

“Tug of War between Fundamental Rights and Fundamental Duties during Lockdown”

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Introduction

With the lockdown extended to 3rd May 2020, it is a high time for the people to understand the criticality of the situation and to extend the full support and cooperation to the law enforcement agencies. The people of India enshrined in the Preamble of the constitution should adhere to the seven guidelines urged by our Hon’ble Prime Minister Shri Narendra Modi Ji in his address on 14 April 2020 in order to contribute in this biggest fight that the human Civilisation have ever witnessed.

It is needless to mention that the catastrophic situation caused by this unprecedented and novel COVID-19 pandemic has affected the whole world. According to a research published in Journal of American Medical Association the current physical distancing guidelines provided by the World Health Organisation and US Centres for Diseases and Prevention may not be adequate to curb the corona virus spread and the research says the gas cloud from a cough and sneeze may help particles to travel up to 8 meters. The whole world is facing a big challenge to handle this situation where the number of the cases around the globe has crossed 1.8 million confirmed cases and number of cases in India has crossed 10,000 but India has comparatively dealt with the situation in an effective manner which has restricted the number of cases which would have been uncontrollable taken into account the density of population in India.

Tug of war between fundamental rights and fundamental duties:

One of the most debateable topic that revolves around the legal and intellectual lobby is the harmonisation of fundamental rights and duties in the current scenario. While Article 21 offers a great deal of freedom to the individuals relating to having the right to access to clean air and good health which is to be ensured by the State, Article 51A describes the fundamental duties of the citizens which they have to carry out for the State. An essential duty is to “strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement [Clause j of the Article 51A]” and here, the achievement would be to overcome this pandemic which also comes under the duty of the citizens to “protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures [Clause g of the Article 51A]”

“It is health that is real wealth and not pieces of gold and silver” as coined by Rashtropita Mahatma Gandhi is the perfectly applicable in the current scenario around the world. Focusing on health has become the top most priority of all nations and India is leading the charge to contain this deadly virus that is COVID 19. With this, the public health and sanitation, hospital and dispensaries is the foremost priority of the state which is enshrined in Entry 6 of List II of the Seventh Schedule of the Constitution of India and so are the fundamental rights of freedom of conscience and free profession practice and propagation of religion which are enshrined in Article 25 of the Constitution being subjected to public order, morality and health. In both the cases the state is empowered under the constitution to regulate and put restrictions to protect the public health and morality particularly during this lockdown to contain the pandemic caused by COVID-19. The secular activities could always be regulated by the state and the essential religious practices could be exercised by the citizen anywhere at any place not necessarily in the mosque or the temples which is the need of the hour.

Bear in mind that India is a country where primary care and preventive medicines have always been inadequate. The educated people understand social distancing but those who lack the requisite educational background and belong to marginalised segment are either unable to grasp the importance of SD and practice it or constrained in a given space due to the high density of population as India is the home to about 1/3rd of the global slum population with an average of 1 in the 6th city residents living in slum where population density varies between 277136 persons per square km in Dharavi, Maharashtra to 125000 persons per kilometre in Rasulpoora, Hyderabad. The primary reason for the need of Social Distancing is this high density of population.

Even in the capital of India, lack of clean water, poor sanitation, social dependency, low immunity system and no adequate number of toilets along with lack of medical facilities also makes the speed and size of virus transmission tremendous and fast where even though WHO has claimed that there has been no community transmission as yet, it is imperative to take necessary precaution and practice Social Distancing very seriously as in no time the virus could spread fast in these bad conditions.

To tackle this pandemic, the sealing of hotspots as decided by the State would cast onerous duty on the state officers particularly the Police under Entry 2 of list II of the Seventh schedule and the Public Order Entry 1 of the List II contains the provision to exercise by the State to provide the residents of those areas essential commodities but is a nevertheless a challenging job which needs to be monitored closely and with protective gear available to the Police officers and essential workers.

It is the first and primary obligation of the state to look out for the Heroes in this situation which are the police and the essential workers but merely clapping for them and calling them heroes is not enough. PPE and more protective gear along with benefits should be given to these heroes for helping India maintain its stance regarding this pandemic and emerge as a nation which has conquered this whole issue in the best possible manner.

The 1 Billion dollar loan given to India by the IMF to tackle this pandemic should also be utilised in a free and fair manner, to foremost provide the essential medical and paramedical staff the most needed equipment, medicines and protective gear to help India fight this pandemic. The State has to ensure the safety and health of its citizens by making the testing of COVID 19 free in private labs irrespective of them being covered under schemes like Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana and the labs should be reimbursed by the state particularly in the hotspots falling under the Red zones in the country.

Article 47 of the Constitution furthermore explains the duty of the state to raise the level of nutrition and the standard of living and to improve public health. This duty is to be available to the citizens all around especially when there is pandemic going on but recently it has been sidelined very clearly where we can see that essential commodities required to fight this pandemic in the interest of public health are not being made available by the State. Personal Protective Equipment is one such necessary piece of equipment which would protect our medical staff who are fighting this pandemic and need the equipment to stay safe but in a very erroneous manner and with lack of seriousness the state has not provided this essential equipment to the medical staff.

Here, it is important to highlight the timely and responsible interjection of the judiciary that played a vital role in insuring the free and adequate disseminating medical facility to the weaker and marginal section of the society. As directed by the Hon'ble Supreme Court vide order dated 08.04.2020. However the aforementioned order has been modified by a subsequent order dated 13.04.2020 with a direction to limit the free Covid-19 testing to those who belong to EWS category and who come under the Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana only but however the private labs can continue to charge payments for testing from the person who are able to make payments as fixed by ICMR.

Main hurdles/challenges for the law enforcement agencies in the prevailing scenario:

The main issues that are making the operations of law enforcement agencies more difficult and complicated to halt the spread of Corona Virus is the negligence and non-compliance of the lockdown norms by the people. Some of these instances are succinctly below:-

There have been cases where Mohalla clinic doctors have contracted COVID 19. To overcome this problem, Infrastructure, Health Care and Personal Protective

Equipments (PPE) are three vital factors which should be monitored by a nodal agency created by the State of expert body. Incidents like setting ablaze of three night shelters at Kashmere Gate on 10th of April 2020 due to paucity of space and the congregation of *Tablighi Jamat in Nizamuddin* goes on to prove State inaction in permitting these events though informed in time and not quarantining those who came from abroad to join the same led to endangering the health of the society at large. Though there are earnest appeals to not come to the mosque to offer Namaz by All India Imam Organisation and other respected clerics, it all went in vain and still there are instances of congregating to offer Namaz resulting in arrest of some of the imams reported in Delhi.

In another serious situation where exodus of migrant workers suddenly came to *Anand Vihar ISBT on 28th March 2020* in gross violation of lockdown in vogue in the city and across the country state inaction on not providing basic food and shelter amidst this situation of joblessness compelled the workers to come out on street in such high numbers which forced the government of Uttar Pradesh to make the arrangement of buses for their convenience just goes on to prove that State has till now not paid heed to the fundamental rights of every citizen especially the poor class which have faced a lot of hardship regarding losing daily wage, not having food and shelter and not being able to move freely to even reach their homes.

The incident of 14th April 2020 where migrant workers came out in huge numbers at Bandra and Surat should act as a wake up call for the government to address the issue in a more serious and strategic way keeping in account the stake of all sections of the society and to apprehend that the repercussions of beyond SD could be worse if constructive steps are not taken immediately.

The *AzadpurSubzi Mandi* in Delhi is another example where there has been a gross violation of Social Distancing which has also been tried to mitigate by giving the entrant a token but was met with failure. Patiala also tried to use a similar technique which was to stop entry into the SubziMandi but in doing so, a forcive entry by Nihang Sikh who were stopped by the police resulted into chopping off of a policeman's hand goes to the root of the matter where the citizens are not understanding the gravity of the situation.

Take away or latches/challenges for the Government from this situation:

The key issues which emerged before the Government functionaries is the economic and social problems that are prevailing in our country but it would not be an overstatement to say that they were never addressed in an appropriate manner in which it should have been addressed. This resultantly has become the most challenging issues for the government amid Covid-19. Some of these issues are Unemployment, issue of unorganised workers/sectors,

Centralisation/Urbanisation that led to migration, concentration of opportunities in handful avenues leading to large densely populated cities, lack of health care infrastructure and medical facilities, poor IT infrastructure facilities specially in government departments specially in rural and sub divisional level, negligence of law enforcement authorities particularly the local intelligence agencies in anticipating the fore-coming issues. The hope that the Government functionaries will take more constructive initiative to address these socio-economic problems, once the situation is better.

Need of the hour:

We should appreciate the proactive support from the world community to India in the form of the 1 Billion USDollar loan given to India by the IMF to tackle this pandemic should be utilised to foremost provide the essential medical and paramedical staff the most needed equipment, medicines and protective gear to help India fight this pandemic. The recent Supreme Court order also goes onto prove that the State has to ensure the safety and health of its citizens.

But in these grave times, Jaan (Life) bhiaur Jahan (Outside World) bhi as cited by the Hon'ble PM Shri Narendra Modi on 11th of April is a very smart and expansive but short expression which has left an impression of obedience of the lockdown on the people of India and is a very smart move to make people realise that life and the outside world can only be in correlation if we strive to follow this lockdown and allow the State to properly exercise its jurisdiction.

With the PM's note this expression may finally lead towards a smart lockdown with severe restrictions on affected districts and partial lifting of restrictions in unaffected districts earmarking/demarking the country into three zones viz Red, Orange and Green depending upon the scale of COVID 19 outbreak. One thing is to be made certain that to protect our life and the outside world, we need to follow the seven instructions/ guidelines urged by our Hon'ble Prime Minister.

Social Distancing while being impossible to adhere in the event when the restrictions are lifted in Green zones and would be a challenge to law enforcing agencies due to opening of certain industries, It is still an important and probably the most effective way to contain this pandemic where medical check-up in small groups should be conducted before permitting entry into the specific area.

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The views expressed are personal.