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# Justice during Global Pandemic- Well Served?

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## ABSTRACT

*“No legal system can maintain justice unless every participant magisters, prosecutors, Legumes, defendants, witnesses, all risks life itself in whatever dispute comes before the bar. Everything must be risked in the Court arena. If any element remains outside the contest and without personal risk, justice inevitably fails.”*

— Frank Herbert, *The Dosadi Experiment*.

*The Novel Coronavirus or the COVID 19 has wrecked down the across late since the year of 2019. The transmission of the disease harmed more about 200 different countries which affected economical, social, and physical realities. This infectious virus to which there is not a known vaccine or an antidote has lobbed an unprecedented challenge to nationals as well as to international governance systems. Many restrictions which laid down has disproportionally affected the individuals who are already the most vulnerable. The role of the Judiciary as an enforcing authority and as an overseer to tackle the pandemic becomes more crucial. It is explicit that the situation demands to risk court arena to deliver justice to the seeker, if the court is restraining to take a personal risk the justice will inevitably fail as Frank Herbert quoted. This research understands why justice will inevitably fail if the court fails to face this situation as it demanding and to what extent this global pandemic affected the smooth functioning of the judicial body, Whether the Justice Institution fails to deliver justice as this novel virus is an unprecedented challenge before the Judiciary or Whether its taking ample steps to deliver Justice. Moreover, this work analyzes the extent to which the Judiciary utilized its extraordinary power to look into the concerns of the NRI's. And also this discussion is to recognize and understand did the Supreme Court being an apex court exercised its power to secure the rights of the citizen and migrant workers while also focusing on the shortcomings in the procedural aspects of the court.*

**Keywords:** *COVID19, Novel Virus, Judiciary, Justice, Citizen, Non Resident, Guidelines, Legal System, Disputes, Antidote, Infectious, Role, Constitution, Migrant Workers, Litigation, Complaint, Procedure, Constitutional Rights, Suo Moto, Governmental Actions, Court, Challenges*

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## **I. INTRODUCTION**

Safety and Health have been given more priority these days. And Needless to say, this unprecedented challenge the novel virus or COVID 19 has left a mark on the litigation and ADR measures as well. There is transference by the court to the world embraced or accepted of technology or a new modus operandi which mandatorily involved e-filing, also criticized hearing only to critical cases and conducting them through video conferencing as one of its new standard operating procedure. In particular, after the Government Of India passed a nationwide lockdown for 21 days beginning from 25<sup>th</sup> March 2020, The High Courts as well as Supreme Court passed various orders from judicial sides to minimize the impact of COVID 19 as much as possible on Litigants and their Attorneys. But this on other had failed to protect the rights in the amid of this pandemic as many outstanding judges chose to remain silent when they have the power to take cases on suo motto based on the news reports and scientific pieces of evidence instead of waiting for petitions to be file before the Judges or Chief Justice. The Constitution ensures the right of the people have to be protected and infringement to those rights have to be compensated where the judiciary has an important role to deliver compensation and justice by hearing the matter and looking into the concerns of the litigants by abiding by the Constitution without failure. The delay in justice and not having a public view of the court proceedings is undeniable question the credibility of effective working of the judiciary. The Covid 19 has resulted the same. The aim of the paper is to understand the regulation adapted by the country during this pandemic and how this unprecedented challenge of novel corona virus has caused an impact on the smooth functioning of the Judiciary. The lockdown and curfew taken to regulate the spreading of the virus proportional caused changes to hearing of matter before court. And the adoption of new measures to dispose the matters also resulted in new challenges such as user interface issues and lack of accessibility of technology. The court also took many measures to protect the migrant worker as well as the non-resident of India. But there exist certain drawbacks in the procedure adopted by the judiciary during COVID 19 as the judicial system till need to expand it digital arena

## **II. UDHR RESPONSE ON PANDEMIC**

United Nations High Commissioner for Human Rights (OHCHR) has provided guidance on a people-centered COVID-19 response.<sup>3</sup> That It is health regulations should not only address the medical dimensions of the pandemic but also the human rights and gender-specific

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<sup>3</sup> <https://www.un.org/en/un-coronavirus-communications-team/protecting-human-rights-amid-covid-19-crisis> (Visited on november 27 ,2020)

consequences of measures taken as part of the health response. Emergency power shouldn't be used for quashing the dissent or silence the work of human rights defenders or journalists. People who is deprived of their liberty, including in prisons, pre-trial detention, immigration detention, institutions, and other places of detention are at heightened risk of infection in the case of an outbreak. Their situation should be specifically addressed in crisis planning and response.

UN Deputy High Commissioner for Human Rights filed a statement in human rights council the pandemic is a striking reminder of existing inequalities, and the consequences of those inequalities for human rights. The use of Artificial Intelligence to process bank loan applications, may lead to discrimination against individuals from already marginalized communities. The multifaceted threats to the civic space, from online attacks to digital surveillance also require increased attention.<sup>4</sup>

#### **GUIDELINES ISSUED BY JUDICIARY:**

A bench consisting of CJI Bobde and Justices DY Chandrachud and L Nageswara Rao issued a direction In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic<sup>5</sup> exercising its powers under Article 142 of the Constitution of India:<sup>6</sup>

- Measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful
- The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies
- Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorized to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies,

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<sup>4</sup><https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26050&LangID=E> (Visited On November 27, 2020)

<sup>5</sup> RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC [ 2020 SCC Online SC 355, order dated 06.04.2020.]

<sup>6</sup> *ibid*

- The concerned courts shall maintain a helpline to ensure that any complaint concerning the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance about it shall be entertained thereafter.
- The District Courts in each State shall adopt the mode of Video Conferencing prescribed by the concerned High Court.
- The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, inappropriate cases courts may appoint an amicus-curiae and make video conferencing facilities available to such an advocate.
- Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Courtroom the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.
- The presiding officer shall have the power to restrict the entry of persons into the courtroom or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants is many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.

### **III. AN ANALYSIS ON THE GUIDELINES ISSUED:**

But the flaw within the guidelines issued by the apex court is that the public view principle which considered to be an important aspect is questioned. But when it comes to modalities which are suitable for temporary transition to use the video conferencing the challenge comes to lawyers and litigants especially from the rural areas as they have limited access and knowledge within the usage of online platforms used for video conferencing. It cannot be expected even though the video conferencing as prescribed by the high court is easy to have an access as that the every district of this nation is not developed enough in accepting the video conferencing so the efficiency of the disposal of matters through video conference is

questioned. And again restriction in entry of person challenges the principle of public view, openness and transparency.

#### **IV. HEARING OF MATTERS BY JUDICIAL BODY DURING PANDEMIC:**

The COVID 19 has brought delivery of justice almost into a halt. After this case court stated hearing cases through video conferencing, very rarely through physical hearing. And this system was quite challenging as user –interface issues exist and troubles itself within technology. So it resulted in extensive delays in hearing and passing an order and lack of consistency within judicial-making.

##### **Video Conferencing and Hearing**

the experience in hearing the matters through video conferencing could expand its mechanism finally to improve its quality and justice delivery. In *Krishna Veni Nagam v. Harish Nagam*<sup>7</sup> it was held by the Apex Court “it is appropriate to use videoconferencing technology where both the parties have equal difficulty due to lack of place convenient to both the parties”. Proceedings may be conducted on videoconferencing, obviating the needs of the party to appear in person, wherever one or both the parties request use of video conferencing, But later on, the veninagam case was overruled by *Santini v. Vijaya Venketesh*<sup>8</sup> in which the majority of the bench upheld that in “transfer petition, video conferencing cannot be directed”. Justice Chandrachud in the dissenting opinion highlighted the pro of video conferencing which is laid down below:

- "The Family Courts Act, 1984 was enacted at a point in time when modern technology which enabled persons separated by spatial distances to communicate with each other face to face was not fully developed. There is no reason for the court which sets precedent for the nation to exclude the application of technology to facilitate the judicial process."
- "Imposing an unwavering requirement of personal and physical presence (and exclusion of facilitative technological tools such as video conferencing) will result in a denial of justice."

Recently Chairman of Bar Council of India had addressed in a letter to CJI opposing virtual hearing of the case stating the yawning gap between resources available for video-conferencing and e-filing with lawyers of humble background from rural cities as compared

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<sup>7</sup> Krishna Veni Nagam v. Harish Nagam Transfer petition [ (CIVIL) NO. 1912 OF 2014]

<sup>8</sup> by Santini v. Vijaya Venketesh TRANSFER PETITION [(CIVIL) NO.1278 OF 2016].

to that of the elite class of big cities.<sup>9</sup> Many lawyers have opposed video conferencing for the hearing case as it does not facilitate public viewing as the facility is only accessible for judges and lawyers. In *Naresh Shridhar Mirajkar & Ors vs. State of Maharashtra & Anr*<sup>10</sup> it was held "Public hearing of cases before courts are as fundamental to our democracy and system of justice as to any other country". But in a current situation like a pandemic virtual court is needed but the principle of an open court should be in a compromise.

### **Judiciary on Migrant Workers:**

The misery faced by migrant workers was one of the challenging issues raised before the courts via 'n' number of petitions. The lock-down that was announced with only a 4 hour notice has led such workers stuck where they are. They faced issues of poverty, food, shelter, transportation etc. though initially when the petition regarding the suffering of migrant workers was heard by the Supreme Court, each state having a different situation, the court directed the state governments to take necessary steps. But after the incident of death of many migrant workers who walked back home, the Supreme Court realized that the state governments were not taking necessary steps. The Supreme Court then ordered the railways to supply the States with 171 more Shramik Special trains to carry migrant workers over the next 24 hours. The Court ordered the centre and the state government to remove every complaint or litigation lodged against migrant labourers who had set out for their native villages to avoid malnutrition, jobs and disease during the pandemic on foot from big cities and It also directed the establishment of counseling centres to reach out to them and to explain the different schemes for their rehabilitation and employment.

### **Food and Ration**

Lack of food and ration during the lockdown period was another challenging issue faced by the marginal sections of our country. Several petitions were raised before the court with respect to this issue. But considering this as a policy matter, the court directed the state governments to take necessary steps like providing free food, water ration etc. But the state governments being idle or not taking proper care of this issue the court strictly directs the state government to take the issue of food and ration into consideration and asked the state governments to submit reports with respect to that. After the strict monitoring of the Supreme Court the state governments ensured that the marginalized communities in the country are fed with adequate food and ration. The court appointed certain committees to monitor the works of state government.

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<sup>9</sup> Letter BCI: D: 1372/2020 (Council) dated 28.04.2020.

<sup>10</sup> *Naresh Shridhar Mirajkar & Ors vs. State of Maharashtra & Anr* [1967 AIR 1 ,1966 SCR (3) 744]

In *Justice Brigade v. Union Of India*<sup>11</sup> court directed the state of Kerala to regulate the prizes of essential commodities like mask, sanitizer and to conduct awareness programmes through television and special channels. Further the court asked the Learned State Attorney to convey the direction of the court to fix the prize of mask and sanitizer as well as issuing regulations for possession, purchase, and sale of the above said essential commodities forthwith.

### **Constitutional rights guaranteed for migrant worker**

During COVID 19 some of the articles under the Constitution of India were underlined such as 14-16, 23-24,38, and 41-4 which directly concerns labor rights. Article 14 guarantees every citizen should be equal before the law, article 15 while in hand specifically states no citizen should be discriminated against citizens, and article 16 extends to the right of equal opportunity for employment or appointment in a state. Article 23 prohibits forced labor and human trafficking. Article 38(1) underlines the "strive to promote the welfare of the people" with a "social order in which justice, social, economic and political, shall inform all the institutions of national life. In article 38(2) it ensures inequalities in income should be minimized. Article 43 says workers should have the right to a living wage and "conditions of work ensuring a decent standard of life".

### **Apex Court on Migrant Workers**

In *Harsh Mander v. Union of India*<sup>12</sup> a writ petition was filed before the SC requesting it to issue a direction to both the Central/State Governments to ensure minimum wages for all the migrant workers in the country, to prepare a national and State disaster management plans for dealing with the COVID-19 epidemic, or to pass any such orders that the Court may find appropriate. On 31<sup>st</sup> March 2020 Supreme court ordered<sup>13</sup> center to ensure accessibility to basic needs and medical facilities to migrant workers during the nationwide lockdown. And meanwhile the Union Home Ministry directed<sup>14</sup> the employers pay their wages to the migrant workers without any deduction during lockdown also to refrain from collecting rent from migrant workers Who live in rental accommodation. On 26<sup>th</sup> May 2020 the court took<sup>15</sup> suo moto cognizance of problems and miseries of migrant laborers who had been stranded in different parts of the country.

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<sup>11</sup> Justice Brigade v. Union Of India [WP(C).No.8260 OF 2020(S)]

<sup>12</sup>Harsh Mander v. Union of India [ WP (Civil) Diary No(s). 10801/2020]

<sup>13</sup> Alakh Alok Srivastava v. Union of India [2020 SCC OnLine SC 345]

<sup>14</sup>[https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%202029.03.2020pdf\\_.pdf](https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%202029.03.2020pdf_.pdf) (Visited on November 30,2020)

<sup>15</sup>Suo Motu writ petition (civil) no(s). 6/2020



## **V. SHORT COMINGS**

Each individual will reserve the privilege of food, cover, water, clinical consideration, which is ensured under Article 21 of the Indian Constitution. However, sadly the Supreme Court or High Courts neglected to assume their genuine function to make sure about these rights during the COVID-19 pandemic by giving notices to state governments. At commonly Supreme Court and High Courts assumed their ideal function in contemplating matters like prudent, therapeutic, logical and so on In any case, at whatever point Courts chooses not to include in strategy making, it returns to the standard mantra "courts intervene in scientific matters" even though social distancing is a definitive part of the period, the Judiciary maintains its pride just when it renders equity in the most ideal manner amid the constraints. And there is a user-interface issue with using digital technology which has to be sorted.

At the point when strict lockdowns are winning in the province, a supplication for indicating least wages to transient laborers was additionally discarded by the apex court cleared route for fights in various areas of the Country. There are as yet numerous zones where Courts can suo moto accept the perception of issues, for example, making accessible basic items like food, water, disinfection, and so on.

## **VI. FINDINGS**

By analyzing the objectives and aims through the research it can be find out that the lack of proper strategy for judiciary for considering which is a crucial matter. And to further develop a proper justice strategy system as a response to COVID19. Also it lacks uphold judicial oversight to safe guard the abuse of powers during COVID 19. The new measures especially disposal of matters through video conferencing demands the principle of public view, openness and transparency to be set aside during this pandemic.

## **VII. SUGGESTIONS**

It is important to develop a justice sector strategy for covid-19response.also criteria to determine the criteria to decide the crucial matters. And it is way to necessary to provide legal assistance and educate the lawyers as well as the litigants how to access the video conference platforms and how to use e-filing procedures. Also there is need to expand and lift emergency measures to respond to pandemic situation like this.

## **VIII. CONCLUSION**

The Indian experience of COVID-19 has been disastrous even before the disease has reached a peak, and this is largely due to the central government response, which has been wanting in

several crucial respects. The whole history of the humanity has seen and encountered the devastation brought about by the devilish infections since around in 3000BC to Zika infection in year 2015 and now COVID-19 of every 2020. Of the equal occasions, the judiciary has been in resource for making the adjudication of the dispute and now, in the advanced circumstances such as that of COVID-19 being pandemic, it is the need of great importance to draw and edge down a code and law which completely manages the extraordinary circumstances as are we are seeing today and even are more terrible to envision in future by goodness of which the code can be enacted as and when such circumstance is looked by the general public. The logic of the judicial decision-making process is more or less has been the same throughout, within the same constraints not only in India dependent on what ideas hold sway in the society and nation. Filing Petitions is all right but the situation demands calls for a bit more initiative than filing petitions in honorable courts, There is a need to assert our rights as citizens and eradicate the injustice happening across the nation.

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