

What is 'Novel' in Ordinance to Epidemic Diseases Act to Fight the Novel COVID-19 Pandemic?

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The Background Promulgation of Ordinance

The Ordinance which extends to the whole of India to handle the unfortunate incidences of violence against the health care service personnel, which have been reported from across the country, has been promulgated by the Ministry of Law & Justice (Legislative Department), Union of India on 22nd April, 2020 and it has come into force '*at once*'.

The Hon'ble President of India, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution of India, has promulgated the Epidemic Diseases (Amendment) Ordinance, 2020 (hereinafter 'the Ordinance') in order to further amend the Epidemic Diseases Act, 1897 (Act 3 of 1897) [hereinafter 'the principal Act'] as the Parliament is not in session and the President of India is satisfied that circumstances exist which render it necessary for him to take immediate action.

Notable points of Epidemic Disease Act, 1897

Let us first understand the aim and objects of the principal Act, which this Ordinance intends to amend further. The principal Act, was enacted in the year 1897 with the aim to provide for the better prevention of the spread of dangerous epidemic. Under the principal Act as per sub-section (1) of the Section 2, the State Government (exclusive executive and or legislative competence of the State Government) is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed. Further sub-section (2) goes on to indicate some of the measures and regulations which a State Government may take and prescribe. Further Section 2A provides that when the Central Government is satisfied that Indian or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations 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. Again Section 3, which is a deeming provision and by operation of legal fiction, provides that any person disobeying any regulation or order made under the principal Act shall be deemed to have committed an offence punishable under Section 188 of the Indian Penal Code (45 of 1860). The last section i.e. Section 4 provides for protection to persons acting under the provisions of principal Act and shielding them from any suit or other legal proceeding by providing that no suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

The Ordinance & Its Provisions

The Ordinance has inserted a new Section 1A in the principal Act wherein various definitions have been given for the first time as to the "act of violence", "healthcare service personnel", & "property". An amendment has been made in Section 2A of the principal Act to give power to the Central Government to make further measures (apart from inspecting ship or a vessel or detaining such ship or a vessel), as it deems fit and prescribe regulations for the inspection of any bus, train, goods vehicle or aircraft and empowers the Central Government to even detain persons intending to travel therein, or arriving thereby. Section 2B prohibits the act of violence against the healthcare service personnel or cause any damage or loss to any property during an epidemic. Section 3 of the principal Act has been now numbered as sub section (1) of Section 3 and a new sub-section (2) has been inserted which provides for punishment for causing or abetment for (i) an act of violence against the healthcare service personnel or (ii) damage or loss to any property and provides for a minimum

punishment with imprisonment for a term which shall not be less than three months, but which may extend to five years and with fine, which shall not be less than Fifty thousand rupees, but which may extend to Two lakh rupees. The new sub-section (3) draws the definition of grievous hurt from Section 320 of the IPC, and provides for a minimum imprisonment of Six months, but which may extend to Seven years and with fine, which shall not be less than One lakh rupees, but which may extend to Five lakh rupees. Further a new sections- Section 3A, 3B, 3C, 3D & 3E have been inserted, wherein cognizance, investigation and trial of the offences as under the Ordinance have been provided. All the offences as defined under Section 1A, have been made cognizable and non-bailable, meaning thereby Police can arrest a person without warrant for commission of offences against healthcare service personnel and the same is non-bailable. There is a provision for investigation of all the offences by a police officer not below the rank of Inspector and the same has to be completed within a period of 30 days from the date of registration of the FIR and further that trial of the case under sub-section (2) or (3) of Section 3 has to be conducted as expeditiously as possible and tried to be concluded within a period of one year and in case there is any delay in conclusion within one year, the Judge shall record the reasons for not having done so and in certain circumstances for six months at a time. Section 3B provides for composition of offences, with the permission of the Court, punishable under sub-section (2) of section 3 by the person (healthcare services personnel) against whom such act of violence is committed. Section 3C creates a very definitive legal presumption (shall presume) that such person/ accused has committed offence punishable under sub-section (3) of Section 3, unless the contrary is proved. Section 3D provides for shall presumption of culpable mental state on the part of the person who is accused of an offence under sub-section (3) of Section 3 however, it also allows the accused person to prove the fact that he has no such mental state with respect to the act charged as a defence. So it seems that even though the presumptions are "shall" yet the accused is given opportunity to rebut the same during the trial. Section 3E in addition to punishment for offences under sub-sections (2) & (3) of Section 3 also provide that the person so convicted shall also be liable to pay, by way of compensation-which can be recovered as an arrear of land revenue under the Revenue Recovery Act 1890- for causing hurt or grievous hurt to any healthcare services personnel and in the peculiar situation where damage to any property or loss has been caused- even though the healthcare services personnel and the accused enter a settlement/composition under the provisions of section 3B, yet the accused has to pay twice the amount of fair market value of the damaged property or loss caused, as may be determined by the Court, before such offence is allowed to be compounded.

Critical Analysis of the Ordinance

At one hand it is heartening to note that the Executive has come up with the present Ordinance, which has a potential just not to instil fear in the hearts of those who have been wilfully and deliberately indulging in the wanton act of violence against the healthcare services personnel for the reasons best known to them, but it also provides for stricter punishment (offences under sub-sections (2) & (3) are cognizable and non-bailable and with minimum punishment of Six months imprisonment & Fifty thousand rupees fine and maximum may extend to Seven Years with fine which may extend to Five lakh rupees, and also time bound investigation as well as trial of the case and very well incorporates the provision for making the perpetrator pay for the loss or damage caused to the property by such a person- by way of compensation twice the fair market value of damaged property or loss caused. There can be no doubt whatsoever about the good intentions of the Government, however the Ordinance seems to be silent *inter alia* on certain legal aspects, which can be enumerated hereunder:-

- a. Why there has not been any provision in the Ordinance to deal with any such IO who fails to file the Charge-Sheet within 30 days from the registration of the FIR when there has been a time line for the Judge to conclude the trial which starts only after the Charge-Sheet is filed and the charges are framed ?
- b. Under the ordinary criminal law, it is presumed that an accused person is innocent unless proven guilty whereas under the present ordinance an accused person charged for commission of grievous hurt are presumed to be guilty for the said offence unless proves his innocence.
- c. It does not define clearly the offence - it only provides for instances like harassment impacting the living or working condition of healthcare services personnel or preventing him from

discharging his duties; harm, injury, hurt, intimidation or danger to life of such healthcare services personnel either within the premises of a clinical establishment or otherwise; obstruction or hindrance to such healthcare services personnel in discharge of his duties, either within the premises of a clinical establishment or otherwise; loss or damage to any property or documents in custody of, or in relation to, such healthcare services personnel. It is pertinent to point out that some of the expressions are very vague and prone to either misuse by the authorities or even by the accused during the trial, leading to take benefit of doubt and requirement of the Ordinance/ any penal provision to prove beyond reasonable doubt and not merely when the prosecution can only show the preponderance of probability.

- d. It does not designate the Court which is competent to try such offences, though there is provision for investigation for a police officer not below the rank of an Inspector.
- e. As per sub-clause (iii) of Section 3A, the investigation of a case under the Ordinance shall be completed within a period of 30 days from the date of registration of the FIR, but a question arises, if the IO fails to file the Charge-Sheet within 30 days of registration of the FIR at the first place and even neglects to file it, in say the next 40 days, why has the accused to wait for 60 days from the date of arrest to avail the benefit of default bail as provided in Section 167 CrPC?
- f. It fails to take into account the very important issue of dissemination of false information and hatred through social media, which is one of the most important reasons for inciting violence against healthcare services personnel at the first place. It was a great opportunity for the Executive to include misuse of Social Media platforms and violations of the provisions of the Information & Technology Act, 2000 & regulations framed there under during the pandemic, within the scope of 'abetment' as provided in sub-section(2) of section 3.
- g. The principal Act empowers the State or the Central Government to make temporary regulations, that too when it thinks that the ordinary provisions of law for the time being in force are insufficient for the purpose i.e. better prevention of the spread of dangerous epidemic disease. What stopped the executive to amend and provide for these offences and punishments in the Indian Penal Code, 1860 (IPC)?
- h. It is not clear as to whether the provisions are for a limited period or are permanent in nature since under the principal Act, the state or the central government get the power to make temporary regulations in the face of dangerous epidemic. Say if the central government declares in the month of August, 2020 that COVID-19 is no longer an epidemic, what is going to be the impact of the same on the pending trials? Would that mean that after such an announcement if any act of violence is perpetrated by an accused against healthcare services personnel, that will not be covered by the present Ordinance and shall be tried under the regular penal laws like IPC ?

Conclusion

With whatsoever seeming difficulties with the Ordinance, there cannot be any two views as to the urgent necessity and requirement for such a law to be in force for the protection of healthcare services personnel and it is a right step in the right direction. The Parliament has enough time and opportunity to deliberate of the pros and cons of the Ordinance once the Parliament is in Session and to fill all the lacuna which might be brought into notice and discussed upon by the citizenry in general and legal minds in particular.

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* The Epidemic Diseases Act, 1897 (Act 3 of 1897)

* The Epidemic Diseases (Amendment) Ordinance, 2020 (No. 5 of 2020)