



INDIAN COURTS AND THEIR COLLECTIVE RESPONDS TO COVID-19 SECOND WAVE

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ABSTRACT

Our country has witnessed its deepest dark hours when the second wave Covid-19 rammed up as over 86,000 death reported from the first week of April. Thousands of patients are dying in the hospital beds without getting oxygen, hospitals are running out of oxygen, shortage of medicines when everything is turning out into messy, our Judiciary system has stepped in to address the government's handling of the crisis. Multiple high courts have been demanding answers from the state and central governments on oxygen supply and transport, availability of medicines, observation of Covid-19 norms during elections, medicine shortage, and RT-PCR test numbers and issuing some enforceable orders. The Supreme Court has registered a *suo motu* case concerning issues arising out of COVID-19 pandemic and the management of the crisis unfolding in various states with clear intention that during national crisis Supreme Court cannot be a mute spectator.

INTRODUCTION

Over three and half lakh are testing positive for Covid-19 on a daily basis in India the highest count of daily infections in the world

with more than 3,000 daily deaths recorded for the last one month. Even with allegations of data fudging, the country accounted for nearly one in every four deaths in the world due to the virus as on 28 April.¹

The various level of judiciary has needed to get involve because the uttermost failure on the part of the Central Government. Despite the several warnings from the scientists Centre Government chose to ignore the impending threat of second wave of Covid 19 and as a result our health care collapsed, supply chains got chocked, oxygens and medicines disappeared.

APEX COURT INITIATIVE

After noticing the pandemic crisis across the country, the Supreme Court initiated the *suo motu* proceedings to consider four critical problems relating to the response of the authorities to the pandemic: the supply of oxygen, the supply of essential drugs, the method and manner of vaccination and the state's powers to declare lockdowns. The Apex Court appreciated the efforts of the High Courts on the pandemic response and has also ensured that it won't stop high courts from hearing petitions in their respective states. From the very beginning the High Courts from the various state have been in better position to monitor the crisis in their individual states but Supreme Court refused to sit quietly. It has directed that a Task Force be set up to ensure oxygen supply, it has ordered that no patient will be denied admission by hospitals or essential drugs in any State or Union Territory for lack of local residential or identity proof and police or administration should not harass or file

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<https://www.thehindu.com/news/national/coronavirus-india-accounts-for-1-in-4-deaths-in-the-world->

[reports-over-380000-infections-for-the-first-time-on-april-29-2021/article34443570.ece](https://www.thehindu.com/news/national/coronavirus-india-accounts-for-1-in-4-deaths-in-the-world-)



charges against those asking for help. It has been firmly directed that Central government and State governments shall notify all Chief Secretaries/Directors General of Police/Commissioners of Police that any clampdown on information on social media or harassment caused to individuals seeking/delivering help on any platform will attract a coercive exercise of jurisdiction by this Court. The SC bench headed by Justice DY Chandrachud and also comprising Justices L Nageswara Rao and Ravindra Bhat ruled that there should be a free flow of information and voices of citizens should be heard. The apex court ruled that there should not be any presumption that grievances raised on the internet by citizens are false.²

HIGH COURT PLAYING THE KEY ROLE

Meanwhile many High Courts, are continuing to monitor the evolving government policies in different states and make critical observation on Central and State Governments and other authorities.

Here is a summary of those observations-

DELHI

The Indian capital is one of the worst-affected cities in the country's explosive second wave, with every third person tested for the virus found to be positive. Hospitals are turning away patients because they don't have beds or oxygen to keep them alive. The city has been reporting an average of one

death every four minutes. The Delhi High Court bench consisting of Justices Vipin Sanghi and Rekha Palli have been leading from the front and declared the "pandemic" as "tsunami". The Delhi High court addressed the alleged mismanagement in the distribution of Oxygen supply and held the Delhi Government responsible for the oxygen crisis, "*Set your house in order. Enough is enough. If you cannot manage it, tell us, then we will ask the central government to send their officers in and do it. We will ask them to take over. We cannot let people die like this,*"³ said the court.

Later Delhi High Court criticised Centre by asking "*Are you living in ivory towers? Where are you living*"⁴, for its failure to meet the assurance with regard to the supply of 700MT per day liquid medical oxygen to the Delhi Government after the Supreme Court clear direction. The High Court not only just made a critical observation but also issued a contempt notice against Centre and sought the personal appearance of its officials for non-compliance of the direction on the required supply of 700 MT of medical oxygen per day to treat covid 19 patients in Delhi.⁵

MADRAS

"Election Commission singularly responsible for Covid second wave and officers probably should be booked on

² <https://www.hindustantimes.com/india-news/will-treat-action-by-states-against-people-s-appeals-on-social-media-as-contempt-of-court-sc-at-covid-19-hearing-101619767976766.html>

³ <https://www.wionews.com/india-news/indian-courts-pull-up-governments-over-covid-crisis-381504>

⁴ <https://www.livelaw.in/news-updates/delhi-hc-centre-failed-oxygen-supply-delhi-show-cause-contempt-173584>

⁵ http://delhihighcourt.nic.in/dhcqrydisp_O.asp?pn=78415&yr=2021



*murder charges*⁶- as The Madras High Court singularly held Election Commission responsible for the recent time covid crisis.⁷ The Chief Justice Sanjib Banerjee criticised the Election Commission for not enforcing basic safety precautions like masks, social distancing and sanitisers in election rallies being held in the state in the run up to the Assembly elections. The Election Commission rushed to the Supreme Court asking that these observations be deleted and also made a demand to remove the oral observations of The Madras High Court from media outlets. However, the apex court rejected these pleas and said that while the Madras High Court's observations were "harsh" but they served as a waking up call. Few days later after criticising The Election Commission, The Madras High Court questioned Centre for the raging pandemic and asked "What were you doing for the past 10-15 months?"

*"There can't be ad-hocism in dealing with a pandemic, and the Centre should have acted in a planned manner with expert advice. Despite having almost, a year-long lockdown, see the situation we are in."*⁸ the bench made the observations on a suo motu public interest writ-initiated check Tamil Nadu's preparedness to tackle second wave.

BOMBAY

All three Benches of Bombay High Court – located in Mumbai, Aurangabad and Nagpur – have given directions and orders on a host

of issues related to management of Covid pandemic in Maharashtra.

The Aurangabad bench of Bombay High Court asked the citizens to follow the covid protocol before to blame the Government. Despite the severe second wave, public failed to show their responsible sides and chose to roam around without masks and most of the time people were found to wearing masks on their chin or under their nose. While noticing the violation of the covid protocols the court ordered strict restrictions and stern punishment for the violators.

The Covid 19 scenario in Nagpur, Maharashtra has turned to its worst. More than 20,000 covid cases daily were reported during the second week of April. Witnessing the alarming situation Nagpur bench of the Bombay high court decided to take suo motu cognizance and passed several directions regarding the supply of drugs used for Covid-19 treatment and medical oxygen supply in Nagpur city and district. The bench ordered that Covid-19 test reports be sent to the patients immediately over WhatsApp and on hard copy without waiting for them to be uploaded to the portal of the Indian Council for Medical Research and it also asked the Maharashtra chief minister to consider setting up an oxygen production plant in Nagpur expeditiously.⁹

Even during this crucial time, the allocation of life saving anti-viral drug Remdesivir to Nagpur was very low. Later the Nagpur bench made observation "There appears to be

⁶ <https://www.livelaw.in/top-stories/madras-high-court-pulls-up-election-commission-for-allowing-political-rallies-during-amid-covid-173135>

⁷ <https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/583201>

⁸ <https://timesofindia.indiatimes.com/city/chennai/what-were-you-doing-for-15-months-madras-high-court-slams-centre-on-covid-situation/articleshow/82317777.cms>

⁹ <https://indiankanoon.org/doc/176017944/>



a disparity and some arbitrariness in the distribution of Remdesivir vials to Nagpur district. The vials are not being released in proportion to the requirement”.¹⁰ Later the Court directed the Maharashtra government to immediately release 10,000 vials of Remdesivir for Nagpur. When it brought to the court’s notice that its order on Remdesivir was not followed, the court openly lashed out at the government. A division bench of Justices S B Shukre and S M Modak said, *“If you do not feel ashamed of yourself, then we feel ashamed of being a part of this nasty society. We cannot do anything for the unfortunate patients of Maharashtra. This is how we are shirking from our responsibilities. You are neglecting and ignoring our patients. We give you a solution, you do not follow it. You do not give us a solution. What absolute nonsense is going on here?”*¹¹ The court also added that fundamental right under art 21 was violated when the life saving drug was not made available for the people and asked for immediate report from the authorities within the evening. At the late evening hearing officials reported to the bench 5,560 vials of the drug had been received and 6,520 vials would be received by next morning.¹²

The principal bench of Bombay High Court had also admitted several PIL cases filed by lawyers on deteriorating Covid-19 situation in Maharashtra. The High Court questioned Centre about their vaccination policy and also asked why did not they have started door

-to- door vaccination for senior citizens who were unable to go the vaccination centre. After several directions to conduct door- to-door vaccinations policy for elderly citizens to the Centre Government, the Bombay High Court asked the Bombay Municipal Cooperation if they can conduct door-to-door vaccination programme for citizens above 75years, differently abled and bed-ridden. It also further mentioned that if the Corporation was willing then the court grant permission irrespective of centre’s stand.¹³

ALLAHABAD

Strongest and the firmest decision came from Allahabad High court regarding covid 19 crisis. More than 30,000 cases were reported in Uttar Pradesh on daily basis during the second the first week of April. People were waiting in queues outside every hospital in search of a bed for survival but only a very few lucky ones were getting chance. Public health infrastructure had attained saturation. The Allahabad High Court directed the Uttar Pradesh government to shut down all private and government-run establishments in five cities, imposing a near-lockdown till the last week of April and the bench comprising Justice Siddhartha Varma and Justice Ajit Kumar issued a total of 12 directions for the cities of Prayagraj, Lucknow, Varanasi, Kanpur Nagar and Gorakhpur as follow:

¹⁰ <https://www.thehindu.com/news/national/other-states/allocation-of-remdesivir-has-to-be-need-based-bombay-high-court-to-centre-maharashtra-government/article34358313.ece>

¹¹ <https://www.indiatoday.in/coronavirus-outbreak/story/bombay-high-court-pulls-up-maharashtra-govt-on-remdesivir-procurement-allocation-to-nagpur-1793695-2021-04-22>

¹²<https://www.livelaw.in/top-stories/bombay-high-court-restores-oxygen-supply-to-maharashtra-interfering-with-centre-order-172917>

¹³ <https://www.livelaw.in/news-updates/bombay-high-court-door-to-door-vaccination-policy-bombay-municipal-corporation-covid-19-174381?infinite-scroll=1>



- Major government hospitals of the above cities of Lucknow, Prayagraj, Varanasi, Agra, Kanpur Nagar, Gorakhpur and Jhansi should have health bulletin system twice a day apprising people of health updates of the patients to avoid visiting attendants to hospitals. The hospitals may use large screens to give details of patients and their saturation levels. This will definitely help in reducing the number of visitors every day to the hospitals and chances of spread of further infection. The government is also directed to declare on its district portal of the above cities the occupied and vacant positions of beds in covid wards and ICUs of all government hospitals and covid assigned private hospitals and government is also directed to make wide publication of its district covid portals and sites in newspapers and also through public announcement
- Mere antigen negative report should not be a ground to throw a patient out of the hospital as such patients can still infect others. They needed to be shifted to non-Covid wards for at least a week and for this government needs to gear up to set up makeshift wards on the campus of the hospitals if there is a space so that there may not be problem of nursing staff and health workers. Availability of oxygen is to be ensured.
- Government hospital should be provided with sufficient medicines and injections including Remdesivir for patients to be treated, oxygen supply to hospitals should remain uninterrupted. This should be ensured at all cost.
- The management of the Doctors, medical and paramedical staff needs an urgent attention. They are all working day and night and are getting infected as well when they

remain amidst the Covid patient's day and night. Effort should be to rotate the staff six hourly to give it the required rest etc.¹⁴

While the UP government failed to draw up a clear plan the court was constrained to intervene even though it was aware that lockdown measures were purely in the domain of the executive.

The court expressed displeasure with the State Government and State Election Commission for holding Panchayat Elections. The court issued show cause notice to the State Election Commission over the death of 135 Panchayat Election duty staff due to Covid. The division bench comprising of Justices Siddhartha Varma and Ajit Kumar sternly observed "*neither the police nor, Election Commission did anything to save the people on election duty from getting infected by this deadly virus.*"¹⁵ It had issued notice U.P. State Election Commission, Lucknow to explain why it failed in checking noncompliance of covid guidelines during various phases of the panchayat elections held recently and why action may not be taken against it and its officials for the same and to prosecute those responsible for such violations.

MADHYA PRADESH

Taking a note of the health infrastructure in the Madhya Pradesh to deal with the second wave of Covid 19, the court directed the state to ensure continuous and regular supply of oxygen, the drug Remdesivir and other facilities required for treatment of coronavirus patients.

¹⁴

<http://elegalix.allahabadhighcourt.in/elegalix/WebShowJudgment.do>

¹⁵ Ibid



The bench of Chief Justice Mohammad Rafiq and Justice Atul Sreedharan was hearing five petitions against alleged failure of the state government in dealing with the pandemic situation. In its 49 pages order the court noted that the Government has miserably failed to ensure the availability of treatment to poor and needy, especially in semiurban and rural areas thereby violating the right to life of the citizens enshrined in Article 21 of the Constitution of India.¹⁶ On the supply of antiviral drug Remdesivir, the court advised the state government to adopt a regulation process to ensure that the medicine is made available to patients within an hour after being prescribed. The court had shown the disappointment by mentioning that the State Government had utterly failed to cope up with the ongoing medical emergency inasmuch as there was huge communication gap and lack of coordination amongst various government functionaries. In fact, the entire State machinery had been caught off-guard and has been found lacking in its efforts to provide basic health care to the citizens. By observing Pandemic was a national calamity the court ordered the central Government should consider stepping in to arrange the Oxygen firstly, by diverting the available stock of Liquid Medical Oxygen from the Steel Plants and other industries located in different parts of the country and secondly, if that is not sufficient, by importing the Oxygen and the Central Government should also consider to step in to ensure increase in the production of Remdesivir and till such time it is not done, it should consider procuring the Remdesivir by importing it so

that by the time the peak of Coronavirus is reached, Oxygen and Remdesivir both remain available to the affected persons in sufficient quantity.

TELANGANA

*“The entire world, not only the country or the state, knows of the war-like conditions going on since February 2021. Does the SEC not belong to this planet? Are you living on Mars?”*¹⁷ the State Election Commission came under the radar of the Telangana High Court for conducting elections to municipal corporations of Greater Warangal and Khammam as also five municipalities. The court dramatically mentioned Tennyson’s poem titled “Charge of the Light Brigade” where helpless soldiers obeyed the command and marched into the valley of Death without artillery, to describe the helpless and hapless conditions of 10,000 Government staff and Police personnel called upon the election duty. The court expressed deep dissatisfaction with the State Election Commission as it had decided to put risk the life and health of citizen.¹⁸

CALCUTTA

As the West Bengal gearing up for eight phase State Election, criticism had been poured from the various section of society as the leaders across parties addressing the larger meetings without following Covid-19 protocols.

The High Court criticised Election Commission for issuing circulars and not

¹⁶ <https://mphc.gov.in/judgement-orders#> WP Nos.8914 & 20889 of 2020

¹⁷ <https://www.deccanchronicle.com/nation/politics/290>

[421/telangana-hc-criticises-sec-for-holding-municipal-elections-during-cov.html](https://www.deccanchronicle.com/nation/politics/290)

¹⁸ The Telangana High Court, available at: https://www.livelaw.in/pdf_upload/telangana-high-court-covid-19-election-commission-392732.pdf

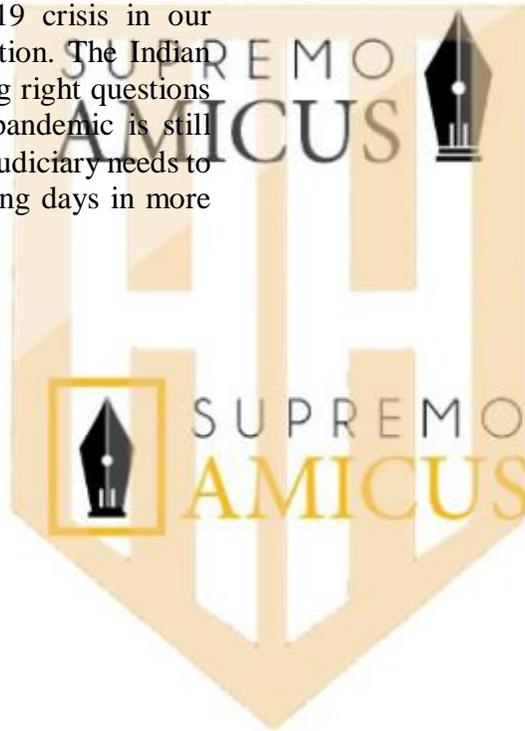


monitoring their implementation. It also added that Chief Election Officer would hold personally responsible for implementation of the guidelines.¹⁹

After the formation of the TMC led Government, the Court directed the state government to file an affidavit disclosing to exact state of affairs as well as the facilities, medicines, infrastructure and the vaccine drive already started within the state.²⁰

CONCLUSION

Recent the second Covid-19 crisis in our country needs for introspection. The Indian Courts have started to asking right questions at the right moment. The pandemic is still devastating and its like that judiciary needs to continue its role in up coming days in more decisive way.



¹⁹ The Calcutta High Court, available at: https://www.livelaw.in/pdf_upload/west-bengal-polls-eci-22-april-392263.pdf

²⁰ <https://www.livelaw.in/news-updates/calcutta-high-court-to-wb-govt-covid-submit-details-regarding-facilities-medicines-infrastructure-vaccination-drive-173908>