

## IMPACT OF COVID-19 ON RIGHT TO LIFE

Dr G. K. SHARMA  
INSTITUTE OF LAW, JIWAJI UNIVERSITY

**Abstract-** This article deals with the impact of corona virus on the various aspects of right to life and liberty as enshrined under the Indian constitution. The right to life has been interpreted by the Supreme Court to include the right to live with dignity. Yet, we failed to provide a life of dignity during lockdown to our most economically vulnerable people. The governments are also disclosing the names and addresses of positive patients in each district separately. The disclosure was aimed at calling upon all people who came in contact with this infected person, to self-identify themselves to enable contact tracing and restrict the spread of the virus. A just society is one where the right for the individual is an instrument for the greater collective good, and not antithetical to it.

**Keywords:** COVID-19, Right to Life, Right to Privacy, Health, Law

### INTRODUCTION

As countries around the world race to contain the pandemic, many are deploying surveillance tools as a means to exert social control, even turning security agency technologies on their own civilians. Health and law enforcement authorities are understandably eager to employ every tool at their disposal to try to hinder the virus. Even as the surveillance efforts threaten to alter the precarious balance between public safety and personal privacy on a global scale. Nobody needs to be convinced of the direct impact on human rights flowing from the pandemic induced by the COVID-19. The necessity of reorganizing the state and way it works goes hand in hand with sudden changes in how entire societies live, as well as the necessity of adapting to dynamically changing conditions. The interference of authorities in how we manage our time doubtlessly finds its expression in the right to privacy.

### IMPACT OF COVID-19 ON RIGHT TO PRIVACY

Louis Brandeis and Samuel Warren are considered the fathers of the concept of the right to privacy, publishing in 1890 an article entitled “The Right to Privacy” in the “Harvard Law Review”. They created the notion of the “right to be left alone”, proclaiming that there is a certain zone of individual behaviour and interpersonal relations which should be free from any external interference both vertically (from the state) and horizontally (from other individuals). From then on, the right to privacy began its dizzying career. At the same time, it became one of the fundamental rights guaranteed in national constitutions as well. In the following years, the jurisprudence through progressive interpretation, decoded new aspects of privacy deserving of protection.<sup>1</sup>

In response to an alarming surge in Covid-19 patients, the government imposed a complete lockdown in the country from the last week of March, 2020. The government took the decision to prevent the spectre of a community transmission of the disease.

The governments are also disclosing the names and addresses of positive patients in each

district separately. The disclosure was aimed at calling upon all people who came in contact with this infected person, to self-identify themselves to enable contact tracing and restrict the spread of the virus.

The disclosure of the patient's identity, however, has drawn some criticism on the ground of breach of an individual's right to privacy. The criticism is particularly relevant now, when the country is discussing a new Personal Data Protection law and the government is asking people to download the Aarogya Setu application.

The Supreme Court in the *Justice K S Puttaswamy versus Union of India*<sup>2</sup> case held that the right to privacy of an individual can only be subject to reasonable restrictions, when the restrictions are enforced through a law which pursues a legitimate state aim and are proportionate.

The disclosure of names of patients with the aim to trace contacts and stop the spread in such exceptional circumstances is a proportionate and necessary limitation to the person's right to privacy.

Constitutional scrutiny of any government action related to Covid-19 must be contextualised within the extraordinary circumstances which inform such action. Given the existential threat to the entire human race, it is imperative that the Union and state governments take all possible measures to map the transmission, identify potential carriers and prevent community transmission. We have seen the result of uncontrolled community transmission in countries such as Italy, Spain and the United States despite their admitted advanced healthcare systems.

Disclosure of the name of the patient was enforced by the governments through a law pursuing a legitimate aim. The government had promulgated the Covid-19 Regulations, 2020, in exercise of powers conferred on it under the Epidemic Diseases Act, 1897.<sup>3</sup>

The regulations strictly prohibit the disclosure of the name, address or telephone number of any person, except under 'exceptional circumstances affecting public health and safety'.<sup>4</sup> The governments, in the instant case, disclosed the name of the patient under the above mentioned exception.

Reasonable restraint of the right to privacy of one person must be balanced against the right to life of an entire population under the well-settled doctrine of 'reasonable restriction' enshrined in Article 21 of the Constitution. The protection of the right to life and livelihoods of millions required that the right to privacy of some individuals is subject to reasonable restrictions as was resorted to in this case by the government.

## **SURRENDER OF PARTIAL LIBERTY**

The established discourse on rights says that the enjoyment of your rights ends where it

affects the ability of another person to enjoy theirs. The idea is to ensure the enjoyment of rights by all, in equal measure. Today, however, we are facing an unprecedented situation: By your presence alone, you can threaten the well-being of another human being.

The Constitution guarantees the right to life and liberty under Article 21.<sup>5</sup> But never before have these fundamental rights been treated as antithetical to each other. But they are today. To preserve life, in its real, actual and most basic sense, we are ready to give up liberty. The more liberty we surrender, the higher the likelihood that we preserve the right to life.

As much of the world enters various phases of lockdowns, scholars are trying to find a legal basis of the lockdowns and other legal measures undertaken by governments to fight the corona virus. In every country, including India, there is confusion between “government advice” and measures that have the force of law. Some countries such as the United Kingdom (UK) and Singapore have hastily passed legislation to facilitate the collective surrender of the right to move freely and to enforce it through law enforcement authorities. However, despite the enactment in the UK, there have been many instances of confusion between legally enforceable restrictions, and “advice”, even among law enforcement officials.

## **LAWS DEALING WITH COVID-19**

In India, two laws have been used to tackle the virus:

- a) The Epidemic Diseases Act, 1897,<sup>6</sup> a two-page relic from our British colonial past that arms the State to put in place temporary measures, which the public needs to follow, to prevent the outbreak of diseases. Anyone disobeying the Epidemic Diseases Act can be penalised under the all-purpose, all-weather Section 188 of the Indian Penal Code, which prescribes a punishment of imprisonment for up to six months, or a fine up to Rs1,000, or both.<sup>7</sup>
- b) The second is the Disaster Management Act, 2005.<sup>8</sup> The pandemic is a “disaster” under the wide definition of the Act.<sup>9</sup> However, in its design, the Act is structured to address natural calamities. To secure compliance of directives issued under this Act, broad unspecific provisions are relied upon. For instance, the guidelines issued by the home ministry under the Act include a slew of directives such as wearing masks at workplaces.

Apart from the prohibition on spitting, the violation of which entails a fine, specific punishments for other violations are not indicated. Any other violation would fall under Section 51 of the Act, which prescribes a maximum punishment of imprisonment for a year or a fine. This increases to two years, if the violation results in loss of lives or imminent danger. The notification issued by the home ministry also cites the trusty old Section 188.

## **IMPROVEMENTS**

No existing law is designed to address the corona virus pandemic. So repurposing outdated legislation, or using legislation not designed for this purpose, may have enabled swift measures, but at the same time, it has a one- size-fits-all approach. It would be ideal to have a law that tailors punishments proportionately to the behaviour it seeks to secure.

We need to change the vocabulary to encourage honest reporting of symptoms and exposure. People do not observe physical space or boundaries, nor do they often have the luxury of them. We are hardwired to not be solitary creatures. Will we be capable of the behavioural change required to keep us all safe. The right to life has been interpreted by the Supreme Court to include the right to live with dignity. Yet, we failed to provide a life of dignity during lockdown to our most economically vulnerable people. This is a cross that the nation will carry forever.

## **CONCLUSION**

Nobody needs to be convinced of the direct impact on human rights flowing from the pandemic induced by the COVID-19. The necessity of reorganizing the state and way it works goes hand in hand with sudden changes in how entire societies live, as well as the necessity of adapting to dynamically changing conditions. The interference of authorities in how we manage our time doubtlessly finds its expression in the right to privacy.

The current situation engulfing the world leads us to reflect on the sudden but unnoticed paradigm shift in the contemporary right to privacy. We must accept limitations on it, a return to its roots, understood as family life, personal life, the right to self-development, and the inviolability of the home. These are certain basic elements of privacy on whose basis “secondary” rights of the individual related to privacy have been interpreted. At the same time, the perception of the role of the right to privacy in relations with authorities is also changing. We are beginning to sacrifice it tacitly and implicitly, entrusting it to the state in exchange for responsible administration of the state during the emergency.

And above all, let us not forget that law is ‘for many, not the few’. A just society is one where the right for the individual is an instrument for the greater collective good, and not antithetical to it.

## REFERENCES

1. Redefining the Right to Privacy in the Age of the COVID-19 Pandemic by Dr. Olga Hałub-Kowalczyk, Chair of Constitutional Law, Faculty of Law, Administration and Economics, University of Wrocław, Poland
2. Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors
3. Act No. 3 of 1897
4. Section 2. Power to take special measures and prescribe regulations as to dangerous epidemic disease.—  
When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof...
5. No person shall be deprived of his life or personal liberty except according to procedure established by law.
6. Act No. 3 of 1897
7. Section 3. Penalty.—  
Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860)
8. Act No. 53 of 2005
9. Section 2(d), Disaster Management Act, 2005