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Constitutional Safeguards to the Right to Life During the Times of the Pandemic

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Abstract: Amidst the ongoing COVID Pandemic, the entire world has seen sufferings, loss of life, denial to adequate healthcare and medical facilities, the infringement to human dignity and also a shortage of oxygen and hospital beds in major hospitals. The Supreme Court of India has stepped in to provide *ex gratia* compensation to all the victims of the COVID pandemic, especially noting that the loss of life cannot be justified on the grounds that the reason of death on the individual's certificate makes no mention of COVID¹. The judgment further goes on to point that COVID patients dying by suicide shall also be included under the scheme of compensation.

The right to live with dignity is a basic human right², which needs to be respected by the State at all times, making concrete efforts towards realising that this right shall be sacrosanct. The Universal Declaration on Human Rights also recognizes the right to a standard of living with adequate standards of healthcare³. The human rights that are to be respected by the States, especially during an unprecedented health emergency has been enumerated as being the inviolable and revered.

The States should make an extra effort to ensure that the rights of all individuals are catered for, and no distinction is made on the basis of nationality, sex, caste, creed, and/or religion of the individual.

¹ Gaurav Kumar Bansal vs Union of India, LL 2021 SC 536

² Maneka Gandhi vs Union of India, 1978 AIR 597

In the above case, the Supreme Court has added a new dimension to the meaning and interpretation of Article 21 of the Constitution. The Court held that the Right to Life does not merely include the right to physical living but includes within its ambit the right to live with human dignity.

³ Article 25 UDHR

1. The Imminent Challenge

The Covid-19 Pandemic, also called as the Coronavirus Pandemic, is a viral disease caused by “severe acute respiratory syndrome, coronavirus 2”, also known as SARS CoV 2. The outbreak of the Covid-19 was declared by the World Health Organisation as an International Public Emergency in January 2020, and subsequently as a pandemic in March 2020.

It was not just India, but even the most advanced nations like the United States of America, Russia, Italy, and Brazil have suffered from this outbreak. The smaller, less developed, developing nations, particularly the African and East-Asian nations, who lack healthcare and health infrastructure, were the highest sufferers, and are still suffering till date from the virus.

Table 1 shows the impact of the COVID-19 pandemic on the nations in different parts of the world.

Table 1: Reported Coronavirus Cases (10 extremely affected countries of the World).⁴

Countries by Rank	Total registered cases	Deaths Toll	Total recovered	Critical patients	Share of deaths in total registered cases	Share of recovered patients in total registered cases	Difference between total recovered patients and total death cases
USA	311,357	8,452	14,825	8,206	2.714569	4.761415	2.046847
Spain	126,168	11,947	34,219	6,532	9.469121	27.12177	17.65265
Italy	126,632	15,362	20,996	3,994	12.13121	16.58033	4.449112
Germany	96,092	1,444	26,400	3,936	1.502727	27.47367	25.97094
France	89,953	7,560	15,438	6,838	8.404389	17.1623	8.757907
China	81,669	3,329	76,964	295	4.07621	94.23894	90.16273
Iran	55,743	3,452	19,736	4,103	6.192706	35.40534	29.21264

⁴ Anser MK, Yousaf Z, Khan MA, et al. Does communicable diseases (including COVID-19) may increase global poverty risk? A cloud on the horizon. Environ Res. 2020;187:109668.

Countries by Rank	Total registered cases	Deaths Toll	Total recovered	Critical patients	Share of deaths in total registered cases	Share of recovered patients in total registered cases	Difference between total recovered patients and total death cases
UK	41,903	4,313	135	4,103	10.29282	0.322173	-9.97065
Turkey	23,934	501	786	1,311	2.093256	3.284031	1.190775
Switzerland	20,505	666	6,415	391	3.247988	31.28505	28.03706
World	1,201,964	64,727	246,638	42,290	5.385103	20.51958	15.13448

India sees a mutation of the virus, and emerging strains, a shortage of the supply of vaccines, shortage of oxygen and hospital beds in major hospitals, in major parts of the country, along with the failure of administrative machinery and the rise of the higher judiciary.

This challenge can be overcome by a decisive administrative framework, adherence to the laws, transparency in dealing with the issue at hand, and respecting the rights of every citizen by ensuring effective setup of regulatory guidelines, agency support, and ensuring effective implementation of the guidelines and regulations.

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2. Health as Safeguarded by the Constitution of India

“Health is Wealth”. This quote highlights the importance of good health and explains why health is considered sacrosanct. The health of an individual is a sacrosanct, revered, and inviolable aspect of his well-being. Health is a plethora of concepts. It is an umbrella definition encompassing the physical, mental, and even the social and economic well-being of an individual.

The World Health Organization (WHO) has defined health as, “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”⁵. Health includes the opportunity to enjoy the highest standards of physical, mental, and social

⁵ World Health Organisation, <https://www.who.int/about/who-we-are/constitution>; (last visited on 24.04.2021)

well-being, and has been recognised by the WHO as being one of the fundamental rights of every human being without any distinction and differentiation as to race, caste, creed, religion, gender, etc.

The WHO also recognises the fact that attainment of good health and well-being should be the common goal of all nations, and mutual cooperation and understanding between all nations is essential for recognising peace, security, and harmony by establishing health as being an inviolable fundamental right of every individual.

The Right to Health has been included in the Indian Constitution with the intent that these rights are inviolable and cannot be manipulated by the government of the day under any circumstances. The right is justiciable, meaning, the Courts can uphold the rights when infringed by administrative actions.

The idea of fundamental rights in India emerges from the different cultural, social, religious, and linguistic segments and groups of individuals residing in the country. This fundamental rights pave way to recognise the ideals of the Constitution of India being a sovereign, secular, and democratic republic, and to secure to all its citizens justice, social, economic, and political; liberty of thought, expression, belief, faith, and worship; equality of status and opportunity set forth in the Preamble.

Under the modern concept of a “welfare state”, the concept of fundamental rights plays an important role in relation to the increased administrative purposes and the Indian Administrative Law. Laws conferring the power on these administrative bodies are scrutinised against the stone of fundamental rights⁶.

According to Justice. Bhagwati, Article 21 “embodies a Constitutional value of supreme importance in a democratic society”⁷. Justice. V.R Krishna Iyer has termed Article 21 as “the procedural *magna carta* protective of life and personal liberty”⁸. Article 21 of the Indian Constitution is rightly said to be the lifeline of the Constitution. Although a two-line Article, it encompasses a variety of implied rights that are the gift of judicial interpretation by the judiciary.

Article 21 lays states that no person shall be deprived of his life or personal liberty except according to the “procedure established by the law”. Article 21 has been very proactively used

6 NB Khare v Delhi, AIR 1950 SC 211

7 Francis Carolie v Union Territory of Delhi, AIR 1981 SC 746

8 PSR Sadhanantham v Arunachalam, AIR 1980 SC 856

by the Supreme Court to help protect the “quality of life” of an individual. “Life” does not only mean “mere animal existence” but refers to living with “human dignity”.

Supreme Court has time and again held that the right to health is an integral part of right to life enshrined under Article 21. In the case of *Parmanand Katara v UOI*⁹, the Supreme Court has held that it is the duty of every doctor, medical practitioner, as well as the government to ensure that the life of every individual is preserved whether the concerned person is a criminal or not. Article 21 casts a duty on the State to protect the life and health of every individual.

In *Vincent v UOI*¹⁰, the Court opined that “a healthy body is the very foundation of all human activities”. The Court also held that Article 21 needs to be read in congruence with Article 47, a Directive Principle, which lays down stress on the importance of improving the public health and prohibition of drugs injurious to health as of the primary duties of the State.

In the light of the current wave of COVID-19 pandemic, various High Courts have placed heavy reliance on such precedents and taken cognizance of the executive and administrative negligence throughout the country. The Nagpur Bench of the Bombay High Court was seen acting proactively to direct the immediate restoration of oxygen supply to Maharashtra from neighbouring States. The Delhi High Court has come down heavily upon the Central as well as the State government and has ordered them to “beg, borrow, or steal” oxygen and ensure that all those in immediate need of oxygen should be catered to.

The Supreme Court has taken *suo moto* cognizance on 22nd April, 2021 in *Re: Distribution of Essential Supplies and Services during the Pandemic*¹¹ and held that, “prima facie, we are inclined to take the view that the distribution of these services and supplies must be done in an even-handed manner according to the advice of the health authorities”. The Court also ordered the government to set-up a national plan for the implementation of their orders. This action on part of the Supreme Court comes handy under Article 139 of the Constitution, which empowers the Court to transfer cases to itself from the High Courts if they involve the same question of law.

9 *Parmanand Katara v UOI*, AIR 1989 SC 2039; (1989) 4 SCC 248

10 *Vincent v UOI*, AIR 1987 SC 990; (1987) 2 SCC 165

11 *Re: Distribution of Essential Supplies and Services During the Pandemic*, *Suo Moto Writ Petition (C)* No.3/2021

3. Rights of Patients in the Light of COVID-19

The Ministry of Health and Family Welfare issued the Charter of Patients Right in the year 2018 which laid down 17 basic rights of the patients. This Charter includes the right to information, right to records and reports, right to emergency medical care, right to confidentiality, human dignity, and privacy, right to non-discrimination, right to safety and quality care, right to choose the source of medication, right to informed consent, etc.

The National Human Rights Commission has noted that the denial to adequate and proper healthcare facility is in violation of human rights, and has thus issued advisories and recommendations on the access to free healthcare for COVID-19 patients in government hospitals, access to free testing for COVID-19, implementation of the patients' rights charter, transparency in rates and availability of medical information to the patients, no discrimination by the healthcare facility in providing treatment to the patients, *etc.*

Some significant observations with regards to the patients right to healthcare and treatment can be summarised as follows¹²:

- i. Access to free healthcare for COVID-19 patients in public healthcare facilities.
- ii. Access to free COVID-19 testing facilities.
- iii. Availability of medical services and transparency in the rates for medical services.
- iv. A formal grievance redressal mechanism to be set up by the government to ensure timely redressal of complaints regarding the COVID-19 medical assistance and treatment.
- v. The healthcare facilities should ensure the dignity of the deceased by handing the deceased person to the relatives or by providing dignified rites to the deceased.
- vi. The access to ambulance is also treated as being the rights of the patients to access healthcare. The right to get access to ambulances is considered to be a pre-requisite to the access of healthcare facilities. Article 41 of the Indian Constitution imposes a duty on the State to aid those who are sick and disabled.
- vii. The government must ensure that the patients are adequately provided with the required medicines, drugs, as well as quality health assurance.

¹² See, Protection of rights of patients during the COVID-19 Pandemic, Oxfam India's submission to National Human Rights Commission's (NHRC) Committee of experts on "Impact of COVID-19 pandemic on human rights and future response".

- viii. In addition, the WHO and the NHRC also recognise the role of the government in fixing the rate and regulating the rate at private hospitals. There must be complete transparency in the rates and no additional cost shall be charged by the hospital.
- ix. Every patient recovering of the COVID-19 virus in a quarantine centre shall be provided with clean and hygienic conditions of living, clean drinking water, nutritious meals, healthy sanitary conditions, separate bathroom, and sanitary napkins for the women patients, *etc.*
- x. The patients also have the right to secure support from medical and healthcare institutions while in home isolation, as well as recourse to mental health assistance and counselling.

4. Conclusion

The right to life is the basic and natural right. The State should exist to protect the right to life of every individual. The plight of citizens today proves why right to life is such an essential right. Right to health and emergency aid should be always paramount¹³. Right to oxygen, clean air, and safe drinking water should be catered to by the administrative, executive, as well as the judiciary. Right to life is an inviolable right even during the times of public health emergencies. The executives and the administrators should have foreseen the upcoming circumstances and should have prepared themselves to deal with the crisis. A makeshift arrangement should have been planned and provided to all.

It is never an easy task for the State to pre-plan any natural calamity, especially one dealing with the health of every individual. However, given the vast resources at the disposal of the State, it shall not be prudent of the State to justify the deaths and sufferings of numerous individuals for want of adequate healthcare resources and life-saving drugs and medicines.

The working of the “administrative bodies”, along the line of what we call as “delegated legislation”, should be legal and justifiable. Discriminatory, arbitrary, unreasonable, and haphazard actions of these bodies is not expected and furthermore, it is not appreciated. It is undeniable fact that unprecedented times like the COVID-19 pandemic calls for strict and stern executive actions, but all actions taken under such times should be measured, proportionate

13 *Paschim Banga Khet Mazdoorsamity v State of West Bengal & Anr*, 1996 SCC (4) 37, JT 1996 (6) 43

and within the framework and in tune with the Constitutional mandate of the country. The cost of inaction or inadequate action on part of such executive and administrative bodies may be severe and expensive.



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