

Revisiting Fundamental Rights in the light of Covid 19 Pandemic in India: An Overview

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Abstract

The year 2020 is a watershed in the annals of the human civilization. Global pandemic Covid 19 brought the entire mankind to the brink of scared state of mind, desperation and dejection. Panic was rampant all over the world. Imitating the worldly trend of imposing lock down, India also chose this option to save her people from the scourge of Covid 19. Lock down changed the entire course of life for any section of the society in the country. Govt of India was hit by criticism for the plight of migrant workers. But lock down was a bitter pill to swallow to cure the disease. Lock down undoubtedly curbed some of the fundamental rights of the people. But rights of the people are still safe secure here as constitution is still intact and is also sacrosanct for all. Vigilant people, awakened media, active courts, multiple opposition parties and vibrant democracy are the best safeguards to fundamental rights. But some corrective measures are required to be added such as to add pandemic as the ground for suspension of some the fundamental rights of the people. India faced the challenge of this menace successfully for this it deserves praise.

Keywords: Fundamental Rights, Part III of Indian Constitution, Plight of Indian Citizenry, Impact of Covid 19, Indian People and Covid 19, Lock down in India.

Introduction

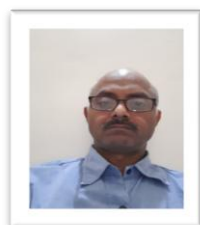
The year 2020 was full of fluid situation all around the world as the entire world was witnessing the trauma of Covid 19 pandemic. India too being the 2nd most populous country of the world was undergoing tremendous pressing time as the country was not prepared to meet any such eventuality due to the lack of trained medical staff, medical infrastructure and adequate knowledge to face Covid 19. With a population of over 130 Crore, India might be the easiest prey to corona outbreak. Had corona infected just 1% of the population, the number of Covid patients would have escalated over 1 Crore 30 lakh patients. India has not been in a position to provide medical treatment to such large number of anticipated patients keeping in the availability of beds, doctors, kits, testing facilities etc. in view. Obviously lock down, imposed by the Govt of India, paved the way to some extent to save the people from this pandemic. In this course of action, fundamental rights of the people were curbed. Though only during National Emergency, under article 358 & 359, rights guaranteed by Part III, can be suspended (except art. 20 & 21) yet this pandemic suspended these rights without any formal declaration to do so, merely an Executive Order in name of lock down. Govt of India was criticized for the lock down from within the country and overseas as it is said to hamper the fundamental rights of the people guaranteed by the constitution.

Objective of the Study

This paper aims to analyse the impact of lock down, imposed to curb Covid 19 pandemic, especially on fundamental rights. Consequent to the declaration of lock down in India, the plight of migrant workers drew the attention of media from within and overseas. Govt. incurred the ire and criticism as being violator of the fundamental rights of the people. This very peculiar situation prompted and demanded a study of the whole scenario afresh. The present paper accomplishes this task.

Methodology and Review of Material

The discourse for deliberation here is of recent origin and still persistent one, so availability of primary sources is not in plenty. Hence this



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Paper is basically based on secondary sources. Personal Observation of the author comprises bulk of its content. Media, electronic and print, websites, news and newspapers are the sources to derive basic information. Peer groups discussion is also contributory to the task of writing this paper. Empirical data and its analysis is desirable for further studies. Books on Indian constitution by noted authors, proved to be helpful in grasping the crux of fundamental rights. Its conception, origin, incorporation in the constitution of India, intentions of constitution makers, list of rights and its description etc. all are significant in perceiving and precipitating this paper. On Covid pandemic, the website of WHO, Home Ministry, Health Ministry, All India Radio, provided necessary information.

Fundamental Rights in Part III

During the British rule, demand for political rights and equality of status with Englishmen for Indians, gained momentum in form of various resolutions passed by Indian National Congress between 1917 to 1919. These were incorporated in Annie Besant's Commonwealth of India Bill 1925 and Nehru Report of 1928 but Simon Commission which was responsible for Govt. of India Act 1935, ridiculed the rejected the idea. In 1931 Karanchi Resolution Congress reiterated the demand for fundamental rights. Sapru Report of 1945 also stood for incorporation of fundamental rights in the constitution to be framed for Indians. The then prevalent communal situation of the country also convinced the leaders of the Congress for inclusion of fundamental rights to assure the minorities of their safety and well being in India. Cabinet Mission Plan of 1946 advocated for appointment of an Advisory Committee on fundamental rights and Minority Rights for making recommendations on these issues. U N "Declaration on Human Rights in 1948", American Bill of Rights and French declaration on "Rights of Men" also influenced the constitution makers.

Constitution makers were committed to equip the Indian masses with certain guaranteed rights. Hence a Committee was appointed by constituent assembly on Fundamental Rights and Minority Rights chaired by Sardar Ballabh Bhai Patel in January 1947. This committee further appointed a sub committee headed by Acharya J B Kriplani on the issue. "Part III dealing with fundamental rights was discussed for as many as 38 days – 11 in the sub committee, 2 in the advisory committee, and 25 in the constituent assembly"¹. On the basis of reports from Sardar Patel's committee the drafting committee prepared the scheme of things on fundamental rights.

Finally 7 fundamental rights were incorporated in Indian Constitution in Part III

1. Right to Equality 14 – 18
2. Right to Freedom 19 – 22
3. Right against Exploitation 23 – 24
4. Right to Religious Freedom 25 – 28
5. Cultural and Educational Rights 29 – 30
6. RIGHT TO PROPERTY 31, (omitted by 44th Amendment 1978)

Right to Constitutional Remedies 32

These rights, guaranteed by the constitution, are necessary for the development of human personality. No law can be enacted which violates fundamental rights. Only a constitution amendment passed under article 368, can alter the course of the fundamental rights. If any of the right is violated the aggrieved can move to the apex court under article 32 and high court under 226. But lock down curbed these fundamental rights of the people. Hence Govt. of India became prey to criticism for imposing lock down and for not making sufficient preparations to avert this menace.

Outbreak of Covid 19 pandemic and Indian Response: In December 2019, capital city Wuhan of Hubei province of People's Republic of China acquainted the humanity with first case of Covid 19, an infectious disease spreading from man to man due to novel corona virus. By end of March 2020, over 190 countries became prey to this infectious disease. Europe (Italy, Spain, France and Britain in particular) and America were the worst sufferers. In February 2020 India also fell into its ambit. An alarming condition arose for the entire world. Lock down is declared in several countries. All services, except essential ones, were suspended.

Govt. of India declared Lock Down 4 times in the year 2020 to fight against the menace of Covid 19 pandemic and contain its spread. Chronology of lock down unfolded such as:

1. 15 March to 14 April
2. 15 April to 3 May
3. 4 May to 17 May
4. 18 May to 31 May

Reasons for lock down were mainly four fold:

1. To flatten the curve of corona virus infection
2. lack of medical infrastructure like N 95 mask, PPE kit, ventilators, corona test facility
3. lack of trained medical staff
4. large but least awakened population of the country

Humanitarian crisis sprang in India in the backdrop of lock down. Workers from Jharkhand, Bihar, Madhya Pradesh, Chhattisgarh and Uttar Pradesh are employed in Delhi, Haryana, Punjab, Gujrat and Maharashtra at great scale. The plight of these migrant workers was most deplorable. After imposition of lock down, these migrant workers were hit badly as they were fired from their jobs so they were rendered out of pocket and uncertainty of future loomed large in their minds. So paying for food, house rent, medicines etc, became a trouble for them. As such it was very logical for them to quit their working place, in favour of their native place. Due to lock down, means of transport were unavailable. So they started their journey on foot, by hiring auto, e rickshaw, by cycle or any means. In last week of March 2020, at U. P. - Delhi border, thousands of workers gathered to move for their homes but due to shut down.

Govt at the Centre provided Special Trains to these workers to reach their native places. State Governments also with mutual cooperation and understanding tried their best to avert the plight of

migrant workers. Noteworthy is the fact that social service organizations, on their own initiative, on appeal of the Govt., and many State Governments did their best to ensure that none remains unfed. By cash transfer to the Jan Dhan account, distribution of food grains, asking the district administration to open kitchens for such needy people, endeavours were made to cater to the needs of needy people. From 1 June, Unlock Process started to ease the routine human life. Thus every attempt was made to protect the basic needs and rights of the people by the Govt.

Lock down was not an easy decision to make at all especially when Govt. of India aimed to make India a 5 trillion dollar economy. Brazil, a Latin American country, declined to impose lock down and instead preferred to boost her economy arguing even if some human lives are lost, no mountain will fall but the health of economy must be strengthened. Same was the view of Trump Administration in America. But Govt lacked at one point. When the corona outbreak preyed China, it could have had a vigilant eye over the happenings there. Entry of people on Indian soil, be it foreigner or Indian native, must have been followed by a mandatory 14 days quarantine.

On 10.03.2020 was a major festival, Holi, in the country. People like to celebrate it with their family members. Migrant workers, students, Professionals, Employees of private and public sector, moved for their native places. After observing festival, most of these people resumed their duties. The most appropriate time to declare Janta Curfew was 11.03.2020, as following day of Holi is usually kept closed. On 08-09 March Govt. could have announced the proposed lock down date in advance. This would have given ample time to the people for lock down preparations, reduced the movement of people from one place to another unnecessarily and also the situation would have been more in control as cases of corona virus were negligible by that time.

Impact on fundamental rights

The primary function of the State is to provide security to her people and to protect their rights which are guaranteed in the constitutions of many countries of the world also. Govt. of India undertook various measures to protect the lives of her people from from the Covid 19 pandemic like closure of educational institutions, suspending nonessential activities and services initially and then declaration of lock down.

Even then in the midst of lock down, declared to avert the Corona virus infection, question raised, was - Whether lock down abducted the fundamental rights of the people?

People have supreme place in Indian constitutional scheme. Preamble of the constitution of India opens as "We the people of India". Oath of the office of the President under article 60 reads: "I will devote myself to the service and well being of the people of India". Further article 47 says: "the State shall regard raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties". Lock down also had its obvious repercussions. Obviously fundamental rights guaranteed in the constitution of

India could not remain as robust as earlier. Article 14, 19, 21, 25 and 32 were especially dented due to this lock down. But the fact to be borne in mind equally is that the motive of lock down itself was to save human life.

Article 14 talks of "Equality before Law": The State shall not deny to any person, equality before law and equal protection of laws within the territory of India. But once lock down was declared, a new culture of WORK FROM HOME emerged. Be it business men, students, teachers, officers etc. all were supposed to work on online mode. Online became the new lifeline for the people. But here were three fold problems:

1. Non Availability of such gadgets to work with online mode (laptop or desktop or smart phone and internet connection)
2. Non Availability of uninterrupted net connection or network
3. Skill or acumen to run these gadgets and the know how of the work.

In rural areas and with low income group people, online mode working is still a distant dream. Thus a digital divide or digital disparity permeates the society: two new classes emerging -digital haves and digital have nots.

Article 16 provides for equality of opportunity in matters of public employment but as the notices for employment, availability of forms, payment of exam fee, submission of forms, downloading admit card, availability of study material, study at coaching centres, even exams themselves, all went online. Naturally the digital have nots were at losing wicket in this race as they lacked necessary knowledge and infrastructure to do all these. Just one instance will be sufficient to illustrate this point. At application forms for jobs, a candidate is supposed to upload his or her photo but its pixel, resolution and kb are specific for successful upload, not easy to do. If the same is done with help of cyber café it additionally costs dearly to a poor candidate. According to "NSSO data, only 4.4% of rural households and 2.4 % of urban households own computers. Moreover while 42% of urban households have computer with internet connection, the same is available to only 14.9% of rural households. The share of smart phone penetration was only around 25% in rural areas"2. So the game of online work culture is not fair for all stakeholders.

So rights guaranteed by these articles were hampered.

Article 19 comprehensively deals with right to freedom, protection of certain rights regarding freedom of speech etc.

19(1) All citizens shall have the right

1. To freedom of speech and expression
2. To assemble peacefully and without arms
3. To form associations or unions
4. To move freely throughout the territory of India
5. To reside and settle in any part of the territory of India
6. To practice any profession or to carry on any occupation or trade or business

Constitution, however itself permits the State to put certain reasonable restrictions on these rights.

The heaviest dent inflicted by lock down was observed on this article. Rights guaranteed by article 19 (1) from (b) to (g) were crippled immensely. People became captive to their houses as lock down disallowed to move out of the premises. So one single decision of the executive to observe lock down brought the normal life to a standstill. Now people could neither assemble peacefully nor form associations or unions nor move freely throughout the country nor reside and settle in any part of the country nor pursue any profession. All the means of transportation, business activity, industries, educational institutions, public places like parks, hotels gymnasium etc. were closed. The greatest trouble emerged for the workers of UP, Bihar Jharkhand, Chhattisgarh, MP workers who had moved or migrated to other States in search of employment and livelihood. Now as their working places were closed, they were slapped with financial hardship as they were unpaid now. Consequently they were unable to pay off their dues. So they started to return to their native places by any and all means available even at the risk of their lives.

Article 21: Protection of Life and Personal Liberty: "No person shall be deprived of his life or personal liberty except according to the procedure established by law"³. This article is regarded as Magna Carta of India. Here the phrase "procedure established by law" does mean that "procedure" must be just fair and reasonable. Due to judicial creativity, the scope of article 21 expanded. Right to life was interpreted to incorporate many new rights necessary for the very existence of the individuals. Such as right to live with dignity, pollution free air, potable water, clean environment, gender equality, education, health, right to be informed and shelter etc. Right to shelter, food, livelihood, health, nutrition, mixing and mingling with fellow beings all are derived from article 21 but under the lock down regime, these rights were curbed for the people.

Article 25: Freedom of Conscience and Free Profession Practice and Propagation of Religion:

1. Subject to public order, morality and healthall persons are equally entitled to freedom of conscience and right freely to profess, practice and propagate religion. But once lock down was declared, this right of the people automatically became dormant. Religious places were closed for general public. People celebrated festivals inside the houses.
2. Article 32: Remedies for enforcement of rights conferred by this part:
 1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.
 2. The Supreme Court has power to issue directions or orders or writs including writs in nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari. High Courts have similar power under article 226 to safeguard and secure rights conferred by part III of the constitution. "If I was asked to name any particular article in this constitution as the most important article without which this constitution will be nullity, I could not

refer any other article except this one. It is the very soul of the constitution and the very heart of it"⁴. But due to lock down Courts remained closed and such a significant fundamental right also became inoperative and ineffective.

Suggestions

Under part XVIII of the Constitution of India, three types of emergency provisions have been laid down – National Emergency under article 352, Failure of Constitutional Machinery in a State under article 356 and Financial Emergency under article 360. Grounds to declare National Emergency in the country are three fold till day. These are – war, external aggression and armed rebellion. Now a new ground – Pandemic and Disaster also needs to be added to declare national emergency. Mankind is passing through a critical phase of her existence. Environmental degradation and Climate Change are emerging fast on the planet earth. So natural disaster is not far from happening. Fukushima nuclear disaster of March 2011 also needs to be recalled in this regard. An eventuality of nuclear accident is also a cause of major concern. So in all these circumstances, fundamental rights would be curbed. So article 359 needs to be amended in the light of it.

Lock down was declared merely by executive order. It inherently curbed the fundamental rights guaranteed by the constitution. So an amendment of the constitution must be accomplished necessitating such a declaration to be passed by parliament also in order to avert any probable of misuse of power by executive.

Article 51 A dealing with Fundamental Duties needs a revision asking the citizens to comply with the lock down orders fully when a situation of Pandemic or Disaster crops up. Otherwise occurrences of attacks and misbehavior on frontline workers – doctors, medical staff, security personnel would go unchecked.

Observations

1. Lock down was not an option but a necessity arising out of compulsion
2. Executive emerged as powerful organ of the govt
3. Centre took precedence in the governance
4. People accepted the lock down without much hue and cry it shows the maturity of Indian masses. Plight of migrant workers caused to no anarchy, which is welcome.
5. Though constitution does not give any precedence to any of the fundamental right over the other but right to life guaranteed by article 21, has taken a remarkable edge over the other fundamental rights.
6. In 4 declarations of the lock down, Govt. of India always tried to maintain a balance between saving human lives through lock down and running the governance of the country.

Conclusion

The crisis is an unprecedented one so the response could not be a very calculative and well designed one. People of India patiently cooperated with the govt. as its intentions behind the lock down were bona fide. Lock down was non discriminatory as it applied to all equally and reasonably. Lock down did curb the fundamental rights but the basic motive

behind lock down was to arrest the spread of Covid 19 infection among the people, it means – the purpose was to save life, guaranteed by article 21.

Fundamental rights might have been faded and fainted for a transitory period in letter but its spirit is all intact. Grounds to curb fundamental rights must be delineated and crystal clear lest it be misused in future by any govt. Rights are safe and best safeguards are – world public opinion, international organizations, vigilant people, awakened media, active courts, multiple opposition parties and vibrant democracy. Moreover constitutional system remained unchanged during the lock down so the question of fundamental rights is being compromised, as one section of media projected and propagated, does not arise at all. From 1 June, unlock process started to ease the routine human life. This rights curb was a temporary phenomenon to be revived with return of normalcy. Massive awareness campaign by the govt against Covid 19 paid rich dividends to face this menace.

India has exhibited patience on the part of people and planning on the part of govt. Bleak time is

over and bright days will again rule the real life. To conclude with Ravi Zacharias: We have a right to believe whatever we want but not everything we believe is right.

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