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ROLE OF WELFARE STATE IN PROTECTING FUNDAMENTAL RIGHTS OF CITIZEN DURING COVID-19 PANDEMIC AND INDIAN LEGAL FRAMEWORK

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Abstract

This research paper focuses on the function of the welfare state in defending citizens' basic rights during the Covid -19 and Indian legal frameworks. COVID-19 is not the first catastrophe to devastate the earth, and it most certainly will not be the last. According to Covid-19, global health has resulted in a massive and systematic humanitarian disaster around the world. Fundamental rights were not only limited but also stifled under Covid-19. COVID-19 has rendered the most developed nation's government powerless. The Directive Principles of State Policy are contained in Part IV of the Indian Constitution. It sets out the aims and objectives to be taken up by the states in the governance of the country. The idea of a welfare state envisaged in our Constitution can only be achieved if the states endeavour to implement it with the highest sense of moral duty. India needs something more than a DisasterManagement Act or an Epidemic Disease Act that only grants powers to the government to take steps they deem necessary. India requires a methodological & comprehensive framework to combat a pandemic of this nature.

Keywords: Covid-19. Welfare State. Fundamental Rights, and Legal framework.

Introduction

COVID-19 pandemic is not the first catastrophe to devastate the earth, and it most certainly will not be the last. However, experience shows that every 100 years, this kind of crisis happens and lasts for a few years until everything returns to normal. COVID-19 is an infection caused by a coronavirus that originated in China. The coronavirus was discovered for the first time in Wuhan, China's biggest metropolitan region, and was first confirmed by the WHO Country Office in China. The WHO declared a public health emergency in response to the COVID-19 epidemic.The global health crisis, according to Covid-19, has triggered a huge andhumanitarian catastrophe across the globe. Fundamental rights of citizen world over were not only limited but also locked down under Covid-19. We, the Indian people, realize that in this dire circumstance, basic rights cannot be limited but must be enshrined.

1) Aim and Objectives: --
   a) To study the fundamental rights of citizens during covid-19.
   b) To study the role of the welfare state in protecting fundamental rights
   c) To study legal provision during Covid-19

Significance of topic of research: - This research article is very significant to study in current scenario. Because when the Government of India, under the Disaster Management Act 2005, declared a countrywide lockdown, to pause the spread of COVID-19, they have felt obliged, under the settled law of Olga Tellis, to compensate those whose livelihood affected by this lockdown. However, without notice, any intimation lakhs of people were deprived of their basic fundamental rights.Hence the need to study the role of law to protect fundamental rights of citizen.

1) **Hypothesis: -**
   1. India has fallen short in ensuring a modern legal framework to tackle the pandemic.
   2. State has failed to protect the fundamental rights of citizen.

Methodology: -- This article is based on the doctrinal method. References have been collected from books, journals, newspapers, and the internet.

1.To study the fundamental rights of citizens during covid-19.

The most important fundamental right of a citizen is the 'Right to life & personal Liberty' enshrined under Article 21 of the constitution. Article 21 states that no individual shall be deprived of his or her life or liberty except according to procedure established by law.

The Courts in various decisions, have given an extended connotation to the ''right to life'', In Maneka Gandhi v. Union of India ,the Apex court held that the right to life is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court

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in Francis Coralie v. Union Territory of Delhi , observed that:"The right to life includes the right to live with human dignity and all that goes along with it."

Throughout Covid-19 pandemic, the second component, personal Liberty, is limited or locked down to safeguard the first component, Right to Life.The most critical component of the Right to Lifeis the Right to Health. InState of Punjab v. M.S. Chawla , it has been held thatthe right to life guaranteed under Article 21 includes within its ambit the right to health and medical care. According to Art.47, a Directive Principle of State Policy, provides for the improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the state.But Covid-19 pandemic has posed unprecedented danger to our health. Though the doctors, Government, and administrative authorities were trying to deliver their best, certain flaws made things miserable. Covid-19 treatment varies across public and private institutions.Government hospitals lacked essential infrastructure, doctors and health workers. The state failed to regulate prices of treatment at private hospitals. In terms of health, the 'Right to Equality has also been reduced to a footnote in the constitution.

Though private hospitals are not controlled by the government, but they provide public services and are subject to extensive and compelling government supervision.The Supreme Court in the case of R.D. Shetty v. International Airport Authority of India &Ors . and Ajay Hasiav.Khalid Mujib State, acting through its agencies or instrumentalities, is prohibited from violating the fundamental Rights, for what state cannot do directly, it shall not be allowed to do that thing in a colourable manner, through its agencies or instrumentalities'. Private Hospitals can be construed as an instrumentality of State under Article 12 of the Constitution,hence can be made liable to pay compensation for any kind of medical negligence. Apart from this, the victim always has a right to approach Consumer Forum or Civil Courts for seeking compensation and damages separately. InPaschim Bengal Khet Mazdoor Samity v. State of West Bengal , the Supreme Court held that the government is obligated to provide adequate health facilities to the citizens of India. The welfare state has to work for adequate medical services to all people. Unfortunately,the state has failed to carry out constitutional responsibilities. Therefore, the pandemic has compelled the people to beat the mercy of the state and central authorities.Thousands of people died because sufficient hospitals, beds, oxygen, or medicationswere not available. This problem gives rise to the issue that whether a failure on the part of authorities to provide medical care violates the basic right to health.

Apex court in Parmanand Katara v. Union of India &Ors. held the state government must preserve life. In Pratibha Shinde &Ors. v. State of Maharashtra &Ors. , the Bombay High Court held the State Government accountable for the unfortunate death of an elderly lady suffering from Covid-19 and failure of the hospital administrationto provide timely and proper medical treatment. In another case, the Patna High Court noted in Shivani Kaushik v. Union of India &Ors it was held that the State's failure to provide sufficient health care to people, especially in the current Covid-19 crisis, would constitute a violation of Article 21's Right to Life.In KS Puttaswamy v. Union of India held that the Right to Privacy is a Fundamental Right under Article 21. Since the imposition of the lockdown, both these rights have been massively undermined or ignored by the State

It was observed during the pandemicthat the guidelines restricting freedom of trade/occupation/profession have been framed under the National Disaster Management Act, 2005 to monitor the symptoms of the infectious virus, this disease beinga communicable disease that spreads from person to person. The government enforced a lockdown and limited freedom of travel under Article 19(1)(d) of the Indian constitution by enforcing fair restrictions under Article 19(5) of the constitution in the interest of the general public.

Professor Dicey rightly said "Englishmen are ruled by law and by the law alone a man with us may be punished for a breach of law. But can be punished for nothing else." One of the basic principles of the English constitution is the rule of law. According to this principle "All men are equal" and all classes of persons must be governed by the ordinary law of the land as administered by the ordinary courts. No one can be degraded,no one can be upgraded. The law gives equal justice to all.

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Part IV of the Indian Constitutionsets out the aims and objectives to be taken up by the government in the governance of the country. The idea of a welfare state envisaged in our Constitution can only be achieved if the states endeavour to implement them with the highest sense of moral duty.

Like fundamental rights,directive principles are not enforceable. Directive Principles seek to give a certain direction to the legislature and the government of India as to how and in what manner and for what purposes they have to exercise this power. But as per Article 37, these principles are not enforceable by any court of law because these are only positive obligations of the state. Nevertheless, these principles are fundamental in the rulers of the country. It is the responsibility of the State given under Article 41 to provide the citizens with education, work, or gives public assistance in Article 43 provide living wages for workers and article 47 duty of the State to raise the level of nutrition and the standard of living and to improve public health. Hence, instead of proposing a new law on COVID-19, India has decided to enact an existing statute dating back to 1897.

2. To Study Legal Provision During Covid-19:

1. The Epidemic Diseases Act, 1897 is a law which was first enacted to tackle bubonic plague in Mumbai (formerly Bombay) in former British India. This Act is somewhat 123years old and obsolete, it does not even define what an epidemic is. This Act has also beenused to control various diseases in India such as swine flu, cholera, malaria, and dengue.This Act has only four-sections.It is not well equipped to deal with the current coronavirus (Covid-19) pandemic. Many Nations have enacted holistic laws to deal with such public health emergencies, unlike India. India has made amendment in Epidemic Diseases (Amendment) Ordinance, 2020 to tackle the situation when that has gone beyond the control of the government.But India is yet to take a new path. The state has kept on using these age-old provisions of a long gone by era.

Section 1 is applicability of the Act and Section 2provides for power to take special measures and prescribe regulations vis a vis a dangerous epidemic disease

Section 2A. Powers of Central Government:The provisions of the Act state that the government can fine people or imprison them for violating rules and regulations that will be set to contain the outbreak.

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).

Section 4 Protection to Persons Acting Under Act.No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

The Act can be used to restrict the movement of suspected coronavirus patients to preventfurther spread of the disease. The need to invoke the Act was felt to empower the central government to tackle the outbreak.The Centre noted that the powers held by the home ministry under the Disaster Management Act shall be "delegated" to the health ministry to prepare India against the outbreak .

Amendment 2020: On 22 April 2020,the Act was amended. It has added provisions to punish those attacking doctors or healthcare personnel combatting epidemic diseases and expands the powers of the central government to prevent the spread of such diseases. Also, the law specifies that the guilty will have to pay twice the market value of the damaged property as compensation for damaging the assets of health care staff including vehicles and clinics.

2. Indian Penal Code, 1860:In addition to the Epidemic Diseases Act, 1897provisions of another legislation of British times, i.e., IPCare often invoked. In the current crises various provision of IPC were taken into account to supplement the provisions of epidemic disease Act.

A) Section 271: Aims to punish acts of disobedience to quarantine rule.

B) Section 268: Aims to punish a person who is guilty of a public nuisance (spread of pandemic), by doing any act, an illegal omission, which causes any common injury, danger, or annoyance to the public or people, in generalwith simple imprisonment extending up to six months, or fine, or both.

C) Section 269:Aims to punish negligent act of person likely to spread infection of disease

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danger¬ous to life includes negligent act to spread the virus.

D) Section 270:provides for punishment to whoevermalignant does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life.

E) Section 188: aims topunish for disobeying an order duly promulgated by a public servant during lockdown period in covid-19 pandemic.He/she will be punished with simple imprisonment for a term which may extend to one month or fine which may extend to 2 hundred rupees,or with both;

3. Section 144 of the CrPC 1973: imposes power to the executive magistrate to restrict particular or a group of persons residing in a particular area while visiting a certain place or area." The most important preventive measure against corona is safeguarded by this section that restricts to a gathering of people and thus in a way supports social distancing.

4.Essential Commodities Act, 1955:Section 3 of the Act During this time of global crisis, the citizens need to know what counts as essential commodities and what items are to be avoided.

5. Schedule 1 of the Essential Services Act: Provides a list of services in the category ofessential that would be provided during the period of lockdown. The central government has allowed the flow of essential services during the lockdown thus it becomes extremely necessary for us to know what services are covered as essential in the Act.

6. Disaster Management Act, 2005:According to this the Central government may designate the whole country or a portion of it as disaster-affected and create measures for disaster mitigation to minimize the "risks, consequences and effects" of the catastrophe. The Epidemic Disease Act, 1897 does not provide such powers. DMA encompasses all man-made and natural catastrophes that are beyond a community's ability to cope or recover from them. It also gives the government the right to take action against anyone who violates government rules and regulations. The lockdown was imposed under the Disaster Management Act. The Ministry of Home Affairs, on the other hand, deemed COVID-19 to be a "notified catastrophe," triggering Section 2(d) of the Disaster Management Act. As a result, state governments were able to spend a greater portion of the State Disaster Response Fund (SDRF) to fight the virus's spread.

Conclusion:

In India, there are several laws enacted by the Parliament on public health which are not addressed under one single enactment. It is the need of the hour for the legislature to amend the century-old laws to be ready for any epidemic.The point in favour ofboth hypothesis is proved.Governments has to overcome this virus, save lives and protect fundamental rightstoo, while limiting the economic damageto build a strong nation.

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