EPIDEMIC DISEASES (AMENDMENT) BILL, 2020: A MISSED OPPORTUNITY

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Abstract

The Epidemic Diseases (Amendment) Bill was passed by both House of Parliament in September 2020. The amendment, which comes amid the COVID-19 global pandemic, extends protection to healthcare service personnel against violent attacks in the line of duty. While this is a laudable move, it is a missed opportunity as far as establishing precedent for future such crises is concerned. India lacks a comprehensive law that lays down the procedures and protocols to be adhered to in a public health crisis. Public health crises are as much an administrative and governance crisis as they are a medical crisis. In the absence of such a law, India has relied on ad-hoc rule-making to tide over legal and administrative limitations in its efforts to fight the pandemic. This lack of foresight has meant that not all facets of a public health emergency are addressed nor are all those affected in the line of duty protected. This article is an analysis of the Epidemic Diseases (Amendment) Bill, 2020 in light of India's response to the COVID-19 pandemic.

I. Introduction
II. Colonial Era Act
III. The Epidemic Diseases (Amendment) Bill, 2020: Critical Analysis
IV. Comparative Analysis of Legal Frameworks
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I. Introduction

THE EPIDEMIC Diseases (Amendment) Bill, 2020 ("Amendment Bill") was passed by the Rajya Sabha and Lok Sabha in the monsoon session of 2020. The Amendment Bill extends protection to healthcare service personnel working on the frontlines in the battle against the COVID-19 pandemic. It was earlier notified through an Ordinance by the Union Government in April 2020 in the wake of the COVID-19 outbreak in India.

India recorded its first coronavirus case in January 2020 and the government imposed a nationwide lockdown in March 2020 when only a few hundred cases were recorded. The

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lockdown was meant to be a temporary measure while the country's healthcare systems prepared themselves for the epidemic.[1] During the lockdown, which lasted two months, only essential services (which include grocers, banks, media, police, sanitation workers, municipal bodies among other things) were allowed.[2] This health emergency presented a situation unlike any other that India has dealt with since Independence. The highly virulent nature of COVID-19 necessitated extreme social distancing measures in public, besides quarantine and isolation for infected individuals. Consequently, Central and State governments invoked the National Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 in order to impose measures to curb the spread of the disease.[3] Even as these measures were being instituted, the stigma surrounding COVID-19 patients was spreading almost as fast as the virus itself. Stories of prejudice and ill-treatment of COVID-19 patients were being reported from all over the country. Healthcare personnel at the forefront of the crisis were met with hostility because of their proximity to patients. In some instances they were violently abused while on duty.[4] In response, the government passed the Epidemic Diseases (Amendment) Ordinance, 2020 in April 2020.[5] It was passed by both houses of Parliament in the monsoon session and awaits the President's assent.[6]

II. Colonial Era Act

The Epidemic Diseases Act, 1897 ("the Act") is a colonial era law enacted to curb the spread of the Bubonic Plague which had caused casualties in the Bombay Presidency.[7] Epidemics, like the one we are going through now, present unique challenges to administration and

[1] Nitin Sethi and Kumar Sambhav Shrivastava, "Govt Knew Lockdown Would Delay, Not Control Pandemic", *Article 14,* April 23, 2020, *available at*: https://www.article-14.com/post/govt-knew-lockdown-would-delay-not-control-pandemic (last visited on Sept. 25, 2020).
[2] Guidelines of MHA on Essential Services in View of Covid 19 Outbreak Crisis and National Lockdown.
[3] Swagata Yadavar and Apoorva Mandhani, "Modi govt is using two laws to tackle coronavirus spread. But one of them needs changes", *The Print,* March 23, 2020, *available at*: https://theprint.in/theprint-essential/modi-govt-is-using-two-laws-to-tackle-coronavirus-spread-but-one-of-them-needs-changes/386052/ (last visited on Sept. 03, 2020).
[4] Vikas Pandey, "Coronavirus: India doctors 'spat at and attacked'", *BBC,* April 3, 2020, *available at:* https://www.bbc.com/news/world-asia-india-52151141 (last visited on Sept. 05, 2020).
[5] Siddhartha Shankar Ray, "The Epidemic Diseases (Amendment) Ordinance, 2020: An Ordinance that hit the nail on the head," *Bar and Bench*, May 23, 2020, *available at:* https://www.barandbench.com/columns/an-ordinance-that-hit-the-nail-on-the-head-epidemic-diseases-amendment-ordinance-2020 (last visited on Sept. 03, 2020).
[6] The Epidemic Diseases (Amendment) Bill, 2020, *available at:* https://www.prsindia.org/billtrack/epidemic-diseases-amendment-bill-2020.
[7] Manish Tewari, "The legal hole in battling Covid-19", *The Hindustan Times***,** March 19, 2020, *available at:* https://www.hindustantimes.com/analysis/the-legal-hole-in-battling-covid-19/story-s0VFHssIu68N01oHs5LgDI.html (last visited on Sept. 04, 2020).

governments may need to exercise wider powers than usual in order to control the spread of a contagious disease.

The Act is a crude legislation, a two-pager with four provisions, which grants wide-ranging and vague powers to the Centre as well as the State Governments to take measures when satisfied regarding the "outbreak of any dangerous epidemic", including search, seizure and isolation of persons suspected to be infected as well as a generically worded provision allowing the prescription of "*temporary regulations … as it shall deem necessary to prevent the outbreak of such disease or the spread thereof*".[8] The law fails to identify what factors determine the satisfaction of the Centre or State regarding an "outbreak" or even what situations may be deemed to be "epidemic" situations. The Amendment Bill misses the opportunity to define the terms "outbreak", "epidemic" or "pandemic" in any manner leading to continued uncertainty regarding the "temporary" nature of measures undertaken in such circumstances. At the least, it would have been useful to require the Central Government or State Government, singularly or in consultation with each other, to announce the emergency situation by way of public notification duly published in the Official Gazette. The publication of such an announcement acts as a forewarning to citizens regarding the law and order situation and the stringency of the measures to follow. Upon successfully dealing with the emergency and exceptional circumstances, due public notice regarding the suspension of the powers under the Act must also be required by law.

Further, over the course of the ongoing pandemic, various State Governments have used the powers contained in the Epidemic Diseases Act, 1897 to carry out arrests[9] purportedly to control the spread of infections. Yet, a failure to even-handedly implement these provisions to prevent gatherings, personal[10] or religious[11], point towards uncertainty and selectivity in State machinery which can be weeded out through legal mechanisms. At the same time, the lack of

[8] The Epidemic Diseases Act, 1897 (Act 3 of 1897), ss.2, 2A.

[9] Ajoy Ashirwad Mahaprashasta, "Outrage as Adityanath Govt Uses Epidemic Diseases Act to Arrest CAA Dissenter", *The Wire,* March 27, 2020, *available at*: https://thewire.in/rights/ashish-mittal-epidemic-act-uttar-pradesh (last visited on Sept. 05, 2020); *See also* M. Abdul Rabi, "Social worker assaulted by cop, booked under Epidemic Act", *The New Indian Express,* May 13, 2020, *available at*: https://www.newindianexpress.com/states/tamil-nadu/2020/may/13/social-worker-assaulted-by-cop-booked-under-epidemic-act-2142693.html (last visited on Sept. 12, 2020).

[10] Bharath Joshi, "Karnataka BJP MLA asked to explain birthday bash amid coronavirus lockdown", *The Deccan Herald,* April 11, 2020, *available at*: https://www.deccanherald.com/state/top-karnataka-stories/karnataka-bjp-mla-asked-to-explain-birthday-bash-amid-coronavirus-lockdown-824232.html (last visited on Sept. 05, 2020).

[11] Rishav Raj Singh, "MP: No Action Against BJP MLA For 10-Day Ganesh Chaturthi Celebrations", *The Wire,* Sept. 04, 2020, *available at*: https://thewire.in/communalism/madhya-pradesh-nsa-muharram-ganesh-chaturthi-usman-patel (last visited on Sept. 13, 2020).

balance between the fundamental rights of citizens against arbitrary arrests and the sweeping powers granted to the police forces under the Act have been famously criticised by historians David Arnold and Myron J. Echenberg,[12] the Indian freedom fighter Bal Gangadhar Tilak,[13] and, more recently, by scholars[14] and activists[15] in India. Unfortunately, the Amendment Bill of 2020 misses the opportunity to address these concerns which have been repeatedly raised in the century old history of the Act.

Section 3 of the Epidemic Diseases Act, 1897 lays down the penalty provisions for violation of measures undertaken pursuant to the Act alluding squarely to section 188 of the Indian Penal Code ("IPC"). Section 188 of the IPC titled "*Disobedience to order duly promulgated by public servant*" decrees that any person disobeying the orders lawfully promulgated by a public servant shall be punished with imprisonment for a period of one to six months or with fine amounting up to one thousand rupees, or with both. The provision, as it stands, has not been amended but modified with additional penal provisions specific to acts of violence against healthcare service personnel. Once again, due to the far-reaching measures which may be promulgated in times of emergency, a check mechanism could have been introduced herein. Moreover, the insertion with respect to the healthcare service personnel lays down specific timelines for investigation by police personnel as well as trial by court, which is woefully missing in the Act with respect to disobedience against orders by public servants. Given the sensitive and temporal nature of emergency orders, it would have been useful to integrate similar timelines for investigations and trials involving prosecution under the original section 3 of the Epidemic Diseases Act, 1897 as well.

Finally, section 4 of the Epidemic Diseases Act, 1897 provides protection to persons acting in pursuance of the Act against legal proceedings for their actions done or intended to be done in good faith. The blanket protection from suits and legal action for all public servants acting in pursuance of measures issued under the Act, without qualification, is problematic. The

[12] V. Venkatesan, "Time to Act", *Frontline,* Sept. 11, 2009, *available at*: https://frontline.thehindu.com/cover-story/article30188196.ece (last visited on Sept. 05, 2020).
[13] Neeraj Chandhoke, "Democracy should not permit a trade-off", *The Hindu*, April 27, 2020, *available at*: https://www.thehindu.com/opinion/lead/democracy-should-not-permit-a-trade-off/article31274449.ece (last visited on Sept. 10, 2020).
[14] Rakesh PS, "The Epidemic Diseases Act of 1897: Public Health Relevance in the Current Scenario" 1(3) *Indian J Med Ethics* 156 (2016), *available at*: https://pubmed.ncbi.nlm.nih.gov/27474696/#affiliation-1 (last visited on Sept. 05, 2020).
[15] HT Correspondent, "Police crack down on Covid-19 'misinformation', activists concerned", *The Hindustan Times,* April 30, 2020, *available at*: https://www.hindustantimes.com/india-news/about-500-cases-lodged-in-india-for-social-media-posts-on-covid-19/story-PBaxt7oNs9IdPNUCVRiUUM.html (last visited on Sept. 06, 2020).

presumption of good faith, couched in the terminology pertaining to "*actions...intended to be done*", has the potential to reach far beyond the written word of any temporary order to bestow upon a public servant implied "fulfilment" of the law in case of an omission to act. While judicial actions may protect against such an interpretation, it is unnecessary to leave the same to judicial interpretation when the law could very well limit itself to the scope of actions undertaken rather than intended. Again, the Amendment Bill of 2020 fails to rectify the colonial intentions in granting blanket protection to government action. As pointed out by MP of Rajya Sabha, Mr. Manoj Kumar Jha, Rastriya Janata Dal (RJD), the Act provides detailed mandate to the citizens but barely any direction or action points to the Governments.[16]

All in all, it is evident that the Epidemic Diseases Act, 1897, an act displaying significant authoritarianism of the colonial raj, has not been modified in order to address its criticism over the years. Rather, limited amendment has been brought in with a limited mandate to address the incidents of violence against the healthcare service personnel. In that, the Amendment Bill of 2020 succeeds. However, it fails to address the pre-existing, colonial manifestations already contained in the Epidemic Diseases Act, 1897 by limiting its modifications to addressal of a limited issue.

III. The Epidemic Diseases (Amendment) Bill, 2020: Critical Analysis

The Amendment Bill essentially introduces provisions that criminalise and punish any attack on healthcare professionals or their property. It defines a healthcare service professional as a person who comes into contact with infected individuals during the course of performing their duties to curb the epidemic and therefore, are at risk of contracting the disease. It specifically identifies (i) public and clinical healthcare providers such as doctors and nurses, (ii) any person empowered under the Act to take measures to prevent the outbreak of the disease, and (iii) other persons designated as such by the state government.[17]

The Amendment Bill also inserts section 3B under which it prohibits acts of violence against healthcare personnel or causing any damage to the property of healthcare personnel in which

[16] Rajya Sabha discussions concerning the Epidemic Diseases (Amendment) Act, 2020 on Sept. 19, 2020, Remarks by Manoj Kumar Jha, RJD (Bihar), Rajya Sabha TV.
[17] S.S. Rana & Co. Advocates, "India: Epidemic Diseases (Amendment) Ordinance, 2020 Receives Presidential Assent," *Mondaq*, May 27, 2020, *available at*: https://www.mondaq.com/india/employment-and-workforce-wellbeing/941818/epidemic-diseases-amendment-ordinance-2020-receives-presidential-assent- (last visited on Sept. 09, 2020).

they have a direct interest. A violation of these prohibitions would attract a penalty of Rs. 50,000-Rs. 2,00,000 or a jail term of six months to seven years.

The government introduced this Amendment Bill in response to various incidents of attacks on healthcare personnel involved in testing and treating COVID-19 patients. As the epidemic progressed in India, so did the stigma attached with it. Misinformation and lack of understanding about how the disease spreads led to the ostracization of suspected infected individuals and the doctors and other healthcare personnel who were at the forefront treating patients. Following numerous such instances in the initial days of the nationwide lockdown, the Indian Medical Association (IMA) which is an association of doctors, demanded that the government introduce a law on an urgent basis to criminalise attacks on medical professionals while on duty.[18] The IMA had also urged doctors to demonstrate against public apathy by wearing black badges to work, which was called off after assurances from the Home Minister that legislative action would be taken. It is in this context that the government issued the Ordinance in April 2020.

The Amendment Bill seems to suggest that physical violence and property damage are the only significant threats facing medical professionals on duty. Arguably, these professionals face a much greater risk of physical harm from actually contracting the disease while treating patients. This could be prevented by ensuring that they have access to protective gear they could use while treating patients. The Amendment Bill is silent on this facet of protection of medical professionals. In April 2020, a Public Interest Litigation (PIL) was filed in the Supreme Court by a doctor seeking that the Court ensure the availability of Personal Protective Equipment (PPE) for medical professionals.[19] The Court observed that healthcare personnel had to endure unusual occupational hazards. It further directed the government to ensure the availability of appropriate PPE kits for doctors, nurses and other professionals treating COVI-19 patients.[20] The ruling came on April 8, days before the Ordinance was passed and yet no mention of

[18] India Today Web Desk, "Attack on doctors: IMA declares April 23 as black day, asks medics to light candles tomorrow," *India Today***,** April 21, 2020, *available at*: https://www.indiatoday.in/india/story/attack-on-doctors-ima-declares-april-23-as-black-day-asks-medics-to-light-candles-tomorrow-1669292-2020-04-21 (last visited on Sept. 04, 2020).

[19] Siddhartha Shankar Ray, "The Epidemic Diseases (Amendment) Ordinance, 2020: An Ordinance that hit the nail on the head," *Bar and Bench*, May 23, 2020, *available at*: https://www.barandbench.com/columns/an-ordinance-that-hit-the-nail-on-the-head-epidemic-diseases-amendment-ordinance-2020 (last visited on Sept. 03, 2020).

[20] Shruti Mahajan, "Supreme Court says COVID-19 pandemic is a national calamity; passes directions for protection of doctors and frontline workers", *Bar and Bench,* April 8, 2020, *available at:* https://www.barandbench.com/news/litigation/supreme-court-says-covid-19-pandemic-is-a-national-calamity-passes-directions-for-protection-of-doctors-and-frontline-workers (last visited on Sept. 04, 2020).

protection equipment was made in the executive order. When the Amendment Bill was presented in Parliament, MPs also pointed out the multi-faceted threats that medical professionals faced "acts of violence from the inside,"[21] lack of safety and hygiene, lengthy and inhumane working hours, delay in payment of salaries, cost of treatment in case of contracting the epidemic disease in the line of duty, etc. However, the Amendment Bill was passed as it is and failed to address these shortcomings on the part of State machinery in protecting the frontline workers, particularly those in the healthcare sector.

Criticism in both Houses of Parliament pertained mainly to its oversight in providing a more comprehensive framework for dealing with epidemic situations. These concerns pertain to inclusive coverage of essential workers, including sanitation workers and Accredited Social Health Activist (ASHA) workers, provisions concerning government collection, dissemination, public notification of data pertaining to the spreading of the diseases as well as effective models of management devised by States or the Centre, provisions regarding funding salaries of healthcare service personnel as well as allied service providers, provisions pertaining to the compensation of workers retrenched owing to the lockdown conditions, fiscal bailouts and stimulus packages for individuals and enterprises suffering due to the lockdown, prosecution of persons hoarding essential goods, addressing the high price procurement of essential medical equipment, as well as provisions of funds to the State Governments to manage the epidemic. Simply put, the consensus appears to be that what has been accomplished through the Amendment Bill of 2020 was necessary in view of the increasing stigma and attacks against healthcare service personnel but for a holistic Epidemic Law, a lot more is needed.

A look at the definition clause introduced by the Amendment Bill shows that the “healthcare service personnel” are defined to include persons carrying out duties in relation to epidemic related responsibilities and who may come in direct contact with affected patients risking infection. Upto this point, the definition is fairly broad and would include all healthcare professionals, allied health workers as well as sanitation workers across the board. However, the definition goes on to narrow the definition with an inclusive list limited to 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 of the disease or spread thereof; and any person declared as such by the State Government, by

[21] Rajya Sabha discussions concerning the Epidemic Diseases (Amendment) Act, 2020 on Sept. 19, 2020, Remarks by Binoy Viswam, CPI (Kerala), Rajya Sabha TV.

notification in the Official Gazette. The specification by way of an exhaustive list risks leaving out important components of State machinery which ensure the curbing of communicable diseases, such as sanitation workers tasked with critical hygiene functions, officials gathering critical data, persons tasked with the handling and disposal of infected dead bodies, etc.

Under section 2A, the Amendment Bill modifies the powers of the Central Government under the Act. While the original wording permitted the Central Government limited action, referring to the measures "*for the inspection of any ship or vessel leaving or arriving at any port in the territories to which this Act extends and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.*"[22] The modified language elaborates these powers to include measures "*for the inspection of any bus or train or goods vehicle or ship or vessel or aircraft leaving or arriving at any land port or port or aerodrome, as the case may be, in the territories to which this Act extends and for such detention thereof, or of any person intending to travel therein, or arriving thereby, as may be necessary.*" While the amendment appears to be a straightforward attempt to update the language in view of the advancement of means of transportation over the last hundred years, the same found criticism in the comments of the Members of the Rajya Sabha as an encroachment by the Centre on the States' mandate. India follows a system of governance that is neither purely federal nor purely unitary and the Constitution of India clearly demarcates the responsibilities of governance and administration to be performed by Centre and State in its Schedules. Under Schedule 7 of the Constitution, the subject of "public health and sanitation" falls squarely under 'List II- State List'. So does the regulation of "offences against laws with respect to any of the matters in this List". Therefore, the provisions in the Epidemic Diseases (Amendment) Bill, 2020 which allow the Centre to regulate the same appear to overreach the Centre's constitutional mandate. At the same time, it must be kept in mind that "List I-Union List" squarely covers the subject of "inter-state migration" and "inter-state quarantine" justifying the provisions laid down under section 2A of the Amendment Bill of 2020.

Sections 3 to 3E of the Amendment Bill of 2020 lay down penalty provisions, with sections 3B to 3E specifically regulating the penalizing, by way of imprisonment as well as through imposition of fines, of any person committing an act of violence against a broadly defined class of healthcare service personnel. Legislating on this subject matter has also been claimed to be an expropriation of State function by the Centre by various Members of Parliament.

[22] The Epidemic Diseases Act, 1897 (Act 3 of 1897), s. 2A (prior to the Amendment).

Specifically Mr. Derek O'Brien, All India Trinamool Congress (West Bengal), pointed out, during the Rajya Sabha discussions prior to the passing of the Amendment Bill, that various State Governments have legislated upon the matter of attacks on healthcare service personnel and the Centre's legislation may run into conflict with the local legislations of these States. Prevention of Violence and Damage to Property Acts, specific to medical service providers, exist in many States including Karnataka, Maharashtra, Rajasthan, Tamil Nadu, and West Bengal. These Acts contain provisions pertaining to penalties, by way of imprisonment and fines, in case of attacks against medical professionals.[23] The terms of imprisonment and the quantum of fines in these State Acts and the Amendment Bill are different and it is unclear how the divergence between the two would be addressed. It is also unclear whether fines would be collected in the State exchequer or the Central exchequer.

Interestingly, the provisions contained in the Amendment Bill echo the provisions of a prior Bill published by the Ministry of Health and Family Welfare in September 2019 for public consultations.[24] However, the Bill was never introduced in the Parliament owing to concerns of the Ministry of Home Affairs itself that special protection to healthcare service personnel was not required in view of the existing provisions of the Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC) which were deemed to be sufficient to address the increasing incidents of violence against healthcare service personnel.[25] Grounded in this backdrop, the claim of State representatives regarding the overreach of the Central Government into the State List finds some legitimacy.

There is a larger point to be made here regarding the lack of a legal framework to deal with public health emergencies in India. The COVID-19 outbreak was met overwhelmingly with law-and-order measures rather than public-health measures. Ideally, a public health legal framework would account for all the aspects of the public health emergency including health, sanitation and law and order. The current pandemic is an opportunity to reimagine India's response to public health emergencies, but the government has passed the buck for now. In his

[23] Simrin Surir, "There is a law to protect doctors from assault but this is why it doesn't work", *The Print,* June 14, 2019, *available at*: https://theprint.in/india/there-is-a-law-to-protect-doctors-from-assault-but-this-is-why-it-doesnt-work/250217/ (last visited on Sept. 05, 2020).

[24] Call for Comments on Draft Bill, Ministry of Health and Family Welfare, Government of India, *available at:* https://main.mohfw.gov.in/sites/default/files/Draft%20Bill.pdf (last visited on Sept. 07, 2020).

[25] Press Trust of India, "MHA opposition puts bill to check violence against doctors on backburner", *The Economic Times,* December 15, 2019, *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/mha-opposition-puts-bill-to-check-violence-against-doctors-on-backburner/articleshow/72677503.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited on Sept. 07, 2020).

speech in Parliament, the health minister said that the government is formulating a National Health Bill[26] but there is little information available in the public domain regarding the same.

IV. Comparative Analysis of Legal Frameworks

How would a legal framework help fight a public health emergency? A public health emergency, especially when caused by highly contagious diseases like COVID-19 could potentially bring the ordinary functioning of the state and the economy to a grinding halt. At the same time, essential services viz. healthcare, sanitation, basic amenities need to go in an overdrive in order to mitigate the epidemic. A comprehensive legal framework in such a context would provide clarity and offer an efficient response.

The Epidemic Diseases Act, 1897 duly recognises that a public health emergency could render the ordinary administrative machinery inadequate, yet its provisions are ambiguous. The need for a legal framework that addresses all the challenges that public health emergencies present is even more imperative in the light of studies that show that global warming and climate change will accelerate the rate at which epidemics occur. The COVID-19 crisis has shown that countries with a legal framework to deal with such public health events were better prepared to deal with the crisis. The following section is an analysis of the legal frameworks of South Korea, Canada and Britain and its role in dealing with the pandemic.

South Korea

South Korea has had remarkable success in curtailing the spread of COVID-19 despite being a proximate neighbour to China. Much of its success is attributed to its preparedness in dealing with a public health emergency and its experience with the MERS epidemic of 2015. In the aftermath of the 2015 outbreak, the country laid down a solid legal foundation to deal with infectious disease outbreaks.[27] The country has two legislations to deal with epidemics. The first is the Infectious Diseases Control and Prevention Act which stipulates measures including contact tracing and testing for preventing the spread of infectious diseases. In March 2020, the Infectious Diseases Control and Prevention Act was amended to increase fines on violation of social distancing measures as well as to grant the right to treatment for patients and masks for

[26] Rajya Sabha discussions concerning the Epidemic Diseases (Amendment) Act, 2020 on Sept. 19, 2020, Reply by Dr. Harsh Vardhan, Union Minister of Health and Family Welfare, Rajya Sabha TV.
[27] Mark Zastrow, "How South Korea prevented a coronavirus disaster—and why the battle isn't over," *National Geographic,* May 12, 2020, *available at*: https://www.nationalgeographic.com/science/2020/05/how-south-korea-prevented-coronavirus-disaster-why-battle-is-not-over/ (last visited on Sept. 08, 2020).

children and elderly population. In addition, it also has a Quarantine Act which provides extra measures to prevent the spread of infectious diseases by travellers returning from other countries. The country also has a Center for Disease Control that monitors the prevalence and spread of infectious diseases.[28]

Canada

Canada has had relative success in managing the COVID-19 pandemic. As of September 2020, it has had 148,000 cases and fewer than 10,000 deaths. This is in stark contrast to its southern neighbour, the United State of America (USA) which is one of the worst hit countries with over 6 million cases and 200,00 deaths as of September 2020. Canada's epidemic response is delegated between the federal and provincial governments. The federal government's response is stipulated under the Emergency Act of 1988 and the Emergency Management Act of 2007 while provincial governments have their respective Health Acts, albeit the case federal government has greater responsibility to control disease spread. In addition, under the Public Emergency Act, the federal government can regulate the movement of people, distribution of goods, impose fines and establish temporary health facilities. The Quarantine Act of 2005 is yet another legislation invoked during health emergencies. This Act allows the federal government to establish quarantine facilities and to designate officials to deal with administering the epidemic response.

Canada also has an agency along the lines of the CDC known as the Public Health Agency of Canada (PHAC) which monitors and promotes health, prevention, and control of all major diseases (including chronic, infectious). The PHAC is also incharge of planning and directing the response to an epidemic.[29]

Britain

Britain is the worst hit by the COVID-19 pandemic in Europe. The country has the Public Health (Control of Disease) Act, 1984 is invoked during public health emergencies. The Act is complemented by a set of three regulations viz. Health Protection (Notification) Regulations 2010, Health Protection (Local Authority Powers) Regulations 2010 and Health Protection

[28] Library of Congress, "South Korea: Legal Responses to Health Emergencies," July 24, 2020, *available at*: https://www.loc.gov/law/help/health-emergencies/southkorea.php (last visited on Sept. 10, 2020).
[29] The Emergency Management Act (S.C. 2007, c. 15).

(Part 2A Orders) Regulations 2010.[30] Together, these legislations allow authorities to implement a plethora of measures in order to contain an epidemic, with clear guidelines for the responsibilities of each level of government. Like in India, laws in Britain also do not specify what kind of action is required to prevent an infectious disease from spreading, Instead, they focus on conferring powers on the authorities to act as they deem fit.

In March 2020, after the COVID-19 outbreak, Parliament passed additional legislation - known as the Coronavirus Act - to grant emergency powers to the government to manage the COVI-19 crisis. Specifically, it empowers the police to enforce quarantine and isolation rules as well as to shut down ports. In addition, the legislation provides measures to strengthen the National Health Service (NHS) by approving the return of retired staff, simplified admission and discharge procedures and employment protection for volunteers helping with managing the crisis.

The legal frameworks of these three countries suggests that they consider a public health emergency not dissimilar to other emergencies precipitated by natural disasters and conflicts in the manner that resources and administrative machinery have to be reprioritized. This results in dramatic a surge of state power and potential curbs on rights that citizens would ordinarily enjoy. However, it may seem like a fair bargain considering that these restrictions are enforced to ensure effective coordination between various agencies, efficient resource reallocation and regulate essential services. It is also important to note that most countries recognise the need to extend additional support to healthcare professionals and other essential workers to ensure that they can carry on with their service crucial to mitigating the epidemic. These are all valuable lessons that India could adopt in its own public health emergency response framework while making them timebound measures that would require Parliament's periodic approval.

In comparison to these countries, India's Epidemic Diseases Act is rather skeletal and fails to address the vast majority of issues that arise during a public health emergency. Along with its intervention to protect doctors, the Amendment Bill could have used this as an opportunity to establish a legislative paradigm for health emergencies. This would have been all the more useful given the woeful state of India's healthcare system.

[30] Richard Griffith, "Using public health law to contain the spread of COVID-19" 20 *British Journal of Nursing* (2020).

In the absence of a clear legal framework, India's response to the crisis has been ad hoc and without foresight. Six months after the pandemic was declared, there is still no clarity on which agency is in charge of the epidemic response. In most countries, disease control agencies like the Center for Disease Control (CDC) of the US, Korea and the PHAC in Canada have been leading the response to the epidemic in their respective countries. In March 2020, a few days after India imposed a nation wide lockdown, the Health Ministry constituted a High Level Committee consisting of members from the Indian Council for Medical Research and the National Center for Disease Control (NCDC).[31] According to media reports, the Committee met only once and the two bodies constituting it have not been in consultation with each other. Furthermore, the ICMR which is a body of clinicians and doctors has been the prominent body in the fight against COVID-19. The NCDC under the Ministry of Health has been running the Integrated Disease Surveillance Programme (IDSP) since 2004 but its role in handling the COVID-19 crisis has been conspicuous in its absence. In fact, the IDSP, which was rather diligent with its weekly reports on disease outbreaks in India did not submit a single report since February 2nd when it recorded the first COVID-19 case in India.[32] This confusion at the institutional level has led to a chaotic epidemic response. With the NCDC seemingly out of action, it is not clear which agency is rigorously tracking COVID-19 cases in India. This has led to a situation where the number of cases and the casualties are being severely underestimated. This in turn has affected the testing policy, as well as contact tracing and hospital capacity.[33]

The government must understand that an epidemic cannot be fought simply with increasing administrative power to restrict movements, but it has to have a public health emergency response guided by scientific reason and embedded in the law that can be activated without losing valuable time during a crisis.

V. Conclusion

The Epidemic Diseases Act, 1897 and the Amendment Bill, 2020, read together, provide a structure for the Central and State Governments to issue ad-hoc notifications and confer almost unfettered powers to control the spread of an infectious and fatal outbreak. However,

[31] Vidya Krishnan, "Epidemiologists say India's centre for disease control withheld COVID-19 data since pandemic began," *The Caravan,* May 12, 2020, *available at*: https://caravanmagazine.in/health/epidemiologists-say-india-centre-disease-control-withheld-covid-19-data-since-pandemic-began (last visited on Sept. 11, 2020).
[32] *Ibid.*
[33] *Ibid.*

practically, the conferment of these powers does not automatically ensure a synergistic and effective response. India needs an action plan, an outline of how to identify an outbreak situation, quickly gather data regarding the same, isolate critically infected regions on a grid basis, collaborate with authorities at various levels of governance, ensure continued supply of essential services and safety kits, ensuring sanitation to control the spread of communicable diseases and to share information regarding effective models of combatting the spread of the disease in question. The absence of such an action plan has left India in the lurch and dealing with the sixth month of almost continued increase in the daily number of cases. At the same time, critical attention needs to be paid to the factual woodwork out of which this current piece of legislation has been drawn—the parliamentary admission that the government has maintained no data pertaining to the death of its citizens, frontline healthcare workers and allied workers included, during this entire period of lockdown in India and the Centre's refusal to disburse GST revenue funds to the States except as a loan which is impacting the ability of the States to fund the response to COVID-19 outbreak.

The legislations developed across the world and within India, in response to various disease outbreaks like Severe Acute Respiratory Syndrome (SARS), Middle East Respiratory Syndrome (MERS), and, closer home, Nipah Virus, can map the development of an Epidemic Diseases legislation that provides guidance regarding the first actions to be taken in case of local outbreaks and / or resurgence, including public notification, fund disbursal, compensation packages (particularly for persons employed in unorganised sectors such as construction, agriculture and residential assistance) and deployment of equipment and infrastructure to curb the spread of highly communicable and life threatening diseases. Additionally, procedures for handling safe migration and regular monitoring of disease patterns must also be established. For now, the Amendment Bill is merely a stop gap measure than addresses an increased instance of violence against healthcare service personnel, without addressing the larger issues faced by India in its response to COVID-19.