

Role and Contribution of Indian Judiciary During Covid-19 Crisis

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Abstract

The researcher has discussed the role of the Indian Judiciary during COVID Crisis in the country and the main focus is on the actions and responses of the Supreme Court. The COVID Crisis imposed a never imagined challenge to the entire country, its people, and the government institutions. The Central Government in order to deal with this unprecedented situation imposed an absolute lockdown on 24th March 2020 in the entire nation which created chaotic and havoc situation. The legal system was also affected and in order to ensure the citizen's right access to Justice, the SC adopted a Virtual Mode of proceedings. The strict rules imposed by the Executive and the harsh and unreasonable steps of government were curtailing the basic rights and liberties of the citizens. The Judiciary has given the power of Judicial Review to keep a check on the arbitrary and unreasonable rules and actions of the government and executive, also it is the Constitutional Duty of the Supreme Court and therefore the actions taken by Judiciary in this regard have been discussed in the paper where both aspects have been shown that is where Judiciary failed to make government accountable and then the decisions which limited the arbitrary and unreasonable power of government and executive that are appreciated by the nation. Also, the actions taken by the SC of Nepal in response to COVID-19 have been discussed in the paper. The researcher has used an analytical method in writing this paper.

Keywords: Pandemic, judicial activism, judicial adventurism, virtual mode, rights

INTRODUCTION

The public's perception of judicial activism is based on their understanding of the constitutional court's legitimate function in a democracy. Judicial activism is often seen as a regular judicial duty and expression, rather than a departure or abnormality [1]. Critics of judicial activism argue that the courts are usurping roles that should be handled by other government agencies. Defenders of judicial activism, on the other hand, argue that the courts are just performing their constitutional duties. Judge A. H. Ahmadi, Former Chief Justice of India, says that the protection of the public interest over the private interest is paramount, hence judicial activism is a complement to the judicial duty [2].

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We are in extraordinary times, and the Covid-19 outbreak has posed an unprecedented challenge to all citizens and institutions throughout the country. This concern is much more significant when it comes to the legal world because the basic right of an individual Access to Justice is restricted due to the absolute lockdown of the nation which includes the Courts of the country as well. The system of "access to justice" includes the bar and the bench.

In the case of *Anita Kushwaha v Pushap Sudan* [3], the Honorable Supreme Court of India held that

access to Justice is not only a facet of the Right to Life under Article 21 but also a guarantee provided by Article 14 of the Indian Constitution. Thus, it is the Constitutional duty of the Supreme Court to ensure access to Justice for the people of India even in the times of crisis. The basics of “access to justice” consists of the following elements according to the SC [4]:

1. The state's decision-making process must be efficient;
2. The mechanism given must be relatively easy to remove;
3. The judgment delivery process must be quick; and
4. The cost of arbitration for the party must be reasonable.

These characteristics have changed as a result of the pandemic. The principle of “access to justice” has been met with a never-before-seen challenge.

Due to the lockdown when the Courts were completely closed, the people's access to Justice was completely restricted and therefore the Supreme Court of India quickly responded to this situation by adopting technology and devising e-Courts and Video Conferencing to ensure that the denial of access to Justice remains transitory. Initially, the court has faced several difficulties in running Courts via virtual mode but gradually the institution is getting more efficient, also this online mode is a positive step towards accessing Justice rather than having no access at all in exceptional circumstances like this Covid-19 Pandemic.

The Indian Judicial System was trying and focusing on promoting the digitalization of Courts since the mid-1990s and especially after the enactment of the Information and Technology Act 2000 (amended in 2008) like e-Courts were launched as a part of the National e-Governance Plan in 2005, many applications were made for Supreme Court and High Courts where one can find the listing of cases, the bench for the case, etc. Then the sudden outbreak of Corona Virus brings the need for digitalization of Courts a priority [5].

For conducting Court proceedings in online mode the Supreme Court framed guidelines for a virtual mode of proceedings [6]. By invoking Article 142 of the Constitution the Apex Court conferred that all decisions shall be deemed to be lawful which ensures the control of the spread of the Virus and therefore the Supreme Court and all other High Courts are authorized to adopt measures required to ensure the robust functioning of the Judicial System through the use of video-conferencing technologies.

Research Objectives

Through the Research Work, the author aims to highlight the following important aspects of

1. To study about the Constitutional Duty of Courts to protect the people of India from arbitrary actions of the Government.
2. To study the thin line difference between Judicial Activism and Judicial Adventurism.
3. To find the Judicial Failures in making the State accountable for its arbitrary actions for curbing COVID.
4. To study the good decisions taken by the Indian Judiciary during COVID Crisis.

“There is no better test of the excellence of a government than the efficiency of its judicial system.”
- Lord Bryce

INTERFERENCE OF JUDICIARY WITH STATE DURING COVID-19

The activist role of Indian courts was responsible for fundamentally changing India's legal structure. The guiding philosophy of judicial activism has allowed the courts to issue forward-looking, fair, and comprehensive judgments as demonstrated in the cases of *Kesavananda Bharati v. State of Kerala* [7], *Maneka Gandhi v. Union of India* [8], *M.C. Mehta v. Union of India* [9], *Shayara Bano v. Union of India* [10], and others. “The Supreme Court has done a lot of good via judicial activism, literally attempting to wipe away every tear from the underprivileged, marginalised, and uneducated sections of

society,” stated India's Attorney General, K.K. Venugopal [11]. On the contrary, critics of “judicial activism” often refer to the few instances in which courts have deviated from the rule of law and engaged in “judicial adventurism,” so breaching the doctrine of separation of powers. The Indian court has an important role in ensuring that “judicial activism” does not lead to “judicial overreach.” Also, the fact that “Judicial Activism is a necessary pillar of Indian Justice” is indisputable and very known [12].

“Why is the intervention of the Judiciary necessary in this time of Crisis when it is the duty and responsibility of the Executive to deal with the Covid Crisis in the Country? [13]”

The answer to this question is that in times of crisis when the Executive uses excessive force to deal with any situation, the Judiciary should intervene and look upon the actions of the Executive and their consequences on the people and whether strict actions are proportionate to the benefits of people or it is excessive and arbitrary. The court can perform such functions under its Constitutional Power of Judicial Review.

The Central government didn't impose Emergency provisions as provided in the Constitution rather invoked Disaster Management Act, 2005 to deal with the COVID Crisis and the State Government invoked the Epidemic Diseases Act, 1897. These legislations make the government lesser accountable towards several actions and therefore confirming the reasonableness and requirements of any active intervention of the Judiciary is mandatory [14].

RECOGNISING THE ROLE OF THE INDIAN JUDICIARY

In order to keep the issues alive, it's essential to identify some of the judgments issued by various courts across the country. Thousands of migrants were left jobless and were living on daily pay as a result of the unanticipated nationwide lockdown. Although the Supreme Court was initially negligent in dealing with these concerns due to its blind trust on the government's false guarantees that can be observed in its decisions like the SC dismissing a PIL filed by Alakh Alok Srivastava declined to provide food and shelter to the Migrant Workers and rely upon the ‘Status Report’ submitted by Union regarding the welfare of workers without putting any effort to see the actual status [15].

The Apex Court ordered the media to publish the “official version” of events regarding the pandemic and blamed “fake news” for the Migrant Exodus which is a violation of Article 19(1)(a). Also, the SC responding to a petition seeking payment of wages to Migrant Workers, the CJI asked Why do migrants need wages if they were being provided meals [16].

It later restored its reputation by being fully aware of the terrible conditions in which migrants are forced to live. Ordered the state and central governments to return all migrant workers to their homes within 15 days and develop job programs to help them adjust to life [17], it also ordered the center to provide additional trains for migrants' travel, nevertheless, any procedures against migrant workers for alleged violations of detention rules were to be suspended [18].

In the absence of effective executive action, the most notable example of legal activism can be found in the case of *Shashank Deo Sudhi v. Union of India and Others* where it has been argued that testing in private laboratories from Covid19 would be free for economically deprived members of society [19].

The Supreme Court has also issued guidelines for the Union of India to protect healthcare professionals and to prepare for the optimal use of personal protective equipment for all health workers [20]. In addition, the Supreme Court in *Re: Contagion of the Covid-19 virus in prisons* [21] Suo-moto learned of the issue of overcrowding in prisons and ordered both the states and the territories of the Union to set up high-level committees to determine which categories of prisoners can be released on parole or on bail [22].

The SC directed State Governments and Union Territories to trace children who have lost their parents due to COVID and record their data in the national portal of NCPCR (National Commission for the Protection of Child Rights) and to ensure that their study continues in both private and government schools till some arrangements being made [23].

Justice D.Y. Chadrachud took suo-moto cognizance on the issue of Oxygen Shortage in many states and he set up a 12-member National Task Force for the effective and transparent allocation of medical oxygen to states and U.T. on the scientific, rational, and equivalent basis because the method of distribution of government for distributing oxygen was as per the number of beds in the hospitals that left the patients in their home.

The SC recently announced that the families of deceased due to Corona will be granted ex-gratia compensation for which the Court asked the National Disaster Management Authority to form guidelines for the payment of the compensation, the decision regarding the amount of compensation was left to the wisdom of government who recently decided to provide with Rs.50000 aid to the families of those whose member died of COVID [24].

Many other important decisions were given by the SC in the meanwhile related to the proper burial rights of the deceased, regular payment of pension money to the elder ones, protecting individuals taking the help of social media for spreading awareness during the second wave, etc.

ROLE OF THE SUPREME COURT OF NEPAL IN HANDLING COVID CRISIS

In response to the first wave, the Nepal government announced a lockdown on March 24, 2020 [25]. Strict restrictions on the movement of people were imposed resulting in chaos among Nepali migrant workers who were stuck in other countries or at Nepal's border. The workers tried to enter their nation but they were denied permission by the government, leaving thousands of workers without food or medication in other countries and on Nepal's borders.

The Supreme Court of Nepal in response to this situation released a press statement on March 26, 2020, stating that the court would consider "issues relating to individual rights and important matters relevant to the pandemic" even during the lockdown period [26]. When people's life in Nepal became extremely difficult because of the lockdown measures, the Supreme Court of Nepal started considering writ petitions to safeguard "the fundamental rights provided by the constitution."

Adv. Manish Kumar Shrestha filed a PIL [27] in Nepal S.C., bringing up the difficulties faced by Nepalese citizens in returning to Nepal via the Indian border, and asking S.C. to affirm that it is the government's responsibility to rescue its citizens and assist them in returning home, wherever they may be. Art 16(1) of the Nepalese constitution guarantees the right of every person to live with dignity [28], Art 17(1) guarantees the right to personal liberty shall not be violated except in accordance with the law [29], Art 18(1) guarantees that no one shall be denied equal protection of the law [30], and Art 35(3) guarantees the right to health care [31].

In response to this petition, the Supreme Court ordered the government to identify Nepali citizens who are in need of food, shelter, or medical treatment abroad, and to make necessary arrangements to bring them back to Nepal through diplomatic channels in collaboration with the concerned country. It also instructed the government to make measures to bring Nepali people wanting to enter Nepal on the Nepal-India border [32].

To deal with the pandemic, the Nepal government was dependent on the Infectious Disease Act of 1964, however, the law was not appropriate for dealing with the COVID Crisis, and thus the Supreme Court of Nepal ordered the government to draft a new law that would specifically address issues related to pandemic management of pandemic. The government has issued an ordinance for COVID Crisis Management in 2021 responding to the order of SC.

The Supreme Court also considers the problems faced by pregnant women in obtaining health treatments, as well as the fear of harassment at quarantine places, and therefore the Supreme Court issued an interim order directing authorities to provide special attention to women, children, and the elderly in quarantine facilities. The Court ordered the creation of a helpline number to gather information and complaints about violence against women.

The Nepal Supreme Court on issues like overcrowding in jails during the pandemic said that it is a violation of prisoners' rights to health and poses a danger to their lives and that the authorities should consider alternative methods to punish those in prison.

The SC directed the Nepal Government during the First wave itself to improve their health infrastructure and ensure the availability of other medical requirements. Still, the government failed to comply with such orders which resulted in the devastating situation of Nepal in the Second Wave. The Court held the government to be responsible for its failure and said that "the protection of the public's life is the primary responsibility of the State and the government cannot be relieved from its responsibility of taking care of its people even when the resources are not enough." The court ordered the government to guarantee that all people receive an opportunity to get vaccinated and also the government to take appropriate measures to secure preparedness for the upcoming third wave.

The SC attempted to defend the human rights of Nepali people throughout the pandemic, as well as other basic rights such as the right to food, shelter, and medical care. Thus, the comprehensive approach of Nepal SC towards the management of the Covid Crisis and holding the government responsible for its poor management is significant.

CONCLUSION

It was seen in the Pandemic that the Government framed various strict guidelines which are arbitrary and unreasonable in nature due to which severe consequences are faced by the public especially those who are underprivileged and vulnerable sections of Society like women, children, elderly, poor, sex workers, transsexuals, etc. Then the Executive was very strict with the implementation of guidelines provided by the government due to which again the common people suffered a lot. So, to keep a check upon such policies of government and actions taken by the Executive the Judiciary intervened in between via PILs, suo-moto cognizances, issuing important guidelines, etc. The Supreme Court of India has been vested with the huge power of Judicial Activism which is supposed to be used at a time when the state and its executive are curtailing the rights and liberties of its citizens which is very well seen in this Pandemic.

Despite the initial failures or missteps by the Apex Court in making the Executive and Government accountable for its policies and regulations in combating against Pandemic, the overall Judicial response in its entirety to the Pandemic's many challenges must be appreciated.

Initially, the Supreme Court tried to distance itself from intervening in the actions and roles of the Executive and also trusting blindly with the false guarantees made by the government resulting in huge violations of the basic rights of citizens. Making the Executive responsible for its policies is not usurping the role of the Executive but it is the Constitutional demand that the Judiciary like our country which is independent and vested with huge powers like Judicial Activism must interfere at places where the basic rights of an individual are absolutely restricted and that is also not serving the purpose of such curtailment [33].

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