

**THE SUPREME COURT OF INDIA AND SUO MOTO COGNIZANCE-
IN THE CRISIS OF CORONA VIRUS**

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ABSTRACT

The Supreme Court of India takes Suo Motu cognizance of issues pertaining to prisons, child care homes, migrants and medical institutions and directs certain reliefs to the suffering citizens in the country. It not only does recognise the issues but also makes sure that the government agencies work at the optimum to protect the rights of the citizens as provided in the Constitution of India. The court not only proactively discusses and directs the reliefs but also ascertains that the necessary steps are taken at right time thus acting as the sentinel of the justice.

It is the spirit and not the form of the law that keeps justice alive.

-Earl Warren

INTRODUCTION.

Suo Motu is a concept of “epistolary jurisdiction” which means that a government agency, authority or court can take the control over a matter. The doctrine of Suo Motu cognizance found its origin in India during the era of judicial activism in the late seventies. The Supreme Court of India and the High Courts can take cognizance, under Article 32 and 226 respectively, of a matter or a case on its own through media broadcasting or third party letters. This was a need of the time as it enhanced the access of justice for the economically backward, poor and marginalised section of the society.

SUO MOTU COGNIZANCE IN THE CRISIS OF THE CORONAVIRUS

When the countries across the globe were battling with a pandemic known as “Coronavirus” or “Covid-19”, the situations started worsening in India with the onset of Coronavirus. With the impositions of countrywide lockdown from the 22nd day of March, many serious issues surfaced

alongwith the ongoing pandemic. These issues were unprecedented and neglected and needed the attention of the country.

With everything happening in the country, various pleas and petitions were filed in the Supreme Court to overlook the matters and seek proper relief. The Court was working with the reduced capacity. It only took the **matters of “urgency”**¹. But with the aggravating situations and existing sorry state of affairs, the Supreme Court exercised its extraordinary powers. The court started taking Suo Motu cognizance of the prevailing matters in the country. This move of the Supreme Court not only recognised the importance of resolutions of these problems but also strengthen the faith of the people in the institution of the judiciary.

Some of the matters which were decided by the court are :

1) **Over-crowding of prisons**

The Supreme Court has always shown its concern regarding the overburdened prisons of the country. Even though the courts have time and again taken the cognizance of this matter the situation is yet unchanged and has worsened with time. According to the NCRB² report there are **1361 jails accommodating 4.50 lakh prisoners**. These jails are understaffed with 33%³ which highlights the apparent reason of poor management in these facilities.

With these prevalent conditions, the Supreme Court in the month of March⁴ took the cognizance of the spread of the Covid-19 infections in the prisons and remand homes in India due to them being congested. The main object of this move was to protect the rights of those in prisons and remand homes under Article 21 and provide them with optimum facilities to secure themselves against the virus. The Bench led by the Chief Justice of India observed that with the Indian jails being congested over the **occupancy rate of 117.6%**⁵, they can become a **breeding facility** for the infection of Covid-19.

The court observed that many states and union territories have taken considerable and effective measures to prevent the spread and improved the facilities. But with prevailing conditions and

¹ Supreme Court Observer.

² 2019.

³ India Justice Report 2019.

⁴ In Re : Contagion Of Covid 19 Virus In Prisons, Suo Motu Writ Petition (C) No. 1/2020 (India).

⁵ National Crimes Record Bureau,2019.

the excess numbers of prisoners the court also gave few directions to be followed to avoid further transmission.

- Physical presence of under-trial prisoners before the courts be stopped for the given time.
- The prisoners should be transferred from one jail to another only for decongestion purpose.
- A monitoring team must be set up at the state level to review the conditions of prisons and remand homes.
- Each state and union territory must set up a **high powered committee** to decide on which class of prisoners should be released on interim bail and parole.
- The “**Under-trial Review Committee**” contemplated by the Supreme Court⁶ shall weekly review the conditions.
- The prisoners who have already contracted the virus shall not be released to contain the further transmission.
- While the class of prisoners are released on **interim bail or parole**, if they contract the infection the prison authorities shall be responsible for quarantine facilities.

Following the directions of the Supreme Court, various states released the recommended class of the prisoners on interim bail or parole on the recommendations of the high powered committee . Thousands of prisoners have been released by the states like Maharashtra, Punjab, Uttar Pradesh, Delhi where the congestion is rampant.

Though the actions for the current situation seem to be justifiable the question still arises as to the prevailing prison conditions and the plight of the prisoners post pandemic times.

2) **Child care and foster homes**

Various Child Care Institutions(CCI) like Observation Homes, Juvenile Justice Boards(JJB) and other shelter facilities are established in India under the authority of the Juvenile Justice(Care and Protection of the Children) Act,2015 over the past few decades. These are the institutions responsible for the juvenile delinquents in India. Along with these institutions there are certain

⁶ In Re Inhuman Conditions In 1382 Prisons, ((2016) 3 SCC 700) (India).

institutions which provide aid to homeless children like the Shelter homes in India. There are total of **9589 of these Child Care Institutions**, shelter homes, etc. Where 1.8 lakh children reside.⁷

With these institutions being overcrowded and the threat of the spread of the Coronavirus amongst the children residing here, in the month of April the Supreme Court took Suo Motu Cognizance regarding prevention of the Coronavirus in these children. A slew of directions and guidelines have been laid down by the Supreme Court⁸ for all the CCI as well as children under the foster homes and kinship care.

- Measures to be taken by the CCI and child welfare committees
The committees shall **proactively work** on the investigation and enquiry of whether the children shall be kept in the CCIs or sent back home. If sent back home then the District Child Protection Committees and Foster and Adoption Committees shall co-ordinate the well being of the family and child.
- The children in JJBs shall be considered sending home on **bail** given their safety concerns and health well being. The children in the Observation Homes shall be proactively monitored so as to check their mental health.
- All the State Governments are directed to **co-ordinate** with various CCIs and make sure that necessary budgetary allocations are made for the same and continuous monitoring of these delinquents shall be maintained.
- The Child Care Institutions shall make sure to take all necessary medical precautions as provided by the health ministry and if need contact the medical emergencies for the same.
- The well being of the children in these institutions during the lockdown shall be the paramount consideration. Their mental health shall be paid heed to. They shall be provided with psychological counsel time and again.

Though the Judiciary ensured the **medical and psychological safety** of these children during the times of this pandemic, the main question lies as to are these children safe from the other vices of the society?

⁷ Mapping Of Child Care Institutions, Ministry Of Women And Child Development, 2019.

⁸ In Re: Contagion Of COVID 19 Virus In Children Protection Homes, Suo Motu Writ Petition (C) No. 4/2020(India).

3) Migrant workers crisis

In the month of March, thousands migrant workers gathered on the streets on Delhi, seeking transport to their natives. Slowly this became a countrywide crisis. Lakhs of workers were stranded on roads with no food, shelter and livelihood. This was an unprecedented and unavoidable crisis. The governments tried various interim measures but nothing seemed to be sufficient. They started walking in the scorching heat of summer to reach their homes which were 1000s km away. Many suffered injuries, many faced death. Their sufferings just didn't seem to end.

The government started railway facilities for them. Various NGOs and private institutions helped in securing meals for them, arranging transport facilities but the sufferings continued. There seemed no co-ordination between the government agencies. Under the **Schedule 7** of the Constitution of India, in the Union List the Central Government has a duty with respect to inter-state migration and inter-state quarantine of these migrant labourers, though these duties were discharged there were certain on face lapses which could have been forseen. The State governments, under the state lists, also lacked while discharging their duties with respect to maintaining Public Order, Police regulation, maintaining public health to migrants by not providing proper facilities of sanitation and dispensaries and no quick relief to unemployed migrant labourers. This intensified crisis was not only a socio-political crisis but a human rights crisis.

Many PILs were filed and directions were passed by the Court but nothing laid emphasis on their sufferings.

After receiving letters, from various senior advocates , urging the court to intervene in the matter the Court took Suo Motu cognizance of this issue on 9th June. The Court recognised the active work of the various media agencies in showing the real problems as to this issue. The court noted that the miserable and unfortunate conditions of this section of society in this lockdown asks for the help of the government. The inadequacies between the governments were evident. The Supreme Court thus laid down **8 directions** to be followed by the states and the union territories and for them to make sure that all the migrant workers with their families shall be transported to their homes by the coming 15 days from the date of the order.

Even though there was delay in taking the cognizance of such fundamental and crucial issue the Supreme Court at last restored the principles of judiciary and showcased its fundamental responsibility in providing reliefs to the migrant workers.

4) Mishandling of patients and dead bodies

Right to health is a fundamental right under **Article 21** and right of patients to be treated with dignity is both their fundamental right as well as human right.⁹ Hospitals/Nursing homes/Clinics are liable to provide treatment to the best of their capacity to all patients.¹⁰

But this very basic aspect of life seems to be in danger with the ongoing covid-19 crisis and mediocre health system of our country. In India there are 0.8 doctors and 0.7 beds available per 1000 persons. These figures don't do great with a population of 1.3 billion. But with ample resources available Indian manufacturing units were able to meet up the demands of the medical devices but the same cannot be said for some of the medical institutions of the country. The hospitals in various parts of the country have not been able to treat the covid-19 patients properly. Affected patients are either forced to sit beside the dead bodies or are not admitted in the hospitals under the pretext of lesser availability of services. They are charged exorbitantly or are not provided treatment as per the decided standards. Not only the living patients but the dead bodies of the Covid-19 affected patients has not been done justice. They are dragged as those of animal carcasses.

Some of these incidents, especially the ones being happening in one of the hospitals of Delhi were brought to light by the news agencies. The Supreme Court on 11th June took Suo Motu Cognizance on this matter¹¹ Regarding the treatment to the living patients as well as the dead bodies of those affected by the virus, the court observed that they are being treated worse than the animals. The court did recognize the efforts of the governments but it also re-iterate the duty of the state – to ensure that each and every citizen gets the adequate treatment facilities under safe and hygienic environment. The three judge Bench went on to say that the situation is “**horrendous**” and the states are responsible for this sorry state of affairs. The court also

⁹ 8th ed. MP Jain's Indian Constitutional Law.

¹⁰ Balram Prasad v. Kunal Saha, (2014) 1 SCC 384 (India).

¹¹ In Re The Proper Treatment Of Covid 19 Patients And Dignified Handling Of Dead Bodies In The Hospitals Etc., Suo Motu Writ Petition (Civil) No(S). 7/2020 (India).

questioned the low testing capacity and how it is delaying the people from seeking the right treatment at the right time. The states of Delhi, Maharashtra, West Bengal, Tamil Nadu and Gujarat have been given the notice by the court to improve the medical facilities and eliminate these grim situations. The court in the subsequent hearing also noted on the fact that the nurses and doctors should be working on the patients trying to save their lives rather than being suspended by the authorities just because they highlighted the problems of the particular institution.

Though the directions have been laid down by the court and the concerned authorities have been made responsible for the cause, the fact which is still in question is whether the medical services and facilities in our country are effective and adequate enough to overcome the pandemic of Corona virus.

CONCLUSION

The Supreme Court has given importance to the necessary issues and taken a note of the prevailing issues with best of its intentions and with an object of eliminating the sufferings of the citizens of the country. Justice Untwalia has rightly observed that “*The Judiciary is like a watching tower above all the big structures of the other limbs of the State*” and makes sure that the principles of social justice and the Constitution of India are given the paramount consideration over the other activities of the state. Thus, by exercising its power of Suo Motu cognizance the court made sure that the rights of the citizens duly protected.