



BREACH OF FUNDAMENTAL RIGHTS DURING COVID -19 ERA WITH SPECIAL REFERENCE TO ARTICLE 21

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Abstract:

Right to life is very important for the development of human life. Without them the progress of human civilization will not be possible. In Indian Constitution Fundamental Rights are enshrined in Article 21. These Rights include Right to Life. Right to Life include Right to Health and Right to Food as well. But these rights are hampered during Covid-19 pandemic in a big way in the country specially during second wave of pandemic. It has been great challenge for the central and state governments to contain the virus. So, the citizens can enjoy unfettered Fundamental Rights. The present paper tries to find out the impact of Covid-19 on Article 21(right to life) enshrined in Constitution of India.

Index Terms - Constitutional Guarantee, Fundamental Rights, Article-21, Covid-193.

1.1 INTRODUCTION

We are currently facing a challenge which is unprecedented in the history of the country. The pandemic has taken away countless precious lives and has left our country to breathe. Once the pandemic ends, it will leave a country with deep disparity. Furthermore, the pandemic has raised existential questions about the jurisprudence and institutional resilience of our rights. Addressing these core issues is imperative as we rebuild our nation from the devastating impact of the virus.

Pandemic 2019 is a public health emergency more of this it is economic and social crises and call for Human rights which has a widespread impact on people's livelihoods. Human rights are people-centric and they are shaped to ensure human dignity and health care for all during COVID-19 emergency.

1.1.1 History of Rights

The first document in history that bestowed rights is Magna Carta (1215) signed between King and Nobles in Britain. The days of natural rights theory evolved in sixteenth and seventeenth century in Europe. This era began with Hobbes and Locks. French philosophers Rousseau and Voltaire declared that liberty, equality and fraternity were rights of citizens. In seventeenth and eighteenth century several theorists argued that Rights are inherent and are gifted to us by Nature and God Natural Rights theory rejected hierarchical and authoritarian ethos of medieval times and believed that Rights to Liberty, Equality and Property are gift of nature and God.

1.1.2 Fundamental Rights in India

The Fundamental Rights in Indian Constitution were inspired by The United States's Bill of Rights. Fundamental rights are written in Part III of India's constitution from article no 12 to article no 32 they explain the Magna Carta of India. Fundamental Rights are constitutional guaranteed to all the citizen of India without any race and cast discrimination. Originally the Constitution provides seven Fundamental Rights which are exhibit in graphic figure 1.



Figure 1: Fundamental Rights for all the citizen of India

1.1.3 COVID-19

It is a disease caused by Corona virus called SARS COV2. It was first identified in Wuhan, China. It is highly infectious virus. From Wuhan, China it spread in whole world. India too witnessed the spread of Covid 19. By now, India has faced first and second wave of infection and a very large population have been infected by now. There is also a threat of third wave which can be more severe than the previous ones. India with a population of about 1.34 billion has difficulty in containing the spread of the virus which causes acute respiratory syndrome. To check the spread of virus Center and State Governments have taken various measures like making mask mandatory and making people aware of keeping safe distance, besides lockdown and creating containment zones.

1.2 REVIEW OF RELATED LITERATURE

The present study is unique in nature therefore no any systematic research found in this field only the statements of court judges and UN reports are presented here--*Zarifi Sam (2021)* stated that Indian federal and state governments failed to prepare for a second wave of the COVID-19 pandemic, exacerbating the catastrophic impact of the pandemic and the avoidable tragedy of over 1,500 to 3,000 deaths per day further extended by *Ganguly Meenakshi (2021)* observed that the Indian government should focus its efforts on responding only to those in need of help and those who die for absence of medical care. According to *Mishra A.K. (2021)* the right to life should prevail over the rights of patent holders to meet shortage of Covid-19 vaccines and lifesaving drugs. *United Nations (2020)* analyses that human rights are important in shaping the covid -19 responses on public emergency and largely affected people's lives and their livelihoods.

1.3 SIGNIFICANCE OF THE STUDY

The outbreak of COVID-19 is the first incidence in the history of India where virus infection is challenging Constitutional rights. The pandemic spreading like forest fire fails all state and central government efforts and flatten the curve of economy. It has significant impact on variety of fundamental rights of the people. Fundamental Rights, Part III, Article 21 (right to life and liberty) is a right guaranteed by India Constitution, which cannot be retracted. Every day the country faces a new challenge in the executive and the judiciary part. After analyzing the review of related literature, the present study is an attempt to answer how Covid-19 is questioning the constitutional fabric of India.

1.4 OBJECTIVES OF THE STUDY

- To study the significance of fundamental rights with special reference to article -21(Right to life).
- To study the impact of COVID-19 on article 21 (Right to life).
- To identify tradeoff between Article 21 (Right to life) and COVID -19.
- To suggest an effective strategy to safeguard Article 21 (Right to life) during COVID-19 pandemic.

1.5 STATUS OF COVID -19 IN INDIA

India, which has the second largest population in the world, is severely affected by the COVID-19 disease. The rules of social distancing and lockdown were implemented in India, which had additional impact on the economy, human life and environment. In the second wave of COVID-19, India has registered over 200,000 cases per day and on April 27, it reported 360,960 - the highest globally - In the devastating second wave, the official death toll exceeded 1,500 - 3,000. Several hospitals have reportedly turned patients back due to space constraints and some hospitals have reportedly asked those in need to sign forms acknowledging the risk of death due to collapse of oxygen supply. The failures of the government have prompted people to take recourse to the courts.

1.6 RIGHT TO HEALTHCARE AS A CONSTITUTIONAL GUARANTEE

The major casualty of the pandemic is our healthcare infrastructure. The pandemic has brought to mind the preexisting systemic issues like lack of physical infrastructure and human resources. While we are recording an upward trend in COVID mortality and many of our hospitals are running dangerously low on oxygen, it leaves open the constitutional question: do we really enjoy the right to life?

The right to live is the right of someone to strive for or get what he needs in order to live, provided that keeping it does not infringe on the rights of other beings. In a democratic county, every person has the right to have good food, good health, good education and employment. All these rights are assured by eighteen words written in the constitution of India. Article 21 says – “*No person can be deprived of his life and his personal liberty except according to the procedure backed by constitutional law.*”

This constitution guarantee grants us the right to live i.e no one can be destroyed and injured us and we can enjoy our life with liberty and dignity. This means that the life and personal liberty of a person can be disputed only if that person has committed an offence.

The National Human Rights Commission (NHRC) has issued an advisory on the right to health in view of the second wave of the Covid19 pandemic. The key recommendation of the commission is that it is the responsibility of a public hospital to transfer a Covid-19 patient to an appropriate hospital if it does not have an adequate number of beds for the treatment. The main intention of the commission behind issuing such advisory is that no individual shall suffer due to his inefficiency especially financial incapability in these brutal times and thus it becomes duty of state to ensure that every individual gets adequate treatment despite of having different social and financial conditions as it is the constitution that states that every citizen of India has Right to health as a fundamental right.

Right to healthcare as a constitutional guarantee it came in the forefront during the wake of Covid 19 and some related case - Table 1

Table 1: Court Judgement on Violation of Article 21 (Right to Life and Health)

Register Cases	Court judgment on violation of Article 21
<i>Union of India V/S Pt. Parmanand Katara v/s (1989)</i>	It was proved that the right to health is consider as fundamental right. Thus, it can be implied that the right to health can be enforced by a court of law and the state is bound to protect it.
<i>State of W.B. v/s Paschim Bangal Khet Mazdoor Samity (1996) 4 SCC 37</i>	The Supreme Court relied on the (supra) judgment of Parmanand Katara and held that the primary duty of the government is to secure people's welfare and the of the state to provide adequate medical facilities to the people. If government fail in its part, they have to pay a compensation amount to family. In this case the government pay a compensation of Rs. 25,000/- to the patient.
<i>Union of India v/s D.K. Basu v/s (1997) 1 SCC 416</i>	While dealing with the breach of Article 21 to avoid violence, the Supreme Court has a strong belief that monetary compensation is a suitable and effective remedy.
<i>Pratibha Shinde and Ors. V/S State of Maharashtra (2021)</i>	In case of death of an old lady suffering from COVID-19 due to negligence of the hospital, the Bombay High Court which failed to provide her timely and proper treatment, the state is responsible for providing a compensation of 5 lakhs to the family. Pratibha Shinde violated her fundamental right i.e. right to life.
<i>Suo- moto petition 2021</i>	The Allahabad High Court, while hearing a Suo moto petition, held it is concluded that hoarding of oxygen cylinder and non-supply of oxygen to hospitals is a criminal offence and nothing short of genocide by those tasked with the continuous procurement of liquid medical oxygen and ensuring the supply chain.
<i>Union of India & Ors. v/s Shivani Kaushik CWJC No. 353/2021</i>	The Patna High Court documented that any delay on the part of the State in providing health care to the citizens during the current COVID-19 situation, would be destabilizing to the right to life under Article 21 of the Constitution.

Source: Self Structure

1.7 EFFECTIVE STRATEGY TO SAFEGUARD ARTICLE 21 (RIGHT TO LIFE) DURING COVID-19 PANDEMIC

- Use the maximum available resources nationally and internationally to ensure that the quality of health care will be available and accessible for all without any discrimination and assure that the right to life is preserves during the pandemic.
- Ensuring livelihood security and social assistance to vulnerable people with adequate food, water and housing.
- Proper identification of local recovery channels to find out the judicious impact of the virus on different groups including migrates and refugees who live in venerable conditions without access to food, clean drinking water and housing.
- Motivate political and religious leaders, actors and social workers to stand up and take strategic actions against social issues resulting from pandemics and explore new dimensions of inclusivity.
- Ensure freedom of expression, including the freedom of the press, so that information can be disseminated without repression.
- Ensure that protections are mapped with new technologies which helpful in surveillance of COVID-19 accuracy in data increases.
- Reinforce international collaboration and take measures towards the provision of universal health care and developing a vaccine for the COVID treatment.
- Take lessons from the present pandemic and refocus our actions towards eliminating poverty and inequalities which are challenging the human rights during COVID -19 and try to create a sustainable world for the next generation.

1.8 CONCLUSION

In nutshell, it is the paramount responsibility of the government during Covid -19 to ensure proper medical care of its citizens, snubbing it for any reason would be a breach of Article 21, in that case, the patient family is entitled to receive compensation money for violation of rights. Although we all know that no amount of compensation can surpass the mental shock, pain suffered by the victim family. Monetary compensation is only a momentary help but it cannot fill the gap of a person in the family. The amount of monetary compensation will depend on the individual facts and circumstances of a particular case.

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