

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 5

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Drawing the Line: Comparison of the Public Health (Prevention, Control & Management of Epidemics, Bio-Terrorism & Disasters) Bill, 2017 with the Health Law in the United Kingdom

ARSHIA ANN JOY¹

ABSTRACT

The Public Health (Prevention, Control, and Management of Epidemics, Bio-Terrorism & Disasters) Bill, 2017 was drafted with an aim to manage epidemics and public health concerns in an effective manner. It entrusted with the executive many sweeping powers without providing adequate safeguards. Although legislation of this kind is novel to the Indian scenario, similar legislation have already been enacted in different parts of the globe. This article is an attempt to compare the provisions of the impugned bill with those in the United Kingdom. The Public Health Bill, 2017 (India) is compared with the Public Health Control of Disease Act, 1984 (UK), the Civil Contingencies Act, 2004, and the recent Coronavirus Act, 2020. The aspect of Bioterrorism, although significant, is beyond the scope of this article and hence not elaborated upon.

I. INTRODUCTION

The Public Health (Prevention, Control & Management of Epidemics, Bio-Terrorism & Disasters) Bill, 2017 was drafted in order to better manage epidemics, public health consequences of disasters and incidents of bioterrorism². This Bill received multiple criticisms for the sweeping powers it envisaged for the authorities, without even an ounce of scrutiny³. Similar legislation in foreign jurisdictions like the United Kingdom has been in effect for over a couple of years. Hence, they can provide some guidance on restraining the powers of the authorities so as to strike a balance between promoting public health and safeguarding individual autonomy. This is an attempt to deal with the management of epidemic diseases alone

¹ Author is a Student at The National University of Advanced Legal Studies, Kochi, India.

² The Public Health (Prevention, Control & Management of Epidemics, Bioterrorism & Disasters) Bill, 2017 (India).

³ Ramesh Shankar, *Bring the Public Health Bill*, PHARMABIZ.COM, (Jan. 1, 2022, 8:45 PM) <http://www.pharmabiz.com/ArticleDetails.aspx?aid=131341&sid=3>

in light of the measures taken during Covid-19. The aspect of Bio-terrorism is hence beyond the scope of this article.

II. THE PUBLIC HEALTH (PREVENTION, CONTROL & MANAGEMENT OF EPIDEMICS, BIO-TERRORISM & DISASTERS) BILL, 2017

The Bill in its present form allows Public Health officials to enforce measures like forceful quarantining without any checks and subsequently, it was not tabled in the Parliament.⁴ However, in 2020, the Union Health Minister announced that the Bill would soon be tabled as it sought to address the shortcomings of the Epidemic Diseases Amendment Bill and the National Disaster Management Act.⁵

The Public Health Bill (hereinafter “the PH Bill”) is touted as the single legislation to address all the public health related matters simultaneously, as the Epidemic Diseases Act, 1897 will be repealed if the former is enacted.⁶

Undoubtedly, the provisions of the impugned Bill restrain individuals and impose a specific code of conduct for so long as the Executive deems it necessary⁷ in the event of a public health emergency. The restrictions imposed via a legislation cannot be ‘arbitrary, unfair or unreasonable’ and a person can be deprived of his personal liberty only according to the procedure established by law.⁸ An individual has the right to remain free from encroachments on his person, imposed directly or indirectly, by virtue of his right to personal liberty.⁹ The judiciary has a constitutional obligation to ensure that individual rights are not sacrificed while overarching powers are vested with the Executive to impose restrictions in the name of a public health emergency.

It can however be argued that power must not be denied merely because it could get abused. The Supreme Court in *State of Rajasthan v. Union of India*¹⁰ opined that “the wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief.”¹¹ The courts are expected to be

⁴ *Legislative Framework to Combat Public Health Emergencies in India*, <http://www.swaniti.com/wp-content/uploads/2020/03/Indias-Legislative-Framework-for-Public-Health-Emergencies.pdf>

⁵ Sushmi Dey, *Bill to tackle health emergencies coming*, TIMES OF INDIA, (Jan. 1, 2022, 8:45 PM) http://timesofindia.indiatimes.com/articleshow/78212383.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁶ The Public Health (Prevention, Control & Management of Epidemics, Bioterrorism & Disasters) Bill, 2017, § 14, 2017 (India).

⁷ The Public Health (Prevention, Control & Management of Epidemics, Bioterrorism & Disasters) Bill, 2017, § 3 (b), 2017 (India).

⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁹ *Putta Swamy v. Union of India*, (2017) 10 SCC 1.

¹⁰ *State of Rajasthan v. Union of India*, (1977) AIR 1361.

¹¹ *Id.*

mindful of the practical needs of the government. As the Apex court held in *Kesavananda Bharati v. State of Kerala*¹² Constitutional Law has to take chances and allow trial and error.

This being said, heavy-handed policing provisions, failure to define the functions of the authorities and the inability to protect the rights of patients makes the PH Bill a recipe for disaster.¹³ Legislative and judicial oversight are hence imperative in ensuring that the authorities concerned do not overstep their powers and violate the basic rights guaranteed by the Constitution of India. Similar legislations and their impact on foreign jurisdictions could be analysed to minimise the effect of the shortcomings of the PH Bill while enforcing it.

For the purpose of this article, the Public Health (Control of Disease) Act, 1984 (hereinafter “the UK Act”) and a few other relevant legislations in the United Kingdom shall be analysed.

III. THE PUBLIC HEALTH (CONTROL OF DISEASE) ACT, 1984 (UNITED KINGDOM)

Under the UK Act, powers are delineated among various stakeholders and each one’s authority and limitations are defined without ambiguity. The courts generally refrain from delving into the regulations and rules as imposed by the Executive lawfully empowered by the legislation. For instance, in *R (on the application of Dolan and others) v Secretary of State for Health and Social Care and another*¹⁴ the court held that the regulations imposed under the UK Act were solely a matter of ‘political judgement’ and not for the courts to sit up and take note through a judicial review. It refused to consider questions pertaining to whether the restrictions imposed were violative of the Human Rights Act 1998 as they were purely academic in nature. The decisions made by the authorities lawfully empowered to do so, are generally not reviewed by the courts unless there is a gross violation or an outright overstepping of powers vested with them by the statute.

The courts are mindful of the practical difficulties faced by the Executive in battling with a health emergency. In *R (on the application of Manchester Airports Holdings Ltd) v Secretary of State for Transport and another*¹⁵ the claimant alleged that the Risk Assessment Methodology document which was used to classify countries into green, amber and red depending on the risk associated with the virus-spread, was an ‘insufficient guide.’ This was so because no reasons were given as to why the Secretary of State from time to time exercised his

¹² *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹³ Aditya Ranjan (et.al), *Towards A Post-Covid India, 25 Governance Challenges and Legal Reforms*, VIDHI CENTRE FOR LEGAL POLICY, (Jan. 30, 2020), <https://vidhilegalpolicy.in/research/towards-a-post-covid-india-25-governance-challenges-and-legal-reforms/>.

¹⁴ *R (on the application of Dolan and others) v. Secretary of State for Health and Social Care and another*, (2021) 1 All ER 780.

¹⁵ *R (on the application of Manchester Airports Holdings Ltd) v. Secretary of State for Transport and another*, (2021) EWHC 2031 (Admin).

powers under section 45B of the UK Act to classify countries into the traffic light list¹⁶. The court however held that the methodology as provided by the Secretary may not be precise but it was definitely sufficient enough for her to make regulations. Considering that the scientific knowledge pertaining to the virus was still evolving, the methodology did not in any way offend any legal principle of certainty or foreseeability.

Further, courts do ensure that those powers vested with the Judiciary remains intact, while implementing the UK Act. As per the said Act, the relevant Minister is empowered to impose duties on medical practitioners¹⁷, local authorities or any other person during a public health crisis. Restrictions on events, gatherings, burial of the dead etc., can also be decided upon under the UK Act. Any special restrictions or requirement can also be mandated. However, the adjoining section, i.e., section 45D¹⁸ (1) mandates that the restrictions imposed must be proportionate to the aim sought to be achieved. In the case of *R (on the application of Francis) v Secretary of State for Health and Social Care*¹⁹ it was contended that the regulations imposing self-isolation were violative of the UK Act as only the Justice of Peace is authorised to mandate isolation or quarantine.²⁰

The justice may make an order only if she is satisfied that the person is infected or contaminated and that this poses a significant threat to the general health and safety²¹. The court however ruled in favour of the Secretary of State by distinguishing self-isolation from isolation as no form of 'clinical management' is involved in the former. It added that, the regulations were not absolute and sought to reduce the chances of an infected person getting in contact with the others.

It is worth noting that decisions which have a huge impact on the personal autonomy of an individual is left to the judiciary, in this case, the Justice of Peace, and not the Secretary of State who forms a part of the Executive. Health measures pertaining to persons²², things²³ and premises²⁴ come within the ambit of the orders that may be made by the Justice of Peace. This is why the regulations imposed by the Secretary came under judicial scrutiny. In India, the

¹⁶ The *Traffic Light List* consists the colours red, amber and green. High risk countries are placed in the red category, moderate risk ones are in the amber category and the relatively safe ones are placed in the green category.

¹⁷ The Public Health (Control of Disease) Act, 1984, § 45 C, Acts of the Parliament, 1984 (UK).

¹⁸ The Public Health (Control of Disease) Act, 1984, § 45 D, Acts of the Parliament, 1984 (UK). *See* Restrictions on power to make regulations under section 45C, UK Act.

¹⁹ *R (on the application of Francis) v. Secretary of State for Health and Social Care*, (2020) EWHC 3287 (Admin), (2021) PTSR 921, (2020) All ER (D) 35 (Dec).

²⁰ The Public Health (Control of Disease) Act, 1984, § 45 G, Acts of the Parliament, 1984 (UK).

²¹ *Id.* at § 45G (1).

²² *supra* note 19.

²³ *Id.* at § 45 H.

²⁴ *Id.* at § 45 I.

magistrate or another judicial body may be vested with the powers to decide on matters that severely affect personal autonomy instead of giving sweeping powers to the Executive.

IV. COMPARISON WITH THE CIVIL CONTINGENCIES ACT, 2004 AND THE CORONAVIRUS ACT, 2020

The Civil Contingencies Act, 2004 (hereinafter ‘CCA’) is very similar to the PH Bill in India as it covers aspects of terrorism too within the term ‘emergency.’²⁵ An event which damages human welfare by causing illness, or loss of life is considered an emergency and hence, bioterrorism and epidemics are included within its scope.

CCA specifies a ‘triple lock test’ to ensure that the emergency provisions are employed only when the situation demands so. The first criterion mandates the occurrence of an emergency or the threat of an imminent emergency.²⁶ Secondly, the provisions sought must be essential for preventing, controlling or mitigating an effect of the emergency²⁷. Finally, there must be an urgency and the existing legislation would risk delay^{28, 29}. This Act is not immune to judicial scrutiny in the form of judicial review.³⁰

Furthermore, the regulations made under the CCA must adhere to the Convention Rights within the meaning of Chapter 42 of the Human Rights Act.³¹ The powers vested on the authorities are not unlimited under the CCA. The provisions must at all times be proportionate to the danger.³² The emergency provisions may not create a new offence other than the ones prescribed³³ and must be triable before a magistrate or a sheriff.³⁴ Moreover, there is a limit imposed on the duration of imprisonment and the fines to be charged from the offenders.³⁵ The Regulations formulated under the CCA cannot amend these provisions of the Act³⁶ thus, effectively preventing the Executive from overpowering the safeguards imposed. Emergency imposed under this Act is valid only for 30 days,³⁷ and the regulations are to be approved by

²⁵ The Civil Contingencies Act, 2004, § 1(1), Acts of Parliament, 2004 (UK).

²⁶ The Civil Contingencies Act, 2004, § 21(2), Acts of Parliament, 2004 (UK).

²⁷ *Id.* at § 21 (3).

²⁸ *Id.* at § 21 (4).

²⁹ *Id.* at § 21 (5).

³⁰ Responding to House of Commons Public Administration and Constitutional Affairs Committee Parliamentary Scrutiny of the Government’s handling of Covid-19, p. 15, Fourth Report of Session 2019–21 Report, together with formal minutes relating to the report Ordered by the House of Commons to be printed 8 September 2020, retrieved at: <https://committees.parliament.uk/publications/2459/documents/24384/default/>.

³¹ *supra* note. 28 at § 20 (5) (b) (iv).

³² *Id.* at § 23 (1).

³³ *See* § 22(3) (i) for the prescribed offences.

³⁴ *supra* note 31 at § 23 (4) (b).

³⁵ *Id.* at § 23, (4) (c).

³⁶ *Id.* at § 23, (5).

³⁷ *Id.* at § 26.

the Parliament by means of a resolution or else they lapse within seven days³⁸. This enables strict scrutiny by the Parliament on the activities undertaken under the CCA. When emergency legislations are made to undergo Parliamentary scrutiny, it provides legitimacy as debates are held on a public forum. Moreover, the stakeholders can identify problems and opt for changing them.³⁹ Although the CCA was ultimately not employed by the government in the Covid-19 response, it was nevertheless touted as the better statute compared to the Coronavirus Act, 2020, which was devoid of the safeguards the CCA had. The House of Commons Public Administration and Constitutional Affairs Committee hence recommended that the safeguards in CCA be put in place for all the legislations dealing with civil contingencies.⁴⁰

It can hence be concluded that the CCA is similar to the PH Bill in terms of the scope but the former is way stricter with the restrictions and limitations defined unambiguously.

The Coronavirus Act, 2020 on the other hand is not subject to judicial review. Parliamentary reviews are conducted every six months but they do not allow the House to individually vote on the specific provisions. The government also does not have to furnish any evidence-based arguments as to why a particular provision must continue. The Committee⁴¹ recommended that quantitative evidence must be provided by the government to ensure that only the relevant, lawful provisions stay in force after the Parliamentary scrutiny. This suggestion is worth emulating in the PH Bill too. Routine parliamentary scrutiny can be mandated with the government furnishing evidence-based arguments as to the relevance of each provision.

V. CONCLUSION

It can be concluded that limiting the powers of the authorities concerned, is as important as giving powers, in ensuring the effectiveness of a legislation. Routine parliamentary and judicial scrutiny have to be conducted in order to ensure that individual rights are not flouted. Powers and functions of the Executive and the Judicial bodies must be well-defined and unambiguously demarcated to ensure proper implementation.

³⁸ *Id.* at § 27 (1) (b).

³⁹ *supra* note, at 18.

⁴⁰ *Id.*

⁴¹ *supra* note 38.