

INDIA NEEDS TO ENACT A COVID-19 LAW

Relevant for: Environment | Topic: Disaster and disaster management

The [nationwide lockdown](#) has been central to the government's strategy to combat the [COVID-19 pandemic](#). With businesses closed, supply chains disrupted, timelines extended and contracts terminated, this exercise has caused the organised sector unprecedented economic losses. In the unorganised sector, there has been a complete breakdown with little or no legal recourse for those who are affected. While the lockdown has helped contain community spread of the disease, a legal and legislative audit of this exercise has evaded scrutiny so far. As we are now in the seventh week of the lockdown, it is imperative and timely that we assess its underlying legislative soundness.

The lockdown has been carried out by State governments and district authorities on the directions of the Union Ministry of Home Affairs under the Disaster Management Act of 2005, which was intended "to provide for the effective management of disasters and for matters connected therewith or incidental thereto". Under the Act, the National Disaster Management Authority (NDMA) was set up under the leadership of the Prime Minister, and the National Executive Committee (NEA) was chaired by the Home Secretary. On March 24, 2020, the NDMA and NEA issued orders directing the Union Ministries, State governments and authorities to take effective measures to prevent the spread of COVID-19, and laid out guidelines illustrating which establishments would be closed and which services suspended during the lockdown period.

Taking a cue from the guidelines, the State governments and authorities exercised powers under the Epidemic Diseases Act of 1897 to issue further directions. For instance, the Health and Family Welfare Department of Tamil Nadu issued a government order on March 23, 2020, to impose social distancing and isolation measures which directed "suspected cases and foreign returnees" to remain "under strict home quarantine" and people "to stay at home and come out only for accessing basic and essential services and strictly follow social distancing norms". Subsequently, on March 25, the earlier order was extended for a period of 21 days, in accordance with the directions of the NEA. District authorities such as the Commissioner of Police, Greater Chennai, have consequently issued orders to impose Section 144 of the Criminal Procedure Code in public places.

Cumulatively, these orders constitute the legislative umbrella governing the lockdown that has been in place since March 24. The invoking of the Disaster Management Act has allowed the Union government to communicate seamlessly with the States. However, serious questions remain whether the Act was originally intended to or is sufficiently capable of addressing the threat of a pandemic. Also, the use of the archaic Epidemic Diseases Act reveals the lack of requisite diligence and responsiveness of government authorities in providing novel and innovative policy solutions to address a 21st century problem. Another serious failing is that any violation of the orders passed would be prosecutable under Section 188 of Indian Penal Code, a very ineffective and broad provision dealing with disobedience of an order issued by a public servant.

In contrast, the U.K. enacted the Coronavirus Act, 2020, which is a comprehensive legislation dealing with all issues connected with COVID-19 including emergency registration of healthcare professionals, temporary closure of educational institutions, audio-visual facilities for criminal proceedings, powers to restrict gatherings, and financial assistance to industry. Similarly, Singapore has passed the Infectious Diseases Regulations, 2020, which provides for issuance of stay orders which can send 'at-risk individuals' to a government-specified accommodation

facility.

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Both the U.K.'s and Singapore's laws set out unambiguous conditions and legally binding obligations. As such, under Singaporean law, the violators may be penalised up to \$10,000 or face six months imprisonment or both. In contrast, Section 188 of the Indian Penal Code has a fine amount of 200 to 1,000 or imprisonment of one to six months. Even then, proceedings under Section 188 can only be initiated by private complaint and not through a First Information Report. As such, offences arising out of these guidelines and orders have a weak basis in terms of criminal jurisdiction thereby weakening the objectives of the lockdown.

In India, both Houses of Parliament functioned till March 23, 2020, when they were adjourned sine die. There were a number of interventions regarding COVID-19 by Opposition members through the session. However, the Union government showed no inclination towards drafting or enacting a COVID-19-specific legislation that could address all the issues pre-emptively. In fact, there has been little clarity on a road map to economic recovery after the announcement by the Union Finance Minister last month.

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Worryingly, a consolidated, pro-active policy approach is absent. In fact, there has been ad hoc and reactive rule-making, as seen in the way migrant workers have been treated. The flip-flop of orders regarding inter-State movement has left the fate of hundreds of thousands of migrant workers to be handled by district administrations with inadequate resources. This has also exposed the lack of co-ordination between the Union and State governments.

In past instances, the Union government has not shied away from promulgating ordinances. These circumstances call out for legislative leadership, to assist and empower States to overcome COVID-19 and to revive their economic, education and public health sectors.

Manuraj Shunmugasundaram is an advocate at the Madras High Court, and spokesperson, DMK

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