

JUDICIARY AT LOGGERHEADS WITH A PANDEMIC

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We are witnessing a historic change in the paradigm of the Judiciary the world over, especially so in India. The covid-19 pandemic and the situations prevailing under it have compelled institutions to evolve and adopt new and inspiring measures to maintain their credence and reliability. When the Luftwaffe rained bombs on London and Churchill was briefed about the on-ground situation and casualties including collateral damage, the officials were caught off-guard by an uncanny question put by the Prime Minister. “Are the courts functioning?”¹ asked Churchill. He was visibly relieved to hear that the Courts had been dispensing Justice as they did everyday. “Thank God. If the courts are working, nothing can go wrong.”² replied a reassured Churchill who had indirectly satiated the concerns of the anxious officials with a simple statement expressing trust in the robustness of the Judiciary and an accompanying sigh.

The Covid-19 crisis delivered the first light knocks on Indian doors and shores in January-end. It was expected to be a disease which could have been controlled like the previous cases of Nipah virus and the Zika virus. As of 22nd June, total cases being in excess of four lakh have been confirmed by the Ministry of Health and Family Welfare. The disease that had been termed as a ‘passport holder’s disease’ initially, went on to become the cause of overcrowding of the burial places and overwhelming of the medical apparatus as well as body disposals of many countries like Italy and Iran, due to rapid community transmissions that had taken place in these countries. The preventive measures that have been taken in India so as to see to it that the same did not happen in our country, all arms and organs of the government worked in tandem with each other in a synchronized manner towards this goal and the role of Judiciary has been crucial in assisting governments, in citizens receiving proper treatment, their rights are guaranteed and guarded. The economic tailspin has further added to the woes of the public. Like many other Institutions, the Indian courts have been eager to adopt an alternate channel of electronic hearing for providing access to justice in cases of paramount importance or urgency, when open courts are not feasible due to the contagious nature of the corona virus.³ This garnered even more support from the legal fraternity when a few Honourable Judges sadly fell prey to the disease⁴. It’s said that “Necessity is the Mother of Invention”⁵ for a reason, afterall.

The court grounds had recently and regrettably so, turned into ‘The Coliseum’ for gladiatorial carnage to unfold in the form of frivolous PILs aimed at discrediting and debasing the anti-pandemic

¹ Dr.Farrukh Saleem “Capital Suggestion: Working Courts”, *International The News*, Jul. 30, 2017.

² *Ibid.*

³ “Virtual Courts or E-Courts” available at : <https://ashubanaras.blogspot.com/2020/04/virtual-or-e-courts.html?m=1> (last visited on Jun. 23, 2020)

⁴ Mohammed Imranullah S., “Three High Court Judges test positive”, *The Hindu*, Jun. 5, 2020.

⁵ Proverbial definition of ‘Necessity is the mother of invention’ available at:

<https://dictionary.cambridge.org/dictionary/english/necessity-is-the-mother-of-invention> (last visited on Jun. 23, 2020)

efforts of the governments and executive in order to score political goals. The Supreme Court came across one such instance recently when took us PILs of Harsh Mander, Swami Agnivesh and others on the issue of payment of wages for workers since lockdown, Solicitor General Tushar Mehta made a very relevant point calling on people running the ‘ Professional PIL Shops’ to pull down their shutters atleast in the times of the pandemic. The reason he gave for this seems to be very relevant in order to explain the position the Judiciary has taken during the pandemic. He explained how many Advocate Generals had expressed their anxiety and disgust on the state of affairs where every moment was vital, be it the supply of essentials or arranging for and acquiring equipment for medical/Public Distribution System and sanitation services. During such pressing times, a hoard of public officials required to sanction and administrate are had been congregating at the legal offices of the respective governments to seek relief and file replies and affidavits for such frivolous PILs that had been files without any ground research. He also emphasized on the fact that filing of such PILs was extremely irresponsible as any unnecessary hindrance to the officers working on a war footing at such testing times may prove to be detrimental to the efforts of the respective governments and the country in fighting the pandemic.⁶

Sometimes it becomes inevitable for the relatives to maintain silence and restraint, entrusting the doctor operating, to save a soul instead of interfering, metaphorically speaking. This to some extent reflects the wisdom of the Judiciary in India which realizes that procedures and absolute legal protection subject to statutory definition is not something to ponder upon when extraordinary circumstances shadow the people and the people of the institutions.

The Judiciary however has also become a victim of circumstances owing to the ever-exceeding expectations of people who keep their ‘rights’ before their respective ‘duties’ as citizens of India which is again, a very irresponsible behavior. Also, common wisdom dictates that in times of crisis, a need for central and decisive authority arises which must take action on behalf all and with the uncontested support of all lest we prove the old proverb “too many cooks spoil the broth”⁷, true.

“Everyone has duties to the community in which alone the free and full development of his personality is possible.”⁸

Talking about the State level involvement of courts, there have been PILs, fines and orders ranging from every sane suggestion to the most bizarre ones and bizarre ones getting implemented later. PILs seeking allowance and directions for home delivery cropped up in Allahabad High Court and Kerala High Court, to which the Kerala High Court reacted by slapping a fine of 50,000 rupees to be added to the Chief Minister’s Relief Fund. Even though after witnessing over-crowding when the liquor stores were opened, many cities including Mumbai allowed and encouraged home delivery of the

⁶ “‘Professional PIL Shops’ Must be Locked Down during COVID-19 Pandemic: Centre to SC” available at: <https://www.news18.com/news/india/professional-pil-shops-must-be-locked-down-during-covid-19-pandemic-centre-to-sc-2563235.html> (last visited on Jun. 23, 2020)

⁷ Proverbial definition of ‘too many cooks spoil the broth’ available at: <https://www.dictionary.com/browse/too-many-cooks-spoil-the-broth#:~:text=too%20many%20cooks%20spoil%20the%20broth,soup%2C%20which%20finally%20tastes%20awful> (last visited on Jun. 23, 2020)

⁸ Article 29(1) of the Universal Declaration of Human Rights available at: <https://www.un.org/en/universal-declaration-human-rights/> (last visited on Jun. 23, 2020)

liquor. The litigant Mr. G Jyothish must be immediately reimbursed with due respect, as his suggestion did come in handy after just a few days of filing the PIL and helped in reducing crowding and black-marketing of liquor while significantly boosting the governments' treasuries. According to many critics, the High Courts managed the migrant crisis in a more sensitive and humane way than the Supreme Court.⁹ The High Courts termed it as a 'Human Tragedy'¹⁰ and stated that the Hon'ble judges couldn't control their tears witnessing the plight of the migrant workers.¹¹ The criticism was invited by the statements that had been issued by the Supreme Court on the migrant crisis, which were as follows

"It is impossible for this court to monitor who is walking and not walking. There are people walking and not stopping. How can we stop it? How can anyone stop this when they sleep on railway tracks?"

The High Courts have been a little more vocal in their views about their respective State governments and their functioning, be it the Gujarat High Court pulling up authorities for lack of basic medical amenities and facilities for patients in hospitals making scathing remarks like "hospitals as good as dungeon or worse"¹², or the Delhi High Court taking *suo moto* cognizance of horrific state of affairs in crematoriums of Delhi and dissatisfactory treatment meted out with dead bodies of victims of covid-19. Though the Gujarat High Court was also quick to recognize the swift actions and steps taken by the Gujarat government when the CJ Vikram Nath of Gujarat High Court stated that

*"If the state government would not have been doing anything, as alleged, then probably, by now, we all would have been dead."*¹³

There were also some controversial orders of few High Courts which seemed extremely misplaced and of a political nature that had been entertained for reasons best known to the State Police and Judges hearing the matters. One such case happens to be in Mumbai, one of the most prominent cities that had recorded a major share of total covid-19 cases and is still under a constant threat of community transfer.¹⁴ The case in conversation is the one where politically motivated complaints had been filed in states ruled by a particular party against something said by a news anchor on live television, which were later quashed by the Hon'ble Supreme Court of India except one.¹⁵

⁹ Karan Thapar, "Justice Lokur: 'SC Not Fulfilling Its Constitutional Role Adequately, Needs to Introspect' " available at: <https://thewire.in/law/justice-lokur-sc-not-fulfilling-its-constitutional-role-adequately-needs-to-introspect> (last visited on Jun. 24, 2020)

¹⁰ "It Is A Human Tragedy': Madras HC Slams Centre, State On Migrant Crisis" available at: <https://thelogicalindian.com/news/madras-hc-migrant-crisis-21142> (last visited on Jun. 23, 2020).

¹¹ Manasa Rao, "Can't control tears seeing plight of migrant workers': Madras HC seeks report", *The News Minute* <https://www.thenewsminute.com/article/can-t-control-tears-seeing-plight-migrant-workers-madras-hc-seeks-report-124695> (last visited on Jun. 23, 2020)

¹² Nikunj Soni, "Civil Hospital is as good as dungeon or worse, says HC", *The Ahmedabad Mirror*, May 24, 2020.

¹³ Sohini Ghosh, "Gujarat High Court now praises state govt: 'we would have been dead'", *The Indian Express*, Jun 1, 2020. (last visited on Jun. 23, 2020)

¹⁴ Manoj Sharma, "Covid-19 hotspot: At 25,317, Mumbai has more coronavirus cases than 158 countries", *Business Today*, May 22, 2020.

¹⁵ Murali Krishnan, "No coercive action against Arnab Goswami for 3 weeks, orders Supreme Court", *Hindustan Times*, Apr. 24, 2020.

The Lower courts have suspended most proceedings and trials for the time being in most states while some have begun dispensing justice through limited hearing on urgent matters and granting bails in cases with up to sever years of imprisonment in order to decongest jails as per the suggestions provided and orders issued by the Apex Court.¹⁶

The lower courts of law have laid low as per the directions of the Supreme Court for now and the court rooms have been quite dormant now for over a couple of months now. But, this dormancy must not translate to laxity in efficient discharge of justice when the courts re-open as a huge mass in the form of *force majeure* is piling and is headed to topple in their direction as soon as there's a chance. The lower courts would be playing a crucial role in detangling this yarn of *force majeure* cases to help and serve economic justice to the country which is already in a soup when it comes to economy. The courts shall clear the hurdles in economic activity for early revival of the systems already in place. For justice delayed would definitely be justice denied which cannot be afforded by the people at any cost, not after this major slump in economy and production. To conclude, in the words of one of the greatest poets to have ever lived, the lines that would sum up the role of the judiciary that has efficiently and commendably transformed itself and discharged its duties, subject to criticism, and the future efforts and endeavours the Judiciary should be ready to embark upon would be the following,

“..but I have promises to keep,

and miles to go before I sleep, and miles to go before I sleep.”¹⁷

¹⁶Shruti Mahajan, “Coronavirus: Consider bail for all undertrials facing up to 7 years in jail to decongest prisons, Supreme Court to states” available at: <https://www.barandbench.com/news/litigation/coronavirus-consider-bail-for-all-undertrials-facing-up-to-7-years-in-jail-to-decongest-prisons-supreme-court-to-states>(last visited on Jun 24, 2020)

¹⁷ Robert Frost, “Stopping by the woods on a snowy evening”, available at : <https://www.poetryfoundation.org/poems/42891/stopping-by-woods-on-a-snowy-evening>(last visited on Jun 24, 2020)