

A CRITICAL STUDY OF HUMAN RIGHTS DURING THE PANDEMIC: COVID-19 AND SECURITIZATION OF HEALTH IN INDIA

Jaishree Mahatma, Research Scholar, Dept of Law, Kalinga University, Raipur Chhattisgarh

Dr Sukant Vats, Professor, Dept of Law, Kalinga University, Raipur Chhattisgarh

ABSTRACT

The outbreak of the SARS CoV2 virus, commonly referred to as the COVID-19 pandemic, has impacted the social, economic, political, and cultural lives of citizens around the world. The sudden outbreak of the pandemic has exposed the legal preparedness, or lack thereof, of governments to reduce and contain its drastic impact. Strong legislative measures play a crucial role in any epidemic or pandemic situation. In this situation, the Indian Government has requested all state governments to invoke the Epidemic Disease Act (EDA) of 1897 to address the COVID-19 emergency. The Central Government has also used the powers provided in the Disaster Management Act (DMA) of 2005. As the country is facing its first major health emergency since independence, the existing legislative measures to deal with a COVID-19 like situation are lacking and require certain amendments to address such situations in the future. Human rights have long been regarded as critical to a person's complete growth as well as progression generally. Human rights are pertained to a Person's life, liberty, equality, and dignity. Various Human Rights such as Right to freedom of speech and expression, Right to Decent Burial, Right to Education etc. were impacted due to worldwide health emergency. So apart from heavy casualties it becomes also relevant to study the Covid 19 Pandemic in light of human rights violations that happened during the counter-pandemic measures implementation such as curfews and strict lockdown.

Keywords: Covid 19 and Human Rights, strict lockdown

Introduction

The outbreak of COVID-19 has changed lives across the globe, impacting the ways governments have been responding to the ongoing health challenge. The lengthy duration of the pandemic with its multiple waves and virus mutations, has resulted in the securitisation of public health responses globally, and multiple long and short-term restrictions on human rights. From the significant curtailing of rights during the first wave, often demanded by populations themselves, to longer-term solutions, the impact of the pandemic on human rights has been far-reaching and global. While some limitations, such as restrictions on movement, country-wide lockdowns, and quarantine confinement have had dramatic short-term impact, others have resulted in sustained rights trade-offs for the benefit of public health – such as continued limitations on travel, newly emerging vaccine passports, and continued contact-tracing efforts. Living with SARS-CoV-2 has become a somewhat permanent fixture of public and private life in nearly all jurisdictions. While most human rights treaties include provisions concerning emergencies, this article intends to illustrate that while these provisions justifiably apply in the phase of the initial response, the prolonged and continuously changing levels of restrictions are more problematic as they create more permanent trade-offs introduced slowly in the name of health security.

The World Health Organization (WHO) announced a worldwide pandemic. It had asked countries to take immediate measures to curb the virus's transmission, stressing “alarming levels of spread and severity.” The magnitude and seriousness of the COVID-19 virus certainly raised to the level of a global health emergency, justifying limits on some rights, such as those resulting from isolation and mandatory quarantine's rules restricting freedom of movement. 522,062 lives are already taken by the corona virus in India and many countries including India are again heading toward the 4th wave of pandemic with cases continue to raise and states started to bring

back the mandatory mask and sanitizer guidelines for people.

While the virus had disturbed countless lives, there is little doubt that the people and groups who have been most devastated by the virus are those who were already disadvantaged prior to the outbreak. Pre-existing systemic imbalances have been amplified and made obvious by the outbreak. The outbreak, like earlier emergencies, has special regard for gender, caste, race, religion, orientation, or any other societal feature. The pandemic lockdowns impact largely those who were already underprivileged and stigmatized the worst. The global epidemic had a negative impact on many human rights and their preservation. Human rights have long been regarded as critical to a person's complete growth as well as progression generally. Human rights are pertained to a Person's life, liberty, equality, and dignity.

As per United Nations *“Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.”*

Not even a single element of the human rights definition by UN left untouched during Covid pandemic. Whether it be Right to Health, right to life and dignity, right to work and ultimately the right to decent burial all such precious human rights got violated. Criminal charges under draconian laws such as UAPA, NSA and sedition were slapped against citizens who were complaining against shortage of oxygen cylinders and trying to approach the state government on social media. This heavily infringed the freedom of speech and expression.

The government's approach to the COVID-19 outbreak was clearly swift but the extent of its execution demonstrates an evident lack of preparation and cooperation. India did not reap the rewards by instituting preventive closure, and within a few weeks, it had entered the list of top corona virus-affected countries. Migrant workers were vilified and judged harshly for disease outbreaks. They were, nevertheless, one of the most severely afflicted group. Starvation, suicides, illness, roadway and train mishaps, police violence, and denial of proper medical attention were among the causes of death for migrants.

So apart from heavy casualties it becomes also relevant to study the Covid 19 Pandemic in light of human rights violations that happened during the counter-pandemic measures implementation such as curfews and strict lockdown.

Right to Health

According to the WHO, *“Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease. It is the state legal obligation to ensure uniform access to timely, acceptable, and affordable health care of appropriate quality as well as to provide for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality to all its people.”* Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) has recognized the right to health as a basic human right. It provides that *“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”*

This right is guaranteed in many ways under the Indian Constitution although it is not directly provided in the constitution but is inferred from other rights especially the right to life under article 21.

The DPSP in the Constitution gave a foundation for the right to health. Article 47 provides that *“It Duty of the State to raise the level of nutrition and the standard of living and to improve public health”* Human trafficking and child labor are prohibited under article 23, which implicitly helps to the protection of the Right to Health.

Article 41 provides *“the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”*

Apart from Directive Principles, through judicial interpretations right to health has become an inseparable part of Right to life. The Supreme Court of India has played an essential part in safeguarding the public's health. The SC

has frequently stated that the term "life" in Article 21 refers to a dignified life, not only survival or animal existence. The Supreme Court of India in *Bandhua Mukti Morcha v. Union of India* held that *"although the Directive Principles of State Policy are not binding obligations but hold only persuasive value, yet they should be duly implemented by the State. The dignity and health fall within the ambit of life and liberty under Article 21"*

So, the right to health has gained status of human right as well as the fundamental right. As a result, it is the government's responsibility to look after the general public's health. Public health and its implementation are presently vested in states as per schedule 7 of the constitution and the states has to rely on center for funds so as to carry out its duties. Hence a proper coordination between both center and states was required during the covid outbreak but opposite response was observed during pandemic, there was a constant fight between states and center on critical issues of public health. For instance, there was a tussle between center and states on vaccine availability, many states blamed center for shortage of vaccines, The policy of central government on procurement of covid vaccines was biggest disaster, states were made to compete with each other for tenders to global private manufacturers. Ultimately SC had to interfere and Justice Chandrachud while hearing a writ petition on issue sternly observed that *"There is a vital issue. Article 1 of the Constitution says that India, that is Bharat is a, Union of States. When the Constitution says that, then we follow the federal rule. Then Government of India has to procure the vaccines and distribute it. Individual States cannot be left in a lurch"* Ultimately Center had to change its unreasonable policy over vaccine procurement.

The National Human Rights Commission in its advisory titled *"Advisory on Right to Health in Context of Covid 19"* had noted that covid 19 had adversely impacted the treatment of persons suffering from tuberculosis, cancer and other fatal diseases. This advisory had guidelines to be followed by the healthcare sector. it included free access to healthcare facilities, right to information of the patient etc.

Lives are lost from the lack of oxygen, but the state's failure in delivering adequate healthcare at no cost or at a reasonable cost may damage people's trust in the system, which is far more deadly and widespread. Courts have recognized right to health as a fundamental right and the distinguishing feature of fundamental right is that it can be enforced against the state. The non-accessibility to basic healthcare facilities violated the right to health of the citizens.

Right of a Dead Person to Decent Burial/Cremation

The COVID-19 virus has caused not only a healthcare, safety, and financial collapse, but also a religious dilemma in human's last path. The bodies of the deceased Covid-19 patients were dumped and discarded as waste. Even the kin of COVID-19 sufferers avoided the body of such individuals after death for fear of becoming infected. Countless bodies were tossed in the Ganga instead of the proper cremation. Dead bodies were seen being eaten by dogs and birds on the banks of river. It also indicated *"massive discrepancy between the official Covid-19 death figures and the actual numbers on the ground"*. In India, there is no particular legislation safeguarding the rights of the deceased.

In Chennai a doctor had died due to covid-19 virus, his burial was opposed at two cemeteries, his family was attacked by mob. People feared that that burial of covid positive body will spread the virus. After this incident, Madras High Court took cognizance of the matter on a writ petition and observed that *"The right to life also encompasses the right to a decent burial or cremation. The State is clearly under an obligation to ensure that members of all communities are provided access to burial/ cremation facilities."*

Again, Bombay High Court in *Pradeep Gandhi v. the State of Maharashtra*¹⁹ Held that

"Right to a decent burial, commensurate with the dignity of the individual, is recognized as a facet of the Right to life guaranteed by Article 21 of the Constitution. There is no reason as to why an individual who dies during this period of crisis because of suspected/confirmed COVID-19 infection would not be entitled to the facilities he/she would have otherwise been entitled to but for the crisis."

The Supreme Court in *Parman and Katara v. Union of India* It acknowledged that a person's right to life, fair treatment, and dignity extends to his or her deceased body as well. These rights are taken from Article 21 of the

Indian Constitution. Furthermore, the granting of afterlife legal rights confers important moral legitimacy on the deceased in our system of justice. The law also seeks to honor and defend a decedent's intentions and interests. Further Article 130(1) of the fourth Geneva Convention mandates that *“States should ensure that graves are respected, properly maintained, and marked in such a way that they can always be recognized”*

Taking cognizance of the grave violations of right to decent burial and cremation amid covid, the NHRC had issued the advisory to centre and states governments which included various guidelines which included

- *In the event of legal heirs disowning the body and depriving it of a decent burial, the local Government / civic body should ensure proper disposal of the body after due legal procedures like post-mortem etc.*
- *It must be ensured by the State/ Local Government that the condition of crematoriums, burial grounds, electric crematoriums are properly maintained to keep them in effective working conditions.”*

The gross violation of right to health has further led to the infringement of right to decent burial.

Freedom of Speech and Expression

After the right to health another major and intrinsic human right which was grossly violated during the covid 19 pandemic is free speech. Freedom of speech and expression being a fundamental right granted under article 19 (1) (a) is an enormous, significant, fundamental and immensely contentious premise in the province of democracy. The autonomy granted under the right to expression has been subjected to certain reasonable restrictions with the rationale of maintaining public order. Dissent, discussion and scrutiny are a fundamental aspect and forms fundamental ground in the strengthening of a robust and vibrant democracy.

Human Rights Watch found that *“At least 83 governments worldwide have used the Covid-19 pandemic to justify violating the exercise of free speech and peaceful assembly. Authorities have attacked, detained, prosecuted, and in some cases killed critics, broken up peaceful protests, closed media outlets, and enacted vague laws criminalizing speech that they claim threatens public health. The victims include journalists, activists, healthcare workers, political opposition groups, and others who have criticized government responses to the coronavirus.”*

In pandemic period, a doctor had posted pics of doctors wearing Raincoats instead of PPE kits on his social media account and criticized government for lack of necessary medical equipment,

he was detained by police and charged with spreading communal disharmony, his mobile was seized. He was questioned for 16 hours and was forced by the police to admit and apologize on his social media account that his previously posted pics were mistaken. He was released from detention when he appreciated the state government by sharing a tweet. Later doctor moved the high court of Calcutta for getting back his mobile from police. The HC while ordering the police to return the mobile too doctor remarked that *“Freedom of speech and expression which is granted under Article 19 of the Constitution of India has to be scrupulously upheld by the State. If an expression of opinion brings the government into disrepute, it cannot defend this allegation by intimidation of the person expressing the opinion by subjecting him to prolonged interrogation, threatening arrest seizing his mobile phone and SIM card and so on.”*

In various cases even draconian laws like Sedition, UAPA and NSA was used against against the people who criticized the govt's handling of pandemic. For instance, An Actress was charged under the sedition law allegedly for commenting that *“Lakshadweep had zero cases of COVID-19 Now, it is reporting a daily spike of 100 cases. What the Centre has deployed is a bio-weapon. Centre was using the Union Territory's administrator Praful Khoda Patel as a bio-weapon against residents.”*

UN Office of the High Commissioner for Human Rights had suggested states for releasing “every person detained without sufficient legal basis, including political prisoners, and those detained for critical, dissenting views” But instead of it more arrests were made on charges of making critical remarks against govt's covid handling policy. Protests and demonstrations were restricted not only in India but across the world as a result of the virus. Lockdown and quarantine policies placed people packed into their homes. So online expression of dissent was the only source of protest against the government. Which also got curbed due to arbitrary use of criminal laws. Further govt of India had ordered the social media Giants Facebook and Twitter to remove the posts that are critical to the

government's handling of the pandemic.

Right Against Torture

One of the tightest lockdown restrictions in the world was enacted in India, and the police force was granted broad authority to implement it. With no training or expertise in dealing with such an unforeseen crisis in a very huge and populous nation as India, the police force has been pushed to be on the front lines of virus control. Unfortunately, the implementation of the lockdown regulations had turned a brutal and punishing turn, with policemen exercising unreasonable force to impose the restrictions. In the lack of specified rules or a lockdown strategy, the lockdown was imposed as a law-and-order problem than as a public health care issue. On social networks, footage had circulated depicting police officers slapping individuals with batons and sticks. Unreasonable corporal punishments such as squatting for long time, Multiple sit-ups, slapping etc were given by the police to the people who were in violation of lockdown rules. Kerala HC took cognizance of the matter and observed that *"exemplary work done by the health authorities and the police personnel in containing the spread of COVID-19, but adds that it cannot turn a blind eye to some of the other material that "...has been published in the print, electronic and social media in the past week, that would point to excesses committed by the police personnel in the course of discharge of their duties."* Further in Tamil Nadu dual deaths of father-son happened in police custody, The father and son were arrested for having kept their store open 15 minutes beyond closing time in curfew. they were beaten to death in police custody brutally, the case arose when the world's attention turned to police brutality in the aftermath of the killing of George Floyd by the police in the U.S. It has reignited concerns in India for reforms of the nation's police, which human rights activists have characterized as a subculture of brutality and injustice.

Right against torture is implicit in article 21 of the Indian constitution which provides the right to life and through various judicial pronouncements this life is interpreted to mean a life of dignity and respect.

As per the recent study on policing in India *"55% people feared police would beat them during lockdown"* It reflects the public perception of police in India which further deteriorated during the pandemic.

Right Against Torture is One of the most accepted human Right. It is regarded as barbarous and inconsistent with humanity.

Article 3 of the Human Rights Convention (ECHR) mandates that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."* Similar be it UDHR, ICCPR or humanitarian international law, torture and degrading treatment is strictly prohibited.

Torture by the state authorities infringe the right to life and liberty of a person, it deprives a person of his dignity. As rightly pointed out by Supreme Court in *Kishore Singh V. State of Rajasthan "Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights"*

So gross violation of right against torture occurred during the covid 19 pandemic in India that magnified the need for police reforms.

Right to Education

The COVID outbreak had underlined the challenge of establishing an equilibrium between two conflicting rights: the right to public health and the right to education, both of which are guaranteed in India's Constitution. Considerations for healthcare system have, obviously, been at the forefront of governmental policies and planning. Moreover, in addition to the public health disaster, the outbreak had resulted in education turmoil across the nation. Notwithstanding India's *"fundamental right to education"*, complete school closures had left students across the nation without opportunities for education since the nationwide lockdown began. As per UNESCO *"Indian schools had been closed for the longest duration after Uganda."* During the outbreak, India, like other nations, depended on internet for continuous education. Unfortunately, majority school, educators, and children have found it difficult to engage in online classes due to a lack of network technologies.

Researches highlighted that *"only 18.3 percent of children in rural areas enrolled in government schools have*

accessed video recordings, and 8.1 percent have attended live online classes”

As per UNICEF “Globally, 3 out of 4 students who cannot be reached by the remote learning policies come from rural areas and/or belong to the poorest households.”

The outbreak had an influence on institutions of higher learning as well. All colleges and universities were decided to shut by the govt and the Universities Grant Commission. All through this time, such schools have depended on online learning programmes. Students' accessibility to technology at homes, on the other hand, has been unequal, leading to irregular exposure and participation in digital education. Furthermore, studies suggested that even student and universities with access to information technology faced additional hurdles. Students especially, suffered with the mental and physical health issues during the pandemic, resulting in low participation with online classes.

it has primarily been left to the educational institutions to close the gap in education policy. Whereas the emphasis on public health is vital, it has led in an educational imbalance throughout the nation, especially among children from low-income families. India's goals making headway include a coordinated drive for national policy change and increased expenditure in the educational program to ensure that no students are left behind.

Conclusion

Our economic, healthcare, and legal systems have been challenged to respond quickly and efficiently to the immediate danger of COVID-19. While restrictions began to mount rapidly across the globe, heavily curtailing most of our contemporary freedoms, their future human rights implications have remained in the background rather than the foreground of the pandemic response. The levels of restrictions have repeatedly fluctuated from relaxed to tightened, signaling potentially long-lasting securitization of the health sector. This article has shown that while the initial response was likely to be compliant with allowed human rights derogations, the long-lasting limitations pose the danger of permanently curtailing the scope of certain rights. While not the first area of contemporary life to be securitised, health may become a trigger for normalizing a wide array of multiple exceptional measures, justifying rights trade-offs particularly in fields related to the right to privacy. The long-lasting pandemic has begun to shift what is considered ‘normal’ and necessary when it comes to accepting new forms of surveillance and fluctuating limitations on rights. The COVID-19 pandemic is a novel and previously unforeseen occurrence with slowly emerging consequences. Securitisation of the health sector is not entirely new but it is experiencing rapid acceleration due to the renewed sense of danger. This in turn is likely to exacerbate work in similar ways to the securitisation of other areas – creating acceptable trade-offs that allow for accepting limitations that would have otherwise been seen as problematic. At last, we can conclude that most of the human rights got affected by the Covid 19 pandemic in some or other way. The Human Rights discussed in this study were adversely impacted by the pandemic in India, although same impact can be noticed in other countries as well where right to freedom of speech and expression got violated on the name of anti-fake news law. Pandemic had impact on all aspects of human life from the family life to the professional life.

References:

- Francis Coralie Mullin Vs The Administrator, Union Territory of Delhi AIR 1981 746a.
- Mann, ‘Human Rights and AIDS: The Future of the Pandemic’ in Schenker, Sabar-Friedman, and Francisco (eds), AIDS Education: Interventions in Multi-Cultural Societies (1996) 1; Doyal, Living with HIV and Dying with AIDS: Diversity, Inequality, and Human Rights in the Global Pandemic (2013).
- Jacob, ‘Human Rights and Public Health During Pandemic Influenza’ (2006) 3 Indian Journal of Medical Ethics 2.
- Duckett and Orkin, ‘AIDS-Related Migration and Travel Policies and Restrictions: A Global Survey’ (1989) 3 Aids 231.
- Laver and Garman, ‘Pandemic Influenza: Its Origin and Control’ (2002) 4 Microbes and Infection 1309.
- Barbisch, Koenig, and Shih, ‘Is There a Case for Quarantine? Perspectives from SARS to Ebola’ (2015) Disaster Medicine and Public Health Preparedness 547.

- Gostin, 'Pandemic Influenza: Public Health Preparedness for the Next Global Health Emergency' (2004) 32 The Journal of Law, Medicine & Ethics 565.
- Criddle and Fox-Decent, 'Human Rights, Emergencies, and the Rule of Law' (2012) 34 Human Rights Quarterly 39, at 47
- United Nations, UN Human Rights Treaty Bodies Call for Human Rights Approach in Fighting COVID-19 (24 March).
- Goold and Lazarus (eds) Security and Human Rights, 2019.
- World Health Organisation, International Health Regulations Guide to Ship Sanitation Third Edition, October 2007, Chapters 7.3.4 and 13.4.5.
- Gostin, 'Pandemic Influenza: Public Health Preparedness for the Next Global Health Emergency' (2004) The Journal of Law, Medicine & Ethics 565.
- Criddle and Fox-Decent, 'Human Rights, Emergencies, and the Rule of Law' (2012) 34 Human Rights Quarterly 39, at 47
- United Nations, UN Human Rights Treaty Bodies Call for Human Rights Approach in Fighting COVID-19 (24 March).