International Journal on Emerging Technologies **11**(4): 23-26(2020)

ISSN No. (Print): 0975-8364
ISSN No. (Online): 2249-3255

Security and Safety of Health Care Professionals during COVID-19 Pandemic in the Context of Epidemic Diseases (Amendment) Ordinance, 2020

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(Received 17 April 2020, Revised 23 June 2020, Accepted 25 June 2020)
(Published by Research Trend, Website: www.researchtrend.net)

ABSTRACT: The outbreak of Corona Virus (COVID-19) witnessed the vicissitude of *Epidemic Diseases Act,* 1897 and *Epidemic Diseases (Amendment) Ordinance*, 2020. The clamping of 123 years old *Epidemic Diseases Act,* 1897 and 160 years old *Indian Penal Code*, 1860 stenches the ambience, therefore, the theory of 'coping capacity of community' underpinned in Section of 2 (d) of *Disaster Management Act*, 2005 applied in two months lockdown. During COVID-19 pandemic, the violence against doctors at their workplace and mobile health care reported extensively in India. The slew of health legislations namely *National Health Bill*, 2009, *Prevention of Violence against Doctors, Medical Professional and Medical Institutions Bill,* 2018 and *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill,* 2019 has not become the law. Therefore, the security and safety of health care professionals during COVID-19 pandemic heavily compromised. The study examines the violent attitude of the people against the government machinery and health paraphernalia. The broad ramification of the non-cooperation of the people in fighting COVID-19 pandemic has a disastrous fallout. It sets out nature and incidence of the deviance and compliance of law in time of crisis to anarchy and travesty of health equity in the context of *Epidemic Diseases (Amendment) Ordinance*, 2020.

Keywords: Vintage Law, Epidemic Control, Deviance & Compliance, Health Care Personnel, Legal Reform.

I. INTRODUCTION

The outbreak of Corona Virus (COVID-19) with its horrendous fall outs reminded of the epidemic, pandemic and disaster in legal arenas. The government of India invoked Section 2 and 2A of the *Epidemic Diseases Act,* 1897 *vis-à-vis* quarantine law enforcement provided under *Indian Penal Code*, 1860 and Section 133 *Criminal Procedure Code*, 1973 to control COVID-19 in India [1]. The clamping of 123 years old *Epidemic Diseases Act,* 1897 and 160 years old *Indian Penal Code*, 1860 stenches the ambience of the COVID -19 pandemic in 21st century India [2]. The government therefore subscribed to the theory of 'coping capacity of community' underpinned in Section of 2 (d) of *Disaster Management Act*, 2005 [3]**.** The experiences of enforcement of four consecutive nationwide lockdowns resulted in the sordid experiences [4]. It witnessed the discontentment against the medical and paramedical professional. The Ministry of Health and Family Welfare (MoHFW) compelled to issue advisories to all states and UTs on March 24, April 4 and April 11 requesting them to ensure adequate safety and security to healthcare professionals, medical staff and frontline workers. Despite the ministerial directives, incidents of violence have been reported from different parts of the country, creating an atmosphere of insecurity amongst the healthcare community. There are 141 registered cases under Section 188 of the *Indian Penal Code*, 1860 in Mumbai alone [5]. The states of Kerala, Haryana, Maharashtra, and Telangana also witnessed violent attacks on doctors. Realizing the gravity of the situation, the state governments invoked Section 2 of the *Epidemic Diseases Act*, 1897, read with Section 38 of the *Disaster Management Act,* 2005 to protect the health workers [6]. The President under Article 123 of the *Constitution of India*, 1950, also promulgated the *Epidemic Diseases (Amendment) Ordinance*, 2020 on April 22, 2020, to deal with the emergent situations [7]. The paper examines the inherent vices and colonial overlords of *Epidemic Diseases Act,* 1897 and its eventual correction in the *Epidemic Diseases (Amendment) Ordinance*, 2020 in controlling COVID-19 pandemic in India *vis-a-vis* affording safe working environment for the medical fraternity in India.

II. MATERIALS AND METHODS

The protection of health workers is one of the priorities for the response to COVID19 outbreaks in health care operations. The occupational health services in health care facilities have an essential role in protecting health workers and ensuring the business continuity of health care services [8]. The literature on safety and security of health care professionals mainly drawn from the series of the WHO Reports on the protection of health workers and emergency responders. The focal reference to the *Corona Virus Disease (COVID-19) Outbreak: Rights, Roles and Responsibilities of Health Workers, Including Key Considerations for Occupational Safety and Health,* 2019 [9]. The challenges of a prolonged response to COVID-19 stressed on the hospital personnel and safety, and security laws and policies must emphasize the importance of liberating clinicians and administrative team members from other tasks and commitments [10].

The material and methods utilize James G. Adams study on the *Supporting the Health Care Workforce during the COVID-19 Global Epidemic*, 2020 submitted that the transparent and thoughtful communication contribute to trust and a sense of control among caregivers, support staff, administration, and preparedness teams [11].

III. RESULTS

The violence against doctors at their workplace and mobile health care is not a new phenomenon. However, during COVID-19 pandemic, doctors getting thrashed by patients reported extensively in India [12]. The medical fraternity is reeling under fear psychosis as doctors not trained to deal with emergent and violent situations. According to an estimate, the healthcare workers are four times likely to confront violence in indoor, outdoor and mobile visits than all other workers combined. The statistical figure reveals that over 75% of doctors across the country faced at least some form of violence. The violence against doctors by the patient, relatives and escorts estimated to a total of 68.33% of [13]. Here it is appropriate to look at the protective provisions of the *Epidemic Diseases Act*, 1897 during the outbreak of any dangerous disease and epidemic.

A. Epidemic Diseases Act, 1897

The *Epidemic Diseases Act*, 1897 extends to the whole of India. Section 2 of the Act makes emp*ower* State Governments to take extraordinary measures and prescribe regulations for the outbreak of any dangerous epidemic disease. Such laws defray expenses and compensation if it may deem necessary to prevent the outbreak of the epidemic. The *Epidemic Diseases Amendment Act*, 1938 transferred this power to the Central Government under Section 2A. The Central Government can take measures and pass regulations for the inspection of any ship arriving or leaving India. For the detention of any person intending to sail, if the Central Government is satisfied that India or any part of India threatened with, an outbreak of any dangerous epidemic disease and the ordinary statutes in force would be insufficient to take appropriate action. Section 3 penalizes any person who disobeys a quarantine order following Section 188 of the *Indian Penal Code*, 1860 [14] and Section 133 *Criminal Procedure Code*, 1973 [15]. The disobedience order passed by a public servant tends to cause obstruction, annoyance and injury then it is punishable with simple imprisonment and fine of Rs. 200. The disobedience *tends to create a riot or affray then* it shall be punishable with imprisonment extending up to six months and fine up to Rs. 1000. This has a direct bearing on the realization of the right to health and environment in India [16].

In *J. Choudhary v. State of Orissa,* [17] the Orissa High Court in 1963 applied Section 3 of the *Epidemic Diseases Act*, 1897 and Section 188 of the *Indian Penal Code*, 1860 against a doctor who refused cholera vaccination. The Court noted that under Section 188, an intention to cause harm is not relevant as mere knowledge of the order gives sufficient cause for liability of committing the offence. The Orissa High Court accordingly set aside the intention of the doctor and punished for disobedience by invoking Section 3 of the *Epidemic Diseases Act*, 1897 and Section 188 of the *Indian Penal Code*, 1860. Section 4 of the *Epidemic Diseases Act*, 1897 seeks to immunize public servants against legal action while acting in good faith. The Calcutta High Court in 1904 in *Ram Lall Mistry v. R.T. Greer* [18] held that omission to pay compensation as prescribed under regulations passed under the *Epidemic Diseases Act*, 1897 would not be protected under this Section [19].

B. Security of the Health Care personnel

Although Section 4 *Epidemic Diseases Act*, 1897 has afforded protection to the officers the medical and paramedical forces faced the onslaught of the people often resorting to violence as retaliation to sledgehammer lockdowns orders successively. The government resorted to quarantine disobedience contained under sections 188, 269, 270, 271 [20] of *Indian Penal Code*, 1860 [21]. The sanctioning regime designed in *Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill,* 2019 did not mature to law [22]. The proposed law criminalizes people indulging in to assault on doctors and other healthcare professionals with stringent conviction. Since the proposed Bill did not bring to the statute book, the president promulgated *Epidemic Diseases (Amendment) Ordinance*, 2020 in right earnest. The backdrop of the Ordinance can be traced from the directions of the Supreme Court in *Dr. Jerryl Banait v. Union of India* [23]. The petitioner in public interest litigation (PIL) attracted the attention of the Supreme Court for the Personal Protective Equipment (PPEs) for medical professionals in the COVID-19 pandemic attack and violence. The Supreme Court directed the Union and state Governments to provide police protection to medical professionals working engaged in COVID-19 diagnosis and treatment in hospitals.

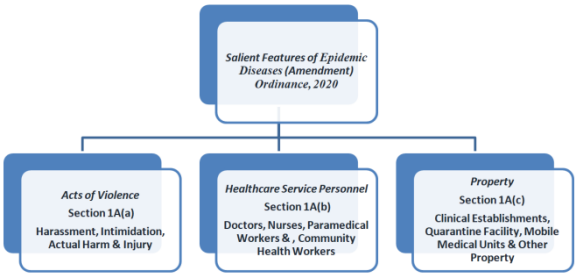
IV. DISCUSSION

In response to the COVID-19 pandemic, many countries such as China, Ireland, Philippines, Singapore, Taiwan, United Kingdom and the United States have suitably passed health legislations. The United Kingdom embarked on Health Protection (Coronavirus) Regulations, 2020 Coronavirus Act, 2020; *Contingencies Fund Act*, 2020; Health Protection (Coronavirus, Restrictions) (England) Regulations, 2020 Coronavirus (Scotland) Act, 2020. Similarly, the United States introduced a slew of legislation covering Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; *Families First Coronavirus Response Act,* 2020; *Coronavirus Aid, Relief, and Economic Security Act,* 2020 and *Paycheck Protection Program and Health Care Enhancement Act,* 2020 [24]. Among Asian countries, China, Singapore, and Taiwan have passed not only laws on COVID-19 but also amended the constitution and transitory statutes and regulations. In the comparative legal reform at the global level, it is imperative to appraise Indian government *Epidemic Diseases (Amendment) Ordinance,* 2020 promulgated by the President under Article 123 of the *Constitution of India*, 1950 to deal with the emergent situations.

A. *Epidemic Diseases (Amendment) Ordinance, 2020*

A safety and security law envisioned in the *Epidemic Diseases (Amendment) Ordinance*, 2020. It stated the objective to '*protect healthcare service personnel and property, including their living and working premises*

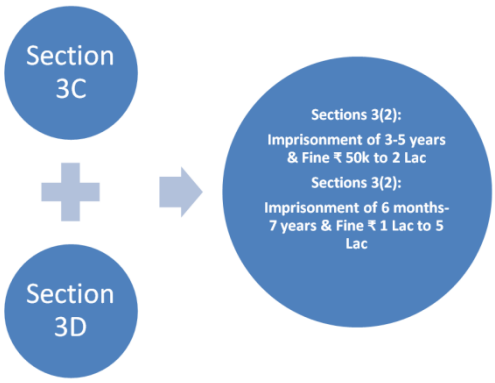
against violence during epidemics.' It added three definitions of *acts of violence, Healthcare Service Personnel and* property under Section 2 B of the *Epidemic Diseases Act*, 1897. The inclusive description *"acts of violence"* covers harassment, intimidation, actual harm and injury to a healthcare professional in the discharge of duties within the premises of a clinical establishment or otherwise. The *Healthcare Service Personnel* to include doctors, nurses, paramedical workers, community health workers, etc., who may come in direct contact with affected patients and may be at risk of contracting the disease.



The expression "property" includes clinical establishments, quarantine and isolation facility, mobile medical units, and health care property instrumental in diagnostics and therapeutic treatment during the epidemic and pandemic [25]. The loss and damage to medical data and documents of a healthcare professional are covered under the act of violence and not the property.

B. Salient Features of the Ordinance

Sections 3(2) and 3(3) of the *Epidemic Diseases (Amendment) Ordinance*, 2020 provides for the twin punishment *viz;* Punishment for commission or abetment of an act of violence" and 'punishment for grievous hurt caused to a Healthcare Service Personnel.' The 'punishment for commission or abetment of an act of violence*'* is made punishable with imprisonment of 3 months to 5 years and with fine of Rs. 50,000 to 2 Lac. Section 3(3), prescribes for 'punishment for grievous hurt caused to a healthcare service personnel.'



The commission of these offences based on the strong presumption of the accused. The Court while establishing the guilt shall presume culpable mental State that the perpetrator has committed the offence under Section 3C. The offence is punishable with imprisonment ranging from six months to 7 years and a fine of Rs. one lac to five lac. The Ordinance became effective since last month, but cases of COVID-19 is on the rise. India witnessed around 322,318 positive cases and 9204 deaths [till 14.6.2020] by the end of the lockdown period [26].

V. CONCLUSION & SUMMATION

The medical professionals and workers conducting a screening of COVID-19 deserve security and safety during mobile visits. The State should take necessary action against persons obstructing medical professionals in the discharge of their duties. The MoHFW issued an advisory for ensuring the safety of healthcare workers, timely payments, psychological support, and life insurance for COVID-19 services. The measures of MoHFW find strong support from the Ministry of Home Affairs' directions. The Supreme Court judgment provided the impetus to the multi-layer of protection to healthcare workers in COVID-19 pandemic. The Indian legal initiatives for COVID-19 pandemic started with invigorating *Epidemic Diseases Act*, 1897 by reverting to *Epidemic Diseases (Amendment) Ordinance*, 2020. There is little logic for India to take refuge in the colonial mould of the epidemic-pandemic laws. The State of Delhi and Maharashtra have passed COVID-19 Regulations, and the central government should also initiate legislation on the pandemic. There is an urgent need to come out of pounds and shells of the *Epidemic Diseases Act*, 1897 centric legal reform. The healing touch of a pandemic requires a solution beyond the criminalization of an epidemic.

REFERENCES

[1]. (2020) The *Livemint* website. [Online]. Available: https://www.livemin t.com/news/india/a-123-yr-old-act-to-combat-coronavirus-in-india-experts-say-nothing-wrong-1158 4182501707.html.

[2]. Sherwani, F. (2020). The epidemic diseases act: the stench of colonial legislation? [Online]. Available: https://www.barandbench.com/columns/the-stench-of-colonial-legislation

[3]. Section 2(d), *Disaster Management Act*, 2005:"disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

[4]. Nomani, M.Z.M. (2020). Quarantine law enforcement & corona virus (COVID-19) Pandemic in India. *Journal of X'idian University*, *14*(4), 536-542.

[5]. https://mumbaimirror.indiatimes.com/police-registers-178-cases-under-ipc-section-188-for-violation-of-prohibitory-orders/articleshow/74816859.cms).

[6]. Sherwani, F. (2020). Of disasters and epidemics: the constitution (44th amendment) act, a probe into the

wisdom of our choices, [Online]. Available: https://www.barandbench.com/columns/of-disasters-and-epidemics-the-constitution-44th-amendment-act-a-probe-into-the-wisdom-of-our-choices.See also: Nomani, M.Z.M. (2000). Environmental insurance liability for industrial disaster in India: a study of therapeutic perception of compensatory jurisprudence. *Indian Bar Review*, 29(1), 77-102.
[7]. The Epidemic Diseases (Amendment) Ordinance, 2020 promulgated to punish those attacking healthcare workers. [Internet]. [cited December 1 2019]. Available from: https://www.barandbench.com/news/read-the-epidemic-diseases-amendment-ordinance-2020-promulgated-to-punish-those-attacking-healthcare-workers
[8]. Nomani, M.Z.M. Alhalboosi, A.K.K. Rauf, M. (2020). Legal and intellectual property dimension of health and access to medicines in India. *Indian Journal of Forensic Medicine & Toxicology,14*(1),118-122.
[9]. WHO resources for protection of health workers and emergency responders, (2020) [Internet]. [cited June 12 2020].Available from: https://www.who.int/news-room/detail/09-03-2020-covid-19-occupational-health
[10]. Nomani, M.Z.M. Tahreem, M. (2020). Constitutionality and legality of corona virus (COVID-19) in India: limits of sanction and extent of liberation. *International Journal on Emerging Technologies.* (2020), *11*(3), 14-18.
[11]. James G. Adams on *Supporting the Health Care Workforce During the COVID-19 Global Epidemic,* doi:10.1001/jama.2020.3972; (2020) [Internet]. [cited June 14 2020]. Available from: https://jamanetwork.com/journals/jama/fullarticle/2763136.
[12]. M.Z.M. Nomani (1996). Environment and Industrial Relation: Emerging Judicial Trend in India. *Academy Law Review*, *20,*153-172.
[13]. Suchi Saxena, The forgotten pandemic: violence against doctors, (2020) [Internet]. [cited June 15 2020].Available from: https://timesofindia.indiatimes.com/blogs/un-travesty/the-forgotten-pandemic-violence-against-doctors.
[14]. Section 188, *Indian Penal Code,* 1860 envisages that 'whoever knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order he is directed to abstain in form a certain act, or to take certain property in his possession or under his management, disobeys such direction and if such direction and if such disobedience causes or tends to cause danger to human life, health, or safety, shall be punished with imprisonment of either description for a term which may extend to six months or fine which may extend to one thousand rupees or with both.'
[15]. Section 133, *Code of Criminal Procedure*, 1973: Conditional order for removal of nuisance:(1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this of behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers.
[16]. Nomani, M.Z.M. (2000). The human right to environment in india: legal precepts and judicial doctrines in critical perspective. *Asia and Pacific Journal of Environmental Law, 5*(2), 113-134.
[17]. AIR 1963 Orissa 216
[18]. *(1904) ILR 31 Calcutta 829*
[19]. Nomani, M.Z.M. (2004). Right To Health: A Socio-Legal Perspective. Uppal Publications, New Delhi; 56-59.
[20]. Section 271, *Indian Penal Code*, 1860: Disobedience to quarantine rule: Whoever knowingly disobeys any rule made and promulgated by the government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
[21]. Section 188, 269 & 270 of *Indian Penal Code*, 1860: Negligent act likely to spread infection of disease dangerous to life. [Internet]. [cited December 1 2019]. Available from: https://indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf
[22]. Parmet W.E. Sinha, M.S. (2020).COVID-19-the law and limits of quarantine. New England Journal of Medicine, (2020) [Internet]. [cited May 19 2020]. Available from: https://www.nejm.org/doi/pdf/10.1056/NEJMp2004211
[23]. Writ Petition (C) Diary No. 10795 of 2020 vide Order dated 08.04.2020
[24]. List of COVID-19 pandemic (2020). [Internet]. [cited December 1 2019].Available from: legislationhttps://en.wikipedia.org/wiki/List_of_COVID-19_pandemic_legislation
[25]. Nomani, M.Z.M. Lone, A.A. Alhalboosi, A.K.K. Raj, A.A. & Allail, B. (2020). Therapeutic Perception of Access to Medicines and Health Care in Government Hospital of Union Territories of Jammu and Kashmir. *Indian Journal of Forensic Medicine & Pathology, 13*(1),57-63.
[26]. *The COVID-19 India.org Website.* [Online]. Available: https://www.covid19india.org/' India COVID-19 Tracker: A Crowdsourced Initiative.'[14 June, 2:36 noon IST]. (2020).

How to cite this article: Nomani, M. Z. M. & Sherwani, F. (2020). Security and Safety of Health Care Professionals During COVID-19 Pandemic in the Context of Epidemic Diseases (Amendment) Ordinance, 2020. *International Journal on Emerging Technologies*, *11*(4): 23–26.