

Punishments under the Quarantine and Prevention of Disease Ordinance in Sri Lanka: Adequate to Fight a Pandemic?

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Abstract – The society needs more laws to protect the people from COVID-19. Recently, the increasing number of people who are violating the quarantine laws in Sri Lanka due to the insufficient punishments that comes under the Quarantine and Prevention Disease Ordinance No.03 of 1897. In this situation, the national security fails to punish people because the legislature has not given sufficient attention to this matter. In this research it is expected to understand how the current legislature has supported in punishing the general public who violated quarantine laws in the current context of Sri Lanka. Further, in this research it is expected to address the research problem of, whether the prevention measures should help national growth and the security through the provisions of punishments under Quarantine and Prevention of Disease Ordinance in Sri Lanka is enough in expected level. This research is mainly based on both primary and secondary data. By analyzing those data, it defines the issues with regard to the Ordinance and recommendations and conclusion will provide solution for punishments regarding the quarantine laws. So it will be better to re-enact quarantine laws which should be suitable for the present and future time period in Sri Lanka.

Keywords- Pandemic epidemic laws, National growth and security, Quarantine and Prevention of Disease Ordinance

INTRODUCTION

Background to study

History of health system of Sri Lanka began during the king Pandukabhaya's period and

then during the colonial period many things were introduced.¹⁹³ Among them Quarantine and Prevention of Disease Ordinance was enacted in 1897.¹⁹⁴ Further, this ordinance was introduced to prevent the introduction of plague and all contagious or infection diseases to Sri Lanka and the spread of such diseases in and outside Sri Lanka. The above mentioned Ordinance contains twelve sections and the Minister of Health and Indigenous Medical Services were granted power to make necessary regulation thereunder.

However, Sri Lanka has witnessed many large out breaks of emerging and re-emerging infectious diseases like plague, cholera, yellow fever, typhus and small pox and etc. in past years. In 2019 novel coronavirus named as COVID-19 by the WHO has spreaded in the whole world today including Sri Lanka.

Currently, to prevent and control this pandemic, Sri Lanka is governed under the Quarantine and Prevention of Disease Ordinance No. 03 of 1897.

Legal frameworks are important during emergency situations as they can delineate the scope of the government's responses to public health emergencies and also, the duties and rights of citizens. Therefore, the section 05 of the Quarantine Ordinance described regarding the punishments of guilty person who are committing offences against above ordinance. Whether it mentioned several punishments in the Ordinance it was questionable though these punishments are adequate to fight a

¹⁹³ Dr. Sunil De Alwise, Health issues in Sri Lanka,

www.bidti.lk

¹⁹⁴ Quarantine and Prevention of Disease Ordinance No.03 of 1897.

pandemic in 2020. By breaching quarantine laws people were violating fundamental rights: right to life. For example, many were hiding their travel history, breached the curfew rules and importantly the incident that happened in Suduwella area in Ja-Ela; government had to quarantine sailors from Welisara Navy Camp.¹⁹⁵

These kind of violations show that the punishments that comes under the quarantine ordinance should be renewed according to the current situations.

Research problem

In this research, it is intended in exploring the following question: Why the Quarantine and Prevention of Disease Ordinance in Sri Lanka has not implemented laws to control the situation in 2020 by using more severe punishments?

Research objectives

To find out the existing laws that emphasize the penalizing applicability of the Quarantine and Prevention of Disease Ordinance.

To pinpoint the issues regarding the punishing section of Quarantine and Prevention of Disease Ordinance relating to national growth and security.

To suggest recommendations to Quarantine and Prevention of Disease Ordinance to control the pandemic situation in Sri Lanka.

II. METHODOLOGY

This research has mainly recognized as a Doctrinal legal research therefore gives accentuation on substantive law rules, principles, ideas and legal theories. Mainly this study continued around lawful suggestions and legal claims on the lawful recommendations of the Courts, and other traditional legitimate materials. The qualitative data utilized in this research. The statutes, case reports,

international standard on relevant laws, knowledge on expert isetook as primary sources. The Quarantine and Prevention of Disease Ordinance No.03 of 1897, the Public Security Ordinance No 25 of 1947, the Disaster Management Act No 13 of 2005, Penal Code No. 2 of 1883 and Quarantine Act of Canada referred as primary sources. And also data gathered in library base by going through Journal articles, internet articles etc. as secondary sources. Furthermore, qualitative data gathered from primary and secondary sources.

This research conducted on black letter method and International comparative research method. Also this research paper filled the gaps of QPDO related to the punishment for those who are violating the quarantine law and how to implement the legislations regarding this matter.

III. ANALYSIS

Issue of the Quarantine and Prevention of Disease Ordinance section regarding punishments

Under the QPDO, section 5 define the punishments of violating quarantine laws and it says that, 'if any person is guilty of an offence against this Ordinance, he shall be liable on conviction before a Magistrate for imprisonment or either description for a term not exceeding six months or to a fine not exceeding one thousand rupees, or to both. Furthermore, nothing in this section contained shall affect the liability of any person to any punishments or penalty to which he is liable under any enactment other than this Ordinance, but so that a person shall not be punished twice for the same offence.' In here, these punishments are not enough to fight a pandemic because comparing to the present the punishments should be developed. The community should fear for violating the quarantine laws by knowing the tough punishments. In some developed countries, they enacted new quarantine laws and

¹⁹⁵ COVID-19 pandemic in Sri Lanka, www.wikipedia.com

punishments only for COVID-19. This way the relevant authorities were able to reduce the quarantine law violators and control the situation according to their will.

Existing other legislations in Sri Lanka to reduce the quarantine law violators

In Sri Lanka there are several legislations to control and prevent quarantined diseases.

However, when dealing with the COVID-19 the government mainly base on QPDO and for punishments the relevant authorities base on penal code and PSO and also DMO can be used. Other than QPDO, in Penal Code chapter 19 discusses about the punishments and offences affecting the public health, safety, convenience, decency and moral. Under that, in section 262 define the punishments for negligent act likely to spread infection of any disease dangerous to life and it says that 'whoever unlawfully does any acts shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both'. And also, under this section 263 define that, 'whoever maliciously 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'. Further, disobedience to a quarantine rule, punishments comes under section 264 and it says that, whoever knowingly disobeys any rule shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Other than that, section 16 (3) of PSO describes that, 'if any person contravenes an order made he shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not exceeding one month or to a fine not exceeding one hundred rupees or to both such imprisonment and fine'. Also some punishments were mentioned in the DMO

relevant to the pandemic situation but Sri Lankan government did not use it. However, above mentioned legislations help to prevent and control the COVID-19 though the punishments are not enough to fight a pandemic.

Comparison of quarantine laws between Canada vs. Sri Lanka

Most of the countries enacted new laws to control and prevent the covid-19. Among them, Canada introduced an Act to prevent the introduction and spread of communicable diseases in 2005. Under that the Quarantine Act of Canada define 'every person is guilty of an offence if they cause a risk of imminent death or serious bodily harm to another person while willfully or recklessly contravening this Act or the regulation and moreover, if any person who commits an offence above section is liable on conviction on indictment, to a fine of not more than \$1,000,00 (Rs. 184,740,000/-) or to imprisonment for a term of not more than three years or to both and on summary conviction, to a fine of not more than \$300,000 (Rs. 55,422,000/-) or to imprisonment for a term of not more than six months or to both'. Considering these punishments, Sri Lanka is having slight punishments as mentioned above. However, the importance in here that these laws have helped those countries to reduce the law violators while number of Sri Lankan quarantine law violator were raised up. Therefore, above international laws can be adapted to Quarantine and Prevention of Disease Ordinance in Sri Lanka.

IV. RECOMMENDATIONS

- Making sure that the quarantine laws address all the loopholes identified in current Quarantine and Prevention of Disease Ordinance No 03 of 1897

Under the QPDO section 5 define the punishments of violating quarantine laws and those punishments are not enough to fight a pandemic because this Ordinance was established during the colonial period and now Sri Lanka is passing the 21st century. But the

legislations were not developed according to the time period. Therefore, above mention section should be amended and made necessary regulations.

- Developing the punishments of curfew rule under the Public Security Ordinance No 25 of 1947

Under the PSO section 16 explains the curfew and the punishments. In section 16 subsection 1 defines the curfew as, 'no person in such area shall, between such hours as may be specified in the order, be on any public road, railway, public park, public recreation ground or other public ground or the seashore except under the authority of a written permit granted by such person as may be specified in the order'. Further, in the same section subsection 3 describes the punishments for violating the curfew and it says that, 'if any person contravenes an order made under this section, he shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to rigorous imprisonment for a term not exceeding one month or to a fine not exceeding one hundred rupees or to both such imprisonment and fine'. Further, looking in to these punishments show that these were enacted during the colonial period and not adequate to current situations. Due to the lack of punishments the community violate the curfew rules and in here, it's so hilarious to say that 40,095 people violated the curfew rules in Sri Lanka while other countries patients rate were increasing in same amount. Considering above situation, these laws should be developed and the punishments should be re-enacted.

- Using the punishments which come under the Disaster Management Act instead of Quarantine and Prevention of Disease Ordinance.

The Disaster Management Act was enacted for whereas human life, property and environment of Sri Lanka is being threatened and endangered due to certain disasters taking place within the territory of Sri Lanka. Though

this Act could be used to reduce the violators of quarantine laws but the government did not use the laws that contain in this Act. Further in Disaster Management Act section 24 explain that, 'every person who assaults, obstructs, threatens, intimidates, abuses or insults any person exercising any power or discharging any duty conferred on or imposed on such person by this Act, shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to imprisonment of either description for a term not exceeding two years or to a fine not exceeding twenty five thousand rupees, or to both such imprisonment and fine'. The reason for recommending this Act is that, it was enacted in the very recent past with comparing to Quarantine and Prevention of Disease Ordinance and also the punishments were adequate to control the situation.

- Holding awareness program regarding existing quarantine laws and punishments

Continuingly, informed on problems related to violating quarantine law and the sections that lay down in Quarantine and Prevention of Disease Ordinance. Then what punishments that the Quarantine Ordinance can take against the community were mentioned in the Ordinance but the community is not aware about this. So, it provides opportunity to violate the quarantine laws that the community should follow. Sri Lanka health system, Sri Lanka Army, Police officers and relevant authorities shall hold awareness programs regarding the sections of offences and punishments by using social media, governmental and non-governmental organizations meetings. For an instance, Tamil Nadu police released a prank video showing lockdown violators put in an ambulance with a (mock) covid-19 patient. This will give worth opportunity to reduce violating quarantine laws and will support to control the pandemic.

- Introducing international laws to domestic laws

As mentioned above, Quarantine Act of Canada helped to reduce the law violators. Therefore, above international laws can be adapted to Quarantine and Prevention of Disease Ordinance in Sri Lanka.

V. CONCLUSION

According to the analysis it was understood that there have been the QPDO as the key support that has been given through the legislature for the punishment to the general public who violates quarantine laws in peak period of COVID -19 in Sri Lanka. The laws in the ordinance has been established in the colonial period of the country and still no any required amendments were done based on that. Considering the number of cases has been reported only in the period of quarantine in the recent past started in 20th March 2020, it can be concluded that the provisions under the QPDO and Penal code of Sri Lanka has not been able to punish the people who violate the laws specially during the curfew period because of there are insufficient laws to penalize.

Finally, the punishment section of QPDO ordinance fails to punish people because the quarantine laws are aged. Mainly many states still have lack of implementation strategies such as providing punishments and preventive measures to reduce to violating quarantine laws. In this situation the general public do not respect the laws because of those punishments are not tough to them. According to the above facts, mainly Sri Lanka using quarantine ordinance and penal code to punish those people who violate the laws. Finally, this research tries to give awareness to the general public regarding the punishments under quarantine laws. As a conclusion, this paper suggests to implement quarantine laws in Sri Lanka based under punishments and adopt international laws to the domestic laws to help national growth and security of Sri Lanka.

REFERENCE

Legislations

Quarantine and Prevention of Disease Ordinance No.3 of 1897

Public Security Ordinance No. 25 of 1947

Disaster Management Act No.13 of 2005

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ABBREVIATION

QPDO- Quarantine and Prevention of Disease Ordinance

PSO- Public Security Ordinance

DMA- Disaster Management Act

WHO- World Health Organization

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