

Indian courts during Covid: focusing judicial activism in trying times of pandemic 2020

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Abstract

It is an attempt by the authors vide this article to discuss as to how the judicial activism has been persisting in the times of the pandemic situation arising out of novel Corona virus in the nation having population of around 1.3 billion and its wide net of Judiciary in the vibrant democracy. The Nation is witnessing a unique way of the working of judiciary and its activism during the times of the pandemic in 2020. It is not out of blue to mention that the COVID-19 has been demonic for everything that exists on this planet and bill board "CLOSED" has been put on the planet Earth for time being. Amid such conditions, the judiciary has not stopped and opened a new dimension for delivering justice by virtue of its modified working and hearing over Video Conferencing and e filing of the matters. Apart from that, Hon'ble Courts over the Nation alongwith the Hon'ble Supreme Court of India delivered important orders which have tremendous impact over the public at large in the trying times of the pandemic since Judicial Activism is *judicial outlook in a changing society whilst considering the dynamic*

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1. Introduction

Human civilization has its history of evaluation and development foot prints on the sands of time and whilst the progression of growth of human civilization, the system of judiciary and justice has also developed in different stages and phases in the Nation and also, around the globe.

The Judiciary of the Republic of India has been assigned active role under the Constitution of India and such has lead to evolution of judicial activism. *Judicial activism is a dynamic process of judicial outlook in a changing society whilst considering the dynamic and pragmatic societal factors.*

Judiciary and Judicial Activism has been as ancient as has been pandemics witnessed by this intellectual breed called Humans. During the times of the novel Corona Virus, Judiciary has been active and playing important roles through working of the Courtrooms in the different States within the Nation and the Apex Court of Nation i.e. Hon'ble Supreme Court of India.

Corona Virus/Covid-19: A Brief

By the time this article has been into its final stages of taking shape, the readers must have been aware of the novel Corona Virus and about it being contagious. For to describe, COVID-19 is the infectious disease caused by the most recently discovered corona virus. This new virus and disease were unknown before the outbreak began in Wuhan, China, in December 2019. Many health experts believe and claim that the new strain of coronavirus likely originated in bats or pangolins. The first transmission to humans was in Wuhan, China and since then, the virus has mostly spread through person-to-person contact which has left a devastating and calamitous impact on everything that exists on this planet.

The Coronavirus, COVID-19, which originated in Wuhan, China, is widespreading around the world with such speed that the World Health Organization (WHO) has declared the outbreak a pandemic. The said virus had affected in such a

way that it has, for the long time, put the signboard "CLOSED" while capturing human lives at home, hospitals or coffins.

Judicial Activism

To maintain the law and order and to do justice, Courts have been established by the Constitution of India. The Court is an authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal, and administrative matters in accordance with the law of the land. In both, common law and civil law legal systems, Courts are the central means for dispute resolution, and it is generally understood that all people have an ability to bring their claims before a court. Similarly, the rights of those accused of a crime include the right to present a defence before a court.

The Hon'ble Gujarat High Court while adjudicating State Of Gujarat vs Patel Karsanbhai Madhabhai, reported in (1997) 2 GLR 1224, observed qua judicial activism that "Every proceedings before the Court must reflect judicial initiative, involvement, resourcefulness, concern which can be packed up in one word, namely, the 'judicial activism', the moving spirit of justice! In fact, the Judge without judicial activism can perhaps be described as a flower without colour and fragrance and vehicle without fuel and wheels which is unavoidably must for any Court to be known as the Court of justice, substantial justice and the speedy justice!"

The system of courts that interprets and applies the law is collectively known as the judiciary. The place where judges/ presiding officer preside and proceedings of adjudication commence is known as a courtroom. The reason behind making such explanation is for the purpose of making the preface to explain judicial activism.

Judicial activism is a *dynamic process* of judicial outlook in a changing society while observing pragmatic persisting situations and circumstances. Black's Law Dictionary has

defined judicial activism as "*judicial philosophy which motivate judges to depart from the traditional precedents in favour of progressive and new social policies*". In recent trying times, the judiciary has observed new dimensions through judicial activism while adopting a healthy trend of interpreting law in social context and realistic factors. As a matter of fact, in the present times, the justice has factor of society being synchronised with the law which sets the precedent for the dynamic society and the adjudication of the disputes within that framework. The concept of judicial activism is closely related to constitutional interpretation, statutory construction, separation of powers and the prevalence of the conditions in the society.

Judiciary and Judicial Activism in the Trying Times of Pandemic 2020

By the virtue of the model and theory of the judicial activism that has developed over the time, the judiciary has been adjudicating the disputes of the individuals as well as of the society more boldly while taking crucial decisions and adjudicating the cases.

The core prospects of the judicial activism has lead to the following facets;

1. Law interpreted and applied being based on ongoing changes in conditions and values of the time prevailing and,
2. As society changes and their beliefs and values change, courts make decisions while considering those and the judgments reflect those changes.

According to the idea and concept of judicial activism, *Judges use their judicial vista to correct injustices, especially when the other branches of government do not act to do so or fail to undertake such adventure.*

In short, the courts play an active role in shaping social policy on issues like that of civil rights, protection of individual rights, political unfairness, and public morality. Judicial Activism has got its vast ambit and explanation but since, the present article is authored to magnify and focus the judicial activism during the tough and trying times of pandemic caused by COVID-19, the discussion has been specifically focused to that extent. Globally, humans are aware that the COVID-19 is contagious and spreads human to human. Since, as of the date, no antidote of the virus is available, social distancing is the foremost precaution that can help to cut the spread rate of the virus. During the time, while invoking the provisions of the Disaster Management Act, 2005, the nation has been under lockdown since March 24, 2020 while infusing the relevant modifications and reliefs from time to time. But, even in these difficult times, the justice and the judiciary has not been put under lockdown.

During the course of the lockdown, the Courts have evolved with new modus operandi i.e. hearing over video conferencing as one of its new standard operation procedure. In India, there are about 25 High Courts and sole Apex Court i.e. Supreme Court of India.

Whilst observing the prevailing pandemic situation and halt, the Courts across the country did not pause the working rather, modified the working as per the existing pandemic situation and as such, introduction of Video Conferencing was initiated which is prevailing as on the date and also, the online filing system has been introduced which has lead to

contactless filing system development and has set an example of ease of doing business.

By way of the system of hearing over Video Conferencing, the Counsels are allowed to argue their cases over video calls connected to the Hon'ble Judges presiding from the Courtrooms directly and this has been an unique evolution of the judicial system and activism during such pandemic conditions. To allow adjudication over video calls and letting the Counsels avoid visiting courts was the need of the hour and as such it demonstrated a unique and exclusive example of judicial activism for the very first time in the history of pandemic situation.

The judiciary ensuring that justice is not delayed, passed necessary orders and judgments for making the lockdown effective and at the same time directed the responsible authorities that the citizens of this country shall not face any inconvenience as the Rights as envisaged under the Constitution of India have been seized.

Moresoever, *during the times of pandemic, panic always prevails in the ambush of rumours.* Judicial activism has played a prominent role in the times of the COVID-19 lockdown while laying down judgments and orders against the rumours in wake of the outbreak of the novel corona virus. As such, orders have been passed by the courts to register FIR against the persons spreading rumours w.r.t. COVID-19 on social media. The judiciary has also balanced the Police and Public situation while directing the police authorities to not to manhandle the public found breaking lockdown codes.

During the prevalent times of virus, the Judicial activism is plied on the suo moto jurisdiction and by the wagon of Public Interest Litigation (PIL). Many orders and directions pertaining to the social issues have been passed either by suo moto cognizance of the Hon'ble Courts or in the PIL instituted before the Court while posing different aspects and highlight concerns and requirements of the society. For instance, specific orders have been passed by the Courts while directing that no person to be allowed in the premises without masks while arranging all the methods to maintain Social Distancing and sanitation in different High Courts and Apex Court. Moresoever, directions have been given by Justices for specific working hours and listing of specific matters which require urgent adjudication and also the staff shifts regulation. It is much relevant to highlight here that in this time of harsh situations, the Hon'ble Judges have been regularly presiding in the Courtrooms to adjudicate the matters. Further, it has been per se judicial activism by virtue of which Hon'ble Supreme Court has ordered for free testing of the COVID 19. Moresoever, the Hon'ble Apex Court have intervened and while addressing the COVID-19 pandemic to be national calamity, passed directions for protection of doctors and frontline workers during the prevalent time of COVID-19. Also, there have been directions by different courts to tender help to the advocates who are troubled with the prevailing circumstances and suffering financially. Also, in a recent incident, the Hon'ble Rajasthan High Court ordered that the Advocates are to appear wearing proper uniform even though the hearing is being conducted through video conferencing, the sole purpose behind the said order was to maintain the decorum and dignity of this noble profession. Since, the virus is highly contagious, there have been directions by the High Courts of different states which has lead to suspension of the working of the subordinate courts and tribunals to

certain date, possibly the lifting up of lockdown. Likewise there have been many illustrations and demonstrations which have lead to passing of the orders while considering the conditions of the society and such has lead to a new phase and branch of judicial activism to develop.

At this moment, it is pertinent to highlight and jot down, although not exhaustively, some of the crucial judgments and/or orders passed by different Courts of the country whilst dealing with the pragmatic prevalent situations and concerns in the democracy. The Judgments are as follows;

Table 1

Mustafa Versus Union of India & anr. (Hon'ble Supreme Court)	Petition seeking safe return of pilgrims stranded in Iran disposed-off on assurance by UOI to assist and repatriate Indian pilgrims in Iran.
Kerala Vydyuthi Mazdoor Sangham & ors. Versus State of Kerala & ors. (Hon'ble Kerala High Court)	Petition while challenging state government's decision to defer paying six days' worth salaries to government employees for the next five months in the wake of the COVID-19. The Hon'ble Court stayed the Operation of Govt decision for two months and held that payment of salary is certainly not a matter of bounty. It is a right vested in every individual to receive the salary. Article 300A of the Constitution which confers a right to property will include within its purview "salary" also a property, at least prima facie."
Align Components Pvt. Ltd and another Versus Union of India and others (Hon'ble Bombay High Court)	The Court on a petition challenging the notification issued by the GOI dated 29/03/2020 held that the workers would be expected to report for duties as per the shift schedules subject to adequate protection, from Corona Virus infections, by the employer in areas where restrictions are lifted in Maharashtra. In the event such workers voluntarily remain absent, the Management would be at liberty to deduct their wages for their absence subject to the procedure laid down in Law while initiating such action. This would apply even to areas where there may not have been a lock down.
K. Amsa Kannan Versus State of Tamil Nadu (Hon'ble Madras High Court)	The Court dismissed Plea for Reduction in Salary of Government Servants holding that it is a matter of Govt. Policy.
Shashank Deo Sudhi Versus Union of India and Ors. (Hon'ble Supreme Court)	The order dated 08.04.2020 which made testing in private Labs of COVID-19 free for all starta of society was modified to make testing in private Labs of COVID-19 free only for economically weaker sections of the society who are unable to afford the payment of testing fee as fixed by ICMR for COVID-19.
Jerryl Banait Versus Union Of India & Anr (Hon'ble Supreme Court)	Detailed Directions/Guidelines issued to Union of India to safeguard and protect the medical professionals and make necessary suggestions in the 'Rational Use of Personal Protective Equipment' guidelines so that PPEs are provided to all health officials, as stated above, who are working in Non-Covid treatment areas.
Mahendra Singh Versus. Commissioner of Police & Ors (Hon'ble Bombay High Court)	The Court on a plea of Habeas Corpus observed: "Quarantine facilities cannot be used by the police to keep away people, who according to them, are of nuisance value. Quarantine facilities cannot be used as preventive detention or as a punitive measure."

Concluding Remarks

The entire history of the mankind has witnessed and experienced the havoc caused by the demonic viruses since circa in 3000BC to Zika virus in year 2015 and now COVID-19 in 2020. Of the parallel times, the judiciary has been in subsistence for making the adjudications of the disputes and now, in the modern times like that of COVID-19 being pandemic, it is the need of the hour to draw and frame down a code and law which categorically deals with the unprecedented situations as are we witnessing today and even are worse to anticipate in future by virtue of which the code can be activated as and when such situation is faced by the society.

At this juncture, it is pertinent to quote the *observation* qua judicial activism as made by the Hon'ble Delhi High Court while adjudicating DLF Universal Ltd. vs Greater Kailash II Welfare Association, reported in 127 (2006) DLT 131, that "We hasten to add that it is 'not our opinion that Judges should never be 'activist'. Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the U.S. Supreme Court, vide *Brown v. Board of Education (1954) 347 US 483*, *Miranda v. Arizona (1966) 384 US 436*, *Roe v. Wade, 410 US 113*, etc. or the decisions of our own Supreme Court which expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to in exceptional circumstances when the situation forcefully demands it in the interest of the nation, but always keeping in mind that ordinarily the task of legislation or

administrative decisions is for the legislature and the executive and not the judiciary."

Since, *modern problems need modern solutions*, the modern times need modern adjudication dealing the modern problems and therefore, it is much required that the judicial activism in the times of the pandemic bring about the requisite amendments and legislations which are specific in dealing with the problems of the society and functioning of the Courts posed in today's scenario and amid this, *Judicial Activism has very important role to play in making the judicial system to be pandemic proof and escalate to be more effective for it to continue to work to deliver effective and necessary justice and also for balancing the society which does not hamper the pious judiciary system of the country.*

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