

INDIAN FEDERALISM PERSPECTIVES

Even after more than a year and a half, there is no relief from COVID-19. Given the mutation of the virus and the appearance of more transmissible variants, vaccine availability has not necessarily brought normalcy back to social and economic life. Governments have responded with various measures to contain the spread of the virus and prevent further deaths. In this edition of IFP, Vivek ND looks at how governments have used securitisation measures that they would not use under normal circumstances as policy responses to tackle the pandemic. Exceptional times require exceptional measures seems to be the order of the day. Does the COVID-19 pandemic require extraordinary measures?

Governments in many states have used various measures, including the use of contact tracing apps and restricting the movement of people to specific places or times of the day. Besides this, agencies have also been collecting a whole lot of information in the name of protecting people, which could be used for multiple purposes. Securitisation, Vivek argues, gives the appearance of governments doing something and being in control. When issues get securitised, it is the police and law and order agencies that are in control.

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Kailash KK
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Securitisation of COVID-19 pandemic: Policy measures of States and Implications

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ABSTRACT

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Since the outbreak of the COVID-19 pandemic, states across India, led by the Centre, have advocated policy measures which are punitive in nature and have passed over democratic principles. Government led securitisation measures have led to severe restrictions on citizens' daily lives, the arrest of journalists covering the pandemic and its mitigation by authorities as well as serious intrusions of people's privacy through the use of invasive digital technologies. This paper probes these issues by scrutinising how the COVID-19 pandemic served as justification for governments to infringe upon democratic processes as a result of the pandemic itself being portrayed as a state of exception requiring such ostensible measures. The paper demonstrates how securitisation as a means to monitor health, and health as a reason for greater securitisation, came to the fore in state responses to the COVID-19 pandemic.

Securitisation is a political process where a certain situation is framed as an existential threat, thus devising it as a matter of grave concern, requiring singular and harsh policy actions by the state. Under ordinary conditions citizens would object to such decrees. Securitisation, as a concept, attributes governmental coercion through "actions outside the normal bounds of political procedure (Buzan et al., 1998: 24). Securitisation controls are put in place when circumstances appear to threaten the general population, which can be managed only through extreme responses that circumvent conventional democratic procedures.

Policy measures adopted during the COVID-19 pandemic across select states have emphasised reinforcement of securitisation measures, including lockdowns that severely restrict movement of people, legal and punitive orders, excessive technological surveillance without due cognisance of citizen's privacy, and muzzling of the press.

This paper examines the securitisation of health and the emergency measures that Indian states are adopting in dealing with the COVID-19 pandemic. The securitisation of the COVID-19 pandemic in India is a dangerous turn away from framing sound long-term public policy. It shifts the focus from the health of the citizens to short-term measures and

technocratic policing, which can potentially undermine civil liberties.

State responses and ‘securitising’ of health

Securitising health in states across India has been conforming to regulatory orders from the Centre. To mitigate the spread of the novel Corona virus and deaths in its wake, state authorities have instituted measures that severely breach citizens' freedoms, starting with restricting their freedom of movement. Restrictions on movement except for emergency purposes put most people under various socio-economic and psychological pressures during the 68-day national lockdown between March 25 and May 31, 2020. Multiple states continue to institute partial lockdowns in areas with an increased prevalence of positive cases during different waves of the pandemic in India.

The restrictive and punitive measures included imposing various fines for flouting guidelines to reduce the spread of the COVID-19 virus among individuals. Multiple states, including Maharashtra, invoked the colonial era Epidemic Diseases Act (EDA) 1897 to curb all non-essential public movement and imposed a penalty of Rs 1,000 for spitting in public places across major cities of the state (Kulkarni, 2020). Further, industries requiring continuous operations had to function with half of the total staff. Historians have termed the 1897 law, introduced by the British to combat the Bubonic Plague, as the most draconian colonial legislation (quoted in the same article in *The Indian Express*). It gives complete protection to state officials acting under the EDA. Section 4 emphatically states, “No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act” (EDA, 1897). The Jharkhand government, in early August, enacted the Jharkhand Contagious Disease Ordinance 2020. It imposed a jail term of up to two years and a fine of up to Rs 100,000 for disregarding COVID-19 guidelines (*Hindustan Times*, 2020).

The punitive approach also saw excessive clampdowns on the movement of people within and between states. Section 144 of the Code of

Criminal Procedure was enacted across almost every state during the first wave, especially in districts with more confirmed cases. The restrictions were reduced slowly over the last few months of 2020 while continuing on Sundays and other holidays. Gujarat, for instance, continued with night curfews through the year in the four major cities of Ahmedabad, Rajkot, Surat and Vadodara, with a reduction in timings when cases were reduced but never called for an end to the curfew completely. With the "second wave", starting April 2021, almost all states have renewed curfew under Section 144 with differing durations for the curfew, often with ambiguous and inconsistent mandates on what activities are designated as essential services. The movement of individuals between states required clearance through a green signal on the Aarogya Setu app and registration with state authorities on arrival. Further, individual movement between districts in states including Assam, Haryana, Maharashtra, Meghalaya, Punjab and Rajasthan have also been barred with people requiring COVID e-passes issued by the deputy commissioner or the state police respectively to move within the state.

Across states, there is also clear evidence of the leadership adopting the rhetoric of securitisation and war against an invisible enemy. Maharashtra Chief Minister Uddhav Thackeray compared the COVID-19 situation as literally being in a “World War” (*The Statesman*, 2020). The Gujarat Chief Minister Vijay Rupani, in his Independence Day address, exhorted the residents of the state to "... win this war by cultivating good habits" and “called for a mass awareness campaign on the lines of the 'Quit India Movement to drive out coronavirus.” (*Deccan Herald*, 2020; emphasis added). The war rhetoric framed COVID-19 as a high national security threat that invokes a sense of emergency and creates space for the use of extraordinary measures that could potentially undermine the people's sovereignty.

The degree of openness of the administration in instituting policy measures is also essential in a democratic country like India. While some states like Kerala, Delhi and Maharashtra have regularly engaged with the public with details on infections, deaths, other health statistics and

directives, many states cannot be said to be following similar measures in reaching out to the public. Gopal Guru in the From the Editor's Desk column in the Economic and Political Weekly pointed to how the central government has been using two techniques - moral appeals and punitive measures in dealing with the pandemic, digressing from effective and open governance and communication with citizens (Guru, 2020).

Along with the provision of open data by states, the fourth estate is fundamental for a functioning democracy – its function to disseminate policy decisions and standard operating procedures to citizens is imperative, more so during a health emergency like the COVID-19 pandemic. The New Delhi based human rights association, Rights & Risks Analysis Group, in its highly critical report, India: Media's Crackdown During COVID19 Lockdown, called attention to the state's use of inordinate measures to muzzle the media and press for covering the COVID-19 pandemic. At least 55 journalists bore the brunt of lawsuits, false bureaucratic charges and even physical attacks for “exercising freedom of opinion and expression during the national lockdown between March 25 and May 31, 2020” (Rights and Risks Analysis Group, 2020). Many states, including Gujarat, Maharashtra, Himachal Pradesh, Uttar Pradesh, Punjab and West Bengal, issued warnings to media members to behave "properly" with the possibility of facing legal action under the DMA. A high point was seen in the gag order imposed by the Mumbai Police under section 144 of the Criminal Procedure Code (CrPC) on May 23, 2020, prohibiting any criticism of government functionaries involved in COVID-19 related duties. In the wake of the “second wave”, the Centre and states, including Uttar Pradesh, Bihar, Delhi and Manipur relied on disciplinary actions to deter citizens who used social media in seeking essential medicines and hospital beds. Legal orders were purportedly issued to prevent confusion among citizens as well as to maintain order as imposed by the state. Rather than increase public capacity to provide healthcare through provision of more testing centres, ICUs, ventilators, vital medicines and oxygen cylinders, governments were keener to steer public opinion

towards a positive image of the administration.

Ruse for techno-policing?

In a more covert, yet highly securitising move, governments across states have embraced digital technology and surveillance measures to manage the COVID-19 situation. These measures not only contravene the current constitutional structure for digital privacy but also do not consider the socio-economic context in which many Indians live. One of the less egregious contact tracing systems include the smart phone app built by the National Informatics Centre (NIC) under the Ministry of Electronics and Information Technology – Aarogya Setu. States across India have also developed apps for their respective states and regional languages. As of June 2020, at least 62 apps developed by obscure private IT enterprises have been introduced by public authorities, viz. the central government, state governments, state and district level health agencies, municipal corporations and law enforcement agencies (Mihindukulasuriya, 2020). Almost all the apps are ambiguous on guidelines in the handling of privacy issues. The Aarogya Setu app, promoted as a “community-driven contact tracing” app collects data, including gender, age, address of a particular user to calculate the risk of infection. It compels the Global Positioning System (GPS) and Bluetooth to be activated at all times for the smart phones to interact and exchange details with other users in the vicinity. The app also requires granting “admin access” for Bluetooth settings leading to the possibility of security breaches as the app can capture more data than mandated. Further, the technical process adopted in Aarogya Setu for exchange of information between users has far greater privacy risks than the contact tracing apps used in countries like Singapore and South Korea (Deep, 2020). Once the data is collected it is stored on a server, initially on Amazon Web Services and later to the NIC server. It is then evaluated on a separate platform managed by the central government, IT-enabled Integrated Hotspot Analysis System (ITIHAS). Details in anonymised formats are soon after shared with state and district authorities to enable surveillance

and containment strategies. In spite of the data being anonymised, privacy is not ensured as mobile numbers of users are shared with the authorities for contact tracing. This also opens up the possibility of data being shared with agencies beyond the necessary remit, including governmental security and intelligence departments or private organisations for profiteering.

India currently does not have a legal framework for personal data protection. The Personal Data Protection Bill, 2019 tabled in Parliament is still under review and deliberation. Given the digital incursions into citizen's lives through apps during the COVID-19 pandemic, authorities have been questioned on various issues of concern. Accountability of the app-makers, especially with respect to Aarogya Setu, has been a primary concern as it was created by the NIC and Information Technology Ministry in collaboration with individual volunteers whose affiliations were not made public. Installation of the app is mandatory for air/rail travel. Though the order was withdrawn later it was also requisite for movement of public and private sector employees and is still misused to restrict movement of individuals in both public and private spaces. The enormous costs incurred without any substantial effects in alleviating the pandemic. Considerable apprehension also arises with regard to the continued use of Aarogya Setu, even though the government states otherwise, with the prospect of the app being utilised as a prototype for establishing India's National Digital Health Mission. The government's attempt to digitise health data on a national scale raises a number of privacy and ethical concerns across the healthcare system. Ostensibly securitisation could become a feature of India's federal democracy and lead to the normalisation of large scale collection of data of populations by authorities without an appropriate regulatory framework.

Supplementing the Aarogya Setu app, other mechanisms to track people's movements include drones, CCTV footage, and facial recognition software that notify the police on activities of individuals who disobey quarantine protocols. Many states, including Kerala, Karnataka, Tamil

Nadu, Uttar Pradesh, Haryana, Himachal Pradesh and Jharkhand, have insisted on collecting call detail records of COVID-19 patients from mobile service providers. Rajasthan and Madhya Pradesh continue to collect details for what they term "special cases". In addition, in April 2021 the National Health Authority (NHA) in collaboration with the Unique Identification Authority of India (UIDAI) piloted a project in Jharkhand to promote contactless COVID-19 vaccination through Aadhaar based facial recognition for verification of vaccine beneficiaries (Chandna, 2021). In line with the deployment of smart phone apps, there was no assessment of the privacy impact for the use of such facial recognition technology. These instances of techno-policing further indicate how the health emergency is leading to the state's misuse of power in applying controls and technological means with least regard for transparent policies and to preserve civil liberties.

Conclusion

The tragedy of the "second wave" of the COVID-19 pandemic is seen in the plight of citizens across India's states. They were left in acute distress – lacking life-saving drugs, healthcare facilities and most importantly an all-inclusive public health policy. The situation is indicative of how during the first wave of the pandemic in India, when the Centre and states had the chance to boost healthcare resources, they were intent on securitising health and repressing democracy. With the public health sector historically being a non-priority, continually lacking in financial and human resources, the preferences of the Centre and choices of our leaders reveal the fundamental and abiding consequences of securitising the pandemic endangering the lives of countless citizens while establishing exceptional measures that eschew democratic norms and values.

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