

India needs to enact a COVID-19 law

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Abstract:-

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

Introduction:-

Laws governing lockdown

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

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

Union-State co-ordination

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

The Law and Limits of Quarantine:-

As Covid-19 spreads around the globe, governments have imposed quarantines and travel bans on an unprecedented scale. China locked down whole cities, and Italy has imposed draconian restrictions throughout the country. In the United States, thousands of people have been subjected to legally enforceable quarantines or are in “self-quarantine.” The federal government has also banned entry by non-U.S. nationals traveling from China, Iran, and most of Europe and is screening passengers returning from heavily affected countries. Still, the numbers of cases and deaths continue to rise. Quarantines and travel bans are often the first response against new infectious diseases. However, these old tools are usually of limited utility for highly transmissible diseases, and if imposed with too heavy a hand, or in too haphazard a manner, they can be counterproductive.¹ With a virus such as SARS-CoV-2, they cannot provide a sufficient response.

Inside the country, isolation and quarantine orders have traditionally come from the states. Courts have typically upheld these orders in deference to the states’ broad powers to protect public health. Nevertheless, courts have occasionally intervened when a quarantine was unreasonable or when officials failed to follow necessary procedures. For example, in *Jew Ho v. Williamson* (1900), a federal court struck down a quarantine imposed by San Francisco in response to an outbreak of bubonic plague because it was racially motivated and ill-suited to stop the outbreak.

The federal quarantine power is limited to preventing the spread of communicable diseases into the country or across state lines. Section 361 of the Public Health Service Act grants the Surgeon General the power (since delegated to the Centers for Disease Control and Prevention [CDC]) to apprehend, detain, or issue a conditional release for the purpose of preventing the introduction into the country, or the spread across state lines, of a quarantinable disease, as designated by executive order (see box). The current list includes “severe acute respiratory syndromes,” which encompasses Covid-19. We must also reduce hurdles to testing and care. The House bill would provide free testing, but more needs to be done to ensure that testing kits are available. Furthermore, noncitizens must be protected from adverse immigration consequences for seeking testing or care or for complying with contact tracing. Finally, emergency guidance or regulations can be issued to limit the financial impact of high-deductible health plans and “surprise bills” from out-of-network providers for Covid-19 diagnosis or treatment.

Future Directions:-

Looking into the near future, containing the COVID-19 epidemic is likely to take several months; public health interventions will be directed towards social distancing and improving hygienic practices. These interventions will be effective in delaying the onset of wide community transmission, reducing peak incidence and its impact on public services. Testing, contact tracing, isolation of infected, and precautionary self-isolation of contacts is critical in reducing the number of new cases. An exceptionally high degree of understanding in the population and acceptance of these measures is also critical. These interventions have to be balanced with getting back to normal life and everyday activities to the best extent possible until a reversing the trajectory of the pandemic is traced.

A little knowledge is available so far on alternate routes of transmission, namely via sewage, contaminated water, or air conditioning systems. It is also poorly known if those who have

recovered from SARS-CoV-2 infection would be protected from reinfection, but evidence to confirm this is yet to be generated. Antibody testing has to be implemented on a large scale to identify who is already immune to the virus. The effect of temperature, season, and humidity on COVID-19 also has an impact on the COVID-19 outbreak, however, results from other parts of the world are awaited.

One of the last concerns regards the second wave of COVID-19 outbreak. Asian countries and cities that seemed to have brought the coronavirus epidemic under control are suddenly tightening their borders and imposing stricter containment measures, fearful about new imported infections. Hong Kong suddenly saw new cases spike as high as 65 in one day and ordered a new closure of non-essential activities. In Japan, where infections have remained relatively controlled, cases started to rise in March as travelers returned in the home country. New cases of local transmission have also been detected. Similarly, Singapore again announced one-month lockdown in view of increased local transmission. This portends a worrisome sign for the United States, Europe, India and the rest of the world regarding the second wave of the virus spreading once the restrictive measures are relieved.

Conclusion:-

Over the past two months, COVID-19 has emerged as a public health threat around the world. It adds to the list of previous epidemic infectious disease outbreaks, including Bovine Spongiform Encephalitis in 1986, the Avian flu in 1997, the SARS in 2002, the Swine Flu in 2009, and the Ebola in 2014. All these outbreaks remind us that we live in a habitat where it is necessary to respect the relationship between animal, social life, and the environment to survive and thrive. Rapid urbanization and our incursion into forest lands, has created a new interface between humans and wildlife; and exposed humans to unfamiliar organisms often involving the consumption of exotic wildlife. As stated by the UN Environment Chief, Inger Anderson "Our continued erosion of wild space has brought us uncomfortably close to animal and plants that harbor diseases that can jump to humans." She said, "If we don't take care of nature, we can't take care of ourselves". With COVID-19, nature is sending us a message that we need to recognize the interrelationship between animals, including pets, livestock and wildlife. The transdisciplinary One Health approach involving professionals from many disciplines such as medicine, veterinary, environmental health, and social sciences has been advocated to limit new infectious outbreaks. The global experience is teaching that containment measures and aggressive contact tracing are mandatory to keep the infection under control until an approved treatment or a vaccine is available to the global community. They should also minimize the economic burden of disease, and improve understanding of disease mechanisms, health problems, disease emergence, and reemergence to respond in a proportionate and timely manner. This will help in detecting, preventing, and combating future pandemics based on our experience from COVID-19 outbreaks. The implementation and development of the One Health collaborations on a global scale are critical in reducing the threat of emerging viruses.

Acknowledgements

We would like to acknowledge the following members for their contribution to the manuscript: Dr. Manoj V. Murhekar, Director and Scientist, National Institute of Epidemiology, Indian Council of Medical Research, Chennai, Tamil Nadu and Dr Larry Brilliant, Chair, Ending

Pandemics; Founder Seva Foundation and CEO, Pandefense and CNN on-air analyst. Dr Brilliant is an alumnus of the WHO Smallpox Eradication program. We would also like to acknowledge Ms Sreedevi Penmetcha, Management consultant at L V Prasad Eye Institute for language editing of the manuscript.

Financial support and sponsorship

Nil.

Conflicts of interest

There are no conflicts of interest.

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