
LAW IN ACTION IN A TIME OF CRISIS: A LEGAL REALIST ANALYSIS OF FUNDAMENTAL RIGHTS ADJUDICATION BY INDIAN COURTS DURING THE COVID-19 PANDEMIC

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ABSTRACT

The COVID-19 pandemic placed India's constitutional architecture under extraordinary stress, triggering executive orders, emergency legislation, and judicial proceedings that brought state power and fundamental rights into direct conflict. This paper applies the lens of American Legal Realism, drawing on Holmes' Bad Man Theory and prediction theory, Llewellyn's paper rules/real rules distinction, Jerome Frank's psychological account of adjudication, to examine how Indian courts actually responded to fundamental rights challenges arising from pandemic governance.

The central argument is that judicial behaviour during the pandemic conformed far more closely to Legal Realism than to classical formalism. Courts deferred markedly to executive action in the early crisis phase, prioritised practical relief over constitutional scrutiny, and exercised creative discretion through Article 142 when formal rules proved inadequate. As the humanitarian catastrophe became undeniable during the 2021 second wave, judicial posture shifted toward greater scrutiny, confirming the Realist insight that law is a situationally responsive institution, not a system of logical deduction.

The paper analyses several judicial decisions and concludes by arguing that Realist insights point toward structural constitutional reforms to close the gap between rights on paper and their real enforcement.

Keywords: Jurisprudence, Legal Realism, Bad Man Theory, COVID-19, Fundamental Rights, Article 14, Article 19, Article 21, Article 142, Judicial Deference, Oliver Holmes, Karl Llewellyn, Jerome Frank, Indian Constitutional Law, Supreme Court, High Court.

Research Proposition:

Did the Indian judiciary's adjudication of fundamental rights challenges during the COVID-19 pandemic reflect the predictions of American Legal Realism, and what does this reveal about the structural adequacy of India's constitutional framework for public health emergencies?

Research Methodology:

This paper adopts a doctrinal and theoretical research methodology. The primary analytical framework is drawn from the canon of American Legal Realism, with particular reference to the works of Oliver Wendell Holmes Jr., Karl Llewellyn and Jerome Frank. Primary legal sources include the Constitution of India, judicial decisions of the Supreme Court of India and the Bombay High Court, and the statutory texts of the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. Secondary sources include books on Jurisprudence, juridical publications, and contemporaneous reporting on the socio-economic conditions of the pandemic period.

The method is essentially interpretive and comparative. Each judicial decision studied is first analysed on its own terms i.e. examining what the court said, what it did, and what it declined to do, and is then assessed against the theoretical predictions that Legal Realism would generate for that type of case. The paper does not employ empirical or quantitative methods. No primary data was collected from courts, litigants, or government authorities. All conclusions are derived from systematic analysis of the judgments themselves, read in conjunction with the relevant Realist theoretical literature. The comparative dimension of the paper is internal: it traces the evolution of judicial posture across different phases of the pandemic and across different categories of rights, rather than comparing India's pandemic jurisprudence with that of other jurisdictions.

Introduction:

On 24th March 2020, the Government of India announced a nationwide lockdown.¹ Almost overnight, the fundamental rights of over a billion people were curtailed by executive

¹ Histula Nebbar, *PM Modi Announces 21-Day Lockdown as COVID-19 Toll Touches 12*, THE HINDU (Mar. 24, 2020), <https://www.thehindu.com/news/national/pm-announces-21-day-lockdown-as-covid-19-toll-touches-10/article61958513.ece>.

fiat. The formal constitutional emergency provisions of Articles 352, 356, and 360 were not invoked. No constitutional amendment was passed. Yet the practical effect on civil liberties was as profound as any declared emergency in the republic's history. The Indian courts were soon flooded with petitions: on behalf of migrant workers stranded on highways with no food or shelter; on behalf of employers ordered to pay full wages despite zero revenue; on behalf of citizens challenging the indirect coercion of vaccine mandates; on behalf of families of frontline workers denied welfare benefits on procedural technicalities, etc.

How did the Indian Judiciary respond? This is not merely an empirical question about which cases were decided in which direction. It is a theoretical question about the nature of law itself. A classical formalist account would expect courts to scrutinise executive action against the text of the Constitution, applying established doctrines such as proportionality and non-arbitrariness with consistent rigour regardless of political or institutional context. The tradition of American Legal Realism, however, makes very different predictions. Legal Realism holds that law cannot be understood by studying rules alone. What matters is what courts actually do, not what the rule books say they should do. Judicial decisions are shaped by psychology, institutional context, social pressure, and the situational judgment of individual judges, as much as by formal legal doctrine.²

Literature Review and Theoretical Framework:

A. American Legal Realism:

Legal Realism developed in the United States in the early twentieth century as a strong criticism of Classical Legal Formalism.³ Formalism viewed law as a complete and logical system where judges could reach correct decisions simply by applying existing rules in a mechanical way. Legal Realists rejected this idea. They believed that this view of law was not only incomplete but also misleading because it failed to reflect how judges actually make decisions in practice.⁴

The intellectual foundation of Legal Realism was laid by Oliver Wendell Holmes Jr. in his famous lecture, *The Path of the Law*.⁵ Holmes argued that law should be understood from

² P.J. FITZGERALD, SALMOND ON JURISPRUDENCE (12th ed. Sweet & Maxwell 2022).

³ M.D.A. FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE (9th ed. Sweet & Maxwell 2014).

⁴ *Id.*

⁵ Oliver Wendell Holmes Jr., *The Path of the Law*, 10 HARV. L. REV. 457-478 (1897),

the perspective of what he called the “bad man.” This “bad man” is not a morally upright citizen but a practical and self-interested individual who only wants to know what the courts will actually do to him if he behaves in a certain way. From this viewpoint, law is essentially a prediction of how courts will act in the future.⁶ Holmes believed that moral terms used in legal reasoning, such as duty, right, and obligation, often hide the real nature of law instead of clarifying it. His prediction theory shifted the understanding of law away from moral philosophy and toward the practical study of how legal institutions actually behave.⁷

Karl Llewellyn later developed and organised the ideas of Legal Realism in a more systematic manner. In works such as ‘The Bramble Bush’⁸ and ‘The Common Law Tradition’⁹, he introduced an important distinction between “paper rules” and “real rules.” Paper rules are the rules written in statutes, precedents, and constitutional provisions. Real rules, on the other hand, are the patterns of behaviour that courts actually follow in practice. Llewellyn argued that the connection between these two is often weak. Courts frequently claim to follow established rules while in reality departing from them, and judicial decisions are usually influenced by complex facts and circumstances that formal rules cannot fully capture. He also introduced the idea of “situation sense,” which refers to the intuitive judgment that experienced judges develop when they encounter particular factual situations. According to him, judges often reach conclusions based on this intuitive understanding and then justify their decisions using formal legal reasoning.¹⁰

Jerome Frank pushed the Realist critique further in the direction of psychology. Where Llewellyn's rule skepticism questioned whether stated rules determine outcomes, Frank's fact skepticism questioned whether courts accurately find the facts at all.¹¹ Frank argued that the desire for legal certainty is a regressive fantasy rooted in the wish for an authoritative father-figure, and that judges are profoundly shaped by personality, prejudice, and pre-rational intuition in ways that neither they nor the parties before them can fully identify or control.¹²

<https://www.jstor.org/stable/1322028?seq=1>.

⁶ *Id.*

⁷ *Id.*

⁸ KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (Oxford University Press 2008).

⁹ KARL N. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* (Little, Brown & Co. 1960).

¹⁰ *Id.*

¹¹ Freeman, *supra* note 3.

¹² JEROME FRANK, *LAW AND THE MODERN MIND* (Brentano's 1930).

Another important influence on Legal Realism was Roscoe Pound, whose theory of sociological jurisprudence introduced the distinction between “law in books” and “law in action.” Pound observed that the legal rules written in statutes and judicial decisions often differ significantly from how those rules operate in real life. This gap between the law as written and the law as applied becomes especially important when examining how courts handled constitutional rights during the COVID-19 pandemic.¹³

B. The Bad Man Theory:

According to Holmes, the “bad man” represents a person who is entirely self-interested.¹⁴ He does not care about morality or ethical duties.¹⁵ Instead, he only cares about avoiding the practical consequences that courts may impose on him, such as penalties, liabilities, or being forced to perform certain obligations.¹⁶ In simple terms, the bad man does not ask what is morally right or wrong. He only wants to know what the courts will actually do if he behaves in a particular way.¹⁷ Holmes believed that looking at law from this perspective, without moral considerations, helps us understand the true nature of law more clearly.¹⁸

This theory has three important implications that are central to this research. First, it presents law as a matter of prediction. To understand the law means to be able to predict how courts are likely to behave.¹⁹ Second, it highlights the gap between moral language and legal reality. If courts consistently fail to enforce a particular rule, then for the bad man that rule effectively does not exist.²⁰ Third, the theory also has a practical implication for the behaviour of the State. If the State behaves like a rational bad man, it will act based on what courts are actually likely to allow, rather than strictly following what the Constitution formally requires.²¹ For example, if courts tend to show deference to executive actions during emergencies, a rational State may use this deference to its advantage while still staying within the limits that avoid judicial intervention.

¹³ Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12 (1910).

¹⁴ Holmes, *supra* note 5.

¹⁵ Holmes, *supra* note 5.

¹⁶ Holmes, *supra* note 5.

¹⁷ Holmes, *supra* note 5.

¹⁸ Holmes, *supra* note 5.

¹⁹ Holmes, *supra* note 5.

²⁰ Holmes, *supra* note 5.

²¹ Holmes, *supra* note 5.

Constitutional and Statutory Framework:

During the pandemic, three groups of fundamental rights were most directly affected by government restrictions. Article 19(1)(b) guarantees the right to assemble peacefully, Article 19(1)(d) guarantees the right to move freely throughout India, and Article 19(1)(g) guarantees the right to practise any profession or carry on any occupation, trade, or business. Lockdown measures significantly limited all of these rights. The Constitution allows certain limitations on these freedoms through the reasonable restrictions clauses contained in Articles 19(2) to 19(6), particularly in the interests of public order and the general public.²² From the perspective of Legal Realism, however, the key question is whether courts genuinely examined whether these restrictions were proportionate, or whether the justification of public health was accepted without serious scrutiny.

Article 21, which protects the right to life and personal liberty and states that no person shall be deprived of these rights except according to procedure established by law²³, became one of the most debated provisions during the pandemic. Over time, the Supreme Court has interpreted Article 21 broadly to include several related rights such as the right to health, the right to livelihood, the right to education, and the right to live with dignity.²⁴ Because of this wide interpretation, pandemic restrictions raised complex issues under Article 21. Measures taken to control the spread of COVID-19 could be justified as necessary to protect the right to life, but at the same time they could also interfere with personal liberty through quarantine rules, movement restrictions, and similar controls.

Article 14, which guarantees equality before the law and equal protection of the laws²⁵, was also deeply relevant during the pandemic. The crisis affected different sections of society in unequal ways, most visibly in the hardships faced by migrant workers.²⁶ Questions also arose regarding unequal access to healthcare facilities and vaccines.²⁷ These circumstances raised serious concerns about whether the principle of equality was being effectively upheld during

²² INDIA CONST. art. 19, 1(b), 1(d), 1(g), 2–6.

²³ INDIA CONST. art. 21.

²⁴ J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA (62d ed. Central Law Agency 2025).

²⁵ INDIA CONST. art. 14.

²⁶ Kaushal Shroff, “We Are Deserted”: Migrant Workers Forced to Walk Hundreds of Kilometres Due to Lockdown, THE CARAVAN (Mar. 26, 2020), <https://caravanmagazine.in/news/we-are-deserted-migrant-workers-forced-to-walk-hundreds-of-kilometres-due-to-lockdown>.

²⁷ Deborah Gleeson et al., *Global Inequities in Access to COVID-19 Health Products and Technologies: A Political Economy Analysis*, 83 HEALTH & PLACE 103051 (2023), <https://www.sciencedirect.com/science/article/pii/S1353829223000886>.

the pandemic.

The main laws used to impose pandemic restrictions in India were the Epidemic Diseases Act, 1897²⁸ and the Disaster Management Act, 2005²⁹. The Epidemic Diseases Act is a colonial era law that gives state governments wide powers to take special measures to control dangerous epidemic diseases. These powers are very broad and the law itself contains very few detailed limitations or safeguards. The Disaster Management Act, 2005 was also used as a legal basis for the nationwide lockdown, with directions issued by the National Disaster Management Authority.

From the perspective of Legal Realism, the structure of the Epidemic Diseases Act is particularly significant. The law is extremely short and vague, which gives courts a large amount of freedom when interpreting it. Because the provisions are not clearly defined, judges have considerable discretion in deciding how the law should be applied. From the lens of Legal Realism, the courts often used this interpretive freedom in a way that supported executive action during the pandemic.

Judgments under Realist Scrutiny:

1. The Migrant Worker's Crisis and the restraint of Judicial Power:

One of the most serious constitutional challenges faced by Indian courts during the pandemic was the crisis involving internal migrant workers. When the nationwide lockdown was announced on 24th March 2020, millions of workers who had moved from rural areas to cities for employment suddenly lost their jobs and sources of income. Many of them were left without food, shelter, or any means of survival. At the same time, public transport had been suspended, making it impossible for them to return to their home states. As a result, large numbers of migrant workers began walking back to their villages, often travelling hundreds of kilometres on foot. Several deaths were reported on highways and railway tracks, and many people died due to exhaustion, hunger, and lack of medical care.³⁰

In *Alakh Alok Srivastava v. Union of India*, a Writ Petition was filed before the Supreme Court requesting directions to provide food, shelter, and transportation to migrant

²⁸ Epidemic Diseases Act, 1897, No. 3, Acts of Parliament, 1897 (India).

²⁹ Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005 (India).

³⁰ Shroff, *supra* note 26.

workers. In its initial response, the Court *inter alia* accepted the government's statement that adequate arrangements had been made and that no migrant workers were walking on the roads.³¹ This statement, however, did not match the situation that was widely reported and documented at the time. The Court did not appoint any commissioner to verify the situation on the ground, nor did it demand detailed empirical data from the government. Instead, it relied on the assurances given by the executive. Later, in the *suo motu* proceedings, ***In Re: Problems and Miseries of Migrant Labourers***, the Court *inter alia* issued several directions regarding the registration of migrant workers, provision of food, payment of wages, and arrangements for transportation.³²

Holmes' Bad Man Theory³³ helps explain this situation at three different levels. At the level of the State, the government's early strategy of providing broad assurances reflected a realistic expectation that courts would accept official affidavits without strict scrutiny. This prediction turned out to be largely correct. At the level of citizens, a lawyer advising migrant workers from a Legal Realist perspective might have predicted that directly challenging the constitutionality of the lockdown itself would likely fail. A more practical strategy would be to seek relief such as food, shelter, or transportation rather than attacking the restriction as a whole. This approach ultimately proved to be more effective. At the judicial level, Jerome Frank's psychological analysis provides further insight. The Supreme Court's initial deference to the government may reflect an intuitive institutional response that questioning the executive's management of a nation-wide lockdown in its early stages would be inappropriate. In this sense, the judicial reaction may have been shaped first by a situational instinct, with formal legal reasoning developed later to support that initial response.

2. Health Infrastructure and the Second Wave:

The second wave of COVID-19 in April and May 2021³⁴ created a very different pattern in the behaviour of Indian courts. During this period, the healthcare system faced an unprecedented crisis. Hospitals ran out of medical oxygen, essential medicines were difficult to obtain, and hospital beds became extremely scarce.³⁵ The situation was widely visible to the

³¹ Alakh Alok Srivastava v. Union of India, (2021) 19 SCC 689.

³² In Re: Problems and Miseries of Migrant Labourers, (2022) 13 SCC 504.

³³ Holmes, *supra* note 5.

³⁴ Chetan Chauhan, *Half of all Covid deaths in India took place in April-May, shows government data*, HINDUSTAN TIMES (Jul. 25, 2021), <https://www.hindustantimes.com/india-news/half-of-all-covid-deaths-in-india-took-place-in-april-may-shows-government-data-101627204345380.html>.

³⁵ Alasdair Pal and Neha Arora, *Hospitals overrun as India's COVID-19 infections top global record for second*

public and reported extensively. Because of the seriousness of the crisis, the earlier atmosphere of quiet judicial deference to the executive began to change.

In *In Re: Distribution of Essential Supplies and Services During Pandemic*, the Supreme Court took *suo motu* cognizance of issues such as the shortage of oxygen, lack of essential drugs, and concerns regarding vaccine policy.³⁶ The Court adopted an unusual and innovative approach. It created a National Task Force of medical experts to advise the government on matters such as oxygen allocation and the supply of critical medicines.³⁷ This step was significant because it went beyond the traditional role of courts in constitutional adjudication. Instead of merely applying existing legal rules, the Court used its discretion to create an expert body to help address the crisis. From a Legal Realist perspective, this reflects the idea that difficult situations often require judges to exercise practical judgment rather than simply rely on formal legal rules.

However, when it came to examining the Central Government's vaccine pricing policy, the Supreme Court eventually chose not to intervene directly. After the government filed a detailed affidavit explaining and defending its policy, the Court observed that it would not question policy decisions during a national crisis.³⁸ If we apply Jerome Frank's psychological analysis, this decision can be understood as reflecting the Court's awareness of institutional limits. A direct confrontation with the executive on a complex issue involving scientific, logistical, and administrative considerations could have led to ineffective judicial orders and possible damage to the Court's credibility. Therefore, the Court stepped back from further scrutiny in this area.

3. Bodily Autonomy vs. Vaccination Policy:

In *Jacob Puliye v. Union of India*, the Petition challenged several aspects of India's COVID-19 vaccination policy.³⁹ The issues raised included the pricing of vaccines, the adequacy of clinical trial data for vaccines that had received emergency approval, and whether vaccination could effectively be made compulsory either directly or indirectly through

day, REUTERS (Apr. 24, 2021), <https://www.reuters.com/world/india/fire-covid-19-hospital-kills-12-india-struggles-with-huge-second-wave-2021-04-23/>.

³⁶ *In Re: Distribution of Essential Supplies and Services During Pandemic*, (2021) 7 SCC 772.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Jacob Puliye v. Union of India*, (2024) 17 SCC 485.

restrictions on access to services and public spaces.⁴⁰ The case involved important constitutional questions. Article 21 of the Constitution protects personal liberty, which includes bodily autonomy, meaning that individuals should have control over decisions concerning their own bodies. At the same time, Article 21 also protects the right to life, which could justify restrictions aimed at preventing the spread of a serious communicable disease.⁴¹ As a result, both sides of the argument could rely on the same constitutional provision. The text of the Constitution alone did not clearly determine the outcome.

In its Judgment, the Supreme Court *inter alia* recognised that bodily autonomy forms part of the fundamental right to personal liberty under Article 21. The Court stated that no individual can be forced to take a vaccine against their will. It also held that any form of vaccine mandate, whether direct or indirect, must satisfy the test of proportionality. At the same time, the Court concluded that the existing vaccination policy was not unconstitutional. In reaching this conclusion, it largely relied on the government's expertise in matters of public health, especially in relation to vaccine procurement and pricing.⁴²

Holmes' Bad Man Theory⁴³ provides useful insight into this situation. From the perspective of the State, the vaccination policy was structured in a way that encouraged vaccination strongly without formally imposing a strict legal mandate. In practice, vaccination became necessary for accessing several services and public spaces, but the government avoided creating a direct legal obligation. By designing the policy in this way, the government reduced the likelihood of successful constitutional challenges. This reflects the logic of the bad man theory, where actors carefully calculate where the legal boundary lies and operate as close to it as possible without crossing it.

From the perspective of citizens, a lawyer applying a Legal Realist approach might have predicted the Court's likely response. It was reasonable to expect that the Court would resist direct compulsory vaccination because bodily autonomy is a well established part of Article 21. However, conditions related to access to services could be more easily justified as regulatory measures rather than punishments. The final Judgment largely reflected this expectation.

⁴⁰ *Id.*

⁴¹ Pandey, *supra* note 24.

⁴² Puliyeel, *supra* note 39.

⁴³ Holmes, *supra* note 5.

At the judicial level, Jerome Frank's psychological approach to adjudication also helps explain the outcome. The Court's Judgment carefully balanced two considerations. On one hand, it clearly affirmed the constitutional principle of bodily autonomy. On the other hand, it allowed the existing policy framework to continue in practice. By the time the decision was delivered, the most severe phase of the pandemic had already begun to decline. The Court therefore adopted an approach that allowed it to make an important constitutional statement without disrupting ongoing public health policy. This type of decision making, which is sensitive to institutional limits and the broader situation, closely reflects the kind of judicial behaviour that Frank's theory of Legal Realism anticipates.

4. Economic Rights and Wage Payment Obligations:

In *Ficus Pax Private Limited v. Union of India*,⁴⁴ employers challenged the directions issued under the Disaster Management Act, 2005 that required businesses to continue paying full wages to employees during the lockdown, even when many establishments were completely closed and earning no revenue.⁴⁴ The dispute involved a conflict between two constitutional interests. On one side was Article 19(1)(g), which guarantees the right to practise any profession or carry on any trade or business. On the other side were the livelihood interests of workers, which fall within the protection of Article 21.⁴⁵

The Supreme Court *inter alia* recognised that the government had the authority to issue such directions during a national crisis and that protecting workers during the pandemic could justify requiring employers to contribute financially.⁴⁶ At the same time, the Court directed that disputes between employers and employees should be resolved through mutual negotiation.⁴⁷ This decision can be understood as a way for the Court to offer a formal solution without directly deciding the deeper economic question involved. The central issue was who should ultimately bear the financial burden of the lockdown. By directing the parties to negotiate, the Court avoided making a clear determination on this distributive conflict while still appearing to provide a resolution.⁴⁸

⁴⁴ *Ficus Pax Private Limited v. Union of India*, 2020 SCC OnLine SC 481.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

5. Article 142 and Judicial Legislation:

In *In Re: Cognizance for Extension of Limitation*, the Supreme Court took *suo motu* cognizance of the disruption caused by the pandemic to the functioning of courts and legal processes.⁴⁹ Because lockdowns and restrictions made it difficult for litigants to file cases within the prescribed time limits, the Court *inter alia* ordered that limitation periods for filing cases and appeals would stand extended across all courts and tribunals in India.⁵⁰ Notably, there was no specific statutory provision that authorised the Court to suspend or override limitation rules under all existing laws at the same time. To justify its action, the Court relied on Article 142 of the Constitution, which gives the Supreme Court the power to pass any order necessary to achieve complete justice.⁵¹

From the perspective of Legal Realism, this order provides a clear example of how courts sometimes act beyond strict formal rules when circumstances demand it. A strict formalist approach would struggle to justify how a constitutional court could effectively create a new limitation framework that applied across multiple statutes. However, the Court exercised this power because the practical situation required an immediate and uniform solution. Article 142, by its nature, is broadly worded and allows the Court to exercise institutional discretion in exceptional situations where existing legal provisions are inadequate.⁵² From the viewpoint associated with Karl Llewellyn, this illustrates how courts often create new legal solutions in difficult cases, even though traditional formalist thinking tends to present judicial decisions as merely discovering or applying pre-existing law rather than shaping it.

6. Hospital Negligence and the Right to Life during COVID-19:

In *Pratibha Shinde & Others v. State of Maharashtra & Others*, the Petitioners filed a Public Interest Litigation (PIL) alleging mismanagement, negligence, and failure to follow Indian Council for Medical Research (ICMR) guidelines in the treatment of COVID-19 patients at the Government Medical College and Civil Hospital, Jalgaon.⁵³ The Petition particularly highlighted the death of an elderly COVID-19 patient, Malati Nehete, whose body was discovered several days after she went missing from the hospital ward, raising serious

⁴⁹ *In Re: Cognizance for Extension of Limitation*, (2022) 3 SCC 117.

⁵⁰ *Id.*

⁵¹ INDIA CONST. art. 142.

⁵² Pandey, *supra* note 24.

⁵³ *Pratibha Shinde & Others v. State of Maharashtra & Others*, 2021 SCC OnLine Bom 87.

concerns about hospital administration and patient care. The State argued that disciplinary action had already been taken, including suspension of officials, departmental inquiries, and registration of an FIR. The Hon'ble Bombay High Court *inter alia* held that the PIL was maintainable because it raised genuine issues concerning public health and the right to life under Article 21, observing that failure of government hospitals to provide timely and adequate medical treatment can amount to a violation of fundamental rights and may justify compensation in public law, while also noting that several broader COVID-19 management directions had already been issued in earlier related cases.⁵⁴

From a Legal Realist perspective, the Judgment shows how courts respond to real world crises instead of relying only on abstract legal doctrines. The Court recognised that the COVID-19 pandemic created extraordinary challenges for governance and healthcare systems. Rather than automatically deferring to executive authorities managing the pandemic, the Court closely examined the factual situation inside the hospital. It looked into serious issues of mismanagement such as shortage of staff, poor sanitation, mixing of suspected and confirmed COVID-19 patients, and failure to follow the ICMR guidelines at Jalgaon Civil Hospital. These conditions posed a direct threat to the right to life under Article 21, which the Court interpreted as including the right to health and proper medical treatment.⁵⁵

The Court's reasoning reflects the practical effects of law rather than rigid legal formalism. The Court accepted the PIL as maintainable because it revealed serious systemic negligence in the treatment of COVID-19 patients and violations of fundamental rights. The case drew attention to the tragic incident involving an elderly patient, Malati Nehete, whose body was discovered days later in the hospital toilet, highlighting major administrative failures.⁵⁶ The Court relied on the principle laid down in *Nilabati Behera v. State of Orissa*, which established that constitutional courts can award compensation for violations of fundamental rights while exercising their powers under Article 226.⁵⁷ From a Legal Realist's lens, this as an example of the judiciary adapting existing legal principles to address urgent social realities during a public health emergency rather than merely applying statutes in a mechanical manner.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Nilabati Behera v. State of Orissa and Others*, AIR 1993 SC 1960.

From the perspective of Holmes' Bad Man Theory, the Judgment also illustrates how individuals and authorities respond to law based on the consequences that courts may impose. Government officials and hospital administrators are likely to follow pandemic guidelines not only because of moral responsibility but also because judicial intervention can result in inquiries, compensation orders, or liability for negligence. The Court's willingness to examine administrative action and enforce Article 21 during the pandemic signals that violations of fundamental rights can still lead to legal consequences even during emergency conditions. In this way, the Judgment demonstrates how courts during COVID-19 attempted to balance public health restrictions with constitutional protections, shaping behaviour through enforceable legal outcomes rather than relying solely on abstract legal ideals.⁵⁸

7. Frontline Sacrifice and Fair Compensation:

In *Vijaya Yashwant Jadhav & Others v. State of Maharashtra & Others*, passed by the Hon'ble Bombay High Court, the Petitioners sought the benefit of a ₹50 lakhs insurance/ex-gratia scheme introduced by a Government Resolution to compensate families of government employees who died after contracting COVID-19 while performing frontline duties.⁵⁹ The deceased, Yashwant Jadhav, an Extension Officer working with the Panchayat Samiti, contracted COVID-19 while carrying out pandemic-related duties and died on 11th July 2021, but the State denied compensation because the scheme applied only to employees who died on or before the cut-off date of 30th June 2021. The Court *inter alia* held that such a rigid interpretation would defeat the welfare objective of the scheme, noting that the deceased had contracted COVID-19 before the cut-off date and remained hospitalized until his death. Emphasizing the sacrifices made by frontline workers during the pandemic and adopting a humanitarian and purposive interpretation of the Government Resolution, the Court directed the State to grant the insurance benefit to the petitioners within four weeks.⁶⁰

From a Legal Realist perspective, the Judgment illustrates how courts prioritize the practical consequences of law over rigid textual interpretation. The dispute arose because the family of Yashwant Jadhav, a frontline government employee who contracted COVID-19 while performing pandemic duties and died on 11th July 2021, was denied the ₹50 lakhs

⁵⁸ Pratibha Shinde, *supra* note 53.

⁵⁹ *Vijaya Yashwant Jadhav and Others v. Block Development Officer, Karveer Panchayat Samittee, Kolhapur and Others*, Writ Petition No. 17617 of 2024 (Bombay H.C. Dec. 10 2025).

⁶⁰ *Id.*

insurance benefit under a Government Resolution since the official cut-off date for eligibility was 30th June 2021. Instead of strictly adhering to the literal language of the policy, the Court examined the real circumstances: the deceased had contracted COVID-19 before the cut-off date and remained hospitalized continuously until his death.⁶¹ A Legal Realist would view this as an example of judicial decision-making influenced by social realities of the pandemic and the sacrifices made by frontline workers, rather than mere mechanical application of administrative rules.

The Court also emphasized the humanitarian context of the COVID-19 crisis and the extraordinary role of frontline workers who risked their lives to protect society. It reasoned that the insurance scheme was welfare-oriented and intended to support families of workers who died while performing pandemic duties. Therefore, denying benefits solely because death occurred slightly after the prescribed date would defeat the purpose of the scheme and undermine the principles of fairness, justice, and constitutional values.⁶² This reflects the Realist view that judges often interpret law in light of broader social policy considerations during extraordinary circumstances such as the COVID-19 pandemic.

From the perspective of Holmes' Bad Man Theory, the decision demonstrates how legal rules influence behaviour through the consequences imposed by courts. Government authorities may rely on strict technicalities like cut-off dates to deny benefits, but the Court's intervention signals that such rigid application may be overridden when it leads to unjust outcomes. The Judgment therefore creates a practical incentive for administrative authorities to interpret welfare schemes more fairly in similar pandemic-related cases. In this sense, the 'bad man', who evaluates the law based on likely judicial consequences, would understand that courts during the COVID-19 period were willing to extend protections and benefits to frontline workers when strict bureaucratic interpretation conflicted with substantive justice.

Post-Pandemic Lessons:

A Legal Realist analysis of the judicial decisions during COVID-19 has important implications for constitutional design. The pandemic showed that the Indian constitutional framework does not contain a provision specifically designed to deal with public health

⁶¹ *Id.*

⁶² *Id.*

emergencies.⁶³ The formal emergency provisions contained in Articles 352, 356, and 360 were not suitable for such a situation and were therefore not invoked. Instead, the government relied on ordinary legislation such as the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. These laws are broadly worded and leave significant room for interpretation, which gave courts considerable discretion. In practice, however, courts often exercised this discretion in a manner that supported executive action during the crisis.

Holmes' Bad Man Theory also points toward certain reforms in constitutional design. According to this perspective, constitutional safeguards against emergency powers will only be effective if courts are willing and able to enforce them against a government that carefully calculates what the judiciary is likely to allow. If courts are unlikely to strictly enforce certain constitutional limits, whether due to lack of information, institutional deference, or dependence on the executive for implementation, then those limits do not act as real constraints on government power. For constitutional safeguards to be effective, the gap between the written rule and its practical enforcement must be reduced. This may require mechanisms such as sunset clauses that automatically end emergency restrictions after a fixed period⁶⁴, mandatory periodic review by an independent judicial body with the power to examine factual evidence, and clearly defined proportionality standards tailored specifically for public health emergencies so that courts have less room to simply defer to executive authority.

Conclusion:

The COVID-19 pandemic revealed the distance between constitutional text and constitutional reality. Indian courts, across the decisions examined, behaved precisely as Legal Realism predicts: deferring to executive authority in moments of institutional uncertainty, shifting toward scrutiny when public suffering became undeniable, and exercising creative discretion when formal rules proved insufficient. The pandemic thus confirmed that law is not a mechanical system of logical deduction but a living institution shaped by social context, judicial psychology, and political circumstance. Bridging the gap between paper rights and their real enforcement remains the central challenge for Indian constitutional design in the years ahead.

⁶³ Hita Sharma and Rishav Sharma, *Proclamation of Medical Emergency: A Constitutional Dilemma*, 4 (2) IJLMH 2801 - 2809 (2021), <https://ijlmh.com/paper/proclamation-of-medical-emergency-a-constitutional-dilemma/#>.

⁶⁴ Sean Molloy, *Covid-19, Emergency Legislation and Sunset Clauses*, U.K. Const. L. Blog (Apr. 8 2020), <https://ukconstitutionallaw.org/2020/04/08/sean-molloy-covid-19-emergency-legislation-and-sunset-clauses/>.