

JUDICIARY: PROTECTING THE RIGHTS OF THE CITIZEN DURING COVID 19 PANDEMIC

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Abstract:

We all know that the whole world is going through the Covid 19 pandemic. The pandemic world had not seen in the last 100 years. The medical facilities of developed countries are crumbled up, even they are not able to cope up with this situation. So the situation of developing countries like India and its citizen needs some special support system to have faith to get over this situation. The medical facilities are not equipped for taking this huge load of patients and only fewer getting the proper medical facility reflects the inaction taken by the government. It is clear that the legislature has not learned any lesson from the first wave of the pandemic. This less than required medical facility has taken the rights of citizens; the ill-preparedness of the government has taken fundamental rights of the citizen. Seeing the plight of the citizen the judiciary had to step in. the different high Courts and the Supreme Court took cognizance of so many matters including suo moto matter to protect and secure the rights of its citizens. The government may have overlooked some important point while combating the pandemic, at that place the courts have given instructions to the legislature so that no citizen suffers. This article puts lights upon few case laws and instructions given by the judiciary to protect the basic rights i.e. Right to Live and Right to equality from getting abrogated by the legislature. The judiciary was criticised and made accused of overstepping into the jurisdiction, but the court must keep a check on the action of the other two important organs of the Indian Constitution.

Introduction

The world is battling a pandemic never seen in 100 years. A lot has changed in the last 100 years. India has become an independent nation and now has its own Constitution and Judicial System. The system is trying its best to handle and overcome this situation. So now the question arises what the judiciary is doing in the time when the real vested power of the constitution i.e the people of India are suffering badly with the Covid 19 situation? The medical support system plays a pivot role but the judiciary is also important to secure the fundamental rights of the citizen. In the eyes of the common citizen a judge is perceived as supreme, the primus inter pares, and one who gets to have the last word, especially on issues of public importance.

India has the concept of separation of power which means that Legislative, Executive and Judiciary has prescribed functions according to the Constitution of India. But there is a very important role of the judiciary in this whole system, which is to check the action and in-action of the executive and Judiciary must ensure not only Fundamental Rights but also all the constitutional rights to the citizens of the country. In the time of Covid 19 the rights of citizens were breached by the government. And this is the place where the judiciary steps in to keep an eye on the arbitrary actions of the government. As it is said, "Law & Order is the medicine of the body politic and when the body politic gets sick, medicine must be administered".

This is not the first time when the Indian Judiciary came forward to protect the rights of the citizen provided under Part III of the Constitution of India. Even before the pandemic, during emergency, the judiciary did its best to secure the rights of the people.

As the situation of the Covid 19 worsened the different high courts and the Supreme Court decided to take many cases suo moto, to protect the basic rights that are Right to Live (Article 21) and Right to Equality (Article 14). During the first phase of the Covid 19 pandemic, when the lockdown happened and we all witness a huge plight of migrant workers, that was the time the court interfered with the situation. The Andhra Pradesh High Court¹ ordered on May 15, 2020 that outposts on the national highway should not just be food counters but also provide drinking water, dehydration salts and glucose packets and it should be equipped with paramedics or a doctor. An ambulance should also be on call; there should be public toilets as well as a sanitary pad dispensing machine. In its May 22 The court gave some extremely detailed instructions on how the migrants should be registered for transport within 48 hours, with staff, including those of supporting NGOs, working in shifts. It asked the state government to ensure that buses are arranged for travel and also put the District Legal Services Authority to work by directing them to visit shelters to ensure migrants are being provided for. In the order the court asked the government to not view the PIL as an adversarial litigation and take the directions thus issued in true sense and spirit thereby respecting humanity.

In other matter taken High Court of judicature at Allahabad, bench Lucknow², The court issued notice to the state government and called upon the State to, "explain about the policy and norms for providing medical facilities and treatment to the migrant workmen and their families and further to stop spreading of Coronavirus disease (COVID-19) in rural parts of the State of Uttar Pradesh and further about the scheme of the Government for rehabilitation of migrant workmen and their families in the State of Uttar Pradesh itself.

¹ K. Ramakrishna vs. UOI and ors (WP(PIL) 101 OF 2020) order dated May 15 and May 22, 2020

² Ritesh Srivastava and anr vs. State of UP (PIL No. 583 of 2020)

The State is also required to give a complete layout to reduce migration of the natives of Uttar Pradesh to other parts of the country to earn a minimum livelihood."

These are only a few examples where the court stepped in for the humanity and protection of the rights of the citizen. And then the second wave of the Covid 19 came breaking all the barrier of previous deaths and patients. The whole medical system crashed with the overflow of patients, people started dying from the lack of oxygen. And this time situation was not only limited to one class of the society but with was including rich, poor, kids adult, old everyone. The court could not keep silent for long on the failure of government so various high courts and Supreme Court started giving instructions to the government.

When the people were dying without oxygen the Delhi High Court³ Says Centre Failed To Supply Oxygen As Per Orders; Issues Show-Cause Notice For Contempt to the officers, though the contempt proceeding was later stayed by the Supreme Court, the court took cognizance of less supply of the oxygen in the state. Even the Allahabad High Court taking the matter as suo moto based on news reports⁴ about the deaths of five patients in the Intensive Care Unit (ICU) of a new trauma centre at the Meerut Medical College on Sunday and fatalities at the Sun Hospital in Lucknow observed that "Death of Covid patients just for non-supplying of oxygen to the hospitals is a criminal act and not less than a genocide"

Not only this The Supreme Court of India taking the matter of shortage of oxygen seriously has put in place a 12-member National Task Force (NTF), including top experts and doctors from across the country, "to facilitate a public health response to the pandemic based on scientific and specialised domain knowledge".

The Task Force would also undertake an oxygen audit for "formulating a methodology for the scientific allocation of oxygen to states and UTs (Union Territories)". The Union Cabinet Secretary or a nominee of the official will serve as Convenor of the NTF.⁵ A bench of Justices D Y Chandrachud and M R Shah observed "It is necessary that an effective and transparent mechanism is set up within the Union government for the purpose of allocating medical oxygen to all states and UTs for being used during the Covid-19 pandemic. The Union Government has agreed to set up a National Task Force to streamline the process,"

³ Rakesh Mehlotra Others Vs Union of India and others W.P.(C) No. 3031/2020 & all connected matters

⁴ Dated May 5, 2021

⁵ Suo Motu Writ Petition (Civil) No.3 of 2021

The Madras High Court⁶ took a harsh step by saying the Election Commission of India a Murderer when the election commission despite ongoing pandemic decided to go ahead with the legislative election in five states. The court observed⁷ that murder charges should probably be imposed on the panel for being "the only institution responsible for the situation that we are in today". The court further observed, "Despite repeated orders of this court, going on like a broken record at the foot of almost every order on an election petition, that Covid protocol ought to be maintained during the campaign time, the significance of adhering to such protocols may have been lost on the Election Commission, going by the silence on the part of the Election Commission, as campaigning and rallies were conducted without distancing norms being maintained and in wanton disregard of the other requirements of the protocol."

The remark of Madras High Court was later challenged by the Election Commission in the Supreme Court of India By Special Leave Application⁸ but the bench headed by Justice D Y Chandrachud, however, acknowledged that the high court's remarks were "harsh", but did not expunge them saying they do not form part of the judicial order

One more example of the surge in Covid 19 cases we saw during Panchayat Elections. the High Court had taken judicial notice of reports about the death of 135 persons, who died after contracting COVID during their election duty. Then the government announced Rs 30 lakhs compensation to the kin of the polling officers died during panchayat elections. The High court expressed its displeasure on the amount of the compensation and instructed to raise the amount to Rs. one Crore and remarked "To compensate the loss of life of the family's bread earner and that too because of a deliberate act on part of the State and the State Election Commission to force them to perform duties in absence of RT-PCR support, the compensation must be at least to the tune of Rs one crore. We hope that the State Election Commission and the government will rethink the amount of compensation and come back to us on the next date fixed."⁹

The concerns of the judiciary reached the jail inmates. With the unprejudiced surge, the Supreme Court moved to decongest prisons and ordered the immediate release of prisoners who were granted bail or parole last year. a bench headed by Chief Justice N V Ramana Observing that the decongestion of prisons housing around 4

⁶ WP No. 10441 of 2021

⁷ Order dated 30 April 2021

⁸ The Chief Election Commissioner of India Versus M.R Vijayabhaskar & Ors. Civil Appeal No. 1767 of 2021 (Arising out of SLP (C) No. 6731 of 2021)

⁹ In-Re Inhuman Condition At Quarantine Centres And For Providing Better Treatment To Corona Positive VS State of U.P. (PUBLIC INTEREST LITIGATION (PIL) No. - 574 of 2020)

lakh inmates across the country is a matter concerning "health and right to life of" prisoners and police personnel. The bench further observed "overcrowded prisons where there is lack of proper sanitation, hygiene and medical facilities", the bench said, adding "there is a requirement for effective management of pandemic from within the prison walls so as to defeat this deadly virus."¹⁰

The judicial activism of the court did not only limited to the oxygen supply but the court also considered the suffering of its citizens. The Supreme Court of India by taking Suo moto¹¹ cognizance of the matter regarding 'Contagion of Covid 19 virus in children protection homes' ordered instructions to Child Care Institutions, Juvenile Justice Board and the concerned government to take appropriate action to curb the spread to protect the children.

Taking rasing and sudden rise in the number of orphans due to Covid 19 pandemic, the Supreme Court Juvenile Justice Committee, in coordinate with UNICEF highlighted the need to urgently provide care and protection to those children who are suddenly made vulnerable due to loss of the both the parents. The Supreme Court Judge and the chairperson of JJC directed State and centre to make all efforts to provide interim care to the children who have been orphaned, abandoned or left unaccompanied in their homes.¹²

Despite all these the courts has been accused of overreaching its power and not respecting the separation of power provided under the constitution of India. For example, The Allahabad High Court took suo motu cognizance of the Covid situation in the state and instructed that five cities of Uttar Pradesh must go into a lockdown. The court also gave directions to curb the situation effectively. This order was challenged in Supreme Court and the top court stayed the order imposing restrictions and observed that the power to declare lockdowns rests with the state and not with the judiciary. The Uttar Pradesh government's averment rested on judicial overreach into the executive domain by the High Court.

But A three-judge bench of the Supreme Court led by Justice D Y Chandrachud's on a suo moto cognisance after several high courts delivered orders regarding the Covid situation in their states made it clear that during¹³ " During the national crisis, the SC cannot be a mute spectator. The role of the Supreme Court is complementary in nature. The court will examine the issue which travels beyond the boundaries of the states

¹⁰ Order dated 7.5.2021 passed by the Hon'ble Supreme Court of India in Suo Moto Writ Petition (C) No. 1 of 2021

¹¹ SUO MOTO WRIT PETITION (CIVIL) NO. 4 OF 2020

¹² <https://www.thehindu.com/news/national/sc-in-coordination-with-unicef-highlights-need-to-protect-children-orphaned-by-covid-19/article34515810.ece>

¹³ <https://www.thehindu.com/news/national/coronavirus-supreme-court-says-it-cant-be-mute-spectator-in-national-crisis/article34421586.ece>

and have repercussions." The court further observed that" High Courts are best suited to make an assessment of ground realities in each state and find flexible solutions for the problems faced by the citizen. No need to interfere in the work of the high courts.

It all concludes that the ultimate aim of a state should be the welfare of its citizen, if the legislation would have pre-prepared taking lessons from the first wave and had taken reasonable precautions the question of overstepping of the judiciary would have never arisen. But somewhere the legislature failed to do its duty, so it becomes the duty of the judiciary to keep a check on the functions of the executive and legislation. And to prevent the rights of its mourning citizen the judiciary had to step in.

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