MANKIND'S FIGHT AGAINST CORONA AND THE GOVERNMENT

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ABSTRACT:

The COVID-19 outbreak in India is causing a churning in India's public health regulations. The effectiveness of the 160-year-old Indian Penal Code, 1860, and the 123-year-old Epidemic Diseases Act, 1897, in suppressing the horrible COVID-19 pandemic proved short-lived euphoria. The nationwide lockdowns enacted under Sections 6, 10, 38, and 72 of the Disaster Management Act of 2005 aided much in coping with COVID-19's tremendous obstacles. . The implementation of these rules exposed public health professionals' and the delivery system's safety and security to severe risk. As a result, India's President signed the Epidemic Diseases (Amendment) Ordinance, 2020, making "acts of violence" cognizable and non-bailable offenses with a significant deterrent value. Through this article, we would do a comparative study of the 2021 and 2020 pandemic situation in India, factors responsible for such growth in the 2nd phase of the pandemic, as well as the potential health system, social, political, and economic consequences.

INTRODUCTION

The Covid-19 epidemic triggered an exceptional scenario that the globe is currently dealing with. India, being a densely populated country, had to prepare for the massive health disaster that Covid-19 has sparked. As soon as the disease began to spread across the country in March, the Indian government realized that dealing with such a scenario would be impossible under normal legal and administrative rules[1].

WHO through its latest report on 2nd June 2021, i.e., 70th report has reported that India has the 2nd highest number of daily cases in the world and stands 4th for the highest number of death rates[2]. Testing capacity has scaled up and it is reported that around 1 million RT-PCR tests are being conducted per day nationwide, 50% at private labs. There are thousands of people who couldn't get tested because the testing kits are insufficient and of which many would eventually die because hospitals are not admitting without the COVID report. Fundamental rights and DPSP have been violated: Article 21: includes dying with dignity albeit people are dying and there is not enough space for the cremation of the bodies. Article 38: This article demands social welfare measures, however, the Government has failed to secure social order as we have witnessed a major surge during 'Kumbh Mela' and election rallies in West Bengal. It is not enough to say that the Government has failed. We are witnessing crime against humanity for which Uttar Pradesh is a prime example. Beds are not available in the hospitals,

[1] See https://www.orfonline.org/research/india-governmental-accountability-during-the-pandemic/ (Accessed on 8th June, 2021 at 11:04 A.M)

[2] See https://who.int (Accessed on 8th June, 2021 at 2:26 P.M)

doctors, and nurses are at a breaking point and there are many hospitals where there is no staff and patients are dying in the corridor, roads, and their homes. The right to speech has been taken away by the UP government.

LEGAL FRAMEWORK IN HEALTH EMERGENCIES

Although the Right to Health is not explicitly mentioned in the Constitution of India, as is the Right to Education, various judgments have included the Right to Health as part of Article 21 of the Indian Constitution, including Consumer Education and Resource Centre v Union of India[3], State of Punjab and others v Mohinder Singh Chawala (1997), and Paschim Bangal Khet Mazdoor Samity v State of West Bengal[4].

Since public health legislation such as the National Health Bill of 2009 appears to be a long way off, the Ministry of Health and Family Welfare imagined violence against healthcare professionals and property damage to clinical establishments when dealing with public health emergencies and health delivery. Acts of violence against healthcare service staff, including doctors, nurses, and paramedical workers, are prohibited under the Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019. Damage to hospitals, clinics, and property as defined by the Clinical Establishment and (Registration and Regulation) Act, 2010 is also protected[5]. It suggested assault on doctors and healthcare professionals a non-bailable offense punishable by up to ten years in jail, but it did not become law. The medical and paramedical forces faced abuse and violence from the public during COVID-19

[3] 1995 AIR 922, 1995 SCC (3) 42

[4] 1996 SCC(4) 37

[5] See https://www.prsindia.org/theprsblog/explaining-draftbill-violence-against-healthcare-professionals-andclinical (Accessed on 8th June, 2021 at 2:56 P.M.)

induced lockdowns I, II, and III, in flagrant violation of sections 188, 269, 270, 271 of the Indian Penal Code, 1860, and Section 4 of the Epidemic Diseases Act, 1897. As a result, the President of India promulgated the Epidemic Diseases (Amendment) Ordinance, 2020[6] under Article 123 of the Constitution of India, 1950. Apart from the prohibition of travel and acts of violence (Section 2B), the Ordinance has expanded the authority of the central government to regulate all modes of transportation. It has also established definitional clauses relating to the act of violence.

The Ordinance defines an "act of violence" as a cognizable and non-bailable offense punishable by imprisonment of three months to seven years and a fine of 50,000 to five lakhs. The Ordinance also provides monetary compensation to healthcare service professionals for injury and property damage at market value or decided by the Court, in addition to the strict sanctioning system. The investigation and trial will be conducted in a fast-track manner, with the investigation and trial to be finished within 30 days following the filing of the First Information Report and the trial to be finished within one year, with a six-month extension possible[7]. The Epidemic Diseases (Amendment) Ordinance, 2020, contains pari material incorporation of the goals of the Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019, and represents a quantum leap in public health care.

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[6] See https://www.prsindia.org/billtrack/epidemic-diseasesamendment-ordinance-2020 (Accessed on 8th June, 2021 at 3:14 P.M.)

[7] Nomani, M.Z.M., and Sherwani, F. (2020). Security and safety of health care professionals during covid-19 pandemic in the context of epidemic diseases (amendment) ordinance, 2020. International journal on emerging technologies, 11(4): 23-26.

MAJOR REASONS FOR THE RISE OF 2ND WAVE:

The Indian social media has been swamped with SOS please in recent weeks, with hospitals tweeting about depleting oxygen supplies and doctors watching helplessly as patients die of avoidable deaths. The 351000 deaths reported (as of June 6th[8]) are a sad tragedy in and of themselves. However, various reports from across the country corroborate that the official death toll does not tell the whole story. International data also suggests that, given India's population and the spread of disease, many more deaths are likely.

"We kept warning that the pandemic was not over, but no one listened," says Rakesh Mishra, senior principal scientist, and director of the Center for Cellular and Molecular Biology in Hyderabad, who is currently investigating whether a new homegrown variant—B.1.617—is to blame for India's second surge[9]. Mishra claims that after the initial wave, the healthcare system moved on to other medical issues that had gone unnoticed during the first wave, and special COVID-19 facilities were repurposed. The B.1.1.7 variation, initially detected in the United Kingdom, has been blamed for the second wave in India, which has seen an increase in cases in the Punjab state. Another suspect is a local variety known as B.1.617, which has two alarming mutations and was discovered in Maharashtra, the worst-affected state.

Major reasons are:

1. The Kumbh Mela, an annual religious festival, was also allowed to begin with great fanfare on April 1. It was unexpected that the annual holy dip in

[8] See http://www.thehindu.com (accessed on 8th June, 2021 at 6:06 P.M.)

[9] See https://www.nationalgeographic.com/science/article/how-indias-second-wave-became-the-worst-covid-19-surge-in-the-world (accessed on 8th June, 2021 at 8:30 P.M.)

the Ganges, which drew 3.5 million Indian pilgrims to the state of Uttarakhand, turned into a super spreader event—though the full impact won't be known for a few weeks. It increased the number of daily cases in Uttarakhand from 30 to 60 in February to 2,000-2,500 this month. Later in May, it was reported that 99% of Kumbh Mela devotees were covid positive.

2. In October of last year, cinemas, schools, malls, clubs, and restaurants were allowed to operate, wedding guest limits were lifted, and politicians were free to travel across the country for election rallies as four Indian states went to the polls for regional elections.
3. The election in West Bengal, which was elected a new administration, took place from March 27 to April 29, and the state continued to conduct large rallies and crowded electioneering even as everyday cases rose. The state had 6,519 cases as of April 1st. It has registered 12,000 new instances in one of the initial days of the rally, with the total anticipated to reach 20,000 by the end of the week. A different, more virulent variety known as the Bengal strain—a triple mutant—has also been linked to many of the infections in the state.
4. Nonetheless, the people of India are also accountable for this as they flouted all the health guidelines and attended social gatherings without using masks and sanitizers. A survey showed that out of 90% of the people who were aware and participated, only 35% were wearing masks, and out of that 35%, most of them were not wearing them properly for which the prime reason stated was discomfort in breathing.

PERSONAL HEALTH DATA

Personal health data protection is a top concern due to the permeable interface between the right to privacy and the necessity for medical treatment. A patient's

personal health information is input and saved online at the point of care throughout his life, from his first hospital admission to his final laboratory tests.

The entire issue of the state stopping the epidemic by various methods such as these will confront an impediment in the shape of people's privacy, or the problem of privacy will take a backseat during the epidemic to give way to a wider public interest.

The right to privacy was recognized as an inherent aspect of the right to life under Article 21 of the Indian Constitution in Justice K.S. Puttaswamy v. Union of India[10], and was later reaffirmed in Puttaswamy II. However, under the Indian Constitution, the right to privacy is not an absolute basic right like any other fundamental right, and as such, it can be reduced by the state. Even in the Aadhaar case, three factors were established to determine if an Act infringing on any right was valid: first, the activity must be sanctioned by law (lawfulness). Second, the activity must be necessary for the achievement of a certain goal (need). Finally, the behavior (invading privacy) must be reasonable[11].

To pass the proportionality test, any action taken by the Central or State governments that infringe on people's fundamental rights must not be deemed "extreme." What this means is that no existing measures should be considered equally efficient with a smaller degree of intrusion[12]. This is what Puttaswamy refers to as the "necessity stage." Some governments have adopted the policy of using indelible ink to stamp those who have been tested positive or who have been quarantined.

[10] (2017) 10 SCC 1

[11] Writ Petition (Civil) No 494 of 2012.

[12] V.N. Shukla, *Constitution of India* (11th edn, Eastern Book Company 2008)

VIOLATION OF RIGHT TO SPEECH BY UP GOVERNMENT:

In a virtual interaction with some editors, Uttar Pradesh Chief Minister Yogi Adityanath claimed that there is "no shortage of oxygen" in private or government hospitals in the state, as the health infrastructure continues to be overwhelmed and SOS calls flood social media due to the rising cases of COVID-19 in India. He claimed that the real issue was "black-marketeering and hoarding."

While the UP chief minister has asked officials to "seize the property" of those spreading rumors about an oxygen shortage and attempting to "spoil the atmosphere," ground reports from several news organizations, including The Quint, and first-hand accounts from healthcare professionals and activists working for COVID relief paint a very different picture[13].

On the topic of coercive action taken against persons who are pleading for oxygen on social media, Saket Gokhale has filed a complaint with the Allahabad High Court against the state of Uttar Pradesh.

However, Justice DY Chandrachud, while hearing a suo moto case involving COVID-19-related issues, stated that if citizens convey their grievances on social media and the internet, it cannot be stated that the information is incorrect. “Do not stifle citizens' SOS requests for medical help on social media,” the SC warns, threatening states with a contempt action.

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[13] See https://www.thequint.com/coronavirus/yogi-adityanath-says-no-oxygen-shortage-in-uttar-pradesh-ground-reports-differ (Accessed on 9th of June, 2021 at 10:13 A.M.)

The court observed in the case of Santosh Kumar, a 64-year-old patient who was reported "lost" from Meerut District Hospital on April 21 by family, and whose body was disposed of as unidentified by officials. During the hearing on a PIL over the Covid situation in Uttar Pradesh, the court considered the government's submissions on district health facilities, stating that it was inadequate and warning of a third wave. Justices Siddhartha Varma and Ajit Kumar also questioned why the government was not mass-producing vaccinations. The Allahabad High Court said that Uttar Pradesh's "entire medical system" "about smaller cities and villages can only be compared to a famous Hindi adage, Ram Bharose (at God's mercy)[14]."

The death of Covid-19 patients due to a lack of oxygen supply to hospitals is a crime, according to the Allahabad High Court, and is "not less than genocide" by the officials responsible for ensuring the oxygen supply chain is maintained. The comments were made in response to news stories circulating on social media about the death of Covid-19 patients in Lucknow and Meerut regions owing to a shortage of oxygen. A court-ordered investigation into the incidents was also issued[15].

The Uttar Pradesh administration's statements about the trustworthiness of its Covid information system were exposed by the Allahabad High Court, which demonstrated a disparity between the government helpline and portal on the availability of hospital beds. Given the tremendous demand for beds and the logistics of updating the portals, mismatches between government portals'

[14] See https://indianexpress.com/article/india/up-small-city-medical-facilities-allahabad-hc-7319304/ (Accessed on 9th of June, 2021 at 11:06 A.M.)

[15] See https://economictimes.indiatimes.com/news/india/death-of-covid-patients-for-non-supply-of-oxygen-criminal-act-not-less-than-genocide-allahabad-hc/articleshow/82397585.cms?from=mdr (accessed on 9th of June, 2021 at 11:30 A.M.)

statements about bed availability and the situation on the ground are common across the country - from Delhi to Chennai.

The Uttar Pradesh government claims that the portal is updated twice a day, in the morning and late afternoon. Some states, on the other hand, claim that their portals are updated every four, six, or eight hours.

The panel also demanded clarity on claims that Justice V.K. Srivastava, a sitting high court judge who died in Lucknow, did not receive proper medical treatment[16].

CONCLUSION

The government has failed to fulfill its constitutional commitment to creating public health and disaster preparedness laws in epidemic-pandemic COVID-19-like scenarios, according to a critical analysis of Indian public health legislation. It hid behind the Epidemic Diseases Act of 1897, or, at best, the Disaster Management Act of 2005. The International Health Regulations, 2005, which ushered in a host of legal reforms to address biological, chemical, and radio-nuclear risks at the entry, control, and mitigation levels, are also an example of indifference and apathy. The National Health Bill of 2009 and the Health Services Personnel and Clinical Establishments (Prohibition of Violence and Property Damage) Bill of 2019 are both currently pending. As a crisis, COVID-19 provided an opportunity to address long-standing reforms of public health regulations, but it was a huge miss. The Epidemic Diseases (Amendment) Ordinance, 2020, is considered as more of a criminal statute than a civilian

[16] See https://www.telegraphindia.com/india/covid-crisis-allahabad-high-court-dials-helpline-exposes-yogi-claim/cid/1814635 (Accessed on 9th June, 2021 at 12:03 P.M.)

approach to health care and equity, as it is based on 123-year-old colonial legislation.

There is a huge difference between the Government's report and the ground reality especially in the states like Uttar Pradesh or Bihar. There is a huge population who couldn't afford the RT PCR test and eventually die and there is no report for those people. In this second wave, more emphasis is given to politics rather than medical facilities and thousands of people died because of that. The COVID-19 pandemic has raised concerns in India about a variety of issues, including health-care quality, government, and institutional response, and law-and-order concerns. These issues should be addressed via the constitutional and legislative framework. While the Indian government effectively implemented the lockdown and reduced the number of cases, certain MPs and legal experts questioned the lockdown's constitutional legitimacy and the government's response. Even though the EDA and DMA have been adopted by the central government, they are insufficient to address the health emergency effectively due to the disease's dynamic character.