COVID-19 AND THE COURT IN INDIA

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SUMMARY: I. *Introduction*. II. *Accessibility to the Higher Judiciary during Pandemic: A Flashback into the Recent Past*. III. *Interventions by the Judiciary – Selected Issues*. IV. *Conclusion*.

I. INTRODUCTION

Thus far, in India, the contribution made by the Supreme Court for the promotion and protection of human rights for underprivileged and marginalized sections of the society has been phenomenal. The creativity displayed by the Apex Court in relaxing the rule of locus *standi* has resulted into better access to justice and broadened the scope of the human rights.[1] Amidst a wide range of the benefits arising out of judicial activism, Public Interest Litigation is the most prominent one, which enables the public spirited citizens to knock at the door of the higher judiciary of the country against the violation of their rights.[2]

The unprecedented global pandemic caused by COVID-19 has exposed the vulnerability of the health care infrastructure across the globe.

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[1] The Supreme Court has recognised a set of socio-economic rights within the ambit of 'right to life' under Article 21 of the Constitution.

[2] The term 'higher judiciary' has been used for both the Supreme Court and the High Courts as they are entrusted with the jurisdictions to entertain the petition for the breach of fundamental rights under Articles 32 and 226, respectively. India follows hierarchical judicial structure comprising of the Supreme Court at the top, High Courts at mid-level (25 High Court – either geographically dedicated to one or more than one state), and Subordinate Courts at the lowest level (at the district level). Public Interest Litigation evolved in mid-1980s when the Supreme Court relaxed the rule of *locus standi* and allowed the public-spirited citizens to approach the court against the violation of the rights of the marginalized sections of the society.

The challenge faced by India, perhaps, even more daunting comparing to any other countries as because of large population its governance model is under severe stress ever since the lockdown has been imposed.[3] Therefore, to avoid fallacies of governance and for lessening the sufferings of the poor people, the hope is pinned down on the higher judiciary. The jurisdictions of both high courts and the Supreme Court are being repeatedly invoked by the public spirited citizens. Also, the courts on its own motion are often questioning the decision-making process of the government. Either on the petition of the public-spirited citizens or on-its-own motion, the jurisdictions of the Supreme Court and the High Courts were invoked to assail the decision-making process, to mitigate the sufferings or to ensure accountability of the government.

The chapter builds on the intervention made by the judiciary on the issues surfaced during the time of pandemic that affected the general public. It enquires into the response on the selected issues during the global pandemic. In conclusion, it brings out the significance of access to the judicial forum and the court's promptness to intervene in issues of public importance to save the institutional credibility.

II. Accessibility to the Higher Judiciary during Pandemic: A Flashback into the Recent Past

Indian Legal Database, *Manupatra*, has been popularly surveyed to identify the number of order/judgment passed by the Supreme Court and the high courts. The search pattern during the period of lockdown revealed that researchers were more eager to mine information related to pandemic comparing to any other issue. From the last week of March up to July 2020, the terminology that was searched in the data base was 'COVID 19'. So far, 99 hits have come for the Supreme Court and 719 hits for the high courts. For the purpose of the present work, the cases filed by the public-spirited citizens in the form of Public Interest Litigation (PIL) or *suo-moto* action taken by the courts have been considered. The Supreme Court had entertained 20 PILs or *suo-moto* petitions on diversified issues connected to COVID 19. More precisely, the oldest High Courts of the country, in Delhi, Madras, Kolkata and Bombay, had witnessed a considerable number of PILs during lockdown on

[3] Though, currently the country is going through the process of un-lockdown, the discipline that the public is expected to display, is grossly missing. This is forcing the government, both at central and local level, to reevaluate strategies to fight COVID pandemic time after time.

the issues related to the COVID 19. Interestingly, the High Courts of the states, such as Bihar, Jharkhand, Odisha and Chhattisgarh, which lack the robust health care infrastructure and have the presence of large number of migrant workers, were spared. The extraordinary jurisdiction, under which the action like PIL is traditionally entertained by the higher judiciary in India is a practice unparalleled to any other country. The popularity of this legal avenue has stayed in its course since the time of its emergence in India during 1980s. The data, therefore, reveals a curious trend, that indicates towards an inconsistency in the behavior of the populace. This further intrigues us when we look at the concurring jurisdictions of the Supreme Court and the high courts. Even that had failed to pursue the right-seekers. Hitherto, in some states they have displayed a strange indifference when it comes to take the matter to the nearest available judicial forum while in some parts of the country people on the similar issues are aggressively questioning the government actions before the appropriate courts.

However, notwithstanding the asymmetry in the interventions made by the various high courts, the trend in general exhibits the ease of accessibility to the judicial institutions during the torrid time of pandemic.

III. Interventions by the Judiciary – Selected Issues

1. *'Migrant' Workers*

Due to the notification of the lockdown issued by the central government under the National Disaster Management Act, 2005, every industrial activity was shut down in the first few months on account of the fear of spreading of deadly virus. But the notification made it amply clear that an employer should pay wages to workers during the period of lockdown. In pursuant to the notification, the government issued advisory to the employer to continue to pay the wages during the period of lockdown.

Even after this sensible instruction given by the government, thousands of workers at different parts of the country started to feel vulnerable because of the apathy shown by their employers. They started to return to their native places which, unfortunately in most of the cases were far away from their place of employment. The journey was perilous and often undertaken by the workers under the extreme adverse conditions. As public transport remained grounded, these workers were found walking miles on foot, desperate to get back to their native places.

Regardless of their fundamental right available under Article 19(1) to move freely, reside, and carry on trade, occupation, and profession in any part of the territory, the workers were branded as 'migrant' in their own country. The door of the Supreme Court was knocked by Alakh Alok Srivastava for these migrant workers, demanding a relief package from the government. But the Court had refused to pass any specific directions. The court's intervention was also sought to impose the liability on the central and state governments to to pay the wages. However, the Apex Court again agreed with the government's decision that principally had put the burden on the employers for such payment.

The sordid scene of thousands of workers walking on the roads and heading towards their native place in inhuman conditions attracted the attention of electronic, print, and social media. The arrangements made by the governments were more seen on the paper than on the ground. The appalling conditions of the workers had finally shaken the conscience of the judges of the Supreme Court. Addressing the significant criticism of civil society, the Supreme Court, exercising its inherent power as the custodian of the rights, took a *suo-moto* petition to provide a remedy migrant workers (*In re: Problems and Miseries of Migrant Workers*). The government was directed to arrange the transport for the workers who were heading towards the home without charging any cost of travel from these people. Further, it was seen that the poor people were subjected to criminal action for the violation of the order of lockdown, resulting in the filing of First Information Report against them at various places across the country. The Court had passed order to withdraw the criminal complaints made against them. The court truly realized the role of *sentinel qui vive* by making a timely intervention and restored its dignity in the eyes of the poor people for whom the institution matters the most. On a petition to bring in respite to the migrant workers, the Court advised the governments to look into the feasibility of the implementation of 'One Nation One Ration Card Scheme' whereby poor people would be entitled to have food grains under the public distribution scheme regardless of the place of the issuance of the card (*Reepak Kansal v. Union of India*). On the issue of payment of wages to the workers, the Court realized the employers' hardships on account of the closure of the business. It suggested that both the employers and the employees should sort out their differences through negotiations (*Ficus Pax Pvt. Ltd. v. Union of India*).

Notably, the Delhi High Court lauded the effort of the Government of Delhi and accepted the plea of resource scarcity when a petition was filed to establish community kitchen where migrant workers stayed so that food could be made available to them on the production of the ration card or any

valid document (*National Campaign Committee for Eradication of Bonded Labour India News Communications Ltd. v. Govt. of NCT of Delhi*).

2. *Health Care*

The COVID crisis has particularly exposed the vulnerability of the health care infrastructure of the country. The absence of a vaccine and the dire need to undertake preventive measures to minimize the casualties have put enormous pressure on the limited resources available in the hospitals managed by the government. A plea was made before the Supreme Court to nationalize all the health facilities, and the COVID test shall be available free of cost in government as well as private hospitals (*Amit Dwivedi v. Union of India*). The Court refused to pass an order of nationalization but directed not to charge any cost to conduct the test in all the hospitals. The order has burdened the private hospitals and compelled them to stop cooperating with the government to fight the epidemic. The hour's need was to augment all the resources available with a reasonable approach to recover the cost of the clinical support. In *Jerryl Banait v. Union of India*, the Supreme Court's attention was attracted to the shortage of personal protection equipment to medical personnel and the harassment suffered by them from the relatives of the patients or in their neighborhood due to fear of contagious nature of the disease that made people paranoid towards usual social norms.. The Court had directed to augment the resources to procure the equipment and initiate criminal action against any obstruction caused to the hospital staff in performance of their duties. In another petition, the Court was asked to direct the government to formulate a comprehensive policy for the welfare and the safety of the healthcare workers (*United Nurses Association v. Union of India*). The Court refrained from issuing the detailed guidelines and gave the petitioner liberty to approach if the order issued earlier was not followed.

Further, the intervention was sought to make changes in the treatment guidelines for seriously ill COVID-19 patients based on the reports that appeared in the United States and Canada. The Court aptly refused to issue any directions in this regard. In a *suo-moto* matter, the Court was not satisfied with the monitoring mechanism to supervise the functioning of the hospitals. Expert Committee comprising of bureaucrats and medical professionals was constituted to oversee the steps taken by the government. It was also suggested to form similar committee at the state level (*In re: The Proper Treatment of Covid 19 Patients and Dignifying Handling of Dead Bodies in the Hospitals etc*).

Besides the Supreme Court, the high courts were also approached to strengthen the health care infrastructure for the welfare of the population. Delhi HC again directed the Government of Delhi to follow a timeline for the pathological result of the sample collected and to inform the status on daily basis to the general public. On a *suo-moto* petition, Madras High Court had invoked the spirit of 'the right to life' to guarantee a dignified burial to the dead person. Madras High Court had also approved the plan to use the carriages for isolation ward while rejecting the request to pool in the private hospitals to treat the patients of the corona. The Court had acceded to the private hospitals' exploitative tendencies towards the poor people and expressed confidence in the government's system.

3. *Justice Delivery System*

The crisis has presented an opportunity for the judiciary to internalize the use of technology in its day-to-day functioning. In *suo-moto* matter of *Contagion COVID 19 Virus in Prisons,* the Supreme Court advised all the courts to aggressively use the video conferencing facilities to record the statement of under trial prisoners and also directed to the state governments to constitute a high-powered committee comprising of the high officials of the prison. The Court in addition to arrest the spread of disease directed the governments to suggest guidelines how some prisoners might be released from the overcrowded prisons to avoid congestion. The government was asked to arrange the stay of the released prisoners in the shelter homes during the lockdown. Consequently, Karnataka High Court had agreed with the state governments' steps to decongest the prisons by releasing the prisoners who have been put behind bar for more than 10 years (*People Unity for Civil Liberties and Human Rights Forum v. State of Karnataka*).

Considering the significance of the access to justice for the litigants, in another *suo-moto* matter, the Court has issued guidelines for hearing the matters through video conferencing throughout the country.

IV. Conclusion

Overall, apart from little inhibition shown by people in some parts of the country, the large number of PILs filed on the issues related to COVID-19 reflects the alertness of the citizenry. After a slow start judiciary started to warm up to the task and the respect of the judiciary in the eyes of the common

man was mostly restored. The diverse issues that courts patiently head so far, for example, the administration of traditional medicines to the patients, preparing a robust plan to treat other severe diseases, formulating guidelines for media on reporting of the positive cases of corona, withdrawal of the toll collection on highways, financial assistance to the lawyers, make one this clear – the purity of the higher judiciary is still intact in this country Perhaps, among all cases, the most laudable efforts made by the Supreme Court are the directions issued to mitigate the sufferings of the migrant workers and health professionals. It reminds us that judges, especially those at the highest Court of the country are not insulated from social upheaval and ready to walk extra mile to place India's justice delivery system at a pedestal from where vision of new India may be seamlessly realized.