

The extent of government intervention in the public health system and individual freedoms during the Covid-19 pandemic: a theoretical analysis

Vahid Moazzen¹, Ehsan Shamsi Gooshki*²

1. Visiting Professor, Department of Public and International Law, Law Faculty, Farabi Campus, University of Tehran, Tehran, Iran.

2. Associate Professor, Medical Ethics and History of Medicine Research Center, Tehran University of Medical Sciences, Tehran, Iran; Associate Professor, Medical Ethics Department, School of Medicine, Tehran University of Medical Sciences, Tehran, Iran; Lecturer, Monash Bioethics Center, Monash University, Melbourne, Australia.

Abstract

The concept of individual freedom has complex and multifaceted dimensions that significantly affect the limits of permissible government interventions aimed at restricting such freedoms and maintaining public health. Therefore, the boundary between individual freedom and the social obligations of the government must be carefully clarified. During the Covid-19 pandemic, the need for such clarifications clearly increased. This study intended to investigate the concept of freedom according to major theories and to observe their application in analyzing the relations between individuals and the government in the health system, particularly during public health emergencies.

The findings revealed that “justice-based”, “development-based” and “accountability-based” conceptions of freedom provide a more appropriate rationale for implementation of public health restrictive measures by health authorities during infectious disease outbreaks including pandemics such as COVID-19.

Even in minimal governments that are built upon a free-market system and unrestricted conception of individuals’ freedom, such public health interventions are justifiable in the light of the ‘Catastrophic Moral Horror’ where there is an extreme risk to the health of citizens.

Keywords: Covid-19; Individual freedom; Government intervention; Public health measures.

**Corresponding Author*

Ehsan Shamsi Gooshki

Address: No. 23, 16 Azar St., Keshavarz Blvd., Tehran, Iran.

Postal Code: 1417863181

Tel: (+98) 21 66 41 96 61

Email: shamsi@tums.ac.ir

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Introduction

The COVID-19 pandemic has fueled the long-lasting debate around the classic conflict between individuals' freedom and the public good. According to WHO's Coronavirus Dashboard, this pandemic caused the illness of nearly 765 million and the death of nearly 6.9 million people worldwide in the span of more than 3 years, from January 2020 (the official announcement of the beginning of the pandemic) to May 2023 (the official date of its termination). However, it can safely be assumed that the real numbers of infection and death cases were even higher. There has long been a deep alignment of speech and appreciation of the high status of freedom among various philosophers and systems of thought. As Aristotle put it, "Flourishing and capacity are clearly in connection with the quality of life and major human freedoms" (1). In this interpretation of the concept of freedom, individual role-playing and social arrangements strongly complement each other, indicating the need for clarifying the boundary between individual freedoms and social obligations. This translates into avoiding the use of pretexts such as protecting individual freedoms that restrict others' freedom, or exercising authority in a negative manner, for instance by violating the

fundamental rights and freedoms of citizens. Citizens not only need a government that respects individual rights and provides them with the necessary and legal protection against aggression and the risk of being violated, but in some circumstances, they also need to be protected against government intervention (2). Threats to public health such as infectious disease outbreaks shed light on this dual role of governments in protecting or interfering with citizens' fundamental rights. The level of social freedom in a particular context is another significant factor in such situations. While individuals' fundamental rights are always an essential part of such discussions in public health areas in some biopolitical systems, such considerations are not seriously taken into account in other political contexts. Also, there is no doubt that in addition to personal consequences, an individual's health-care choices have social ramifications as well (3).

Therefore, addressing the scope of government competencies in providing or protecting public services such as health on the one hand and putting restrictions on some rights and fundamental freedoms of citizens on the other could be the central focus of the Constitution; the reason is that

both theories of *'the necessity of protecting freedom as an ultimate value'* and *'the inevitability of restricting freedoms through the actions of state guardian measures'* have their own justifications. The natural human right to freedom supports the principle of non-intervention. In contrast, there are many reasons that support government intervention in the health sector and limiting the freedoms of individuals, for instance reducing social inequalities by interfering with the free market system or imposing travel bans or lockdowns in order to decrease the social transmission of viruses in cases such as the COVID-19 pandemic (4). Therefore, establishing a balance between these two tasks of the government (i.e., respect for the fundamental rights and freedoms of citizens while ensuring the right to health for the public) is of crucial importance. On the other hand, besides the fact that assumptions have a major effect on the discussions about government intervention in each area, the nature of the government should be considered (e.g., democratic, modern, and legitimate); this is mainly because measures taken by, for instance, a legitimate government are more likely to be perceived as justified by citizens than those imposed by a non-democratic political system (5).

The subject of this research is also related to the biopolitics theory of Michel Foucault. Indeed, one of the effects of the COVID-19 pandemic has been to bring the notion of "biopolitics" borrowed from Michel Foucault back to the forefront of the discussions, since the recent pandemic led to an unprecedented expansion of all forms of government interventions and obligations. According to Foucault's conception of biopolitics, killing is no longer considered the utmost realization of power, but totalizing the body is. The former power exercised through infliction of death and symbolized by the power of the ruler is entirely replaced with 'totalizing subjects' and 'discipline', and by mentioning issues such as birth, longevity, public health, housing and immigration in the political and economic domains. In this regard, political powers have developed various techniques to totalize bodies and control individuals and communities (6). Accordingly, this study intends to analyze the relationship between individual freedoms and government authority, as the representative of the collective interest, in the health system, and examine its effect on the realization of social justice, which has grown in importance since the onset of the Covid-19 pandemic.

Methods

The current study adopted a descriptive-analytical approach using several relevant theories that are somehow generalizable to the field of health and can be considered a prominent representative of different schools of thought. This method involved investigation of various interpretations of the concept of freedom in the fields of health, welfare and social justice, including those offered by Amartya Kumar Sen, John Rawls, and Robert Nozick. The main purpose of this article was to examine the level of intervention of governments, the concept of freedom, and its relationship with the surrounding environment; it also aimed to clarify the boundaries of freedom and regulate the relations between the government and the individual in the health system during public health emergencies such as infectious disease outbreaks.

Results

Governments are responsible for ensuring ‘the right to freedom’ and ‘the right to enjoy the highest attainable level of health’. This has also been emphasized in various international documents, including the WHO Constitution (1946), and the General Comment No.14 on ‘The right to the highest attainable standard of health’ (2000). In cases such as increasing the taxes on goods like

cigarettes and alcoholic or non-alcoholic high-sugar drinks, or imposing restrictive measures such as lockdowns, travel bans, physical distancing, obligatory vaccination and issuance of vaccine certificates during infectious disease outbreaks, it is not possible for governments to ensure the highest level of both of these rights. The reason is that ensuring the right to health as a collective good and a basic human right often necessitates governmental paternalistic measures to limit the freedom of citizens, which is highlighted in human rights documents as another fundamental value with a high status. Both health and freedom hold an increasingly significant place in modern societies and are constantly expanding in scope. The dominant understanding of freedom is moving from the concept of negative freedom toward that of positive freedom, which particularly strengthens individuals’ interests in governments’ interventions. At the same time, the general understanding of health is shifting toward a broader sense to include various aspects of human life. Interestingly, in new theories of health such as Nussbaum and Powers and Faden who emphasize various aspects of human “capabilities” or “well-being”, freedom is considered a basic property of health and is essential for a just health system (7, 8).

Freedom and Management of Health Systems during Infectious Disease Outbreaks

Freedom by itself is desirable for humans and has always been praised as one of the most important and highest human values (9). According to Kant, an order or rule has moral value only if it is rooted in free will and has been determined by virtue of sound nature (5). It is noteworthy that among the various types of freedom, there is a class called ‘instrumental freedoms’. These types of freedoms directly enhance people's capabilities, complement each other, and can reinforce one other. Without being the primary goal of development, these freedoms are regarded as the main tool of development and help people to live as they wish. Freedom is an essential factor for conceptualizing the perspectives, visions and goals of development. In addition, moral and legal issues are closely related to cultural and philosophical paradigms in any society (10). For this reason, paying attention to the concept of freedom in various countries can indicate the perceptions and functions of governments. One of the most obvious areas is explanation of the limits of the guardianship actions of governments and the fundamental rights and freedoms of citizens. In his book *Development as Freedom (1999)*, Amartya Kumar Sen focuses on drawing a relationship between freedom and

development based on individual responsibility. John Rawls, on the other hand, defends and promotes the theory of the “Welfare State” relying on social justice in his book, *A Theory of Justice (1971)*, while Robert Nozick supports a minimal state in *Anarchy, State, and Utopia (1974)*. Freedom and its interactions with the environment have provided a way that can be helpful in explaining the limits of freedoms and regulating the relationship between the government and the individual in the health system.

It is essential that public health authorities take the concept of freedom into consideration when responding to a public health emergency that calls for restrictive measures such as lockdowns, travel bans, obligatory vaccination, obligatory testing, mask-wearing or physical distancing. This issue is even more significant when such interventions are discussed in socio-political context with a prominent level of government intervention in the daily life of citizens. In such situations, there is a higher risk of neglecting the value of freedom when discussing restrictive measures to be implemented to control the spread of infectious disease outbreaks. It is crucial to consider the value of freedom in such situations since health-care authorities and professionals, regardless of their political affiliation and philosophical interests, are

naturally more concerned about the physical health of people and the number of infected, hospitalized or dead people due to diseases. As a result, they have the tendency to be less sensitive about other aspects of human life that could be seriously impacted by imposing restrictions, for instance the effects of isolation on citizens' mental health or the effect of school closure on the future of children. This position of health-care professionals is understandable since they are in direct contact with seriously ill and even dying patients. To ensure balanced decision-making, it is recommended that people with social and philosophical perspectives be included in the policymaking process and representatives of civil society be given chairs at the table.

Discussion

Development-Based and Accountability-Based Freedom

This interpretation of the concept of freedom was proposed by Amartya Kumar Sen, who believes that the relationship between freedom and responsibility is a two-way communication; in other words, accountability depends on freedom, and freedom is a necessary and sufficient condition for responsibility (1). He believes that the natural differences among people must be considered as

they affect the quality of life they expect. Unlike John Rawls who sets the standard for basic social products, Amartya Sen introduces a criterion called the "capability approach" (11). Two meanings emerge from the concept of responsibility in Amartya Sen's theory. In the first sense, a person is considered responsible for a particular action, and the correctness or badness of his/her action is judged based on this responsibility. Thus, responsibility has a moral and legal aspect that can be attributed to the agent. In the second sense, a person acts responsibly when he/she is aware of the importance of acting in a particular context and knows that his/her behavior will have consequences, even if he/she never knows what those consequences will be. In this sense, responsibility is "the ability to respond" to a situation rather than "react" to that situation (12). In the capability approach, freedom is the focus, and development is nothing but an increase of fundamental human freedoms (7). In order to examine the application of Amartya Sen's theory in creating a balance between individuals' right to health choices and the government's duty to provide public health services, certain aspects of his theory will be mentioned below. While basing freedom on the development process, Amartya Sen believes that

individuals are committed and responsible for their health choices toward the society, and that imposition of restrictions over the health choice freedoms of individuals by the collective wisdom (government) in its own exclusive way is possible and legitimate. He argues that a theory of justice must be based on a general and rational agreement, and therefore justice can be achieved in the society through collective reasoning rather than individual decisions, which are often made based on anger and personal desire (13).

As mentioned earlier, inclusion of civil society representatives and non-medical experts and humanities thinkers in the decision-making process is essential for reaching a more balanced decision through a broader outlook on the concept of freedom. The significance of including different stakeholders and social groups in policymaking regarding restrictive measures during public health emergencies such as the COVID-19 is further highlighted by Amartya Sen's formulation for freedom, which includes concepts of accountability and collective reasoning.

A World Health Organization policy brief on good ethical governance of the health system during the COVID-19 pandemic also emphasizes the importance of procedural principles of transparency, accountability and

inclusion/participation while considering the substantial values of well-being, respect, equity and solidarity (14). In this regard, transparency and inclusion of the public in discussions about public health measures are basic requirements for holding the members of the society accountable for their health-related choices. In addition, it could be argued that the lowest possible level of obligation would be the most effective way to maintain this accountability in a developed society. In the absence of real participation of citizens in the policy-making process, a desirable outcome cannot be achieved through implementation of public health restrictive measures. In addition, providing the highest level of freedom for the citizens makes it possible to hold them accountable.

Freedom with Minimal Government Intervention

According to libertarian thinkers such as Robert Nozick, the government is absolutely barred from entering the realm of economic redistribution in any form and under any circumstances, and government intervention is legitimate only when social self-regulatory mechanisms are insufficient or ineffective (15).

Nozick's entitlement theory of justice has been formed based on the principle that the distribution of wealth, income and assets is only fair if everyone in the society is entitled to their assets (16). In fact,

unlike Rawls, Nozick believes that humans should be able to enjoy all the natural benefits and pleasures of life without restriction (17). An examination of Nozick's views on the concepts of government and freedom produces no suitable basis for supporting the patriarchal government in the area of health, except in the case of 'Catastrophic Moral Horror' as the only part of his theory that emphasizes the importance of the government's role in the health system. According to Nozick's theory, the entitlement people gain through exercising their rights cannot be underestimated because of the consequences; however, these consequences may be unpleasant. He believes the only exception to be 'Catastrophic Moral Horror'. According to this view, in some cases, excessive sanctification of authoritarian rights can lead to deprivation of fundamental freedoms that are necessary for people to achieve their valuable aspirations such as escaping death, proper nutrition, maintaining health, etc. (16). Thus, in Nozick's theory, the only area that discusses serious moral horrors has the potential to be used as a basis for supporting the guardianship of governments in restricting the rights and freedoms of citizens in the health system.

It could be argued that even within theories that strongly emphasize individual freedom and allow

only minimal government intervention, restricting individuals' freedom could be justified when catastrophic consequences are expected, although such restrictions are saved for truly catastrophic situations. The way that one liberal government or political system defines and interprets a "catastrophic" situation would be crucial in this regard. In addition, risk evaluation is a core point in determining catastrophic situations, and therefore experimental and scientific evidence plays a vital role in such discussions. Reliance on scientific evidence is important in all discussions about imposing restrictive public health measures on the daily procedures of affected communities, but when the only reason for implementing such measures is to avoid a catastrophe, evidence-based decision-making becomes even more important. Certain periods during the COVID-19 pandemic when the risk of collapse of the health-care system was high are examples of catastrophic situations with devastating consequences. As a result even health-care systems within libertarian contexts would find theoretical ground to impose some restrictions to control infectious disease outbreaks or similar public health emergencies.

Justice-Oriented Freedom

John Rawls' "Theory of Justice" is tied to the concept of "fairness". In Rawls' view, the quality

of human life is primarily influenced by societies' political, social and economic institutions (18). This provides the grounds for imposing restrictions on the achievements of better-off individuals and allowing people with poorer public and social assistance to be eligible for assistance. For this reason, governments must be able to guarantee a decent life for every citizen while exercising minimal force and coercion (19).

Although Rawls' theory does not directly address the subject of health, some interpretations of his theory (20) provide a good theoretical basis for assessing social health inequalities and for treating health as an important precondition for social equity. He sees the focus on health differently based on the indirect mechanisms of the basic social institutions that cause health inequalities (21). According to this view, premature death, illness, disability and a reduction in people's normal functioning limit the range of opportunities available to them for a decent life plan (22). Therefore, the establishment of a universal public insurance system is among the duties of the government (23).

It seems that Rawls' theory of health justice, later expanded by his followers (mainly Norman Daniels), provides a better ground for government intervention in times of infectious disease

outbreaks. The reason is that these theorists believe citizens to be normally healthy and perfect, and since a great deal of suffering often accompanies accidents and illnesses, community intervention may be needed to restore the health of individuals by providing medical services (24). This theory could be interpreted in a way that implementation of restrictive public health measures limiting individuals' freedom might be justified in protecting the people. Such restrictive measures could be considered as a kind of health service to minimize the effect of public health emergencies on the general population.

Conclusion

This study aimed to determine how various theories of individual freedom could be interpreted in the time of public health emergencies such as the COVID-19 pandemic, when health policymakers face the dilemma of restricting individual freedom on one hand and protecting the health of the public on the other. According to the findings, despite the fundamental differences in the foundations of theories on individual freedom represented by famous thinkers such as Rawls, Nozick and Amartya Sen, the intervention of government and social justice could be justified. Such interventions may include mandatory testing, mask-wearing,

vaccination, school closure, lockdowns, travel bans and restrictions, mandating vaccine certificates for social movement and travel, quarantine and isolation. It appears that even minimal governments can justify such interventions when faced with extreme risks to the health of citizens.

Emphasizing collective and social values, the interdependence of individuals, and a positive perception of freedom, Rawls and Amartya Sen consider man to be inherently a social being whose rights and freedoms are not independent of the government. According to them, governments can and should, through the law and the means at their disposal, provide the foundations for the freedom of individuals to grow and increase their ability to pursue their goals. In addition, providing the highest level of freedom for citizens makes it possible to hold them accountable.

Therefore, our findings showed that the substantive and procedural principles introduced for ethical governance of pandemic response could be aligned with the two theories mentioned above. The findings revealed that “justice-based”,

“development-based” and “accountability-based” conceptions of freedom provide a more appropriate rationale for implementation of restrictive measures by health authorities during infectious disease outbreaks including pandemics such as COVID-19. Thus, even in minimal governments that are built upon a free-market system and unrestricted conception of individual freedoms, such public health interventions are justifiable in the light of the ‘Catastrophic Moral Horror’ concept where there is an extreme risk to the health of citizens.

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Conflict of Interests

The authors report there are no competing interests to declare.

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