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Kumbh Fair: The Judicial and Political Aspect

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ABSTRACT

The pandemic had a hold over the country and this demanded consistent and strict adherence to covid appropriate behavior but the practice was inconsistent. The scope of this research is to address the contrast in the stance of judiciary regarding public gatherings and the reason behind this contrast. Further, the paper seeks to highlight the political developments in the country and their possible role in the spreading of the virus. The Uttarakhand judiciary displayed adequate foresight yet the kumbh was organized, thus, the paper seeks to analyze as to what led the judiciary not consider the postponement or cancellation of the fair where, in other parts of the country religious and/or public gatherings were not being allowed. It is for the purpose of consistency that law is legislated but disaster in ensured when the law is applied inconsistently.

Keywords: *Inconsistent application of law, religious gatherings, covid, influence over judiciary.*

I. INTRODUCTION

Law being the regulator of the society and social norms consistency becomes an important characteristic attributable to the law. The application of law demands some consistent behavior from the members of the society thus the interpretation and application of law itself needs to be consistent.[2] Not only treating a person differently over time may amount to inconsistency but also treating similarly situated persons may also contribute to inconsistency. Another situation which gives rise to inconsistency in law is that of applying the law in a different manner to similar situation. Naturally, the presence of this kind of inconsistency gives rise to a supposition that either of the decision is bad in law. However, it must be remembered that the presence of inconsistency is the signal that something is wrong and merely removing the inconsistency will not make the system disease free.[3]

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[2] Maksim Voronin, *Consistency in Law: Theoretical Model and Pratical Significance*, 10 RESEARCH JOURNAL OF APPLIED SCIENCE 851–856, 1 (2015).
[3] John McCoid, *Inconsistent Judgments*, 4 WASHINGTON AND LEE LAW REVIEW 487–514, 488.

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The law has been developing throughout the course of history and this development in the 'nature of law' cannot be termed inconsistent and the law must grow and evolve to satisfy the demands of the society. With this being said, it becomes vital for us to see where the development and application of law is headed in the country and whether it is being applied in a homogenous and consistent way. For this purpose the current pandemic situation, particularly the religious mass gatherings, serves as the best illustration because it is here we see the divergence and immense contradiction in the stance of the judiciary.

II. JUDICIAL STANCE AND THE UNDERLYING CONTRAST

On one hand we had the High Courts of Delhi and Bombay which prohibited/allowed, subject to covid norms, public gatherings for religious purposes and on the other hand there was the Uttarakhand High Court which was contemplating upon the steps taken by the state government so that the *kumbh* fair could be conducted. It is here we see a differential approach of the High Courts. A detailed observation of the proceedings in the court will show us that a petition was dismissed even when the petitioner showcased the safeguards adopted to curtail the spread of the virus while a public gathering was allowed and the State was directed to produce a standard operating procedure to curtail the spread of the virus. In other words, we have a scenario where one party which shows preparedness is prohibited from proceeding and on the other side we have a party which is asked to show its preparation but is allowed to proceed nonetheless.

The genesis of the matter can be traced to 2021 when India was just recovering from the second wave of the virus. To curb the spread of the virus a nationwide lockdown was imposed on 23rd March, 2021 when every place including places of worship was shutdown. The lockdown was lifted partially on 15th April, 2021 but all activities involving public gatherings were prohibited. The order specifically stated that all religious congregations were to remain suspended to curb the spread of the virus. [4] On 12th April a request was made by the Delhi Waqf board to allow the mosque area to be made operational for the month of *ramzan.* The petition was allowed and the mosque was allowed to be opened five times a day so that fifty persons could offer *namaz* following the social distancing norms.[5]

Similar petition was filed before the Bombay High Court on 14th April, 2021.[6] In Maharashtra more than seventeen thousand cases were being reported each day around this

[4] MUKTA GUPTA, *Delhi Waqf Board v Government of NCT of Delhi and Anr* 8 (2021).
[5] *Id.* at 10.
[6] Juma Masjid of Bombay Trust v State of Maharashtra and Ors., 10152, 1 (2021).

time.[7] The petitioner argued on similar lines as of the above mentioned case and prayed that the mosque be opened and persons be allowed to offer *namaz* five times a day following social distancing norms. But since the case load in the state was high the petition was dismissed and the mosque was not allowed to be opened for offering *namaz* five times a day and the Bench opined that the right to life is of prime importance and cannot be diluted for celebrations and stated-

> *"While religious sentiments of all sections of the society must be respected, the right to life and health of the public at large cannot be sacrificed at the altar of a right to celebrate a festival, however, significant it may be for a particular community."*[8]

The *kumbh* fair, 2021 was organized amidst serious concerns and several writ petitions were filed in the Uttarakhand High Court voicing concerns given the extraneous circumstances and the possibility of the fair becoming a breeding ground for the virus. The situation was unique since people would be coming from all over the country to attend the fair and there might be a possibility of transmission of the virus owing to such large scale movement. It was at this juncture, that the need for concrete plans was highlighted so that persons coming from different places could be "allowed to enter into the state and resolve the logistical problem created by the congregation of such a large problem"[9]

In the hearing conducted on 13th January, 2021, the High Court of Uttarakhand recognized the fact that *Kumbh* fair being the largest fair in the world generates lot of potential to spread the virus.[10] The court also recognized the fact that the virus was mutating and was becoming more deadly and contagious and that these mutated strains have been reported from different parts of the country.[11] The considerations were placed before the State Government and the State Government responded by stating its ability to 'manage' the huge influx of population and cited that it had arranged buses which would ferry devotees from the railway stations to the *ghats*.[12] Further, the State also maintained about its ability to a maintain social distancing and ensuring the health of the devotees by stating that the hotels had been given instructions to 'convince' devotees to use masks and hand sanitizers and to maintain social distancing. To add a cherry on top the State promised to deploy eight thousand police personnel and other

[7] Development of number of Coronavirus cases: Maharashtra, India, https://coronalevel.com/India/Maharashtra/.
[8] Juma Masjid of Bombay Trust v State of Maharashtra and Ors., *supra* note 5 at 17.
[9] Raghvendra Chauhan & Alok Verma, *Writ Jurisdiction Public Interest Litigation* 1 (2021).
[10] Raghvendra Chauhan & Alok Verma, *Writ Jurisdiction Public Interest Litigation* 3 (2021).
[11] Raghvendra Chauhan & Alok Verma, *Writ Jurisdiction Public Interest Litigation* 6 (2021).
[12] *Id.* at 10.

security personnel to maintain social distancing.[13] The court recognized the fact that the state was ill-equipped to tackle the pandemic; it ordered the State of Uttarakhand to report back with Standard Operating Procedures (hereinafter referred to as SOP) and also directed the petitioner to submit a report.[14]

The SOP laid down highlighter the importance of covid appropriate behavior and compliance with social distancing norms but the report filed by the petitioner brought forward the lacunae in the steps taken by the government and highlighted "a dire need to improve the facilities"[15] On a bare perusal of the SOP issued by the government it can be seen that there was absolutely no provision for providing hand sanitizers and checking the temperature of the incoming population[16] and the same was highlighted in the report. The report also highlighted the fact that there were inadequate health care facilities. On one hand, the population of Uttarakhand would increase to seventy lakh and on the other hand five thousand hospital beds were being readied to tackle the health emergency. [17] Further, the accommodation facilities were also highlighted as inadequate to deal with the huge influx of population. With all these shortcomings yet to be addressed the fair was bound to be a disaster.

III. ENABLING CIRCUMSTANCES FOR THE SPREAD

Improper planning coupled with political arrogance and judicial ignorance resulted in the outburst in the number of infected persons. The impact was such that states like Karnataka and Maharashtra announced that people retuning from *Kumbh* fair would have to undergo a mandatory quarantine of ten days.[18] To curb the spread the state no doubt undertook the help of drones to ensure that devotees wore masks and adopted covid appropriate behavior but the fact remains intact that drone and AI would only enable reporting and the enforcement would rest in the hands of the police or other security personnel which were very less in number. Thus, compliance and enforcement of law was the problem and not reporting. Further, the police reported that a "stampede like situation" would occur if they tried to ensure social distancing norms at the fair.[19]

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[13] *Id.* at 11.
[14] *Id.* at 22.
[15] RAGHVENDRA CHAUHAN & ALOK VERMA, *Writ Jurisdiction Public Interest Litigation* 5 (2021).
[16] Chief Secretary, Uttarakhand Administration, *Standard Operating Procedure on prevenive measures to contain spread of COVID-19 during Kumbh Mela, Haridwar' 2021 (SOP)* 1, 2 (2021), https://cdn.s3waas.gov.in/s33416a75f4cea9109507cacd8e2f2aefc/uploads/2020/03/2021032775.pdf.
[17] CHAUHAN AND VERMA, *supra* note 14 at 6.
[18] RAGHVENDRA CHAUHAN & ALOK VERMA, *Writ Jurisdiction Public Interest Litigation* 11 (2021).
[19] Asian News International, *Kumbh 2021: "Difficult to ensure social distancing during second shahi snan at Har Ki Pauri,"* ASIAN NEWS INTERNATIONAL, April 12, 2021, https://www.aninews.in/news/national/general-news/kumbh-2021-difficult-to-ensure-social-distancing-during-second-shahi-snan-at-har-ki-pauri20210412064343/.

Apart from this, the State organized several special trains which would enable 'mass movement' to Haridwar so that devotees could attend the fair in huge numbers.[20] Not only this, full page newspaper advertisements invited people from all the over the country to come and attend the fair and declared that everything was safe and all necessary arrangement were made.[21] Further, superstitious beliefs were invoked by the Uttarakhand Chief Minister Tirath Singh Rawat when he gave a remark that mother *Ganga* would bless everyone and there would be no corona infection.[22] The superstitious beliefs soon gave way to political arrogance and it was argued that there must be no interference with the attendance and the fair must be attended[23] by everyone and the argument was supported by the fact that people now know the importance of hand hygiene and wearing masks and this will ensure that the pandemic does not spread. But seeing this arrogance, apparently, *Ganga Ji* didn't bless him and he fell prey to the virus soon after.

IV. ROLE (OR LACK THEREOF) OF THE JUDICIARY

On one hand there Courts of Delhi and Mumbai were restricting public gathering in wake of the corona virus and on the other hand there was the Uttarakhand High Court which was considering the question of allowing the *kumbh* fair. It is correct that Uttarakhand was not reeling under the same pressure as Delhi and Mumbai and organizing the *kumbh* fair could be considered. But the fact cannot be ruled out that the mass influx of population would not increase the corona cases. The same should have been considered by the Uttarakhand High Court.

In one case we saw that public gatherings were absolutely restricted to curb the spread of the virus, in another, public gatherings were limited to fifty but the Uttarakhand practice demonstrated that more than half million people could be accommodated and they could take the holy dip and there would be no risk of spreading of the virus. At one instance we witnessed the Court stating that holy water would not be sprinkled on persons offering *namaz* to curb the spread and the events at Uttarakhand paint a completely different picture. *Kumbh*

[20] LiveMint, *Indian Railway adds 12 more Haridwar-bound Kumbh Mela Special Trains*, LIVE MINT, March 10, 2021, https://www.livemint.com/news/india/indian-railways-adds-12-more-pairs-of-hardiwar-bound-kumbh-mela-special-trains-11615366554911.html.

[21] Asian News International, *COVID-19: Plea in SC against invitation advertisement to "Kumbh Mela,"* ASIAN NEWS INTERNATIONAL, April 17, 2021, https://www.aninews.in/news/national/general-news/covid-19-plea-in-sc-against-invitation-advertisement-to-kumbh-mela20210417150638/.

[22] TheWire, *"Maa Ganga's Blessings in Flow, There Should Be No Corona": Uttarakhand CM on Kumbh Vs Markaz*, THE WIRE, April 14, 2021, https://thewire.in/politics/uttarakhand-corona-covid-tirath-singh-rawat-kumbh-markaz.

[23] Lalmani Verma, *Explained: Why new Uttarakhand CM wants no 'rok-tok' on Kumbh crowds*, THE INDIAN EXPRESS, March 21, 2021, https://indianexpress.com/article/explained/why-new-uttarakhand-cm-wants-no-rok-tok-on-kumbh-crowds-7236428/.

fair being a month long celebration demanded staying of persons together and this was allowed while the mosque which was to be opened five times a day so that people could offer *namaz* was ordered to remain shut citing the gravity of the situation.

At one instance the petitioner demonstrated the ability to curtail the spread but this was not accepted and on other hand the petitioner showed the incapability of the state to organize the event and the High court did not even acknowledge that maybe the fair should not be organized this year. The petitions were filed in the Uttarakhand High Court on 13th January, 2021 and by that time the SOP to organize the fair was non-existent but the Uttarakhand High Court still directed the government to prepare SOP so that *kumbh* fair could be organized successfully. On 23rd January, the central government issued guidelines for the organization of *kumbh*[24] and it was only on the 24th March, 2021 the State Government issued its guidelines. It appears as if the court was following the directions of the central government and had made up its mind to enable the organizing of the fair. This raises pertinent questions as to the independence of the Uttarakhand Judiciary.

V. FORESIGHT DISPLAYED BY THE BENCH

The Bench recognized the fact that the State was relying too much on assurances and not many concrete steps were being undertaken to manage the large congregation, therefore, it directed the Additional Secretary of Public Health, the District Magistrate and the *Mela Adhikari* to convene a meeting to discuss and come up with concrete steps.[25] The court acknowledged the fact that the incomplete flyover, the ill-maintained *ghats* and lack of SOP would pose a problem therefore, the court sought a report from the Chief Secretary furnishing the steps taken by the State Government to address the issues.[26] To ensure compliance, the bench directed state departments to furnish photographs and complete the unfinished work so that the huge influx of population could be handled.[27] Owing to this foresight, the number of police personnel was increased, hospital beds were increases, the hospitals were equipped with oxygen cylinders and ventilators, ambulance facility was also introduced, cleanliness and hygiene were given prime importance, waste management was given prime importance, *ghats* were segregated into different parts to enable social distancing norms and all precautions were undertaken so that the *kumbh* does not become a breeding ground. The

[24] Government of India, Ministry of Health and Family Welfare, *Standard Operating Procedures on preventive measures to contain spread of COVID-19 during Kumbh Mela, Haridwar 2021* (2021), https://www.haridwarkumbhmela2021.com/wp-content/uploads/2021/01/sops-for-kumbh-21.pdf.
[25] CHAUHAN AND VERMA, *supra* note 8 at 2.
[26] CHAUHAN AND VERMA, *supra* note 9 at 7.
[27] RAGHVENDRA CHAUHAN & ALOK VERMA, *Writ Jurisdiction Public Interest Litigation* 13 (2021).

testing capability of the state was increased and mobile vans were equipped with capabilities to conduct RTPCR tests. Further, health workers were equipped with PPE kits.[28]

All this was possible only because of the foresight displayed by the judiciary. But this foresight was too less when compared with the mass movement of devotees who had come to take the holy dip, for instance there were only 132 ambulances for over fifty lakh devotees.

VI. THE RESULT

The State Government was continuously working to break the chain of transmission, yet it went ahead with the *kumbh*. With every passing day of the fair, the positivity rate increased and the number of covid positive cases jumped from 3.05% to 13.54% within a period of twelve days.[29] With the hospitals full and the Remdisivir not available a health crisis changed into a full scale health emergency. Further, with the case load increasing and testing capacity constant there was a delay in the declaration of result which further aided in the spread of the virus.

What we see here is a classic case of first creating a problem and then thinking of ways to solve it. With the positivity rate nearly doubling in a month, covid reached the hamlets and far-flung areas of the State. Since, Uttarakhand is surrounded by mountains and many hamlets are situated at mountain tops, mobile vans were to be sent to these areas to conduct tests. All this could have been avoided if the fair was postponed or cancelled.

VII. THE POLITICAL ANGLE

Historically, the *kumbh mela* had two participants, the sadhus who were the "kings of the *mela*"[30] and the pilgrims who came to the fair to "experience the religious and spiritual aspects of the event"[31] Sadhus were traditionally identified as fierce warriors and they were probably mercenaries.[32] The relevance of these *akhadas* was well founded during the times of Mughals and Britishers and it was to counter their growing influence that the Britishers puts checks and this was done by labeling them as beggars and vagabonds who roam naked. Thus, their presence was curtailed to the *kumbh* only. However, their association with power and influence did not cease. When India gained its independence political parties associated themselves with the sadhus and *akhadas* for instance, Jawaharlal Nehru visited the *Kumbh* in 1954, similarly in 2019, the then Prime Minister and the then President visited the Prayagraj

[28] CHAUHAN AND VERMA, *supra* note 17 at 14.
[29] *Id.* at 5.
[30] Kama Maclean, *Seeing, Being seen, and Not Being Seen: Pilgrimage, Tourism, and Layers of Looking at the Kumbh Mela*, 59 UNIVERSITY OF NORTH CAROLINA PRESS 319–341, 324 (2009).
[31] *Id.* at 322.
[32] WILLIAM PINCH, WARRIOR ASCETICS AND INDIAN EMPIRES 15 (2006).

Ardh Kumbh to witness the historic confluence.[33]

The *kumbh* is a huge celebration and any government which is successful in organizing it is deemed to be a good government equipped with the tools required for good governance. Not only this, it has become a means to garner the support of the *akharas* which later serve as a vote bank. Therefore we see exorbitant expenditure on the *kumbh* as a means to appease and anything which goes against this appeasement is not tolerated. This can be observed from the events surrounding the resignation of erstwhile Uttrakhand Chief Minister Trivendra Singh Rawat based on "collective decision" just nine days before the completion of four years of being in power.[34]

Though there are many reasons for this "collective decision" and resignation, one of them is the fact that Trivendra Singh Rawat voiced concerns over the rising cases of covid and that "more caution should be exercised while organizing mega religious events"[35] Other party members accused Trivendra Singh of not listening and criticized his way of working. With Trivendra Singh being replaced by Tirath Singh Rawat, preparations for *kumbh* were renewed. It can be assessed so as to why and on what points there be friction between Trivendra Singh Rawat and the party members.

VIII. CONCLUDING REMARKS

The country was in the clutches of the virus and all conscious efforts should have been to curtail the spread of the virus instead, absolutely contrary events took place. The conducting of *kumbh* posed two fold risks, first, spread of virus in Uttarakhand, second, transmission of disease from Uttarakhand to other parts of the country. Yet the fair was organized and the result was that positivity rate shot to 16.2% and Uttarakhand witnessed the largest single day jump in covid cases. It is well established that there are lot of contradicting considerations for political parties and they have to be balanced but they must also remember that at the end of the day if there is no population then all calculations for vote bank will become futile. Since India gained its independence, the judiciary has been revered and respected for its impartial stance but its role in the unfolding of the current crisis raises questions regarding its impartiality. There is no doubt in the fact that Uttarakhand Judiciary showed lot of foresight

[33] Mehr Gill & Om Marathe, *Kumbh Mela: A 'recent' pilgrimage with political undercurrents*, THE INDIAN EXPRESS, April 7, 2021, https://indianexpress.com/article/research/with-kumbh-mela-back-at-its-original-site-in-haridwar-a-look-at-how-this-recent-pilgrimage-always-has-a-political-undercurrent-7262923/.

[34] Lalmani Verma, *Trivendra Singh Rawat quits as Uttarakhand CM, says collective decision taken in Delhi*, THE INDIAN EXPRESS, March 10, 2021, https://indianexpress.com/article/india/trivendra-singh-rawat-resignation-uttarakhand-cm-bjp-7220953/.

[35] Rashme Sehgal, *Why was Kumbh Mela held amidst raging pandemic?*, REDIFF.COM, April 22, 2021, https://www.rediff.com/news/column/covid19-why-was-kumbh-held-amidst-raging-pandemic/20210422.htm.

in the instant case but all of its foresight was outweighed when it did not even consider the possibility that the *kumbh* could be postponed. Further, the Uttarakhand judiciary could have adopted the approach of Delhi and Bombay High Courts, but it didn't. This adamant stand of the judiciary makes partially responsible for the loss of lives and livelihoods.

Corona was spreading like wildfire throughout the country and throughout the country awareness campaigns were being organized to maintain hand hygiene, wearing of masks and maintenance of social distancing. "Kumbh is the largest gathering on the Earth"[36] then what made pilgrims and sadhus believe that any distance would be maintained in Haridwar? Thus, at the end of the day, did the general public not know about the risks associated with the fair? And if it did and still the public attended then only the public is responsible for spreading the disease as there is no law to cure the ignorance.

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[36] Alan Taylor, *Kumbh Mela: The Largest Gathering on Earth*, THE ATLANTIC, January 14, 2013, https://www.theatlantic.com/photo/2013/01/kumbh-mela-the-largest-gathering-on-earth/100438/.

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