



## LOCKDOWN: THE ADJOURNMENT OF FUNDAMENTAL RIGHTS

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### **Abstract:**

Almost the whole world is stuck in the grip of coronavirus. Every nation has been trying to prevent the spread of Covid-19 with the help of WHO guidelines and existing laws but yet not succeed in it. Indian government also declared lockdown under the Epidemic Disease Act, 1897 (EDA) and the Disaster Management Act, 2005 (DMA). The term 'lockdown' imposed certain restrictions on the fundamental rights of the individual which is guaranteed in Part-III of the Constitution of India. The EDA and DMA gives exclusive power to the union and state but not mentioned any 'due procedure' in it and with the help of these power government imposed certain restrictions on the fundamental rights of citizens. While doing so, number of fundamental rights guaranteed under Art. 21 has been violated, *inter alia*, right to life with human dignity, right to food, right to health and medical assistance, right to privacy and right to education. Though imposing lockdown is sine quo non for prevention of Covid-19, but the state shall not abrogate such fundamental rights at any cost.

**Key Words:** Lockdown, Fundamental Rights, Covid-19

### **Introduction:**

The strain of coronavirus has been making difficulties in whole world and when it has been swallowing territory of whole world by its virus, WHO<sup>i</sup> announces COVID-19<sup>ii</sup> outbreak as a pandemic on 11 March, 2020 and whole world goes in unpretended lockdown.

For prevention of spread of coronavirus and break the chain of infection, Indian government declared 21 days strict lockdown, which gets further extended and became the world's biggest and lengthiest lockdown.

See, the term 'lockdown' is not a legal term. But if we try to understand and legalise. It is quite bit similar to term 'lockout' which means, "Temporary closing of place of work (not permanent), or the suspension of work, or the refusal by an employer to continue to employ..."<sup>iii</sup>

De facto in lockdown, the government also (like employer) put some temporary restrictions on civilians, suspend transport services and refused to enjoy certain civil rights, to tackle such infectious disease called Covid-19.

Though lockdown is essence to curtail spread of covid-19, it affected more or less to all people throughout world. Specially on those people who belongs to below poverty line and middle class people.

### **Whether existing legal framework is sufficient or not?**

- **Legal framework of lockdown:**

On 24 March, 2020 Indian Government also declared lockdown like other suffering nations, to prevent spread of corona virus. To enforce the lockdown, we took recourse of two separate legislation (EDA and DMA) and some Constitutional provisions, that is Art. 256<sup>iv</sup> and Art. 257<sup>v</sup>. Which gives certain rights to Union, to give directions on how to implement and control over state in certain cases, respectively.

Those legislations are as follows:

Epidemic Disease Act, 1897

Disaster Management Act, 2005

- **Epidemic Disease Act, 1897 (EDA):**

The EDA which is old centurial law and hurriedly drafted British legislation before commencement of Indian Constitution. It contains only four sections.

Section 2 of which gives power to take special measures and prescribe regulations as to dangerous epidemic diseases. Also gives power to central government under sec.2(A). And prescribe punishment under Sec.3 for disobedience of any regulation or order made by public servant under Sec.188 of IPC<sup>vi</sup>.

- **Disaster Management Act, 2005 (DMA):**

The DMA deals with disaster situation such as flood, earthquake, tsunamis, etc. rather than any disease like Covid-19. Sec.2(d) speaks about the definition of term "Disaster"<sup>vii</sup>. However, the Ministry of Home Affairs declared the Covid-19 outbreak as "notified disaster", thus bringing into play the provision of DMA.<sup>viii</sup> This Act has allowed National Executive Committee to give certain directions to the government and allows to collect Disaster Response Fund (DRF) to deal with disaster situations. Also provide power to restrict on flight landing and gathering of peoples at a certain place, etc.

The DMA works at three level, the National, state and district level to execute its disaster plan.

Sec.6 - empowers the central government to issue binding directions to authorities and State governments.

Sec.22(2)(h) - permits the state authority/ executive committee to give directions to Government departments on actions.

There are some sections of IPC i.e. Sec.269<sup>ix</sup> and Sec.270<sup>x</sup> and Sec.144 of Crpc<sup>xi</sup> which also assist to combat such pandemic.

- **Whether legal framework is sufficient?**

These two Acts only generates power to Union and state but not mentioned any due procedure, formula, theory, doctrine or comprehensive framework to execute such laws and prevent spread of virus. That's why we are still using other provisions of IPC, Cr.p.c. Such provisions give exclusive power to administrators while implementing such laws. Because of that number of fundamental rights has been restricted. It clearly shows that India seeks something more than present framework.

**Lockdown in Purview of Constitution:**

For testing Constitutionality of any law or Act, there has been some ground which satisfy or shall consistent with Part-III of the Constitution. If that statute will not satisfy or inconsistent with fundamental rights shall to extent of such inconsistency, be void.<sup>xii</sup> The EDA, 1897 is the Act which was hurriedly drafted legislation under the control of colonial power and ruthless administration and passed before commencement of the constitution so, there were no any safeguards provided to protect fundamental rights. Even after the Commencement of Indian constitution to till date the test of constitutionality of EDA will not be checked.

The term 'lockdown' imposes number of restrictions on the fundamental rights of individual which is guaranteed under Part-III of the Constitution. Like right to life and personal liberty of individual, restriction on free movement of the citizens and to assemble peacefully in the territory of India, guaranteed under Art.21, Art.19(1)(b) & (d) of the Constitution respectively.

**Impact of Lockdown on Fundamental Rights:**

First time in Indian History, after the commencement of Constitution of India, an infectious disease like Covid-19 is questioning the fundamental rights of people. In 'Rule of Law'<sup>xiii</sup> fundamental rights are always fundamental in governance. But lockdown has made significant impact on the fundamental rights of people.

Though imposing lockdown is *sine quo non* for preventing spread of infectious disease like COVID-19 but while its implementation, number of innocent peoples were suffered without any personal mistake. Number of lost their work. So many peoples struck due to inability of executive to provide transport facilities. When a single man could succeed to transport number of peoples to their native place then why state couldn't? it is mass violation of Art.21 of Constitution.

While widening the scope of Art.21, Justice Bhagwati, in *Maneka Gandhi v. UOI*<sup>xiv</sup>, held that "The expression 'Personal liberty' in Art.21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty ....."<sup>xv</sup>

Art.21 gives the variety of rights through its judicial pronouncements *inter alia* Right to live with human dignity, Right to livelihood, Right to privacy, Right to food, Right to health, Right to education.

**Rights under Art.21 and its Implementation:**

- **Right to Live With Human Dignity:**

Every person has right to live with human dignity. In *Francis Coralie v. UOI*,<sup>xvi</sup> SC held that, the right to live is not mere animal existence. It means something more than just physical survival. Contrary to the above judgement has been happening in this lockdown. So many peoples living their life just for existence.

In India, more than 800 million people are belonging to poor family<sup>xvii</sup> and after the declaration of lockdown so many peoples lost their work, someone forced to go on leave without salary and some were paid less. The survey conducted by Praja Foundation, across all over Mumbai, in lockdown period, impacted their livelihood has found that at least 66% either lost their job or their employment avenues were adversely affected. They had to dip into their saving to pay for household expenses.<sup>xviii</sup> They have been suffering from financial crisis. His whole family has been struggling for basic needs. Government policies like MGNREGA<sup>xix</sup> also still in dormant condition.

- **Right to Food:**

In a significant judgement in *PUCL v.UOI*,<sup>xx</sup> the SC explicitly established a constitutional human right to food under Art.21 of the Constitution. In lockdown, number of peoples lost his works. It directly effects on the financial stability of peoples. So, they migrated to their native place. Because of change of residence address on the ration card they are unable to get ration food. Lakhs of applications are still pending for getting new ration cards or BPL<sup>xxi</sup> cards.

Delhi HC passed order while disposing of a plea by NGO NayeeSoch Society seeking direction to provide food and corona virus relief kit to every person having ration card or Adhar card or voter card till the operation of Disaster Management Act is going.<sup>xxii</sup>

Art.47, states that, state should provide nutritious food and to improve public health. Government also trying to implement such schemes but did not succeed yet to provide ration to each and every hungry person seeking for food. So, now it is test of executive, how will they overcome this situation by taking care of our constitutional framework.

- **Right to Health and Medical Assistance:**

In *PaschimBangaKhetMazdoorSamiti v. State of W.B.*<sup>xxiii</sup>, the SC held that denial of medical aid by government hospitals to person on the ground of non-availability of beds amounts to violation of right to life under Art.21 of the Constitution. In this pandemic, many government hospitals are rejecting patient due to unavailability of beds, ventilators, etc. As a result, many citizens going to private hospitals for treatment and private hospitals are charging extra money for treatment.

In a historic judgement in *Consumer Education and Research Centre v. UOI*<sup>xxiv</sup>, the SC held that, the right to health and medical care is a fundamental right under Art.21 of the Constitution. 'Right to life' includes protection of the health and strength of the worker. In lockdown, doctors, health workers, nurses, sanitation workers and police administration doing their duty by endangering their life. While doing so their health and strength ability goes decreasing day by day. So many doctors, health workers infected and died due to lack of medical facilities i.e. testing kits, PPE kits, ventilators, etc.

According to the Indian Medical Association (IMA) 2,238 doctors were infected with covid-19 and of them 382 lost their lives.<sup>xxv</sup> In Maharashtra state, more than 4000 state police were tested positive and of them 51 have died.<sup>xxvi</sup>

- **Right to Privacy:**

In *R. Rajagopal v. State of T.N.*<sup>xxvii</sup>, popularly known as 'Auto Shankar case' and also in *K. Puttaswamy v. UOI*<sup>xxviii</sup>, SC held the 'Right to privacy' is a fundamental right guaranteed by Art.21 of the Constitution. But state has been ignoring such fundamental right by launching ArogyaSetu App. This app tresses the location of person, store health details among other personal data of the user on a government server. Even collection of data is not sanctioned by law. Meanwhile government issued guidelines, which had stated that the 'ArogyaSetu App' shall be mandatory for all private and public employees. The Karnataka High Court, in its interim order restrained the government of India, stated that, sharing individual health data without their consent infringes right to privacy.

Though it is essential and in the interest of public at large but there may be chance to misuse such personal data. Government should find any middle ways, which protect both i.e. health and privacy of citizens.

- **Right to Education:**

It is well known that education is a basic human right for the success of democratic system of government. In *Mohini Jain v. State of Karnataka*<sup>xxix</sup>, the SC held that the right to education is a fundamental right under Art.21 of the Constitution. Also, the 86<sup>th</sup> Amendment Act,2002 has added a new Art.21(A), after Art.21 and has made right to education is fundamental right. In primary phase of lockdown total education system was struck down. Educations get stopped, then government took a golden step to provide online education. But due to lack of facilities like smartphone, light, internet facilities etc, number of rural students and poor class students failed to get online education. It becomes very difficult to provide online education to each and every student.

**Conclusion:**

In India, the constitution is the supreme law of the land. The Indian constitution was framed keeping in the mind the 'Rule of law'. In rule of law everything will be governed with by law. Though present situation is critical but in the state of rule of law there is no place for the Doctrine of Necessity. i.e. necessity knows no law. Because it will harm the supreme law of land. In lockdown government of India enforced the Epidemic Disease Act,1897 and Disaster Management Act, 2005. Which only gives powers to the state and executive rather than any due procedure for implementation. So, implementation of such has been violating fundamental rights of the citizens.

We should need a well-organized legislation, who gives power to state and executive but that power must be legitimate and limited, with the help of that legislation we can effectively works in the pandemic situation by taking care of constitutional structure. If we do so, definitely it will be beneficial in the future to deal with any pandemic like COVID-19.

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**End Notes:**

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- <sup>i</sup>World Health Organization.
- <sup>ii</sup>Corona virus Disease 2019.
- <sup>iii</sup>Sec. 2(1) – Industrial Dispute Act, 1947.
- <sup>iv</sup>Art. 256 – The Constitution of India, 1950.
- <sup>v</sup>Art. 257 – The Constitution of India, 1950.
- <sup>vi</sup>Sec.188 - Indian Penal Code, 1860.
- <sup>vii</sup>Sec.2(d) - Disaster Management Act, 2005.
- <sup>viii</sup>The Disaster Management (Amendment) Ordinance, 2020.
- <sup>ix</sup>Sec.269 – Negligent act likely to spread infection of disease dangerous to life.
- <sup>x</sup>Sec.270 – Malignant act likely to spread infection to disease dangerous to life.
- <sup>xi</sup>Sec. 144 – Power to issue order in urgent cases of nuisance of apprehend dander.
- <sup>xii</sup>Art. 13 – The Constitution of India, 1950.
- <sup>xiii</sup>No man is above the law and every person is subject to the jurisdiction of ordinary courts of law.
- <sup>xiv</sup>AIR 1978 SC 597
- <sup>xv</sup>Dr. J. N. Pande, The Constitutional Law of India, p.n. 239, 47<sup>th</sup> edition, Central Law Agency.
- <sup>xvi</sup>AIR 1978 SC 597.
- <sup>xvii</sup>Poverty in India: Facts and figures on the daily struggle for survival.
- <sup>xviii</sup>The Indian Express, Jan 30, 2021.
- <sup>xix</sup>Mahatma Gandhi National Rural Employment Guarantee Act.
- <sup>xx</sup>2000(5) SC ALE 30.
- <sup>xxi</sup>Below Poverty Line.
- <sup>xxii</sup>The New Indian express, June 3, 2020.
- <sup>xxiii</sup>(1996) 4 SCC 37.
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- <sup>xxvi</sup>The Hindu, June 24, 2020.
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- <sup>xxviii</sup>K. Puttaswamy v. UOI, 26<sup>th</sup> September, 2018.
- <sup>xxix</sup>Mohini Jain v. State of Karnataka, (1992) 3 SCC 666.