

Striking a Balance between COVID-19 Regulatory Responses and the Fundamental Rights of Citizens in Sri Lanka within the New Normal

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Abstract - With the World Health Organization (WHO) declaring the Covid-19 outbreak a global pandemic, states have been compelled to take prompt actions to limit the spread of the virus. In response to the crisis and adhering to the global health standards, the Sri Lankan government has imposed a series of restrictions. The legal basis upon which these restrictions have been imposed is constantly debated and are viewed as unlawful restrictions upon the fundamental rights of citizens secured by virtue of the Constitution. Counter arguments support that these restrictions are imposed as prescribed by law in the interests of national security, public order, and public health. In such a background this paper will attempt to recognize the possible breaches of fundamental rights caused by the restrictions imposed while analysing the impact of such restrictions on the fundamental rights of citizens. In order to study the main research problem library research was carried out with the aid of relevant statutes and international instruments. The analysis of the present legal framework relating to the imposition of quarantine restrictions supports the view that the rule of law must be a fundamental principle in every government action whereby the states should collectively collaborate to curb the virus while respecting the basic norm of sovereignty of the people. It is understood that the imposition of quarantine restrictions is essential in present times, but they should be imposed in a manner that does not interfere with the fundamental rights of people while protecting the dignity of a democratic society.

Keywords— *global crisis, fundamental rights, rule of law, collective action*

I. INTRODUCTION

Ever since the first cases of Covid-19 being reported in Wuhan China in the latter part of 2019, the virus has been spreading in a global scale up to date, in all countries irrespective of any difference. The first case of the virus in Sri Lanka reported in January 2020, a

Chinese national was successfully met by the medical authorities of the country and the approach taken by Sri Lanka to curb the virus at early stages was applauded by the international community. However with the outbreak of the second and third waves the ability to limit the spread of the virus has deteriorated and Sri Lanka is presently experiencing the dire consequences of delayed precautions with over thousand new cases being reported each day.

In such a background the responsible authorities have taken actions to impose island wide travel restrictions and restrictions on public gatherings, non-essential work, conducting schools and work of other governmental institutions. Within the purview of state responsibility, they are seen as essential and mandatory to safeguard the lives of the people. Though these actions have been taken in furtherance of the provisions of Quarantine and Diseases Prevention Ordinance of Sri Lanka No 03 of 1987 the legality of the limitations has been questioned by the Human Rights Authorities in the country. The arguments basically surround the fact that these restrictions have created a hindrance for the citizens to enjoy their fundamental rights such as equality, movement and freedom from degrading treatment.

Thereby this research has attempted to address the main research problem by recognizing how the imposition of these restrictions violates the fundamental rights of the citizens. The main objective of the research is to identify the fundamental rights that have been violated and devise mechanisms through which the government will be able to bring about effective solutions to curb the virus while safeguarding the rights of a citizen in a democratic state. Recommendations will be made as to how the government can bring about a balance between the restrictions imposed and the fundamental rights of the people.

II. METHODOLOGY

To achieve the aforesaid research objectives a library research has been carried out. In the adoption of the black letter approach primary sources including the Constitution of Sri Lanka, Quarantine and Diseases Prevention Act No 12 of 1952, The Public Security Ordinance No 06 of 1978, Disaster Management Act No 13 of 2005 and other relevant statutes have been utilized. Secondary data have been collected through scholarly articles, working papers, reports of United Nations (UN) on covid-19 outbreak, reports of Human Rights Commission on Sri Lanka (HRCSL) on protection of human rights during the pandemic. Through the analysis of such resources the manners through which fundamental rights can be protected thus establishing rule of law has been understood.

III. IMPORTANCE OF FUNDAMENTAL RIGHTS AMIDST THE GLOBAL PANDEMIC

With the unprecedented times brought about in the global scenario states have taken extraordinary measures to protect the lives of the citizens. When the Sri Lankan context is concerned the government has acted in a proactive manner with stringent controls on travel and public gathering. Though a state of emergency has not been declared island wide curfew has been imposed while promoting practises such as working from home for non-essential services.

A multi stakeholder approach in fighting the pandemic with the inclusion of the services of the armed forces and medical officials has been implemented along with the rapid establishment of quarantine and treatment centres. Powers have been decentralized and vested upon local authorities to take necessary action at regional levels (Amarathunga et al, 2020). However with the imposition of more stringent barriers human rights issues have been surfaced while emphasizing the legality of the imposition of restrictions.

UN human rights reports highlight that human rights of all citizens should be protected ensuring that everyone participates equally in response to crisis and are provided equal opportunities of access to healthcare services and other basic requirements. It is argued that the outbreak of the virus has provided grounds for the government to suppress contradictory opinions while making the government less accountable for the decisions and policy measures on the view that they are taken purely to contain the virus thus leading to autocratic behaviours (Kugathasan, 2020). It should be noted that these unprecedented times does not provide the

governments with sole authority to impose restrictions on the grounds of public health in an arbitrary manner. Governments are expected to act in respect of democracy without adhering to autocratic decisions and actions (HRCSL, 2020).

It is in this background the importance of protection of fundamental rights as an enforcement mechanism comes into play. In furtherance of human rights at a national level, fundamental rights guaranteed by the constitution should be protected upon respect to rule of law. Challenges are imposed on right to movement, equality, freedom from torture and degrading treatment and many other rights attached therewith. Challenges on securing fundamental rights have become a crucial issue amidst the pandemic as those rights have been curtailed with the imposition of restrictions.

It is the duty of the states to ensure that they do not violate the fundamental rights of people on the grounds of protecting their lives through autocratic measures. On the other hand the citizens should possess a coherent understanding of their inherent rights without vesting the sole authority on the governments to impose any measure necessary to curb the virus at the expense of fundamental rights. It is argued that the restrictions thus imposed should be provided by law to achieve a legitimate aim in a democratic society (Kugathasan, 2020).

IV. LIMITATIONS ON THE FREEDOM OF MOVEMENT

Freedom of movement is secured by article 14 (1) (h) of the constitution of The Democratic Socialist Republic of Sri Lanka. The island wide travel restrictions are basically imposed with the intention of limiting the movement of citizens viewed as the main manner through which the virus is transmitted. Limiting citizens to the vicinity of their homes and avoiding movement is seen as essential within the pandemic. As by article 15(6) of the constitution restrictions can be imposed on the freedom of movement as prescribed by law. Restrictions on the right of movement should be necessary and proportionate to achieve the legitimate aim with which they are imposed and should not be discriminatory (UN, 2020). Imposition of curfew and lockdowns should be to the extent necessary and in accordance with the regulations relevant to such instances.

The manner in which actions should be taken against those who breach those restrictions should be regulated. The arrests of such people and detention

should be carried out according to the relevant statutes and procedures in a manner that would not violate the rights of the citizens. Policy making, arrest and detention of those who violate the travel restrictions amidst the covid-19 pandemic should not be a mechanism through which the government barricades the voice of human rights institutions and other interest groups making it essential to comply with any arbitrary action taken by state officials. Further the restrictions should be imposed on every citizen in an equal manner without allowing a privileged minority to enjoy unrestricted rights with a view to establish rule of law in the country.

Attached with the freedom to movement is a series of other rights that are questioned along with. Lockdowns have restricted employees from attending to work causing organizations to implement redundancy plans leading to issues such as unemployment, access to basic needs and health services (Wimalaweera, 2020). Burdened with the outbreak of the virus and loss of employment many citizens are put in further helplessness resulting in higher levels of poverty, dependency and inequality. Thus the government is vested with a wider responsibility to provide for the social and economic rights of the citizens to ensure the quality of life while guaranteeing that the travel restrictions do not hinder many other fundamental rights of the citizens.

While the imposition of restrictions on movements should be necessary, proportionate and equal, actions for violations of such restrictions should be flexible and humane without imposing unnecessary fear in the citizens. The imposition of the restrictions should not be in a manner that the citizens completely vest their inherent rights on the state as a trade-off for their freedom to take whatever action necessary faced by the need of curbing the virus and protecting the valuable lives of the citizens during a global pandemic which has brought dire consequences to the world as a whole.

V. BREACHES ON EQUALITY

Equality is essentially the most important fundamental right protected by the constitution. Provided in article 12(1) of the constitution equality within the pandemic requires all citizens to be included in the process of combatting the virus through equal access to healthcare services without any discrimination. Treatments and quarantine facilities should be provided to the infected, exposed, young, women and older generations in equal sense without any distinction. Provision of vaccinations

should be done in an equal manner without the facility being secured only to populations with access to internal connections with those in authority. UN reports suggests that discriminations across the world are observed in respect to health care workers, older populations, persons with disabilities, Internally displaced people (IDP), prisoners and migrants (UN,2020). There should be equal access to information by all citizens guaranteeing that all citizens are well informed about quarantine regulations, preventive measures and remedies to curb the virus.

Inequalities in income distribution and the distribution of resources are observed. With the imposition of restrictions daily income earners have failed to find a living thus putting their daily living at a risk. Though the government has initiated a program to distribute a subsidiary of five thousand rupees to daily wage earners the efficacy and equality with which these programs are initiated have become doubtful. The situation is further worsened with the flood conditions faced by citizens of several parts of the island where they have been displaced and left homeless. Within the facilities provided for the displaced social distancing has become more challenging while citizens are further opened to the disease.

The closure of schools has led the adoption of distance learning and online teaching requiring students to adopt technological tools to facilitate learning. Many issues have arisen in less developed and rural areas in respect to facilities such as internet connections and the availability of the needed devices. This has created a barrier for students to be deprived of avenues for educations thus creating inequalities (Attanayake, 2020). Equality should be promoted in the cremation of those who have died resulting from Covid-19 infection and special facilities should not be provided to a privileged few. Regulations on cremation should be such that the practises are the same nationwide without any distinction of social status.

It is seen that the breaches of equality are vast and are surfaced in a multiplicity of circumstances. Though the entire responsibility of provision of all facilities cannot be vested on the government entirely the role of the government in furthering equality in the services provided must be ensured. The efforts of the Sri Lankan government to provide facilities for covid-19 treatments to all citizens without a distinction should be appreciated.

Similarly the state should not create a marginalization of services and provide essential subsidiaries to populations that genuinely require the assistance of the government to secure their daily livelihood during these unprecedented times.

VI. FREEDOM FROM TORTURE AND DEGRADING TREATMENT

Article 11 of the constitution guarantees that no person should be subjected to torture, cruel, inhumane or degrading treatment or punishment. With the imposition of the restrictions the police have been vested with the power to take action against those who violate the travel restrictions thus imposed. Though such power is vested the manner in which a person is arrested should be humane and must not be disproportionate with utmost respect upon the dignity of such person as a human being and in accordance with the law of the country. In counter arguments it is the duty of a responsible citizen to adhere to travel restrictions and take collection action alongside the government to contain the virus.

As reached at by the prominent legal scholars and judicial precedents in Sri Lanka embedded within the right to be free from torture is the right to life which must be secured in every state action. Thereby it should be established that every infected person and those under quarantine inherently enjoy a right to medical treatment and the right to work towards safeguarding their lives. The right of every citizen to live should be safeguarded by the medical practitioners, government and other responsible authorities (Janz, 2020). Thus the need of a collective action to combat the virus both through precautionary and remedial measures with effective of all stakeholders is called for.

Detaching from a fundamental rights perspective looking upon the freedom from torture and ill treatment in a human rights perspective, domestic violence can be viewed as a major issue during the period of lockdown imposition. Many cases have been reported where women and children have been subject to various abuses at their homes resulting in severe consequences. Though not caused through an administrative or executive action domestic violence has become a major human rights issue that needs quick responses within the pandemic times. Statistics show that there is more than 12% increase in the acts of physical abuse and sexual violence against women and in most instances the perpetrators has been their own husbands or intimate partners (Epidemiology Unit, 2020).

It has been researched that the main reasons that has led to such issues is the mental pressure undergone due to the pandemic and lockdowns coupled with unemployment issues and increase in time spent with the abusers. Though the actions that could be taken at state level for domestic issues are limited it is felt that initial actions should be taken to protect the human rights of women and children who are subject to violence during the pandemic. Actions should be taken in accordance with the Domestic Violence Act no 04 of 2015 which imposes a legal obligation on the state to prevent actions of domestic violence. Additionally during the unprecedented times a responsibility is vested with the responsible authorities to bring about practical and effective solutions through a social support system without directing the victims to return to their abusers who have been strictly advised.

VII. SECURING FUNDAMENTAL RIGHTS THROUGH THE RULE OF LAW

Rule of Law is a major constitutional principle that should be respected upon by all in equal sense. While the principle demand utmost adherence upon it the extent to which a state aims to establish rule of law will decide the wellbeing of all citizens. The outlining base of the principle is that every person is equal before the law and should be subject to the due process of the law. Thereby rule of law embeds supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, procedural and legal transparency respect upon the rights of citizens, peace and democracy (UNSC,2004). Strict adherence to the rule of law will ensure that the government does not engage in arbitrary policy making that will cause an impact on the fundamental rights of citizens. Further rule of law will ensure that the regulatory responses are transparent, flexible, proportionate and are imposed as by the law.

As stated the imposed restrictions are essential to curb the virus and decrease the number of infected populations and it is the duty of the citizens to adhere to these regulations following the government imposed responses. However the restrictions should not be driven politically creating a barrier in democratic conduct by imposing barriers of expression of the disfavours of interest groups (UN, 2020). Fairness, due process of law, equality and non-discrimination should be followed in the provisions

of healthcare services and other relief methods. A less discussed issue is the evasion of privacy created as a result of the pandemic with the use of new technologies such as drones, artificial intelligence. Though the right is not specifically guaranteed in the country through the establishment of right to live by virtue of article 11 it can be argued that during the pandemic the privacy of the citizens should be protected.

The government should at all time work towards building peace and security within the nation by uplifting the rule of law. Quarantine regulations and travel restrictions should be imposed according to the relevant statues, international law and should not be extensive and disproportionate. Such restrictions may impose a barrier on the achievement of certain fundamental rights. But restrictions on fundamental rights can be imposed according to the constitution as prescribed by the law in accordance with concerns on public security, public economy and health.

Covid-19 pandemic has proven sufficient to impose such restrictions yet they should not be extensive and arbitrary. Imposition of restrictions as permitted by the law will strike an effective relationship between the fundamental rights government policy making (Amarathunga et al, 2020) Therefore it is seen that rule of law is a prominent principle that would serve beneficial during the unprecedented times to safeguard the rights of the citizens and limit the arbitrary actions of the government that would have a long term negative impact on the respect of dignity to human life in a democratic country.

VIII. THE NEED OF COLLECTIVE ACTION

International sources state that Covid -19 is not a battle to be fought alone. It is the collective action of the government, citizens and the global population as a whole that will lead the world to successfully battle the pandemic. In the context of Sri Lanka the prompt actions of the government should be appreciated along with the efforts of all stakeholders to combat the virus. Medical health professionals, armed forces, the government and all respective authorities have contributed immensely to safeguard the rights of the citizens (Mukhopadhyay, 2020)

However the entire burden of battling the pandemic should not be solely vested on the government. Owing to the economic and financial stability of the country provisions of all medical treatments free of charge has itself become a great pressure on the economy of the country.

On the other hand the citizens should effectively adhere to the travel restrictions and other regulations with a view to assist the government and save their own lives. However they should be vigilant and well aware of their rights in order to avoid the abuse and trade off of the fundamental rights. The citizens should be aware that the outbreak of the pandemic though provides grounds for restrictions upon fundamental rights does not call for arbitrary, in equal and undemocratic actions.

In the same manner the government should ensure that they donot impose regusltions ore tthan neccsaary or extensive undermining the guding pricniples of democratic institutions. Emergency powers should not be imposed to bring about more tragedy to the general public through inequitable regulations, arrests and detention. The policymaking should be humane to understand the plight of the citizens and provide for their welfare. Thus it is seen that respect upon rule of law becomes the basis for fighting the pandemic in a democratic manner as an accountable government and responsible citizens.

Going beyond the national perspective UN highlights that the global pandemic calls for a collective global actions where each state should build capabilities to effectively fight the circumstances. Considering the economic levels of states and the medical expenses incurred UN has directed developed countries to extend their assistance to countries that are in need of medical equipment, vaccinations and other medical facilities.

Therefore in order to gain the collective contribution of all stakeholders authoritative institutions should take transparent decisions, promote open communication with accurate information, open themselves to criticism thereby promoting an integrated, inclusive approach to fight the pandemic hence establishing democracy and rule of law.

IX. CONCLUSION

The outbreak of the Covid - 19 pandemic has demanded states to implement strict regulations on the general public in order to prevent the spread of virus into uncontrollable levels. In response to such demands Sri Lankan government too has implemented various regulatory responses to limit the movement and gathering of people. These restrictions are essential to protect and safeguard the rights of people. However in a legal perspective travel restrictions are viewed as limitations upon the fundamental rights of the public. Hence in the imposition of such regulations the government

should be vigilant about the possible breaches of fundamental rights that could be caused as a result.

In this paper the possible violations of freedom of movement, right to equality and the freedom from torture and inhumane treatment has been discussed alongside human rights perspectives. While it is seen that the government should not act in a manner arbitrary and inhumane in policy making during the pandemic the citizens are also vested with the duty to ensure that they adhere to the regulations imposed.

Establishment of rule of law is seen as the most effective remedy to protect the rights of the people amidst the regulatory responses of the government. In such a background the government regulations should be implemented only to the extent necessary and the violations of these regulations should be penalized in a legal and equitable manner. It is noted that the unprecedented times does not bring about power to the government to act in an arbitrary manner in derogation of democracy and rule of law. The extent to which Sri Lanka is able to establish rule of law will determine the extent to which the rights of the citizens and the actions of regulatory bodies are balanced.

However in a global scale it is noted that overcoming the pandemic demands collective action of all stakeholders who will jointly work towards a common goal. While the efforts of the government to fight the pandemic is to be appreciated given the economic and financial circumstances of Sri Lanka the government the sole responsibility of fighting the pandemic cannot be vested on the government itself. Hence it becomes the responsibility of all stakeholders including the citizens to ensure that they fulfil their contribution to support the government in their actions while seeking a balance between the imposed regulations and fundamental rights. It is only through the effective establishment of rule of law and due legal process that the Sri Lankan legal system will be able to address the pandemic in a coherent manner upon respect to the rights inherently enjoyed by the people and long standing principles of a democratic nation.

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ABBREVIATIONS

HRCSL – Human Rights Commission of Sri Lanka

IDP – Internally Displaced People

UN – United Nations

UNSC – United Nations Security Council

WHO- World Health Organization

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Thamasha Walgama has completed her LLB at the General Sir John Kothelawela Defence University. She takes a keen interest in the areas of Constitutional Law, International Law and Administrative Law. This research deals with the legality of the imposition of the Covid-19 regulatory responses and the need of strict adherence to Rule of Law to ensure the protection of the rights of the citizens.