4 Juridicalising justice?

COVID-19, citizenship claims, and courts

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Introduction

Since March 2020, India has been under a lockdown owing to the COVID-19. In what was perhaps the ‘harshesht coronavirus lockdown in the world’, this governmental measure saw an outpouring of workers from cities and towns they had migrated to in search of work, back to their native villages that they had left in search of better lives and survival with dignity. The turbulent waves of internally displaced persons (IDPs) on the highways and railway tracks heading back ‘home’ will remain an enduring image of the pandemic in India. As Upendra Baxi notes, ‘we must fully know the existential horror reflected in their social biographies: the economic, social and political conditions and contexts which make people move from the domicile of birth to the domicile (of their necessitous and precarious) “choice”’ (Baxi, 2020a). Brahma Prakash reflects on the spectre of internal displacement and the forced return of workers to villages they had left: ‘The problem of migrant workers’, he observes pertinently, ‘is not to be defined in terms of a choice between village and city. It is about a condition in which they are neither part of the village, nor part of the city’, for we cannot afford to forget that migration of Dalits and other oppressed castes and classes out of villages is forced by the inhuman conditions in villages and the routine indignities they are forced to bear (Prakash, 2020). With worksites shut down, schools and colleges closed, curfew in place, hospitals and medical facilities ill-equipped to deal with the crisis on hand, governance floundered and rested on a series of arbitrary measures and hasty ordinances, with citizens as mere spectators and victims of the unfolding tragedy. Under the circumstances, the judiciary was the only check on the government and courts the only resort available to petitioners in urgent need of proactive intervention that was needed to protect and safeguard Article 21 rights under the Constitution – to use Justice PK Goswami’s words, ‘last resort of the bewildered and the oppressed’.¹

In the context of COVID-19, Upendra Baxi underscores the importance of the ‘peremptory jus cogens’ that categorically set out state obligations and goes on to observe, ‘only new forms of human compassion and solidarity can help overcome this lethal and formidably grim challenge and [help build] a new future for global politics marked by empathy, fraternity, justice, and rights’ (Baxi, 2020b).

In this chapter, we examine the cascading jurisprudence that sprang up from the lockdown, and reflect on trends in judicial deliberations and their implications for an understanding of justice and rights under the Constitution. The rights of internally displaced persons during the lockdown and the forced migration that it triggered needs to be understood as constitutive of the understanding of justice under the ‘triadic ethical framework of the Constitution’.²

While arbitrary state action was a major issue in the declaration of lockdown as well as in state measures at containment for the most part (Kannabiran, 2020), broadly speaking, citizens petitioned the courts on (a) the right to health and (b) rights of internally displaced persons. Apart from the specific cases brought before the courts, there were concerns raised in the media about the unprecedented surveillance on citizens in the name of containment measures (Aarogya Setu and policing practices) and the dismantling of labour protections by some state governments in the immediate aftermath of the lockdown as a way of safeguarding employers’ interests.

Of particular interest is the direction in which jurisprudence has proceeded. To anticipate our argument, courts have engaged with these petitions either with deference to executive or by urging the executive to think of better policy-making instead of discussing rights, fundamental freedoms, guarantees, and their enforcement. Except for one order of the Telangana High Court, the ruling of the Supreme Court in *Puttaswamy vs. Union of India* in the matter of the non-negotiability of fundamental rights has not been cited in any of the cases pertaining to/arising from COVID-19.³ What is the place of the Preamble and the Directive Principles of State Policy in understanding and evaluating ‘COVID-19 jurisprudence’? (Kannabiran, 2021). If, as Justice DY Chandrachud says, ‘it is the Constitution that is lynched when a person is lynched’,⁴ the deaths due to hunger, train/road accidents, physical exhaustion, custodial torture (which includes exposure to infection in custody), and custodial murders imperil the Constitution and its futures.

The right to health

In considering issues around access to health care as a core element in justice claims, it is important to look at the entire range of concerns around

the right to health as also health care access specific to the pandemic. Since COVID-19 is our point of departure in this chapter, it is important to point to the demands the pandemic places on the health care system, in order to then move to the ways in which these demands have impacted on non-COVID health care needs, and then situate the specific ways in which courts have over five months addressed right to health concerns, as part of Article 21 rights. While we have several documents, studies, and statements put out by various health rights collectives in the country, we draw from Srivatsan's mapping of the pandemic in relation to institutionalised health care in Telangana state (Srivatsan, 2020). Pointing to the fact that in its fifth month, India is witnessing a full-blown community spread of COVID-19 in several states of the country, he estimates that in Telangana alone the cumulative mortality rate from COVID-19 will be over 57,000, with 90 per cent of those dying over 60 years of age. With 239,000 infected individuals seeking hospitalisation, the numbers of available hospital beds in private and public facilities falls far short – if pooled together, his estimates point to 99,919 beds. Similarly, while the requirement for ICU units is around 43,000, available units (for the most part concentrated in private hospitals) total about 5,000 in the state. There is little reason to assume a vastly different scenario in most of the other states. This then has an immediate impact on health care access for other emergency and critical cases. Anoo Bhuyan underscores the struggles of those with chronic illnesses unrelated to COVID-19 to access health care, emergency services, and affordable medicines (Bhuyan, 2020). Alongside this, triggered by the lockdown, health care needs of the exodus of workers and IDPs with no money, food, or shelter suffering deep trauma after being locked out and dispossessed in four hours, hunger, exhaustion, and utter neglect remain unaddressed. This is the largest section of people who do not enter the account of even trying to access institutionalised health care. Deaths – countless – in these cases are not counted as deaths caused by the novel coronavirus. They are also not deaths or morbidities caused by lack of access to care for chronic ailments, nor are their needs counted as critical health care needs. Where then does this aspect of COVID-19 morbidity and mortality figure in our accounts of the right to health and the right to life? This is the backdrop against which the jurisprudence on health care access during COVID-19 needs to be situated.

Although there were reports of pregnant women being turned away from hospitals and dying during or immediately after childbirth⁵ and countless women being deprived access to contraceptives in line with the advisory of Ministry of Health to suspend provisions of sterilisations and IUCDs,⁶ the cases that drew the attention/ire of the courts were few. Addressing this urgent need to resolve questions of reproductive justice for women, Sama, a women's health collective in Delhi, petitioned the Delhi High Court in April

2020, asking for reliefs against the denial of basic health care, and delivery and childbirth services to pregnant women and the barriers faced by families in accessing maternal health care access.⁷ Despite detailed guidelines issued by the Ministry of Health and Family Welfare, Government of India, for the delivery of essential medical services – which include reproductive services, treatment for communicable diseases, chronic diseases and emergencies, health care workers, particularly Auxiliary Nurse Midwives and Asha workers – these were unavailable on the ground for the care of pregnant women. In this case, the petitioners' demand for a dedicated helpline, provision of transportation services and access to health workers for pregnant women was agreed to by the ministry, which was also putting in place a helpline for senior citizens. This is especially relevant in the light of the observation of the Gujarat High Court:

Ordinarily, the High Court would not interfere with the functioning of the State Government. The Court steps in by mandamus when the State fails to perform its duty. The true test of an efficient Government can be determined from its performance in times like the present one.

In difficult times, it is expected of any Government to rise to the occasion and protect its citizens ... All that we are doing is to remind the State Government of its constitutional obligations and the directive policies of the State. In such circumstances, we expect the State Government to accept our orders passed in the Public Interest in the right spirit bearing in mind the paramount consideration of the health and wellbeing of the people as imperatively implicit in the right to life guaranteed under Article 21 of the Constitution of India.⁸

In exercising oversight over governmental measures for reining in private hospitals, increasing the number of treatment and care facilities available, providing facilities for doctors and medical personnel, taking over hotels for expansion of medical services, controlling costs and pricing by private facilities and demanding detailed reports from the government, forcing convergence between different departments, the Gujarat High Court, in response to a slew of petitions filed before the court on governmental neglect, addressed itself to the remit of the court in matters of emergency such as one triggered by COVID-19, and directed the state government to fulfil its obligations to the people under Part IV of the Constitution, recognising that 'Public Interest Litigation is meant for the benefit of the lost and lonely and of those whose social backwardness is the reason for no access to the Court' (para 53). The Telangana High Court, similarly passed orders 'in the nature of Writ of Mandamus', directing the state to report on quarantine facilities for returning international travellers, non-provision of

PPE to doctors, medical and para-medical personnel, non-availability of N-95 masks and sanitisers for the public at large, non-availability of daily essential goods at reasonable prices to the general public, and the absence of any provision for livelihood support, shelter, and protection for IDPs, homeless, students evicted from hostels, and itinerant communities, and inadequate testing facilities for COVID-19.⁹ Problems of short supply of medicines, beds, and medical care leading to exploitation especially by private hospitals forced some states to cap prices related to medical treatment of COVID-19 with one of the first states – Maharashtra deciding on 22 May 2020.¹⁰ Despite the Supreme Court's direction to the centre to ensure prices are capped in private hospitals across the country,¹¹ only around 12 states complied,¹² without any serious enforcement of the same with serious instances of exploitation by private hospitals persisting.¹³ In looking at testing policy, and asking Indian Council for Medical Research to be impleaded, the Gujarat High Court recalled the observation of the Supreme Court in *Navtej Johar & Ors. Vs. Union of India*:

The jurisprudence of this Court, in recognizing the right to health and access to medical care, demonstrates the crucial distinction between negative and positive obligations. Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health.

(para 28, 42/2020)

What we witness in the case of Gujarat and Telangana, for instance, is the effective opening out of the jurisprudence of 'continuing mandamus' – 'a process by which the constitutional court instead of delivering a conclusive verdict, keeps the litigation ongoing, giving orders from time to time, monitoring governmental compliance through regular hearings' (Poddar and Nahar, 2017). The important aspect of 'continuing mandamus' is of course the fact that state action on each of the problems addressed in these sweeping orders falls woefully short, forcing citizens to approach courts that may then force accountability on the government. In Telangana state especially, the sharp observations of the court and its stringent directions point to the utter inadequacy of state action that is self-driven and bound by constitutional obligations.¹⁴ In cases where 'continuing mandamus' is the approach of the courts, there is an implicit recognition by the courts of the need to closely monitor state compliance to constitutional obligations through the entire duration of the crisis. Gautam Bhatia points towards an

inter-reading of Article 14 with the right to health in his discussion on the Supreme Court's interim orders on free testing for COVID-19:

the question is not whether a Court order interferes with the budget and is therefore illegitimate, but whether the Court order does or does not enforce a constitutional right. If it does, then the impact on the budget is a collateral issue ... In the present case, therefore, the key issues are twofold: what rights are at play (... these are the rights to equality read with the right to health), and whether lack of access to testing constitutes an infringement of these rights (... the nature of the coronavirus pandemic is such that it does).¹⁵

We also see, in these cases, the interconnections between right to health and other Article 21 rights that, strictly speaking, may be delineated in distinct ways but cannot be disaggregated from the whole. This still limits the reach of measures to health care seekers. How many of the hundreds of thousands of IDPs – women and men – were able to effectively access health care, and how their health care needs remained unaddressed and subservient to a surveillant focus on their forced travels is a problem we must grapple with.

Rights of internally displaced persons

Any attempt to grasp and bear witness to the pandemic exodus 'must fully know the existential horror reflected in their social biographies: the economic, social, and political conditions and contexts which make people move from the domicile of birth to the domicile (of their necessitous and precarious) "choice"' (Baxi, 2020a).¹⁶ As Deshpande and Ramachandran suggest, 'the incidence of the disease is not class-neutral: poorer and economically vulnerable populations are more likely to contract the virus as well as to die from it', and the 'economic consequences of the current pandemic are likely to be concentrated most on low wage earners' (Deshpande and Ramachandran, 2020). Examining employment data for India pertaining to April 2020, they find that the rise in unemployment immediately after the imposition of lockdown was far steeper for the scheduled castes and scheduled tribes than for the upper castes. This correlated with their earlier work of disparities in educational attainment by social group suggests again that it is the scheduled castes and scheduled tribes that faced the job losses, being concentrated in insecure precarious employment.

The question that we will examine in this section is whether, in the framing of its jurisprudence on the COVID exodus, the constitutional court was in fact cognisant of the gravity of the infringement of constitutional rights in the very imposition of lockdown as evident from its consequences. The

focus, therefore, is not as much on what specific reliefs the courts ordered on but how they framed this grant/denial (as the case may be) of reliefs. This holds important lessons for our future understanding on constitutional jurisprudence on forced migration in India, and the framing of state responsibility in this situation.

Within a week of the imposition of Lockdown 1.0, the very first order passed in the matter of two petitions before the Supreme Court of India on 31 March 2020 by Chief Justice SA Bobde and Justice L Nageswara Rao is instructive in its framing of the forced migration triggered by the union government. The petitions, the court recounts,

highlighted the plight of thousands of migrant labourers who along with their families were walking hundreds of kilometres from their work place to their villages/towns. The concern of the Petitioners pertains to the welfare of the migrant labourers. They are seeking a direction to the authorities to shift the migrant labourers to government shelter homes/accommodations and provide them with basic amenities like food, clean drinking water, medicines, etc.¹⁷

The court then proceeds to detail at length the *Status Report* filed by the union government in response to the petitioners' concerns: the various steps to prevent the spread of corona virus; 'various other measures ... dealing with the needs of *lower strata of society*' (emphasis added); relief package of Rs. 1.70 lakh crore under Pradhan Mantri Garib Kalyan Yojana; 'the exodus of migrant labourers was triggered due to panic created by some fake/misleading news and social media;' '[t]he very idea of lock down was to ensure that the virus would not spread. It was felt [by the government] that transportation of migrant labourers would aggravate the problem of spread of the Virus; on 31 March 2020, 21,064 relief camps had been set up, 6,66,291 persons were provided shelter and 22,88,279 persons were provided food.'

In presenting its status report, the government of India sought directions from the Supreme Court to (a) issue directions for compliance by state governments of advisories issued by union government and (b) 'prevent fake and inaccurate reporting whether intended or not, either by electronic print or social medial which will cause panic in the society'.

The Supreme Court declared that it was satisfied with the steps reported by the union government to contain the spread of the virus, and in considering the situation of the exodus of workers, it went on to quote the director general of the WHO:

We are not just fighting an epidemic; we are fighting an infodemic. Fake news spreads faster and more easily than this virus, and is just as dangerous.

There was no attempt at this stage by the Supreme Court to arrive at an independent assessment of the situation unfolding on the ground, nor was there any attempt to engage with questions of proportionality, forced displacement, forced migration, the question of dignity, and the possibilities of an exercise of continuing mandamus demanding specific performance of constitutional obligations by the state. The focus on ‘stopping the spread of the virus’ rendered the suffering that the lockdown unleashed opaque from the institutions of justice in the immediate aftermath. The deflection of attention from those forcibly displaced to the diversionary rhetoric of ‘fake news’ undermined processes of justice in fundamental ways. The second petitioner in this case, Harsh Mander, in his rejoinder to the Status Report filed by the state, pointed importantly to the problematic reliance of the court on the status report alone in its response to the matters raised in the petitions, both filed on the basis of a detailed ground report and on-site assessment of predicament of pandemic IDPs.¹⁸ This rejoinder details the specific problems faced by the ousted workers and their families (including children), the inadequacy of the relief mentioned in the status report, the inaccessibility of the Public Distribution System (PDS) to most workers who had migrated in search of work owing to the domicile requirement of the PDS, the total exclusion of workers in the unorganised sector, notably construction workers to any manner of relief, and the deaths of workers and kin within the first week of lockdown owing to the disproportionate hardships imposed on them. The response of the court in this matter was telling, with Chief Justice SA Bobde going on record to ask the petitioner ‘*why wages are required when meals are provided by the government.*’¹⁹

This one statement by itself frames the approach of the Supreme Court of India to the Lockdown IDP’s right to citizenship claims and dignity, as also its approach to questions of empathy (on its own part and on the part of the state), compassion, and fraternity in the face of grave harms and disproportionate suffering.

Although the exodus began the night that the lockdown was imposed, the fact that hundreds of thousands of the country’s workers were on the road trekking infinite distances on the highways with their children and meagre belongings, no destination in sight, weeks on end, with no food or water, some dying of exhaustion, others in road accidents, others mowed down by trains while governments watched and barricaded state borders or abandoned workers at borders or sprayed bleach on returning workers, resulted in some scattered orders from different courts for ‘stranded workers’.²⁰ Finally, the Shramik trains that yet again did not match the numbers who needed to travel across the length and breadth of the network of the Indian Railways, apart from lacking in basic facilities and schedules that were

widely known and understood by those who needed to travel, prompted the NHRC to take suo motu notice and observe,

A train getting late due to bad weather etc. for some hours is always considered beyond control of the authorities but trains getting lost during journey, reaching unexpected destinations and taking more than a week to reach its scheduled station is hard to believe and require a thorough investigation into the matter.²¹

A few states, including Gujarat, announced police action if migrants were to travel back to their states,²² while the Karnataka government cancelled 'Shramik Trains' on a representation from the builders' association so that the displaced workers could now be put to work on construction sites.²³ This stands in stark contrast to the state of Kerala which set up a model containment and logistic policy that dealt with every aspect of the pandemic and the lockdown.²⁴

Courts did go as far as to observe that the migrants 'are not afraid of COVID but they are afraid they would die due to starvation',²⁵ and food supply and glucose was provided in a few instances on highways.²⁶ The IDPs were not *afraid* of starvation, they were *dying* of starvation, and suffering from hunger. Yet, the reason for their predicament remains unacknowledged both by states and courts. In response to an Interlocutory Application seeking directions from the Supreme Court to District Magistrates to identify and transport migrants on highways within their jurisdiction to their home states,²⁷ Justice L. Nageshwara Rao's nonchalant observation, 'How can we stop them from walking? It is impossible for this Court to monitor who is walking and who is not walking',²⁸ and Justice SK Kaul's retort, 'Will you go and implement government directives? We will give you a special pass and you go and check',²⁹ point to a total absence of epistemic humility and judicial compassion in the face of suffering.

The jurisprudence of continuing mandamus that evolved quite quickly in several courts with respect to medical treatment, and access to health facilities, did not figure at all in the jurisprudence on forced migration induced by the lockdown. The reliefs granted by courts in the matter of IDPs, whether related to food, work, wages, or transport, remained episodic and piecemeal over three months of the lockdowns. This has to do, we suggest, with the question of class – the description for instance of IDPs as 'lower strata of society' or the Supreme Court's doubt about why workers needed wages if they were given food, put into stark relief the class-caste biases embedded in the juridicalisation of the rights of forced migrants by constitutional courts and the limitation of those rights to state largesse.

Finally, on the question of labour rights – the lockdown IDPs were all workers – ostensibly in a bid to revive the economy and incentivise local businesses and foreign investors, the states of Uttar Pradesh, Madhya Pradesh, and Gujarat, among others, exercised their powers under Factories Act, 1948, and other laws and issued notifications ‘relaxing’ labour laws.³⁰ Some of the effects of such relaxations would be extension of work hours to 12 hours a day (without over-time wages), deprivation of access to raise disputes under Industrial Disputes Act, and relaxation of measures on safety and hygiene in factories (ironically during a health crisis), among others that constitute a serious derogation of basic standards of fair labour practice and dignity of labour. Two PILs filed in the Supreme Court challenged the vires of the proposed notifications and exercise of power as violative of the Constitution.³¹ The petitioners argued that such relaxation would constitute forced labour and is in violation of India’s commitments to international human rights guarantees.

In relation to the question of labour protections, especially, we witness the rise of concerted coercive practices by the state – both directly and through the absence of due diligence – especially in relation to workers: forced displacement aggravated by forced labour proscribed under Article 23 of the Constitution of India.

Conclusion: Unravelling arbitrary state action

In conclusion, we dwell briefly on the subject of arbitrary state action and judicial empathy during this time. In assessing the principle of proportionality of any specific state action, disparities in access and disproportionate impact owing to social vulnerabilities are critical determining factors of ‘manifest arbitrariness’ – with first measures requiring safety mechanisms to be put in place to ensure minimal adverse impact on the precariat.

An important concern that figured significantly in judicial discourse which we have not been able to address at any length is the communalisation of pandemic vulnerabilities and the surge in ‘genocidal journalism’ in India.³² The refusal by the Supreme Court to restrain the media from inciting hatred against Muslims³³ despite the violation of Rule 6 of Cable Television Network Rules, 1994 (which prohibits attacks on religions which promote communal attitudes), points to the earlier issue we raised about class and caste biases embedded in the juridicalisation of the pandemic, that were fundamentally majoritarian.

There were important countermeasures from the Madras High Court and the High Court of Bombay in cases related to the Tablighi Jamaat meeting. The Madras High Court observed in the matter of the detention of Bangladeshi and Indonesian nationals who attended the Tablighi Jamaat congregation that

COVID-19 should teach us to care for each other rather than use the arsenal of law. Merely because the petitioners have contravened the visa conditions, they cannot be seen as criminals. The situation calls for empathy and understanding.

(para 16)³⁴

The Bombay High Court observed:

There was big propaganda in print media and electronic media against the foreigners ... There was virtually persecution [emphasis added] against these foreigners ... A political Government tries to find the scapegoat when there is pandemic or calamity and the circumstances show that there is probability that these foreigners were chosen to make them scapegoats ... It is now high time for the concerned to repent about this action taken against the foreigners and to take some positive steps to repair the damage done by such action.³⁵

Can there be a sharper indictment of the government? And yet, the refusal of courts and governments to intervene to stop incitement in media points to the expanding field of impunity under a majoritarian state.

On the subject of impunity, while the spike in state impunity through custodial torture and death with numbers ranging over 7,000 custodial deaths in the period 2014–2018³⁶ is alarming and predates the lockdown, the use of lockdown and restricted mobility to bolster custodial torture (including wilful exposure to COVID-19 in jails where political prisoners are detained) is especially a cause for concern. State violence on civilians ‘violating’ restrictions on mobility (such as the custodial murder of Jeyaraj and Bennix in Sattankulam in Tamil Nadu), curbing any congregation of protest against state violence as routinely witnessed in Kashmir, and the routine and aggravated derailment of due process rights in matters of life, liberty, and dignity, as we witness in the case of the detention of a rape survivor and her counselors in Araria in Bihar, mark the lockdown, making it a more serious human rights concern than the pandemic itself.

Public health emergencies have necessitated stringent measures of containment by states at different times in recent history, particularly through the imposition of restrictions on liberty such as quarantine, self-isolation, lockdowns, curfews, and mandatory distancing norms. However, it is precisely at times such as this that international human rights standards force obligations on states to be attentive to the limitations necessary on these drastic measures (Kannabiran, 2020). The place of empathy, transparency, and setting out blueprints of positive, enabling, non-coercive measures of containment, care, treatment, and remedies can scarcely be understated in

a situation where the certainty that the overwhelming majority of persons affected will be the precariat.

In a rare (perhaps singular) expression of judicial empathy and humility, Justice G.R. Swaminathan observes,

I feel sensitive to the petitioners' misery particularly in these pandemic times. I posed a question to myself if I am acting beyond jurisdiction? ... If I come to the conclusion that the petitioners have already suffered enough and that they are being put to 'surplus or unnecessary suffering', I am obliged to intervene.

(paras 17–18)³⁷

A close examination of 'COVID-19 jurisprudence' (Kannabiran, 2021) points to an uneven and inconsistent focus by courts – with continuing mandamus invoked by a few courts for monitoring state action on the right to health, and an episodic, inadequate response to forced migration and displacement triggered by an arbitrary lockdown. In the blanket announcement of lockdown, the ends of justice and indeed its obligation towards the triadic ethical framework of the Constitution, especially state obligations under Part IV, were jettisoned by the state in stark ways that were manifestly arbitrary both in the means (the process) and the end (the measure).

Notes

- 1 *State of Rajasthan & Ors. v. Union of India*, 1977 AIR 1361.
- 2 Justice B. Sudershan Reddy in *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, [2010] 156 *Comp Cas* 455 (SC).
- 3 *Ganta Jai Kumar vs. State of Telangana and Others*. Writ Petition (PIL) 75 of 2020 dated 25.05.2020. *Puttaswamy and Others vs. Union of India* (2017) 10 SCC 1.
- 4 Justice D.Y. Chandrachud, 'Why constitution matters', at: https://www.youtube.com/watch?v=vr1Dc_-ZKbQ (last accessed 27 August 2020).
- 5 H.S. Shreyas, 'Turned away by two hospitals, MP woman dies after delivery', *Times of India*, 24 April 2020 among other reports.
- 6 'COVID-19 lockdown deprives over 2 crore couples from availing contraceptives', *The New Indian Express*, 9 May 2020.
- 7 *SAMA-Resource Group for Women and Health v. Union of India & Ors.*, W.P.(C) No. 2983 of 2020 & CM APP Nos.10345-46 of 2020 dt, 22 April 2020.
- 8 *Suo Motu v. State of Gujarat*, W.P. No. 42 of 2020, *LiveLaw*, at: <https://www.livelaw.in/top-stories/dont-politicize-covid-19-crisis-gujarat-hc-157618> (last accessed 27 August 2020).
- 9 High Court of Telangana, Common Order on W.P. (PIL) Nos. 59, 78, 81, 82 & 92 of 2020 dt. May 26, 2020; *Ganta Jai Kumar vs. State of Telangana and Others*. Writ Petition (PIL) 75 of 2020 dated 25.05.2020.

- 10 'COVID-19 treatment: Maharashtra caps per day private hospital charges', *Mumbai Mirror*, at: <https://mumbaimirror.indiatimes.com/coronavirus/news/covid-19-treatment-maharashtra-caps-per-day-private-hospital-charges/articleshow/75884756.cms> (last accessed 27 August 2020).
- 11 'Coronavirus: SC directs Centre to cap cost of treatment at private hospitals as cases cross 9 lakh', *Scroll.in*, at: <https://scroll.in/latest/967415/coronavirus-there-will-be-no-return-to-old-normal-for-the-foreseeable-future-warns-who> (last accessed 27 August 2020).
- 12 Anoo Bhuyan, "'Exorbitant" coronavirus treatment prices slashed as state govts step up', *Business Standard*, 9 August 2020.
- 13 Akshita Saxena, 'Former Law Minister (Sr Adv) Ashwani Kumar writes to CJI to take Suo Moto action against reported incidents of manhandling of Covid patients/dead bodies', *LiveLaw*, at: <https://www.livelaw.in/top-stories/former-law-minister-sr-adv-ashwani-kumar-writes-to-cji-to-take-suo-moto-action-against-reported-incidents-of-manhandling-of-covid-patients-dead-bodies-read-letter-158113> (last accessed 27 August 2020).
- 14 The Supreme Court in its suo motu order called out the governments of Delhi, Maharashtra, Gujarat, Tamil Nadu, and West Bengal for mismanagement and mishandling of dead bodies and patients shuttling around in search of testing facilities and beds, when hospital occupancy showed availability of vacant beds. *In Re The Proper Treatment of COVID 19 Patients and Dignified Handling of Dead Bodies in the Hospitals*, Suo Moto W.P. No. 07 of 2020, *LiveLaw*, at: <https://www.livelaw.in/top-stories/sc-notice-to-delhi-maharashtra-tamil-nadu-west-bengal-covid-19-management-158220> (last accessed 27 August 2020).
- 15 Gautam Bhatia, 'Coronavirus and the constitution – XVII: The Supreme Court's free testing order – some concluding remarks', *Indian Constitutional Law and Philosophy*, at: <https://indconlawphil.wordpress.com/2020/04/11/coronavirus-and-the-constitution-xvii-the-supreme-courts-free-testing-order-some-concluding-remarks/> (last accessed 27 August 2020).
- 16 Upendra Baxi's insistence on unpacking the opaque category of 'migrants' mindful of the important distinctions between various kinds of voluntary and involuntary, free and forced migration is extremely important in understanding the exodus that India witnessed from the end of March 2020 (Baxi, 2020a).
- 17 *Alakh Alok Srivastava v. Union of India*, W.P.(C) No. 468 of 2020.
- 18 *Harsh Mander & Anr v. Union of India*, W.P. (C) Diary No. 10801 of 2020.
- 19 Shruti Mahajan, 'Migrant Workers' plight during coronavirus lockdown: Will not interfere in government decision for few days, CJI SA Bobde', *Bar and Bench*, at: <https://www.barandbench.com/news/litigation/migrant-workers-plight-during-coronavirus-lockdown-will-not-interfere-in-government-decision-for-few-days-cji-sa-bobde> (last accessed 27 August 2020). Emphasis added.
- 20 *Prof. Rama Shankarnarayan Melkote v. State of Telangana*, W.P. (PIL) No. 94 of 2020.
- 21 'Trains getting lost, reaching unexpected destinations require thorough investigation': NHRC takes Suo Moto notice of migrants' hardships in Shramik trains', *LiveLaw*, at: <https://www.livelaw.in/top-stories/nhrc-takes-suo-moto-notice-of-migrants-hardships-in-shramik-trains-157488?infinite-scroll=1> (last accessed 27 August 2020) and other similar stories.
- 22 'Coronavirus: Travel and face police action, Gujarat warns migrant workers', *The Hindu*, 27 March 2020; Rashid, Omar, 'Coronavirus lockdown: U.P. police warning against helping migrants sparks row', *The Hindu*, 15 May 2020.

- 23 <https://thewire.in/government/karnataka-trains-migrant-workers> (last accessed 27 August 2020).
- 24 Kerala's description of workers from other states as 'guest workers', however, remains deeply problematic and counter-constitutional in terms of the freedoms allowed to all citizens to move and settle within the country under Article 19 of the Constitution.
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