Legal Framework for Managing Covid-19

Centre for Disaster Management,
Administrative Training Institute, Mysuru

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Context

- January 30, 2020 – First Covid-19 case detected in India
- March 9, 2020 – First case detected in Karnataka
- March 11, 2020 – WHO declared Covid-19 as a pandemic
- As on April 16, 2020 – 315 positive cases, 82 recoveries, 13 deaths in Karnataka
- Union and the State Governments have taken several measures for the containment. Lockdown is the primary measure for containment.
Lockdown

- On 24 March, the Government of India under Prime Minister Narendra Modi ordered a nationwide lockdown for 21 days.
- The legal order to this effect was made through an Order of the Ministry of Home Affairs, dated April 15, 2020.
Order of the Ministry of Home Affairs
Dated April 15, 2020
Legal Basis

- The Disaster Management Act 2005 creates a National Executive Committee (Sec. 8) and this committee has the power to make orders to avert disasters (Section 10).
- The present order is promulgated in exercise of powers conferred under Section 10(2)(l) of the Disaster Management Act.
- Order promulgated by the Union Home Secretary Mr. Ajay Kumar Bhalla in his capacity as the ex-officio Chairperson of the National Executive Committee.
Highlights

- Lockdown measures for the containment of Covid-19 to remain in force till May 3, 2020
- Selected additional activities to be allowed for public convenience.
- These activities are to be carried out under strict operating guidelines
Overview of the order

- Provides detailed lockdown guidelines for the Union and State Government departments. It contains guidelines sector wise
- Standard Operating Procedure for Social Distancing for offices, workplace, factories and establishments
- Offences and penalties for violation of lockdown measures
  - Provisions of Disaster Management Act
  - Section 188 of Indian Penal Code
Legislations Covered

- In view of the legal provisions cited in the Ministry of Home Affairs order, a simple explanation of the relevant provisions from the following legislations is made:
  - Disaster Management Act, 2005
  - The Epidemic Diseases Act, 1897
  - Indian Penal Code, 1860 (relevant provisions)
Disaster Management Act, 2005
Gol orders and circulars for management of COVID-19 under DM Act

- MHA order dated 16/04/2020 consolidated revised guidelines.
- State-UT Helpline COVID-19
- 3rd Addendum dated 2.4.2020 to Lockdown measures
- MHA DO letter dt.14.4.2020 to Chief Secretaries and Administrators for strict implementation of Lockdown Order during extended period
- DO Lr. Dt. 12.4.2020 to Chief Secretaries and Administrators reg. welfare activities towards migrants
- MHA clarifies on ground level issues being faced by States in ensuring smooth flow of supply chain of Essential Items during National Lockdown to fight COVID-19
- On directions of the Prime Minister, Home Ministry approves release of Rs 11,092 crores under State Disaster Risk Management Fund to All States
- MHA writes to States/UTs to ensure smooth Disbursal of Money to beneficiaries of PMGKY during 21-day Lockdown to fight COVID-19
- State-UT Helpline COVID19
- MHA issues advisory to all States/UTs to make adequate arrangements for migrant workers, students etc from outside the States to facilitate Social Distancing for COVID-19
- MHA authorises States to use State Disaster Response Fund for relief measures for migrant workers during COVID-19 lockdown

- Note- For more circulars and orders visit https://www.mha.gov.in/
Paradigm Shift in 2005

• With the enactment of Disaster Management Act, 2005, there was a paradigm shift
• Earlier: Relief centric response
• Present:
  ◦ Proactive prevention
  ◦ Mitigation
  ◦ Preparedness
• Thus, minimize loss of life, livelihood and property.
Overview of Disaster Management Act, 2005

- It is an Act to provide for the effective management of disasters
- Creates the following authorities
  - National Disaster Management Authority (NDMA)
  - State Disaster Management Authority (SDMA)
  - District Disaster Management Authority (DDMA)
- Lays down offences and penalties
Institutional set up DM Act 2005

Central Government

State Government

District Administration

Panchayats

Municipalities

National Disaster Management Authority
Chairman: PM

State Executive Committee

National Executive Committee

MHA

NIDM

NDRF

DMD

State Disaster Management Authority
Chairman: CM

District Disaster Management Authority
Co-Chairmen
DM/Chairman ZP
Powers and Functions of NDMA (Section 6)

- Lay down the policies, plans and guidelines for disaster management.
- The National Executive Committee shall prepare a National Disaster Management Plan in consultation with the State Governments.
- The National Plan shall include measures for
  - prevention and mitigation of disasters,
  - integration of mitigation measures in the plans,
  - preparedness and capacity building.
- NDMA shall recommend guidelines for the minimum standards of relief provided to persons affected by disaster.
Constitution of the National Executive Committee (Section 8)

- **Chairperson:** Secretary to the Government of India in charge of the Ministry or Department in charge of disaster management
- At present, it is the Union Home Ministry is in charge of disaster management and Union Home Secretary **Mr. Ajay Kumar Bhalla** is the Chairperson of the National Executive Committee
- Secretaries from the Ministries of agriculture, atomic energy, defence, drinking water supply, environment and forests, finance (expenditure), health, power, rural development, science and technology etc
- Chief of the Integrated Defence Staff of the Chiefs of Staff Committee
Organisational Structure for Disaster Management in Karnataka

Karnataka State Disaster Management Authority (9-Member body) chaired by the CM of the state

Department of Disaster Management (GoK) headed by the Secretary to Govt.

Karnataka State Natural Disaster Monitoring Centre

Karnataka State Crisis Committee

Karnataka State Executive Committee

Advisory Committee

CDM, ATI Mysore

District Disaster Management Authority
7-member body chaired by the District Magistrate and comprising of representatives from the civil Administration

Line Departments of GoK

Local Authorities (PRIs, ULBs, UDAs etc)

Advisory Committees
## Structure of Karnataka State Disaster Management Authority (KSDMA)

<table>
<thead>
<tr>
<th>SDMA Members</th>
<th>Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Chief Minister of Karnataka</td>
<td>Chairperson, Ex-officio</td>
</tr>
<tr>
<td>2 Minister of Revenue</td>
<td>Vice-Chairperson</td>
</tr>
<tr>
<td>3 Minister of Home</td>
<td>Member</td>
</tr>
<tr>
<td>4 Minister of Rural Development and Panchayat Raj</td>
<td>Member</td>
</tr>
<tr>
<td>5 Minister for Health and Family Welfare</td>
<td>Member</td>
</tr>
<tr>
<td>6 Minister for Agriculture</td>
<td>Member</td>
</tr>
<tr>
<td>7 Minister for Public Works</td>
<td>Member</td>
</tr>
<tr>
<td>8 Minister for Animal Husbandry</td>
<td>Member</td>
</tr>
<tr>
<td>9 Minister for Housing, Information, ITBT and BWSSB</td>
<td>Member</td>
</tr>
<tr>
<td>10 Minister for Energy</td>
<td>Permanent Invitee</td>
</tr>
<tr>
<td>11 Chairperson of the State Executive Committee (The Chief Secretary to the Government of Karnataka)</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>12 Secretary, Disaster Management and Relief Commissioner</td>
<td>Member Secretary</td>
</tr>
</tbody>
</table>
Constitution of State Executive Committee (Section 20)

- Chairperson: Chief Secretary to the State Government
- Secretaries to the State Government at the discretion of the State Government
- Chairperson shall have powers as given by the State Government and powers delegated by the State Authority.
# Structure of Karnataka State Executive Committee

<table>
<thead>
<tr>
<th>SL No</th>
<th>SEC Members</th>
<th>Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Chief Secretary to the Government of Karnataka</td>
<td>Chairperson, Ex-Officio</td>
</tr>
<tr>
<td>2</td>
<td>Addl. Chief Secretary/Development Commissioner</td>
<td>Member</td>
</tr>
<tr>
<td>3</td>
<td>Principal Secretary, Finance</td>
<td>Member</td>
</tr>
<tr>
<td>4</td>
<td>Principal Secretary, Energy</td>
<td>Member</td>
</tr>
<tr>
<td>5</td>
<td>Principal Secretary, Agriculture</td>
<td>Member</td>
</tr>
<tr>
<td>6</td>
<td>Principal Secretary, RDPR</td>
<td>Member</td>
</tr>
<tr>
<td>7</td>
<td>Principal Secretary/Secretary, Home</td>
<td>Member</td>
</tr>
<tr>
<td>8</td>
<td>Secretary Revenue (DM)</td>
<td>Member Secretary</td>
</tr>
</tbody>
</table>
Sub-committees (Section 21)

- The State Executive Committee may create “sub-committees” for efficient discharge of functions.
- State Executive Committee has the powers to appoint one of its members as the Chairperson of the “sub-committee”.
- Experts may be associated with the sub-committees and paid allowances by the State Government.
Functions of the State Executive Committee (Section 22)

- Implement National and State Plan for disaster management
- Coordinating and monitoring body for management of disaster in the State
- Examine disaster vulnerability and specify measures for prevention and mitigation
- Lay down guidelines for preparation of disaster management plans by the Govt. departments District Authorities and monitor the same
Functions of the State Executive Committee (Section 22)

- Promote general education, awareness and community training for vulnerable disasters
- Provide necessary technical assistance or give advice to District Authorities and local authorities for carrying out their functions effectively
- Provide information to the National Authority relating to different aspects of disaster management
- Advise the State Government regarding all financial matters in relation to disaster management
Functions of the State Executive Committee (Section 22)

- ensure that communication systems are in order and the disaster management drills are carried out periodically
- lay down, review and update State level response plans and guidelines and ensure that the district level plans are prepared, reviewed and updated
- Direct the District Authority or Local Authority to comply with the standards for constructions which are vulnerable to disasters.
Constitution of District Disaster Management Authority (Section 25)

- Chairperson – District Magistrate or Deputy Commissioner of the district
- Co-chairperson - Elected representative of the local authority (Zilla Panchayat)
- Other Members
  - Chief Executive Officer of the District Authority
  - Superintendent of Police
  - Chief Medical Officer of the district
  - Two other district level officers
- The number of members shall not exceed 7
- Click here for the complete list of DDMA in Karnataka
### DDMA Structure for the Districts having City Corporation

<table>
<thead>
<tr>
<th>SL No</th>
<th>Members</th>
<th>Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Deputy Commissioner of the District</td>
<td>Chairperson</td>
</tr>
<tr>
<td>2</td>
<td>President of the Zilla Panchayat</td>
<td>Co-chairperson</td>
</tr>
<tr>
<td>3</td>
<td>Commissioner of City Corporation</td>
<td>Member</td>
</tr>
<tr>
<td>4</td>
<td>Chief Executive Officer of the Zilla Panchayat</td>
<td>Member</td>
</tr>
<tr>
<td>5</td>
<td>Superintendent of Police of the district</td>
<td>Member</td>
</tr>
<tr>
<td>6</td>
<td>District Health Officer of the District</td>
<td>Member</td>
</tr>
<tr>
<td>7</td>
<td>Executive Engineer of the Zilla Panchayat of the District</td>
<td>Permanent Invitee</td>
</tr>
<tr>
<td>8</td>
<td>Joint Director of Agriculture</td>
<td>Permanent Invitee</td>
</tr>
<tr>
<td>9</td>
<td>Addl. Deputy Commissioner of the District</td>
<td>Member Secretary</td>
</tr>
</tbody>
</table>
Powers of Chairperson of District Authority (Section 26)

- Presides over the meetings of the District Authority
- exercises and discharges powers and functions delegated by the District Authority
- In case of emergency, the Chairperson has the power to exercise the powers of District Authority (subject to later ratification)
- Chairperson may delegate his powers to the Chief Executive Officer of the District Authority
Constitution of advisory committees and other committees (Section 28)

- For efficient discharge of functions, the District Authority may create advisory committees and other committees.
- One member among the District Authority shall be appointed as chairperson of the other committees.
- Experts may be associated with the advisory committees and be paid allowances from the State Government.
Powers and Functions of the District Authority (Section 30)

- District Authority acts as the district planning, coordinating and implementing body for disaster management in the district
- Prepare district disaster management plan
- Coordinate and monitor the implementation of the National Policy, State Policy, National Plan, State Plan and District Plan
- Identify vulnerable areas and suggest measures to the departments and local authorities for preventing the disasters
Powers and Functions of the District Authority (Section 30)

- Ensure that the guidelines for disaster prevention laid down by National and State authorities are followed by the departments
- Lay down guidelines for prevention of disaster management plans by the department of the Governments at the district level
  - Monitor the implementation of such plans
- Review the state of capabilities for responding to any disaster and give directions to the relevant departments or authorities for their upgrading
Powers and Functions of the District Authority (Section 30)

- Organise and coordinate training programmes for different levels of officers, employees and voluntary rescue workers in the district
- Facilitate community training and awareness programmes for prevention of disaster in coordination with local authorities and NGOs
- Set up, maintain, review and upgrade the mechanism for early warnings and dissemination of proper information to public
Powers and Functions of the District Authority (Section 30)

- provide necessary technical assistance or give advise to the local authorities in the district for carrying out their functions
- identify buildings and places which could be used for relief camps and create sanitation and water supply facility
- establish stockpiles of relief and rescue materials or ensure preparedness to make such materials available at a short notice
- Carry out disaster management drills periodically
Powers and functions of District Authority during emergencies (Section 34)

- give directions for the release and use of resources available with any Department and local authority in the district
- control and restrict vehicular traffic to, from and within, the vulnerable or affected area
- control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area
- provide shelter, food, drinking water and essential provisions, healthcare and services
Powers and functions of District Authority during emergencies (Section 34)

- establish emergency communication systems in the affected area
- require experts and consultants in the relevant fields to advise and assist
- procure exclusive or preferential use of amenities from any authority or person
- ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner
· The Central Government constituted National Response Fund (NDRF) and National Mitigation Fund (NDMF).
· The State Government constituted State Response Fund (SDRF) and State Mitigation Fund (SDMF).
· Retain - Chairperson of NEC issued orders to utilize SDRF funds for COVID-19 management.
Offences and Penalties (Chapter X)

- Punishment for obstruction
- Punishment for false claim
- Punishment for misappropriation of money or materials
- Punishment for false warning
- Offences by Departments of the Government
- Failure of officer in duty
- Offence by companies
Punishment for obstruction (Sec 51)

- Acts punishable
  - For obstructing the officers on duty discharging functions under the Disaster Management Act
  - For not complying with the orders made under the Act

- Punishment: 1 year imprisonment or fine or both. 2 years imprisonment for resulting in loss of lives
Punishment for False Claim (Sec 52)

- **Punishable act:**
  - Making false claims intentionally to obtain any disaster related relief or benefits from the Government authorities

- **Punishment:**
  - Imprisonment of two years
  - Fine
Misappropriation of money or materials (Section 53)

- Punishable act
  - Whoever is entrusted with money or relief materials meant for disaster mitigation
  - If that person misuses such materials for his / her own use

- Punishment
  - Imprisonment for two years
  - Fine
Punishment for false warning (Sec 54)

- Punishable act
  - makes or circulates a false alarm or warning as to disaster or
  - its severity or magnitude
  - leading to panic

- Punishment
  - Imprisonment for two years
  - Fine
Offences by Departments of the Government (Section 55)

- If an offence under the Disaster Management Act has been committed by a Government Department
- The head of that department shall be punished for such offence
- Exceptions
  - If the officer proves that the offences was committed without his knowledge
  - If he had exercised due diligence to prevent the offence
- If it is proved that an officer other than the head of the department was involved in the commission of an offence by a Govt Department, such officer shall be liable.
Failure of officer on duty (Section 56)

- Punishable act
  - If an officer is entrusted with a duty under this DM Act
  - And such officer refuses to carry on the duty

- Punishment
  - One year imprisonment
  - Fine

- Exception
  - If such officer has obtained written permission from his superior officer, he/she is exempted

- Prior permission of the State / Central government should be taken before prosecuting such an officer as per Section 59
Penalty for refusing to facilitate rescue operations (Section 57)

- Under Section 65, the authorities under this Act have the power to obtain resources, vehicles and provisions for rescue operations.
- If a person refuses to provide such resources / vehicles for rescue operations, he/she will be punished.

- Punishment
  - Imprisonment of 1 year
  - Fine
Offence by companies (Section 58)

- If the offences under this Act are committed by a Company
- The person(s) in charge of running the company / business at the time of commission of the offence will be made liable
- If a director / manager / secretary or any other officer of the company facilitated the commission of such offence, even they shall be made liable
- Exceptions: If the person proves that the offence was committed without his knowledge or he exercised due diligence
Cognizance of offences (Section 60)

- Courts shall take cognizance of offences under this Act only under these situations
  - If the complaint is made by the authorities created by this Act
  - If the complaint is made by officers who are entrusted with duties under this Act
  - By any other person who gives a notice of 30 days about the offence and intending to make formal complaint to the authorities under this Act.
Direction to media for communication of warnings (Section 67)

- The National Authority, the State Authority, or a District Authority may recommend to the Government to any media

- To carry any warning or advisories regarding any disaster

- Such media shall comply with the direction
Delegation of powers (Section 69)

- **Section 69 of DM Act:** Delegation of powers by Union Home Secretary to Secretary, Ministry of Health and Family Welfare.

- **The National Executive Committee, State Executive Committee may**
  - delegate to the Chairperson or any other member or to any officer
  - such of its powers and functions under this Act as it may deem necessary
Act to have overriding effect (Section 71)

- The Disaster Management Act, 2005 is a special legislation
- Meant for preventing disasters and to be applied in times of emergencies
- Hence it is a special legislation and overrides other laws, even if the provisions of other laws inconsistent with this Act
The Disaster Management Act 2005 (Section 61)

- Prohibits all forms of discrimination – be it based on sex, caste, community, descent or religion – in any activities related to disaster risk reduction, disaster relief or humanitarian assistance to the affected people.
- Ministry of Social Justice and Empowerment issued orders during COVID-19 outbreak, to take care of these discriminations.
** End of Disaster Management Act **
The Epidemic Diseases Act, 1897
Overview of the Act

1. Short title and extent.
2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.
2A. Powers of Central Government.
3. Penalty.
4. Protection to persons acting under Act.
Objective of the Act

• To provide for the better prevention of the spread of Dangerous Epidemic Diseases.

• Extent (Section 1):
  ◦ It is applicable to the whole of India
Power to make regulations for the prevention of epidemic diseases (Section 2)

- If there is an outbreak of an epidemic diseases in a State
- And if the State thinks that the ordinary laws are insufficient to combat such epidemic
- Then
  - The State Govt may make temporary regulations
  - For the containment and prevention of the outbreak of disease
Regulation in respect of (Section 2)

- The regulations may be made for the following purposes
  - the inspection of persons travelling by railway or any other means
  - segregation in hospital
  - temporary accommodation of persons suspected of being infected with such disease
Powers of the Central Government (Section 2A)

• If the Central Govt is satisfied that any part of India is threatened with the outbreak of a disease
• And if the Central Govt thinks that the existing laws are insufficient for controlling the diseases
• The Central Govt may make regulations to
  ◦ Inspect vessels / ships arriving at the ports
  ◦ Detention of persons sailing in the ship
Penalty (Section 3)

- Any person disobeying the regulations made under this Act
- Such person shall be punishable under Section 188 of the Indian Penal Code, 1860
- In the next part of the presentation, the discussion on Section 188 of IPC is made

**End of Epidemic Diseases Act**
Indian Penal Code, 1860
(relevant provisions)
Disobedience to order promulgated by public servant (Section 188)

- Punishable act
  - If a person knows that a public servant is empowered with a duty promulgate an order
  - If that person obstructs the public servant from carrying out the order

- Punishment
  - Imprisonment for 1 month & Fine of Rs. 200
  - If the disobedience causes danger to human life, health or safety then the imprisonment shall be 6 months and fine of Rs. 1000
Nature of Section 188

- The offence is cognizable and bailable
- The court takes cognizance of the offence if there is a written complaint by the public officer as per Section 195 of Code of Criminal Procedure.
- Court does not take cognizance of this offence merely on the basis of an FIR
Offences affecting public health

- Chapter XIV (14) deals with offences affecting the Public Health, Safety, Convenience, Decency and Morals
- Section 268 to 294A are covered in this chapter
- Relevant provisions for Covid-19 situation
  - Section 269
  - Section 270
  - Section 271
Section 269

- Negligent act likely to spread infection of disease dangerous to life
- Punishable with simple or rigorous imprisonment for 6 months and / or fine
- Offence is cognizable and bailable
- The offence is not compoundable under Section 320 of the CrPC
Section 270

- Malignant act likely to spread infection of disease dangerous to life
- Section 270 is a serious variant of Section 269
- In Section 269, person acts negligently
- In Section 270, person acts with evil intention
- Punishable with rigorous imprisonment for 2 years and fine
- Offence is cognizable and bailable. But not compoundable
Section 271

- Disobedience of quarantine rule
- The Government has the power to put any vessel (ship) into quarantine and regulate its movement
- If any person disobeys this order, he shall be punished with
  - Imprisonment of 6 months
  - Fine
Explanation to some legal jargons

- **Compoundable offences:** Those offences, where the person making the complaint is allowed to make a compromise and agrees to drop the charges.

- **Bailable offences:** offences that are less serious in nature and grant of bail is a matter of right (easy to obtain bail)

- **Cognizable offences:** those where a police officer can arrest without a warrant

- **Act:** when “A” is capital, it refers to the relevant legislation (For eg. Contract Act)

- **act:** when “a” in lowercase, it refers to “a thing done”
** End of Indian Penal Code **
Thank You

Feedback and suggestions may be sent to:

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gagan555@gmail.com