



ACCESS TO JUSTICE AND COVID -19 WITH RESPECT TO DISTRICT COURTS

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INTRODUCTION

The world today is facing the unprecedented threat of Covid-19. Its been almost two years and yet we have no clue how to curtail or minimize the misgivings and tragedy of covid-19.

The Covid-19 pandemic has posed a never-imagined challenge to every sector of the economy and every activity of the nation. When it comes to the legal world, that challenge is even graver. It ought to be, as the world of the bar and the bench is a part of the whole system of access to justice. The Constitution Bench of the Hon'ble Supreme Court of India, in the case of *Anita Kushwaha v Pushap Sudan*¹, while holding that access to justice (apart from being a facet of right to life under Article 21 of the Constitution of India), is a part of the guarantee contained in Article 14 as well. The apex court observes that:

- the State must provide an effective adjudicatory mechanism;
- the mechanism provided must be reasonably accessible in terms of distance;
- the process of adjudication must be speedy; and
- the litigant's access to the adjudicatory process must be affordable.

But unfortunately the pandemic has gone through a massive chaos during this pandemic, the Indian judiciary which already had faced a huge problem of pendency has gone through a massive jolt. The number of cases has massively increased specially the cases of offences against women, domestic violence maintenances cases etc. The Supreme Court and high courts somehow managed to work at its pace through online mode but the District courts are the worst sufferers.

BACKGROUND

The Covid-19 pandemic forced the Indian judiciary to adopt digital processes at an unprecedented speed and scale. With a lockdown being imposed on March 25 and the enforcement of physical distancing, courts across India started using video-conferencing to hear cases, accompanied by facilities for e-filing and e-payment, wherever possible. Although there has been media coverage of online hearings in the Supreme Court and a few high courts, the experiences of district court lawyers remain at the margins of public awareness. Given that the district courts are the first port of call for litigants, it is critical to understand the circumstances under which lawyers in these courts worked during this period. Any new problem in an existing system is bound to cause serious discomfort at the threshold, and situation covid-19 is no different from this. It was provided for by the Supreme Court in its April 6, 2020 order invoking article 142 of the Constitution. This order covered all the High Courts, and they were in fact endowed with the discretion of adopting such a technology basis to their own needs customisation in view of the evolving pandemic scenario in different states. Model rules were drafted and circulated as well amongst all the High Court's while the District or lower courts were to adopt rules as prescribed by their parent High Courts and all of a sudden Indian courts had to go virtual and no one is prepared for this drastic change in the system, keeping the apex court and the High court aside the District courts had no infrastructure which could hold the things intact, thus the litigants are the one who are the worst suffers in order to get justice. However several arrangements have been done on every level but seem fell short and does not come up to the expectations.



PROBLEM FACED BY THE JUDICIARY

Some of the common problems faced during this period is discussed as under: The justice system and its actors play a key role in oversight and accountability, but also in securing the rights of those “left behind” during this crisis. Ensuring access to free legal aid for those who are being disproportionately impacted by any reason, legal representation, advice and assistance for prisoners and detainees, including those in administrative detention, to secure release or use of noncustodial measures and alternatives to imprisonment along with the prosecution and the judiciary, legal aid providers, including legal aid authorities, bar associations, pro bono lawyers, assistance from other actors such as civil society and community-based paralegals, as well as national human rights institutions and ombudsman offices, have a critical role to play in this regard. But the covid 19 had halted it all. There are many problems faced by the sectors and are discussed as under:

- 1) **Delay in getting justice** – Due to national wide lock down and the restrictions imposed by the government judiciary also had to go through drastic change, firstly physical hearing had come to halt and in online proceedings too only matters having urgent nature like bail matters, cases related to domestic violence etc. was entertained and thus left the backlog of rest of cases. All these things increased the pendency in the courts and huge delay is suffered by litigants in order to get justice. Specially the cases of civil nature has suffered a lot and it has been estimated by various jurists that it will increase the burden on judiciary many folds.
- 2) **Difficulty in approaching courts**:- In the lock down everything comes to stand still, courts were closed for litigants and litigants was left to the mercy of counsel only. For rustic and uneducated person who has his hearing in the court it becomes a nightmare. He had hardly any means to know about his case. Moreover it was also noticed that the existing system somewhere also de-motivate the genuine litigants to approach the court. While releasing Draft Model Rules by E-committee of Supreme Court for Live-Streaming and Recording of proceedings the supreme court observed that right to justice include right to access live court proceedings but still it is a matter that many people have no access to that.
- 3) **Increase burden on courts**:- As the district courts heard only emergent matters the remaining cases were left to their own fate as a result of that the pendency of cases increases. The disposal has gone down and the pressure on courts has increased. Moreover the courts were not also well equipped for its functioning via online mode. The staff including judicial officers has to undergo extreme difficulty in order to conduct their regular work.
- 4) **Unpreparedness**:- situation arising from Covid- 19 is totally unprecedented and everything took place all of a sudden. The system does not get any time for preparation. The courts were not ready at all for facing such situation. Moreover there was no unilateral system, every court is working according to its accessibility and comfort.
- 5) **Sustainability of lawyers**: the current scenario hit the lawyers' fraternity financially, especially the young lawyers and new comers got effected by the present system. In some cases situation become so bad that the advocates have to take loan to fulfill their basic amenities.
- 6) **Grave injustice towards under trials**: Under trials suffers a lot during this pandemic and the functioning of courts make the situation even worse for them. As no regular proceedings take place the undertrials has to wait for their fate for long time. Inspite of directions from apex court the current scenario is a sheer violation of humanitarian right of an individual and right to life and right to speedy trial which has been enshrined in tones of judgment by the Apex court.
- 7) **The Digital Divide**: Another serious repercussion as a consequence of the COVID-19 crisis in India is equally disturbing and cannot be ignored. The Courts in India at various levels, viz., Supreme Court, High Court and Subordinate or District Court levels through guidelines issued from time to time have been insisting on only virtual hearings in several types of cases during the COVID-19 crisis. However,

due to the ground realities many litigants are barred from seeking justice for no fault of theirs. More specifically, in faraway rural areas or remote towns where there is no internet connectivity whatsoever, the lawyers are unable to contest and the litigants are suffering with the COVID-19 crisis situation to blame. Besides, during the COVID-19 crisis, the situation seemed to be no different for other peripheral but important stakeholders in justice administration as well. Due to a substantial reduction in the footfall in the courts due to strictly imposed COVID-19 restrictions, there was meagre earning for the Notaries, Oath Commissioners and a section of lawyers who practised in relation to offences pertaining to petty crimes. However, on the infrastructure front, with the COVID-19 pandemic dangers in view, the Government is also speedily providing video-conferencing rooms in courts across the nation in order to facilitate E-judiciary mode of justice administration during the COVID-19 crisis period.

- 8) **Selective prosecution of crimes-** It is motivated by stigma and discrimination. As borders close and restrictions on movement increase, fear of the pandemic can result in an increase of xenophobia and hate crimes targeting 'outsiders' who are perceived as bringing the virus into communities. In some cases, this has involved individuals and groups targeting particular ethnic groups, foreigners (including migrants or refugees), or minority populations, such as ethnic and religious minorities. In other situations, specific populations such as LGBTI persons or other groups are at risk of use of force violations by police and security providers. Government responses can also fuel community divisions, particularly when quarantine measures target a specific population group. Penalties for hate crimes and discrimination against minorities and marginalized communities should be clearly outlined. Legal aid providers can help to ensure that justice systems address such crimes swiftly and thoroughly.
- 9) **Internal problem:** Operational problems relate to the internal efficiency of the justice system, such as: Lack of cooperation between different bodies within the justice system; lack of legal aid services; lack of pre-trial counseling; and the expense of bringing a case to court. Structural obstacles are not only related to the workings of the justice system but are also linked to the organisation of society they include: The elitism of the justice system, with courts located in urban areas and legal process steeped in specialist language; the vulnerability of the poor, who fear that much-needed social programmers will be cut if they 'dare' to claim their rights; and the lack of awareness among the poor of their rights.
- 10) **Literature Review:** Many articles have been written by eminent scholars, jurists and students that how the Covid effects the Indian judicial system but the current research is focused on how the Covid effects the working of the lower judiciary which happened to be the back bone of this judicial system. In the current research survey has been done on those people who are closely associated with the lower judicial system i.e. district courts and how they get affected in different ways with the sudden change in the system. This research paper is quite different from rest of the researches that has been done on this topic in every sense firstly the research has been done on the lower judicial institute secondly the research has been done by conducting survey of those people who are directly associated with the judicial system i.e. litigants, advocates, judicial clerk and judicial officer. The research gives first hand information that how the district courts work during this pandemic, what is the efficiency of courts and how much justice is accessible to the common masses.

METHODOLOGY

The survey has been conducted on litigants, advocates, judicial clerk and judicial officers and thirty questions have been asked to everyone. The questions have been sent to them through google forms and the answers to such questions are to be given in affirmation or negative. The participants have to open the link which was sent to them and after logging in with their mail accounts the participants are accessible to take part in the survey. Due to pandemic restrictions it is not possible to conduct the



field survey, so the researchers have to opt the above mentioned option in order to conduct the survey. After analyzing the results the major findings have been reproduced.

FINDINGS

1. Number of respondents: 40
2. Gender:

Male	Female
24	16

3. Details of Participants:

Participants	Number
Judicial Officer	10
Judicial Clerk	10
Advocates	10
Litigants	10
Total	40

4. Responses given by the Participants:

Response Seek	Response Given by Judicial Officer	Response Given by Judicial Clerk	Response Given by Advocates	Response Given by Litigants



Percentage of people take part in online proceedings	100%	90%	70%	10%
Percentage of people Satisfied with the connectivity	100%	90%	70%	50%
Percentage of people used Official website for proceedings	50%	50%	60%	-
Work load reduced on courts	No	No	No	No
Percentage of people satisfied with infrastructure	75%	40%	20%	20%
Percentage of people feel content with online mode	75%	20%	10%	10%



Percentage of people think there is requirement of special training	90%	80%	100%	70%
Percentage of people think that virtual hearing work well in District court	80%	40%	30%	20%
Percentage of people satisfied with online mode	90%	20%	20%	10%
Do you find Survey Relevant	Yes	Yes	Yes	Yes

DISCUSSION

From the above research we come to the conclusion that almost more than 50% respondents were affected by COVID-19 in some manner. Near about 93% of people admitted that their dependency on the internet has increased during this pandemic in connection with their work. It is also witnessed that majority of people don't find it easy to access the court proceeding easily. It is also worthwhile to notice that majority of people agreed that the virtual mode has not reduced the workload on the courts rather it increased the workload on courts. Moreover, subordinate courts does not have ample resources and smooth procedure to run the courts virtually. Maximum people in the survey showed their displeasure on the working of courts. From the survey it also becomes clear that the online mode/ virtual mode does not help in fast disposal and does not able to provide justice at doorstep. Majority of people in the survey are of the opinion that the judicial officers and advocates need special training and vocational courses for smooth functioning of courts. Near about 70% people in the survey found the offline mode much better than the online.

From the said survey one can easily understand the displeasure of the people towards the online functioning of the courts. Whoever is associated with the court in any prospect has registered his

displeasure. One of the major concern that has been observed during this survey is the lack of proper infrastructure. Moreover most of the respondents feels that it impacts the efficacy of justice delivery system . Since as we are well aware that the justice delayed is similar to justice denied, immediate steps should be taken to improve the existing system unless we restore back to the traditional once.

CHALLENGES IN VIRTUAL COURTS

1. **Question of accessibility:** Article 39A² of the Constitution mandates the State to secure the operation of the legal system in such a way that it promotes justice on a basis of equal opportunity and ensures that the same is not denied to any citizen by reason of economic or other disabilities further equal opportunity must be afforded for access to justice as its not sufficient that the law treats all persons equally, irrespective of the prevalent inequalities but the law must function in such a way that all the people have access to justice in spite of economic disparities. Large chunk of our citizenry is vulnerable to being excluded from the process of justice delivery owing to factors beyond their control. As the district courts and subordinate courts are the first port of call for citizens, keeping people away from their right to seek justice is violation of law of land. However, in view of this, it was recommended that Communications should fast track the implementation of the National Broadband Mission, with the aim of providing reliable, and consistent connectivity infrastructure to all districts and lower courts across India but it turn out to be a too little too late.
2. **The degree of comfort:** it was noticed that senior advocates who have well established practice and chambers didn't fell that much heat as by the young advocates and the new comers. The situation in rural areas is exceptionally bad. Very rarely training programme had organized and fails to provide any solution.

END OF OPEN COURT

Trial in open court is one of the essential features of our judiciary. Section 327 of Cr.P.C states that- The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them: Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.³ In Naresh Shridhar Mirajkar and Ors.

v. State of Maharashtra and Ors⁴, the Supreme Court stated — Public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice, moreover in Indira Jaising vs. Secretary General of Supreme Court & Ors⁵ the significance of live streaming of court proceedings as an extension of the principle of justice had been re-emphasised unequivocally. In CPC there is also a provision which stated that place of trial deemed to be a opencourt.⁶

The Open Court principle finds its origins in the much-revered 1215 *Magna Carta*. The specifically relevant portion is which translates to “To no one will we sell, to no one will we refuse or delay, right or justice.⁷

3. **Issue of privacy and data security:** Data security and right to privacy is one of the major concern at present time. Internet makes a world small entity but it increase the threat of cyber crime. There is no uniform platform used by the district courts in majority of courtstthird party platforms



are bring in use and hence bring security hazards with it it poses a great threat of hacking and misuse.

The bench of Justices Chandrachud and MR Shah while considering a 2018 SLP when it was met with a request for adjournment on behalf of petitioner observed that live streaming was the only answer to adjournment seeking antics.

Some suggestions for the following policy measures:

- Decentralising the courts to make them more accessible.
- Making court buildings more welcoming to ordinary people, like, for example, the new Prosecutor District Office in a Buenos Aires suburb.
- Making legal language more accessible to the public.
- Shaping the administration of justice to fit the client, rather than the other way round, like, for example, the informal system of justices of the peace in rural Peru.
- Involving all actors in reforms of the justice sector, including the users and NGOs and public interest lawyers representing them.
- Allowing class actions and granting NGOs the right to represent individuals and unorganised collectives in the legal process, in order to give the poor more confidence in claiming their rights.
- Training judges to handle collective claims.
- In areas where lawyers are scarce, training lay lawyers/paralegals to help the poor bring cases to court.
- Supporting NGOs and other civil associations, such as bar associations, in working to provide legal services for the poor.
- Adoption of strategies for reducing risks of COVID-19 in detention centers and that can be done by:

1. Alternatives to imprisonment and alternative sentencing. Measures to reduce the risk of the spread of COVID-19 in detention facilities may include, for example, reducing the number of new detentions (i.e. no detentions for minor, non-violent offences). This should be agreed in consultation and coordination with all justice actors, including the police. Priority use of non-custodial measures in appropriate cases should be increased. This includes measures at all stages, including pretrial discharge, diversion, and other alternatives to pretrial detention (e.g. release on bail or personal recognizance/surety bond), use of alternative sentencing laws or conversion of prison sentences to noncustodial sentences, as well as early release, temporary release, parole, pardons, or furlough for sentenced prisoners. Monetary bail or fines, if used, must not disadvantage those living in poverty.

The monitoring of non-custodial measures should be carried out by relevant means (such as telephone or in person with the required distance) and do not necessarily require, for example, the use of electronic monitoring bracelets which can be expensive and technologically burdensome. In some contexts, engaging respected members of the community to provide assurances of good behaviour can also be effective. In the case of children, the use of diversion from the formal justice system and alternatives to detention should be prioritized, upholding the best interests of the child as a primary consideration. Immigration detention should be avoided, and non-custodial alternatives explored. These may include, community-based accommodation or Access to Justice & COVID-19 placement in open shelters / hotels accompanied by appropriate additional restrictions, where relevant and necessary, such as registration of residence, surrender of documents, or regular reporting by phone.

2. Management of prisons and places of detention. For those that remain in prison or detention centres, a comprehensive emergency plan should be developed that specifies

provisions related to medical isolation and quarantine, referral and care plans for persons deprived of liberty and detention staff, as well as health and safety measures to mitigate the spread of COVID-19 and prevent outbreaks. Issues relating to visitation (by families and lawyers) and security arrangements should be given due consideration. Mitigation measures to ensure the continued oversight of detention facilities and treatment of prisoners when access is restricted for lawyers, CSOs and oversight bodies (e.g. national preventive mechanisms) should be considered. More detailed guidance on COVID-19 responses in prisons and places of detention can be found in the Resources section of this guidance note.

3. **Identification of criteria for release for persons deprived of liberty.** Due to the exceptional vulnerability to COVID-19 in places of detention, many countries are currently implementing emergency release measures for detainees and prisoners. Criteria for determining the eligibility for such emergency release measures must be based on a careful balancing of vulnerability of individual detainees against public safety and be accompanied by appropriate safeguards to the safety and the rights of witnesses and victims. In many cases, juveniles, pregnant and breast-feeding women, those with caretaking responsibilities, older persons, and those with underlying health issues are being considered for release. In addition, people who are considered to pose no or a very low risk to the public, such as those who have been detained or imprisoned for minor or non-violent offenses, those whose sentences that are almost complete, or who are facing relatively short sentences are also being released to reduce the population of overcrowded prisons, which heightens vulnerability to COVID-19. In addition to vulnerability, the release of people awaiting trial who have not been convicted of a crime is even more pressing, especially if the risk of flight or another sort of interference with the course of justice is low during lockdown measures. Authorities are also strongly encouraged to release people in immigration detention, in particular where that detention is arbitrary or does not comply with international standards. This includes people in pre-removal detention where deportations have been suspended due to the COVID-19 situation. In many of these cases, the grounds for their continued deprivation of liberty no longer exist. Those convicted and imprisoned for domestic violence, sexual crimes, and other violent crimes should not be eligible for emergency non-custodial measures. Lawyers and legal aid providers can assist authorities to identify potentially eligible persons, ensure their clients are included in these alternative measures, as well as to ensure that those that remain in prison or immigration detention centres receive adequate protection (i.e. sanitation and hygiene) and access to health care.
4. **Reintegration plans for newly released prisoners/detainees.** Reintegration measures should be part of decongestion plans. Facilitating cross-sectoral support for newly released prisoners to reintegrate into communities in the context of physical distancing measures is essential. Many released detainees will not have access to safe places or suitable homes for self-isolating or means to support themselves and may not have access to social services or community support. Children will require particular post-release support and reintegration back into their families and communities such as educational support in a context where schools are closed. Support to national authorities to develop reintegration plans that provide comprehensive services, which can involve legal aid providers, health services, and other service providers, is needed to manage Access to Justice & COVID-19, the release of detainees in a manner that is consistent with their human dignity and well-being as well as public interest. The development of communications strategies to ensure communities are sensitized to the release of detainees is also important to support reintegration steps and

avoid stigma and discrimination against detainees.

5. Access to justice and effective remedies for victims and survivors of violence, including sexual and gender-based violence -Gender-based violence, including against LGBTI persons, and all forms of violence against children are increasing exponentially as responses to the pandemic deepen economic and social stresses and restrict movement. Domestic violence has increased dramatically across all regions, as many people are being forced to 'lockdown' at home with their abusers, including victims of trafficking and their traffickers, at the same time that services to support survivors are being disrupted or made inaccessible. Measures must be taken to ensure continued access to essential support services when movement is restricted, including the continued operation and scaled up functioning of the national child protection authority. Protection measures to ensure that survivors can remain at home and protected from further violence should be prioritized. In some contexts, laws are being passed to require the abuser to leave the home rather than the survivor. Ensuring access to shelters is also critical. Exemptions to movement restrictions should be allowed for survivors seeking safety.

National COVID-19 response plans should ensure that the judiciary and law enforcement authorities remain able to identify, protect, and provide remedies to survivors who are at risk and that necessary emergency funding be allocated towards these efforts, for example, giving priority for the continuation of court hearings for restraining and protection orders. Legal aid providers should be supported to ensure the provision of continued and safe access to legal services, including through hotlines and online services. Hotline staff should also be equipped with up-to-date information on the solutions and protection measures available to victims or those at risk while emergency measures are in place and when measures are scaled down.

CONCLUSION

The significance of the research that has been done is immense, the findings that come after the survey is equally against the claims made by the government and the Supreme court itself. There is complete resentment for the existing online mode. May be the system works for the High courts and the Supreme court but for the district courts the system comes out to be a nightmare.

Briefly, as of now, it cannot be said for sure that the COVID-19 crisis will be short-lived. That only time will tell, because the COVID-19 virus is showing long term after-effects as well, and long-Corona cases too are emerging, plus new strains/variants of the COVID-19 virus are making their appearance every now and then, like in the United Kingdom, South Africa, Brazil and so on, and the virus still continues to pose a dreadful potential global threat. We do not seem to be fully out of danger yet. So, for how long the COVID-19 crisis induced interim hurriedly introduced technological innovations and the new COVID-19 crisis prompted court working methods shall persist, is yet to be seen. Under the circumstances, whether these will become a permanent "new normal" in the court administration system of the country in times to come, is also difficult to predict. Nevertheless, this is an important aspect which would be the subject matter of future quantitative legal studies, after the ongoing COVID-19 crisis dust settles down.

Another question that arises here is what next? India may have come to the stage of E-judiciary earlier than expected due to the COVID-19 crisis but is that all? It is observed that now further improvements in the justice administration in India are also expected to gather pace. Steps are afoot for greater use of Artificial Intelligence (AI) in justice administration. For instance, in December 2019, the Chief Justice of India (CJI), had proposed to introduce the system of Artificial intelligence (AI) as that is expected to bring about further improvements in the judicial system of the country besides helping in better administration



and delivery of judgments. The CJI allayed the fears that digitization will ultimately replace the judges in the courts. Clarifying, the Chief Justice of India at an event organized by Supreme Court Bar Association (SCBA) said that 'We propose to introduce, if possible, a system of artificial intelligence. There are many things which we need to look at before we introduce ourselves. We do not want to give the impression that this is ever going to substitute the judges.'