
Amidst a Pandemic: Oxygen Crisis and Right to Life in India

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ABSTRACT : *The second wave of Covid 19 engulfed the Indian soil in pyres and ashes. The surge in the number of cases and the unavailability of resources to tackle the same translated into a crisis which remains as the watermark of the pandemic in India. As the medical infrastructure crashed to handle the rise in the demand of medical care and facilities, the factor which fuelled the piling up of pyres is the shortage of medical oxygen. This study aims to analyse the oxygen shortage crisis of the second wave of Covid 19 in purview of the violation of the Article 21 of the Indian constitution. It shall explore the significance of right to life within the larger constitutional framework of the fundamental rights and primary functions of the government.*

KEYWORDS: *Article 21, Covid 19, Oxygen crisis, Right to Life.*

I. INTRODUCTION

"At the heart of the Constitution was the individual and the rights of individual were recognised as 'fundamental'. These rights have been beautifully balanced with the demands of public order, morality and health." S A Bobde (Leaflet, 2020).

In the year of 2020 the world witnessed a pandemic that ushered the globe into a state of panic. It emerged in Wuhan, China and soon engulfed the entire world in a matter of months. The response to this pandemic varied from country to country depending on their economic stability and infrastructure and availability of other resources. In January 2020 when the first case of covid 19 came to limelight in India, the Central government, State government and the Union territories started invoking laws in order to curb the spread of this virus (Moole, 2021). Though the measures taken by the Government showed promising results in the beginning and a minimisation of the impact of the virus was achieved, the tragedy that would befall lied dormant in assumptions and early claims that India had successfully controlled the spread of pandemic. The second wave of the covid 19 knocked on the doors of India in February 2021 and by mid march a huge population was already seen gasping for breath in the hospitals.

The lack of medical facilities and equipments led to an innumerable amount of deaths some of which were accounted for and some not. The factor which increased the death rate was the non availability of medical oxygen. As the patients were struggling with their lives, medical oxygen became both hope and despair and eventually the shortage led to a price hike and its smuggling in the black market. For a major proportion of the Indian population that is below poverty line it simply became inaccessible.

The question which arises with such a calamity which already existed and whose mutation and reoccurrence was predetermined is not only whose fault is it but also what is it that was actually being faltered in this situation. Article 21 of the Indian constitution provides its citizens with the right to life which according to Any Rand is the only fundamental right and the other rights are corollaries to it. Individual rights are the

means of subordinating society to moral law(Rand, 1963). The most cardinal necessity for a person to be free is to have an understanding of his own rights. It emanates from two basic aspects, first, what are these rights and second, how to exercise them. Once an individual is aware of his rights and how to exercise these rights in his pursuit of happiness, it must not violate the rights of another individual. Therefore, from understanding ones own rights to respecting the rights of others, a sense of moral law is generated and hence becomes the core of the foundation of an individualistic society.

II. CONCEPTUAL FRAMEWORK

The concept of individual rights is as old as the concept of State itself. Its origin can be traced back to the ancient Greek and Roman thinkers. Cicero laid down the foundations of natural rights based on natural law which was further developed in the writings of Thomas Hobbes, John Locke and Jean-Jacques Rousseau in their respective doctrines of natural law and natural rights (Rao, 2006) .

Thomas Hobbes in his book, 'Leviathan 'asserted that all human beings are equal and no individual could be deprived of the right to life, which he enjoyed in the state of nature. John Locke in his book, 'Two Treatises Government 'evolved this idea further and advocated that human beings have a natural right to life, personal liberty, and property which existed even before the creation of the civil society, and no governmental authority has power to deprive individuals of these rights. Jean-Jacques Rousseau in his book, 'The Social Contract 'advocated that men are bestowed with inalienable rights of liberty, equality and fraternity. Even though the significance of rights were advocated from time to time but the power always resided within the grip of the State. State was considered as the primary functioning unit of social existence and therefore its integrity was considered above any individual right. These were the Realists. The concept of territoriality and its integrity still holds prominence in the post world war era. The role of an individual was realised and accepted by the theorists and put to lime light and an excellent example of that would be the emergence of constructivism. The present era is an amalgamation of thoughts of both pre war era and post war era and this blend is scattered around the globe in the form of various types of governments, for example, democratic, socialist etc or any combination of these depending of the socio-political history of the place. A landmark in the history of individual rights is the 1948 United Nations Universal Declaration of Human Rights that gave these rights an international platform which made it mandatory for the post war world to adopt and give individuals an access to these rights. It was the US Declaration of Independence (1776) which formulated individual rights in the form of The Bill of Rights and ultimately laid down the "principle that "to secure these rights, governments are instituted among men". This provided the only valid justification of a government and defined its only proper purpose: to protect man's rights by protecting him from physical violence"(Rand, A 1963). Therefore the government's function was reduced from the role of ruler to the role of servant.

The government was set to protect man from criminals — and the Constitution was written to protect man from the government. The Bill of Rights was not directed against private citizens, but against the government — as an explicit declaration that individual rights supersede any public or social power.(Rand, 1963).

Individual rights are indispensable for a person to live and to live as a free man. Rousseau in his book, 'The Social Contract 'stated that "All men are born free but everywhere they are in chains" and these chains can only be undone by granting people access to the rights that they are inherited with as a human being.

For a land whose history is coloured with the shades of colonialism, individual rights are inculcated within the very foundation of Indian nation. The Motilal Nehru committee had demanded a bill of rights as far back as in 1928 and the Swaraj Bill (1895) covered a number of individual rights such as right to free speech,

right to property, equality before the law etc (Chaitanya, 2020). India was transforming to a polity of state-individual from a state-group one.

The preamble of the Indian constitution reflects that the basic character of the Indian constitution is built on individualistic rights such as equality, liberty and fraternity in a nation which is Sovereign, Socialist, Secular, Democratic and Republic. This not only reflects the expectations and the aspirations of the constitution makers but also of the renascent India which finally held the quill in its own hands to write its legacy and to frame its own future. The preamble gave a glimpse of what people aspired to be after centuries of slavery. The bill of rights found its place in the part III of the Indian constitution under the heading of fundamental rights. Presently, it covers 6 fundamental rights (Articles 12 to 35) which are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and , Right to Constitutional Remedies. Right to property, which was the 7th fundamental right was removed from the list of fundamental rights by the 44th constitutional amendment. These are justiciable in nature and act to safeguard the interests of the people.

III. OBJECTIVES OF THE STUDY

1. To analyse the role of the government in the second wave of Covid 19.
2. To understand the role of fundamental rights with respect to the functioning of the government
3. To examine the scope of Article 21 of the Indian constitution in the second wave of the pandemic.
4. To reestablish the value of the fundamental right to life as the basis for legislation and governance.

IV. RESEARCH QUESTIONS

1. Is unavailability of medical oxygen in the second wave of Covid in India which had witnessed number of deaths in the first wave in violation of the Article 21 of the Indian constitution?

V. RESEARCH METHODOLOGY

This research follows a qualitative methodology and an exploratory approach through case study analysis. This approach helps to understand different paradigms, interpretations of evidences and helps to reflect on implications and inferences. The study primarily focuses on the primary and secondary sources such as government documents, reports and relevant information from government ministerial websites, books, journals, and scholarly articles, newspaper reports in order to get a conceptual and critical perspective. Qualitative observation helps in systematic observation of data and Case Study Analysis method gives scope for deep and thorough understanding of collected data. This research tries to analyse the existing theoretical literature. Based on this, Right to life, Article 21 of the Indian constitution shall be weighed against the notion of proper subject of legislation as proposed by Any rand. Case study analysis method is used for interpretation of data, this study focused on elaborative investigation. This method helps in interpreting the qualitative and dynamic concept of right to life and how government could be tool for ensuring the same during a time of crisis.

VI. SCOPE AND LIMITATIONS

This study aims to reflect on the protection of the right to life as the primary duty of a government. It shall explore the oxygen crisis which took place in the second wave of Covid 19 in India in purview of the relationship between the fundamental right to life and the existence of government itself. Article 21 of the Indian constitution shall be weighed against the notion of fundamental rights under the assumption that individual rights supersede any public or social power (Rand, 1963).

This study aims to achieve a critical perspective on the functioning and the priorities of the government and try to explain how good legislation without proper execution mechanism and checks and balances can never be a tool of governance in emergencies.

Since this study is majorly theoretical, it restricts the scope of the study to mere analysis without any definitive deduction or conclusion. Also, only unavailability of medical oxygen and its implications are covered in this study and other factors which fuelled the spread of the pandemic and the deaths of people are outside the purview of this study. This study has kept itself restricted to the oxygen crisis and the fundamental right to life during the second wave of pandemic in India.

VII. FUNDAMENTAL RIGHT TO LIFE

According to Ayn Rand, there is only one fundamental right, that is, a man's right to his own life and other rights are its consequences or corollaries. The right to life is the source of all rights. She states in her essay 'Man's Rights' that

Life is a process of self-sustaining and self-generated action; the right to life means the right to engage in self-sustaining and self-generated action — which means: the freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life. (Such is the meaning of the right to life, liberty and the pursuit of happiness. (Rand, 1963)

Article 21 of the Indian constitution deals with the protection of life and personal liberty. It states "No person shall be deprived of his life or personal liberty except according to procedure established by law." The scope of Right to Life has evolved ever since the adoption of the constitution in India. Maneka Gandhi vs. Union of India Case (1978) is the landmark case in which supreme court overturned the judgment of AK Gopalan Case (1950) and established that article 19 and article 21 are not watertight compartments and it has a wide scope and implications(Chaitanya, 2020).

It was Unni Krishnan vs. State of Andhra Pradesh (1993) in which the Supreme Court upheld the expanded interpretation of the right to life and gave a list of rights which would be included under the broad spectrum of article 21, for example, Right to privacy, Right to go abroad, Right to education, Right to health and medical aid etc.

VIII. EPIDEMIC DISEASES ACT, 1897

As covid 19 engulfed a large section of land and its population, India invoked a 123 year old law in order to curb its impact in the year of 2020. The union cabinet secretary invoked provisions of section 2 of the epidemic diseases act as coronavirus cases crossed the 70 000 mark(economic times, 2020). The section 2 of the act states that,

(1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Government may take measures and prescribe regulations for—
(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

Under Section 3 of the Epidemic Act, disobeying any regulation or order made under this Act shall be punishable under section 188 of the Indian Penal Code.

According to the clause 1 of the act, measures necessary to control the outbreak of the disease must be followed by any 'class of persons 'as deemed necessary by the state government and the sub clause b under clause 2 establishes that the state government 'may take 'measures for 'segregation, in hospital, temporary accommodation 'of the people affected. In the raising horrors of the pandemic, both these clauses seem to have been flouted and the results are such that India has become not only a land of burials but its water bodies are also flowing against the weight of the dead bodies flowing with it.

IX. DISASTER MANAGEMENT ACT, 2005

This act was enacted in 2005 with the aim "to provide for the effective management of disasters and for matters connected therewith or incidental there to". The act consists of 79 sections and covers a wide range of issues, such as the establishment of the National Disaster Management Authority (NDMA), the State Disaster Management Authority (SDMA), the District Disaster Management Authority (DDMA), measures that to be taken by governments during disasters, and offences of the offenders. The NDMA was established on the basis of the act, and the Prime Minister is ex-officio chairperson along with nine other members (M.P. Ram Mohan, 2020). Following this, a guide to biological disaster management 2008 was adopted, and the NDMA now deals extensively with biological disasters and health emergencies. It was the Disaster Management Act under which the 21-day national lockdown was declared on March 25, 2020 by the Modi Government and which was then further extended until May 31, 2020 (M.P. Ram Mohan, 2020). The NDMA has certain sections that have helped the central government impose a lockdown and restrict all forms of transportation in the country. Section 62 of the DMA empowers the central government to give instructions to any ministry or department of the government of India and to the governments of the state and UT. On April 11, 2020, the central government referred to Section 69 of the DMA, which delegated the powers of the Home Secretary to the Secretary, Ministry of Health and Family Welfare to coordinate various activities between ministries and states / TUs. Unlike other laws, this law "provides for a comprehensive administration prepared for disaster management". Under Articles 51-60 of the Act offenders are punishable by up to one year of imprisonment or a fine, or both. Many states have also invoked Article 144 of the Code of Criminal Procedure (CCP) to better enforce the national lockdown. It was under the same act in which unhindered transportation of medical oxygen through states was ordered (Srinivasan, 2021).

The first wave of COVID receded in the month of February which created a state of oblivion in both the citizens and the government. Masks became an aspect of protest and were neglected and the protocol given

by doctors remained alive only in theory and this in fact escalated in January when the Indian government declared victory over the pandemic. The statement of the Indian Prime Minister Narendra Modi gave people a position of assertion over the false reality of COVID being a matter of history. It led to religious and political gatherings which ushered India in a state of doom towards the grim reality of more than 200,000 people dead.

X. SECOND WAVE OF COVID 19 IN INDIA

By the end of April, affected patients were hurled up in the hospitals, both inside and outside of the 12 most severely affected states. As the medical infrastructure crashed to handle this growing demand of medical care and facilities, the factor which fueled the piling up of pyres is the shortage of medical oxygen. Since COVID majorly affects the lungs and its functioning in the human body, the demand for oxygen rose 10 times from 700 metric tonnes per day (MTD) to over 6,000 MTD by late April (Purie, 2021). As a result of it, India experienced a major lag between supply and demand. Gujarat recorded a shortfall of 350 MTD which led to the reported deaths of 19 people in the first half of April, in Lucknow the demand spiked from 2,000 medical oxygen cylinders per day to 7,000 and even in Maharashtra, which has eight oxygen plants and produce 1,250 MTD of medical oxygen had to ask other states for help (Purie, 2021). This adversity could have been avoided if India had learnt its lesson from the first wave and not taken its guard down. Facilities developed to combat this deadly virus was slowly being dismantled, for example, in February 2021, the Union home ministry had closed down a 10,000- bed Covid care facility, at the Radha Soami Satsang Beas in South Delhi's Chhatarpur last June (Unnithan, 2021).

The affect of COVID on lungs is well known and it was well known at that point of time also when these facilities were being dismantled or when what is required to be done was ignored as a thing of past. Central government formed 11 inter-ministerial Empowered Groups in March 2020 in order to tackle the crisis effectively. An empowered committee chaired by Guruprasad Mohapatra, secretary, Department for Promotion of Industry and Internal Trade (DPIIT), was tasked with ensuring the availability of essential medical equipment which included oxygen. It was followed by meetings with the A II India Industrial Gas Manufacturers 'A ssociation (AIIGMA), and the licensing authority, the PESO (Petroleum & Explosives Safety Organisation), and they aimed to work on increasing the existing supply of 4,200 MTD of medical oxygen(Correspondent, 2021). As cases surged, the government steadily increased production to 7,191 MTD by October. As soon as the covid graph showed a decline in the number of positive cases, it ultimately led to a decline in the demand of oxygen. According to AIIGMA, daily demand dropped between 1,200 and 1,400 MTD by February 2021 (Unnithan, 2021). This created a state of relaxation for governments at both centre and state level for which India eventually had to pay a hefty price. On April 6, India saw a rise in infections with 115,000 cases in just 24 hours, which is single- largest daily case load since the beginning of the pandemic . Shortness of breath defined this new wave and need for oxygen for patients in the hospitals increased to 47.5 percent as compared to the 4.71 percent in the first wave (Unnithan, 2021). It was a well known fact that ventilators and oxygen are a necessity in order to fight this virus and to save lives but the short sightedness of the government drove India on the verge of doom. Demands for medical oxygen raised exponentially and overburdened factories faltered. INOX which is one of India's largest medical oxygen suppliers whose plants supply most hospitals in North India, said they could not cope (Purie, 2021).

The production of medical oxygen was not the only failure of part of the government but it also includes its distribution infrastructure which was not developed enough in order to meet this surge . India has only 1,700 tankers to ship liquid oxygen whereas the increased demand would require double this fleet size. Cryogenic ISO containers and 20- feet-long cylindrical tanks that store oxygen were also in short supply (Unnithan, 2021).

In addition, most states mishandled this crisis. Gujarat, for example, has not set up any oxygen production plants in the past years if the assuming production would be sufficient to meet every need. Rajasthan needs at least 30 tankers instead of the current 14 to transport oxygen from its facilities to hospitals. Chhattisgarh noted that overall medical oxygen consumption had jumped from 3.5 MTD to 110 MTD by mid April when 6,000 patients required oxygen support. Although the state has an excess of oxygen due to its industry, it lacks containers for transporting oxygen from plants to medical units (Unnithan, 2021). In Madhya Pradesh, oxygen tankers at the BHEL plant have to wait a mile to stock up. Long lead time is the main reason for the current crisis, with one refill taking 4-6 hours in a row. The central government last year sanctioned the installation of 162 PSA plants in 14 states. When the second wave struck, only 30 of them were functional. The government, meanwhile, has sanctioned the PSA facilities of an additional 100 hospitals to reduce medical oxygen demand. On April 16, it announced a tender to import 50,000 tons of medical oxygen. When the oxygen supply became fierce on April 22, the government directed much of India's 7,500 tons of oxygen production per day to the medical sector. However, industry officials say they did not follow these instructions. The oxygen trucks were stopped local governments of the districts and, in some cases, the states, hindered the interstate movement of trucks (Unnithan, 2021).

XI. CONCLUSION

"It was the concept of individual rights that had given birth to a free society. It was with the destruction of individual rights that the destruction of freedom had to begin" (Rand, 1963). The short sightedness of government and a premature declaration of victory on the pandemic cut short the life spans of lakhs of Indians. This violated the right to life of people as efforts to protect them were faltered. According to the judgement passed in Paschim Banga Khet Mazdoorsamity vs State Of West Bengal & Anr on 6 May, 1996

"In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21."

In the purview of this judgement it's established that government has failed to deliver its primary objective. Indeed after this lapse a destruction of freedom followed. Media was threatened for its reporting on the deaths taking place. For example in UP, the chief minister declared that NSA would be operated against a person or medical institution which claims that there is a lack of oxygen supply in the hospitals holding a strong belief that UP has an adequate supply of oxygen and such information was false and misleading. On the other hand, on April 27 in an affidavit before the Supreme Court, the Union government projected shortfalls in supply in six Covid-affected states by April 30 in which UP was likely to be the worst-hit, with a demand-supply gap of 400 tonnes (Unnithan, 2021). "Protection of individual rights is the only proper purpose of a government, it is the only proper subject of legislation"(Rand, 1963). This idea needs to be revisited and the purpose of the government needs to be reestablished. The purpose of the government is to protect people and the purpose of the constitution is to protect people from the government.

Anarchy of any sort leads to destruction and that's what exactly happened with the pandemic. By manhandling the ongoing crisis, it created a havoc that not only destroyed people but their spirits as well. This goes down in the history as a lesson, that governance can only prevail when it's active. Any passiveness in

governance results in anarchy and that's the doorway to hell, that's exactly how India could be seen in the second wave of this pandemic, with pyres of fire covering the soil and ashes floating in the air.

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