



JUDICIARY: NEW CHALLENGES V. PROTECTION OF RIGHTS

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ABSTRACT

Rights are fundamental to any society. Certain rights like human rights and fundamental rights must be protected even in emergencies. The pandemic has brought many issues to various institutions. Judiciary is also one among them. People comment SC for digitalization of courts, problems in online hearing, worry about migrant workers, and protection of the right of various other people in India, but at the same time forget to recognize that the judiciary is also an institution in which a large number of people works and their lives are also in danger. Despite all these along with doctors, the judiciary is also working as an essential service to protect and uphold the rights of people. When the doctors are working to save the lives of people, the judiciary is working to protect the rights of the same people who are vulnerable especially during pandemic situations. The judiciary has an important role in the protection of fundamental rights and the human rights of the people. It must also ensure the right to health of all the citizens. At the same time, they must also carry out the regular duties of the court and ensure justice is served. To make sure that the judicial process keeps going on even in the times of the pandemic they must adopt new processes like e-filing and e-hearing and try to adapt to the new normal.

➤ INTRODUCTION

Every person looks for what they gain, in the work they do. Similarly, people try to make

1a profit and fight for it till the boundary of their life no matter what. In these times, Judiciary plays a major role to “**uphold justice**” and establish the “**Rule of Law**”. The enormous spread of coronavirus over the world has impacted people’s life which has come to a situation that we have to live with corona until the vaccine is invented or herd immunity is attained. During this pandemic, along with the health of the people, their rights should also be protected. Judiciary Review must not be neglected in these critical times. Thus, Judiciary holds a major responsibility in protecting and ensuring citizen’s rights.

➤ IMPACT OF PANDEMIC ON JUDICIAL SYSTEM:

1. **Increase of cases and lack of time.** Judiciary is already burdened enough with a large number of pendency cases. The outbreak of covid and the safety measure to be taken further create many difficulties and hurdles in speedy trails.
2. **Need to deal only with emergency cases, delays under trails.** Lockdown made courts take only emergency cases that affect the other prisoner’s right to a speedy trial.
3. **Virtual court.** Courts, by adopting measures of the pandemic, followed the online mode of hearing cases, filing PILs. People with money can easily approach lawyers, but poor people find it difficult to approach advocates in dealing with cases. Not many people know the use of technology. Many advocates are still trying to adapt to technology.
4. **Meaning of Urgent case:** Every person feels that their case is urgent. But the real meaning of urgent cases interpreted by the Supreme Court has been misunderstood.
5. **Measures Adopted By court for its functioning.** Article 142 of the Constitution



of India, the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Exercising this power Supreme Court, said that all the measures which shall be taken by the courts to reduce the physical presence of stakeholders within its premises "shall be deemed to be lawful".¹ Indian Supreme Court has taken *Suo moto* cognizance of the threat posed by this pandemic and taken necessary steps.

Thus, with these changes judiciary has a certain role in protecting the rights of citizens.

➤ **ROLE OF JUDICIARY:**

Judiciary has a vital role. It has an important role in protecting Fundamental rights, Constitutional rights, and preserving Constitutional morality. But, these rights are being violated in many cases, where some were noticed and some went unnoticed.

Role of Judiciary to protect Fundamental Rights:

Part III of the Indian constitution provides Fundamental Rights to all citizens. Since all these rights are not absolute, during an emergency some rights can be made abrogate.

During this pandemic protection of rights should be focused on.

- **Equality before law: Equal opportunities**
Article 14 of the Indian Constitution provides that "The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India."

This right to equality has been violated and neglected in many cases during this pandemic.

There are many instances like migrant laborers, daily laborers, availability of hospital beds only to people with a high recommendation, etc.

- **Right to move freely throughout the territory of India.**

Article 19(1)(d) of the Indian Constitution enshrines this Fundamental Right. But this right is somehow compromised due to this pandemic.

Example: Obstructing migrant laborers
However, Judiciary is trying its best to maintain both the rights of the citizens at the same time tried to protect the lives of people.

Amit Bhargava v. The State (NCT of Delhi)².

In the opinion of the Court, the period of 14 days stipulated in the Guidelines of 14th March-2020 is not mandatory but is intended to serve as a general guideline. The Court observed that even the executive is traversing uncharted territory while formulating and implementing its policy to deal with the pandemic. In such circumstances, the executive must be allowed to formulate and implement its policy as meaningfully and efficiently as possible. The decision to an extension of the quarantine period taken in the context of the COVID-2019 crisis does not involve legal or constitutional violation, therefore the Courts should necessarily be

¹<http://probono-india.in/blog-detail.php?id=155>

² Writ Petition(C) 3016/ 2020



slow in subjecting executive action to judicial scrutiny³.

- **Protection of Life and Personal Liberty:**

Article 21 states “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

In the case of *Maneka Gandhi v. Union of India*⁴, The Honorable Supreme Court interpreted “Right to Life” as “Right to Life with Human Dignity”. But this dignity has been compromised during the pandemic by the government various times like death by walking miles without food during the lockdown, failure in many ways in terms of providing proper assistance like food, shelter, and more safe arrangements for migration to the needy and distressed people during the lockdown, etc.⁵

*K. Ramakrishna, s/o. K. Rangaiyah v. The Union of India and others*⁶

Challenge in brief: The Writ Petition was filed under Article 226 of the Constitution of India against the order of the State Government prohibiting migrant workers to travel to their respective hometowns. It was argued that the failure to provide arrangements for safe travel, food, and accommodation facilities to the migrant workers violates their fundamental rights.

³<https://www.mondaq.com/india/government-measures/962354/compilation-of-judicial-pronouncements-during-covid-19-phase-iii>

⁴ 1978 SCC (1) 248

⁵ <https://blog.ipleaders.in/role-judiciary-during-pandemic-india/>

Order: The Court underlined the gravity of the situation and reaffirmed its role as a protector of the marginalized section. The Court also took into account the ever-expanding scope of "life" under Art 21 of the Constitution of India and accordingly directed the State Government to adopt certain supplemental measures like strengthening the medical, food, and transportation facilities for migrant workers. The Court clarified that such direction will not inhibit the States from implementing their respective policies related to quarantine.⁷

The case of *Suo Motu v. State of Rajasthan*⁸,

In this case, the High court of Rajasthan, because of current pandemic situations, ordered the state government to maintain high standards of care for jail inmates. HC of Rajasthan has also given directions to follow safety measures for prisoners at Jaipur District Jail.

➤ **PROTECTION OF RIGHT TO HEALTH:**

The United Nations Committee on Economic, Social and Cultural Rights, which monitors state compliance with the covenant, has stated that:

The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education,

⁶ Writ Petition (PIL) No.101 of 2020

⁷ <https://www.mondaq.com/india/government-measures/962354/compilation-of-judicial-pronouncements-during-covid-19-phase-iii>

⁸ D.B. Civil Writ Petition No.5618/ 2020



human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

The right to health provides that health facilities, goods, and services should be:

- available in sufficient quantity,
 - accessible to everyone without discrimination, and affordable for all, even marginalized groups;
 - acceptable, meaning respectful of medical ethics and culturally appropriate; and
 - Scientifically and medically appropriate and of good quality.⁹
- The judiciary has a major role in ensuring that medical treatment and vaccination reach all kinds of people in society. Every citizen has the right to health and they must be given quality medical treatment. The judiciary must also ensure that all medical treatment and vaccines are available at a reasonable rate.

➤ **Some of the major decisions taken during a pandemic:**

1. ***Japinder Singh v. Union of India and others***¹⁰

In this case, the High court of Uttarakhand noticed that Private unaided schools cannot collect tuition fees and coerce them in case of students not attending online classes and reduced the burden on parents.

⁹ <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>

¹⁰ Writ Petition(PIL)No.59/ 2020

¹¹ Writ Petition No. 4013 of 2020

2. ***Rashtriya Shramik Aghadi v. The State of Maharashtra and others.***¹¹

In this case, though the state government has mentioned that “No work-No wage” doesn’t apply during pandemic situations in the case of *FicusPax Private Ltd. &Ors. v. Union of India &Ors.*,¹² before SC, Sc ordered that it is a matter of settlement between employer and worker and directed to approach labor authorizes in case of any dispute during settlement.

3. ***Mahendra Singh. v. Commissioner of Police &Ors.***¹³

It was observed one Mr. K. Narayanan was deliberately and in mala fide intention sent to the Quarantine Centre for several reasons, including his animosity with the concerned Sr. police official and not because he was suspected to be a Covid-19 patient. The withholding of Mr. K. Narayanan's mobile, non-disclosure of his Covid-19 report, the conduct of the officers, and circumstances in which he was sent to the Quarantine Centre, were unjustified. The Court directed that the Quarantine facilities cannot be used by the police to keep away people, who according to them, are of nuisance value. Quarantine facilities cannot be used as preventive detention or as a punitive measure. Thus, in this case, the court has upheld article 20 i.e Right against preventive detention.

4. ***Dr Aarushi Jain V. Union of India***¹⁴

In this case, a PIL has been filed by Dr. Arushi jain seeking a separate

¹² Writ Petition (C) Diary No. 10983 OF 2020

¹³ Case No: LD/VC/OCR/14/2020

¹⁴ Writ Petition (Civil) Diary No: 10852 of 2020



accommodation for doctors and healthcare workers near hospitals. The Supreme Court noted that the welfare of Doctors and frontline healthcare workers is a matter of concern and the government cannot work half-heartedly. The Court noted that their welfare was a matter of concern and that these warriors cannot be left unsatisfied.¹⁵

➤ **Role of judiciary in ensuring delivery of Justice**

The courts must supervise the national emergency laws passed by the national authorities during the pandemic. The laws passed by them must ensure the basic principles of democratic governance, human rights, and the rule of law. The courts must act as a guardian of the human rights and civil liberties.¹⁶

The senior counsels of Bombay High Court have written to the Chief Justice expressing concern about access to justice for the weak and poor. They said that two fundamental reforms can ensure that judicial justice is always up and running. Those measures are:

Electronic access to hearings:

Justice can be ensured by establishing reliable means of electronic hearing. The electronic hearing ensures that there is no delay in justice even during the covid19. The sudden stoppage of the judicial system can be made to resume the process of electronic hearing. This is easier to implement. It is easier to conduct at least a final hearing online with the availability of video

conferencing technology and proper Wi-Fi bandwidth.

Electronic filing:

The Supreme Court has shown the way by referring to Article 141 and Article 142 and directing suspension of limitation. Replicating the approach with e-filing standards to ensure uniform text-searchable-digitally-signed pleadings and judgments must become a permanent feature. If the filing process is done electronically it will be easier for both the court and the citizens.

Justice delivery is a public good and it must be available at all times. Lawyers and judges are also warriors who protect the constitution like doctors.¹⁷ At all times the 3 wings of government that is the executive, legislature, and judiciary must keep going during unprecedented events like Covid-19 also. They must work together and help the doctors to provide essential services to the citizens. The judiciary must make sure that the medical and other essential services are made available to all the citizens. They must also make sure that the laws passed during this pandemic are constitutional.

CONCLUSION

Finally, the courts have a primary duty to uphold the constitution and ensure that the rights of the people are not violated. Even though there are unprecedented events like Covid-19 that lead to the stoppage or slowdown of the judicial system the courts must strive to resume and protect the citizens and ensure that justice is served. They must

¹⁵ <https://www.indialegallive.com/top-news-of-the-day/news/role-of-supreme-court-in-the-era-of-covid-19/>

¹⁶ <https://www.unodc.org/dohadeclaration/en/news/202>

¹⁷ [0/03/access-to-justice-in-times-of-judicial-lockdown.html](https://thewire.in/law/pandemic-coronavirus-rights-03/access-to-justice-in-times-of-judicial-lockdown.html)

¹⁷ <https://thewire.in/law/pandemic-coronavirus-rights>



try to adapt to the new normal as the pandemic is no soon to come to an end. So they must adapt to new procedures like electronic filing and hearing of cases.

“Justice delayed is justice denied”. The pandemic has already been bothering many families in the country. And courts are taking only urgent cases. There are many cases under trial and many cases are being delayed during this pandemic because of non-urgency. Still, during this pandemic Supreme Court has taken an unprecedented challenge of conducting virtual courts in dealing with cases which is appreciable.

Honorable Indian Courts despite taking new challenges, still ensuring to maintain Justice and became the guardian of rights of people during these crucial times.

