

Covid Activism: Can Courts Comment on Policy Matters?

The years 2020 and 2021, the world has and is witnessing a virus making a headway, putting the world in standstill and human lives at stake. The Covid 19 pandemic has cost us many things, loss of life, economic crisis, mishandling of the situation by the government in various nations. The pandemic was nothing that anyone ever envisaged or ever experienced, it quite natural that the measures taken, backlashes, the need of the hour is that all the three organs work in a synchronised and efficient manner and overcome this crusade. The pandemic has changed the way people engage in activism and the communication of the authorities to the commoners. It has drastically changed and shaped the shape of millions of peoples daly lives. The lockdown has ushered in a digital reinvention for a socio political dissent and debate in various national and international platforms, as they have become instrumental in addressing the peoples needs, grievances and apprehension and reaching it to the executive, for the necessary actions to be taken. In the situation where we are facing a national crisis, decisions taken in haste, integrating all the services, effective implementation of the policies is a difficult job, in this process, mishaps are bound to happen. Considering this context, an independent body like the judiciary commenting on the policies can have both positive and negative repercussions.

The supremacy of the constitution of India binds the three organs of the government, the legislature, executive and the judiciary. Laws made by the legislature and implemented by the executive has to be in consonance with the fundamental principles of the constitution, which is protected by the judiciary. Similarly when it comes to the pandemic, where the lives of people are being questioned, judiciary can intervene in policy matters, comment on the pitfalls, provide with suggestions. As in such circumstances, the judiciary must stand with the people and make sure that they are provided with necessary incentives and services. During the pandemic, citizens from various strata of the society suffered, especially the migrant workers and daily wage workers. As it is the executive's responsibility to take a foot front in promulgating rules and policies, towards fulfilling people's socio economic entitlements, which cannot be overlooked by the judiciary. To address the stresses upon medical infrastructure or on the exodus of migrant workers, governments has formulated policies under the pretence of controlling the pandemic, which actually abrogates the concept of welfare state. Since there wasn't timely judicial intervention, Indian courts are now flooded with petitions

challenging the constitutional legitimacy of such executive decisions, it is true to an extent that some of the petitions are of little relevance, but a few of them are of substance. Keeping in mind the system of check and balances, the judiciary can only intervene with the policy decisions of the government if it is found to be arbitrary, unreasonable and bad in law. After facing interminable criticism, since the judiciary failure to review the executive's actions against the pandemic. The major reason for high levels of criticism against the judiciary is that, way before the nation went to lockdown, the court took *suo moto* cognisance in certain matters, for instance, it issued appropriate directions to decongest overcrowded prisons amidst COVID-19, and directed private laboratories to conduct free Covid testing for the poor. The supreme court showed laxity in addressing issues of the migrant workers in the times of the pandemic, because of its blind reliance on the false assurances given by the government. The executive is obviously capable of handling these issues but times when there is a national crisis and expeditious decisions are to be taken, miscalculations may happen and incorporating the requirements of all may be fatiguing, timely judicial intervention can help in resolving the situation by commenting on the policies formulated and giving vital suggestions can be of great support. Certain proactive measure taken by various courts have created a profound impact, supporting people during these challenging times .

1. Government order prohibiting private hospitals tossed aside

A judgement by the Telangana High Court struck down a state government order that compelled patients to seek diagnosis and treatment for Covid -19 only at designated government hospitals. Calling it unconstitutional, arbitrary and unreasonable, the court highlights that the pandemic cannot be termed as a “medical emergency” which can trample on citizens fundamental rights.

2. Dungeon Hospital and the hapless migrants

The Gujarat High Court took *suo moto* cognisance of the shabby conditions of Gujarat's hospitals and issued directions concerning, amongst other things , the efficiency of doctors, quarantine facilities, testing kits and PPE kits.

3. The Karnataka High Court's intervention compelled the state government to pay for the travel of migrant workers

The Karnataka High Court directed the central and state government to make immediate decisions regarding the payment of migrant workers railway fare, where those workers wanted to travel back to their states but were unable to pay. The court found that it was the central and state governments constitutional obligation to mitigate the suffering of those migrant workers.

Now the courts are trying to redeem their image by taking *suo moto* cognisance of the inhuman conditions of migrants. The court has instructed the central , state and union territories to endure the safe travel and basic necessities for the migrants.

The orders passed by various courts are an exemplary illustration of judicial intervention that holds all levels of government to the highest standards , where those states failed in meeting their constitutional goals. It has actually provided another occasion for courts to remedy executive under reach . At the the same time Supreme Court's lack of responsiveness during times of crisis has wobbled the faith of people in the constitutional ethos. This shows the relevance and trust people have on the judiciary commenting on the policy matters by the state.

Realising this the court has started taking dynamic steps in this time of dire , the court has passed a verdict on providing 750 MT of oxygen cylinders in Delhi and has even pointed out , how the state government has failed in providing 450 MT of oxygen cylinders to the hospitals and other medical facilities and has posed some strong questions on the efficacy of the state government and hoe they are discharging the responsibilities. Even the supreme court has asked the Centre to come out with a national plan to deal with proper distribution of oxygen and essential drugs for the patients. Making such bold comments on the policies creates a confidence amongst the citizens but also sends a quiver in the executive and the authorities holding power. There are raising arguments from politicians stating that the “Supreme Court is ill equipped to deal with such local issues, local logistics and should not supplant that local touchstone on the erroneous and fallacious touchstone of uniformity”. The judicial. It creates a demoralising, chilling, paralysing and negative effect done by the government, non-governmental institutions of governance and results in people loosing confidence in the government they elected and resulting in instability, which cannot be accepted, considering the current turn of events.

CONCLUSION

Judiciary commenting on the policy matters can create positive impacts , but when the intervention is more, can result in people losing trust on the government and at the same time government's loses its autonomy in taking certain decisions , and the fact that judiciary cannot be an expert in all matters of national interest, intervention keeping in mind the demarcation of power amongst the three organs of government, will help in bringing about the best policies with effective implementation of the same, which is the need of the hour.

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