

Protection of Human Rights During the Pandemic Under the Disaster Management Systems: An Overview

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Abstract - It has been a dynamic practice to maintain public health though there is a vast population. There are many challenges post-independence which was faced by the nation either it may be the political revolution or even it may be related to the 'protection of the rights of people'. It is the right of every human to get a clean and safe environment. Health is the basic element and has its own importance in the life of human. Protecting the human rights and upholding their interest is very important for the government. There are many disasters that took place in the country and has been resolved by the state itself. Post-independence it has faced many challenges related to health and the environment, but the state has always tried to protect the rights of its citizens. Right to health prevails over all the other rights as given under fundamental rights of the constitution. The protection of right includes not only during the disasters but even during the normal days. Now from the year 2020 we have been facing a cycle of pandemic again and again hitting the health and the environment in a way that cannot be fixed, here the Disaster Management is a duty of the state and that has the same responsibility. This article shows the pandemic reflecting on the life of humans and the state responsibility in curbing the pandemic by applying disaster management and prepare various grounds for clearing the crisis.

Index Terms - health, constitution, fundamental rights, disaster management.

INTRODUCTION

A nation is a combination of many people. They are the citizens belonging to a particular state and are having certain set rights by the nation itself. The rights as provided by the state as fundamental right cannot be changed by any person nor can be taken aback. Therefore, the rights are always to be protected by the state. The state as many a times faces problems such as disasters caused either naturally or man made both causing a huge destruction. Here at this point rich will be affluent to spend and avail the services needed

including the treatment but the same does not happen with the poor. But the discrimination should not be made regarding the protection of rights nor there can be any hindrance from protecting the rights of the people. The international law always guarantees the protection of rights at the highest attainable standard and even makes its government to take steps to protect their rights. Therefore, whether it is a normal day or even during any disaster that the government has to take care of the rights of the human. The World Health Organization (WHO) "implemented a risk-reduction and emergency preparedness plan for the health sector and community capacity development to assess emergency preparedness for mass casualty incidents (MCIs) or disasters in each country." The health has to be protected during pandemic and that is done through disaster management.

The world is gearing up to call out for the new year, the WHO did pick up a report calling out the numerous cases which was few and far between just like kind of 'pneumonia' in a place called Wuhan in China. There was called a "Global Emergency" a month later as because of the unprecedented health crisis as there was this novel coronavirus disease or COVID-19 pandemic. As the disease started spreading India also faced the cases one after the other state. The disease started spreading globally due to different international traveling, as the number of cases kept mounting globally, so did with that of number of deaths.

The WHO did declare the spreading disease to be global pandemic as the number kept on increasing day by day infecting many people and there was an increase in the number of deaths. Even the number of cases increased in India by around nine times, increasing the number of deaths.

'The Disaster Management Act 2005 (DM Act)' was invoked in India for the very first time during the pandemic since it was passed almost a decade and a

half ago, to tackle the COVID-19 pandemic which was then in its initial stages of spreading, increasing rapidly. The National Disaster Management Authority (NDMA), which was created by the Ministry of Home Affairs (MHA) in pursuance of the DM Act, which issued an order on March 24, 2020 under Section 6(2)(i) of the DM Act. The order as that was directed by the ministries and even Departments of Government of India, with that of State Governments along with the State Disaster Management Authorities to take measures to "ensure Social distancing so as to prevent the spread of COVID-19 in the country".

Fundamental Rights are provided by the Constitution of India. The 'Right to health' is not the direct fundamental right as provided by the nation for its citizens. This is an indirect right as included in the article 21 which provides "right to life and personal liberty". "Covid-19 is an infectious disease that was caused by a new coronavirus as first identified in December 2019. Coronavirus is a family of viruses known to cause respiratory infections."

Disaster means "A sudden occurrence of an accident that caused huge loss of life and even property." It is even called as calamity. There are two kinds of Disaster:

1. Natural Disaster
2. Man-made Disaster.

Natural disaster that are caused by natural factors and can even be called as act of God. Ex: Cyclone.

Man-made disaster: As known it is a disaster caused due to the human intervention or activities e.g., wars, fire accidents, industrial accidents etc. "Disasters take place when a community is not appropriately resourced or organized to withstand the impact, and whose population is vulnerable because of poverty, exclusion or socially disadvantaged in some way"

"The right to health provides that all the health facilities, goods, and services as made available by the State should be:

1. available in ample quantity,
2. accessible to all the citizen without any discrimination and affordable for all, even the marginalized groups;
3. acceptable and must have a meaning respectful of medical ethics and culturally appropriate; and
4. Scientifically, medically it has to be appropriate and of good quality."

THE RIGHT TO LIFE AND THE RIGHT TO HEALTH DURING PANDEMIC; FUNDAMENTAL RIGHTS IN INDIA

India is a nation with a huge population, different climatic condition with different environment. Human rights as mentioned are always to be protected by the State. These rights includes even protection of health the state has to protect even the health by providing a clean environment. In India the "right to health" is given under the Fundamental Right mentioned under "Article 21 of Constitution of India". The protection of rights becomes an important task of the state. Now there comes a situation of pandemic this is not for the first time but that has been always faced by the nation every now and then pre-independence or post-independence.

It is a known fact that the "Right to health is not a direct right but by the judicial interpretation this right is included under Article 21". It is often portrayed that the procedural Magna Carta is protective of right as mentioned under the article 21 i.e. Right to life and personal liberty of the Constitution of India, this is a progressive provision. The protection of the right becomes a prime importance in the democratic society as the fact clearly says "No person shall be deprived of his life or personal liberty except according to procedure established by law." The right granted solely against the state that this is a negative right as there is a word no before the word deprived. Article 23 of the Constitution of India indirectly contributes to protecting the Right to Health as it prohibits human trafficking and child labour.

Under Article 21 the word Life is defined as more than just the 'act of breathing'. *Munn v Illinois*, which held the term 'life' meant something more than mere animal existence. This includes right to live in dignity, the right to livelihood, right to health and right to get a clean environment. *Murli S. Deora v. Union of India*, the Supreme Court of India observed that "the fundamental right guaranteed under Article 21 of the Constitution of India provides that none shall be deprived of his life without due process of law". The fundamental right as guaranteed by the Constitution of India under Article 21 only protects the rights against the acts of the State or any acts performed under the authority of the State that do not follow any of the procedure established by law, limiting its parlanace against private individuals.

The Directive Principles of State Policy(DPSP), as enshrined under the Chapter IV of the Constitution of India shall require the state to including other duties shall:

1. “Promote the welfare of its people” ; as is mentioned in the Constitution of India it is the prime duty of the State to provide all the necessities for the public during pandemic.
2. “Protect their health and strength from abuse” - The State here has the responsibility to provide good and healthy environment which could make the public stop from facing the abuse of health if the state fails to provide and protect the health.
3. “Provide public assistance in case of sickness, disability or “undeserved want” ;this brings an obligation on the State to provide assistance during the pandemic for the people who fall sick.
4. Ensure just and humane conditions of work; so that there should not be any destruction caused to any person.
5. “Raise nutrition levels, improve the standard of living and consider improvement of public health as its primary duty” .

In addition to the Directive Principles of State Policy as mentioned in the Constitution of India there are still more health related provisions can be found in the 11th and 12th Schedules that there are jurisdictions of Municipalities and Panchayats too. To provide clean drinking water is also included in healthcare and sanitation (this again includes hospitals, primary healthcare centers and dispensaries)

It is totally noteworthy that the Supreme Court is trying the level in protecting the health of the public. The Supreme Court has repeatedly observed that the expression “life” in Article 21 means a life with human dignity and not mere survival or animal existence Francis Coralie Mullin vs The Administrator, Union Territory of Delhi .“Article 21 should also be read in relation with the directive principles of state policy, cited above, to understand the true nature of the obligations of the state in this respect.”

The Supreme Court ruling in A.K. Gopalan vs State of Madras that did segregate the contents and the subject matter of Article 21 and Article 19 (1) (d) as “non-identical, proceeding on different principles”. Serving even as a paradigm shift, this judgment removed the uniqueness between Articles 19(1) and Article 21, and the procedure that was established by law that was

restricting these rights and should stand the scrutiny of other provisions of the Constitution as well.

“As a result of the expansion of the scope of Article 21, Public Interest Litigations in respect of children in prison being entitled to special protection, health hazards caused by pollution and harmful drugs, housing for beggars, immediate medical aid to injured persons, starvation deaths, the right to know, the right to an open trial, and inhumane conditions in aftercare homes have all found a home under Article 21.”

In 1989, through a landmark judgment in Pt. Paramanand Katara v. Union of India the Supreme Court recognized “emergency medical care as a part of Article 21 and the right to health care was added to its wide catena.” Furthering its stance through Paschim Banga Khet Mazdoor Samity v. State of West Bengal and blunder Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ratified on 10th April 1979), that the vertex court had envisaged a robust health care jurisprudence. “All the defenses that is related to the right to healthcare cannot be construed as absolute, fall flat when we identify the greatest casualty in the pandemic-our health infrastructure gilded in its pre-existing issues of lack of physical infrastructure and human resources.”

In a subsequent case Consumer Education and Research Centre V. Union of India , it was held that “the right to health and medical aid to protect the health and vigour of a worker, both while in service and even the post-retirement, is a fundamental right under Article 21.”

The initial response of the Supreme Court during the pandemic did not justify its role as “the guardian protector of the fundamental rights, its proactive interventions in the rationale of state vaccination policies hint at a redemption”. Although the pandemic has been brutally exposed the fault lines in our governance and raised disturbing questions about the realization about our essential rights, our resilience, and constructive zeal will walk us through this “new normal”, towards a day when “the distinct prisms of the constitutional guarantee of the right to healthcare” are realities in their truest sense.

GOVERNMENT LEADERSHIP AND RESPONSIBILITIES

While all these sectors of the society is totally involved in pandemic preparedness and the response from the

national government is always considered to be the natural leader for overall coordination including all the communication efforts. In its leadership role, the central government should:

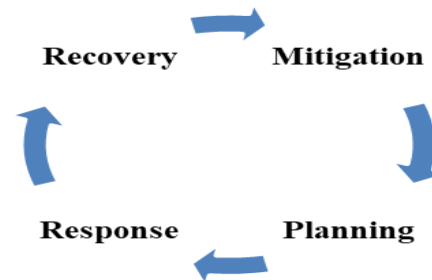
- Always identify, appoint and lead the coordinating body for the preparing its citizens for the pandemic and should see the responses;
- Strive to enact or modify legislation and policies that isso required to sustain and optimize pandemic preparedness, capacity development, and the response efforts across all the sectors;
- Always prioritize and even guide the allocation and targeting of resources to achieve the goals as outlined in a country's Pandemic Influenza Preparedness Plan;
- provide the additional resources as necessary for national pandemic preparedness, capacity development, and response measures; and
- consider to provide the necessary resources including technical assistance to countries experiencing outbreaks of influenza with pandemic potential.

These are the Responsibilities of the State:

1. Respecting the “right to health” which is a means and that shall not interfere directly or indirectly with that of the enjoyment of the right. There are many chances that the States may bring a breach of this obligation by unlawfully polluting the air, water and soil or may even by unjustifiably denying or limiting the access to health care services or by limiting access to the contraceptives by withholding or even misrepresenting health information, including sexual health information.
2. Protecting the right to health that is a mean to take the actions that could be very necessary to prevent the third parties from interfering with the right as given by the State. This requires States to adopt legislative as a vital role of law or other measures to ensure that registered medical practitioners and other health professionals have achieved appropriate standards of education, professional skills and ethics.
3. Fulfilling the right to health means taking actions to facilitate, provide and promote the conditions in which the right can be fully realized. “This requires States to adopt a national health policy and to implement legislative measures that seek to realize the right.”

THE DISASTER MANAGEMENT AND THE PHASES FOR THE MCI

Every problem comes with the solution in itself. The legislations are made to apply it and keep safe the citizens. The disasters are something that must be managed by the state and should always have a backup planning to save the rights of its citizens. The pandemic during the 2020’s was an unpredictable disaster. The state had no plans as a backup to curb the pandemic. The state with the disaster management always planned to fight the pandemic in all the ways it could making it easy to its citizens to save themselves from facing the worst. The state should keep in mind four phases that could help them to protect the rights of the citizens and could always have a plan to withstand any disaster. We call it as a disaster cycle. They are:



“There must be a balanced concentration with regard to the four phases if an unbalanced attention is being posed on only phase or aspect that would increase the harmful impact of events which would bring a great harm to the society and people. There has to be the particular attention to be given on those aspects of the cycle in order to adapt the action to the MCI faced. On the other hand, the unbalanced attention so posed on only one aspect may increase the harmful impact of events.”

These four phases are as follows:

1. Mitigation:

There are devastating effects of the mass casualty incident(MCI) that might be reduced before the event. If planned properly they can pose useful measures in the affected areas to stop the event from taking place. The event is always realistically announced therefore managing it should be done by the state.

2. Planning:

Planning at first place is always reminds about thinking in advance and preparing self in advance. The realistic disaster management includes the exercise, practice and continuous revision of the activities. It is not always possible to plan for all the contingencies but the planning should be in general and must be expandable and must be adaptable for the present situation.

The planning should include the agreements or contacts with such an organization or institutions or associations to be established so that it could be ready to work during such an event pf pandemic. This should be established before an event and there must be ample resources made available to stop such disaster if any. There has to be optimal usage of the available resources and even there has to be a good plan for even refunding and reimbursement if any. No medical entities or even scientists working all around never could predict this pandemic and when they understood the pandemic they planned it in accordance to the time and the resources available.

3. Response:

This is the phase where in general it is considered to be the utmost important one, as that is needed to know the outcome of the things so planned and executed. This is considered very effective and is expected a coordinated response will be greatly depending on the other three phases. The main aspects of the this response phase can be summarized as follows:

a. Activation, notification, and initial response:

There has to be a trustworthy communications channels to have communication with that of the potentially affected population without creating any panic situation and mass unreasonable and risky situations. So the work can be assigned to some organizations or even the personnel involved in response.

It must be kept in mind the necessities to fight against any of the pandemic. The different structures must be mentioned and even plan the ways to allocate the bed for the people and male use of the resources so available and even to host the people who are sick. When the pandemic arose in the year 2019 that was the first wave the state should have planned for the same.

b. Organization of command and scene assessment:

Establishing an important command structure is another most crucial steps. This has to be arranged

prior that would be including the assembling of the things almost immediately, including communication nets to be established. The Incident Command System (ICS) is the only that is in charge to direct and organize the different actions in the affected regions. All those different regions or local directors aren't even allowed to manage the event very differently from what is defined by the ICS.

c. Search and rescue:

The people so affected by the incident must be searched for and must be rescued by the officials so appointed for the work.

d. Extrication, triage, stabilization, and transport:

This shall involve providing the most efficient aid to many of the members prioritizes victims treatment, transport and transfer. There are many variables influencing the manner in which patients are transported, whether the appropriate means of treatment is given, the number of victims out of the disaster. If the right decisions are not taken on time that may turn worse

The health care providers must be very much familiar with the MCI triage concept and must be trained in performing it. Transportation, providing the best medicine, finding the right vaccination must equitably distributed to the victims who are capable of receiving facilities. The resource allocation is a must during the MCI since it is different from the normal activity.

e. Definitive scene management:

Surgeons and even few ultra-specialist branches related to health system providing a unique service which would not be performed by other medical disciplines apart from such surgeons. Therefore, all of them must be secured in a very protected environment, minimizing risks of acquiring the disease because critically ill and injured patients will continue to need emergent care.

4. Recovery:

This is the end phase and is much crucial for the community that gets affected. The personnel who is involved in taking care of the work related has to manage properly and that is very important. If failed to take actions further it would be quiet very difficult to bring any future improvements.

THE RIGHT TO HEALTH: A HUMAN RIGHT
ENSHRINED IN INTERNATIONAL HUMAN
RIGHTS LAW AND DISASTER MANAGEMENT

International Law during Pandemic and Disaster Management in India assures the protection of health as a “human right”. When a nation assures the protection of “health as a fundamental right” then it is the duty of the nation to provide good health and hygienic environment and should protect all the rights of the public. It is always a necessity to have a National laws for the sake of “protecting the rights of the citizen” and uphold the health and there must be an emergency plans which must take an account of international obligations for the management of these public health emergencies, including the International Health Regulations (2005)

ICESCR’s Article 12 provides that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The International law supports International Disaster Response Law (IDRL), that it is an emerging area of International law which is designed specifically to improve the humanitarian response to natural disasters.

IDRL isn’t any comprehensive or any unified framework. “There is no much core international treaties, such as the Geneva Conventions and the Additional Protocols under IHL. Rather this consists of a fragmented and the piecemeal collection of various international, regional and bilateral treaties, non-binding resolutions, declarations, codes, guidelines, protocols and procedures. This shall even include relevant provisions of international treaties in other areas of law, such as international human rights law, international refugee law and IHL (in the case of conflict situations).”

International Covenant on Economic, Social and Cultural Rights, ICESCR (1966)

1. The state that are parties to the above covenant shall recognize the right of everyone to allow them to enjoy to the highest attainable standard of physical and mental health.
2. There are few steps that needs to be taken by the parties to the covenant, they are:
 - (a) “Provisions for the healthy development of the Child reducing the infant mortality.

- (b) The improvement of all the aspects of environmental including industrial hygiene;
- (c) The prevention, treatment and control of all the epidemic, endemic, occupational and other diseases;
- (d) To create conditions which would assure all medical services and medical attention in the event of sickness.”

In compliance with the fundamental obligations which is laid down in article 2 of this Convention, “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law”,

States Parties would take all the necessary appropriate measures “to eliminate the discrimination against women in the field of health care in order to ensure, equality of men and women, access to health care services, includes those related to family planning. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women the appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

The right to health was first articulated in the WHO Constitution (1946) which states that: “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being”. The preamble of the Constitution defines health as: “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

CONCLUSION

Human rights have always been imbibed in the Indian culture since ages. This concept has been recognized and is being developed by the international community after that of the world war-II. As it is a known fact that the concept of human rights is not very old concept, for the first time the major development took place when the Universal Declaration of Human Rights document was being made, thereafter the recognition was so given by the Constitution of WHO- World Health Organization which was again a major step. It is always considered a challenge for the nation to protect all the rights of its citizens. It is the state government and even there are institutions at global

level to actively start the effective plans just to promote or improve MCI management and show well preparedness in general and now concentrating upon the Covid-19 pandemic. Global health shall not proceed with any mass medical emergencies which create extraordinary situations as a part of natural course. Global health must have been prepared to face all the difficulties and to provide a best part of the common life. If the MCI does not show well preparedness or sets a drawback the number of victims during the pandemic would increase.

As a known fact we consider health as a fundamental human right as mentioned by the World Health Organization. All the WHO member nations have consensually considered that the highest standard of health has to be provided regardless of religion, race, caste, sex, creed and political belief, social or economic condition. Therefore, "health is the fundamental right of all the people and everyone must have access to the required services as and when required."

Health is what is considered to be the most precious and valuable wealth on this earth. When there is an obligation upon the state to protect the rights related to health there has to be the strict measures that must be taken by the State to bring a healthier environment. It can be thus concluded that the 'right to health' is a fundamental right and is exclusively given by the state through the law of land- Constitution of India, though the right may not be the direct right but that is included under Article 21 that provides 'Right to Life and Personal Liberty'. The pandemic are always uninvited but the state through the disaster Management always has pre planned measures and shall try to stop the pandemic from increasing. As for now during the pandemic the State called for lockdown stopping the virus from getting spread to a greater extend. The Disaster Management as is a central Act helps the nation to regulate the nation from such pandemic.

Violations of any measures was strictly prohibited and the state had given a list of measures to the public making it easy to handle the pandemic. The researcher has found that the national and international conventions though not enough to curb the virus from spreading and somewhere more strict conventions were necessary yet the given conventions has helped to stop the spreading of virus. It is very true that the state has responsibility to protect right to health and provide safe environment as mentioned in M.C. Mehta

V. Union of India it was held that, "Art 39 (a), 47 and 48-A by themselves and collectively bring an obligation on the State to secure the Health of the people, improve public Health and protect and improve the environment".

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