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Covid-19 and Indian Constitution

MOHIT SINGH ¹

We cannot stop natural disasters but we can arm ourselves with knowledge: so many lives wouldn't have to be lost if there was enough disaster preparedness.

-Petra Nemcova

I. INTRODUCTION

In the year 2019, in a city called Wuhan, capital of Hubei, province of People's Republic of China reported a new type of pneumonia, started coming. It was mid of November when it's said that China recorded its first case relating to Covid19 or Coronavirus. Initially, its spread was way too slow. But it was just a matter of time when there was a boom in its total number of cases. It was around the 30th of January when the total number of cases reached ten thousand and after that, within just 4 days i.e. on 3rd February the total number of cases reached twenty thousand. It was on March 5th of 2020, the total number of cases reached hundred thousand and on 18th March 2020, the total number had doubled and reached two-hundred thousand. This clearly shows that how much slowly there was an increase in total numbers initially but then it grew rapidly. It took nearly 4 months to reach 100 thousand cases but then just in the next 13 days the total number of cases doubled. The first country to report cases of the corona was China, and then news of new cases started to come from Thailand, Japan, South Korea, Taiwan and the United States of America. France was the first European country to report the case of the coronavirus.

It is said that this virus has originated from the animal. Bats are one of the known carriers of this Virus. Though this is not the first time when a virus that originated from an animal is threatening human life. Before this virus, viruses like EBOLA, SWINE FLU have been a big challenge for humans. Though Wuhan, where this virus was first reported doesn't sell bats. It is said that somehow this virus was transferred from bats to chickens or other animals that are transported with bats. These animals when consumed caused the transmission of the coronavirus. Since then we have been facing tough times. We have reached tough times now. The whole country is under lockdown, the economic conditions of every country are worsening. One of the biggest reasons why this disease with a low mortality rate is giving rise to threatening conditions is because it can get transmitted due to close contact and there is no

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vaccine available for this problem. Around two million people have been infected by this virus and more than 100 thousand are dead.²

During this critical time, various nations have undertaken different steps to fight this virus. Nearly half of the world is under lockdown, people inside their homecoming out only for necessary things. Many countries like the USA, Germany, China, and Turkey are now highly involved in research and development of a vaccine for the coronavirus. Japan, which initially only banned visitors from a certain area of China and South Korea, has now extended its ban to 21 European countries and Iran. It is also asking arrivals from the USA to undergo quarantine for 14 days. Australia and New Zealand have banned visitors from all over the world. South Korea has asked everyone visiting their country to undergo 2-week isolation or quarantine. Meanwhile, India has applied nationwide lockdown and suspended visa services till mid-April. European Union has sealed its borders. UK, Spain, France have also applied nationwide lockdown and have declared high fines for violators.³

II. LOCKDOWN AND ITS CONSTITUTIONAL VALIDITY IN INDIA

India went under complete lockdown from the 25th of Mar. 2020. This was announced by Prime Minister Modi in his address to the nation on the 24th of Mar. 2020. Initially, people didn't take this seriously but after the government started taking harsh steps people started following the rules. Under this lockdown, the movement of all the people is restricted. Only those who are involved in necessary jobs are allowed to move out that too with valid ID and passes. Normal people can only go out when they need some essentials. Food delivery is still allowed but in a controlled manner.

But is this all legal? Does our constitution or other laws permit such lockdown? Aren't they arbitrary?

A lockdown in an area of India mainly comes in conflict with two rights of any Indian. These are the right to move freely throughout the territory of India⁴ and the right to practice any profession, or to carry on any occupation, trade or business⁵. Meanwhile what is to be noted is that the same article states that there is a reasonable restriction to the rights given under clause (1). These restrictions are valid if the right is being used against sovereignty and integrity of India, the security of the states, friendly relations with foreign states, public order, decency or

²*Covid19 Coronavirus Pandemic*, worldometer, <https://www.worldometers.info/coronavirus/>, (Last visited on April 18th, 2020)

³ *Coronavirus: What Measures are Countries taking to Stop it?*, BBC News, (April 1st, 2020), <https://www.bbc.com/news/world-51737226>, (Last visited on April 18, 2020)

⁴ Article 19 (1) (D), The Constitution of India, 1949

⁵ Article 19 (1) (G), The Constitution of India, 1949

morality, or concerning contempt of court, defamation or incitement to an offense.⁶

Even the Supreme Court while applying the test of reasonableness in a case, the court considered the test of reasonable restriction taking in the background the acts and circumstances under which the order was made by the government. And it was held that it will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary for the interests of the general public. The test of reasonableness was to check the ratio of the harm caused to the individual due to the restriction is less or more than the benefit of the society.⁷ Supreme Court in one of the cases also held that a restriction doesn't become unreasonable only because it is acting harshly.⁸

Our constitution states that no person shall be deprived of his life or personal liberty except according to the procedure established by law.⁹ Before 1997, our supreme court hadn't explained an article in a much broader sense. It was the case of the state of Punjab v. M.S. Chawla¹⁰, where the Supreme Court interpreted Article 21 in a very broad sense. They said that the "right to health is integral to the right to life. The government has a constitutional obligation to provide health facilities."

This clearly shows that there is a duty of government towards nations and individuals. One may ask that even though public health falls under the state how can center issue guidelines under this. Public health falls in the state list as entry number 6. This permits the state government to legislate on all matters concerning public health falling under their jurisdiction. However, an act i.e. Disaster Management Act, 2005 was formed under entry 23 of the concurrent list which is "social security". This act has been invoked by the government during these tough times. This act defines 'disaster' as a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area¹¹. The government has declared the coronavirus as a disaster. As per section 3(2) (a) of the Disaster Management Act (DMA), 2005 makes Prime Minister of India as the ex officio chairperson of the National Disaster Management Authority (NDMA). Prime Minister as the ex officio of NDMA has the

⁶ Article 19 (2), The Constitution of India, 1949

⁷ Narendra Kumar And Others v. The Union of India And Others, AIR 1960 SC 430

⁸ Bannari Amman Sugars Ltd. V. CTO, (2005) 1 SCC 625

⁹ Article 21, The Constitution of India, 1949

¹⁰ State Of Punjab vs. M.S. Chawla, (1997) 2 SCC 83

¹¹ The Disaster Management Act, 2005

power to take measures for the prevention of any disaster.

One must not mistake lockdown as a curfew. Both things are different. Curfew is a small-time measure where people are required to stay indoors. In these, essential goods and services are also disrupted. Meanwhile, lockdown is a long term measure where private and public establishment are closed to keep them off the streets. However essential goods and services are not closed. Meanwhile, the Ministry Of Home Affairs has asked to use Section 188 of Indian Penal Code, 1860 against violators during this lockdown.

III. DOES INDIA HAVE PROVISIONS FOR MEDICAL EMERGENCY?

Indian constitution which is federal in nature¹² gives provision for some special times when it forgoes the principle of federalism for some time. These provisions are called as emergency provisions. Our constitution states that “If the president is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether, by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect [in respect of the whole of India or of such part of the territory as may be specified in the proclamation]¹³. The words armed rebellion was added at place of “internal disturbance” by the forty-fourth amendment in 1978. The words internal disturbance was removed after Indra Gandhi arbitrarily declared emergency.

Even though the term ‘internal disturbance’ was quite broad and could have been used arbitrarily by an autocratic regime, but could this be a reason for removing the words from the statue? The drafters of the constitution were conscious that all kinds of emergency could not be anticipated and addressed and an element of flexibility that the phrase ‘internal disturbance’ provides was essential.¹⁴ The Sarkaria Commission, in their report¹⁵, was set up with a motive to study the relation of center and state. They had said that the words “internal disturbance” were meant to convey ‘something more’ not just violence. The report even states that an ‘internal disturbance’ may even be ‘nature-made’ i.e. earthquakes, cyclones, epidemics, etc. These conditions should be enough to put state security in jeopardy.

Our constitution also gives provisions for a state emergency. It states that “if the president, on receipt of a report from the governor of a state or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on following the provisions of

¹² Kesavananda Bharti and ors. vs. The State of Kerala, (1973) 4 SCC 225

¹³ Article 352 (1), The Constitution of India, 1949

¹⁴ Sanjay Ghosh & Rishabh Jaitley, *Does the Constitution Allow Modi to Declare a National Emergency Over COVID-19?*, The Wire, (March 23, 2020), <https://thewire.in/law/can-an-1897-law-empower-the-modern-indian-state-to-do-whats-needed-to-fight-an-epidemic> (Last visited on April 18, 2020)

¹⁵ Sarkaria Commission Report, 1987

this constitution, the president may by proclamation...¹⁶. This provision enables the president either to take the state under his direct control¹⁷ or the powers of state legislature under the authority of parliament. The Sarkaria Commission states that even a physical breakdown of state machinery will amount to constitutional machinery and mentions a natural calamity, disaster or epidemic, which paralyzes the government machinery – and which the state government is unable or unwilling to exercise its power to relieve – as an instance of such a breakdown.

This shows that with the present provisions government cannot declare a national emergency. But an ordinance can make amendments in the constitution and make a special provision for declaration of a medical emergency. Such power is stated by the constitution as following;

“If at any time, except when both Houses Of Parliament are in session, the president is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.”¹⁸

If the condition gets worse, the central government might declare state emergency with the help of the governor to declare state emergency as given under article 356 of the Indian Constitution.

Looking at the present condition one can easily understand that there is going to be a severe effect on the economic condition of the world. With everyone locked inside their houses, the manufacturing industry is going through one of its worst times. Even if a national emergency or state emergency is not declared, a situation might come when India will need to declare a financial emergency because we will have to reorganize our expenditures and keep an eye on our revenue. A financial emergency has been described in our constitution. It states that;

“If the president is satisfied that a situation has arisen whereas the financial stability or credit of India or any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.”¹⁹

We might need to implement a financial emergency for fighting this war against the corona. But what it is also that it's going to next to be impossible for declaring a national emergency. On March 26, the center for accountability and systematic change, filed a PIL in the apex court to ask the government to declare a national financial emergency. Even though our finance minister has declared that such an emergency will not be declared in India. But this will surely help India in the future.

¹⁶ Article 356, The Constitution of India, 1949

¹⁷ Supra Note. 15

¹⁸ Article 123, The Constitution of India, 1949

¹⁹ Article 360, The Constitution of India, 1949

IV. FOREIGN COUNTRIES AND COVID-19

India is not the only nation that is fighting against corona. Countries like the USA, France, and the UK are way more badly affected by this virus. They have also taken serious steps to fight this virus.

The United Kingdom has passed coronavirus 2020 bill²⁰ which is all set to bring mammoth changes to tackle the coronavirus. This bill deals with the entire major problem the UK might face while battling against corona. It makes financial changes and gives more power to police to ensure lockdown is implemented correctly. Some of the major take-ups away are:

- Statutory Sick Pay; as current legislation requires employers to pay its employee sick pay. This new bill will modify the rules regarding SSP. This new bill aims at helping medium and small enterprises. Rebate is being given by the government to avoid the employers from getting overburdened. At the same time, some relaxation in rules has also been done so that employees can also get benefits.
- The government will be given more powers relating to the closure of some institutions, and restrict or prohibit public gathering.
- Where ever possible, especially in criminal proceedings, courts have to hold these proceedings completely remotely via a video conference.
- Ministers have been given special powers to stop activities on ports and the UK border.
- Apart from this, special power to police has also been given.

The UK has undergone lockdown which has been extended again by the prime minister. UK Prime Minister, Boris Johnson said that the UK might be under lockdown for nearly 12 weeks.²¹

Another country that is battling the coronavirus and is in a critical situation is the United States of America. The USA is currently the worst affected country of this virus. The POTUS said that the USA is on a war against an invisible enemy i.e. coronavirus, he said that the Military of USA is also involved in keeping their country safe and has increased their involvement in the response effort.²² More than 9000 retired US soldiers have returned to their jobs. The United States Army Corps Of Engineers (USACE) has assessed more than 100 facilities in 50 states.

²⁰ CORONAVIRUS ACT, 2020 (ENGLAND)

²¹ NICK TRIGGLE, *Coronavirus: What Next in the UK Coronavirus Fight?*, BBC NEWS, (March 23, 2020), <https://www.bbc.com/news/explainers-51632801>, (Last visited on April 17, 2020)

²² *Coronavirus in the USA: Donald Trump expands US Army Role to Combat COVID-19*, Business Today, (April 4, 2020, 11:38 A.M), <https://www.businesstoday.in/current/world/coronavirus-in-usa-donald-trump-expands-us-army-role-to-combat-covid-19/story/400133.html> , (Last visited on April 18, 2020)

At very fast speed, the USA is procuring N95 respirators, PPE kits and an anti-malarial drug that helps in fighting corona.

Senate there has signed a package of approximately \$2 trillion. This package has been passed to provide relief to the American economy. This package will mainly help seven different groups. These groups are individuals, small businesses, big corporations, hospitals and federal safety net, state and local governments, and education. Around \$300 billion has been allotted for individuals to help them. People who are earning less than \$75000 would be given around \$1200 as a one-time payment. Families would be given \$500 per child. Around \$260 million has been allotted for people who have filed for unemployment. They would be given 600 dollars above the amount they were already receiving.

\$10billion has been allotted for emergency grants to SMSE. Around \$260 billion have been allotted for loans for the SMSE. \$100 billion has been allotted for hospitals fighting the coronavirus. Students have been given temporary loan relief. Meanwhile \$380 billion has been allotted for state and local governments.²³ Even when this bill was passed, special orders were made to avoid crowding in the house. These orders were instructions for the Senate to follow the social distancing and avoiding contact.²⁴

It's a common saying in Europe that Italians are at their best in emergencies. Well, it's not a hidden fact that Italy has one of the best medical services in the whole world. But still, they are suffering from the corona. They have taken many steps to curb them. Some of these steps are like the prohibition on people from leaving their houses unless they have some emergency or they are working in essential sectors. For helping the health care system which has been crippled due to corona, the Italian government had announced the intervention of the army and the creation of two field hospitals. This has been the largest military mobilization since 1945 in Italy. They were the first to start online classes. Special attention is being given to kids so that they may not suffer from depression and anxiety.²⁵

V. WHAT LAYS AHEAD?

India and the whole world is going on a tough road against corona. In our nation daily 1000 new case is coming and we have entered the second phase of lockdown. But it's not all gloomy,

²³ Kelsey Snell, “*What's Inside The Senate's \$2 Trillion Coronavirus Aid Package*”, NPR ORG., (March 26, 2020), <https://www.npr.org/2020/03/26/821457551/whats-inside-the-senate-s-2-trillion-coronavirus-aid-package>, last visited on April 18th, 2020

²⁴ Clare Foran & Ted Barrett, “*Trump Signs Coronavirus relief Legislation into Law*”, CNN, (March 19, 2020), <https://edition.cnn.com/2020/03/18/politics/coronavirus-congress-relief-senate-house/index.html>, last visited on April 18th, 2020

²⁵ Valentina Saini, “*Coronavirus: Lessons from Italy*”, EU OBSERVER, (March 07, 2020), <https://euobserver.com/coronavirus/147753>, last visited on April 18th, 2020

Kerala is leading the way in fighting corona. They are now reporting cases less than 10 every day. The number of recovered patients is now more than the infected ones. The home ministry has ordered some relaxations which will happen after 20th April 2020. Indian has yet not announced any emergency, even though we are ensuring that everyone is following the lockdown. Kerala and Delhi have started Plasma transmission for curing people who are in very critical condition. We don't have a vaccine yet and now it's going to be a tough road for us. India has successfully stopped itself from entering into the third stage of corona transmission I.e. community transmission. But we have been now under lockdown for a long time and we need to take measures to avoid bad economic conditions for the country. Its a matter of time when India will face extreme unemployment if necessary steps are not taken. We can not forget the underprivileged, migrant workers, poor people. It's not only the government's duty to check that nobody sleeps hungry. It's our duty also. The USA, which is considered to be the superpower has also been unsuccessful in fighting corona. It has now the most number of infected people and the maximum number of deaths. Things in Europe are slightly getting better. Till the time any vaccine for corona is not found we have to follow precautions to keep us safe. We have a long past of battling epidemics from time to time. We have won those fights and we will win this one also.

VI. CONCLUSION

This battle against Corona is going to be a long one. We are still at least a year away from finding vaccines of this deadly virus. One of the most important things that one must remember is that whatever caused this devastation should be finished. If China had done this on purpose or even misrepresented details of the Coronavirus, they have to pay for their wrong things. On similar grounds, a case was filed against the Chinese government for paying them repercussions for their actions. A case of \$20 trillion has been filled by an American lawyer Larry Klayman and his advocacy group freedom watch and buzz photos. This case was filed on March 17th, 2020, in the United States District Court for the Northern District of Texas. It was a class-action suit concerned with massive damage which has been caused by the defendants as a result of the release of a deadly virus COVID-19 from an internationally outlawed bio-weapon facility of Wuhan. The plaintiffs said that since the development of any kind of bio-weapon has been outlawed since 1925, it was wrong on China's behalf in developing such a bio-weapon. They demanded fines to pay along with the closure of such labs.

It would be interesting to see whether someone files a case in the International Court of Justice. Even if China had not developed any such bio-weapon. They have misrepresented and the

misguided whole world by hiding facts. They should be held liable if they have committed any wrong. But what is to be remembered is that one should not start discriminating against Chinese people. It would be wrong on our behalf to do so.
