

JUDICIARY OVER THE GOVERNMENT IN PANDEMIC

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The novel coronavirus also called COVID- 19 originated in China in 2019 and this first seen in January 2020. The World Health Organization declared COVID- 19 pandemic and the government of India and State governments took different steps to deal with it. The central and state government took serious steps before much effect of this virus in country and that was proved successful. The situation is normalized by December 2020. In February 2021 the schools and colleges also started and the central government decided to organize Kumbh mela and declare election in West Bengal, Assam, Puducherry, Kerala and Tamil Nadu.

But expertise says that this is not an end of this virus and India will face second wave of this virus on the basis of B.1.617 (Indian Variant) and UK variant of Corona virus found in India in October 2020 and its first report of concern was published in December 2020.

The central government of India set up INSACOG National multi agency consortium in 30th December 2020 of 10 National Laboratories.Ten laboratories of Department of Biotechnology, CSIR, ICMR and Ministry of Health & Family Welfare, were brought together. National Centre for Disease Control (NCDC), MoHFW was given the responsibility to correlate the clinical aspects and coordinate collection of samples from the states to sequencing of all samples of UK Travellers and a defined percentage of positive samples of others in the community were initiated in January 2021.

In a report of INSACOG,it was said that “the Mutation at sites E484 and L452 in the virus’ Spike protein have been observed separately, but this is the first major viral lineage that combines the two into the same virus” which is B:1:167 variant. This variant was first found in Maharashtra by NCCS Laboratory in Pune on 12th March 2021,which can easily enter in human body.

The warning of new variant in early March was issued by INSACOG and said that the number of corona virus cases can quickly increase in next few days. It was conveyed to

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Ministry of Health and Family Welfare but the government did not respond on it. Also, in the month of March, 20 reports issued by Ministry of Health and Family Welfare that shows that the virus is spreading more day by day in the state of Maharashtra, Kerala, Punjab, Tamil Nadu and Gujarat after having knowledge of these facts and risk, the central government held election in Kerala and Tamil Nadu also. And by the end of the month march the cases was increasing in the state of Madhya Pradesh, Karnataka and Chhattisgarh also. But this was also ignored by the Central Government. Even after the worst condition, the elections of West Bengal, Assam, Puducherry, Tamil Nadu and Kerala was held and Kumbh Mela was organized. India is a religious country and the citizens of India are highly involved in religious activities. The Kumbh mela also one of the most famous religious festival in which every citizen who have faith in god go to have bath in river ganga at the place where the mela is organized. In this event most of the old aged people participate and to complete the wish of love ones in home the family members of the Hindus also participate in this festival. In the month of march INSACOG warn the central government and the report of Ministry of Health and Family Welfare shows that the virus is spreading in some states of the country and one of the states have a new variant of this virus and that one is more effective than the other variant of the corona virus. The central government even after having knowledge held election and organize Kumbh mela which cause the high spread of virus and due to insufficient medical facility, many people affected by this new variant and died due to lack of oxygen and ventilators.

According to the JHU CSSE COVID-19 Data the on 13th of March 2021, the total number of cases found in a day in India was 25,320 with 2.9% positivity rate and it was increased to 72,330 cases with 6% positivity rate in a day till 31st March 2021. The government also ignored this data and did not revoke its decision of Kumbh mela and election and from 31st March 2021 to 8 May 2021 this number increased to 4,03,405 cases and positivity rate attain 22.7% in a day. On 13th March, 2021 total 161 death was found due to corona and till 31st March 2021, this number was increased to 469 deaths per day. And till 8th May 2021 this number attain 4,077 death per day. According to the data mentioned above it can easily determine that, the month of March was alarming time for the government and the increase in number of cases showing that the condition is going to worst day by day and the election and Kumbh mela can make this situation problematic in the whole country. According to the interviews of the INSACOG expertise, INSACOG gives advice and warn government in the

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early march that in the upcoming days the new variant will spread more faster and it can easily enter in the human body then the other variant but the PMO ignored the advice of the forum. And the result was found that this time the corona cases not only found in city as found in first wave but also affect rural people also.

S.No.	Date	New Cases Found	Death Per Day	Positivity Rate
1.	13 th March 2021	25,320	161	2.9%
2.	31 st March, 2021	72,330	459	6%
3.	8 th May, 2021	4,03,405	4,077	22.7%
4.	18 th May 2021	2,67,334	4,150	17%

The data of corona death of rural area is not clear because the death occurred in hospital of the person who is tested corona positive is considered as corona death but it was found that in many village areas of Haryana, UP, Punjab, Rajasthan etc., the number of death is more than some last years. It should be noted that the number of deaths in this time period of second wave is more than the number shown by the government. The Supreme Court of India should setup another committee to find out the original number of deaths in rural areas and a criteria should be made so that the deceased person who fall in that category should be considered as corona death. An order should be passed by the Supreme Court in which direction should be given to take sample of every dead person who died out of the hospital premises so that it can be determined that the death is occurred by corona or not. So that more and more rural families also become eligible for any future scheme for the family members of corona deceased person.

The central government should be liable for the negligence because it was the legal duty of the government to take care of its citizens by anything which can harm the life of the people. The decision of the central government to organize Kumbh Mela and to held election was caused to spreading the corona virus and by which not only the participant got affected but all the person who came in the contact of participants who is affected by corona also infected. Which make a chain of corona and day by day more and more people infected in

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minimal time. It was possible that the spreading speed of corona will not be this much as it was spread in the month of April if the election and Kumbh Mela was not held in this critical time period.

As per law of tort, "Negligence is an independent tort. Which means any conduct which cause damage to the plaintiff without intention". A person can be liable under civil law for his negligent act. A civil liability arises when a person fails to exercise his duty to take care and in the present case the the government fails to exercise his duty to take care. So, the government should be liable for civil negligence. Under the law of tort there are some essentials that are required for the civil negligence.

Duty to take care – It means the defendant should have legal duty to take care of its citizens while performing any act. In the present case at the time of pandemic it is the duty of the government to not to take any step by which any dangerous virus can escape. The expertise and government reports are already showing that the corona cases are increasing day by day and the new variant is also found which is more dangerous and which can also spread more effectively by the decision of election and Kumbh mela. But the government didn't take any step to delay or cancel it. Which shows that the central government fails to perform his legal duty.

And in the result the county faces huge damage which includes rapid increase in new corona variant cases, lack of oxygen and ventilators, lack of corona medicines and injections like Febiflu medicine, Remdesivir injection, Tocilizumab drug etc. which cost very high for a middle and poor class people. In India Remdesivir price is 5000 and Tocilizumab government price is 40,000 which is not affordable for a normal citizen and the availability of these injection was very less that's why many people who admitted in private hospitals (Approach private hospital due to shortage of bed in government hospitals) fails to afford these doses. The court should order to make these doses free for citizens, who are admitted in private hospitals because the government himself liable for the spread of corona virus at this level in very less period of time.

Section 6, Section 35 and Section 36 of Disaster Management Act, 2005 talks about Central Government to take measures, which clearly says that "the central government shall take all the measures as it deems necessary or expedient for the purpose of disaster management". This section gives full power to central government to take any step which it deems necessary to control the situation and by which the situation can be controlled. And

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section 55 of the same act talks about the offences by Department of Government which state that if any department of government committed an offence under this act then the head of the department shall be deemed to be guilty of the offence and shall be liable and also punishable accordingly. In the present case the step to held election and organize Kumbha Mela and failed to take preventive measures which are necessary for pandemic is not taken by the government is the violation of the Act.

Article 21 of the constitution of India talks about the Right to life and personal liberty. Which states that “No person shall be deprived of his life or personal liberty except according to law”.The life of every person is protected under this article and the decision of the government played a vital role to violate the fundamental right of the citizens. In the case of **Sunil Batra v/s Delhi Administration**² the Supreme Court held that “right to life” included the right to lead a healthy life so as to enjoy all those limbs and faculties by which life is enjoyed. But in the present case the decision of government resulted not only to the spread of the virus but also fails to protect the life of many people due to lack of medical facility and by not arranging facilities. If it was arranged, then the situation can be controlled but the government didn’t take any step towards this and the price was paid by the innocent people. Not taking appropriate steps shows that the government also failed to protect “right to breath” which is also a fundamental right protected under article 21 of the constitution. This was the situation which should not be created but the negligence of the government creates this situation.

As mentioned above the government is liable for negligence and fail to protect the fundamental right the government should compensate to all the family members who loses their life by the negligence of the government and an investigation should be started to examine this whole matter and the government servants who fails to perform their duty should be terminated from their jobs and a criminal proceeding should be started against them for negligence and violation of Disaster Management Act, 2005.

2.AIR 1978 SC 1675

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