

SITUATIONS LIKE COVID-19 AND STATE RESPONSIBILITIES ON IMPLIED RIGHTS FOR COMMON MAN

A.M.A Mahees*

As we all as human being we are facing happiness and sadness together in our life. As because of the world order we must face everything as human. It is impossible one without another. When it come in case of Corona Panic, it has its own logic. The fact that in the UK, due to the coronavirus panic, even rolls of toilet paper disappeared from stores reminds a strange incident with toilet paper from socialist Yugoslavia. Suddenly, a rumor started to circulate that there was not enough toilet paper in the stores. Authorities quickly promised that there was enough toilet paper for normal consumption and, surprisingly, these were not only true, but most people even thought it was true. Same what happened even in our countries super market like Cargills, Keels and all.

However, an average consumer reasoned as follows: I know there is enough toilet paper and the rumor is false, but what if some people take this rumor seriously and, in a panic, start buying excessive supplies of toilet paper, causing a real shortage of toilet paper? So I better go and buy some of it myself. It is the situation regarding a common man regarding purchasing. This is apart. In other hand in case of this scenarios their responsibilities impliedly arise for a state on their citizens. Let's discuss one by one in next paragraphs.

Generally, responsibility of the protection of the citizens arises with the government. In case of this government implying lock downs as well curfews. Here curfews or lock downs must be handled in a proper manner. Otherwise it became the reason of another problem. When it come in case of curfew, there are several day by day workers are effecting. And by the way nation's economy also go down. Here is the place where problem is starting. We will discuss it briefly later. Other than this within this situation making social harmony and conciliation is state responsibility. Here media reporting is playing a huge role. Government must make regulations and control regarding this. Because it became the reason of infringe a person's fundamental rights. So It became the reason of violating the articles of fundamental rights of the constitution. Other than that state must have the responsibility to enact proper law and aware People. In Ranjan Ramanayake's recent case Former UNP MP Ranjan Ramanayake who was arrested for violating curfew without a proper pass, was released on bail by the Nugegoda Magistrate's Court yesterday after his lawyer President's Counsel M.A. Sumanthiran argued in court that the curfew imposed island wide to keep people at home had been illegally imposed.

<https://www.colombotelegraph.com/index.php/sumanthiran-argues-curfew-illegal-gets->

* Final year, Sri Lanka Law College

[ramanayake-released-on-bail/](#) cited on 2020-05-09). So state must act in a proper manner regarding this.

But in other hand if state impose strict curfew, should this rigorous lock-down have continued longer? It is a matter of great concern that while the relaxations to the lock-down flow, there is an alarming continued spurt in the number of new COVID-19 cases across the country. Should the government has acted more cautiously and guardedly to contain the virus?

Batticaloa is in the Green Zone having officially to date not a single COVID-19 death. But there can be no room for complacency as we are fighting an unknown vicious enemy that has devastated the entire mankind across the globe. The Government should take scientific and medical advice and study global trends and actions, not just pander to the whims of big business and rush into ill-judged decisions. Perhaps they could use a simple natural example of a watermelon that sums up our current situation. A watermelon has a green zone on the outside but once cut open it readily displays a red zone.

In Goa it's now all wide open with even the Mining trucks zooming through the borders and the State being now curfew less while that Section 144 is superfluous. Except for the Casinos, Matka and Bullfights it's almost business as usual and once all this commences too, the Drug and flesh trade will also kick in. The lock down was implemented without a well thought out plan on its implications and the relaxation of the lockdown has even less of a plan. (<https://www.livemint.com/news/india/>

[after-go-a-two-more-states-become-coronavirus-free-11587699238229.html](#) cited on 2020-05-10)

Even in Sri Lanka Over the last few weeks this unprecedented lock-down caused a lot of hardship and inconvenience to all which the brave people endured in the bigger battle against the raging virus. Let us only hope that all this effort does not go in vain while the looming global pandemic shows no signs of tapering down. There is even warning of a possible second wave of the pandemic occurring if the virus restrictions are lifted too soon. Government has an obligation and duty to protect its people above all else. Yes, the economy is important, but peoples' lives matter more.

Another problem is Protection of women from domestic violence during lockdown. In this case Delhi HC directs central, Delhi government to convene High level meeting. Delhi High Court has directed the Central Government, Delhi Government, National Commission for Women, Delhi Commission for Women, and other concerned authorities to convene a meeting at the highest level to look into the issue of protection of women from domestic violence during the lockdown period. The Division Bench of Justice J R Midha and Justice Jyoti Singh has also directed the said authorities to deliberate on what additional measures can be undertaken in order to curb the instances of domestic violence as well as towards protection of the victims.

The present order has come in a plea seeking enforcement of the provisions of Protection of Women From Domestic Violence Act, 2005, in order to ensure that women who are

victims of domestic violence are getting adequate assistance and are not further victimised due to the lockdown. Appearing for the Central Government, ASG Maninder Acharya informed the court that the Ministry of Women and Child Development, Government of India, has issued an Office Order dated 25.03.2020 taking cognizance of the spike in domestic violence cases on account of lockdown and has noticed in the Order that a quick response mechanism is required due to special circumstances that are prevailing. She further submitted that the Ministry has issued certain directions to the concerned District Collectors/District Magistrates to make suitable duty roster for the concerned officers so that they are able to provide essential services to the affected victims of domestic violence. These District Collectors/District Magistrates, she submitted, have also been directed to undertake appropriate measures to provide transport as well as protective gears and other logistic support to the helpline personnel, enabling them to render help and take requisite measures in case calls are received from the victims.

On the other hand, counsels for the Petitioner argued that certain more effective measures need to be put in place, as it is a matter of record and statistics that the cases of domestic violence are on a rise, on account of the women being confined to their homes. In light of these submissions, the court has directed all the authorities to convene a meeting at the highest level to discuss the concerns raised by the Petitioner and take a decision within 3 days. This decision, and fresh steps taken to protect women from domestic abuse, shall be implemented

immediately thereafter. In Sri Lanka there are lot of NGO's care regarding this matter. But government must intervene to solved out this problem in a proper manner. Because state not only has the governing responsibility but also it has protection of the citizens. Sri Lanka can take a big example from this. So government must take proper mechanisms to mitigate this issue

In other hand people's day to day life activities and maintenance of their family affect because of this pandemic. We can see this under two subtopics as for normal civilians and medical workers and forces safety and fulfil their essential needs. There are lot of cases decided in India regarding this matter. Let's see with some decided cases. (<https://www.barandbench.com/news/litigation> cited on 2020-05-10)

Mustafa Mh v. Union of India [Supreme Court] In this case About 500 Indian citizens from Ladakh, who had gone to Qom, Iran on a pilgrimage, are presently stranded there. About 250 persons who had also proceeded on a pilgrimage to Qom have been brought back to India. Several of the existing batch of 500 persons may have tested positive for Covid-19. Many of them have no funds available for their maintenance. Hence, urgent humanitarian assistance is required to be provided to these persons by the Government of India.

Adityajit Singh Chadha v. Union of India [Punjab & Haryana High Court], here said that Maintaining social distance is a sine qua non to control the disease. The Administration may also solicit opinion of the specialists of infectious/communicable diseases, while taking a decision.

Accordingly, the petition is disposed of with an observation that the Administration may lay down the parameters of social distancing at the time of distribution of essential items and also to monitor and regulate the same by taking stringent actions against the violators.

Another issue when arrest a person he or she may has affected by covid-19. In chance he can spread while in custody to others. So in *Suo Motu v. State [Gujarat High Court]* case, In case any arrest is made during this period and the accused is lodged in a particular jail without ascertaining whether such accused being taken into custody is clean or is a suspect or infected with the Corona Virus, lodging him into jail where already hundreds and thousands of under trial or convicts are lodged, it would be an imminent peril to all the inmates of the particular jail where any new entry suspected or infected of the Corona Virus is introduced. It may result into disastrous situation where large number of inmates inside the jail may be infected thus defeating the social distancing and the extraordinary measures being taken for control and check of the Corona Virus. Therefore, it would be appropriate to direct the Department of Home, Government of Gujarat to consider this aspect and issue necessary circular / instructions to all the Superintendents of Police / Commissioners of Police throughout the State to ensure that before any accused is arrested and sent to jail, it is confirmed that he is not a suspect or infected with Corona Virus. It is only after such confirmation that an accused be lodged in a particular jail, otherwise the same be avoided for the period of crisis. Even in Sri Lanka there are lot of Navy personal affected because of such kind

of similar scenario. So government must give proper protection and instructions to them.

Other than above those essentials must be provided to medical workers. We can see them by below two cases

Sanicchar Oraonv. State [Jharkhand High Court] The RIMS, Ranchi shall provide N-95 masks to all the doctors and para-medical staff across the departments forthwith and to make appropriate arrangement including fully equipped separate (isolation) ward for treatment of the patients being admitted there with suspected case of Coronavirus. All preventive measures must be taken by the RIMS Administration so that if at all any patient is found positive of Coronavirus infection, the same should not spread to any other person.

Court On Its Own Motion v. Nemo [Jammu and Kashmir High Court] Given the nature of the infection, it is essential to not only anticipate the need for identifying the persons with COVID 19 infections/persons who have been exposed to infection/persons who may be possible carriers of the virus but also to ensure appropriate and adequately equipped isolation and quarantine facilities, as well as make provisions for medication; equipment necessary for treatment; masks for the public and separation kits for medical experts and health workers.

Another issue is media reporting. The media circus must be regulating by the government. Better late than never. It is heartening to see all the authorities including the Ministry of Defense calling on the media to regulate themselves when reporting on patients who have contracted Covid-19. We have as a

country suffered the scourge of the pandemic for over a month, and due to the thankless efforts by the front line workers: Our medical staff, nurses, attendants, cleaners and our forces we have been able to contain it. However, during the crisis we witnessed how the media hounded race, religion and the identity of patients creating hate and animosity against one group by the other. It is indeed better late than never that these regulations against the identity of patients are put forth. We need to respect the privacy of each and every human being infected by this disease and that has been our call throughout this time. The disease does not know race, religion, gender or identity of a human being. We need to fight it as one.

Unemployment and labor related issues are another vast issue. Unemployment is rising in China. One day in Guangzhou, more than 500 workers who were laid off by local factories staged the demonstration. The video circulated on Chinese social media immediately removed by the Chinese government. And my good friend who is a local communist party key official told me that his factories are closing down from tomorrow. His factory got around 450 workers, and they will lose their jobs without any compensation or unemployment benefits. (https://www.bbc.com/news/world/asia/china_cited_on_2020-05-08). The life is getting harder for ordinary people in China with the drop of demands from the US and western countries, and plush withdrawal of Japanese companies from China. Some American companies will move out of China by August. All this development may trigger popular resentment toward the China that facilitated the corona virus. But the regime

would resort to ultra nationalistic rhetoric to distract the anger from the regime. Some communists' think that this is the great time for the China to invade Taiwan. The life is getting harder for ordinary people also wants to win American leftists and liberals in their fight against the Trump administration. We will see very strange developments in coming days and months.

Even in our country the life is getting harder for ordinary people because of unemployment and loss of their jobs. When it comes to the context of employment employer – employee relationship matters. It defined by the contract of employment. There is an impact of pandemic in employment. So here both parties affect through this Covid-19. As we all know our contract of employment's law is governing by RDL. In RDL there is nothing called frustration but there is supervening impossibility. Here one party need to give notice to other party. If he or she is an employer, employer needs to give prior notice. Likewise, there are several problems there. Normally public sector employees are not going affect that much. But the private sector employees will suffer. It depends on the industry. For an example Hotel industry and tourism industry will get at least one year to get back to normal routine. So here some kind of state intervention is important. As Sri Lanka is a welfare state, it must intervene regarding this matter. Depending on the nature of the industry decision must take. So state can consider what are the frustrations, what are the circumstances and so on. There can be temporary suspension or payment of compensation. By considering the both sides just and equitable decision must be taken.