In our second blog post on the impact of the COVID-19 pandemic on human rights and transitional justice Abhilasha Ramakrishnan, Assistant Lecturer at O.P. Jindal Global University, argues that State agents’ practices of publicly shaming COVID-19 rule transgressors violates core human rights principles.

As countries await with bated breath for a vaccine to put an end to the COVID-19 pandemic, another epidemic is on the rise: the use of public humiliation as a misguided tool to enforce compliance with COVID-19 orders. There have been several incidents in countries like India, South Africa, the Philippines...
and Indonesia, of policemen and other State agents resorting to publicly shaming transgressors for violating stay-at-home orders, not wearing masks and not following social distancing protocols. The rule-breakers are made to do sit-ups and push-ups, to crawl on the street, and to wear humiliating placards and signs. One can even find several such videos on the internet, uploaded by the authorities themselves, of transgressors being subjected to humiliating punishment as “atonement” for their acts.

There is no doubt that adherence to State-imposed orders and guidelines aimed at preventing and curbing the spread of COVID-19 is absolutely crucial. Strict penalties for the blatant violation of stay-at-home orders or self-isolation protocols enforced by due process of law are essential during these times. However, in the process of enforcing such rules, it is just as crucial to ensure that a core foundation of a modern democratic society – the realization and protection of human rights – is not foregone.

The right against degrading treatment or punishment

All people have a right to not be subjected to degrading punishment. The prohibition against ill-treatment and degrading punishment is clearly spelled out under three international human rights instruments: The Universal Declaration of Human Rights (Article 5), the International Covenant on Civil and Political Rights (ICCPR) (Article 7) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (Article 16).

The prohibition against degrading treatment or punishment and the right to be free from such acts is absolute and non-derogable (Committee against Torture, General Comment No. 2). Therefore, a State cannot impose ‘reasonable restrictions’ or cite ‘permissible exceptions’ to this right. This includes the ‘public health’ exception which is available under several other (qualified) rights. For example, the right to movement may be reasonably restricted by stay-at-home orders and curfews for safeguarding public health. However, there cannot be any justification for State-inflicted degrading punishment under any circumstance. The act of subjecting people to ridicule by forcing them to debase themselves in public should not be excused, irrespective of the motive behind it. Even a well-intentioned act aimed at curbing the spread of an infectious disease cannot be morally or legally vindicated if it has the effect of diminishing one’s human dignity.

Unlike ‘torture’, there is no universally recognized definition of the term ‘degrading treatment’. In the broadest sense, degrading treatment involves a lower degree of severity as compared to that of torture or cruel or inhuman treatment. The term has been interpreted by human rights courts on several occasions – mostly notably by the European Court of Human Rights, which has in the past recognized that:

1. The right against degrading treatment may be violated even if the State does not intend to humiliate or degrade the victim, but where this is the result nonetheless [Grori v. Albania (Application no. 25336/04), para 125].
2. An act may be regarded as degrading if it arouses feelings of fear, anguish and inferiority and is capable of humiliating and debasing an individual, or shows a lack of respect for, or diminishes the human dignity
[Ireland v. United Kingdom (5310/71), para 167; Pretty v. United Kingdom (Application no. 2346/02), para 52].

3. For it to amount to ‘degrading treatment’, the humiliation involved must go beyond the inevitable element of humiliation resulting from legitimate treatment or punishment [Soering v. the United Kingdom (Application no. 14038/88), para 100 (ECtHR)].

Admittedly, what constitutes ‘degrading treatment’ in a constantly evolving world would essentially have to be examined on a case-by-case basis. However, the act of being forced to debase oneself in public by crawling, begging, squatting, or chanting as punishment (and one which has not been meted out by due process of law) may well be regarded as ‘degrading’ when committed in a modern democratic society. It is a different argument entirely that public shaming may not be as good a deterrent as people expect it to be. Furthermore, the subsequent ‘online shaming’ of such persons who are captured on video humiliating themselves is a whole other can of worms. Not only would this amount to a violation of one’s privacy (Laidlaw, 2017), but such acts may well detrimentally impact the victim’s personal and professional lives, and well as their mental well-being.

What must States do?

The ICCPR and the UNCAT require States Parties to prevent acts of degrading treatment or punishment within their jurisdictions. Essentially, States have a three-fold obligation: to prohibit acts of ill-treatment and degrading treatment (UNCAT, Article 10), to prevent and refrain from committing such acts (UNCAT, Article 16), and to investigate the occurrences and provide adequate redressal (UNCAT, Articles 12, 13). Generally, the right against torture and ill-treatment is only available against acts committed by public officials (UNCAT, Article 16). But such a protection may also be extended against the acts of private parties by invoking the ‘positive obligations’ of States.

However, such obligations become diluted against countries that have not ratified the UNCAT (for example, India). In such cases, it is not enough for States to simply ‘denounce’ such degrading acts committed by its officials – rather, States must take active steps (in the form of investigation, prosecution and redressal) to ensure that history is not repeated. For the most part, countries which have been accused of perpetrating human rights violations by meting out degrading punishments under the guise of combatting COVID-19 have responded with silence – and in some cases, the individual offenders have been admonished or suspended at best. Granted, the instances of people being forced by policemen and State officials to humiliate themselves in public as penance may be scattered and isolated. However, while it is possible to recite the infamous ‘some bad apples’ excuse, such deplorable occurrences must nonetheless be addressed at a national level. A State’s inaction in addressing degrading acts committed by its agents may well amount to complicity and a clear disregard of its commitments towards the protection of basic human rights. As such, one may reasonably foresee a slew of human rights claims against the offending States before national and international bodies in the post-COVID world.
Recently, the world has also seen several instances of people being subjected to physical abuse and brutality by policemen and other security forces for violating COVID-19 orders. Such acts must be strictly condemned, and perpetrator accountability must be actively pursued. If left unaddressed, we run the risk of severely undermining human rights and to an extent, civilization itself. In these difficult times when countries around the world turn towards each other for support, States must recognize the widespread human rights implications of their actions – and inactions – towards injustice.

As we enter yet another week of this pandemic with seemingly no end in sight, we must remember now more than ever to mutually respect one another and stand unified (but six feet apart) against the invisible enemy. A global pandemic is not an excuse to ignore human rights, to act in fits of rage, or to take the law into one’s own hands.

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