

Role of judiciary during COVID-19 pandemic in India

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Abstract

Legislature, Executive and Judiciary are the three pillars of Indian Democracy. They do not isolate but they function interdependently. The judicial system plays a crucial role. Though the Indian Constitution does not unambiguously discuss about the relation between these three powerful institutions through various provisions a system of 'Checks and Balances' has been established and there is a clear separation of powers. During this pandemic, the functioning of courts has changed drastically and most of the traditional things happening in and around courts have been put under severe pressure. Courts are functioning in India with limited resources and for emergency purposes. The present pandemic situation has impacted much in all in the environment, especially the judicial system. The justice delayed is the justice denied. The courts were not opened, and the counsels are not able to attend their clients and the authorities are not able to provide services to the public. The police excesses and custodial violence are happening throughout India because of this pandemic and because of limited functioning of courts. The technical and technological development is extremely limited in the Judicial system, most of the courts are functioning in India very traditionally. The system of e courts, virtual courts, online filing, Video conferencing, E court seva are not that much familiar and this has distanced the justice for the needy during this pandemic. The fundamental rights and the natural human rights are subjected at many instances and this has resulted in grave situation during this pandemic. The migrant workers are the real time example for the violation of fundamental rights. They walked for more than 2000 kms to reach their home, some died during this process and because of non-functionality of courts resulted their lives and their future. The prominent British Prime Minister Winston Churchill during the second world war said, If the courts are functioning in this uncertain situation then nothing can go wrong. That sounds the importance of judicial system. This paper summarises the impact of pandemic in the judicial system and the role of judiciary during this COVID19. The judicial precedents and the judicial authorities have repeatedly overturned the executive decisions and have laid their hands to uphold the constitutional responsibility and the constitutional importance. The functioning of courts came to halt because of this pandemic and this resulted in pendency of disposal of cases. This pandemic has resulted in slow down of constitutional rights envisaged to the public at large. The justice is under severe threat. The judiciary system plays a vital role in any society and during this pandemic is discussed in detail.

Keywords: judiciary, Legislature, Interdependently, pandemic

Introduction

Legislature, Executive and Judiciary are the three pillars of Indian Democracy. They do not isolate but they function interdependently. The judicial system plays a crucial role. Though the Indian Constitution does not unambiguously discuss about the relation between these three powerful institutions through various provisions a system of 'Checks and Balances' has been established and there is a clear separation of powers. During this pandemic, the functioning of courts has changed drastically and most of the traditional things happening in and around courts have been put under severe pressure. Courts are functioning in India with limited resources and for emergency purposes. The prominent British Prime Minister Winston Churchill during the second world war said, If the courts are functioning in this uncertain situation then nothing can go wrong. That sounds the importance of judicial system. This paper summarises the impact of pandemic in the judicial system and the role of judiciary during this COVID19.

Impact of Judiciary

Suppose to be the strongest pillar of the Constitution but the political and environmental system in India has made the role of judicial system under the stranglehold of the

Government. The executives overturn the judicial powers and they try to hold their supremacy. The judicial precedents and the judicial authorities have repeatedly overturned the executive decisions and have laid their hands to uphold the constitutional responsibility and the constitutional importance.

It was held in *Indira Gandhi v Raj Narayan*^[1] that lead to the dramatic change of the political and economical situation of India, the justice Sinha observed that the honourable Prime Minister, the legal servant of the nation has committed an offence and punished her with a ban on contesting elections for a period of 6 years. This judgment has transformed the powers and authorities entrusted in the Judicial System. The judgment made the Constitutional importance and the responsibility of Judicial System. The primary role of judicial system is to administer the justice. The functioning of courts came to halt because of this pandemic and this resulted in pendency of disposal of cases. This pandemic has resulted in slow down of constitutional rights envisaged to the public at large. This pandemic has slowed down the appointment of Judicial authorities and has made several things pending across the nation. The courts

¹ *Indira Gandhi v Raj Narayan* (1975 AIR 865, 1975 SCR (3) 333)

are functioning only for the emergency purposes and for the decisions to be taken in an extreme situation. The appointment of judges is in controversy and the disciplinary mechanism is questioned. The justice is under severe threat.

Impact of COVID19

The number of cases heard or disposed is very meagre when compared to the normal hearing process. There are almost 30 million cases pending for disposal across the nation. The apex court itself must dispose around 65000 cases. As per the report of Justice Malimath Committee ^[2], around 13.25 Lakh cases were disposed during the normal course of court proceedings but this COVID 19 has ceased the functionality and the proceedings of the court and only 35,169 cases were disposed during the month of April 2020. Quasi-Judicial bodies have stopped functioning because of this pandemic. Around 120 High Court Judgements appointment are pending because of this pandemic. This resulted in the load and work pressure to the existing judges and the delay in judgement. The delay in justice is denial of justice.

Impact on Fundamental Rights

The court failed to protect the rights of citizens during crisis and remained silent as citizens suffered, DAVE, the president of Bar Association SC said. The Supreme Court came to a drastic pressure during cases with respect to migration of workers. The Court observed that “how can we stop people from walking? It is impossible for this court to monitor who is walking and who is not walking”. This remark by the Court and the delay in justice has resulted in the lives of so many workers and they were put into undue hardship. Also, in an another plea, in respect of wages to migrant workers, the honourable supreme court dismissed the petition without any concrete directions also resulted in the privation of migrant workers. The life of workers were already in sharp threat because of COVID19, the judicial system failed to provide the constitutional remedy to them in the right time.

Right to Health

The fundamental rights are enshrined in the constitution but during this pandemic whether the fundamental rights are enjoyed by the citizens is a matter of question. The judiciary system is undergoing tremendous pressure during this pandemic to balance public health and the access to justice. A study conducted by Vidhi ^[3] Legal Policy on the infrastructure facilities in Delhi district courts revealed that the restrooms are often without running water. This pandemic questioned the hygienic practises and the basic infrastructure facility provided in the courts.

Government to control the pandemic, has come out with the technological support of Arogya Setu App. This resulted in the questioning of surveillance. Already more than 10 crores are using this app and the right to privacy as enshrined under Article 21 of the Constitution is under threat. The honourable justice B N Srikrishna who chaired the committee of personal data protection bill strongly opposed the mandatory usage of Arogya Setu App and said it is utterly illegal. The judiciary plays a key role in protecting the privacy.

The judicial system played a major role in this pandemic especially with respect to sharing of health data. The bench of Kerala High Court observed that the information should be shared with the consent from the patient and it should not be used for any marketing or advertising purposes. This judgment upholds the right to privacy enshrined in the constitution.

Distanced from the Society

Because of the closure of courts and its non-functionality has resulted in social distancing between the public at large and the judicial system. People are afraid to come out because of this pandemic and the lack of technical and technological systems has resulted in low number of cases filed during this pandemic. Also, this distancing and the non-functionality of courts have resulted in the trust of the society and it questions the legality of the things happening in and around. With limited benches and limited resources, it is highly impossible to render justice for all. Honourable Justice Sri Asok Kumar Ganguly while drafting his reforms on the judiciary process has submitted that the speedy trial is guaranteed under Article 21 of the Constitution and also mentioned about e filing and video conferencing which will drastically reduces the time as well as the resolution process. As per our father of nation, Shri MK Gandhi, “if you want to change anything, you be a change”. The Judicial System must undergo a drastic change in all means for the speedy resolution process and to render justice in the upcoming years.

Criminal Law and Pandemic

District Magistrates across the country had imposed curfews by exercising their power articulated under Sec 144 of Cr P. The Central Government imposed lockdown as envisaged under the National Disaster Management Act. The Epidemic Diseases Act empowers the state to have unlimited powers to control the epidemic. The closure of courts and its functionality have questioned the fundamental rights enshrined to the citizens by the Constitution and these Acts which are very old and enacted during the colonization are mostly in favour of the State than the citizens. These things play a crucial role for the honourable judges to safeguard the fundamental rights in the constitution and to protect the citizens with their precise and clear interpretation of law.

There are lot of cases filed across the nation for the deviation by people in following the rules and regulations enforced by the special acts during the pandemic. This has resulted in police excess and the excess of authorities across the nation. Most of the news channels and dailies reported the police excess during this lockdown and the fundamental rights enshrined in the constitution were not provided to the public at large. The judicial system because of limited resources were not able to deliver the justice or not able to condemn the activities. The honourable Justice S Ravindra Bhat of the SC tells that if the legal world does not move ahead with the rest of the world, the judiciary could fall behind the times, especially during this pandemic.

It was held in *Katar Singh v State of Punjab* ^[4] that right to speedy trial is an essential part of Fundamental Rights to life and Liberty.

The Honourable Justice Krishna Iyer while dealing with the

² <https://www.hindustantimes.com/india-news/judiciary-failed-to-protect-citizens-rights-amid-covid-19-pandemic-dushyant-dave/story-GXUEmlQQaamHZGEclTYgJ.html>

³ <https://indiankanoon.org/doc/32424520/>

⁴ *Katar Singh v State of Punjab* (1961 AIR 1787, 1962 SCR (2) 395)

bail petition *Babu Singh And Ors V. State of UP* ^[5] remarked, “our justice system even in grave cases, suffers from slow motion syndrome which is lethal to fair trail whatever the ultimate decision.

The fundamental rights cannot be suspended even in the condition of emergency as held in *ADM Jabalpur v Shivkant Shukla* ^[6]. It was about 196 years ago 1824 that the U.S SC affirmed the powers of the state to enact quarantine laws and impose health regulations

Quarantine is considered the oldest mechanism to reduce the rapid spread of bacterial infection and viral insights. This is the right time to have a well-controlled and well provisioned act for handling the issues with respect to epidemic and pandemic. The Judicial system must enforce its rights and to pass such judgement to handle these crises in future. The fundamental rights enshrined in the constitution should not be under threat or under mayhem situation even during the emergency.

Conclusion

The judicial system at present is very traditional. It must be changed according to the need and the development in the technical and technological manner. It should meet out the demand even during the emergency. The modernization of judicial system is the need of the hour and this will reduce the burden of the judges and the pending cases before them. Digitization, Process Automation, Technical and Technological Development, Virtual Court Hearing, E Courts, Usage of Artificial Intelligence will definitely have a better judicial system and saves the time.

References

1. *Indira Gandhi v Raj Narayan* AIR 865, 1975 SCR (3) 333, 1975.
2. *Katar Singh. v State of Punjab* (AIR 1787, 1962 SCR (2) 395), 1961.
3. *Babu Singh. And Ors V. State of UP* (AIR 527, 1978 SCR (2) 777), 1978.
4. *ADM Jabalpur. v Shivkant Shukla* (AIR 1207, 1976SCR 172), 1976.
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6. <https://indiankanoon.org/doc/32424520/>

⁵ *Babu Singh And Ors V. State of UP* (1978 AIR 527, 1978 SCR (2) 777)

⁶ *ADM Jabalpur v Shivkant Shukla* (1976 AIR 1207, 1976SCR 172)