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INTERNATIONAL JOURNAL
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CONSTITUTIONAL MANDATE AND THEIR VIOLATION DURING PANDEMIC

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Introduction

Our health, and the health of others we care about, is a daily concern for us as humans. We see our health as our most basic and vital asset, regardless of our age, gender, socioeconomic status, or ethnic heritage. On the other side, poor health can prevent us from going to school or job, from attending to our family responsibilities, or from fully engaging in community events. Similarly, we are willing to make many sacrifices if it means that we and our families will live longer and healthier lives. In other words, when we talk about well-being, we frequently refer to health.¹ "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control," according to Article 25(1) of the Universal Declaration of Human Rights. "Health is a situation of total physical, mental, and social prosperity, not merely the absence of disease," as stated by the World Health Organization in the introduction to its constitution. This announcement has now been expanded to include the ability to manage a team.

Previously, the Right to Health was included in the State Policy Directive Principles (DPSP). Article 38 of the Indian Constitution mandates that states ensure the fulfilment of a social request for the advancement of government support to individuals, but we won't be able to do so without good health. It suggests that individual support from the government without regard to general health is inconceivable. In India, Article 47 of the Directive Principle of State Policy considers it to be the state's vital role to enhance general health, ensuring equity, human state of work, extension of disorder, mature age, disablement, and maternity benefits, among other things. The Supreme Court, on the other hand, has upheld the right to health under Article 21.

¹ Jain MP, Indian Constitutional Law, 8th Edn, 2018

The scope of this arrangement is enormous. It supports the right to life as well as individual liberty. Individual freedom encompassed a wide range of rights that were linked to an individual's existence or freedom. In addition, an individual can now protect his right to health. As a result, the Indian Constitution manages insurance for the right to health, as well as several other social, political, and monetary rights.

Jurisprudential Aspect Of Right To Health

The right to health refers to and denotes the highest levels of health that each individual is capable of. Under international human rights legislation, the global network considers health to be an essential and major human right. In contrast to other human rights, the right to health requires states to ensure that the right to health is respected, protected, and fulfilled for all of its citizens. Each right, according to Salmond, has a corresponding obligation that must be met, and no right can exist without an equal component of obligation.

In addition, there are both positive and negative enforceable substances with respect to the right to health; these range from the state providing adequate security, providing equal health care services to all citizens, and requiring the most significant commitment from the state to create such ideal conditions that the right to health is satisfied.²

The right to health was established in 1946, when the World Health Organization (WHO) became the first worldwide organisation to recognise health concepts as human rights. Also, prior to the World Health Organization's demise, a few states had been in the process of recognising health as a fundamental right. The trend owed its actuality to recent upheavals as well, in which workers were considered as commodities and firms paid no attention to the unsanitary conditions in which they worked. As a result, the concern for one's health grew to the point that it was considered one of the most important and fundamental human rights that any individual with a reality on Earth is entitled to.

² Kanya Saluja, Right to health- a part of article 21, <https://blog.iplayers.in/right-health-part-article-21/>, (last visited March 30th 2022, at 12:12 pm)

Right To Health As A Fundamental Right Guaranteed By The Indian Constitution

Legislators, the government, and public health specialists have faced a slew of policy difficulties as a result of the COVID-19 outbreak.

The World Health Organization (WHO) defines health as a condition of whole physical, mental, and social well-being, not just the absence of sickness. The WHO goes on to say that it is the state's legal responsibility to ensure that all citizens have equal access to "timely, acceptable, and affordable health care of appropriate quality, as well as the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality." This right, which is a natural result of supporting public health in India, is guaranteed in many ways under the Indian Constitution.

The Directive Principles of State Policy (DPSP), enshrined in Chapter IV of the Constitution of India, require the state to, among other duties,

- promote the welfare of its people (Art.38);³
- protect their health and strength from abuse (Art 39(e));⁴
- provide public assistance in case of sickness, disability or "undeserved want" (Art 41);⁵
- ensure just and humane conditions of work; and
- raise nutrition levels, improve the standard of living and consider improvement of public health as its primary duty (Art 47).⁶

In addition to the DPSP, the 11th and 12th Schedules contain various health-related rules that fall under the competence of Panchayats and Municipalities, respectively. These include the responsibility to provide safe drinking water, proper healthcare and sanitation (including hospitals, primary health care facilities, and dispensaries), family welfare, women's and children's development, and social welfare promotion, among others.

Part III of the Indian Constitution does not explicitly mention the right to health as a basic right (Fundamental Rights). However, this has been read into the fundamental right to life and personal liberty (Article 21) by judicial interpretation and is now deemed an inseparable aspect

³ Indian Constitution, Art 38

⁴ Indian Constitution, Art 39 (e)

⁵ Indian Constitution, Art 41

⁶ Indian Constitution Art 47

of the Right to Life. Human trafficking and child labour are prohibited under Article 23 of the Indian Constitution, which indirectly helps to the protection of the Right to Health.

The Supreme Court of India has played an important role in safeguarding the public's health. The Supreme Court has frequently stated that the term "life" in Article 21 refers to a humane life, not just survival or animal existence (*Francis Coralie Mullin vs The Administrator, Union Territory of Delhi*⁷). The right to life encompasses a wide range of issues, including the right to a better standard of living, sanitary working conditions, and leisure. As a result, the right to health is an intrinsic and unavoidable aspect of living a dignified life. To fully comprehend the nature of the state's obligations in this regard, Article 21 should be read in conjunction with the above-mentioned directive principles of state policy.

The Supreme Court held in *Bandhua Mukti Morcha v. Union of India*⁸ that, while the DPSP are not binding obligations and only have persuasive value, they should be implemented by the state. Furthermore, the Court determined that under Article 21, dignity and health are included in the definition of life and liberty.

The scope of Article 21 was further broadened in *Paschim Banga Khet Mazoor Samity v. State of West Bengal*⁹ when the court declared that it is the government's responsibility to provide adequate medical aid to everyone and to work for the general welfare.

In the case of *Parmanand Katara v Union of India*,¹⁰ the Supreme Court declared that every doctor, whether at a government hospital or elsewhere, has a professional obligation to extend his services with due expertise to protect a patient's life.

The right to health and medical aid to protect a worker's health and vigour, both while in service and after retirement, was ruled to be a basic right under Article 21 in the subsequent case of *Consumer Education and Research Centre V. Union of India*¹¹.

Furthermore, the basic right of all citizens to practise any profession, carry on any occupation, trade, or business is subject to restrictions established in the public interest under Article 19 (1) (g) of the Indian Constitution. In *Burrabazar Fire Works Dealers Association and Others v.*

⁷ 1981 AIR 746, 1981 SCR (2) 516

⁸ 1984 AIR 802, 1984 SCR (2) 67

⁹ 1996 SCC (4) 37, JT 1996 (6) 43

¹⁰ 1989 AIR 2039, 1989 SCR (3) 997

¹¹ 1995 AIR 922, 1995 SCC (3) 42

Commissioner of Police,¹² the Hon'ble Supreme Court declared that Article 19 (1) (g) does not grant any freedom at the expense of the community's safety, health, or peace.

Because the right to health is inextricably linked to the right to life, it is a basic right guaranteed to every Indian citizen under Article 21 of the Indian Constitution. We owe the acknowledgment of this right to the Supreme Court of India, which logically extended its understanding of the right to life to encompass the right to health through a series of legal precedents.¹³

As a result, it is the State's responsibility to protect the public's health, and the Central Government and several State governments have taken appropriate and proactive measures to prevent the introduction and spread of the COVID-19 pandemic.¹⁴

Was Covid-19 Lockdown A Violation Of Our Fundamental Right?

COVID-19 is a coronavirus-related disease that originated in China. On December 31, 2019, this novel coronavirus was initially found in Wuhan, China's Hubei province's largest city, and was first reported to the WHO Country Office in China. The WHO labelled the COVID-19 outbreak a worldwide health emergency on January 30, 2020.

The global coronavirus pandemic has caused death, damage, and turmoil, and COVID-19's outbreak has brought social and economic life to a halt. To tackle the sickness, the Indian government implemented a complete lockdown in most parts of the 22 states and union territories where confirmed cases had been detected in the last week of March 2020. Since then, the Indian government has declared victory in the coronavirus pandemic, claiming that the number of cases would have been higher if the state wide lockdown had not been enacted. However, given the recent increase of COVID-19 positive cases and the state of the economy, we are less likely to embrace this explanation of success. On Prime Minister Shri Narendra Modi's request, India conducted a 14-hour voluntary public curfew on March 22. From March 24, 2020, there was a 21-day national lockdown. Following PM Modi's declaration on March

¹² AIR 1998 Cal 121

¹³ Kailash Satyarthi, why access to health care need to be fundamental right, <https://indianexpress.com/article/opinion/why-access-to-healthcare-needs-to-be-a-fundamental-right-7367734/>, (last visited 30th March 12:20 pm)

¹⁴ Ashish Das, The fundamentality of fundamental rights in India: Right to health in the Pandemic, <https://timesofindia.indiatimes.com/readersblog/dash-insights/the-fundamentality-of-fundamental-rights-in-india-right-to-health-in-the-pandemic-39345/> (last Visited 1st April 10:30 am)

24, 2020, the Centre justified the pan-India lockdown by citing "lack of uniformity in measures adopted by states as well as their implementation." The National Disaster Management Authority (NDMA) used its powers under section 6(2)(i) of the Disaster Management Act, 2005, to impose the lockdown.¹⁵

India prolonged the state wide lockdown to May 3 2020 on April 14, 2020, followed by two-week extensions on May 3 and 17 with significant relaxations. The government began "unlocking" the country in three phases beginning June 1.

A lockdown is an all-encompassing edict that restricts a variety of civil liberties. The first tier of restrictions in a lockdown are freedom of mobility, freedom to practise one's chosen profession, trade, or occupation, and freedom to reside in any region of the country.

The second layer of restrictions is the result of instances of excess when enforcing the first, resulting in a blatant violation of the otherwise anonymous right to life and personal liberty.

The fact that the state's capacity to order a lockdown and people's rights to resist disproportionate limitations on their civil liberties are both born out of the same constitution, the "holy document," in the words of Justice Rohinton Nariman, makes this examination of lockdown critical. As a result, the examination is governed by the Indian Constitution.

It's worth noting that the National Disaster Management Act of 2005 established restrictions restricting freedom of commerce, occupation, and profession. Notably, these standards do not impose any restrictions on one's ability to roam freely. Citizens' freedom of movement is restricted through a network of executive orders issued under Section 144 of the Code of Criminal Procedure, 1973, in conjunction with the Home Ministry's addition and the colonial-era Epidemic Diseases Act.

Any person who is deprived of his right to livelihood without following the law's just and fair procedure can dispute the deprivation as a violation of Article 21's right to life.

One would suppose that when the Government of India announced a countrywide lockdown under the Disaster Management Act 2005 to halt the spread of COVID-19, they felt obligated,

¹⁵ Rakesh k. Singh, Was Covid- lockdown was a violation of Fundamental right, <https://www.freepressjournal.in/india/was-covid-19-lockdown-a-violation-of-our-fundamental-rights>, (last visited 2nd April 12:10 pm)

under Olga Tellis' settled law, to pay individuals whose livelihoods would be harmed by the lockdown.¹⁶

Thousands of people, however, were robbed of their livelihood almost overnight, with no notice, choice, or warning. Many people who were employed on a regular basis became homeless and hungry, and they began walking back to their hometown. Others who were concerned about their pay checks at the end of the month joined the long march to safety. The state governments were directed to provide food and shelter to the workers who had fled to their communities, but no compensation was promised. When the petition was filed, the Supreme Court chose to dismiss it, stating imperiously that "if food is provided, what need do people have for a wage?"

With all humility, such dismissal appears to ignore the law established by a Constitutional Bench of the Supreme Court in Olga Tellis, that "any person who is deprived of his right to livelihood except in accordance with a just and fair procedure established by law can challenge the deprivation as violating the right to life conferred under Article 21 can challenge the deprivation as offending the right to life conferred under Article 21."¹⁷

The Court was required to determine "whether citizens were deprived of their livelihood in a just and fair manner" and whether the state was required to pay citizens a compensatory minimum wage under Article 21 of the Indian Constitution if they were deprived of their livelihood as a result of directions under the Disaster Management Act, 2005.

Not only did the Court fail to examine the scope of power under the Disaster Management Act to ensure that it did not go beyond the mandate of Article 21, but it also failed to investigate whether the law-enforced procedure under the Industrial Disputes Act was being followed by workers in both organised and unorganised industries.

The Hon'ble Court of Law cannot remain a bystander to the state's tyranny, and courts have always stepped out to preserve people's rights in the past. The court is still a last resort for the average man, and it is up to the court to step up and hold the hand of people in general, and the poor and needy in particular. The Dharmaraj is responsible for upholding the constitution's Dharma.

¹⁶ Probono-india.in, <https://www.probono-india.in/blog-detail.php?id=202> , (last visited 2nd April 2:00 pm)

¹⁷ Indian Constitution, Art 21

Is National Lockdown in India Is Constitutionally Valid?

On March 24, the National Disaster Management Authority (NDMA) issued social distancing guidelines, considering the "coronavirus pandemic" as a "disaster" within the meaning of the DMA, coinciding with Prime Minister Modi's May 24 address to the nation, in which he announced a four-hour lead time for putting the entire country on 'lockdown' for 21 days. By an order dated the same day, the Union home secretary forwarded these lockdown guidelines to the states and Union Territories.¹⁸

All non-essential government establishments, commercial and private establishments, industries, air, rail, and road transportation, hospitality services, educational institutions, houses of worship, political meetings, and so on will be closed. Medical personnel, journalists, gas stations, and other necessary retailers have all been granted exemptions. District collectors will serve as "incident commanders" in each district, deciding who will be granted exception passes. Several states have issued orders under Section 144 of the Code of Criminal Procedure, 1973, forbidding groups of more than five individuals from congregating in public places.

Legality of National “House Arrest”

The Janata Curfew was given four days' notice, but only four hours' notice was given to the millions of Indians who needed to organise their lives and businesses. The chaotic aftermath of the nationwide lockdown has been documented by heart breaking sights at railway stations, inter-state bus terminals, state borders, labour markets, and other locations where scores of individuals have been forced to work while being separated from their homes.

India has 41 million migrant labourers, according to the 2011 Census. Domestic workers, daily wagers, and construction employees are also included. The prime minister, many chief ministers, and government advisory have all stated that employers should not withhold salaries during the lockdown. Can the right to life, which includes the right to livelihood of these unfortunate people, be suffocated solely by relying on Article 256 read with the DMA in the absence of a fixed wage or some minimum income or compensation?

Even if an emergency is technically declared, the right to life cannot be taken away as a result of the Janata government's amendment. The emergency provisions have not even been triggered in this situation! If the government can circumvent the Constitution's emergency provisions and take such drastic measures with widespread support, one might wonder if such

¹⁸ Sanjoy ghosh, Is National lockdown in India Constitutionally Valid, <https://thewire.in/law/is-the-national-lockdown-in-india-constitutionally-valid> (last Visited 12:30 pm)

provisions – which not only specify how fundamental rights can be suspended but also lay out the constitutional-legislative oversight over such suspension – are now completely meaningless.¹⁹

While Section 144 of the CrPC²⁰ prohibits collective assembly, can the NDMA order a "lockdown" that brings the "lakhsman rekha" to the citizen's door and effectively imprisons her for 21 days? Isn't this a death sentence for the everyday gambler, the street seller, the migrant worker, and the small business owner? Article 39,²¹ clauses (a) and (e), require the government to take steps to ensure that citizens have a right to adequate means of subsistence and that citizens are not forced to engage in unsuitable occupations due to economic necessity. These responsibilities are part of the Directive Principles of State Policy, which are considered essential to the country's government. The current lockdown would produce situations that would be in violation of these commitments. It's difficult to choose between COVID-19 and economic death. For whatever good reason, the citizen has been stripped of her right to choose. Without risking the expected backlash, I'll remark that these were really difficult decisions that necessitated a delicate balancing act - one that, according to the leader of one of our neighbours, weighed heavily on him when opting against an imposed shutdown.

Assembly is normally prohibited by Section 144 of the Criminal Procedure Code and similar prohibitions in state police Acts (such as Section 30(3) of the Delhi Police Act, 1978). However, the 'Lakhsman Rekha' has arrived on our doorsteps as a result of the lockdown. Returning to the original question, is a "lock-down" constitutionally valid without a declaration of emergency, and therefore with the freedom to mobility and livelihood remaining in effect?

I'm quite aware of the counter-arguments. Such constitutional arguments are heresy when the nation's very right to existence is in jeopardy. After all, "Necessity knows no rule," as the Doctrine of Necessity declares emphatically. For what it's worth, if we accept that these unforeseeable times force us to act outside the bounds of our fundamental law, let us not lose sight of the equally important mandates of both the EDA and the DMA, namely disaster relief and rehabilitation for the disaster-affected, i.e. the poor and most marginalised.²²

¹⁹ Gautam Bhatia, Coronavirus and Constitution, <https://indconlawphil.wordpress.com/tag/coronavirus/>, (last visited 5:15 pm)

²⁰ Code of Criminal Procedure, Sec 144

²¹ Indian Constitution, Art 39

²² Nishant Sirohi, Declaring a right to health a Fundamental right, <https://www.orfonline.org/expert-speak/declaring-the-right-to-health-a-fundamental-right/> (last visited 7th April 8:00 pm)

Conclusion

The World Health Organization considers health to be a fundamental human right (hereinafter alluded to as WHO). The member countries have agreed that the enjoyment of the highest and best possible standard of health is a vital and basic right of every person, regardless of religion, race, rank, sex, doctrine, political conviction, social or monetary circumstance. As a result, health is an unexpectedly basic right, and everyone must seek out the appropriate administrations as and when the need arises. Clean and safe drinking water, sanitation, adequate lodging, training and sympathetic working circumstances, nutritional nourishment, and so on are all important aspects of well health. Health is inextricably linked to the right to protection, which ensures that everyone is treated with dignity and respect. As a result, each individual has the ability to govern his or her own body and health, which includes a variety of factors. In India, the legal system has played a vital role in recognising the right to health as a part of Article 21 of Chapter III, which governs the fundamental rights guaranteed by the Indian Constitution. The state has been organised to provide the best possible health indicators to its citizens in order to comply with international standards.

It is past time for India to declare health to be a fundamental right. Strong health legislation will aid in the development of social resilience in the face of future pandemics and public health crises. Human rights commitments cannot be ignored in the face of an emergency. The right to health must therefore be applied in accordance with the values of transparency, proportionality, and solidarity. The COVID19 experience has also proven the significance of a decentralized polycentric reaction; India's cooperative federalism must be enhanced as a result.

The COVID19 pandemic has raised concerns in India about a variety of issues, including the quality of health treatment, government and institutional responses, and law and order concerns. These issues should be addressed via the constitutional and legislative framework. While the Indian government effectively implemented the lockdown and reduced the number of cases, certain MPs and legal experts questioned the lockdown's constitutional legitimacy and the government's response.

Despite the fact that the EDA and DMA have been adopted by the central government, they are insufficient to properly address the health emergency due to the disease's dynamic character. These disasters will provide enough opportunity to remedy gaps in the legal framework, allowing future generations to be better prepared for any form of health emergency.