

“Fragility of Democracy during COVID-19 Pandemic”

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ABSTRACT

The prevalence of the pandemic COVID-19 globally and its consequent impact followed by measures taken by government to contain it has grossly violated democratic rights of an individual. It has been observed that various governments are working immensely to face the challenge and threat imposed by the growing pandemic but some governments have sought to exploit and reap benefits to gain political advantage by curtailing freedom of speech, movement and assembly. Needless to say the common man has been affected the most. Therefore numerous petitions are being filed every day and orders are being passed for the welfare of the people. The sole purpose of the article is to ascertain that whether the government is validating the basic democratic and human rights in the due course of covid-19 pandemic. It has been inferred that the process of limiting the virus is concurrently showing inadequacy in law but the government’s endeavour to refine it is uninterrupted.

INTRODUCTION

Execution of democracy during a pandemic is a challenge as evident in the current situation of COVID-19.

Democracy is a term, which essentially means a government in which the supreme power is vested in the people. The citizens together with their elected representatives forming the democracy must agree on acknowledge that an effective execution of democracy depends on the maximum access to uncensored opinions, ideas and data. In an independent country, the citizens must have absolute freedom to express themselves openly and publicly in a repetitive manner through every medium, whether in speech or in writing and for the protection of such freedom the democracy has endowed the citizens with certain fundamental human rights.

A pandemic is defined as “an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people.”¹ Corona virus is a member of the influenza family. The very first case of this virus was detected in Wuhan, China during the month of December 2019. It has been ascertained by the World

¹ <https://www.who.int/>

Health Organisation as an highly communicable disease causing major respiratory issues. The spread of this virus was so rapid crossing international boundaries in no time and attacking a hefty amount of people in 213 counties across the globe that the situation could no longer be termed as an ‘epidemic’.

The role of law and ethics in this situation is utmost. In the context of harmonisation within the countries there has to be cross judicial and cultural perspectives. Distribution of health kits, distribution of power between levels of government and maintaining equity between the people are some of the agendas to be fulfilled by the nations. Preparatory framework for combating this virus may lead to complications in allocation of justice.

The lockdown in several countries have led to adjournment of human rights, so, Antonio Guterres, UN Secretary General cautioned that Covid-19 pandemic should not be used as an excuse to quash human rights in authoritarian nations. He also added that this public health emergency may soon end up as a human rights catastrophe which will question the democratic nature of several countries.

DEMOCRATIC SCENARIO AROUND THE WORLD

The novel corona virus pandemic has been unfolded under circumstances where democracy is already under threat in many countries. Apart from creating enormous repercussions on public health and world economy, the virus imposes threat on the implementation of democracy. Government around the world are struggling to meet halfway between human rights and social securities. The fundamental right to freedom of assembly has been impeded in the wake of this pandemic. Many governments around the globe have been taking advantage of the catastrophe as a pretext to curb all the antigovernmental protests that have outraged global politics. Algeria is one such country to do so.

The right to freedom of expression has also been curtailed as an alibi for spreading rumors about the virus. In China and Thailand, journalists as well as citizens who denounce the government in this crisis are being taken to the lawsuit. In Egypt, a reporter has been asked to leave the country after she had inquired on the official count of the corona virus cases.

It has been observed several democracies of the world are using the emergency powers to truncate the fundamental rights of the citizens. For instance, Prime Minister of Jordan now has the jurisdiction to suspend freedom of expression. Israel Prime Minister Benjamin Netanyahu has postponed his corruption trial. It is imperative to mention that Hungarian Government has passed a law ‘on protection against corona virus’ and suspended all existing laws which allows him to rule by decree. The Government of Philippines also possesses infinite emergency powers.

Electoral processes have also been disrupted across the globe. Various European countries like Italy, Spain, Serbia and the United Kingdom have rescheduled their national and local election. In this disastrous situation, the right to choose the leader is of supreme importance,

which the people are deprived of. It is needless to say that it tantamount to non-execution of democracy.

Countries like Iran, South Africa, Israel, Peru and Kenya have incorporated military forces. It is of utmost importance to keep an eye on the same so as to see whether the pandemic strengthens the military actions or whether civil authorities will be back in force and the hard force will subside.

DEMOCRATIC SCENARIO OF INDIA

The fight against the COVID-19 pandemic in India were in various proportions, as it is the largest democracy, country's every move is under inspection both at home and abroad and where every public policy by the Parliament is open for questioning. This nation's implementation is done through belief and not coercion.

'Extraordinary times calls for extraordinary measures' - the rapid spread of the COVID-19 lead the Government in ordering a nationwide lockdown and amounted to a house arrest for the citizens. Even though the Constitution empowers the President under Chapter XVIII to declare state of emergency, current government has chosen not to take that path during the crisis of COVID-19, as environmental or public health do not come under the purview of the provision.

The uncalled announcement of the nationwide lockdown has not only lead to the curtailment of various fundamental rights of the citizens as the first layer of restraint but has also revealed quite a few loopholes in the execution of democracy by the government. The second layer emerges from execution of the first, violating Article 21- 'Right to life and liberty' of the Indian Constitution.

However, there is clearly no alteration pertaining to the scope of power given to the government both at central and state level because under the existing laws they are given 'sweeping' power with practically no legislative checks on their limitations. State action related to the COVID-19 pandemic has been initiated in three levels.

The central government on 24 March, 2020 called upon the National Disaster Management Act, 2005 (NDMA). The very invocation of this Act is debatable because the Act was enacted in the wake of a natural disaster and never included provisions for public health emergencies; also the guideline put restrictions of free trade, occupation or profession not movement.

Nevertheless, this is the Act the government chose to fall back upon and deciphered that this pandemic must be considered as a 'disaster' under the meaning of this Act. Section 10 of the Act empowers the government to issue binding directions and guidelines to the several state governments although as per our Constitution matters related to public health must be dealt in the State level. . The 'nationwide lockdown' has been implemented through this section and eventually certain amendments were also made but the Parliament has not really actively

taken part at any point of time. Precisely, the sphere of operations were centralized by giving federal government over-riding powers of enforcement.

Prior to the central government calling upon the NDMA to declare a country wide lockdown certain states had invoked the Epidemic Disease Act which in turn allowed for quarantine of individuals, sealing of certain areas, etc., such being the second level of State action. The Epidemic Disease Act of 1897 lacked sufficient explanation on various areas related to the current scenario of Covid-19. Firstly, the law is vague to explain the severity of a contagious disease and its spread. Secondly, due to accelerated evolution, human race have undergone rapid industrialization and urbanization, which led to frequent international or domestic travel or migration. The definition of communicable disease have changed over the years because of the earlier said factors and the Act fails to provide the proper guidelines. 'Human Rights' is the essence of democracy. In a chaotic democracy like India it is crucial to protect the basic human rights, so, it is necessary to have provisions to protect those rights in emergent situations as well. There is no provision in the whole Act for the above said concern and it have never undergone any judicial review or amendment. Even though this Act has some major drawbacks to deal with the pandemic as it is almost 100 years old, still it has to be prioritized and activated.

On April 22, 2020 the ordinance issued which proposed for the amendments in the Epidemic Diseases Act was sanctioned by the Union Cabinet. The amendments mainly included provisions related to protection of the medical service providers and their properties during an epidemic. The alteration in law have made any inhuman act towards healthcare and medical workers or staff cognizable and nonbailable offence ; making that person punishable with fine, imprisonment or paying of compensation.

The very character of our statutes, notifications and guidelines seems to be obscure and inconclusive and hence has led to the infringement of many civil rights of the citizens. The deficiency of a firm statutory basis for actions like stamping of individuals and asking for their personal details is supplemented by the fact that even after a landmark judgement India still does not have a proper data protection law. Also, there is absence of statutory standard that monitors data collection and processing and their utilization by the state governments. However, there is the presence of 'constitutional standard' for proportionality that requires rationality, legality, necessity and strict proportionality.

According to the principality of the Constitution, it is significant to draw the difference between use of power to thrust restrictions and its proportional use when discussing about the limitations laid down by the nationwide lockdown. Even though these restrictions could be justified under Article 19(5) which states- *"Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the*

protection of the interests of any Scheduled Tribe.”² It has been observed that two most devastated categories of citizens are traders (right to trade) and migrant workers (right to movement). Curtailment of trade operations have resulted in cessation of work and an obligation on part of the traders in payment of wages. In the context of “general public interest”, it is lawful to abstain the citizen to carry on trade, but, in absence of law, any executive directions cannot compel them to fulfil economic duties towards others. It is an inequitable situation for the migrant workers of this country. The government failed to recognise the enormous ramification of the lockdown would have on the common man. Thousands of daily wage earners spread across the country has been marooned jobless away from home, without food and shelter. In the eyes of law the words ‘reasonableness’ and ‘proportionality’ has always pointed out that each and every situation is unique in nature, so, it is unjust to apply one uniform formula for every citizen. When implementing of Article 19 if the governments fails to take the principle of proportionality into consideration, it will collapse the basic structure of Article 14 and Article 21.

Therefore an order was passed by the three-bench judge on March 29, 2020 declared a judgement on the basis of varies petitions filed asking the government to not take any coercive actions against companies who could not pay the full wages. Supreme Court pointed out the same issue with the direction as said earlier.

Soon after the announcement of the nation-wide lockdown the Apex Courts and all High Courts moved to virtual hearings but having functioning in a ‘limited capacity’ they would only cater to ‘extremely urgent’ ‘criminal and family law cases. Since the term ‘extremely urgent’ had been left to the discretion of the Courts it was disappointing on the part of certain High courts to not consider bail cases to be extremely urgent and not hear them during the lockdown which again leads to the violation of an individual’s right to personal liberty which even a State cannot afford to do in an Emergency. In the mean time, numerous petitions are being filed before the Supreme Court for violation of rights arising due to the lockdown. A pattern, which can be observed throughout, is that the Supreme Court has tended to be defensive to the State rather than subjecting them to intensive judicial scrutiny.

Finally, there is the ultimate level of executive law making which directly pertaining to free movement of individuals. It empowers senior police officers, within their jurisdictional limits, to restrict individual movement where there is anticipated risk to human ‘life, health and safety’. The logical order of this interlocking web of executive decrees is that although the lockdown is stringent and acute, it is also to some extent arbitrary.

CONCLUSION

It is important for us to note that India being a ‘federal republic’ consisting of a parliamentary democracy operating as per a written Constitution, and comprising of Courts who exercise

² M.P.Jain, Indian Constitution Law (Lexisnexis, Haryana 7th Edition, 2014)

judicial review over executive and legislative actions, the country's response to the pandemic involves multiple institutional factors and various levels of government.

However, the response of the Indian states to the Corona Virus pandemic has clearly revealed a sheer truth which is that in the current scenario it is not binding or compulsory on the part of the executive to declare a formal emergency in order to equip itself with the necessary powers. Our present judicial framework, comprising of both colonial vintage and wide vaguely-worded laws, allow the governments both at Central and State level to assume the required powers because these powers are backed up with formal statutory, the Parliament and the Courts, though continuing to function in a limited capacity does not seem to be really keen on or able to subject the State's action to relentless judicial review.

It is perplexing for a nation like India to manage the pandemic and upheld its democracy simultaneously. We can see what affect the government policies have had on the democracy. Therefore the implementation of various steps by the government to contain the pandemic is not justified and undemocratic. It should be also noted that the government and people of India are giving enough effort to bring changes and rectifying the loopholes in maintaining the equilibrium of democracy and health emergency. The success in this pandemic by the most chaotic democracy will set an example in the political history of the world.