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## “HUMAN RIGHTS VIOLATIONS AND MENTAL DISTRESS DURING COVID-19 PANDEMIC WITH SPECIAL REFERENCE TO LOCKDOWN”

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### ABSTRACT:

The outbreak of COVID-19 has affected the way the Governments have been responding and mitigating the health issue, that is affecting the lives of the people all around the world. The influence of the pandemic on human rights has been far reaching including confinement in quarantine zones, nationwide curfews and travel bans. The realization of human rights is inextricably tied to and dependent upon the mental health of individuals. Mental health is a basic human right that must be given highest priority in times of crisis, regardless of race, class, gender, ethnicity, or age. In order to determine the most serious human rights violations during the COVID-19 epidemic, this paper evaluates the most important relevant legal provisions under human rights legislation and applies these regulations to the reality of managing the crisis. It aims to investigate human rights violations during the COVID-19 outbreak, the mental impact of a lockdown and the limitations placed on individual freedoms in order to protect public health.



Despite the fact that policies and guidelines have different effects on different populations, this review acknowledges that increasing the involvement of policymakers may be helpful in addressing health outcomes during public health emergencies. Advocates for civil society and human rights should work with policymakers to identify the policies, services, and interventions that should be implemented. A policy can be created that satisfies these values and relationships by better understanding the trade-offs and reciprocal relationships between these various fields of science, including but not limited to infectious disease, and between physical and mental health, human rights, and individual rights.

**KEY WORDS:** Covid, Health, Migrants, Policy, Human Rights.

### INTRODUCTION

In reaction to the global pandemic of the new Coronavirus illness, the WHO declared a public health emergency of global concern on March 11, 2020. States have taken immediate emergency health steps to restrict the virus's spread. As a result of these measures, which include stay-at-home orders and school closures, people had to reconstruct their lives.

Governments throughout the globe have implemented emergency measures that restrict individual freedom, social and economic rights, and global solidarity in order to prevent the spread of

COVID-19.<sup>1</sup> As a result of these regulatory measures, many schools, offices, and public transportation systems have been forced to close, public meetings have been cancelled, house confinement has been made necessary, and extensive electronic surveillance has been implemented. However, human rights requirements are seldom addressed, despite the pandemic response's enormous influence on them. Responding to COVID-19 should be guided by human rights principles and norms, with these rights supporting public health solutions.<sup>2</sup>

Many other instances of human rights violations, such as arbitrary arrest, censorship, and racial discrimination, were documented worldwide as part of the COVID19 epidemic. Rights abuses "undercut rather than facilitate" the response to public health emergencies, according to Amnesty International's position statement. Human rights should not be sacrificed in the name of curbing the pandemic, according to the WHO. Human rights, democracy, and governance are among the other issues raised by the containment measures for COVID-19.<sup>3</sup>

While responding to public health emergencies, governments must strike a tough balance between preserving the population's health and upholding core human rights such as education, freedom of movement, and access to health care. Although infectious disease prevention measures can reduce deaths, they can also increase human suffering if human rights are violated. Many vulnerable communities may be denied their human rights while being safeguarded from evident public health hazards. Even while we support the use of research to accomplish common global goals, we believe that the tradeoffs between lockdown and freedom to assert social and economic independence must be considered for all evidence, not only that related to infectious illnesses. We advise states to prioritise reducing the number of people killed while also ensuring human rights are upheld. As defined by the United Nations, human rights are those that apply to all people equally, regardless of their racial or sexual identity or standing in society. Life and liberty, freedom from slavery/torture, freedom of speech, right to employment and education, and many more rights, such as a safe and clean environment, have all become increasingly important to protect. "These rights are guaranteed to everyone without discrimination or danger of any sort," says the report.

The achievement of human rights is fundamentally linked to and depends on the well-being of people's mental health. As a result of the COVID-19 epidemic, studies show that mental health and civil freedoms are being grossly undermined, while the right to education and access to correct information for health care personnel are being violated, as well as discrimination against disadvantaged groups. There is a lack of consideration for human rights protection and mental health concerns in disaster response policy and administration. Individuals who have been abused as children, those with impairments, youngsters and the elderly, domestic workers, health care providers, and members of ethnic and marginalized communities are all at risk for mental health disorders, according to a growing body of data. These groups will not have their psychological needs adequately addressed unless meaningful legislation and intervention are implemented. Mental health professionals have long been concerned that the human rights of those in psychiatric facilities, as well as those who are experiencing psychological or social suffering, are being ignored. The integration of human rights policies and practices into emergency response policy and management has been overlooked from a mental health policy viewpoint. Several issues of vulnerability, disability, treatment coercion and systemic oppression have been major problems. Specifically, this examination focuses on rights breaches and complaints that might lead to increased mental anguish and long-term harm to vulnerable groups.

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<sup>1</sup>Sekalala S, Forman L, Habibi R, et al Health and human rights are inextricably linked in the COVID-19 response BMJ Global Health (2020).

<sup>2</sup> Thomson, Stephen; Ip, Eric."COVID-19 Emergency Measures and the Impending Authoritarian Pandemic". Journal of Law and the Biosciences. 7 (1): (29 September 2020).

<sup>3</sup> Rahman et al (2021), Mental Distress and Human Rights Violations During COVID-19: A Rapid Review of the Evidence Informing Rights, Mental Health Needs, and Public Policy Around Vulnerable Populations, Policy and Practice review article (Jan 8, 2021)

This worldwide epidemic necessitates an expansion of our knowledge of what rights breaches are and how they may be mitigated and prevented, as well as the emotional suffering that results from them. Understanding and summarizing current knowledge and practices is a vital first step in informing global human rights policy and standards as well as methods for effectively managing a global pandemic.<sup>4</sup> For this review, evidence on human rights violations and the resulting mental health consequences of diverse groups, especially those known to be at high risk or have larger vulnerabilities, is the primary focus of this investigation.<sup>5</sup> The two specific objectives are:

1. The impact of human rights violations during the COVID-19 outbreak on community mental and behavioral health is investigated in this research. There will be no discrimination based on race, gender (including orphans and refugees), occupation (such as a doctor), religious background (such as a Muslim), or any other factor.
2. Examining existing or newly formed multilateral or bilateral treaties and policies aimed at improving the human rights and well-being of those most at risk, such as those drafted specifically for this pandemic.

An estimated 14% of Indians are affected by some form of mental illness, although only approximately a third of them receive the therapy they require.<sup>6</sup> They are frequently abused by the general public because to their status as "crazy" or "lunatics." When a person is coping with a mental health condition, it's important that friends, family members, and coworkers provide support and encouragement. This could have been a chance to address the issue sooner rather than later, but instead, ignorance is chosen, which only helps to worsen the situation. Even the Hon'ble Supreme Court decided in a review petition<sup>7</sup> that a death-row convict had been suffering from a mental disorder for nearly 12 years and that it would be unjust and unfair to execute a patient of mental illness, the Supreme Court ordered the government to provide the inmate with medical assistance under appropriate provisions of the Mental Healthcare Act, 2017, while upholding its ruling in *Navneet Kaur v. State (NCT of Delhi)*<sup>8</sup>. The Act, which is a powerful and comprehensive piece of legislation, may substantially aid those who suffer from mental health conditions.

## STATEMENT OF PROBLEM

Most countries' efforts to avert and mitigate the effects of World War I were sudden and difficult because of the prolonged lockdown that impacted economical operations. Following the disease's spread, India implemented a series of lockdown and rigorous quarantine measures, including travel restrictions, the closure of educational institutions, offices, and commercial activity, among other things. Confinement to physical areas, lack of mobility, panic buying, fear of contraction, loss of income, migration, adaptation to the new normal, and growing uncertainty were some of the communal experiences reported during the lockdown, hurting overall well-being. With the looming ambiguity regarding the pandemic's end and the emergence of a new strain of the virus, there's a chance for yet another wave, requiring individual and community preparedness. Psychological anguish can be a result of human rights abuses and violations that are committed against disadvantaged people and persons as a result of the epidemic. Human rights breaches and constraints during the epidemic have led to mental discomfort and disruptions, the topic of this study. The goal of the study was to show how the pandemic's strength, as well as the preventative and mitigating measures put in place to combat it, had a direct impact on mental health.

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<sup>4</sup> Dubey S, Biswas P, Ghosh R, Chatterjee S, Dubey MJ, Chatterjee S, et al. Psychosocial impact of COVID-19. *Diabetes Metab Syndr Clin Res Rev.* (2020)

<sup>5</sup> Elshobake, M.R.M. (2021), "Human rights violations during the COVID-19 pandemic", *International Journal of Human Rights in Healthcare* (2021)

<sup>6</sup> Dr. Ramon Llamba, What India must do to solve its mental health crisis? *HEALTHWORLD.COM* (Feb. 26, 2020, 1:10 PM)

<sup>7</sup> *Accused X v. State of Maharashtra*, REVIEW PETITION (CRIMINAL) NO. 301 OF 2008 (India)

<sup>8</sup> *Navneet Kaur v. State (NCT of Delhi)*, (2014) 7 SCC 264 (India)

According to the article's recommendations, all members of society will receive adequate health care in accordance with human rights principles, allowing them to access information, protecting their right to freedom of expression, and reducing racism and discrimination. All detainees will also receive adequate health care.

## RESEARCH METHODOLOGY

Through doctrinal study and content analysis, this paper examines the key relevant legal provisions under human rights legislation and applies these regulations to the reality of managing the COVID-19 crisis in order to identify the gravest Human Rights violations during the COVID-19 outbreak. Several resources will be consulted throughout the course of the investigation. Many books on International Law, Articles, and Journals have been used by the researcher in the research effort. The web resources have remained a reliable and useful source of information for the research.

## OBJECTIVES

- To study Human Rights breaches during the COVID-19 epidemic are the focus of this study, which is based on human rights legislation.
- To study the psychological effects of a lockdown
- To examine the constraints on individual rights to safeguard the health of the community.

## CONCEPTUAL REVIEW

### Human Rights

Human rights are inherent rights that each person has since he or she is a human being. It doesn't matter who you are or where you were born; these rights apply to everyone equally. In addition, a person is entitled to these rights at birth. Individuals are held to a level of conduct that is defined by these rights. Human rights are referred to as "basic freedoms" in international law since they are always a component of a country's constitution. Everyone should care about human rights. It's not just those who have been abused or suppressed that are affected by this. These are fundamental rights that are founded on fairness, decency, respect, and independence. Universal, dynamic, inalienable, and non-negotiable human rights cannot be absolute.

## COVID-19

The newly discovered corona virus causes COVID-19, an infectious illness. On December 31st, 2019, China notified the World Health Organization (WHO) of an as-yet-unidentified infectious illness. respiratory difficulties may range from moderate to severe as a result of this infection. To yet, no vaccinations have been developed to combat this virus. Almost 190 nations and territories have been infected by this virus. It is most commonly transmitted through intimate contact with a COVID-19-positive person. Touching a contaminated location or object, and then touching your face, is another way individuals may come into contact with it. Coughing, colds, exhaustion, a diminished sense of smell, and shortness of breath are all frequent symptoms.<sup>9</sup>

## International Human Rights Obligations

The rights to life, liberty, the right to respect for one's private and family life, and the right not to be treated in an inhuman or humiliating manner are all included in these treaties. The epidemic has harmed these human rights across the world.

An international study published in *Frontiers in Psychiatry*, a publication of the American Psychiatric Association, discovered evidence of human rights abuses and mental anguish during the

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<sup>9</sup>WHO's Report on Addressing Human Rights as the key to the COVID-19 response, WHO/2019-nCoV/SRH/Rights/2020.

epidemic. Some examples include a surge in suicides and psychiatric patients in numerous nations facing more physical and verbal abuse because of their isolation and confinement.<sup>10</sup>

### Updated Guidance on Human Rights during the Pandemic

In response to Covid-19, a slew of international human rights organisations revised their recommendations to governments on how to preserve human rights. Toward the end of March 2020, the UN High Commissioner for Human Rights urged governments to include human rights at the core of any pandemic responses. To “promote the formation of healthy societies with rule of law and human rights protections,” UN experts recommended states to “remain steadfast” in supporting a human rights-based approach to regulation. People in psychiatric facilities are in a “grave” condition, according to the UN Special Rapporteur on Disability, and require particular protection during the epidemic, he added.

### COVID-19 and The Human Rights

Over 130 million people are being confined to their homes in India, which is officially on lockdown. In an effort to slow the spread of disease and save as many lives as possible, the government has reduced certain individuals' Human Rights in the process. To keep over a billion people safe, the Indian government has an unprecedented challenge. As a result of the lockout, those living in low-income neighborhoods have already suffered disproportionately. Inflation and a sense of scarcity have been compounded by the closure of state borders, which has disrupted the supply of basic food. As a result, the government has an obligation to protect its population from a pandemic, but this should not be done at the expense of violating their human rights. According to reports, police operations to punish individuals who disregard the law have resulted in abuses against those in need.

### Right to Health

According to the ICESCR, “everyone has the right to enjoy the maximum possible quality of physical and mental health,” which India is a signatory to, India is a State Party (Article 12.1 ICESCR). Article 4 of the ICESCR shows that the right to health is not absolute. There must be a careful balancing act when pursuing this basic right. As a result, the right to health is linked with and dependent on other human rights, such as non-discrimination and privacy and information access.

The International Covenant on Civil and Political Rights (ICCPR), to which India is also a signatory, protects some types of rights. It allows a waiver from rules in the case of a national emergency, as described in Article 4.1. However, the Human Rights Committee's General Comment No. (GC) 29 states that two essential conditions must be met before it may be invoked: An official declaration of an emergency is required, as well as the existence of a public emergency endangering the nation's well-being. All of the ICCPR's requirements continue to apply in the absence of such a declaration. Now we'll talk about certain rights that the state must defend since they're essential to their mission and don't have any bad associations; they're part of the right to health.<sup>11</sup>

### Access to Information

Even the UN's Health and Social Development Council (CESCR) acknowledges this as an important element of the right to health, and one of its core obligations is to provide people with “access to information concerning the community's most important health problems, including methods of prevention and control,” as one of its core obligations. (GC 14, para. 44).

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<sup>10</sup>ShoibS, NagendrappaS, GrigoO, RehmanS, RansingR. Factors associated with COVID-19 outbreak-related suicides in India. *Asian J Psychiatry*. (2020)

<sup>11</sup>Nisha Gupta & Udaiveer Ahlawat, “India's battle against Covid-19: The lockdown of human rights”, *Völkerrechtsblog* (20 April 2020), available at <https://voelkerrechtsblog.org/indias-battle-against-covid-19/> (last visited Dec. 26, 2021)

India was successful in spreading information about the disease's characteristics, measures to be taken, and the danger it poses. However, citizens have the right to know what measures the government is considering taking, what the possible consequences are, and how the government is responding. The goal is to provide accurate information so that everyone may make well-informed decisions about their health. The people were given only four hours' notice before a countrywide lockdown was put into effect, which goes against the spirit of this right by leaving them ill-informed and unprepared for the days ahead. Even the Prime Minister had to apologise to the public for the government's quick response, which resulted in disastrous results.

There are a few things worth mentioning about India, despite the fact that the allegations of misrepresentation levelled against China pale in comparison. To begin with, despite the accuracy of the reported number of tested instances, the data is incorrect owing to substantial undertesting. As a second example, India is well-known for restricting news for political gain, limiting people's ability to freely transmit information.<sup>12</sup>

### Right to Free Movement

Article 12.1 of the International Covenant on Civil and Political Rights (ICCPR) provides the “right to freedom of movement” in the territory of a State. Exceptional situations, such as protecting public health, are permitted under Article 12.3 of this right. In order to comply with the Covenant's other responsibilities, any limits imposed must be necessary, legally mandated, and in accordance with applicable legislation.

Stories about the hardship of migrant workers have filled the internet since the shutdown. When all non-essential businesses and public transit services stopped, the only option left for daily wage employees was to walk hundreds of kilometers back to their towns. Surviving a lockdown was more stressful than surviving the sickness.

The lockout and the shutdown of firms that provided daily wagers with a source of income are said to have killed dozens of individuals. Despite attempts to provide them with shelter housing and adequate food, it's unclear that these employees' “inherent dignity,” as defined by the human rights Covenants, is maintained.

It has also become a pretext for police abuse because of the severe limitations imposed by the authorities. Even when going to the store to buy necessities, people have been physically assaulted by police. As a result of this, a guy who was on his way to the store to get milk for his family died from his injuries.

### Protection of Health Workers

Around the world and in India, health care professionals struggle for their lives on the frontlines. International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12.2(c) encourages nations to adopt prevention action against occupational disorders. There must be proper health education and protective gear and equipment for health professionals in order for this to be effective.

Doctors treating Covid-19 patients in India have been using improvised hazmat suits, masks, and sanitizers instead of proper PPE (Personal Protective Equipment). Health workers were not properly protected by the government's weak procurement procedures and lack of rules for the production of Personal Protective Equipment (PPE). As a result of the shutdown, PPE manufacture and shipping has become a monumental undertaking. Covid-19 has been detected in more than 50 doctors, according to the most recent studies.

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<sup>12</sup>Muruganandam P, Neelamegam S, Menon V, Alexander J, Chaturvedi SK. COVID-19 and severe mental illness: impact on patients and its relation with their awareness about COVID-19. *Psychiatry Res.* (2020)

## RIGHT TO PRIVACY

Article 17 of the ICCPR provides the right to privacy, which is also an important component of the right to health, as the CESCR points out in GC 14. Article 21 of the Indian Constitution just recently recognised it as a fundamental right.

Nonetheless, the emergence of cholera has increased privacy concerns in the country. Passenger data of 722 people flying to New Delhi were leaked on WhatsApp and Facebook by the government. This is appalling. The government entities were seen blaming one other after a privacy violation resulted in the release of sensitive information about travellers. The community has threatened and shunned the family members because of the lack of anonymity of those who may have been sick. As a result, state and non-state entities have intruded directly into the privacy, family, and home of travellers, which is protected by Article 17 of the ICCPR.

There's also the new central government smartphone app, AarogyaSetu, to worry about. It's a coronavirus tracker that alerts people when they've been in close quarters with an infected person. Despite claims that the data is secured and would not be shared with other parties, the ability to track a user's whereabouts and send reports directly to the government has raised concerns about the possibility of widespread surveillance on them. In addition, there are concerns about the abuse of the information if it falls into the wrong hands. The government aggressively encourages residents to install the application, despite the fact that it is not required. According to rumors, the programme may eventually be used as a "e-pass" to enter public places, suggesting that those who wished to leave their homes would have to download the app.<sup>13</sup>

## Reasons for Disturbed Mental Health

An estimated 14% of Indians are affected by some form of mental illness, yet only approximately a third of them receive the therapy they require.<sup>14</sup> They are frequently abused by the general public because to their status as "crazy" or "lunatics." When a person is coping with a mental health condition, it's important that friends, family members, and coworkers provide support and encouragement. Problems can be fixed early if they are caught early enough, but instead people choose the path of least resistance, which just makes things worse. Even the Supreme Court, in a petition<sup>15</sup> for hearing, came to a conclusion, on the grounds that a death-row convict had been suffering from a mental disorder for almost 12 years and it would be unjust and unfair to execute a patient of mental disorder, the Supreme Court ordered the government to provide the convict with medical assistance under appropriate provisions of the Mental Healthcare Act, 2017 while upholding its ruling in Navneet Kaur v. State. (NCT of Delhi).<sup>16</sup> Those with mental health concerns can certainly benefit from the Act, which is a powerful and comprehensive piece of legislation.

Because of the widespread spread of the Corona virus, families throughout the country have suffered the death of hundreds of loved ones as well as thousands of dollars in economic difficulties. All sorts of sports and exercise facilities were shut down as a result of the recession, and many people were laid off as a result of the financial losses incurred by enterprises. Mental issues can be induced by any of the following:<sup>17</sup>

- Unhealthy sleep habits and inadequate sleep as a result of worry and lack of physical activity.
- Travel and recreational activities are restricted.

<sup>13</sup>Supranote11,NishaGupta&UdaiveerAhlawat

<sup>14</sup> Dr.RamonLlamba,WhatIndiamustdotosolveitsmentalhealthcrisis?(Feb.26,2020,1:10PM) available at <https://health.economictimes.indiatimes.com/news/industry/what-india-must-do-to-solve-its-mental-health-crisis/74314862>(last visited Dec 30,2021)

<sup>15</sup>Supranote7,Accused'X'v.Stateof Maharashtra.

<sup>16</sup>Supranote8,NavneetKaurv.State.(NCTofDelhi)

<sup>17</sup> PKDalal,etal,EmergingmentalhealthissuesduringtheCOVID-19pandemic:AnIndian perspective, 62, Indian J Psychiatry (2020)

- Withdrawal symptoms caused by substance use disorders in persons who are hooked to alcohol and drugs but can't get them because of the lockdown.
- Fear, dread, and uncertainty as a result of the prolonged lockdown and the steady flow of negative news in print and on the internet.
- Symptoms include a lack of physical participation with society, a loss of decisiveness, and memory and concentration impairment.
- Unpredictable and rash eating habits
- Constant concern for family members who work on the front lines.
- Death of loved ones.
- In extreme cases, people may resort to regrettable behaviours such as suicide attempts, especially if no specialised aid is available or provided to those in need.

### Current Policies and Laws on Mental Health in India

Since Article 21 of the Indian Constitution, the right to life has been expanded to include the right to health. Mentally ill people must have access to high-quality mental health care and a safe environment in their homes and communities.

In 1982, India's government started the National Mental Health Program, which has been in place since specialized (NMHP). It's still on paper, even after 38 years. The mental health care system in the United States is severely underprepared to deal with the growing burden of mental illness on society as a whole.

The Mental Health Act has been a source of controversy since its inception in 1987. The National Health Policy of 2002 includes a section on mental health. There is no such thing as mental public health. Of 2003, the Mental Health Program (DMHP) was enlarged and reorganized to include two major projects: the Modernization of State Mental Hospitals and the Upgrading of Psychiatric Wings in Medical College/General Hospital. India became the first country in the world to sign and ratify both the CRPD and its Optional Protocol in 2007, making it the first country in the world to do so. The Manpower Development Scheme was included in the 2009 Program (Scheme-A and B).<sup>18</sup>

It's worth noting that the DMHP envisions community-based basic mental health treatment and has the following goals:

- a. Provide basic mental health services to the public and integrate them with other medical services;
- b. Community-based early detection and treatment of patients;
- c. By raising public awareness of mental illness and reducing the stigma associated with it
- d. The treatment and rehabilitation of mentally ill members of society.

In 2012, the Ministry of Health and Family Welfare (MoHFW) created a Mental Health Policy Group (MHPG) to produce a version of the DMHP for the Twelfth Five Year Plan (2012–2017). The main goal was to reduce suffering, disability, and premature mortality linked to mental illness while also working to improve recovery by ensuring that mental health care was accessible to everyone during the plan period, especially the most vulnerable and underprivileged sections of the population.

Other objectives included reducing stigma, encouraging community involvement, increasing access to preventive services for the most vulnerable, protecting individuals' rights, expanding mental health coverage to include rural and child health, inspiring and empowering employees in the workplace, and improving mental health service delivery infrastructure.

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<sup>18</sup>Manisha T Karia, Urgent need for reforms in law and policy for Mental Health in India, Bar & Bench, 13 Dec, 2020 available at <https://www.barandbench.com/author/manisha-t-karia> (last visited Dec 30, 2021)

A centralised mental health team has also been formed to monitor and carry out the strategy. Ongoing work on the development of an MHIS (Mental Health Information System) With the use of a training document, standardised training was proposed.

The National Mental Health Survey (NMHS) was conducted in India between 2014 and 2016, following which the government started developing policies such as the National Mental Health Policy (NMHP), 2014, which went into effect on May 29, 2018, and the Mental Healthcare Act, 2017. The new Act, which focused on the rights of the mentally ill, repealed the Mental Health Act of 1987. Despite its many virtues, the Mental Health Act of 1987 has been extensively criticised since its creation, and owing to a lack of resources, it has yet to be completely implemented.

It is unfortunate that the Mental Health Act, 1987, was not addressed in the new legislation. The new Act fails to take into account the fact that the country already has a mental health programme. State mental authorities should have been given the responsibility to implement NMHP in all states, and the Act should have compelled this. In order to properly implement the right to mental healthcare, the Act must enable all states to implement NMHP.

### Issues to be Addressed

Suicide rates in India are among the highest in the world. Mental health is directly linked to India's high crime and drug abuse rates. Mental health difficulties that were previously unrecognised by the epidemic have been discovered in the current mental health system and law enforcement. Because of this epidemic, India's mental health care system has been exposed as in need of improvement and more assistance from the federal and state governments. The DMHP has not been effectively applied across India due to a lack of integrated mental health treatment.

As the COVID-19 epidemic spreads, its effects on human mental health are now becoming evident. Inaction on mental health will have far-reaching effects in terms of health, social and economic well-being.

Each year, the global economy loses billions of dollars due to depression and anxiety, two of the most frequent mental illnesses. More than 75% of persons with mental problems in low and middle-income nations are not receiving any therapy for their condition. Because of a lack of funding and resources, mental health care in India is deteriorating. To put mental health at the top of the priority list, we must invest and integrate mental healthcare into both the commercial and public sectors.<sup>19</sup>

### Measures Required

Mental healthcare in India presents several challenges, and experts agree that the DMHP must be implemented correctly in order to address these problems.

Those who no longer need treatment in restrictive mental health facilities are now required to be housed in "less restrictive community-based establishments, such as half-way homes, group homes, and the like," according to the new Act. In actuality, India's mental health care system lacks or provides inadequate rehabilitative facilities. The Supreme Court's 2017 order to set up or enlarge half-way homes has yet to be implemented by the federal and state governments. Only a road plan for implementation has been provided by the states as of 2020.<sup>20</sup>

As the saying goes, "there is no health without mental health," the treatment of mental health issues must be handled seriously and given as much attention as the treatment of physical health. Legislators must encourage mental health and easy access to cheap treatment for prevalent mental ailments at the primary care level.

There is an urgent need for government policy and resource allocation in India's current mental health crisis. In order to decrease the stigma associated with mental illness and raise public awareness, it is critical that programmes be implemented across the country using various media and social media

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<sup>19</sup>*Id.*

<sup>20</sup>*Supranote5, Elshobake, M.R.M. (2021)*

platforms. Anxiety, worry, despair, fear, and sleeplessness are just a few of the symptoms that have emerged from the epidemic. India After the lockdown was implemented in March 2020, there was a 20% increase in mental health problems in India, as according Today.

As previously mentioned, the NMHP has taken some early steps to improve the mental health care system. Understanding the problem, having easy access to specialists, and taking appropriate action are all essential to remedy the situation. Teamwork between the public and private sectors will be necessary to deal with this problem effectively. Mental health facilities and skilled mental health specialists must be connections and those made available to the public as a first aid measure in order to alleviate suffering and ensure that people have easy access to care when they need it. As a petition before the Supreme Court has requested, mental health issues should be covered by insurance.

### Duty of the State

Every person in India has the right to life under Article 21 of the country's constitution. In addition, Article 47 states that the state has a responsibility to enhance the nutritional and living conditions of its citizens. That the state has a responsibility to prevent alcohol and drug usage for reasons other than medical is also emphasised in the document.<sup>21</sup> People's mental and emotional well-being is essential to their ability to perform at their highest level of ability.

The Mental Healthcare Act of 2017 (the Act) was enacted by the Parliament in accordance with the mandate of the constitution, and the phrase "mental illness" is defined in section 2(s) of the Act as "a substantial disorder of thinking, mood, perception, orientation or recollection that grossly impairs judgement, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions."

The law specifies the creation of national and state mental health authorities, each of which has the power to issue licences and enforce regulations on mental health facilities within their jurisdictions. People with mental illness have the following rights under the Act:<sup>22</sup>

- The right to get mental health care and treatment from government-run or supported mental health services.
- The right to obtain care without discrimination based on gender, religion, caste, disability, or other factors.
- The right to high-quality medical care, sheltered housing, and other relevant services.
- Treatment is provided at no cost to patients who fall below the poverty level.
- The right to a decent life is a fundamental human right.
- In terms of his mental health and therapy, he has the right to confidentiality.
- The ability to keep personal contacts and conversations.

Section 115 of the Indian Penal Code (IPC) decriminalises attempting suicide under section 309 of the IPC, stating that anybody who tries suicide is deemed to be suffering from extreme stress, and the government is responsible for paying for his treatment and rehabilitation. Section 29(2) of the Act requires the appropriate government to take special steps to enhance mental health and prevent suicide.

### Legal Framework

The Central Government issued Orders on March 24, 2020, demanding a nationwide lockdown to prevent the spread of COVID-19. The Orders were issued in connection with the Epidemic Diseases Act of 1897, as required by the Disaster Management Act of 2005 (DMA) (the ED Act). In order to exercise its powers under Section 6(2)(i) of the DM Act, India's Central Government issued an order on March 24, 2020, directing all ministries/departments, as well as state/union territory governments, to

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<sup>21</sup> Vincent v. Union of India, 1987 AIR 990

<sup>22</sup> Supra note 5, Elshobake, M.R.M. (2021)

take adequate steps to prevent COVID-19's dissemination. This was bolstered by MHA issuing an Order dated 24.03.2020 under Section 10(2)(l) of the DM Act, which directs all Ministries/Departments of the Indian government, as well as all State/Union Territory governments, to take effective social distancing measures in order to prevent COVID-19 from spreading in India. The injunction was initially only in effect for 21 days, but it was extended twice, the first until May 3rd and the second until May 17th, each time for two weeks.

“The effective handling of disasters” is one of the provisions of the DM Act. The word “disaster” is defined in Section 2(d) of the Act as an occurrence that causes catastrophic loss of life and/or human suffering, as well as damage to property or the environment of the affected region, as a result of natural or man-made causes. A National Disaster Management Authority (NDMA) chaired by the Prime Minister has been formed to deal with such disasters. The NDMA is in charge of formulating disaster management policies, strategies, and guidelines to ensure quick and effective response in the event of a disaster. In addition, the NDMA has the authority to suggest concessional terms for the issue of new loans to disaster-affected individuals in the form of relief in loan repayment. State disaster management authorities (SDMAs) have also been established by every state government under section 14 of the Act.

### Issues

State List in Schedule Seven of India's Constitution authorises the State Governments to adopt legislation on the topics of public health and sanitation, hospitals, and dispensaries. According to the Disaster Mitigation Act, measures can only be performed in places where the disaster has spread or is likely to spread. The Central Government, on the other hand, resorted to total lockdown, totally ignoring the misery of the average citizen.

The ED Act, a British-era statute, was enacted to give better preventative measures against the spread of Dangerous Epidemic Diseases. The Central Government has the ability to take actions and enforce regulations if India or any part of it is threatened by an outbreak of a lethal epidemic sickness. Several states have already developed regulations and instructions for citizens, doctors, and authorities to follow under the terms of this Act.

Since there are no laws to restrict people's freedom of movement outside of confinement and hotspot zones, and no authority to provide directions to businesses about wage payment is granted by the DM Act or the ED Acts, this claim is absolutely meaningless.

The Industrial Disputes Act of 1948 (ID Act) is a unique legislation that provides for the payment of compensation to employees who are laid off as a result of a natural catastrophe. The definition of “Lay off” is found in Section 2 (kkk). If a company is unable to offer work for an employee because of a natural disaster or another associated reason, this would be considered a “lay off,” as described by the standard definition. The central government's directives, then, are better viewed as recommendations instead of directives. Residents are facing extreme financial hardship as a result of the state forcing them to stop working, which is directly related to their livelihood.

People who were displaced as a result of the lockdown should have had access to food, shelter, and other necessities. Article 21 of the Constitution guarantees that “no individual shall be deprived of his life unless in accordance with the method established by law.” Thus, Article 21 encompasses the right to livelihood. ‘Life’ encompasses more than just physical existence; it encompasses all the finer qualities of life, including a person's right to work and to a decent living. Article 21 of the Constitution guarantees each individual's right to privacy. Similarly, Article 19(1)(e) guarantees the right to reside and settle in any portion of India's territory, as does Article 19 (1) (g), which guarantees the right to retain and bear any vocation, trade, or business.

The Supreme Court stated in *Olga Tellis v. Bombay Municipal Corporation* (1985 SCC(3) 545), also known as the “Pavement Dwellers Case,” that the “right to livelihood” was established out of the “right to life,” because no one can survive without the means of living. The constitutional courts have since widened the extent and auspices of the right to life.

India is also a signatory to the International Covenant on Civil and Political Rights (ICCPR), which it adopted and approved in July 1979. There are seven ICCPR requirements from which no

deviation is permissible, as stated in Article 4(2). Article 6 (right to life), Article 7 (prohibition of torture), Article 8 paragraphs 1 and 2 (prohibition of slavery and servitude), Article 11 (prohibition of imprisonment for failure to meet contractual obligations), Article 11 (prohibition against retroactive criminal laws and penalties), Article 16 (right to be recognised as a person before the law), and Article 18 (right to be recognised as a person before the law) are all included (freedom of thought, conscience and religion). A party-State is required under the ICCPR to bring its legislation into compliance with the Covenant's requirements.

The only clause in the Constitution of India that allows for the suspension of fundamental rights in the event of war, external attack, or armed insurrection has been included. Most importantly, the power of the central government expands, and the Parliament obtains full legislative authority over all areas of the country, even if they are listed in the State List. While Articles 12 to 35 of the Indian Constitution provide the citizens of India fundamental rights, no one may infringe on these rights and violate the rights of a citizen.

In the case *ADM Jabalpur v. Shiv Kant Shukla*<sup>23</sup>, according to the Supreme Court, no one has locus standi to file a writ petition under article 226 before a high court for habeas corpus or any other writ, order, or direction challenging the legality of an order of detention on the grounds that it is not under or in compliance with the Act, or is vitiated by mala fides factual or legal, or is based on extraneous considerations in light of the presidential order.

The 44th Amendment to the Constitution, on the other hand, has brought about a number of alterations. "Armed rebellion" has taken the role of "internal disturbance" in Article 352 of India's Constitution. When a state of emergency is declared only on the basis of an armed revolt rather than war or foreign attack, Article 19 of India's Constitution is not suspended. The right to life and liberty guaranteed by Articles 20 and 21 of the Indian Constitution cannot be withdrawn in an emergency.

A person who is dissatisfied with the executive's actions and inaction is denied access to the courts because he cannot travel to the state capital to seek justice for his complaints before the state's high court. For urgent matters to be adjudicated by the courts, attorneys need depend on Video Conferencing because the courts aren't operating at full capacity.

The UN Secretary-General, António Guterres, has warned that the coronavirus pandemic cannot be used as a justification for authoritarian countries to violate individual human rights or restrict information flow during lockdown. A public health catastrophe, he claimed, was swiftly turning into a human rights issue.

With no end in sight to the COVID-19 health threat, the next major problem for individuals and businesses will be to generate resources (money and jobs). There will be an increase in total delay and a worsening of our situation with each passing day if the relief is not supplied. The NDMA has not produced guidelines in accordance with Section 12 of the DM Act, which mandates that people who have been infected by the virus and whose lives have been ruined by lockdown get adequate shelter, food, water, medical care, and sanitation.

### **Migrant Crisis**

After the lockdown, things got out of hand. Production lines and master classes were closed down deciding to leave the workers jobless. They had to deal with severe shortages of money, clothing, and accommodation. The workers' travel to their home towns served as a conduit for the spread of the disease. A swarm of travellers gathered in the shadows of bus and train stations, some of whom preferred to walk the short distance to their lodgings. It was their movement that was fueled by the rumours that the government was going to set up transportation infrastructure without their knowledge. Several employees died to famine, depression, police abuse, and street and train incidents while trying to return home.

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<sup>23</sup> *ADM Jabalpur v. Shiv Kant Shukla*, (1976) AIR 1207 (India)

Both the opposition and the ruling majority began with the same old slandering methods they've used for years (a vital element of contemporary democracy). There were plans put in up by the government, but their implementation remained a problem at the time. There was enough food for at least a year, but the one nation, one ration card system (which was only implemented in a few major areas) was still a problem for the workers. This incident also demonstrated the lack of cooperation between the federal government and the states. On March 27, the Home Ministry issued a directive asking the states to limit the move. It also provided the states the ability to use the National Disaster Response Fund to provide employees with basic necessities (such as food and accommodation). In the grand scheme of things, there was still a lot of regional conflict. While some states opted for a regional policy rather than a national one, others blindly followed the central directive, resulting in police violence that violated the human rights of everyone they come in contact with.

### Ground Reality

Many state and federal administrations have shown a lack of interest in implementing this progressive legislation. Only 19 states have formed state mental health administrations as of August 2019. A Mental Health Review Board was established only in Tripura, and federal expenditures for mental health care are far short of what is needed. The 19 states that have established mental health authorities include Maharashtra, Andhra Pradesh, Karnataka, Gujarat, and Kerala. Mentally sick persons are already stigmatised by a huge segment of the population.<sup>24</sup> Because governments do not want to create them, state mental health authorities and mental health review boards remain dormant.

The Hon'ble Delhi High Court<sup>25</sup> and Uttarakhand High Court<sup>26</sup> had particularly reprimanded the respective state governments for not having set up mental health authorities. According to a PIL filed in the Hon'ble Himachal Pradesh High Court by a law student, suicide cases in the state of Himachal Pradesh increased dramatically during the lockdown. The court ordered the administration to register a suicide helpline number within three weeks.<sup>27</sup>

It was then revealed that the state mental health authority in Himachal Pradesh had also declared that it will undertake a survey to examine how the epidemic affected people's mental health.<sup>28</sup> Only 4% of those surveyed said they'd sought help from a psychiatrist for their sadness and anxiety, according to the results of the study, which indicated that

2.42 percent of respondents had considered suicide.<sup>29</sup> As with any physical or financial issue, this indicates a dangerous truth which is often not mentioned in society.

The majority of suicide prevention helplines in India are run by non-governmental organisations (NGOs), despite the fact that state and federal governments should be responsible for providing urgent assistance to those in need. In these unique circumstances, healthcare authorities may

<sup>24</sup>10Statesyettosetupmentalhealthbody,(Oct.10,2019),THEPIONEERavailableat <https://www.dailypioneer.com/2019/india/10-states-yet-to-set-up-mental-health-body.html#:~:text=Even%20as%20mental%20health%20disorders,rehabilitation%20needs%20of%20the%20sector.>

<sup>25</sup> PTI, *Whynoreviewboardsformentalhealthpatients,Courtasksauthorities*, (Jul.28,2019)THE HINDUavailable at <https://www.thehindu.com/news/national/why-no-review-boards-for-mental-health-patients-court-asks-authorities/article28737137.ece#>

<sup>26</sup> NeerajSantoshi, *HCto govt:Formstatementalhealthauthoritywithin3months*, (Jun.01,2018), HINDUSTAN TIMES available at <https://www.hindustantimes.com/dehradun/hc-to-govt-form->

<sup>27</sup>PoojaDave, *HPHC-ActiveAnti-SuicideNoticeWithin3Weeks*, (Aug.31,2020)availableat <https://lawsisto.com/legalnewsread/Nzg3Nw==/HP-HC-Active-Anti-Suicide-Notice-Within-3-Weeks>

<sup>28</sup> Bhanu P Lohumi, *Suicides up, Himachal to study covid impact*, (Nov. 19, 2020) THE TRIBUNE available at <https://www.tribuneindia.com/news/nation/suicides-up-himachal-to-study-covid-impact-172395>

<sup>29</sup> 18pcHimachalissad, *15pchavesleepproblems:Survey*, (Jan.2,2021)THEINDIANEXPRESS available at <https://indianexpress.com/article/india/himachal-pradesh-sleeping-bipolar-disorder-hp-state-mental-health-authority-covid-related-messages-pyschiatric-consultation/>

have played a hugely essential role by launching a special awareness programme and establishing a specialised hotline for the counselling and rehabilitation of mentally ill people.

## CONCLUSION

It may be claimed that in this pandemic crisis, preserving Human Rights is one of the most important keys to defeating this illness. This epidemic has put the whole human race at risk, and now is the time for the world to take action. Human rights are being restricted by this infection. It is imperative that we respond to the extraordinary situation that we are presently faced with. The Human Rights Framework is a system that might assist the world get out of this epidemic crisis, and it's a good place to start. Building confidence among the nations is essential to defeating this illness, which needs international cooperation. As we saw there are numerous human privileges which are being curbed due to the harsh restrictive measures adopted by the government in attempt to stem the rising number of cases. As a result, there is a pressing need to implement policies that safeguard the fundamental human rights of everyone. The most fundamental human right that has to be protected in the current climate is the right to good health.

Despite the objections, the Government's actions are justified. For the sake of building public trust, the government should implement reasonable limits and be open and honest about them. Human rights are not merely a luxury that should be protected once the threat has passed". People are more willing to collaborate when they trust and feel comfortable in the government, which may be achieved through preserving human rights.

It is incompatible with these duties to shut down the whole country with only a 4-hour notice. Despite the fact that preserving one-sixth of the world's population is a massive task, the lockdown would have been more effective if it had been imposed in phases so that people could plan ahead and make well-informed decisions. Despite the fact that many Indians live day-to-day lives, a gradual shutdown would have enabled India's massive population to at least reach their villages safely, rather than having to trek hundreds of kilometers or worry for their safety in shelter homes that lack essential utilities.

In light of recent events and the evidence presented, it is critical to hold India accountable for its international human rights transgressions, since its domestic system fails to safeguard Indian citizens.

All of these inadequacies in mental health services can be remedied if the Mental Healthcare Act of 2017 is implemented thoroughly and on schedule. People with mental health issues are the sole beneficiaries of the law, which aims to ensure that they receive the care they need. This goal includes both avoiding suicide and offering assistance to those who are in need.

Despite the fact that policy and guidelines have different impacts on different populations, this review acknowledges that improving policymaker engagement may be beneficial in addressing health outcomes during public health emergencies, and civil society and human rights champions (including lived experience representatives), health care providers, and policymakers should collaborate to identify policies, services, and interventions that unfold. The tradeoffs and reciprocal relationships between physical and mental health, human rights, and individual rights, as well as the tradeoffs and reciprocal relationships between these various fields of science (including, but not limited to, infectious disease), can be better understood and a policy can be formed that satisfies these values and relationships.

## SUGGESTIONS

- Mental health is a basic human right that must be given highest priority in times of crisis, regardless of race, class, gender, ethnicity, or age. People's and nations' recovery from the epidemic would be hindered if large populations were left emotionally damaged as a result of this outbreak.
- Human rights violations are likely to increase if health services are under-resourced and badly administered. Ensuring human rights is taken into account is essential for a holistic health system strengthening strategy.

- The provision of health care and the consideration of the multifaceted needs of the most vulnerable are two ways to respect the CRPD and CRC, as well as related agreements.
- Protect civil liberties. The ICCPR rules also demand that the affected public be notified of the state of emergency's exact substantive, geographical, and temporal scope, as well as any accompanying actions. Moreover, the right of individuals and groups to air their grievances and concerns must be respected.
- When imposing lockdowns, limits, or delays in services/opportunities, it is important to consider the legitimacy of state action and how state actors are involved in implementing these restrictions. If restrictions are kept in place for an extended period of time, individuals will become more disinterested, which will lead to an increase in infractions.
- As a result of human rights abuses, abrasively enforced state acts can cause emotional suffering and sickness in individuals and their families; these consequences can be long-lasting.
- The creation of community-level solutions via champions who can address issues and recommend strategies for a better recovery is required for the recovery of countries and economies. Have a human rights plan for epidemics and post-pandemics. State-level funding and resources are required to manage mental health difficulties during and after the epidemic.
- Protecting lives and valuing the interests of disadvantaged and vulnerable communities, assisting individuals in anticipating and addressing health issues, and improving access to and viability of service providers are all top priorities.
- Address prejudice and discrimination as soon as possible, and quickly train the government and civil service on how to respond to the epidemic in accordance with human rights.
- Maintain vigilance on initiatives to lessen inequality and disparity during and after the epidemic to strengthen systems.
- Develop policies, initiatives, and research to combat injustices and inequalities that have aggravated the worldwide burden of mental diseases and to enhance the mental health conditions of communities. The creation of interventions aimed at improving mental health outcomes, equity, liberation, and social justice should be guided by conceptual models and theories identified as essential topics.
- Promote anti-stigma and anti-discrimination messages using media platforms, such as public information programmes. Develop solutions such as public information programmes.