

India's battle against Covid-19: The lockdown of human rights

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India is currently facing the [largest lockdown](#) in the world, with over 1.3 billion people locked inside their homes. While Prime Minister Modi adopted this measures to “[win the battle](#)” against the Covid-19 pandemic, a large portion of the country is left wondering if their well-being was also accounted for in the [hasty decisions](#) of the Government. In a bid to flatten the curve, the Indian government seems to have disregarded their basic human rights as an opportunity cost of saving the population from the widespread disease.

This article establishes that even during a national lockdown the Indian government is obligated to ensure protection to its people under international human rights law and explores its failure in doing the same in the past few weeks.

Right to health

India is a State Party to the [International Covenant on Economic, Social and Cultural Rights](#) (“ICESCR”), which “recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Article 12.1 ICESCR). However, the [right to health is not guaranteed absolute](#), as it is shown in Article 4 ICESCR. All efforts to enhance the realisation of this human right have to be balanced with its effects on other human rights. Furthermore, the right to health itself is [closely related and dependent](#) on various other human rights, *inter alia* non-discrimination, privacy and access to information, to unfold fully.

The [International Covenant on Civil and Political Rights](#) (“ICCPR”), of which India is also a State Party, offers protection of such rights. It allows a [derogation](#) from obligations in case of national emergency under Article 4.1. However, for it to be invoked, two fundamental conditions need to be fulfilled as stated in the Human Rights Committee’s [General Comment No. \(“GC”\) 29](#): Firstly, the situation must amount to a public emergency that threatens the life of the nation, and secondly, there must be an officially proclaimed a state of emergency. Given the absence of such a proclamation, all of the obligations under the ICCPR continue to apply. Therefore, we now discuss [certain rights](#) that the state is bound to protect not just because they are their core obligations or are non-derogatory in nature, but also because they form an integral part of the right to health.

Access to information

The right to seek and receive information is protected by Article 19 ICCPR; the CESCR considers it an important aspect of the right to health, and providing “access to information concerning the main health problems in the community, including

methods of preventing and controlling them” is even part of the core obligations ([GC 14](#), para. 44).

India successfully imparted information regarding the nature of the disease, the precautions one ought to take, and the level of the threat it imposes. However, the right also [entitles](#) citizens to information regarding the possible measures to be taken up by the authorities, early warnings of possible consequences, and information about the ongoing response efforts. The purpose is to ensure that everyone can take informed health-related decisions in light of proper information. Just a mere [4-hour notice](#) before the implementation of a countrywide lockdown goes against the essence of this right as it left the people clueless and unprepared to take care of themselves for the coming days. The knee-jerk reaction of the government had such a disastrous impact that even the [Prime Minister felt the need to apologise to the public](#).

Although India doesn't compare to the claims of misinformation against China, there are a few points that are to be noted. First, although there is no inaccuracy in reporting the number of tested cases, there is inaccuracy in the data itself due to the [massive undertesting](#). Second, India is known for [rampant censorship](#) of news in the interest of political gains, which deters the exercise of the right to freely impart information.

Right to free movement

Article 12.1 of the ICCPR protects the “right to liberty of movement” within the territory of a State. According to Article 12.3, this right can only be restricted in exceptional circumstances, including to protect public health. These restrictions must be necessary, provided by law, and consistent with the other obligations of the Covenant.

Since the lockdown, stories on the [plight of migrant wage-earners](#) have flooded the internet. With non-essential business and all [public transport services](#) closing down, and thus having lost all prospects of income, the daily wage earners found themselves with only one option – walk hundreds of kilometres back to their villages. The stress to survive the lockdown surpassed the stress to survive the disease. Dozens have [reportedly died](#) due to the harsh conditions posed by the lockdown with the closure of businesses that sustained the daily wagers' livelihood. Although [attempts have been made](#) to provide these workers with shelter homes and proper food, it is doubtful that their “inherent dignity”, as envisioned by the human rights Covenants, is protected.

The imposition of such harsh restrictions on movement has also become an excuse for police brutality. Citizens have been [assaulted by police officers for lawful acts](#), such as when venturing out to buy essential goods. This also resulted in the [death of a man](#) who went out to buy milk for his family.

Protection of health workers

Health care workers across the world have been battling on the frontlines – in India, without proper battle armour. Article 12.2(c) of the ICESCR requires states to take steps for the prevention of occupational diseases. This requires health workers to be provided with proper health information and most importantly with [suitable protective clothing and equipment](#).

Indian doctors have been treating Covid-19 patients [without access to proper personal protection equipment](#) (“PPE”), relying on homemade hazmat suits, masks and sanitisers. The Government did little to ensure the protection of health workers with their [poor procurement policies](#) and [delay in framing guidelines](#) for the manufacture of PPE. With the guidelines coming in with the imposition of the lockdown, manufacturing and transportation of PPE has become a herculean task. Latest reports show that over 50 doctors [have been tested positive](#) for Covid-19.

Right to privacy

The right to privacy is enshrined in Article 17 of the ICCPR; it is also an important component of the right to health, as the CESCR points out in [GC 14](#). It has been [recently recognised](#) as a fundamental right under Article 21 of the [Indian Constitution](#).

Nevertheless, with the outbreak of the disease also privacy concerns in the country are soaring. Appallingly, a [“confidential” list](#) curated by the government containing personal details of 722 passengers who travelled to New Delhi was forwarded on WhatsApp and Facebook. After the privacy breach resulted in sensitive information of the passengers going public, the government agencies were seen passing blame to one another. The [lack of confidentiality](#) of potentially infected persons has resulted in threats and ostracization of the family members by the community. This has caused direct interference from state as well as non-state actors with the passengers’ privacy, family and home – which is what Article 17 of ICCPR accords protection against.

Another reason for concern is the latest smartphone app, [Aarogya Setu](#), launched by the Central Government. It is a coronavirus tracker which lets individuals know if they have been near somebody who was infected. Although it is claimed that the data is encrypted and will not be shared with third parties, with its location tracking and a feature for sending reports directly to the government, it has managed to raise a few eyebrows with regards to [threat of mass surveillance](#). There are [concerns](#) regarding a possible misuse if the information would fall into the wrong hands as well. Although it is not mandatory for the citizens to install the application, the government has been strongly encouraging it. There have also been speculations that the application may soon be used as an [“e-pass”](#) to visit public places, which will *ipso facto* make the application mandatory for those who want to leave their homes.

Conclusion

The criticisms regarding the Government’s intense actions are well-founded. It is important for the Government to ensure proper communication with its people and build a sense of trust, by adopting proportionate restrictions and being transparent

about them. Human rights are not simply a luxury that are to be protected once the threat simmers down. In fact, upholding human rights can ensure better implementation and enforcement because when people trust the Government and feel safe, they are more likely to cooperate.

In particular, giving just a 4-hour notice before shutting down the entire nation is incompatible with these obligations. Even though providing safety to one-sixth of the world's population is a mammoth task, the lockdown would have been better implemented, had it been done in a phased manner to allow individuals to plan, prepare, and take informed decisions. Although a large population of India lives a day-to-day life, a phased lockdown would have provided them with the ability to at least reach their villages safely instead of either covering hundreds of kilometres on foot or fearing for their lives in [shelter homes with lack basic facilities](#).

Since its domestic framework is failing to protect India's citizens, it becomes imperative in light of the recent events and the given information to hold India accountable for the breaches of its international human rights obligations.

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