



## **Public Health Laws and Corona-Desire for Comprehensive Legislation**

**Pooja\***

### **Abstract: -**

Good Health is the basic parameter of survival and fundamental need of the people. So, Health related laws are the index of any civilized society from where one can easily judge the actually development of the society. In present time no doubt, we are living in much advanced time period but still we are facing lots of difficulties in relating to medical facilities at COVID-19 time period. In this paper, I will discuss in detail about the present legislative status of Public Health Laws related to corona in detail.

**Keywords:-Corona, Public Health Laws, Right to Health, Constitution of India, Panchayats, Comprehensive, State Government etc.**

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### **Introduction**

Health of the person is a major indicator of development and it is the basic ingredient of advanced society. In India, the right related to health care and protection has been provided under various laws. From the pre-independent time period, India has recognized this right as a legal right through various legislations and it is the obligation of the concerned State Government to ensure the basic health facilities to its citizens.

Today we are living in critical time period of 21<sup>st</sup> century, in which major virus such as a COVID-19 are prevailing ,which is dangerous not only for animals but for the humans also. Novel corona virus directly affects the human's respiratory system ranging from cough and cold to dangerous level of Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome.

As far as origin of Novel corona virus is concerned, it is originated from the Wuhan, china around December 2019. Initially, china suppressed it from the rest of the world. But within few months, it badly spread into the whole world. In India, under the leadership of Narinder Modi (Present PM) With Consultation of Group of Ministers review, monitor and evaluate the current position of the country. The Ministry of Health and Family Welfare of Government of India, issue advisory to all state and union territories to invoke the section 2 of the Epidemic Disease



Act, 1897 for the implementation of the advisory.<sup>1</sup>

Apart from it, the Government of India also invoked section 69 of the Disaster Management Act, 2005 to transfer powers of the Home Secretary, who is also chairman of the National Executive Committee, to coordinating and monitoring office under disaster management, to the secretary of the Ministry of Health and Family Welfare of Government of India

On March 14, 2020 the Government of India declared Novel Corona Virus as notified disaster under the Disaster Management Act, 2005 and help is available under the State Disaster Response Fund. Finally on 22 March, 2020 Government of India declared lockdown in whole of the India.

## **Legislative Framework for Public Health Laws in India**

### **Right to Health and Indian Constitution**

The Indian constitution which also known as law of the land, does not clearly deals with the Right to Health. The preamble of the Indian Constitution clearly provides for the concept of welfare state along with socialistic society under the ambit of Article 21 as a basic and inalienable right, it guarantees the right to life & personal liberty except the procedure established by law. Although, Article 21 India constitution provides a guaranteed fundamental right to life & personal liberty but the term ‘*Life*’ in this article means to live a life with human dignity & not like animal existence. It has a much defined meaning which includes right to live good life, livelihood, better standard of life, hygienic condition in workplace & leisure<sup>2</sup>. So, for practical implementation Article 21 should be read with Articles 38, 42, 43, & 47 to understand the nature of the obligation of the state government in order to ensure the effective implementation of this right. The concept of *democratic socialism* aims to improve the condition of health care of the people.<sup>3</sup> The principle of socialism is also embodied in various provisions of part third & part forth of the Indian Constitution<sup>4</sup>.

Part forth of the Constitution of India deals with the Directive Principles of State Policy, which

<sup>1</sup> On March 11, 2020

<sup>2</sup> Bakshi, P.M., “The Constitution of India”, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003

<sup>3</sup> Tajima M (1970). "Morphology of transmissible gastroenteritis virus of pigs. A possible member of coronaviruses. Brief report". *Archiv Fur Die Gesamte Virusforschung*. 29(1): 105–08. doi:10.1007/BF01253886. PMC7086923. PMID4195092

<sup>4</sup> Shukla M N .Indian constitution, Central Law Agency Publication, 2013



means ideal directions given to the State Government to keep in mind, while making the law, so Directive Principles of State Policy are imposed duties on states. As far as Directive Principles of State Policy relate to the health laws is concern, Articles 38 impose liability on state Government that it will secure a social order for the promotion of welfare of the people but without achieving the good Public Health we can't implement it in its true sense<sup>5</sup>. Article 39(e) exclusively deals with the health of the workers. Article 41 imposed obligation on state Government to assist the public at large, which are sick & disable. Under Article 42 it's a primary responsibility of the State Government to protect the health of children & females by providing more maternity benefit. Article 47 provides for the obligation of the state Government to raise the level of nutrition & the standard of living of its public as major responsibility. Apart from it, there are number of other provisions also under the Directive Principles of State Policy to deal with the Public Health.

The major problem faced in the justifiability of Directive Principles of State Policy, as it is clearly mentions itself in the Constitution of the India that under Article 32 only Fundamental Rights are justifiable not Directive Principles of State Policy because these are just ideal directions given to the State Government but if particular legislation is passed in the furtherance of these directions then it can be enforced under that particular law.

### **Role of Panchayats and Municipalities in Public Health**

Under the constitutional mandate, at the local level panchayat and Municipalities are responsible to improve and protect Public Health of that particular area. *"The legislature of a particular state may endow the panchayats with necessary power and authority in relation to matters listed in the 11<sup>th</sup> schedule of the Indian constitution."*

The contents of 11th schedule having direct relations with the Public Health. The matters listed in the schedule are as following;

- Drinking water
- Health and sanitation which includes hospitals
- Primary Health Care Centers & Dispensaries
- Family welfare schemes.
- Women and child development schemes.

<sup>5</sup> Eschner K (2020-01-28). "We're still not sure where the COVID-19 really came from". Popular Science. Archived from the original on 2020-01-30. Retrieved 2020-01-30.



- Social welfare including welfare of the handicapped and mentally retarded persons.
- Water supply for domestic industrial as well as for commercial purpose.
- Public Health.
- Sanitation conservancy and solid waste management.
- Regulation on cow slaughter houses and tanneries.

### **Epidemic Disease Act, 1897**

The Epidemic Disease Act was of the British time period to deal with the prevention of outbreak of bubonic plague. Its first case was reported in Bombay and quickly spread into the other parts of the country, which resulted into the death rate of 2000 people per week through the rest of the year. At that time, the government was worried to pass legislation on this point. Yet, government was not able to pass law on the bubonic plague. So, at that time it was the only legislation to deal with the epidemic Disease<sup>6</sup>.

### **Disaster Management Act, 2005**

For the first time, this type of legislation was introduced in India, with regards to the disaster management in India. The Disaster Management Act is basically an analysis and evaluation of the disaster management system in India. It also deals with the structure and functioning of disaster management organizations at the national level, which aimed at implementation issues related to the disaster management in the country.

In the present Act, several new organizations/entities related to disaster management have been introduced at the National, State, and District Levels. Some of these organizations/entities have done excellent work in this field well. In this regard, the National Disaster Management Authority has issued complete guidelines for disaster mitigation and preparedness. The National Disaster Response Force has worked for the search and rescue operations in disaster situations in India. In some States, at the state level, The State Disaster Management Authorities have performed significant achievements. But in reality, the functioning of these organizations/entities at National, State, and District levels is lacking coordination in their roles as well as by structural anomalies. Some of the provisions of this Act are having some practical implementation problems. In some cases, the new organizations/entities have not made any commendable work and some are even non-functional in their respective fields.

<sup>6</sup> The Epidemic Disease Act, 1897 came into existence after the bubonic plague.



Moreover, some institutional arrangements existing prior to the existence of the Act are still continued and it creates the situation of confusion for public<sup>7</sup>.

### **Judicial Response towards Public Health**

Judicial organ is the one of the major organ among the other. It plays an active role almost all the fields by entertaining Social Interest Litigation, which enables it to examine the socio, economic and environmental matters related to the weaker, poor and the downtrodden section of the society through Public Interest Litigation through Article 32 & 226 of the Indian Constitution. Even the apex court has also directed the all State Governments to implement the basic fundamental right to life and liberty and executed protection measures in the social interest. Moreover, the court also pointed out that fundamental right are intended to foster the ideal of political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. But it does not mean that Directive Principles are less important than Fundamental Rights or they are not binding on the various organs of the state, while discussing the scope of Article 21 of the Constitution in "*Paschim Bangal Khet Mazdoor Samity & Others VS State of West Bengal & Others*"<sup>8</sup>, in the present case the honorable court held that in a welfare state, it is the basic duty of the Government to secure the welfare of the public. It is also the duty of the Government to provide adequate health facilities to its people. The government can perform this duty only by providing proper medical care to the needy people. In this regard, Article 21 of the Indian constitution imposes a duty on the state Government to protect this right i.e. Right to Life of every citizen. The Government hospitals run by the state Government are bound to provide medical aid for protecting public life. Failure on the part of a state government hospital to provide timely medical aid to the public in need of such treatment, results in violation of his right to life provided under Article 21 of Indian constitution.

So in this regard, the court gives certain directions dealing with medical aid is as under;-

- Adequate facilities should be providing such as basic treatment to the patients.
- The district and subdivision level Hospitals at should be upgraded to the upper level, so that serious nature cases are treated properly.

<sup>7</sup> The Editorial Board (2020-01-29). "Is the World Ready for the Coronavirus?—Distrust in science and institutions could be a major problem if the outbreak worsens". The New York Times. Retrieved 2020-01-30

<sup>8</sup> AIR 1996SC 2426



- Special Facilities for given expert treatment should be enhanced and with regard to the growing needs, it must be made available at the district and sub divisional level hospitals.
- At the time of emergency, there must be an availability of proper bedding in any emergency ward at government hospitals and there must be a proper communication system so that the public can be sent immediately to the hospital, where space is available for the treatment, whenever required.
- For expeditiously transport system of patient from the Public Health center to the state hospitals, a Proper well established arrangement of channel for ambulance should be made with necessary equipment and medical personnel.

In another leading judgment, “*State of Punjab Vs Ram Lubhaya Bagga*<sup>9</sup>”, in this case the apex court held that if no amount or rate is fixed, then in that case private clinics or hospitals increase their rate to exorbitant scales, the State Government would be bound to reimburse the same. The principle of fixing of rate and amount under such a case or policy is justified, and cannot be held to violate Article 21 or Article 47 of the Indian Constitution.

*Further*, The apex court held that the State Government can neither urge nor say that it has no obligation to provide medical facilities. If that were so, it would be contravention of the violation of article 21 of the Indian Constitution. So, it is the major duty of the State Government to provide for secured health care facilities to its public. No doubt the government is following this duty by opening new government hospitals and health centre’s, but that can only be meaningful, if they must be within the reach of its common man.

### **Finding of the Research Paper:-**

The major finding of this research paper is that

- India lacks a comprehensive legislation on serious nature disease like COVID-19 under Public Health Laws.
- Under the Disaster Management Act, there is lack of coordination among the authorities & implementing bodies.
- Some major legislation like Epidemic Disease Act, 1897 up to some extent become outdated in some area.

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<sup>9</sup> AIR 1988 SC 117



- Even Indian judiciary is not playing active role in the matters relating to the Public Health Laws.
- In our country, there is a lack of infrastructure setup in relation to the Public Health Departments.

### **Loopholes in present Public Health laws**

The COVID-19 has brought various changes in the day to day routine of every person life likewise back dated laws are lacked to fulfill the needs of present time need of Public Health Care. As far as matter of India is concern, we had faced lots of crisis in this time period since, the outbreak of COVID-19. It clearly shows the gap between our Public Health care's systems .in the absence of proper structured laws the government of India advise the state government to invoke the Epidemic Disease Act, 1897 to handle the situation. This topic is even not covered by the any human right la directly. So, in the last time period of COVID-19, we felt dire need of comprehensive and more updated laws on Public Health. This is the reason lawmakers pays a more attention towards the Public Health laws.

### **Need for comprehensive legislation**

Corona has changed the whole life style of the public from each and every aspect India is facing lots of crisis due to it. So, this pandemic reveals the clear picture of our healthcare system, including the loopholes of the municipal laws relating to the Public Health laws. So, it is the high time for the policy maker to focus on the comprehensive legislation on this topic so that a separate section of budget can be reserved for this type of diseases.

On this topic, after finding the loopholes in the Public Health laws, it is the high time to introduce Public Health bill 2020 to give more powers to the government to tackle the problem like corona. If it will pass it will open a new era of health care in the country.

### **Suggestions:-**

- First of all, there must be a strong or comprehensive legislation to deals with the grave nature issues as arise in COVID-19.
- The Disaster Management Act, should be implemented in its true sense. The government of India has to make necessary step to ensure the coordination between the various authorities and bodies.



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- The Government has to establish the proper infrastructure setup in relation to the Public Health Departments.
  - The Indian judiciary has to play active role in protecting the rights of affected person in relation to public Health Laws.
  - The Government has to update the Government hospitals facilities to help the public.

**Conclusion:** - in the last words, it may be conclude the Health is the Wealth. So, if a nation or country has to develop, it has to develop its Public Health care system first. So, the people of nation can contribute properly in the development. The present health care laws become outdated in the present scenario of this pandemic and still there is no revision of outdated laws. Without making the much delay on this matter government has to design the policy on complete healthcare of the public.