

A COMPREHENSIVE STUDY ON INFECTIOUS / OCCUPATIONAL DISEASES IN HEALTHCARE WITH RESPECT TO HEALTHCARE WORKFORCE / PATIENTS AND THE INDIAN LEGAL SYSTEM

C.L. Avadhani, Research Scholar,
B.Sc., AMIE, MBA, M.Phil, MMM, PGDFM, PGDMM, PGDBA, PGDHRM,
PGDPM&IR, PGDIPR, DLL, LLM, Project Consultant,
Ph.D.Research Scholar, Department of Business Administration, Annamalai University

Dr. G. Udayasuriyan M.B.A. M.L.S. M.Sc. M. Phil. Ph. D,
Professor Department of Business Administration, Annamalai University (Guide)

Prof. K. Viyyanna Rao M.Com., M.B.A., Ph.D., MIMA., LIII
Former Vice-Chancellor, Acharya Nagarjuna University (A.P.) (Co-Guide)

Abstract:

The Constitution of World Health Organization (1946) emphasizes about,

“The highest attainable standards of health as fundamental right of every human being. Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable healthcare of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water, sanitation, housing, health related information and education and gender equality”

The recent Covid-19 Pandemic and the subsequent variants (SARS) that exploded like a Volcano globally opened the eye of Healthcare Professionals and Providers globally regarding the pitfalls and the Lacunas in Healthcare facilities. This abnormal situation in majority of the Healthcare Facilities even in the developed countries exposed the problems that are being created because of the spread of infectious diseases and occupational diseases and the affect of such diseases on Healthcare Workforce, Professionals, Patients and Social Workers in many of the Healthcare Facilities. In India, though there are few healthcare laws like Epidemic Disease Act, The Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 (Act No. 27 Of 2009) and such other Acts are Colonial Acts as such have to be amended/modified/re-introduced in line with the present situation. In addition many of the laws neither have no teeth nor the punishment for the guilt is very minimum. Though there are International Health Laws that are to be applied in all the Member Countries of World Health Organization but the application and supervision of the International Laws are not exist. In the words of Doctor Tedros Adhanom Dehebreyesus, Director General of World Health Organization,

“No Country, Hospital or Clinic can keep its patients safe unless it keeps its Health Workers safe. WHO’s Health Workers safety charter is a step towards ensuring that Health Workers have the safe working conditions, the training, the pay and respect they deserve”.

In this article, an attempt is made to discuss about the various Laws and Acts relating to Infectious and Communicable diseases and the applicability of such Laws and the punishment thereon, the responsibilities of the respective State and Union Territory Governments and the responsibilities of the Healthcare Providers and the Facilities are discussed threadbare. Also the Judgments delivered by the Hon'ble Apex Court, the highest Judicial Body in India are also mentioned regarding these Infectious and Contagious Diseases. However, it is the responsibility of the Central Government because, though Health is a State and Central subject according to the Constitution, the primary responsibility rests with the Central Government regarding the Health and the State Governments will only endorse the Acts and Laws that are being promulgated by Parliament. In India, because of Lack of specific Healthcare Laws for punishment, one has to depend on the Criminal Laws such as CrPC and IPC for the Negligent Acts committed by the offenders.

The spread of Infectious and Contagious Diseases not only affect the health of the public at large but it will have a bearing on economic and financial conditions of any Country that is being affected, that has been proved recently due to the spread of Covid-19 Pandemic and subsequent variants because there is a travel ban, quarantine period who enters from one country to other, physical distancing etc has isolated from one country with other. In this article, an attempt is made to the extent possible by raising such issues that have global importance and the specific measures taken by the International Organizations and in particular in India. Finally, this Infectious and Occupational diseases not only affected the people but also every living organism has been affected and in addition environmental degradation.

Key Words:

Infectious and Occupational diseases, Contagious Diseases, Provisions of Indian Constitution Relating to Health, Epidemic Diseases Act, The Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 (Act No. 27 Of 2009), The Telangana Infectious Diseases Act, 1950, Covid-19 Pandemic.

I. Introduction:

The Constitution of World Health Organization (1946) envisages,

“The highest attainable standards of health as fundamental right of every human being. Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable healthcare of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water, sanitation, housing, health related information and education and gender equality”.

World Health Organization also mentions that,

“Violations are lack of attention to human rights can have serious health consequences. Overt or implicit discrimination in the delivery of health services – both within the health work force and between health workers and service users – acts as a powerful barrier to health services, and to contributes to poor quality care. Mental ill health often leads to denial of dignity and autonomy, including forced treatment or institutionalization, and disregard of individual legal capacity to make decisions..... A Human Rights – based approach to health provides a set of clear principles for setting and evaluating health policy and service delivery, targeting discriminatory practices and unjust power relations that are at the heart of inequitable health outcomes.”

The recent covid-19 pandemic has brought out many shortfalls and also important aspects such as the role of healthcare workforce and the professionals involvement in healthcare services to relieve sufferings and save lives.

In the words of Dr. Tedros Adhanom Dhebreyesus, Director General, World Health Organisation,

“No Country, Hospital or Clinic can keep its patients safe unless it keeps its health workers safe. WHO’s Health Workers Safety Charter is a step towards ensuring that health workers have the safe working conditions, the training, the pay and respect they deserve”

The recent Covid-19 pandemic exposed Healthcare Workforce Professionals, Patients, Social Workers etc and their families to unprecedented levels of healthcare related risks. Though actual figures are not available it is observed that, Covid-19 Infections (Infectious Diseases) among healthcare workforce are far greater than those in the general population.

World Health Organizations also advices member countries to establish synergies between health worker safety and patient safety, development and implementation of National Programs for occupational health and safety of healthcare workers, protecting them from physical and biological hazards in healthcare facility.

If any violations by anybody who are related to health either to the healthcare workforce, patients, social workers or in fact anybody in the healthcare delivery system face any problem either individually or to the community, there should be a legal system to protect their rights, compensating them for their losses such as financial, physical, mental and not but the least social inequality. In this article, an attempt is made to identify such facts and the remedial measures that are available and the respect of all the stake holders in healthcare system with reference to existing Indian Legal System are discussed.

In India, this right, which is a natural corollary to promoting public health is protected under the Indian Constitution in number of ways.

Though the constitution of India does not expressly guarantees a fundamental right to health, however there are multiple references in the Constitution of India to Public Health and the role of the State, the provisions of healthcare to citizens.

The present situation of globalization, development of technology and participation of private players in healthcare and mushroom growth of healthcare facilities, this type of healthcare hazards like Infectious diseases/Occupational diseases, Pandemics like Covid-19 have brought in numerous legal obligations that are to be addressed.

There are numerous legal options though do not directly related to health but, there are number of Acts and Provisions in the Constitution that place an vital role to get relief to the affected community.

In this article, with the help of the Apex Court of India's decided cases on health and healthcare related issues and the present legal system are discussed to the extent possible.

II. Background:

Right to health means, the most attainable levels of health that every human being who is protected by the Indian Constitution under Article 21 (health as a part of fundamental right) is entitled to, not only in India but also the International Community as a whole regarded **"health"** is the basic fundamental human right under International Human Rights Law; Unlike other International Laws, the right to health creates an obligation on the Member States to recognize and to ensure that, the right to health is respected, protected and fulfilled and it is the duty of all the Member States to its Citizens in Tato.

According to Salmond,

"Every right has a corresponding duty to be fulfilled and there can be no right without a parallel element of duty"

III. FOLLOWING ARE SOME OF THE PROVISIONS OF INDIAN CONSTITUTION RELATING TO HEALTH.

An observation and a close look of the Indian Constitution regarding right to health and the role of states in implementing the same and basic requirements in providing the same, are,

i. Article 38 of the Constitution lays down the responsibility of the State to secure social order for the in-promotion of the welfare of public health.

ii. Article 39 clause (E) relates to, **"the protection of health of the workers"**

iii. Article 41 relates to, **"providing public assistance by the State in special circumstances such as sickness, disability, oldage etc.,"**

iv. Article 42 protects, **"the health of the infant and the mothers, that is in a way it pertains to maternity benefit"**

v. Article 47 imposes, **“a primary duty on the State in improvement of public health in securing of justice, providing human conditions of work for the workers, extension of benefits pertaining to sickness, disability, oldage and maternity benefits. The state is also under the obligation of prohibiting the consumption of liquor in the interest of good health”**

vi. Article 48A states, **“the duty of the State towards providing a good and healthy pollution free environment.”**

The above mentioned articles are all comes under Directive Principles of State policy in the Constitution of India merely pervasive value and are non justicable means and are not enforceable in the Court of Law.

IV. Judicial Interpretation of right to health under Part III of the Constitution

As mentioned above the Directive Principles are not enforceable in the Court of the Law, the State used to make this a tool to escape from its duty/responsibility and liability in providing health and protecting the health of the common man. However, the Judicial System in India is more stronger and responsible; the Hon’ble Apex Court in a remarkable Judgment brought the right under the purview of the Article 21 of the Constitution, and the scope of this Article 21 has been widened to ensure that the right of the life and liberty of each individual is protected. This personal liberty is and include rights that may or may not be directly linked to the life and liberty of a citizen, now that includes right to health.

The Hon’ble Apex Court in Kesavananda Bharati case relating to human rights where the recognition of fundamental right by the Hon’ble Apex Court, promoted Public Interest Litigation (PIL) where any Public Interest is disobeyed even by the State can be questioned and this observation of the Hon’ble Apex Court has led to the protection of health related litigation.

Further, developments of establishment of Consumer Courts, recognition of healthcare a fundamental right and allowing the individuals by the Hon’ble Apex Court to approach directly for the protection of human rights.

A classic example, of the Hon’ble Apex Court’s finding in 1995 in the case of **“Paramananda Ktra”** held that, **“those who are indulged it is the profession of Medical or incharge of public health and have an inherent obligation to protect the same so that who are innocent can be protected and the guilty be punished”**.

V. EPIDEMIC DISEASES ACT, 1897:

The Epidemic Diseases Act, 1897 which was first enacted to tackle Bubonic Plague in Mumbai (Formerly Bombay) in former British India (Imperial Legislative Council – now the powers of the Act rest with Parliament of India). The law is meant for containment of Epidemics by providing powers that are required for the implementation of containment measures to control the spread of the disease.

Long Title – An Act to provide for the better prevention of the spread of dangerous epidemic diseases.

Territorial – Extent – India

Enacted by – Imperial Legislative Council (now the powers of the Act rest with Parliament of India)

Amendments – Epidemic Diseases (Amendment Ordinance, 2020)

This Act has also been amended in its application to various regions and States such as,

The Epidemic Diseases (Punjab Amendment) Act, 1944 etc and the extended to, Dadra and Nagar Haveli (w.e.f 01.07.1965) by Reg. 6 of 1963, S. 2 and SCH. Etc.

VI. LEGAL PROVISIONS:

(1) Sec. 2 of the Act reads:

“(1. 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)”.

(2) Sec. 2(a) of the Act reads Powers of Central Government:

“When the Central Government is satisfied that India 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 and for such detention thereof, or of any person intending to sail therein or arriving thereby as may be necessary”

(3) Penalty

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

Section 188 of IPC

“Disobedience by an order promulgated by Public Servant Lawfully empowered to promulgate such order 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, to be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to Rs. 200/-, 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 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 Rs. 1000/- 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 his likely to produce harm”

What are the ingredients of the section?

- a. A Lawful order promulgated by a Public Servant empowered to promulgate it.
- b. Knowledge of the order which may be general or special
- c. Disobedience of such order.
- d. The result that is likely to follow from such disobedience. Under the section the accused must have knowledge of the order with the disobedience of which he is charged. Mere disobedience of an order does not constitute an offense in itself, it must be proved that such disobedience has resulted into certain consequence, namely annoyance, obstruction etc.

4. Protections to persons acting under Act:

No suit or other legal proceeding shall lie against any person for any intended to be done under this act.

Amendments 2020:

On April 2020, Government of India announced promulgation of an ordinance,

“The Epidemic Diseases “(Amendment) Ordinance 2020”

To amend the Act, adding provisions to punish those attacking doctors or health workers. The ordinance allows for upto seven years of Jail for attacking doctors or healthworkers (including Asha Workers). The offense will be cognizable and non bailable among other things. In addition to this, such cases need to be investigated in a time bound and must be resolved in a year. Also, the law specifies that the guilty will have to pay twice the market value of the damaged property as compensation for damaging the assets of healthcare staff including vehicles and clinics.” The Rajyasabha approved the bill on 19.09.2020 and that the Loksabha on 21.09.2020.

Invocations:

“The Act has been routinely used to contain various diseases in India such as SwineFlu, Cholera, Malaria and Dengue. In 2018, the Act was enforced as Cholera began to spread in a region of Gujarat. In 2015, it was used to deal with Dengue and Malaria in Chandigarh and in 2009, it was invoked in Pune to come back SwineFlu.”

With the emergence of Covid-19 pandemic, the Cabinet Secretary of India, on 11.03.2020 announced that, all states and union territories should invoke provisions of sec. 2 of the Epidemic Diseases Act, 1897.

A. Centre Invokes ‘Epidemic Act’ and ‘Disaster Management Act’ to prevent spread of Coronavirus.

VII. OFFENCES:

“Affecting the Public Health, Safety, Convenience, Decency and Morals in Chapter – XIV, Sec 269 to 285 of Indian Penal Code(IPC)”

A person is guilty of a public nuisance, who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupied property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Sec. 269: Negligent Act likely to spread infection of disease dangerous to life.

“Whoever unlawfully or negligently does any act which is, and which he know 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 fine, or with both – It is a cognizable, bailable, non compoundable, trailable by any magistrate”

Sec. 269 IPC: which deals with spread of infection negligently or unlawfully, contains two kinds of offences; they are

a. Anybody who commits an act unlawfully or negligently with the intent that such action is likely to proliferate any treacherous disease to live. For example, if a person knows that he/she is suffering from Coronavirus and still attends a public gathering, he/she is liable under this section.

b. Any person who commits an act unlawfully or negligently and has reasonable grounds to believe that such action is likely to spread the infection of any treacherous disease to life. For example, a person knowing that is suffering from swine flu attends a party or wedding ceremony or any social gathering, knowing and believing that the infection will pass on to others is also an offense under this section. The ingredients required for this sec. 269 IPC are

i. a Negligent or unlawful act

ii. Such act spreads these infections of any disease which are dangerous to life

iii. Such an act is done with the intent or belief that it will spread any dangerous diseases,

Decided Cases:

1. Vikram singh vs State and Anr (Rajasthan High Court 2017)

Sec. 270: Malignant Act likely to spread infection of disease dangerous to life

“Whoever 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 two years, or with fine, or with both.”

The term malignantly used in sec. 270 connotes, **“the mens rea of the accused who acted maliciously by deliberately spreading the infection”**. That is why severe punishment is prescribed under sec. 270 compared to sec. 269.

a. It was found in some cases that the blood sample that are infected with HIV and such other deadly diseases which are confidential in nature and that are not to be disclosed without the consent of the person and if disclosed by authorities attracts punishment.

In this regard, the Apex Court observed about sec. 269 and 270 in a case in 1998. The Court observed that HIV+ve man had filed a case against the hospital that has disclosed that he was HIV +ve leading to his marriage being called off. The Court observed that, **“Disclosure saved the petitioners fiancé the Court also took note of the two provisions and observed, if a person suffering from deadful disease such as AIDS, knowingly marries a women and thereby transmits the infection, the person would be guilty of offences according to sec. 269 and 270 of IPC. Thus, the above statutory provisions cast a duty upon the appellant not to marry has the marriage would have the effect of spreading the infection, which is dangerous to life to the women whom he marries and is an offence”**

This statutory provisions cast a duty upon the appellant not to marry so that, the affect of spreading infection can be averted.

Imprisonment of two years or fine or both - cognizable – bailable – non-compoundable – trial by any magistrate”

Sec. 271 – Disobedience to quarantine rule

“Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel, it is state of quarantine or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both”

Quarantine means, **“Strict isolation of someone to prevent the spread of the disease. Quarantine is used by the governments either state or centre or union territory and the spreading of contagious diseases. Quarantines or such people or groups who do not have symptoms of disease, but they were exposed to the sickness. By using the rule of quarantine such persons / groups are kept away from others / groups so that they do not unknowingly infect others”**.

Normally quarantines may be used when,

a. Outbreaks – A situation where there is a sudden rise in the number of cases of infectious diseases.

b. Epidemics – Though a similar situation is that of outbreak, but it is generally considered to be larger in size and such as wide spread Cholera, Tuberculosis, swineflu

c. Pandemic – Pandemics are faster and wide spread and at times a global phenomena like covid-19 in nature and effect larger population in different parts of the globe.

Punishment- Imprisonment for six months, or fine, or both – non cognizable – bailable – triable by any magistrate – non compoundable.

Sec. 272 – Adulteration of food or drink intended for sale

“Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both”

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

(State Amendments should be observed)

Sec. 273 – Sale of noxious food or drink

“Whoever sells or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description, for a term which may extend to six months, or with fine which may extend to Rs. 1000/- or with both”

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Act of adulteration merely does not amount to offense under sec. 273 unless it is to be proved that adulteration is to an extent to render the article noxious and sale of such noxious article as food or drink which is mainly prohibited under sec. 273 but not the sale of noxious article.

The terms “noxious as food” refers to and means, ***“Food that is injurious to health or detrimental nature”***

- 1. The work “and” omitted by Act 42 of 1953, S.4 and the third Sch.***
- 2. Subs. By the A.O. 1937, for “by the G. or L., or by any Govt.”***
- 3. The words “Central or any Provincial” rep. by the A.O. 1950.***
- 4. The words “or the Crown Representative” were rep. by the A.O. 1948.***

Sec. 274 – Adulteration of drugs

“Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation or to make it

noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both”.

Sec. 274 can only applied that, **“there must be an adulteration of any drug or any medical preparation and that should be done in such a manner in order to lessen its efficacy or change its operation or make it noxious, and that the accused should have the intention of selling such drugs for any medical purpose or the person must have the knowledge that such drugs are sold”.**

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 275 – Sale of Adulterated drugs

“Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render its noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both”

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 276 – Sale of drug as a different drug or preparation

“Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both”

Under this section the liability cannot be fixed for the injury that is caused but for selling, offering, exposing for sale or issuing any drug for medical preparation.

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 277 – Fouling water of public spring or reservoir

“Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to Rs. 500/- or with both”

The term “Corrupts or Fouls” used in this section connotes the act of physically destroying or deteriorating or defiling the condition of water from any public spring or reservoir. The use of the expression “less fit” instead of using “unfit” is deliberate because the water may not have

been rendered totally unfit for use but even if it has been turned less fit the accused is guilty of that act.

Punishment – Imprisonment for three months, or fine of Rs. 500/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 278 – noxious to health

“Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbor hood or passing along a public way, shall be punished with fine which may extend to Rs. 500/-“

Punishment –fine of Rs. 500/- – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 282 – Conveying person by water for hire in unsafe or overloaded vessel

“Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or as loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may be extended to six months or with fine which may be extended to Rs. 1000/- or with both”

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 284 – Negligent conduct with respect to poisonous substances

“Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his position as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to Rs. 1000/- or with both”

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Sec. 285 – Negligent conduct with respect to fire or combustible matter

“Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life or likely to cause hurt, or injury, to any other person or knowingly or negligently omits to take such order with any fire or any combustible matter in the position as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both”

Punishment – Imprisonment for six months, or fine of Rs. 1000/-, or both – Non cognizable – Bailable – Non compoundable – triable by the magistrate

Exceptions:

a. The term “*Public*” has defined under sec. 12 of IPC and includes any class of community or any public, any community or any class that is dwelling in a particular locality can be covered with in the ambit of public.

b. The term “*illegal omission*” must be interpreted likewise to the meanings of “*Act*”, “*acts*” and “*Illegal*” as has been provided in sec. 32, sec. 33 and sec. 43 of IPC respectively. Only when an omission is illegal then it will amount to an offense of public nuisance.

c. The accused cannot take the defense that the nuisance which was caused was in order to protect the interest of his/her own, or to prevent or mitigate any harm to the property or crops of the accused.

d. Sec. 81 of IPC absolves a person from criminal liability if the act is committed in good faith or it was intercept any other harm. However, if the accused is charged under sec. 268 of IPC then the accused cannot avail the exception under sec. 81 of IPC.

The important ingredients under sec. 81 is to establish, **“Conviction is the existence of danger, annoyance, injury to the public or the person who may have the occasion to use public right”.**

Sec. 290 – Punishment for public nuisance in cases not otherwise provided

Sec. 290 of IPC applies to all such cases of public nuisance where there is no separate provisions for punishment under IPC have been made.

VIII. BUSINESS CRIME AND INVESTIGATIONS IN INDIA:

This relates to matter relating to corporate manslaughter, environmental offenses, health and safety offenses, and modern slavery.

Though there is no specific statutory offence of Corporate Manslaughter in India, offences of a similar nature are provided in the Indian Penal Code, 1860.

Under the IPC, **“a person includes a company or association or body of persons, whether incorporated or not and offence committed by a person and the corresponding punishment can therefore also apply to a company”.**

The Apex Court also observed that, **“a corporation is virtually in the same position as any individual and may be convicted of a common law as well as statutory offences”**

On a case to case basis and with the discretion of the Judiciary, depending on various factors including culpability, menseria, deterrence etc., cases can be examined.

IX. FOLLOWING ARE THE OFFENCES TO PROSECUTE CORPORATE MANSLAUGHTER:

a. Negligent act likely to spread infection of disease dangerous to life: This is committed when a person unlawfully or negligently does any act, which is and which the accused

understood to be likely to spread the infection of any disease dangerous to life, persons found guilty of this offense will be subject to imprisonment for up to six months, or fine or both.

b. Malignant Act likely to spread infection of disease dangerous to life: This offense is committed when a person maliciously does any act which is, and which the accused understood to be, likely to spread the infection of any disease dangerous to life, and persons found guilty of this offense will be subject to imprisonment for up to two years, or fine or both.

c. Negligent conduct with respect to poisonous substance: fire or combustible material, explosive substances, machinery etc, a person will be punishable for negligent conduct when they either

i. Carryout any act with any poisonous substance, fire or combustible material, explosive substances, machinery, in a manner that is so rash or negligent as to endanger human life.

ii. Knowingly or negligently fail to take orders in relation to any poisonous substance, fire or combustible material, explosive substances, while in their position or under their care, as if sufficient to guard against any probable danger to human life from such substance, fire or matter.

X. MEDICO LEGAL ASPECTS OF INFECTION CONTROL:

According to World Health Organization(WHO), Healthcare Associated Infection (HAI) refers to as, **“Nosocomial or hospital infection, is an infection occurring in a patient during the process of care in a hospital or other healthcare facility which was not present or incubating at the time of admission. They are unrelated to the original illness that brings patients to the hospital and are neither present nor incubating as at the time of admission. Health Acquired Infection may also appear after discharge”**

A particular infection should be considered as, **“Healthcare Associated Infection”**, only if,

a. IT was not present or incubating when the patient was admitted to the hospital/healthcare facility.

b. The infection does not represent a complication or extension of an infectious process that was present at the time of admission.

c. The infection occurred more than 48 to 72 hours after admission, and within ten days following discharge or longer if it is related to a surgical procedure,

i. Clostridioides

ii. difficile infection or an antibiotic resistant organism

d. Infections that are not considered to be associated with healthcare

i. Those infections which are associated with complications or extensions of infections already present at the time of admission, unless a change in pathogen or presenting symptoms strongly suggest that the infection has been acquired after healthcare facility admission.

- ii. Infections like herpes simplex, toxoplasmosis, rubella, cytomegalovirus, or syphilis among infants which are acquired transplacentally and manifest in less than 48 hours after birth.
- iii. Reactivation of a latent infection (herpes zoster (shingles), Herpes Simplicis, syphilis or tuberculosis)

e. Conditions that are not infections:

- i. Colonization, i.e. presence of micro organisms on skin, on mucous membranes, in open wounds, or in excretions or secretions but there are no clinical signs or symptoms.
- ii. Inflammation as a tissue response to injury or stimulation by non infectious agents, example chemicals.

f. To prevent and control Healthcare Associated Infections:

It is said that,

“if u know how to prevent infections, u know how to protect patients from most adverse events”

There are many preventive measures recommended and if those measures are applied to reduce morbidity, length of healthcare facility stay, mortality and healthcare facility costs. According to the guidelines there are three main approaches and includes,

- i. Elimination of Endogenous Healthcare Associated Pathogens to reduce Oropharyngeal, Intestinal, and Skin Colonization.
- ii. Use of methods to prevent cross contamination and to control various sources of healthcare associated pathogens that can be transmitted from patient-to-patient or from personnel to patient, that is proper disinfection and care of Catheters, Respiratory equipment, humidifiers, endotracheal tube, and dialysis system.
- iii. Use of antibiotic prophylaxis in Post Operative and High Risk Patients (burn patients, patients in ICUs etc). Aerosolized Polymyxin – B and / or Endotracheal Aminoglycosids can be given to prevent Pseudomonas and / or acinetobacter pneumonia which has highest mortality rates.

XI. MEDICO LEGAL LIABILITY:

Healthcare Associated Infection is that infection which occurs in a patient which was not present or incubating at the time of admission to the healthcare facility. This very definition of HAI itself implies a potential for medico legal problems/cases.

a. Liability for HAI depends on multiple factors

- i. Failure to provide a clean and safe environment during the patient’s stay in the healthcare facility.
- ii. Failure /delay in implementing the infection control measures/mechanism.

- iii. Failure to carryout pre screening which is mandatory for, MRSA or C.Defficile negative prior to surgical or other admissions.
- iv. Failure / delay in identifying and treating the infection when it was acquired.

XII. GUIDELINES PROVIDED BY NATIONAL AND INTERNATIONAL HEALTH ORGANIZATIONS TO PREVENT AND CONTROL HEALTHCARE FACILITY INFECTIONS:

- i. Providing direct patient care using practices that minimize infections.
- ii. Following appropriate pre determined practices of hygiene (handwashing and sterilization of equipment and facility)
- iii. Isolation of patient from other infected patients and healthcare facility staff who may also be infected.
- iv. Following the practices approved by the “***Infection Control Committee***” of that facility.
- v. When any infection is present collecting appropriate micro biological specimens from the infected.
- vi. Keeping a record of HAI and the admission of infected patients.
- vii. Strictly following the recommendations of the “***Anti Microbial Committee***” regarding antibiotic use.
- viii. Educating the patients, visitors and healthcare staff on techniques of preventing the transmission of infection.
- ix. Finally administering appropriate procedure for any infections and taking appropriate measures to prevent such infections from staff to others and patients.

In a Malpractice Law suit with an allegation of harm due to HAI, the complainant has to prove that a reasonable healthcare provider/facility would have anticipated the likely-hood of such harm in the absence of certain steps necessary to prevent the infection and that the healthcare provider/facility failed to foresee the impending harm and take necessary steps to prevent such unhappy situation; otherwise if same is proved the healthcare providers and facilities held liable for such failures in implementing and providing adequate infection control measures/mechanism, and that failure resulted in the harm to the patient.

If the failure is intentional and non compliance of adequate infection control measures then, that healthcare facility or providers concerned are liable for prosecution.

When actual or direct intention is present, the wrong doers not providing infection control measures knowing that is wrong and eventual intention is present they are liable for prosecution.

XIII. LEGAL PROVISIONS THAT ARE APPLICABLE AS PER INDIAN LAWS AND INDIAN LEGAL SYSTEM:

The Indian Penal Code (IPC) is applicable in cases of HAI:

- a. Sec. 304A IPC (Causing death by negligence)
- b. Sec. 337 IPC (Causing hurt by Act endangering life or personal safety of others)
- c. Sec. 338 IPC (Causing grievance hurt by Act endangering life of personal safety of others)
- d. Sec. 269 IPC (Negligent likely to spread Infection of disease dangerous to life)
- e. Sec. 270 IPC (Malignant Act likely to spread Infection of disease dangerous to life)

Healthcare Providers / Facilities owes a legal duty of care to the patients and also the healthcare workers and professionals. They should exercise a degree of care and skill that is normally expected from a prudent person and also they have an ethical and moral responsibility and obligation to act in the best interests of the patients and inmates. In addition the healthcare provider is also having a moral duty to provide a safe environment to the patients and inmates and protect them from any harm due to infections during the sujoron in the facility. In addition the healthcare providers are having an obligation and moral responsibility to disclose such information when a patient has been exposed to risk of harm and any errors occurred during their stay in the facility.

Protecting Privacy is mandatory and reporting of infectious diseases from Pandemics. Due to the recent covid-19 that erupted like a volcano has given some lessons to the healthcare professionals and providers. It is the obligation on the part of the healthcare professionals and the providers and the facility where the Pandemic patients are taken care of, to disclose the information and its impact to the officials concerned by withholding the personal information of the affected persons except to their family members. By doing so, the healthcare providers and the professionals are discharging their moral and ethical obligation in informing the officials so that necessary directions can be passed and implemented by the respective authorities and also by intimating to the kith and kin of the patient's which is mandatory about the healthcare condition of the patient.

XIV. THE TELANGANA INFECTIOUS DISEASES ACT, 1950

The Andhra Pradesh (Telangana Area) Infectious Diseases Act, 1950 is in force in the combined State as on 02.06.2014 and has been adopted to the state of Telangana, under sec. 101 of the Andhra Pradesh Re-Organization Act, 2014 (Central Act 6 of 2014) vide, the Telangana Adaptation of Laws (No. 2), Order 2016 issued in G.O.Ms.No. 46, Law(F) Department dated 01.06.2016.

Infectious disease means, a. Acute Influenza Pneumonia, b. Anthrax c. Cerebro Spinal Fever, d. Chicken Pox, e. Cholera, f. Diphtheria, g. Enteric Fever, h. Leprosy, i. Measles, j. plague, k. rabies, l. relapsing fever, m. scarlet fever, n. small-pox, o. tuberculosis, p. typhus, q. Yaws, r. any other disease which the government may from time to time by notification in the official gazette declare to be an infectious disease either generally throughout the state or in such part or parts thereof may be specified in the notifications.

XV. PREVENTION OF TRANSMISSION OF COVID-19 AND RELATED LAW:

The Covid-19 Pandemic that has spread universally and affected not only the persons, economy, trade and commerce globally. This spread of infection caused economic slowdown Globally, loss of production, loss of manpower hours and many a countries fall pray to this infection and the subsequent variant.

This Pandemic has raised numerous questions regarding National and International Laws, binding nature and how an affected party can sue others and get compensation for their innocence but becoming pray to the inadvertent acts of affected people knowingly or unknowingly. In this regard, many countries have put travel restrictions and quarantine periods if any foreigner comes to their country. This restrictions has varying periods from country to country. If a person affected with Covid-19 who transmits the disease to an

innocent knowingly or unknowingly can the innocent person who was affected by the transmission, sue the person (National and International) to get compensation?

This type of Pandemic which has spread Globally is uncommon and unknown and it has become necessary for the respective governments of the states to promulgate new laws and guidelines. Even the World Health Organization (WHO) has announced number of regulations and guidelines for this purpose to be followed by the member countries.

a. Negligence: Though there is no specific law regarding negligence by a group or community who are the cause of transmission but the provision of Indian Laws says any affected person can take recourse individually against a person who has done the negligent act knowingly or unknowingly. In this regard, the three ingredients that are required to be proved by the affected person to claim any compensation and punishment to the guilt are

- i. The defendant owes him/her a duty
- ii. There was a breach of that duty
- iii. Damages result from such breach

b. Duty to prevent transmission of Covid-19: To determine duty to prevent the transmission of Covid-19, the factors that are to be examined are,

- i. Forcibility of harm to the Plaintiff
- ii. The degree of injury suffered by the Plaintiff
- iii. The closeness of connection between defendant's conduct and the injury suffered by the Plaintiff.

In many of such situations, the Indian Courts allowed law suits for the negligent act of transmitting Covid-19 disease and imposed liability on the persons who are responsible for the transmission of such dreaded disease.

However, in the case of negligence, the plaintiff must prove that the cause of action to the Plaintiff is due to the actions of the defendant and that but for the cause of action of the defendant, the Plaintiff would not have experienced such injury / harm but in such transmission disease cases this cause of action is very difficult to prove because who is proximity to whom. If proved the guilt, damages suffered by the Plaintiff may be in the form of pecuniary losses that include Plaintiff's high healthcare expenses and non pecuniary losses such as Plaintiff's severe physical suffering, that may ultimately led to death or permanent physical disability.

XVI. INTERNATIONAL LAWS RELATED TO CONTROLLING AND SPREAD OF INFECTIOUS DISEASES SUCH AS COVID – 19 PANDEMIC:

The recent outbreak of Coronavirus Disease (Covid-19) causing severe acute respiratory syndrome and the subsequent variant SARS-Cov-2 that has spread to many Countries Globally raised many questions with regard to public health and policy and challenges to various Governments, International Organizations and Non-Governmental Organizations such as Social and Philanthropic Institutions. This Pandemic and the subsequent variant and the phenomenal outbreak Globally many of the affected states that are subjected to change their International Laws adding new restrictions, modifying the old regulations that are

prevalent before the spread of Pandemic to combat the spread of this Infectious disease has become the order of the day.

Globalization of health, and many countries are eager to establish International Healthcare Facilities in their own countries to boost economy and earn foreign exchange, has led to people travelling for their healthcare needs Globally to satisfy their want needs. This has created difficulty due to this infectious disease, to act swiftly in modifying healthcare laws and also the national and international policies with respect to the same to face the situation. Theoretically these challenges can be classified as **“Horizontal and Vertical Healthcare Challenges”**. In Horizontal challenges the public health problems that emerge from increased **“Cross Border Microbial Traffic”**, brought about by healthcare travel facilities offered by many countries. This led to the spread of disease to number of countries because of the **“cross-line-transmission of pathogenic microbes”**. This kind of cross border microbial traffic has brought numerous challenges to the domestic public health of that particular country such as insufficient surveillance capacity and insufficient strategies to face the pandemic. As far as the vertical challenges are concerned, the issues address that nation’s face inside their domains from the National and International Regional Travel. Vertical challenges responses are confined to public health practices and strategies inside a state but not between States.

The Globalization of public health and many people opting for healthcare travel to different parts of the Globe, International Organizations like World Health Organization, the Food and Agricultural Organization, the World Trade Organization etc have stepped in to make / modify / add new rules and regulations in the international laws with respect to health and health travel that are to be implemented in toto by the Member States. Any violation in this regard the affected State can approach the International Bodies for a relief / solace to their people and also the affected International Community.

XVII. FOLLOWING ARE THE PRINCIPLES NEEDED FOR EFFECTIVE INFECTION CONTROL:

The main standard precautions that are set to infection control practice and to prevent the transmission of disease that is supposed to be caused by, contact with blood, non intact skin, body fluids and mucus membranes. Standard precaution practice should be applied to all the patients infected with the disease, whether they are suspected or proven of having an infection, when they are connected with any healthcare facility.

XVIII. FOLLOWING ARE THE MAIN STANDARD PRECAUTIONS:

- i. Hand hygiene
- ii. Compulsory use of personal protective equipments like gloves, masks, eyewear and PPT kits etc.
- iii. Respiratory hygiene / Cough Etiquette
- iv. Safe handling of needles and other sharp devices
- v. Sterilization of all instruments and devices before use
- vi. Clean and Disinfected environment in every healthcare facility
- vii. Disposal of healthcare waste including bio waste

In 1951, the World Health Organization (WHO) adopted the **“International Sanitary Regulations”** during the 19th century International Sanitary Conference and subsequently it was renamed as **“the International Health Regulations(IHR) 1969 and subsequently**

modified in 1973 and 1981 . The International Health Regulation (IHR) is a legitimately restricting arrangement of guidelines embarrassed with the support of WHO, and one of the earliest **“Multi Lateral Administrative System”** strictly focusing on world wide surveillance for **“Communicable Disease”**, and is binding on 196 nations who are the Member Countries. The regulations also focus on the policy to be adopted in any specific occasion that attracts, **“Public Health emergency of International Concern”**, and is communicated by the WHO to all the Member States to combat worldwide outbreak and spread of infectious diseases.

However, there are some drawbacks that has rendered this regulations ineffective because WHO’s relative inexperience in making and implementing the lawful system and the IHR’s inability to adjust to the changing circumstances Globally and exchange of views; added to this IHR’s coverage only with respect to three diseases and lack of core surveillance capacity among the member states of WHO. Having experience in all these things the World Health Assembly, the governing body of the World Health Organization, in 1995 passed a resolution of **“World Health Security”** .

XIX. THE PREVENTION AND CONTROL OF INFECTIOUS AND CONTAGIOUS DISEASES IN ANIMALS ACT, 2009 (ACT NO. 27 OF 2009):

The Act:

“An Act to provide for the prevention, control and eradication of infectious and contagious diseases affecting animals, for prevention of outbreak or spreading of such diseases from one state to another, and to meet the international obligations of India for facilitating import and export of animals and animal products”

Scope of Application of Act:

1. This Act regulates the way in which the control of communicable diseases is organized and the procedure for the provision of healthcare services to infected persons (herein after provision of medical care) and sets out the obligations of the state, local government, legal persons and natural persons in the prevention and control of communicable diseases.
2. The National Vector Borne Disease Control Programme (NVBDCP) is for prevention and control of Vector Borne Diseases viz Malaria, Japanese Encephalitis, Dengue, Chickengunia, Kala – azar and Lymphatic filariasis

Disease Control Programme

- a. Integrated Vector Management
- b. Disease Management including early case detection
- c. Supportive Interventions
- d. Vaccination
- e. Animal Mass Drug Administration

Communicable Diseases and Programme

- a. National Aids Control Program
- b. National Framework for a Gender – Responsive approach to TB in India
- c. National Leprocy Education Program

d. Revised National Tuberculosis control Program

Notifiable diseases related to Global and Indian Laws

The meaning of “**Notified Diseases**” is,

“a disease that is dangerous to the health of the society and requires an action by law by notifying regarding the disease to the health authorities of the Government of India, who in turn takes necessary step notifying the same with guidelines on prevention and control and the same is expressly informed in State Governments and Union Territories”.

Following are the some examples of notifiable diseases:

- a. Bacterial diseases like cholera
- b. Diseases spread by contact such as Hepatitis
- c. Disease spread through
- d. Gastro intestinal Route
- e. Sexually Transmitted Diseases like HIV
- f. Diseases caused by viruses such as Covid-19 and SARS

Global laws on notifiable diseases:

a. The International Health Regulations, 2005: The International Health Regulations, that were established, imposes obligations on all the Countries who are the Members of the World Health Organization and each country has to provide a report of any infectious disease, that can affect people Globally to WHO. These regulations allows the Federal Governments such as Australia, India, Canada and the US for proper survey and investigation on notifiable diseases.

b. The Quarantine Act, 2005: The main object of this Act is to protect public health and to take preventive measures in controlling the spread of infectious diseases. This Quarantine Act has some guidelines, rules that are to be followed by the International Travelers who travels to other countries in Pandemic situations.

c. Indian statutes with respect to notifiable diseases: Many of the public health laws and such other related health laws will operate for infectious diseases also in India; of which certain statutes that are significant with respect to infectious diseases that must be notified by the Government, and some of which are

i. Food Safety and Standards Act, 2006: This Act allows the authorities to confirm their duties according to the Act and the most common serious disease related to the Act is “***Food Poisoning***” and is a notifiable disease. Sec 35 of the Act makes the Healthcare Professionals to notify the cause of Food Poisoning that was tested by treating a patient to the concerned authorities.

ii. The Leprosy Act, 1898: Sec 2(1) of the Leprosy Act, 1898 defines the word “***Leper***” as, “***a person who is suffering from any kind of Leprosy and Leprosy is a notifiable disease in India***”.

iii. The Epidemic Diseases Act, 1897: Explained above

iv. National Aids Control and Prevention Policy, 2002: AIDS is a notifiable disease because it is highly contagious and difficult to prevent this disease. That is why “the Government of India has established the National Aids Control and Prevention Policy”, in the year 2002 for safety and to control the spread of disease.

v. The Epidemic Act with respect to Covid-19 situation: The spread of Covid-19 Pandemic raised the eyebrows of the Government’s to rethink about the existing Epidemic Act, which has become outdated. The Government of India implemented the Epidemic diseases (Amendment) Ordinance, 2020 that allows the provisions of the Epidemic Act to prevent the spread of Pandemic Covid-19. This Amendment provides protection and powers to the Central Government to control the spread of Covid-19 Pandemic. The important provisions of the ordinance are

- The Ordinance defines healthcare service personnel as a person who is at risk of contracting the epidemic disease while carrying out the duties related to the epidemic. They include:
 - (i) public and clinical healthcare providers such as doctors and nurses,
 - (ii) any person empowered under the Act to take measures to prevent the outbreak of the disease, and
 - (iii) other persons designated as such by the state government.
- An ‘act of violence’ includes any of the following acts committed against a healthcare service personnel: (i) harassment impacting living or working conditions, (ii) harm, injury, hurt, or danger to life, (iii) obstruction in discharge of his duties, and (iv) loss or damage to the property or documents of the healthcare service personnel. Property is defined to include a: (i) clinical establishment, (ii) quarantine facility, (iii) mobile medical unit, and (iv) other property in which a healthcare service personnel has direct interest, in relation to the epidemic.
- **Powers of the central government:** The Act specifies that the central government may regulate: (i) the inspection of any ship or vessel leaving or arriving at any port, and (ii) the detention of any person intending to travel from the port, during an outbreak. The Ordinance expands the powers of the central government to regulate the inspection of any bus, train, goods vehicle, ship, vessel, or aircraft leaving or arriving at any land port, port or aerodrome. Further, the Central Government may regulate the detention of any person intending to travel by these means.
- **Protection for healthcare personnel and damage to property:** The Ordinance specifies that no person can: (i) commit or abet the commission of an act of violence against healthcare service personnel, or (ii) abet or cause damage or loss to any property during an epidemic. Contravention of this provision is punishable with imprisonment between three months and five years, and a fine between Rs 50,000 and two lakh rupees. This offence may be compounded by the victim with the permission of the Court. If an act of violence against healthcare service personnel causes grievous harm, the person committing the offence will be punishable with imprisonment between six months and seven years, and a fine between one lakh rupees and five lakh rupees. These offences are cognizable and non-bailable.

- **Compensation:** Persons convicted of offences under the Ordinance will also be liable to pay a compensation to the healthcare service personnel whom they have hurt. Such compensation will be determined by the Court. In the case of damage or loss of property, the compensation payable to the victim will be twice the amount of the fair market value of the damaged or lost property, as determined by the Court. If the convicted person fails to pay the compensation, the amount will be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890.
- **Investigation:** Cases registered under the Ordinance will be investigated by a police officer not below the rank of Inspector. The investigation must be completed within 30 days from the date of registration of the First Information Report.
- **Trial:** The inquiry or trial should be concluded within one year. If it is not concluded within this time period, the Judge must record the reasons for the delay and extend the time period. However, the time period may not be extended for more than six months at a time.
- When prosecuting a person for causing grievous harm to a healthcare service personnel, the Court will presume that person is guilty of the offence, unless the contrary is proved.

XX. INDIAN LAWS THAT ARE APPLICABLE DURING PANDEMIC SITUATIONS:

Laws governing Medico legal cases:

- a. Consumer Protection Act, 1986
- b. Indian Evidence Act,
- c. Law of privileged communication
- d. Law of Torts
- e. IPC Sec 52 (good faith)
- f. Sec. 80 (Accident in doing lawful act)
- g. Sec. 89 (For insane and children)
- h. Sec. 90 (Consent under fear)
- i. Sec. 92 (Good faith/consent)
- j. Sec. 93 (Communication and Good faith)

Laws governing Environmental Safety

- a. Air (Prevention and Control of Pollution, 1981)

- b. Bio medical waste management handling rules, 1998 (Amended on 2000)
- c. Environment protection act and rules, 1986, 1996
- d. NOC from Pollution Control Board
- e. Noise Pollution Control Room, 2000
- f. Public Health by law, 1959
- g. Water (Prevention and control of pollution) Act, 1974
- h. Delhi Municipal Corporation (Malaria and other mosquito diseases) by law 1975
- i. Cigarette and other tobacco products (Prohibition of advertisements and regulation of trade and commerce, production, supply and distribution rules, 2008)
- j. IPC sec 278 (making atmosphere noxious to health), Sec. 269 (Negligent Act likely to spread infection of disease dangerous to life, unlawfully or negligently)

National Centre for Disease Control:

1. Prevention and Control of Leptospirosis
2. Guidelines for Ebola Virus Disease (EBD)
3. National guidelines on Zyka Virus Disease
4. National Risk Communication Plan, 2016
5. Viral Hepatitis manual on zoonotic diseases of Public Health importance
6. National treatment guidelines for anti microbial use in infectious diseases.
7. Nipha Virus Guidelines

SARS Diseases and International Law: After Covid-19 Pandemic the spread a new infectious disease called SARS – Severe Acute Respiratory Syndrome in Asia and its spread to many countries in Asian Region and beyond, raised many public health problems and challenges for the International Community and Non-Governmental Organization as well. SARS is a new infectious disease rapidly spreading Asian Region Countries and is a typical Pneumonia and that public health experts are under the opinion that it is caused by a “**previously unrecognized corona virus**”. According to the US Centre for Disease Control and Prevention (CDC), SARS is spread by close contact between people. This infectious disease SARS is likely to spread with someone is affected with the disease coughs, droplets in the AIR and if someone breaths them in. SARS also spread more broadly through Air or from touching objects that are contaminated with the disease.

SARS an Epidemic Disease that has spread to many countries caused economic damage / loss in that region. World Health Organization’s (WHO) arm, the International Health

Regulations (IHR), the promulgation of the International Health Regulations by WHO under Article 21 of the Constitution in 1951 mentions that,

“Only International Health Agreement on communicable diseases that is binding on member states of WHO”.

The purpose of IHR is

“to ensure the maximum security against the International spread of diseases with a minimum interference with world traffic. To achieve maximum security against the international spread of disease, the IHR established a global surveillance system for diseases. Set out disease specific provisions for the diseases covered under IHR. To achieve minimum interference World Trade Travel, the IHR sets out most restrictive health measures that a WHO member state may take to protect its territory against the diseases identified under IHR”.

However, the officials of WHO and Public experts mention that, the IHR failed to ensure maximum security against the international spread of disease with minimum interference with World Traffic and that the main reason for failure of IHR is the regulations apply only to a small number of diseases like eradication of smallpox, cholera, plague and yellow fever and the IHR regulations will not apply to the present new epidemic infectious diseases such as HIV / AIDS, covid-19 pandemic and SARS and that the WHO Member States have no legal obligation under IHR regulations to report the cases of SARS and other pandemic cases to WHO.

Finally, there should be some strict measures to be followed by the member states of WHO to punish the guilt under international wrongful acts. The Acts and laws that are already existing in Member States according to their legal system it will have no bearing on international community except when the incident occur in that particular State.

Integrated Disease Surveillance Project:

Under this Project the Government of India, Directorate General of Health Services, minister of health and family welfare has issued some guidelines about Laboratory Bio Safety including containment of micro biological agents and toxins.

Laboratory Bio Safety is the term used to describe,

“the containment principles, technologies and practices that are implemented to prevent unintentional exposure to pathogens and toxins, or their accidental release”.

Bio Safety protection is to protect laboratory workers, clinical samples and the environment. Diagnostic and healthcare laboratories (Public Health, Clinical or Hospital based) must all be designed for atleast bio safety level – II or above if required. As no laboratory has complete control over the specimens it receives, standard precautions should always be adapted and practiced.

Following are the international guidelines on bio safety:

1. International Bio hazard warning symbols and signs must be displayed on the doors of the rooms where high risk micro organisms are handled.
2. Entry to laboratory/working area should be restricted only for laboratory persons.
3. Doors of the laboratory could be kept closed
4. Children should not be allowed to enter laboratory working areas
5. Enough working area should be available.
6. Smooth, easily cleanable walls, ceiling and floors impermeable to liquids and resistant to chemical and disinfectants should be preferred. Bench tops should be impervious to water and resistant to disinfectants.
7. Ample illumination should be available for laboratory procedures.
8. Storage space must be adequate to hold supplies for immediate use and to prevent overcrowding and bench tops
9. Regular water supply should be available
10. Wash basins with running water, if possible, should be provided in the laboratory room.
11. Rodents and insects control procedure in the laboratory should be in place.

Universal Precaution:

Precautions consistently used for all patients regardless of their blood born infection status. Under Universal precautions, blood and body fluids of all patients are considered potentially infectious for HIV, HBV, HCV and other blood born pathogens.

One of the fundamental principles of a bio safety program is, the adherence to the practice of precaution. Minimal Standard of work performance to prevent the exposure to pathogenic agents that includes education, personal protective equipment, handwashing and employing safe work practices.

Barrier protection should be used at all time to prevent skin and mucus membrane contaminated with blood and body fluids. The protection used should be appropriate for the type of procedure and the type of exposure anticipated.

XXI. Conclusion:

To sum up the above discussions one can come to a conclusion regarding the effect of outbreaks of Infectious diseases and Contagious diseases on the society. The provisions that are available in public health and the related Laws one can identify the spread of dangerous diseases and the risk associated with the public health. For any Country of any Government early detection of Notifiable Infectious and Contagious Diseases, will have time to take

preventive steps and measures in controlling and containing the spread of these diseases and also takes safety measures in the form of providing medical aid and facilities to the affected community and also the Healthcare Professionals, Providers, Healthcare Workforce and Persons who are actively engaged in social works. Based on the statutes mentioned above it can be reasonably concluded that a Law / Provision of Constitution can play an indispensable role in regulating the activities related to Public Health that includes the spread of Notifiable diseases (Infectious and Communicable Diseases). However, there needs a comprehensive and effective International Law that can be imposed and applied on any Member State of WHO that will have questionable situation in spreading such diseases. Though it is easy to say but it is very difficult to implement due to the fact that many of the under developed and undeveloped countries who cannot afford the financial burden in controlling such situations. As an example, even in the developed and developing countries everybody has seen the deficiency like availability of medical oxygen, hand gloves, PPT Kits, the ancillary equipment that require in controlling breathing problems of the affected Covid-19 patients, Isolation Wards in healthcare facilities, availability of healthcare professionals and mostly Paramedic Staff at short notice. Hence, it is the necessity of every country to have a comprehensive future plan to combat such situation, by allocating reasonable funds and financial support to the public health system and by regulating the healthcare and healthcare system which is controlled by Private Sector. Hence, it is time that the Governments of all the Countries should come out with a comprehensive plan to meet such alarming situations so that the lives of the innocent public can be saved.

As Mahatma Gandhi, the father of the nation (India),

“Health is Wealth but not a piece of Gold and Silver”

References:

1. Occupational Health and Safety manual for funeral homes - <https://news.wfuneralnet.com/en/occupational-health-safety-funeral/>
2. Qualitative study on the biological hazards associated with mortuary - [https://www.journalofhospitalinfection.com/article/S0195-6701\(22\)00010-X/fulltext](https://www.journalofhospitalinfection.com/article/S0195-6701(22)00010-X/fulltext)
3. Special issue: working with death psychological risks and protective - <https://www.mdpi.com/journal/>
4. Precaution for handling and disposal of dead bodies - <https://www.chp.gov.hk/files/pdf/grp-guideline>
5. Managing infection risks when handling the deceased - <https://www.hse.gov.uk/pubns/books/hsg283.htm>
6. Occupational risks in hospital mortuary - <https://www.taylorfrancis.com/chapters/>
7. Mortuary occupational health and safety potential pitfalls - [https://www.pathologyjournal.rcpa.edu.au/article/S0031-3025\(16\)40674-4/fulltext](https://www.pathologyjournal.rcpa.edu.au/article/S0031-3025(16)40674-4/fulltext)

8. Managing stress among mortuary and death care workers during Covid-19 - <https://files.asprtracie.hhs.gov/documents/managing-stress-among-mortuary-and-death-care-workers-04-27-2020.pdf>
9. Guide for the funeral industry work safe QLD - https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0019/18442/funeralindustry_guide2004.pdf
10. Infection Prevention and Control for the safe management of dead - <https://www.who.int/publications/i/item/infection-prevention-and-control-for-the-safe-management-of-a-dead-body-in-the-context-of-covid-19-interim-guidance>