



## Covid-19 Pandemic Consequent Lockdown and Role of Higher Judiciary In INDIA

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TOPIC:-COVID-19 PANDEMIC CONSEQUENT LOCKDOWN AND ROLE OF HIGHER JUDICIARY IN INDIA This particular topic is not about the active role of judiciary in respect of hearing through Video conferencing during lockdown period in the entire counting due to Covid-19 pandemic rather it deals of passive and in active role of higher judiciary of India in that period.

### Abstract

*This particular topic is not about the active role of judiciary in respect of hearing through Video conferencing during lockdown period in the entire counting due to Covid-19 pandemic rather it deals of passive and in active role of higher judiciary of India in that period. How courts particularly Supreme Court of India have letdown both the constitution and the people of India ?*

*It is to be remembered always that Supreme Court and various High Court in India are not scientific experts or medical doctors or even policy maker which can tackle the effect of lockdown due to unprecedented pandemic of Covid-19. However being a non political issue, the issue of Covid-19 pandemic is required to be taken seriously by all the organs of the Government i.e. Legislature, Executive and Judiciary.*

### Key Words

**Pandemic, Intrinsic relief, Judicial Review, Lockdown, Migrant workers, Marginalized Section.**

As the pandemic of Covid-19 cost serious and deleterious effect on all but particularly it has left unforgettable memory for the poor, the migrant workers, children, women, dalits, adivasis, transgenders, sex workers and other marginalized sections of the Society. As the pandemic of Covid is non -political issue, its effect has been alarming on entire population. At this juncture it is the pious, moral, ethical and legal duty of all the organs of the Government to play significant role to cure the sufferings of the people of India.

Each organ has specific obligation and duty to perform towards the people of India while

legislature is to enact good quality of law, executive is to administer the provisions of law and to apply the same to the best of common people and Judiciary is to interpret the provisions of law and to render justice to the people will not be able to repose their trust and confidence towards Government and Justice administration system of the country. Though Judiciary has its own limitations but can not excuse or justify its total failure to even listen to those marginalized class many of them are left to die of hunger during the period of lockdown in the Country.

Generally, the people of India expect a lot from Supreme Court of India and various High Courts. Therefore these courts are under their constitutional obligation to render quality justice which is to be tested on the touchstone of fundamental rights, directive principles of state policy, federalism and State accountability. It has been observed in the alarming situation of Covid-19 pandemic that the higher judiciary has completely surrendered itself to the executive while making decisions in Covid-related issues during the period of lockdown. It has not only been an institutional failure but viewed as personal failure of the judges. Now the role of higher judiciary in India in Covid related issues are analysed to draw a conclusion and its down falling trend.

Some questions before the higher Judiciary are raised and doubts are expressed in respect of its role during lockdown period owing to Covid-19 pandemic:

1. What is the obligation of Supreme Court of India in respect of protection of fundamental rights and directive principles of state policy especially in the period of crisis?
2. It is not responsibility of the court to interfere in policy matters, scientific and medical expertise carrying financial implication?
3. What the apex Court of India has performed as its duty interms of food, shelter, medical help and travel during the period of crisis.

The answers to above questions are expected from higher judiciary of India. Infact, it is states obligation to protect the socio-economic rights of the people by providing affordable health care, free ration, free travel etc. There services are not considered as a charity rather it is the duty of a welfare state like India towards its people who are considered to be repository of constitutional power in accordance with the preamble of the constitution of India.

#### **A. The Legislative Mandate behind Lockdown in the period of Covid-19 pandemic.**

Before Disaster Management Act, 2005, there existed Famine/Scarcity code from 1880 in India mandating relief obligation of state during calamities. The Disaster Management Act, 2005 was passed to fulfil some commitments made by the country in international convention like action plan adopted by UN in 2005, Sendai Frame Work in 2015 for Disaster risk reduction by UN. Correspondingly India has National Disaster Management Act, 2005 and National Disaster Management Plan 2016 which include relief, rescue and rehabilitation measure for affected people due to disaster or calamities. In 2008, Guidelines for management of Bio-logical Disasters were framed to deal with the pandemic and prevention and quarantine measures. Since Epidemic Disaster Act, 1897 was as to what is the legal basis for quarantine and lockdown which were announced during the period of Covid-19 pandemic.

If the landmark decisions of Supreme Court starting from Olga tellis in 1985 to A.P. Pollution control Board in 2001 are analysed then it is evident that honorable Court has reiterated its view calling. India as a welfare state in more than 300 Judgements. Moreover there are constitutional provisions like articles 13,21 and 141 that clearly state the power Supreme Court to give shape of legislations from the scattered provisions in directive principles of state policy. To name a few, National Food Security Act, Street vendors Act, NREGA, Un-organized sector-workers social security Act, maintenance welfare of senior citizens Act & Prohibition of Employment of Manual scavengers Act. The court is also having power of judicial review to test the veracity of legislative and executive

actions to the from Laxmikant Pandey case (Foreign adoption matters) Vishakhas case, Gaurav Jain's case. Therefore it is clearly proved that if the legislative & executive policies are arbitrary or violative of fundamental rights then the Supreme Court has constitutional power to interfere in policy matters. It cannot escape or abdicate from its constitutional responsibility saying that it will not interfere in the policy matters of legislative and judiciary.

It has also been noticed during the period of lockdown, the Supreme Court has agreed with bornbastic claims made by the Government before it, though the reality of starvation of people and pathetic problems of migrant workers are known to public and reported by media. But inspite of these existing problems, Supreme court went on believing what Government claimed before it through the Attorney General of India and Solicits General of India. Now the response of Supreme Court's on Covid-related issues will be analysed to know the reality.

## **B. Supreme Court and Covid-Related Issues**

A large number of issues have been raised before Supreme Court by some individuals and various organizations to declare financial emergency. The Court should have/could have entertained all there petitions but failed to do so calling them as frivolous. It went on praising the steps taken by the Government during the period of lockdown. It should have atleast asked the Government to consider the issued raised in the petitions but there was no question raired, no guidelines framed, no concerns expressed by the court on those issues and consequently the petitions died their natural death.

### **The issue of migrant workers:**

The Government of India does not have official data of number of interstate migrant workers in the country. Though the provisions of Inter-state Migrant workers (registration of Employment and condition of service) Act, 1979, provide for compulsory registration, yet it is a dream which may take several years to be translated into reality. Some private studies by Prof. Amitabh Kundu from Research and Information system for Developing Countries submitted a report based on census of 2011. According to the study there are atleast 65 milions inter-state Migrant workers. Similarly Centre for the study of Developing Society of Aim Premji University conducted a survey in 2019. It reported that approximately 29% population in India's big cities are daily wage earners. Based on the these studies it can be opined that the central Government should have enough knowledge about migrant workers and their problems, but it did not take sufficient step to tackle their problems.

Covid-19 was declared pandemic much before 24<sup>th</sup> March, 2020 which was the date of 1<sup>st</sup> Country wide lockdown. Due to this, lockdown flights were stopped and the Govt. instead of taking any concrete step, had begun the circus of clapping and beating of dishes or drums. Any responsible and efficient Government would have anticipated the rush of migrants to home states and planned it before commencement of lock down from March, 24<sup>th</sup>, 2020. Even after knowing all the facts and plight of migrant workers the Supreme Court did not ask any question to Central Government as to (a) why were migrant workers not allowed to travel from March 24, 2020 and (b) Why were they allowed to travel after 37 days of lockdown. Infact on March, 26, 2020 a petiton was failed by Alakh Srivastava in Supreme Court praying for arrangement of food, shelter and medicine for migrant workers. The honourable court after two-three hearing in March, 2020 accepted an astonishing claim of Solicitor General on the issue that 'not a single migrant was walking and the petition is finally disposed of an 27<sup>th</sup> April, 2020 without any substantial relief.

Another suomotu notice was taken by Supreme Court on the basis of a letter sent by an MP Mahua Moitra on April 2<sup>nd</sup>, 2020 and the same was dismissed on 13<sup>th</sup> April for unknown reasons. Similarly another petition filed on 3<sup>rd</sup> April by Harsh Mander, a petition by Jagdeep Chhokar on 18<sup>th</sup> April, 2020 met with similar fate like petition of Mahua Moitra. All these issues before Supreme Court

were disposed of without adequate relief. Thus Supreme Court believed an executive only and disbelieved the lived reality of the people and failed to exercise its jurisdiction embedded in law and jurisprudence of its own in the last 40 years.

### **C. Covid-19 Pandemic and the issue of Corporate Social Responsibility Fund**

Ministry of corporate Affairs, Government of India declared on 23.03.2020 that CSR was permissible for Covid related issue. It again issued a clarification on 10<sup>th</sup> Aril, 2020 that Schedule VII of the Companies Act, 2013 does not include contribution as CSR expenditure if fund is given to Chief Minister's Relief Fund or State Relief Fund. It was infact included in PM's Fund.

Mahua Moitra, an MP challenged this discrimination in Supreme Court on 5<sup>th</sup> May, 2020 and the same was rejected by the Court stating that the matter is required to be debated in parliament and also that no corporation had challenged this issue of CSR to PM's Relief Fund not to CM's Relief Fund or State Relief Fund.

### **D. CAG Audit of PM Care's Fund**

Another petition praying for CAG audit of PM's care's Fund was filed but was dismissed on the ground of misconceived one. On similar matter, Bombay High Court (Nagpur Bench) on May, 13<sup>th</sup> 2020 directed the union of India to file a reply to a petition.

## **Conclusion**

Supreme Court of India is the highest Court of appeal and people have great expectation from it. They do not want the Court to be a doctor, or scientific experts or order for lifting the lockdown or, curtailment of civil liberties to be altogether removed, rather the above mentioned petitions were filed urging the court to think for poorest of poor who were dying not of Covid-19 but by being jobless complete lack of food, complete lack of planning to ensure livelihood during lockdown. In fact it was an unprecedented situation demanding proactive role from the apex court of the country as it is considered as protector and guarantor of entrenched provisions of the constitution. But it has failed to perform its constitutional duty completely at the time of dire need. It is not just an institutional failure rather it also stakes claim in personal image of honourable Judges of Supreme Court of India.

## **References**

1. Tripathi, G.P., *Judicial process*.
2. Swamy, Radhika Kumar, *Supreme Court is centre for Political Power*.
3. Rao, M. M., (1997), *Judicial Activism*, 85 CC (J1)
4. Olga Tellis V. Bombay Municipal Corpn. (1985) 3 SCC 545.
5. Iyer, Krishna, (1979), *Some Half hidden Aspects of India Social Justice*, P- 20, Eastern Book Co.

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