

LEGAL ADVISORY ON COVID-19 PANDEMIC

Two laws are now applicable in the current pandemic, namely:

- **The Epidemics Diseases Act, 1897**
- **The Indian Penal Code, 1860**

On 11th of March 2020, the Union Cabinet Secretary announced that all the States and Union Territories should invoke Section 2 of the Epidemic Diseases Act, 1897. Nearly all the States and Union Territories followed this directive. This gave legal backing, a statutory support to the directions issued by the Union health ministry, the State governments and the local authorities to contain the corona pandemic. The disease had already been declared as a notifiable disease.

Two laws are now therefore applicable to everyone - doctors, hospitals, patients and general public, namely, The Epidemics Diseases Act, 1897 and The Indian Penal Code, 1860. Coincidentally, both these laws are more than 100 years old and are penal in nature, that is they give rise to criminal liability and hence imprisonment is one of the consequences of not following them.

The first law, The Epidemic Diseases Act, 1897 was enacted “for the better prevention of the spread of Dangerous Epidemic Disease”. It is a very short Act having only 4 sections.

Section 2 of the Epidemic Act empowers the State Government to take suitable temporary measures to prevent an outbreak or threatened outbreak or spread of an epidemic. Once this Act is invoked, the State government can give directions and take required steps to arrest spread or outbreak of an epidemic disease.

Section 4 gives legal protection to every person who has acted under this Act or the directions issued under this Act subject to only one condition that the act must have been done in good faith.

Section 3 of the Epidemic Act prescribes the punishment for disobeying the orders of the State government given under this Act. The penalty prescribed takes us to the second law which is applicable in an epidemic, The Indian Penal Code, 1860, very specifically Section 188.

Section 188 of the Penal Code prescribes punishment of upto 6 months and fine of upto Rupees One Thousand for not following government orders.

There are 2 more provisions of the Indian Penal Code that can be attracted in the current scenario for spreading an infectious disease either knowingly (Section 270) or unknowingly or negligently (Section 269). The former attracts imprisonment or 2 years which is far more than the 6 months under Section 188 of the Indian Penal Code which is attracted under the Epidemic Act.

Duties, Responsibilities and Precautions: Doctors, Hospitals, Patients, and the general public

✓ **Doctors & Hospitals**

- Doctors must keep themselves fully informed about the directions that are coming from the State and local authorities. These have to be followed religiously.
- Any suspected patient must be managed appropriately according to the expertise, qualification and expertise as well as the facilities available with the doctor and hospital.
- Ensure that patients who have been referred to the other facility report to the other facility.
- Report to the authorities about any patient who refuses to follow medical advice or acts dangerously.
- Do not fear law. It protects you. Every action that you have taken in good faith irrespective of the consequences is immune from legal action under section 4 of the Epidemics Act.
- 'Take care of yourself'. Self-preservation is a supreme law.
- Hospitals must ensure personal safety of its staff. This is not only a legal obligation but also an ethical and moral one.

✓ **Professional bodies, associations of doctors and hospitals**

- For an individual doctor it would be a Herculean task to be vigilant about the various directives coming from the authorities. Failure to follow these directions could result in adverse legal consequences. Hence the need for the associations to be active.
- A copy of the directives, regulations and guidelines issued by statutory authorities is usually marked to the relevant professional bodies and associations, especially the ones at the national level. The national bodies must ensure that the relevant information is passed to their State or District Chapters. Emails, SMS's, WhatsApp and such other medium can be used to reach member doctors directly.
- In case the relevant information is not shared by the authorities, then a letter or email must be addressed requesting them to send the relevant information.
- At times, the doctors of a particular speciality may be facing some problems or the directions given by the authorities may be unclear or confusing or may not be capable of execution. In all such cases, the authorities must be contacted for suitable clarification or further directions.
- A small committee can be constituted for this specific purpose to co-ordinate and take appropriate decisions.

✓ **Patients / Public**

- Everyone has to follow the directions given by the authorities.
- Persons who have been advised isolation or quarantine and have not followed the same are liable to be prosecuted. There are reports that a few persons have ran away from hospitals or have been travelling when they have been advised isolation. One must remember that the legal action for these misdemeanours can be initiated even after months and the result could be imprisonment of 2 years.

ANNEXURE - APPLICABLE LAWS

The Epidemics Diseases Act, 1897

Section 2.(1). Power to take special measures and prescribe regulations as to dangerous epidemic disease

When at any time 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.

Section 3. Penalty.

Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

Section 4. Protection to persons acting under Act.

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 Indian Penal Code, 1860

Section 188. 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 person 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 trends 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 necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient, that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Section 269. Negligent act likely to spread infection of disease dangerous to life

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 270. Malignant act likely to spread infection of disease dangerous to life

Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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