
PANDEMICS AND GOVERNMENT LIABILITY: CAN THE STATE BE SUED FOR NEGLIGENCE?

Mahi Chopra, IILM, Institute of Integrated Learning in Management University, Gurugram

ABSTRACT

Government actions during pandemics have a significant impact on public health, economic stability, and the population's rights. This paper questions the extent to which the Indian government can be held liable for negligence in handling pandemics. It examines legal principles such as sovereign immunity, exceptions to the discretionary power, and constitutional obligations.

The basis of the principle of sovereign immunity, grounded in the common law doctrine that "the king can do no wrong," is that the governments have been free from liabilities for a long time. The courts, by contrast, have found that gross negligence or administrative failure constitutes a particular kind of mischief and, therefore, have come to the view that such a phenomenon exists in societies worldwide, including India. Unlike the United States' *Federal Tort Claims Act* (FTCA) or the United Kingdom's *Crown Proceedings Act, 1947*, which outlines state liability, India does not have a uniform statutory framework for managing government negligence. Court statements, particularly in public health emergencies, have been trying to address this issue by holding the state accountable under *Article 21 of the Constitution of India*.

This research also investigates the role of judicial review in pandemic governance, delving into the debated topic of whether the judiciary should interfere in executive decisions. This study suggests possible reforms to government liability while preserving the state's capabilities to respond effectively in public health crises. With the help of India's case studies, the paper analyses the idea of qualified immunity and state compensation mechanisms as possibilities of reforms.

Keywords: sovereign immunity, negligence, pandemic, government liability, state compensation.

Introduction

The COVID-19 pandemic exposed the vulnerability of the states' public health systems and made clear the pivotal role of government intervention. Nonetheless, the lack of preparedness for a pandemic, slow responses, and insufficient healthcare incited concerns about the state's responsibility. This asks whether the Indian government can be held accountable for negligence in handling a pandemic.

The argument on the side of the law aside, the liability of the government in the context of public health crises is a complex puzzle that rather gives room to policy and ethical questions for surveys. In a scenario where the governments can act decisively, due to immunity, it also can hide negligence, unnecessary waste, and probable danger. End users who insufficient health facilities, the lack of oxygen, and poorly executed lockdown plans may require compensation, but the current legal frameworks generally do not allow them to sue the authorities.

Over the years, public health crises- starting from the 1918 Spanish flu to the more recent SARS and H1N1 outbreaks- have shown that the latter fights the COVID-19 pandemic by striking a balance between the three cores, namely public safety, economic stability, and individual rights.¹ This paper examines the mechanics of India's legal system through the lens of how it navigates the contradiction between the demands of accountability and the need for political responsiveness.

Themes and Key Considerations

Sovereign Immunity and Exceptions

Sovereign immunity is a legal principle and part of the common law that means the king can do no wrong. The same principle is a pervasive one in Indian jurisprudence as it both prevents and imposes liability in peculiar cases, the latter being through the gradual evolution of the doctrine of the administration of justice and the need for its careful and conservative application.²

¹ Gong, B., Zhang, S., Yuan, L., & Chen, K. Z. (2020). A balance act: minimizing economic loss while controlling novel coronavirus pneumonia. *Journal of Chinese Governance*, 5(2), 249–268.

² M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis, 2018).

Kastruila Ram Jain v. State of Uttar Pradesh (1965): The Supreme Court, in its judgment, illustrated the above-mentioned principle by concluding that the state is immune from suit for its misdeeds and thus cannot be made a defendant in any lawsuit.³

N. Nagendra Rao & Co. v. State of A.P., (1994): The court perceived a difference between non-sovereign and sovereign functions; therefore, such differentiation was instituted as the underpinning of the principle of state accountability to be adhered to when the public administration has an administrative failure.⁴

These rulings demonstrate that governments are generally protected from liability, but negligence can still incur liability in non-policy actions.

Over time, the Indian courts have developed the law of sovereign immunity into such narrowness with a view to fundamental rights infringement that state liability. This ensures that governments cannot use a defence the shield of the “right to life”, which is enshrined in *Article 21* of the constitution of India, in such cases, as it happened in the healthcare-related cases.

Also, it is noteworthy to mention some of the essential characteristics of the shifting of the Indian legal concept of sovereign immunity, in particular, the notion that sovereign immunity shall not apply to cases under which there is serious negligence that could result in the collapse of public health and safety.

Common Cause v. Union of India (1999)⁵

This is a landmark case where the court specifically outlined that the functions of the state are to be performed in such a way that is not contradictory to the people's constitutional rights. In addition, the Law Commission of India (1st report, 1956) has suggested that sovereign immunity should be the subject limitation wherein the state being negligent makes individual injury regardless of the fact the corporate and industrial business are performing consociate activities. After assessing the government's error, the commission advised legislating the plea in front of the courts in these circumstances to enable the people to be rescued from the

³ Kastruila Ram Jain v. State of Uttar Pradesh, AIR 1965 SC 1039.

⁴ N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205.

⁵ Common Cause V. Union of India, (1999) 6 SCC 667.

disastrous consequences caused by the government's losses.⁶

Although definite terms, such as those from the *Code of Civil Procedure, 1908*⁷ This implies that the productivity of the law requires notice before filing a suit against the government; they do not prevent the ability to offend. Moreover, courts are seen as the organizations responsible for the protection of the ultimate principle of public accountability, which in turn reinforces the idea that a Sovereign must not be protected from legal disputes when it is not able to manage a pandemic due to its gross negligence.

Discretionary Function and Policy Decisions

During a crisis, governments often enjoy some form of immunity, and judges recognize the complexity of pandemic management, so the courts do not closely scrutinize state policy choices. The core dilemma focuses on the ability to distinguish between policy discretion and the commission of gross negligence.

One instance of this could be the decision on lockdowns, the provision of vaccines, and the economic relief programs, which are seen as being the only rightful powers of the executive and it is the discretion of the policymakers. At any rate, even if the supply of oxygen, medical infrastructure, and pandemic preparedness went awry due to policy choices, there is still a likelihood that those reasons might be attributed to negligence rather than the policy judgment. They might be seen to be the result of negligence rather than as a mere policy judgment.

Normally, the process of setting aside executive decisions faces opposition from the courts as they believe that it is the executive's solitary responsibility and that trial judges are not technically qualified to assess pandemic policy decisions. On the other hand, they have indeed acted in cases when the state measures were arbitrary, discriminatory, or in violation of fundamental rights, such as the case of *Maneka Gandhi v. Union of India (1978)*⁸

The Supreme Court emphasized the accountability that the states must fulfill in their conduct of public health issues, stating that state actions should be just, fair, reasonable, and common sense. In equal measure, it is the absence of clear legal systems that give direction and that are

⁶ 'doctrine of sovereign immunity'.

⁷ Code of Civil Procedure 1908, s. 80.

⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

directly related to the occurrence of natural catastrophes and the subsequent need for emergency medical care that brings about the accountability issue for this type of situation.

It is the exact opposite in the environmental law context, which is based on dignity ideas, while the issue of the pandemic regulations has its rules but is not regulated, and the interpretations of the courts are less specific, having to be based on the broad principles of the Constitution.⁹. It is the legislators who have to establish regulations that are clearly defined, which only the legislative intent can do in this case.

Human Rights and Constitutional Obligations

Poor governance of the pandemic can lead to the demand for constitutional answers, especially the right to life and health enshrined in *Article 21*. Judges have constantly said that the responsibility of the state is to provide sufficient healthcare and to see to it that the public health measures do not interfere with the fundamental rights of citizens.¹⁰

- The court emphasized the right to health in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996)*¹¹ And judged that it is a component of the right to life, hence, the government is bound to provide medical facilities.
- The ruling by the Supreme Court in *State of Punjab v. Mohinder Singh Chawla (1997)*¹² Which further echoed that the state must ensure the provision of medical infrastructure, brought out the liability in cases of avoidable healthcare errors.

Even though courts are not usually directly responsible for the government's liability for negligence, they have stepped in through the *public interest litigation (PIL)* requiring the government to take the standards the court sets. The immediate intervention of the Supreme Court during the COVID-19 crisis, in which the court asked governments to do something about oxygen shortages, vaccination disparities, and migrant worker drowning, made it clear that the role of the judiciary in terms of state oversight does not always completely override

⁹ May, James R., and Daly, Erin (2020). Dignity Rights for a Pandemic. *Law, Culture and the Humanities*, 20(1), 21-40.

¹⁰ M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis, 2018).

¹¹ Paschim Banga Khet Mazdoor Samity V. State of West Bengal (1996) 4 SCC 37.

¹² State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83.

the discretion of the executive.¹³ (M.P. Chengappa, 2021)

Moreover, in addition to the right to life, the public health crisis is the genesis of human rights challenges being faced in the forms of the *Right to live (Article 19 (1) (g))* and the right to food (*Article 47, Directive Principles of State Policy*).¹⁴

The prompt and sudden shutting down of the economy in 2020 was unfair to daily wage earners as it led to the judicial inquiry about the ways the state was following in the constitutional dictate of protecting the poor.¹⁵

Judicial Review and State Accountability

Courts are important structures that are supposed to oversee government activities during emergencies. Although most of the time, the presidency usually takes the lead in saving the country during crises, it may arise that the judiciary does not stay quiet in the background. Here is one case where the need for the courts to participate in according of the right to the government to have information published, rights of others to be treated equally, and responsibility as public servants were among their duties. Judicial financed reforms are not always more effective when it comes to government liability, sometimes these policies do not work out.¹⁶

Several times the Supreme Court and High Courts took Para *Suo Cognizance* in the Covid-19 crisis which in particular was a step to create room for the shortage of oxygen, helping the migrants, vaccine distribution policies, and the government duties, amongst others, some of which had to be correctly performed, without any arbitrariness in the challenged policy. The concept of judicial oversight of disaster governance seems to be expressed clearly in some of the key cases like *Vishaka v. State of Rajasthan* (1997)¹⁷ When the supreme court proscribed standards in the absence of statutory enactment.

¹³ Chengappa, M. P., and Jha, Adya (2021). Personal Liability: Forging New Tools of Accountability in Public Law. *Indian Journal of Public Administration*, 67(1), 27-39.

¹⁴ Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press, 2016).

¹⁵ Paramjit S. Jaswal and Nishtha Jaswal, *Human Rights Law and Practice* (scconline, 2019).

¹⁶ Tate, C. Neal (1993). Courts and Crisis Regimes: A Theory Sketch with Asian Case Studies. *Political Research Quarterly*, 46(2), 311-338.

¹⁷ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

The situation could come about when a judge decides in the summer months on compensation that is not approved by relevant laws and are like those that followed the post-2001 economic boom. But the fact remains that the courts, too, work independently, to some extent at least in those areas that need judgment streamlined techniques and scientific know-how.¹⁸

The prohibition of the courts doing executive work is due to the separation of powers; therefore, their option seems to be the primary one in the area of the question, which can be answered in the following way;

The situation that courts are not allowed to take executive powers under the doctrine of the separation of powers makes strict judicial restraint very much a necessity for the judiciary to prevent an imbalance between judicial activism and judicial restraint.¹⁹

Some new trends indicate that the future might be headed towards hybrid models, with independent inquiries and ombudsman groups supporting legal oversight. Enhancing legislated frameworks for disaster governance can be a solution changing for accountability to be top down, and litigation penultimation sometimes might be unreasonably high that can be curbed using alternative adoptive methodologies at some moments in the future.²⁰

CASE ANALYSIS

COVID-19 and the Migrant Worker Crisis

Case: Problems & Miseries of Migrant Labourers, 2020²¹

The sudden nationwide lockdown imposed in March 2020 was the reason why several million migrant workers could not afford food and housing, with transportation being the area hit hardest, which all led to a large human-made disaster scenario. The Supreme Court, in the early stages, first left the executive to its discretion but later commanded relief operations, such as food distribution and free transportation. The courtroom's decision to remain less stern yet

¹⁸ Arzlee Hassan, Ahmad et al. (2019). Challenges against Adjudication Decisions on Payment Disputes within the Construction Industry. *IOP Conference Series: Earth and Environmental Science*, 233, 022035.

¹⁹ Lenta, Patrick (2004). Judicial Restraint and Overreach. *South African Journal on Human Rights*, 20(4), 544-576.

²⁰ Gopalakrishnan, Chennat, and Okada, Norio (2007). Designing new institutions for implementing integrated disaster risk management: key elements and future directions. *Disasters*, 31(4), 353-372.

²¹ Problems & Miseries of Migrant Labourers, 2020 SCC OnLine SC 594.

interventionist in managing the pandemic crisis came out in the judgment.

This instance was of a kind that while judges would not hold the state directly responsible, still be sure that government policies should be always observed in parallel to constitutional rights. The lockdown and subsequent mishandling on the side of the State were the failure areas due to the absence of a legal framework to operate emergency efficiently.

Oxygen Shortage and Government Responsibility

Case: Gaurav Kumar Bansal v. Union of India, W.P. 2021²²

Many deaths resulted in hospitals due to an acute lack of life-providing oxygen flow during the COVID-19 second wave. The Delhi High Court showed a strong aversion to the governments of both the center and the states for failing to ensure adequate supplies of oxygen. The Supreme Court permitted them to act, and a governmental task force was established to check every step in the treatment. For the court, the case was an example of how it ensured the mover's liability in case of pandemic mismanagement, and at the same time, it did not interfere with the government's freedom of action and non-accountability.

The judgment also exposed the reality that the courts are incapable of launching their legislative strategies and instead resort to imposing accountability when necessary.

Compensation for COVID-19 Deaths

Case: Reepak Kansal v. Union of India, 2021²³

The family members of COVID-19 victims have appealed for compensation according to the Disaster Management Act, 2005. The court upheld the appeal to compel the government to deliver compensation of ₹50,000 per COVID-19 fatality. The court decision stopped short of responsibility as the accusation was indirect, though the court mandated the payment of damages and, in effect, set the tone for forthcoming pandemics when it was given.

This instance showed that a government can be shielded from direct lawsuits by a sovereign immunity defence, but it isn't off the hook when it comes to ethical and constitutional duties.

²² Gaurav Kumar Bansal v. Union of India, W.P. (C) 546/2021

²³ Reepak Kansal v. Union of India, 2021 SCC OnLine SC 462

The ex-gratia model should be used as a reference in subsequent epidemic occurrence scenarios to ensure prompt help to the affected individuals.

Vaccine Policy and Judicial Review

Case: Jacob Puliyel v. Union of India, W.P. 2021²⁴

The petitioner questioned mandatory vaccine policies and the lack of transparency in vaccine approval. The Supreme Court decided that vaccination, being voluntary, cannot be imposed, thus, it supported personal independence under Article 21. The realization of this scenario made the harmonization of public health measures and individual rights a precedent for further reparations.

This lawsuit depicted the changing course of India about medical autonomy and by that pandemic preparations must be in line with rights of freedom. It was also a way to point out the fact that there must be more transparency in the area of public health, with courts requiring rational, rights-based policies.

Broader Implications

From these cases, you can understand the legal framework that goes with holding the government responsible in health crises. Although so far, there have been no final judgments on direct liability issues, there has been a stream of judicial activity ensuring the upholding of the Constitution, the upholding of public welfare, and policy corrigenda. One of the major weaknesses in this case is that there is no comprehensive legal framework for pandemic responsibility, which further substantiates the argument for clear legislative standards on state responsibility during public health crises.

Suggestions and conclusion

Qualified Immunity Instead of Absolute Protection –

The government should be immune from good-faith policy decisions, while the culpable officials should not enjoy their equivalent status but rather be fined and penalized by the

²⁴ Jacob Puliyel v. Union of India, W.P. (C) 607/2021

government for perpetrating crimes.

Establishing a Pandemic Compensation Fund –

The Government could also develop a contingency fund that will ensure rapid compensation without extended litigation.

Strengthening Oversight Mechanisms –

A commission that would involve not only public health experts but the representatives of civil society would monitor the proceedings of the government and issue judgments in the situation of the future pandemic or other threats of that kind.

Defining Government Liability in Public Health Emergencies –

Ideally, the *Disaster Management Act, 2005* (Ministry of Home Affairs, Government of India) would be revised to create a central disaster fund that will be used for disaster management, to pay compensation, and to help the local rural bodies in distress.

Conclusion

Litigating against the Indian authorities for being derelict during an epidemic continues to be fraught with legal considerations, mainly because of sovereign immunity and the judiciary's reluctance to intrude into policy decisions. Courts, moreover, keep the accountability process alive by using judicial review to prolong it, as well as protecting human rights and controlling policies.

Even if the exercise of discretion is a protected right, the intervention of the judiciary and the provision of compensatory remedies in cases of gross negligence or a failure to discharge constitutional duty have led to the establishment of a legal framework. The central issue is the lack of a precise legal framework outlining the liability of governments in public health emergencies. The US and the UK, for instance, have clarified the liability and compensation of the government on the one hand and the limitation clauses on the other. That could be an option in India, too.

The Disaster Management Act, 2005, should be amended to put in place processes to deal with

issues of state responsibilities during pandemics, accountability structures, and compensatory mechanisms. Subsequently, new legal regulations such as qualified immunity, a state compensation fund, and stronger actions to keep the functioning under control should make it difficult for the government to abuse its powers and yet enable it to respond to public demands in an emergency. Moreover, improving the preparedness of institutions, establishing essential legal protections, and implementing a system of checks and balances are some of the most basic ways to safeguard public rights and the obligation of the state as well as to both address and prevent a future pandemic.