

The Long 2020

State Impunity and Erasure of Rights through Logistics of Governance

— Amit Prakash*

The year 2020 has a peculiar character, full of contradictions. While on the one hand, the country came to a virtual stop owing to restrictions imposed to manage the Covid-19 pandemic, on the other hand, large sections of populations — mostly the poor — were literally on the march to return home. While concerns about filling idle hours by deploying online streaming and exotic cooking occupied the privileged, the rest of the population was left to fend for themselves looking for a non-existent basic meal.

Focussing on such contradictions, as has been the case in a section of the popular media, glosses over the mechanisms and logistics of governance that were deployed to ostensibly manage the exigencies of the pandemic — to identify, isolate and medicate those infected. However, the logistics of governance that unfolded was far more expansive than that dictated by the medical emergency. The conversion of the health emergency into an issue of order — the curfew model that quickly emerged, creates at least three implications that will cast a long shadow on the Indian citizens in times to come:

- (a) The apparatus of the state was geared towards a veritable erasure of right to life and livelihood and rendering life of a very large section of the population bare, to cite Agamben.¹
- (b) The logistics mobilised and deployed to police and enforce the curfew model portends to fundamentally transform the processes of governance —marked by centralisation of powers and funds while decentralising responsibilities to lower tiers of governance without concomitant powers and resources.
- (c) The logistics of testing and vaccination that emerged is likely to contribute another layer to this story of transformation of governance by prioritisation of logistics.

The legal mechanisms deployed were two: first was the invocation of the colonial era Epidemic Diseases Act, 1897 (popularly called the Plague Act), swiftly amended by an ordinance on April 22, 2020 to ostensibly offer protections for healthcare personnel combatting epidemic diseases. This Act empowers the government to issue any direction it deems fit to manage the epidemic, violation of which invites action under Section 188 of the Indian Penal Code dealing with “Disobedience to order duly promulgated by public servant”. This created a degree of impunity in the state that brooks no argument since intention of the accused is no defence under this Act.

Second was the invocation of the National Disaster Management Act, 2005 under which the National Disaster Management Authority, headed by the Union Home Secretary, can (and did) arrogate to itself powers to issue any direction to anybody, including State governments. While there remains some doubt if the NDMA, 2005 covers a health emergency, the state forged ahead without any such concern, including complete violation of some of the Basic Structure of the Constitution such as federalism and powers of the State.

Such an autocratic legalism² was upheld by the judiciary through its inaction and credulity in the unfounded claims of the government. The framework of logistics of governance,

geared towards étatisation³ of the polity, leading to state impunity and undermining of a host of citizen's rights was thus complete.

The proposed paper will examine these processes across two axes: (a) the logic, mechanisms and implication of the National Disaster Management Act/ Authority and the Epidemic Diseases Act, 1897; and, (b) political economy of testing and vaccine delivery in terms of its conversion of the process of governance from that of political to mere management.

Tentatively, it is argued that this process which started unfolding during the Long 2020 will have a much longer and multidimensional impact on the fundamentals of governance processes in the country. The paper will seek to identify, document and analyse this complex process in terms of étatisation of the polity and implications thereof for liberal democracy in India; and, the impact of such logistics of governance on the right to life and livelihood, especially that of the poor and marginalised.

Notes

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¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Tr. Daniel Heller-Roazen), Stanford: Stanford University Press, 1998.

Also see, Amit Prakash, 'Shadow of the Pandemic and the Beleaguered Liberal-Democratic Script in India', *India Review*, 2021, forthcoming.

² Kim Lane Scheppelle, "Autocratic Legalism", *The University of Chicago Law Review*, 85, no. 2 (2018): 545-83.

³See James Ferguson, *The Anti-Politics Machine: "Development", Depoliticisation, and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994).