

Right to Health and Responses of the State During Covid-19 Pandemic: An Analysis

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Abstract

Human Rights are fundamental, inviolable, inalienable. It is the essence to lead a life like a human being. Among the variety of rights, the right to life, liberty, equality and dignity of an individual are of prime importance. Right to health is a fundamental human right. During the COVID-19 Pandemic the right to life was at a toss. At this point, the role of the Supreme Court mainly focused to two aspects, viz. economic one, where the court delved into the cost of COVID-19 testing; and an administrative one, where the court analysed failure in the implementation of the guidelines with respect to patients' care, hospital management, and infrastructure. The paper aims at analysing the efforts of the state with special emphasis to the judiciary during the COVID-19 pandemic.

Keywords: Fundamental Rights; DPSP; Dignity; Life; 4A's; NHRC.

INTRODUCTION

Art. 21 of the Constitution is the father of all Human Rights Laws in India. Human Right is essential for all human being to live like a human being. Human Rights are fundamental, inviolable, inalienable. It is the essence to lead a life like a human being. Among the variety of rights, the

right to life, liberty, equality and dignity of an individual are of prime importance. Right to health is a fundamental human right. The right to health is a fundamental right recognized by the Hon'ble Supreme Court in a good number of cases while interpreting the provision under Art. 21 of the Constitution of India. According to the Merriam-Webster dictionary health is the condition of being sound in body, mind, or spirit; especially: freedom from physical disease or pain.¹ Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".² The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." In recent years,

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increasing attention has been paid to the right to the highest attainable standard of health, for instance by human rights treaty monitoring bodies, by WHO. The activism of WHO in recent times can be noticed through the Declaration of Pandemic at the outbreak of Covid-19 and its' devastating nature all the world is currently experiencing. Currently we are undergoing through an unprecedented health crisis in the form of Covid-19 Pandemic. This paper wants to examine the Indian responses of to address the Covid-19 Pandemic.

Right to Health and International Instruments

The international instruments dealing with the right to health are as under:

- **Universal Declaration of Human Rights, 1948:** The Universal Declaration of Human Rights, 1948 under Art. 25 mentioned health as part of the right to an adequate standard of living. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- **International Covenant on Economic, Social and Cultural Rights, 1966 (General Assembly Resolution 2200A (XXI) of 16 December 1966):** The right to health was again recognized as a human right³ in the 1966 International Covenant on Economic, Social and Cultural Rights. Article 7 (b) of the International Covenant on Economic, Social and Cultural Rights states that the States, Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular Safe and healthy working conditions. Further, Art. 12 states:
 1. The States parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
 2. (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases. (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
- **Declaration of Alma-Ata, 1978:** The Declaration affirms the crucial role of primary health care, which addresses the main health problems in the community, providing promotive, preventive, curative and rehabilitative services accordingly (art.

VII). It stresses that access to primary health care is the key to attaining a level of health that will permit all individuals to lead a socially and economically productive life (art. V) and to contributing to the realization of the highest attainable standard of health.

- **Vienna Declaration, 1993:** Under the *Vienna Declaration, 1993*, Human rights cannot be bifurcated. Human rights are inter dependent, indivisible, and interrelated.⁴ This means that violating the right to health may often impair the enjoyment of other human rights, such as the rights to education or work, and vice versa.
- **Commission on Human Rights (Human Rights Council):** In 2002, the Commission on Human Rights (now replaced by the Human Rights Council), created the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health. The Council was created by the United Nations General Assembly on 15 March 2006 by resolution 60/251.

Enforceability of Right to Health: A Constitutional Mandate: Right to health is not specifically recognised under the Constitution of India. The directive principles of State Policy in Part IV of the India constitution provide a basis for the right to health. Article 39 (E) directs the State to secure health of workers, Article 41(d) directs the State inter alia to ensure the people within the limit of its economic capacity and development..... public assistance in case of unemployment, old age, sickness Article 42 directs the State to just and humane conditions of work and maternity relief, Article 47 casts a duty on the State to raise the nutrition levels and standard of living of people and to improve public health. The Constitution under Entry 6, List-II, Seventh Schedule, Article 246⁵ oblige the State to enhance public health under and both State and Central Government Entry 29, List III, Seventh Schedule, Article 246⁶, it also endows the Panchayats and Municipalities to strengthen public health under Article 243G (read with 11th Schedule, Entry 23).⁷ Right to Health involves 4 A's which are⁸:

Availability: Proper functioning of the Public Health Care Facility in fairly manners.

- **Accessibility:** Accessibility of health care facilities to everyone following the principles of:
 - ◆ Non-discrimination
 - ◆ Physical accessibility (within an easily reachable distance)

- ◆ Economic accessibility (Affordability)
- ◆ Information accessibility and confidentiality
- **Acceptability:** All health facilities shall be culturally acceptable to the person receiving treatment.
- **Ability:** Hospitals with minimum health care facilities as per the declared policy of the Government.

In regard to the right to health, the activism of the Supreme Court of India can be noticed in the case of *Rakesh Chandra Narayan vs. State of Bihar*.⁹ In this case the bench of Justice Rangnath Misra and Justice M.N. Venkatachalliah, held that the Government has an obligation to ensure that medical attention is provided to every citizen in the country. The case adjudicated on the deplorable condition in a mental hospital in Ranchi and was filed in the form of a letter petition under Article 32 of the Indian Constitution. Basically, fundamental rights are justiciable while the DPSPs are non-justiciable in nature. DPSP are for the progressive realisation of rights. This was one of the first instances where the Supreme Court went on to merge the non-justiciable Directive Principles of State Policy with justiciable Fundamental Rights. However, with the passage of time the Supreme Court of India in *Pt. Parmanand Katara v. Union of India & Ors*¹⁰ has categorised right to health under the Art. 21 of the Constitution of India. The Court ruled that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay, the discharge of the amount obligation cast upon members of the medical profession. In *People's Union for Civil Liberties v. Union of India*¹¹, the Supreme Court held that Article 21 of the Constitution of India in relation to human rights has to be interpreted in conformity with international law. The Supreme Court in *Bandhua Mukti Morcha vs. Union of India*, has held that the right to live with human dignity, enshrined in Article 21¹², derives from the directive principles of state policy and therefore includes protection of health.¹³ In *State of Punjab vs. Mohinder Singh Chawla* it has also been held that the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities.¹⁴ In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, it had been held that the failure of a government hospital to provide a patient timely medical treatment results in violation of the patient's right to life.¹⁵ In *State of Punjab vs. Ram Lubhaya Bagga*,¹⁶ the Court held

maintenance of health has been held to be of the greatest priority. It also said that it has time and again emphasized to the government and other authorities for focusing and giving priority to the health of its citizens, as it (health) not only makes one's life meaningful and improves one's efficacy, but in true, it gives optimum output. While courts have recognized the importance of health to persons in general, in some cases, the significance of health to workmen in particular, has been highlighted. In *Vincent Panikurlangara vs. Union of India*,¹⁷ it was observed "Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society which the Constitution envisages. Attending to public health, in our opinion is, therefore of high priority - perhaps one at the top".

In September 2019, a High Level Group on the health sector constituted under the 15th Finance Commission had recommended that the right to health be declared a fundamental right. It also put forward a recommendation to shift the subject of health from the State List to the Concurrent List. However, a 2019 of the NITI Aayog report highlighted that states in India had unequal public health systems. This imbalance was primarily due to restricted technical expertise and fiscal constraints. While fiscal dependence of states on the centre continues to be a major challenge, if the subject of health was moved to the Concurrent List, it would lead to excessive bureaucracy, red tapism and institutional constraints.¹⁸

Pandemic and Responses of the Global Bodies and Government

World Health Organization: The World health Organisation (WHO) declared the Pandemic due to outbreak of Covid-19. A pandemic is the worldwide spread of a new disease.¹⁹ From the time of Declaration of Pandemic on March 11, 2020, the WHO has come out with several guidelines for all the countries which includes "Protect yourself and others from COVID-19".

The guidelines entitled Protect yourself and others from COVID-19 includes inter alia as follows²⁰:

- Cleaning regularly and thoroughly hands with an alcohol based hand rub or wash them with soap and water.
- Maintaining of at least 1 metre (3 feet) distance between yourself and others.

- Avoidance of going to crowded places.
- Wearing of a fabric mask (preferably 3 layer mask especially where physical distancing cannot be maintained).
- Avoidance of touching of eyes, nose and mouth.
- Making sure you, and the people around you, follow good respiratory hygiene.
- Staying home and self-isolate even with minor symptoms such as cough, headache, mild fever, until you recover.
- If you have a fever, cough and difficulty breathing, seek medical attention, but call by telephone in advance if possible and follow the directions of your local health authority.
- Keep up to date on the latest information from trusted sources, such as WHO or your local and national health authorities.

Very recently, on 18th September, 2020 the World Health Organization (WHO) and UNICEF signed a new collaborative framework which will accelerate joint public health efforts that put the most marginalized and vulnerable populations first.²¹

Government of India: In addition to already discussed that Right to health is a fundamental right under Article 21 of the Constitution, there are a good number of statutory provisions responsive to the ongoing Pandemic. Now, let's have an analysis of the statutory provisions.

Statutory Provisions: The issues arose at the outbreak of Covid-19 Pandemic can be addressed under the following legislative instruments which include both the Central and State legislations.

Central Legislations: The Central legislations dealing with the issue are as under:

- ✓ **Indian Penal Code, 1860:** The relevant provisions of IPC are as under **Section 188. Disobedience to order duly promulgated by public servant:** Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order:
 - He is directed to abstain from a certain act.
 - To take certain order with certain property in his possession or under his management.

Disobeys such direction and if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, shall be punished with:

- Simple imprisonment for a term which

may extend to one month or with fine which may extend to two hundred rupees, or with both.

- If such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation: It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. *It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.*

270. Malignant act likely to spread infection of disease dangerous to life: Whoever malignantly does any act which is, and which *he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life*, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The Epidemic Diseases Act, 1897: The Epidemic Diseases Act, 1897 is a law which was first enacted to tackle bubonic plague in Mumbai (formerly Bombay) in former British India. Section 3 of the Act says any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under Section 188 of the Indian Penal Code which may attract fine or imprisonment for violating rules and regulations. Basically, the Epidemic Act was a medical surveillance tool in British India. The Epidemic Diseases (Amendment) Ordinance, 2020 was promulgated on April 22, 2020. The Ordinance amends the Epidemic Diseases Act, 1897. Recently the same has been passed in Rajya Sabha. The Ordinance amends the Act to include protections for healthcare personnel combatting epidemic diseases and expands the powers of the central government to prevent the spread of such diseases. The Ordinance specifies that no person can: (i) commit or abet the commission of an act of violence against a healthcare service personnel, or (ii) abet or cause damage or loss to any property during an epidemic. Contravention of this provision is punishable with imprisonment between three months and five years, and a fine between Rs 50,000 and two lakh rupees. This offence may be compounded by the victim with the permission of the Court. If an act of violence²² against a healthcare service personnel²³ causes grievous harm, the person committing the offence will be punishable

with imprisonment between six months and seven years, and a fine between one lakh rupees and five lakh rupees. These offences are cognizable and non-bailable. Persons convicted of offences under the Ordinance will also be liable to pay a compensation to the healthcare service personnel whom they have hurt. Such compensation will be determined by the Court. In the case of damage or loss of property²⁴, the compensation payable to the victim will be twice the amount of the fair market value of the damaged or lost property, as determined by the Court. If the convicted person fails to pay the compensation, the amount will be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890.

The Protection of Human Rights Act, 1993: The Protection of Human Rights Act, 1993 under Section 12, the Commission shall perform inter alia, the following functions, namely:

- a. Inquire, suo motu or on a petition presented to it by a victim or any person on his behalf (or on a direction or order of any court), into complaint of:
 - i. Violation of human rights or abetment thereof.
 - ii. Negligence in the prevention of such violation, by a public servant.
- b. Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

The Disaster Management Act, 2005: The legal basis of the Disaster Management Act, 2005 is Entry 23, Concurrent List of the Constitution "Social security and social insurance".²⁵ The legislative intent of the DM Act was to, "provide for the effective management of disasters". The National Disaster Management Authority (NDMA) is the nodal central body for co-ordinating disaster management under the Act, with the Prime Minister as its Chairperson. The Act also established State, District and Local level Disaster Management Authorities to work in coordination. The NDMA lays down policies, plans and guidelines for management of disaster.²⁶ The NDMA so far formulated 30 Guidelines on various disasters including the 'Guidelines on Management of Biological Disasters, 2008'. Further, the Biological Disaster and Health Emergency is again dealt under the National Disaster Management Plan, 2019. The Central Government, irrespective of any law in force (including overriding powers) can issue any directions to any authority anywhere in India to facilitate or assist in the disaster management.²⁷ Importantly, any such directions issued by Central

Government and NDMA must necessarily be followed the Union Ministries, State Governments and State Disaster Management Authorities.²⁸ The present national lockdown was imposed under DM Act as per Order dated 24-03-2020 of NDMA 'to take measures for ensuring social distancing so as to prevent the spread of COVID-19' Section 6 (2) (i) of the Act. Additional guidelines were issued on the same day by the Ministry of Home Affairs, being the Ministry having administrative control of disaster management under Section 10(2)(l) of the Act.

To alleviate social sufferings, NDMA/SDMA are mandated to provide 'minimum standard of relief' to disaster affected persons under Sections 12 and 19, which includes relief in repayment of loans or grant of fresh loans on concessional terms under Section 13 of the Act.

State Laws: In addition to the Disaster Management Act, 2005, the States have used different legislative instruments e.g.

- **Tamil Nadu:** The Public Health Acts (e.g: Tamil Nadu Public Health Act, 1939) to deal with the crisis.
- **Kerala:** Kerala, invoking the legislative power under Entry 6 of State List²⁹ and issued 'Kerala Epidemic Diseases Ordinance, 2020'.

After the 'Containment Plan for Large Outbreaks (COVID 19)' issued by the Union Ministry of Health & Family Welfare, several states have issued COVID specific Regulations.

India COVID 19 Emergency Response and Health Systems Preparedness Package: The Ministry of Health and Family Welfare has formulated India Covid19 *Emergency Response & Health System Preparedness Package on 23rd April 2020 & an SOP has also been issued on March 29, 2020. The objectives³⁰ of the Package are: Emergency COVID-19 Response: To slow and limit as much as possible, the spread of COVID-19 in India; Strengthening National and State Health Systems to support Prevention and Preparedness & finally, Strengthening of Surveillance activities including setting up of Laboratories.* The package includes:³¹

- The development of diagnostics and treatment facilities, including development of Dedicated COVID Hospitals (DCH), Dedicated COVID Health Centres (DCHC), Dedicated COVID Care Centres (DCCC), support for human resources, training and capacity building, IEC and risk communication, measures for protection

of healthcare professionals, workers and volunteers, surveillance including community outreach, disease surveillance and other emergent measures as detailed in para 4.1.

- Strengthening National and State Health Systems to support Prevention and Preparedness—This component will support the States\UTs to build resilient health systems to provide core public health, prevention, and patient management functions to manage COVID-19 and future disease outbreaks.
- Community engagement and Risk communication.
- Implementation, Management, Capacity Building, Monitoring and Evaluation.

Additionally, the Government of India issued summary guidelines³² for proper functioning of the system.

NHRC observation on children home in Bihar:³³ The National Human Rights Commission, NHRC, took note of the situation based on a media report pertaining particularly to Bhagalpur district in Bihar, which suggests that destitute children are not getting mid-day meals and are, therefore, having to work and fend for themselves. The report also stated that the people residing in these areas belong to below poverty line, who do garbage collection, begging or working for the contractors to collect waste etc. As a result, the children were starving and suffering from malnutrition. In this context, the District Magistrate claimed that money is being transferred to every affected child's (or their guardian's) account instead of the mid-day meal for the entire period during which schools have been shut. At this, considering the issue as a serious violation of human rights stating, the significance of the mid-day meal scheme, the Commission observed that the same ensures protection of children's right to food and right to education, which is recognized as a Fundamental Right under Article 21-A. The Commission also noted that "the condition of the children is pathetic. This is a serious issue of violation of human rights. The right to life, food, dignity and equality of the children are being violated due to negligent attitude of the state authorities."

NHRC approach to GB Nagar Pregnant Women issue:³⁴ The National Human Rights Commission, NHRC, India has taken suo motu cognizance of media reports of medical apathy towards two expecting women by various government and private hospitals in Gautam Budh Nagar and

Noida, Uttar Pradesh. Reportedly, in the incident of Gautam Budh Nagar, an eightmonth pregnant woman died when a frantic 13 hours hospital hunt failed to find her a bed. The victim aged 30 years was taken to at least 8 hospitals³⁵ by her husband including the government run hospitals before she died in the ambulance, just outside a health facility in Greater Noida on 05.06.2020. The husband of the deceased has reportedly stated that finally they got admission in the GIMS Hospital where she was put on a ventilator but it was too late.

In the second incident of Noida, a 26 years old woman was allegedly refused admission by the Noida District Hospital in Sector-30 and as a result she delivered a still born baby on the pavement, outside the hospital. The family of the woman has reportedly alleged that had she got timely treatment, the baby could have survived. The Commission would like to know from the State Government whether any Standard Operating Procedure has been issued by it to the hospitals to deal with the current scenario, if yes, all the concerned shall be asked for strict compliance so that lives of the people coming to the hospitals in emergency for treatment of illnesses other than Covid-19, could also be saved.³⁶

NHRC Observations to the Delhi Government: The National Human Rights Commission had received complaints as well as took cognizance of the media news that COVID patients are denied admissions in Govt Hospitals like Lok Nayak Jai Prakash Narayan (LNJP) Hospital, Guru Teg Bahadur Hospital, All India Institute of Medical Sciences, New Delhi etc. The patients are alleged to have been made to run from one Hospital to other on the pretext of non-availability of beds in the Hospitals. In most of the state run Ambulances, oxygen cylinders are not there forcing the families to hunt for private ambulances, which charge very heavily. Hence, based on the Report on the Visit of NHRC Team to the LNJP Hospital, Delhi on 11th June 2020, the Commission recommended inter alia the followings:³⁷

A. Administrative

1. The hospital should establish a Help desk with important phone numbers displayed at the initial point of contact with the patient.
2. A window should be opened with a two-way communication with a mic and speaker so that patients are be provided proper directions.
3. Transportation like wheelchair be provided at the gate of hospital to patients

- reaching hospital on foot.
4. At gate of emergency ward, hospital attendants should always be present to receive the patient from Ambulance.
 5. If medically permitted, CCTV Cameras to be installed in the wards where patients are admitted so that doctors can monitor the patients continuously.
 6. The facility of calling up the relatives by the patients should be made available to the patient at least twice a day.
 7. The quality of food to be provided to patients should be monitored by a dietician.
 8. The administrator should ensure proper sanitization of wards and lavatories.
 9. The patients should be allowed to be in touch with their family members through their mobile phones & should also have the facility of home cooked food.
 10. List of the Oxygen enabled Ambulances be put on the website by NCT Delhi and the charges of the Ambulances be also monitored.

B. Death of patient in hospital

11. The death of the patient should be communicated to the relatives at the earliest.
12. Dead bodies of the Corona Patients be removed from the wards as per the standard practice without any delay and all possible assistance be rendered to the aggrieved families for the last rituals in a dignified and safe manner.

C. Medical

13. The doctors/para medical staff should work on building up confidence in the patients and relatives by regular counselling.
14. There is an urgent need to provide psychological counselling to the medical and paramedical staff on duty.
15. Proper referral and admission protocol need to be devised and practiced.
16. For augmenting the manpower, services of final year MBBS students can also be availed appropriately. The retired medical and paramedical staff in sound health can also be roped in.
17. Covid Care Centre be created for those Covid positive patients who live in slums

or rehabilitation colonies including those who don't have independent toilet and room for the quarantine.

18. Hospital should refer such Covid positive patients, to these Covid Care Centres who don't require hospitalisation. However, those who have facility of quarantine at home and don't require hospitalisation, should quarantine at their respective homes.

Judicial Responses During the Covid-19 Pandemic: In *Re: The Proper Treatment of Covid 19 Patients and Dignified Handling of Dead Bodies in the Hospitals etc.*, the Supreme Court in its order dated 19.06.2020 had directed the Ministry of Health and Family Welfare to constitute a committee that would inspect the hospitals and conduct surprise visits from time to time. The Court felt that every piece of information, which is presented before the Supreme Court has to be subjected to higher scrutiny. An independent investigation is also required because of the recent distrust created by the previous flimsy statements of the State Government and Central Government. The court observed, *in the entire affidavit, apart from general statement that all steps are being taken, the affidavit does not indicate any mechanism for proper supervision of the functioning of the hospital and steps for improvement When the Government does not endeavour to know any shortcomings or lapses in its hospitals and patient care, the chances of remedial action and improvement becomes dim.*" Herein before on 12th June 2020 in its order the Court noted a decrease in COVID-19 testing and directed that there should be a step increase in testing by the state.

Court has ordered installation of CCTV cameras in the government hospitals and constituted a committee to oversee the condition of hospitals in Delhi.³⁸

Pregnant Women: The UN Population Fund has warned that the pandemic has "severely disrupted access to life-saving sexual and reproductive health services"; Human Rights Watch has flagged the impact that the ongoing crisis could have on abortion access and maternal care. To mitigate this threat, WHO has urged governments to treat abortion as an essential healthcare service.³⁹ At least 61 pregnant women and 877 newborns have died in Meghalaya in the four months starting from April for want of admission to hospitals and also due to lack of medical attention because of diversion of the health machinery to fight COVID-19 pandemic.⁴⁰ However, excepting some stray incidents the Municipal Corporation of Mumbai in its affidavit

submitted in a Case filed before the division bench comprising of *Chief Justice Dipankar Datta & Justice S.S. Shinde*, said that there have been 3905 deliveries in March, 4169 deliveries in April and about 2412 deliveries till the date of affirmation of the affidavit, of which about 359 patients tested positive for COVID-19. Such COVID-19 positive patients have been treated in special facilities. The Corporation also said that the revised guidelines have been issued on May 12, 2020 for testing of even asymptomatic patients who are expected to deliver in the next five days and should any of such expecting ladies test positive for COVID-19, it has been assured that all arrangements would be made to arrange for smooth delivery in other facilities available with the Corporation.⁴¹ The judicial intervention is noticeable to protect the rights of pregnant women. The Courts in several cases came forward in the ways as under:

- A bench of Justices Hima Kohli and Subramonium Prasad, which conducted the hearing through video conferencing, directed the followings:⁴²
 - ✓ The Delhi government to ensure that the helpline number proposed to be set up within two days for assisting senior citizens during the pandemic are also made available for pregnant women.
 - ✓ The Court said, “the helpline number shall be publicised adequately,” In its order, the court said, “Union of India and government of national capital territory (NCT) of Delhi shall work in tandem to make sure that no barriers are faced by pregnant ladies and their family members residing in hot spots during the lockdown.”
 - ✓ The court noted that the guidelines issued by the Ministry of Home Affairs for enabling delivery of essential health services during the pandemic, which include care during pregnancy and child birth, besides prevention and management of communicable diseases, treatment of chronic diseases to avoid complications and for addressing other emergencies.
 - ✓ While this is a welcome move, we urge that access to safe abortion is specifically recognized and appropriate services extended to women seeking abortion. It is completely understandable, and correct, that all non-emergency procedures be suspended at hospitals in these times of Covid-19. Thus, not only elective plastic surgery procedures, but surgeries such as that for inguinal hernia, or thyroid adenomas, have to be postponed. This is for two reasons: first, to prevent exposure of people to Coronavirus in hospitals and second, to reduce the demand on health systems, overwhelmed in the Coronavirus pandemic. The situation with Medical Termination of Pregnancy (MTP) is however unique, and cannot be classified as a “non-emergency” procedure worthy of postponement.
- A bench of the Supreme Court headed by Justice Ashok Bhushan, Justices SK Kaul and BR Gavai asked the Centre to explore granting “further priority” to some doctors and nurses, who are stranded in Saudi Arabia amid COVID-19 pandemic and are in advanced stage of pregnancy, for bringing them back to India.⁴³
- The divisional bench presided by Chief Justice D.N. Patel and Justice Prateek Jalan while hearing the matter through video conferencing noted that there seems no reason to further monitor the present petition since, “the guidelines issued by ICMR are for providing obstetric care for pregnant patients with confirmed novel Coronavirus disease (COVID 19) or a pregnant person under investigation (OUI), *i.e.* who presents with symptoms.”⁴⁴ The Court directed, the Government of Delhi Pregnant women's request for COVID-19 test should be met immediately and the its results be declared quickly.

TERMINATION OF PREGNANCY

- During the Covid lockdown period after the foetus showed symptoms of Down syndrome, the Punjab and Haryana High Court not only allowed her plea, but also directed her to be treated as a poor patient on 24th April, 2020. Taking up her petition through video conferencing, Justice Sudhir Mittal directed that the woman be admitted forthwith after taking all necessary precautions required due to the Covid-19 pandemic. The procedure was also directed to be performed at the earliest keeping in view the urgency involved.⁴⁵
- The Delhi High Court on Tuesday allowed a woman’s plea seeking termination of her over 23-week pregnancy after All India Institute of Medical Sciences (AIIMS) endorsed the procedure in view of the complications associated with the birth of the baby. A Bench of Chief Justice D.N. Patel and Justice Prateek

Jalan said in view of the report submitted by a team of medical experts at AIIMS, it was allowing the woman's plea seeking termination of her pregnancy due to certain abnormalities in the foetus.⁴⁶

- A 39 year-old married woman will have to continue her first pregnancy which has exceeded 23 weeks as "financial condition" or her mental preparedness to be mother at "advanced age" were not reason enough to permit termination as sought by her. A bench of Justices Ujjal Bhuyan and Riyaz Chagla held that the agony over unwanted pregnancy argument would not be applicable since it is her first pregnancy.⁴⁷

Rationing of Hospital Bed: Hospital systems generally are designed for average patient loads, not epidemics. When containment fails, the exponential growth of cases can transform a public health emergency into an operational crisis.⁴⁸ During the pandemic, there have been several incidents all over India where the hospitals charged high admission fee, cost of treatment and on non-payment of the bill they denied the release of the patient and even the dead body of the patients. They came forward and maintain the vigilance over the same. In this regard, *Court on its Motion vs. Union of India through its Secretary and Others*⁴⁹ a Division Bench of the Bombay High Court of Judicature at Nagpur comprising Justice RK Deshpande and Justice PV Ganediwala of the Nagpur bench held as under-

Availability of beds: It is the duty of state is to save lives of those infected with Covid-19. Hence, non-availability of ICU, ventilators cannot be a reason for denying admission in the Hospital. The Court also stated of course, this cannot be the reason for the State and it is the duty of the State to make all such infrastructural and medical facilities available to save the life of people who are affected or likely to be affected by Coronavirus. The problem of non-availability of the medical and para-medical staff can also not be a problem to deny the admission in the Hospital to the patients. The Court further stated "We do not want a situation to occur where the patients are required to travel from one Hospital to another to secure the position in ICU, ventilated beds or oxygenated beds or due to non-availability of the services of medical and paramedical staff. If any patient requires medical assistance and approaches any Hospital or DCHC where such facility is not available for any reason whatsoever, such Hospitals or DCHCs should immediately make necessary enquiries and help

the patient to reach the proper destination. It shall be the duty of the Municipal Commissioner and the Task Force to see that all the Hospitals and DCHCs should provide the information and contact numbers of the Hospitals where such facilities can be easily made available and the patients are not required to travel from pillar to post.

Obligation of private doctors and interneers: Even private Doctors are under obligation to provide the treatment. The preservation of human life is of paramount importance. The Court also suggested that the services of the Ayush Doctors or PG students or students in Super Speciality can be utilized and they can work under the guidance and instructions from the senior Doctors through various communication system.

Classification of patients: The Court also noted that there is a classification of patients in different categories broadly, it is in three categories of mild, moderate and severe. These are further classified as asymptomatic positive patient, symptomatic patient without co-morbidity, symptomatic patient with co-morbidity, symptomatic patient with pneumonia without hypoxia, symptomatic patient with pneumonia with hypoxia and symptomatic patient with pneumonia with hypoxia with sepsis/shock/organ failure.

Doctors with Co-morbidities due to age etc: So far as Doctors of 65 years of age and onwards with co-morbidities, it may be possible, keeping in view the experience which they possessed in the profession, to provide guidance in respect of investigation and treatment to be administered to a particular patient through various means of communication like personal contact on cell phone, sending of reports through Whats App in pdf or looking the condition of the patient through Video Call and also conducting the conference.

Publication of real time data of beds at Hospitals and Facilities for the benefit of Covid-19 in Bilingual Mode: A division bench of Chief Justice Abhay Oka and Justice Alok Aradhe of Karnataka High Court on 14th July, 2020 directed the State government and Bruhat Bengaluru Mahanagara Palike (BBMP) to ensure that the website developed to give real time data of availability of beds at hospitals and facilities for the benefit of Covid-19 patients is bilingual and details are available in 'Kannada Language'.⁵⁰

Capping on Billing: In *Sachin Jain vs. Union of India*⁵¹, it was argued that the 'Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana' is aimed at providing health cover to poor and vulnerable

persons in the country. The petitioner pointed out to various reports of surging bills of Covid-19 patients and the resultant barrage on insurance companies for reimbursements. At this, the Supreme Court bench comprising Chief Justice S A Bobde, Justices AS Bopanna and Hrishikesh Roy directed the Centre to identify a list of those hospitals where minimum or free of cost treatment can be done for treatment of Coronavirus and also asked only those private hospitals which have been given land at concessional rates by the government to treat certain number of coronavirus infected patients for free. The bench asked the Union Health Ministry to explore the possibility of cost-effective treatments. Finally, the issue of earmarking caps on cost was left to individual state Governments.

Fixation of Reasonable Charges for Ambulance Services: The Supreme Court Division Bench comprising A bench of Justices Ashok Bhushan, R. Subhash Reddy & MR Shah on 11th September, 2020 directed, "It is obligatory for all states to follow the SOPs for all states and take appropriate measures regarding augmenting the capacity of ambulances & that a helping hand must be extended to needy persons who are required to be transported."⁵²

Release of Inmates in Parole etc: In *Re: Contagion of Covid 19 Virus in Prisons*,⁵³ To restrain the overcrowding of prisoners in the prison, the Supreme Court of India on March 23, 2020 (Monday) has directed all states and Union Territories to set up high level committees to determine the prisoners convicted of or charged with offences having jail term of up to seven years can be given parole to decongest jails. The Bench headed by Chief Justice SA Bobde along with Justices L Nageswara Rao and Surya Kant said that the high level committee comprising of home secretary and chairman, State Legal Service Authority to determine a class of prisoners, who can be released on parole for four to six weeks or on interim bail to avoid overcrowding in jails so as to safeguard against the spread of coronavirus pandemic. The Bench also maintained on 16th March that it is difficult to maintain social distancing to prevent the spread of Coronavirus, which has been declared Pandemic by the World Health Organisation (WHO).

Dignified Handling of Dead Bodies of Covid-19 Patients: There have also been the instances of ill treatment of dead bodies like throwing the same into pits (in Pondicherry⁵⁴, Karnataka)⁵⁵, dragging with hooks for loading and unloading the dead bodies (in West Bengal)⁵⁶ etc. Interestingly the judiciary didn't remain silent seeing these issues. In addition to these, there have been incidents of

non-release of dead bodies of Covid-19 patients for payment of hospital bills etc. In *Re Proper Treatment of COVID-19 Patients and Dignified Handling of Dead Bodies in The Hospitals, Etc.*⁵⁷ the Supreme Court registered a suo motu case which Chief Justice of India (CJI) SA Bobde took cognisance of media reports over issues of treatment of Covid-19 patients and handling of the bodies of Covid-19 victims in hospitals. The Division bench of the Supreme Court comprising with Justice Ashok Bhushan, Justice Sanjay Kishan Kaul and Justice MR Shah on 12th June, 2020 rebuked states and hospitals across the country for the callous and insensitive manner in which they were treating coronavirus disease (Covid-19) patients and the bodies of those who had fallen victim to the disease, issuing notices to the central government and five states Delhi, Maharashtra, West Bengal, Tamil Nadu and Gujara in a suo motu (on its own) case initiated by the apex court. The court noted, in its order, "The patients are in the wards and the dead bodies are also in the same wards. Dead bodies are seen also in the lobby and waiting area. *The patients were not supplied with any oxygen support or any other support, no saline drips were shown with the beds and there was no one to attend the patients. Patients are crying and there is no one to attend to them.*

In a Suo Motu Case⁵⁸ the Division Bench of the High Court of Madras comprising *Justice M Sathyanarayanan & Justice M. Nirmal Kumar* condemning the mob attack against burial of doctor died of Covid-19, viewed Article 21 includes right to have a decent burial. Taking cognisance of a news item telecasted on Sunday evening on how the burial of a doctor, who succumbed to a heart attack, his ongoing health problems having been aggravated on account of COVID infection, invited mass opposition, creating a law and order situation observed "Citizens are not expected to take law and order into their hands and if it is so, would definitely lead to anarchy." In this case, reference was made to section 297, IPC which prescribes punishment for trespass on burial places Whoever, with the intention of wounding the feelings of any person, or of insulting their religion, or with the knowledge that he/she is likely to do so, commits trespass in any place of worship or on any place of sepulchre, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

In *Pradeep Gandhi vs. State of Maharashtra*,⁵⁹ the Bombay HC through a bench comprising with Justice Dipankar Datta, CJ. & Justice S.S. Shinde directed that the State as well as the Corporation to ensure that all protective measures envisaged in the GoI guidelines are strictly complied with not only by the members of the family of the deceased at the time of burial but also by those second line workers who would, as part of their duty, deal with the cadaver of any suspected/confirmed COVID-19 infected individual immediately after death. It is only in public interest that the GoI guidelines have been issued and such guidelines shall not be allowed to be observed in the breach by anyone.

In *Vineet Ruia vs. The Principal Secretary, Ministry of Health & Family Welfare, Govt. of West Bengal & Ors.*⁶⁰, the Division Bench comprising of Justices Thottathil B. Radhakrishnan, CJ & Arijit Banerjee, J. of the High Court of Calcutta recognised that COVID-19 victims have a right to decent burial as per religion under Articles 21 And 25 and the immediate family members of Covid-19 victims be permitted to perform the funeral rites of the deceased subject to them following certain precautionary guidelines to eliminate/minimize the risk of them becoming infected by the deadly virus. Additionally, the Court issued the following guidelines:

- i. When post-mortem of the dead body is not required, the dead body shall be handed over to the immediate next of kin of the deceased *i.e.* the parents/surviving spouse/children, after completion of hospital formalities. The body should be secured in a body bag, the face end of which should be preferably transparent and the exterior of which will be appropriately sanitized/decontaminated so as to eliminate/minimize the risk to the people transporting the dead body.
- ii. The people handling the dead body shall take standard precautions, e.g., surgical mask, gloves, etc. If available and possible, PPE should be used.
- iii. The vehicle carrying the dead body to the crematorium/burial ground will be suitably decontaminated.
- iv. The staff of the crematorium/burial ground should be sensitized that Covid-19 does not pose additional risk. They will practice standard precautions.
- v. The face end of the body bag may be unzipped by the staff at the crematorium/burial ground to allow the relatives to

see the body for one last time. Currently, religious rituals, such as reading from religious scriptures, sprinkling holy water, offering grains and such other last rites that do not require touching of the body, should be allowed.

- vi. After the cremation/burial the family members and the staff of the crematorium/burial ground should appropriately sanitize themselves.
- vii. As a social distancing measure, large gathering at the crematorium/burial ground should be avoided.
- viii. The persons handling the dead body shall go directly from the hospitals to the crematorium/burial ground and not to anywhere else including the home of the deceased where he/she last resided.
- ix. In case the body of a Covid-19 infected deceased is unclaimed, the same shall be cremated/buried with due dignity, at State expense.

The Court further held that the State Government or local self-government institutions may and should prescribe additional reasonable measures as they may be advised by medical/clinical experts for the safety and protection of the health of the people who deal with the mortal remains of a Covid-19 victim.

Insurance Coverage: The IRDAI has mandated general and health insurers to offer this indemnity based Individual Covid Standard Health Policy called "Corona Kavach" with fixing the parameters for premium to offer coverage of Medical Expenses of Hospitalization on diagnosis of Covid-19. The Authority had issued clearance to the following 30 General and Health Insurance companies to market this Corona Kavach Policy.⁶¹ However, it is interesting to note that the upper ceiling of the policy is Rs. 5 Lakh while the expenses may be more. Further, the policy doesn't include the scope of protection not available for patients above 65 Years of age who requires more attention to be paid by the Government. In *Sachin Jain vs. Union of India*⁶², it was argued that the 'Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana' is aimed at providing health cover to poor and vulnerable persons in the country. The petitioner pointed out to various reports of surging bills of Covid-19 patients and the resultant barrage on insurance companies for reimbursements. At this, the Supreme Court Bench comprising Chief Justice S A Bobde, Justices A S Bopanna and Hrishikesh Roy directed the Centre to urge insurance companies to release dues promptly.

Health Care Professionals and Others working During Pandemic: In *ESC Ltd vs. Subhash Chandra Bose*,⁶³ the Supreme Court held that Article 25² of the Universal Declaration of Human Rights and Article 7 (b) of the International Covenant on Economic, Social and Cultural Rights have been cited by the Supreme Court while upholding the right to health by a worker. Now, if the question arises whether the Doctors are workers or not and the answer is negative, a broader meaning may be extended to safeguard the interest of such professionals since they are performing a public duty and benefits may be extended to them.

Telemedicine Practice Guidelines, 2020: The Telemedicine⁶⁴ Practice Guidelines was issued on 25th March, 2020 as Appendix 5 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics Regulation, 2002). The Guidelines for Telemedicine in India speaks inter alia the followings:⁶⁵

- The professional judgment of a should be the guiding principle for all telemedicine consultations.
- A Registered Medical Practitioner (RMP) is well positioned to decide whether a technology based consultation is sufficient or an inperson review is needed.
- Practitioner shall exercise proper discretion and not compromise on the quality of care.
- Seven elements need to be considered before beginning any telemedicine consultation. The Seven Elements to be considered before any telemedicine consultation are *Context; Identification of RMP and Patient; Mode of Communication; Consent; Type of Consultation; Patient Evaluation; and seventhly Patient Management.*
- An RMP cannot prescribe Medicines listed in Schedule X of Drug and Cosmetic Act and Rules or any Narcotic and Psychotropic substance listed in the Narcotic Drugs and Psychotropic Substances, Act, 1985.
- An RMP involved into any misconduct is liable to be dealt under the IMC Act, ethics and other prevailing laws.

It doesn't mention reproductive health services which countries like France, UK and Germany has extended the time limit for at home medical abortion to nine weeks using medicines which can be prescribed over phone or by video consultation by doctors or midwives.⁶⁶

Conclusion and Suggestions: Hence it may be concluded that both at the Central level and at respective state level the governments have tried their level best to save the lives except some incidents of gaps due to lack of experience to tackle such situations or failure of some of the organs of the government. Today, there is the need for an inclusive policy for development with poor people in focus. An integrated and harmonious approach is required in addressing the plight of common people while interpreting the FRs and DPSPs. Interestingly, the role of the Supreme Court in regard to the Health issues during Covid-19 Pandemic was mainly linked to two aspects, viz. **economic one**, where the court delved into the cost of COVID-19 testing; and an **administrative one**, where the court analysed failure in the implementation of the guidelines with respect to patients' care, hospital management, and infrastructure.⁶⁷ Hence, the following may be recommended.

Treatment facilities: A section of doctors stopped practicing during the pandemic. The government after supplying the necessary safety kits at free of cost urge them to take part else may take action which may amount to temporary suspension of license. It is also required to prepare the data of the doctors involved into private practice during such a health emergency and extend insurance coverage for them where the government will pay be premium for the smooth functioning of the health care system.

Availability of bed and norms for allocation:

- There should not be provision of a hefty amount to be charged at the time of admission of a patient may be affected by any contagious disease. In this regard, the Govt. of WB has issued the direction
- There should be a declared policy for admission of non-Covid 19 patients on the followings:
 - ◆ Whether allocation of life support system should be made before Covid-19 testing?
 - ◆ What principles to be followed for differentiating most needy and next to such patients?
 - ◆ Principles for allocation of medical resources.
 - ◆ Determination of degree of ailments suffered by patients.
- The hospitals must follow the guidelines as set under the Referral Policy before referring

a patient to other hospitals.

- If any hospital denies offering treatment after being approached by the Patients' Party, the hospital authority must record the reasons for denial.
- Protective equipments to be made accessible at the reasonable price and if possible, it should be GST free during the Pandemic is on. And it may be made available at free of cost for the economically backward people/job losers etc. through the public distribution system.

Protection of Health care professionals: As per the latest data collected by the IMA, of the 196 doctors who lost their lives to the virus:⁶⁸

- There should be proper training and adequate guidelines from the relevant agencies like ICMR, MCI etc.
- **Protection:** The health care professionals are facing difficulties in two ways:
 - ◆ **Life:** There should be adequate supply of protective instruments like PPE Kit etc. Additionally, there should be compensatory mechanism arranged by the Government if any doctor gets affected by the Pandemic. In this regard the Government of West Bengal has announced a compensatory package involving insurance of Rs. 10 Lakh and a government job to one of the family members of the people in the service of government during Covid-19 Pandemic.⁶⁹
 - ◆ **Stay:** People return home once the work outside is over. This is not an exception to the health care professionals. During pandemic, we have noticed the incidents of local outrage including creating barriers to entry at homes, be it of his/her own or a rented ones. In this regard, the local administration must immediately take action and engage in sensitising such areas without any delay. In this connection, the Hospital Authorities must step forward for local accommodation, if required, to avoid such harassments of the doctors and other health workers involved in treating such highly infectious diseases especially during Pandemic.

Insurance coverages: (Corona Kabach)

- ◆ Upper ceiling of the policy is Rs. 5 Lakh shall be increased since the cost

of treating such patients is sometimes much higher due to co-morbidity or some other factors.

- ◆ protection not available for patients above 65 Years of age

Ambulance Services:

- ◆ There should be dedicated ambulance booth centrally regulated by agencies with fixed fare separately for patients with contagious diseases like Covid-19 etc. and other diseases.
- ◆ The ambulance used once for carrying patients with contagious diseases like Covid-19 etc. must be properly sanitized before using the same for carrying a new patient and the agency running the Ambulance Booth must ensure the same.

Services offered for cremation: It may be submitted that the government should take adequate measures to ensure the safe and hassle free cremation of their kith and kin.

- ◆ In order to avoid any untoward incidents at the time of cremation of a dead body of a patient with Covid-19, there requires proper coordination between and among: The Hospital Authorities; Health Department and Local administration including local bodies.
- ◆ There should be separate crematorium for patients died with contagious diseases like Covid-19 etc.
- ◆ Local bodies must take special attention to ensure proper cremation of such patients died with contagious diseases like Covid-19 etc.
- ◆ In case of any information regarding the development of any nexus between the hospital authorities and the agencies for the cremation of Covid-19 dead bodies or in cases of claiming money for showing the dead body of relatives stringent punishment may be imposed.

Incentive for Health Care Workers: Introduction of system of incentives for the health care professionals (doctors and paramedic staff) to boost the morale of working in COVID-19 hospitals. In recent times, the Govt. of Orissa has announced "Doctors, paramedics and other assistants working in COVID-19 hospitals and COVID-19 health centres will get incentives of Rs. 1,000, Rs. 500 and Rs. 200 respectively per day for the number of

days they will serve positive patients. Further, the ASHA workers engaged in door-to-door survey and special surveys will be given Rs. 1,000 per month as incentive from July to October 2020. In addition to all the above there requires a special attention to the health care personnel. To encourage them, the following measures may be taken by the Government.

Additionally, after **Katharina Ó Cathoir**, Professor of Health Law the right to health in India will need to be implemented within the framework of principles of solidarity (in the context of the right to health, *solidarity* can guarantee equal access to public health systems to all), *proportionality* (proportionality is a tool to determine a correct balance between the restrictions imposed by the state as a corrective measure and the severity of the prohibited acts), and *transparency* (transparency is a tool ensure people's trust in public administration. *The principle of transparency goes hand-in-hand with that of accountability and reliability* that are central to international human rights and health law.⁷⁰

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- Healthcare service personnel as a person who is at risk of contracting the epidemic disease while carrying out duties related to the epidemic. They include: (i) public and clinical healthcare providers such as doctors and nurses, (ii) any person empowered under the Act to take measures to prevent the outbreak of the disease, and (iii) other persons designated as such by the state government.
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