

DE JURE NEXUS LAW JOURNAL

Author:

Amitabh Yash Singh

Amity Law School, Noida

3rd Year, BBA LL.B. (Hons.)

**RELEVANCY OF SECTION 188 INDIAN PENAL CODE IN RELATION
TO EPIDEMIC ACT 1897 TO COMBAT COVID 19****Introduction**

The central and state governments' significant steps to prevent the spread of the COVID-19 virus, including the imposition of nationwide lockdown, have had and will continue to have a widespread impact on people's lives and enterprises. Those who disobey the lockdown instructions may face legal prosecution under the Epidemic Diseases Act, 1897, which establishes penalties for disobeying such orders under Section 188 of the Indian Penal Code, 1860.

New and ancient statutes, such as the Disaster Management Act of 2005 (DMA), the Epidemic Diseases Act of 1897 (EDA), and some provisions of the Indian Penal Code, 1860 (IPC), have suddenly entered the legal vocabulary. Various governments cited the EDA when announcing its actions, with some even implementing lockdowns on their own. The DMA, on the other hand, was triggered by the central government's notice of a nationwide lockdown on March 23, 2020, and a notification on April 15, 2020, prolonging the lockdown and releasing comprehensive instructions with certain relaxations from April 20, 2020, onwards.

Section 188 of IPC: Disobedience to order duly promulgated by public servant

Disobedience to any rule or order issued under the Act is punishable under Section 3 of the Epidemic Diseases Act of 1897. These are in accordance with Indian Penal Code Section 188. (Disobedience to order duly promulgated by public servant)

Section 188, which comes under the Code's Chapter X, 'Of Contempt's of the Lawful Authority of Public Servants', reads:

Disobedience to order duly promulgated by public servant. —

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation. —

“It is not required that the offender intend to cause harm or consider his disobedience to be likely to do injury. It's enough that he's aware of the order he's disobeying and that his disobedience does or is likely to cause harm.”

Epidemic Diseases Act, 1897 – A Brief Overview

It is an Act that aims to make it easier to avoid the spread of dangerous epidemic diseases. The Epidemic Diseases Act of 1897 was created to combat bubonic plague in former British India's Mumbai (previously Bombay). The law is designed to help limit epidemics by giving extraordinary powers to those who need them to put containment measures in place to stop the virus from spreading.

The Act, which was created to prevent the spread of epidemic diseases, gives both the centre and state governments the authority to take specific measures to prevent the spread of such diseases. The Act is one of the smallest in India, with only four sections.

- a) During the emergence of an epidemic disease, Section 2 of the Act authorises state governments to adopt extraordinary measures and issue laws. It specifies that if the State Government believes that existing Acts are insufficient for the stated objective, it may issue a public notice prescribing interim restrictions for the public/class of individuals to follow.

- b) Section 2A of the Act empowers the Central Government to take measures and pass regulations for the inspection of any ship arriving or leaving India and for detention of any person intending to sail, if the Central Government is satisfied that India or any part of India is threatened with, an outbreak of any dangerous epidemic disease and the ordinary statutes in force will be insufficient to take an appropriate action.
- c) Section 3 of the Act states that anybody who disobeys a government order or rule issued under the Act would be prosecuted under Section 188 of the Indian Penal Code, 1860 (“IPC”). Disobedience of a public servant's command is punishable under Section 188 of the Indian Penal Code. Disobedience of an order passed by a public servant and “if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury”, is punishable with simple imprisonment which may extend up to a month and/or a fine of up to Rs. 200. If the disobedience "causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray," it is punished by up to six months in prison and/or a fine of up to Rs. 1,000. In particular, violations of the Act's provisions enacted in response to the Covid-19 epidemic would result in the latter punishment, as it would endanger human life. Additionally, it is important to note that under Section 188, IPC, an intention to cause harm is not relevant as mere knowledge of the order gives sufficient cause for liability of committing the offence. Although an offence under Section 188, IPC is cognisable and bailable, courts will not take cognisance by merely filing an FIR.
- d) Section 4 of the Act protects public workers from legal action when they are operating in good faith in accordance with the Act's requirements. When considering the scope of Section 4, the Calcutta High Court decided in the case of Ram Lall Mistry v R.T. Greer[10] in 1904 that a neglect to pay compensation as required by the Act's rules would not be protected by Section 4.

The Epidemic Act in 2021

The Government continues to rely on the 124-year-old Epidemic Diseases Act, 1897 (“The Act”) to attempt and bring some semblance of control to the situation, since daily instances of COVID-19 in India have shown all predicted rates of decrease incorrect. In a judgement dated November 17, 2020, the Supreme Court declined to rule on the Act's constitutional legality and returned the case to a High court.

The current situation has reignited debates over the validity and efficacy of this British-era law, which may now be considered outdated. This act urgently needs to be updated to reflect the requirements and technical capabilities of modern India. If the Act is not to be repealed entirely, modifications are required. The Act, which is split into four sections, was designed to rule the country amid large-scale outbreaks like the current epidemic. It does, however, have certain basic faults.

To begin with, the most apparent absence in the Act is the absence of a definition for the term "epidemic" across the whole Act. This creates an inherent lack of clarity and objectivity, allowing the government to abuse the system as it sees appropriate. The Act gives the government some special powers, but there is no requirement that they use them within a reasonable time frame due to a lack of clarity.

Second, violating the requirements of this Act is punishable under Section 188 of the Indian Penal Code. This section is a wide clause that covers disobedience of any public servant's command in general. Instead, then relying on broad disobedience statutes, there is a lack of efficient enforcement measures that are focused on and meet the needs of the Act. Furthermore, the Section demands either a six-month jail sentence or a fine of one thousand rupees. This minimal sentence is unlikely to be an effective deterrent in the event of a pandemic, and it is scarcely an appropriate punishment for disobedience that might result in death. It is worth noting that Section 270 punishes anybody who engages in malicious behaviour that spreads illnesses by imposing a two-year sentence. Sections 269 and 271, which each carry a six-month sentence, deal with careless activities that may transmit illnesses and disobedience of any quarantine order, respectively. Even though these provisions exist, they are not mentioned in the Act. Due to this, recent orders issued by the Maharashtra, Haryana, and Telangana State governments regarding the COVID-19 pandemic also refer to only Section 188. Moreover, the Patna High Court in **Raj Mangal Ram v State of Bihar** made the usage of Section 188 stricter – a mere FIR is not enough, but it must be supplemented with a complaint filed under Section 195 of the Criminal Procedure Code as well. This decision has made the procedural aspect of punishment under the Act more long drawn, making the case clear for alternative remedies as well.

Thirdly, the Act provides that the government may use its provisions whenever it believes that ordinary laws are insufficient. The word "satisfied" has an inherent ambiguity in this context, and its subjectivity renders it vulnerable to abuse and erroneous usage.

Fourth, the Act fails to address concerns that are critical in the twenty-first century. Only land and marine routes are covered by the Act. The Act makes no mention of disease control during aerial transport since it was enacted at a period when air travel was still in its development. This is one of the most pressing issues that need immediate action.

The Present Times

Despite the fact that the Act is currently being utilised to control the spread of the new corona virus, it strikes a chord because it lacks reflections of modern-day realities of disease propagation. The Act also falls short in terms of providing an efficient structure for responding to an outbreak of such a disease, especially as the Act's four provisions fail to define what constitutes a "epidemic disease."

However, the Indian Government did take notice of the fact and had introduced a bill in 2017 called the 'Public Health (Prevention, Control, and Management of Epidemics, Bio-terrorism and Disasters) Bill'. The said Bill was to repeal the Act; however, even after three years, it is yet to see the daylight.

Today, we may fairly expect the Indian government to take efforts to limit epidemic transmission by introducing comprehensive laws that will take into account modern-day circumstances and control mechanisms for the spread of such diseases.

Conclusion

In today's environment, the Epidemic Diseases Act of 1897 has lost its usefulness and relevance. It will remain an antiquated and colonial piece of legislation that is open to abuse and continual criticism unless the appropriate adjustments are made. At a time when global disease control standards have set an extraordinarily high bar, the Indian government must recognise the inadequacies of its present legislation.