International Journal of Academic Research and Development
www.academicjournal.in
ISSN: 2455-4197
Received: 23-04-2022, Accepted: 09-05-2022, Published: 25-05-2022
Volume 7, Issue 3, 2022, Page No. 79-84

'Monopolization of the legitimate means of movement': The modern state and the pandemic

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Abstract
The Covid-19 Pandemic has had, without a doubt, a wide-ranging impact on the lives of all people worldwide. But its impact could be seen not just on the lives of people, but also on the nature of the modern state, its functions, and its means of exercising monopoly in the times of extraordinary circumstances. Most definitions of the modern state agree that it exerts monopoly on certain aspects of the lives of the citizens. The Weberian notion of the state's monopoly on the legitimate use of violence is well-known. But, apart from violence, the modern state also exercises, quite importantly, the monopoly on the legitimate means of movement. When the pandemic hit, it was perceived important for people's movement to be restricted in order to curb the spread of the virus. And thus the modern state, with great vigor, put into force its monopoly powers and placed restrictions on the means of movement. The scope of this paper is not to defend or argue against the state's actions during the pandemic. Instead, what it seeks to do is to zoom into the modern state's monopolization of the legitimate means of movement and demonstrate how it dilated and accentuated due to the pandemic. This paper is an attempt to juxtapose the extraordinary circumstances of the pandemic over what has been an important feature of the modern state: monopoly on the legitimate means of movement. It seeks to enquire into the effects of this monopolization in the context of the pandemic, while bring in the debates on the right to free movement and the interplay of citizenship and state.

Keywords: modern state, pandemic, means of movement, lockdown, citizenship

Introduction

Once in every century, as has been the trajectory, a pandemic has hit the world and shaken all foundations of human life. The Great Plague of Marseille (1720-1723), the Cholera pandemic (1817-1824), the Spanish Flu (1918-1920), and for our times, the novel coronavirus (also referred to as Covid-19) have ravaged humanity, led to disastrous deaths, sunken economies and posed a challenge to the state. The state is challenged, for it acts as the bridge between individuals and a cold world. What immediately comes to mind is Hobbes's description of the state of nature: "…worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short". Under such disastrous circumstances, enters State. During the Covid-19 pandemic, the State transformed into, what is known as, the 'state of exception'. Therefore, in order to ensure public health, the state put its powers into full force, thereby acquiring a false legitimacy for its discriminatory and discretionary actions. Of the many instances where the state could be seen using its extraordinary powers, a prominent aspect was the imposition of lockdown and closing of borders by almost all states, across the globe. When the first Covid-19 case was reported in China, the central government took a startlingly rapid decision and imposed a lockdown on 23 January 2020 (The Guardian, 2020). This lockdown mechanism to deal with the virus was quickly adapted by nations around the world. In the India case, this was seen when the Indian state enforced the Disaster Management Act, 2005 and curtailed people's mobility, in stark opposition to the freedom of movement that Article 19(d) of the Constitution ensures (Chowdhory & Poyil, 2021, p.25) [6]. But the question arises: how did the state come to acquire the authority to impose any restrictions on people's movement?

The answer to the above-stated question can be found in an oft-cited work. John Torpey (2000) [33], in his book, gives a detailed account of how the state came into establishing a monopoly on the means of movement. He argues that the regulation of people's movement is directly related to constituting the very "state-ness" of the states (ibid). The state creates a form of dependency, and renders the people reliant on it for the authorization to move, both within and across state borders. This authority to regulate, rather, restrict movement had not always been the state's prerogative. From a Marxian perspective, prior to the state, under the system of slavery, the masters controlled the movement of the slaves; and later, the feudal lords that of the serfs. With the coming in of capitalism, and the notion of "master-less men", it became imperative for the state to take upon itself the monopoly to legitimatize the means of movement (ibid).

The state's monopoly on the legitimate means of movement has not developed overnight. States have come to acquire this character over many years. Torpey's analysis of this development can be summarized as follows. The state's character to control people's movement can be quite comfortably traced back to 13th and 14th centuries. In 1215, the Magna Carta allowed the English subjects, the freedom to depart. However, a statute

issued in 1381 prohibited all to leave the kingdom without a license. The only exception to this requirement was that it did not apply to peers, notable merchants, and soldiers. This was England, but even in the East, certain restraints came into picture with the coming in of the reign of Peter the Great, the Russian Czar. A 1719 edict made it mandatory for everyone to carry with them a pass issued by their superiors when moving from one town/village to another. Revolutionary France saw the struggle to fight against the control over freedom of movement, and with the nineteenth century Germany, came in an era of liberalization in such controls. But from the late nineteenth century till the period of the First World War, new identity controls emerged in many parts of the world, including, France, Italy, Germany and the United States. The situation post the war led to certain key developments, including the creation of Nansen passports that could be issued to stateless persons, without giving them absolute citizenship rights. With the coming in of the Nazi regime, horrendous controls were imposed on the Jews, the effect of which, the whole world felt. But post the Second World War, controls started to loosen up, bit by bit. This was largely because of mass refugee movement there arose a need to settle such huge populations that were uprooted by the conflict. But the state of things as we see today, are largely the outcome of the aftereffects of the 9/11 attacks. It also led to the birth of a security state that put in place all possible measures to 'secure its own'. Thus, was seen the rise of highly tightened passport mechanisms (not just international but also internal) so as to create a 'globalized world with closed borders'.

But this process has not been free of biases and inherent hierarchy of power structures. Stefan Mau and others have studied the evolution of the geography of visa-waivers over a span of time and produced important results. Their study talks about a highly relevant issue: global mobility divide. What it primarily means is that the citizens of the OECD and other rich countries have gained strong global mobility rights over the past five to six decades. They can freely travel around the world, with much lesser restrictions. However, on the other hand, for the citizens of the African countries and other nations of the Global South, these global mobility rights not only stagnated but also diminished (Mau *et al*., 2015) [22]. A mere glance at the Passport Index (2020) also reveals the same story.

As is evident, the rationale behind the State creating a monopoly on the legitimate means of movement was to uphold the territorial character of the modern state (Torpey, 2000, p. 10) [33]. But more importantly, this needed to be done for the creation of an identity: in order to distinguish between the citizens of the state and aliens, which in turn allows or restricts their access to certain spaces. The idea of monopolization, according to Torpey, is deeply associated with the state's need to build its capacity to "embrace" its own citizens (ibid, p. 15) and exclude the rest. It was this character of the modern state that accentuated during the pandemic and emerged loud and clear in its policies of lockdown imposition and travel bans.

The remaining part of this paper is an attempt to bring out the major debates on the freedom of movement during a pandemic as against the state's authority to restrict people's means of movement, while exercising its monopoly. During the course of that discussion, an important character of the state, to distinguish between its own and the rest, and engage in the process of 'othering', holds the center stage. These arguments shall be substantiated with relevant evidences from around the world, wherever necessary.

Freedom of Movement: (UN) Reasonable Restrictions & Pandemic

The pandemic, when it hit the world and spread a wave of shock and fear, invited a knee-jerk reaction from states across the world. While there were large disagreements on various aspects of the pandemic and no clear answers to many questions, one dimension was crystal clear: the contagious nature of the disease. The world was witnessing a public health emergency and thus it was evident that the right to health must prevail over all others (Adami *et al*, 2021) [1]. This was believed largely because the right to health, particularly during a health emergency, carries more legal and moral weight than any other liberty. Moreover, the liberty of an individual always comes with certain restrictions, to ensure the collective good of the people. And so to control its spread, person-to-person contact had to be blocked. To this, the first line of response by the state was closing of the borders. But this exercise did not come without biases. But that dimension would be taken up a little further in this paper. Prior to that, one needs to question: was the lockdown really the one-stop solution to the pandemic? Evidence indicates otherwise.

When the pandemic hit, the Chinese authorities intimated the World Health Organization, based on which the international body issued an advisory. The document advised 'against the application of any travel or trade restrictions on China' (WHO, 2020a). In fact, when the Chinese government imposed a lockdown in the city of Wuhan, WHO representative in Beijing, Gauden Galea, remarked, "The lockdown of 11 million people is unprecedented in public health history, so it is certainly not a recommendation the WHO has made" (Reuters, 2020). Even when Covid-19 was declared a public health emergency of international concern, the Director-General of WHO, Tedros Ghebreyesus remarked in a statement: 'there is no reason for measures that unnecessarily interfere with international travel and trade. WHO doesn't recommend limiting trade and movement' (WHO, 2020b). But as stated earlier, most countries quickly followed suit and imposed haphazard travel bans. As per the WHO reports, while 143 countries of the world closed their borders, in all 194 nations imposed one or the other kind of restriction on travel (WHO, 2020c) [37]. By April 2020, approximately 90% of the world's population was living in countries that had travel restrictions for non-residents and non-citizens (Connor, 2020) [8]. But surprisingly enough, scientific evidence is available to show that travel restrictions are ineffective (Mateus *et al*., 2014; Anzai *et al*., 2020) [21, 3]. The most they do is push the peak of the pandemic a few weeks later. In fact, some studies have shown that travel restrictions do more harm than good. The Covid-19

led mass migrant crisis in India due to internal lockdown is a case in point, but is only one of the many other disastrous outcomes of the lockdown. The idea of a lockdown is also highly problematic for not only it is an expensive approach, but also because it exacerbates inequality (Ren, 2020) [26]. While it slows down economy, leading to huge losses, it also creates a divide in the national population due to lack of resources and income sources while being packed inside the four walls of a house, if at all one has a place to call a house. It would be naïve to think that the states across the world were absolutely ignorant of these effects of a lockdown. Despite, the Covid-19 pandemic saw the applications of one of the most tightly executed lockdowns and travel bans in human history.

That being said, an important dimension of the imposition of travel ban during the pandemic is its direct confrontation with one of the most basic human rights: Freedom of Movement. To quote Hannah Arendt, "Of all the specific liberties which may come into mind when we hear the word "freedom" the "freedom of movement is historically the oldest and also the most elementary." (Arendt, 1968, p.9) [4]. But there is no doubt, that with the pandemic hitting the world, this freedom became the first one to be curtailed. And so this debate between the state's duty to ensure public health and its authority to restrict people's movement has attracted scholarship from all spectrums.

There have been those who have argued that during a public health emergency, it is absolutely justified for the state to impose travel bans and quarantine orders in order to 'protect the public' (Mareiniss, 2020). The US Supreme Court had also passed a judgment in May 2020 stating that during a public health emergency the state has the power to restrict activity to ensure the public good (South Bay United Pentecostal Church, *et al*. v. Gavin Newsom, Governor of California, *et al*., 2020). To be noted is that the state has not come to acquire this judicial go-ahead on its authority to impose restrictions in the name of public good, only with the Covid-19 pandemic. In 1905, the US Supreme Court had declared a famous verdict that, to a large extent, had set precedent for the years to follow; so much so, that it is being quoted in other judgments around Covid-19, to this date. In Jacobson v. Massachusetts (1905) [15], the court had ruled that in "every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great danger, be subjected to such restraints, to be enforced by reasonable regulations, as the safety of the general public may demand." The court went further to also affirm the wide authority that rests with the state during a health emergency and iterated that in order to ensure that the larger public is safe, the state can limit the personal liberties of the population. However, the questions remain: what constitutes the 'public good'? Does the restriction of movement lead to any substantial good that justify the restrictions? Or do the restrictions have an implicit character of exclusion?

Pandemic & Citizenship: Who Belongs?

Having brought out the debates on the restrictions on people's movement, it becomes imperative to highlight a key aspect implicit in these restrictions: the creation of a notion of 'pandemic citizen', together with an identity that leads to a distinction between citizens and non-citizens, or between residents and non-residents. As Torpey (2000) has highlighted, the idea of citizenship gets threatened when people cross borders. The monopolization by the state over the means of movements inherently creates a need to sort out "who is who" and "what is what". This phenomenon emerged loud and clear during the pandemic. The state has absolute control on who belongs and who does not, who may come and go and who may not (ibid).

In the wake of the pandemic, at certain places, travel bans were imposed based on the nationality of travellers. Drawing from Torpey's understanding, such measures reiterate a notion of 'othering'. Lutterbeck (2020) [18] writes that such travel bans create an illusion that the citizens of the state are safe and the danger to public health comes from the 'outside' and thus the 'outsiders' need to be kept out, in order to ensure the good of the citizenry. Quite clearly, this is a practice of scapegoating, essentially because, the virus doesn't discriminate based on nationality; states do. Mishra and Mishra (2010) have termed this phenomenon, 'border bias.' Blaming foreigners for the spread of the pandemic inevitably leads to the creation of a 'new "health securitization" migration rhetoric' (Chugh, 2020) [7]. This stems from discrimination and stigmatization based on the individual's nationality or place of residence. Ratna Kapur, while analyzing a postcolonial narrative of citizenship, states that citizenship operates in highly complex ways. Its purpose it both to include, while at the same time, exclude (Kapur, 2007) [16]. There have been evidences where restrictions on movement between countries have quite evidently been unequal and unfairly applied.

The Trump Administration was severely criticized for imposing an early ban on travellers from China to the United States of America (International Institute for Democracy and Electoral Assistance, 2021) [14]. This was done while travellers from Europe were freely allowed to enter. This reaction largely stemmed from branding the Covid-19 virus as a 'Chinese virus' or 'Wuhan virus', thereby leading to racist and stigmatizing effect. To cite another instance, Australia faced allegations of racism when it imposed a ban on Australians of Indian descent to come back home (Gunia, 2021) [11]. When Covid-19 cases were detected in the Greek citizens that returned from Italy, the Prime Minister of Greece, Kyriakos Mitsotakis had remarked that 'the country can no longer accept more illegal entries' (Lavelle, 2020) [17]. Following this, the Greek government announced tighter border controls so as to stop the spread of the virus. One of the key highlights of these controls was the increase in patrolling using boats around the Aegean Islands that is known to be inhabited by illegal migrants (ibid). The roots of such exclusionary policies of the new right-wing Greek government lie in the dynamics of exclusion propagated in 2019 and the escalation of tension between Greece and Turkey, particularly since the early 2020 (Heller, 2021)

[12]. Audrey Macklin (2022) [19] gives a detailed account of the intersection of the notion of borders and the extraordinary circumstances of the pandemic, in the Canadian case. When the pandemic hit and borders were sealed in Canada, such cars that carried a US license plate were looked at with suspicion and hostility. Not only this, people made calls to the Canada Border Services Agency (CBSA) in order to report suspected illicit presence of Americans on their land (ibid, p.23). The Canadian federal government, in August 2020 made a strikingly ironic announcement. It sought to provide permanent resident status to those refugee claimants that worked in the health sector and come in the direct contact with the patients (Government of Canada, 2020). The immigration minister of Canada remarked that these refugee claimants portrayed a unique quality of 'Canadian-ness' (Canadian Press, 2020) [5]. But inherent in this policy, was a huge exclusionary outlook. There are many other workers and refugee claimants in Canada that were left out in the cold. These also included those who worked in the healthcare sector like cleaners, security personnel as well those involved in food preparation (Macklin, 2022) [19]. Outside the healthcare sector were agricultural workers as well as precarious migrant workers who were not eligible for this policy of permanent residence (ibid). This policy was rooted in the notion of 'earned citizenship' and the logic of deservingness. It implied that those non-citizens that show extraordinary patriotism towards the nation maybe rewarded by offering them citizenship status (ibid, p.38). This was also the case with many European states that had closed their borders, but later made an exception for those migrant workers who could qualify as 'critical professionals' (Weisskircher, Rone and Mendes, 2020) [34].

Apart from direct exclusionary practices, as in the above cited cases, states can be seen to have engaged in another, rather, indirect exclusionary behavior. The idea of "Covid-19 immunity passports" and the announcements by the airlines to only allow travellers that have been vaccinated against the virus is worrying, particularly from the perspective of global mobility regimes, discussed earlier in this paper. Given the unequal access to vaccines around the world, the global mobility divide is bound to increase. With most countries of the Global North resorting to hoarding of vaccines and depriving the Global South of the immunity against the virus (Heller, 2021) [12], the vaccine diplomacy is a persistent challenge, for the scholars of Global Justice, not just from the perspective of the right to health but also from that of the freedom of movement.

The International Institute for Democracy and Electoral Assistance had released a publication titled, 'The Global State of Democracy 2021'. The document revealed that when many governments invoked a legal state of exception in the early days of the pandemic, they gave themselves extraordinary powers to introduce measures and policy actions in order to curb the spread of the virus and put a hold to the pandemic. But, while doing so, 59% of countries, i.e, a total of 97 countries of the world portrayed undemocratic character and used excessive force so as to enforce restrictions during the pandemic. Out of these, 54 countries were democracies. To cite an example, in Zambia, harassment and intimidation tactics were used, along with making arbitrary detentions, in order to enforce the imposed restriction on movement of people. This is simply justified by the states in the name of curbing the spread of the Covid-19 pandemic. It is ironic to note that that the same document has hailed Zambia for making continuous progress on the path of democratization. In the India case, the government of the land took advantage of the ban on any form of social gathering to launch a series of actions against the dissidents and opponents across the nation (Sarkar, 2020). This provides ground for one to rethink the state of democracies in the times a pandemic, which at the moment, is beyond the scope of this paper.

Conclusion

In the introductory paragraphs of this paper, a reference was made to the 'state of exception'. It is important to understand that any measures adopted or actions taken during exceptional times should ideally not become norm. Restrictions on movement during a pandemic therefore should be exceptional and temporary. However, the overtly regulatory character of the state as the response during the pandemic in the form of travel restrictions and bans reveals a staggering potential of the state's capacity to control the movement of the people across borders in a highly coordinated fashion (Macklin, 2022) [19]. The response mechanisms adopted by the state during the pandemic indicate the tendency of the state to use the state of exception as the new normal of the government (Agamben, 2020) [2]. A danger, thus, looms. The populist measures of the state by putting border restrictions in response to the pandemic hold the possibility to stay even after the pandemic ceases to pose danger (Danchin *et al*., 2020) [9]. As had been seen, what might be considered exceptional may in fact be a measure to further such agendas that maybe covered behind the veil of exception. Far-right leaders of the West have taken advantage of the pandemic to put a stop to immigration from the countries of the African continent. Italy is a case in point (The Guardian, 2020b) [31]. The pandemic exposed the inherent biases of the framework of citizenship and put out in open the unjustified use of monopoly on the legitimate means of movement, by the state. The paper began with Torpey's analysis of that monopoly. To conclude, it is imperative to say that in the state of exception, the state while exercising this monopoly has to a large extent gone beyond what was necessary to curb the virus. This should lead us to question the most fundamental foundations of the state and rethink those aspects of the state that, particularly as citizens, we take for granted. The pandemic has unraveled the complexities of the state and has, in fact, presented an opportunity to untangle the web of the state.

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