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‘When State Overlooks Fundamental Rights of Citizens’ - A Situation During the Covid-19 Lockdown

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ABSTRACT

The Fundamental rights are guaranteed under Part III of the Indian Constitution. The Judiciary is the guardian of these fundamental rights and time and again, Courts in India have protected the citizens against the legislative and executive tyranny. While the Covid-19 pandemic has led the world to a crisis, both humanitarian and economic, it has been evident that India is one of the worst-hit countries with this crisis. A nationwide lockdown was imposed in India to contain the Covid-19 disease. While experts have called this lockdown necessary and a stringent one, the lockdown brought several repercussions on ordinary citizens socially and economically. In a democracy like India, several fundamental rights faced a hostile response in the light of the restrictions imposed under the lockdown. This research paper endeavours to briefly explain the fundamental rights affected on account of the said lockdown. Although the lockdown was a necessary measure, it is also viewed as an unorganised striking on citizens.

I. INTRODUCTION

India today has come a long way forward in its battle towards the Covid-19 virus where it followed a strict lockdown, bringing to a halt, all major activities which were necessary for a day to day lifestyle. Pandemics throughout the world have had far-reaching impacts which are remembered till date. What is worrisome about the current reaction to coronavirus, is that as the human species continues to expand massively in numbers, and as it continues casually to make other species extinct, it is inevitable that the excessive and crowded human population will become susceptible to the disease. Almost all countries where the virus has spread has taken strict measures and initiatives to restrict and contain the spread of the virus. It is pertinent to note that while such measures and initiatives are for restricting the spread of the virus, we have come across incidences which have directly affected the fundamental rights of the citizens. The present lockdown is a curfew and a stand-still situation where people are permitted to act or travel in a rarity and limited circumstances, and on account of such restriction, people have lost their employments ultimately resulting in the loss of their

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livelihood, along with basic amenities like food, shelter and clothing. It is during such times when the duties of a state ought to be charged up. As a layman's thought would call the present lockdown a Government's safety measure, there are some relevant aspects which need attention, about the Government's role and the Judiciary's role in handling the situations which are the outcome of the present lockdown. The present research paper seeks to summarize the fundamental rights which are affected amidst the lockdown, which further imposes an obligation on the State to come up with measures. The present pandemic of Covid-19 further stands as a test for the Government and the Judiciary to ensure they have diligently active in their obligations.

II. CONSTITUTIONALITY OF THE LOCKDOWN:

The lockdown imposed in the country is indeed the first time in independent India when the country has come to a standstill. Its outcome was that businesses, normal lifestyle, and economy came to a sudden standstill. While sufferings out of the lockdown are evident and explanatory, a pertinent question which arises is that what gives the Central Government the authority to impose such a stringent lockdown and whether the Central Government's actions were constitutionally valid? To simply answer, yes, the State has the power to impose a nationwide lockdown despite the negative consequences which follow the lockdown. The Supreme Court of India in several landmark judgements has held that under Article 21 of the Constitution which guarantees the right to life, "**right to health is integral to the right to life. The government has a constitutional obligation to provide health facilities.**"² Thus, it can be categorically construed that the State should take action during a public health emergency such as the Covid-19 pandemic. Matters of public health fall under the State List, as provided under the Seventh Schedule of the Constitution, thereby authorising the States to legislate on the matters concerning public health. Further, it is the Centre which has the authority to make laws on inter-state quarantine. Entry 29 of the Concurrent List empowers the Central and State governments to legislate on matters of the prevention of an infectious or contagious disease spreading from one state to another. In the event of any inconsistency, it is the law and regulation passed by the Centre which shall have an upper hand, according to Article 254 of the Constitution.

Section 2 of the Epidemic Diseases Act, 1897 mandates the State Government to take all necessary measures to contain an epidemic, whereas Section 2A empowers the Central Government to take measures for inspections and detention of ships arriving at ports of India.

² State of Punjab v. M.S. Chawla, JT 1997 (1) SC 416 (India)

However, the Central Government took a different route to impose the lockdown by invoking the Disaster Management Act, 2005 and thereby termed Covid-19 as a 'disaster' as per the definition provided under the Disaster Management Act, 2005. The Prime Minister, being the 'ex officio Chairperson' of the 'National Disaster Management Authority (NDMA)' under Section 3(2)(a) of the 2005 Act, has the power under Section 6(2)(i) to take measures for the prevention and mitigation of a disaster as per the Disaster Management Act, 2005. Accordingly, looking at the gravity of the situation, the announcing of a Nationwide lockdown by the Prime Minister turned out to be legally tenable and a suitable measure.

III. DUTIES OF THE STATE:

Part IV of the Indian Constitution has provided for policies which are to be adopted by States, known as the Directive Principles of the State Policy. Though the directive principles are not enforceable in a court of law, the framers of the constitution included the same with a vision that the State shall nevertheless aim at securing the rights of citizens through these policies legislatively and administratively. A bare reading of the directive principles makes it clear that they embody the object of the State under the republican Constitution, namely that it must be a welfare state and not mere a police state. Article 47 is a direction enshrined in the Constitution to the state, to raise the level of nutrition and standard of living. It mandates that the primary duty of the state should be working towards improving public health and there is no uncertainty in the fact that the State must protect the public health of its citizens. While it is evident that the Government had sanctioned and announced several budgets and allocations of food grains for the long run of the lockdown, one important aspect which had kept the states out of the race of understanding the health conditions of its citizens is the testing process of the citizens. Time and again, medical and health experts have recommended for conducting as many tests as possible, since testing would give the authorities a sense of the trajectories of transmission of the Covid-19 virus. However, sources show that India has, so far still has a lower ratio of testing than other countries. While as of April 24, India's test positivity rate stood at 4.76%, a low value by international standards (because the median test positivity rate was around 5.73%), India's testing rate was 380 persons tested per million population, an extremely low value, again, in comparison to other countries of the world (the median testing rate in the world on that date was about 5,897 persons tested per million population).³ India must ramp up testing since, in the event of such a failure, the state is in the position of loosely safeguarding the health

³ Deepankar Basu, India's COVID-19 Testing Conundrum: *Why the Govt and Critics Are Both Right* (Apr. 27, 2020), <https://science.thewire.in/health/india-covid-19-testing-contradiction-rate/>.

of its citizens, when the surge of the virus is evident. Testing citizens for the ensuring positivity of the Covid-19 is one of the ways for the state to ensure the safety of public health of the citizens by ensuring that the spread of the virus is contained through the positive patients. As of August 2020, with an exponential increase in the number of cases, it appears that India has started conducting tests rigorously and with rapid actions.

IV. FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION:

The current situation poses a new test every day for the executive and the judiciary. For the executive, it is a test to enforce the law of the land and ensure that the citizens do not face a violation of their Fundamental Rights provided by the Indian Constitution on account of laws implemented. For the judiciary, it is the test to uphold those rights which have been denied by the State. To uphold and protect the Constitutional fabric, the executive and the judiciary need to constantly re-evaluate the state of affair. Fundamental rights of citizens, which form a part of the Constitution under Part III, are affected largely on account of the imposition of the lockdown. One noteworthy aspect of the Indian Constitution is that while the Constitution was drafted by the drafting committee, several fundamental rights and provisions were adopted from the American Constitution. In 1776, the American Declaration of Independence was brought into force with Mr Thomas Jefferson as its principal author and architect. After some years, the Bill of rights, 1791 was enacted in the United States of America, which protects freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition. It also prohibits unreasonable search and seizure, cruel and unusual punishment, and compelled self-incrimination. For sake of brevity, it can also be said that these two enactments of the United States of America made it clear that human rights recognised by a constitution are those rights which are an inseparable part of the individual. The same position has been upheld by the Supreme Court in the landmark case of '**I.C Golakhnath vs State of Punjab**'⁴ where it is categorically stated that '*Fundamental rights are the modern name for what has been traditionally known as "natural rights". They are the primordial rights necessary for the development of human personality. They are the rights which enable a man to chalk out his own life in the manner he likes best.*'

It is evident that since the lockdown was announced, many people opted for working from home since they can burden their work at home, whereas contrary to this, a large number of people who belong to the poverty line and the below poverty line strata have incurred loss of

⁴ I.C Golakhnath vs State of Punjab, A.I.R. 1967 SC 1643 (India)

work and ultimately, a loss of livelihood. While some are enjoying time with families, others are desperate to sustain their livelihood. According to a survey conducted by NGO **Jan Sahas**, 90% of labourers (approx..) in India had already lost their source of income in three weeks of the lockdown. While the right to livelihood is one of the important facets of the right to life, it is a sad situation that there has been a failure on the part of the State administration to provide for livelihood to these labourers. A major point of discussion arose that the Centre may consider and allow the States to transport migrant workers and labourers, the risk of transmission of the Covid-19 virus was difficult to be ruled out. The Home Ministry had told the State Governments to ensure adequate support, including food and shelter, to migrant workers who are being forced to return to their domicile states or are trying to do so. The Central Government, later on, organized buses and trains to transport groups of labourers and migrants with assurances that the vehicles will be sanitised and will have to follow safe social distancing norms in seating which looks like a sigh of relief for these workers. Lockdown affected the basis of livelihood for innumerable labourers and rendered them without adequate food, shelter and clothing, which is contrary to the principle of the right to livelihood guaranteed under the Constitution of India.

Religious discrimination in the Lockdown

Equal and humane treatment in a society is a basic human right to which every person is entitled to. Article 14 of the Constitution states that ‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India’. The concept of equality and equal protection of laws in its proper spectrum encompasses social and economic justice in a political democracy.⁵ Every person within the territory of India has the right to equality, which also includes protection from unreasonable social discrimination. However, it was witnessed that social stigmas were attached to certain communities and persons for spreading the Covid-19. A petition was filed in Supreme Court seeking directions to Central Government for issuing guidelines to prevent attacks and stigmatization of communities based on profiling done on religion, community, or caste. The petition stated that “Existing social schisms in society are widened during a situation like that of Coronavirus disease pandemic. This renders the already vulnerable population of race, religious, caste and sexual minorities etc to even greater threat of being socially boycotted and ostracized resulting in essential services including healthcare inaccessible to them”.⁶ The Petition also threw light on the fake

⁵ Dalmia Cement (Bharat) Ltd Vs Union of India, (1996) 10 SCC 104 (India)

⁶ India Legal Bureau, *Plea Filed in SC Seeking Guidelines to Prevent Attacks Based on Religious Profiling* (Apr.23, 2020, 07:38 PM), <https://www.indialegallive.com/constitutional-law-news/courts-news/plea-filed-in-sc-seeking-guidelines-to-prevent-attacks-based-on-religious-profiling-97125>

news and the hate messages surrounding the ‘Tablighi Jamaat’ calling them super-spreaders and highlighted the maligning of the Muslim community. It led to harassment of a large number of people in various parts including the Northeastern citizens. Not only were these sections denied access to basic services but even their access to health care were impeded. They were also denied access to public places, it said. This led to a violation of the Fundamental Right to Equality of many citizens. It is pertinent to note that such stigma causes vulnerable groups such as Dalits, religious and linguistic minorities, women, and children to come under greater threat of harassment and ostracism. Such ostracism denies them the basic right to equality and thereby necessitates that humanity must supersede all religious beliefs. The Government must be at the forefront to take strict steps to curb the spread of diseases for all citizens and not ignore elements which perpetuate hate.

Right to expression and speech

Article 19 of the Constitution, being one of the most important provision, embodies the basic freedoms available to citizens. Article 19(1) provides that all citizens shall have the right to freedom of speech, assemble peacefully, to form association and unions, move freely throughout the Country and settle or reside in any part of the Country. It is a matter of fact that the right to dissent is also a part of the right to speech. Furthermore, this freedom of speech and expression is not an absolute right and it is subjected to reasonable restrictions. Many instances had seen a widespread of several fake news related to the Covid-19 virus which had people panicking. The Supreme Court heard two petitions that brought the issue of the plight of migrant labourers to the notice of the court. While hearing the petition, the Apex Court noted that there was a migration of a large number of labourers working in the cities which was triggered by panic created by fake news that the lockdown would continue for more than three months. In strong words of criticism, the Supreme Court held that *'media should maintain a strong sense of responsibility while disseminating news on coronavirus and should ensure that unverified and fake news is not published. Media should refer to and publish the official version about developments regarding coronavirus threat'*. The Court further went on to uphold that in such scenario, it does not intend to interfere with the freedom of discussion and speech of the media about the ongoing pandemic, neither does it intends to impose censorship on the media to report upon the same. It further held that *'Any deliberate or unintended fake or inaccurate reporting either in electronic, print, or social media and particularly web portals has a serious and inevitable potential of causing panic amongst large sections of the society'*. Thus, while the right to speech is the matrix and indispensable condition of nearly every form of freedom, it is the need of the hour that such freedom should not be misused in times of such turmoil. In

such situations, the Government and the media houses must make sure that proper figures, facts, and measures taken for the containment of the disease are provided.

Right to move freely throughout the territory of India

Another important aspect of Article 19(1) is that it provides for the right of movement of citizen throughout the territory of India. In a lockdown, a question arises as to whether restrictions can be placed on the movement of the citizens. In Italy, as in France and Spain, authorities had imposed strict quarantine measures to prevent the spread of the virus. Following the closure of shops, sports and arts venues, lockdowns and travel authorisation documents had taken priority over freedom of movement. It is to be noted that these restrictions are important and legitimate if there is a serious risk to public health. However, these restrictions can be detrimental to the citizens if they are imposed for a long and indefinite period. The Constitution restricts the right to movement subject to the interest of the public. These restrictions are particularly problematic for those who need to move to find safety in times of a lockdown. Though elementary freedom of movement can be curtailed for a greater good, nevertheless there are wider implications of such restrictions. Restrictions on movement are problematic for people who do not have a home and for whom a self-quarantine is hardly an option, for people with disability who remain without care, and for people, mostly women, whose home is not a haven but the site of insecurity and domestic abuse. A question which arises concerning Article 19(1)(d) is whether freedom of movement is a crucial stake or a tool in the fight against global injustice, even, or particularly, during a global health crisis? The present crisis demands a substantial restriction on the freedom of movement. The right to move freely is not absolute. It is important to note that reasonableness of restriction on such movement cannot be held subjectively. Reasonableness of a restriction must be determined in an objective manner and from the standpoint of the interests of the public and not from the persons upon whom the restrictions are imposed or upon abstract considerations. A restriction also requires having a direct nexus with the situation and the object which the Government seeks to achieve. Given the current situation, restriction on movement of people is likely to safeguard public health by preventing ‘likely to be affected people’ and ‘affected people’ to move amidst a large population, thereby preventing the spreading of the virus. Certainly, “extraordinary times call for extraordinary measures” is a saying quoted to justify measures that evoke introspective instincts in the citizens. In emergent situations, there is no gainsaying that measures also ought to be emergent and rightly so. However, extraordinary measures should be carefully distinguished from extra-constitutional measures since the former can be sustained only if it does not militate against the latter.

Rights of Medical Professionals

Article 21 of the Indian Constitution provides that ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law’ It means that no member of the Executive shall be entitled to interfere with the liberty of a citizen unless he can support his action by some provision of law.⁷ The Apex Court in several landmark decisions has held that right to life as enshrined in Article 21 means something more than mere survival or animal existence and would include the right to live with human dignity. It would include all those rights which provides minimum subsistence to the individual and which would make a man’s life meaningful, complete, and worth living. Right to food and good health is also a recognized right which forms the part of the right to life. Keeping this in mind, the Governments of several states time and again assured constant availability of food stocks to ration shops. Despite efforts, states still struggle to enforce the right of good food to the citizens since reports already showcase that people who were not able to leave the cities struggle to get food and basic wages. A cross-country narrative shows that over 101 doctors and 30 medical staff died in Italy – marking unavailability of adequate PPE (Personal protective equipment) as one of the causes behind the spread of infection among the healthcare workers. Similarly, doctors in India have been at a loss of their right to protection of their health while they relentlessly continue to provide their services to patients and individuals. Indian doctors fight coronavirus with raincoats, helmets amid lack of equipment. In Uttar Pradesh, India’s most populous state, drivers of around 4,700 ambulances that mainly serve government hospitals went on strike, demanding proper safety gear and health insurance. According to one projection, it was estimated that more than 100,000 people could be infected by mid-May, putting India’s underfunded health system and scarce doctors under severe strain.⁸ Given the rising numbers of deaths and active cases along with the scarcity of resources and infrastructure, the health of those curing the patients had gained paramount importance. Thus, while medical professionals expose themselves everyday catering to patients, it is vehement that the safety of the lives of medical professionals is protecting through safety measures.

Right to basic internet services

Right to the internet is now recognised as a fundamental right by the Supreme Court to keep

⁷ DURGA DAS BASU, INTRODUCTION TO CONSTITUTION OF INDIA, 121 (22 ed. 2015)

⁸ Devjyot Ghoshal, Aditya Kalra, *Indian doctors fight coronavirus with raincoats, helmets amid lack of equipment*, (Mar. 31, 2020, 01:29 PM), <https://www.reuters.com/article/us-health-coronavirus-india-doctors/indian-doctors-fight-coronavirus-with-raincoats-helmets-amid-lack-of-equipment-idUSKBN2110X0>.

pace with the innovation of technology in the 21st century and therefore it would be arbitrary on the part of the Government to deprive citizens of this fundamental right. Jammu and Kashmir were declared a Union Territory of India after the revocation of Article 370 of the Constitution. However, the Union Territory faced an internet shutdown for more than 200 days, making it the longest shutdown of internet imposed in a democracy.⁹ While this ruling is in sync with the United Nations recommendations, the Supreme Court directed the Government on several occasions to restore internet services in Jammu and Kashmir in institutions providing essential services like hospitals and educational places. However, while the Government restored internet services on March 4, 2020, the Centre again issued orders restricting the internet speeds up to 2G only. In the event of such a lockdown and health crisis, it is critical for allowing communications to continue sooner so that citizens are well acquainted with the public health consequences. Certainly, broad restrictions on access to the internet cannot be justified on public order or national security grounds, especially at the times of emergency. With internet speed restricted to 2G, Kashmiris have struggled to work from home or attend online classes like others in India, which had 171 active coronavirus cases, according to the government. Doctors in Kashmir, which has four confirmed cases, have been stymied in getting information on the virus.¹⁰ It is further pertinent to note that doctors need high-speed internet for accessing latest updates on COVID-19, and for online consultation with patients and the restrictions on speed of internet has a detrimental effect on the performance of the doctors in carrying out their necessary functions. **Mr Avinash Kumar**, executive director of Amnesty International in India, said ‘access to information was a crucial part of the right to health. An inability to access information can heighten the sense of helplessness, anger and frustration, undermine the public health response and the health of others at risk, and may constitute human rights violations.’ Restricted internet access also undermines the right of Kashmiri children to have access to education from home in times of a lockdown. An outdated 2G connection can hardly connect internet sites and educational prerogatives for children and is nothing but a mockery of their fundamental rights. In times of crisis, the Centre must investigate the situation to at least enable families to warn their loved ones about the basic steps to take to prevent infection of the virus. For ensuring the establishing internet services in the Union Territory, the

⁹ Niha Masih, Shams Irfan and Joanna Slater, *India's Internet shutdown in Kashmir is the longest ever in a democracy*, (Dec. 16, 2019, 12:30 PM), https://www.washingtonpost.com/world/asia_pacific/indias-internet-shutdown-in-kashmir-is-now-the-longest-ever-in-a-democracy/2019/12/15/bb0693ea-1dfc-11ea-977a-15a6710ed6da_story.html

¹⁰ Rina Chandran and Emeline Wuilbercq, *Internet shutdowns 'not justified' in coronavirus outbreak*, (Mar. 21, 2020, 12:07 PM), <https://www.thejakartapost.com/news/2020/03/21/internet-shutdowns-not-justified-in-coronavirus-outbreak.html>

Supreme Court, directed the setting up of a special committee to examine the contentions made by the petitioners seeking the restoration of 4G internet services in Jammu and Kashmir, and look into the prevailing circumstances and immediately determine the necessity of the continuation of the restrictions.¹¹ In a development on the issue, on 11th August 2020, the Centre submitted before the Supreme Court that a committee set up to review restoration of 4G internet service in Jammu and Kashmir shall be considered to allow the services in one district each.¹²

Right to Privacy in the advent of the Arogya Setu Application

The Supreme Court in the landmark judgement in **K.S Puttaswamy v. Union of India**¹³ held that the Right to Privacy is a Fundamental Right under Article 21 of the Constitution. There have been several instances where the state governments have released personal data of people who have been quarantined. This data includes names, passport numbers, residential addresses, and phone numbers. This release of personal data has become a privacy concern and has been stated as a gross violation of the legitimate expectation of privacy — a Fundamental Right laid down in the landmark judgment. Another new trend seems to be a breach of personal information in the garb of Covid-19 tracking in the form of **Arogya Setu App**. The app tells a person if he or she is at risk of contracting COVID-19 by taking a simple test. The app needs the person's GPS location and Bluetooth to be switched on. However, the terms and conditions of these apps seem to be wary of the personal and private information of a user since there is a line in the policy document which says, "*Such personal information stored in the cloud may also be shared with such other necessary and relevant persons as may be required to carry out necessary medical and administrative interventions.*" As per its terms and conditions, it gives the Government of India to have any unauthorised access to the user's information or modification thereof. Furthermore, the effectiveness of the app is uptight when there exist large-scale testing capacity and less spread (the first condition certainly does not exist in India today); there is a high risk of false positives and false negatives (something that gets worse as the population size increases) and there is a large penetration of smartphone usage. Amidst the current crisis, the regularisation of such apps is a compromise with citizen's personal information in the wake of privacy being a fundamental right in India. Many of them do not

¹¹ The Quint, 4G in J&K: SC Sets Up Special Committee to Examine Restrictions (May. 11, 2020, 04:05 PM), <https://www.thequint.com/news/law/4g-in-jammu-and-kashmir-supreme-court-directs-setting-up-of-special-committee>

¹² ANI, *Committee Considering Restoring 4G Internet In 1 District Each of Jammu, Kashmir On Trial Basis: Centre Tells SC*, (Aug.11, 2020), <http://www.businessworld.in/article/Committee-considering-restoring-4G-internet-in-1-district-each-of-Jammu-Kashmir-on-trial-basis-Centre-tells-SC/11-08-2020-307364/>

¹³ K.S. Puttaswamy v. Union of India (2017) 10 SCC 1 (India)

even have privacy policies and terms of Use in place which could lead to grave violations of individual privacy in times of a pandemic.

Right to education

Right to education under Article 21-A was incorporated in the Constitution in 2002 by the 86th Amendment since the right to education is indispensable in the interpretation of the right to development as a human right. Right to development, being an important facet of basic human right includes education to all. However, as schools remain closed, students have been at their homes without a substantial method of acquiring education, thereby facing losses. Furthermore, Section 16 of the Act provides that no student studying in elementary classes (Class I to Class VIII) will be held back or expelled. The resultant effect would be that all students studying in government schools in elementary classes will be promoted without receiving or attaining the necessary education, thereby making their fundamental concepts weaker. While the standard of education is already diminishing in certain states, these will have far-reaching effects on students in later stages of competitive examinations and render many children from the weaker sections of the society, without proper and basic education.

Right to a decent burial

Right of burials of dead bodies has been a major concern in the current time of physical distancing and strict measures and initiative are at their peak to be followed. **In Parmanand Katara, Advocate v. Union of India & Anr**¹⁴, the Supreme Court held that *We find that the word and expression 'person' in Article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. The State must respect a dead person by allowing the body of that dead person to be treated with dignity and unless it is required to establish a crime, to ascertain the cause of death and be subjected to post-mortem or for any scientific investigation, medical education or to save the life of another person by law, the preservation of the dead body and its disposal by human dignity.*" In such times of crisis, a right of decent burial is still recognised as a fundamental right of a person and the State is obliged in law as a Welfare State and to protect the rights of a dead person in its extended meaning under Article 21. Unfortunately, the city of Chennai witnessed a tragic case of a neurosurgeon, by the name of Dr Simon Hercules who was a Covid-19 patient, who was denied

¹⁴ Parmanand Katara, Advocate v. Union of India & Anr, (1995) 3 SCC 248 (India)

the right to burial with dignity when a mob pelted stones on the ambulance carrying his body, further injuring the driver of the ambulance. Right of the burial of a dead body infected with Covid-19 is a concern, which does not rule out and discard the principle of decent burial as a fundamental right. Such right is nevertheless subject to public health and order as provided by the Constitution. To ensure a safe and decent burial of dead bodies, the World Health Organisation has provided certain key points such as preparing the body or transfer including removal of all lines, catheters and other tubes, ensuring that anybody fluids leaking from orifices are contained, keeping both the movement and handling of the body to a minimum etc. The health organisation further said that children, older people, and anyone with underlying illnesses (such as respiratory illness, heart disease, diabetes, or compromised immune systems) should not be involved in preparing the body and a minimum number of people should be involved in the preparation of the last rites of the body.¹⁵ In such times, it would be a fair measure to provide a separate burial ground for bodies infected by Covid-19, keeping into account and verifying the medical history of the body and further providing them with the necessary material of burial without any discrimination and distinction.

V. CONCLUSION:

In a society like India which is deeply divided into economic and social terms, the quality of rights, desirability of restrictions and effect of restrictions upon the citizens can never be the same, and this fundamental feature of our society puts the extra onus upon the state to ensure the standards of proportionality. While on paper, the Constitution always guaranteed a set of rights; in reality, the State is suffering from an implementation failure, despite measures been taken. However, sooner or later, the State will have to deal with them. Quite interestingly, these fault lines have often been highlighted by experts much before the outbreak of Covid-19 but have time and again been overlooked by the State. There is an urgent need for the State and the judiciary to re-evaluate and fix these implementation gaps and upheld the basic rights of the citizens during the current pandemic.

¹⁵ Tufail Ahmed, *WHO provides a step-by-step guideline for safe burial of COVID-19 patients*, (Apr. 04, 2020), <https://tribune.com.pk/story/2190949/3-provides-step-step-guideline-safe-burial-covid-19-patients/>.