

OUTREACH AND OVERREACH: THE HINDU EDITORIAL ON JUDICIAL INTERVENTION AGAINST THE UNION GOVERNMENT'S FLAILING RESPONSE TO COVID-19 CRISIS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Judicial intervention in response to the Union government's flailing response to the health crisis has reached its apotheosis with the Supreme Court order forming [a 12-member national task force](#) for the effective and transparent allocation of medical oxygen to the States and Union Territories "on a scientific, rational and equitable basis". Making recommendations on augmenting the supply based on present and projected demands and facilitating audits by sub-groups within each State and UT is also part of its remit. The Court has also mandated it to review and suggest measures for ensuring the availability of essential drugs and remedial measures to meet future emergencies during the pandemic. In other words, the national task force has become a judicially empowered group that may significantly guide the handling of the health crisis set off by the second pandemic wave. Faced with proceedings in High Courts relating to the allocation and availability of oxygen, the Centre submitted that an expert committee may be constituted, consisting of persons drawn from public and private health-care institutions, to facilitate a fresh assessment of the basis for the allocation.

When the Karnataka High Court ordered last week that the [Centre should supply 1,200 tonnes of medical oxygen daily](#) to the State, the [Centre rushed with a challenge to the apex court](#). Solicitor General Tushar Mehta argued that if every High Court started entertaining petitions on equitable allocation of oxygen, pandemic management would become unworkable. The [Supreme Court declined to stay the order](#), describing it as a careful and calibrated one. Several High Courts and the Supreme Court are examining different aspects of the pandemic response, including availability of beds and oxygen. The trend did raise concerns about the judiciary encroaching on the executive domain. There is some merit in the argument that allocation of resources based on a formula related to the present and projected requirements of each State is indeed an executive function. However, as the daily infection numbers and death toll have acquired frightening levels, the constitutional courts felt obliged to take it upon themselves to protect the right to life and good health of the population. It cannot be forgotten that the judiciary drew much flak last year for its initial failure to mitigate the crisis set off by the lack of succour to millions of migrant workers. Justice D.Y. Chandrachud, who heads the Bench hearing the *suo motu* proceedings, has clarified that the Court was not usurping the executive's role, but only wanted to facilitate a dialogue among stakeholders. As long as this position is clear, the present intervention need not be seen as a dangerous overreach.

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From the abrogation of the special status of Jammu and Kashmir, to the landmark Ayodhya verdict, 2019 proved to be an eventful year.

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