

Issues and Challenges for Epidemic Diseases Act of India, 1897: A Literature Review

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ABSTRACT

The current pandemic of COVID-19 has brought forth issues salient to the epidemic diseases act of India, 1897 like ambiguous terminology, lack of defined criteria for its application, and dearth of features regarding adequate response to threats arising due to communicable diseases for public health. The public health law has an important role in the control of communicable diseases. Constraining individual rights is inherent to public health law which necessitates striking a balance between the coercive aspect of public health law and the common good. Adhering to ethical principles relevant to public health law and valid limitations on human rights as per international covenants is imperative for public health law. A tabular summary of articles published about the epidemic diseases act, of 1897 highlights the need for urgent reform in the legislation. Suggestions to achieve congruence between the epidemic diseases act of India, 1897, and ethical principles for public health law are provided.

Keywords: Public health law, public health ethics, communicable disease, epidemic diseases act of India-1897

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INTRODUCTION

Public health ethics is a branch of knowledge that investigates ethical issues and quandaries pertinent to the population. It is said that public health law and public health ethics have a complementary role in the sense that law mandates that ethical obligations are adhered to, like ethical obligation about not hurting others is compiled to, because the law will penalize a person hurting others.¹ Ethics provide the reason d'être for law. Public health law is defined as "Public health law is the study of the legal powers and duties of the state, in collaboration with its partners (e.g., health care, business, the community, the media, and academe), to ensure the conditions for people to be healthy (to identify, prevent, and ameliorate risks to health in the population), and of the limitations on the power of the state to constrain for the common good the autonomy, privacy, liberty, proprietary, and other legally protected interests of individuals. The prime objective of public health law is to pursue the highest possible level of physical and mental health in the population, consistent with the values of social justice."² Public health law can contribute to infectious disease control in two ways. Firstly, it can facilitate the use of preventive health services like vaccination which can help in preventing infectious diseases. Secondly, it can facilitate the use of curative services and empower healthcare providers to implement provisions about reducing contact with persons affected by a communicable disease like isolation.³ Thirdly, it can sanction the use of emergency powers to control communicable disease outbreaks by healthcare providers. Public health law can impinge on the freedom of mobility, right to control one's body, privacy, and property rights which makes it necessary to strike a balance between individual rights and public health interests in a manner that is transparent and ethical.³ These further points towards the need to keep in consideration relevant principles about public health ethics while designing public health law. Constraining individual autonomy and liberty is inherent in public health law. The state can curtail human rights to protect public health but in doing so it needs to consider criteria regarding it laid down by international human rights covenants and the Siracusa principles.⁴

Explication of Ethical principles and human rights covenants relevant for public health law

The ethical principles relevant to public health law are public health necessity, reasonable and effective means, proportionality, distributive justice, and trust and transparency.³ The principle of public health necessity implies that a coercive approach restricting individual liberty can be implemented if it can avert avoidable harm to people's health.⁴ This principle presupposes that government has reasonable grounds for implementing forceful measures related to public health.⁴ The principle of reasonable and ef-

fective means entails that the public health intervention should be effective in tackling the public health peril for which it was implemented. Consequently, public health interventions having an adverse impact on people's lives should have a fair probability of shielding public health.⁴ Another implication of this principle is: it is the responsibility of the government to conduct evaluations of public health interventions especially those of coercive nature to judge their effectiveness.⁴ The principle of proportionality says that burdens due to public health interventions should be proportional to benefits accrued from them. Therefore, public health interventions have to strike a balance between public good and encroaching on personal liberty.⁴ The principle of distributive justice means that vulnerable sections of society should not be disproportionately affected by public health interventions.⁴ This principle implies that the distribution of benefits from public health interventions should be fair. The principle of trust and transparency suggests that government should give the rationale for intrusion on personal liberty while implementing public health policies and programs and the process of making public health policies should be participatory in nature.⁴ The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights & International Covenant on Economic, Social, and Cultural Rights puts forth the rights and freedoms of the people. In the context of public health, they provide rights against discretionary confinement, rights regarding mobility and dwelling, rights about not being discriminated against, the right against being treated in a brutal or barbarous manner, and the right to health.⁴ Although fundamental guarantees provided by International Covenant on Civil and Political Rights cannot be constrained in any situation there are certain circumstances that provide a reasonable basis to curtail certain civil and political rights, for example, a national crisis like the COVID-19 pandemic.⁴ The criteria for restricting civil and political rights as per International Covenant on Civil and Political Rights are as follows—they should be as per the law of the country, they are laid down in a democratic society, indispensable to fulfill objectives such as public order, public health, public morals, national security, public safety or rights and freedoms of others.⁴ Siracusa principles spell out the criteria for restrictions on human rights in the same vein as the International Covenant on Civil and Political Rights.⁴ As per the International Covenant on Economic, Social and Cultural Rights coercive measures related to public health can be implemented if they are deemed to be necessary to protect public health.⁴

Epidemic diseases act, 1897 of India in the context of the current COVID-19 pandemic

In December 2019, in the city of Wuhan in the Hubei province of China, a cluster of pneumonia cases of unknown aetiology was reported.⁵ According to nomenclature by World Health Organization, this dis-

ease was called Coronavirus disease 2019 (Covid-19), and the causative agent was called Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-Cov-2).⁶ Severe Acute Respiratory Syndrome Coronavirus 2 is a single-stranded RNA virus belonging to the Coronaviridae family. The common symptoms of Covid-19 are fever, cough, and shortness of breath.⁵ The World Health Organization's response to the emerging novel coronavirus outbreak began in the first week of January 2020. The novel coronavirus outbreak in China was declared to be a public health emergency of international concern on 30th January by World Health Organization and on 13th March 2020 Covid-19 situation worldwide was called a pandemic by it.⁷ India reported the first case of COVID-19 in the last week of January 2020 and the country has experienced two waves of COVID-19 since the first case was reported in January 2020.^{8,9} Although progress has been made on research about therapeutic agents and vaccines for this novel infectious agent the countermeasures for Covid-19 necessarily include non-pharmaceutical interventions.¹⁰ Non-pharmaceutical interventions aim to interrupt disease transmission through measures like a ban on the mass congregation, mandatory closure of educational institutions compulsory shelter-at-home policies, cordon sanitaire, etc.¹⁰ The ethical implications of these measures always need to be considered so as to balance individual liberty with constraints placed on it by these public health measures.

Legal framework for implementing communicable

disease control interventions in India is provided by the Epidemic diseases act of 1897.¹¹ This law is divided into four sections, the first section is about the title and extent of the law, the second section concerns powers conferred on central and state government in the country to implement measures about controlling the spread of infectious disease, the third section describes penalties for breaching this law, and the fourth section is about legal protection conferred on persons implementing this act.¹⁴ This act has been invoked by central and state governments in the country to provide a legal framework for implementing various control measures for COVID-19.¹² Some states in the country like Madhya Pradesh, Kerala have enacted legislation of similar nature.¹² This act has origins during the British rule of India. This act has got ambiguous terminology which can lead to inappropriate application of this law, for example, it can be pressed into action if the government is "satisfied" that existing laws would be inadequate to provide a legal framework for countermeasures in the extant situation.¹³ Instances of violations of personal freedom and liberty have been reported by the media after this act was invoked.¹⁴ Moreover, it lacks appropriate provisions to control the spread of communicable diseases in the current context. In light of the above, this review was performed to delineate salient issues and challenges related to the Epidemic Diseases Act, 1897 of India, and to highlight ethical principles relevant to communicable disease control law.

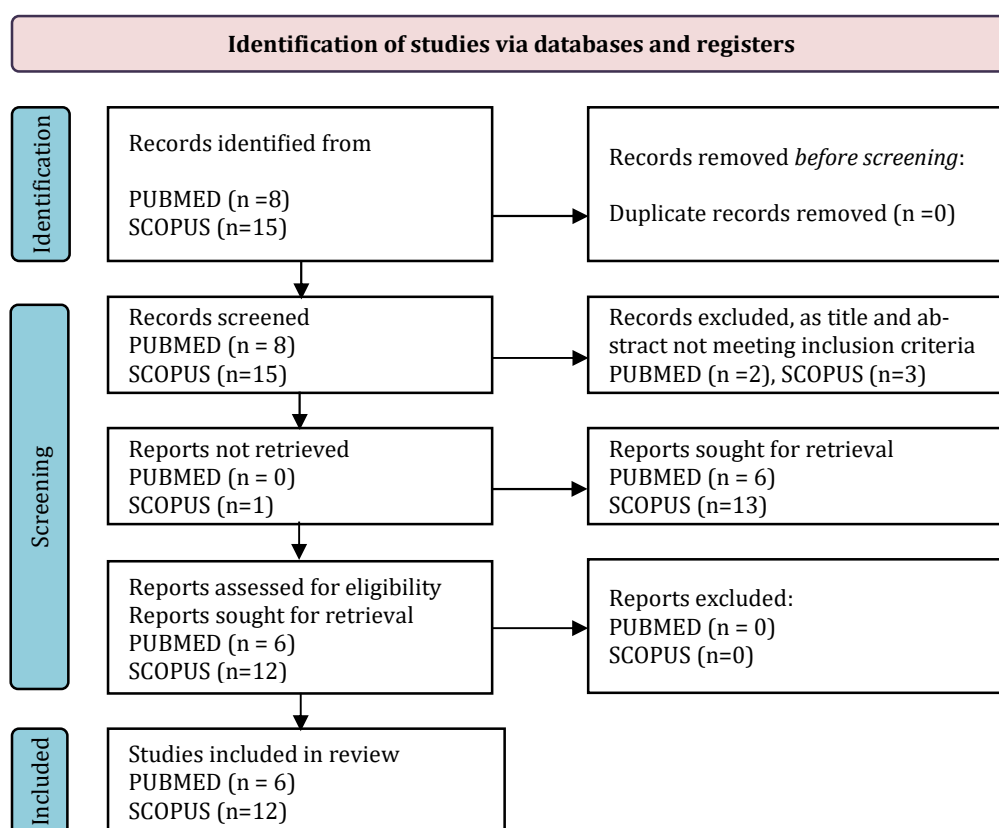


Figure 1: PRISMA flow diagram

METHODOLOGY

Firstly, the focus of the literature review was to determine salient issues and challenges related to the Epidemic Diseases Act, 1897 of India, and to highlight ethical principles relevant to communicable disease control law. Secondly, literature was collected from electronic databases like PUBMED and SCOPUS and grey literature was searched from Google. The search terms used for electronic databases were Epidemic Diseases Act, 1897, and India. They were combined using the Boolean operator AND. The PRISMA flow diagram for this review is depicted below (Fig.no.1).

Initial search yielded 8 records from PUBMED and 15 records from SCOPUS, after examining the title and abstracts of the records it was found that 2 records had to be removed from PUBMED search and 3 records from SCOPUS search. The full text of the remaining records was examined for eligibility criteria which were Journal articles discussing any feature of the Epidemic Diseases Act, 1897 and written in the English language. Grey literature search did not yield

unique record meeting eligibility criteria (Unique records implies records not found in PUBMED or SCOPUS) The information was extracted from the included studies using a predesigned data collection form. Thirdly, the literature was collated in the form of a tabular summary. Finally, the qualitative synthesis of the included studies was done using the tabular summary.

RESULTS

Salient Issues and Challenges for the Epidemic Diseases Act, 1897 of India

The legislation has ambiguous terminology which hinders its effective implementation. It doesn't spell out the organizational hierarchy to enforce its provisions. It needs to strike a balance between constraints on individual liberty and public good. It should emphasize the decentralization of power for effective implementation. It does not have provisions related to augmenting community capacity to respond to crises.

Table 1: Summary of journal articles about the Epidemic diseases act, of 1897

| Authors | Type of article | Year | Findings |
|--------------------------------------|-----------------|------|--|
| Mishra A et al ¹⁵ | review | 2022 | The epidemic diseases act,1897 needs significant changes like well-defined organizational hierarchy, unambiguous terminology, elucidating the duties and responsibilities of the community, spelling out the relevant ethics and human rights issues |
| Chugh G ¹⁶ | review | 2022 | The epidemic diseases act, of 1897 was implemented during the pandemic without giving attention to issues like decentralization of powers, the delegation of duties, and strengthening community capacity to respond to crisis |
| Gowd KK et al ¹² | review | 2021 | Several recommendations for change in the epidemic diseases act, 1897 are given. These pertain to measures implemented during pandemic/epidemic like quarantine and isolation, the definition of diseases based on severity, delineating the role of union government for improved coordination of the control efforts with state government |
| Nomani MZM et al ¹⁷ | review | 2021 | It suggests that the implementation of the epidemic diseases act,1897 by the government during the COVID-19 pandemic needs a critical appraisal |
| Rakesh PS ¹⁸ | review | 2021 | The present legislation lacks provisions to protect the rights of the citizens and does not spell out a coordinated and scientific response to disease outbreaks |
| Nomani MZM, Sherwani F ¹⁹ | review | 2020 | Challenges posed by the COVID-19 pandemic for the public health law framework are brought in the context of supreme court decisions related to the same |
| Nomani MZM, Parveen R ²⁰ | review | 2020 | It sheds light on historical and contemporary perspectives about the Epidemic Diseases (Amendment) Ordinance, 2020 promulgated to combat the COVID-19 pandemic |
| Nomani MZM, Parveen R ²¹ | review | 2020 | Normative choices to reform the epidemic diseases act, of 1897 are emphasized |
| Nomani MZM, Parveen R ²² | review | 2020 | The need for new legislation to combat the epidemic and pandemic disease is stressed. |
| Nomani MZM, Tahreem M ²³ | review | 2020 | A critical evaluation of the lockdown implemented to combat the COVID-19 pandemic from a legal perspective is conducted |
| Rakesh PS ²⁴ | review | 2016 | There is a requirement for actionable and exhaustive legal provisions for the control of disease outbreaks in the country |

DISCUSSION

The public health law has an indispensable role in public health, especially in the context of communicable disease control as it provides the legal basis for the implementation of control measures that might occasionally constrain individual rights and liberties. Therefore, public health law needs to strike a balance between public good and constraints on individual rights and liberties. The ethical principles relevant to public health law enable the harmonization of coercive public health measures with the public good. Infringement on individual rights and liberties based on public health law should be congruent with criteria for curtailing it according to international human rights covenants. The epidemic act, 1897 suffers from a number of shortcomings out viz ambiguous terminology, lack of organizational hierarchy for implementation of its provisions and fails to achieve balance between individual liberty and public good. The provisions of this legislation are out of sync with ethical principles relevant for public health law.

CONCLUSION

There is a need for reformulating the epidemic diseases act of 1897 of India according to ethical principles related to public health law like public health necessity, reasonable and effective means, proportionality, distributive justice, and trust and transparency and making it compatible with criteria for curtailing individual rights and liberties given by international human rights covenants. This would provide an enabling legal framework for the control of communicable diseases.

RECOMMENDATIONS

Based on this review there are certain suggested features for incorporation in the Epidemic diseases act of India, 1897 based on ethical principles related to public health law and international covenants about human rights.

1. Government plans for implementing public health measures to counter threats to public health arising due to communicable diseases, which could constrain individual liberty, for example, shelter-in-place orders, should be accompanied by evidence regarding the same
2. Government should adopt public health measures that are minimally restrictive in nature for example permitting home-based isolation or quarantine if a person has to undergo it.
3. There should be a formal assessment of burdens and benefits arising from coercive public health measures

4. Vulnerable social groups should be identified and provisions to prevent their targeting through forceful public health measures should be included in public health law regarding communicable disease control
5. It should have provisions to ensure that vulnerable social groups are not excluded from the benefits of public health measures like vaccination
6. The degree to which rights are limited should not exceed from what is prescribed by International Covenant on Civil and political rights

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