

“The Covid-19 Conundrum and the Supreme Court of India”

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Ever since the second outbreak of COVID-19, human rights violations have become rampant whether it be by gagging of free press and the freedom of expression on social media, the black marketing/hoarding of oxygen tanks and cylinders or denying the deceased a decent right to burial. On Thursday the 6th of May 2021 in a landmark decision The Supreme Court emphasised the need for the Union government to begin planning for the allocation of oxygen to states, as well as its supply and distribution, in the event of a third COVID-19 pandemic outbreak. The court brought the government's attention to reports that children might be harmed in the next wave.

Before the coming wave, a bench of Justices D.Y. Chandrachud and M.R. Shah said the government needed to finalise a method for allocating, supplying, and distributing oxygen in a "scientific manner." It said that the current "rough-and-ready" framework for the "oxygen-for-bed" system would fail miserably. The new formula for apportioning oxygen to Delhi, for example, based on the number of ICU/non-ICU beds, vastly overestimated the National Capital's oxygen needs. “Also, not everyone who went to the hospital needed an oxygen bed, and not everyone needed to be in the intensive care unit or on a ventilator. Many people have been told to stay at home and quarantine,” Justice Chandrachud said, pointing out the flaws in the formula.

The court stated that the procedure for allocating and distributing oxygen among the states should be founded on a "oxygen audit," which determines a state's real oxygen needs. “We need to reconsider the basis for allocating oxygen. The pandemic is now in its second level. Stage three may have drastically different criteria... But, if we start preparing now, we'll be ready for stage three. It's all about allocating oxygen correctly and figuring out the modalities, which includes proper distribution. A buffer stock must also be established," according to Justice Chandrachud.

The importance of vaccination was emphasised by the court. “Children will be affected,” the judgement stated. They'll be admitted to hospitals. They will be escorted by their guardians. Vaccination is required,” it said.

During the hearing, Justice Shah inquired about the treatment given in the country's rural areas. Rural areas, according to Justice Chandrachud, have a rudimentary health system. In Maharashtra, however, a task force of a dozen doctors was created to coordinate with hospitals and provide advice on pandemic treatment in rural communities.

For the Delhi government, senior advocate Rahul Mehra challenged the Centre's concern that providing 700 MT of oxygen to Delhi would trigger a shortfall in availability to other states. He claimed that the Centre had stated that there was no shortage of oxygen in Delhi and that a

reserve of 160000 MT was available. On April 28, oxygen demand in Delhi increased by 113%, from 490 MT to 700 MT. The Centre was attempting to reduce Delhi's supply to less than 560 MT once more.

“We have to see that there is an equal distribution of resources,” Mr. Mehta countered. We cannot begin nit picking in order to gain debate points. I simply don't want to see any more people suffer.” However, amicus curiae and senior advocate Jaideep Gupta maintained the same line of reasoning, asking why there was a scarcity at all if the 700 MT demand for Delhi was wrong and the National Capital could make do with 490 MT.

Mr. Mehta's initial comments in the hearing that large stocks of oxygen were present in Delhi hospitals and that prolonged supply of oxygen to Delhi in surplus would impact other States was the subject of the submissions.

This is one in the line of a plethora of judgments the court has delivered ever since the COVID outbreak and shortage of oxygen. Last Friday the court in another judgement made it clear that any effort to restrict the free exchange of information on social media, including requests for assistance, on the assertion that the grievances are fallacious in nature, unnecessarily creating panic by describing the second wave of COVID-19 as a national emergency would be considered contempt of the court. The centre opined “There should be an unrestricted exchange of information, and citizens' voices should be heard ” According to a bench led by Justice D Y Chandrachud, and that all DGPs should refrain from taking any action against anyone who posts messages on social media regarding shortages of oxygen, beds, or doctors as trying to spread misinformation. “We will consider any action taken by people in distress against such posts as contempt of court”, said the bench, which also included Justices L Nageswara Rao and S Ravindra Bhat. The remarks are noteworthy in light of the Uttar Pradesh government's recent decision to prosecute citizens under the National Security Act for reportedly spreading false alarms on social media. The Supreme Court is currently hearing the Suo motu case for developing a national strategy for the COVID-19 operation.

At the hearing, it was noted that even frontline physicians and healthcare staff were having difficulty accessing treatment beds, that the healthcare system inherited over the previous 70 years was inadequate, and that the situation was dire. The Supreme Court ordered that hostels, mosques, churches, and other public buildings be converted into COVID-19 care centres. The Centre should follow a national immunisation model, otherwise, poor people would be unable to afford vaccines, the Supreme Court opined. "What happens to the marginalised and members of the SC/ST communities?" It questioned whether they should be left to the mercy of private hospitals.

The court also stated that the government should consider a National Immunization Program for multiple vaccines and start offering vaccination to all people free of charge. The Apex Court observed, The healthcare sector has reached a breaking point, and retired doctors or officials could be re-employed as a result of the crisis.

The Apex Court also ruled that private vaccine producers cannot determine which states should receive how many vaccines. The court suggested the centre give a PowerPoint presentation on their preparation strategies for COVID-19. The bench noted the pandemic situation on 22nd April 2021, citing the sudden increase in COVID-19 cases as well as fatalities, and said it expects the Centre to issue a comprehensive, national plan to deal with the supply of vital resources and supplies, such as oxygen and medicines.

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