

## **A Jurisprudential Study on Individual Liberty v. Public Interest: A Case of COVID-19**

*Dr. G. Rajasekar<sup>1</sup>*

### **Abstract**

*Human community witnessed many outbreaks of infectious disease from very ancient period. Indian society is also not spared by the nature in this regard. These diseases posed great threats not only to the public health security of the nations but also significantly disrupted the economic and commercial activities of the State.*

*The power exercised by the state in protecting public health during health emergency is limited by the individual right to liberty, right to food, right to privacy, right against discrimination etc. Therefore, a fine balance may be drawn between the individual liberty and the power state to maintain public health.*

**Keywords:** Personal Liberty, Public Health, COVID-19

### **I. Introduction**

Human community witnessed many outbreaks of infectious disease from very ancient period. Indian society is also not spared by the nature in this regard. These diseases posed great threats not only to the public health security of the nations but also significantly disrupted the economic and commercial activities of the State.

Unlike earlier centuries, nineteenth century is a remarkable one in the human history. There is a paradigm shift in the concept of the state. The state across the globe became a welfare state. This concept has increased role of the state to a larger extent. Again, the end of the Second World War has resulted in growth of human rights. This has changed the functions of the state from coercive nature to right based approach. This dual nature of the state, that is protecting the rights of the individual on one side and the security of the state on other hand really made the function of the state a complex one

---

<sup>1</sup> Assistant Professor, Department of Legal Studies, University of Madras, Chepauk, Chennai, 600005

Responding to this change both the international community and the municipal state came with declarations and conventions and Law respectively to guard the rights of its citizen. To strengthen this role most of the countries in the world have adopted a Constitution guaranteeing protection to the fundamental rights to its citizen and also cast an obligation on the part of the state to provide the social security and welfare measures of the citizen. This can be understood from the Part III<sup>2</sup> and Part IV<sup>3</sup> of the Indian Constitution. Therefore, it is a settled principle that fundamental rights are not absolute and always subject to reasonable restriction. In other words, fundamental rights deal with individual liberty<sup>4</sup> and reasonable restriction focuses on public interest or social interest<sup>5</sup>. Thus, in the name of security of the state and on public interest the state can derogate the fundamental rights of the citizen<sup>6</sup>. Therefore, the political trumps held by the individual are termed as individual rights.

But the experience shows that the containment measures taken by the public health authorities is proven to be a disproportionate one on the poor and marginalised. The surveillance and the brutal actions taken by the police on the lockdown violators are seems to be violative of the personal liberty of the person. The general public felt that quarantine and other regulatory measures fell harder on the poor. It also felt that there were many instance in which the ethnic and religious minorities are stigmatized as the communicators of the disease.

## II. Right to Life and Personal Liberty

The right to life and the right to personal liberty are guaranteed under Art.21<sup>7</sup> which has received the widest possible interpretation. The right to live means something more than mere animal existence and includes the right to life consistently with human dignity and decency. In other words it can be said as this right is not merely physical act of breathing but, it is a life with dignity. Reputation of a person is his valuable asset and is a facet of his right under Article.21 of the

---

<sup>2</sup> See generally Arts.19,21,22, 32 of the Constitution of India.

<sup>3</sup> See generally Arts.39,41, 42 and 47 of the Constitution of India.

<sup>4</sup> Art.19 (1) a to g and Art.21 of the Constitution of India.

<sup>5</sup> Art. 19 (2), and other Preventive Detention Laws.

<sup>6</sup> See generally Arts. 352, 356,358,359 of the Constitution of India.

<sup>7</sup> Art. 21 read as, No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Indian Constitution<sup>8</sup>. A good reputation is an element of personal security and it is protected by the Constitution equally with the right to the enjoyment of life and property under Article 21 of the Constitution<sup>9</sup>. Under Article 21 of the Constitution, so many rights have found shelter growth and nourishment. One can easily understand these developments have evolved from judicial decision. Art.21 of the Constitution which guarantees protection of life and liberty can be said to be heart and soul of the fundamental rights<sup>10</sup>. Thus, this right can be said as a finer grace of human civilization<sup>11</sup>. However, this right also not an absolute right and it can be controlled by reasonable restriction<sup>12</sup>.

The concept of Personal liberty was first defined by the Apex Court of India in *A.K.Gopalan V State of Madras*<sup>13</sup> by the following words:

By qualifying the word liberty, the importance of the word ‘personal liberty’ is narrowed down to the meaning given in English Law to the expression ‘liberty of person’. Art.19 and 21 deals with different aspects of liberty. Art 21 deals with the deprivation of right (total loss) of personal liberty but Art 19 is protecting the rights of its citizen from unreasonable restriction (partial control).

Therefore, it can be safely said that a personal liberty of person found in Art.21 can be deprived by means of a valid law and in case of freedom under Art.19 can be enjoyed by a free citizen.

### III. The Jurisprudence of Dignity

The comparative reading of Arts 19 & 21, one can easily infer that the aim of these articles are not only to protect the physical existence but also the quality of

---

<sup>8</sup> Sukhwant Singh v. State of Punjab, AIR 1995SC1601.

<sup>9</sup> Umesh Kumar v. State of Andhra Pradesh, AIR, 2014 SC 1106 see also, Om Prakash Chautala v. Kanwar Bhan, AIR 2014 SC1220.

<sup>10</sup> Mohd.Sukur Ali v. State of Assam, AIR 2011 SC1222.

<sup>11</sup> Dr. Nalla Thampy Terah v. Union of India, AIR 1985 SC1133.

<sup>12</sup> Asha Ranjan v. State of Bihar, AIR 2017 SC 1079, see also, Church of God in India v. K. K. R. Majestic Colony Welfare Asso. (2000) 7 SCC 282- The person has the right to enjoy these freedoms but it should not adversely affect the right of others including that of not being disturbed in their activities.

<sup>13</sup> AIR 1950 SC 27.

life<sup>14</sup>. The hard social reality of today is the right to life with dignity of migrant workers.

The violation of human dignity and right to privacy of migrant workers really frustrate the object of Art.21 of the Indian Constitution. Going by the clean words of our Supreme Court in M.Ngaraj case, human dignity is inseparable and intrinsic to human existence, As such, the dignity of a person is inalienable and neither be given up nor be taken away from a person<sup>15</sup>.

Again in Justice.K.S.Puttaswamy<sup>16</sup>, it is observed that, the essence of dignity and liberty infused into the very existence of a person. The right to privacy was recognized and its jurisprudence interpreted to express the recognition of such a right for every person. It also laid down that the reflection of the concept of dignity is laid.

#### **IV. Right to Health as a Fundamental Right**

The widely acceptable definition of health is that given by the WHO in the preamble of its constitution, according to World Health Organization, “Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease<sup>17</sup>”

The word Right to health could be seen neither in Part-III nor in Part IV of our Constitution. It is the Indian Judiciary by its creativity brought this right in the Indian Constitution under Art. 21. Therefore, the plain reading of the various decision of the Supreme Court, the Right to health is a right of every human being in most attainable levels.<sup>18</sup> Further, it has also been held that the right to health is integral to the right to life<sup>19</sup>. Thus, Right to Health has been much considered as

---

<sup>14</sup> State of H.P. & Ors v. Umed Ram Sharma & Others, AIR 1986SC847

<sup>15</sup> M.Nagaraj v. Union of India, (2006)8SCC212 see also, Jeeja Ghosh v. Union of India, (2016) 7 SCC 761.

<sup>16</sup> Justice K.S.Puttaswamy & Others v. Union of India, (2017) 10 SCC 1.

<sup>17</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19–22 June 1946; signed on 22 July 1947 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100); and entered into force on 7 April 1948).

<sup>18</sup> Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 812.

<sup>19</sup> State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83.

the basic and fundamental human right by the international community under international human rights law<sup>20</sup>.

## V. Judiciary and Right to Health

At no point of time the Supreme Court of India want to compromise health of the citizen with quality of justice provided by it to the aggrieved parties who comes before it.

Constitutionally speaking the Directive Principles of State policy is not enforceable one<sup>21</sup> and also subject to the economic condition of the state<sup>22</sup>. Therefore, many a time state used this as a weapon to escape its duty, responsibility and liabilities in providing and protecting health of the common public. Therefore, the judiciary proactively rescue and brought this right under the purview of Article 21 of the Constitution of India by enlarging the scope of Article 21. Article 21 ensures the right of life and liberty to every one irrespective of citizens or not.

Now the concept of personal liberty is wide enough to include rights that may or may not be directly linked to the life and liberty of a person. Thus, it now includes right to health as well. This can be understood from the following decisions of the Supreme Court.

In *CESC Ltd. v. Subash Chandra Bose*<sup>23</sup> the Supreme Court observed that “right to health is a fundamental right”. The Court came to this conclusion relying upon international instruments.

The Apex Court again in *Consumer Education and Research Centre v. Union of India*<sup>24</sup> opined that right to health is also an integral part of the right to life under

---

<sup>20</sup> Article 25 1. Of UDHR runs as, *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. See also, Article 12.1. of ICESCR* read as The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

<sup>21</sup> Art. 37, “The provisions contained in this part shall not be enforceable by any court....”

<sup>22</sup> Art. 41, “The state shall within the limits of its economic capacity....”

<sup>23</sup> AIR 1992 SC 573 at p.585.

<sup>24</sup> AIR 1995 SC 636.

Part III. This right also includes the access to medical care for the highest attainment of living standards.

## **VI. Right to Health Care as a Duty of the State**

A welfare state is a parent or guardian of the individual<sup>25</sup>. So, the state has to provide, promote and protect the individuals' right without any compromise. Therefore, right to health care and maintenance of public health is a primary role of the state.

### **A. International Level**

In contrast to all the other human rights, the right to health creates an obligation upon the states to ensure that the right to health is respected, protected and fulfilled, and is duly entitled to all its citizens<sup>26</sup>.

According to World Health Organization, Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease<sup>27</sup>.

Going by the above words of WHO one can easily infer that the healthy life of a human is not only devoid of disease and infirmity but also inclusive of his physical, mental, social wellbeing. Later WHO has also played a momentous role both at the international and national in guiding development of health policy with an overall objective of ensuring & attaining the highest standards of health care to all the people around the world<sup>28</sup>. WHO has not only given a wider definition to HEALTH but also brought the vision of HEALTH CARE.

### **B. National Level.**

A plain look at nature of Directive Principles of State Policy under Part IV of the Constitution of India leads to a conclusion that it is the responsibility of the state

---

<sup>25</sup> Charan Lal Sahu v. Union of India, AIR 1990 SC 1480.

<sup>26</sup>ICESCR, **Article 12.2** The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (c) The prevention, treatment and control of epidemic, endemic, occupational, and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

<sup>27</sup> *Supra Note.17.*

<sup>28</sup> WTO Agreements and Public Health A Joined Study BY WHO and WTO Secretariat. (date of visit 1-05-2020),

[https://www.wto.org/english/res\\_e/booksp\\_e/who\\_wto\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/who_wto_e.pdf).

to ensure social and economic justice to its citizens. Therefore, one can easily come to a decision that Part IV of the Constitution directly or indirectly relates to the public policy in terms of health<sup>29</sup>. The following decisions of our Apex court picturise how judiciary effectively fix the responsibility on the state.

In *Ratlam Municipal Corporation*<sup>30</sup> case the court held that “it is the primary duty of the state under Article 47 of the Constitution to ensure the living conditions of the people are healthy and enforce this duty against any governmental body or authority who defaults in doing so irrespective of the financial resources it has”.

The Supreme Court, in *Paschim Banga Khet mazdoor Samity & Ors. v. State of West Bengal & Ors*<sup>31</sup>, while widening the scope of Art 21 and the responsibility of the State the Court observed that, it is the primary duty of the government in a welfare state is to secure the welfare of the people by providing adequate medical facilities to the people.

In *State of Punjab v. Ram Lubhaya Bagga*<sup>32</sup>, the Supreme Court of India held that a comprehensive reading of Arts. 21, 41 and 47 of the Indian Constitution, makes it clear that these articles explain the duty of one another. Hence, the right enshrined under Article 21 imposes a parallel duty on the state which is further reinforced as under Article 47. Furthermore, it is pertinent to note that the Apex Court in this case viewed health to be a sacrosanct, sacred and valuable right.

From the above ratios it is quite clear that improvement of public health being one of the primary duties of the state. The state can impose restriction on any right found in the Part III of the Indian Constitution. In this regard the Court observed that the movement of a person may be restricted on the Ground of Public Health and Public morals<sup>33</sup>.

In *Uttar Pradesh v. Kaushalya*<sup>34</sup>, the Court held that on the ground of public health and public morality the right to movement of a prostitute can be restricted.

---

<sup>29</sup> See generally Arts.38,39(e), 41,42,47,48

<sup>30</sup> *Ratalam Municipality v. Vardichan*, AIR 1980 SC 1622.

<sup>31</sup> (1996) 4 SCC 37.

<sup>32</sup> AIR 1998 SC 1703.

<sup>33</sup> *Kamala China v. State*, AIR 1963 Punj.36.

<sup>34</sup> AIR1964 SC416.

## VII. Maintenance of Public Health

In common parlance maintenance of Public Health is nothing but an art of prolonging the life by preventing disease and promoting health through the organized efforts and informed choices of society, communities and individuals.

Going by the words of WHO Public Health can be defined as the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition". In India though, public health is not explicitly found in the Constitution of India, the judiciary has explained the need for the maintenance of public health in many of its decision. While interpreting the Part-IV of the Indian Constitution the judiciary observed that it's the duty of the state to take care of the public health. This can be understood from the following words of the Supreme Court.

By reading Arts.21 and 47 together the court held that one of the primary obligations of the state is to provide better health services to the poor. This can be understood from the following words of the Supreme Court in *Vincent Panikur Ilangara v. Union of India*<sup>35</sup> :

"... maintenance of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health in our opinion, therefore, is of high priority-perhaps the one and the top.

To achieve the above goal, it is felt that an effective public health system regulated by effective legislations is highly essential for any society.

Technically speaking, Public health System is a study of the powers and functions of the state. This state function is normally regulated by a statute, or rule or local ordinance. It also deals with the limitation on the powers of the state in curbing the individual liberty and the other interest of an individual that are legally protected.

---

<sup>35</sup> AIR 1987 SC990.

Therefore, the stakeholders of Public health are the state having responsibility of maintain the public health and the other is the population as a whole, has a legitimate expectation of benefitting from public health services

The right to health for all people means that everyone should have access to the health services they need, when and where they need them, without suffering financial hardship<sup>36</sup>.

### **VIII. Constitutional Structure of Indian Public Health Law**

The Constitution of India distributed the Power to enact Laws regulating the Health issues to the Parliament and The State Legislatures through the list seen in the Seventh Schedule<sup>37</sup>. Constitutionally speaking The Parliament has no power to legislate on items from the State List, which include matters like public health, hospitals and dispensaries, water and sanitation. However, two-thirds of the Rajya Sabha may vote to allow parliament to pass binding legislation on any state issue if “necessary or expedient in the national interest”.

In India periodically, many Health Laws has been enacted by the Parliament and the State Legislatures to tackle the health issues during the normal time and in emergency situation. In normal time one could find that there is a balance between the health laws and protection of the liberty of the individual. These laws are mainly right based approach instead of coercive nature of the state. That is to say the pendulum swings equally between the obligation of the state and liberty of the individual.

But the Health Laws enacted to maintain the emergency are in coercive nature and restrict the individual liberty. These types of Law empower both the central government and state government to take special measures and prescribe regulations in case of dangerous epidemic disease<sup>38</sup>.

---

<sup>36</sup> *Supra Note:17*

<sup>37</sup> VII- Schedule Entry: 6 of the State List, Public Health and Sanitation; hospitals and dispensaries., Entry:29- Prevention of the extension from one state to another of infectious diseases of pest affecting men, animals or plant.

<sup>38</sup> THE EPIDEMIC DISEASES ACT, 1897- [2A. Powers of Central Government.— When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and

Moreover, the objective of Epidemic Diseases Act-1897<sup>39</sup> is to provide better prevention of the spread of dangerous epidemic diseases. The Epidemic Diseases Act empowers both the Union and State governments to take effective measures to control the further spread of the disease. Thus, any state government, when satisfied that any part of its territory is threatened with an outbreak of a dangerous disease, may adopt or authorize all measures, including quarantine<sup>40</sup>, to prevent the outbreak of the disease. The Disaster Management Act, 2005<sup>41</sup> spells the Powers and Functions of the Authorities during the disasters<sup>42</sup>.

Today all the countries including India is facing a great health catastrophe due to COVID-19.

The spread of COVID-19 posed a serious threat to the maintenance of public health. In order to tackle the situation, the state came with lockdown invoking Sec.144 of the Cr.P.C. ultimately resulting in certain restrictions on the freedom of Assembly and Freedom of movement etc. For

Jurisprudentially speaking, these pandemic laws empower the state to design and enforce regulations to reach the decided goals of curbing the epidemic rather than catering to the basic needs of the Individual. In other words, it can be said that the existing Legal frame works are heavily relying upon maintenance of Public Health forgetting to safeguard the liberty of the individuals though certain liberties are non-derogable at any point of time.

While answering to an issue relating to Public Health in *Ratalam Municipality*<sup>43</sup> case, the Supreme Court by making a comparative reading of Secs.188 and 268

---

prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in 2[the territories to which this Act extends] and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.], Sec.188 of Indian Penal Code, see generally DISASTER MANAGEMENT ACT, 2005.

<sup>39</sup> ACT NO. 3 OF 18971.

<sup>40</sup> *Ibid.*

<sup>41</sup> ACT NO. 53 OF 2005

<sup>42</sup> Sec. 6. Powers and functions of National Authority. —(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

<sup>43</sup> *Supra Note.24.*

of IPC and Sec.133 of Cr. P.C held that public health, decency, dignity and morals are interrelated.

### **IX. Concept of Balancing of Right**

The balancing of right approach is ingrained in the Social Engineering propounded by Roscoe Pound. Balancing, weighing or accommodating interest was understood as an integral part of the libertarian. While explain the concept of balancing of right, supreme court touched upon Dworkin's thesis and dismissed it for its "all or nothing" rule based approach as opposed to the more malleable principle based approach of other scholars which according to the Supreme Court permits balancing of rights (not between individual but between individual and society)"<sup>44</sup>. The Courts generally use pragmatic and Practical approach than hyper legalistic approach since the human rights and fundamental rights cannot be compromised.

### **X. Lock Down Orders and Individual Liberty**

The word emergency has different meanings. It is distinguished based on the seriousness of incident involved or might involve or depend upon the widespread risk of injury or harm to the public at large, destruction or huge damage to the public property. In these circumstances it is the duty of the state to take appropriate and effective preventive measures to deal with the emergency situation.

While doing so, the care should be taken that the restriction should never be excessive either in nature or in time<sup>45</sup>.

The interpretation made by the Supreme Court on Secs.188 and 268 of IPC and Sec.133 Cr.P.C. In Ratlam Municipality is highly relevant in the wake of the current lock-down scenario<sup>46</sup>. The question of courts right to intervene on the reasonableness and procedural preparedness before enforcement by the State was raised in *Alakh Alok Srivastava V Union of India*<sup>47</sup>, by way of public interest

---

<sup>44</sup> Anuradha Bhasin v. Union of India, (2020)3 SCC637, see also *Foundation for Media Professionals v. UT of Jammu Kashmir* (2020)5 SCC 746.

<sup>45</sup> *Ramlila Maidan Incident, In re*, (2012)5 SCC 1.

<sup>46</sup> Tarique Faiyaz, COVID-19 and the Current Challenges of Quarantine Law Enforcement in India, <https://www.jurist.org/commentary/2020/04/tarique-faiyaz-covid-19-quarantine-india/>

<sup>47</sup> Writ Petition(s)(Civil) No(s).468/2020, Supreme Court of India dt.31-3-2020.

litigation. In the writ petition the petitioner has highlighted the plight of thousands of migrant labourers who along with their families were walking hundreds of kilometres from their workplace to their villages and towns in defiance of COVID-19 lock-down order. The jobless and migrant workers stranded without any means of transportation are nothing short of forced detainees in the midland. The police actions under Section 188 of the IPC are justifiable but resulted in abuses against people in need. The sealing of state borders has caused disrupted freedom of movement and halted the supply of essential goods is blatant violation of liberty<sup>48</sup>.

The declaration lockdown during pandemic may be inconsonance with Art.19(2) but not providing transportation to the migrant workers within a reasonable time is a clear violation Art.19(1)(d) and Art.21 since, it is a deprivation of their dignity.

This can be understood from the catena of decision of the Supreme Court of India with respect to the right to movement of Migrant workers during COVID 19. Time and again the Supreme Court reiterated that “the state is under the obligation to remove the hindrance affecting the enjoyment of the fundamental rights of Art.19 (1) (d) and Art.21. It also observed that the denial of rights of the migrant workers is nothing but stripping of their dignity as human beings, which is a protected right under Art.21 of the Indian Constitution. Imposing compulsory measures to keep social distancing and wearing of face mask may be reasonable but complete denial of movement of migrant workers is disproportionate.

Though the state’s power to quarantine a person to maintain the public health is a legitimate one no doubt it seriously affected the liberty of an individual. Liberty of an Individual and public health are not complementary but supplementary to each other.

One of the facets of Art.14 is to get rid of in human practices prevalent in the country and the unequal treatment of the working groups (workers of the state and migrant workers) by the state governments is an arbitrary action and will shake the foundation of the democracy. Therefore, in Maneka Gandhi case, the Supreme Court held that arbitrary action is in violation of Right to equality protected by

---

<sup>48</sup> *Supra Note.36.*

Art.14 of the Indian Constitution. The Court also highlighted the link between Arts.14, 19,21 which is called as Golden Triangle of the Indian Constitution<sup>49</sup>.

Tussle between Liberty and Security is inevitable in a democratic society having rule of law. The pendulum should not swing in either extreme direction so that one preference compromises the other. Time and again the Indian Judiciary observed that during preventive laws cannot be used as a tool to prevent the legitimate exercise of any democratic rights. Therefore, it is the duty of the state to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure<sup>50</sup>.

The fundamental freedoms enshrined in Art.19(1) are found with certain exceptions. Therefore, the settled principle is “reasonable restriction imposed on the Fundamental Freedoms in Art.19 (1) must satisfy the test of proportionality<sup>51</sup>.

So, it is to be noted that the restrictions must be minimal and not to exceed the limit necessary in a particular situation. Hence, restriction on the Freedoms encapsulated under Art.19 (1) cannot be an instrument of coercion or persecution or harassment.

### **XI. Doctrine of Proportionality**

However, the Supreme Court now a day made it clear that a clash between two rights must be decided in the light of Proportionality. Justice Chandrachud J observed in *Justice K S Puttasawamy (Retd) and Anr. v. Union of India & Ors.*<sup>52</sup>, observed that, “An invasion of life or personal liberty must meet three-fold requirement of (i). Legality, which postulates the existence of law (ii). Need, defined in terms of a legitimate state aim (iii). Proportionality which ensures a rational nexus between the objects and means adopted to achieve them.

In the same case Kaul J. observed that (i) The action must be sanctioned by law (ii) the proposed action must be necessary in a democratic society for a legitimate aim, (iii) The extent of such interference must be proportionate to need for such interference (iv) procedural guarantees against abuse of interference with rights,

---

<sup>49</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>50</sup> Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.

<sup>51</sup> Rupinder Singh v. Union of India, AIR 1983 SC 65.

<sup>52</sup> (2017) 10 SCC 1 at p.509 para 325 and p.632 para 638.

which echoes Article 21's central requirement of having a "procedure established by law".

So, from the observations of the Judges one may easily infer that only to the nature and extent to which a law interferes with fundamental rights must be proportionate to the goal it seeks to achieve. Therefore, in the name of public interest individual liberty cannot be invaded completely. It is pertinent to say that reasonable measures should alone be followed in case of restricting the liberty of an individual. Time and again the Supreme Court of India reiterated that restriction of personal liberty should not be made in a casual manner and it should be dealt with utmost care. In this connection it is pertinent to quote the words of Lord Diplock in *R V Goldsmith*,

*"You must not use a steam hammer to crack a nut if a nut cracker would do"<sup>53</sup>*

## **XII. Conclusion**

Therefore, in the light of above discussion it is clear that any public health law would certainly be inconsistent for the simple reason that Government, on the one hand is compelled to protect the health of the people on the other hand, it cannot disproportionately assault individual rights in the name of communal good. The power exercised by the state in protecting public health during health emergency is limited by the individual right to liberty, right to food, right to privacy, right against discrimination etc. Therefore, a fine balance may be drawn between the individual liberty and the power of the state to maintain public health.

Any country that follows the principles of Rule of law and respecting human rights will not recognize any health legislations, regulation or executive order even during a health hazard disproportionately conflicting with the life and personal liberty of an individual

---

<sup>53</sup> (1983) 1 WLR 151 at p.155.