Novel Corona Virus and the Case of Novel Discrimination Based on ‘Feared Medical Condition’

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Abstract

Covid-19 has caused not only a worldwide health crisis but also triggered issues on social, economic, legal and political fronts in novel embodiments. Already rampant online hate-speech against migrants, foreign workers and victims of xenophobia has taken new dimensions. Since outbreak of Covid-19 outside Chinese borders, there are numerous reported incidents, which continue to take place, around the world where people of Asian descent have been targeted by hate-mongers, hurled at racial slurs and, at mild scale, refused entry into hotels and restaurants being labelled as carriers of virus – generally a phenomenon described as ‘Sinophobia’ denoting hate towards Chinese ethnicity. However, in the present case, the issue of discrimination due to fear of being infected is unique and distinct from other forms of discrimination based on race, religion, sex, ethnicity, language etc. Racial discrimination is outlawed under international conventions, notably the Convention on Elimination of Racial Discrimination (CERD), and state parties are required to undertake appropriate legislation to eliminate it. Present crisis caused by Covid-19 has triggered a novel kind of discrimination which is not anchored, strictly speaking, in religious, ethnic or racial context but is based on a Feared Medical Condition (FMC) that an individual or group infected or likely to be infected can be responsible for transmission of the virus or disease to others. The objective of present study is to examine whether this peculiar type of discrimination is covered by selected instruments of international on human rights. If so, what are states’ responsibilities in eliminating such discrimination. The research employs analytical and qualitative method, and is followed by a conclusion and recommendations.
Novel Corona Virus and the Case of Novel Discrimination Based ...

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1. **Introduction**
   On March 11, 2020, the World Health Organization declared novel the Corona Virus as a global pandemic, calling on the countries to take action more aggressively. Before outbreak of Covid-19, a Swedish medical expert, Hans Rosling, raised alarm in 2018 on five ‘global risks’ that the world should worry about. The foremost among those is a flu which could pose a challenge for world. Rosling noted, medical experts agree that a ‘nasty kind of flu is still the most dangerous threat to global health’ due to its ability to transmit through 'tiny droplets’, posing greater risk than Ebola or HIV/AIDS. The present challenges in the wake of Covid-19 fulfil the medical prophecy of Hans Rosling and his colleagues. These challenges range from health to economic and from legal to social interventions. After the Spanish Flu, which cost 50 million lives, more than the deaths in the First World War, Covid-19 has posed the most challenging threat to public health and global economy. The challenge is not only that the virus is novel, but also that it has created novel challenges on different fronts. The world economy is more globalized than it was at the time of Spanish Flu. Due to massive aviation industry, the world is more connected today than it was a century ago. Emigration, employment and traveling has brought together people of different origins and races, making the world a more multipolar place than it was in the beginning of 20th century.

Today the international and national legal environment is more human-rights-conscious than it was after the First World War. However, mixing of people from different origins has given rise to new challenges like xenophobia, discrimination, hate speech and even violence due to these impulses. The novel coronavirus has exposed the existing problem of discrimination with a new face, which wears the mask of Feared Medical Condition against an individual or a group of individuals.

2. **What is Feared Medical Condition (FMC)**
   Being a novel embodiment of discrimination, the following definition of FMC is proposed in this paper to identify how discrimination based on FMC differs from other forms triggered by racial, ethnic or religious impulses.

   “FMC is an assumption, not based on medical evidence, but on the basis of fear that a certain individual or group of individuals may carry a transmittable disease which can infect others.” The proposed definition highlights the distinguishing feature of FMC that it is not based on scientific evidence but on a presumption triggered by fear of infection. So, the discrimination based on the FMC is not triggered by religious affiliation, racial identity or ethnicity of the victims but because of their feared medical condition. Though a certain religious group, race or ethnicity as a whole may be targeted for being infected since it has happened in a number of cases around the world where a religious group or people of Asian origin became victims of the novel FMC-based discrimination when the novel Corona virus went viral.

   Certain groups of people may fear reinforced discrimination as the present virus is going viral across countries and continents. For example, those who are already victim of Sinophobia due to their Chinese ethnicity may face an even rougher form of discrimination triggered by the FMC due to their Chinese identity and coming from a country, China, where the virus first
started. Therefore, it is important to understand that on the one hand the FMC-based discrimination is novel due to its novel arbitrary distinction but at the same time it has the potential to reinforce existing forms of discrimination.

3. Discrimination Goes Viral

After breakout of Corona Virus in Wuhan province of China in November 2019 and its spread to countries beyond Chinese borders, it was assumed by certain groups and individuals that the virus was ‘Chinese’. Former President of the United States, Donald Trump, termed it as ‘Chinese Virus’ while his Secretary of State Mike Pompeo called it ‘Wuhan Virus’. Both terms, ‘Chinese Virus’ and ‘Wuhan Virus’ seem to have influenced how people with discriminatory tendencies and paranoid of infection started to perceive the people of Asian descent and the Corona Virus as if the former were the reason for the latter. In the United State and around the world people of Asian descent, especially Chinese, were targeted by the virus-vigilantes in a myriad of ways such as denial of entry into restaurants, cafes, educational institutes and harassment at public places. The blame-war between US and Chinese officials added enough fuel the fire of misconception and discrimination. Political leaders on the international stage labelled Covid-19 with ‘Chinese’ prefix and even mocked and instigated a feeling among their followers that it was to be blamed on Asians who were ultimately seen as carrier of Corona Virus. In February 2020 when the outbreak in Italy was outpacing the measures to contain it, an Italian politician and Governor of Veneto Region, Luca Zaia, made outrageous statements. In his interview with Antenna Tre channel, he accused Chinese of eating ‘live mice’ and accused them of inappropriate hygiene. Brazilian politician and education minister Abraham Weintraub received heavy criticism for terming Corona Virus as Chinese ‘plan for world domination’. These political stunts amid fear of virus among the masses added to the plight of not only Asians but also the vulnerable communities in countries where group tensions can be easily manipulated. For instance, in Malaysia there was a campaign against Rohingyas, and the government authorities conducted mass arrests of Rohingya migrants, on which, according to Voice of America, refugee protection groups have raised serious concerns. In India, Muslims in general and a Muslim group, identified as Tablighi Jamaat, in particular faced reinforced discrimination at the hands of majority groups and police. Jayshree Bajoria noted that social media platforms and WhatsApp groups were used to call for boycott of Muslims and there were physical attacks on them for the false accusation of spreading Corona Virus. Ruling Bhartiya Janata Party termed it ‘Corona Terrorism’ and a hashtag ‘Corona Jihad’ went viral on Indian social media – exposing the already vulnerable Muslim minority to more discrimination and violence. In Pakistan, members of Shia community were blamed for transporting Corona Virus from Iran where they went for visiting their holy sites. Several incidences of violence were reported in in the United States. In China Town, San Francisco, a group of teenagers vandalized a shop owned by a person of Asian origin. The image of wrecked counter at the shop went viral on Facebook and was also posted by the Human Rights Watch on its official website. These instances across borders show that inherent prejudices against and vulnerabilities of marginalized groups may wear new masks of discrimination in crisis like Covid-19. Those coming from the region or ethnicity first hit by the virus faced a discrimination for fear of their being infected with the viral disease.
In Australia, members of the Chinese group, who form around 5% of the total population in the country, have reported that they have been discriminated in access to schools and restaurants.\(^{18}\) Every fourth person who registered a complaint against racial discrimination stated that they were targeted after outbreak of Covid-19, notes the Australian Commission of Human Rights.\(^{19}\) A Hong Kong student was punched in the face on allegation of carrying coronavirus.\(^{20}\) In another case, an Indonesian woman faced racial discrimination in public place. According to an ABS News report, People of Chinese and Asian origin were publicly harassed with racial slurs and the number of cases of discrimination went higher during the first quarter of 2020 as the infection broke out in Australia.\(^{21}\)

The above reported incidents across different countries show a representative sample of the ongoing discrimination which appears anchored in the FMC of people of Asian and Chinese origin, who are facing discrimination and racial slurs at different levels, from public life to online platforms. At political level, allegations from the political leaders in US, Spain and Brazil further reinforced the prejudice against these groups. These incidents combined make a strong case for scrutiny of the FMC-based discrimination from the perspective of legal response to the pandemic along with health and social interventions to contain its impact.

### 4. Discrimination under International Law

Studies on international human rights law describe ‘discrimination’ as ‘insidious and arbitrary distinction’\(^{22}\) which goes against the principle of equality. International human rights instruments provide for elimination of all of forms of discrimination, reiterating it as a fundamental human right that the no person shall be discriminated based on their ethnicity, language, race or religion. It is important to highlight here those international instruments and conventions and the forms of discrimination sought to be eliminated by the member states.

In order to understand treatment of discrimination under international law, it is important to look into the relevant provisions of various international and regional conventions. To this end, the major international instruments and conventions will be briefly discussed below:

#### 4.1 Universal Declaration of Human Rights

International law on human rights has progressively evolved over time since Universal Declaration of Human Rights (UDHR) in 1949,\(^{23}\) which having received universal recognition is attributed character of customary international law.\(^{24}\) On the question of equality and elimination of discrimination, Article 2 of the UDHR provides the basis of anti-discrimination laws not only in later conventions and but also in the constitutions of modern states, as it reads:

> “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

[emphasis added]

It appears that the language of Article 2 prohibits all known forms of discrimination and inclusively extend its scope of prohibition to ‘other status’ which may give rise to distinction or discrimination. The concept of non-discrimination under Article 2 is further reiterated under Article 7, which guarantees as fundamental right equality before law and equal protection of law without any
Novel Corona Virus and the Case of Novel Discrimination Based ...

discrimination. In the wake of Corona virus spread across different countries, there have been various incidents of discrimination, hate speech and in some cases even physical assault to person and property of targeted groups. In backdrop of these instances, Article 12 of the UDHR may also become relevant, which inter alia provides for protection against interference to a person’s privacy, honor and reputation. In the incidents noted above, the privacy and dignity of target individuals and groups were under attack on the basis of FMC-triggered discrimination.

4.2 United Nations Convention on the Elimination of All Forms of Racial Discrimination

After the UDHR in 1948, another milestone achievement on human rights under international law was the Convention on the Elimination of All Forms of Racial Discrimination (CERD) which was adopted by the United Nations General Assembly in 1965 and came into force in 1969. The subject of the CERD is relatively more specific as it provides for protection against racial discrimination, which it defines under Article 1(1) as:

“...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

At the outset, the CERD refers to the UDHR and its stance on protection against any ‘distinction of any kind, in particular as to race, colour or national origin’.

4.3 International Covenant on Civil and Political Rights

Another major development after the UDHR was the International Covenant on Civil and Political Rights (ICCPR) which was adopted in 1966 by United Nations General Assembly and came into force in 1976. It is noted that the provisions of the ICCPR concerning discrimination mirror those of the UDHR. For instance, Article 4 of the ICCPR encompasses those forms which may provide ground for discrimination: race, colour, sex, language, religion or social origin. A member state is required under Article 4 to ensure even in cases of emergency the measures taken by the state authorities do not involve discrimination on the aforementioned grounds.

When compared with the UDHR, the ICCPR under Article 26 reflects similar concept of equal of law and safeguard against discrimination, as it provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

On a closer look, it appears that later part of Article 26 of the ICCPR enlisting grounds of discrimination is replica of the forms of discrimination stated in Article 2 of the UDHR. The ICCPR, however, reinforce the provisions of Article 26 by requiring the member states to prohibit ‘advocacy of...incitement to discrimination’ under Article 20 also.

When compared together, it is found that both the UDHR and the ICCPR as main instruments of international on human rights prohibits all possible forms of discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin,
Novel Corona Virus and the Case of Novel Discrimination Based ...

property, birth or other status. While the UDHR has attained the character of customary law, the ICCPR under Article 2(2) positively places an obligation on the member state to provide for protection against discrimination in the national legislation. This shows a consistent approach under international law on protection against any forms of discrimination.

5. Analysis
Coronavirus has changed the world and perception of people in different ways. From economy to health system and from legal framework to social settings, every aspect of global and national life has come under review for changes in policy making. Law is an important tool for intervening measures not only for enforcement of policy objectives but also for ensuring protection for the vulnerable and marginalized individuals and groups. Response to the present pandemic of Covid-19 involved interventions at various level mainly social, health and legal. On the legal side, new laws have been enacted in different countries for dealing with the health, economic and enforcement crises triggered by the Corona virus. For instance, in the United Kingdom, the Coronavirus Act 2020 was legislated, which was followed by a number of Regulations that were made to provide for legal basis and frame for the intervening and preventive measures. In the United States, the Families First Coronavirus Response Act of 2020 and lately the American Rescue Plan Act of 2021 can be quoted as examples legal interventions to mitigate the risks of Covid-19.

The issue of discrimination under the legal response strategies is as important as the measures providing for economic or employment related reliefs. It can be seen that under the international law there is already prohibition of discrimination on grounds of ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ However, the FMC as a ground for discrimination is not expressly provided in any international convention, though with an inclusive interpretation it can be argued that the use of words ‘other status’ in Article 2 of the UDHR and Article 26 of the ICCPR can include the case of FMC-based discrimination.

6. Conclusion
Since the of discrimination against people of Asian origin and certain marginalized and minority groups has been unprecedented after outbreak of Covid-19, it is important that the matter of discrimination on grounds of Feared Medical Condition should not be left to interpretation by any member state. It should be provided within these international law instruments that discrimination on the basis of FMC is equally prohibited like any other grounds of discrimination. If that is provided within Article 2 of the UDHR or at least under the provisions of Article 26 of the ICCPR, then the member states to the ICCPR.

At national level, the state parties to the ICCPR and the CERD should ensure that the legislation in their respective jurisdictions appropriately cover the aspect of FMC-based discrimination. It is not only the case of Covid-19 that can trigger such discrimination. In fact, the concept of FMC extends to any feared medical condition which may be cause for discrimination against a person or a group. Therefore, already existing framework of constitutional protections and the legislation at national level should also provide for safeguard against this novel kind of discrimination which is not covered by the legal spectrum of discrimination on grounds of religion, race, ethnicity, language or origin.
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3. Ibid., p. 238.
5. Rosling, Factfulness, p. 238.


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