Website: http: jebhpme.ssu.ac.ir
EBHPME 2020; 4(3): 150-3 pISSN: 2538-5070

EBHPME

LETTER TO EDITOR

Evidence Based Health Policy, Management & Economics
Health Policy Research Center, Shahid Sadoughi University of Medical Sciences

Legal Aspects of the Pandemic Covid19: Obligations and Duties of Government

Gholamreza Zakersalehi

Institute for Research and Planning in Higher Education, Tehran, Iran

ARTICLE INFO

Article History:
Received: 1 Jun 2020
Revised: 30 Jul 2020
Accepted: 28 Aug 2020

***Corresponding Author:**
Gholamreza Zakersalehi
Institute for Research and Planning in Higher Education, Tehran, Iran.

Email:
Rsalehi514@gmail.com

Tel:
+98-9128337791

Citation

This paper should be cited as: Zakersalehi Gh. **Legal Aspects of the Pandemic Covid19: Obligations and Duties of Government.** Evidence Based Health Policy, Management & Economics. 2020; 4(3):150-3.

Dear editor

Recently, the coronavirus (covid19) outbreak has become pandemic which raised and highlighted many hygienic, managerial, economic and cultural arguments, however, with regard to legal arguments there has been little considerations. The purpose of this article is to explain the new legal conditions created by the crisis of Covid-19 in the legal system, (especially regarding the obligations and duties of governments). In this article the author tries to shed more lights on legal arguments:

1) This outbreak once again necessitates the importance of the “Right to health”. This right is mentioned both in Human Rights Declaration and the International Covenant on Economic, Social and Cultural Rights, article twelve (1). It entails rights like: Having drinkable and clean water, nutritious and enough food, enjoying a good public health, care and basic hygienic and treatment services and supports, health insurance, accessibility to essential medicine. Right to health is placed in the second generation of human rights resolution but it is closely related to the right to life and hence relevant to the first generation. On the other hand, this right is closely related to the right to healthy environment, we can conclude that it is also relevant to the third generation of human rights. All human beings must enjoy such right everywhere, anytime without any restrictions. In order to provide the opportunity for people to have these rights, "governments are under obligation of means" to provide the necessary means and pool all their resources to uphold that right (2).

2) Another vital and serious duty for all

Copyright: ©2020 The Author(s); Published by ShahidSadoughi University of Medical Sciences. This is an open-access article distributed under the terms of the Creative Commons Attribution License (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

[Downloaded from jebhpme.ssu.ac.ir on 2026-11-21]

[DOI: 10.18502/jebhpme.v4i3.4159]

governments is "healthcare providing". In the constitutions of many countries, having the right to enjoy proper welfare and health service are regarded as a public right. (For example, the Article 21 and 43 in Iran's Constitution, Article 21 in Greek's Constitution and article 34 in Korea's Constitution).

The Article 36 in Korea's Constitution says: The government attempts to prevent disasters and protect the citizens from the likely damages caused by disasters (3).

3) In pandemic situations, all the international organizations and countries must come to the victim's aid. In pandemic conditions all the countries must co-operate closely to overcome the disaster, they should work on exchanging information and experiences or provide medical and medicinal help to each other. The host country should call for help and accept any humanitarian help offered by the world community.

States, due to their sovereignty, have the obligation to protect the people living in their territory and assist them during natural disasters. The reality, however, is that all States have not sufficient and necessary power to assist their citizens. Therefore, in many cases humanitarian assistance without the cooperation of other states and international organizations is impossible. International Law Commission, for the importance of this issue, has studied on this subject for some years and finally provided a draft article and sending it to the general assembly. Under ILC draft affected state has obligation to make available humanitarian assistance for its own people and its consent is the essential element for receiving humanitarian assistance, although the affected state has no right to object to the assistance arbitrarily (4).

4) We should welcome social, medical, logistics supports offered by NGOs as long as it is not regarded as interfering in the therapeutic and medical procedures.

Article 9 (paragraph z) of the Iranian Crisis Management Law stipulates that the government is obliged to develop the participation of NGOs in crisis management and to use their potential (5).

5) Governments' duties and actions are varied and include: immunization and vaccination of vulnerable people, educating people, helping to improve the nutrition, keep sick people and the ones in contact with them in quarantine, providing and preparing medical facilities and etc., …

6) Medical care should be provided in a way that the patient has the right to choose the method. If there is any supplementary medicine or alternative cure process, the government should value the patient's right to choose (2,6,7) unless it helps the severe outbreak.

7) The main duty of the state authorities and managers before the crisis is to predict and warn, during crisis their duty is being present at the scene and provide reliable and precise information and reports to their higher-ups along with engaging in swift and necessary acts which they deem essential to tackle the crisis. After the crisis, they should help to find out the reasons behind the disaster and volatile situations caused by it to avoid such incidents in the future.

8) If a patient is diagnosed with Covid19, reporting the case should be in an urgent priority. Notifiable diseases are those which their occurrence is so important that must be reported through telephone, fax, or letter to medical authorities so they have to immediately record this case and report it to higher authorities.

9) During disastrous situations, governments set some limits for the people like quarantine or limited commuting. The origin of these restrictions and laws are government cabinet or a decree. In these dipterous situations, The Decree will replace the usual rules and regulations and must be obeyed and enforced. It is noteworthy to say that the restrictions must be for the betterment of the people and it must be temporary.

According to Article 79 of the Iran Constitution, although the establishment of martial law is prohibited, in the event of a war or emergency, the government has the right to impose restrictions temporarily. Imposing restriction should be with the approval of the Islamic Consultative Assembly and its duration cannot be more than thirty days. If the urgency persists, the government is obliged to obtain permission from the parliament again (8).

[Downloaded from jebhpme.ssu.ac.ir on 2026-11-21]

[DOI: 10.18502/jebhpme.v4i3.4159]

10) In many countries and based on their Constitutions, in time of such disastrous situations the Government can use the army and their facilities to help people. So, using these facilities is not just a good advice but a duty and a must (8).

11) After the crisis, there can be fact finding investigations to find out any probable negligence or recklessness by authorities or responsible agents. In cases related to executive organizations, people can sue in administrative courts and demand compensation. (Article 173 Iran constitution)Public courts of Law will take care of nongovernmental cases, that administrative authorities are not involved.

12) For suing authorities who neglected their duties towards people and the society in international law forums, the UN in May 5, 2013 amended a protocol to human rights social laws that makes it possible for people to pursue their complaint in international commissions, however many countries have not adopted this additional protocol yet.

13) At time of crisis, there will be changes to contracts between legal persons for example terminating the contracts of the employees by the employer based on force majeure (unforeseeable circumstances that prevent fulfilling a contract). In such situations, the government must act as a mediator, stabilizer or even assume a compensatory role to ease the situation, provide unemployment insurance or offer the employers to keep their employees in exchange for receiving special aids by the government.

Bayat believes that sometimes the crisis - covid-19 crisis - does not make the fulfillment of obligation impossible, make it difficult.

In some legal systems, alongside the force majeure debate, the issue of hardship is raised. This means that obligation is difficult but possible. In the framework of Iranian legal system, this issue has not been fully introduced and has no general rules (9).

Bayat (9) states that an issue in order to be a force majeure, three characteristics should be existed together:

1- Externality: This means being outside the will of the committed parties. In other words, an accident has occurred and has nothing to do with the parties (seller, contractor, etc.).

2- Unpredictability: This means that an ordinary human being in that area cannot predict it. In fact, it is unpredictable.

3- Irresistibility: This means that the committed party cannot fulfill his obligation due to the existing circumstance and the fulfillment of the obligation becomes impossible, so that it cannot be done in any other way.

Therefore, it is not possible to issue a general verdict on the force majeure of the Corona crisis. Rather, it should be considered whether Corona has impeded your commitment or not (9).

According to Article 9 of the Iranian Civil Code, the treaties concluded by the government with other states are binding (in accordance with the law) (10). Therefore, all international conventions signed by Iran and containing requirements for the right to health are binding.

The government must mobilize all its potentials and accept the assistance of other governments and NGOs, except in very rare cases. Regarding the introduce of any restrictions on traffic and business, the government should consider two important factors: 1- It is in the public interest. 2- It is temporary and not permanent.

Regarding the contract between the employer and the employee, the force majeure rule should not lead to the permanent dismissal of workers due to the crisis conditions.

At the same time, the interests of employers who are the cornerstone of economic production should also be taken into account. Here the government can maintain a balance.

References

1. International Covenant on Economic, Social and Cultural Rights. 1966. Available from URL: https://treaties. un. org/doc/ Treaties/ 1976/ 01/19760103%2009-57%20PM/Ch_IV_03.pdf.
2. Zakersalehi G. Study on the Legal Status of Traditional and Complementary Medicine and the Challenges Ahead in Iran. Iran J Med Law. 2017; 10(39): 101-20.

[Downloaded from jebhpme.ssu.ac.ir on 2026-11-21]

[DOI: 10.18502/jebhpme.v4i3.4159]

3. The Constitution of the Republic of Korea. 1987. Available from URL: https:// www. wipo. int/ edocs/ lexdocs/ laws/ en/ kr/kr061en. pdf.
4. Heath J. Benton ,“Disaster, relief and neglect: the duty to accept humanitarian assistance and the work of the International Law Commission”. Int Law Politics. 2011; 43: 419-77.
5. Iranian Crisis Management Law. 2019. [In Persian]. Available from URL: http://www.rrk.ir/ Laws/ShowLaw.aspx?Code=18237.
6. WHO Traditional medicine strategy 2002-2005. Geneva; 2002. Available from URL: http:// apps. who.int/ medicinedocs/ en/ d/ Js2297e/. Last Access: March 21, 2016. P.1-3, 43-47.
7. Patient’s Rights Charter in Iran. 2009. [In Persian] Available from URL: http://healthcode. behdasht. gov.ir/approvals/.
8. Iran constitution.1989. Tehran [In Persian] Available from URL: https://rc.majlis.ir/fa/ content/ iran_constitution.
9. Bayat F. webinar business development and legal challenges in coronaviros crisis .2020. [In Persian] Available from URL: https:// utstpark. ir/ webinar- coronavirus- legal- challenge- business/
10. Iran civil code, Majd press. Tehran. 1934. [In Persian]

[Downloaded from jebhpme.ssu.ac.ir on 2026-11-21]

[DOI: 10.18502/jebhpme.v4i3.4159]