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Right to freedom during COVID-19: a study of Article 19 of the Indian Constitution in light of COVID-19

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Abstract: The year 2019 ended with a virus that is believed to be the first sought in the Wuhan Province of China. The ensuing epidemic was not limited inside China's borders, and it went on to infect huge populations in other countries as well. On January 30, 2020, it was proclaimed a public health emergency of international concern, and on March 11, 2020; it was declared a pandemic. As a preventative step against the COVID-19 pandemic in India, the government imposed a statewide lockdown on March 25, 2020, restricting the mobility of the whole population. Services of everyday use such as transportation were suspended to contain the spread of the virus. Although necessary, these measures threatened people's fundamental rights. This paper discusses the interference with the fundamental rights of the common people, specifically those under Article 19 of the Constitution of India, caused by the government's nationwide lockdown.

Keywords: pandemic; COVID-19; lockdown; fundamental rights; Article 19.

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1 Introduction

The Constitution of India provides for, inter alia, the right to freedom vide Article 19. Article 19(1) comprises a set of six freedoms¹, viz. “speech and expression, peaceful assembly, association, free movement, residence and ‘practicing’ any profession and carrying on any business”. These rights are available only to the citizens of India and are not absolute or uncontrolled rights, i.e., they are subject to restrictions. Articles 19(2) to 19(6) lists those grounds on which the freedoms in Art. 19(1) may be restricted. These grounds are often called ‘reasonable restrictions’. However, it is noteworthy that these restrictions can only be imposed by or under the authority of law and must be reasonable with respect to the purposes mentioned in Article 19(2) to 19(6). This would mean that no restriction can be imposed without legislative backing and such legislation is subject to judicial review. Therefore, a restriction imposed on the right to freedom under Art. 19(1) will have to pass a twin test – the test of reasonableness and it must be done by or under the authority of law.

2 COVID-19 restrictions: the enabling legislations

During the initial days of the pandemic in India, the government ordered a complete lockdown, and maximum restrictions were imposed on the freedom of an individual. All of these were done by invoking the provisions of one or more of the following legislations.

2.1 *Indian Penal Code, 1860*

The COVID-19 restrictions are enforced through public servants.² Disobeying the orders of a public servant is punishable under Section 188 of the code. Depending on the gravity of the consequences arising from such disobedience, the punishment may vary from simple imprisonment up to one month or fine up to Rs. 200 or both³, to simple imprisonment up to six months and fine up to Rs. 1,000 or both.⁴ This provision has been invoked many times during the pandemic to penalise the offenders (Deshmukh, 2020).

“Section 269 of the code provides for punishment with imprisonment of either description for a term which may be extendable up to six months or with fine or with both to the person who unlawfully or negligently does any act which he knows or has reason to believe to be is likely to spread the infection of any disease dangerous. Whoever maliciously does any act 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 under Section 270. Section 271 provides for six months of imprisonment with or without a fine for violators of quarantine.”

2.2 *Code of Criminal Procedure, 1973*

In order to control gatherings in public places, Section 144 of the CrPC was used as a weapon. Section 144 of the CrPC prohibits the gathering of four or more individuals in public places. Section 144 is invoked primarily in a state of emergency in order to bring the situation under control and thereby prevent it from worsening.

2.3 *Epidemic Diseases Act, 1897 and ordinance to amend the Epidemic Diseases Act, 1897*

The Epidemic Diseases Act, 1897 confers on the central⁵ and state governments⁶ the power to take necessary steps to prevent the outbreak of an epidemic. The act also penalises non-compliance with the regulation or orders made under the act.⁷ In order to amend the Epidemic Diseases Act, 1897 so as to equip the government with wide powers to act effectively to curb the spread of COVID-19, the ‘Epidemic Diseases (Amendment) Ordinance, 2020’ was promulgated. The ordinance also provides for the protection of healthcare persons combating the pandemic.

2.4 *The Aircraft (Public Health) Rules, 1954*

The terms ‘isolation’ and ‘period of incubation’ (which is synonymous with the term ‘quarantine period’) are defined in the Aircraft (Public Health) Rules, 1954. According to

the rules, isolation means the seclusion of a person or group of persons from other persons undertaken to prevent the spread of infection.⁸ Though the definition says that the purpose of isolation is to prevent the spread of infection, it needs to be kept in mind that prevention in the said context should be construed widely to include controlling and containing the spread of infection. The rules also mention the ‘period of incubation’ or quarantine period for various quarantinable diseases.⁹ It mentions the quarantine period for yellow fever¹⁰, plague¹¹, cholera¹², smallpox¹³, typhus¹⁴ and relapsing fever¹⁵. The rules also empower the central government to decide the quarantine period for any other infectious disease other than those aforementioned.¹⁶

2.5 *The Disaster Management Act, 2005*

The ‘Disaster Management Act, 2005 along with the Epidemic Diseases Act, 1897’ have played a crucial role in providing legislative support for all COVID-19 related measures taken by the government. Nevertheless, it is interesting to note that the Disaster Management Act, 2005 was never designed to cater to a pandemic like the COVID-19; instead, it was designed to deal with disasters like floods, earthquakes, tsunamis, etc.,. The same is evident from the definition of ‘disaster’ given in the act.¹⁷ However, the Disaster Management Act, 2005 came into play when the central government notified COVID-19 as a ‘disaster’. Consequently, there was an increase in the scope of government powers and it enabled the government to make quick administrative decisions to curb the spread of the pandemic.

Therefore, it can be said that there is little dispute regarding the legislative backing of restrictions imposed. The restrictions so imposed with the help of all of the laws mentioned above and certain other aiding laws made the life of the common people come to a standstill. There was chaos all around with no recourse to the demands of the general public. The common people were left stranded for essential commodities related to edible items such as food and dairy products, while the police of each state showed no mercy to the people. In the following parts, the section shall throw light on the methodology of the lockdown and how each of the freedoms guaranteed under Article 19 was curtailed due to the nationwide lockdown.

3 **COVID-19 lockdown in India: the background**

The first confirmed case of COVID-19 in India was reported on January 30, 2020, and the lockdown was announced on March 24, 2020, due to the unprecedented growth in the number of positive cases. For almost three months, the government kept assuring the general public that there would be no nationwide lockdown in the country. Globally, the countries that saw a surge in the active cases imposed lockdown to prevent the infection, and the same was speculated for India as well. However, the government official kept on reiterating that the government was not planning any such preventive measures (Shekhar, 2020). The government would have taken this time from January to March to prepare a strategy for the implementation of lockdown as well as preparing the masses mentally and logistically to face a nationwide lockdown. They would have told about all the measures which were to be taken by the government in advance so that the masses would have done enough preparation to face the challenges. But the officials kept on declining

any news of a lockdown as false and labelled them only as rumours, and kept assuring the public at large that nothing of that sort is going to happen (Agrawal, 2020).

On March 18, the Prime Minister invited his compatriots to follow a self-imposed public curfew on March 22, 2020, known as the Janta Curfew, which would be in effect for 14 hours from 7:00 AM to 9:00 PM. The people stayed in their homes for 14 hours as part of a social distancing exercise designed to interrupt the virus's transmission cycle. As part of the curfew, markets and businesses were also closed, with the exception of those dealing in vital goods (ET HealthWorld, 2020). The Prime Minister has finally proclaimed a three-week lockdown beginning at midnight on March 25, 2020.

4 The impact of lockdown on the fundamental rights

The COVID-19 pandemic has an impact on each and everyone in some or the other form. The central government and various state governments have taken many measures, some of which are urgent measures and other plans to curb the spread of the virus so as to provide a safeguard to the public at large and also to provide medical needs to all such people who require it from time to time. In a way, we can say that they are defending the citizen's rights to health and life by implementing all the required measures. In that process, the measures taken by the government limit the fundamental rights of the individual. We can say that on the one hand, the measures taken up by the government provide the individuals with their right to life and health, and on the other hand, the same measures also put restrictions on the enjoyment of certain fundamental rights of the people (European Union Agency for Fundamental Rights, 2021). Some of the fundamental rights which saw an unprecedented restriction due to the lockdown were "the right to free speech and expression, the right to assembly, the right to form associations or unions, the right to move freely throughout the country, the right to reside and settlement in any part of the country and the right to practice or carry out any occupation, trade or business." In the following portions of the paper, we will see how these curbs or the measures taken by the government have put untimely restrictions on the fundamental rights of the people.

4.1 Freedom of speech and expression

Governments throughout the world have used the COVID-19 outbreak to justify restrictions of free expression and peaceful assembly. Authorities have assaulted, arrested, prosecuted, and in some cases murdered critics, dispersed peaceful demonstrations, shut down media outlets, and enacted ambiguous laws criminalising speech that, according to them, poses a threat to public health. The victims include journalists, activists, healthcare professionals, and political opposition organisations that have criticised the government's coronavirus actions (Human Rights Watch, 2021).

In India, the situation was same, and several occurrences occurred. From March 25 to May 31, 2021, around 55 journalists who exercised their right to free speech and expression by reporting on the present epidemic were subjected to legal action in one form or another (FIRs, show causes, etc.) or became victims of vandalism. Uttar Pradesh led the nation in the number of such violations, followed by Jammu & Kashmir, Himachal Pradesh, and other states (Chakma, 2020). Senior journalist

Vinod Dua was charged with sedition for his YouTube programme, *The Vinod Dua Show*, in which he questioned the government's conduct during the lockdown during the epidemic (*The Indian Express*, 2020).

Under Section 69A of the Information Technology Act, 2000, the Ministry of Electronics and Information Technology has ordered Twitter to remove a number of tweets and nearly a thousand Twitter accounts for allegedly spreading false rumours and criticising the government's inability to control the pandemic (Sharma and Mongia, 2021).

4.2 Right to assemble peaceably and without arms

The Constitution under Article 19(1)(b) gives us a right to assemble in a peaceful manner without arms. This particular provision of the constitution paves the way for the right to protest against any hardship or any action of the government or its authorities and also against any inaction of the same. The famous protest of Shaheen Bagh in New Delhi, which started around the mid of December against the Citizenship Amendment Act of 2019, which later on became a symbol of resistance and an idea of peaceful protest in a democratic society, was ended after the completion of 100 days by the cops of Delhi Police citing the COVID surge in the country in early months of 2021 (Ajmal, 2020).

Under the various provisions of the 'Disaster Management Act, 2005', the government implemented curfew-like conditions throughout the country and widely misused Section 144 of 'the Criminal Procedure Code', which threatened the right to protest guaranteed by the Constitution of India. The right to assemble peacefully is a hallmark of a democratic society and is itself a democratic process. New ideas and philosophies develop through the assembly of the citizens, which provides them a platform to discuss and come along on any aspect of the authorities of the government.

Various provisions of the Epidemic Disease Act and Disaster Management Act were employed to mark various places as quarantine zones throughout the country, and any kind of assembly at any such place was prohibited under Section 144 of CrPC.

4.3 Right to form associations or unions or cooperative societies

The Constitution under Article 19(1)(c) provides for the formation of associations or unions, or cooperative societies. Everyone has the right to form such associations or unions and have the right to join any such associations or trade unions or the cooperative societies to protect their interests (House of Commons House of Lords Joint Committee on Human Rights, 2021). Also, no restrictions can be made on the wilful enjoyment of such a right except the reasonable restrictions placed under Article 19(4).

But the lockdown and subsequent national or provincial restrictions that made people quarantined under the four walls of their houses and other living places directly posed a threat to the freedom to form associations and unions. For any association or union to be formed, people of like-nature and common objectives should meet and set their working agenda. Only then can the association be fruitful and result-oriented. But due to the restriction under the aforementioned provisions as well as the imposition of Section 144 of the CrPC, where four or more individuals cannot gather at any place, such rights are only meant to be placed in the statute book.

4.4 Right to move freely throughout the territory of India and reside and settle in any part of the country

The Constitution of India, under Article 19(1)(d), mandates that all the citizens have the right to move freely in any part of the country with no restriction, and they also have the liberty to reside and settle in any part of the country with no restriction other than the one under Article 19(5).

But the lockdown halted the lives and aspirations of such individuals. The sudden lockdown, which was announced by the government on March 24, 2020, with a notice of less than four hours, created confusion, chaos, and panic in the lives of the people of the country. One significant setback for the common people was the suspension of the railway services from midnight of March 21–22, 2020, without any previous notice (Daijiworld Media Network, 2020). The importance of the railway services in India need not be reiterated, which is the fourth largest railway system in the world and runs around 1 lac passenger trains on a daily basis on long routes as well as suburban areas. It is the lifeline of crores of people who travel through the railways, and shutting down this system of passenger trains without any notice left the common people at a standstill.

The immediate effect of the suspension of the railway services was that a crore of migrant labourers working in different parts of the country and away from their native places was left stranded in their places of work. They can no longer work there as the majority of the industries and establishments where they used to work got closed amid the lockdown. With no job and no financial assistance, they were forced to return to their homes, walking on their foot for hundreds of kilometres.

Visuals of thousands of migrant workers wearing gamchas, sleepers carrying backpacks, and their children have to walk in the scorching heat since they were left in their earning cities due to the shutting down of the public transport system (Rashid et al., 2020). This was believed to be one of the significant causes of reverse migration that was witnessed by the country.

4.5 Right to practice any profession, trade or business

As the nationwide lockdown got enforced all of a sudden, it gave no scope for the people who were involved in any kind of business or trade or commerce but to shut down all whatever they had. Amid such a lockdown, small, medium-sized, and big business houses had to suffer uncertainty over their right to livelihood. The right to livelihood has been regarded as a fundamental right by the Hon'ble Supreme Court, which falls under Article 21 of the constitution of the country (The Supreme Court of India, 1986).

Such a decision by the government coupled with the provisions of the 'Epidemic Diseases Act and Disaster Management Act' which mandates a conviction of a person for 1 to 5 years if he or she is found obstructing the employees of the government or is reluctant to comply with directions or orders of the central government. This led to a situation where the common people of the country had to shut down the business, which was the means of livelihood for the majority of the household in the country, and keep themselves safe from legal complications in which they could be trapped if they do not follow the orders. All this led to a contraction in the country's overall economy, resulting in high inflation rates, which has worsened the situation for the common people (Baker and Roy, 2020).

5 Conclusions

Extraordinary times call for extraordinary measures is a saying most often seen quoted by the authorities of the government and its officials where they try to correct the grave mistakes committed by them during the handling of the COVID-19 situation in the country. The desperate measures of shutting down the entire nation on notice of less than four hours will not go unnoticed in a democratic nation like India. There were clear violations of one of the most important of the fundamental rights of the common people of this country by the measures taken by the government.

It was evident that the government finds itself in a situation where it thinks of no proper discussions and then comes to a conclusion. It is evident by the actions of the government that it lacked proper planning when it came to handling the upsurge of the COVID cases, and all the measures taken by it were proving to be incongruous. At the same time, the COVID-19 pandemic was indeed unprecedented and therefore, the governments across the globe had no idea as to its containment. Apart from the callous attitude of the government, the vast population, high population density, illiteracy and poverty of the Indian masses are also vital factors that contributed to the widespread of the pandemic within the nation.

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Notes

- 1 The original text of the Constitution guaranteed seven freedoms, the seventh one being the freedom to hold and acquire property [Art. 19(1)(f)]. The same was deleted by the Constitution 44th (Amendment) Act, 1978.
- 2 “A public servant is an officer of the government whose duty is to prevent commission of offense or protect public health or convenience.” See the Indian Penal Code, 1860 (Act 45 of 1860), S. 21.
- 3 If the disobedience tends to cause obstruction or annoyance or injury to the public servant.
- 4 If the disobedience causes danger to human life, health, safety or causes affray or causes riots.
- 5 The Epidemic Diseases Act, 1897 (Act No. 3 of 1897), S. 2A.
- 6 Id at S. 2.
- 7 Id at S. 3.
- 8 The Aircraft (Public Health) Rules, 1954, Rule 2 (13).
- 9 Id at Rule 2 (15).
- 10 Period of incubation for yellow fever is six days.
- 11 Period of incubation for plague is six days.
- 12 Period of incubation for cholera is five days.
- 13 Period of incubation for smallpox is 14 days.
- 14 Period of incubation for typhus is 14 days.
- 15 Period of incubation for relapsing fever is eight days.
- 16 The Aircraft (Public Health) Rules, 1954, Rule 2(15)(b).
- 17 The Disaster Management Act, 2005 (Act No. 53 of 2005), S. 2(d).