

**ROLE OF JUDICIARY IN COVID-19 PANDEMIC, A COMPARATIVE
STUDY OF INDIA AND USA**

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Abstract

Human safety has taken the top spot on the priority list because the epidemic has touched individuals all around the world. Each nation's government developed its own pandemic plan, outlining the procedures to take in response to the COVID-19 epidemic. The epidemic caused a lot of suffering for the human race. Many people's rights were violated during the pandemic in India by the federal and individual state governments. The Indian Constitution is the highest authority and directs the country's key democratic institutions. The Indian Constitution gives the judiciary numerous powers to defend the rights of persons who are looking for legal redress. In this regard, it is the duty of India's court system to monitor all arbitrary decisions undertaken by the executive branch. One of them, the judiciary, is responsible for defending each Indian citizen's rights. USA went through a difficult time during the pandemic, similar to India. The American Constitution guarantees "due process of law," and the Indian Constitution includes a legal procedure. The fundamental distinction between these two is that under "due process of law," the Supreme Court has broad discretion to uphold the rights of their citizens. This paper is thus focused on discussing the laws that were in place to address the Covid 19 problem in both India and the USA and providing a comparative study of the same.



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Key Words- Constitutional Rights, COVID-19, Judiciary, Pandemic, USA

I. INTRODUCTION

The Constitution of India is the supreme authority to deal with all types of legislation and the application of the existing laws. Law as a weapon of social control, supported by the sovereign power. The legislature, the judiciary, and the executive branch of government are three examples of how the concept of separation of powers is applied in India. Each of these entities is mandated to do a particular task. Each of these streams will play a crucial function in their respective fields, but the judiciary will play a crucial part in monitoring the actions and inactions of the administration and legislature. Every citizen's fundamental rights were guaranteed by the judiciary..People's different

rights, including fundamental rights, were suppressed by the federal and individual state governments as a result of the pandemic scenario in India. In this context, the judiciary must play a variety of functions, including those related to constitutional morality, constitutionalism, and the constitutional oath. Additionally, the judiciary is accountable for establishing the rule of law and delivering social justice. To fight the Covid-19 pandemic, which has swept the world, people must abide by safety regulations. Each nation's government has formed its own set of laws and norms in this issue.

Although the lockdown and house quarantine seemed to be a catastrophe for the populace, everyone must go by the rules and newly set limits in order to survive safely. In this pandemic situation, it was crucial to prioritise people's safety since it was necessary to protect them from the corona virus and stop its spread. In this stream, the judiciary took a stand to defend the rights of Indian citizens and began to take Suo-motu notice of their problems. In this regard, the Supreme Court of India began issuing directives to the state and Central Government on a number of topics, including the distribution of medications and the assignment of patient beds, as well as the allocation of oxygen cylinders to the state and hospitals.

II. RESEARCH METHODOLOGY:

The researcher has adopted secondary method of data collection and has therefore used the doctrinal and non-doctrinal research method, relied on legal books, library support and higher court judgments, journalistic articles, statutes, constitutional commentaries, legal websites and data from various online Publications, books, reading materials.

The content of this overview includes laws and statutes, and the case studies are briefly presented to imply their relevance to key issues and to help the reader gain a deeper understanding of the subject.

III. LEGISLATIONS THAT WERE AVAILABLE IN INDIA TO COMBAT COVID 19

i. CONSTITUTIONAL PROVISIONS

Health related provisions are covered under Article 21 in the Indian Constitution states unequivocally the resident's central right to life and individual freedom, which can be contended was disregarded as the nation sanctioned a total cross country lockdown. Arrangements connected with wellbeing are referenced in Part IV of the Constitution regarding the Directive Principles of State Policy.

Article 39(a) makes reference to the obligation of the State to give security to residents by guaranteeing the Right to sufficient method for Livelihood. Article 39(e) specifies the State's liability to guarantee that "wellbeing and strength of labourers, men, and ladies and the youthful time of kids are not mishandled." Article 41 forces an obligation on the State to "give public help with

instances of joblessness, advanced age, infection, and disablement." Article 42 makes arrangement to "safeguard the soundness of the new-born child and mother by maternity benefit." Article 47 is tied in with "raising the degree of sustenance and the way of life of individuals and working on general wellbeing."

ii. **THE EPIDEMIC DISEASES ACT, 1897 (EDA)**

iii. **DISASTER MANAGEMENT ACT, 2005**

iv. **STATE WISE POLICIES AND REGULATIONS IN REGARD TO COVID-19**

Article 8 of the Constitution of India has been provided that the health related issues will be mentioned under state list of India. The clear guidelines were provided for every state separately.

IV. ROLE OF JUDICIARY IN INDIA DURING PANDEMIC

To preserve Constitutionalism during Pandemic

Constitutionalism is a combination of ideas, attitudes, and patterns of behaviour it states that the principle authority of government derives from limited by a body of fundamental law. Also constitutionalism is obverse of arbitrary power.

To Preserve a Constitutional Morality-

During the Pandemic the constitution envision establishing equitable social order rendering to every citizen social, economical, and political justice. In the Naz Foundation case Supreme Court said that only constitutional Morality should prevail therefore it is well expedient that the constitutional Morality will always be a paramount reverence.

Access to the justice with the help of Technology

Access to Justice during the pandemic I was the great challenge before the judiciary of India. For the experiment purpose the SC and other courts were hiring the Video conferencing system for the hearing purpose. This was happened first time in Supreme Court, and it became news. With help of Technology many litigants getting benefit of speedy trial¹.

Landmark Judgement

• **Suo Moto V State of Rajasthan**

In this case the SuoMoto PIL was enlisted based on news detailed in different news channels of Rajasthan expressing that an immense number of detainees (approx. 55), the two convicts and under trials at Jaipur region prisons were detected with corona positive.

Judgement

Considering the conditions presented by the flare-up of Coronavirus pandemic, the Court guided the state government to keep up with exclusive expectations of care for the prison detainees. It likewise gave specific headings in such manner, for example, incorporation of the Coronavirus SOP for correctional facilities with the goal that the accused will be tried by neighbourhood clinical

experts for Covid and on the off chance that found pessimistic, The segregation wards in the correctional facilities will be assessed by the clinical officials of each locale and make strides which will be essential for keeping up with neatness and sterilization. The previously mentioned bearings were made to the State of Rajasthan to consolidate similar in their SOP for correctional facilities with the end goal of the present Coronavirus pandemic².

V. LEGISLATIONS THAT WERE AVAILABLE IN USA TO COMBAT COVID 19

i. HEALTH CARE SYSTEM OF USA

According to the World Health Organization (WHO), the United States burned through \$9,403 on medical services per capita and 17.9% on medical care as level of its GDP in 2014. Medical care is given through a mix of private health care coverage and general wellbeing inclusion (e.g., Medicare, Medicaid). The United States doesn't have a general medical care program, dissimilar to most other created countries.

ii. CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT, 2020

iii. FAMILIES FIRST CORONA VIRUSES RESPONSE ACT

iv. CARES ACT 2020: The Coronavirus Aid, Relief, and Economic Security Act

v. PAYCHECK PROTECTION PROGRAM AND HEALTH CARE ENHANCEMENT ACT- APRIL 2020

vi. PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT OF 2020 – JUNE 2020

vii. CONSOLIDATED APPROPRIATIONS ACT, 2021 - , DECEMBER 2020

viii. RESCUE PLAN ACT OF 2021

VI. ROLE OF JUDICIARY IN USA DURING PANDEMIC

The Judiciary is committed to the innovative court management and administration that effectively addresses the changing the needs of judges, staff, advocates as well as public. Although the pandemic in 2020 tested the court operations in (unprecedented) way judiciary commenting. With the help of expanded use of technology careful planning along with Judges Dedication and their entire employee the federal courts were able to continue the proceedings of court throughout the world. We can understand the health care system of United States of America with the help of following.

¹<https://www.unodc.org/dohadeclaration/en/news/2020/04/covid-19--technology-and-access-to-justice.html>

²<https://indiankanoon.org/doc/127960872/>

Establishment of Judicial Task Force

At the advent of pandemic February 2020 the COVID-19 judicial Task force has been established by the judiciary. It includes the membership of Chief Judges and court executives, federal defenders, staff of the administrative office of the U.S. Courts and also the representatives from general services Administration, the U.S. Marshals service, the federal the federal protective service, and the U.S. Attorney's office.

Operation of Judiciary through Technology

Teleconferencing, free audio access to audience and Media at proceedings time was made available. For this purpose a internet networking and data expansion were also allowed for the smooth judicial proceeding.

Pandemic recovery guidelines to the Federal courts

Administrative office of the U.S. Courts presented the guidelines to the federal courts to deal with the Covid situation in the country.

Presentation of Jury Reports

The jury trials were allowed in the month of June, accordingly the record of jury trial maintained by respective departments. In the Pandemic the subgroup appointed for the trial Judges, Executives, and Representatives from the federal defender community and development of justice distributed to courts. The detailed report on trials must consider and changes to prospective jury questionnaires to create the conventional reports³.

Landmark Judgement

Maniscalco vs. New York City Department of Education

In this case On August 23rd the vaccine mandate was issued in an executive order for all the public school employees in the New York city. All the public school employees had to prove that they have received at least one dose of Covid-19 vaccine. Getting vaccinated should be a personal choice and this condition must be considered by court and an extended period must be provided for getting vaccination. This was the collective demand of employees. In this regard employees filed a petition for not getting vaccination in a short duration.

Judgement

The petition was turn down by the federal district court. Court said that they have to follow the guidelines provided by the US Court. Second appeal to the Circuit Court was made. However, the petition was denied.

³<https://www.uscourts.gov/statistics-reports/court-operations-and-pandemic-response-annual-report-2020#:~:text=In%20February%202020%2C%20the%20Judiciary,provided%20advice%20on%20emerging%20issues.>

VII. COMPARATIVE ANALYSIS STUDY BETWEEN INDIA AND USA

The USA was one of the first few who reported the case of COVID-19 virus from Wuhan China. China declared the Public medical crisis made in January 2020. The first instance of Covid in India took place at Kerala in January 2020. Indian Prime Minister followed the situation and ordered for Nationwide Lockdown from 14th March 2021.

Right to health and equality is most important part for any state concerning the pandemic making new policies and recommendations, however the available legislations of India proved to be insufficient for dealing with the emergency like COVID-19 Pandemic. Unlike USA the constitution of India does not enable the President to declare the national emergency on his own basis. Also there is a difference among the methods of Quarantine in USA as the rules related to the quarantine were extremely strict because of sudden raise of death rate of the infection in USA. In India the quarantine rules were changed in various ways according to state according to Prime Minister Orders and the Medical council also suggested different opinions to be followed. Looking to all these aspect the United State's administration is more appropriate then the Indian administration.

VIII. CONCLUSION

Herewith the researchers can conclude that the Pandemic situation is very crucial for every nation and to be well equipped is most important thing. The National Disaster Management Guidelines, 2008 outlined by the National Disaster Management Authority gives the meaning of Biological Disaster as, yet it is as yet questionable regardless of whether different arrangements of these rules are executed. The Indian Government successfully faced the lockdown and diminished the quantity of cases, while simultaneously certain legislators and legitimate specialists scrutinized the established lawfulness of the lockdown and the reaction of the Government. However the Central Government has executed the EDA and the DMA, however they aren't adequate to confront the pandemic situation considering recent Covid 19 condition. This paper has investigated different choices for overcoming any barrier and fortifying the protected and lawful system for tending to any future wellbeing crisis.

In USA the plan of action is always ready and the policies are in favour of the peoples so they do not suffer for the health care facilities. The presidential rule is again prevail on the administration policies of India it was the differentiate point. The available policies also scattered it should be centralised administration.

IX. SUGGESTIONS

There is a need to examine generally inside and beyond the Parliament as crisis arrangements sway the essential privileges of residents.

There is resistance from pockets of society that lockdown is illegal and there has been analysis of the over the top job of the Central Government in monumental the lockdown (Owaisi, 2020). Then again, there are Public Interest Petitions (PILs) documented in the Supreme Court to force a monetary crisis under Article 360 of the Indian Constitution (Kannan, 2020).

Clearness on the lockdown which confines the development of individuals will affect the essential privileges revered under Article 19 (1)(d) to free development all through the domain of India and 19 (1) E to live and get comfortable any piece of the region of India.

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