

Human Dignity, Rights and Duties in Post Covid-19 Era for Global Citizenship with reference to Indian Constitution

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Abstract

Human rights are crucial in shaping the pandemic response, both for the public health emergency and the broader impact on people's lives and livelihoods during post Covid-19. The paper will justify the rights and duties of the people and the government, to carry peace, progress and prosperity in divers' society of India. Human dignity and rights are interrelated with each other and are significant for the human value. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity with the idea of welfare state. The research will endeavor to find out the most sufferers of our society from this fatal pandemic and the government response to secure justice social, economic, cultural and educational of vulnerable group. The paper will also focus on the ground now for emerging from this crisis with more equitable and sustainable societies, development and peace.

Keynotes: - *Dignity, Right, Duties, Fatal pandemic, healthcare, Peace, Progress, Prosperity, Global citizenship, Sustainable etc.*

Introduction

The world is facing an unprecedented crisis. At its core a global public health emergency on a scale not seen for a century, requiring a global response with far-reaching consequences for our economic, social and political lives. The priority is to save lives.

In view of the exceptional situation and to preserve life, countries have no choice but to adopt extraordinary measures. Extensive lockdowns, adapted to slow transmission of the virus, restrict by necessity freedom of movement and, in the process, freedom to enjoy many other human rights. Such measures can inadvertently affect people's livelihoods and security, their

access to health care (not only for COVID-19), to food, water and sanitation, work, education – as well as to leisure. Measures need to be taken to mitigate any such unintended consequences.

The United Nations has available a powerful set of tools, in the form of human rights, that equip States and whole societies to respond to threats and crises in a way that puts people at the centre. Observing the crisis and its impact through a human rights lens puts a focus on how it is affecting people on the ground, particularly the most vulnerable among us, and what can be done about it now, and in the long term. Although this paper presents recommendations, it is worth underlining that human rights are obligations which States must abide by.

Guaranteeing human rights for everyone poses a challenge for every country around the world to a differing degree. The public health crisis is fast becoming an economic and social crisis and a protection and human rights crisis rolled into one. In some, ongoing crises, especially armed conflict, put human rights and other international legal protections under extra pressure. The COVID-19 crisis has exacerbated the vulnerability of the least protected in society. It is highlighting deep economic and social inequalities and inadequate health and social protection systems that require urgent attention as part of the public health response. Women and men, children, youth and older persons, refugees and migrants, the poor, people with disabilities, persons in detention, minorities, LGBTI people, among others, are all being affected differently. We have an obligation to ensure everyone is protected and included in the response to this crisis.¹

International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Human rights law also recognizes that in the context of serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited

¹ COVID-19 and Human Rights We are all in this together APRIL 2020

duration, respectful of human dignity, subject to review, and proportionate to achieve the objective.²

The Indian Union is a welfare state and has human dignity as one of the cornerstones of its constitution. The idea of governance in India is guided by the notion of a welfare state as enshrined in Article 38 of the Indian constitution that seeks to establish a just social order in social, economic and political terms in the welfare state.³ The social order in the welfare state resonates with the idea of social justice, which is rights-centred, aiming at improving the lives of all the citizens, especially the marginalised. The fundamental rights function as the ground for ensuring social justice. The fundamental rights in the Indian constitution aim at the protection of the human dignity of its citizens. The constitution guarantees its citizens' dignity through the seven fundamental rights viz. the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies.⁴

Dignity is a sort of status-concept: it has to do with the standing (perhaps the formal legal standing or perhaps, more informally, the moral presence) that a person has in a society and in her dealings with others. He has ventured even to define this term "dignity" in the following manner:⁵

"Dignity is the status of a person predicated on the fact that she is recognized as having the ability to control and regulate her actions in accordance with her own apprehension of norms and reasons that apply to her; it assumes she is capable of giving and entitled to give an account of herself (and of the way in which she is regulating her actions and organizing her life), an account that others are to pay attention to; and it means finally that she has the wherewithal to demand that her agency and her presence among us as human being be taken seriously and accommodated in the lives of others, in others' attitudes and actions towards her, and in social life generally".⁶

² <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>

³ Bakshi & Kashyap, 1982.

⁴ Austin, 1999

⁵ HUMAN DIGNITY AS A CONSTITUTIONAL VALUE– JUSTICE A.K. SIKRI JUDGE SUPREME COURT OF INDIA

⁶ See Article of Jeremy Waldron : "How Law Protects Dignity"

Welfare State and the Dignity

The migrant labourers constitute a class that undergo human dignity violations and the pandemic brought to light some of the intense forms of dignity violation of migrant labourers. A welfare state is founded on the principles of equal opportunities, equitable distribution of wealth and a public responsibility towards the marginalised.⁷ A welfare state is entitled to promote the social and economic wellbeing of its citizens. The Directive Principles of the State Policy in the Indian Constitution seeks to promote the Welfare of the citizens emphasising on social, economic and political justice.⁸ The idea of social, political and economic justice put forth by the constitution involves a call for protecting human dignity. The migrant labourers were denied their dignity through visible patterns of social, economic and political injustice. They were subjected to the violence of dignity in the forms of humiliation, instrumentalisation, degradation and dehumanisation. The cases of extreme human dignity violation during the pandemic were just a manifestation of what lied deep within the society and the system. Migrant labourers are a group of people with their dignity under threat in modern India. It raises the question of the dignity of the marginalised in a so-called welfare state.⁹

Right to Health and the Government

Healthcare experts have criticized the government for failing to invest in the country's weak health infrastructure since the pandemic began. Although the authorities have advocated using masks and other public health practices, they conveyed contradictory messages by claiming that they have beaten the virus while allowing and participating in large-scale gatherings, including election campaign rallies.

The government has ignored calls from the United Nations Office of the High Commissioner for Human Rights for governments to release “every person detained without sufficient legal basis, including political prisoners, and those detained for critical, dissenting views” to prevent the growing rates of infection everywhere, including in closed facilities, such as prisons and detention centres. Instead, the government has increasingly brought politically motivated cases

⁷ Encyclopaedia Britannica, n.d.

⁸ Joshi, 1983

⁹ The COVID-19 Pandemic and Human Dignity: the Case of Migrant Labourers in India
Anoop C. Choolayilcorresponding author and Laxmi Putran

against human rights defenders, journalists, peaceful protesters, and other critics, and jailed them under draconian sedition and counterterrorism laws, even during the pandemic.

The government should take immediate steps to release all those jailed on politically motivated charges for peaceful dissent and consider reducing prison populations through appropriate supervision or early release of low-risk category of detainees. Detained individuals at high risk of suffering serious effects from the virus, such as older people, people with disabilities or with underlying health conditions, should also be considered for similar release, Human Rights Watch said.¹⁰ Thus the action of government to tackle the any pandemic crisis and health infrastructure must be on paramount in spite of detaining political dissenter behind the bar and organising political rallies frequently. It should be the collective responsibility of government as well as opposition and the citizen to handle such crisis.

Vulnerable Groups

1. People living in poverty

‘This is a crisis that disproportionately affects poor people, who are more likely to have health complications, live in crowded housing, lack the resources to stay at home for long periods, and work low-paid jobs that force them to choose between risking their health or losing their income.’¹¹

Basic sanitation, including access to soap and water, is essential for reducing the spread of COVID-19. In rural and urban areas, especially informal settlements where social distancing is impossible, governments need to provide the resources to ensure that essential services for water, sanitation and primary healthcare are available. A human rights response can help to identify actions that are needed by law makers, civil servants, ministers and local government officials. Monitoring bodies and civil society can use the framework of human rights to hold governments to account considering the need for cross-border efforts.¹² Wealthy States should

¹⁰ India: Protect Rights, Dignity Amid Covid-19 Crisis Human Rights Watch - 350 Fifth Avenue, 34th Floor New York, NY 10118-3299 USA

¹¹ Former UN Special Rapporteur on Extreme Poverty and Human Rights Philip Alston

¹² Alston went on: ‘the coronavirus is poised to wreak havoc in poorer countries.

direct support to governments that need it, suspend or cancel foreign debt, and stop monopolising medical equipment and corona virus tests.¹³

2. Children

The pandemic may aggravate the conditions of the most vulnerable children, many of whose education will suffer.¹⁴ At the international level, the Food and Agricultural Organization (FAO), UNICEF and WHO have all issued recommendations.¹⁵ The principles are referenced in the Convention on the Rights of the Child and other regional instruments and national laws:

- Non-discrimination in the quality of education.
- Participation especially of children in relation to decision making;
- Proportionality: not directly in the Convention, but indirectly insofar as any derogation from the Article 28 right to education is subject to the principle of proportionality, for example in considering quarantine and school re-openings;
- Dignity especially for mentally or physically disabled children;
- Freedom of expression and the right to information about education, especially in areas with reduced access to schooling.¹⁶

3. Older people

The highest mortality rates from COVID-19 are among older people. Disadvantages intersect; for example, people with dementia struggle to understand social distancing, and isolation increases loneliness. At the regional level, the Inter-American Convention on Protecting the Human Rights of Older Persons protects 'effective enjoyment of the right to life and the right to live with dignity in old age'. To the greatest extent possible, states should guarantee the principle of participation with older people fully involved in decision making about their support – with dignity. As care homes for the elderly have been devastated by the virus, states should apply the principle of proportionality in any special measures, such as measures limiting

¹³ COVID-19 and Key Human Rights Principles in Practice: State obligation

¹⁴ Koulla Yiasouma, Chair of the European Network of Ombudspersons for Children

¹⁵ International, regional and national human rights laws safeguard children's rights.

¹⁶ *ibid*

access to visitors, physical restraint and surveillance, whether in hospitals, residential care or detention.¹⁷

4. People with disabilities

State obligations to people with disability are provided by the CRPD. States must take 'all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters' (Article 11). Necessary measures within Article 11 should include the provision of PPE for care workers, and financial support to ensure that care needs can be met, where the pandemic has made care more difficult and expensive. The principle of participation requires that states should engage people with disabilities through representative organizations in the design of measures to fight the pandemic. The UN Special Rapporteur on the rights of persons with disabilities stresses the right to information: 'Public advice campaigns and information from national health authorities must be made available to the public in sign language and accessible means, modes and formats, including accessible digital technology, captioning, relay services, text messages, easy-to-read and plain language.'¹⁸

5. Indigenous peoples

'I am receiving more reports every day from all corners of the globe about how indigenous communities are affected by the COVID-19 pandemic, and it deeply worries me to see it is not always about health issues. States of emergency are exacerbating the marginalisation of indigenous communities, and in the most extreme situations, militarisation of their territories is taking place. Indigenous peoples are being denied their freedom of expression and association, while business interests are invading and destroying their lands, territories and resources.'¹⁹

Cultural Rights

India is the largest democracy in the world having diversity of culture, scripts, languages and religions. As we know the democracy is a rule of the majority. But the minorities are also

¹⁷ ibid

¹⁸ ibid

¹⁹ José Francisco Cali Tzay, UN Special Rapporteur on the rights of indigenous peoples⁶⁶

equally important for its successful working. Therefore, protection of language, culture and religion of the minorities becomes essential so that the minorities may not feel neglected or undermined under the impact of the majority rule. Since people take pride in their own culture and language, a special right known as Cultural and Educational Right has been included in the Chapter on Fundamental Rights. In Articles 29-30 two major provisions have been made.²⁰ The increasing communal gap between minority and majority is challenging task for the government to established peace and communal harmony during post Covid -19.

Right to Education (RTE)

The Right to Education is added by introducing a new Article 21A in the Chapter on Fundamental Rights in 2002 by the 86th Constitutional Amendment. It was a long standing demand so that all children in the age group of 6-14 years (and their parents) can claim compulsory and free education as a Fundamental Right. It is a major step forward in making the country free of illiteracy. But this addition remained meaningless, as it could not be enforced until 2009 when the Parliament passed the Right to Education Act, 2009. It is this Act which aims at ensuring that every child who is between 6-14 years of age and is out of the school in India, goes to school and receives quality education, that is his/her right.²¹ The major issue is the digitalization of education in the every government and private educational institution which deprived half of the population has no access to internet and electronic gadgets.

Conclusions

The history of human civilization and its action teaches us more to tackle any emergency situation and human crisis with great enthusiasm, intellectual mind as well as judicial mind in light of the principle of constitutionalism.

Francis Coralie v. Union Territory of Delhi²² the court observed: "The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing

²⁰ <https://nios.ac.in/media/documents/secsocscicour/english/lesson-16.pdf>

²¹ <https://nios.ac.in/media/documents/secsocscicour/english/lesson-16.pdf>

²² 1981 AIR 746, 1981 SCR (2) 516

and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

*Bandhua Mukti Morcha v. Union of India.*²³ The court characterising Article 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed: “It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

“These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”²⁴ Thus, both the above case will open the government mind to perform their duties to protect the right and dignity of an individual’s to help in the service of mankind.

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²³ 1984 AIR 802, 1984 SCR (2) 67

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