

# **A CRITICAL ANALYSIS OF STATE-IMPOSED HEALTH EMERGENCIES AND VIOLATIONS OF CIVIL LIBERTIES DURING THE CORONAVIRUS PANDEMIC**

*Written by Vikas Kumar*

*Assistant Professor, Campus Law Centre, Faculty of Law, University of Delhi, New Delhi, India*

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*“Emergencies have always been the pretext on which the safeguards of individual liberty have been eroded”<sup>i</sup>*

## **ABSTRACT**

Our future generations will ever remember the year 2020 for the human tragedy caused by the covid-19 pandemic, which was the worst in human history. That year saw the emergence of the coronavirus disease covid-19, which initially appeared in 2019 in the Chinese region of Wuhan and eventually spread around the world. It compelled states around the world to impose history's most devastating health emergency, in which people were forced to live in their homes for years without food or consumables, and all human rights constitutionally guaranteed to them were suspended for years. It also saw the total collapse of the medical system and the collapse of the government machinery. If someone in the family was found to be infected, he was removed away from his family and admitted to isolation wards in hospitals where no relatives were allowed to see the patients. It has also been reported in the press that many patients died in isolation because they were not even visited and cared for by medical staff, and in some cases, patients perished simply due to a lack of vital supplies such as food, water, and medicines. Countless deaths were reported all across the world, and many were seen crying and sinking on their knees after learning that one of their relatives had died as a result of the covid-19 sickness. The author through this article intends to understand the role played by the state in such emergent situations by investigating whether the state reacted as per the law of

the nations or acted in defiance of it and did anything it ever wanted to seize power as an authoritarian.

**Keywords:** Coronavirus Pandemic, Human Rights, Health Emergency, Civil Liberties Violations

## INTRODUCTION

In December 2019, a new type of disease appeared in the Chinese province of Wuhan that had never been observed or identified previously in the history of human diseases, and it spread to the rest of the world by the year 2020<sup>ii</sup>. However, China reported officially it on 31<sup>st</sup> December 2019 to WHO stating that an unknown cause is causing pneumonia in people in Wuhan city Hubei province<sup>iii</sup>. The WHO stated on January 9, 2020, stating that Chinese researchers have confirmed a preliminary determination of the virus as a novel coronavirus detected in a person suffering from pneumonia<sup>iv</sup>. Virologists later identified the virus as a coronavirus and named the disease a covid-19 disease<sup>v</sup>. This virus was eventually discovered to be a member of the Coronavirus family, a virus family that infects both animals and humans. Respiratory issues, chest congestion, fever, cough, and shortness of breath are some of the usual symptoms seen in people infected with this type of coronavirus. In extreme situations, the infection can cause pneumonia, severe acute respiratory syndrome, and, in the worst-case scenario, death. Coronaviruses can cause small illnesses such as the common cold to major illnesses like as MERS (Middle East Respiratory Syndrome), whereas covid-19 can cause more deadly illnesses known as SARS (severe acute respiratory syndrome). Later, this virus engulfed the entire globe<sup>vi</sup>.

To stop the spread of the virus, states initially levied soft restrictions on their citizens' civil liberties, such as weekly lockdowns, which prevented citizens from leaving their homes for a day or two, and instructions not to shake hands and keep a distance of at least two metres, among other things. When soft rules failed to stop the virus's spread, the authorities resorted to harsh measures, enforcing a rigorous lockdown and suspending residents' fundamental rights, such as the right to free movement and the freedom to congregate. In fact, in one of the media reports, it is discovered that confinement at home proved very devastating to children and infants<sup>vii</sup>. The deaths rate among young children and infants has risen because the regular

vaccination procedure stopped which ultimately resulted in the untimely deaths of many infants besides other health issues to these innocents<sup>viii</sup>

Similarly, many countries have reacted to the coronavirus outbreak by disregarding the right to privacy by allowing executive authorities to track residents' locations as well as the use of other techniques like compulsorily installing a covid app on the mobile. The Hindu newspaper has also reported on this issue with the tagline “the government’s technology solutions to fight COVID-19 do not meet minimum legal requirements”<sup>ix</sup> The same was done in India complete lockdown and restrictions to come out from the home to the public places except in case of emergency only. Anyone found violating the states' norms faced harsh consequences in the form of monetary and bodily punishments, including months in jail.

Some states went much further and proclaimed an indefinite lockdown and restriction in their territory like a ban on leaving home, i.e., permanent closure of the public at their homes, and ordered the police to deal with severe punishments if anyone violated the guidelines, and close monitoring was done using CCTV cameras and other technology using devices such as apps and with the assistance of drones over civil residential areas. All markets were closed, and vital commodities were only provided by government-appointed individuals or approved non-governmental organisations besides from these typical covid-19 prevention guidelines, which include frequent hand washing with an alcohol-based solution, soap, and water, as well as protecting the nose and mouth with masks, people must follow while in public.

One thing which should not be forgotten and which is evidenced from history is that there are risks of states becoming authoritarian in case of emergencies and states hit first the civil liberties and basic freedom of their citizens<sup>x</sup>. The government's justification for implementing all of these countermeasures was, of course, to stop the transmission of the infection and save people's lives. Now, the author's main concern, which forced him to investigate, is what happened to the citizens' civil liberties, which were guaranteed to them by the state constitutions. Can the government use such draconian steps in the name of virus control and disease prevention by violating civil liberties? If the answer to the preceding question is true, the next question is which law authorises the states<sup>xi</sup>? Are the powers of the state absolute or are there any riders to the power of the states?

So, these are a few but not all complete list of questions to be inquired about, however, the above questions are very general because the author, despite being a law expert, failed to

understand which law gives the state's power to use coercive and forceful measures, such as those mentioned above, where the lives of innocent people were threatened in the name of health emergency measures by the states<sup>xii</sup>. Other concerns that the researcher in this study plans to address are as follows to understand the legality of curbing civil liberties in the name of a health emergency to discover the truth and reality. Is it legal for the government to restrict citizens' basic rights in the name of virus control??

1. Is it permissible for the state to disrespect fundamental rights and deprive people of their civil liberties by imposing a strict lockdown and holding them hostage in their homes for months??
2. Is it feasible for a government to sacrifice citizens' civil liberties when there is no legislation in the country??
3. Is it acceptable for a government to compromise citizens' civil liberties in the absence of legislation in the country??
4. Is it possible for states to become dictatorial as a result of the coronavirus??

## MEANING OF CIVIL RIGHTS AND CIVIL LIBERTIES

Before the author delves into the discussion about the justification or illegality of suspension of civil liberties of citizens by the states in the name of a health emergency, let me make clear the definition and history of civil liberties. So, according to Collins's dictionary, the term civil liberties mean a person's civil liberties are the rights they have to say, think, and do what they want as long as they respect other people's rights<sup>xiii</sup>. Civil rights" and "civil liberties" are terms that are often used synonymously, and interchangeably, but the terms are very distinct civil liberties are protections and freedoms that governments agree not to abridge without due process, whether through the constitution, statute, or judicial interpretation. Civil liberties may include the freedom of conscience, freedom of the press, freedom of religion, freedom of expression, freedom of assembly, freedom of speech, the right to privacy, the right to equal treatment under the law and due process, the right to a fair trial, and the right to life, though the scope of the term varies by country while civil rights include the right to property ownership, the right to self-defence, and the right to bodily integrity. The formal notion of civil rights is sometimes traced back to Magna Carta<sup>xiv</sup>, an English legal charter agreed upon in 1215, between the king and the people of that time where the king release first time the bundle of civil rights and civil liberties in favour of their people which was never recognised earlier. It



was a turning point in the history of mankind where people's human rights were recognised first time formally. Every state has provisions in their constitutions for granting Civil liberties or freedoms to its citizens are protected explicitly in the constitutions of most democratic countries like in the U.S., civil liberties are guaranteed by the Bill of Rights<sup>xv</sup> and the 13th, 14th, and 15th Amendments to the Constitution of the United States. In India, too civil liberties are granted in the form of fundamental rights like freedom of speech and expression and freedom to move anywhere in the country in part III of the constitution.

## **BASIS OF THE ENQUIRY**

Emergencies" have always been the pretext on which the safeguards of individual liberty have been eroded and this erosion of individual rights will always have a corrosive effect on democracy<sup>xvi</sup>. It is also a proven fact that in every case of emergency the poor and the marginalised section of the community are the worst affected section during the crisis. LGBT persons are being targeted under the guise of Covid-19... While in India, informal migrants who had previously been badly impacted by government policy were subjected to additional state violations<sup>xvii</sup>. The same happened in this case of the covid-19 pandemic also and the measures taken thereafter by the state governments all around the globe. Many governments have responded to the coronavirus pandemic by suspending the civil liberties or fundamental rights of their citizens by imposing nationwide lockdowns and thus making the citizens captive in their homes. The whole world saw the complete infringement of people's civil liberties and freedoms by the governments<sup>xviii</sup>.

However, large populations accepted the dramatic curtailment of their civil liberties for weeks and even months believing that these curtailments are temporary and urgent necessities of the time. But despite the pandemic is going to become endemic and thus most of the emergency measures should have been ended but it is seen that many the governments are still keeping those measures in force in lighter modes like tracking patient's locations and activities and compulsorily installation of apps on mobile phones and other privacy breaches that can have long-term consequences. And this is why now People wonder whether their civil rights will ever be fully restored or not or whether this health emergency has given a powerful weapon in the hands of the government to violate their civil liberties which the state always wants.

Now to find out the legality of the emergency measures taken by the governments we must look into the legal system of that country. The first step in tackling these questions is to identify the fundamental rights granted by their legal system and which were limited or cancelled entirely like the right to move freely in the streets of one's city, people's freedom to gather or to visit friends or family or compulsion to wear a face mask outside one's home are examples of some of the rights that were taken away completely by the states during the periods of lockdown. Similarly, social distancing rules have prohibited handshakes, and hugging and kissing which are a hallmark of many cultures across the globe.

The crisis has also had a sharp impact on the free movement of people across borders, which, is perceived as a civil right by international law and was considered for the all-around development of human beings very fundamental<sup>xix</sup>. Several countries closed their borders during the pandemic, and like the EU closed their external borders to foreign nationals. Lockdowns and social distancing also have had a heavy impact on religious freedom, while individuals are permitted to pray at home, religious gatherings were prohibited and are still in force in many countries. Of the world. Limits of person were also fixed in case of marriage and other social gatherings like funerals etc. irrespective of the fact that these are important community meetings for some religions. While border closures may be effective in delaying the spread of COVID-19, if implemented before the establishment of community transmission within a country, their overall effect on the transmission of COVID-19 is modest and not sustainable<sup>xx</sup>

Privacy is a fundamental right recognised almost by all the legal systems around the globe, and data protection is a growing concern, in some countries, there is a serious fear of the abuse of power by governments and police overreach. Drones were employed by states to locate the tracking people a measure that violates their freedoms. These measures brought unrest among civil societies and compelled liberals to protest the use of these emergency measures fearing this was the beginnings of a police state. Some religious groups took the advantage of the pandemic and spread hate against other religions and minorities to segregate them from the mainstream and cause them social and economic losses by spreading misinformation about their religion and sects<sup>xxi</sup>. This has happened particularly in India where some miscreants aired misinformation about Muslims on different channels like WhatsApp, YouTube and Facebook and mainstream media falsely running propaganda that Tablighi jamaat, a religious group of

people who came to India are corona positive and they came to India specially to spread the virus in the country has aggravated the problem, in several parts of India, at the start of the pandemic<sup>xxii</sup>.

A call was given by a radical religious organisation for an economic and social boycott of Muslim businesses and Muslims in general, and the result is that the majority in India started believing that Muslims are spreading coronavirus and people boycotted Muslims in various ways like nobody was buying vegetables and fruits from them and stopped interacting them in various ways<sup>xxiii</sup>. In one such news telecast by the British Broadcasting Corporation (BBC), a Muslim vegetable seller shared how his business suffered just because of a fake video that got circulated on WhatsApp and went viral that showed a Muslim man spitting on bread<sup>xxiv</sup>. Further, a series of forwarding on social media containing misleading information and fake news spread like fire after the Tablighi Jamaat incident in New Delhi, with false claims about Muslims purposely spreading the virus. There were attacks on Muslims in all parts of India furthering Islamophobia and targeting the minority<sup>xxv</sup>.

More shocking was that state-sponsored such news and hate propaganda and many ministers of the existing governments gave statements in support of these false and hateful pieces of information and high officials of the government kept silent on these issues<sup>xxvi</sup>. Innocent people were thrust into jails and were beaten very mercilessly by police and other state-sponsored agencies formed to curb the virus. Such, incidents were not only reported in India only but globally such news was aired on news channels. States and state organisations should have used social media for creating awareness and encourage citizens during a crisis to reinforce the public health response. Public media, newspapers and radio stations could have been used to better inform the public to fight false news by addressing theories of conspiracy circulating at the time but unfortunately, nothing like that seems from governments. Social media analytics should have helped government authorities to exchange and comment on real-time information about ongoing infectious disease threats. Effective communication between the citizens and the public health authorities and/or governments through the media and social media platforms was among the essential components of successful pandemic responses and timely monitoring of risk networks and public social media interactions would have helped to promote awareness of viewers and have assisted in developing the policies needed for successful risk mitigation and resilience, for ensuring efficient management of disastrous events but the governments

found reluctant in responding taking all such measures. International law to some extent justifies the stand of states but again it mandates that certain civil and political rights may be suspended or revoked only in emergency conditions that "threaten the life of the nation." Some safeguards, such as the respect for certain fundamental rights that cannot be suspended under any circumstances, must not be taken away in any circumstances whatever emergent are<sup>xxvii</sup>.

## **EMERGENCY POWERS OF THE STATE AND CIVIL LIBERTIES**

Most of the nations of the world were caught down by the spread of the coronavirus pandemic in the year 2020 as stated above and every state responded in their way to cater to the problems. A few months after the outbreak, many countries were desperately searching for solutions to battle Covid-19 amid serious political, economic, social and legal consequences. As the coronavirus pandemic continues, many countries face several challenges requiring not only extraordinary responses but also attention to prevent the abuse of power during the crisis. History witnesses that it is an indisputable fact that in times of crisis, civil rights and civil liberties are at the greatest risk and states have always misused their power by curtailing the civil freedoms of their citizens to gain politically.

While such restrictions on liberties are often required for pandemic management, many of these regulations have been unduly broad or have failed to assess the costs for communities that are already vulnerable to human rights breaches<sup>xxviii</sup>. Furthermore, the epidemic has intensified pre-existing disparities in health care access, poverty, racial injustice, refugee crises, and education level<sup>xxix</sup>. It is therefore needed that civil societies should keep a check on the state's power otherwise, crises may lead to an excuse for the permanent erosion of individual rights and liberties, and even a backslide of democracies by the states<sup>xxx</sup>. Government policies and actions are monitored by them and opposed whenever the state tries to become a totalitarian state<sup>xxxi</sup>.

To understand the concept, the author considered the case of India by taking into account the reactions of the government of India to those situations to protect the democratic setup of the country during this pandemic. India while facing a national threat, put forth policies to defend the public and the national interest. Light will be thrown on the measures initiated by the government of India and a comparison of other countries will be done to understand the policies and steps taken by the government in a better way. The policies adopted were very poor which



led to poor policymaking, poor policing and miscalculations and mismanagement and total collapse of the medical system because no prior assessments of policies were done by the agencies and there was seen chaos all around the countries.

However, some regional governments took measures which proved very beneficial as far as medical aid and assistance are concerned but despite all this one, quite a common thing was complete violations of civil liberties of the people, especially in India where the poor people who were labourers and who were compelled to walk for thousands of kilometres without water and food and many of them died in the midway<sup>xxxii</sup>. The recession has been steadily increasing, particularly in the unorganized sector, indicating that economically vulnerable individuals are on the edge of the collapse of sacrificing disproportionately more for public health measures due to a lack of knowledge about the virus and the fear associated with it, as well as inadequate funding to unlock it<sup>xxxiii</sup>.

On the other hand, there are many countries which seriously understood the problem and took a step like transparency in medical facilities, and honesty to counter the pandemic one such country was Taiwan which has proved itself as a country that has successfully battled the pandemic in the competitive world order<sup>xxxiv</sup>. It issued various policies like including a QR code with every traveller to act as a meter of the infectious risk-based health history of the person, health insurance cover covering 99% of the population assuring that 'life' and 'health' are the foremost priority in the country and lastly and the most important one was the use of media to act as the greatest tool for alerting common man informing about the latest development that took place day to day basis on the deadly disease<sup>xxxv</sup>. These measures by the government of Taiwan raises a ray of positive hope among civilians and the state saw fewer casualties as compared to other countries of the world<sup>xxxvi</sup>. Like Taiwan, other countries also took various positive steps in addressing the Covid-19 crisis and authorities in those countries successfully have addressed their populations with transparency, honesty, reason and compassion. This approach is the key that has fostered national unity, the principles and practice of impartiality and objectivity. Regular news conferences have provided reliable, accurate information and scientifically grounded guidelines for action.

The responsiveness of the governments requires a proactive approach considering that every person's life has equal value and the goal is to save everyone. Therefore, the management of pandemics requires utmost transparency and accuracy, and news conferences acknowledge the

disease's scope and severity rather than the spread of misinformation. This would ensure that the citizens felt safe rather than fearful, observing government actions that are smart, effective and responsible. The author feels compelled after seeing the news shown on media and other social media platforms about the mismanagement to enquire about what has gone wrong with India that instead of acting bonafide and in an honest way and keeping in mind the principles of the constitution of social justice the state acted in derogation of it and the poor were left to die and because of no-cooperation by the district authorities of the states, people were compelled to throw dead bodies of their relatives in the river Ganga and Yamuna and others.

## **INDIAN CONSTITUTION AND LEGALITY OF HEALTH EMERGENCY**

As said above the threat of the Covid-19 outbreak has far-reaching consequences in India also like other nations of the world, India too comes into the grip of the coronavirus pandemic and faced very tough times and still facing its impacts. India is the world's second-most populous country with nearly 1.4 billion and has reported the largest number of infected cases and deaths in the world after US and Brazil as reported by the WHO on its official website. Like other countries, It too had faced many difficulties in terms of managing the crisis during the peak of the infection particularly during the first and second waves where a complete lockdown was imposed in the territory and strict guidelines were issued by the government of India to tackle the pandemic to save more and more lives. Now the million-dollar question is to enquire about what does the constitution of India say about dealing with emergent situations like the one under consideration because any act of government should align with the constitution as it is treated as a sacred document as far as rights and duties of the citizens are considered and its violations are not permitted at any cost.

The Indian government declared a health emergency in the country and imposed a countrywide lockdown during the rising cases in March 2020 initially for 40 days and further extended it by eight weeks with gradual relaxation and unlocking<sup>xxxvii</sup>. However, the instant declaration of emergency and sudden imposition of lockdown without prior information to the public and suspension of civil liberties reflected not only the misuse of the state's power but also raised questions on the constitutionality of invoking health emergencies. Indian constitution as discussed guarantees certain civil liberties to its citizens in the form of fundamental rights in

part III and part IV in the name of directive principles of the state's policy is the mandate or bundle of obligations states should undertake while initiating any action. These may be understood as.

1. The right to freedom of speech and expression<sup>xxxviii</sup> which gives the freedom to speak but this right is not absolute and reasonable restrictions may be imposed if the integrity of the country is in peril, but in case of a pandemic lot of misinformation was telecasted by a news channel and on WhatsApp and government did not seem honest in punishing these misinformants, on the other hand, state machinery did not allow the relatives to report the mismanagement and irregularities inside the hospitals and in few cases where either the patients or relatives of patients circulated through social media the kinds of mismanagement and atrocities the police beat them mercilessly and put a complete ban on taking mobiles phones inside the hospital premises and it was a blatant example of violations of constitutional freedoms given to them by the constitution

2. The right to earn livelihood and the right to carry on any business and trade<sup>xxxix</sup> is the fundamental right recognised by the constitution but in case of emergency this right is being taken away by the state in many forms where it is ordered to all to close their business activities till lockdown is in force and those who out of necessity tried to open their shops and business point were either beaten mercilessly and heavy fines were being imposed on them. The question that arises here is how you can order to shut down the business without providing them with an alternative source of livelihood as it is directly related to their life.

3. The right to privacy<sup>xl</sup> is the cherished right of everyone declared by the supreme court in a catena of cases and without which life has no meaning but during the time of pandemic blatant violations of this right are being done by state agencies like police and medical authorities where police were entering into the house of the general public on the suspicion of mere someone is being infected by the coronavirus and same was done by medical staff where they forcefully entered the house and forcefully took the custody of anyone showing mild symptoms of diseases and thrusting them in corona ward specially constituted to admit the patients suffering from the virus, in many cases after testing it was revealed that some patients were found having negative antigen test or RTPCR report but after their exposure to corona ward in the second report they found positive and this happened just because they have been forcefully exposed to coronavirus by keeping them with one who is already positive,

3. The right to movement and right to peaceful assembly<sup>xli</sup>, a right which is recognised as very fundamental in the all-round development of humans was at greater peril as forceful lockdown imposed by the state made everyone hostage in their own house and some people for whom daily walk is recommended by doctors like patients of blood sugar and high blood pressure died in the house because of isolation and stay of socio-cultural interaction which caused mental distress at home<sup>xlii</sup>, and thus these restrictions on free movement left negative impacts and thus I can say that freedoms were blatantly violated by state<sup>xliii</sup>

5. The right to equality and equal protection of laws<sup>xliv</sup> is the most important right which is not only guaranteed to citizens but available to aliens also was snatched by the government. In most of the cases, the state behaved prejudicially and those who were politically connected or rich were treated differently from those who were poor or had no political connections or had politically ideologies different from the existing governments, for example, some were favoured not wearing masks compulsorily but others were fine for not wearing masks and in many cases, police sent the person to jail who questions the police for not giving equal treatment. And thus, the above principles mandate to the state that regardless of the severity or urgency of the problem state actions must meet requirements of legality, legitimacy, necessity, proportionality, evidence, and non-discrimination<sup>xlv</sup>.

The important thing is that the term health emergency is not included in the Indian Constitution but provisions related to health are mentioned in Part IV of the Constitution in terms of the Directive Principles of State Policy where it is mentioned that it would be the responsibility of the State to provide security to citizens by ensuring the Right to adequate means of Livelihood<sup>xlvi</sup>. It further mandates the state to ensure that the health and strength of workers, men, and women and the tender age of children are not abused<sup>xlvii</sup>.

Article 42 makes provision to “protect the health of the infant and mother by maternity benefit and Article 47 is about raising the level of nutrition and the standard of living of people and improving public health. The imposition of a state of emergency may lead to a temporary suspension of those very rights conferred by the constitution along with the fundamental rights like the right of freedoms of speech and expression, freedom of peaceful assembly and movement, etc.

The Constitution has the provisions where it authorises the President of India to declare three types of emergencies in the national interest national, state, and financial. If the country's



security is threatened by war, external aggression, or armed insurrection, a national emergency is declared<sup>xlviii</sup>. If there is a constitutional crisis in the state, a state emergency is declared<sup>xlix</sup>. If the country's financial stability is jeopardised, a financial emergency is declared<sup>l</sup>. Because imposing a lockdown or maintaining severe restrictions to limit the spread of disease will have an influence on citizens' basic rights, several constitutional procedures to include health emergencies in emergency provisions with sufficient discussions are needed. so from the above analysis, it can be said that there is no provision to declare a health emergency in our constitution and whatever is being done in India o the name of a health emergency was completely against the constitution. But in international law there is one principle that gives justification to these violations done by the government and that too in case of a health emergency is Siracusa Principles which may provide justification and legality to what state done in such a crucial time<sup>li</sup>.

## **ANALYSIS OF THE NATIONAL DISASTER MANAGEMENT ACT 2005 AND THE EPIDEMIC ACT 1897 AND THEIR LEGALITY**

### ***A. The National Disaster Management Act 2005 and its Legality***

The National Disaster Management Act of 2005, which comes into action after the Covid-19 epidemic was declared a national disaster, was being used to declare a health emergency in the country<sup>lii</sup>. The district administration has issued several recommendations, such as keeping social distance and avoiding handshaking, religious gatherings and public meetings, unrestricted movement of the public has also been suspended, and disobedience of directions may result in a high fine and civil punishment<sup>liii</sup>. According to the statement, the uniform lockdown standards will ensure "effective measures" for social separation needed to restrict the pandemic's spread and the Ministry of Home Affairs will supervise the orders' execution<sup>liv</sup>. Certain provisions in the NDMA helped the Central Government in imposing the lockdown and restricting all modes of mobility in the country. One such provision grants the Central Government the authority to issue directions to all ministries or departments of the Government of India, as well as state and union territories<sup>lv</sup>.

On April 11, 2020, the Central Government activated the provision which assigned the powers of the Home Secretary to the Secretary, Ministry of Health and Family Welfare, to coordinate

different activities across ministries and states/UTs<sup>lvi</sup>. In contrast to the previous laws, this act provides for a comprehensive administration set up for disaster response. The Act penalises violators with up to a year in prison, a fine, or both. The offence is defined by the law as obstructing or preventing any official or employee from executing his legal duties or refusing to comply with directions<sup>lvii</sup>.

Many states invoked Section 144 of the Criminal Procedure Code to help in the execution of the national lockdown<sup>lviii</sup> and section 188 of the Indian penal code for disobeying the directives of public officials which is an offence punishable by imprisonment for 6 months or a fine of 1000 rupees under the Code<sup>lix</sup>. One of the most contentious issues with the Disaster Management Act is whether an epidemic or pandemic is a disaster under its definition. According to Section 2(d) of the DMA, a disaster is defined as "any catastrophe, mishap, calamity, or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence, which results in substantial loss of life or human suffering, or damage to, and destruction of, property, or damage to, or degradation of, the environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area." However, a health emergency is not covered by the Act and therefore one can argue that dealing with health emergencies like the Covid-19 pandemic raises serious concerns because DMA Act does not define it but such reasoning will not help the epidemic to be managed successfully. There are complexities and difficulties related to the health emergency that this legislation does not address.

In the Covid-19 age, vulnerability is more than just the possibility of catching the virus. Although vulnerability in the current context is a dynamic concept since anyone who is not vulnerable at the start of the epidemic may later become vulnerable depending on the government reaction. Vulnerable people are individuals who are affected by the pandemic's short- and long-term effects, but whose needs were not taken into account in the preparation of local responses and relief. The pandemic exposed glaring health, economic, gender, caste-based, and educational disparities around the world, but these disparities were most visible in India, particularly among the impoverished, homeless, socially disadvantaged migrants, refugees, and those living in informal settlements. Another impact of social distancing is the stigmatisation of some communities as Some sections and communities in India have come dangerously close to social rejection due to Covid-19. Though the term "social separation"

appears rational and is suggested by many experts and governments, it has an entirely different meaning in the Indian context due to the history of caste systems. This is due to the stigma and psychosocial ramifications of being an outcast, which adds to the trauma in the individual.

### ***B. The Epidemic Act Of 1897 and its Legality***

Along with the disaster management act of 2005, an epidemic diseases act was activated in India during a pandemic to control virus spread. But the question is whether it was legal to use the law from the colonial era. To get the answer, we must first understand the background of laws. The EDA, Act 1897, was adopted during the British colonial era and was once activated and enforced to combat the bubonic plague that broke out in the state of Bombay. The Act is 125 years old and consists of only four provisions. During the discussion on the measure tabled, John Woodburn, the Council Member of the Governor-General of India in Calcutta, regarded the law as remarkable yet necessary.

During the discussion on the bill filed in 1897, John Woodburn, the Council Member of the Governor-General of India in Calcutta, regarded the law as extraordinary but necessary, emphasising that people must trust the executive's discretion in a grave and crucial circumstances. As a result, any action taken based on epidemics must take into account all grave and important circumstances and such decisions of the government should not be criticised by the general public for the greater good of the community. Previously, the law had been successful in suppressing outbreaks such as Cholera (1910), Spanish Flu (1918–20), Smallpox (1974), Swine flu (2014), and the Nipah Virus (2018). The EDA is the sole law that allows for legal involvement in the event of a national or subnational epidemic.

The EDA is not extensive, and it is up to state governments to develop their public health policies. However, only a few state governments, like Madhya Pradesh and Bihar, have public health legislation. Though the EDA was invoked by various state governments in response to Central Government directives during the COVID19 pandemic, there is a need for a consolidated, coherent, actionable, and relevant legal mechanism for the epidemic outbreak and its control in India. The EDA in its current form is insufficient to deal with health catastrophes such as Covid19 because it is lacking technological and operational procedures for epidemic control and management.

## CONCLUSIONS AND RECOMMENDATIONS

### A. *Conclusions*

Based on the above analysis, the authors draw the following conclusions that international law recognises human's natural, inalienable rights as the foundation of all civilized states and is the cornerstone of democracy<sup>lx</sup>. Almost all governments around the globe, provide adequate health and hygiene benefits, freedom of speech, right to health, the right to information and due processes of achieving those rights. These are inalienable rights which states are not supposed to infringe in any conditions not even at the time of crisis.

However, it is seen that states try to take away those cherished rights of their citizens on one or the other pretexts. The same happened after the announcement of Covid-19 as a pandemic, the governments were seen imposing restrictions on civil liberties in the name of controlling the virus's spread by announcing lockdown and making people hostage in their homes. Curtailing these liberties in times of crisis is often considered a controversial part of an effective policy response because the states are found to misuse their powers. In the case of an epidemic spread of diseases, states often take the recourse of drastic measures to control the spread of the diseases and no doubt it is required and must but it must not be forgotten that citizens have certain fundamental human rights which must not be violated by the state at any cost not even in case of imposed health emergencies.

Emergency policies during crises may sometimes become an excuse for eroding rights in the long run<sup>lxi</sup>. The Covid-19 crisis has provided a great opportunity for states to infringe the civil liberties of their citizens in the name of a health emergency and is a great opportunity to understand how individuals perceive the swapping of civil liberties in times of crisis by states. People generally expect a better and more responsive public health system during the pandemic in countries and the actions taken by governments to curb it. It is critical for countries that lack modern media communication skills or require more efficient and strategic transparency on the epidemic to protect particularly vulnerable communities that lack exact and factual information during the outbreak<sup>lxii</sup>.

In a democratic system, attempting to address a public health issue requires close collaboration among multiple stakeholders, including political and civil society organizations, the administration, medical specialists, and the general public. This process is completely based on open decision-making and mutual trust. Because the pandemic is continuous, the restraint



of civil liberties and individual freedoms by the states may have resulted in a lack of confidence in society and impeded a coherent response. Restrictions that were once viewed as pragmatic and essential were not received welcomed by large sections of the society and the procedures adopted in implementing those policies by the government have also been found defective and ineffective and failed to fulfil the aspirations of the citizens and break social cohesion. One thing that was certainly done by the pandemics is that it has caused a chunk of the population in many countries to live in fear, owing mostly to health risk exposure and the eroding of civil liberties.

### ***B. Recommendations***

After such a detailed analysis of restrictions imposed worldwide in the name of health emergencies curbing virus spread, blatant violations of human rights and civil liberties are seen across the globe as mentioned above. However, some countries took sincere and very positive steps without infringing on their citizen's rights but most of the states have become autocratic and enforced health emergencies without careful planning and consequences. Studies suggested that without constitutional provisions and legislation health emergencies are imposed during the pandemic. The following recommendations are suggested by the author for better management of the pandemic situations on the one hand as under.

- All countries should have a comprehensive public health law embracing all areas of health. The Right to Health should be explicitly mentioned in the Constitution. National public health law must take into consideration practicable provisions for responses to a health emergency and try to strengthen the law while keeping social, political, economic, cultural, and environmental factors in mind.
- Measures like lockdown should not extend beyond the required minimum period based on the incubation period of the virus
- Governments should consider human rights impacts, particularly the right to safe shelter, the right to protection from violence, and the right to medical treatment, testing, and mental health services before taking any coercive measures like health emergencies.
- Quarantine and isolation are regarded as necessary but not sufficient virus spread strategies as there are possibilities that they may erode human rights, especially for marginalized populations such as detained people, refugees, immigrants, women, and children<sup>lxiii</sup>.

- The role of the authorities at all levels i.e., at Union, state and local levels should be predefined without creating any conflict among them.
- An institutional mechanism that can establish a network with governments, research institutions, and health care providers should be included.
- The act should clearly state various processes and mechanisms for tracing testing and treatment for controlling the epidemics through appropriate and timely interventions at the national, state, and local levels.
- Fiscal and momentary relief for states and local bodies during medical emergencies should be available without many formalities.
- Special protection should be given to health care and sanitation workers keeping in mind the social dynamics of society.
- Policies for prioritising the most vulnerable and underserved populations must be made and ensure additional support for such communities, including access to financial, social, and medical resources, and
- The state should not only formulate to consider pandemic control but also took into account the health and human rights of those who have been hit badly by the virus. Decision-makers must ensure that public health interventions are executed with a human rights lens by taking concrete steps in both policy and practice.
- Decision-makers must follow a forward-thinking approach while constantly assessing and reassessing policies and restrictions for potential impacts on human rights and inequities. Policy decisions need to be adapted to emerging issues and challenges that arise during long-lasting crises.
- Countries should avoid enforcing laws which though are not repealed but have never been in use for more than a century like what happened in India there is an urgent need to revisit the colonial-era legislation, the EDA act

## ENDNOTES

<sup>i</sup> Friedrich Hayek (1979) puts it in his book *Law, Legislation and Liberty*,

<sup>ii</sup> R. Prasad, a new virus that emerges in China, the Hindu, 14th Jan 2020 available at <https://www.thehindu.com/sci-tech/health/a-new-virus-emerges-in-china/article30567853.ece> (last visited on 19/6/2020)

<sup>iii</sup> Id.

<sup>iv</sup> Id.

<sup>v</sup> Available at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last visited on 19/6/2020)

<sup>vi</sup> Coronaviruses are a broad family of viruses that can cause everything from a mild common cold to severe disorders like severe acute respiratory syndrome (SARS) and the Middle East respiratory syndrome (MERS). MERS coronavirus was transmitted from dromedary camels to humans in Saudi Arabia in 2012, whereas SARS coronavirus was transmitted from civet cats to humans in China in 2002. in Saudi Arabia in 2012

<sup>vii</sup> By Geeta Pandey Coronavirus: The children struggling to survive India's lockdown, BBC News, Delhi, 11 April 2020

<sup>viii</sup> World Health Organization, COVID-19 pandemic leads to major backsliding on childhood vaccinations, new WHO, UNICEF data shows (2021). Available at <https://www.who.int/news/item/15-07-2021-covid-19-pandemic-leads-to-major-backsliding-on-childhood-vaccinations-new-who-unicef-data-shows>; D. N. Durrheim, J. K. Andrus, S. Tabassum, et al., "A dangerous measles future looms beyond the COVID-19 pandemic," *Nature Medicine* 27/3 (2021), pp. 360–361 In Sophia A. Zweig, Alexander J. Zapf, Chris Beyrer, Debarati Guha-Sapir, and Rohini J. Haar, ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19, *Health and Human Right Journal*, Volume 23/2, December 2021, pp. 173-186

<sup>ix</sup> Apar Gupta, Gautam Bhatia and Surith Parthasarathy, "privacy concerns during a pandemic" *The Hindi*, 29 April, 2020.

<sup>x</sup> see Friedrich Hayek, 1979, *law legislation and liberty*.

<sup>xi</sup> The COVID-19 pandemic situation necessitates several countries around the world to take extreme steps to protect the population's health and well-being. Even in a public emergency, these actions must abide by the rule of law, United Nations Human Rights, covid-19 Response, available at [https://www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures\\_COVID19.pdf](https://www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures_COVID19.pdf) last visited on 19/6/2020)

<sup>xii</sup> See supra note 9

<sup>xiii</sup> See <https://www.collinsdictionary.com/dictionary/english/civil-liberty>

<sup>xiv</sup> See <https://www.bl.uk/magna-carta>

<sup>xv</sup> The Bill of Rights is the first 10 Amendments to the Constitution. It spells out Americans' rights to their government. It guarantees civil rights and liberties to the individual like freedom of speech, press, and religion. It sets rules for due process of law and reserves all powers not delegated to the Federal Government to the people or the States. And it specifies that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

<sup>xvi</sup> See <https://www.theguardian.com/global-development/2020/dec/09/covid-used-as-pretext-to-curtail-civil-rights-around-the-world-finds-report> last visited 19/6/2022)

<sup>xvii</sup> Id.

<sup>xviii</sup> Id.

<sup>xix</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 13

<sup>xx</sup> M. Chinazzi, J. T. Davis, M. Ajelli, et al., "The effect of travel restrictions on the spread of the 2019 novel coronavirus (COVID-19) outbreak," *Science* 368/6489 (2020), pp. 395–400

<sup>xxi</sup> Art. 4 of the Covenant Of Civil And Political Rights

<sup>xxii</sup> The Markaz or religious centre in Delhi's Nizamuddin West area was identified as a COVID19 hotspot by the centre, 2nd April 2020, NDTV available at <https://www.ndtv.com/india-news/coronavirus-pandemic-tablighi-jamaat-delhi-mosque-event-and-covid19-cases-2204572> (last visited on 19/6/2022)

<sup>xxiii</sup> See <https://www.aljazeera.com/news/2020/4/29/do-not-buy-from-muslims-bjp-leader-in-india-calls-for-boycott> (last visited on 19/6/2022)

<sup>xxiv</sup> Shruti Menon, "Coronavirus: The human cost of fake news in India", BBC report, 1 July 2020. Available at <https://www.bbc.com/news/world-asia-india-53165436> last visited on (22/2/2022)

<sup>xxv</sup> See *supra* note 23

<sup>xxvi</sup> *Id.*

<sup>xxvii</sup> See *supra* note 11.

<sup>xxviii</sup> *Id.*

<sup>xxix</sup> Sophia A. Zweig, Alexander J. Zapf, Chris Beyrer, Debarati Guha-Sapir, and Rohini J. Haar, ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19, *Health and Human Right Journal*, Volume 23/2, December 2021, pp. 173-186

<sup>xxx</sup> See <https://www.brookings.edu/blog/up-front/2020/04/06/civil-society-an-essential-ingredient-of-development/> (last visited on 19/6/2022)

<sup>xxxi</sup> *Id.*

<sup>xxxii</sup> See *supra* note 15

<sup>xxxiii</sup> Sharma T. Management of Civil Liberties During Pandemic. *Indian Journal of Public Administration*. 2021;67(3):440-451. doi:10.1177/00195561211035931

<sup>xxxiv</sup> Erin Hale, How Taiwan used simple tech to help contain Covid-19, *Business reporter*, Taiwan, 25 February available at <https://www.bbc.com/news/business-60461732> (last visited on 19/6/2022)

<sup>xxxv</sup> Chen, S. (2020, Mar 13). Taiwan sets an example for the world on how to fight coronavirus. *ABC News*

<sup>xxxvi</sup> *Id.*

<sup>xxxvii</sup> Nistula Hebbar, PM Modi announces 21-day lockdown as COVID-19 toll touches 12, *New Delhi, The Hindu*, MARCH 25, 2020

<sup>xxxviii</sup> Article 19(1), The constitution of India, 1950

<sup>xxxix</sup> *Id.* Art. 19(1)(g)

<sup>xl</sup> Art. 21, the constitution of India, 1950

<sup>xli</sup> *Id.* Art. 19

<sup>xlii</sup> M. Aragona, A. Barbato, A. Cavani, et al., “Negative impacts of COVID-19 lockdown on mental health service access and follow-up adherence for immigrants and individuals in socio-economic difficulties,” *Public Health* 186 (2020), pp. 52–56;

<sup>xliii</sup> M. Aragona, A. Barbato, A. Cavani, et al., “Negative impacts of COVID-19 lockdown on mental health service access and follow-up adherence for immigrants and individuals in socio-economic difficulties,” *Public Health* 186 (2020), pp. 52–56;

<sup>xliv</sup> *Id.* Art. 14

<sup>lv</sup> A. Ponta, “Human rights law in the time of the coronavirus,” *American Society of International Law* 24/5 (2020) In Sophia A. Zweig, Alexander J. Zapf, Chris Beyrer, Debarati Guha-Sapir, and Rohini J. Haar, ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19, *Health and Human Right Journal*, Volume 23/2, December 2021, pp. 173-186

<sup>lxvi</sup> Article 39(a), the constitution of India

<sup>lxvii</sup> *Id.*, Art. 39(e)

<sup>lxviii</sup> Art. 356, of the constitution of India

<sup>lxix</sup> *Id.*, Art. 358

<sup>l</sup> *Id.*, Art. 360

<sup>li</sup> International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (1984)

<sup>lii</sup> Chetan Chauhan, Covid-19: Disaster Act invoked for the 1st time in India, *the Hindustan times*, 25th march 2020, New Delhi

<sup>liii</sup> *Id.*

<sup>liv</sup> *Id.*

<sup>lv</sup> Section 62, The Disaster Management Act, 2005

<sup>lvi</sup> *Id.* Section 69

<sup>lvii</sup> *Id.* Sections 51 to 60

<sup>lviii</sup> Act No. 2 OF 1974.

<sup>lix</sup> Act No. 45 of 1860.

<sup>lx</sup> Rawls, 1971.

<sup>lxi</sup> Reppucci, 2020.

<sup>lxii</sup> Depoux et al., 2020

<sup>lxiii</sup> Gostin and Wiley (2020, see note 35); J. J. Openshaw and M.A. Travassos, “COVID-19, quarantines, Sheltering-in-place, and Human rights: The developing crisis,” *American Journal of Tropical Medicine and Hygiene* 103/2 (2020), pp. 578–580