an emergency. The Act even fails to clarify when and how a particular disease is to be declared as an epidemic, necessitating the evocation of the Act.

Without a proper and coherent command and control superstructure what would result is a state by state response, with each state differing in its strategy to contain and overcome a public health emergency. Each state would have to come up with administrative and health protocols on the fly whilst in the midst of a crisis. There are currently some schemes operating at the national level like the Integrated Disease Surveillance Project which aims to monitor and provide rapid response to epidemic situations, however the same lack any [legislative backing](#). Being based on executive instructions they are devoid of adequate powers to contain and handle an epidemic. The scheme sets up an IT-enabled disease surveillance system, and is at best a tool for identification and early intervention. There exists no legislation or regulation today which has identified and or trained the administrative machinery and State health apparatus to adequately respond to a nationwide Public Health emergency. There is no law for example to sanctify the isolation and cordoning off of entire regions, nothing to mandate compulsory hospitalisation, No expert authority to oversee the logistics of the kind of shut downs that would result from even a mediocre epidemic. What is further required is a cohesive legislation which relates to areas outside of immediate treatment, the UK act for example identifies specific authorities to make regulations in advance about how and to what extent schools would respond to a major epidemic.

The act in an almost cavalier fashion can be summed in the self defeatist mantra from the movie

'the three idiots' "All is Well".

Abhimanyu Tewari is a practising lawyer in the Supreme Court

The Indian Express is now on Telegram. Click [here to join our channel \(@indianexpress\)](#) and stay updated with the latest headlines

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

CrackIAS.com