

Research Article

Fundamental Right to Religion in India amidst COVID -19

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Abstract

“I have but one candle of life to burn, and I would rather burn it out in a land filled with darkness than in a land flooded with light.”Freedom of religion was one of the most undermined fundamental rights during lockdown. Article -1 of “The U. N. Charter”ⁱⁱ encourages for the religious freedom to all its member nations. People follows their religions for their whole life believing that they would get salvation after their death and keep walking upon the path shown by their religion or idol of their religion. It is believed that there is nothing but religion goes with the man even after his life. “Lost people matter to god, and so they must matter to us”ⁱⁱⁱ. **“The rights of a dead hold more weight than a ruler, because that is the weight of divine law”**^{iv}. After the death of a person, his body departs from his soul and the body is buried or cremated as per his religious last rites. Although the dead person is no more living human being, still the body have some fundamental rights belongs to his religion, which he was professed during his life.

This paper generally broadens the scope of ‘person’ defined in various statutes to include dead persons in it and specifically it includes ‘right to decent burial or cremation’ and ‘right to human dignity after death’ in Article -21 of Indian Constitution i.e., ‘Right to life’. In this paper, the development of religious freedom in regards to last rites of a dead from the ancient Greek period to today’s democratic & socialist approach is streamlined through the waves of international treaties, conventions and landmark Supreme Court & High Court’s Decisions. Justice B.P. Jeevan Reddy said that, “Introducing religion into politics is to introduce an impermissible element into body politic and an imbalance in our constitutional system”^v. Still, right to life is considered top most fundamental amongst all other religious rights by majority of courts, specifically in emergency conditions like Lockdown. **More than hundred countries across the world have implemented lockdown as a tool of last resort and worldwide people managed to perform religious rituals and prayers for an end to spread of corona virus from their home only and for them, deferring all religious services seems like an emblem of lost chance to sigh, to breathe and to gather together.**

Several operations & missions initiated by the state to curb this pandemic and the process of vaccination is also initiated all over the world. Social media proves like blessings in disguise during lockdown. Perhaps this lockdown remains helpful to encourage the states for balancing religious freedom along with other human rights.

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Figure-1 (Artist shows in above pictorial representation that the family members of deceased are trying to bury the person dies due to corona virus, but the neighbors living near cemetery house are obstructing the burial ceremony due to fear of spread of infection and soul of a dead is making an appeal before them to rest him in peace as protesting his fundamental right to decent burial and human dignity after his death and right to remain silent)

Keywords: Fundamental rights, religion, COVID, right to life, lockdown, restrictions

1.1 Introduction

Right to Religion as Fundamental Right

Being Secular, is a great sign of religious freedom for the citizens of any democratic nation like India. “Secularism” does not mean being divorced from an ideology, faith or belief system, but an understanding of society that all are rational. It does not compel to surrender one’s religion but to give respect to all religions. To understand the term “secularism”, it is must to see the origin of secularism first. In India, secularism is not enforced through any act, statute or constitution, but it is an intrinsic part of the National Socialism and Indian Constitution is just

playing the role of care taker of this enriched culture of the nation. India is very rich in cultural and religious diversity from the ancient times. There are so many different religions having different customs and customary rituals. As per our Constitution, India has no particular religion. It does not mean that the people of India do not profess any religion, but it means that the people have full freedom to profess any religion. State cannot bound people to follow any particular religion. Preamble of our Constitution was amended once only that too in 1975 via 42nd amendment^{vi}. Prior to this amendment, 'secular' word was not a part of preamble and it was added via this particular amendment by Indira Gandhi Government during emergency period. In landmark case of "S. R. Bommai", Supreme Court gets honored to interpret the true sense of Secularism. In Bommai case, a nine Judge Bench of the Supreme Court explore the concept of secularism in the Indian Sociological context. As per Sawant, J.: "...religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our constitution..."^{vii}.

Although Art – 25 & 26 of Indian Constitution provides freedom of religion to its citizens, but this freedom is ignored many times in front of other superior fundamental rights. State intervenes in several compelling circumstances for the consideration of health and safety of citizens. When right to life comes in to clash with freedom of religion, one must sacrifice the latter having no other choice. Sometimes it seems very difficult & complex to expand the horizons of religion, secularism & religious freedom without clashing with each other. Supreme Court also tried a lot to define these vague terms but that too failed in this objective. Having diversified and so many different interpretations given by different judges, it is very difficult to give a clear demarcation for the sphere of these terms. Still, some landmark judgments and comparative study of religious freedom in other similar democratic countries may prove useful in this direction.

In Sabarimala case, Supreme Court, by a 4:1 majority, declared the restriction upon women's entry having the age between ten to fifty years, into temple as unconstitutional. The majority judgment was based upon the pillar of human dignity, equality and progress. Still the controversy of women dignity vs. freedom of religion is under consideration in review petition referred to nine Judges Bench in Supreme Court^{viii}. They have to reply yet that which right is superior, women's dignity or freedom of religion?

In America, The First Amendment was adopted on Dec. 15, 1791. It separated church and state that prohibited the federal govt. from making any law "respecting an establishment of religion." Govt. was also prohibited from interfering with a religious practice and person's religious belief. In 1868, The Fourteenth Amendment was adopted to extend religious freedom by preventing states from enacting laws that would inhibit or advance any one religion.

In "Lemon v. Kurtzman"^{ix}, Supreme Court struck down a Pennsylvania law allowing the state to reimburse Catholic schools for the salaries of teachers. In this case Supreme Court established the "Lemon Test" for determining when a federal law or state violates the First's Amendment that prohibits the govt. from making any financial aid to state religion. The court applied a three – pronged test based upon prior court decisions. "First, the statute must have a secular purpose; secondly, its primary effect must be one that neither advances nor inhibits religion; and at last, the statute must not foster as excessive govt. entanglement with religion". Later on, in 2019, this test was criticized in "American Legion v. American Humanist association". In this case Justice Samuel A. Alito Jr. writing for the majority opinion held that, "history and tradition must be considered while deciding modern objections to monuments that were built with a secular purpose and the cross is undoubtedly a symbol of Christian religion, but the fact should not blind us that the Bladensburg cross has come to represent"^x. But Justice Sotomayor along with Justice

Ruth B. Ginsburg writing dissent opinion strongly argued that, “Cross is the foremost symbol of Christian faith and using it as a war memorial doesn’t change that”^{xi}.

In Canada, Religious freedom is protected from state inference by the charter and federal statute “Canadian Human Rights Act”, which prohibits religious discrimination. Supreme Court of Canada held in “Chaput v. Romain”, that, “all religions have equal rights, based upon tradition and the rule of law”^{xii}.

In the Guibord case in 1874, Privy Council held that, “Roman Catholic Church in Montreal couldn’t refuse the burial of a deceased member of the Church”^{xiii}. Supreme Court of Canada also provided a two – pronged test to introduce a freedom of religion claim; first a demonstration of practice or a belief having a nexus with religion and second, the person has to be sincere in his/her belief.

Article 18 of the United Nations Universal Declaration of Human Rights contains a definition of religious freedom echoed in many subsequent international and domestic instruments. It defines religious freedom as, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”^{xiv}. So, it can be said that freedom of religion and concept of secularism is accepted worldwide in different sense. Although it is very difficult and almost impossible to define the term religion in absolute sense, which may be accepted worldwide without contradictions, still there are some great philosophers, who put their hard to define it in simple words.

A British sociologist David V. Barrett defines the religion as, “a social construct encompassing beliefs and practices which enable people, individually and collectively, to make some sense of the great questions of life and death”^{xv}.

Another American sociologist of science Nelkin termed it as, “a belief system that includes the idea of the existence of an eternal principle..... that has created the world, that governs it, that controls its destinies or that intervenes in the natural course of its history”^{xvi}.

Pascal Boyer has explained the religion as, “The human instincts that fashion gods, spirits and ancestors points us in the right direction”^{xvii}.

Otto identified and discussed a series of phenomena related to human predisposition towards religious experience that was always present but only gradually awakened. Otto discussed about eight phenomena that are not part of religion, but of pre- religion like magic, ideas regarding spirits and souls, worship of the dead, belief that natural objects have powers that can be manipulated by spells etc., belief that natural objects like rivers, mountains, sun and the moon are actually alive, fairy stories (and myths), belief in daemons (pre – deities), notions of pure and impure^{xviii}. Otto developed the concept of numinous – a “state of mind” and a “category of value”, based on the Latin word numen (i.e., divine power). The concept of the numinous is applied in academic research in study of world religions.

Durkheim describes religion in terms of rites and beliefs. As per Durkheim, the religion divides the world into two domains i.e., sacred and profane. His view was that sacred is far from being synonymous with the divine. He said, “not only may god and spirits be sacred, but also natural things like mountains, rocks, rivers, plants etc. in fact anything, which is natural and it is different from other domain i.e., profane”^{xix}.

Dawkins explained the religion as a ‘virus’ and as per Dawkins, “religion is a meme and religious beliefs are mind-parasites”^{xx}. Dawkins said, “when you plant a fertile meme in my mind, you literally parasitize my brain, turning it into a vehicle for the meme’s propagation in

just the way that a virus may parasitize the genetic mechanism of a host cell and this isn't just a way of talking – the meme for, say, 'belief in life after death' is actually realized physically, millions of times over, as a structure in the nervous systems of people all over the world"^{xxi}. As per Dawkins, "a child is genetically preprogrammed to accumulate knowledge from figures of authority"^{xxii}. The basic essence of the religion and religious freedom is taken as natural and divine law of god, which need not to be sanctioned by any constitution or statute. It initiates everywhere since human life starts at the universe and developed along with the development of humanity.

1.2 Interruption in practice of right to religion amidst COVID - 19

COVID - 19 is an infectious disease, which is caused by a newly discovered coronavirus. Mostly, who fall sick with corona virus will experience moderate or mild symptoms and that too recover without any special treatment. The virus that causes COVID -19 disease is mainly transmitted through droplets generated when an infected person exhales, coughs or sneezes. These droplets are too heavy to hang in the air, and quickly fall on floors or surfaces. Infection may be caused by breathing in the virus, if you are within close proximity of someone who has COVID – 19, or by touching a contaminated surface and then your nose, eyes or mouth. Fever, tiredness & dry cough are its main symptoms. COVID – 19 spread almost all over the world.

For the safety of people, WHO i.e., World Health Organization issued various guidelines^{xxiii} to prevent from communal spread of corona virus. They mention that people can reduce the chances of spreading corona virus by taking simple precautions and people should wash their hands regularly for at least 20 seconds, use of alcohol-based sanitizers, maintain social distancing, avoid touching to eyes, mouth and nose, avoid going to crowded places and should stay at home for their safety. Under the instructions of WHO^{xxiv}, i.e., "Ban to go at crowded places" press the trigger of worldwide lockdown and closure of all public places includes worldwide Temples, Gurudwaras, Mosques, Churches and all other holy places. To avoid from communal spread, mostly countries enforced lockdown and close all activities.

In India, lockdown enforced just after four hours of Prime Minister national address at 8.00 P.M. on 23rd March, 2020. While in other countries, it was enforced either immediately or after proper planning. Singapore gave four – day notice to its citizens to prepare for lockdown. So did South Africa. Even our neighboring country Bangladesh gave a seven – day notice to its people to prepare for the nationwide lockdown. **More than hundred countries across the world have implemented lockdown as a tool of last resort and worldwide people managed to perform religious rituals and prayers for an end to spread of corona virus from their home only.** Most people, who used to pray at holy places in the morning, for them, the implementation of lockdown have meant a life rhythm disordered and for them, deferring all religious services seems like an emblem of a lost chance to sigh, to breathe and to gather together. Due to communicable nature of disease, no state has a better option to opt except to limit its spread by lockdown.

In this worldwide lockdown, all activities suspended for a temporary time. Public gatherings, public transport, industries, shopping malls, markets, marriage palaces, schools, colleges and even all holy places etc. were also lockdown amidst COVID – 19. **Due to closure of all Temples, Gurudwaras, Mosques, Churches and all other holy places, Right to Worship is highly affected. In this pandemic situation, all states prefer to suspend right to worship for**

the safety of the whole society and right to life upheld as a superior right in front of right to worship. Nagar Kirtans related to Vaisakhi in spring season have also been suspended.

People face a lot of other problems also due to spread of corona virus and due to lockdown. They lost their jobs and earnings and got out of money suddenly. In this difficult time, many NGO's, social servers, Temples & Gurudwaras served to the poor and homeless people. They managed to supply food and shelter to them. At Bangla Sahib Gurudwara, approx. 40000 people managed to get food daily. Similar to this, volunteers from other Temples and Gurudwaras situated across the country come ahead to serve for the goodness of humanity. Amidst COVID -19, Churches continues to serve for the humanity and by operating their food pantries and offering food, meat and toilet papers to the poor families whereas some American big churches cancel Sunday service, move online amid coronavirus outbreak. The National Cathedral of United States distributes N95 surgical masks to the people for their safety. The Dalai Lama, a Buddhist monk, expressed in The Time Magazine that there is a need to fight the crisis with compassion. **Association of academics of the legal regulation of the religious phenomenon have also started a research project, "Religion, Law and COVID -19 Emergency"^{xxv} under the coordination of 'Professor Pierluigi Consorti' of University of Pisa and this research work is facilitated by the Italian research scholars of law and religion.**

1. Right to religion vs Right to Life

Right to life is the top most superior right which includes a bundle of rights in its bouquet. So, there is no question of sacrificing the Right to life in any how condition. But if we bifurcate it in a hierarchy than we will find the same rhythm of less superior and more superior rights in Article-21 itself. This time, in the extreme circumstance, state was compelled to even suspend these less superior fundamental rights embedded in Article – 21 to save the most important and superior subject upon which Article – 21 is based i.e., Life of human being.

Now, turn to the meaning of "life of human being" and try to understand its origin with religious philosophy first. As there are so many different religions, different aspects, different ways of living, different cultures etc., all people mainly remain stuck to the common aim of life i.e., "to get salvation", which means to purify the soul and to get peace & salvation for the soul, during the life or even after the life. Although, primary purpose of all religions is to provide salvation to their followers, but existence of different religions indicates that there are different meanings of salvation and different opinions of people to achieve it.

Some countries are following a specific religion and have declared that particular religious state like Islamic countries, but many countries are secular these days and have no particular official religion. India is one of them. Our preamble also declares it that India is a secular state. Religion, Society and politics all three are embedded into each other in such way that it is almost impossible to separate them, means there is no existence of society without the religion and politics and there is no religion or politics without society. Religion is that social institution which includes beliefs and practices for the purpose of serving the society. It is a cultural universe as it is found in all societies in one or another form. Having different religions doesn't means that the purpose of life is also different for these religions or religious groups as the religions are creation of people only and not by the God himself. These are human beings himself who kept them separate from the other groups having different ideology and it doesn't mean that God had created different people to follow different ideology. Religion is just a way to live life in a particular way by collective community having similar ideology. Having different

ideology or following different religious group doesn't mean having different purpose of life. People may explain it differently, but cannot completely sever themselves from the ideology of other religions, because every creation of God in this universe is only one and common for all like earth, water, air, sun, rivers, mountains etc. and we all are living in this same universe. Having secular also doesn't mean "to not follow any religion", but it means "to not follow any particular religion and have freedom to follow any religion". By following or unfollowing a particular religion, people set his goal of life to achieve. Religion shows the path to get his goal. Belief and faith in a particular religion give direction to their followers to live the life in a systematic and purposeful way and nobody can compel to other person to follow any religion, in which that person have no faith. Religious groups may influence to others to follow their religion but they cannot compel them to do so because it is a divine matter and related to their inner consciousness and soul. **The purity of religious matters is undebatable as it is a matter of faith and belief of any person in their way of living life.** So, one may say that right to religion is equally superior to right to life as it is equally important in one's life and right to religion must be protected at same parlance as right to life.

2. **Right to life includes right to die with decent burial or cremation that too with human dignity**

John Salmond discussed about rights of deceased person which may be extended even after his death mainly related to three things. Those are his property, his reputation and his body. By this, rights related to deceased persons may be classified into three categories and legal heirs or family members of deceased person can enforce these rights against the wrong doer.

- i. Right to die with decent burial or cremation i.e., right to remain silent
- ii. Right to die with human dignity
- iii. Duties of the state in relation to deceased person as a right of family members of deceased

People dies and his body departed from this world, but these above discussed certain rights never dies. These rights may overlap upon each other but have distinguished enforcement. William H. F. Basevi wrote in his book published in 1920 "The Burial of the dead"^{xxvi} that, "across history, different cultures having no other rituals in common treat dead bodies with reverence". Flowers, food & clothes are placed inside or near the grave and the body is protected from molestation or any other damage. This idea shows the faith, sympathy, respect, love & affection towards the dead. According to historical facts and settled presumptions of the society, it is believed from the ancient times that the deceased persons deserve some respect and have a superior right than others i.e., right to remain silent and right to rest unmolested & undisturbed. **In a famous Greek Play "Antigone"^{xxvii} written by "Sophocles" in or before 441 BCE, the issue of rights of a dead is discussed well. In this play, writer put the weight upon natural rights and said that, "the rights of a dead hold more weight than a ruler, because that is the weight of divine law"^{xxviii}.** As per 1949 Geneva Conventions, every country must give respect to the dead bodies of their enemies too. These conventions make the roots of rights of deceased stronger. In "S. Sethu Raja v. The Chief Sec."^{xxix}, Madras High Court held that right to decent burial or cremation should be taken as expansion of right to die with human dignity. Justice V. Ramasubramanian cited the International Convention on "Protection of rights of migrant

workers” to bring back the body of deceased at state expenses and also held that Art -51 of the Indian Constitution mandates the states to not contravene International Laws and treaties.”

It is also settled in “Common Cause V. Union of India”^{xxx} that, “right to life with human dignity is a part of Article 21 i.e., Right to Life”. In another judgment of 2016, Madras High Court again held that it’s the duty of state govt. to brought bodies of Indians back to home and handed over to their relatives at state’s expenses.

In “AshrayAdhikarAbhiyan v. Union of India”^{xxxi}, Supreme Court held that it is duty of state to dispose of body of deceased person with cultural and religious ceremonies, which he professed during his life and should give respect to all unclaimed dead bodies by making an arrangement of decent burial as per his religion.

In “Vikash Chandra Guddu Baba V. U.O.I”^{xxxii}, The Bihar High Court held that, “Hospital staff and state officials should dispose of unclaimed and unidentified bodies with utmost respect to the deceased and as per customs and religion of the deceased.

On 23rd March, 1931, before independence, British rulers disobey these rights and didn’t perform the last religious rites during Bhagat Singh, Rajguru and Sukhdev Singh trio martyr cremation, which lead to riots and killing of more than 400 innocent persons on next day. Whereas, after independence, India state, being a democratic & socialist country undertook the responsibility of providing decent burial or cremation rights to a dead. The body of Sarabjit Singh, an Indian national, who was convicted by Lahore High Court for death sentence and died in prison at KotLakhpatt Jail Lahore, brought back to India by State intervention and handed over to their family members with great honor and respect, which he was deserved. Later on, his cremation was done with all his cultural and religious rights.

3. Meaning of word ‘person’ under Article 21

Recently, while registering Suo motto PIL, Madras high court observed that right to decent burial is a part of Article 21 i.e., Right to Life. Justice M Sathyanarayanan and M Nirmal Kumar held that “while recounting that the Supreme Court itself has opined that the right to life under Article 21 cannot be restricted to a mere animal existence, and that it means more than physical survival”^{xxxiii}. Adding to this, court stated that, “citizens are not expected to take law & order into their hands and if it so, it would definitely lead to anarchy. There is likelihood of similar kind of incidents to occur in future also”^{xxxiv}. The court takes Suo motto cognizance for this issue, after a mob obstructs the burial of a Doctor died due to COVID –19. In Article – 21 the term “Person” is the most controversial term. Different philosophers gave different definition and tried a hard to interpret this term. Many definitions are self-explanatory and enough wide but that too are incompetent to solve some critical issues.

As per Farlex dictionary, the word ‘person’ is related to all natural & artificial persons and the term natural person refers to living human being with certain rights and responsibilities under the law. With the advancement of society, this definition of person seems incomplete and defunct to embrace all for the purpose of Article 21. Article 21 elaborate that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. In simple explanation, it refers to only living person. But with the development of society and need to change in social laws, Supreme Court have enlarged the scope of Article 21 so much that some it includes some rights of dead persons also.

Sec. – 499 of IPC generally talks about the reputation of living person, but by explanation 1 of the same section, the scope of person was extended to include dead persons in it. It clearly

embarks that society and our legal system give reverence to dead persons also and that too from the ancient times, due to which our legal system of that time was compelled to make it punishable to impute the reputation of a dead. Judicial activism of Supreme Court makes it possible to enlarge the ambit of Article 21 to include all such basic fundamental rights in it that are necessary for the existence of human being and differentiate humans from the other animals. Safe environment, right to health and safety, unpolluted water, right to live with human dignity, right to decent burial or cremation etc. are all such rights that are not specifically mentioned in the constitution, but Supreme Court found their real source embedded in Article 21 itself and so, these rights impliedly become part of Article 21. With the expansion of scope of Article 21, there is a need to re define the term “person” also.

In the case of “Ramji Singh @ Mujeeb Bhai v. State of U.P.”^{xxxv}, High Court of Allahabad has ruled that the word & expression ‘person’ in Article 21 includes dead person in it in limited sense and right to life with dignity should be extended to dead persons also. The respect should be given to dead body, which he would have deserved during his life and as per culture and religion, which he was professed.

As per sec. -11 of IPC 1860^{xxxvi}, person includes any company, association or body of persons, whether incorporated or not. Commentary of this section explores that it includes natural persons as well as artificial persons and unborn child in the mother’s womb is also a person for the purpose of this section, but this explanation is not a part of main section and therefore it depends upon the judiciary how to interpret it. Other drawback in this code is that it defines man and woman as “human being having any age” but not before birth.

Sec. - 3 (42) of General Clauses Act 1897^{xxxvii} also defines the word ‘person’ in the same sense as sec. -11 of Indian Penal Code. As per Transfer of Property Act, a living person can convey a property to another living person only with exceptional case of creating interest in favour of unborn child that too subject to some conditions. Hindu laws also give various provisions in regards to unborn child. Moreover, Article 21 of Indian Constitution itself doesn’t include fetus in the definition of person to provide right to life to unborn child that means right to take birth. These provisions in different statutes shows that there is a need of more precise definition of person.

With the changing scenario, it is need of the society also to enlarge the scope of word ‘person’ for the purpose of removing various flaws in our legal system and it is only for the jurists, philosophers and legislatures to do some progressive work in this direction. It must be defined to include all such persons who have some existence in the society and have some rights in regards to his existence. By generalizing the meaning of word ‘person’ from all statutes & acts collectively, “the word ‘person’ refers to all-natural living persons and artificial persons. A natural living person is a beneficiary of all fundamental rights available to human beings since from the conception of child in mother’s womb and up to the presence of his body and soul at this earth as well as he is capable of all contractual capacities also subject to general or specific conditions applied, if any, whereas artificial persons are product of statutes or acts, and so, being capable of all contractual capacities only”.

Along with expansion of meaning of word ‘person’, there is a need to relook at the sphere of ‘fundamental rights’ also. It need not to be redefined and it is settled that only basic rights that needs for the existence of human life should be included in fundamental rights but there is a need of some clarity for social interest. Those rights, which were not necessary for the existence of human being or were not part of fundamental rights since their inception and were added later into constitution or in any other statute book due to advancement of society, must be controlled

by that statutes and natural fundamental rights must be remain inalienable in nature. The beneficiaries of these natural fundamental rights must include – “all those natural living persons, who, since the evolution of society & till they are connected in the society, by contracts or family bonding, either before their birth, during their life or even after their life, have some natural rights which must be fundamental for the very existence of human being and his dignity and they derive these rights from the nature itself and not from any constitutional or statute book”. By this definition, the word ‘person’ must afford to include child in womb and dead persons in it for clarification of lot of social issues.

4. Lockdown wise restrictions relating to last rites of the dead

The first and foremost restriction applied to the funeral ceremonies during lockdown is gathering of family members and relatives. It is restricted to 20 number only. Secondly, family members and relatives residing outside the country or living at far places from their family members remained unable to attend funeral ceremonies due to travelling ban. Interstate movement of vehicles, international flights, railways and public transports etc. all are suspended during lockdown. These restrictions are strictly applied in red zone and cantonment areas. Even persons restricted to perform the ceremonies related to immersion of ashes of their kin in holy river bodies like Ganga. Under consideration of guidelines issued by W.H.O, other ceremonies of ‘AntimArdaas’ or ‘Bhog ceremonies’ participated by nears and dears are also suspended due to ban upon the gatherings and people performed this ceremony inside their homes instead of going at holy places like Temples, Gurudwaras or Churches etc. Different religions follow different funeral ceremonies. In Hindu mythology, death applies only to the physical body and there is no death of the soul. Hindus dispose person’s body through cremation and they don’t believe in resurrection of body material. They believe that body has no significance and therefore they didn’t attempt to preserve it. While the soul, which truly represented the body has detached from the body. They immerse the ashes of their kin into holy river bodies like Ganga. Some Hindus choose to bury their dead, but most common practice is cremation only. Muslims choose to bury the body of deceased of their family beings in Cemetery. Cremation of the body is strictly prohibited in Islam. Due to worldwide lockdown, funeral ceremonies effected in a big way. Travelling ban makes it impossible to attend the funeral ceremonies by their family beings & relatives. By this, rights of funeral of the family members are greatly affected. At some places people obstructed the funeral ceremonies and prevented the cremation or burying the dead due to fear of spreading corona virus infection.

5. Other fundamental rights affected during pandemic with contrast initiatives taken by the state

“To conceptualize law as a legal system or order, rule of recognition is must”^{xxxviii}. State provides some fundamental rights to all person and some specific fundamental rights to its citizens only. Judiciary protects these fundamental rights from its violation. Thus, both states work as care taker of these fundamental rights. Sometimes state use its powers provided in exceptions to save greater losses. During this unprecedented pandemic, state overrides various fundamental rights of persons to save the existence of the country. Some fundamental rights are less superior and these rights may be sacrificed or surrendered to save other superior rights. State manages this pandemic situation in a better way by giving preference to more superior fundamental rights as compare to less one as there were some compelling situations to choose

some fundamental rights among all and to surrender the left one. The core issue in front of state was to survive the human being existence only, which can be maintained by making total ban on many things like travelling, luxury lifestyle, hotels & restaurants, public gatherings, cultural and national events etc. Even state was compelled to close all educational institutes and hospitals routine OPD. Some fundamental rights greatly affected are public health issues, right to free movement, right to education etc.

- **Public health issues & State initiatives to minimize public health crisis**

Due to COVID-19, every person remained unable to go for medical check – up and routine health check – up. Even many persons died due to non – availability of medical facility. Patients, who need emergency medical services, were left to die with their worst conditions in the wait of their COVID test reports. Due to non - availability of proper staff and due to fear of spread of infection, the services of ambulance also got suspended in maximum hospitals. The worst is that, some private Doctors shut down their hospitals and close their OPD services, which created a major setback to public health system. State took many initiatives to maintain and provide these medical services properly, which got interrupted unprecedentedly. World Health Organization issued various guidelines^{xxxix} to prevent from spread of infection and state organized many awareness programs to educate each & every person. Private players, welfare clubs and social servers also play a vital role to make general awareness of WHO guidelines for fighting with COVID-19. State and many organizations came forward to distribute food, essential commodities, masks, sanitizers and other health service equipment free of cost to needy person. In-spite of lot of efforts by state and welfare organizations, people got effected a lot in regards to their rights of medical services, which is the top most priority right embedded integrally under Article 21.

- **Violation of right to free movement and our ability to conduct democracy without full freedom of movement.**

Our Constitution provides several freedoms to all citizens under Article- 19(1) like freedom of speech and expression, to assemble peacefully and without arms, to form associations, to move freely throughout the India, to reside and settle anywhere in India. These freedoms are part of fundamental rights of citizens, but these freedoms are not absolute and subject to some reasonable restrictions provided under clause (2) to (6) of the same Article. State may impose reasonable restrictions in the interest of sovereignty and integrity on the nation and to maintain public order and morality. During this pandemic, state was compelled to put some restrictions on free movement, assemblies, religious processions on all citizens to minimize the spread of viral infection. Although, it was completely violation of fundamental rights of citizens provided under several articles, but it was necessary to curb the threat of COVID-19 and so, state had taken some strict decisions under compelling situations. State put complete restrictions on free movement by roads, railways or by air also, put restrictions upon public gatherings in religious occasions, functions or festive events.

- **Right of religious denominations to manage their own affairs in matters of religion (ART – 26 of The Constitution of India) and cancellation of many national cultural and religious events**

India is a country of great diversity having so many religions living there. Almost every religion and religious groups arrange different activities/ cultural events to promote their religion and to

celebrate special events having important history on that day. Some events are so big that the whole country tie into a single thread during the celebration of that event. Festival of EID, Chhatth Puja, Ganesh Visarjan, Dussehra Fair, Janmashtami Celebration, Holy Amarnath Yatra etc. all remained mostly effected national activities and events which got suspended by the state under compulsive situations during this pandemic. Otherwise in routine, thousands and lakhs of people gather at one place to celebrate these different events. These events are connected with life of human beings in such a way that it becomes the un-separable part of their life. These events work like energy booster in their life and there are so many positive approaches attached with these events in which people have extreme faith to achieve their ultimate religious goal i.e., to get salvation (Moksha).

6. The role of social media during pandemic

“Social media is the ultimate equalizer. It gives a voice and a platform to anyone willing to engage”^{xl}. During lockdown, social media proves like blessings in disguise for many people. It also proves like a twig for the drowning religious rights. Somehow, religious institutes maintain their daily prayers and other religious activities via online social platforms. For keeping social distancing and avoid public gatherings, people do online darshans, daily aarti, Bhog offerings and other donation type activities via online media. Social media is the suitable platform to spread any news or awareness worldwide. Now-a-days, people are so much connected with the each other through this social media, that it converted the whole world into one unit without having any boundary or limitation.

Social media remained very helpful to make aware whole community in regards to WHO guidelines^{xli} also. How to wash your hands properly, how to sanitize your hands and other objects to which we touch normally, how to maintain social distance, how and which mask is safe to wear, how to organize social gathering, how to keep child and senior citizens safer etc. are all part of WHO guidelines and teachings which easily goes viral on various social media platforms like Facebook, WhatsApp etc. It was also remained helpful for states to provide important information on time regarding lockdown timings, food distribution programs, other activities held related to this pandemic. Most of the companies, educational institutes and organizations are using virtual platforms like ZOOM App, Google Meet, WebEx etc. for online meetings and online classes. These platforms increase the efficiency of persons by reducing time & travelling cost.

“Mark Zuckerberg”, CEO and founder of Facebook said that, “when you give everyone a voice and give people power, the system usually ends up in a really good place”. Although social media proves very helpful for effective governance for the states, but sometimes misinformation may also go viral, which is not good and so for it is taken just as buzzword until you come up with a plan. Social media is best used by people, welfare institutes, social servers, and various government organizations to influence other people and to step ahead collectively for fulfillment of the most important mission i.e., to fight with COVID-19. In- short, we can say that states are using the social media greatly as an effective weapon to curb the curtailments of lockdown. People remained restricted to go other places but social media not, and by this, it was remained helpful to protect the fundamental right of free movement {Article – 19 (1)} indirectly. It spread the voice of people at other places without any hindrance and tune the nation into single motive. Punjab Government runs the social awareness program through social media i.e., “**Mission Fateh**”^{xliii}, which influences the people very much and so on other state governments and center

government also. **Social media connects the people through a strong thread in such a way that it gathers the people at a common platform and even to those persons who follows different religions have different ideology.**

7. Vaccination

World Health Organization is working with countries and partners to improve global vaccination coverage, through the “Global vaccine action plan 2011-2020”. Every year, WHO also works with UNICEF^{xliii} to produce national immunization coverage estimates for Member States. From 2020, WHO is working with Member States to develop the “Immunization Agenda, 2030”^{xliiv}. “World Health Organization came into being on April 7, 1948, with 61 members on board. Its avowed aim is to promote health, keep the world safe, and serve the vulnerable. In its early decades, the organization played a critical role in eliminating small pox from the world. Its work on malaria and neglected tropical diseases, among others, are also recognized”^{xliv}. This year 2021 comes with a hope of recovery in medical conditions also as WHO has granted the permission for vaccination made by PFIZER and Bharat Biotech companies and some other vaccinations trials are going on. Health teams are positive on the outcome of vaccination as it will reduce the fear of re-spread of infection in future and saves the human lives. States are preparing at giant level to provide the vaccination in all world. They are preparing for many campaigns through which they can complete this project. Vaccination at mass level have started in many countries. In India, state have started vaccination to health workers first. To vaccinate each and every people is another challenging task before the state.

8. The recovery: economic, political, social, cultural & environmental

There are various reports made by different agencies to recover from this pandemic. States are working on different modules for speedy recovery. “The International Renewable Energy Agency (IREA) offers practical advice on key investments and policy decisions for the crucial post- COVID recovery”^{xlvi}. As the impact of pandemic is fading now-a-days, the whole machinery of universe is set up on re-booting mode. Industries are starting their production slowly. Travelling relaxation has been given with some strict guidelines by the state. It is highly recommended by the state to maintain social distance at public places. GDP is also taking “V” shape recovery and so on economic conditions. State has allowed cultural events with some instruction of maximum number of gatherings. Society has start to move on for the recovery of damages and for routine life style. Social institutes and welfare societies have come forward to recover the losses, they are helping the poor for food, clothing etc. Religious groups have also started their traditional events with limited gatherings. Workers are also coming back and re-joining their services in the industries and commercial units. The major impact of lockdown is that states are focusing on local products now. It seems that it will boost up consumption of local products in comparison to imported one. Our P.M. took the initiative to start a mission of “**Atmanirbhar Bharat**”^{xlvii} to motivate the local industrialist for increasing their productions and to influence the consumers for consumption of local products. It is believed that this mission will be helpful to strengthen the national economy as consumers will purchase local products and by this, local industries will rise.

1.3 Conclusion

Most of the worldwide governments enforced lockdown in lieu of W.H.O guidelines^{xlviii} and health expert warnings^{xlix} issued in relation to prevention of spread of Corona Virus disease. While enforcing lockdown, several inferior rights are suspended or ignored for the sake of safety of people. Every state prefers to choose the superior right i.e., Right to health by ignoring all other inferior rights under compelling circumstances. Right to worship is the most ignored and affected right during lockdown. At some places, people got irreparable loss due to this ignorance. This unprecedented situation of worldwide Lockdown supports to the theory that Right to Life is the top superior right among all other fundamental rights. It is also proved during lockdown that this theory of top superior right among all is applied to all humanity and hence to almost worldwide nations, either they are democratic or not and whether this right is placed in their constitution or not. It also supports to the school of natural laws that some basic rights need not to mention or didn't get authority from any statute book or constitution. These rights are natural rights and inalienable rights. Neither state can ignore nor can anybody surrender these basic rights which are fundamental for the existence of human being in their natural state. Safety of human being and their family beings is impliedly embedded in Article 21 i.e., right to life and an expanded part of right to life. Although right to religion does not seem superior to right to life in first thought, but it is not so that it is less important than right to life.

Religion is inseparable part of the society, without which one cannot imagine its existence. Even in secular nations, having their no particular religion, god is found in constitutional oaths and even those people, who have no faith in idol worship, also accepts that there is a divine, natural and unseen power working behind this universe. **Right to religion paves for the way of living and the religion is embedded in the society in such a way that it is almost impossible to separate the water from the blood and moreover, it is of no use after this imaginary separation.** So, it is must to protect religious rights at same parlance of right to life. As state is the care taker of all fundamental rights, state must take this issue into consideration while prioritizing fundamental rights.

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