

COVID–19 Pandemic: A Study Towards Access To Justice And Healthcare

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Abstract

COVID - 19 pandemic has encompassed the entire universe and no limb or surface has remained unscathed by it. The healthcare facilities and infrastructure went into a toss and the pandemic spread its tentacles with hitherto unfathomed ferocity, indiscriminately on the high and mighty as well as meek and poor. The nations boasting of the best infrastructure in the healthcare and relative services were brought to their knees. The consequent lockdowns inflicted unprecedented miseries on all and sundry especially the people belonging to the poor strata of society. The Pandemic presented a leadership challenge and the countries which provided a better leadership escaped the fury of the pandemic and economic pitfalls to a larger extent. The access to justice too suffered as everything including the courts were closed. The family values and relationships went for a complete spin and people abhorred the site of their kith and kin suffering from the disease and at times even a decent and dignified burial was denied. The migrant labourers were forced to literally beg on the streets for their survival and for ensuring two square meals for their families. The horrific scenes of the people returning to their native villages with small children in tow walking barefooted stirred even the most difficult of the souls. The study focuses on the various pitfalls on account of the pandemic especially on health care and access to justice in the Indian polity and seeks to conduct an efficiency audit thereof.

Keywords: Lockdown, Health Care, Migrant Labourers, Access to Justice, Leadership

1. Introduction

He who has health has hope and he who has hope has everything.

- Thomas Carlyle

The Humans, since time immemorial have been taught the importance of good health and health is the real wealth is the basic perspective and concept that has been ingrained into all minds. A good mind resides in a good body and which is the consequence of good health. The year 2020 has taught us this theory in the most subtle way and in a manner that we will seldom forget the same. The pandemic affected everybody irrespective of geographical terrain or economic gradation and brought home the point that the universe is a big one family and each member of the family should care and empathise for the others. The massive lockdowns enforced by way of a last resort in the absence of an unknown enemy and the lack of an antidote or vaccine to treat the same closed everything completely and squarely. All the nations, big or small, rich as well as poor were brought to their knees and were cowering with fear at the sight of hitherto unfathomed fury of the corona which was spreading its tentacles indiscriminately overall and sundry. The present concept paper focusses on the pitfalls of COVID-19 on the healthcare as well as on the access to justice during the nightmarish period and attempts to

highlight as to what more could have been done and seeks the solutions and deciphers future safeguards to deal with such situations particularly in Indian Polity.

2. Healthcare

Constitutional Mandate:

Entry 6 of the State List in Schedule VII of the Constitution provides for Public Health and Sanitation; Hospitals and Dispensaries. Most provisions related to health care are in Part IV (Directive Principles of State Policy). These are:

- Article 38 which provides that State will serve a social order for the promotion of welfare of the people. Providing affordable healthcare is one of the ways to promote overall welfare of the people.
- Article 39 (e) calls upon the State to ensure that health and strength of workers, men and women and the tender age of children are not abused.
- Article 41 imposes duty on State to provide public assistance in cases of unemployment, old age, sickness and disablement etc.
- Article 42 makes provision to protect the health of infant and mother by maternity benefit.
- Article 47 makes it the duty of the State to improve public health, level of nutrition, human condition of workers and standard of living of its people and also ensure that intoxicating drinks and drugs which are injurious to health are not consumed except for medicinal purposes.
- Article 48A ensures that State shall endeavour to protect and improve the environment and ensure the pollution free environment for good health.

Apart from these Directive Principles of State Policy, some of the provisions related to health fall in the 11th Schedule and 12th Schedule as subjects of Panchayats and Municipalities respectively.

Article 243G mandates that the legislature of a state may endow the panchayats with necessary power and authority in relation to matters listed in the 11th schedule.

Health is a vital indicator of Human Development and Human development is the basic ingredient of economic and social development in India. Article 21¹ of the Constitution of India guarantees a Fundamental right to life and personal liberty. The expression 'Life in this article means a life with human dignity and not mere survival or animal existence. The right to health is inherent to a life with dignity and it has a much wider meaning which includes right to livelihood, better standard of life, hygienic condition in work place and leisure. Hon'ble Supreme Court has expanded the scope of Article 21 time and again to incorporate various rights related to healthcare under its amplitude.

Judicial Perspective:

Various healthcare rights which have been recognised on account of judicial benevolence based on a catena of decisions are enumerated below-

- The right to life includes the right to health – State of Punjab v. Mohinder Singh Chawla²
- Right to life included the finer graces of Human Civilization : Dr. P. Nalla Thampy Terah v. Union Of India³
- Right to live with human dignity : Francis Coralie Mulin v. Administrator, Union Territory Of Delhi⁴
- Right to Healthy Environment : M C Mehta v. Union of India⁵
- Pollution free life and healthy environment and workplace : Bandhua Mukti Morcha v. Union of India⁶
- Pollution free Water and Air : Dr. B.L. Wadhwa v. UOI⁷
- Protection against Hazardous Industries : Vellore Citizens Welfare Forum v. Union of India⁸
- Emergency Medical Aid : Pt. Parmanand Katara v. Union of India⁹
- Timely Medical Treatment in Government Hospital : Paschim Banga Khet Mazdoor Samiti v. State of West Bengal¹⁰
- Right to Electricity : Molay Kumar Acharya v. Chairman cum Manager Director West Bengal State Electricity Distribution Co. Ltd.¹¹

Role of World Health Organisation(WHO):

According to World Health Organisation , Health is a state of complete physical, mental and social well-being and not merely the absence of disease.¹²It is manifestly clear from the definition that condition of life of the individual should incorporate physical , mental and social well-being and must be devoid of disease and infirmity. The preamble of the Constitution of India which strives to provide for welfare state with socialistic patterns of society under Article 21 of the constitution, guarantees the right to life and personal liberty. The

concept of democratic socialism aims to improve the condition of health care of the people. Article 23 is indirectly related to health as it prohibits traffic in human beings. Article 24 is relating to child labour and it provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment and thus this article directs the relevance to child health.

Access to Justice:

Constitutional Safeguards:

No right is meaningful and has got any relevance unless the same right is effectively enforced through unhindered and smooth access to justice and institutional dispensing with justice. All the rights related to healthcare as mentioned above lose their significance and relevance the money they are rendered unenforceable on account of a disability or handicap on the part of the beneficiary- be it lack of means to engage a lawyer on account of poverty or a blockade to fora dispensing with justice. Article 39 A of the Constitution has recognised the right to access to Justice which was enacted and Inserted by Constitution (Forty – Second Amendment Act, 1976) w.e.f. 3.1.1977, based on the recommendations of a number of high powered committees. An important impact of Article 39 A read with Article 21 has been to reinforce the right of a person involved in a criminal proceeding to legal aid.

Judicial Approach:

The Judiciary has also extended the canopy of Article 21 to include the right of free legal aid under its ambit through various judicial pronouncements, some of which are enumerated below:

- Hussainara Khatoon v. Hon. Secretary, State of Bihar ¹³
- M.H. Hoskot v. State of Maharashtra ¹⁴
- State of Haryana v. Smt. Darshana Devi ¹⁵
- Khatri v. State of Bihar ¹⁶
- Kishore v. State of Himachal Pradesh ¹⁷
- Bajiban Chauhan v. U.P.S.R.T.C ¹⁸
- Sukh Das v. Union territory of Arunachal Pradesh ¹⁹
- State of Maharashtra v. Manubhai Pragajivaish ²⁰

The concept of Justice could be described as the moral obligation to act on the basis of Fair adjudication between competing claims. As such it is linked to fairness, entitlement and equality. In healthcare ethics, this can be subdivided into three categories: (i) fair distribution of scarce resources (distributive justice) (ii) respect for people's rights (rights based justice) and (iii) respect for morally acceptable laws (legal justice). Two predominant components of Justice are equality and equity.

The right to be treated equally and in some cases equal access to treatment can be found in many constitutions, but in actual practise, a number of different factors may influence actual access to treatment e.g. age, place of residence, social status, ethnic background, culture, sexual preferences, disability, legal capacity, hospital budgets, insurance cover and prognosis.

Emergence of COVID-19:

In December 2019, COVID-19 was first identified in Wuhan, China as a respiratory tract infection causing symptoms such as fever, chills, dry cough, fatigue and shortness of breath. ²¹This atypical virus pneumonia, belonging to the family of SARS and MERS : COV has disabled the world, causing catastrophic health and economic losses. COVID-19 was declared a Public Health Emergency of International concern by the end of January 2020, according to the standards of International Health Regulations, 2005 by the World Health Organisation.

Impact of COVID-19 on India:

India's population exceeds 1.3 billion people and is further growing with a registered birth rate of 20.2 per 100 people. India has a positive growth rate as the death rate is 63 per 100 people and more than half of India's population is under age 30.

The Indian healthcare system is divided between the Union Government and State Government. The Union Ministry of Health and Family Welfare leads the program to be implemented which can be eventually adopted by the State Government, while the State Govt. overlooks the public health system within the state. The health care infrastructure is divided into primary, secondary and tertiary level health centres. The healthcare system of India officially includes Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy Collectively known

as AYUSH with a dedicated ministerial office called Ministry of AYUSH. ²²AYUSH deals with herbal, ergonomic and traditional medicine- based treatments for ailments and certified practitioners of AYUSH are recognised as authorised healthcare professionals.

Indian Government spends a meagre 3.5% of its total gross domestic product (GDP) on health almost consistently since 2006. This percentage is approximately half of the overall world GDP spent on health systems by WHO member states as well as the average current health expenditure on health by BRICS nation, both standing at 6.3%. A survey has summarised that Indians were spending 80% of their household income on medications. A long period of hospitalization results in borrowing assets and/or utilising income savings for treatment costs where catastrophic healthcare leads to the impoverishment of patients. To tackle this issue, Ayushman Bharat Pradhan Mantri Jan Arogya Scheme was launched in 2018 covering 40% of the poorest population in India and is amongst the biggest healthcare insurance system in the world. ²³

Lack of healthcare providers is a major concern as there are 35 doctors, nurses and midwives per 10,000 populations and one allopathic public doctor per 10,000 individuals. As per OECD data, India has a modest 0.5 bed per 1000 habitants. At present, India is facing a recurrence of COVID-19 Pandemic which is more infective but is less lethal.

In the initial stages of COVID-19, The health infrastructure in India was woefully inadequate leading to an acute shortage of PPE kits, masks, sanitizers etc. but slowly and steadily India built up its infrastructure, brick by brick and became Atmanirbhar within a couple of months. The Indian entrepreneur did not stop at this but eventually developed two world class vaccines which were universally accepted and a couple of them are more in the pipeline. A nasal vaccine is also on its way and is likely to receive permission for clinical trials soon. The Indian political leadership has also risen to the occasion and is transporting vaccines to its immediate neighbours, SAARC countries as well as BRICS nations gratuitously as well as on commercial terms, depending upon the requirements, during the middle of the pandemic. India also arranged supply of hydro chloroquine and remdesivir which were the medicines initially taken to suppress the potency and fury of COVID 19 and large consignments of these two medicines were supplied to a number of countries including the super powerful USA at the request of the then President Donald Trump. India was also a pioneer in developing the plasma therapy treatment wherein plasma from already infected persons who have been cured was injected to the patients suffering from this disease which proved quite successful in the initial stages in reducing the intensity of the infection and helping in speedier recovery.

On 25.03.2020, the Government of India imposed a sudden complete nationwide lockdown for 21 days, with the closure of non – essential markets and a complete halt to all national rail network, international and domestic flights. However, it turned into a major challenge for the daily wage earners and migrant labourers who could not continue to earn their living and returned to their hometowns due to closure of all rail and road networks. The short-notice before commencing lockdown stranding thousands of migrants was severely criticised as it resulted in scores of migrants walking back home for miles, essentially risking viral transmission through their long journey. Moreover, due to approaching summer and the heat waves, many migrant workers perished in their journey home. India went under four phases of lockdown extensions and extended its fifth phase on 8 June 2020 where regions deemed as safe called ' Green Zones' were given more liberty in movements and business operations and dangerous 'Red Zones' continued with strict travel and trade restrictions. However, limited domestic air travel and railway travel with appropriate safety precautions for citizens in necessity resumed in 25th May and 1 June 2020 respectively. An unlock phase coincided with the 5th Lockdown to restart selected businesses, educational institutions and local public transport, while maintaining distance and hygiene. On 14 March 2020, all public gathering areas such as cinemas, malls, marriage halls, pubs, etc. were closed. The 16th National population census for 2021 scheduled initially for April 2020 was indefinitely postponed.

A substantial relief package under Pradhan Mantri Garib Kalyan Yojana was announced on 26th March 2020 wherein eligible people will receive either monetary or alimentary assistance according to their specific needs. The Government of India also launched a mobile application called Aarogya Setu on 2nd April 2020 for citizens.

Increased vulnerabilities on account of COVID-19 are likely to lead to a surge of legal needs especially for SMEs, entrepreneurs, middle-income and disadvantaged group which may in turn increase the pressure on social and economic systems, thus adding to the vicious cycle. In this context countries around the world are taking steps to provide viable access to justice and facilitate resolution of legal problems in the face of COVID-19 pandemic. These range from online service delivery by courts, alternative mechanism to resolve disputes and legal profession to enhanced use of data to plan judicial workload and greater coordination of services across sectors.

The constitution bench of Hon'ble Supreme Court of India in *Anita Kushwaha v. Pushp Sudan* ²⁴ while holding that access to justice apart from being a facet of right to life under Article 21 of the Constitution of India is a part of guarantee contained in Article 14. The following attributes of access to justice were also highlighted:

- The state must provide an effective adjudicatory mechanism.
- The mechanism provided must be reasonably accessible in terms of distance.
- The process of adjudication must be speedy and
- The litigants' access to the adjudicatory process must be affordable.

The very concept of access to justice has been subjected to a unique challenge, hitherto unheard of and never faced before. Commendably Judiciary has responded remarkably by harnessing technology to ensure that access to the courts is not impeded. The response of the bench in adopting technology and devising e-courts and video conferencing has ensured that the disruption was transitory. Our legal system has demonstrated dynamism and adaptability and the bench has wholeheartedly incorporated and collaborated to ensure that the system continues to work. The only facet which access to justice adopted during the pandemic was ensuring access/remote access or virtual access which was far more productive and useful than 'no access at all'. Recent steps towards digitisation by the bench are complimenting the virtual courts and electronic filing. The introduction of e-courts portals and apps ensuring the availability of soft copies of court orders and immediate access to case status, uploading of copies of FIRs on the website of the police / state and Supreme Court's mobile application are some of the key initiatives in this direction.

Contemporary Scenario:

The fury of COVID-19 pandemic has no doubt stabilized and subsided to some extent but it has not gone completely. The rising cases in Delhi as well as in Maharashtra, Kerala and Tamil Nadu are a testimony to the same. Universal testing strategy for all symptomatic, asymptomatic, pre-symptomatic and paucisymptomatic cases is necessary to adequately mitigate the growing of COVID-19 spread especially in India given the massive population of the country and increased risk of community transmission. We cannot lower our guard at this juncture and the time tested strategies of wearing a mask properly and not perfunctorily and maintaining social distancing must be followed scrupulously.

The economic pitfalls of the covid-19 are also required to be comprehended as the pandemic is likely to cause an economic crisis in India as approximately 4% of the GDP is projected to be lost amid the management and recovery phase. The continuous loss of jobs and consequent efflux of migrant labourers post lockdown phase reflected in lack of civilian employment sustainability by the government. This shows that a proper emergency and preparedness response plan is essential to avoid catastrophic loss in the financial sector and the already deprived health sector which India must integrate into its core public health program.

3. Conclusion and Suggestions:

A perusal and analysis of the study and various data and factors collected under the same would clearly reveal that certain urgent measures are required to ensure that we are not caught off-guard in future lest the similar situation appears on hand. A Social security program for migrant labourers as set up in the informal sector and in the unorganised sector is the need of the hour and will go a long way in ensuring that the nightmares of the migrant labourers at these times are obviated. Further, the system requires more *Sonu Soods* should be encouraged and felicitated.

The current vaccination programme is continuing presently at brisk pace as it has acquired legitimacy which was much needed being manifested on the vaccination of Hon'ble P.M. Modi and other important members of his cabinet and the Hon'ble members of the political class. The public-private partnership model adopted by the executive also needs to be appreciated as it has added scales to the program and the numbers have significantly increased which was much needed as the system was reeking of insufficient and underutilisation of capacity. The relaxation of timings, making it a 24x7 exercise has also provided much needed boost to the vaccination program.

In the other domain area of access to justice, e-filing of petitions should be encouraged as far as possible as it would save time in scarce resources. This could be achieved by generating filing portals which could be linked to e-courts portal and to police websites to ensure the e-availability of impugned orders, FIRs etc. Further, electronic payment of court fees and appending of digital signatures could also be explored which is being followed by executive in its various departments. The need of the hour is to develop a hybrid system of court hearings and e-court model should not be confined to posterity simply because physical hearing is being commenced in most of the courts in India including the subordinate courts, Delhi High Court and Supreme Court. Both the models of hearing should continue and the lawyers must be accorded a choice which they may exercise keeping in mind the availability of bandwidth and internet connections as well as familiarity or

otherwise of the litigant with the system. The other important facets of access to justice like the 'mediation' and 'legal aid' which would be quite challenging to be performed through video conferencing may be continued through traditional systems and albeit with modifications to ensure social distancing and safety. Mandatory virtual courts/e-courts can be prescribed for certain types of litigation or for a fixed hour daily or for specified days of the week. Further, we may consider e-courts only for vacation courts during summer vacation or winter vacation of the courts. This will gradually integrate the new system with the old system and changes introduced moderately hurt less and invite positive support and accordingly our system will start to adapt the same and it will be permeated in our system eventually. In this context we must remember that one cannot do today's job with yesterday's method and be in business tomorrow.

It would be apt to conclude with the adage –

“It is health which is real wealth and not prices of gold and silver”.

Mahatma Gandhi.

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