

The Impact of Public Health Emergency on the Right to Freedom during Covid-19

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Abstract:

A coronavirus is an exceptional event that the world has not seen before for a long time, as the large and rapid spread of the virus has turned into a threat to all humanity, as a result, the countries of the world found themselves forced to impose exceptional measures to confront this exceptional event, as these measures carried with them many restrictions that limited the Fundamental rights and freedoms of citizens, intending to reduce the severity of the spread of the virus. Therefore, these restrictions, which are based on the theory of exceptional circumstances, found a strong justification as they relate to the preservation of public health and the safety of individuals, which gave government agencies more exceptional powers and constituted a departure from the traditional legal rules to enable them to control the existing situation and preserve public health. The measures were invoked and exploited in many cases to strengthen the executive authorities and weaken the counter-powers, which had a catastrophic impact on human rights. This study seeks to identify and analyze the human rights consequences that will result in the future of applying the state of health emergency under exceptional circumstances as a result of the Corona pandemic, intending to try to achieve some kind of reconciliation between Fundamental freedoms, especially freedom of movement of individuals, and the requirements for maintaining public health.

Keywords: coronavirus, covid-19, public health emergency, fundamental freedoms, human rights, Restrictions.

1. Introduction:

The rapid spread of the Coronavirus and the significant increase in the number of infections and deaths have led to the formation of a very serious threat to public health, which has prompted governments to take exceptional steps to limit its spread, such as restricting freedom

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of movement and travel, freedom of work, isolating cities, banning gatherings participation in cultural, sports and entertainment activities, including the suspension of some businesses and professions. This sparked a debate that is still raging about the impact of these emergency measures on human rights and freedoms and the various principles and values guaranteed by the International Bill of Human Rights.

Opinions differed on the impact of the health emergency and the restrictions it bears on human rights. Some considered that all restrictions issued by the government on the rights and fundamental freedoms of persons have justified because these restrictions aim to avoid the dangers to which the lives of citizens, in general, are exposed, given that the Coronavirus poses a threat to all humanity, and therefore the urgent necessity is to protect the right to health and life first, As one of the Fundamental Rights for the existence of man himself, even if this is done at the expense of some other rights, and they substructure their position on a legal basis included in the International Bill of Human Rights itself, which guarantees and understands the need for some exceptional measures restricting freedoms in conditions of life-threatening crises.¹ the supporters of this view turn a blind eye to the catastrophic future ignore the catastrophic future human rights implications these restrictions may have.

There is another opinion with a more profound view that understands that governments impose a limited ban on the movement of people to ensure social distancing, and the non-transmission and spread of infection, in a way that mitigates the effects of the disease and its repercussions. They also understand the closure of borders and crossings, the suspension of travel, and the temporary prevention of gatherings and activities, but they fear that these measures will, over time, lead to the violation of their personal freedoms and facilitate the abuse of their dignity, and worse, to deny them their other basic rights or suspend and postpone them under the pretext of protecting public health; While the owners of this position rely on the package of reservations that most international and national organizations concerned with defending human rights have made regarding the exceptional and urgent measures taken, they stress with it the need not to prejudice absolute human rights that are not subject to restrictions or exceptions such as the right to life and protection from torture Arbitrary detention, as well as the need for these measures to be based on scientific evidence declared and explicitly, programmed in time and subject to review at all times, and not to be implemented arbitrarily and punitively, but by persuading people and obtaining their consent and respecting their

feelings, privacy and dignity in a way that encourages them to participate in the success of these measures and reduce Risks to their health and the health of society in general.

2. The concept of public order and public health:

Fundamental rights and freedoms in democratic societies are protected rights that cannot be violated. However, these rights are not absolute but are restricted to public order as it is considered one of the pillars of the existence and preservation of society. Where freedoms find their natural scope when the public order existing in society is not violated.

The concept of public order is characterized by blurring and flexibility due to the evolutionary nature of its content, which makes it a variable concept according to the circumstances of time and place.ⁱⁱ Classically, the concept of public order was linked to three elements (public security, public tranquillity, and public health), as these elements continued to form the concept of public order despite the great developments that he witnessed later.

The connotation of public health as an element of public order has traditionally been associated with measures taken by the existing authority to preserve the health of the entire population. Where the measures took many forms, such as ensuring the cleanliness of streets and public roads, combating the spread of mobile or infectious diseases, and protecting the environment from various forms of pollution threatening human health.ⁱⁱⁱ However, the traditional narrow concept of public health elements has witnessed evolution and expansion in its scope^{iv}, in addition to addressing external risk factors, it has extended to include the possibility of imposing specific health behaviors on individuals when they are a source of a health threat,^v such as subjecting them to a compulsory medical examination and limiting their freedom of movement, assembly, or Doing certain actions.

In December 2019, the world witnessed one of the biggest health threats in decades, as the speed and spread of Corona among humans prompted governments to take urgent measures to preserve public health. Many of the measures were characterized as restrictive measures that were imposed on individuals' certain behaviors that limit their Fundamental rights and freedoms, with the aim of stopping the spread of the virus and preventing and protecting public health in the Coronavirus phase. The restriction of public rights and freedoms through the

public system found a legitimate justification represented in protecting members of society from the health risks caused by the virus and thus contributing to creating a healthy and healthy environment that enables them to fully exercise their rights and freedoms.^{vi} Perhaps the most prominent freedoms that have been restricted are the right to freedom of movement, freedom of assembly, freedom of private life, and freedom to work. Although these rights are Fundamental and constitutional rights, these rights are subject to restriction, unlike other rights whose perception of their ability to be restricted is denied, such as the right to life and the right to human dignity, freedom of opinion, and the right to information.

3. The effect of exceptional circumstances measures during a health emergency:

The principle of the rule of law stipulates that all persons in the state, whether rulers or ruled, must be subject to the provisions of the law, and therefore compliance with this principle is the most important to be guaranteed for protecting the Fundamental rights and freedoms of individuals in the face of the ruling authority. The principle of legitimacy prevails in the relationship between the ruling power and the fundamental freedoms of individuals, but some exceptional circumstances may lead the ruling authority to depart from this principle to ensure the functioning of public institutions and facilities.

The state of health emergency and the exceptional circumstances that accompany it lead to two basic effects. The first effect is to stop the authority of ordinary legal rules in the face of the executive authorities, and the other effect is that the decisions of the ruling authorities are subject to legality or exceptionalism governed by rules that regulate the state of emergency as a restriction on the principle of legality.^{vii}

In this sense, the theory of exceptional circumstances embodies its legal basis not only in case of necessity but also in the duties of the administration in ensuring the regular and steady functioning of public facilities and in maintaining public order, as such duties impose giving the administration exceptional powers to confront the exceptional situation.^{viii}

By dropping the concept of exceptional circumstances on the Covid-19 pandemic, it seems that the widespread of the epidemic, its danger to health, and its deadly effects have made it an exceptional circumstance of a healthy nature par excellence that allows the administrative

authorities to free themselves from the normal rules of legitimacy to confront this epidemic as they enable them to restrict Fundamental freedoms to how much the authorities are able to restrict it under normal circumstances.^{ix}

4. The impact of the health emergency on Fundamental Freedoms:

As exceptional circumstances impose exceptional measures commensurate with the seriousness of the situation caused by the Coronavirus, governments found themselves facing a serious threat threatening the lives of the entire population. Therefore, the need to declare a state of health emergency arose to strengthen the authorities' capacity and enable them to protect the entire community. According to the state of a health emergency, the state can impose restrictions on the freedom of movement of individuals from one place to another, as well as restrictions on freedom of assembly, as it enables it to impose certain behaviors on individuals and obliges them to adhere to them, in addition to closing public or private facilities, as well as many measures that involve A violation of Fundamental human rights and freedoms.

The authorities did not hesitate to resort to the latest technical means for mass surveillance.^x China has used drone technology, along with dedicated cameras, to recognize the face and detect the places where the citizens are and restrict their freedom of movement. Many countries have also used the GPS used in their citizens' phones, credit card information, and images captured with cameras to limit their movement and monitor the spread of the virus.^{xi}

The importance of tracking technologies in the field of health cannot be denied, as they contribute to improving public health and reduce behaviors committed by individuals that may lead to dangerous health outcomes in addition to their role in preventing diseases and limiting the spread of epidemic diseases such as the Covid-19 virus. However, these technologies may be a double-edged sword, as they may turn into a tool for monitoring citizens at the hands of the state, as well as the use of this data by some authoritarian or even democratic regimes to further restrict freedoms and suppress them.^{xii}

Whereas, despite the health emergency and the accompanying control measures and measures, they have contributed to effectively containing the Coronavirus. However, these measures have brought many serious threats to human rights in the future in the period following the end of

the Coronavirus threat. These fears may lead us to ask: What is the impact of the health emergency, with its exceptions, on Fundamental freedoms? These fears are justified. To answer this question, it is necessary to clarify how the state of emergency, as an exception to the asset, can become the original. Olivier Nay in his paper “Can a virus undermine human rights?” Explains these concerns through three very serious implications in this regard, the first serious effect is when these exceptional rules become part of regular legislation under the pretext that the threat and dangerous situation is still lurking and may return to pose an imminent danger at any time. This is precisely what happened after the terrorist attacks in France in 2015, where the anti-terrorism law limited civil liberties by giving the security services more powers in light of the reduction of judicial control over them.^{xiii}

This may not seem to be the only danger that the exceptions that the health emergency carries on human freedoms. Rather, governments may exploit the spread of the epidemic crisis to make many adjustments and measures restricting freedoms that were not accepted before, using what is known as the shock strategy. And that is through the use of the national trauma caused by the Coronavirus to strengthen control over citizens in all aspects of life.^{xiv} The third dangerous effect is that the concept of freedom itself may lose some of its value for citizens at the expense of the concerns of global dangers that may threaten them. That pushes them to accept the abandonment of some of their Fundamental Rights.^{xv}

Therefore, although governments require additional powers, if the rule of law is not respected, this leads to the transformation of the health emergency into a human rights disaster, According to Michelle Bachelet.^{xvi}

Statistics indicate that the period of the spread of the Coronavirus was accompanied by a marked decline in Fundamental freedoms in many countries.^{xvii}

It is noticeable that the impact of the epidemic on freedoms was not limited to countries ruled by authoritarian regimes. Rather, this effect was reflected even on liberal democracies, albeit to a lesser degree.

As the health emergency procedures have gradually changed the states of law, and this prompted the European Parliament in November to warn that emergency powers pose a risk of

abuse of power by the executive branch and may remain in force in the legal framework with the end of the state of emergency.^{xviii}

In Paris, Berlin, and London, citizens have been accustomed for decades to live in vast freedom guaranteed by the rule of law, but it has become restricted by curfews, prohibitions on gathering, and shop closures. This followed the adoption of other control measures in the context of combating terrorism.

Giorgio Agamben considered that “what is happening today marks the end of the rule of law and bourgeois democracies that have already undergone profound transformations.” In his book “Homo Sacer”, the Italian philosopher estimates that “the voluntary establishment of a permanent state of emergency (even if it is not declared in that capacity technically) has become a fundamental practice in Contemporary countries, including those we call democracy”. Laurene Fontaine, a new professor of public and constitutional law at Sorbonne University, explains that the health emergency in France, for example, closely resembles a security emergency and established sustainable and steady changes. Fontaine believes that political speeches tend to emphasize the exceptional character of the state of emergency. On the other hand, changes are being introduced in the law that is not temporary.

5. Preserving the legality of restricting Fundamental freedoms in light of the application of the health emergency:

5.1 The principle of necessity and proportionality:

This principle promotes reconciliation between the exercise of rights and freedoms and the preservation of public health, as this principle stems from the rule that the exercise of freedom is the basis and its restriction is the exception. The principle of necessity and proportionality reflects the relationship between the restrictive measures taken by governments and the goal for taking them. Any restrictive measure must be justified to preserve public order, meaning that the necessary condition requires that the action taken by the government must be the only means for the government to achieve the goal of maintaining public order.^{xix} Whereas the principle of proportionality requires the necessity of compatibility between the content of the measure restricting freedom and the size of the anticipated danger, this is achieved through the public authorities’ distancing from arbitrary decision-making and choosing the means that are

least harmful to the rights and freedoms of individuals. Consequently, when restricting individual freedoms in the name of preserving public health, the government must take into account the principle of the primacy of exercising freedom, and it does not intend to restrict it except to the extent sufficient to preserve public health and thus intervene with the least restrictive measures to exercise freedom.^{xx}

Thus, despite the rapid spread of the Coronavirus and its danger, the practice of restrictive public authorities on freedoms must be subject to the principle of necessity and proportionality, so governments must take the necessary measures to limit the spread of the virus.^{xxi} This means that any measure aimed at restricting freedoms is useless in limiting the spread of Corona, or if this measure is disproportionate and exceeds the extent sufficient to achieve the goal, it is an illegal measure.

5.2 Judicial oversight of the measure restricting freedom:

If it is acceptable for public authorities to exercise more powers to restrict the freedoms of individuals, the restriction shouldn't be without prior authorization. And the authority should not oversee the basic rights and freedoms guaranteed while exercising its power. Consequently, the measures of the state of health emergency must be subject to the supervision of the judiciary, which must have all the powers to verify the availability of the conditions of the state of a health emergency.^{xxii} Besides, when taking any restrictive measure, the judiciary must verify that the criterion of necessity and proportionality is met, namely the necessity of the measure to curb the spread of Coronavirus and the preservation of the public health system, as well as to fit the restrictive measure of freedoms with the magnitude of the risk of the situation when taken and to consider such a measure unlawful if the principle of necessity and proportionality is left behind.

6. Conclusion:

Despite the apparent negative consequences that the measures to combat the Corona epidemic have led to on the reality of human rights, it has always been the crises that have inspired the improvement and immunization of human rights and the promotion of fundamental freedoms. The subsequent phase of eliminating the Coronavirus must witness a human rights movement

that deals with fundamental freedoms. Consequently, a kind of reconciliation between the state of health emergency and the need to preserve individual freedom must be created by creating a legislative framework that regulates this case with precision and takes into account the application of the principle of necessity and proportionality to an exceptional measure applied by the government and subjecting this measure to judicial oversight, with Firm assertion that the exceptional restrictive measures will end with the end of the situation that prompted them to be imposed. Given that the state of emergency measures was imposed due to exceptional circumstances, they must end with the end of these exceptional circumstances. finally, the ultimate goal of anti-Corona measures, despite their restrictive effects on fundamental freedoms, must be to secure an environment that ensures the effective exercise of these rights and freedoms.

References

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- ⁱⁱ Schneider M-J and Schneider HS (2021). Introduction to Public Health, Jones & Bartlett Learning, P 22
- ⁱⁱⁱ Gostin LO and Wiley LF (2016). Public Health Law: Power, Duty, Restraint. University of California Press. P 56
- ^{iv} Myriam Feinberg, Laura Niada-Avshalom & Brigit Toebes (2015) National security and public health: exceptions to human rights?, *The International Journal of Human Rights*, 19:4, 383-387, DOI: 10.1080/13642987.2015.1044812
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^{xvi} She also added “Different countries are at different stages of the pandemic. Some are starting to come out of emergency measures, while others are extending or reinforcing them. The abiding principle must be that these measures are enforced humanely. Penalties for violating them should be proportionate, and not imposed in an arbitrary or discriminate way,” Michelle Bachelet ,UN High Commissioner for Human Rights , (2020, April 27), COVID-19: Exceptional measures should not be cover for human rights abuses and violations– Bachelet, Retrieved April 2 from <https://www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=25828>.

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^{xviii} European Parliament resolution of 13 November 2020 on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights, B. “whereas government-led emergency measures that respect the rule of law, fundamental rights and democratic

accountability are needed to combat the pandemic and should be the cornerstone of all efforts to control the spread of COVID-19; whereas emergency powers require additional scrutiny to ensure that they are not used as a pretext for changing the balance of powers more permanently; whereas measures taken by governments should be necessary, proportional and temporary; whereas emergency powers carry a risk of abuse of power by the executive and of remaining in the national legal framework once the emergency is over, and consequently appropriate parliamentary and judicial oversight, both internal and external, and counterbalances have to be ensured to limit this risk;”

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