

COVID-19 Response and the Health Regimes in International Law: A Critical Perspective from the Third World

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Abstract

Covid 19 pandemic has brought a unique situation of medical state of emergency across the globe. Such an emergency is largely viewed as apolitical and inevitable for saving human lives. World Health Organization's guidelines for containing this pandemic has become the basic parameters for various governments to implement measures like complete lockdown and suspension of various freedoms in an attempt to control the spread of coronavirus. These attempts have a huge impact on the human rights, livelihood, and civil liberties of the people, especially in the global south. The saving of bare life has been given utmost priority at the cost of other freedoms that invest human lives with meaning. This paper is an attempt to provide an appraisal of various health regimes in international law from the prisms of human rights and biopolitics. We have taken the Third world in general and India in particular as examples to present our arguments. Our methodological framework for this paper is being inspired by the third world approach to international law.

1. Introduction

COVID 19 pandemic has ushered in a medical emergency across the world, a situation which is supposed to warrant a 'state of exception' for various sovereign nation-states; the abysmal mortality rate of this virus has privileged survival of human life over all other socio-political conundrums of our times. Such a state of emergency is seen as an unprecedented, inevitable, and apolitical situation, where the universal medical guidelines and laws that have suddenly become the defining features of our lives, are to be internalised by us without any critical assessment. However, these ubiquitous and seemingly innocuous measures, laws, and guidelines to counter the pandemic need a closer scrutiny, in order to make sense of its immediate as well as long term impact on our lives and our societies. This paper will attempt to engage critically with politico-legal concept of 'right to life' and will try to problematise the normative understandings of 'survival trumps all' philosophy that seems to be the guiding principle of COVID 19 response across the globe. COVID 19 pandemic has given us a unique opportunity to see 'right to life', 'right to health' and 'right to healthcare',

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various provisions in international law pertaining to these rights and the impact of international bodies like the World Health Organisation (WHO) in a new light.

It must be noted that while the site of debate about these medical strategies, ‘state of exception’ and their political implications on life and liberty has been Europe, the site of various political pathologies of these strategies has been the Third World, where civil liberties and democratic freedoms are anyway precariously available. There are several visible markers and examples in the Third World which indicate that precariously available democracy is sliding steadily and gradually in authoritarian regimes due to the various methods deployed to combat this medical ‘state of exception’. These methods have been weaponised against rights guaranteed under Universal Declaration of Human Rights and other conventions relating to human rights and fundamental freedoms. This paper will look more closely at the case study of India to examine the political implications of state of medical emergency on the socio-political milieu of the nation-state.

This paper will argue that the various strategies to contain the contagion have also brought with them a number of political pathologies like recession in civil liberties and an overall democratic deficit in formulating various COVID 19 policies and responses, giving impetus to the authoritarian tendencies of state in the name of medical ‘state of exception’. The response to the pandemic also presents a catalyst moment in history in which texts of human rights documents need to be radically interpreted or intentionally ‘misinterpreted’. ‘Misreading’ the text of international law ‘in ways that such texts were generically and institutionally never meant to be read’¹ is being developed by critical legal scholars as an intellectual resistance to hegemonic understanding in the various branches of international law in order to create a space for the marginal voices to ‘tell a different story’². This paper will attempt to do that by first engaging with the concepts of *bio-politics* and *bare life* and its implication for the sovereign in creation of ‘state of exception’, as seen during the emergency lockdowns in various nation-states during COVID 19 pandemic; the paper will then examine the legal framework of ‘health’, and juxtapose the debates around human rights with the current strategies of privileging *bare life* above everything else; finally, the paper will look at the case study of the Indian lockdown to examine the impacts of ‘state of exception’ in states with democracy deficits.

¹ As cited in Anne Orford, *Reading Humanitarian Intervention : Human Rights and the Use of Force in International Law*, CAMBRIDGE UNIVERSITY PRESS (2003) 38.

² *Id.* at 38