

# **A Critical Review on the Proposed Kerala Public Health Bill- 2021 (Deliberations of the webinar held on 7-3-2022)**

Background of the present task:

The proposed public health bill was presented in the fifteenth Kerala legislative assembly as Bill no. 77, designed as a unified public health act for the state. Now this is viewed by the academia and other interest groups of the civil society as the most welcome step because since the last 64 years, the state was being governed by two acts namely Travancore cochin Public health act, 1955 and Madras Public health act, 1939. The ordinance promulgated by the Governor of Kerala on 23<sup>rd</sup> February 2021 was published as extraordinary gazette on Feb 24<sup>th</sup> and minister for health and Social Justice presented this in the 15<sup>th</sup> Kerala assembly on October 27<sup>th</sup> 2021. This was then discussed and entrusted on a 15 member select committee for detailed study and advise. The committee has identified areas of concern and placed this as questions in open domain to be answered by experts and civil society members as feedback.

In the context of the COVID pandemic, Kerala Government has already enacted the epidemic disease Bill-2021 which replaces the Epidemic disease act, 1897 on March 2020 and subsequently the Kerala epidemic disease covid-19 additional regulations.

Inspired by these activities by authorities the academic think tank at KUHS decided to organize an open thinking on the subject involving public health experts, practitioners and health activists. Given below are the deliberations of this webinar.

Introduction to the subject:

Regulatory approach to public health action: Right to health is one of the fundamental human rights which are usually compromised by outcomes of human behaviour either individually or collectively. The consequences of these are faced by the entire population in everyday life. The control of human behaviour for the welfare of the society can be approached by three ways. 1. Regulatory approach, 2. Service approach and 3. Health education. The second and third are mostly motivational and former is said to be merciless to the individual. Though health education is the ideal, many a times regulatory approach is necessary considering the seriousness of the issue.

Broad structure of the Legislation: Public health legislation deals with the legal power and duties of the state to improve the health of the general population. yet there are limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary or other legally protected interests of individuals for the protection or promotion of community health. It's mainly aimed at sustainable development, supporting the development of health systems, implementation of health policies and programs, right to health to address inequalities, fighting new and re-emerging communicable diseases and combating the continuing poverty and inequities in health. These domains for action points are the core content of the public health legislation. In addition to this the document also contains definitions, delegation of powers and other accessory information for execution of the law. The public Health Legislation as a policy tool emphasises ethical considerations, epidemiological soundness as well as the cultural, political, and economic factors prevailing in that society ensuring public transparency and accountability.

Historical evolution: Public Health Bills in India emerged as a reform of sanitary laws, addressing the public health concerns. Government of India developed a Model Public Health Act in 1950 and revised in 1987. On 31 August, The Supreme Court had directed the central government to advise all states and Union Territories (UTs) to formulate a legal Public Health framework, similar to the National Health Bill, 2009, which focuses on marginalised sections of society. According to the ministry's affidavit, as and on now among the 28 states, Andhra Pradesh, Tamil Nadu, Goa, Uttar Pradesh, Madhya Pradesh and Assam have their own public health act.

## **The Proposed Bill**

In Kerala, there are two Public Health Acts, Madras Public Health Act of 1939 and Travancore -Cochin Public Health Act of 1955. An effort to unify those two Public Health Acts in Kerala was started long back under the attempt of many committees, but could only succeed now. The current proposed Public Health Bill is published on February 24, 2021 and is extended as 12 chapters with different Provisions and clauses. The purpose of the ordinance is to consolidate and to unify the existing laws relating to public health in the State of Kerala and to provide for the enhancement of administration of Public Health in the State of Kerala.

*Chapter-wise content of the Bill:* The first chapter of the bill consolidates the definitions that commonly used in Public Health and second chapter narrates the powers of authorities. Core domains of the Public Health Bill are discussed from the third chapter which is about water for human usage and disposal of waste water, where in the quality of drinking water, standards for drinking water, and provisions and penalties regarding use of water. Chapter four is about sanitary conveniences, which advocates about the basic sanitary needs and facilities to be maintained in an institution, office or building and the penalties in case of contravention. Fifth chapter discuss the situations which comes under abatement of nuisance, and the instructions for maintaining a safe, calm and comfortable atmosphere. it also mentions the powers of the authorities in case of disagreement and the penalties for the violation. Sixth chapter includes the measures for Reproductive, Maternal, Neonatal, Child and Adolescent Health (RMNCH +A), directed by the Government from time to time. The chapter mandates the powers of Local Public Health authority to monitor and promote RMNCH+A activities and mentions about higher authorities to report in case of contrary. Chapter seven enlists the identified communicable diseases and the proceedings to be carried out in case of reporting a notifiable disease. The chapter also includes the duties of State Surveillance Officer and District Surveillance Officers and medical practitioners in such situations. Eighth chapter is about vector control, its prevention, control, and treatment, and the powers of the authorities in such instances. Provisions for ensuring a safe environment, proper sanitary facilities and food safety during the occasions of fairs, festivals and public gatherings are mentioned in ninth chapter, the powers of concerned authorities to handle such situations are also given. Tenth chapter is for the health care programmes targeting aged, destitute

and the like and the powers of local and state public health authorities to carry out the programmes. The second last chapter enlists non-communicable diseases and mentions the guidelines for the preventive, primitive, curative, rehabilitative and palliative activities for the control of the non-communicable diseases and ensuring of these guidelines by the Local Public Health Authorities and the healthcare providers. The last chapter discuss miscellaneous domains like serving notices and Orders, revision, appeals and punishment for malicious abuse of power such as cognizance and compounding of offences, delegation of powers by Government and Local Public Health Authority. A statement of objects, financial memorandum and memorandum regarding delegate registration are given at the end.

**The Deliberations** The main points discussed in the meeting are as follows: -

Dr Mohanan Kunnummal, Hon. Vice Chancellor in his inaugural address mentioned the importance of this discussion and the relevance of the bill in the current context of Kerala. He also said that there are already existing laws which deals with the domains in public health like Panchayat Raj act, municipality act etc .Proposing another act in the field of public health may be done with caution.

Dr. Sara Varghese, Principal, GMC commented that this bill will be an answer for the current public health concerns. Though comprehensive, it is resourceful and covers all domains.

Dr Rajamohanam, Professor, School of Public health(KUHS) while discussing the context of Public Health bill pointed that these laws should be more people friendly and hence needs wide discussion among people's forums.

Dr. Jayakrishnan, Professor, Dept. of community Medicine, Kozhikode talked about Human Rights & Ethical dimensions of the proposed Bill. The new Public Heal Bill is constructed in a right based approach which is more universal and empowering. The bill focuses on the functional outcomes of the services and addresses the voice of vulnerable sections. He discussed the human right issues related to quarantine, and surveillance mentioned in the Bill.

*The main point Dr. Jayakrishnan raised was the law should be coherent that it should not interfere with the existing laws and should be gender friendly.*

Dr. Chintha, Asso. Professor, Govt. Medical College, Thiruvananthapuram discussed the main domains of public health bill. She talked about the basics of public health laws, its strategies and targets. All these bills are somewhat the repetition of the existing ones, which needs to be more progressive and forecasting. She critically commented on all the chapters of the bill.

*The discussion points of Dr.Chintha were a) the power decentralization and penalties needs to be rescheduled so that rules can be made stronger. b) e - waste management is not addressed anywhere in the bill. c) Rather than creating a coercive environment, right based approaches like setting up incentives and grants may help to implement the law successfully. d) Equity issues are not fairly addressed in the bill. She mentioned some core areas like one health, Health Information system, Public Health Laboratories, Public Health Cadre and Board, Health Impact assessment, occupational safety, climate changes, urban and school health, trauma care which needs further emphasis.*

Sri. N.Jagaevean, Social activist, Executive Director, Grameena Patana Kendram, Karakulam, who talked about Implementation challenges of the bill in rural areas commented that the bill has not addressed the common rural issues like slaughter waste management, stray dog management and pollution of

public water sources, solid waste management etc.. Also provisions for child abuse, domestic violence issues are not included. He pointed that It would be appropriate if the higher legal authority would be a Collective rather than a single person. An official Legal supporting system should be constructed for smooth implementation of the act.

Dr. Sreekumar, Former Health officer, Corporation of Thiruvananthapuram, who discussed the implementation challenges of the bill in urban areas, coined that two or more existing laws in similar areas will be difficult to implement. He added that the current public health act didn't mention about the infra structure needed for the implementation of the act especially in urban areas where the population is comparatively high. He highlighted that a law cannot be constructed against constitutional rights and that needs to be checked.

Dr. Althaf, Professor Community Medicine, Govt. Medical College, Manjeri emphasized that the bill should be more right based and evidence based and added that there are many missing links in the bill like incorporation of noise pollution. He also suggested the need of public health cadre for the effective implementation of the bill.

Sri. K Raju, Technical officer, Thrissur shared his views that this act should work in way that it should complement and support the existing laws and should address all neglected areas completely. He concluded that the laws must encourage social justice and should work for the good of people.

Dr. A S Pradeep Kumar, Former Addl. Director, Public Health said that we should make an honest introspection whether we need to interfere with existing laws when there are strong legislations on national level itself on many areas discussed in the bill. It is wiser by all means that the current bill would complement the existing laws. He also agreed to the view that decision-making power should be vested on a team of experts than a single individual.

Dr. Kabir, Former Professor, Economics, University College Thiruvananthapuram talked about the historical legacies of the public health in the state and about the bill. He remembered that the emergence of public health laws in India was as a modification of sanitation acts during the period of 1960s and the least concerned area in the current bill is the sanitation issues. In his opinion, the current public health bill is a duplication of the epidemic disease act which was remodified short time before. He added that the public health laws should consider the changes in population, age structure and resources for the effective planning and implementation. He suggested that a notwithstanding clause also should be added to the bill.

Hon. Justice Hariharan Nair, Former Judge of High court of Kerala addressed most of the concerns raised in the discussion. He supported the view of Dr. Kabir that the lack of non-obstante clause in the bill may create legal complications in future. He replied to Dr. Sreekumar's comment that the unpaid fine can be recovered through a small addition to the revenue recovery proceedings, if provision is made therefore. The Hon Judge also supported the views of Mr. K Raju that proposing a private public health Bill including all these suggestions and recommendations will be useful for further discussions in this regard.

As a technical committee member of the current proposed bill, Dr. Jagadeesan, Deputy Director, Health Services replied to some of the concerns raised in the discussion. He said that the bill has already considered most of the existing laws concerning public health field, and the current bill is completely supportive and complimentary to those. There are vivid mandates for public health action and all cannot be put under the purview of any single public health law. He added that the execution issues related to the bill can be addressed by training the officials on concerned areas. He concluded that when the COVID situation was at a peak time, we had many new public health experiences and Government of India also planned new things like setting up state level public health laboratories, Block level public health units and public health cadres.

Dr. Thomas Mathew, Joint Director of Medical Education, made the closing comments that through such healthy discussions, we can bring changes in public health field and such discussions should be encouraged and he shared a hope that these insights of the discussions will make positive impacts on the bill.

Dr. Anuja U, HOD & Professor of GMCT made vote of thanks. In her remarks she said that the meeting was quiet useful and thought provoking. we got a clearer picture of the public health act, its implementation issues and the way it was approached from various experts from diverse fields. We could identify the missing links and limitations of the bill and the suggestions and recommendations to correct it. She extended the vote of thanks to all who participated in the discussion and concluded that the meeting was very constructive and insightful.

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